PECULIARITIES OF THE CRIME OF DRIVING A VEHICLE UNDER THE INFLUENCE OF PSYCHOACTIVE SUBSTANCES, PROVIDED BY ART. 336 PARA. (2) CP. THEORETICAL AND PRACTICAL ASPECTS

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Abstract

In the current social and legal context, the crime provided by art. 336 para. (2) CP is increasingly common in the practice of criminal investigation bodies and courts. Both theorists and practitioners have been faced with problems of interpretation of the incriminated text, regarding the meaning of the notion of psychoactive substances, the way in which the influence that these substances have on the ability to drive a vehicle or detention in competition of this crime with the one provided by art. 4 of Law no. 143/2000. The present paper aims to analyze the controversial aspects stated above, both from a theoretical and a practical point of view. The opinions of legal authors in the matter will be presented and interpreted, as well as the solutions pronounced by the High Court of Cassation and Justice, by other national courts and by the criminal prosecution bodies. The present study will present, with regard to each controversial aspect to which I have referred, both the authors conclusions and possible proposals for lege ferenda. At the same time, the possibility of ensuring the uniform interpretation of the incriminated text by all courts will be analyzed, regarding all the aspects that were the subject of this paper.

Keywords: *driving on public roads, psychoactive substances, possession of drugs, under the influence.*

1. Introductory aspects and brief history of the regulation of the act provided for by the criminal law that is subject to this analysis

According to art. 336 para. (1) and (2) CP: (1) Driving on public roads of one vehicle for which the law provided compulsory hold of a driver 's license by a person who, at the time of biological samples, has an alcoholic strength imbibition over 0.80 g/l alcohol pure blood is punished by imprisonment from one to 5 years or by a fine.

(2) With the same punishment is sanctioned the person under the influence of some psychoactive substances, who drive a vehicle for which the law provided compulsory hold of a driver 's license.

The offense of driving a vehicle under the influence of psychoactive substances is not new in Romanian criminal law. Before the entry into force of the new Criminal Code, it was provided for in art. 87 of GEO no. 195/2002, being sanctioned, according to para. (2) „(…) the person who drives a motor vehicle or a tram and is under the influence of narcotic substances or products or drugs with similar effects." It should be noted here that, before the appearance of GEO no. 195/2002, Decree no. 328/1966[1] regarding traffic on public roads only sanctioned the driving of a motor vehicle by a person with an alcohol concentration above the legal limit or in a state of intoxication, driving under the influence of psychoactive substances being a relatively recent crime.

With the entry into force of the new Criminal Code, it was provided for in art. 336 para. (2), with a partially modified form:

- the terms motor vehicle and tram were replaced with the phrase a vehicle for which the law stipulates the obligation to obtain a driving license;
- psychoactive substances were used instead of narcotic substances or products or drugs with similar effects;

If, with regard to the first amendment mentioned above, it was considered natural, in relation to the new regulations in the matter (the current form being applicable to any vehicle covered by the provisions of criminal legislation – with the natural additions found in GEO no. 195/2002), the definition of the term „psychoactive

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[1] Art. 38 of Decree no. 328/1966 regarding traffic on public roads, published in the Official Bulletin of the Socialist Republic of Romania no. 28-29/31.05.1966.

substances" required extensive debates in the doctrine, but also contradictory solutions pronounced by the criminal investigation bodies and the courts.

The main reason that determined the non-unitary interpretation and application of the law is the non-definition, by the legislator, of the phrase „psychoactive substance". As long as this term appeared for the first time in the criminal legislation, it would have been natural - in our opinion - to have a definition, which would allow both theorists and practitioners to understand the concept exactly. The specification found in art. 241 of Law no. 187/2012, according to which *psychoactive substances mean the substances established by law, at the proposal of the Ministry of Health, it* has no legal relevance, as long as no such normative act has been issued.

Thus, at the time the new Criminal Code came into force, there were three regulations defining the substances that could be subject to the application of art. 336 para. (2) CP:

- Law no. 143/2000, which defines drugs and, separately, new psychoactive substances[2];
- Law no. 339/2005, which deals with narcotic or psychotropic substances;
- Law no. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the normative acts in force.

It should be noted, here, that none of the cited normative acts clearly define the notion of *psychoactive substances*. Moreover, from the formalistic interpretation of the three legal texts, we can draw the conclusion that high-risk and high-risk drugs are different from psychoactive substances, as long as Law no. 143/2000 makes this distinction, the other legal provisions cited being applicable to narcotic substances, psychotropics or products likely to have psychoactive effects.

Even if there were also authors who appreciated that the legislator's explanation was not necessary, since the belonging of high-risk and high-risk drugs to the notion of psychoactive substances can be deduced from a simple semantic or historical-theological analysis and by reference to new or old practice [3], we maintain our view on the usefulness of the definition of the concept or an interpretation decision because:

- the legal language is a specific one, which can even be appreciated as cumbersome, imprecise and difficult to approach[4]. There are many situations where the legal meaning of some expressions is different from that of the common language, even when we compare identical words;
- *lex stricta* principle implies, logically, that whenever the law is unclear, it cannot be interpreted to the disadvantage of the offender, being fully applicable the adage *in dubio mitius* and not *in dubio pro reo,* which refers to the evaluation of the evidence[5];
- the proof of the law's ambiguity (regarding the cited term) is the multitude of contradictory solutions pronounced by the courts and the criminal investigation bodies in the matter that is the subject of this study.

In fact, after the entry into force of the new Criminal Code, although the criminal prosecution bodies were notified about driving under the influence of cannabis, there were cases in which it was ordered either to change the legal classification in the crime of possession of dangerous drugs, or even classification of the case[6]. In the motivation of these solutions, it was noted that the use of the term *psychoactive substance* limits the analysis of the existence of the offense to the substances indicated in Law no. 194/2011, which do not refer to high-risk and high-risk drugs.

In this context, it was natural to notify the HCCJ with the pronouncement of a preliminary decision that would definitively clarify the scope of application of the provisions of art. 336 para. (2) CP. By dec. no. 48/2021, pronounced in case no. 833/1/2021, the panel for resolving some legal issues of HCCJ established that the use of the notion of psychoactive substances under art. 336 para. (2) CP includes the substances provided by Law no. 143/2000, Law no. 339/2005 and Law no. 194/2011, definitively putting an end to any contradictory interpretations regarding this legal issue.

Without going into the analysis of the reasoning of the cited decision, we feel the need to emphasize that it was „confirmed" by the Constitutional Court which, in a decision[7] rejecting an exception of unconstitutionality,

[2] Art. 1 of Law no. 143/2000 defines substances under national control, high-risk drugs, high-risk drugs, but also new psychoactive substances - which are not part of the narcotic or psychotropic substances specified in the UN Conventions of 1971 and 1972.

[3] V. Cioclei, *The meaning of the phrase psychoactive substances from the content of art. 336 para. (2) CP*, *www.bizlawyer.ro*.

[4] D. Mellinkoff, *The Language of the Law*, Boston: Little, Brown and Company, 1963, pp. 3-29.

[5] M.A. Hotca, *Criminal Law Manual, General Part*, Universul Juridic Publishing House, Bucharest, 2022, p. 56.

[6] R.Al. Nestor, *Aspects regarding the establishment of the typicality conditions of the crime of driving a motor vehicle under the influence of psychoactive substances, www.juridice.ro*.

[7] CCR dec. no. 452/2021, published in the Official Gazette of Romania no. 1138/26.11.2021, para. 32.

assessed that the phrase „psychoactive substances" contained in art. 336 para. (2) CP is clear, precise and predictable.

2. Aspects related to the necessity of establishing the existence of the „influence" of psychoactive substances on the driver of the vehicle, in order to retain the existence of the offense provided for in art. 336 para. (2) CP

If in the case of the standard crime, provided for in art. 336 para. (1) CP, the legislator established that, in order to fulfill the conditions of typicality, it is necessary for the offender to have an alcohol concentration of over 0.80 g/l of pure alcohol in the blood, in the case of the assimilated variant provided for in para. (2), only the necessity for the person who drove the vehicle to be under the influence of psychoactive substances was established.

The reason why a minimum level of psychoactive substances was not indicated in the criminal law is obvious: unlike alcohol, there are a multitude of drugs, psychotropic or narcotic substances, it being practically impossible for the Criminal Code to provide a concentration for each substance in part. These arguments were also retained by CCR in two decisions rejecting the exception of unconstitutionality of art. 336 para. (2) CP[8].

What is to be criticized, in our opinion, is that the phrase *under the influence of psychoactive substances* does not provide sufficient clarity and predictability, which is the reason why contradictory solutions have been issued by judicial bodies, nor does the doctrine[9] have a unified approach regarding this legal issue.

Thus, the first (majority) opinion is that, regardless of when the psychoactive substance was consumed, or the concentration identified in its biological samples, the perpetrator will be held criminally liable. The reason for this theory is that the legislator appreciated that any substance referred to in art. 336 para. (2), once ingested (regardless of how it got into the perpetrator's body) produces certain changes in the nervous system, but also in the cognitive functions, affecting with certainty the ability to drive a motor vehicle of any person. The main „weapon" of those who agree with this interpretation is HCCJ dec. no. 365/16.10.2020[10], in which it was noted, among other things, that: „*The state of danger for social relations regarding the safety of traffic on public roads arises as a result of the simple act of driving a vehicle by a person who has consumed substances with a psychoactive effect, because the cognitive functions, including the driver's attention and reaction capacity, are inevitably affected by the consumption of psychoactive substances, even when the consumption of said substances is not objectified in unequivocal, easily perceptible behavioral changes. This one mean that regardless of the substance concentration identified in the biological samples or the eventualities psychophysical alterations effectively presented by the author de facto, the act of driving a vehicle by the person whose body psychoactive substances are present, creates a state of danger for social relations protected by art. 336 para. (2) CP and justify so deed penalties through means criminal charges.*".

The minority opinion, to which we subscribe, is that in for ordering a judgment of conviction for the offense provided for by art. 336 para. (2) CP, it is not enough to show from the evidence that the person who drove the vehicle consumed psychoactive substances, but also the fact that they influenced or could influence in any way the ability to drive.

In this regard, the Constanța CA also ruled in case no. 6360/118/2016[11]. In justifying the decision, the judges held that the prosecution did not prove, beyond any doubt, that the defendant was under the influence of psychoactive substances, although it was discovered during the analysis carried out after the arrest in traffic, that he had consumed cannabis. Moreover, the judges of the court of appeal considered that it was the responsibility of the prosecution to prove, through a medical certificate, that the defendant's ability to drive was impaired, the mere finding of the existence of the dangerous drug in the body not being sufficient to lead to a sentencing solution. It should be noted that such a solution is not exceptional, as there are other situations where the judges from Constanța reached similar conclusions[12].

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[8] CCR dec. no. 138/2017, published in the Official Gazette no. 537/10.07.2017, para. 21, respectively dec. no. 101/2019, published in the Official Gazette no. 405/23.05.2019, para. 24.

[9] C. Ghigheci, *Criminal law. Special Part*, vol. II, Solomon Publishing House, Bucharest, 2021, p. 680.

[10] HCCJ, dec. no. 365/RC/16.10.2020, *www.scj.ro.*

[11] Constanța CA, dec. no. 341/13.03.2018, in R.Al. Nestor, *Aspects regarding the establishment of the typicality conditions of the offense of driving a motor vehicle under the influence of psychoactive substances*, *www.juridice.ro*.

[12] Constanța CA, crim. sent. no. 485/03.04.2020, in R.Al. Nestor, *op. cit., loc. cit.*

The Cluj CA ruled in the same way, before the entry into force of the new Criminal Code[13], holding that the influence of certain substances or narcotic products or drugs with similar effects must be proven[14], this cannot be presumed.

Beyond the issues cited above, the arguments for which we do not support the majority opinion in this paper – based on the decisions cited above – are the following:

- if the legislator wanted to penalize any person who drives a motor vehicle after ingesting drugs, the incriminating article should have contained such a mention. For example, *the same penalty applies to a person who drives a motor vehicle after consuming a psychoactive substance...* ;
- in the reasoning of HCCJ decision, it is shown that the interpretation of the phrase „under the influence" should be carried out according to the meaning found in current speech, respectively *the action exerted on a being, possibly leading to their change.* Or, this is precisely our argument: we consider that the change in the driver's mental, psychological or behavioral state as a result of the consumption of narcotics must be proven!
- the decisions of the CCR rejecting the exceptions of unconstitutionality regarding art. 336 para. (2) CP emphasized the impossibility of establishing a concentration with regard to each psychoactive substance separately, recognizing – implicitly – that a certain level of concentration is necessary for any drug to negatively influence the person who consumed it;
- the state of danger created by the consumption of narcotics is not doubted by anyone, this is the reason why in Romania not only drug trafficking is sanctioned, but also their possession with a view to consumption. In this context, the criminal conviction of a person who got behind the wheel a week after consuming a cigarette containing cannabis does not even have a criminal policy justification;
- in Romania, practice is not a source of law. The reasoning of a decision by a panel of the HCCJ does not have a definitive and binding character for all courts;
- one of the fundamental principles of criminal law is that of legality. It is not normal for the judge to be put in a position to presume that a person is under the influence of psychoactive substances, just because, at a given moment, he has also consumed such substances, without having any relevance as to how much time has passed since at that time and what quantity was consumed.

The present study does not only aim to ascertain certain contradictory opinions and solutions, or to criticize certain arguments that were the basis of the substantiation of some theories or the reasoning of some court rulings, but we also try to propose a solution to the legal problem.

The solution at hand, in terms of the lack of clarity of the commented legal text, seems to be the pronouncement of a preliminary ruling or a decision of the Constitutional Court. Unfortunately, in relation to the inadvertence noticed in the content of the criminal law, such a decision cannot definitively solve the legal problem, the legislator having to intervene to modify the text – regardless of the solution pronounced by the courts.

Our opinion is that the text is perfectable and the solution is simple and easy to apply in practice.

The proposed law *ferenda* is that art. 336 para. (2) has the following content: *With the same the punishment is sanctioned also the person under the influence of some psychoactive substance confirmed by a medico-legal report* (s.n.)*, who drives a vehicle for which the law provided a compulsory hold of a driver's license.*

The solution proposed does not imply, in any case, the aggravation of the investigation or of delaying criminal prosecution since, at the time detection in the traffic of one driver who consumed some psychoactive substance, there is already regulated a procedure that assumes involvement specialists within INML.

Thus, according to the methodological rules regarding harvesting, storage and transport the biological sample for the view probation court through the establishment alcohol or presence in the body of substances or drug product or of drugs with similar effects, the people involved in event or circumstances related to road traffic[15], biological sample for the determination of the existence of psychoactive substances in the body is carried out through a procedure complex that involves:

[13] Dec. no. 38/A/09.03.2011, in V. Pușcașu, C. Ghigheci, *Annotated Criminal Code*, vol. I, Universul Juridic Publishing House, 2021, p. 620.

[14] The previous regulation was different only in terms of the definition of psychoactive substances, the condition that the perpetrator was under the influence of these substances remained unchanged.

[15] Annex to Order no. 1512/2013 for the approval of the Methodological Norms regarding the collection, storage and transportation of biological evidence for the purpose of judicial probation by establishing the alcohol level or the presence in the body of narcotic substances or products or of drugs with similar effects in the case of persons involved in events or circumstances related to road traffic, published in Official Gazette no. 812/20.12.2013.

- transport of the author to an assistance facility healthcare authorized or in the medico-legal institutions where he is taken over by specialized personnel;
- collection of a blood sample of at least 20 ml;
- collection of a urine sample of at least 20 ml;
- permanent supervision by the traffic police of the medical staff and the perpetrator;

In addition, the determination of, in view of judicial probation, of alcoholism or presence in the body of a person of the products or drug substances or of drugs with similar effects, named in the continuation drugs, it is realized no more in the toxicology laboratories within medico- legal institutions, accordingly to the territorial authority.

In this context, since the existence the crime provided by art. 336 para. (2) CP depends on the expert report done in the INML laboratories, it seems natural that the specialists within this institution to review in what measure the person who was surprised driving a motor vehicle is or not under the influence noun identified in his body.

Such a solution legislation would be in accordance with the above mentioned CCR decisions, by which it is indicated the impossibility of establishing a minimum concentration for every substance psychoactive in part, remaining at discretion INML experts to review the incidence of criminal standard, depending on the substance swallowed by its characteristics and the impact which he has regarding the capacity of the perpetrator to drive the vehicle.

3. Retention of the contest of crimes with regard to the facts provided for in art. 336 para. (2) CP and in art. 4 of Law no. 143/2000

According to art. 4 of Law 143/2000 growing, producing, manufacturing, experimenting, extracting, preparing, transforming, buying or possessing drugs for own consumption (s.n.), without right, is punishable by imprisonment from 3 months to 2 years or with a fine.

There is no discussion about the retention in competition of the offense provided for by art. 336 para. (2) CP with that provided by art. 4 of Law no. 143/2000, in the situation where a driver of a vehicle is caught while driving the car under the influence of psychoactive substances and was in possession of high-risk or high-risk drugs . In this sense, both the doctrine and the practice of criminal investigation bodies and courts are unitary [16].

The issue of the existence of a contest between the two crimes is nuanced, when the author of the act provided by art. 336 para. (2) CP does not possess any drug (of risk or high risk) at the time of his detection in traffic, but he consumed such prohibited substances, as it appears from the toxicological analysis report issued by INML.

The authors of criminal law believe (rightly so, we say) that the offense provided for by art. 4 of Law no. 143/2000, as long as the perpetrator does not possess any quantity of high-risk or high-risk drugs (with a view to consumption), proof of the presence of any such substance in his body – regardless of the amount – not being sufficient to meet the elements constitutive of the crime of possession of drugs for consumption.

In this regard, it was shown in the specialized literature[17] that the legislator understood not to regulate the illicit use of drugs, but only certain preparatory activities, including their purchase and possession for this purpose. In fact, in our legislation drug use was criminalized (partially) only in the interwar period, when Law no. 58/1928 for combating drug abuse[18] established punishments only if it was practiced in a group, respectively in the company of others[19].

Contrary to the will of the legislator and the doctrinal interpretations, HCCJ found in a criminal case[20] that a defendant must also be sentenced for simple drug use, since to claim that drug use as such cannot be punished, but only the possession in view of consumption, would mean that the goal action (consumption itself), although achieved, remains unpunished, and the means action (possession), although less dangerous, remains punished. This solution was criticized, of course, by the authors of criminal law, among the arguments against the solution

[16] M. Hotca, in V. Dobrinoiu, M. Gorunescu and others, The new Criminal Code annotated, Universul Juridic Publishing House, Bucharest, 2016, p. 762.

[17] T. Dima, A.-G. Păun, *Illicit Drugs*, Universul Juridic Publishing House, Bucharest, 2010, p. 256.

[18] Law no. 58/1928 published in Official Gazette no. 90/1928.

[19] T. Dima, *Again about illicit drug use*, in RDP no. 4/2004, p. 57.

[20] HCCJ, crim. s., dec. no. 3241/29.05.2006, *www.scj.ro*.

and the reasoning of the supreme court being the violation of the principle of the legality of criminalization[21] or the expansion of the content of the criminal law through its interpretation[22].

It is possible, and sometimes real, for a person to take a smoke or more from an artisanal cigarette that is in another person's hand. Another similar situation is when a user finds a large amount of cocaine on a friend's table, and only takes as much as he needs. It is noted that, in both cases, we are dealing with drug consumption (of risk, respectively high risk), in the conditions where the person in question has never possessed any prohibited substance.

An extreme interpretation of the decision mentioned above would involve the conviction, both for drug trafficking and for possession of drugs for consumption, of 10 young people who „share" a cigarette containing cannabis. From a strictly formal point of view, as long as they „passed" the cigarette from one to the other, but also consumed it, each one's act would meet the constitutive elements of both the crime of high-risk drug trafficking (in the form of offering), but also of the crime provided by art. 4 of Law 143/2000, which, in our opinion, would be absurd.

Unfortunately, although the authors were consistent in appreciating the non-punishment of drug use, there are cases in the practice of criminal investigation bodies, in which the contest of crimes is retained [between art. 336 para. (2) CP and art. 4 of Law no. 143/2000], although the author of the act provided by art. 336 para. (2) CP does not possess any drug (of risk or high risk) at the time of its detection in traffic.

In this regard, we note that, at the level of Dolj county, the Police bodies that detect drivers in traffic who are under the influence of psychoactive substances notify the DIICOT prosecutors, who, even when the author of the alleged act of art. 336 para. (2) CP does not possess any drug (at the time of its detection in traffic or in one's own home), it states the existence of both crimes!

Thus, by the indictment of DIICOT, ST Craiova, it was ordered to send the defendant BI to court for the concurrent commission of the crime of „driving a vehicle under the influence of alcohol or other substances" provided by art. 336 para. (2) CP and „possession of dangerous drugs for own consumption, without right", provided by art. 4 para. (1) of Law no. 143/2000. With regard to the offense provided for by Law no. 143/2000, it was noted that „During the criminal investigation, the witnesses PC, CA, AM were heard and of the defendant BI, resulting undoubtedly that the author voluntarily consumed a cannabis cigarette in the evening of 20/21.08.2021 (s.n.) while he was at the home of PC"[23]. Although initially, the representative of DIICOT assessed before the court that „the claim regarding the arrival of drugs in the defendant's body is illogical, stating that he could not have done otherwise unless he had previously come into possession of them"[24], at the time when the Dolj Court questioned the change in legal classification (in the sense of removing the offense provided for by Law no. 143/2000) the hearing prosecutor agreed, appreciating that the crime of drug possession would be absorbed into that provided by art. 336 para. (2) CP[25].

In the end, the court ordered the change of legal classification from the two initial crimes, to a single crime provided by art. 336 para. (2) CP[26]. Even if the pronounced solution is novel, considering that the crime of driving under the influence of psychoactive substances absorbs that of possession of drugs with a view to consumption, the effect is favorable to the defense, in the sense of removing the provisions of art. 4 of Law no. 143/2000.

If at the level there is such a practice in Dolj County most of the cases from Romania, in the event of the crimes provided for by art. 336 para. (2) CP, the notified criminal investigation body is the Prosecutor's Office corresponding to the Court that is going to judge the case on the merits, regardless of the amount and of the kind drugs consumed by the defendant. Thus, by sent. no. 538/16.07.2021, pronounced by the Sector 2 Court in case no. 1135/300/2021 (final through non-appeal), was arranged condemnation 4050 lei fine to the defendant criminal, in conditions in which he drove under the influence following substances: Nordazepam 0.1 ug /ml, THC - COOH 0.017 ug /ml, benzodiazepines, cannabinoids and cocaine, ketamine and metabolites, cocaine metabolite, oxazepam[27]. Another case in which he decided condemnation for a person who was surprised at the wheel after consuming may several drugs is case no. 14349/4/2021 of the Bucharest CA[28] in which the application

[21] M. Hotca, M. Gorunescu and others, *Offenses provided for in special laws*, C.H. Beck Publishing House, Bucharest, 2019, p. 32.
[22] T. Dima, A.-G. Păun, *op. cit.*, p. 280.
[23] The indictment issued in case no. 381/D/P/2021 of DIICOT, ST Craiova – AS own archive.
[24] The conclusion of November 16, 2022, pronounced by the Dolj Court in case no. 834/63/2022 – AS own archive.
[25] The conclusion of February 22, 2023, pronounced by the Dolj Court in case no. 834/63/2022 – AS own archive.
[26] The conclusion of March 15, 2023, pronounced by the Dolj Court in case no. 834/63/2022 – AS own archive.
[27] Sent. no. 538/16.07.2021, pronounced by the 2nd District Court, in file no. 1135/300/2021 – AS own archive.
[28] Bucharest CA, dec. no. 902/29.06.2022, *www.portal.just.ro*.

was ordered (dec. no. 902/29.06.2022). of a criminal fine, in conditions in which the defendant had consumed cocaine, methadone, cannabis and opium. Also, by way of example we indicate the dec. no. 39/2023 of the Zarnesti Court, pronounced in the case no. 4208/338/2022[29], in which it was accepted a plea agreement for driving under the influence cocaine.

We indicate, as judicial practice, and other decisions given by the national courts, in which it was detained only the crime provided by art. 336 para. (2) CP, in conditions in which the defendants had previously consumed high-risk[30] drugs: sent. no. 183/2021 of the Bistrita Court, sent. no. 243/2021 of the Bolintin Vale Court, sent. no. 247/2018 of the Odorheiu Secuiesc Court, sent. no. 311/2019 of the Constanța Court, sent. no. 1170/2021 of the Gherla Court, sent. no. 1272/2021 of the Cluj-Napoca Court, sent. no. 1275/2021 of the Târgu Mureș Court.

It is obvious that, to some extent overwhelmingly, the courts and the prosecutor's offices in Romania do not detain in competition the offense of driving under the influence of psychoactive substances and that of drug possession for own consumption, than in the situation in which the author of the first acts owns at the moment identified in the trafficking, dangerous drugs or high risk about himself. Just in the extent in which the exceptional situations that we have made references to, they will repeat, the intervention from the Supreme Court will be needed, to clarify finally this legal issue.

4. Conclusions

The present work proposed not only to consider controversial issues about the theoretical interpretation and practice of provisions of art. 336 para. (2) CP but, where we considered necessary, to propose solutions too.

If in the event of the term „psychoactive substances", the HCCJ rulings (Complete for absolution some matters of law), but also CCR intervened and they clarified the legal issue appeared, regarding the others aspects which they did the object of this study, the intervention of the legislature or the courts ability with interpretation / solving legal issues appear as being necessary.

The fact that in the doctrine there are unitary reviews or majority regarding certain legal problems does not exempt legislature or superior courts to clarify issues which generated different settlements of the causes, by tracking criminal bodies or courts of law. We can't accept that the same legal issue can be judged differently according to the „practice" of one prosecutor or court. Moreover, the impact on litigants of the decisions in the criminal material is a decisive one.

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[29] Dec. no. 39/2023 of the Zărnești Court, *www.portal.just.ro*.

[30] All the cited decisions were identified on the website *www.rolii.ro*.