

Accidents: The fight against road rodeos is strengthened

Passengers will be punished as well as drivers

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The drama of Charmilles was played out 13 November around 10:30 p.m. According to the Public Ministry, during an illegal race, one vehicle struck a pedestrian, age 34. This unfortunate person died on the scene of the accident.

It's a first. In the affair of a road rodeo in Geneva that ended in one death 13 November, the passengers of the two vehicles are, like the drivers, charged with murder. This is news that has shaken the public. Some suspect the law to be influenced by the hardness toward the drivers of the Via Sicura (Swiss traffic law). The judicial reasoning is however reasonable: if a passenger is associated psychologically in the totality of the acts, he can be considered a co-author of the crime. If his role is indispensable to the commission of the act but remains secondary, the complicity can be reserved. The difficulty, according to specialists, belongs to the investigation: how to know what the drivers and the passengers said to each other and what was in their heads?

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After a road rodeo, the prosecutor charges drivers and passengers

A passenger can also be a criminal

ROAD RACE

They weren't at the wheel of the cars implicated in the drama of Charmilles (Geneva), but they are charged with murder. It's a first.

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An road race—at least that is what is assumed by investigators—between two vehicles. A pedestrian, the father of three children, in the wrong place at the wrong time. The death occurred 13 November 2013 in Charmilles (Geneva), just a couple of steps from the former Servette stadium. The prosecutor Adrian Holloway has questioned the two drivers and the two passengers, aged 18 to 23 years old, and has charged all four with murder. The affair is shaking public opinion. For the reason of the death of an innocent bystander but also as well because of the inculcation of the passengers, a first. How to understand this decision? An inquiry.

Why is it that the passengers can be inculpated?

If a passenger is associated psychologically with the totality of the act, he can perhaps be considered as a co-author. If his role is indispensable to the commission of the act but his role remains secondary, his complicity can be restrained. This notion of “participation in the infraction” has been developed in the course of years. “In 2000, the Federal Tribunal (FT) an individual for a grave violation of the rules of traffic. This person was neither at the wheel nor a passenger. He was associated in an insurance fraud scheme consisting of causing accidents,” explained Mr. Jacques Roulet, founder of the network of Swiss Romand (French Switzerland) traffic lawyers.

The persons sitting next to the driver, are they conscious of their responsibility? “There is a form of ignorance,” responds Mr. Robert Ayrton. “Drunken drivers often ask their passengers to take their place before the arrival of the police. But that doesn't protect either of them.” A passenger can thus be found guilty of complicity for drunk driving. Three friends proved this in 1988 in the canton of Obwald. They had drunken “coffee schnapps” for six hours before taking the road, separately. One of them had an accident. He was convicted of drunk driving. His friends were convicted for complicity in the state of drunkenness. The FT reproached them for having contributed to the commission of the infraction.

“In the case of a road race, if the prosecutor thinks that the passengers wanted to participate, he can charge them with murder. This holds to a judicial point of view,” analyzes Mr. Yvan Jeanneret, professor of the Faculty of Law at the University of Neuchatel.

Why is it that this is the first time passengers have been charged with murder?

According to a number of attorneys, to inculcate for murder a passengers seems to be a Swiss first. “If the Public Ministry has the will to make obstacles for certain behavior on the road, he can try to prove that one can be found guilty of intentional murder in the case of the driver...but also in the case of the passenger,” reckons Mr. Christian Reiser, who has defended a youth implicated in a road race in 2004. “For this, the case has to contain some solid elements.”

An attorney for a youth implicated in the drama at Charmilles, Ms. Jennifer Bauer-Lamesta is catagoric: “There is a political angle to this story. The prosecutor wants to strike out at a mentality.” The spokesman for the Public Ministry, Vincent Derouand, refutes this: “There is no intention here to set an example. At this point the Public Minister considers the passengers as potential co-authors of the infraction.” A number of attorneys decry however the criminalization of something that turns around the driver. “The program of action of the Via sicura, put into effect this year, is to make an example of this,” reckons Mr. Jacques Roulet. “In five years, no prosecutor has been able to charge a passenger with murder.” For Mr. Robert Ayrton, the Via sicura “has given this result” and he’s happy about it. “It is too easy to talk of negligence when a person drives at ridiculous speeds. The driver is a criminal just like other criminals.” Mr. Henri-Phillipe Sambuc, who defended the family of a victim of a road rodeo in 2007, fully agrees with this view. “Geneva has often given negative signals in refusing to charge drivers with intentional murder. So much the better that there’s an evolution.”

Why is it that drivers are rarely convicted of murder?

Criminalization or not for drivers, they are rarely convicted of murder. “Murder has not been proved a single time in the last 15 years in Geneva,” confirms Mr. Yvan Jeanneret. The reason? “Intentional murder supposes that the person at the wheel knows that what he does can kill and that he is accommodated to this hypothesis. Yet the driver has a tendency to think that even if he drives crazily, nothing bad is going to happen. Moreover if he accepts the hypothesis that an accident can happen, that supposes that he accepts the proposition of death, because in a road race, the risk of killing a third party is just as likely as losing your own life. One could deduce that the driver doesn’t want to have an accident because he doesn’t have the intention of dying.” “Doubt always favors the accused,” adds Mr. Jacques Roulet. “To look at it clearly, one much thus inter into the privacy of the passenger compartment and prove what has happened in the heads of people. That’s difficult.”

How must a passenger behave?

The drama of Charmilles reminds us that the passenger carries part of the responsibility. What must he do if the driver is drunk, for example? “He must ask him to stop. If he does it, he must ask for the keys, even if it’s a friend,” responds Stefan Krähenbühl, spokesman for the Road Cross, which has as its objective the prevention of accidents. For Mr. Jacques Roulet, “One must not fall into the trap of punishing the simple act of taking a seat in a car. The penal system rests on the principle of punishing the fault, not the act alone. The passenger is not ever wearing the hat, and one shouldn’t thus reproach him.”