

“Vehicular homicide”, a new Italian offence: law provisions and comparison with some other European countries

E. MARINELLI¹, S. PICHINI², S. ZAAMI¹, R. GIORGETTI³,
F.P. BUSARDÒ¹, R. PACIFICI²

¹Department of Anatomical, Histological, Forensic and Orthopaedic Sciences, Sapienza University of Rome, Rome, Italy

²Department of Therapeutic Research and Medicines Evaluation, Istituto Superiore di Sanità, Rome, Italy

³Section of Legal Medicine, Università Politecnica delle Marche, Ancona, Italy

Abstract. – According to the most recent World Health Organization report, road accidents represent a very serious public health issue, claiming each year more than 1.2 million lives worldwide and being the leading cause of death among young people aged between 15 and 29 years.

Up to now, the policies to reduce this issue are different, unbalanced and often inadequate not only in Italy, but also in the other European Countries. Specifically, the Italian Parliament has recently introduced a new law (n. 41 of March 23rd, 2016), making vehicular homicide together with road traffic injuries a criminal offense, both to be punished as a result of negligence. The measure came into force on March 25th, 2016.

In this paper, the provisions of the above-reported law have been assessed, taking into account the modifications introduced in the Penal Code by this law and the impact it is having and will have on drivers on a day-to-day basis. Similarities and differences with legislative framework of some other European countries were also examined. Finally, some open questions to be solved are named as an open eye for future considerations.

Key Words:

Vehicular homicide, Driving Under the Influence of Drugs (DUID), Italian offence, European legislation.

Introduction

According to the most recent World Health Organization report, road accidents represent a very serious public health issue, claiming each year more than 1.2 million lives worldwide and being the leading cause of death among young people aged between 15 and 29 years¹. The con-

tribution of driving under the influence of drugs (DUID) to road crashes is non-negligible, while that of alcohol is much greater than that of any other drug¹.

In 2014, the number of road accidents resulting in personal injuries in Italy was 177,031, resulting in the death of 3,381 people (within 30 days) and in 251,147 injured people. Compared to 2013, the number of accidents dropped by 2.5% and that of the injured by 2.7%, even if the decline in the number of deaths was only of 0.6% with 1,491 deaths among car drivers and passengers, followed by 704 motorcyclists, 578 pedestrians, 273 cyclists, 159 truck drivers (159), 112 mopeds and 64 regarding other modes of transport. The mortality rate for pedestrians (deaths per 100 accidents) resulted four times higher than that of passenger car occupants (2.75 against 0.67). Conversely, for motorcyclists and cyclists, the index value was triple and double, respectively (1.69 and 1.41)². Unfortunately, since 2009, there have been no data concerning the percentages of accidents caused by DUID or alcohol abuse. Nevertheless, the National Health Institute estimates that alcohol-related road accidents in Italy are about 30-35% fatal accidents³, while those caused by psychotropic drugs are theoretically calculated as less than 0.5%, but with 1.1% fatalities⁴. These figures are in any case considered as underestimated, since drug testing at roadside has not been implemented at all in recent past.

Up to now, not only in Italy, but also in the other European Countries, the policies to reduce this issue are different, unbalanced and often inadequate.

Specifically, the Italian Parliament has recently introduced law n. 41 of March 23, 2016, making vehicular homicide together with road traffic injuries a criminal offense, both to be punished as a result of negligence. The measure came into force on March 25th, 2016⁵.

The aim of the present paper was to examine the provisions of the above-reported law, taking into account the modifications introduced in the Penal Code by this law and the impact it is having and will have on drivers on a day-to-day basis. Secondly, similarities and differences with legislative framework of other European countries will be assessed.

Vehicular Homicide in Italy

The recent law 41/2016⁵ adds in the Penal Code the crime of vehicular homicide (Section 589-bis), through which negligence is punishable by imprisonment (with a variable number of years in prison depending on the degree of guilt) for the driver of motor vehicles whose reckless conduct causes severe and fatal injuries. In particular:

- Imprisonment from 2 to 7 years in cases of manslaughter in violation of traffic regulations was confirmed from previous law regulations;
- Driving a motor vehicle in a state of severe alcohol intoxication (blood alcohol concentrations-BAC – higher than 1.5 grams per litre) or psycho-physical alteration resulting from the consumption of narcotic drugs or psychotropic substances is considered culpable homicide and is punished with imprisonment from 8 to 12 years; for professional drivers, with BAC between 0.8 and 1.5 grams per litre the same penalty is applicable;
- A vehicular culpable homicide is punished with imprisonment from 5 to 10 years if committed by drivers of a motor vehicle with a medium alcohol concentration defined as BAC between 0.8 and 1.5 grams per litre if they behaved imprudently: e.g. exceeding speed limits, crossing when traffic lights are red; driving in the wrong direction; reversing in proximity or in correspondence of intersections, curves, or humps and reckless overtaking.

The penalty is reduced up to a half when the vehicular homicide, although caused by imprudent conduct, is not the exclusive result of the action (or omission) of the perpetrator.

The punishment is increased if the offender does not own a driving license (or has it suspended or revoked) or has not his motor vehicle insured.

An increase of the penalty is applied in the case of a driver causing the death of more persons or the death of one or more persons and lesions of one or more persons. Also, in this case, the punishment inflicted for the most serious violations can be increased up to three times; with the maximum penalty limit being 18 years (before the introduction of this law it was 15 years).

Finally, there is a specific aggravating circumstance if the driver, responsible for a vehicular culpable homicide, run away without providing assistance. In this case, the penalty is increased from one-third to two-thirds and, in any case, cannot be less than 5 years. The main provisions of Law 41/16 are reported in Figure 1.

The amends in the Code of Criminal Procedure, introduced by law 41/16, have to be highlighted with regard to the following aspects:

- In the field of investigation and compulsory collection of biological samples, in particular, the vehicular homicide and road traffic injuries are included among the offenses for which the judge, ex officio, may issue a reasoned order for compulsory collection of biological samples;
- Compulsory collection may be arranged by the public prosecutor (PP) in urgent cases and whereas a reasonable risk exists that any delay could cause serious or irreparable detriment to the investigation (in any case the PP has to require within 48 hours the permission of the Judge for the preliminary investigation, who has another 48 hours at his disposal);
- The mandatory arrest in flagrante delicto for the crime of “vehicular culpable homicide” and the discretionary arrest for the crime of severe or very severe road traffic injuries are both expected.
- For the new offenses of vehicular homicide and road traffic injuries, the PP can ask just once for an extension of the term of duration of the preliminary investigation;
- The indictment request has to be complied within 30 days from the date of investigation closure and it is expected that no more than 60 days should elapse between the date of the preliminary hearing and that of the judgment itself;

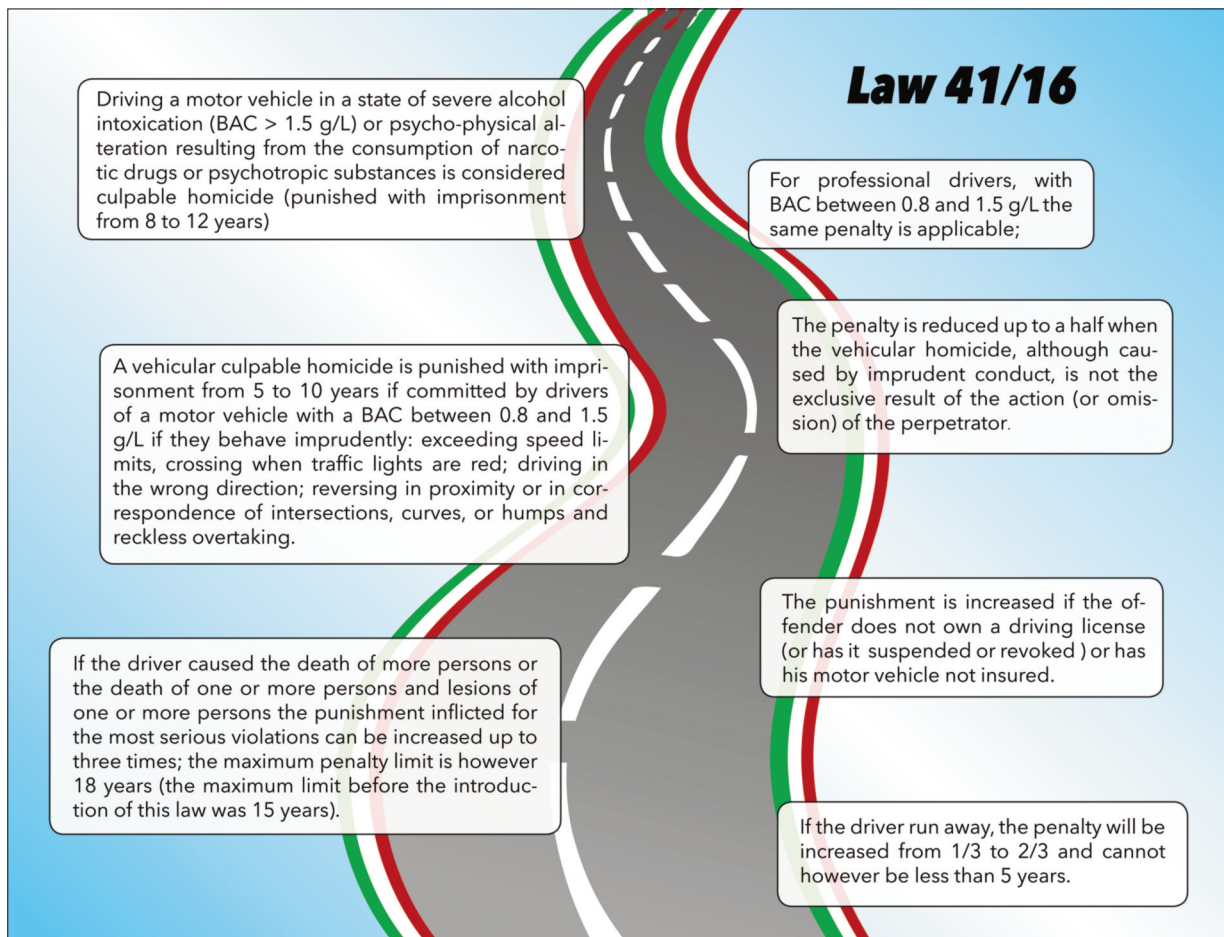


Figure 1. Main provisions of law 41/16.

European Overview: Great Britain, France and Spain

In *Great Britain*, the offense of “vehicular homicide” does not exist. When a vehicle has been used to deliberate assault with the intention of killing or causing serious injury and one of these two situations occur, the driver is charged with murder according to the Common Law.

When death is due to dangerous driving and not to intentional assault, the Road Traffic Act 1988 (RTA 88) regulates the case⁶. Following are the offenses related to road deaths:

- Section 1 RTA 88 “Causing death by dangerous driving” - the prosecution has only to prove that the driver caused death by driving hazardously.
- Section 2B RTA 88 “Causing death by careless or inconsiderate driving”. This is similar to Section 1, but in this case, even if the standard of driving is unacceptable, it does not reach the point of being considered dangerous.

- Section 3ZB RTA 88, “Causing death by unlicensed, disqualified or uninsured driving” – Drivers in Great Britain need to possess an appropriate driving license and are also obliged to own third party insurance for their vehicle. This section has been included to rule those road death cases where although the driving standards have been respected, the driver should not guide since not in possession of the required documents.
- Section 3A RTA 88 “Causing death by careless driving while drugged by alcohol/over prescribed limit”.

The concept of recklessness in British law needs a *mens rea* so the RTA 88 by introducing the concept of driving dangerously removed the offence of “reckless driving”⁷.

In *France*, the reference road code standard is the “Code de la route”⁸, which in turn refers to the “Code pénal”.

Causing others death by driving a motor vehicle falls under the “culpable homicide” (art. 221-6- 1 cp), but it is sanctioned with more severe penalties than those provided for general manslaughter: e.g. imprisonment from a minimum of three years and a fine of a minimum of 45,000 euros, increased to 5 years and € 75,000 in the event that the driver’s conduct is clearly disrespectful of laws, regulations or rules of prudence.

The Section 221-6-1 of the Code pénal explicitly provides a minimum sentence of five years imprisonment and a 75,000 euros fine for the situations where the driver of a vehicle commits errors, driving recklessly, carelessly, negligently or he acts unrespectful of road and passengers safety. The Penal Code also reports some aggravating circumstances where the minimum penalty is further increased:

The minimum penalty is extended to seven years in prison and 100,000 euros fine if:

1. The driver violated regulations and safety standards.

The minimum penalty is extended to ten years in prison and 150,000 euros fine if

1. The driver is clearly drunk or under the influence of alcohol with a BAC or a breath alcohol concentration equal to or more than the allowed legal limit; or if he/she refuses to undergo the alcohol test
2. The blood test discloses that the driver has used drugs; or he/she refuses any eventual inspection to establish if he/she was driving under the influence of drugs
3. The driver does not own driving license or if license had been cancelled, invalidated, suspended or revoked
4. The driver has exceeded the maximum speed limit more than 50 km/h
5. The driver, knowing that he had caused an accident, did not stop.

The code contemplates a set of additional penalties for culpable homicide when driving a vehicle (section 221-8):

- The suspension of the driving license for a minimum period of five years increased to a minimum of ten years if one of the aggravating circumstances provided for by art. 221-6-1 occurs;
- The cancellation of the driving license with prohibition to demand the release of a new license before 5 years or more. In the presence of aggravating circumstances, the prohibition

to apply for a new license is extended to the first 10 years or more. This time, interval is also increased in case of relapse, in relation to which the court may also order, by reasoned decision, that the driving interdiction will be permanent;

- The obligation to attend a course on the dangers of psychoactive drug at driver expenses;
- The prohibition of driving certain motor vehicles for five years or more, including;
- The obligation to attend a course on road safety at driver expense;
- The latch of the vehicle in which the crime was committed for a minimum period of 1 year, if owned by the driver;
- The impounding of the vehicle with which the offense was committed, owned by the driver. Impounding is compulsory in the presence of some aggravating circumstances or in the presence of a relapse.

In *Spain*, the law of reference for road offences is the “Ley Orgánica 10/1995 del Código Penal”⁹, as amended by Ley Orgánica 15/2007¹⁰.

In Sections 379-385 the law provides for some specific driving behaviours which are punished as criminal offenses: speeding, driving under the influence of alcohol or drugs, reckless driving and homicidal-suicidal driving.

In particular, Sections 380 and 381 regulate and punish reckless driving and homicidal-suicidal driving:

Whoever drives a motor vehicle or moped dangerously endangering the life or integrity of other persons is punished with imprisonment from 6 months to 2 years and forbidden to drive vehicles and mopeds for 1 to 6 years. Exceeding speed limits and alcohol concentrations as indicated in section 379 (+ 60 km/h on urban roads, + 80 km/h on rural roads; breath alcohol concentration more than 0.60 milligrams per liter or BAC higher than 1.2 grams per liter) fall into this category.

If a driver willingly endangers the integrity and life of others, he/she is punishable with imprisonment from 2 to 5 years with the prohibition of driving motor vehicles and motorcycles for a period of 6 to 10 years and a fine, established by the judge to be paid monthly in a time interval between 12 and 24 months. If the driver conducts the vehicle recklessly but he/she does not endanger the life or safety of others, the penalty is imprisonment from 1 to 2 years, the prohibition of driving motor vehicles and motorcycles for a pe-

riod of 6 to 10 years and a fine determined by the judge to be paid monthly in a time between 6 and 12 months.

When the conduct referred to in sections 379, 380 and 381 have actually caused an adverse effect (death or injury), in order to determine the sentence with reference to section 382 of penal code, the court has to take into account the most severely punished offenses and in all cases condemn the culprit to pay the compensation of civil liability.

Discussion

One of the principal aim in the introduction of the offense of "vehicular homicide" in Italy has been a punishment increase for offenses committed by people driving under the influence of alcohol or psychotropic drugs (paragraph 2, section 589-bis P.C.)⁵.

International literature including studies on psychopharmacology and epidemiology demonstrates that alcohol (meaning ethanol) and drugs of abuse impair driving ability decreasing the level of attention and causing drowsiness, dizziness slowing reflexes and reactions to dangers¹¹. This is clearly due to their effects of different receptors and neuromodulators of CNS, which alters the state of consciousness. In this concern, a study conducted in six European countries (Italy, Belgium, Holland, Bulgaria, Poland, Spain) showed that, when consumed, alcohol and use of drugs of abuse are able to influence the individual reaction time, i.e., the time interval that elapses between exposure to the stimulus and the production of a response¹². This study has been confirmed by the European funded project "Driving under the Influence of Drugs, Alcohol and Medicines (DRUID)"¹³ and by a recent meta-analysis from a panel of British Experts¹⁴. Both demonstrated that in Europe 90.5% of injured drivers and 87% killed drivers had a BAC of ≥ 0.5 g/L, which is the acceptable limit of blood alcohol content before a person is charged with a crime in Italy. The median value for alcohol concentration in injured drivers was 1.6 g/L, while in killed drivers was 1.7 mg/dL, respectively. Indeed, as above reported, for its action on CNS, alcohol affects driving behaviour by increasing reaction time and decreasing concentration, coordination and tracking. In addition, increasing alcohol consumption leads to risk-taking behaviour, since drivers overestimate their skills and

underestimate the risk due to the effects of alcohol¹². Risk taking behaviour is significantly increased when consumption is associated to that of psychotropic drugs. The simultaneous use of alcohol and drugs of abuse makes movements coordination difficult and, by increasing the reaction time, the movements and the obstacles are perceived by the subject with considerable delay¹¹. Concerning the prevalence of psychotropic drug use in European drivers, cannabis is the most frequently detected drug in biological fluids of injured and killed drivers, followed by cocaine. Cocaine, the second most frequently detected drug, was usually detected in combination with cannabis and benzodiazepines. In addition, the most frequent combination is that of these psychoactive drugs and alcohol. Amphetamines and illicit opiates are rarely detected in European impaired drivers¹⁵. In the case of alcohol, the disabling effects begin fifteen min after intake, with the maximum effect within first two hours after drinking and a significant decrease after 6 hours. Likewise, in the case of cocaine and cannabis, the disabling effects (coordination difficulties along with anxiety, paranoia, panic attacks) start 15 min from the assumption, with the peak effect within the first two hours and a substantial reduction of the effects after 6 hours after a single intake¹⁶. Furthermore, in the specific case of cocaine in the early hours after assumption, an accentuation of psychomotor functions (reaction time, attention and vigilance) associated with an alteration of the perception of risk has been observed. Consequently, the drugged driver tends to increase the driving speed and to reduce safety distances with a higher possibility of road accidents. These same effects have been reported for amphetamines^{17,18}. With respect to opioids, the established effects on disability are related to driving mood changes (e.g., depression and euphoria) reduction of muscle coordination, drowsiness and ideo-motor lag. Ideo-motor coordination difficulties are also present in the case of cannabis smoking along with anxiety, paranoia, panic attacks, which are mainly made manifest on the speed and deviation from the lateral position of the vehicle¹⁷⁻¹⁹.

Conclusions and Future Perspectives

The recent introduction of law 41/16 in Italy represents a significant step forward, especially regarding the punishment increase for offenses

committed by people driving under the influence of alcohol or psychotropic drugs (paragraph 2, section 589-bis P.C.)⁵. Looking at the legislation in force in other “key” European Countries (e.g. UK, France or Spain), it can be observed that the in certain cases such as in the UK the offense of vehicular homicide is not clearly expressed. For this reason, this new Italian law pays more attention to reckless and dangerous driving that seriously limit other people safety especially in cases where driver deliberately alters his consciousness by the use of psychotropic substances. At the moment, a crucial issue remains which is not solved by the present legal system concerning the compulsory collection of biological samples to objectively and specifically assess the use of above reported drugs. Indeed in the light of the sentence n. 238 expressed by the Italian Constitutional Court on July 9th July 1996, n. 238, blood sample collection still results as a restriction of personal freedom, when the compulsory execution is needed if the person does not spontaneously agree or cannot agree- for current physical conditions- to the collection itself. The sentence states that “the restriction not only affects the sphere of personal freedom, but also invades – even if minimally – the body’s personal sphere”. In this sense, it follows that it would be unreasonable to ask for a “blood sample”, unless it is explicitly authorized, even though it results the only reliable tool to ascertain mental and physical alterations induced by consumption of alcohol or psychotropic drugs. As a result, presently compulsory blood collection could never be imposed by recourse to the legal support provided by sections 224-bis and 359-bis c.p.p. Furthermore, in agreement with the most accepted jurisprudence, it should be considered that, if healthcare professionals did not provide the driver with proper medical care and blood sampling, the request of the judicial police to measure BAC or to collect blood sample for drugs of abuse testing presupposes the notice to the suspected person on the right to be assisted by the lawyer. In the absence of this prerequisite, an intermediate nullity is configured which is not deductible after the decision of the Court first instance ruling (Supreme Court of Cassation, IV Criminal Section, 23rd October 2015 and United Sections, 29th January 2015)²⁰. This question remains open for the moment and it is advisable that it should be solved in the immediate future for a complete and satisfying application of “vehicular homicide” law.

Conflict of Interest

The Authors declare that there are no conflicts of interest.

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