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**CRIMINAL LIABILITY FOR THE VIOLATION OF ROAD TRAFFIC
SAFETY OR VEHICLE OPERATION RULES BY THE DRIVER**

SUMMARY

Specialty 554.01 – Criminal Law and Criminal Enforcement Law

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RESEARCH CONCEPTUAL MILESTONES

Topicality. The implementation of the technical and scientific potential shall facilitate communication and improve the quality of life. From this standpoint, it is difficult to imagine our modern society without transportation. The latter has played and is playing a crucial role in society. In a modern world, the transport is the indispensable tool, which enables the humans to achieve their objectives. The transport sustainable development is a guarantee of economic growth, of free circulation of goods and services, of competition and economic freedom, as well as of raising the population standard of living.

Road transport is the most spread and diversified type of transport. Cars are no longer a luxury item as they have become available practically to anybody. The number of car owners is increasing on a daily basis. Each day, millions of people are engaged in social relations related to car traffic and operation. The evident advantages of the means of road transport are as follows: high mobility; relatively easy operation; potentiality to carry passengers or goods on both short and long distances, etc.

At the same time, there is a “reverse side of the coin”. In case of failure to observe the “precaution rules”, the means of transport within the meaning of Article 132 of the Moldovan Criminal Code (MCC) may become a vehicle causing serious harmful consequences. An inevitable consequence of the increased number of cars is the upsurge of violation cases of traffic safety rules or of vehicle operation.

A Communication from the European Commission reads: “Significant contributing factors to road traffic accidents are speed, driving under the influence of alcohol or drugs, and the failure to wear seatbelts or helmets. In addition to these and alongside a growing phenomenon of distraction by mobile devices, new trends are emerging in a complex environment, calling for a flexible and dynamic approach”.¹ In the same vein, Government Decision No. 1214 of 27.12.2010 approving the National Road Safety Strategy, acknowledges that the “Direct costs of the increased number of road traffic accidents are borne mainly by the Health Sector, Business Sector and by the families of those engaged in crashes”.² Undoubtedly, the increased number of road traffic accidents and higher rates of morbidity and mortality due to road traffic crashes negatively affect the socio-economic situation. Road traffic accidents lead to the destruction or deterioration of assets, death of and injuries in economically active people of working age.

¹ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Europe on the move. Sustainable Mobility for Europe: safe, connected, and clean.* Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0293&from=GA>

² Moldovan Government Decision No. 1214 of 27.12.2010 approving the National Road Safety Strategy. In: *Official Gazette of the RM*, 2011, No. 43-45.

Worldwide, more people die as a result of road traffic injuries than from HIV/AIDS or tuberculosis. Road crashes are now the most common cause of death for children and young people between 5 and 29 worldwide.³ Twenty to fifty million people sustain non-fatal injuries from a collision, and these injuries are an important cause of disability worldwide. Road traffic injuries are among the three leading causes of death for people between 5 and 44 years of age. Unless immediate and effective action is taken, road traffic injuries are predicted to become the fifth leading cause of death in the world, resulting in an estimated 2.4 million deaths each year.⁴

In the Republic of Moldova, the number of road traffic accidents remains high over the last years, namely: 2015 – 821 (of which 167 with deceased people; 315 – with injured people)⁵; 2016 – 833 (of which 193 with deceased people; 296 – with injured people)⁶; 2017 – 868 (of which 201 with deceased people; 299 – with injured people)⁷; 2018 – 824 (of which 181 with deceased people; 258 – with injured people)⁸; 2019 – 920 (of which 204 with deceased people; 296 – with injured people)⁹; 2020 – 747 (of which 179 with deceased people; 275 – with injured people)¹⁰; Q1 2021 – 173 (of which 35 with deceased people; 68 – with injured people).¹¹

This situation in our country stems from several reasons, amongst which one should mention the following: the mismatch between the road infrastructure and the number of operated means of road transport; low qualification and culture level of many drivers. The underestimation of the social threat generated by the breaches of traffic safety rules or vehicle operation rules leads to increased morbidity and mortality caused by road traffic accidents. Such breaches are the projection of traditions and stereotypes of indiscipline and impunity, having enhanced such phenomena in the group and individual awareness.

Under such circumstances, the issue of increased road safety in the Republic of Moldova is currently one of the most important. The life and health of many people depend on the

³ *EU Road Safety Policy Framework 2021-2030 – Next steps towards “Vision Zero”*. Available at: https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/move-2019-01178-01-00-en-tra-00f.pdf

⁴ *Global Plan for the Decade of Action for Road Safety 2011-2020*. Available at: https://www.who.int/roadsafety/decade_of_action/plan/plan_english.pdf

⁵ *Operative information on crime status (without classification) on the Moldovan territory for December 2015*. Available at: <https://mai.gov.md/ro/date-statistica>

⁶ *Operative information on crime status (without classification) on the Moldovan territory for December 2016*. Available at: <https://mai.gov.md/ro/date-statistica>

⁷ *Operative information on crime status (without classification) on the Moldovan territory for December 2017*. Available at: <https://mai.gov.md/ro/date-statistica>

⁸ *Operative information on crime status (without classification) on the Moldovan territory for December 2018*. Available at: <https://mai.gov.md/ro/date-statistica>

⁹ *Operative information on crime status (without classification) on the Moldovan territory for December 2019*. Available at: <https://mai.gov.md/ro/date-statistica>

¹⁰ *Operative information on crime status (without classification) on the Moldovan territory for December 2020*. Available at: <https://mai.gov.md/ro/date-statistica>

¹¹ *Operative information on crime status (without classification) on the Moldovan territory for March 2021*. Available at: <https://mai.gov.md/ro/date-statistica>

identification of an appropriate solution to this end. Harming the essential attributes of an individual due to the infringement of road traffic safety threatens inevitable the normal operation of the society, having created a serious imbalance therein.

A Communication from the European Commission reads: “Safety is fundamental to any transport system; it must always be the top priority. As mobility continues to grow and is radically transformed by digitisation, decarbonisation and innovation, the opportunities to further improve safety performance must be seized”.¹² Nobody doubts the need to enhance road traffic safety, including through legal means. The road traffic is a process subject to regulation. The legal regulation, as a form influencing the social relations aimed at their ordering and harmonising, plays one of the key roles in increasing the road traffic safety. To enhance the efficiency of road traffic safety, the State shall adopt and implement state road safety programmes; develop and enforce sustainable urban mobility plans; restore and upgrade the road network, etc.

An important role in preventing the violation of road traffic safety or vehicle operation rules is played by the Criminal Law, as the threat to road traffic safety is brought by the individual who operates the vehicle and violates the road traffic safety or vehicle operation rules rather than the means of transport itself. The Criminal Law fulfils the general prevention function and interacts with the insurance mechanisms belonging to the Administrative Law, having implemented the purpose outlined in Article 2 (1) of the MCC: “Criminal Law shall protect people from crimes; their rights and freedoms; property; the environment; constitutional order; the sovereignty, independence, and territorial integrity of the Republic of Moldova; the peace and security of humanity, as well as the rule of law in its entirety”. When the non-legal and non-criminal means are neither efficient nor sufficient, the Criminal Law, namely Article 264 of the MCC, shall protect the legal order against the violation of road traffic safety or vehicle operation rules by the person operating the means of transport.

Quite recently, the aforementioned Article was subject to amendments operated by Law No. 207 of 28.07.2016 on Amendments and Addenda brought to certain Legal Acts¹³ and Law No. 138 of 19.07.2018 on Amendments brought to certain Legal Acts.¹⁴ Nonetheless, there are still many gaps in place, which negatively affect the quality of Article 264 of the MCC. In our opinion, this

¹² *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Europe on the move. Sustainable Mobility for Europe: safe, connected, and clean.* Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0293&from=GA>

¹³ Law No. 207 of 28.07.2016 on Amendments and Addenda brought to certain Legal Acts. In: *Official Gazette of the RM*, 2016, No. 369-378.

¹⁴ Law No. 138 of 19.07.2018 on Amendments brought to certain Legal Acts. In: *Official Gazette of the RM*, 2018, No. 347-357.

Article lacks efficiency as it is inappropriately formulated, while the assumptions described in this Article are presented in a distorted way.

Moreover, Decision No. 20 dated 08.07.1999 regarding the judicial practice on applying the legislation while investigating the criminal cases related to the violation of road traffic safety or vehicle operation rules¹⁵, adopted by the Moldovan Supreme Court of Justice (SCJ) during its Plenary Session (hereinafter referred to as Decision No. 20/1999 of SCJ Plenary) fails to provide answers to all questions related to the qualification of deeds based on Article 264 of the MCC. Even the Criminal Law Doctrine failed to develop a single concept to this end, or, at least, a dominant concept on how to qualify the deeds on the basis of Article 264 of the MCC. It is required to redefine the conceptual foundation of the Criminal Law study concerning the liability for the offences covered by Article 264 of the MCC, as well as to systematize all theoretical approaches with respect to defining the constituents of such offences.

In light of the above, the topicality and importance of the issue suggested for research becomes obvious.

Describing the Situation in the Research Area and Identifying the Research Issue.

Amongst the scientists who tackled the issue of criminal liability for violation of transport traffic or operational safety rules by the person operating the means of transport one can mention: A. Borodac, S. Brinza, V. Budeci, S. Cernomoret, L. Girla, N. Gordila, D.M. Hortopan, T. Popovici, I. Slisarenco, V. Stati, I. Sevcenco, Iu. Tabarcea, I. Turcan (Republic of Moldova); Gh. Alecu, S. Badiceanu, M. Buzea, G.M. Husti, T-C. Medeanu (Romania); S.V. Babanin, A.O. Danilevski, V.O. Gapcici (Ukraine); G.S. Aiupova, A.I. Korobeev, M.V. Muhortova, V.I. Neverov, N.I. Pikurov (Russian Federation); A.I. Saharciuk, A.A. Siomin (Republic of Belarus), etc.

The Thesis relies on the works of these authors, which served as its theoretical foundation. This work shall complement the studies developed previously in this area, having highlighted some new trends and matters, which are specific for the current phase of societal development.

As a result of benchmarking the relevant current situation, the following *research issue* has been formulated: develop the conceptual framework to identify the offence constituents related to the breach of road traffic safety or vehicle operation rules by the person operating the means of transport, which will improve streamlining the process of interpreting and applying Article 264 of the MCC, having ensured, in theory, the prevention of and combating the offences covered by this Article.

¹⁵ Decision No. 20 of 08.07.1999 regarding the judicial practice on applying the legislation while investigating the criminal cases related to the violation of road traffic or vehicle operation safety rules adopted by the Moldovan Supreme Court of Justice (SCJ) Plenary. Available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=361

Work Goal and Objectives. The Thesis *goal* is to conduct a thorough research of criminal liability for the offences referred to in Article 264 of the MCC, to consider and address the issues regarding how this Article is interpreted and applied, and to identify the gaps affecting the quality of Article 264 of the MCC, having formulated *de lege ferenda* proposals aimed to improve the relevant regulatory framework.

In order to attain the aforementioned goal, some *objectives* have been formulated and displayed below:

- to review the doctrinal opinions on the liability for the violation of road traffic safety or vehicle operation rules by the driver;
- to consider from the Criminal Law standpoint the offence constituents referred to in Article 264 of the MCC, as well as the aggravating circumstances covered by Paragraphs (2), (4) and (6) of this Article;
- to use the non-criminal rules, defining the road traffic safety or vehicle operation rules, in the process of interpreting Article 264 of the MCC;
- to identify compatibility between Article 264 of the MCC and the reference non-criminal rules;
- to benchmark the criminal regulations pertaining to the legislation of some foreign countries, which define the liability for breaching the road traffic safety or vehicle operation rules by the driver;
- to distinguish the offences referred to in Article 264 of the MCC from certain criminal or contravention deeds;
- to disclose the issue occurring in the qualification practice of deeds pursuant to Article 264 of the MCC, followed by the formulation of solutions;
- to estimate the degree of clarity of terms and notions operated by the Legislature in Article 264 of the MCC;
- to highlight the gaps/weaknesses made by the Legislature in the provisions of Article 264 of the MCC;
- to detect the deficiencies characterising Decision No. 20/1999 of the SCJ Plenary¹⁶;
- to formulate *de lege ferenda* proposals aimed to improve the relevant regulatory framework.

¹⁶ Decision No. 20 of 08.07.1999 regarding the judicial practice on applying the legislation while investigating the criminal cases related to the violation of road traffic or vehicle operation safety rules adopted by the Moldovan Supreme Court of Justice (SCJ) Plenary. Available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=361

Research Methodology. To accomplish the aforementioned goals and objectives, it has been resorted to the logical method, comparative method, historical method, etc. The investigation carried out in this Thesis is based on the studies of doctrine, legislation and practices exercised by the Moldovan and Romanian courts. Case-law of the Moldovan Constitutional Court and of the Romanian Constitutional Court was taken into consideration.

Upon carrying out the investigation, the criminal and non-criminal regulatory framework of the Republic of Moldova served as a core milestone. Where appropriate, a comparative analysis of other countries legislation has been performed, involving the legislation of the Russian Federation, Greece, Kingdom of Spain, Republic of Bulgaria, Republic of Croatia, Republic of Estonia, Federal Republic of Germany, Republic of Finland, Republic of France, Republic of Italy, Republic of Latvia, Republic of Lithuania, Republic of Poland, Republic of Portugal, Republic of Slovenia, Romania, Ukraine, etc.

Scientific Novelty and Originality lies in the fact that a thorough research of offences referred to in Article 264 of the MCC has been conducted from a legal and criminal standpoint. In addition, the scientific novelty of research results consists in assessing some controversial concepts covered by the doctrine; carrying out their analysis and formulating the Author's position. Stemming from this foundation were the conclusions and theoretical recommendations aimed to continuously improve the legislation. The achieved research results prove the Author's contribution to the improved investigation of the most litigant issues dealt with by the Criminal Law science and practice concerning the offences referred to in Article 264 of the MCC.

Work Theoretical Significance lies in the following: a) redefining the conceptual foundation of the Criminal Law study concerning the liability for the offences referred to in Article 264 of the MCC; b) systematizing the theoretical approaches on defining the constituents of those offences; c) gathering wide theoretical and practical material to develop some topical and complex guidelines for the investigation of the offences referred to in Article 264 of the MCC; d) drawing some new perspectives covering the theoretical and methodological framework of the criminal liability actual and legal basis for the offences specified under Article 264 of the MCC.

Work Applied Value can be described as follows: a) the scientific concepts presented by this Work display a real interest both for the national science of Criminal Law and for the Moldovan Legislature; b) the interpretation of notions used in Articles 132 and 264 of the MCC, as well as the criteria for distinguishing the proposed related deeds have a great importance both for using these Articles pursuant to the principle of lawfulness and for the subsequent development of scientific concepts tackling the issue concerned; c) the outcomes of critical assessment of imperfections, characterising Articles 132 and 264 of the MCC may be taken into

account by the Legislature in the process of continuous improvement of Criminal Law; d) the conclusions formulated and recommendations submitted by us are applicable in the practical activity of law enforcement bodies, as well as in the training process within the secondary and higher education institutions with legal profile, but also within the National Institute of Justice.

Core Research Results submitted for Defence can be summarized as follows: bringing arguments that Article 264 (1) a) and b), (3) and (5) of the MCC covers the liability for separate offences; setting the suprageneric legal subject-matter and the subgroup legal subject-matter for the offences referred to in Article 264 of the MCC; setting the conditions under which Article 264 of the MCC shall apply when committing an offence while carrying out motorcar competitions, trainings or races; identifying the assumptions when the offences referred to in Article 264 of the MCC presuppose an attempt stage; setting the role and place of electric vehicles in the context of the definition covered by Article 132 of the MCC; showing that the means of transport with autonomous components and driverless vehicles are those mentioned within the meaning of Article 132 of the MCC; setting psychological attitude towards the harmful event covered by Article 264 of the MCC; identifying the solutions that are needed for the hypothesis of mutual guilty displayed in the offences referred to in Article 264 of the MCC; detecting there is a reason in place leading to these offences; identifying the required solutions in the assumption of the unforeseeable case and that of urgent necessity, attested in the context of offences referred to in Article 264 of the MCC; determining the extent to which the level of inebriation is to be taken into account upon the individualisation of punishment for the offences referred to in Article 264 (2), (4) and (6) of the MCC; defining the possibility of the aggravating circumstance in place “commission of the offence under the influence of alcohol” in Article 264 of the MCC, etc.

Implementation of Scientific Results. The accomplished scientific results find their application in the training process of Law School students within the higher education institutions, in the practical activity of law enforcement bodies, as well as of the Legislature. Likewise, the implementation of scientific results is shown in the theoretical conclusions and practical recommendations of scientific articles, as well as presenting these results at scientific conferences, which contributed to the enrichment of the legal criminal doctrine.

Approving the Results. The results accomplished following the performed study were presented and approved at many scientific fora, as follows:

➤ International Scientific Conference “Contemporary scientific challenges and trends” held on 20 August 2018 (Warsaw, Poland);

- International Scientific Conference “Current scientific studies in the contemporary world”, the XL-th Edition, held on 26-27 August 2018 (Pereiaslav-Hmelnitki, Ukraine);
- National Scientific Conference with international participation “Integration through research and innovation” held on 8-9 November 2018 (Chisinau, Republic of Moldova);
- International Scientific Conference “Contemporary scientific challenges and trends” held on 20 July 2019 (Warsaw, Poland);
- National Scientific Conference with international participation “Integration through research and innovation” held on 7-8 November 2019 (Chisinau, Republic of Moldova);
- International Scientific Conference “Contemporary scientific challenges and trends” held on 30 July 2020 (Warsaw, Poland);
- National Scientific Conference with international participation “Integration through research and innovation” held on 10-11 November 2020 (Chisinau, Republic of Moldova);
- International Scientific Conference “Contribution of young researchers to the development of public administration” held on 26 February 2021 (Chisinau, Republic of Moldova);
- National Scientific Conference with international participation “Offence – Criminal Liability – Punishment. Law and Criminology” held on 25-26 March 2021 (Chisinau, Republic of Moldova);
- International Scientific Conference “Current scientific studies in the contemporary world”, the LXXII-th Edition, held on 26-27 April 2021 (Pereiaslav, Ukraine).

Likewise, the Thesis outcomes have been published in two scientific journals with impact factor: *Studia Universitatis Moldaviae* and *National Institute of Justice Journal*.

Thesis coverage: 22 scientific publications.

Thesis volume and structure: Introduction, five chapters, General conclusions and recommendations, Bibliography comprising 560 titles, 318 pages of body text.

Key words: means of transport; road traffic safety; operation of means of transport; violation of rules; imprudence; person operating the means of transport; state of intoxication/drink-driving.

THESIS CONTENT

The Thesis comprises five chapters. Each chapter ends up with a summary section (conclusions) on the issue discussed and the results achieved.

Chapter 1 – *Analysis of the situation on criminal liability for the violation of road traffic safety or vehicle operation rules by the person operating the means of transport* – we have reviewed scientific materials on the Thesis topic published in the Republic of Moldova, as well as in other countries.

A paper developed by a group of authors, namely A. Barbaneagra, V. Berliba, M. Bargau et al.¹⁷ in 2003. A. Borodac is the Author of the comment to Article 264 of the MCC.

The aforementioned Paper defined the content of the special legal subject-matter of offences referred to in Article 264 of the MCC: “the social relations, which normal existence and flow are conditioned by the protection of safety rules and of vehicle operation rules”.¹⁸ Further, A. Borodac determined the structure and content of the offence objective dimension. By resorting to the explanations displayed by Decision No. 20/1999 of the SCJ Plenary¹⁹, the notions “the violation of road traffic safety rules” and “the violation of vehicle operation rules” were defined, the means and the place of offence commission were considered for the offences referred to in Article 264 of the MCC. As for the subjective dimension of these offences, A. Borodac stated: “The subjective dimension is characterised by imprudent guilt only. Therefore, offence preparation and attempt shall be removed. If the operator of the means of transport deliberately caused damage to the life and health of a person, the action shall be qualified as an offence against the life and health of a person”.²⁰ The review carried out by A. Borodac ended with the review of offence features covered by Article 264 of the MCC, as well of the notion “under the influence of alcohol/state of intoxication”, which is used in Paragraphs (2), (4) and (6) of this Article.

The monograph developed by A.I. Korobeev was published in 2003.²¹

This author expressed the point of view, according to which “the notion “means of transport” covers not only the trams, trolleybuses, tractors, other self-propelled vehicles (combines, graders, scrapers, bulldozers), motorcycles or other mechanical means of transport (scooters, snowmobiles), but also non-mechanical means of transport, including those with certain

¹⁷ *Criminal Code of the Republic of Moldova. Comment* / Edited by A. Barbaneagra. Chisinau: ARC, 2003. 836 p.

¹⁸ *Ibidem*, p. 581.

¹⁹ *Decision No. 20 of 08.07.1999 regarding the judicial practice on applying the legislation while investigating the criminal cases related to the violation of road traffic or vehicle operation safety rules adopted by the Moldovan Supreme Court of Justice Plenary*. Available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=361

²⁰ *Criminal Code of the Republic of Moldova. Comment* / Edited by A. Barbaneagra. Chisinau: ARC, 2003, p. 583. 836 p.

²¹ Коробеев А.И. *Транспортные преступления*. Санкт-Петербург: Юридический центр-Пресс, 2003. 406 p.

specificity, like mokiks, animal-powered transport, strollers for children, etc.”.²² This point of view cannot be applied in the context of Criminal Law of the RM, because the notion “other types of mechanical means of transport” is used in Article 132 of the MCC. The purpose of using this notion is to limit the scope of the notion “means of transport” defined in this Article. Therefore, if the means of transport used by the infringer is not mechanical, then Article 264 of the MCC shall not apply. In this case Article 269 of the MCC may apply.

In a different vein, A.I. Korobeev claims: “The review of judicial practice shows that the road traffic safety rules or vehicle operation rules are violated deliberately, while the infringer shows imprudence towards the consequences of those violations (specified as excessive self-confidence or negligence)”.²³ The analysis of this doctrinal opinion helps us identify the features of offences referred to in Article 264 of the MCC, which have a specific impact on the offender’s guilt content. Hence, the harmful event covered by Article 264 of the MCC means the violation of certain rules defined by regulatory norms outside the Criminal Law. The violation – either deliberate or reckless – of such rules shapes also the content of the harmful event for the offences referred to in Article 183, Article 212 (4), Article 215, Article 218 (4), Articles 223, 224, 226-230, 235, 261, 263, 265, 267, 269, 293, 296-298, 300, 301, 345, 373, 374, 376, Article 381 (3), Articles 382-384, etc. of the Criminal Code. With respect to all these offences, the attitude towards the injurious consequences is driven by imprudence. Such offences are also covered by the Criminal Law of the Russian Federation, Ukraine and the Republic of Belarus.

S. Brinza, X. Ulianoschi, V. Stati, I. Turcan and V. Grosu developed and published a paper in 2005.²⁴ Paragraph 3 “Violation of road traffic safety or vehicle operation rules by the person operating the means of transport”, Section III “Offences directly related to the violation of road traffic safety rules or of vehicle operation rules”, Chapter XIII “Offences in the area of transport” of the aforementioned Paper is of interest for this study. I. Turcan is the Author of offence review covered by Article 264 of the MCC.

This author acknowledged the complex feature of the special legal subject-matter of offences referred to in Article 264 of the MCC: “The core legal subject-matter of this offence refers to social relations on safe operation of the means of transport stated by law. Social relations linked with the person’s life or health or with the integrity of assets appear as the secondary legal subject-matter of this offence”.²⁵

²² Ibidem, pp. 200-201.

²³ Ibidem, p. 135.

²⁴ Brinza S., Ulianoschi X., Stati V. et al. *Criminal law. Special part. Vol. II*. Chisinau: Cartier, 2005. 804 p.

²⁵ Ibidem, p. 512.

While considering those two regulatory ways for the harmful event referred to in Article 264 of the MCC, I. Turcan claims: “The road traffic safety rules are defined with the aim to safeguard the operation of the means of transport in motion, i.e. from the very moment it starts moving and until its full stop. Speeding, violation of overtaking rules relative to other means of transport, crossing at the red colour of traffic light, etc. are deemed as breaches of traffic safety rules. The vehicle operation rules comprise a series of measures, which ensure the appropriate technical condition of the means of transport, as well as observance of the rules set for its operation (for instance, carriage of people by a means of transport not intended for this action)”.²⁶

Gh. Alecu published a scientific article in 2008.²⁷

Gh. Alecu recognises the likelihood of situations when the offender may not realise he/she is drunk: “Out of the rich casuistry one could mention accidental intoxications with alcohol, as there might be certain industrial areas; taking, for therapeutic purpose, medicinal volatile substances (camphor, some sugars with alcoholic function, neuroleptics, etc.), as well as the case of a participant in fire extinguishing who, being accused of alcoholic intoxication, visited a forensic doctor who found physiological signs assimilated to alcoholic intoxication following the clinical investigations, but who detected no alcohol in blood and a 28% concentration of COHb following the analysis of the collected biological samples”.²⁸ This opinion helps us draw the conclusion in Sub-chapter 5.1 of this Thesis, according to which an attempt to commit an offence is possible in the hypotheses referred to in Article 264 (2), (4) or (6) of the MCC. We may talk about an attempt to commit an offence in these hypotheses when the offender has got an erroneous representation on his/her intoxication status.

Likewise, another point of view expressed by *Gh. Alecu* is of interest, namely: “Using the breath to determine the alcohol level as evidence is cumbersome due to several matters. The outcomes derived through this method may not be conclusive, as the proportion of cellular air in the breath is variable depending on the breath depth (2/3 on the average) or on the individual physiological factors of the tested person, while changes in ventilation or temperature also hinder an accurate appraisal [...]. Specialty studies showed that although the electrochemical determination of alcohol concentration in the breath is a useful method to assess the level of alcohol intoxication, the outcomes may take an insecure value within the interval 0.99-1.40‰ [...]”.²⁹ This point of view facilitates the setting, in Sub-chapter 5.2 of this Thesis, of the fact that

²⁶ *Ibidem*, p. 513.

²⁷ *Alecu Gh.* Matters of judicial practice regarding the intentional homicide crime in case of road traffic crashes. In: *National Law Journal*, 2008, No. 4, p. 68-70.

²⁸ *Ibidem*.

²⁹ *Ibidem*.

the level of drunkenness should be determined via medical examination of the inebriate condition and its nature. By doing the breath alcohol testing it is possible to determine the alcohol concentration in the breath, but not the level of drunkenness. Any alcohol intoxication condition involves the concentration of alcohol in the breath, but not any concentration of alcohol in the breath involves the level of drunkenness.

Another publication on the Thesis topic is the one developed in 2009 by A. *Barbaneagra, Gh. Alecu, V. Berliba et al.*³⁰ V. Budeci is the Author of the comment to Article 264 of the MCC.

This author describes the special legal subject-matter of offences referred to in Article 264 of the MCC as follows: “social relations, which existence is conditioned by the road traffic safety and by the operation of means of transport, as part of public safety and order”.³¹ This opinion stems from the Russian Criminal Law rather than the Moldovan Criminal Law. Thus, the Russian Criminal Code, Chapter 27 “Offences against road traffic safety and operation of means of transport” is included in Title IX “Offences against public safety and order” from the Special Part. In the Moldovan Criminal Code, the fundamental social value defended against the offences covered by Chapter XII of the Special Part is of similar level as the fundamental social value defended against the offences covered by Chapter XIII “Offences against public safety and order” from the Special Part. One may not claim that these social values find themselves in a “part/whole” relationship.

It is of particular interest to distinguish between the material subject-matter of offences referred to in Article 264 of the MCC and the means for their commission, a fact carried out by V. Budeci: “The means of transport is not the offence material subject-matter, because the driver’s actions/inactions are not targeting directly a vehicle, exposing it to danger or damaging it. The offender’s action/inaction is targeting the traffic safety (social value, non-material subject-matter) he/she endangers. The vehicle is the means, tool used to jeopardize the aforementioned social value, and, therefore, to commit the offence”.³²

In 2010 a monograph was published where V. *Stati* analysed, *inter alia*, the offences referred to in Article 264 of the MCC.³³

Having considered the causality link for the offences referred to in Article 264 of the MCC, V. *Stati* claims that the constituent sign is present if “the violation of road traffic safety or vehicle

³⁰ Barbaneagra A., Alecu Gh., Berliba V. et al. *Criminal Code of the Republic of Moldova. Comment (Annotated with ECHR and national courts case-laws)*. Chisinau: Sarmis, 2009. 860 p.

³¹ *Ibidem*, p. 586.

³² *Ibidem*, p. 586.

³³ *Stati V. Offences where the means of transport appeared as a material subject-matter or as means to commit the offence*. Chisinau: CEP USM, 2010. 352 p.

operation rules preceded the occurrence of harmful consequences; the violation in question has been the necessary cause to produce harmful consequences; the violation of road traffic safety or vehicle operation rules triggered a real threat leading to the occurrence of harmful consequences; the violation in question has seized the possibility to produce harmful consequences, making it happen”.³⁴

Deserves attention the opinion of V. Stati concerning another constituent sign of the objective dimension of offences referred to in Article 264 of the MCC: “If the scene of incident is neither open to vehicle traffic and pedestrian movement nor has it been managed by an empowered body as public road or as adjacent territory thereof, one may not talk about an offence of road traffic safety or vehicle operation rules, the latter being covered by the Road Traffic Regulation (RTR). Therefore, Article 264 of the MCC shall not apply. Instead, Article 149 or Article 157 of the MCC shall apply, as appropriate”.³⁵ Such interpretation is based on the provisions of RTR Paragraph 1: “The Road Traffic Regulation [...] covers the rules that determine the vehicle traffic and pedestrian movement on the public roads of the Republic of Moldova, as well as on the adjacent territories thereof. [...]”.³⁶

I. Slisarenco defended his PhD Thesis in 2019.³⁷

This author stated that for the offences referred to in Article 264 of the MCC, the person’s life and health shall be protected alongside with other social values.³⁸ In order to be accurate, the qualification of the deed referred to in Article 264 of the MCC must take into account both the social values and social relations, which represent the harmful event, and the social values and social relations representing the harmful consequences. Damaging the person’s life or health is what confers an offence feature to the violation of road traffic safety or vehicle operation rules.

Likewise, we support the opinion of I. Slisarenco, according to which “if following the same violation of road traffic safety rules, it would cause, due to imprudence, health injuries of different severity to two or more people, or medium or serious health injury to one/more people and the death of another person(s), the legal classification of harmful deeds shall be done based on multiple offences”.³⁹ On this occasion we shall mention that it is not possible that the same offence has occurred firstly due to imprudence, causing medium-level injury to limb or health, and then causing, also due to imprudence, either serious injury to limb or health or the victim’s death.

³⁴ Ibidem, p. 136.

³⁵ Ibidem, pp. 136-137.

³⁶ Moldovan Government Decision No. 357 of 13.05.2009 approving the Road Traffic Regulation. In: *Official Gazette of the RM*, 2009, No. 92-93.

³⁷ Slisarenco I. *Legal nature of deeds leading to health impairment and death committed from imprudence due to the violation of road traffic safety rules / A Thesis for the Award of PhD Degree in Law*. Chisinau, 2019. 221 p.

³⁸ Ibidem, p. 59.

³⁹ Ibidem, p. 139.

We shall conclude the analysis of scientific materials on criminal liability for the violation of road traffic safety or vehicle operation rules by the person operating the means of transport, published abroad, with the review of the scientific article published in 2019, its Author being *G.M. Husti*.⁴⁰

Having considered the imputability issue of road traffic accidents involving driverless vehicles, the Author claims that: “A system of *strict liability* where the guilt is presumed is preferable because it is closer to our system based on subjective liability and avoids the unfairness generated by the purely objective liability, where the *mens rea* component is absolutely indifferent. [...] The proposed solution is that only the individual responsible for the component leading to the accident in question shall be criminally liable. If the offence is a consequence of a programming error, the liability would belong to the person who had the obligation to supervise, coordinate and manage the team responsible for programming the driverless vehicle within the legal entity. If there were several IT teams involved, the liability would belong to the individual who should have supervised the merger of work done by two teams. Certainly, the proposed solution in this case targets only the limitation of liability of a large number of people, not the limitation of holding liable a single person”.⁴¹ Being guided by these ideas, in Sub-chapter 3.4 of this Thesis, we may draw the conclusion that in order for the harmful consequences to occur due to malfunctioning of the driverless vehicle, the following people shall be criminally liable: 1) the individual who created the system of artificial intelligence that managed such a vehicle; 2) the individual who ensures safe operation of this system of artificial intelligence; 3) the individual who ensures the operation of a driverless vehicle. Article 264 of the MCC may apply only to the individual who belongs to the latter category. The people pertaining to the first two categories shall be held liable pursuant to Articles 149, 157 or 261 of the MCC.

Finally, we have drawn the conclusions referring to the liability for the offences covered by Article 264 of the MCC, using the opinions expressed in the scientific materials subject to review. The research issue has been defined as a result of benchmarking the current situation in this area. The strands aimed at addressing the research issue have been defined as well. And last but not least, the Thesis goals and objectives have been set.

Chapter 2 – *Subject-matter of offences related to the violation of road traffic safety or vehicle operation rules by the person operating the means of transport* – first of all, the

⁴⁰ Husti G.M. Guilt and other constituents concerning the criminal liability in case of operating driverless vehicle. In: *Criminal Law Notebooks*, 2019, No. 3, pp. 73-96.

⁴¹ *Ibidem*.

suprageneric legal subject-matter and the subgroup legal subject-matter for the offences referred to in Article 264 of the MCC have been defined.

Safety in rail, waterborne, air and road transport, seen as fundamental social values protected against the offences covered by Chapter XII in the Special Part of the Moldovan Criminal Code, is that integral part of the national security, which presupposes the protection of interests shown by an individual, society and state in the area of transport, against the offences referred to in Articles 264-276 of the MCC. Stemming from the social relations regarding the safety in rail, waterborne, air and road transport (as generic legal subject-matter of offences covered by Chapter XII in the Special Part of the Moldovan Criminal Code) there are two sub-group legal subject-matters, namely: a) the social relations on safety in rail, waterborne, air and road transport, involving the observance of certain rules applied in the area of transport (Articles 262-267 and 269 of the MCC); b) the social relations on safety in rail, waterborne, air and road transport, not involving the observance of certain rules applied in the area of transport (Articles 268, 270-272, 275 and 276 of the MCC).

The special legal subject-matter of offences referred to in Article 264 of the MCC includes two components: the principal legal subject-matter and the secondary legal subject-matter. Those two components of the social value protected, in principle, against the offences referred to in Article 264 of the MCC, are: 1) road traffic safety; 2) safe operation of means of transport. The road traffic safety and safe operation of means of transport are interdependent and mutually reinforcing components, shaping a binary social value protected against the offences referred to in Article 264 of the MCC. There are two social value components protected secondarily against the offences referred to in Article 264 of the MCC, namely: a) person's health; b) person's life.

The human body, not the human, is the material subject-matter of offences referred to in Article 264 of the MCC. The victim of these offences is the natural person exposed to immediate danger to limb or health (Paragraph (1) and (2)); serious injury to limb or health (letter a) Paragraph (3) and Paragraph (4)); death (letter b) Paragraph (3), Paragraphs (4)-(6)).

Chapter 3 – *Objective dimension of offences stemming from the violation of road traffic safety or vehicle operation rules by the person operating the means of transport* – first of all, the objective dimension structure of offences referred to in Article 264 of the MCC has been defined as follows: 1) the harmful event expressed in the action/inaction leading to the violation of road traffic safety or vehicle operation rules; 2) the harmful consequences including, as appropriate: a) medium-level injury to limb or health; b) serious injury to limb or health; c) death of one person; d) death of two or more people; 3) causal link between a harmful event and harmful consequences; 4) the means of committing the offence, namely the means of transport; 5) the place where the

offence has been committed, namely the place where regulatory acts apply (containing road traffic safety rules or vehicle operation rules, infringed by the subject of offences covered by Article 264 of the MCC), falling within the scope of this Article.

The reference feature of Article 264 of the MCC enables it to “borrow” the text of norms setting the road traffic safety or vehicle operation rules. Nonetheless, the norms themselves, which define such rules, are not included in Article 264 of the MCC. The content of the harmful event, referred to in Article 264 of the MCC, can be made up only out of those infringements of road traffic safety or vehicle operation rules, which may potentially cause: medium-level injury to limb or health; serious injury to limb or health; death of one or more people.

Regarding the harmful consequences of offences referred to in Article 264 of the MCC, we have found that the participant in illegal races might deliberately follow actions leading to injurious consequences. Having generalised, if following the commission of the offence referred to in Article 264² (1) of the MCC, it leads to the death or causes medium/serious injury to limb or health, the participant in illegal races shall be held liable also pursuant to Articles 149 or 157 of the MCC (if he/she showed imprudence towards such consequences) or Articles 145, 151 or 152 of the MCC (if the participant in illegal races showed intention towards death or medium/serious injury to limb or health).

As regards the causality link of offences referred to in Article 264 of the MCC, we have found that such link shall be considered as identified when the violation of road traffic safety or vehicle operation rules preceded the occurrence of harmful consequences covered by Article 264 of the MCC, being the necessary cause generating such consequences.

As for the means of offence commission referred to in Article 264 of the MCC, we substantiated that in Article 132 of the MCC, the notion “self-propelled vehicles” does not have the meaning of self-propelled means of transport. Otherwise, the notion “self-propelled vehicles” would duplicate the notion “mechanical means of transport”, used in the same Article. In Article 132 of the MCC, the notion “self-propelled vehicles” has the meaning of mechanical means of transport assimilated to tractors intended to carry out some construction, agricultural, forestry works or other activities. The driverless vehicles, as well as those with autonomous components (not controlled by the driver) shall fall within the scope of the notion defined by Article 132 of the MCC. These means of transport are fitted with their own propulsion, which is controlled in full or in part by artificial intelligence.

Regarding the place of commission of offences referred to in Article 264 of the MCC, we proved that it should meet three conditions: a) to fall within the scope of regulatory acts Article

264 of the MCC refers to; b) these regulatory acts cover road traffic safety or vehicle operation rules; c) these rules have been infringed by the subject.

Chapter 4 – *Subjective components of offences related to the violation of road traffic safety or vehicle operation rules by the person operating the means of transport* – the subjective dimension and the subject of offences referred to in Article 264 of the MCC have been considered.

As regards the subjective dimension of these offences, we proved that, essentially, the offences referred to in Article 264 of the MCC shall be considered to be offences committed due to imprudence. Article 19 of the MCC does not describe the guilt content for the offences covered by Article 264 of the MCC. Distinguishing between excessive self-confidence and indirect intention is important while separating the offences mentioned by Article 264 of the MCC from some adjacent offences. Distinguishing between negligence and excessive self-confidence is important for the individualisation of punishment/penalty for the offences covered by Article 264 of the MCC. The absence or presence of obligation and possibility to foresee the occurrence of harmful consequences represents the specific difference allowing to distinguish negligence (Article 18 of the MCC) from the deed committed without guilt (Article 20 of the MCC). Under the circumstances of the Moldovan Criminal Law, sharing a common guilt would not be justified even when the offender and the victim would be held liable pursuant to the same provision of Article 264 of the MCC. Even less, if the offender and the victim are guilty for the offences covered by different provisions of this Article or by different articles (for instance, Articles 264 and 269 of the MCC), or by different Codes, it is not possible to share it. The principle of personal criminal liability invalidates the concept of shared guilt; each offender shall be held liable individually, not jointly with somebody else. When a road traffic accident takes place, the offender's guilt does not automatically mean that the victim is not guilty, just like if the victim is guilty it does not automatically mean that the offender is not guilty. It could be the case that both the offender and the victim are guilty or only one of them. In case of offences referred to in Article 264 of the MCC, the reason and purpose shall refer to the harmful event, not to the offence as a whole. Article 264 of the MCC shall apply only when the harmful consequences covered by this Article occur following the violation, due to hooliganism, of traffic rules, while such infringement is expressed in the violation of traffic rules by people operating the means of transport through aggressive behaviour or unauthorised group movement on public roads.

Regarding the subject of offences referred to in Article 264 of the MCC, we have found that when holding a Driver's Licence, the subject of offences referred to in Article 264 of the MCC shall be at least 16 years old. If the trainer initiated the violation, by the trainee, of road traffic safety or vehicle operation rules or, although the trainer did not initiate such violation, he/she

failed to undertake all the measures necessary to prevent the violation, by the trainee, of road traffic safety or vehicle operation rules, although he/she should have done that and was able to do it, then the trainer shall be held liable pursuant to Article 264 of the MCC. If the trainer undertook timely measures to prevent or stop the violation, by the trainee, of these rules, but, due to circumstances beyond his/her will, failed to avoid the road crash, then the trainee shall be held liable pursuant to Article 264 of the MCC. In this case the trainer shall not be held criminally liable pursuant to this Article. If the consequences covered by Article 264 of the MCC have causal links with the violation, by a military man, of driving rules or of vehicle operation rules, the vehicle belonging to the National Army or to the General Inspectorate of Carabineers, then Article 382 of the MCC shall apply.

Finally, in Chapter 5 – *Alcohol intoxication level of the subject of offences related to the violation of road traffic safety or vehicle operation rules by the person operating the means of transport* – we found that out of the definition of the notion “state of intoxication” covered by Article 134¹² (1) of the MCC, one may infer the presence of the following three features: a) formal feature (consumption of alcohol, narcotic drugs and/or other substances with similar effects); b) material feature (bodily psycho-functional disorder); c) causal feature (the presence of a causal link between the consumption of alcohol, narcotic drugs and/or other substances with similar effects and bodily psycho-functional disorder).

The state of intoxication along with its nature shall be identified via medical examination. The breath alcohol tester shall measure the concentration of alcohol in the breath, not the level of drunkenness. Any alcohol intoxication condition involves the concentration of alcohol in the breath, but not any concentration of alcohol in the breath involves the level of drunkenness. Identifying the offender’s state of intoxication, confirmed after the occurrence of a road traffic crash, does not necessarily presuppose that he/she violated the road traffic safety or vehicle operation rules, being under the influence of alcohol. The liability pursuant to Article 264 (2), (4) or (6) of the MCC shall apply only when the level of drunkenness was a prerequisite of the violation of road traffic safety or vehicle operation rules by the person operating the means of transport. If the violation of these rules is the prerequisite, and the level of drunkenness is the effect, there would be no ground for Article 264 (2), (4) or (6) of the MCC to apply. The provisions of Article 264 (2), (4) and (6) of the MCC shall apply regardless of the level of alcohol concentration in blood and the level of alcohol vapour concentration in the breath. When both levels are infirm, Article 14 (2) of the MCC should not operate. The grounds based on which one could specify the state of intoxication as an aggravating condition of offences referred to in Article 264 of the MCC are missing. Just like other offences, in the assumption of offences referred to in

Article 264 of the MCC, the level of drunkenness shall be considered individually, on a case by case basis, to define whether it could be used as an aggravating condition, a mitigating condition or a neutral condition, which does not influence the punishment/penalty/charge.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of carrying out the Study and devising a summary, we have drawn the following *general conclusions*:

1) safety in rail, waterborne, air and road transport, seen as fundamental social value protected against the offences covered by Chapter XII in the Special Part of the Moldovan Criminal Code, is that integral part of national security, which presupposes the protection of interest an individual, society and state may have in the area of transport, against the offences referred to in Articles 264-276 of the MCC;

2) road traffic safety, seen as fundamental social value protected against the offences referred to in Article 264 of the MCC, is expressed in the situation conditioned by the operation of means of transport, ensuring the protection of people against of road traffic accidents, which presuppose the violation of road traffic safety or vehicle operation rules, leading to serious injury or death of one or several people;

3) safe operation of means of transport, seen as part of the fundamental social value protected against the offences referred to in Article 264 of the MCC, is expressed in the situation conditioned by the observance, by the person operating the means of transport, of technical requirements set for their use, which shall ensure protection to people against road traffic accidents, which presuppose the violation of road traffic safety or vehicle operation rules, leading to serious injury or death of one or several people;

4) in case of occurrence, under the same circumstances, of harmful consequences covered by different paragraphs and/or indents/letters of Article 264 of the MCC, referring to different victims, the legal classification of harmful deeds shall be done based on multiple offences;

5) driverless vehicles, as well as those with autonomous components (not controlled by the driver) shall fall within the scope of the notion defined by Article 132 of the MCC. These means of transport are fitted with their own propulsion, which is controlled in full or in part by artificial intelligence;

6) the commission by the same person(s), at the same time, of deeds referred to in Articles 228, 235-242 or 243¹ of the MCC, and of deeds referred to in Article 149 or 157 of the MCC, shall have the effect of summing up the social danger/threat of these deeds/events and their

“merger” into a qualitatively new product, namely in the offences referred to in Article 264 of the MCC;

7) essentially, the offences, referred to in Article 264 of the MCC shall be considered as offences committed due to imprudence;

8) when a road traffic accident takes place, the offender’s guilt does not automatically mean that the victim is not guilty, just like if the victim is guilty, it does not automatically mean that the offender is not guilty. It could be the case that both the offender and the victim are guilty or only one of them;

9) in case of offences referred to in Article 264 of the MCC, the reason and purpose shall refer to the harmful event, not to the offence as a whole;

10) essential for ascertaining the state of intoxication within the meaning of Article 134¹² (1) of the MCC is not the presence of alcohol, narcotic drugs and/or other substances with similar effects, but bodily psycho-functional disorder. The latter may be ascertained only when the state of intoxication has been determined pursuant to the relevant regulations and pursuant to the medical criteria applied in drug and alcohol evaluation area;

11) Article 264 (2), (4) or (6) of the MCC, by “state of intoxication” it is meant either the advanced level of drunkenness or the minimum level of drunkenness, the level of drunkenness induced by the narcotic drugs and/or by other substances with similar effects;

12) in the hypotheses referred to in Article 264 (2), (4) or (6) of the MCC, an attempt to commit an offence is possible. One can talk about such an attempt in these hypotheses when the offender has got an erroneous understanding of his/her level of drunkenness.

Based on the statements mentioned *above*, we plead for the implementation of the following **recommendations**:

1) substitute, in the provisions of Article 62 (1) b¹), (6) and Article 65¹ of the MCC, the word combination “means of transport” by the word combination “*means of transport (including motor vehicles)*”;

2) amend Article 132 of the MCC as follows:

“Article 132. Motor vehicle

Motor vehicle shall be defined just as it has been defined by the Law of Road Traffic Safety No. 131-XVI of 07 June 2007”;

3) supplement the Criminal Code with Article 134²⁰ having the following content:

“Article 134²⁰. Unauthorised races, competitions or trainings conducted on public roads

By unauthorised races, competitions or trainings conducted on public roads within the meaning of Article 264², it shall be meant the operation of motor vehicles on public roads (save the ones authorised by the administration of the corresponding road and endorsed by Police), which involves or not an award, which implies the presence of an organiser or not, which is based on a preliminary or spontaneous agreement of participants, and which is expressed, as appropriate, in: a) a race between two or more motor vehicles (regardless if it is a speed or other type of race or whether the race takes place on a predefined or unknown route); b) a test to see how quickly a motor vehicle may cover the distance between two points; c) a competition between two or more motor vehicles, which presupposes or includes sustained sliding of wheels; d) a speed or performance test of a motor vehicle or of its driver's abilities”;

4) substitute, in Articles 192¹, 264, 264¹, 264², 265 and 266 of the MCC, the word combination “means of transport” or its derivatives with “*motor vehicle*” or its derivatives;

5) amend Article 264 of the MCC as follows:

“Article 264. Violation of road traffic safety rules or of operation of motor vehicles by the individual operating the motor vehicle, which caused medium-level injury to limb or health

(1) Violation of road traffic safety rules or of operation of motor vehicles by the individual operating the motor vehicle, which caused, due to imprudence, medium-level injury to limb or health,

shall be punished by a fine of up to 650 conventional units or by community service for 180 to 240 hours, or by imprisonment for up to three years with (or without) the deprivation of the right to operate motor vehicles for up to two years.

(2) The same deed affecting two or more people,

shall be punished by a fine in the amount from 800 to 1200 conventional units, or by community service for 200 – 220 hours or by imprisonment for up to four years with (or without) the deprivation of the right to operate motor vehicles for up to four years”;

6) supplement the Criminal Code with Articles 264³ and 264⁴ having the following content:

“Article 264³. Violation of road traffic safety or of motor vehicle operation rules by the individual operating the motor vehicle, which caused serious injury to limb or health

(1) Violation of road traffic safety or of motor vehicle operation rules by the individual operating the motor vehicle, which caused serious injury to limb or health,

shall be punished by imprisonment for two to five years having repealed the right to operate motor vehicles.

(2) The same deed affecting two or more people,

shall be punished by imprisonment for three to six years having repealed the right to operate motor vehicles”;

“Article 264⁴. Violation of road traffic safety or of motor vehicle operation rules by the individual operating the motor vehicle, which caused a person’s death

(1) Violation of road traffic safety or of motor vehicle operation rules by the individual operating the motor vehicle, which caused, due to imprudence, a person’s death,

shall be punished by imprisonment for four to seven years having repealed the right to operate motor vehicles.

(2) The same deed that caused the death of two or more people,

shall be punished by imprisonment for six to ten years having repealed the right to operate motor vehicles”;

7) substitute, in the definitions of motor vehicle notion provided by Article 2 of Law No. 131/2007 and Paragraph 7 of the RTR, the word “self-propelled” by the word combination “*fitted with thermal engine, electrical engine, a hybrid application or a combination thereof or with any other types of engines*”;

8) remove the sentence “Trolleybus is considered to be a motor vehicle” from Paragraph 7 of the RTR;

9) remove “The courts shall be explained that, by “means of transport” one may understand all types of cars, tractors and other types of self-propelled vehicles, trams and trolleybuses, as well as motorcycles, and other mechanical means of transport. By “other self-propelled vehicles” one may understand the transport put in motion occasionally on public roads, which is intended for construction, agricultural, forestry works or other activities (cranes, excavators, combines for harvesting, etc.). By “other mechanical means of transport” one should understand any mechanism put in motion, by an engine, with the work volume not less than 50 cm³ and, being subject of road traffic safety rules and operation of means of transport” from Decision No. 20/1999 of the SCJ Plenary, Paragraph 1, subparagraph 2;

10) substitute, in the text of Decision No. 20/1999 of the SCJ Plenary the word combination “means of transport” or the derivatives thereof by the term “*motor vehicle*” or its derivatives.

The advantages of these recommendations are highlighted in the following areas:

a) legislative area. The following would be ensured: fair protection of each and every victim in case of occurrence, in the same circumstances, of harmful consequences covered by different paragraphs and/or different indents/letters of Article 264 of the MCC, relating to different victims; considering individually, on a case by case basis, the state of intoxication in the assumption of

offences referred to in Article 264 of the MCC, defining whether it could be used as an aggravating condition, a mitigating condition or a neutral condition, which does not influence the punishment/penalty/charge; matching criminal rules, which define the liability for the violation of road traffic safety or vehicle operation rules by the person operating the means of transport, with non-criminal reference rules; approximation of the national regulatory framework on road traffic safety rules with the EU relevant legislation; adjusting the national regulatory framework on road traffic safety rules to the technical and scientific progress;

b) case-law area. The following would be ensured: aligning the practice of applying criminal rules, which define the liability for the violation of road traffic safety or vehicle operation rules by the person operating the means of transport; applying these rules pursuant to the principle of lawfulness;

c) economic area. The impact on the national economy would be felt via lower costs related to case re-trial following the re-qualification of deeds covered by Article 264 of the MCC to other rules, or vice-versa.

Future Research Plan includes the following milestones:

- 1) legal and historical review of offences referred to in Article 264 of the MCC;
- 2) assessment of efficiency of punishment/penalty charged for the commission of offences referred to in Article 264 of the MCC;
- 3) forensic analysis of offences referred to in Article 264 of the MCC.

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ADNOTARE

Postovanu Nicolae, „Răspunderea penală pentru încălcarea regulilor de securitate a circulației sau de exploatare a mijloacelor de transport de către persoana care conduce mijlocul de transport”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2021

Structura tezei: introducere, cinci capitole, concluzii generale și recomandări, bibliografie din 560 titluri, 318 pagini de text de bază. Rezultatele obținute sunt publicate în 22 lucrări științifice.

Cuvintele-cheie: mijloc de transport; securitatea circulației; exploatarea mijloacelor de transport; încălcarea regulilor; imprudență; persoana care conduce mijlocul de transport; stare de ebrietate.

Domeniul de studiu. Lucrarea face parte din domeniul dreptului penal, partea specială.

Scopul și obiectivele tezei. Scopul tezei se exprimă în efectuarea unei cercetări temeinice a răspunderii penale pentru infracțiunile prevăzute la art. 264 CP RM, în examinarea și soluționarea problemelor ce caracterizează interpretarea și aplicarea acestui articol, precum și în identificarea carențelor ce afectează calitatea art. 264 CP RM, cu formularea de propuneri *de lege ferenda* menite să contribuie la perfecționarea cadrului reglementar în materie. În vederea atingerii scopului propus, au fost formulate următoarele *obiective*: examinarea din perspectiva dreptului penal a elementelor constitutive ale infracțiunilor prevăzute la art. 264 CP RM, precum și a circumstanței agravante prevăzute la alin. (2), (4) și (6) ale acestui articol; utilizarea normelor extrapenale, care stabilesc regulile de securitate a circulației sau de exploatare a mijloacelor de transport, în procesul de interpretare a art. 264 CP RM; determinarea gradului de compatibilitate dintre art. 264 CP RM și normele extrapenale de referință; analiza comparativă a reglementărilor penale din legislațiile unor state străine, care stabilesc răspunderea pentru încălcarea regulilor de securitate a circulației sau de exploatare a mijloacelor de transport de către persoana care conduce mijlocul de transport etc.

Noutatea și originalitatea științifică a tezei constă în faptul că a fost realizată o cercetare temeinică, sub aspect juridico-penal, a infracțiunilor prevăzute la art. 264 CP RM. În plus, noutatea științifică a rezultatelor cercetării constă în punctarea unor concepții controversate întâlnite în doctrină, în analiza acestora și în expunerea propriei poziții. Pe acest suport au fost formulate concluzii și recomandări teoretice în vederea îmbunătățirii continue a legislației. Rezultatele științifice obținute demonstrează aportul autorului la ridicarea gradului de investigație a celor mai litigante probleme ale științei și practicii dreptului penal vizând infracțiunile prevăzute la art. 264 CP RM.

Semnificația teoretică a tezei constă în: a) redefinirea bazelor conceptuale ale studiului de drept penal privind răspunderea pentru infracțiunile prevăzute la art. 264 CP RM; b) sistematizarea abordărilor teoretice referitoare la stabilirea elementelor constitutive ale acestor infracțiuni; c) acumularea unui vast material teoretic și practic pentru dezvoltarea unor direcții actuale și complexe ale investigării infracțiunilor prevăzute la art. 264 CP RM etc.

Valoarea aplicativă a tezei poate fi rezumată la următoarele: a) concepțiile științifice expuse în cadrul lucrării prezintă un real interes atât pentru știința națională a dreptului penal, cât și pentru legiuitorul moldovean; b) interpretarea noțiunilor ce apar în art. 132 și 264 CP RM, precum și criteriile propuse de delimitare a faptelor adiacente, au o mare importanță atât pentru aplicarea acestor articole în corespundere cu principiul legalității, cât și pentru dezvoltarea ulterioară a concepțiilor științifice asupra problemei vizate; c) rezultatele evaluării critice a imperfecțiunilor, ce caracterizează art. 132 și 264 CP RM, pot fi luate în considerare de către legiuitor în procesul de perfecționare continuă a legii penale etc.

АННОТАЦИЯ

Постовану Николае, «Уголовная ответственность за нарушение правил безопасности движения или эксплуатации транспортных средств лицом, управляющим транспортным средством». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2021

Структура диссертации: введение, пять глав, выводы и рекомендации, библиография из 560 названий, 318 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 22 научных работ.

Ключевые слова: транспортное средство; безопасность движения; эксплуатация транспортных средств; нарушение правил; неосторожность; лицо, управляющее транспортным средством; состояние опьянения.

Предмет исследования. Работа относится к сфере особенной части уголовного права.

Цель и задачи диссертации. *Цель* работы выражается в проведении тщательного исследования уголовной ответственности за преступления, предусмотренные ст. 264 УК РМ, в изучении и решении проблем, характеризующих толкование и применение данной статьи, а также в выявлении недостатков, влияющих на качество ст. 264 УК РМ, с формулировкой законотворческих предложений, призванных способствовать совершенствованию нормативной базы в этом вопросе. Для достижения поставленной цели были сформулированы следующие *задачи*: изучение с уголовно-правовой точки зрения признаков, характеризующих элементы преступлений, предусмотренных ст. 264 УК РМ, а также отягчающего обстоятельства, предусмотренного ч. (2), (4) и (6) данной статьи; использование неуголовных норм, устанавливающих правила безопасности движения или эксплуатации транспортных средств, при толковании ст. 264 УК РМ; определение степени совместимости ст. 264 УК РМ и неуголовных бланкетных норм; сравнительный анализ уголовных норм законодательства некоторых иностранных государств, которые устанавливают ответственность за нарушение правил безопасности дорожного движения или эксплуатации транспортных средств лицом, управляющим транспортным средством, и т.д.

Научная новизна и оригинальность диссертации состоит в том, что было проведено тщательное уголовно-правовое исследование преступлений, предусмотренных ст. 264 УК РМ. Кроме того, научная новизна результатов исследования выражается в выявлении некоторых противоречивых концепций, встречающихся в доктрине, в их анализе и в высказывании собственной позиции. По этому поводу были сформулированы теоретические выводы и рекомендации с целью совершенствования законодательства. Полученные научные результаты демонстрируют вклад автора в повышение степени изученности спорных вопросов, возникающих в отношении преступлений, предусмотренных ст. 264 УК РМ.

Теоретическое значение диссертации состоит в: а) переосмыслении концептуальных основ исследования уголовного права в части ответственности за преступления, предусмотренные ст. 264 УК РМ; б) систематизация теоретических подходов к установлению состава этих преступлений; в) накопление обширного теоретического и практического материала для разработки некоторых современных и комплексных направлений исследования преступлений, предусмотренных ст. 264 УК РМ и др.

Прикладное значение диссертации состоит в следующем: а) научные концепции, представленные в работе, представляют реальный интерес как для науки уголовного права, так и для законодателя; б) толкование понятий, фигурирующих в ст. 132 и 264 УК РМ, а также предложенные критерии разграничения смежных деяний имеют значение как для применения этих статей в соответствии с принципом законности, так и для дальнейшего развития научных исследований по данному вопросу; в) результаты оценки недостатков, присущих ст. 132 и 264 УК РМ, могут быть приняты во внимание законодателем в процессе совершенствования уголовного законодательства, и т.д.

ANNOTATION

Postovanu Nicolae, „Criminal liability for violation of transport traffic or operational safety rules by the person operating the means of transport”. PhD in Law thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chişinău, 2021

The structure of the thesis: introduction, five chapters, general conclusions and recommendations, bibliography of 560 titles, 318 pages of basic text. The results achieved are published in 22 scientific papers.

Key-words: means of transport; transport traffic safety; operation of means of transport; violation of rules; imprudence; person operating the means of transport; state of intoxication.

Field of the thesis. This research refers to the field of Criminal Law, special part.

The purpose and the objectives of the thesis. The *purpose* of the thesis is expressed in conducting a thorough investigation of criminal liability for the offenses provided by the art. 264 CC RM, in examining and solving the problems that characterize the interpretation and application of this article, as well as in identifying the deficiencies that affect the quality of art. 264 CC RM, with the formulation of proposals meant to contribute to the improvement of the regulatory framework in the matter. In order to achieve the proposed purpose, the following *objectives* were formulated: the examination from the perspective of Criminal Law of the constitutive elements of the offenses provided by the art. 264 CC RM, as well as of the aggravating circumstance provided in para. (2), (4) and (6) of this article; the use of extra-penal norms, which establish the transport traffic or operational safety rules, in the process of interpreting art. 264 CC RM; determining the degree of compatibility between art. 264 CC RM and the extra-penal reference norms; comparative analysis of criminal regulations from the laws of foreign states, which establish liability for violation of transport traffic or operational safety rules by the person operating the means of transport, etc.

The novelty and the scientific originality of the thesis lies in the fact that a thorough investigation was carried out, from a criminal-legal aspect, of the offenses provided by the art. 264 CC RM. In addition, the scientific novelty of the research results is expressed in the identification of some contradictory concepts found in the doctrine, in their analysis and in expressing their own position. In this regard, theoretical conclusions and recommendations were formulated in order to improve the penal legislation of the Republic of Moldova. The obtained scientific results demonstrate the author's contribution to increasing the degree of knowledge of controversial issues arising in relation to offenses provided by the art. 264 CC RM.

The theoretical significance of the thesis consists in: a) rethinking the conceptual foundations of the criminal-legal study in terms of liability for offenses provided by the art. 264 CC RM; b) systematization of theoretical approaches to establishing the *corpus delicti* of these offenses; c) the accumulation of extensive theoretical and practical material for the development of some modern and comprehensive areas of research of offenses provided by the art. 264 CC RM, etc.

The applicative value of the thesis can be summarized as follows: a) the scientific concepts presented in the paper are of real interest both for the science of Criminal Law of the Republic of Moldova and for the Moldovan legislator; b) the interpretation of the notions that appear in art. 132 and 264 CC RM, as well as the proposed criteria for delimiting the adjacent acts, are of great importance both for the application of these articles in accordance with the principle of legality and for the further development of scientific concepts on c) the results of the critical evaluation of the imperfections, which characterize art. 132 and 264 CC RM, may be taken into account by the legislator in the process of continuous improvement of the Criminal Law, etc.

POSTOVANU Nicolae

**CRIMINAL LIABILITY FOR THE VIOLATION OF ROAD TRAFFIC
SAFETY OR VEHICLE OPERATION RULES BY THE DRIVER**

Specialty 554.01 – Criminal Law and Criminal Enforcement Law

Summary of the doctoral thesis in law

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