The constitutive content of the offence in the case of non-respect of duties regarding the technical verification or repairs as directed by the Romanian criminal law.

Critical views and law ferenda proposals

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Abstract: The paper examined the constitutive content of the offence provided for in art. 340 of the new Penal Code, related to the criminalization of the previous law. The innovations consist both in the screening exercise and the critical opinions and the bill ferenda, the latter consisting in addition to the provisions of a new offence criminalizing text as a means to that referred to in paragraph aggravated. (4) art. 340 of the Penal Code. This study continues the examination of specific road safety offences, identifying new formulas to improve legislation in this area. The work can be useful law students in the country, criminal law practitioners and others with an interest in this area.

Key words: content association; the objective side; the subjective side; way worse.

Introduction

How was otherwise expected the entry into force of the Romanian Criminal Code, since the 1st of February 2014, it has caused much controversy in doctrine and practice, which led to the intervention of the Constitutional Court and the High Court of Cassation and Justice embodied in decisions and advance rulings handed down by the courts regarding the exceptions of unconstitutionality of text or interpretation and application of the criminal law.

The new Criminal Code, in particular its special part, introduces several novelties in that a number of offences are taken from some special laws with criminal provisions, with changes both in terms of content and limits of legal punishment, which generally are lower.

Of these news appeared in the new Criminal Code, we send the reader to those offences referring to the group relating to the road traffic safety, which in the previous law were laid in GEO no. 195/2002, republished, as amended and supplemented, on public roads [4] revised by the previous law in the act mentioned above.

Among other crimes, the new Criminal Code also took the offence of non-respecting the tasks regarding the technical verification or making repairs, which is currently provided in article. 340 of the Penal Code.

Although the previous case law reveals a low frequency regarding the crime that obeys examination, we believe that such action is necessary in the light of developments of crime in the field of road transport safety.

We consider that the most often incriminated facts in this article are committed most often in order to avoid criminal liability of persons who have committed other offences regarding road traffic safety.

1. The new Criminal Code in relation to the previous law

The offence of failure to comply with the technical verification tasks or repairs is provided in art. 340 of the new Criminal Code, and has no counterpart in the Criminal Code of 1969, being taken from the Government Emergency Ordinance no. 195/2002, republished, as amended, art. 93.

The comparative examination of the legal content of the two offences allows the identification of differentiation between the two regulations, and others similar.

Thus, within the new Criminal Code in art. 340, the offence is marginally called "Failure of respecting duties on verification or technical repairs", which does not appear in the text of the previous law.

Besides the marginal designation of the offence, we also found the following:

- in the new Criminal Code are punishable two offences, just as within the old law;
- the old law, the result provided in paragraph content. (1) art. 93 is to cause a traffic accident that resulted in the killing and injury of bodily injuries or health of a person, while in the new Criminal Code this continuation is regulated in a different way in par. (1) and paragraph. (2) art. 340;
- within the new Criminal Code it is also regulated the act done by negligence [par. (3)] regulation that does not appear in the old law;
- within the old law, the offence of par. (1) is provided with a penalty, the legislature referring to criminal law, while the new Criminal Code, in its simple way (type), and in the aggravated ones or in the mild one there are provided punishments in the prison or jail alternatively with fine;
- the second offence under par. (2) of the previous law and the par. (4) art. 340 of the new Penal Code, has the same legal content and the limits of punishment are identical;

The comparative examination of the two indictments, allows a conclusion, that the new regulatory structure in terms of crime and punishment limits, is a novelty in Romanian criminal law, according to European standards in this field [1].

2. Concept and characterization

The offence provided for in art. 340 of the new Criminal Code, called marginal "Failure of respecting duties on verification or technical repairs" belongs to the group of offences against road traffic safety.

It is indisputable that the safety of public roads is an important social value to ensure that on the one side are involved road users, drivers of vehicles and pedestrians on the other hand other natural or legal persons who by their attitude must proceed to carry out the verification or technical inspection of vehicles and the failure to repair motor vehicles, trailers, trams or mopeds that has any damage, without constitutive documents according to the law.

It can be appreciated that in a preventive way, the legislature criminalized other facts also, the ones that may be committed by other natural or legal persons than those who drive (or owe) a vehicle on public roads.

In art. 340 there are three distinct crimes requiring specific actions for each of them, as their states therefore creating a dangerous situation on public roads or, producing a crash that resulted in the murder, grievous bodily integrity of one or more persons, or the hindering of specific investigation activities of traffic accidents by unidentified authors.

The first offence under art. 340 par. (1) is the action or inaction of the active subject, which does not satisfy or faulty fulfill the technical verification duties or periodic inspection of motor vehicles, trailers or trams or those relating to carrying out repairs or technical interventions, whether due to the technical state of the vehicle endangered the safety of traffic on public roads.

Under paragraph. (2) there are incriminated two aggravating ways consisting in the result produced, namely a traffic accident that resulted in bodily injury or health integrity of one or more persons or a traffic accident that resulted in the death of one or several persons.

In par. (3) are provided penalties for committing the offences referred to in paragraph fault. (1) and (2).

The offence referred to in par. (4) consists of repair of motor vehicles, trailers, trams or mopeds with traces of accident without fulfilling the conditions provided by law.

Referring to the criminalization of par. (1) - (3) in the field literature "there were expressed two opinions: one considering that the incriminating text is regulated a single offence under two forms, a variant-type, in which the form of guilt is intention, and an attenuated variant, in which the form of guilt is guilt, and the second opinion, which argues that reported in the form of guilt, we are dealing with two separate offences, the differences are qualitative, consisting in the form of guilt" [2].

Another author believes that the four acts criminalized in the text of art. 340 of the new Criminal Code "combine the content of two offences [set out in art. 340 par. (1) and art. 340 par (4)]. The facts described in the art. 340 par. (2) and (3) are variants of the offence provided for in art. 340 par. (1) Penal Code. The first art. 340 par. (2)] is a variant aggravated offence provided for in art. 340 par. (1) Penal Code., and the second [art. 340 par (3)] is an attenuated variant of the same offence" [3].

According to the author cited above, we consider that the rules of art. 340 four acts are criminalized for facts performing the constituent contents of two offences or the offence referred to in par. (1) with two aggravated ways referred to in paragraph (2) of the same article and a subdued way in par. (3) and another distinct crime in par. (4).
The need to criminalize acts is justified on the one hand by the concrete danger that they pose to road traffic safety vehicles technically unsound, and on the other hand, by the requirement to discover authors of accidents resulted in serious consequences, which try to evade criminal liability by destroying evidence traces left on the vehicle [1].

3. The constitutive content of the offence

3.1. The objective side. The objective side of crime is composed examined material element, essential requirements, the immediate consequence and causation. Given the fact that criminalizing includes two distinct facts, we proceed to examine them in order criminalization of text.

As for the offence stated in art. 340 par. (1), the \textit{material element} of the objective side consists of an action or inaction, depending on the variants of the legislature criminalized.

In the first variant prescribed by law action is to meet improper verification tasks or periodical inspection of motor vehicles, trailers or trams or performing the duties related to repair or technical interventions by persons who have such powers.

Under the provisions of art. 7 of O.U.G. no. 195/2002, republished, every vehicle on the road must match the technical rules on road safety, environmental protection and use properly.

To be kept in circulation, registered vehicles that are subject to periodic technical inspection stations authorized in accordance with the law [art. 9 par. (4) and (5) of the O.U.G. no. 195/2002, republished].

There are also inspected, from a technical point of view, before being re-circulated, cars, trailers or trams that supported repairs because of certain traffic events producing severe damages to the steering, the brakes or the resistance structure of the body or of the chassis [art. 9 par. (2) of the Implementing Regulations of Government Emergency Ordinance no. 195/2002, republished on public roads].

At the same time, it is prohibited on public roads of vehicles that do not meet the technical point of view, those whose validity has expired periodic technical inspection, and those uninsured for liability for third party damage case traffic accidents [art. 10 paragraph. (1) O.U.G. No 195/2002, republished].

Therefore, from the interpretation of legal norms mentioned, the owner of a vehicle, tram or trailers, has the obligation to carry out checks and technical inspections or repairs, obligations that accrue to individuals or legal entities which are authorized to make such technical interventions and that are required to comply with the rules in force concerning bringing the vehicle in normal technical condition that excludes endangering road traffic safety [1].

By "improper fulfilment of duties or technical verification of the periodical inspection or to carry out repairs or technical interventions" means an act which such person or persons responsible for performing these activities superficially, without noticing some faults and without taking steps to address them (when required), which makes the vehicle in question is not apt to be driven on public roads in terms of road safety. The second variant of the method set out in the provisions of art. 340 par. (1) consists of verification tasks or technical failure periodical inspection of motor vehicles, trailers or trams or those concerning carrying out repairs or technical interventions by persons who have such powers.

The "non-fulfilment of the duties concerning the technical verification or periodic technical inspection of vehicles, trams or trailers, or of those relating to the performance of repairs or technical interventions by persons who have such powers" we mean the omission of those persons to fulfil these responsibilities or their partial fulfilment.

In par. (2) thereof there are two ways aggravating normative, who will be retained when the commission of the offence of par. (1) there was a traffic accident that resulted in bodily injury or health of one or more persons, or when the result of such an event has caused the death of one or more persons.

In par. (3) there is provided the sanctioning of negligence of acts in par. (1) or (2). To complete the objective side of the offence provided for in art. 340 par. (1) it is necessary to be met the following \textit{essential requirements}:

- the car, tram or trailer be in the legal situation which requires a check or a technical verification or making repairs or other technical interventions;
- through the action of improper fulfilment or through inaction of non-fulfilment of tasks referred is endanger the road traffic safety;
- the active subject must have specific duties relating to undertaking such activities;


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Undoubtedly the first essential requirement refers only to motor vehicles, trailers or trams, which, by law, are subject to such technical interventions, and not any such vehicle. This applies to those vehicles to be registered, those that require outstanding technical inspection after a certain period of time, and those to be repaired because they no longer correspond to road safety rules.

In the case of the second essential requirements, it is necessary that the act or omission regards certain elements involving road traffic safety or braking systems, signage, lighting etc. It should be borne in mind that any malfunction or failure to fulfil those duties is likely to endanger the safety of traffic on public roads. The improper fulfilment of tinwork repairs, including painting, does not meet the essential requirements of law, because this action can not jeopardize the safety of traffic on public roads.

The third requirement regards the quality of active subject, who must be a person (physical or juridical) with specific tasks of verification or periodical technical inspection or to carry out repairs or technical interventions.

Finding lack one of the three essential requirements will lead to the absence of crime examined by default [1].

In case of the aggravated facts of par. (2), in addition to the three essential requirements mentioned above, there must be established the fulfilment of other requirements, which this time regard a second result, namely:
- causing a traffic accident that resulted in bodily injury to one or more persons;
- causing a traffic accident that resulted in the death of one or more persons;

Therefore, the existence of the crime of aggravated ways, first depends on the finding of the existence of the three essential requirements, after which the finding of an accident traffic (due to meet three requirements), which had one of the consequences provided in the text.

In the case of the offence referred to in par. (4) art. 340, the material element of the objective side is realised through the action of repairing the motor vehicles, trailers, trams or mopeds that have traces of accident without being fulfilled the conditions provided by law.

The term repair of the vehicle expressly mentioned by the legislature without being fulfilled the conditions stipulated by the law, it must be interpreted as desired by the legislature. Thus, in art. 79 of the special law where there are set out the obligations of the vehicle driver involved in a traffic accident which resulted only in damage to vehicles and / or other damages, it is also mentioned the obligation to report to the competent police unit in the area of which the accident has happened within 24 hours of the event for drawing up the paperwork proving it [par (1) b], with some exceptions over which we do not insist. In these circumstances, and if the vehicle is involved in a traffic accident which killed, bodily injury or health of one or more persons, the document certifying the repair legality is the authorization issued by the police according to Annex 1C of the Regulation.

Therefore, fulfilling the conditions laid down by law, should be understood by the existence of the repair authorization, of a proving document issued by an insurance company or other document proving the fact issued by a competent authority (usually the police), certifying that the vehicle was involved in a traffic accident or another event and can be repaired by a company in the field. The term "repair" used here by the legislator should be understood as an act of people who have such powers by which the particular vehicle is restored and can be re-given for use on public roads. This includes repairs to the mechanical system, electrical installations, brake system, etc. and also tinwork repairs including painting of the vehicle etc.

By "moped", according to art. 6 pt. 21 of the special law we understand the vehicle with two or three wheels, whose maximum design speed is higher of 25 km / h, but not exceeding 45 km / h and it is equipped with an internal combustion engine with spark ignition, with a cylinder capacity not exceeding 50 cm3 or another internal combustion engine or, where appropriate, electric, whose maximum continuous power does not exceed 4 kW and the mass of the vehicle do not exceed 350 kg not including the mass of batteries in the case of electric vehicle. It is assimilated to the moped cvadicycle, as defined in pt. 6 Part A of Annex. 1. Section 4 of the Regulations on type approval and issuance of identity card of road vehicles and type approval of products used to them - RNTR 2, approved by Ministry of Public Works, Transport and Housing no. 211/2003, as amended and supplemented.

To complete the objective side of the offence provided for in art. 340 par. (4) it is necessary to meet the following essential requirements:
- motor vehicles, trailers, trams or mopeds show signs of a traffic accident;
the repairs be done without the conditions laid down by law, namely the existence of a repair authorization, of an act confirming an insurance company or other proof document to prove the legality of asking for a remedy;

Regarding the traces of accident, we consider that in the desired direction of legal authority these may be different, from traces of paint on the vehicle body, to biological traces. We mean evidence of clogging of the bonnet, wings, broken windshields and headlights, traces of paint etc. especially easily noticeable traces. Although the legal authority used the word repair it did not refer only to the technical side, but also to the vehicle body. In other words, the law has considered any trace that might arise suspicion that the vehicle in question was involved in an accident [1].

For the offence of the art. 340 par. (1), the immediate result is to create a state of danger to road safety on public roads, while in the case of aggravated manner the immediate consequence is the production of a traffic accident that resulted in the murder, grievous bodily or health of one or more people.

For the offence referred to in par. (4) the immediate consequence is the creation of a state of danger to the social relations on road traffic safety and those relating to the administration of justice.

For the existence of the examined offence, it is necessary that between the incriminated action or its omission from the part of the legal authority and the consequence produced to establish the existence of a causal link.

This time, for the offence referred to in par. (1), the existence of a causal link is not presumed, it must be proven by the competent judicial body.

The only way one can determine the existence of causation link both offences referred to in par. (1), both for the offence in par. (1) and for the aggravated ways in par. (2), is the carrying out a technical-car expertise made by an authorized expert [1].

As concerns the offence in par. (4), the causation link arises ex re, not being necessary to be proved.

3.2. The subjective side. For offences considered, the guilty way of acting of the active subject is both intention and the over passed intention or negligence with both forms.

For the offence referred to in par. (1), there will be retained the direct intent when the active subject of this crime, provides the result of their action which consists of endangering the safety of public roads and tracks its production by executing an action prohibited by law or by non-executing a set of tasks dictated by the law, which is to meet malfunction or failure of verification tasks or periodical inspection, or those of making repairs or technical interventions.

There will be indirect intent when the active subject of the offence, provides the result of the act that is to endanger the safety of traffic on public roads and, although the acting person does not seek it, accepts the possibility of producing it, by performing the action or inaction prohibited by the law, of I1 mentioned above.

In case of par. (2) there will be exceeded intention when the active subject intend that by their action or inaction is endangered the safety of traffic on public roads, but the result is much worse consisting in producing a crash that resulted in bodily injury or death or health of one or more persons.

According to the provisions of par. (3) the offences referred to in par. (1) and (2) may be committed both recklessly and under both forms.

For the existence of the crime, the motive or purpose have no relevance, their determination is important in the process of individualization of punishment made by the court [1].

Conclusions, critical opinions, proposals for law ferenda

As part of group-specific road traffic safety offence, the lack of respecting tasks regarding technical verification or repairs is a crime that can be committed by both a physical and a legal entity.

The criminalization of such acts was determined by the need to prevent and combat more effectively the actions or inactions regarding the fulfilment of specific tasks of technical verification or periodical inspection of motor vehicles, trailers or trams.

A special mention regards the criminalization in the par. (4), which consist in the repair of vehicles that has any accident marks, without fulfilling the conditions stipulated by law, act by which it is prejudiced the social relations referring to the application of justice.
Critical examination of the crime allows us sometimes to formulate critical opinions and proposals for law ferenda.

Thus, we believe that the offence would have been required to be provided with an aggravated manner, meaning to criminalize the repair of a vehicle involved in a crash that resulted in the death of one or more persons, the penalty being more serious.

References


