

## Italian law on the vehicular homicide: medical legal issues and comparative analysis

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### Abstract

Law no. 41/2016, enacted after a parliamentary debate characterized by a strong media pressure, intends to give a strong response to the growing social alarm caused by road accidents causing deaths. In this perspective, it introduced the categories of road homicide and road injuries within the Penal Code and the new hypotheses of mandatory and facultative arrest *in flagrante delicto*.

This paper aims at comparing the rules by which the United Kingdom, France, Spain, Germany and Italy protect people's lives and safety of vehicular traffic in order to highlight strengths and weaknesses with a view to future reforms.

A survey on the European legislature highlights that, while other countries tend to criminally sanction several dangerous driving conducts, Italy has preferred, on the one hand, to punish only with administrative sanctions some violations related to reckless driving (with the exception of driving under the influence of alcohol and drugs) and, on the other, to provide for particularly harsh prison sentences in the case of vehicular homicide.

The authors criticize this approach and other aspects of the new law. Moreover, it seems that the legislator's aim has not been achieved because traffic accidents have not decreased. They also believe that better results could be obtained by increasing controls on the roads and developing a policy of economical investments which improves road safety. *Clin Ter 2017; 168(3):e214-219. doi: 10.7417/CT.2017.2009*

**Key words:** road homicide and injuries, driving under the influence of alcohol and drugs, Law, Italy, United Kingdom, France, Spain and Germany

### Introduction

Road accidents are very common across Europe and lead to a loud alarm in public opinion, especially if caused disregarding road rules and under the influence of alcohol or illegal drugs. In Italy for these accidents the civil society and, for some years, both associations of road accident victims and professionals in the field have been expressing

the need to introduce more effective tools for prevention and repression. According to the World Health Organization, road accidents are the ninth cause of death among adults, the first among youths aged fifteen to nineteen and the second among adolescents aged ten to fourteen and young adults aged twenty to twentyfour. In Italy, in 2014 there were 177.031 road accidents resulting in injuries, which brought about 3.381 fatalities and 251.147 people injured. Compared to 2013, the number of accidents decreased by 2,5%; the amount of injured by 2,7% whereas the number of casualties dropped only minimally: -0,6% (1). Instead, in Europe according to the 2009 WHO "European status report on road safety. Towards safer roads and healthier transport", every year in Europe about 120.000 people die as a result of road accidents, while 2.4 million sustain injuries (2).

Even the European Union, on the basis of not encouraging statistics on vehicular accidents (1) since a long time has been calling for a law to limit this type of criminal conduct.

For these reasons, on March 23, 2016 the Italian Parliament enacted Law n. 41 which introduced into the Italian legal regulations two new crimes, road homicide and road injuries, making changes to the Penal Code, the Criminal Procedure Code and the traffic laws (3). Before this reform, such conducts were covered by the general rules applicable to all homicides and unintentional injuries (art. 589, paragraphs 2 and 3, P.C., art. 590, paragraph 3, P.C.). However, these crimes provide for sanctions that, in most cases, seem unable to adequately punish reckless drivers. In fact, penalty for manslaughter is determined by the court from a minimum of six months to a maximum of five years. Usually the judges, in assessing such offences, inflicted penalties considered by the public opinion not adequate to the crime. By this law the legislator intended to sanction conducts that endanger people safety and emphasize the value of life and physical integrity of injured people (4).

A few months after the law has been enacted, it is already possible to make some considerations also by comparing it with the rules in force in other European countries.

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**The “road homicide” and “road injury” offences  
(art. 589-bis and 590-bis p.c., introduced by art. 1, law no.  
41/2016)**

The “road homicide” offence is attributable to any person who by negligence causes the death of a person violating the rules on road traffic. Penalties vary depending on the presence of aggravating circumstances. Punishment provides for imprisonment from two to seven years in the cases of not aggravated road homicide; imprisonment from eight to twelve years, if the driver was under the influence of alcohol or drugs. In particular in the first case, it should be ascertained if the alcohol concentration per liter exceeded 1.5 grams. If it proved to be higher than 0.8 and not higher than 1.5 grams per liter, imprisonment is sentenced to a lesser extent (five to ten years).

“Road professionals” (truck drivers, taxi drivers, etc.) are punished with more severe penalties even if the alcohol concentration is higher than 0.8 grams per liter and not higher than 1.5 grams per liter.

In such cases, the reform provides for the mandatory arrest *in flagrante delicto*.

Furthermore, regardless of whether alcohol or illegal drugs have been taken, the law considers aggravating circumstances other imprudent conducts (speeding, crossing intersections with the red light, travelling on the wrong side of the road, U-turn near or at the intersections, bends, humps, reckless overtaking in the presence of pedestrian crossings or a continuous central line). These traffic offences entail the following sanctions: imprisonment for a period varying from five to ten years (art. 589-bis, paragraph V, P.C.) as well as additional sanctions such as a driving disqualification order and the ban to apply for a new up to a maximum of fifteen years (thirty years if the driver left the scene of the accident) (5). The same approach, but with much lower penalties (from three months to seven years imprisonment, as appropriate) was followed by the legislator when violating highway code rules causes serious injuries (i.e. inability to attend the ordinary activities for a period longer than forty days, or however a permanent or life-threatening damage) or very serious injuries.

For all aggravated cases of serious and very serious road injuries, the law provides for the optional arrest *in flagrante delicto* (art. 381, paragraph 2, of the Criminal Procedure Code, to which letter *m-quinquies* is added). However, drivers cannot be arrested if they stop, and if necessary, render assistance to the injured persons and are at disposal of the judicial police (art. 189, paragraph 8, of the Highway Code, as amended by the subject law).

If death or injuries are not caused solely by the driver’s negligent conduct or omission, the penalty is reduced up to a half. Being generic, this rule could result in a reduction of sanction not only in the case of the victim’s contributory negligence, but also when the accident was caused either by the offender or weather conditions, such as torrential rains that make roads very slippery.

Both in the case of death or injury, the law provides for an increase of penalty (up to three times the maximum penalty), when the road accident caused the death or injury of more persons.

Finally, penalty is anyhow increased if the accident was caused by unlicensed or disqualified persons, or when their motor vehicle was uninsured (6).

**Refusal to undergo the alcohol test**

If drivers found guilty in the accident refuse to undergo the test to verify whether they were under the influence of alcohol or psychotropic substances (7), the prosecutor may order the coercive sampling of their hair or oral mucosa, if he considers that the delay in performing the analysis could jeopardize the investigation. The decision may be transmitted orally; however, the decree must be validated in writing and sent within 48 hours to the Judge for the Preliminary Investigations and confirmed in the next 48 hours (8).

In urgent cases the judicial police officers may accompany the driver to the nearest public health facility. In this case they must advise the driver’s attorney who has the right to attend the above mentioned test (art. 359 bis of the Criminal Procedure Code).

**European legislation**

Some European countries have enacted specific laws to penalize road homicides.

In the UK, homicide committed while driving a vehicle constitutes a separate offense from the common manslaughter. For deaths resulting from road accidents the law (9,10) provides for two decreasing levels of punishment depending on the severity of the driving conduct: 1) dangerous driving; 2) careless and inconsiderate driving. They are both expressed in very generic terms. The following are examples of careless and reckless driving *a*) aggressive driving (such as sudden lane changes or cutting into a line of vehicles); *b*) speeding; *c*) disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate; *d*) driving when too tired to stay awake; *e*) cell phone use “when the driver was unavoidably and dangerously distracted by that use”. Conversely, a careless and reckless driving consists, *inter alia*, in: *a*) overtaking on the inside or driving inappropriately close to another vehicle; *b*) inadvertent mistakes such as driving through a red light or emerging from a side road into the path of another vehicle; *c*) short distractions such as tuning a car radio; *d*) flashing of lights to force other drivers in front to give way; *e*) driving that inconveniences other road users or causes hazards such as unnecessarily remaining in an overtaking lane (11). In the case of reckless driving, penalties charged are: imprisonment up to fourteen years, at least two years of mandatory disqualification from driving and then retesting. The same penalties, applied in a different matter depending on the amount of alcohol or drugs taken, shall be charged for the crime of killing by careless driving when under the influence of alcohol or drugs. “Reckless or careless” driving is sentenced with imprisonment up to five years, mandatory disqualification from driving for a minimum period of one year and obligation to undergo retesting for license renewal on the discretion of the judge (12). In France road accidents falls within the manslaughter (art. 221 -6-1 P.C.), but the penalty is more severe (13,14). Art. 221-6-1 P.C., as the minimum penalty, provides for five year imprisonment and a pecuniary fine of 75,000 euro.

The law provides for up to seven year imprisonment and a pecuniary fine of 100,000 euro for careless driving and disregard of the safety rules, 10 year imprisonment

and a fine of 150,000 euro for the following aggravating circumstances: driving under the influence of alcohol (with a blood alcohol concentration equal or higher than the limit allowed by law), refusal to undergo the alcohol tests, driving without a license or with an expired license, speeding, failure to render assistance.

Finally, the code provides for a set of additional penalties for those convicted of road homicide; (Art. 221-8): driving license suspension for a minimum of five years and a minimum of ten years in the presence of one of the aggravating circumstances provided for by Art. 221-6-1; driving license confiscation with the ban to apply for a new one for a minimum period of five years. In the presence of aggravating circumstances, the prohibition to renew the license is extended to a minimum of ten years. In the event of repeated infringements, the court may also order, by reasoned decision, the definite disqualification from driving. Law also requires the obligation to attend both a course on the awareness on dangers of alcohol and drugs while driving and, at own expense, a course on road safety.

In Spain, the law sanction as crimes some specific driving conducts: speeding, driving under the influence of alcohol or drugs, reckless driving, homicidal-suicidal driving, etc. (art. 379 to 385 ) (15). In particular, Art. 380 and 381 regulate and punish the reckless driving and homicidal-suicidal drivers who 1) driving a motor vehicle or a motorcycle, exceeding the speed limits and the blood alcohol level reported under Art. 379 endanger people life or integrity, shall be punished with imprisonment from six months to two years and with the driving disqualification for a period ranging from one to six years; 2) drivers who consciously disregarding other people life, endanger their life or integrity are punished with imprisonment from two to five years, and with the disqualification from driving motor vehicles and motorcycles for a period ranging from six to ten years and a fine determined by the court. Conversely, if they drive with conscious disregard but do not endanger other people life or safety, they are generally sentenced with imprisonment from one to two years, and the prohibition to drive motor vehicles and motorcycles from six to ten years. The judge also sets the amount of the fine. In case of death, the court has to take into account the most severely sentenced offense and apply the penalty in its upper half. In any case, he has to condemn the driver to pay damages (16).

In Germany the negligent conducts described are punished by applying the general rules of the Criminal Code on manslaughter, which punishes the guilty persons with imprisonment up to five years (Section 222) (17). However, the Criminal Code provides for certain conducts as crimes even if those do not involve anybody's death or injury. In particular, five year detention or a fine will be sentenced to anyone who a) drives vehicles, although not in a condition to drive safely due to consumption of alcohol or drugs, or is affected by physical or mental defects b) does not observe the right of way; c) overtakes or drives improperly in the process of overtaking; d) improperly drives near pedestrian crossings; e) drives too fast in places with poor visibility, at road crossings or junctions or railroad crossings; f) fails to keep to the right-hand side of the road in places with poor visibility; g) turns, drives backwards or contrary to the direction of traffic or attempts to do so on a highway or motorway; or fails to make vehicles which have stopped or broken down recognizable at a sufficient distance, although it is required for the safety of traffic. However, in all these circumstances, drivers can only be punished if their conduct endangers other people life and physical integrity or someone's property. If drivers "negligently cause the danger", they will be sentenced to a maximum penalty of two year in prison (section 315 c).

Even if the above mentioned dangers do not occur, just driving a vehicle when not in a condition to drive safely, being unfit due to alcohol or drugs, is sentenced with imprisonment not exceeding one year, or a pecuniary penalty. The same penalty applies to those who commit this crime with negligence (section 316). Conviction follows the driving disqualification order (section 69) (18).

## Discussion

As for the instruments used by the legislators of the above mentioned European countries to protect traffic life and safety, this overview highlights a clear difference between Italy and the other countries considered (Table 1).

In fact, jurisprudence of the above mentioned European countries punishes as crimes several violations of the road traffic rules. Conversely, in Italy, with the exception of driving under the effect of alcohol or drugs (considered as

Table 1. Protection of life instruments applicable in case of road accidents

	Specific crimes, such as a) death and injuries b) dangerous behaviors	Aggravating circumstances of the general offense of manslaughter and specific crimes that punish mere dangerous behaviors	Specific crimes that punish mere dangerous behaviors. In case of death penalty is higher	General crime of manslaughter and specific crimes that punish mere dangerous behaviors	Specific crimes that punish death and injuries
U.K.	Yes	No	No	No	Yes
France	No	Yes	No	No	Yes
Spain	No	No	Yes	No	No
Germany	No	No	No	Yes	No
Italy	No	No	No	No	Yes

a crime under art. 186 of the Highway Code), other serious violations (such as very high speeding) are punished with administrative sanctions; they are considered aggravating circumstances (not autonomous crimes) only in the event of death or injury. However, having caused death or serious injuries is often linked to fortuitous circumstances, such as poor driving skills of other drivers or health disabilities of people involved in the accident. Therefore, legislative systems which apply penalties more on the basis of conduct negligence than on the actual damaging consequences are preferable.

This limit of the Italian law seems to be even more evident in view of the fact that it punishes more severely than other countries homicides subsequent to traffic accident (Table 2). People convicted for road homicide are given shorter sentences than those found guilty of other types of homicide.

In fact, in Italy serious violations of traffic rules (with the exception of driving under the effect of alcohol or drugs) are not criminally sanctioned and involve short confiscations of the driving license if they do not involve anybody's death or injury. As a result, the same conduct can be punished with eighteen year imprisonment and at least five-year disqualification from driving if the driver caused the death of one person and injury to another, or only with a fine of a few hundred euro and a short confiscation of the driving license if the accident does not occur. This system seems incompatible with the prevention and education objective that the legislator had set by Law no. 41/2016.

Even apart from the comparison with the other European legislative systems, law n. 41/2006 highlights some critical issues. A first objection concerns the proposed maximum penalty of twelve years, eighteen years in the case of killing of one person and injuring of another in the same accident (art. 589-bis, last subsection, P.C., introduced by art. 1 Law no. 41/2016).

Under Italian law, penalties for intentional offenses are always much higher than the culpable ones because much greater is the severity of the intentional offence. This is why common manslaughter (that is, not consequent to traffic accident) is punished with imprisonment from six months to five years (art. 589 P.C.), while intentional extremely serious personal injuries, i.e those that cause permanent damages on the victim, are punished with imprisonment from six to twelve years (Art. 583 P.C.). Since Italian jurisprudence has intended road homicide as a culpable, but not an intentional

offense, the maximum penalty from twelve to eighteen years (if besides death, the accident caused injuries to other people) seems excessive and incompatible with the evident less seriousness of the culpable offense compared with the intentional one (19).

More generally, the decision to lay down specific rules for such conducts has been criticized. For example, as mentioned, penalty is reduced by up to half in cases where the event is not directly related to the driver's negligence or omissions. However, this rule was introduced only for traffic accidents. Therefore, it does not apply, for example, to accidents at work and to physicians' negligent behavior, thus resulting in an unequal treatment. In fact, if the fatal accident is caused not only by the driver's carelessness, but also, for example, by atmospheric or environmental conditions that make the road particularly slippery, penalty should be reduced up to one half. Conversely, if death is caused both by health care personnel negligence and disease severity of the patient, a reduction of the penalty is absolutely not mandatory. Such inconsistency could have been avoided through a more comprehensive reform that includes negligent conducts in all fields and not just limited to road accidents (20).

Even the list of aggravating circumstances seemed to be contradictory and incomplete. In fact, for example, the reform considers serious only the homicide caused by crossing the intersection with the red light and not also the one caused by the driver who violates the obligation to give way or stop at the stop sign. In addition, the law considers serious only the homicide caused by overtaking another vehicle at a pedestrian crossing, not also turning over hitting pedestrians in the crosswalk without overtaking (21). Legislators considered this case more serious not only because it is more frequent than hitting in the crosswalk without overtaking, but also because they felt that overtaking a car standing at a pedestrian crossing is a voluntary act that makes hitting very likely (22). However, even if there are no cars to overtake, the choice not to slow down near the pedestrian crossing can be a voluntary act. Consequently, the choice of protecting in a different way pedestrians' life whether or not an overtaking occurred, might be questionable.

The lack of clarity of the law has also created a conflict among the prosecuting authorities in various Italian cities about the possibility of subjecting the drivers to blood tests against their own will. According to the prosecutor of Trento, since the amendment only provides for the forcible

Table 2. Penalties subsequent to road homicide

	United Kingdom	France	Spain	Germany	Italy
Detention	up to 14 years	up to 14 years	from 6 months to 5 years	up to 5 years	up to 18 years
Driving disqualification order)	at least 2 years; at least 1 year in cases of careless or unconsidered driving	at least for 5 years; at least for 10 years in cases of aggravating circumstances	from 1 to 10 years	If the act shows that the driver is unfit to drive, for example if driving under the influence of alcohol or drugs	at least for five years in case of homicide with no aggravating circumstances; at least for 10 years if there are aggravating circumstances; up to 30 years if the guilty driver did not render assistance and left the scene of the accident

removal of hair or oral mucosa, not also blood, the latter cannot be imposed coercively. However, in order to prove alcohol/drugs effects on the driver's performance, the judges consider valid the medical certificate proving a high concentration of alcohol and/or the presence of drugs in the driver's body fluids if such test is carried out not upon a specific request by the traffic police officers, but by hospital staff who takes sampling for clinical purposes in order to treat injuries suffered by the driver in the road accident in which he got involved (23).

However, according to the prosecutor of Genoa, the list of controls to be carried out is only an indication of those useful to prove alcohol or drugs intake. Therefore, blood sampling, being particularly reliable, cannot be excluded (24). Clearly, in some cases the uncertainty on such an important aspect is likely to prevent the achievement of the crime proof.

An other aspect that is likely to prevent the achievement of the crime proof is the difficulty to search and identify abuse substances in biological samples. Cocaine, opioids, cannabis, amphetamine are only some of the drugs that are being used. Many new substances have entered the drug market, but are not usually easily detected because are not part of the screening pannels that are commonly used (25). An example are the so called designed drugs, such as NBO-Mes, that have major effect on the ability to drive, but will not be found if not specifically searched in the biological samples (26).

Not even the main goal of the law, i.e hindering road piracy, has been achieved. In fact, as it was easily predictable, there has been a significant increase of accidents in which drivers, instead of stopping to render assistance to injured persons, left the scene of the accident. Monitoring carried out after the entry into force of the new law has highlighted that failure to render assistance in accidents which caused injuries or deaths were 556 in five months, against 484 in the same period of 2015: therefore, 72 more cases, with an increase of 14.9% (27). It would have been more appropriate if the law had provided attenuating circumstances for those rendering assistance. In the months of April, May and June 2016, the Observatory of the Italian Association for Road Victims carried out a monitoring and verified that serious episodes of road piracy were 294, compared with 245 in the same quarter of 2015, therefore 49 more accidents with an increase of 20%. The injured persons were 366, while in 2015 they were 313, with an increase of 16.9%. However, the number of deaths remained the same, i.e. 33 (28).

These data show that law on road homicide alone cannot solve the problem of road safety. It is also mandatory to develop adequate infrastructures and improve road safety education, as other European countries have been doing for decades (29,30). Therefore, Italian Government should allocate the necessary funds for ordinary and extraordinary road maintenance. In fact, the bad condition of the roads is actually one of the most frequent causes of accidents (31,32). It is also absolutely necessary to have an adequate number of traffic policemen who take night shifts in order to check on people under the influence of alcohol, prevent the use of mobiles while driving, check that drivers wear seat belts and ensure that drivers of heavy vehicles and buses comply with

regular working times and are not subjected to excessively long shifts. This would help make drivers definitely more aware and more responsible. It would also be advisable that people get involved in education on road safety programs and are aware of the dangers related to the use of drugs and alcohol while driving. Conversely, the Global Status Report on Road Safety (33) of 2009 reported that in 2009 Italy for road safety had allocated 0.9 euro per capita/year against an average of 10.9 euro of the 21 European countries that had provided data on this issue, with peaks that reach 20 euro per year in Spain, 22 in Norway and 39 in France. Moreover, for road safety 0.23% of GDP was allocated in Poland, 0.13% in France, 0.12% in Estonia, 0.09 in Spain, 0.4% in the UK, while in Italy only 0.004%. Conversely, Italy has chosen to enact a law based on repression, and only in cases of death or injury, instead of providing preventing measures.

## Conclusions

The regulatory survey here reported highlights the key elements to be considered when enacting regulations inherent criminal liability on road traffic.

First of all, providing for specific crimes to punish road homicide and injuries due to reckless driving is not in itself necessary to safeguard traffic safety. Regulations on the matter in Germany, Spain and especially France show that it is sufficient to seriously punish those who violate road traffic rules even if they do not cause damage. On the contrary, this kind of approach is more correct as it exposes to sanctions all the imprudent people, not only those who have the misfortune of running into an accident.

Secondly, it is mandatory to avoid applying flexible concepts, such as "the conscious disregard for the safety of others", as well as, very slight distinctions, i.e. "dangerous driving" and "careless and inconsiderate driving". Such legislative techniques increase the risk that the judges apply conflicting rulings, thus determining unequal sanctions.

In addition, if it is considered appropriate that the law provides for specific crimes of road homicide and injuries, the legislator's intervention should be limited to both the penalty entity and a list of the aggravating circumstances, without providing for special rules in case of causal link or other requirements of liability. Conversely, the aforementioned Italian law has reduced the liability in case of concurrence of circumstances, thereby determining an unjustified difference in relation to cases of death and injury occurred in fields other than road traffic. Finally, heavy imprisonment time sentences can appear superfluous and merely demagogic. The deterrent effect can easily be achieved through massive pecuniary fines and long periods of confiscation of the driving license, without applying penalties that are best suited for inveterate criminals than for people who have committed one, even if very serious and tragic, recklessness. It would be necessary to focus on the rehabilitation of people who commit these serious crimes because in this field, much more than in others, it is possible to make reckless drivers aware of the severity of the mistakes made, thus avoiding that they will repeat it.

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