

**Configurația juridică a contravențiilor rutiere constatate prin intermediul „Centrului Unic de Monitorizare și Coordonare a Traficului” în Republica Moldova (studiu de caz)**

**Legal Configuration of Road Traffic Contraventions Detected through the “Unique Center of Traffic Monitoring and Coordination” in the Republic of Moldova (Case Study)**

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**Rezumat:** În această publicație s-a făcut referință la unele aspecte teoretico-practice privind constatarea contravențiilor de către Centrul Unic de Monitorizare și Coordonare a Traficului. A fost abordată în detaliu problematica lacunelor în actele normative ce reglementează activitatea Centrului, problemele identificate în legătură cu actualizarea și administrarea informațiilor stocate. Un indiciu separat l-am dedicat analizei juridice a contravențiilor în domeniul circulației rutiere constatate prin intermediul Centrului. Prin ordonarea logică a problemelor abordate am dorit ca această lucrare să fie utilă și cetățeanului (în special conducătorilor auto), problemele juridice fiind tratate obiectiv și nu doar din punctul de vedere al contravenientului ori al agentului constator.

**Cuvinte cheie:** contravenție, trafic rutier, sistem informațional, agent constator, date personale, monitorizare video, normă juridică, circulație rutieră, securitate/ordine publică.

**Abstract:** This publication refers to some theoretical and practical aspects regarding the detection of contraventions by the Unique Center of Traffic Monitoring and Coordination. There were discussed in details the issue of the gaps in the normative acts that regulates the activity of the Center, the identified problems concerning the updating and the management of the stored information. A separate clue was dedicated to the legal analysis of the contraventions in the domain of the road traffic detected through the Center. Through the logical ordering of the issues addressed, we wanted this work to be useful including to the

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citizen (especially the drivers), the legal issues being treated objectively and not only from the point of view of the contravener or the investigating agent.

**Keywords:** contravention, road traffic, information system, investigating agent, personal data, video monitoring, legal norm, traffic, public/order security.

Road traffic contraventions represent in all states of the modern world much of the contravention committed on the territory of a state. Simultaneously with the unprecedented evolution of land transport over the last decades, there has also been a significant increase in road traffic contraventions. The same situation is established in the Republic of Moldova. Only in the last year in our country were found 243139 road traffic offenses, of which in 1401 the driver was intoxicated, 46332 for exceeding the speed limit, in 794 cases the drivers left the accident.<sup>2</sup> Even though the situation is much better than it was ten years ago, yet the figures presented must be thought by the state authorities to undertake all the necessary measures to improve the road situation. Today, many drivers do not signal when changing the direction of travel, do not wear a seat belt or switch to the red traffic lights. Apparently, these facts are not very critical, but they can entail very serious consequences, and in some cases even dangerous for the people's lives and health.

According to the analysis of the accident situation in the road traffic, during the period 01.01.2018 to 01.10.2018, there were 1888 accidents, in which 203 persons died and another 1274 suffered of various injuries.

Thus, most countries have stepped up their efforts to regulate this matter, which subsequently influenced the decisions of other states, as the old legislation was too complicated to enforce traffic law provisions for the multitude of existing deviations. It was opted for quick and easy procedures to find and apply the appropriate sanctions. In the states that currently maintain the criminal law contravention, as in the case of France, they have established a specific procedure for detecting and sanctioning road traffic offenses by establishing derogatory rules from common contravention law.

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<sup>2</sup> Biroul Național de Statistică comunică datele privind contravențiile constatate, [Online] la [www.statistica.md/](http://www.statistica.md/) și <http://www.statistica.md/newsview.php?l=ro&id=5981&idc=168>, accesat 10.11.2018.

## Results and discussions

In order to facilitate the process of detecting road traffic offenses committed by vehicle drivers, the accumulation of evidence to solve the case and the accountability of the guilty person, road traffic surveillance photo / video surveillance systems have been installed in developed countries. The purpose of technological innovations and legislative changes was to “prevent certain socially-dangerous facts that could affect public roads, driver safety, pedestrian safety, and other trafficked persons.”

In the Republic of Moldova was created the Unique Center of Traffic Monitoring and Coordination (UCTMC). This project arose five years ago when the first cameras were installed to monitor photo / video traffic. The project was further developed in other localities of the republic. Over a calendar year, the system has recorded over 15,000 road traffic offenses. Then on 17.11.2014 was set up the Automated Traffic Control System “Traffic Control”<sup>3</sup>, which establishes the procedures and the mechanism for recording and registration of the information accumulated in the automated supervision of the road traffic on the public roads with the special technical means of software and hardware of the Automated Road Traffic Surveillance System. Also, the system regulates the data protection requirements in the process of collecting, updating, storing, processing and exchanging authorized data with other information systems.

Like any new process, the Road Traffic Monitoring System has been created and developed with great technical and legal difficulties as well as system management issues. The worst thing that may have happened is that the legal provision was not applied exactly as provided in the normative act and the purpose pursued by that act, the rule did not apply in its spirit and letter.

In an Audit Report of the Court of Auditors on April 5, 2017, “Road Traffic Management Systems Management”<sup>4</sup>, it is stated: “... even though the implementation of Traffic Monitoring Video Systems has been aimed at increasing road traffic safety and diminishing morbidity and mortality caused by road accidents, in reality the proposed result has not been reached ...”.

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<sup>3</sup> Hotărârea Guvernului RM nr. 965 din 17.11.2014 pentru aprobarea Regulamentului privind organizarea și funcționarea Sistemului automatizat de supraveghere a circulației rutiere „Controlul traficului” și modificarea Concepției Sistemului automatizat de supraveghere a circulației rutiere „Controlul traficului”.

<sup>4</sup> Raportul de audit al Curții de Conturi al RM,[Online] la <http://www.ccrm.md/3627-1-auditul-managementul-sistemelor-de-supraveghere-a-trafficului-rutier>, accesat 11.11.2018.

The list of legal omissions and practical application of the Traffic Surveillance System can be continued with others:

- Officials from the Information Technology Service of the INP not having the status of Investigating agents, documented and applied sanctions for road traffic offenses (January 2014 – November 2016);

- Drawing up the minutes after sanctioning or executing the sanction (after receipt of the summons from the UCTMC, the person was able to execute the contravention sanction, using the “bar code”). After on August 7, 2017, the barcode of the summons was excluded, and the counterparty had to appear at the UCTMC or the Territorial Police District Inspectorates in the district of residence to draw up the report on the offense, after which the contravener could execute judgment (for example, payment of the fine);

- The lack of a legal mechanism for monitoring the enforcement of pecuniary sanctions applied to offenders, in the context of art. 443<sup>1</sup> Contravention Code.

For the development of the Surveillance System, a Regulation on the functioning of the E-Data Module “The evidence of road traffic offenses, persons who committed them and penalty points” was approved on 25 May 2017.<sup>5</sup> The module is designed to automate, update information in the process of documenting road traffic offenses, and to prepare summons. This module was developed by the Ministry of Information Technologies and taken over by the MAI.

Gaps established in the process of using information through the E-Data module:

- Lack of an internal procedure on the “creation, operation, access and management” of that information system, with the establishment of a rigorous external control.

- Establishment of discretionary powers for the patrol agents by departmental acts, contrary to the provisions of art. 443<sup>1</sup> Contravention Code. According to the provisions of the Code of Contravention, if the deed has been established by certified or approved technical means, the minutes are in the form

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<sup>5</sup> Ordinul MAI al RM nr.145 din 25.05.2017 pentru aprobarea Regulamentului privind funcționarea Modulului E-Data „Evidența contravențiilor din domeniul circulației rutiere, a persoanelor care le-au săvârșit și a punctelor de penalizare” al Sistemului informațional automatizat „Registrul informației criminalistice și criminologice”.

of an electronic document and may also be concluded in the absence of the perpetrator. Ori, INP Order no. 38/2016 and the Order of the INP Chief no. 226/2016 stipulates the right of the patrolling officer *“To dispose of either the compilation the report on the offense or the handing in of a summons (according to the provisions of Article 382 of the Code of Contravention) regarding the presentation of the driver at UCTMC headquarters. In the event of the driver's refusal to receive the summons, he or she will be given a report on the refusal to receive the summons or to sign the receipt of the summons”*. This internal regulation gives great discretion to the patrol agent, since a driver who has violated the traffic rules is liable to be sanctioned in contravention, and if he does not agree with the facts found, he can contest the act of the patrol agent.

- Establishment by INP Order no. 38/2016 of an additional document was made at the discretion of the patrol agent, in the absence of strict evidence. It is named "the report on the refusal to receive the summons or to sign the receipt of the summons" unexpected by the Contravention Code, but mentioned in art. 239 Criminal Procedure Code of the Republic of Moldova. Confusion arises from the very alternative that is given to the patrol agent through departmental acts, to decide either on the drawing up of the contraventional minutes or on the handing over of the summons to the UCTMC, where it will also be made up a contraventional report. However, the refusal to receive the summons by the perpetrator is in no way a guarantee of receiving or reception of the “verbal refusal to receive the summons”. As a result, we conclude that the preparation of such a document, not registered in any register, cannot ensure the purpose of developing and installing the E-Data application, to exclude the evasion of drivers from paying pecuniary sanctions. Or, the finding of previous, unfulfilled violations and the made up of a contraventional report, a strict record, with the possibility of challenging it under art. 443 par. (9) The Code of Conduct would provide an additional guarantee for the achievement of the proposed aim.

- Limited and discriminatory functional character of the information included in the E-Data system due to the lack of territorial coverage for the entire territory of the Republic of Moldova. The information in the system concerns only the violations admitted by the drivers in the area of Chisinau municipality, where the automated video system for road traffic monitoring works. Violations

committed by drivers outside the capital cannot be viewed and invoked by perpetrators.<sup>6</sup>

To eliminate these deficiencies, it is proposed to:

- Develop an internal procedure for “creating, operating, accessing and managing” the information system;
- Establishment of an external control by the General Police Inspectorate on how to access and use personal data by patrol agents by designating a responsible person within the hierarchically superior body with verification right;
- Revision of departmental acts and exclusion of conflicts of law and abusive provisions, adjusting them to the provisions of the Contravention Code (INP Order No. 38/2016 and additional internal acts).
- The traffic monitoring and management system must also have a more complex scope than it is now, in line with European standards: wider information communication, use of sensors for recognition / detection of registration numbers, control of high-risk areas of accidents and traffic (schools, public institutions), the active involvement of local public authorities.<sup>7</sup>

Analyzing carefully the current provisions of the Code of Contravention, art. 443<sup>1</sup> “The finding of contraventions by means of certified technical means or of technical means approved and metro logically verified and the conclusion of the minutes for these contraventions”, we find other rather serious loopholes, namely in paragraph 1 of the same Article “... *the investigating agent sends at the domicile (legal address) of the owner or the holder of the vehicle the application for the declaration of the identity of the driver, with the simultaneous publication of the respective request on the official website of the authority of which the investigating agent is a party.*” The application by UCTMC officials of this rule would seriously violate other provisions of the personal data regime set out in Articles 4 and 5 of the Personal Data Protection Act on 08.07.2011. The processing of personal data is

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<sup>6</sup> Raport CNAal RM privind rezultatele evaluării riscurilor de corupție desfășurat în cadrul Inspectoratului Național de Patrulare, subdiviziune specializată din subordinea Inspectoratului General de Poliție, [Online] la <https://www.cna.md/libview.php?l=ro&idc=5&id=1669&t=%2FMass-media%2FComunicate-de-presa%2FMultiple-riscuri-de-corupție-depistate-de-CNA-in-procesul-de-evaluare-a-INP&fbclid=IwAR2AIYLqwsqgsHassqs5DFxiYFE5lZSfQgibjtF1v8bzx6cJOj1o1kImXpU>, accesat 09.11.2018.

<sup>7</sup> *Ibidem.*

carried out only in certain cases / conditions expressly provided by law, but the provisions of art. 443<sup>1</sup> CC is not included under these conditions.

Beyond the identified problems, surveillance devices are absolutely necessary to increase road traffic safety. They should, both in the process of detecting contraventions, in case research and decision-making (image augmentation, video capture, use of stored information).

Through UCTMC the following types of road traffic offenses are found:

- *Exceeding the traffic speed established on the respective road sector (Article 236 paragraphs (1), (2) and (3) of the Code of Contraventions);*

- *Failure to comply with road traffic signs and prioritization of other road traffic rules (Article 240 (1) and (2)) Contravention code (infringement of the longitudinal marking 1.1.1., 1.12, passage to red traffic light, non-observance of the STOP indicator).*

Previously, at the time of launching the project, the contraventions provided in art. 235 The Code of Conduct “Breach of the rules for the use of the seat belt”, but due to disputes in the courts, decided to no longer detect such deviations through UCTMC than in the physical presence of the road worker. When examining cases of non-fastening of the seat belt, the Center employee had to increase the captured image until he identified the face of the controversial, i.e. what is happening inside the vehicle is considered the private life of the person. In December 2014, the Central district court in Chisinau also adopted a controversial decision on a complaint filed by a public association, establishing that by using the information system for monitoring road traffic, the authorities violate the right to privacy of citizens. The court has forbidden to the Ministry of Internal Affairs to exploit road traffic cameras. Then, by decision of the Court of Appeal, the decision of the first instance was annulled, the cameras for video surveillance of the road traffic being considered absolutely legal.

In the same situation, we consider that UCTMC may find other violations of the Road Traffic Regulation, such as section 8, point 34, par. (1) “In order to alert other traffic participants and to signal in case of daytime driving, the travel light must be turned on from 1 November to 31 March”.<sup>8</sup> However, the contraventional law does not regulate such contravention (perhaps in relation to art.240, par. (1)). Earlier was in force art. 240 par. 3 of the Contravention Code,

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<sup>8</sup> Hotărârea Guvernului RM nr. 357 din 13.05.2009 cu privire la aprobarea Regulamentului circulației rutiere.

intended for other road traffic offences, which was abrogated because too many rules of the Road Traffic Regulation were attributed to this article. Currently, for these violations, maximum that the investigating agent can apply as a preventive measure is a verbal pretext.

As a consequence of an analysis regarding the causes of road accidents, it has been found that most of the accidents occurring during the cold period of the year are due to a reduced visibility during the journey. Thus, it is necessary to introduce a norm in the Contravention Code, an additional paragraph to art. 240, "Violation regarding the equipment rules of vehicles and the use of lighting devices between 1 November and 31 March". At the same time, these deviations could also be detected through the devices of UCTMC.

### **Constitutive content of contraventions found by UCTMC.**

The legal basis for defining the concrete antisocial deed and its classification under the terms of the specific article (part) of the Code of Contravention is the composition of the offense (object, objective side, subject, subjective side).

In the opinion of American sociologist Thorsten Sellin, "Knowledge and research of human behavior – is something indeterminable ...".

Starting in our analysis from general to particular, we mention that the generic legal object of contraventions provided in art. 236 and 240 the contraventional code, namely the social values protected by these norms, is road traffic safety. In fact, this is the generic subject of most traffic offenses in road traffic, with few exceptions to the rules, including pedestrian safety (Article 238 Code of Conduct).

*The specific legal object* of the contraventions is interdependent, directly or indirectly, with the generic object and results from it. The specific object is the concrete value protected by the legal norm and the social relations generated by it. In art. 236 CC, the specific object is – the social relations regarding the observance of the speed of traffic established on the respective road sector, and at art.240 CC – the social relations regarding the observance of the road signs and the granting of the crossing priority, other traffic rules road.

*The objective side* of contraventions, that is, the actual act, is manifest only by *action* – exceeding the established speed or non-observance of the road signs.

An important role in the investigation of road traffic offenses is the place *and time of the finding*. The summons sent to the holder or the owner of the



vehicle is indicated – the place and time of the offense committed. This condition, considered optional, plays an important role both for the legal qualification of the concrete contravention and for the finding of the causes and conditions of the offending offenses.

The offense, is considered to be an illicit activity, is attributable to a particular person who has breached the compliance obligation. Except for minors under the age of 16 and irresponsible individuals, all members of society are susceptible to commit contraventions, as potentially potential *offenders*. In the area of road traffic offenses, in addition to the general conditions listed above, the subject, the driver must also have a *special right* (driving license). Consequently, the subject of contravention in the case of committing contraventions may be only *the natural person*. As a general subject of contravention, the natural person appears at art. 232 al. (2) (Driving without permission) and Art. 245 CC (violation of rules by pedestrians). In the case of contraventions found by UCTMC we have only the special subject.

One of the important aspects of the contravention lies in the attitude of conscience towards the deed conceived and its consequences. *The subjective side* is part of the constitutive content of the contravention and has as its constituent elements: the subjective element (the guilt with its modalities), the reason and purpose. It consists of the psychic attitude of the person who committed the offense, an attitude consisting of intellectual, affective and volitional elements, on the basis of which the guilt is established. In the case of both articles, the subjective side is expressed *intentionally* – to overcome the speed limit or to obey the road signs and to prioritize the passing of other traffic rules.

With reference to art. 245 CC, we admit, however, that the actions of the perpetrator can also be done out of *recklessness*, when the perpetrator realized the prejudicial nature of his action, provided for its damaging consequences, but considered it to be easy to avoid. For example, moving the vehicle with non-compliance with the longitudinal marker continues the line to avoid a damaged part of the road (or a hole).

## Conclusions

Increasing safety in road traffic, raising the level of accountability of vehicle drivers is a major public interest, a positive obligation of the state, but also of the community as a whole. The transport unit, as a road user, is a source

of increased danger, and the driver is required to comply with certain regulations imposed by the authorities in order to avoid the risks resulting from the use of motor vehicles. However, the use of modern automated road traffic surveillance systems is the most effective way to increase road safety on the systems' location, drivers' safety and social security. Throughout the world, the application of advanced road traffic surveillance technologies has responded to the proposed goal from the outset, increasing the level of discipline and guaranteeing the principle of "inevitability" of the contravention of the perpetrators by unconditionally registering of each case produced.

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