

NEW REGULATIONS OF CRIMES AGAINST TRAFFIC SAFETY ON RAILWAYS, AS PRESENTED IN THE NEW ROMANIAN CRIMINAL CODE. GENERAL VIEWS. CRITICAL OPINIONS

Minodora-Ioana Rusu, PhD Student, Assist., "Dimitrie Cantemir" Christian University of Bucharest

Abstract: In this paper there were examined the provisions of the law in force with those of the previous law, which refers to crimes against traffic safety on the railways. It was also made a general characterization of this kind of crime, focusing on the innovations introduced by the new regulation. The innovations are represented in particular by law ferenda proposals that relate to the content of the new Criminal Code introduction of two new chapters in which there are criminalized some facts concerning the safety of air transport and shipping, after the first two chapters in which there are defended specific social values of rail and road traffic. The work can be useful for theorists and practitioners performing specific professions in the field..

Keywords: *Railway, air and water transportation, comparative exam, law ferenda proposals.*

1. Introduction

The importance of specific activities on the movement and rail transport, and the need to defend specific social values particular to the field, determined the Romanian legal authority to take some special measures for the defence of those values.

The railway traffic safety system is the cornerstone around which the entire activity, the importance of this segment going beyond the borders of Romania within the context of the European integration [1].

Against this background, it was necessary the adoption of a special law regulating the safety of railway traffic, Law no. 55/2006 on railway safety [2].

Under the provisions of the enactment mentioned, railway safety is generally maintained and, where possible from a practical standpoint, continuously improved, taking into account the development of Communitarian legislation and technical and scientific progress, giving priority to the prevention of serious accidents. Safety rules are laid down, applied and enforced in an open and non-discriminatory, supporting the development of a single European rail transport system [2].

Attention that is given to the economic activity is not excessive, given the extremely grave danger and sometimes unimaginable consequences that may arise as a result of events on railway [1].

In general, these consequences may aim at life, physical integrity and health of individuals, some environmental elements, railway infrastructure, transport, intervention or manoeuvre by rail, goods transported or other property of individuals or legal entities.

Given the complexity of the movement and transport by rail, special social values, and other elements that are generally related to the prevention and combating of crime in this area, the Romanian legislator, over time, has criminalized various acts of threatening or result, both of which are provided in the Criminal Code and in some special criminal provisions laws .

In a manner similar to the previous law, the legislature of the new Criminal Code has criminalized these facts in a special chapter entitled "Crimes against rail traffic safety" under Title VII "Crimes against public safety".

Given some essential differences between the two regulations (Criminal Code of 1969 and the new Criminal Code), in this paper we proceed to a comparative examination of the provisions of the two laws, the incriminations characterization of the new law, with some critical observations regarding how legislator has criminalized these facts.

2. Comparative consideration of the incriminations of the two laws

A first element of continuity is the provision in the new Criminal Code of a special chapter for such crimes. Comparative examination of the two laws shows evidence of the existence of certain elements of similarity and distinction.

A first distinction we are reporting on the title which includes such offences in the new law, with direct reference to the provisions of the Criminal Code of 1969, refers to the title and the marginal name of chapters and their intended position in the structure of the title.

Thus, as mentioned previously, the new Criminal Code offences against traffic safety on the railways are provided under Title VII - "Crimes against public safety" in Chapter I, while in the Criminal Code of 1969 these offences are set out in Chapter III under Title VI entitled "Crimes against public interest activities or other activities regulated by law".

Without trying to achieve a hierarchy of offences under the title depending on the importance of social values defended, yet we find that the new Criminal Code these offences are provided even in Chapter I, while other offences against public safety, such as those relating to road traffic safety, trespassing of arms and munitions regime, nuclear and explosive materials, etc., are provided within the following chapters.

However, in the Criminal Code of 1969 these offences are provided, as previously mentioned in chapter III of the title, after chapters dedicated to duty offences or in connection with the duty offences that prevent the application of justice.

With regard to offences within the framework of the chapter, another difference concerns the amendment of the sequence of the first two articles in the new Criminal Code, intended offences being given priority to the detriment of wilful negligence committed offence, different from the Criminal Code of 1969 which gave priority to the crime committed by negligence.

With one exception, which relates to the offence of failure to fulfil their duties or improper service of negligence, in the new Criminal Code the marginal names of other offences have been amended or supplemented, without diverting their original legal content resulting from the provisions of the Criminal Code of 1969.

The most important changes and additions occur in the legal content of all offences. Thus, changes in the legal content of offences relate to the essential requirement change and broadening the area of active and passive subjects of crimes.

Another important change regards the waiving from the new Criminal Code of two aggravated manners of crimes, respectively disorder in the activity of railway transport and railway disaster, in the actual regulation being provided only one aggravated manner, respectively the railway accident.

Thanks for giving away this aggravate manner, it was also dropped the defining of the railway disaster.

A final amendment which refers to the name and content of these crimes, which we signal, regards the regulation of the railway accident in a different way, compared to the provisions of the Criminal Code of 1969.

Regarding the search procedure of these types of offences, we find that in the new Criminal Code it is no longer stated the necessity to refer the legal authorities from the part of the competent bodies of the railway for the initiation of criminal proceedings in the case of some of these type, operating in this case, the other ways of initiating judicial bodies.

Thus, for all offences under this chapter, the classical referral operating modes, including notification by the competent authorities or any employee that is responsible for the safety of the activities developed in railway traffic.

Amid the changes that have occurred in the organization and operation of railway traffic and transportation in Romania, which primarily involved the reorganization and the division of the National Company in the field, within the doctrine of recent years there have appeared numerous proposals for law ferenda, aimed in particular at the legal content of these crimes, the marginal ways names, the aggravated manners etc.

Thus, a first proposal of this kind considered the broadening of the area of the active subjects of these offences, taking into account the individuals who were employed by private legal entities with state capital that were carrying out transport activities on the railway [3].

As a direct consequence there was a need to broaden the area of the passive subjects of this kind of offences that had to be completed with legal persons belong to the private sector developing activities that were circumscribed to traffic and transportation on railway [4].

The doctrine also mentioned the need to modify the marginal names of some of these crimes, changes that had to be in accordance both with the evolution of the criminality in the field and with some provisions of their legal content [5].

Finally, a last set of problems reported and implicitly criticized in the doctrine targeted the prosecutorial power and judgment, and how to notify the judicial bodies [6].

We note that, amid the critical opinions expressed in the doctrine of recent years, the legislature of the new Criminal Code has operated a number of important changes in both the legal content of these crimes and their marginal names marginal ways, the aggravated manners, the punishment limits, the prosecution competence and of the court etc.

In a general conclusion we believe that regulation of crimes regarding traffic safety on the railways in the new Criminal Code in the first chapter of title, the marginal name and their content are positive aspects, aimed at removing imperfections from the previous regulation and to ensure a more effective defence of the specific social values and railway traffic and transportation system.

3. Concept and features

In the current context in which Romania is a member state of the European Union, the importance of ensuring traffic safety and railway transport in the country exceeds the interest of the Romanian state, because in a not too distant perspective, on the territory of each Member State (including Romania), merchandise or passenger trains will travel belonging to

other companies belonging to other Member States, with their own personnel (driver, deputy mechanic, chief train etc.).

In order to achieve this objective the EU focuses on two main areas, namely, the development of a railway network in the territories of the Member States corresponding to general safety standards for high-speed railway trains, and the adoption of a single legislative framework applicable across all Member States in ensuring traffic safety.

The enactment framework that provides general rules regarding traffic safety and rail transport in the European Union is Directive 2004/49 / EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways [7].

European legislative act mentioned was transposed into domestic law of Romania by Law no. 55/2006 on railway safety, with subsequent amendments [2].

Please note that both the Romanian legislature in that Framework Act and the European legislator in Directive 2004/49 / EC have not defined the concept of railway traffic safety.

In exchange, in the art. 1 of Railway Safety Act 55/2006 there is stated that the object of the law is to ensure the development and improvement of Romanian railway safety and an improved market access for rail transport services by:

- Harmonization of the regulatory framework at EU Member States;
- Defining the responsibilities of the participants;
- Transposition into national rules of common safety targets and common safety methods;
- The establishment in Romania of a railway safety authority and an accident investigation organism and railway incidents;
- Common principles for the management, regulation and supervision of railway safety.

From the examination of those provisions it is noted that even if the term is not defined as railway traffic safety, Romanian legislator sets instead modalities through which the development and improvement of safety on the railways is realised.

Under the provisions of the law, there was adopted the Regulation of investigation of accidents and incidents, for the development and improvement of railway safety and the subway network in Romania, approved by GD no. 117 / 17.02.2010 [8].

Under the provisions of art. 3 paragraphs. (2) of the mentioned above Regulation,

"railway safety is the concept that the transport operations railways and underground transport network should be carried out without danger to persons, property and goods entrusted to transport to railway vehicles, for infrastructure and for the environment ".

Please note that this is the only definition given by the Romanian legislature of "railway traffic safety. "

In particular, rail safety is achieved through the implementation and compliance of all operators in the field of railway, and in compliance with the normative documents and regulations specific to the transport by railway and subway network, which include mandatory requirements railway safety [art. 5 paragraph. (1) of the Regulation].

We considered necessary the explanations above, as between the regulation of the expression "railway safety" law of organization and functioning of the system as a whole and how this

phrase should be understood as an element which is part of the legal content of any offence against safety and rail traffic, there is a direct link, which ultimately leads to defining "rail traffic safety."

At the same time, it is noted that in the Minister's order it is used and defined the concept of railway safety, while the title of the Chapter dedicated to this kind of crime is *crime against traffic safety on the railways* and in the legal content of the phrase there appears the phrase *safety circulation of means of transport, intervention or manoeuvre* on the railway.

Seeing how railway safety was defined in the law mentioned above, as well as the defining of the traffic safety on the railways in the doctrine, we find that the two definitions are almost identical.

As noted above, crimes against traffic safety on the railways are provided in the first chapter of Title VII entitled "*Offences against public safety*".

These incriminations relate to acts of criminality danger or of result, which once committed through acts or non-actions referred to in the text, are endangering vehicles traffic safety, intervention or manoeuvre on the railway, or in the worse way, can cause railway accidents.

These offences are:

- Failure to fulfil their duties or improper service, offence under Article 329 of the content of the new Criminal Code;
- Failure to fulfil their duties or improper service unintentional, offence under article content. 330 of the new Penal Code;
- Leaving the service station and presence drunk or other substance, offence under Article 331 of the content of the new Criminal Code;
- Destruction or false signalling, offence under Article 332 of the content of the new Criminal Code.

Such crimes have certain characteristics that distinguish them from other groups of offences, features resulted from the specificity of the carried on economic activities.

What characterizes this type of crime is primarily the defended social value or safety of railway traffic, social value involving in its complexity, physical integrity of persons, vehicles, intervention or maintenance manoeuvre, the goods transported, other goods or values, railway infrastructure and the environment.

Another feature of the active subject of such offences, subject (with one exception, that the crime of destruction or false signal) that must be qualified.

Unlike other regulations, the qualification of the active subject of the crime must be understood as having a double valence. On the one hand, it must be an employee of one of the trade company or a specific company operating railway traffic, and on the other hand, the concrete work done in the time of the offence must be circumscribed railway traffic safety.

The employment status of the active subject must result from an employment contract signed by him and the employer for a fixed or indefinite period of time. It is important that this be hired as the time of the offence and not before or after.

Regarding the second class, for those conducting activities in employing society, it is necessary to register the activity among those who contribute to ensuring the safety of railway traffic. This applies to the position occupied by the active subject at the time of the offence.

This function should be included among those responsible for traffic safety, as they are listed in Ministerial Order no. 2262/2005 as amended and supplemented.

Unlike other economic and social fields, in the railway traffic and transportation field, the legal entity has a role in the sense that all individuals with responsibilities in railway safety are engaged as legal persons engaged in administration, maintenance, transport, manoeuvre or intervention by rail. Thus, not any individual can perform any activity in this area, if this is not an employee of a legal person carrying out specific activities railway traffic.

Given this specific resulting from the organization and functioning of the system as a whole, in addition to the individual (employee in charge of railway safety regime), the quality of the active subject of an offence may be attributed to the legal person employing or the legal entity within the framework of which the active subject, legal person, develops activities in connection with the railway safety (when the conditions of criminal liability of legal persons provided by law).

Another element that characterizes this kind of crime is the variety and multitude of passive subjects, respectively physical persons, legal persons and the state.

Railway accident represents the only aggravated manner for all crimes listed, a manner more severely sanctioned by the legislator.

4. Conclusions and critical opinions

New Romanian Criminal Code came up with a new concept in terms of systematization crimes affecting public safety, are included in this category of crime groups railway system, for use on public roads, the regime of weapons etc.

The provision refers to the group of offences about railway traffic safety in the Criminal Code is not an invention of the current legislature, criminalization representing an element of continuity in Romanian criminal law.

The present paper remarked itself, on the one hand, for the comparative examination of the two ways of criminality (of the Criminal Code of 1969 and the applicable law) and, on the other hand, for the current characterization of criminality, through the perspective of new changes in the organization and operation of railway transport as a whole.

Unlike the previous legislation, the provisions of the new Criminal Code are superior in that they were considered new mutations by reorganizing rail system as a whole, and most critical opinions expressed in recent years in terms of doctrine especially the legal content of crimes.

Although the current provisions are superior to those of the previous law, we appreciate that they are not likely to defend under the best conditions the social values specific to this area of economic activity. Against this background, we believe that Title VII is required to be filled with specific offences about naval and aviation safety, be adding two new chapters, after Chapter II of Title VII.

Thus, of *law ferenda*, we propose that after Chapter II of Title VII, there be another chapter as it follows: Chapter II¹ marginally called "*Offences against the safety of air traffic*", in which to be included the offences specific to this segment of transport, provided in the specific normative Act.

Also, of *law ferenda*, we propose that after Chapter II.¹, be introduced a new chapter, respectively Chapter II², marginally entitled "*Crimes against naval traffic safety*", including specific offences specified in the special law in this field.

We believe that such legislation would allow defence by means of rules of criminal law of the social values specific to aviation and shipping.

REFERENCES

- [1] I. Rusu, *Considerations related to specific offences on railway in current legislation*, Law Magazine no. 11/2007, C.H.Beck Publishing House, Bucharest, 2007, pp. 152-164;
- [2] Law no. 55/2006 on Railway Safety, published in the Official Gazette of Romania, Part I, no. 322 of 10 April 2006;
- [3] I. Rusu, *Specific offences and rail traffic*, Prouniversitaria Publishing House, Bucharest, 2009, pp. 416-428;
- [4] I. Rusu, *Proposals recasting the texts of the new Criminal Code offences relating to content railway traffic safety*, Law Magazine no. 2/2006, Bucharest, 2006, pp. 168-175;
- [5] I. Rusu, *General analysis and critical comments on the provisions of Chapter I, Title VII of the Preliminary new Criminal Code. Proposals for amending and supplementing CRIMINAL LAW NOTEBOOKS Magazine no. 1/2008*, Bucharest, 2008, pp. 104-113;
- [6] I. Rusu, *Power prosecution and trial of offences specific to rail transportation*, Criminal Law Magazine, no. 4/2007, Bucharest, 2007, pp. 143-149;
- [7] Directive 2004/49 / EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18 / EC on the licensing of railway undertakings and Directive 2001/14 / EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), published in the Official Journal of the European Union no. L 164 of 30 April 2004; The rectifier is envisaged and to Directive 2004/49 / EC of the European Parliament and of the Council of 29 April 2004 on the Community's railways safety and amending Directive 95/18 / EC on the licensing of railway undertakings and Directive 2001 / 14 / EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), published in the Official Journal of the European Union no. L 220 of 21 June 2004;
- [8] Regulation of accident and incident investigation, development and improvement of railway safety rail and subway network in Romania, GD no. 117 / 17.02.2010, published in the Official Gazette of Romania, Part I no. 138 of 02.03.2010; that Regulation replaced the instructions for the prevention and investigation of railway accidents and events 003, approved by order of the Minister of Transport no. 210 of 14.03.2000;
- [9] Ministerial Order no. 2262/2005 as amended and supplemented, published in the Official Gazette of Romania, Part I, no. 113 of 6 February 2006.