

## Sobering the Law

Last year the National Assembly amended Section 123L of the Road Traffic Act by re-enacting subsection (1) and deleting subsection (2) which used to read as follows:

Subsection (1) shall not apply if appropriate arrangements are made for the vehicle to be driven by a person other than the person being under the influence of alcohol or drug.

Accordingly Section 123L now reads as follows:

### *Detention of persons affected by alcohol or drugs*

*A person required to provide a specimen of breath shall, upon the breath test showing alcohol in excess of the prescribed limit, or upon a refusal to submit to such a test, be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a motor vehicle on a road or other public place, he would not be committing an offence under section 123D, 123E or 123F. [RR 23/16 (cio 18/12/16).]*

The amendment which was part of a package to provide for better sanctions against drivers under the influence of alcohol was welcomed by the public at large. The Minister introducing the Bill in the National Assembly explained that section 123L was being “revised so as to keep the driver in police custody until he is sober, notwithstanding the fact that arrangement may have been made for another driver to drive the vehicle”. There was no guarantee, the National Assembly was told, that a driver would not be driving again if allowed to leave the station.

Whilst not doubting the good intention of the legislator, the section nevertheless gives rise to controversy in its interpretation and application.

I am raising these issues in view of the numerous complaints that have come my way.

Section 123L is intended to vest discretionary power in a police officer to detain any person who has been driving a motor vehicle with alcohol level above the prescribed limit (23mg of alcohol in 100ml of breath or 50mg of alcohol in 100ml of blood or 67mg of alcohol in 100ml of urine) and release that person if and only if the officer is satisfied that his state of sobriety is such that it no longer infringes that limit.

Unfortunately in my view, section 123L as worded opens the door for possibilities of abuse. The law sets no guidelines, no rules to assist either the public or the police for that matter on how to exercise the discretion being bestowed on the police officer. It simply states “...until it appears to the police officer...”. The discretion is absolutely

on the officer as to how he goes about it. One can easily imagine situations where a police officer, on power trip, could decide to be unduly difficult or otherwise prolong the period of detention for reasons which may not be apparent at all.

In such a situation, one may be tempted to think that the provisions of the old law had their "*raison d'être*". The previous Section 123 L allowed for the possibility of a drunk driver leaving a police station in company of another person (say a relative) who could take his charge. The detention would then not be prolonged any further. The rationale of the offence as envisaged by old section 123 L was to enable a police officer to detain a suspect if there is no one to take good charge of him. Detention would no longer be needed if a responsible party could take the offender home under their responsibility.

Any argument as to the risks of the person taking the wheel again at that moment is a "*non sequitur*".

Take for instance an offending driver who offers to take a taxi to return to his place of residence and decides to leave his car behind. Or a father who undertakes to take charge of his offending son and drive him to his place of residence in his own car. Would it not be reasonable for an officer to exercise his discretion in favor of the allowing the offending driver to leave the station?

I trust that it could not have been the intention of the legislator to require an officer to 'babysit' a person until he is in a sober state. Stations are meant to be equipped with "cellule de dégrisement" as police cells may give rise to allegations of imprisonment which is not intended by the law. The section cannot be read as an absolute power to a police officer as it would amount to detaining the suspect administratively in breach of our principle of separation of powers. Whilst we are all deeply concerned with the increasing number of fatal road accidents (74 to date) the law must fairly balance the rights of suspects and victims.

This law is still new, this is the time to set the appropriate parameters to ensure that there are no abuses. Deterrence and the decrease of road fatalities remain a priority for all.

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