The constitutive contents of the offense of hindering or obstructing traffic on public roads according to the Romanian Law

Minodora-Ioana RUSU, Ph.D
“DIMITRIE CANTEMIR” Christian University
Bucharest, Romania
oanarusu_86@yahoo.com

Abstract: With this paper there is a comparative analysis between the current and the old regulation on the offense of hindering or obstructing traffic on public roads and the constitutive content of the crime. The paper can be useful to judicial bodies responsible for law enforcement in this field, and academia. The innovations consist in the examination that highlights the innovations brought to the incrimination text content and it allows the identification and application of a more favorable criminal law, under this current transitional situation.

Keywords: the material element; essential requirements; comparative examination; more favorable criminal law.

Introduction

With the marginal title, the offense “Hindering or obstructing traffic on public roads”, whose constituent content is under examination, is provided for in article 339 of the Criminal Code, and it belongs to the group of offenses against traffic safety on the public roads.

Traffic safety on public roads is an important social value, for its insurance there are involved on the one hand road users, drivers of vehicles and pedestrians, and on the other hand other physical or legal entities that, through their civic stance should refrain the execution of actions that would hinder or obstruct the traffic on public roads or traffic safety.

In this context particularly complex, the legislator incriminated other facts that may be committed by physical or legal entities other than those who drive on public roads or own the vehicle.

In the incrimination of article 339 of the Criminal Code there are provided four separate offenses consisting of some specific actions for each, all resulting in hindering or obstructing the traffic on public roads or sometimes endangering road safety.

First offense under article 339, paragraph (1), Criminal Code consists of the alternative for installing road signals or changing their positions, without a permit issued by the competent authorities likely to mislead road users or to hinder traffic on the public road.

The offense provided for in article 339, paragraph (2) of the Criminal Code consists of a person to participate as a driver of a vehicle in unauthorized races on public roads. The need to incriminate such acts, specific for other EU legislation, is determined by the proliferation of this phenomenon, especially among young people, a phenomenon that resulted in many tragedies, such as killing or serious personal injury or important property damage.

In paragraph (3), article 339 of the Criminal Code it is incriminated the act of placing obstacles that hinders or obstructs the public road traffic, if it endangers the traffic safety or it causes a prejudice to the right of free movement of other road users. Although this content is questionable, the incrimination of the act is required, especially given that the result of this action is endangering the safety of traffic on public roads or in causing a prejudice to the right of movement of other road users.

The last offense is provided in paragraph (4), article 339 of the Criminal Code and it consists of the active subject action of leaving unattended a vehicle on the roadway of a public road, transporting hazardous products or substances. As other incriminated acts in this group, this act is justified as the social danger is easily found, by taking into account two assumptions: in the first it is included the situation where such an action could cause a crash with serious consequences, and in the second situation is where such substances are removed by others [1].
1. The current regulation in relation to the previous law

The offense of obstruction or hindering traffic on public roads provided for in article 339 of the Criminal Code has no counterpart in the Criminal Code of 1969, being taken from the Government Emergency Ordinance no. 195/2002, republished, article 92 [2].

After a comparative examination of the previous law incriminations with those of the current Criminal Code, we find the following:

- in the Criminal Code, the offenses are incriminated with four acts, compared to five acts in the previous law; in the new law it was excluded the offense in paragraph (1), which anyway it is incriminated in other articles of the Criminal Code, i.e. in articles 228, 229, 253 and 255; the solution adopted by the legislator is justified;

- the offense referred to in paragraph (1) article 339, of the Criminal Code is taken from article 92, paragraph (2) of the previous law (to which we referred above), with some additions; they only differ in terms of the minimum term of imprisonment, in the new law is 3 months compared to 6 months in the previous regulation;

- the offense referred to in paragraph (2), article 339 of the Criminal Code is taken from article 92 paragraph (3) of the special law, without being mentioned the sanction of races with animals; there are differences in the maximum term of imprisonment, in the new law is of one year, compared to the old one where the maximum was of 2 years; we should point out that in this case the action of organizing such competition was decriminalized in the new law);

- the offense under article 339, paragraph (3) of the Criminal Code is taken from article 92, paragraph (4) of the previous law, without substantive changes in terms of content, the only modification consisting in reducing the maximum limit of imprisonment from two years to one year;

- the offense under article 339, paragraph (4) of the Criminal Code is taken from article 92 paragraph (5) of the previous law, with identical content; the only change is the substantial reduction of the minimum and maximum penalties from 3-7 years in prison to imprisonment 1 to 3 years or a fine.

Also, in the Criminal Code in force, in article 339, the offense is called marginally “Obstructing or hindering the traffic on public roads”, which does not appear in the text of the previous law.

In conclusion it may be asserted that the new regulation regarding the structure of crime and punishment limits has many positive elements of novelty corresponding to the European standards in this field [1].

2. The constitutive content of the offense

The objective side of the offense referred to in article 339 of the Criminal Code has as components a material element complemented by an essential requirement, immediate result and the causal connection.

Both the material element of the objective side and the essential requirements differ from one crime to another, which is why we will proceed to examine them separately.

In the case of the offense referred to in paragraph (1) the material element of the objective side is achieved by two alternative actions, namely:

- installation of road signals;
- changing positions of road signals;

Under the provisions of article 30, paragraph (1) G.E.O. no. 195/2002, republished, as amended and supplemented, the road signals are: 1. light or sound signaling systems; 2. signs; 3. markings; 4. other special devices. Considering the provisions of the incrimination rule, and also the provisions of the law, we believe that the legislator has referred strictly to the four categories of means of signaling.

In the sense of the incrimination norm, by the term of “installation”, it means an act of “setting, placing, securing the traffic signs with the aim of misleading the road users of the public road or hindering the traffic on public roads” [3]. As according to the incrimination norm these means of signaling traffic must be so as to mislead road users or hinge traffic on the public roads, this means that the traffic signs are not appropriate or strongly recommended for the public road sector on which they are installed.

The second alternative incriminated, in the case of this crime is to change the position of traffic signs, a change that can be achieved through: removing and placing them in another place on the public road (as an indicator of reducing speed), switching two signal means, etc.

In the case of the examined offense in order to determine the existence of the material element of the offense, it is necessary to determine the execution of one of the two incriminated actions, although it is not excluded the possibility of being both retained.
In order to establish the existence of the considered crime, it is necessary to establish that all the following requirements are met:

- the installation or modification action for the position of the traffic signals to be achieved without authorization issued by the competent authorities;
- the installation or modification action for the position of the traffic signals must be for misleading road users or to hinder traffic on that segment of road;
- public road should be open traffic; in the case where the public road is not open to traffic being closed for repairs or other reasons, it will not satisfy this requirement, the direct consequence being the impossibility of retaining this offense in the perpetrator’s’ accountability [1].

In the case of the offense referred to in paragraph (2) the material element of the objective side consists in the action of participating as a driver of a vehicle in unauthorized contests on public roads.

The term “participation” in the sense imposed by the incrimination action is to be actively involved, in the sense of being competitor to such unauthorized competitions.

For the existence of the crime it does not matter whether the active subject, the driver of the vehicle, is or not the holder of a driving license according to the category of the driven vehicle, if he has withdrawn or canceled license, etc. If the active subject is found in one of the mentioned situations, the offense under consideration will enter in the contest with an offense provided for in article 335, paragraph (1) of the Criminal Code.

For the existence of the examined crime it is necessary to establish that all the following requirements are met:

- the action to participate in an unauthorized contest to be conducted by the active subject of the crime as the driver of a vehicle, regardless of the category or ownership;
- for the participation to be direct, the quality of the active subject is that of competitor or candidate;
- the contest involving the driver of the vehicle is not authorized;
- the race to take place on a public road;

Unlike the offense in paragraph (1), in the case of the examination, it is no longer necessary the requirement for the public road to be open to the road traffic, the offense exists even when the public road is closed for various reasons [1].

The material element of the objective side of the offense in paragraph (3) is achieved by the action of placing obstacles that impede or hinder the movement on the public highway, if it endangers traffic safety or it brings prejudice to the right of free movement of other road users.

The term of “installation”, it means an act of “setting, placing, securing the traffic signs with the aim of misleading the road users of the public road or hindering the traffic on public roads, thus putting at risk the traffic safety, or undermining the freedom of movement of other road users” [3]. Regarding the obstacles placed on the public highway, we specify that their size or weight must be so as to hinder or obstruct the traffic on the concerned public road.

The interpretation of the phrase used by the legislator “it brings a prejudice to the right of free movement of other road users” leads to the conclusion that it was intended also the traffic blocking on a public road by other categories of road users, an action that it is specific to forms of protest of the some drivers of vehicles or other professional categories who protest in this way.

The essential requirements that must be met cumulatively for the examined offense are:

- the action of installing obstacles having as purpose hindering or obstructing traffic on public road for the segment in question;
- the obstacles placed on the public highway, due to their size or weight, are likely to endanger the safety of road traffic on that segment of the public road or to undermine the right to free movement of other road users;
- the public road segment with obstacle should be open for traffic [1];

In the case of the last offense referred to in paragraph (4) the material element is the action of the active subject of leaving unattended a vehicle, on the roadway of a public road, transporting goods or hazardous substances. The term “abandon” used by the legislator, it makes sense to stop and abandon the vehicle with or without trailer, carrying hazardous substances or products (on the public road carriageway).

The term “leaving”, used by the legislator, means (according to article 6, point 23 of the G.E.O. no. 195/2002, republished, with subsequent amendments), the portion of the road platform designed for vehicles traffic; a road may comprise several carriageways completely separated from one another, by a partition area or level difference.

Consequently, when the driver of such vehicle stops and abandons the vehicle on the roadway of a public road, it will not be in the case of the examined offense.
The existence of the examined offense is conditioned by the fulfillment of the following requirements:
- the act of leaving the vehicle in question must be followed by a lack of oversight by its driver or other person;
- the vehicle must be loaded with hazardous substances or products;
- the vehicle must be left on the carriageway of the public road;
- public road should be open to traffic [1];

The immediate result in the case of the examined offenses is different from one offense to another and it may consist of:
- misleading the road users or hinder the traffic on a public road;
- creating a state of danger to traffic safety on public road;
- achieving freedom of movement on a public road;

The causal connection in the case of these crimes should not be demonstrated, as it results from the facts described in the incrimination norm.

In the case of the analyzed offenses the form of guilt with which the active subject is acting is the intention of both forms.

It will retain the direct intent when the active subject of this crime provides the result of his act which consists of endangering the safety of traffic on public roads, and he seeks its production by carrying out one of the actions prohibited by law, namely: installing or modifying the position of traffic signs, participation as driver to unauthorized races, placing obstacles or leaving a vehicle unattended on the roadway of a public road carrying hazardous substances or products.

There will be indirect intent when the active subject of the offense foresees the result of his act of endangering the traffic safety on public roads and, although he does not seek it, he accepts the possibility of its occurrence, by performing one of the actions prohibited by law, referred to above.

For the existence of the crime, the motive or purpose have no relevance, their determination is important in the process of individualization of criminal sanctions achieved by the court [4].

Conclusions

The comparative examination of the legal content of the current rules with article 92 of the G.E.O. no. 195/2002, republished, as amended and supplemented, and the examination of the constitutive content of the crime present a major importance in the light of enforcing a more favorable criminal law.

Thus, the offense provided for in article 339, paragraph (2) of the Criminal Code it is incriminated the act of participation as a driver of a vehicle in unauthorized competitions on public roads, and in the previous law [article 92 paragraph (3) G.E.O. no. 195/2002, republished, with subsequent amendments] there were incriminated also the actions of organizing or participating as a driver of vehicles or animals at unauthorized races on public roads.

The comparative research of the two rules of incrimination leads to the conclusion that the action of a person to organize such unauthorized races on public roads without participating as driver of vehicle is no longer incriminated in the new law [5].

The identification and application of the more favorable criminal law can be achieved every time, examining comparatively all the circumstances of the offense, and the two regulations, with a greater emphasis on the punishment limits [5].

References