

# Theoretical and Practical Aspects Regarding the Commission of the Offence of Destruction by Participants in Sports Events

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**ABSTRACT:** In the present paper, we analyze the crime of destruction - art. 253 of the Romanian Criminal Code, committed by participants in sports events. By criminalizing this act, the legislator wanted to ensure the protection of another's property, viewed from the perspective of his material condition. The participants in sports events, in our case the fans, support their favorite team or favorite athlete, but there are situations when some of them resort to actions of vandalizing stadiums, sports arenas, shops, bars, street furniture, parked cars, etc. There were cases when they used pyrotechnic materials prohibited by the current regulatory framework, threw various objects on the field, including broken seats from the stands, provoked acts of violence towards law enforcement, but also towards supporters of the opposing team, etc.

**KEYWORDS:** destruction, degradation, decommissioning, supporters

## Legal definition

*Art. 253. “(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.*

*(2<sup>1</sup>) The destruction of an electronic surveillance device used for electronic monitoring in judicial or executive criminal proceedings is punishable by imprisonment from 6 months to 3 years or a fine.*

*(3) If the act set out in par. (1) concerns assets forming part of the cultural heritage, it shall be punishable by no less than 1 and no more than 5 years of imprisonment.*

*(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.*

*(5) The stipulations of par. (3) and par. (4) apply even if the asset belongs to the perpetrator.*

*(6) For the acts set out in par. (1) and par. (2) criminal action shall be initiated based on a prior complaint filed by the victim.*

*(7) The attempted acts set out in par. (3) and par. (4) shall be punished”.*

## Pre-existing conditions

*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 crime can be any movable or immovable property belonging to a natural or legal person in the case of para. (1) and para. (2) or it can even be the*

perpetrator's in the case of para. (3) and para. (4). The artistic, scientific or historical value of the asset constitutes an aggravating circumstance of the crime.

In judicial practice (Călărași Court, Criminal Sentence no. 112 of April 9, 2015) it was argued that the act of the defendants who, the next day, after stealing some goods from the car, went and set it on fire to “delete it”, the possible traces left, meet the constitutive elements of the crime of destruction, prev. of art. 253 para. (1) from the Romanian Criminal Code. In another case, the trial court found that the act of the defendant who, on January 29, 2015, around 04.00, by using fuel, destroyed by fire the access door to the apartment of the injured persons, endangering both people and property from the inside of the building whose door was set on fire, as well as from the inside of the neighboring apartments, meets the constitutive elements of the crime of destruction provided for by art. 253 para. (1) and (4) of Criminal Code (Pitesti Court of Appeal, Criminal Section and for Cases with Minors and Family, Criminal Decision no. 628/A of October 14, 2015).

Goods without economic value cannot be the material object of the crime. Assets devoid of any value, nor those that are not part of someone's patrimony, cannot constitute a material object of the crime of destruction (Dobrinioiu, Pascu, Hotca, Gorunescu, Dobrinioiu, Chiș, Păun, Neagu and Sinescu, 2012, 348).

The offense 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 patrimonial right and if damage has been caused by this - para. (2) of art. 253. In accordance with the provisions of para. (3), the goods that belong to the national heritage can constitute the material object of the crime.

*The active subject.* In the simple version of the crime, as well as in the version related to the destruction of documents under private signature provided for in para. (2), the active subject can be any person, except for its owner or holder.

For the variants in para. (3)-(4) of the offence, the active subject can even be 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 property.

*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.

In the situation where the perpetrator is the owner of the asset, the passive subjects of the offence will be the people who have a right to the destroyed, degraded asset or whose assets were destroyed at the same time as the destruction of the asset belonging to the perpetrator.

## **Constitutive content**

### ***The objective side***

*The material element* consists in the performance of one of the following actions provided alternatively: destruction, degradation, rendering unusable, preventing the taking of conservation or rescue measures of an asset, removing the rescue or conservation measures taken. The act of the defendant, from the evening of November 28, 2014, at around 11.30 p.m., in front of the bar managed by the injured person, he hit the rear window of the car with the consequence of its destruction, fulfills the constitutive content of the offence of destruction, provided for and punished by art 253 paragraph 1 of the Romanian Criminal Code. The material element of the offence of destruction is achieved through the defendant's activity of destroying the rear window of the Renault Megane car, the immediate consequence of which is causing damage to the injured

person. The causal link exists, resulting from the commission of the deed, and from the subjective aspect, it is noted that the defendant acted with direct intent (Calafat Court, Criminal Sentence no. 104 of June 19, 2015).

In another case it was held that the act of the defendants, committed on the same night, to break the windows of five windows with axes and to render unusable a number of four double-glazed doors from the home of the injured person, fulfills the constitutive content of the offence of destruction, provided of art. 253 para. (1) of Romanian Criminal Code. The material element of the crime of destruction consists in breaking the windows of five windows and hitting four double-glazed doors with axes, belonging to the injured party (G. Court of Appeal, Criminal Section and for cases with minors, Criminal Decision no. 805/A, June 30 2015).

In the specialized literature (Diaconescu and Duvac 2006, 260) it was shown that, more rarely, the material element of the crime can also consist of an inaction. Destruction is the deed of the person who, through his own physical energy or by appropriate means, causes material damage to an asset belonging to another person, with the consequence of its non-existence or uselessness (Dongoroz et al. 1971, 545). Degradation consists in the partial deterioration of the good as a result of the loss of some of its qualities, which leads to improper use. Making it unusable means that the asset can no longer be used according to its intended purpose, the asset becoming completely unusable.

Preventing the taking of measures to preserve or save an asset is an indirect way of destroying the asset, and this is because the perpetrator does not act directly on the asset to destroy it, but through his action prevents the taking of the necessary measures to protect the asset from the danger of destruction that threatens it (Cristian 2017, 225).

The removal of the rescue or conservation measures taken implies the removal by the perpetrator of the measures that were taken in order to protect the asset from the danger of further destruction. The essential requirement of the material element usually assumes that the good belongs to another person, but in the aggravated variants in para. 3 and 4 the good can also belong to the perpetrator. Any of the actions that represent the material element of the offense provided for in para. 1 and 2 can be carried out in any way or means.

The material element of the aggravated version provided in para. (4) consists of any of the actions that represent the material element of the crime in the first two variants with the difference that they are carried out by certain means, which must meet two cumulative conditions, namely that the means consist of arson, explosion or any other such means and the means used are likely to endanger other people or property (Cristian 2017, 226).

*The immediate consequence* consists in the negative change in the factual situation of the property, compared to the state it had before the commission of any of the actions that represent the material element of the crime, and thereby in the production of damage to the natural person or legal person, public or private to whom the good belongs.

There must be a *causal link* between the perpetrator's action and the immediate aftermath, a link resulting from the materiality of the deed.

### ***The subjective side***

The act can be committed with *intention* in both its forms, respectively direct intention or indirect intention. If the deed is committed by *culpa*, the legislator has criminalized it distinctly as *Destruction with basic intent* - art. 255 of the Romanian Criminal Code. Motive and purpose are irrelevant to the existence of the crime.

*Forms.* In accordance with the provisions of para. (7), the attempt is punishable only in the case of the aggravated variants described in para. (3) and para. (4).

The consummation of the crime occurs when the action has been completed and the asset has been destroyed, degraded or rendered unusable. The crime can also take on a

continuous form, in which case the crime ends when the last act of the criminal activity is committed.

*Modalities.* In the standard version, the crime presents a series of normative ways, namely, destruction, degradation, bringing to a state of non-use, preventing the taking of conservation or rescue measures of an asset, removing the rescue or conservation measures taken. Each of the normative modalities can correspond to a variety of factual modalities.

Paragraphs (2), (2<sup>1</sup>), (3) and (4) introduce aggravated forms of the crime of destruction, as follows:

- Para. 2: *destruction of a document under a private signature, which belongs in whole or in part to another person and serves to prove a patrimonial right, if damage has been caused by this.*

- Para. 2<sup>1</sup>: *The destruction of an electronic surveillance device used for electronic monitoring in judicial or executive criminal proceedings.*

- Para. 3: *If the deed concerns goods that are part of the cultural heritage.*

- Para. 4: *The destruction, degradation or rendering unusable of an asset, committed by arson, explosion or by any other such means and if it is likely to endanger other persons or assets.*

*Sanctions.* The simple form of the offense provided for in para. (1) of art. 253 is punishable by imprisonment from 3 months to 2 years or a fine.

For the modality provided by para. (2), the penalty is imprisonment from 6 months to 3 years or a fine.

For the more serious method provided by para. (3), the penalty is imprisonment from one to 5 years.

For the even more serious method provided by para. (4), the penalty is imprisonment from 2 to 7 years.

### Procedural aspects

In accordance with the provisions of para. (6), for the simple form in para. (1) and for the aggravated form provided for in para. (2), the criminal action is initiated upon the prior complaint of the injured person (see in detail Buneci 2020, 45 et seq.). The lack of prior complaint or its withdrawal removes the criminal liability.

For any of the forms of incrimination, the competence to resolve the case in the first instance rests with the court (see in detail Paraschiv, Teodorescu and Nicolescu 2022, 1-6). For the facts provided in para. (3) and (4), according to the provisions of art. 112<sup>1</sup> of the Romanian Criminal Code, the court will be able to order the security measure of extended confiscation if it finds that the legal conditions are met (Dobrinoiu, Pascu, Hotca, Gorunescu, Dobrinoiu, Chiş, Păun, Neagu and Sinescu, 2012, 352).

### References

- Buneci, Bogdan. 2020. *Drept procesual penal. Partea general. Curs universitar (Criminal procedural law. The general part. University course)*. Bucharest: Universul Juridic Publishing House.
- Calafat Court, Criminal Sentence no. 104 of June 19, 2015.
- Călărăşi Court, Criminal Sentence no. 112 of April 9, 2015.
- Cristiean, Victoria. 2017. *Drept penal. Partea specială I (Criminal law. Special Part I)*. Bucharest: Universul Juridic Publishing House.
- Diaconescu, Gheorghe and Duvac Constantin. 2006. *Drept penal. Partea special (Criminal law. The special part)*, vol. I. Bucharest: Fundaţiei România de Măine Publishing House.
- Dobrinoiu, V., Pascu I., Hotca M.A., Gorunescu M., Dobrinoiu M., Chiş I., Păun C., Neagu N., Sinescu M.C. 2012. *Noul Cod penal comentat, vol. II, Partea special (The New Criminal Code commented, vol. II, Special Part)*. Bucharest. Universul Juridic Publishing House.
- Dongoroz, Vintilă and colab. 1971. *Explicații teoretice ale Codului penal român (Theoretical explanations of the Romanian Penal Code)*, vol. III. Bucharest: Academiei Publishing House.

G. Court of Appeal, Criminal Section and for cases with minors, Criminal Decision no. 805/A, June 30 2015.

Paraschiv, Carmen-Silvia (coord.), Teodorescu Maria-Georgiana and Nicolescu Alin Sorin. 2022. *Drept procesual penal. Partea generală. Note de curs (Criminal procedural law. The general part. Course notes)*. 4<sup>th</sup> Edition. Bucharest: Hamangiu Publishing House.

Pitesti Court of Appeal, Criminal Section and for Cases with Minors and Family, Criminal Decision no. 628/A of October 14, 2015.