

The Offense of Destruction with Basic Intent Committed by Participants in Sports Life

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ABSTRACT: This article analyzes one of the offences committed by athletes or fans through negligence, namely Destruction with basic intent, an offence that is part of the group of Offences against property provided for in Title II, art. 255 of the Romanian Criminal Code. During sports competitions or after their completion, some athletes or some supporters resort to actions of vandalism of stadiums, sports arenas, shops, bars, street furniture, parked cars, etc. They use pyrotechnic materials prohibited by the current regulatory framework, throw various objects on the field including broken seats from the stands, cause violence towards law enforcement and towards supporters of the opposing team, etc.

KEYWORDS: Destruction with basic intent, athletes, supporters, offence

Introduction

Sport is a physical activity that can also involve competition. Since ancient times, sport has played an important role in people's lives, being an activity that influences their lifestyle, health or personality. Sport not only provides health but also recreation and entertainment.

Athletes are those people who practice sports. Supporters are fans, sympathizers of an athlete or a sports team. The Romanian penal code in principle sanctions all behaviors aimed at physical integrity or life, but also property. Destruction with basic intent offence is often found in arenas, stadiums, near them because athletes or fans vent their anger or dissatisfaction on other people's property.

In the current Romanian Criminal Code, the rules for criminalizing acts against property are provided in Title II of the Special Part, grouped into five chapters, taking into account both the factual situations in which the assets can be found as patrimonial entities, as well as the character or nature the illegal actions by which these factual situations can be modified. Thus, in Chapter V of Title II of the Romanian Criminal Code in force, the Special Part, under the name “Destruction and disturbance of possession”, the following acts are criminalized: *Destruction, Aggravated destruction, Destruction with basic intent, Disturbance of possession.*

Legal definition

Destruction with basic intent is an offense provided in the Romanian Criminal Code in article 255: “(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 of Romanian Criminal Code represents a mitigated form of the facts described in art. 253 – *Destruction* and 254 – *Aggravated destruction*, provided that the commission of these acts takes place through fault.

The special legal object is made up of social patrimonial relations that concern the security of material existence and their potential use.

The material object of the offence can be any movable or immovable property belonging to a natural or legal person or it can even belong to the perpetrator.

Things without economic value cannot be the material object of the crime. As such, goods devoid of any value and not part of someone's patrimony cannot constitute a material object of the crime of destruction - *res nullius and res derelictae* (Dobrinou, Pascu, Hotca, Chiş, Gorunescu, Păun, Dobrinou, Neagu and Sinescu 2016, 348).

The offence may also have as its material object a document under a private signature, which belongs in whole or in part to another person and serves to prove a right of a patrimonial nature and if this caused damage (Cristiean 2017, 229)

According to Law no. 182/2000 on the protection of the movable national cultural heritage, published in Official Gazette no. 828 of December 9, 2008, republished in Official Gazette no. 259 of April 9, 2014, with subsequent amendments and additions, the movable national cultural heritage is made up of goods with historical, archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophilic, cartographic and epigraphic, representing material testimonies of the evolution of the natural environment and of man's relations with it, of the potential human creator and of the Romanian contribution, as well as of national minorities, to universal civilization.

Subjects of the offence

The active subject can be any person, even the owner of the asset, here the destruction of one's own asset is exceptionally criminalized, provided that the asset is part of the cultural heritage or provided that the deed was committed by arson, explosion or other similar means and if it is likely to endanger other people or goods.

Criminal participation is possible in all its forms, namely in the form of co-authorship, instigation and complicity. The accomplices and the instigator, who acted with intent, will be sanctioned for complicity and instigation in the commission of the offence of destruction, while the perpetrator will be sanctioned for the offence of destruction with basic intent.

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 offence 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 persons 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 2017, 229).

The structure and legal content of the crime

The prerequisite situation of the offence of destruction with basic intent consists in the existence of an asset susceptible to an alteration of its substance or a diminution of its qualities of use. It is not relevant if the good is absolutely new or in perfect working order, it is enough that it is usable. The existence of a worthless asset cannot constitute a prerequisite for a possible offence of destruction with basic intent. The state in which the property was before the destruction will be taken into account when determining the severity and assessing the guilt of the perpetrator (Sima in Antoniu and Toader - coord. 2015, 635).

Constituent content

The objective side

The standard form of the offence, the one provided in para. (1), is identical to that provided by art. 253 para. (4). Destruction with basic intent of property is punishable only if it is committed by

arson, explosion or any other such means and only if it is likely to endanger other such persons or property. In the absence of one of these requirements, the act does not constitute an offence (C.S.J., s.pen., dec. no. 2334/1997, Collection of decisions for the year 1997, p. 329 in Cristean 2017, 229).

The material element can consist of destruction, degradation, rendering unusable.

By *destruction* is meant the abolition, annihilation, suppression, shattering, reduction to simple remains, which even if they have a certain value, it is far below the initial value of the good (Sima in Antoniu and Toader - coord. 2015, 635).

The degradation of an asset means its damage, its partial alteration, i.e., a substantial change that causes the asset to no longer have the qualities and potential of its previous use (Sima in Antoniu and Toader – coord. 2015, 635).

Making it unusable means making the good lose its original qualities that ensured its potential for use, the good becoming completely unusable (Sima in Antoniu and Toader - coord. 2015, 635).

At the same time, it is necessary for the material element to be created by arson, explosion or other such means.

Arson means to set fire to, to set fire to.

The explosion involves the release of the destructive energy of an explosive substance on an asset.

Other such means represent any material operation likely to trigger a strong destructive energy.

The immediate consequence is to create a state of danger for other people or goods.

The causal link must exist and be proven. Although this connection inevitably results with the concrete establishment of the factual situation, sometimes other causal factors can intervene in the causal chain, which requires a careful investigation of the relationship between the material element and the immediate follow-up.

The aggravated form of the crime, the one provided by para. (2), has elements in common with the destruction criminalized by art. 254 Romanian Criminal Code. The main common element is the immediate aftermath, namely the occurrence of a disaster.

The subjective side. The offense is committed both in simple and aggravated form, by fault in both its forms: with provision or without provision.

As a form of guilt, *culpa* is defined by the provisions of art. 16 para. (4) of the Romanian Criminal Code and consists in the mental attitude of the perpetrator who foresees the result of his deed, does not accept it, considering without grounds that it will not occur or does not foresee the result of his deed even though he could and should have foreseen it (Mitrache and Mitrache 2016, 140; see extensively Tănăsescu and Tănăsescu 2004, 132-153).

Forms. Modalities. Sanctions

Forms. Since it is a culpable offense, there is only the established form, when all the continuing elements of the offense are met.

Modalities. The simple normative methods are those specified by law, namely arson, explosion, or any other such place. In art. 255 para. (2) it is stipulated as an aggravating circumstance that the deed resulted in a disaster. The actual ways are numerous in relation to the concrete way of committing the act.

Sanctions. The penalty provided in the law for the form in para. (1) is imprisonment from three months to one year or a fine, while for the aggravated form resulting in a disaster, the punishment is imprisonment from five to twelve years.

Procedural aspects

The criminal action is initiated *ex officio*, and the competence to carry out the criminal investigation belongs to the investigation bodies of the judicial police. The competence to resolve the case in the first instance rests with the court.

References

- Cristian, Victoria. 2017. *Drept penal. Partea specială I. Infrațiuni persoanei. Infrațiuni contra patrimoniului (Criminal Law. Special Part I. Offenses against the person. Offenses against patrimony)*. Bucharest: Universul Juridic Publishing House.
- Dobrinou, Vasile, Pascu Ilie, Hotca Mihai Adrian, Chiș Ioan, Gorunescu Mirela, Păun Costică, Dobrinou Maxim, Neagu Norel, and Sinescu Mircea Constantin. 2016. *Noul Cod penal comentat. Partea specială (The New Criminal Code Commented. The Special Part)*. 3rd Edition. Vol. II. Bucharest: Universul Juridic Publishing House.
- Mitrache, Constantin and Cristian Mitrache. 2016. *Drept penal român. Partea generală (Romanian Criminal Law. The General Part)*. 2nd Edition. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, Gabriel and Camil Tănăsescu. 2004. *Vinovăția (Guilt)*. Craiova: Universitaria Publishing House.
- C.S.J., s.pen., no. 2334/1997, Collection of decisions for the year 1997, p. 329.
- Romanian Criminal Code.
- Law no. 182 of October 25, 2000 regarding the protection of the movable national cultural heritage, published in M. Of. no. 828 of December 9, 2008, republished in M. Of. no. 259 of April 9, 2014, with subsequent amendments and additions.