

INFRACTIONS AGAINST THE TRAFFIC SAFETY ON THE RAILWAYS ACCORDING TO THE REGULATIONS OF THE NEW PENAL CODE

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Abstract

According to the new Penal code, the infractions against the safety on the railways are regulated in art. 329-332. The new regulation brought certain changes to the existing legal provisions among which we point out two. The first common change with regard to the un-carrying out of the work duties or their defective carrying out, leaving of the post and the presence at work under the influence of alcohol or other substances, destruction or false signaling was the removal of the aggravation element consisting in the causing of a railway catastrophe. Considering this change, it is to be applied the rules of the concurrence of infractions among these deeds being also those against the person or the property, if appropriate. Another common change consists in the transformation of the immediate consequence to the infractions stipulated by art. 329-332 into a „result” consequence; the syntagms „jeopardizing” and „jeopardy is created”.

Keywords: *new Penal code, traffic safety on the railways, work duties, railway accident, jeopardy.*

I. Introduction

In terms of art. 329 of Penal code, by comparing the new incriminating text to the corresponding one in the previous Penal code, we notice that there are some content changes¹. The first change refers to the removal of the aggravation element consisting in the causing of a railway catastrophe, which means that the rules of the concurrence of infractions are to be applied, between the infraction stipulated by art. 329 of Penal code and the ones against the person or the property, depending on the case².

Another change consists in the transformation of the immediate consequence of the infraction stipulated by art. 329 par. (1) into a „result“ consequence, being provided the syntagm „jeopardizing” unlike the previous one according to which the deed „*could jeopardize the traffic safety of the means of transportation*”.

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¹ For the analysis of the infractions against the traffic safety of the railways according to the provisions of the previous Penal code, see Tudorel Toader, Drept penal. Partea specială, Hamangiu Publishing House, Bucharest, 2008, p. 319 and the following one. For the analysis of this infraction, according to the provisions of the new Penal code, see Tiberiu Medeanu, in the collective paper (of authors Petre Dungan, Tiberiu Medeanu, Viorel Pașca) Manual de drept penal. Partea specială, Vol. II, Universul Juridic Publishing House, Bucharest, 2011, p. 331 and the following one.

There are changes also with regard to the circumstance of the active subject of the infraction. In the previous Penal code, the active subject could be only a railway employee while, according to the new Penal code, any employee "that managed the railway infrastructure or of the transport, intervention or maneuver operators" could have the quality of active subject.

The material object of the infraction, that including also the means of intervention or maneuver by rail was extended.

The law giver removed from the marginal denomination of the infraction the expression "knowingly", since it is no longer necessary to the new regulation of the guilt.

There is a change also under procedural aspect, namely in the case of the type variant for the setting into motion of the penal action, it is not necessary to formulate a complaint from the competent organs of the railway.

Regarding the content of art. 330, by comparing the incriminating text in the new Penal code to the one corresponding in the previous Penal code, we notice that there are some content changes. Considering the fact that, except for the subjective side and the punishment, the content of the incriminating text is the same to the one within art. 329 of Penal code in terms of the undergone changes within the legal content of the infraction, we make reference to those above-shown.

There are significant changes also with regard to art. 331 of the new Penal code. A first amendment brought to the Penal code regarding the simple version consists in the broadening of the person domain that can have the capacity of active subject from the "employees providing the direct traffic safety of the means of railway transportation" as it was under the old regulations to "employees with duties regarding the traffic safety of the means of transportation, intervention or maneuver on the railways."

As well as with the other two infractions against traffic safety on the railways and with regard to this infraction, in order to achieve its contents, the deed is necessary to jeopardy "the traffic safety" on the railway.

The content of the assimilated version was also changed, besides the change regarding the extension of the category of the active subjects, as the requirement regarding the drunkenness was removed and it was replaced by another one, more precise, namely, the existence of an alcoholic saturation of more than 0.80 g/ l of pure alcohol in the blood. In addition, it was added also the hypothesis consisting in the committing of the deed under the influence of some psychoactive substances. The change of the content of the assimilated variant determined also the renaming of the infraction.

The content of the aggravated variant was reformulated, in the sense of providing a single immediate consequence – causing of a railway accident.

There is a change also under procedural aspect, namely, in the case of the variants stipulated by art. 331 par. (1) and (2) for the setting into motion of the penal action, the formulation of a complaint from the competent organs of the railways is not necessary.

Finally, regarding the infraction stipulated by art. 332 of Penal code, we also notice that there are some content changes. A first change to the new Penal code in terms of the simple variant consists in the broadening of the material object. In the new drafting, the legal text aims also the destruction, degradation or bringing into a state of disuse of the railways, rolling-stock, railway installations or those of the railway communications, as well as of other assets or equipments afferent to the railway infrastructure, unlike the previous form that considered only the destruction, degradation or bringing in a state of disuse of the railway or railway installations.

Another change of the content of par. (1) occurred through the new Penal code consists in reducing the penalty limits from 3-12 years to 2-7 years.

Compared to the changes brought to the content of par. (1), the content of the text incriminating the false signaling was changed accordingly.

The content of the aggravated variant stipulated by par. (3) was also reformulated in the sense of providing a single immediate consequence – causing of a railway accident - and the limits of the punishment were reduced.

The content of the fourth paragraph was also reformulated in terms of the applicable penal treatment in the case of committing in the third degree one of the deeds incriminated by the texts afferent to the previous paragraphs. The new law established a sole sanctioning regime by halving the special limits stipulated by law for the intentional deeds.

We mention that the fifth paragraph of the previous incriminating text has no counterpart in art. 332 of the new Penal code, so that the sanctioning of the attempt is regulated within art. 332 par. (5). Given the specificity of the subjective side of the infraction stipulated by art. 332 par. (3), namely the rightful oblique intent, the common aggravated infraction variant was excluded from the deeds where the attempt is punishable. Surely, it is possible also the less likely hypothesis that the form of guilt in the case of the aggravated variant should be the intention.

II. Non- carrying out of the work duties or their defective carrying out

1. Incrimination structure

Under the marginal denomination afferent to art. 329 of Penal code, it is regulated a simple infraction variant and an aggravated one.

The type variant [art. 329 par. (1)] consists in the non- carrying out of the work duties or their defective carrying out by the employees that manage the railway infrastructure or by transport, intervention or maneuver operators; it achieves the content of the simple variant, if through this it is jeopardized the traffic safety of the means of transportation, intervention or maneuver on the railway.

The aggravated variant [art. 329 par. (2)] assumes the committing of the deeds described by art. 329 par. (1), if its consequence was a railway accident.

2. Preexisting conditions

A. Infraction object

a) Special juridical object. The special juridical object of the infraction consists in the social relations regarding the traffic safety on the railways³. In the case of the aggravated variant, the special juridical object is complex, because along with the social value mainly protected – the traffic safety on the railways, the social relations of property nature are also protected⁴.

b) Material object. The infraction usually does not have a material object. This could have also a material object in the case of the aggravated variant and could consist of means of transportation, rolling- stock or railway installations.

B. Infraction subjects

a) Active subject. The domain of the persons that can commit the examined infraction enter only the employees that manage the railway infrastructure or those of the transport, intervention or

³ In order to present wide opinions expressed in doctrine with regard to the object of the infraction, see Ion Rusu, *Infrațiuni specifice circulației transporturilor feroviare*, Prouniversitaria Publishing House, Bucharest, 2009, quoted work, p. 157.

⁴ Tiberiu Medeanu, quoted work, p. 332.

maneuver operators. It is noticed that the subject of such an infraction is qualified so that the penal participation is possible in any of its forms, except for the co- doer, when the condition of the special quality is necessary. Nevertheless, irrespective of the quality of the persons, the co- doing is not possible if the material element takes the shape of omission⁵.

The person that intentionally carries out performance deeds, but that does not meet the requirements to be a direct active subject will be responsible as concomitant accomplice⁶.

The persons that do not manage the railway infrastructure and other persons that are not employees of the transport, intervention or maneuver operators can not be held responsible as direct active subject. These persons will be held responsible if the requirements stipulated by law for the committing of other infractions (abuse of office, dereliction of duty, falsification of a public document, use of forgery, etc.)⁷.

The active subject can not be a legal person, even if the general requirements regarding the engaging of the penal liability of the legal persons are met, because it deals with an infraction with qualified active subject⁸.

b) Passive subject. The main passive subject is the state represented by the National Railway Company „C.F.R.” S.A. or other companies that carry on railway activities. The person whose activity was affected by the deed of the active subject is the secondary passive subject⁹.

3. Constitutive content

A. Objective side

a) Material element. The material element of the infraction consists either in an action or inaction. The infraction is omissive when the material element is manifested through the „**non-carrying out of the work duties**”, that is, through the total or partial non- carrying out of an activity that the active subject has to carry on according to the work attributions. For instance, the non- observing of the obligatory stops, non- introduction of the speed restrictions or non- closing of the tracks in the cases set by the applicable regulations, non- closing of the barriers under the conditions of the applicable procedures, un- repairing of the defections, etc¹⁰.

The „**defective carrying out**” of a work duty is the inadequate carrying out of such an attribution and can regard any aspect of the duty (content, form, moment of the carrying out, etc.)¹¹. For instance, sending of a train without a free track or the operator’s order, exceeding of the maximum speed limits, surpassing of the fixed and mobile signs that mean the stop or that prohibit the maneuver, etc¹².

⁵ Idem, p. 332.

⁶ See: Vasile Papadopol, quoted work, Vol. II, p. 167; Constantin Duvac, in Gheorghe Diaconescu, Constantin Duvac, *Tratat de drept penal. Partea specială*, C.H. Beck Publishing House, p. 629;

⁷ In the juridical practice, it was retained that the person employed as receiver- distributor will be held responsible for the infraction of falsification of a public document, use of forgery and fraudulent management. In this case, it was retained that the doer had drawn up fictive accounting documents in order to subtract certain goods from the stocks (see Ion Rusu, quoted work, p. 162).

⁸ For the opinion that also the legal persons can be held penal reliable for this infraction, see Tiberiu Medeanu, quoted work, p. 332.

⁹ For the opinion according to which the main passive subject is the state and the persons whose legal interests were injured, it is considered that they have the capacity of secondary passive subjects, see also Tiberiu Medeanu, quoted work, p. 332.

¹⁰ See Ion Rusu, quoted work, p. 164.

¹¹ Siegfried Kahane, quoted work, Vol. IV, page 301; Ilie Pascu, Mirela Gorunescu, *Drept penal. Partea specială*, Hamangiu Publishing House, Bucharest, 2008, p. 467.

¹² I. Rusu, quoted work, p. 164.

The work duties are stipulated in normative deeds, rules, procedures, instructions or other documents that set rules in the traffic domain of the railways.

Irrespective that it deals with the non- carrying out of the work duties or their defective carrying out, for the carrying out of the material element of the infraction, it is enough a single deed of breaking the applicable rules for the carrying out of the activity of the active subject, even if the law uses the plural form¹³.

b) Immediate consequence. In case of committing the infraction stipulated by art. 329 par. (1) of Penal code, the traffic safety of the means of transportation on the railways is jeopardized.

The aggravated variant [art. 329 par. (2)] assumes a railway accident. The railway accident consists in the destruction or degradation of the means of transportation, rolling- stock or railway installation during the traffic or maneuver of the means of transport, maneuver, maintenance or intervention on the railways.

In practice, the existence of a railway accident is retained if the traffic superintendent sent wrong data regarding the circuit of a freight train by violating its work duties, deed which determined its collision to another freight train that had stopped in the railway station. As a result of the impact between the two trains, 7 wagons overturned and 5 wagons and a locomotive went off the rails; the total prejudice is amounting RON 157.953 lei¹⁴.

In exchange, in practice, it was considered that the requirement of a traffic accident can not be retained if the damage is less than (RON 6510¹⁵) or lacks relevance¹⁶.

As for us, we consider that, *a fortiori*, a railway disaster can be assimilated to the railway accident.

c) Casualty report. The casualty report does not result *ex re*, but it has to be set, because the law pretends *in terminis* the finding of the jeopardy for the safety of the means of transportations on the railways and in the case of the aggravated variant, the causing of the railway accident is necessary.

B. Subjective side. From the subjective point of view, the infraction is committed with intention that is direct or indirect.

The form of the guilt with which the deed is committed in the case of the aggravated variant is the oblique intent. Considering that the infraction in the aggravated variant is committed with this form for guilt, it means that the destruction in the third degree is absorbed by the content of the examined infraction. But, if the doer wanted the causing of the railway accident, there will be a concurrence of infractions between the one stipulated by art. 329 par. (1) and the one of destruction.

The mobile of the analyzed deed has no relevance for the existence of the infraction, but, along with the purpose, it can be a mark for the juridical individualization of the punishment that is to be applied.

4. Forms. Punishment

A. Forms. This infraction is susceptible of all the forms of the intentional infraction, but the attempt and the preparation deeds are not incriminated.

The infraction consumption takes place when the jeopardy for the traffic safety of the means of transportation on the railways occurs.

¹³ See Supreme Court penal sentence, decision no. 2760/1975, quoted by I. Rusu, quoted work, p. 165.

¹⁴ Supreme Court penal sentence, decision no. 466/1982, in Culegere de decizii ale Tribunalului Suprem pe anul 1982, Științifică și Enciclopedică Publishing House, Bucharest, 1983, p. 283.

¹⁵ Supreme Court penal sentence, decision no. 3296/1972, C.D. 1972, p. 371.

¹⁶ Supreme Court penal sentence, decision no. 61/1973, C.D. 1973, p. 295.

B. Punishment. According to the provisions of art. 329 par. (1) of Penal code, the deed stipulated by this text is punished with imprisonment from one to 5 years. If the deed had as consequence a railway accident, the punishment is imprisonment from 3 to 10 years.

III. Non- carrying out of the work duties or their defective carrying out in the third degree

1. Incrimination structure

The infraction regarding the non- carrying out of the work duties or their defective carrying out in the third degree is regulated in a simple infraction variant and in an aggravated one.

The type variant [art. 330 par. (1)] consists in the non- carrying out of the work duties or their defective carrying out in the third degree by the employees that manage the railway infrastructure or by transport, intervention or maneuver operators; it achieves the content of the simple variant, if through this it is jeopardized the traffic safety of the means of transportation, intervention or maneuver on the railway.

The aggravated variant [art. 330 par. (2)] assumes the committing of the deed described by art. 330 par. (1), if its consequence was a railway accident¹⁷.

2. Preexisting conditions

A. Infraction object

a) Special juridical object. The special juridical object of the infraction consists in the social relations regarding the traffic safety on the railways¹⁸. In the case of the aggravated variant, the special juridical object is complex, because along with the social value mainly protected – the traffic safety on the railways, the social relations of property nature are also protected¹⁹.

b) Material object. The infraction usually does not have a material object, except for the aggravated variant, when the object is made out of means of transportation, rolling- stock or railway installations.

B. Infraction subjects

a) Active subject. The domain of the persons that can commit the examined infraction enter only the employees that manage the railway infrastructure or those of the transport, intervention or maneuver operators. It is noticed that the subject of such an infraction is qualified so that the penal participation is possible in any of its forms, except for the co- doer, when the condition of the special quality is necessary. Nevertheless, irrespective of the quality of the persons, the co- doing is not possible if the material element takes the shape of omission²⁰.

The persons that do not manage the railway infrastructure and other persons that are not employees of the transport, intervention or maneuver operators can not be held responsible as direct active subject. These persons will be held responsible if the requirements stipulated by law

¹⁷ Pentru un caz din practica judiciară în care s-a discutat problema urmărilor faptei de neîndeplinire a îndatoririlor de serviciu sau îndeplinirea lor defectuoasă din culpă, see C.A. Timișoara, dec. pen. nr. 114/A/1994, R.D.P. nr. 1/1996, p. 126.

¹⁸ In order to present wide opinions expressed in doctrine with regard to the object of the infraction, see Ion Rusu, *Infrațiuni specifice circulației transporturilor feroviare*, Prouniversitaria Publishing House, Bucharest, 2009, quoted work, p. 332.

¹⁹ Tiberiu Medeanu, quoted work, p. 334.

²⁰ Idem, p. 334.

for the committing of other infractions (abuse of office, dereliction of duty, falsification of a public document, use of forgery, etc.).

The active subject can not be a legal person, even if the general requirements regarding the engaging of the penal liability of the legal persons are met, because it deals with an infraction with qualified active subject²¹.

b) Passive subject. The main passive subject is the state represented by the National Railway Company „C.F.R.” S.A. or other companies that carry on railway activities.

The person whose activity was affected by the deed of the active subject is the secondary passive subject²².

3. Constitutive content

A. Objective side

a) Material element. The material element of the infraction consists either in an action or inaction. The infraction is omissive when the material element is manifested through the non-carrying out of the work duties, that is, through the total or partial non-carrying out of an activity that the active subject has to carry on according to the work attributions. The defective carrying out of a work duty is the inadequate carrying out of such an attribution and can regard any aspect of the duty (content, form, moment of the carrying out, etc.). For more explanations regarding the content of the material element of the infraction, we make reference to the comment afferent to art. 329 of Penal code.

b) Immediate consequence. In case of committing the infraction stipulated by art. 330 of Penal code, through its committing it is jeopardized the traffic safety of the means of transportations on the railways.

c) Casualty report. The casualty report does not result *ex re*, but it has to be set, because the law pretends *in terminis* the finding of the jeopardy for the safety of the means of transportations on the railways.

B. Subjective side. From the subjective point of view, the infraction is committed in the third degree, that can be simple or with provision.

4. Forms. Punishment

A. Forms. This infraction, considering the specific of the subjective side, does not allow the attempt nor the preparation deeds.

The infraction consumption in the type variant takes place when the jeopardy for the traffic safety of the means of transportation on the railways occurs or when the accident on the railways occurs.

B. Punishment. According to the provisions of art. 330 par. (1) of Penal code, the deed stipulated by this text is punished with imprisonment from 3 months to 3 years or fine. If the deed had as consequence a railway accident, the punishment is imprisonment from one to 5 years.

²¹ For the opinion according to which also the legal persons can be held penal reliable for this infraction, see: Constantin Duvac, quoted work, page 629; I. Rusu, quoted work, p. 199.

²² For the opinion according to which the main passive subject is the state and the persons whose legal interests were injured, it is considered that they have the capacity of secondary passive subjects, see also Tiberiu Medeanu, quoted work, p. 332.

IV. Leaving of the post and the presence at work under the influence of alcohol or other substances

1. Incrimination structure

The infraction is regulated in a simple infraction variant (leaving of the post), in an assimilated variant (presence at work the influence of alcohol or other substances) and in a common aggravated variant.

The assimilated variant [art. 331 par. (2)] stipulates the carrying out of the work duties by an employee with attributions regarding the traffic safety of the means of transport, intervention or maneuver on the railways that has an alcoholic saturation of more than 0.80 g/l of pure alcohol in the blood or is under the influence of some psychoactive substances.

We mention that the assimilated variant is a distinct deed that can be assimilated to the typical variant if the existence conditions stipulated by art. 331 par. (1) and (2) of Penal code²³ are met. In this sense, it is also the juridical practice. Thus, in a case, in the charge of the defendant – needle controller in a CFR station – it was retained that he left his post without the consent of the station chief on 08.03.1995 and consumed alcoholic drinks, after which he was found drunk at work.

Thus set the deeds, it was indicated that it met the elements of two distinct infractions – one stipulated by art. 275 par. (1) of Penal code and the other by art. 275 par. (2) of Penal code – in concurrence and it could not be considered as the first court thought that the content of the latter would have been absorbed in the content of the former²⁴.

In fact, the infractions regulated by art. 331 of Penal code are nothing but special forms (specie variants²⁵) of the infraction of abuse in office. The differentiation element is the special quality of the active subject²⁶.

In art. 331 par. (3), it is regulated an **aggravated infraction variant** consisting in the committing of the deeds described by art. 331 par. (1) and (2), if its consequence was a railway accident.

There is a change also under the procedural aspect, namely in the case of the type variant and of the assimilated one for the setting into motion of the penal action, it is not necessary to formulate a complaint from the competent organs of the railway.

2. Preexisting conditions

A. Infraction object

a) Special juridical object. The special juridical object of the infraction consists in the social relations regarding the traffic safety on the railways²⁷.

In the case of the aggravated variant, the special juridical object is complex, because along with the social value mainly protected – the traffic safety on the railways, the social relations of property nature are also protected.

b) Material object. The infractions stipulated by art. 331 par. (1) and (2) lack the material object. In the case of the aggravated variant, there is a material object which consists of the means of transportation, rolling- stock or railway installations.

²³ Ilie Pascu, Mirela Gorunescu, quoted work, p. 470.

²⁴ Bucharest Court of Appeal, 1st penal section, decision no. 380/1996, no. 1/1997, p. 122.

²⁵ Valentin Mirișan, in the collective paper (of authors Matei Basarab, Viorel Pașca, Gheorghică Mateuș, Tiberiu Medeanu, Constantin Butiuc, Mircea Bădilă, Radu Bodea, Petre Dungan, Valentin Mirișan, Ramiro Mancaș, Cristian Miheș), Codul penal comentat. Partea specială, Vol II, Hamngiu Publishing House, Bucharest, 2008, p. 750.

²⁶ Tiberiu Medeanu, quoted work, p. 338.

²⁷ In order to present wide opinions expressed in doctrine with regard to the object of the infraction, see Ion Rusu, quoted work, p. 208.

B. Infraction subjects

a) Active subject. The domain of the persons that can commit the examined infraction enter only the employees with attributions regarding the traffic safety of the means of transport, intervention or maneuver on the railways [in the case of the infraction stipulated by par. (1)] or the employees with attributions regarding the traffic safety of the means of transport, intervention or maneuver on the railways [in the case of the infraction stipulated by par. (2)].

It is noticed that the active subject of the infraction stipulated by art. 331 par. (1) is qualified so that the penal participation is possible in any of its forms, except for the co- doer, when the condition of the special quality is necessary. The carrying out of some performance deeds by a person that does not have the quality stipulated by law in order to be the direct active subject it achieves the content of the participation under the form of the concomitant complicity²⁸.

The active subject can not be a legal person, even if the general requirements regarding the engaging of the penal liability of the legal persons are met, because it deals with an infraction with qualified active subject²⁹.

In the case of the infraction stipulated by art. 331 par. (2), which is an infraction with sole doer as nature (*in persona propria*), the doer is excluded *de plano*³⁰.

b) Passive subject. The main passive subject is the state represented by the National Railway Company „C.F.R.” S.A. or other companies that carry on railway activities. The person whose activity was affected by the deed of the active subject is the secondary passive subject³¹.

3. Constitutive content

A. Objective side

a) Material element. The material element of the infraction stipulated by art. 331 par. (1) of Penal code consists in the leaving of the post by the active subject in any way and under any form. The leaving of the post can be committed both through an action (for instance, leaving from the post during the working hours) or an inaction (for instance, the not- coming back to the post after the allowed leaving).

The material element of the infraction stipulated by art. (2) provides the carrying out of the work duties by an employee with attributions regarding the traffic safety of the means of transport, intervention or maneuver on the railways that has an alcoholic saturation of more than 0.80 g/ l of pure alcohol in the blood or is under the influence of some psychoactive substances. The simple presence of an employee with attributions regarding the traffic safety of the means of transport, intervention or maneuver on the railways that has an alcoholic saturation of more than 0.80 g/ l of pure alcohol in the blood or is under the influence of some psychoactive substances.

There is no relevance whether the intoxication with alcohol or psychoactive substances is voluntary or involuntary as long as the doer realized the significance of its actions or inactions and that he could control them.

If a person carries out infraction activities that enter both the incriminating texts – the provisions of art. 331 par. (1) and the ones in art. 331 par. (2) – it will be retained concurrence of infractions³².

²⁸ Siegfried Kahane, quoted work, p. 310.

²⁹ For the opinion according to which also the legal persons can be held penal reliable for this infraction, see: Tiberiu Medeanu, quoted work, p. 338; Constantin Duvac, quoted work, p. 638.

³⁰ See: Vasile Papadopol, quoted work, page 171; Constantin Duvac, quoted work, p. 638.

³¹ For the opinion according to which the main passive subject is the state and the natural and legal persons affected by the infraction activity stipulated by the aggravated form, see also Tiberiu Medeanu, quoted work, p. 338.

³² Siegfried Kahane, quoted work, p. 312.

b) Immediate consequence. In case of committing the infraction stipulated by art. 331 par. (1) of Penal code, the immediate consequence consists in the jeopardizing of the traffic safety of the means of transportation on the railways. In case of committing the infraction stipulated by art. 331 par. (2) of Penal code, the immediate consequence takes the form for a jeopardy for the social values that form the object of the protection.

c) Casualty report. With regard to the typical variant, the casualty report does not result *ex re*, but it has to be set, because the law pretends *in terminis* the finding of the jeopardy for the safety of the means of transportations on the railways.

B. Subjective side. From the subjective point of view, the infraction is committed with intention that can be direct or indirect.

The guilt form of the aggravated variant is oblique intent.

4. Forms. Punishment

A. Forms. This infraction is susceptible of all the forms of the intentional infraction, but the attempt and the preparation deeds are not incriminated.

The infraction consumption in the type variant takes place when the jeopardy for the traffic safety of the means of transportation on the railways occurs.

B. Punishment. According to the provisions of art. 331 par. (1) and 2 of Penal code, the deeds stipulated by these texts are punished with imprisonment from 2 to 7 years. When the consequence of the deeds stipulated by par. (1) and par. (2) was a railway accident, the punishment is imprisonment from 3 to 10 years and the interdiction of some rights.

V. Destruction or false signaling

1. Incrimination structure

The infraction is regulated in a simple infraction variant (destruction), in an assimilated variant (false signaling), in a common aggravated variant and in a common attenuated variant.

The assimilated infraction variant [art. 332 par. (1)] that is an autonomic infraction, consists in the committing of deeds of false signaling or the committing of any deeds that can deceive the personnel that assures the traffic safety of the means of transport, maneuver or intervention on the railways during the working hours, if a jeopardy of accident on the railways is created through these deeds.

The aggravated variant [art. 332 par. (3)] assumes the committing of the deeds of the deeds described by art. 332 par. (1) and (2), if its consequence was a railway accident.

The attenuated variant [art. 332 par. (4)] consists in the committing in the third degree of the deeds stipulated by par. (1), (2) and (3).

We mention that the assimilated variant is a distinct deed that can enter in concurrence with the typical variant, if the conditions set by art. 332 par. (1) and (2) of Penal code are met.

2. Preexisting conditions

A. Infraction object

a) Special juridical object. The special juridical object of the infractions stipulated by art. 332 of Penal code is complex and is made out of the social relations regarding the traffic safety on the railways (main object) and the ones resulting from the protection of the assets on the material element of the infraction aims (secondary object).

b) Material object. The infractions have as material object the railway tracks, rolling- stock, railway installations or railway communications and any other assets or equipments afferent to the railway infrastructure.

B. Infraction subjects

a) Active subject. The domain of the persons that can commit the examined infraction enter any natural or legal person if it achieves the objective and subjective content of the deeds stipulated by art. 332 of Penal code and meets the general conditions for the engaging of the penal liability³³. We also consider along with other authors that the legal persons can be held penal responsible for the infractions stipulated by art. 332 of Penal code³⁴.

b) Passive subject. The main passive subject is the state in its capacity of guarantor of the railway traffic safety. The person whose activity was affected through the deed of the active subject is the secondary passive subject.

3. Constitutive content

A. Objective side

a) Material element. The material element of the infraction stipulated by par. (1) consists in the destruction, degradation or bringing into a state of disuse of the railways, rolling- stock, railway installations or those of the railway communications, as well as of other assets or equipments afferent to the railway infrastructure or the placement of obstacles on the railway. For the content of the three alternative modalities of the material element, we make reference to the explanations given when analyzing the infraction of destruction.

The material element of the infraction stipulated by par. (2) consist in the committing of deeds of false signaling or the committing of any deeds that can deceive the personnel that assures the traffic safety of the means of transport, maneuver or intervention on the railways during the working hours. Through the „committing of any deeds that can deceive the personnel that assures the traffic safety of the means of transport, maneuver or intervention on the railways during the working hours”, we will understand both the activities that deceive the personnel to which the text makes reference, as well as the activities that would deceive this personnel.

If a person carries out activities belonging to both the incriminating texts – both to the provisions of art. 332 par. (1) and the ones of art. 332 par. (2) – it will be retained a concurrence of infractions.

The infraction of destruction stipulated by art. 332 par. (1) of Penal code under certain conditions can be in concurrence with the infraction of qualified theft. So, in the juridical practice, it was stated that the deed of the defendants of cutting down copper wires from the communication network of CFR, while being caught by the police officers after these had been rolled over in order to be transported, meets both the constitutive elements of the infraction of destruction stipulated by art. 276 par. (1) of Penal code and the ones of the infraction of qualified theft in the consummated form³⁵. In fact, the court retained that, on 14.10.2004, after having reached a CFR halt, defendant C.D. that had on him a lantern and tongs, together with defendant D.R., waited to get dark and moved to a 500 m distance from the halt along the railway, where defendant C.D. climbed a post and cut down with the tongs 10 copper wires from the communication network of CFR. Later on, he cut down also the other endings of the wires from the ground, obtaining 20 wires that together with defendants R.A. and D.R. rolled over; while they were rolling over the cables, they got caught by the police officers.

³³ Constantin Duvac, quoted work, p. 644.

³⁴ See, for instance, Ion Rusu, quoted work, p. 238.

³⁵ I.C.C.J., Penal sentence, decision no. 4431/2005, www.scj.ro.

b) Immediate consequence. In case of committing the infraction stipulated by art. 332 par. (1) of Penal code, the immediate consequence consists in jeopardizing the traffic safety of the means of transportation of the railways. In the judicial practice, it was retained that the destruction, degradation or bringing into a state of disuse of the telecommunication circuits between the CFR stations met the constitutive elements of the infraction against the traffic safety on the railways, because through the destruction, degradation or bringing into a state of disuse of the telecommunication support between the C.F.R. stations, the safety of the means of transportation on the railways was jeopardized³⁶. In this case, as a result of taking out the conductors, the communication between the RC operator and the traffic superintendent in the CFR station was stopped, deed through which it was jeopardized the railway traffic safety during that sector.

In case of committing the infraction stipulated by art. 332 par. (2) of Penal code, the immediate consequence takes the shape of a jeopardy for the social values that form the object of the protection consisting in the existence of the risk of causing a railway accident.

The immediate consequence specific to the aggravated infraction variant consists in the causing of a railway accident.

c) Casualty report. With regard to the typical variant, the casualty report does not results *ex re*, but it has to be set, because the law pretends *in terminis* the finding of the jeopardy for the safety of the means of transportations on the railways.

B. Subjective side. From the subjective point of view, the infraction in the typical variant is committed with intention that can be direct or indirect.

The form of the guilt in the case of the aggravated infraction variant is both the intention and the oblique intent.

The form of the guilt with regard to the attenuate variant is the degree of the guilt.

4. Forms. Punishment

A. Forms. This infraction is susceptible of all the forms of the intentional infraction, but out of the two imperfect forms, only the attempt is incriminated in the case of the deeds described by art. 332 par. (1) and (2).

The infraction consumption in the type variant takes place when the jeopardy for the traffic safety of the means of transportation on the railways occurs or when the accident on the railways occurs, if appropriate.

B. Punishment. According to the provisions of art. 332 par. (1) and (2) of Penal code, the deeds stipulated by these texts are punished with imprisonment from 2 to 7 years. When the consequence of the deeds stipulated by par. (1) and par. (2) was a railway accident, the punishment is imprisonment from 3 to 10 years and the interdiction of some rights. The deeds stipulated by par. (1)-(3) committed in the third degree are punished by reducing the limits of the punishment to half.

Conclusions

According to the new Penal code, the infractions against the safety on the railways are regulated in art. 329-332.

In terms of art. 329 of Penal code, by comparing the new incriminating text to the corresponding one in the previous Penal code, we notice that there are some content changes . The

³⁶ I.C.C.J., Penal sentence, decision no. 169/2007, www.scj.ro.

first change refers to the removal of the aggravation element consisting in the causing of a railway catastrophe, which means that the rules of the concurrence of infractions are to be applied, between the infraction stipulated by art. 329 of Penal code and the ones against the person or the property, depending on the case .

Another change consists in the transformation of the immediate consequence of the infraction stipulated by art. 329 par. (1) into a „result“ consequence, being provided the syntagm „jeopardizing” unlike the previous one according to which the deed „could jeopardize the traffic safety of the means of transportation”.

Regarding the content of art. 330, by comparing the incriminating text in the new Penal code to the one corresponding in the previous Penal code, we notice that there are some content changes. Considering the fact that, except for the subjective side and the punishment, the content of the incriminating text is the same to the one within art. 329 of Penal code in terms of the undergone changes within the legal content of the infraction, we make reference to those above- shown.

There are significant changes also with regard to art. 331 of the new Penal code. A first amendment brought to the Penal code regarding the simple version consists in the broadening of the person domain that can have the capacity of active subject from the "employees providing the direct traffic safety of the means of railway transportation" as it was under the old regulations to "employees with duties regarding the traffic safety of the means of transportation, intervention or maneuver on the railways."

As well as with the other two infractions against traffic safety on the railways and with regard to this infraction, in order to achieve its contents, the deed is necessary to jeopardy "the traffic safety" on the railway.

The content of the assimilated version was also changed, besides the change regarding the extension of the category of the active subjects, as the requirement regarding the drunkenness was removed and it was replaced by another one, more precise, namely, the existence of an alcoholic saturation of more than 0.80 g/ l of pure alcohol in the blood. In addition, it was added also the hypothesis consisting in the committing of the deed under the influence of some psychoactive substances. The change of the content of the assimilated variant determined also the renaming of the infraction.

The content of the aggravated variant was reformulated, in the sense of providing a single immediate consequence – causing of a railway accident.

There is a change also under procedural aspect, namely, in the case of the variants stipulated by art. 331 par. (1) and (2) for the setting into motion of the penal action, the formulation of a complaint from the competent organs of the railways is not necessary.

Finally, regarding the infraction stipulated by art. 332 of Penal code, we also notice that there are some content changes.

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