



**The Examination of the Crime Stipulated
in Article 330 of the New Criminal Code.
Critical Remarks**

Minodora Ioana BĂLAN-RUSU¹

Abstract: The objectives of this paper consist of the comparative examination of the current provisions to those contained in the New Criminal Code, identifying the innovation elements and formulating critical observations that should be considered by the legislator. The paper continues further research in this particularly important area and research conducted by other Romanian authors. The relevant results and conclusions consist of comparative examination of the texts and the identification of some gaps that in the future will have a negative impact on the complex activity of preventing and fighting against the crime in this area. The paper can be useful for researchers in the field and practitioners. The essential contribution consists of critical remarks which may be useful to the legislator in the event of changes and completions of the criticized expressions and phrases.

Keywords: Crime; traffic safety; active subject; passive subject

1. Introduction

Since the second half of the XIXth century, when it appeared the transport by rail, the Romanian legislator sought to protect the social values circumscribed to this economic activity through various legal provisions, including the criminal law.

Given the specificity of this type of activity, the social values that had to be protected are contained in a wide range which includes life, bodily integrity and health of physical entities, property belonging to physical and legal entities, railway infrastructure, means of transport, maneuver, maintenance or intervention by railway.

It is easy to see that unlike other areas of economic activity, railway traffic and transportation has a certain specifics, determinant firstly by the special domain to

¹ Assistant Professor, PhD in progress, "Dimitrie Cantemir" Christian University, Bucharest, 176 Splaiul Unirii, District 4, Bucharest, Romania, Tel.: +4021.330.79.00. Corresponding author: ionrusu@univ-danubius.ro.

which we refer.

In this context, the Romanian legislator, having firstly considered the particularities of the railway system that distinguish it from other economic systems or those of transport (air, sea or road), it had to adopt a series of rules of criminal law specific to the domain.

Thus, the first considered, decisive problem is the traffic and rail transportation safety because of how this problem is handled, depending largely by the economic transport activity.

Railway traffic safety may be jeopardized one way or another, the actions or inactions of people outside the system and some actions or inactions of staff with specific responsibilities in the field, employed in the system, such as intentional and at fault. Such actions or inactions were incriminated as crimes, even in the second half of the XIXth century.

Although the first incriminations are provided in the Criminal Code since 1864, still the offense under consideration is mentioned expressly in the Law on Police and railway exploitation from 1870, where the article 21 provides that anyone that will cause, through ignorance, negligence or failure to comply with laws and regulations, any damage to railroad stations or trains, which will result in injury, it shall be punished with imprisonment from one month to one year and a fine of 100 to 2000 lei.

In paragraph (2) it provides an aggravated variant which consists of causing the death to one or more persons, in which case the penalty is from 1 to 2 years and a fine from 500 to 5,000 lei.

Carol II Criminal Code proposes a new approach in the sense that railroad employees are criminally responsible if, as an official of railway or person employed in the service of this institution fails to fulfill his official duties or work against his duties (article 362 and 363 of the Charles II Criminal Code). Certainly, the Charles II Criminal Code and the Code of Criminal Procedure were known and appreciated by the specialists of the time as providing a range of modern legal norms, in line with the overall development of the European law, many of these rules being taken by the current Criminal Code. (Rusu, 2009, p. 59)

In this field, taking some of the provisions of the Charles II Criminal Code, the current Criminal Code provides for this offense in article 273, called marginal, the unfulfillment or the defective achievement of their duties, at fault.

We will not insist upon the examination of this crime, as we will make a comparative analysis with the depositions of the New Criminal Code, but we emphasize that it was provided under our criminal law since the second half of the XIXth century.

2. Compared Examination

As mentioned above, this offense, under the marginal denomination of unfulfillment or the defective achievement of their duties, at fault is provided in article 273 of the current Criminal Code.

In the new Criminal Code, under the same name, but in a different legal structure, the offense is stipulated in article 330, and consists of (1) *Failure to fulfill the office duties or their defective achievement, at fault, by the railway employees managing the railway infrastructure of transport operators, intervention or maneuver if this endangers the safety of transportation means, intervention or maneuver by rail, it shall be punished with imprisonment from 3 months to 3 years or a fine.*

In paragraph (2) it is provided a single aggravated variant, which consists of following the socially dangerous product, that is the railway accident.

The railway accident, as defined in article 333, is *the destruction or degradation brought to means of transportation, rolling stock and railway installations during movement or maneuver of the means of transportation, handling, maintenance or intervention by rail.*

After examining the two offenses it results in a number of similarities and some differences. Therefore, in the New Criminal Code which will enter into force, it was granted priority to intentional offense, the offense committed at fault, being provided at article 330 and article 229. There are no important distinction elements between the subject and material object of the crime, both rules being almost identical.

The active subject of the New Criminal Code offense must be an employee of the company or the company that manages the infrastructure, the transport operators, intervention or maneuver. We note that unlike the current regulation, where the active subject of the offense has the generic name of “railway employee” in their New Criminal Code the scope of active subjects has expanded encompassing all categories of employees of this system, of course, with the fulfillment of specific conditions. As an element of similarity, note the need for an active qualified

subject and who carries out activities circumscribed to and railway traffic and transportation safety.

Currently, the issue of the active subject existence as legal entity is controversial, some authors consider that the legal entity cannot have this quality as the active subject of the crime is qualified. (Dobrinou, Pascu et al., 2012, p. 748)

Other authors (Rusu, 2009, p. 199) and (Diaconescu & Duvac, 2009, p. 629) consider that this offense can be committed by a legal entity as well. Between the two regulations there is a series of differences in the quality of the passive subject of the crime. Thus, the current regulation, according to article 273 of the Criminal Code the passive subject can only be railway, uncertain, insufficiently explicit phrase, criticized in our doctrine. (Rusu, 2006, pp. 179-180)

In the New Criminal Code, amid criticism in our doctrine in the recent years, it was dropped the word "railway" and were expressly mentioned the following categories of passive subjects: means of transportation, intervention or maneuver by railway. It can be appreciated that the actual definition implicitly leads to a better appreciation and evaluation of the passive subject of the crime, although in our opinion is not enough.

In the current Criminal Code, the legislator has provided three different aggravated variants of crime respectively disturbance in the transport by rail, railway accidents and railway disasters.

In the new Criminal Code, it was renounced to two aggravated variants of the offense, that is the disturbances in the activity of railway transport and railway catastrophe, leaving only the railway accident.

Railway accident has been redefined so that any destruction or degradation brought to vehicles, rolling stock and railway installations, during the circulation or the maneuver of transport means, maneuver maintenance or intervention by rail, irrespective of their value, it falls within the set out text in article 333 of the New Criminal Code.

Certainly that in such circumstances, finding the existence in a criminal investigation of a small prejudice, it will inevitably lead to retaining the crime in its aggravated variant, the responsibility of the court being that of achieving a proper individualization of criminal law sanction to be applied.

3. Critical Comments

The legal content of the offense provided for in article 330 of the New Criminal Code allows us to formulate critical remarks aimed at improving the text in question.

A first criticism concerns the exclusion among the active subjects of the employees who handle the vehicle maintenance on the railway. We mention that this category of employees, who travel by rail with specific equipment to perform the maintenance activities of railway and its related facilities, it cannot be confused with employees who travel by rail, also with a range of equipment, to provide assistance at events such as railway accidents, saving victims, lifting locomotives or wagons derailed or cleaning the snow off some sections of track as a result of such phenomena. Although this category was not mentioned specifically in the content type of the crime, it is still under the aggravated variant of the railway accidents.

A second criticism concerns the exclusion from the passive subjects of the variant type of the offense, means of special maintenance which belongs to the company (enterprise) that manages the railway infrastructure.

A final observation concerns the legal content of the railway accident, which in our opinion should be amended. The first additions to be made to this definition is related to giving up the phrase “rolling stock” because this railway in the strict sense means all the equipment moving by rail (locomotives, wagons, vehicles, intervention, maintenance or maneuver by rail).

The second point on the definition of railway accident seeks to establish a minimum prejudice for the aggravated variant to be incident. Finally, the third criticism concerns the inclusion in the scope of the offense of aggravated variants (as well as other specific ones) of the serious railway accident and possibly rail incident.

4. Conclusions

No doubt that the regulation contained in the article 333 of the New Criminal Code represents a step forward compared to the current regulation, the critical observation in our doctrine in the recent years, being useful to the Romanian legislator. The changes in the organization and operation of the railway in Romania

in the recent years, after 1989, required the new thinking of the practical ways of incrimination of acts that endanger the railway road safety.

On the other hand, these changes and additions have been imposed also by the new status of Romania, a European Union member state, a situation in which it had achieved a compatibility of national legislation with that of the Member States, taking into account the development of the European rail which includes the Romanian territory.

With all the positive elements brought to the new incrimination in the New Criminal Code, there should be emphasized some imperfections that can be corrected. The critical remarks in this material and in others, published by other authors, must be properly assessed by the legislator, and where it is considered necessary, to be taken into account, leading implicitly to the modification and completion of the existing texts.

5. References

Rusu, I. (2009). *Infracțiuni specifice circulației și transporturilor feroviare/Specific crimes of circulation and rail traffic*. Bucharest: Universul Juridic.

Dobrinou, V., Pascu, I., Hotca, M.A., Chiș, I., Gorunescu, M., Păun, C., Neagu, N., Dobrinou, M. & Sinescu C.M. (2012). *Noul Cod penal comentat, Vol. II, Partea specială/The new commented criminal code, Special Part*. Vol. II. Bucharest: Universul Juridic.

Diaconescu, Gh. & Duvac, C. (2009). *Tratat de drept penal, Partea specială/Treaty of criminal law, special part*. Bucharest: C.H. Beck.

Rusu, I. (2006). Propuneri de reformulare a textelor din noul Cod penal referitoare la conținutul infracțiunilor privind siguranța circulației pe căile ferate/Proposals for reformulating the texts of the New Criminal Code relating to the content of the offenses regarding the railway traffic safety. *Dreptul/The Law no. 2/2006*, Bucharest: C.H.Beck.