

Violent Crimes Committed by Participants in Sports Life

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ABSTRACT: The boundary between sports law and common law is not a clear one, and this uncertainty is exacerbated in the matter of legal liability. Controversies often arise in connection with the applicability of common law rules in the matter of liability in sports. Active subjects of certain crimes, but also passive subjects can be organizers of sports competitions, managers of sports clubs or decision-making staff of federations, athletes, teaching staff, auxiliary staff, spectators and last but not least, athletes. The elements that differentiate a criminal trial from one without sporting connotations are mainly represented by the active and passive subject and by the circumstances of the commission of the crime which can be assessed as mitigating or aggravating circumstances.

KEYWORDS: crimes, violent crimes, participants, sports life, active subject, passive subject

Introduction

The Romanian Criminal Code sanctions in principle all antisocial behaviors that aim at physical integrity or life and cause injuries to passive subjects, regardless of their concrete gravity.

Establishing a demarcation line between disciplinary liability - specific to sport and criminal liability - not specific to sport, but specific to the state, is difficult to achieve.

Basically, by “violence in sports” we mean any action related to institutionalized sports activity that harms life or physical integrity.

Crimes committed with violence are the most common in sports, benefiting from increased attention from the doctrine, but also from a realistic analysis from the criminal courts.

In addition to crimes committed with violence by athletes, coaches, officials, spectators, the same participants in sports life can be active subjects of other common crimes that they commit in connection with the quality they hold in the world of sports.

Common Offenses

When we talk about common crimes we mean Destruction, Destruction with basic intent, Threats, Battery and other acts of violence, Brawling or Murder, False deeds under private signature, Taking a bribe, Giving a bribe, Tax fraud, etc. provided in the Romanian Criminal Code, but also in special laws.

Murder - art. 188 of the Criminal Code: “(1) Murdering an individual shall be punishable by no less than 10 and no more than 20 years of imprisonment and a ban on the exercise of certain rights”.

The active subject can be any person who meets the legal conditions to be criminally liable, because the existence of the crime is not conditioned by a certain quality of the active subject. Criminal participation is possible in any of the forms provided by law: co-authorship, instigation, complicity. The passive subject is the person killed as a result of the perpetrator’s activity, that is, the one who suffers the harm caused by committing the crime, regardless of age, health, social situation, wealth, etc.

Battery and other acts of violence - art. 193 of the Criminal Code: “(1) Battery or any other acts of violence causing physical suffering shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine. (2) An act causing traumatic injuries or affecting the health of an individual, the seriousness of which is assessed based on medical-care days of maximum 90 days, shall be punishable by no less than 6 months and no more than 5 years of imprisonment or by a fine”.

Direct active subject can be any person who meets the general conditions of criminal liability, because the existence of the crime is not conditioned by a certain quality of the active subject. Criminal participation is possible in all forms. The passive subject in the case of the simple form of the crime is uncircumcised, and can be any person. If several people are hit, in the same circumstance, we are in the presence of a contest of crimes - as many crimes as there are injured people.

Brawling - art. 198 of the Criminal Code: “(1) Participation in a brawl between several individuals shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine. (2) If during a brawl bodily harm were caused to one or more individuals and the participant who caused such consequences is not known, a term of no less than 1 and no more than 5 years of imprisonment shall be applied to all participants, except for the victim, who is held liable as per par. (1). (3) When an act committed as per par. (2) caused the death of an individual, the penalty shall be no less than 6 and no more than 12 years of imprisonment, and if such act caused the death of two or more individuals, the special limits of the penalty shall be increased by one-third. (4) An individual who was caught in a brawl against their will, or who tried to separate others shall not be punishable”.

The active subject is represented by a plurality of perpetrators, each responsible as an author for participating in the fight. The conflict exists if two camps participate in it, each with at least two people between whom mutual acts of violence take place, a situation in which we reach a push, a clash between individuals, realizing that interweaving of actions that make it difficult to delimit the activity of each. When there is only the group of defendants, the victim whose death they caused being alone, the deed falls within the provisions relating to the crime of murder (ÎCCJ, S. pen., dec. No. 5991/2005, Toader and Safta in Antoniu and Toader coord. 2015, 89).

Criminal participation is possible in the form of instigation and complicity. The passive subject may be any person against whom bodily harm has been directed or who has lost his life as a result of the acts of strife. Being a complex crime, we have a secondary passive subject – the state as protector of public order and tranquility (Cristean 2017a, 57).

Threats is provided for in art. 206 of the Criminal Code: “The act of threatening an individual with the commission of an offense or of a prejudicial act against them or other individual, if this is of nature to cause a state of fear, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine; however, the applied penalty may not exceed the penalty established by law for the offense that was the subject matter of the threat.”

The immediate active subject can be any natural person who meets the conditions of age and responsibility. Criminal participation is possible in all forms, namely co-authorship, instigation and complicity. The passive subject is the threatened person, because the threatening acts are reflected on him.

The *Destruction* is provided for in art. 253 of Criminal Code as follows: “(1) The act of destroying, damaging or making unfit for use of an asset belonging to another, or hindering the taking of measures of preservation or rescue for such an asset, as well as removing the measures taken, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine. (2) The destruction of a deed under private signature, belonging wholly or in part to another and which serves to prove a material right, if resulting in a loss, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine. (...) (4) The act of destroying, damaging or making unfit for use of an asset, committed by arson, explosion or by any such means and, if it endangers human life or other property, shall be punishable by no less than 2 and no more than 7 years of imprisonment”.

In the simple version of the crime, the active subject can be any person, except its owner or keeper. For the variants in para. (4) of the crime, the active subject can even be the owner of the asset, provided that the act was committed by arson, explosion or by any other such means and if it is likely to endanger other people or assets.

Criminal participation is possible in all its forms, namely in the form of co-authorship, instigation and complicity. The passive subject is the natural person or legal person, public or private, whose property was destroyed, or the person who had a certain right over the property. The crime can also have a plurality of passive subjects in the situation where the action of the perpetrator affects the patrimony of several persons in indivision. In the situation where the perpetrator is the owner of the asset, the passive subjects of the crime will be the people who have a right over the destroyed, degraded asset or whose assets were destroyed at the same time as the destruction of the asset belonging to the perpetrator (Cristiean 2017a, 224-225).

Destruction with basic intent - art. 255 of the Romanian Criminal Code: “(1) The act of destroying, damaging, or making an asset unfit for use, with basic intent, even if it belongs to the perpetrator, if the act is committed by arson, explosion or by any other such means and if it resulted in endangering human life or property, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine. (2) If the acts resulted in a disaster, it shall be punishable by no less than 5 and no more than 12 years of imprisonment”.

The offense criminalized in art. 255 represents a mitigated form of the facts described in art. 253 of the Criminal Code, provided that the commission of these acts takes place through fault. The two crimes are often found in arenas, stadiums and in their proximity, because athletes or supporters pour their frustration, anger or dissatisfaction on other people's property.

Taking a bribe - art. 289 of the Criminal Code: “(1) The action of the public servant who, directly or indirectly, for themselves or on behalf of others, solicits or receives money or other undue benefits or accepts a promise of money or benefits, in exchange for performing, not performing, speeding up or delaying the performance of an action which falls under purview of their professional duties or with respect to the performance of an action contrary to their professional duties, constitutes a violation of the law and shall be punishable by no less than 3 and no more than 10 years of imprisonment and the ban from exercising the right to hold a public office or to exercise the profession or the activity in relation to which they committed the violation. (2) The action provided under par. (1), committed by one of the persons provided under Article 175 par. (2), shall constitute a criminal offense only when committed in relation with the performance or delaying the performance of an action related to their legal duties or related to the performance of an action contrary to such duties”.

The crime of taking a bribe is part of corruption crimes, more precisely, it falls under the field of passive corruption. The immediate active subject of the crime is a qualified one, in the sense that the author of this act can only be a public official, within the meaning of art. 175 of the Criminal Code (for details see Cristiean 2017b, 153-154).

Criminal participation is possible in any of its forms: co-authorship, instigation, complicity. The special passive subject is the state, as the owner of the public interests defended by this crime.

Giving a bribe - Art. 290 of the Criminal Code: “(1) The promise, the giving or the offering of money or other benefits in the conditions provided under Article 289 shall be punishable by no less than 2 and no more than 7 years of imprisonment. (2) The action provided under par. (1) shall not constitute an offense when the bribe giver was constrained by any means by the bribe taker. (3) The bribe giver shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon”.

The immediate active subject of the crime can be any person who meets the legal conditions to be criminally liable, because the existence of the crime is not conditioned by a certain quality of the active subject.

Criminal participation is possible in any of its forms: co-authorship, instigation, complicity. The special passive subject is the state body or public or private institution in whose service the public official or corrupt official is.

False deeds under private signature - art. 322 of the Criminal Code: “(1) The tampering with a deed under private signature in any of the ways set out in Art. 320 or Art. 321, if the perpetrator uses the false deed or entrusts it to another individual for use, in order to produce legal consequences, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine”.

The direct active subject can be any person who fulfills the conditions of criminal liability and who has a certain perception or dexterity in the operations of counterfeiting or alteration or attesting of some facts or circumstances that are not true or omits the insertion of some data or circumstances. The act can be committed directly by several people - co-authors or in criminal participation in the form of instigation or complicity. Improper participation is not excluded either (Pascu in Antoniu and Toader coord. 2016, 521).

The passive subject can be the natural person or the legal person who is harmed by the use of the document under a forged private signature.

Tax fraud is the direct and open violation of tax rules, in order to hide from the tax administration, in whole or in part, the taxable goods or the taxable base by reducing or altering the level of tax obligations, being an illegal tax evasion.

Offenses Specific to Sports Law

The Romanian legislator incriminates by Law no. 4 of January 9, 2008, regarding the prevention and combating of violence during sports competitions and games, published in Official Gazette no. 24 of January 11, 2008, as amended, a series of crimes, as follows:

- Art. 9 para. (3) “The spectator who, in the sports arena, commits a crime or one of the acts provided for in art. 20 is evacuated, without being able to return to the arena until the end of the sports game”. (Paragraph (3) of art. 9 was amended by Law no. 187 of October 24, 2012 published in Official Gazette no. 757 of November 12, 2012).

- Art. 31 “The act of the person to whom the complementary contraventional sanction of banning access to some sports competitions or games was applied to be in the sports arena where a competition or a sports game of the nature for which the ban was ordered is being held constitutes a crime and shall be punished with imprisonment from one month to one year or with a fine”. (Art. 31 was amended by Law no. 187 of October 24, 2012 published in Official Gazette no. 757 of November 12, 2012).

- Art. 32 “Violent opposition to law-and-order personnel or law enforcement or preventing them from exercising their specific duties, during a competition or sports game, constitutes a crime and is punishable by imprisonment from 3 months to 2 years or with a fine, if the act does not constitute a more serious crime”. (Art. 32 was amended by Law no. 187 of October 24, 2012 published in Official Gazette no. 757 of November 12, 2012).

According to the provisions of art. 14 of Law no. 104 of May 9, 2008 on preventing and combating the production and illicit trafficking of doping substances, republished in Official Gazette no. 451 of June 28, 2011, “Manufacturing, producing, experimenting, preparing, processing, transforming, offering, distributing, selling, putting on sale, administering, delivering under any title, sending or other operations regarding the circulation of high-risk doping substances and of products containing high-risk doping substances, without a right, constitutes a crime and is punishable by imprisonment from one to 5 years and the prohibition of certain rights. (2) Financing the commission of any of the acts provided for in para. (1) shall be sanctioned with the punishment provided for this act, its special limits being increased by one third. (3) Inciting the illicit consumption of high-risk doping substances and products containing high-risk doping substances constitutes a crime and is punishable by imprisonment from 6 months to 3 years and the prohibition of certain rights. (4) If the facts provided for in para. (1)-(3) resulted in the death of the victim, the penalty is imprisonment from 2 to 7 years and the prohibition of certain rights. (5) Attempted crimes provided for in para. (1) and (2) shall be punished” (Supplemented by Law no. 219 of July 26, 2021, published in Official Gazette no. 739 of July 28, 2021).

Conclusions

In this article, we have only talked about some common crimes and some crimes specific to Sports Law, the regulation of which takes into account the characteristics of the sports movement and the assumed desire to protect people and property.

Highlighting these crimes marks the state's superior interest in sports and underlines the fact that the sports movement is a broad movement, with multiple participants, as we presented the active subjects and passive subjects of the crimes, with synergistic and energetic actions that tend to exceed the permeability limits of sports regulations and often falls under the plan of criminal regulations.

References

- Cristian, Victoria 2017a. *Drept penal. Partea specială I (Criminal Law. Special Part I)*. Bucharest: Universul Juridic Publishing House.
- Cristian, Victoria 2017b. *Drept penal. Partea specială II (Criminal Law. Special Part I)*. Bucharest: Universul Juridic Publishing House.
- ÎCCJ, S. pen., dec. Nr. 5991/2005, in *Buletinul jurisprudenței. Culegere de decizii pe anul 2005 (Jurisprudence Bulletin. Collection of decisions for the year 2005)* Bucharest: C.H. Beck Publishing House, 2006, pp. 930-931.
- Law no. 104 of May 9, 2008 on preventing and combating the production and illicit trafficking of doping substances, republished in Official Gazette no. 451 of June 28, 2011.
- Law no. 286 of 17 July 2009 of the Criminal Code Romanian Criminal Code, were published in the Official Journal of Romania, Part I, until 12 November 2012, available at https://sherloc.unodc.org/cld/uploads/res/document/rou/law-no--286-of-17-july--2009-of-the-criminal-code_html/Law_no_286_of_17.07.2009_of_the_Criminal_Code.pdf.
- Law no. 4 of January 9, 2008 regarding the prevention and combating of violence during sports competitions and games, published in Official Gazette no. 24 of January 11, 2008, as amended.
- Pascu, Ilie in Antoniu George and Toader Tudorel coord. 2016. *Explicațiile Noului Cod Penal (The explanations of the New Criminal Code)*, vol. IV Bucharest: Universul Juridic Publishing House.
- Toader, Tudorel and Safta Marieta in Antoniu George and Toader Tudorel coord. 2015. *Explicațiile Noului Cod Penal (The explanations of the New Criminal Code)*, vol. III. Bucharest: Universul Juridic Publishing House.