"NICOLAE TITULESCU" UNIVERSITY OF BUCHAREST

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PhD THESIS

CRIMES AGAINST RAILWAY TRAFFIC SAFETY

- Summary -

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ABBREVIATIONS AND FREQUENTLY CITED WORKS

A. ABBREVIATIONS

alin.	- alineat(ul)
apud	- citat după
art.	- articol(ul)
B. Of.	- Buletinul Oficial al României, Partea I
C.D.P.	- Caiete de Drept penal
C. Ap.	- Curtea de Apel
C. civ.	- Cod civil
C. pen. 1968	- Cod penal anterior (Legea nr. 15/1968)
C. pen.	- Cod penal (Legea nr. 286/2009)
C. proc. pen.	- C. proc. pen. (Legea nr. 135/2010)
CEDO	- Curtea Europeană a Drepturilor Omului
coord.	- coordonator(i)
dec.	- decizie
dec. pen.	- decizia penală
Dreptul	- Revista „Dreptul”
DCC	- Decizia Curții Constituționale
Ed.	- Editura
ed.	- ediția
e.g.	- *exempli gratia*
etc.	- *et cetera*
ex.	- (de/spre) exemplu
hot.	- hotărârea
H.G.	- Hotărârea Guvernului
ibidem	- în același loc
Î.C.C.J.	- Înalta Curte de Casație și Justiție
infra	- mai jos, mai departe
j.c.p.	- Judecător de cameră preliminară
Jud.	- Judecătoria
J.O.U.E.	- Jurnalul Oficial al Uniunii Europene
lit.	- litera
m.t.	- ministrul transporturilor
m.t.t.	- ministrul transporturilor și telecomunicațiilor
m.t.i.	- ministrul transporturilor și infrastructurii
m.t.c.t.	- ministrul transporturilor, construcțiilor și turismului
M. Of.	- Monitorul Oficial al României, Partea I
n.n.	- nota noastră
nr.	- numărul
O.G.	- Ordonanța Guvernului
O.U.G.	- Ordonanța de urgență a Guvernului
op. cit.	- opera citată
p.	- pagina
pp.	- paginile
pct.	- punct(ul)
P.Î.C.C.J.	- Parchetul de pe lângă Înalta Curte de Casație și Justiție
R.D.P.	- Revista de Drept Penal
R.R.D.	- Revista română de drept
R.R.J.	- Revista română de jurisprudență

supra	- mai sus, înainte
s.n.	- sublinierea noastră
s. pen.	- secția penală
s. pen.c.m.	- secția penală şi pentru cauze cu minori
s. pen.c.m.f.	- secția penală şi pentru cauze cu minori şi de familie
sent. pen.	- sentința penală
supra	- mai sus, înainte
ș.a.	- și alții
Trib. (jud.)	- Tribunalul (județean)
Trib. Sup.	- Tribunalul Suprem
urm.	- următoarele
vol.	- volumul

B. FREQUENTLY CITED STUDIES

Codul penal Carol al II-lea adnotat	Const. G. Rătescu, I. Ionescu-Dolj, I. Gr. Periețeanu, V. Dongoroz, H. Aznavorian, T. Pop, M. I. Papadopolu, N. Pavelescu, *Codul penal Carol al II-lea adnotat, vol II. Partea specială. Art. 184-442*, Ed. Librăriei SOCEC & Co., S.A., București, 1937;
Codul penal comentat și adnotat al R.S.R	T. Vasiliu, D. Pavel, G. Antoniu, Șt. Daneș, Gh. Dărîngă, D. Lucinescu, V. Papadopol, D. Popescu, V. Rămureanu, *Codul penal al Republicii Socialiste România comentat și adnotat. Partea specială*, vol. II, Ed. Științifică și Enciclopedică, București, 1977;
CPC	G. Bodoroncea, V. Cioclei, I. Kuglay, L. Lefterache, T. Manea, I. Nedelcu, F-M- Vasile, G. Zlati, *Codul penal. Comentariu pe articole*, ed. a 3-a, Ed. C.H. Beck, București, 2020;
V. Dobrinoiu și colab.	V. Dobrinoiu, I. Pascu, M.A. Hotca, I. Chiș, M. Gorunescu, N. Neagu, C. Păun, M. Dobrinoiu, M.C. Sinescu, *Noul Cod penal comentat. Partea specială*, ed. a III-a, revăzută și adăugită, Ed. Universul Juridic, București, 2016;
Explicații IV	V. Dongoroz, S. Kahane, I. Oancea, I. Fodor, N. Iliescu, C. Bulai, R. Stănoiu, V. Roșca, *Explicații teoretice ale Codului penal român. Partea specială, vol. IV*, Ed. Academiei Republicii Socialiste România, București, 1972;
Explicațiile NCP IV	G. Antoniu, T. Toader, V. Brutaru, Ș. Daneș, C. Duvac, I. Griga, I. Ifrim, Gh. Ivan, G. Paraschiv, I. Pascu, I. Rusu, M. Safta, I. Tanasescu, I. Vasiu, *Explicațiile noului Cod penal. Vol. IV. Art. 257-366,* Ed. Universul Juridic, București, 2016;

V. Papadopol	V. Papadopol, *Infracțiunile contra siguranței circulației pe căile ferate*, Revista română de drept nr. 8/1971;
Repertoriu I	V. Papadopol, M. Popovici, *Repertoriu alfabetic de practică judiciară în materie penală pe anii 1969-1975*, Ed. Științifică și Enciclopedică, București, 1977;
Repertoriu II	V. Papadopol, M. Popovici, *Repertoriu alfabetic de practică judiciară în materie penală pe anii 1976-1980*, Ed. Științifică și Enciclopedică, București, 1982;
Repertoriu III	V. Papadopol. Șt. Daneș, *Repertoriu de practică judiciară în materie penală pe anii 1981-1985*, Ed. Științifică și Enciclopedică, București, 1989;
I. Rusu (coord.)	I. Rusu, Ioana Rusu, B. Bîrzu, *Drept penal. Partea specială*, vol. IV, Ed. Universul Juridic, 2023;

ARGUMENT AND USEFULNESS OF THE RESEARCH

The idea of carrying out this doctoral thesis arose from the study of a legislative proposal regarding the amendment and completion of art. 331 of the Criminal Code, a project that would criminalize, as a novelty in national criminal law, the offense of refusal or evasion of railway personnel from taking biological samples in order to establish blood alcohol levels or the presence of psychoactive substances. Such a proposal came in the context of the alarming increase in the number of cases regarding the consumption of alcoholic beverages among railway personnel and the performance of their duties in such conditions, an aspect that led, in some situations, even to the occurrence of railway accidents.

On this occasion, we were also able to note the lack of a monograph that would treat, in accordance with the current criminal regulation, this extremely technical and interesting field of crimes against railway traffic safety. In this context and by exploring other forms of criminal wrongdoing, we were able to notice that the way of regulating some railway crimes is insufficient from the perspective of some constitutive elements, especially those that concern the quality of the active/passive subject, the material object, respectively the immediate consequence. On the other hand, we could not help but notice the existence of problems of interpretation and application of the present criminalization norms, against the background of the lack of some theoretical benchmarks clearly established at the doctrinal and jurisprudential level.

Moreover, in recent years, we have observed an increase in the number of derailments or collisions of rolling stock with other railway/road vehicles, either as a result of the culpable conduct of railway personnel, or due to negligence, sometimes even as a result of intentional attitudes of drivers to proceed with the irregular crossing of passages at railway level crossings, under conditions in which the red and audible warning signals were in operation or, as the case may be, the barriers were lowered.

In this context, as rail passenger transport involves the movement of a large number of people, the events that led to the emergence of a state of danger for the safety of rail traffic or, even more seriously, to the occurrence of railway accidents, which culminated in the death of people inside road vehicles or rolling stock, contributed to creating a state of emotion among public opinion. These aspects led to the need to study in depth the causes of these railway events, and, on the other hand, they involved increased attention to the way in which the criminal liability of all those involved in the occurrence of such immediate consequences operates.

Under these conditions, the present study, entitled *Crimes against the safety of railway traffic*, aims to treat an extremely little-researched field in the Romanian criminal law literature, currently finding its approach only in the content of commented criminal codes or, as the case may be, in works that treat, in a common manner, a series of chapters within the Criminal Code. However, as we will see, the analyzed field is an extremely technical and complex one, with notions that require in-depth explanations from a railway perspective and that concern, among others, the component elements of the railway infrastructure (e.g. switches, component parts of the railway superstructure and infrastructure, railway or railway communications installations, etc.) or, as the case may be, those concerning rolling stock, the field of railway signaling, the existence

of procedures and the fulfillment of specific duties related to each category of railway personnel, the existence of obligations of railway-specific entities in order to prevent endangering the safety of railway traffic, etc.

Therefore, in addition to researching the substantive criminal law institutions and in order to truly understand the constitutive elements of each railway crime, the current approach analyzes national and European legislation in the railway sector, as well as some specialized works developed over time by renowned engineers in this field. In parallel, an analysis is also undertaken at the level of comparative criminal law, by studying the way in which crimes against railway safety are regulated in the other Member States.

In conclusion, the scientific approach follows an approach that combines theoretical and legislative aspects, in the fields of criminal law and the railway sector, with a detailed analysis of national jurisprudence, respectively that pronounced in other Member States, in order to formulate pertinent conclusions and proposals *de lege ferenda*. Under these circumstances, we consider that this work is of interest, on the one hand, from an academic perspective, given that it represents scientific research that approaches the field of crimes against railway safety in a comprehensive and balanced manner, as well as for practical reasons, as it aims at the unitary and coherent application by judicial bodies of the legal provisions applicable in this matter.

RESEARCH PURPOSE

The purpose of the work lies in the in-depth scientific research of crimes against railway traffic safety, by establishing an analytical framework from both a theoretical and practical perspective, the following objectives being taken into account when preparing this doctoral thesis:

- ✓ analysis of *the general and common aspects of railway traffic safety crimes (Chapter I)*; This approach allows us to have an overview of this area of railway traffic safety and to deal with those technical issues that are repeated, most often, during the 7 railway crimes that have been grouped by the legislator into 4 forms of criminal crime (some with alternative constitutive contents). Such issues concern the railway (with its component elements of superstructure and infrastructure), the means or operators of transport, intervention or maneuvering on the railway, the railway infrastructure, endangering railway traffic safety or, as the case may be, the more serious immediate consequence consisting in the occurrence of a railway accident. Also, this approach allows us to study, from this moment on, other common aspects that concern the constitutive elements of railway crimes, such as the legal object, the passive subject, the consummation and exhaustion of railway crimes, respectively the aspects of a criminal procedural nature.
- ✓ analysis of *the crime of failure to perform official duties or their defective performance*, as well as that committed *through negligence*, provided for in art. 329 and art. 330 C. pen. (*Chapters II and III*); This part aims, in particular, to examine the historical evolution of these crimes, the qualified active subject and the material element by analyzing the legislation specific to the railway sector (laws, government decisions or orders of the Minister of Transport), practical issues regarding the subjective side, the relationship

between these crimes and the general norm regarding abuse/negligence in service, as well as the treatment of aspects of comparative criminal law;

- ✓ analysis of *the crime of leaving the post and being at work under the influence of alcohol or other substances or refusing or evading the collection of biological samples, found in the content of art. 331 C. pen. (Chapter IV)*; This chapter closely follows the research of the historical evolution of the incrimination, the qualified active subject, the ways of committing the material element, the evidentiary aspects regarding the alcohol concentration or the presence of psychoactive substances among railway personnel, the criminal liability that may operate regarding the railway administrator/manager or, as the case may be, any transport operator, maneuver or intervention regarding measures to prevent and effectively sanction the consumption of alcoholic beverages or other substances among railway personnel, the issues concerning a better systematization of this crime, as well as a treatment of the legislation of other European states;
- ✓ analysis of *the crime of destruction or false signaling*, provided for in art. 332 C. pen. (*Chapter V*). This approach aims, among other things, to treat the historical evolution of this crime, the material object (the railway line, railway or railway communications installations, other goods or equipment related to the railway infrastructure or, as the case may be, the nature of the obstacles placed on the railway line), the various factual ways of committing the destruction or, as the case may be, false signaling through the analysis of railway legislation, studying the specificity of the immediate prosecution, the relationship of the railway crime with the general crime of destruction or the link frequently encountered in practice with the crime of theft, as well as aspects of comparative criminal law;
- ✓ illustrating the conclusions of the research, as well as *de lege ferenda* proposals formulated in the work, together with the brief reasons that underpinned them, in order to form an overall picture of this work.

RESEARCH METHODOLOGY

In order to achieve the proposed objectives, this approach uses a series of research methods, which allowed for an in-depth analysis of the field of crime against railway safety. Specifically, the research methodology mainly targets:

- ➢ *the documentary analysis method*, used to study and obtain information from specialized literature, from domestic legislation and jurisprudence and that existing at international level both in terms of the railway sector and the field of criminal liability;
- ➢ *the grammatical method*, used for the purpose of a morphological and syntactic analysis of certain legal provisions;
- ➢ *the logical method*, used to interpret and correlate provisions from various normative acts and their reporting to the existing judicial practice in this matter;
- ➢ *the historical method*, which aimed to research the emergence and evolution of criminalization norms specific to the field of railway traffic safety, starting with the criminal regulations in the Criminal Code of 1864 and ending with those found in the

Criminal Code of 1968, as well as the analysis of various crimes found in special criminal laws;

- *the comparative method*, used for the purpose of analyzing, evaluating and comparing the national regulatory framework with the legislation of other European Union member states, but also for comparing the criminalization norms in the field of railway traffic safety with those in the field of road, naval or air traffic safety;
- *the teleological method* was used in order to know the purpose of some provisions and the purpose pursued by the legislator;
- *the systemic method*, used to determine the meaning of some provisions, but also to corroborate them with other norms concerning various criminal law institutions, labor legislation or, as the case may be, with specific provisions in the field of railway, road, naval or air traffic;

To carry out this work, primary and secondary research sources were used, in the form of articles, statistical data and extensive specialized works in both the railway and criminal fields, with the examination of national jurisprudence or, as the case may be, of courts from other European Union member states, aspects that are likely to contribute, against the backdrop of an interdisciplinary evaluation, to the formation of an in-depth image of the field of crime against railway safety.

RESEARCH STRUCTURE AND CONTENT

The doctoral thesis is structured, as can be seen from reading its plan, in five chapters, each of which has several sections, while each section is composed of several subsections and paragraphs, to which is added a final part containing the conclusions and proposals *de lege ferenda*, as well as the bibliography of the work.

Chapter I analyzes *the general and common aspects regarding crimes against railway traffic safety*, which we will briefly explain in the following:

a. From the perspective of the legislative evolution of railway incriminations, the first forms of criminal wrongdoing in the history of modern Romania, which aimed to protect the railway, are introduced in the content of the Criminal Code of 1864, which provided in the content of *Chapter II. Crimes and misdemeanors against property* (from *Title IV. Crimes and misdemeanors against individuals*) two offenses that targeted acts of destruction of the railway, means of transport, etc. with the consequence of endangering transport on such a road.

Shortly after, through *the Law on the police and operation of railways in Romania of 1870*, the legislator of those times supplemented the two general incriminations in the matter of railway traffic safety, among others, with crimes such as: destruction, threat of destruction or leaving the station or being drunk while a convoy is moving, so that later, through *Law no. 163/1924 regarding some unintentional crimes committed by state or private railway officials*, the crime of negligence in duty, committed by railway personnel belonging to the Romanian state or private individuals, which is likely to cause a railway accident, was regulated.

After a period in which the criminal norms of the great empires that exercised dominion in these regions[1] were applied on the territory of the other historical provinces and with the process of integration of the other historical provinces and the creation of Greater Romania, the need arose to unify the legislation in criminal matters and with this process also that which concerns the field of crimes against the safety of railway traffic. In this context, the Criminal Code of Carol II comes to ensure increased attention to the safety of railway transport, establishing a distinct chapter: *Chapter III. Crimes and misdemeanors against the safety of transport and means of communication* (found within *Title VII. Crimes and misdemeanors that cause public danger*)[2].

After a period of legislative inconsistency regarding railway crimes, marked by a series of amendments or repeals, with the entry into force of the 1968 Criminal Code, the legislator gave stability to this extremely important area for the economy of the socialist state, providing for a distinct chapter called *Crimes against the safety of railway traffic*, within which five crimes specific to this type of traffic are grouped, namely: failure to fulfill duty duties or their defective fulfillment, due to negligence, knowing failure to fulfill duty duties or their defective fulfillment, leaving the post and being at work while intoxicated, destruction and false signaling. At the same time, the same chapter also includes the definition of the notions of accident, respectively of

[1] The Austrian and later Hungarian Criminal Code in Transylvania, Russian criminal legislation in Bessarabia, the Austrian Criminal Code in Bukovina.

[2] which includes five crimes: the crime of danger of a railway catastrophe (art. 359), the crime of a railway catastrophe (art. 360), the crime of aggravated danger of a railway catastrophe, respectively the crime of aggravated railway catastrophe (art. 361), failure to fulfill official duties (art. 362), the crimes provided for in art. 359, 360, 361 and 362 committed through negligence (art. 363).

railway catastrophe, as well as another article that requires, in order to initiate criminal action, the notification made by the competent railway bodies.

b. In the analysis of the 2009 Criminal Code in relation to the 1968 one, we could observe the existence of some changes that occurred as a result of the legislative reform that occurred in 1998 and imposed by the need to move to a competitive market economy, an aspect that was naturally reflected in the railway sector. In this sense, if prior to 1998 the Romanian railways (through the National Company of Romanian Railways-S.N.C.F.R.) included both the administration component (implicitly, maintenance) of the railway infrastructure, and that of transport, shunting or intervention on the railway, after the entry into force of the Emergency Ordinance. no. 12/1998 provided for the possibility that the activity of transport, intervention, maintenance (on the non-interoperable network) or shunting could be carried out by legal entities other than those resulting from the reorganization of S.N.C.F.R. Thus, in addition to the employees of the company that administered (managed) the railway infrastructure (C.F.R. Infrastructure) or of the two transport operators with state capital (C.F.R. Passengers and C.F.R. Freight), other transport or shunting operators with private capital appeared in the railway field, this being naturally reflected also in the secondary active/passive subject of railway crimes.

c. Regarding the common legal object, *railway traffic safety/railway traffic safety*, a concept often used throughout this work, represents a state of affairs resulting from a whole set of rules (laws, ordinances, orders, regulations, instructions, etc.) which aims to ensure a safe/stable climate both for the movement of people and goods transported by rail, and for people, goods or other external elements that could interfere with such an activity, the notion taking into account not only the transport component, but all activities that take place on the railway: transport, intervention, shunting, respectively railway maintenance.

In this context and given that Law no. 195/2020 speaks of *railway personnel* or *units with a railway specific nature*, and the infralegal provisions specific to the field of railway traffic refer predominantly to railway traffic, we have chosen to title, in some places, the crimes against railway traffic safety as *railway crimes*. Moreover, although Law no. 195/2020 differentiates between the functions and professions that concern railway traffic safety and those that concern metro traffic safety (art. 38), we opt for using, in most cases, one of the two phrases railway traffic, respectively railway traffic safety, in order to refer equally to both *railway traffic stricto sensu*, that which takes place on the railway infrastructure network administered/managed by the C.F.R. Infrastructure or, as the case may be, by a non-interoperable infrastructure manager, as well as the metro, which takes place on the railway infrastructure managed by Metrorex. On this occasion, we would like to point out here that the field of railway crime also covers the scope of acts committed in relation to the safety of metro traffic on the railway.

d. In the framework of the investigation of the active subject of crimes against railway traffic safety, both the active subject, legal person (with the specification that in the case of railway service crimes, the legal person will only be able to fulfill the condition of accomplice or instigator), and the secondary passive subject of railway crimes may be, on the one hand, C.F.R. Infrastructure or railway infrastructure managers (for the non-interoperable network), and, on the other hand, C.F.R. Passengers, C.F.R. Freight or any other operator with private capital that carries out a transport,

intervention, maneuvering, maintenance activity on the railway. Equally, the scope of the active and secondary passive subjects of railway crimes will also include Metrorex, an entity that encompasses both the railway infrastructure management component and the metro transport component.

e. Regarding the common premise situation, represented by the railway traffic system, considering the fact that railway crimes use a series of technical notions, we opted, in order to more easily understand the constituent elements of railway crimes, for a technical analysis of the two major components of the premise situation: the railway, with its component parts (infrastructure and superstructure), respectively the rolling stock, with the means of transport, intervention, maintenance or maneuvering on the railway.

From the perspective of the first component, when we talk about endangering the safety of the movement of means of transport, intervention or maneuvering on the railway, we will refer to the railway viewed as a whole, with the superstructure (rails, switches, railway sleepers, small track material and ballast) and the infrastructure (embankments, retaining walls, drains, slope protection devices, bridges, viaducts, tunnels, etc.) related to it, so not only looking from the perspective of the two railway tracks. However, as we saw in the analysis of the material object of the crime of railway destruction, it is necessary to emphasize, from this moment on, that the railway infrastructure is different from the railway infrastructure which, in addition to the assets related to the two component parts of the railway, covers a wider range of railway assets (e.g. train stations, marshalling yards, level crossings with the railway, access routes for passengers and goods, etc.).

As for the second part, after reviewing the means of transport, intervention, maintenance or maneuvering on the railway and considering also from the perspective of the analysis of the common aggravated variant consisting in the occurrence of a railway accident, in the case of railway crimes in the basic form, found in the contents of art. 329-332 C. pen., the intention of the legislator of the Criminal Code was to limit the incidence of criminal liability only to the situation when a state of danger is created for the safety of the movement of railway vehicles for transport, intervention or maneuvering on the railway, thus excluding those for maintenance.

Such an option of the legislator is difficult to justify given that the destruction or degradation of a maintenance vehicle will lead to the retention of the aggravated variant (*majus delictum*), but such a variant cannot be based on a prior endangerment of the safety of the movement of a maintenance vehicle (*primum delictum*). On the other hand, the legislator's approach is as unfortunate as possible given that the material consequences that could occur in the case of railway maintenance vehicles (let us imagine the hypothesis of faulty driving of a machine for boring, leveling and ripping the line or, as the case may be, of a crane trolley, equipment considered, by its dimensions and weight, to be of high gauge) would be the same or even more serious than those that could occur in the case of other railway vehicles.

Against the background of these technical observations, our *de lege ferenda* proposal consists in introducing maintenance means in the content of art. 329-332 C. pen., so that in the future any of these railway crimes can be retained even in the event that the safety of the movement

of maintenance vehicles is endangered. In order to avoid the repetition of all means *de lege lata*, we propose the use of a generic notion that we define in a separate article, alongside the railway accident.

f. From the perspective of immediate prosecution, the legislator of the current code opts, with the exception of the offenses provided for in art. 331 para. (2)-(3) of the Criminal Code, to configure the majority of railway offenses as acts of concrete danger, it being no longer sufficient that the actions or inactions contained in the material element be of a nature to endanger the safety of railway traffic (offenses of potential danger), as was provided for in the old regulation, but the judicial bodies will have to prove the actual occurrence of such a state of danger. From the point of view of the content of the immediate prosecution, this will take into account:

- The risk of causing *material consequences less important than the occurrence of a railway accident*, but similar to those produced in the case of committing a railway destruction crime, namely the damage to a wider range of railway assets;
- The risk of causing a *railway accident*, as defined in art. 333 C. pen.;
- The risk of causing a state of danger to *the life, bodily integrity or health of an undetermined number of persons found inside the train, on the line or next to the line* (passengers, railway personnel, persons travelling on roads near the railway line, etc.) or, as the case may be, of a state of danger to their *property* (e.g. transported goods, goods owned by natural or legal persons in the immediate vicinity of the railway infrastructure, etc.);
- Producing a state of danger for *the environment* (e.g. leakage of hazardous substances from tank cars)[3].

On the other hand, from the point of view of the form in which the immediate consequence is regulated, if within the scope of the act of failure to perform official duties or their defective performance, the immediate consequence consists in endangering the safety of the movement of means of transport, intervention or maneuver on the railway, within art. 330 C. pen., which regulates the offense under the rule of fault, the legislator speaks of endangering the safety of the means of transport, intervention or maneuver on the railway. Similarly, in the case of the offense of leaving the post [art. 331 para. (1) C. pen.] it is spoken of endangering the safety of the movement of these means, while, in the offense of destruction [art. 332 para. (1) C. pen.] the legislator speaks of endangering *the safety of the means* of transport, intervention or maneuver on the railway.

Given that the generic legal object of railway crimes aims to protect the safety of the movement of means of transport, intervention or maneuver, implicitly, the immediate consequence cannot be other than that which consists in endangering the safety of the movement of such vehicles on the railway, which is why *de lege ferenda* it is necessary to establish a uniform regime

[3] See also G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate*, în Dreptul nr. 1/2025, pp. 131-133.

regarding all railway crimes, by providing exclusively for endangering the safety of the movement of rolling stock on the railway.

g. Regarding consummation, as was also retained in our older doctrine, if in the case of crimes of potential danger the danger is "indirect, future, susceptible to generate harm, under the action of any factor (mechanical, meteorological, etc.) that can be triggered naturally or under the conditions of the commission, within the framework of normal activity, of a licit complementary act, either by the same person or by another" (*periculum in futurum*[4]), in the hypothesis of those of concrete danger the danger must be direct and current, therefore, effectively born (p*ericulum ortum*[5]), in the sense that there are some "objective factors of a nature to produce harm directly - without the need, for this, of any other additional action-inaction, so that only the intervention of human conduct or an accident could avoid that consequence"[6].

We also found such an approach in German doctrine when studying *the normative theory of the result of dange*r, which is almost unanimously accepted in this country (but which we also found at the level of other states) and which establishes the existence of a concrete danger when the material consequence does not occur due to *hazard*, viewed not as an inexplicable event by reference to the natural sciences (as, for example, *the natural-scientific theory of the result of danger* does), but as an event/circumstance whose occurrence cannot normally be counted on[7]. Under these conditions, the abilities of those threatened or the fortunate occurrence of certain circumstances, to the extent that they prevent the result from occurring, constitute situations that will not be able to exclude criminal liability for the crime of concrete danger[8].

In the context of our embracing of this theory[9], from the perspective of committing crimes against railway traffic safety it is necessary to fulfill two cumulative conditions: the absence of alternative remedies/mechanisms that would effectively prevent the emergence of a concrete state of danger for railway traffic safety/the occurrence of a railway accident, respectively the existence of a means of transport entering, intervening or maneuvering within the range of action of the danger. Looking at this in this light, I drew attention in the work to the need to return *de lege ferenda* in the case of railway service crimes in the basic form [those provided for in art. 329-331 para. (1) C. pen.], respectively in the case of railway destruction (except for the crimes of placing obstacles and false signaling), to the form of immediate prosecution existing in both the 1968 and 1936 regulations, which correctly provided for the essential requirement that the act could have been/is of a nature to endanger the safety of railway traffic (crime of potential danger).

Under these conditions, in the case of most railway service offenses and railway destruction offenses it is necessary that criminal liability can operate even with the achievement of the material

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[4] Name used since the interwar period, see V. Dongoroz în *Codul penal Carol al II-lea adnotat,* p. 413.
[5] Ibidem.
[6] V. Papadopol, în *Codul penal comentat și adnotat al R.S.R.,* p. 161; Similarly, V. Dongoroz, în *Codul penal Carol al II-lea adnotat,* p. 413, ambele citate în G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate, op. cit.,* p. 129.
[7] G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate, op. cit.,* p. 128.
[8] Ibidem.
[9] Other Romanian authors also note the emergence of a state of concrete danger when the material consequence does not occur due to the intervention of an event, understood as an event whose occurrence cannot be counted on, see F. Streteanu, D. Nițu, *Drept penal. Partea generală,* vol. I, Ed. Universul Juridic, București, 2014, p. 296.

element, namely from the moment of defective performance or failure to perform the duty or, as the case may be, from the moment of destruction, degradation or rendering unusable railway installations, railway lines, railway vehicles, etc., that is, from a moment prior to the one in which the danger of a railway accident actually arises, when it comes to the so-called *near-accident* (an accident that would have occurred without the intervention of a *coincidence*).

From the multitude of situations that can be imagined in practice regarding the conduct of railway personnel, we can only show that in the case of a barrier guard, criminal liability *de lege lata* will not be retained if, having been notified of the approach of the train, he proves that, although he did not take the necessary measures to lower the barrier, there was nevertheless no road vehicle at the level crossing, so that at no time was there a real risk of a railway accident. However, the act of the railway personnel is obviously per se extremely serious from the perspective of the material consequences that could occur if a vehicle approaches that level crossing and does not notice the train, so that the retention of criminal liability can no longer be conditioned *de lege ferenda*, to a decisive extent, by the occurrence of an event external to the conduct of the railway personnel.

Equally, the retention of criminal liability must also intervene from the moment of the material element and in those situations in which the prompt and, as a rule, automatic intervention of the railway traffic control and safety installations caused the state of danger not to occur, so that the committed act remains only one that had the ability to give rise to a state of danger for the safety of railway traffic. We say, as a rule, because, as we have seen, there may be situations in which such systems do not intervene or, as the case may be, intervene, but with a delay either due to the deactivation by the locomotive personnel of the speed control and immediate braking installations, when the locomotive no longer takes over from the signals transmitted by the track installations, or due to other technical causes (e.g. the degree of wear of some track installations, the display on the light diagram incorrectly indicates that the railway event occurred in another area). Equally, there may be segments of railway track on which such safety installations do not exist, which means that the signalman cannot observe the place where damage/degradation of the railway track has occurred.

Last but not least, even in the case where such installations function correctly, the intervention of the traffic officer or his communication with the train driver may prove to be deficient (e.g. area without signal for using radiotelephony), so that the risk of a railway event may ultimately arise. In all these situations, until absolute technological advancement and the elimination of any real risk of affecting the safety of railway traffic on the infrastructure in Romania, the vigilance of the train driver, the line/station staff or, as the case may be, another person, an event whose occurrence cannot be relied upon in all cases for various reasons, will often remain the only option in order to prevent the transition from a state of danger to a material consequence.

In light of the above, we conclude that it should not be necessary to wait for a danger of causing a railway accident to occur for criminal liability to operate, it being obvious that at such a stage the occurrence of material consequences can become a random matter that can hardly be prevented later. Therefore, the role of the state, especially in such areas that concern public safety

and, in particular, the high-speed movement of vehicles carrying passengers, must be to prevent from the earliest possible stage the commission of any form of railway crime, since such acts can ultimately lead to catastrophes and the impairment of extremely important social values, such as the right to life, health, bodily integrity or, as the case may be, the right to property. Moreover, treatment as a crime of potential danger is currently being considered by the legislator also in the case of crimes regarding the safety of naval traffic (Law no. 191/2003) or air traffic (Law no. 21/2020 on the Air Code).

h. In the context of the analysis of the railway accident and in light of the technical aspects previously exposed regarding rolling stock, as such a latter notion encompasses both the means of transport (locomotives, wagons, etc.) and those of shunting, maintenance or intervention on the railway (therefore, all railway vehicles), the mention of the means of transport, in addition to the phrase "rolling stock", becomes superfluous, which is why we propose the use in the content of art. 333 C. pen. only of the phrase "rolling stock or railway installations"[10]. As we have seen, this is also supported by the fact that, according to para. (1) of art. 277 of the 1968 Criminal Code, the railway accident concerned the destruction or significant degradation caused to *the rolling stock* or railway installations, without adding to them, in a justified manner, the means of transport of the railways. Also, in order to avoid the repetition of means of transport, intervention, maneuvering or maintenance on the railway during each railway offense, we propose the definition of "rolling stock" within the scope of art. 333 C. pen.

In the context of defining railway installations, both in relation to the old regulation and to the current Criminal Code, and starting from the technical aspects retained in the railway sector, the criminal legislator currently operates a limitation of the scope of the material object in the event of a railway accident, in the conditions in which, more seriously and through negligence, there is a destruction or degradation of the cable networks that make up the telecommunications installations or, as the case may be, of some elements of the railway infrastructure, such as works of art (e.g. bridges, tunnels, viaducts, etc.). Even under these conditions, in the case of works of art, unlike the situation of telecommunications installations, it becomes more difficult to imagine, from a practical point of view, their destruction or damage, without the intervention of a destruction/damage to the rolling stock, an aspect that makes the differentiated treatment, from a formal point of view, of railway installations from works of art (even in some situations, from telecommunications installations), sometimes blurred from a practical perspective.

Last but not least, also from the perspective of a better systematization, in order to avoid the repetition within each offense of the aggravated form consisting in the occurrence of a railway accident, one can consider *de lege ferenda* the variant of amending art. 333 C. pen., which would include such a circumstance through reference norms, as follows:

i. On the occasion of analyzing the aspects of a criminal procedural nature, more precisely those concerning the civil action and the establishment as a civil party during the criminal trial, we

[10] For a similar opinion, see also I. Rusu, în *Explicațiile NCP IV*, p. 640; I. Rusu, *Conținutul constitutiv al infracțiunii de distrugere sau semnalizare falsă*, în Acta Universitatis George Bacovia nr. 2/2013, vol. II. (www.ugb.ro/Juridica/Issue22013/8._Continutul_infractiunii_de_distrugere_sau_semnalizare_falsa_in_NCP.Ion_Rusu.RO.pd address accessed on May 15, 2025).

were able to find that, in the case of railway offenses in the basic form, as is the case of those provided for in art. 329 para. (1), art. 330 para. (1), art. 331 para. (1)-(3) and art. 332 para. (2) and (4) C. pen. (crimes of concrete or abstract danger), these cannot be susceptible by themselves to generate damage (moral or material), which leads to the impossibility of being constituted as a civil party during the criminal trial.

Likewise, we will not be able to speak of a civil action alongside the criminal one even in the situation where, through the conduct of the railway personnel, damages are nevertheless caused to persons (other than the employer), without being able to retain the aggravated form consisting in the occurrence of a railway accident or, as the case may be, (and) another (resultant) crime, such as the hypothesis of the general crime of abuse or negligence in service[11] or that against life, health or bodily integrity. In such situations, those interested will follow the path of an action filed before the civil court in order to recover the damage caused.

j. Following the analysis of the European doctrine and jurisprudence regarding immediate prosecution, although most legislations usually impose (and) the condition of the occurrence of a state of danger for the safety of railway traffic, the doctrine and judicial practice of these states establish distinct benchmarks regarding the consummation of railway crimes. This leads some states [Germany, the Netherlands, Portugal (aggravated form)] to treat these crimes in the realm of concrete danger, both formally and at a doctrinal/jurisprudential level, through the need to create a current/immediate danger to the protected social values.

On the other hand, there are states that, although, at the legislative level, treat railway crimes as acts of concrete danger, doctrine and jurisprudence, in the context of agreeing to the classic dichotomous approach to the crime of danger (abstract danger crime and concrete danger crime), in fact assimilate them to those of abstract (potential) danger [Italy, Portugal (in the basic form), Hungary, Bulgaria, Latvia], it being sufficient that the act committed has the ability to endanger the safety of railway traffic (potential/future danger). There are also states (Finland) that expressly provide that the act committed must be of a manner to cause danger to other persons.

Sharing the opinion that the crime of potential danger cannot be part of the category of the crime of abstract danger or, as the case may be, of the crime of concrete danger, being a crime of danger distinct and intermediate to the two[12], an aspect also supported by the fact that our current legislator chooses to use in the case of acts of potential/possible danger the phrase "if the act is of a nature to endanger..."[13], unlike the situation when referring to those of concrete danger (e.g. "if the act endangered/created a danger...")[14], obviously *de lege lata* we can only agree with the

[11] This concerns, for example, those situations in which, as a result of the incorrect driving of the locomotive, a vehicle is destroyed/damaged, without also causing destruction/degradation of the rolling stock or railway installations, in the situation in which certain passengers suffer some damage as a result of the impossibility of arriving at an exam, job competition, service, etc.
[12] See in this regard and F. Streteanu, D. Nițu, *op. cit.* vol. I, p. 296 *apud.* G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate, op. cit.*, pp.120-121.
[13] Moreover, even in the old regulation, it treated crimes of potential danger distinctly from the other two, either by using the phrase "if this is likely to..." (threat), or by using phrases that conveyed the full character of a crime of potential/possible danger, such as "if this could endanger/if this could have endangered..." (railway crimes), "If the acts (...) could have caused damage..." (counterfeiting coins or other valuables), "if the act could have had serious consequences" (violation of the order) or "in situations that could have endangered the ship..." (abandoning command).
[14] Of course, in the case of abstract dangers, the legislator does not use any specific terminology, it being the role of doctrine and judicial practice to treat them from this perspective.

approach promoted by both our older doctrine and the German one (mainly) regarding the consummation of the railway crime of concrete danger, which require the existence of a current/immediate danger of producing material consequences.

However, as we previously emphasized, the treatment by referring to one of the two categories is strictly linked to the criminal policy that the legislator of each European state wishes to impose on this matter. Specifically, if it is desired to sanction certain conduct as early as possible, these will naturally be approached as crimes of abstract/potential danger, but if it is desired to treat in the criminal sphere only those facts that are very close chronologically to the moment of producing material consequences, then the legislator will treat them as facts of concrete danger. Looking also from this perspective, we appreciate that the approach of the Romanian legislator must in the future be, from a formal point of view, similar to that of the European states that choose not to wait for the occurrence of the "imminent accident", opting to treat the majority of railway crimes as ones of potential danger (future, indirect), in fact, as both the legislator of the Criminal Code of 1936 and that of 1968 did correctly.

Looking also from the perspective of immediate consequences, there are states that provide for the necessity of endangering the life, physical integrity or important property belonging to third parties [Germany, Portugal (in the aggravated form), Finland, Hungary, Estonia. Bulgaria], as there are states that provide for the condition of endangering railway traffic/transport (Italy, Latvia), similar to the regulation in our domestic law. We also find the situation when the Croatian legislator imposes, for example, the condition of endangering both railway traffic and the life, physical integrity or property of some persons.

We also find an interesting situation on the Australian continent where it is not necessary to produce such consequences for the consummation of the railway service offense, such as endangering the safety of any person on the train or on the railway, their injury or death or the derailment, destruction or damage of any locomotive or other rolling stock on the railway. In this case, the mere pursuit of such a purpose along with the commission of the material element is sufficient, which makes the standard of protection offered by the Australian state legislature higher than the domestic one.

From the perspective of the complex nature of the railway crime, in most situations, bodily harm or death of persons are provided as aggravated forms of railway crimes, so that autonomous crimes, such as: negligent bodily harm or negligent murder will be absorbed into the complex aggravated forms (Netherlands, Croatia, Hungary, Estonia, Bulgaria). As previously stated, the Romanian legislator from 1968 also had a similar approach in this regard, the current one opting, instead, for the application of the rules of concurrent offenses.

Chapter II deals with the crime of *failure to fulfill official duties or their defective fulfillment (art. 329 C. pen.)*, as follows:

a. As a preliminary matter, starting from the marginal name of the crime and in the context of supporting the introduction of the concept of railway crimes at a doctrinal level, we have come

to the conclusion that, taking into account the fact that the marginal name is much too long, and, on the other hand, that the crime represents, in essence, a variant of the general crime of abuse of office (art. 297 C. pen.) - considering the distinct quality of the active subject and the immediate consequences produced, in order to strengthen the role of this crime in the railway service, *de lege ferenda* it is necessary to change the name of the crime so that it is entitled "abuse in the railway service".

b. From the perspective of the active subject, at present, the quality of "employee" within the railway infrastructure administrator/manager or, as the case may be, of the transport, intervention or shunting operators on the railway, specific to the year 1968 (when Law no. 3/1950 on the Labor Code was in force), can no longer be a current one. Thus, in the context of the definition provided for the phrase railway personnel, found in the content of Law no. 195/2020, of the use of this phrase and in the content of GEO no. 12/1998, but also in the legislation of other states (Spain), we propose that the notion of "employee" be replaced *de lege ferenda* by that of "railway personnel".

Next, a major problem we faced was that of clearly identifying the active subject of this crime. Analyzing the legislation on the subject, we were able to find that there is no terminological unity within the primary/secondary norms, finding either the category of personnel with responsibilities in railway traffic safety (GEO no. 8/2013, M.T.I. Order no. 1,151/1,752/2021, Draft GEO to amend art. 46 of GEO no. 12/1998), or that of personnel with responsibilities in railway traffic safety [G.O. no. 1663/2004 (Annex I), M.T.C.T. Order no. 2262/2005, M.T.I. Order no. 815/2010, GEO no. 73/2019], or, finally, the category of personnel with duties and responsibilities in railway traffic safety (Law no. 195/2020, Order of the Minister of Transport no. 1561/2022).

In this context and observing the approach of the legislator of the Criminal Code, we came to the conclusion that it follows a regressive approach from the perspective of the active subject, by moving from a general incrimination in the matter of railway service offenses and with an implicitly larger scope of applicability regarding railway personnel (by reference to art. 329 and art. 330 C. pen.), to a special one with a narrower area and which only targets that category of railway personnel who perform essential/critical duties in the matter of railway traffic safety, as is the case with personnel with duties regarding railway traffic safety (by reference to art. 331 C. pen.). Continuing in this regressive manner, the legislator provides, regarding the crime of false signaling [art. 332 para. (2) C. pen.], an even more restricted incrimination of the category of railway personnel than those mentioned previously, namely that of the personnel who ensure the circulation of rolling stock on the railway.

Under these conditions and following the analysis of the lists of railway personnel found in the previously stated normative acts, the active subject of the offenses provided for in art. 329 and 330 C. pen. will fulfill, except in particular situations, one of the functions or professions with duties and responsibilities in railway traffic safety (Annex I), respectively in metro traffic safety (Annex II), provided for in the content of the Order of the Ministry of Transport and Communications no. 1561/2022.

Also, by imposing *de lege lata* the condition attached to the active subject, namely that he manages the railway infrastructure or, as the case may be, carries out his activity within the transport, intervention or shunting operators on the railway, we reach the situation in which the general railway crime of service cannot be held in the case of an employee who does not necessarily have established service relationships with such entities. However, we have demonstrated that there may also be situations in which the state of danger to the safety of railway traffic/the occurrence of a railway accident is the consequence of the failure to fulfil or the defective fulfilment of the duties of service by railway personnel employed outside such units with a railway specific nature, such as the case of the Railway Safety Inspectorates, the Romanian Railway Notified Body, the National Centre for Railway Qualification and Training CENAFER, the Romanian Railway Investigation Agency, etc.

Therefore, being in the realm of a special offense in relation to the general offense of abuse/negligence in service, but general in relation to other railway service offenses, and in the case of the situations previously exposed, there can be no other option than to incur criminal liability for the general railway service offense and not for a crime of abuse or, as the case may be, negligence in service (as operates *de lege lata*). Thus, also from this perspective, the proposal to report the qualified active subject to the list of personnel with duties and responsibilities in railway traffic safety, from the two annexes to Order no. 1561/2022, responds to the problem previously reported.

Last but not least, regarding the criminal liability of the legal entity, we have presented in detail the reasons why it cannot meet the quality of direct active subject (author/co-author) of the crime of failure to perform official duties or their defective performance, but only that of accomplice/instigator, an aspect that will be valid for the entire range of railway service crimes: failure to perform official duties or their defective performance due to negligence, leaving the job and being present at work under the influence of alcohol or other substances or refusing or evading the collection of biological samples.

c. From the perspective of the passive subject, we cannot agree with the opinion expressed by part of the doctrine according to which legal entities whose goods entrusted to be transported were destroyed or damaged or those that own goods near the railway line (e.g. buildings, vehicles, agricultural land, etc.), as a result of the commission of a railway crime, can also be secondary passive subjects, as they cannot, in our opinion, meet any other quality than that of a person injured by the railway crime or, as the case may be, of a passive subject of a distinct crime (abuse in service, negligence in service, railway destruction, etc.).

d. Regarding the material element, a sensitive issue that arose was the one related to the "defective" nature of the performance of service duties by railway personnel, in the context of the pronouncement of DCC no. 405/2016. In this regard, the decision of the constitutional court cannot be applied, from a formal point of view, also in the case of the crime of failure to perform service duties or their defective performance, the constitutional nature of the two regulations being presumed and cannot be overturned by judicial interpretation. Therefore, in the absence of a new decision of the constitutional court declaring the unconstitutionality of the word "defective" in art. 329 or art. 330 C. pen., judicial bodies will not be bound by *de lege lata* by the conditions regarding

the need for an explicit, unequivocal and precise regulation of the duties of railway personnel at the primary level, requirements that concern *de lege lata* exclusively the general offenses of abuse/negligence in service.

However, the reasoning set out by the Constitutional Court applies mutatis mutandis to the railway service crime. Specifically, its material element could not be configured by reference to service duties provided for in the content of some infralegal acts, as it would lead to a situation in which the crime provided for in art. 329 C. pen. would be configured both by the Parliament or the Government, and by other institutions (e.g. the Ministry of Transport, in the case of ministerial orders), including legal entities with state capital (e.g. C.F.R. Infrastructure, C.F.R. Freight or C.F.R. Passengers) or private capital (e.g. private railway shunting or transport operators, railway infrastructure managers), in the case of guidance given through internal instructions or even the job description.

Under these conditions, in addition to the legislative amendment made to the Criminal Code, it will also be necessary to amend/supplement Law no. 195/2020 or, as the case may be, other primary normative acts (e.g. GEO no. 73/2019, GEO no. 12/1998) in order to more explicitly regulate the duties of railway personnel at the primary level. In this context, I have emphasized that art. 14 of the law currently operates, among other things, with a series of extremely general/principle-level duties or, as the case may be, with a series of references to acts of an infralegal nature or to acts of an internal nature[15], without, at least, part of the material element being configured at the primary level.

An approach that could lead to the future constitutionality of the incrimination norm and that would allow the removal of the equivocal character could be the one in which the legislator provides/adds general obligations in various areas that would interfere with the safety of railway traffic: movement and maneuvering of railway vehicles, towing and braking, signaling, technical inspection and maintenance of wagons, braking, locomotive staff activity, railway installation maintenance, etc., obligations that would be detailed at the infralegal level, within the limits provided at the primary level. In this way, a clear link could be created between the norm provided at the primary level, in which the material element is regulated at this level, and the one at the infralegal level, which comes to detail/complete it accordingly.

Even so, until a future legislative intervention or, as the case may be, a decision of the Constitutional Court, the current regulation at the primary level formally ensures the constitutional nature of the incrimination norm, making it possible to continue to relate the service duties of railway personnel with duties and responsibilities in railway traffic safety to provisions provided for in government decisions, ministerial orders, instructions, internal regulations or, as the case may be, job descriptions, an aspect also highlighted by judicial practice.

e. Regarding the relationship between railway service crimes and those of abuse or negligence in service, as we mentioned above, the acts of failure to perform service duties or their

[15] Art. 14. Railway personnel have the following obligations, for example: a) to fulfill the service obligations established in the job description on time and correctly; h) to apply the rules regarding the operation, maintenance and repair of the railway infrastructure and means of transport on the railway; j) to comply with the provisions of the law, the regulations specific to the railway activity, the collective labor agreement, the individual labor agreement and the internal regulations;

defective performance or of leaving the post or of being present at work under the influence of alcohol or substances constitute specific variants of crimes, such as abuse in service or negligence in service. However, when, as a result of the conduct of the qualified active subject, in addition to the state of danger for the safety of railway traffic, there are consequences specific to the general crime of abuse/negligence in service, namely a damage or injury to the legitimate rights or interests of a natural or legal person, a formal/ideal competition between the railway crime and the general service crime will be retained. In this situation, if the perpetrator is an employee of a company/companies with full or majority state capital (C.F.R. Infrastructure, C.F.R. Freight or C.F.R. Passengers) the norm provided for in art. 297 or art. 298 C. pen. will be applied exclusively, while if he is an employee of a private railway operator/companies, the provisions of art. 308 C. pen. will also be applied.

In all cases and in the context of the recent jurisprudence of the Constitutional Court, the general offense will be considered in conjunction with the railway offense only by applying the ultima ratio principle in criminal matters. The (also) offense of abuse/negligence in service may occur when there is destruction or degradation of other railway assets than rolling stock or railway installations[16]: the railway line, railway communication installations or other facilities related to the railway infrastructure, goods entrusted for transport, those located in the immediate vicinity of the railway line, etc. Similarly, also by applying the ultima ratio, such an act may be considered in the situation where a violation of the legitimate rights or interests of a person occurs (e.g. the situation of civil servants who, due to the delay, are unable to take exams for promotion to office).

f. Following the analysis of comparative criminal law, it was observed that, from the perspective of the structuring of the offense, at the European level, either a global treatment was opted for, in the sense of grouping within the same norm of incrimination all official conduct that may affect road, naval, rail and air transport (Italy, Croatia, Hungary, Latvia, Estonia, Bulgaria), or for a partial treatment, in which we find a separation of conduct in road traffic from the rest of the transport areas (Germany). On the other hand, we also found the option when the railway offense enjoys a separate regulation [Netherlands, Spain, Argentina, Venezuela, New South Wales (Australia)].

From the formal perspective of the active subject of the crime, we can encounter the situation when the European criminal codes refer to the entire category of railway personnel with duties/responsibilities in the safety of railway traffic as a result of their express nomination (Finland) or, as the case may be, as a result of the mention of the quality of participant in railway, air or naval traffic (Croatia, Hungary). We also find the hypothesis in which the same norm provides as active subject both the locomotive driver and the rest of the railway personnel or, as the case may be, the one in which the basic norm aims at the commission of the crime by a locomotive driver, and an attenuated/assimilated norm deals with situations when the non-fulfillment/defective fulfillment is carried out by the rest of the railway personnel with duties in

[16] It should be noted that the aggravated form of a railway accident will be considered to the extent that the material consequence, namely the destruction or degradation of the rolling stock or railway installations, occurred during the movement or maneuvering of the rolling stock on the railway, and the crime of railway destruction cannot be considered, under any circumstances, in the same context, as some courts have wrongly held in practice.

the field of railway traffic safety: employee, conductor, barrier guard, wagon driver, station master, etc. (Germany, Portugal, Estonia, Bulgaria).

Regarding the material element, there are states that impose the condition of the serious/significant nature of the breach of the duty of service (Germany, Finland, Latvia), as there are states that provide that the source of these obligations is represented by laws or regulations of a normative nature (Germany). And in the latter case, criminal liability may be incurred if such duties are provided for in the content of administrative acts, internal orders, individual orders, etc. only to the extent that such acts are based on the content of the duties found in the content of the law/regulation of a normative nature (Germany).

Other states (Hungary, Spain) also retain criminal liability in the event of failure to fulfill or defective fulfillment of certain duties of service developed at an infralegal level (e.g. instructions, professional regulations, etc.). Moreover, in Latvia, criminal liability is also considered in the case of service obligations provided for both at the level of law (Railway Law) and at the level of government decision (regulation of the Cabinet of Ministers). There are also states that relate service duties to the existence of regulations, orders or instructions (Argentina, Venezuela). Looking from this perspective, we could see a similarity with the situation found by *de lege lata* in our country.

Regarding **Chapter III.** *The crime of failure to perform official duties or their defective performance due to negligence (art. 330 C. pen.)*, our analysis focused, in particular, on dealing with the aspects resulting from the rich jurisprudence of the courts, but also on some theoretical aspects revealed by the existing differences compared to the act committed intentionally (e.g. participation, form of guilt, causes of non-imputability, etc.). Otherwise, the substantive issues discussed in the analysis of the act provided for in art. 329 C. pen. apply, accordingly, also with regard to such a crime, no longer requiring a re-examination of them.

However, a problem that we observed in the practice of some courts was related to the formal concurrence of both the act of failure to perform official duties or their defective performance due to negligence, and that of railway destruction due to negligence [art. 332 para. (1), (3) and (4) C. pen.], in the case of destruction of railway assets as a result of the conduct of railway personnel. Regarding this solution, some authors of criminal law have shown that such a plurality will be formed by the railway offense of negligence and the general offense of destruction due to negligence (art. 255 C. pen.)[17]. In all cases, being a service offense, the solution of formally retaining the railway destruction due to negligence/destruction due to negligence cannot be retained, since the destruction, degradation or rendering unusable of railway assets is nothing more than the immediate result/consequence of the act of failure to fulfill or defective fulfillment of the service obligation/duty, and not the result of an action among those that make up the material element of the crime of railway destruction due to negligence/destruction due to negligence.

[17] I. Rusu, în *I. Rusu (coord.)*, pp. 265-266.

Therefore, we have emphasized the importance of correctly establishing the causal link between the material element and the immediate consequence, in the situations mentioned above, except for the situation when the aggravated variant of a railway accident is retained, the plurality of offenses being formed by the railway offense on duty (art. 330 C. pen.) and negligence on duty (art. 298. C. pen.), with the distinctions made when analyzing the relationship between railway offenses on duty and general offenses (abuse/negligence on duty).

Chapter IV deals with the offense of *leaving the post and being at work under the influence of alcohol or other substances or refusing or evading the collection of biological samples (art. 331 C. pen.)*, as follows:

a. In the context of the terminological contradiction existing at the primary/secondary level and following the analysis of the lists of railway personnel found in some ministerial orders, we were able to conclude that the railway personnel with responsibilities regarding railway traffic safety, found in the content of this offense, is the one provided for in the content of the Order of the Ministry of Transport and Communications no. 1,151/1,752/2021. Therefore, unlike the personnel with responsibilities in railway traffic safety, the one with responsibilities has the role of contributing, essentially, to the safety of railway traffic. This leads to the need to make such a distinction in practice, in order to avoid unjustified situations in which criminal liability is held for an act of leaving the job or, as the case may be, of being at work under the influence of alcohol or other substances or of refusing or evading the collection of biological samples with regard to categories of railway personnel who do not perform essential tasks.

Even in the context of referring to a more restricted category than that envisaged in the norms provided for in art. 329, respectively art. 330 C. pen., the retention of criminal liability with regard to certain categories of railway personnel with duties regarding railway traffic safety, such as, for example, those maintaining lines, switches or rolling stock, may seem disproportionate from the perspective of retaining an aggravated sanctioning regime, the legal classification as a general railway service offense being sufficient (art. 329 C. pen.). I supported this because the reason for regulating this special aggravated offense, unlike the general railway offense, which may also result from the existing form in the old regulation - "employees who directly ensure traffic safety", was to prevent and combat the conduct of an extremely limited category of railway personnel, namely that of *railway personnel who actually ensure the circulation of rolling stock*, a category of personnel that we find *de lege lata* regarding the offense of false signaling.

In light of these clarifications, it would be preferable that in the case of the crime of leaving the post, unlike the presence at work under the influence of alcoholic beverages or psychoactive substances, the quality of the active subject be reported *de lege ferenda* to the category of railway personnel provided for in art. 332 para. (2) C. pen.

b. In the context of certain medico-legal aspects and in the conditions in which the legislator opts for the use of the same phrase "is under the influence of psychoactive substances", those retained by the supreme court in the content of Decision H.P. no. 25/2025 also apply to the crime against the safety of traffic on the railways, so that it becomes necessary for these substances to

create the ability to determine the impairment of the capacity of railway personnel to perform their duties. Under these conditions, the standard of criminal protection imposed by the Romanian legislator, and confirmed with the pronouncement of the decision of the supreme court, ends up being similar to that found in the legislation of other member states, the simple finding of the existence/presence of psychoactive substances in the body of railway personnel no longer being sufficient to give rise to an absolute presumption of danger to the safety of railway traffic.

However, being a matter of criminal policy and until the intervention of the constitutional court (*in prior/a posteriori* control), the legislator may return to the approach that existed prior to the publication in the Official Journal of the Decision of the Supreme Court of Justice no. 25/2025, by imposing in the future the requirement that such substances be only present in the body. Under these conditions, *the Legislative Proposal for the amendment of Law no. 286/2009 on the Criminal Code (L30/2025)* has already been adopted at the Senate level (as the first chamber notified), an initiative that aims, among other things, to criminalize the presence of drugs or other substances with psychoactive effects in the blood among railway personnel (thus a return to the majority approach that existed at the time of the Supreme Court's decision), but also to introduce a cause of non-punishment among those who consume medicines containing psychoactive substances.

Among the technical observations that targeted, for example, the cause of impunity were those related to the fact that, by establishing the obligation that the release of medicines containing psychoactive substances be carried out only on the basis of a medical prescription, the situation is reached in which the interested party will have to go to the doctor every time to obtain medicines for various inflammatory pains or to treat simple colds or flu (e.g. Nurofen cold and flu, Bioflu, Fasconal, Nurofen Plus, Advil, Codamin, etc.). This will lead, on the one hand, to a blockage of medical offices and a crowding of hospital emergency departments, and on the other hand, to a situation in which such medicines cannot be taken immediately after the onset of symptoms (e.g. let us imagine the situation when a headache or toothache occurs on Friday after the doctor's working hours). Therefore, we considered that a more balanced approach could be one in which railway personnel are reported to the indications and recommendations provided in the leaflet or, as the case may be, to those issued by the doctor, without, on the other hand, limiting them to the latter.

Also, from the perspective of the predictability of the norm, it is necessary to establish as precisely as possible the moment when each substance ends up being eliminated from the body, since the aim of protecting social relations regarding the safety of railway traffic cannot be achieved exclusively by complying with the indications provided, to the extent that at the time of performing the duties of the job the substance is still of a nature or, even more seriously, affects the capacity of the railway personnel. Therefore, following the introduction of such a clause in the Criminal Code, the Ministry of Health is obliged to issue a series of norms applicable to both doctors and pharmaceutical companies, in which certain benchmarks should be drawn, so that the recipient of the norm cannot ultimately constitute a danger to the safety of railway traffic.

c. A problem that arises from an evidentiary perspective in the case of this crime and that we reiterated in the present scientific approach was the one related to the lack of a regulatory act that details the procedure for collecting biological samples in order to test the concentration of alcohol

or psychoactive substances among railway personnel, so that the judicial bodies end up applying in practice the provisions of Government Decree no. 877/2024 for the approval of the Methodological Norms[18], therefore the provisions of a regulatory act that concerns the circulation of road vehicles on public roads.

It is true that from a criminal procedural perspective it becomes difficult to prove the existence of an injury that would attract the sanction of nullity, with possible consequences regarding the exclusion of the means of evidence thus administered (toxicological analysis report or clinical examination), in the event that they are carried out under the conditions of the previously mentioned *Methodological Norms*. However, looking more deeply at the issue, as the collection of biological samples represents, in essence, an intrusive measure in the fundamental rights or freedoms of railway personnel, it is necessary that the basis for such a restriction, according to art. 53 para. (1) of the Constitution of Romania, republished, be provided at the level of law. Therefore, the simple detailing at the level of a government decision or, as the case may be, a ministerial order of some collection procedures, in the absence of a foundation at the primary level, could not pass the test of legality of the future normative act of an infralegal nature, the evidence not being admissible during the criminal trial.

Furthermore, being a distinct field that presents a series of particularities revealed, among other things, by the need to establish the blood alcohol concentration in order to establish disciplinary liability, it is necessary to create a separate normative act that would target the probation in the matter of facts regarding the performance of duties under the influence of alcoholic beverages or other substances by railway personnel, either the repeal by the Ministry of Transport of Order m.t.t. no. 855/1986 and the issuance of a joint order with the Ministry of Health that would concern the establishment of alcoholism or the presence of psychoactive substances in the body that would operate both in the realm of disciplinary liability and that of criminal liability[19].

d. Going further, we emphasized that the regulation of the crime of refusal or evasion from taking biological samples in positive law, with the entry into force of Law no. 314/2023, represents a great plus in terms of combating the phenomenon of consumption of alcohol or other substances by railway personnel, a phenomenon that has increased considerably in recent years. We say this because, on the one hand, the refusal of railway personnel to submit to the taking of biological samples following the occurrence of railway accidents led, in practice, only to the retention of disciplinary liability, manifested in the form of termination of the employment contract, given that the same railway personnel could shortly sign an individual employment contract with another railway operator. On the other hand, such a form of illegality has existed for some time in the field of crimes against the safety of road, air or naval traffic, so that, also from this point of view, the

[18] See also, G. Rădășanu, *Determining the blood alcohol level or the presence of psychoactive substances among railway staff*, în The International Conference - Challenges of the Knowledge Society, 17th ed, Bucharest, 2024, p. 97, with the mention that the analysis concerned similar provisions contained in the Order of the Minister of Health no. 1512/2013 for the approval of the Methodological Norms regarding the collection, storage and transport of biological samples for judicial evidence by establishing the blood alcohol level or the presence of psychoactive substances in the body in the case of persons involved in events or circumstances related to road traffic, published in the Official Gazette no. 812 of 20 December 2013.

[19] See also G. Rădășanu, *Determining the blood alcohol level or the presence of psychoactive substances among railway staff, op. cit.*, pp. 89, 96-97.

lack of this form of criminal illegality in the field of railway traffic constituted a minus in the state's assurance of the safety of the transport of people and goods by rail.

Furthermore, unlike the field of road traffic, in relation to rail traffic, there is no general obligation regulated at the level of law/emergency ordinance/simple ordinance for railway personnel to submit to the necessary checks regarding breath testing and/or the collection of biological samples in order to establish alcohol levels or the consumption of psychoactive substances, coming from the police body (not from the hierarchically superior railway personnel). Although we could consider that such an obligation would result, to some extent, from the corroborated interpretation of the duties of railway personnel, found in art. 14 of Law no. 195/2020, with those established at the infralegal level through various orders, regulations, instructions, etc., for greater clarity, *de lege ferenda* should also consider the introduction of an express norm in the content of Law no. 195/2020 or of GEO. no. 12/1998, with a content similar to that provided for in art. 38 of GEO. no. 195/2002 regarding traffic on public roads[20].

e. Analyzing some examples provided in practice or, as the case may be, in doctrine, from the perspective of immediate prosecution in the case of the offense of leaving the station, we could observe that these reflect, in essence, a series of hypotheses in which the act of the railway personnel, consisting in their temporary absence from the station, presents the ability/potential to endanger the safety of railway traffic and not the need to create a concrete danger, as required by the general rule. In order for such an act to also create a real danger of affecting the safety of the movement of rolling stock on a certain section, if we are talking, for example, about the station personnel (employee, barrier guard, station shunting operator, signalman, barrier guard, etc.), leaving the station must be carried out at the moment when the rolling stock approaches or, as the case may be, even actually enters the station. We say this because, as we well know, permission from the signalman is usually required for the rolling stock to enter the station. However, in the absence of any message from him, the locomotive driver is obliged to stop the rolling stock and wait for new orders, possibly trying to contact other staff at the station, as is the case with the station master.

Faced with such a particularity, treating the crime as one of concrete danger would lead, in some cases, to the impossibility of holding the railway personnel who leave the station criminally liable, on the grounds that, for example, the act of the signalman did not endanger the safety of railway traffic, given that the locomotive driver stopped the train as a result of his obligation not to proceed in the absence of a signal received in this regard. However, since the presence of the signalman at the station is essential for the safe operation of railway traffic, even in the case of stopping the train before entering the station, keeping the train on the track may lead to the risk of railway accidents due to the approach of other road vehicles that would enter the same (already) occupied line and which had to be released.

Therefore, given the need to sanction such situations, the act of leaving the station must be one that endangers the safety of railway traffic, as was correctly provided for in the old Criminal Code, so that the act of the traffic officer, in the illustrated example, will attract *de lege ferenda*

[20] Ibidem, p. 93.

criminal liability from the moment of leaving the station to the extent that at that moment the rolling stock is, at least, near the station. Practically, the potential danger is analyzed by relating, on the one hand, to the conduct of the railway personnel (the action of leaving/not returning in a timely manner), and, on the other hand, to the degree of proximity of the rolling stock to the station where it carries out its activity. This will mean that disciplinary liability can only intervene in those situations where the next train is a long way from the station, so that the act of leaving the station by the signalman (in the previous example) could not even present the ability to create a state of danger for the safety of railway traffic.

f. Regarding the judicial practice pronounced in the matter of the crime of being at work under the influence of alcoholic beverages, an excuse frequently invoked by railway personnel, in order to retain the cause of non-imputability of the factual error, is that related to the fact that they wrongly assessed that the passage of a certain number of hours from the moment of consuming alcoholic beverages to the moment of committing the material element, as a rule, of entering the post and starting to perform the duties of the job, would be one of a nature to lead to the elimination of alcohol from the blood. Or, as the courts correctly hold, as long as, considering the professional duties and his condition, the defendant is required to avoid the consumption of alcoholic beverages at the time of their ingestion, so that he assumes, through his action, the possibility of subsequently exceeding the alcohol concentration established by the legislator at the moment of the performance/non-performance of his duties.

g. Last but not least, from a systematic point of view, the regulation within the same offense in the form of three alternative constitutive contents, under a cumbersome marginal name, can only be improper in relation to the legislative technical requirements that must be respected in the matter of drafting normative acts. In these conditions, given the model already retained in the case of offenses against traffic safety on public roads or those regarding the customs transport regime, both the act of being present at work under the influence of alcoholic beverages or other substances, and that of refusing or evading the collection of biological samples necessary to establish the blood alcohol level or the presence of psychoactive substances will meet the conditions of distinctly regulated offenses. In this context, in order to achieve a clear delimitation of the new offense from the road offense provided for in art. 337 C. pen., I proposed that the marginal name of art. 331^1 should be the following: "Refusal or evasion of railway personnel from taking biological samples".

h. Following the analysis of comparative law, there are states that opt, from the perspective of systematizing crimes regarding the active subject, for grouping within the same paragraph/article both the acts committed by locomotive drivers and those committed by railway personnel (Spain, Finland, Czech Republic), as we also find the hypothesis of states that configure the crime starting from the criminalization of the act of driving a locomotive under the influence of alcoholic beverages or other substances, with the fulfillment of duty duties, under the influence of the same substances, by the rest of the railway personnel falling under the incidence of general rules regarding service or the attack on the safety of air transport (Germany, Portugal, Hungary). In this context, there are states that limit the retention of criminal liability only to the hypothesis of locomotive drivers or other railway vehicles and train personnel (assistant locomotive driver,

train conductor, conductor, etc.), without taking into account, for example, the personnel on the line or at the station (Argentina).

From the perspective of the material element of the crime of performing official duties under the influence of alcohol, there are two broad categories of situations: states that do not regulate a minimum alcohol concentration (Germany, Portugal, Czech Republic), but with regard to which the doctrine and judicial practice show that such a threshold, from which it can be argued that the performance of official duties is done in unsafe conditions, cannot be lower than the concentration of 1.1 g/l pure alcohol in blood (Germany, Portugal), respectively states in which the threshold is provided for in the very content of the criminalization norm (Spain: 0.10 g/l pure alcohol in blood, Finland, Hungary: 0.50 g/l pure alcohol in blood).

Moreover, some of these states require for the commission of the crime the additional condition that the existence of such concentrations be coupled with the existence *in concreto* of a disturbance or diminution of the psychophysical faculties of the railway personnel (Germany, Portugal, Spain, Czech Republic). In addition to the aptitude/potentiality of affecting the psychophysical capacity of the railway personnel, there are states that require for the commission of the crime the additional occurrence of a state of concrete danger to the life, bodily integrity or patrimony of natural or legal persons (Germany, Portugal) or, as the case may be, even a simple possibility of endangering such social values (Czech Republic).

Regarding the approach in which the presence of an alcohol level above a certain value absolutely presumes the emergence of a state of danger for the safety of railway traffic, it should be noted that we also find states, such as the case of Finland, in which if the alcohol level is lower than these values (perhaps even in cases where it is higher, but cannot be proven in concrete terms by the judicial bodies) the crime will be retained to the extent that it is proven that the railway personnel have a reduced capacity to perform their duties properly. Practically, in such a case this immediate consequence leads to the characteristics of a crime of potential danger (abstract-concrete), in which the judicial bodies are required to prove that, due to the influence of alcohol, the conduct of the railway personnel is, in fact, one of a nature to endanger the safety of railway traffic.

As regards the performance of duties by railway personnel under the influence of psychoactive substances, we find a unanimous approach in the legislation of other Member States, in the sense that the presence of such substances in the body must effectively influence the psycho-physical capabilities of railway personnel to perform their duties safely (Germany, Portugal, Spain, Finland, Hungary).

Last but not least, in the context of the analysis of the legislation of other member states and in the context of the increase in the consumption of alcoholic beverages among railway personnel, the establishment of a gradual sanctioning regime may be considered in the future, starting from a certain alcohol concentration (e.g. 0.4 g/l of pure alcohol in blood) and going up to the current limit (0.8 g/l of pure alcohol in blood), in which criminal liability is established only to the extent that the performance under such conditions is likely to endanger the safety of railway traffic (with basic prison sentence limits ranging from 1 to 5 years).

Subsequently, the legislator will provide for an aggravated form of the crime already existing in art. 331 para. (2) C. pen., in the sense that the state of danger for the safety of railway traffic is absolutely presumed to the extent that the alcohol concentration is higher than 0.8 g/l of pure alcohol in the blood, in which case the limits of the prison sentence will be, as *de lege lata*, between 2 and 7 years. Under these conditions, disciplinary liability could operate exclusively in the situation where the alcohol concentration in the blood is at most 0.4 g/l and not at most 0.8 g/l of pure alcohol in the blood as it is currently or, as the case may be, in the hypothesis where, although it is higher than 0.4 g/l, the act is not likely to endanger the safety of railway traffic.

An alternative option that could be applied to a smaller range of railway personnel with responsibilities in railway traffic safety is the one in which such a concentration (0.4 g/l – 0.8 g/l pure alcohol in blood) would only concern the performance of duties by railway personnel who ensure the movement of rolling stock, namely the locomotive driver, his assistant or the train conductor. This option takes into account that a significant percentage of railway accidents caused by the fault of railway personnel (i.e. not by drivers who do not respect the level crossing signals) inevitably occur due to the fault of locomotive drivers, among the causes being the one that concerns the consumption of alcoholic beverages.

Chapter V investigates the crime of *destruction or false signaling (art. 332 C. pen.)*, among the aspects subject to analysis the following can be briefly mentioned:

a. Starting from the marginal name of the crime and in the context of supporting the introduction of the concept of *railway crimes* at the doctrinal level, we considered that, taking into account the fact that the destruction provided for in art. 332 para. (1) C. pen. represents a specific variant of the general crime of destruction (art. 253 C. pen.), for a clearer differentiation and a strengthening of the autonomous role of this railway crime, the current approach in which two forms with distinct constitutive elements bear the same name can no longer be maintained. Therefore, it is preferable *de lege ferenda* to change the name of the crime so that it is entitled "railway destruction".

b. Moving on to the substantive aspects of the incrimination, an aspect that required an in-depth treatment was the material object. Given the need for a clearer definition, the significance of the railway line, railway installations, railway communication installations, respectively the category of other goods or facilities related to the railway infrastructure, was analyzed, this latter category including all other components of the railway infrastructure, which are not mentioned in the criminalization norm and which are part of Annex I to Law no. 202/2016.

As for *the obstacles placed on the railway line*, these are represented by: road vehicles that are caught, due to the fault of their driver, on level crossings with the railway or, as the case may be, on other portions of the railway line, such as: cars, tractors, utility vehicles, trucks, etc.; by animals left unattended (e.g. cows, buffaloes, horses, etc.) that cross the railway line or even by large pillars or stones placed on the railway lines.

c. Analyzing the rich judicial practice regarding this crime, such an act is observed in the two most frequent situations: in the case of cutting the copper cables that make up the safety and operational management installations of railway traffic for their subsequent exploitation by legal entities in the field, respectively in the case of the unauthorized passage of a road vehicle on the railway line and its surprise at the moment of the appearance of the rolling stock, the main cause of such railway accidents being the failure of road vehicle drivers to comply with the level crossing pre-signaling indicators, as well as the audio/light signals or, as the case may be, the stop indicator, located immediately before such crossings or, as the case may be, the violation of the prohibition to cross the line at places other than the level crossings.

In relation to this second factual situation often encountered in judicial practice, many court decisions do not expressly mention the manner of *placing obstacles* in the event that a person, driving a motor vehicle and who, without taking precautions when crossing the railway, positions it perpendicular to the rails (intentionally or negligently), after which he is hit by the rolling stock, holding, in general, only that the defendant's act meets the constitutive elements of the offense provided for in art. 332 para. (1) C. pen. However, the lack of such mention may lead to the wrong conclusion that such an act - the surprise of a road vehicle on a railway by the rolling stock - may meet the constitutive elements of the offense in the manner of destroying, degrading or rendering the rolling stock unusable [sentence I of art. 332 para. (1) C. pen.].

Therefore, in all these situations in which there is a degradation of the rolling stock as a result of the road vehicle being caught on the railway, the material element will only be represented by the manner of *placing obstacles*, while the material consequence produced (usually, the degradation of the rolling stock) is nothing more than a consequence of the material element, which will determine the retention of the aggravated form of the crime, namely the occurrence of a railway accident [art. 332 para. (3) C. pen.][21]. Therefore, the degradation/destruction of the rolling stock will not be able to represent, in any case, an alternative manner of the material element from those included in the first sentence of art. 332 para. (1) C. pen., it being important that the courts expressly mention the exclusive retention of the second sentence of art. 332 para. (1) C. pen, such a clarification also having the role of eliminating the classification errors that occur in practice in the event of such railway accidents, when sometimes only the provisions of art. 332 para. (1) and (4) C. pen. are retained, without taking into account, erroneously, the provisions of para. (3)[22].

d. Regarding the crime of *false signaling* [art. 332 par. (2) C. pen.], after an in-depth analysis of the *Signaling Regulation no. 004/2006* we were able to conclude that false signaling acts represent those acts based on the use of signals that concern the transmission or, as the case may be, the receipt of orders and instructions addressed to personnel with duties in the field of railway traffic, in a way that leads to the presentation of a reality distinct from the one that must result, legally, from the content of the regulation. Specifically, signaling can come either from a person (usually, railway personnel) who issues a wrong order or indication, or it can result from the

[21] See also G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate*, *op. cit*., pp. 142-143.
[22] Therefore, to the extent that, as a result of the irregular entry onto the railway line, a railway accident occurs, within the meaning of art. 333 of the Penal Code (it being necessary, therefore, to produce, at least, a degradation of the rolling stock during its circulation or maneuvering), the provisions of para. (3) of art. 332 of the Penal Code will be retained in all cases, together with those of the second sentence of art. 332 para. (1) of the Penal Code and, as the case may be, of para. (4), depending on the form of incident guilt.

presence of indicators, installations or other types of signals that include a series of mandatory indications for railway personnel and which, for various reasons, do not express the reality imposed by the factual situation.

With regard to the commission of *other acts that may mislead railway personnel*, we observed that the current way of configuring the crime does not raise problems from the perspective of the principle of legality of incrimination, since it allows the identification of the type of material element, respectively the category of actions likely to mislead railway personnel and prevent the correct performance of their duties. However, the use of a single example of mislead to establish the previously mentioned criterion is deficient from the perspective of the configuration chosen by the legislator, given that, in relation to other criminal law norms, the use of the analogy clause was used in the content of the norm after indicating at least two alternative modalities of the material element/material objects.

Under these conditions, it is appropriate that *de lege ferenda* an extension of the modalities of the material element be operated, so that it concerns in addition to the commission of acts of false signaling and the transmission of false orders, data or information to the personnel ensuring the circulation of rolling stock, situations that we find, moreover, in practice. Also, given that the genre is represented by the category of acts capable of misleading railway personnel, while the species is represented by the acts of false signaling or transmission of false orders, data or information, we consider that *de lege ferenda* the marginal name of the article must naturally refer to the genre/category (and not the species as it operates *de lege lata*), as is also the case when naming groups/chapters or other crimes in the Criminal Code. Therefore, we propose that the crime be named in the future regulation *Misleading railway personnel*.

e. From the perspective of immediate follow-up and in the context of what was retained by the Regional Traffic Safety Inspectorates (in particular) in the content of the addresses submitted to the judicial bodies, we find in practice numerous decisions that mention that, as a result of the event that occurred, there was a endangerment of the safety of traffic on the railways or, as the case may be, of the safety of the means of transport, intervention or maneuver on the railway, as we could observe that there are also courts that retain a variant of the means, namely that the immediate follow-up involved the endangerment of both the safety of the means of transport, maneuver or intervention on the railway, and the safety of traffic on the railways. In the context of the generic legal object and for the reasons already expressed above, the immediate follow-up must aim de lege ferenda and with regard to this offense the endangerment of the safety of the traffic of rolling stock on the railway.

On the other hand, in the case of the crime of *false signaling*, the legislator speaks of the creation of *a danger of a railway accident*, no longer resorting to the formulation used in the first paragraph and which characterizes most railway crimes of concrete danger. In this context, the state of danger for the safety of railway traffic may also concern the risk of harm to the bodily integrity of some persons, without necessarily being in the presence of a risk of a railway accident, as is the case, for example, of the sudden stop of a train alone on the line following the awareness of the false nature of the signaling or other similar acts, an aspect that may lead to injuries to passengers on the train. Under these conditions, our proposal *de lege ferenda* is that the

consequence of the crime of false signaling should aim at *endangering the safety of the movement of material on the railway.*

f. Regarding the consummation of the crime of railway destruction in relation to one of the most frequent hypotheses encountered in practice, namely the destruction or degradation of railway installations following the commission of acts of theft, the jurisprudence almost unanimously holds that the crime is consummated by the simple cutting of safety and railway traffic control cables (containing copper), destruction which is carried out with a view to their subsequent valorization. This conclusion of the judicial bodies is reinforced by those mentioned by the regional railway traffic safety inspectorates in the contents of the addresses issued at the request of the criminal investigation bodies or the courts which hold, in these cases, the automatic production of a state of concrete danger for the safety of railway traffic.

However, the simple destruction of such cables cannot *per se* give rise to a concrete state of danger for the safety of railway traffic, it being, in essence, an act likely to lead to such a consequence (act of possible danger), in order to retain a concrete state of danger, additional proof of the fact is required that, in the event of the destruction of components of the railway traffic safety and control installations, the occurrence of a railway accident or, as the case may be, bodily injury, the death of a person or, as the case may be, the occurrence of other material consequences concerning the heritage/environment could not have been avoided/prevented, in the absence of the intervention of a fortunate event whose occurrence cannot normally be counted on.

Therefore, we will not be able to be in the presence of a railway crime consumed by danger if it is proven that in the given situation, even in the hypothesis of the destruction or degradation of railway assets, the safety and traffic management installations together with the measures taken immediately after the problem was reported by the railway personnel nevertheless allowed the movement to proceed in safe conditions, producing only a series of delays in the movement of the rolling stock or, as the case may be, the communication of the railway personnel in the station with those in the train through the emission-reception station or movement order, and not through the track circuit, as is normally provided[23]. However, such consequences, which involve at most a potentiality/event of endangering the safety of railway traffic, are currently treated by the judicial bodies, in a wrong manner, by taking over the approach from the old Criminal Code which correctly regulated them as crimes of potential danger, in the realm of acts of concrete danger.

In light of the above, until a future legislative intervention that would provide a legal basis for these extremely common situations in judicial practice, it is required *de lege lata* either to pronounce solutions of classification/acquittal based on the lack of objective typicality, or, as the case may be, in the case of the railway destruction crime, even to order a change in legal classification, by holding the attempt to commit such a crime.

g. Regarding the method of placing obstacles, the offense is committed when the rolling stock enters the railway line or, as the case may be, is near the level crossing or another portion of the railway line, if the obstacle is placed prior to this entry/approach, respectively when the obstacles enter the railway line, if the rolling stock is already on the line/nearby, this resulting from

[23] G. Rădășanu, *Starea de pericol în cazul infracțiunilor contra siguranței circulației pe căile ferate, op. cit.,* p. 139.

the fact that, in the absence of a possible immediate and direct material contact between the two material entities, one cannot speak, in essence, of a current/present danger of affecting the safety of the movement of rolling stock on the railway[24].

Under these conditions, unlike sentence I of art. 332 para. (1) C. pen., which encompasses the methods of destruction, degradation or rendering unusable, in the case of placing obstacles which represents, in essence, an activity preceding the production of material consequences, it will not be necessary to return to the previous form of the old regulation, in which the crime was one of a nature to endanger the safety of the movement of rolling stock on the railway (crime of potential danger). Firstly, this method presents a particular specificity resulting from the action, usually continuous, of crossing the line by various road vehicles (e.g. cars, tractors, trucks, etc.) or domestic animals (e.g. horses, cows, buffaloes, etc.), an aspect that leads to the need for a simultaneous approach of the goods/animals that could be the subject of a collision, unlike the situation when there is a destruction of railway goods, when it should not be necessary for the rolling stock to approach the place of destruction. Secondly, the treatment as a crime of concrete danger is counterbalanced by the sanctioning of the attempt, which, in practice, has the role of punishing upstream some intentional conduct that may subsequently endanger the safety of railway traffic.

Under these conditions, *de lege ferenda* the method of *placing obstacles* must be regulated separately (autonomously), within a distinct paragraph, given that this variant of committing the act does not in itself represent an act of destruction, but an activity preceding it, but which the legislator, for various reasons, chose to assimilate to the completed act. Implicitly, this will be found provided separately and within the marginal name of art. 332 C. pen.

h. In the case of the crime of false signaling, it is important that at the time of committing the material element on the same line there are simultaneously two railway vehicles or, as the case may be, even a single railway vehicle, but only to the extent that the risk of rolling stock derailments or damage to people or transported goods arises. Thus, we will be in the presence of a completed crime only when the probability of a railway accident becoming extremely high, so that the event, materialized in practice, usually through the intervention of the locomotive driver, the track inspector, the traffic officer, other people in that area, etc. who notice the false signs, thus attracting the attention of the locomotive driver in time, is the one that leads to the avoidance of a railway accident.

i. From an evidentiary perspective, the proof of the occurrence of a concrete state of danger is made, in most cases, by referring to those retained by the regional traffic safety inspectorates or, as the case may be, by the Regional Telecommunications Branches of the C.F.R. (in the case of the destruction of telecommunications installations), which mention that by destroying railway assets/occupying the free passage gauge (placing obstacles on the line) the safety of railway traffic was endangered. However, given that the inspectorates are part of the Regional Branches of the C.F.R. Infrastructure, branches that are usually civil parties in the criminal process to recover the damage caused, substantiating the retention of the crime by referring exclusively to those

[24] Ibidem, p. 141.

established by them creates a presumption of impartiality and, implicitly, an imbalance of arms with regard to the defense of the person brought to trial.

In this context, a change of perspective in this matter would be beneficial, in the sense that judicial bodies would rather resort to the help of technical judicial experts or, as the case may be, of independent bodies/institutions that could ensure some guarantees of impartiality/objectivity in the criminal process, as is the case, for example, of the Territorial Railway Safety Inspectorates [within the Romanian Railway Safety Authority (ASFR)], the Romanian Railway Investigation Agency (AGIFER), etc. Until then, in order to respect the right to a fair trial, given that we have encountered cases in practice when the defendants' request to administer/re-administer evidence in order to prove the state of danger produced is rejected (on the grounds that such a consequence has already been proven through the addresses issued by these regional inspectorates), it becomes necessary to counterbalance such a situation by the need to administer other evidence (e.g. witness statements, addresses issued by railway safety inspectorates, forensic technical expertise reports, etc.).

j. Regarding the relationship with the general crime of destruction (art. 253 C. pen.), in the absence of the constitutive elements of the special crime, therefore of the cumulative presence of the two aspects that attract the application of the principle of specialty of the criminal law (material object and immediate consequence of danger), the sanctioning treatment of the general crime will be applied, with the mention that before giving precedence to the general norm, the judicial bodies will be required to verify, first, the conditions for the detention of a possible attempt at the special crime of railway destruction.

k. From the perspective of comparative law, as could be observed in the case of certain European legislation, although at a formal level there is talk of creating a state of danger for the safety of railway traffic, for the health or life of some people, etc., which leads us to the idea of a crime of concrete danger, through the interpretation offered by the doctrine of certain states we reach the situation in which criminal liability also operates in the hypothesis in which the danger to social value is a future, indirect one (Italy, Hungary), not just current and direct, as the German and Portuguese doctrine holds.

However, sharing the view highlighted in the Italian or Hungarian doctrine according to which the crime of railway destruction must also target those situations when the danger created is indirect, future, eventual, and therefore not only the situation when it is current, direct and concrete, I reiterated on this occasion the need to modify the immediate consequences in the case of the crime of railway destruction in domestic law (except in the case of placing obstacles), by returning to the previous regulation that correctly treated this act as one of potential danger. Moreover, from a formal point of view, Canada regulates a crime of potential danger, by the need for the existence of acts likely to cause death or bodily harm to persons. Venezuelan doctrine also approaches the railway crime from the same perspective.

Similarly to the other railway crimes previously analyzed, most states condition the commission of the crime of railway destruction on the necessity of endangering the life, physical integrity or important property belonging to third parties (Germany, Portugal - aggravated form,

Spain, Finland, Hungary, Estonia, Bulgaria, Canada). However, there are also situations similar to the regulation in our domestic law that provide for the necessity of endangering only the safety of railway transport (Spain, Denmark), as there are also states that impose the condition that the destruction be committed for the purpose of endangering the property of the perpetrator or another (Denmark). We also find states that presume a state of danger for the safety of railway traffic by committing acts of destruction expressly mentioned in the criminalization norm (Portugal - basic form, Latvia[25]).

This paper concludes the scientific approach with the presentation of some evaluations of the research results carried out, as well as with a series of necessary proposals for legislative amendment, **conclusions** and ***de lege ferenda* proposals** to which I referred above in the brief analysis of the five chapters.

...

Overall, the doctoral thesis followed an approach that combines theoretical and legislative aspects in the fields of criminal law and the railway sector with a detailed analysis of national and other Member States' jurisprudence, as well as comparative law issues, in order to formulate pertinent conclusions and proposals *de lege ferenda*. In these circumstances, we express our hope that this work will be of interest, on the one hand, from an academic perspective, given that it represents scientific research that addresses the field of railway safety crimes in a comprehensive and balanced manner, and also for practical reasons, since it aims at the uniform and coherent application by the judicial bodies of the legal provisions in this matter.

[25] Section 258, para. (1) sentence I.

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67. hwww.scribd.com/document/651088162/Circuitul-de-Cale;
68. https://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#21;
69. www.sintact.ro;
70. www.scj.ro;
71. www.senat.ro/legis/lista.aspx?nr_cls=L30&an_cls=2025;
72. https://sites.google.com/view/formare-profesionala-feroviara/activit%C4%83%C8%9Bi-specifice/services/electromecanic-ttr;
73. www.wipo.int/wipolex/en/legislation/details/16677;
74. https://www.wipo.int/wipolex/en/legislation/details/21816;
75. www.zakonyprolidi.cz/translation/cs/2009-40?langid=1033.

V. Lato sensu legislation

A. Laws, emergency ordinances, ordinances, decrees

1. Legea nr. 314/2023 pentru modificarea art. 331 din Legea nr. 286/2009 privind Codul penal, publicată în M. Of. nr. 1013 din 07 noiembrie 2023;
2. Legea nr. 200/2023 pentru modificarea şi completarea Legii nr. 286/2009 privind Codul penal, precum şi a altor acte normative, publicată în M. Of. nr. 616 din 06 iulie 2023;
3. Legea nr. 195/2020 privind statutul personalului feroviar, publicată în M. Of. nr. 820 din 07 septembrie 2020;
4. Legea nr. 21/2020 privind Codul aerian, publicată în M. Of. nr. 222 din 19 martie 2020;
5. Legea nr. 202/2016 privind integrarea sistemului feroviar din România în spațiul feroviar unic european, publicată în M. Of. nr. 900 din 09 noiembrie 2016;
6. Legea nr. 187/2012 pentru punerea în aplicare a Legii nr. 286/2009 privind Codul penal, publicată în M. Of. nr. 757 din 12 noiembrie 2012;

7. Legea nr. 194/2011 privind combaterea operaţiunilor cu produse susceptibile de a avea efecte psihoactive, altele decât cele prevăzute de acte normative în vigoare, republicată în M. Of. nr. 140 din 26 februarie 2014;
8. Legea nr. 135/2010 privind Codul de procedură penală, publicată în M. Of.nr. 486 din 15 iulie 2010;
9. Legea nr. 286/2009 privind Codul penal, publicată în M. Of. nr. 510 din 24 iulie 2009;
10. Legea nr. 356/2006 pentru modificarea și completarea Codului de procedură penală, precum și pentru modificarea altor legi, publicată în M. Of. nr. 677 din 7 august 2006;
11. Legea nr. 319/2006 a securităţii şi sănătăţii în muncă, publicată în M. Of. nr. 646 din 26 iulie 2006;
12. Legea nr. 339/2005 privind regimul juridic al plantelor, substanţelor şi preparatelor stupefiante şi psihotrope, publicată în M. Of nr. 18 din 11 ianuarie 2007;
13. Legea nr. 289/2005 privind unele măsuri pentru prevenirea şi combaterea fenomenului infracţional în domeniul transportului pe calea ferată, publicată în M. Of. nr. 922 din 17 octombrie 2005;
14. Legea 191/2003 privind infracţiunile la regimul transportului naval, publicată în M. Of. nr. 332 din 16 mai 2003;
15. Legea nr. 53/2003 privind Codul muncii, republicată în M. Of. nr. 345 din 18 mai 2011;
16. Legea nr. 143/2000 privind prevenirea şi combaterea traficului şi consumului ilicit de droguri, republicată în M. Of. nr. 163 din 06 martie 2014;
17. Legea nr. 24/2000 privind normele de tehnică legislativă, republicată în M. Of. nr. 260 din 21 aprilie 2010;
18. Legea nr. 129/1996 privind transportul pe căile ferate române, publicată în M. Of. nr. 268 din 30 octombrie 1996;.
19. Legea nr. 50/1991 privind autorizarea executării lucrărilor de construcții, publicată în M. Of. nr. 933 din 13 octombrie 2004;
20. Decretul nr. 360 din 2 noiembrie 1976 privind aprobarea Statutului disciplinar al personalului din unităţile de transporturi, publicat în B. Of. nr. 100 din 13 noiembrie 1976;
21. Legea nr. 10/1972 privind Codul muncii, publicată în B. Of. nr. 140 din 1 decembrie 1972;
22. Legea nr. 15/1968 privind adoptarea Codului penal al României, publicată în B. Of. nr. 79-79 bis din 21 iunie 1968;
23. Decretul nr. 212/1960, publicat în B. Of. nr. 8 din 17 iunie 1960;
24. Decretul nr. 318/1958 pentru modificarea Codului penal și a Codului de procedură penală, publicat în B. Of. nr. 27 din 21 iulie 1958;
25. Decretul nr. 102/1956 pentru completarea și republicarea Decretului nr. 550 din 21 decembrie 1953, publicat în M. Of. nr. 6 din 29 februarie 1956;
26. Decretul nr. 265/1954 pentru modificarea şi completarea unor dispoziţii din Codul penal al Republicii Populare Române, publicat în B. Of. nr. 36 din 03 august 1954;
27. Decretul nr. 202/1953 pentru modificarea Codului Penal al Republicii Populare Române, publicat în B. Of. nr. 15 din 14 mai 1953;

28. Legea nr. 5/1952 pentru organizarea judecătorească, republicată în B. Of. nr. 29 din 31 iulie 1958;
29. Decretul nr. 192/1950 pentru modificarea Codului Penal, publicat în B. Of. nr. 67 din 5 august 1950;
30. Decretul nr. 292/1949, publicat în B. Of. nr. 47 din 21 iulie 1949;
31. Decretul Lege pentru preschimbarea titlurilor unor coduri și legi nr. 3117 din 12 Sept. 1940, publicat în M. Of. nr. 213 din 13 septembrie 1940;
32. Legea nr. 118/1937 de exploatare și de poliție a căilor ferate, publicată în M. Of. nr. 76 din 1 aprilie 1937;
33. Legea nr. 163/1924 privitoare la unele infracțiuni neintenționate săvârșite de funcționarii căilor ferate ale statului sau particulare, adoptată prin Decretul nr. 2299 din 4 iulie 1924;
34. Legea asupra poliției și exploatării căilor ferate din România, publicată în M. Of. la data de 26 martie 1870;
35. O.U.G. nr. 73/2019 privind siguranţa feroviară, publicată în M. Of. nr. 1002 din 12 decembrie 2019;
36. O.U.G. nr. 8/2013 privind examinarea medicală şi psihologică a personalului cu atribuţii în siguranţa transporturilor şi pentru modificarea Legii nr. 95/2006 privind reforma în domeniul sănătăţii, publicată în M. Of. nr. 115 din 28 februarie 2013;
37. O.U.G. nr. 31/2011 privind interzicerea achiziţionării de la persoane fizice a metalelor feroase şi neferoase şi a aliajelor acestora, publicată în M. Of. nr. 217 din 30 martie 2011;
38. O.U.G. nr. 207/2000 privind modificarea şi completarea Codului penal şi a Codului de procedura penală, publicată în M. Of. nr. 594 din 22 noiembrie 2000;
39. O.U.G. nr. 12/1998 privind transportul pe căile ferate române și reorganizarea Societății Naționale a Căilor Ferate Române, publicată în M. Of. nr. 834 din 9 septembrie 2004;
40. O.G. nr. 39/2000 pentru stabilirea şi sancţionarea unor fapte contravenţionale în operaţiunile de transport feroviar şi cu metroul, publicată în M. Of. nr. 39 din 31 ianuarie 2000;
41. O.G. nr. 29/1997 privind Codul aerian civil, republicată în M. Of. nr. 45 din 26 ianuarie 2001.

B. Government decisions, ministerial orders

1. H.G. nr. 877/2024 pentru aprobarea Normelor privind recoltarea, depozitarea şi transportul mostrelor biologice în vederea stabilirii îmbibaţiei de alcool în sânge sau a prezenţei în organism a substanţelor psihoactive în cazul persoanelor implicate în evenimente sau împrejurări în legătură cu traficul rutier, precum şi de punere în aplicare a art. 1 din O.U.G. nr. 97/2024 pentru stabilirea unor măsuri în domeniul siguranţei rutiere şi pentru modificarea şi completarea Regulamentului de aplicare a O.U.G. nr. 195/2002 privind circulaţia pe drumurile publice, aprobat prin H.G. nr. 1.391/2006, publicată în M. Of. nr. 709 din 19 iulie 2024;
2. H.G. nr. 962/2023 pentru reaprobarea Notei de fundamentare privind necesitatea și oportunitatea efectuării cheltuielilor aferente proiectului de investiții "Modernizarea a 55 de locomotive electrice destinate remorcării trenurilor de călători, conversia a 20 locomotive diesel hidraulice de manevră în

locomotive electrice cu acumulatori și modernizarea a 139 vagoane de călători", publicată în M. Of. nr. 941 din 18 octombrie 2023;

3. H.G. nr. 985/2020 pentru aprobarea Strategiei de dezvoltare a infrastructurii feroviare 2021-2025, publicată în M. Of. nr. 1236 din 16 decembrie 2020;
4. H.G. nr. 666/2016 pentru aprobarea documentului strategic Master Planul General de Transport al României, publicată în M. Of. nr. 778 din 4 octombrie 2016;
5. H.G. nr. 643/2011 pentru aprobarea Condițiilor de închiriere de către Compania Națională de Căi Ferate "C.F.R." - S.A. a unor părți ale infrastructurii feroviare neinteroperabile, precum și gestionarea acestora, publicată în M. Of. nr. 486 din 08 iulie 2011;
6. H.G. nr. 117/2010 pentru aprobarea Regulamentului de investigare a accidentelor şi a incidentelor, de dezvoltare şi îmbunătăţire a siguranţei feroviare pe căile ferate şi pe reţeaua de transport cu metroul din România, publicată în M. Of. nr. 138 din 02 martie 2010;
7. H.G. nr. 1663/2004 privind organizarea şi funcţionarea Centrului Naţional de Calificare si Instruire Feroviară – CENAFER, publicată în M. Of. nr. 983 din 26 octombrie 2004;
8. H.G. nr. 1283/2004 privind înfiinţarea Societăţii Comerciale Electrificare C.F.R. - S.A. ca filială a Companiei Naţionale de Căi Ferate C.F.R. - S.A., publicată în M. Of. nr. 783 din 26 august 2004;
9. H.G. nr. 706/2002 privind înființarea unor filiale ale Companiei Naționale de Căi Ferate ”C.F.R.” - S.A., publicată în M. Of. nr. 525 din 18 iulie 2002;
10. H.G. nr. 203/1994 pentru stabilirea şi sancționarea contravențiilor la normele privind transporturile pe căile ferate române, publicată în M. Of. nr. 24 din 14 februarie 1997;
11. Ordinul m.t.i. nr. 3815/2024 privind aprobarea Instrucţiunilor pentru circulaţia materialului rulant automotor cu gabaritul CFR vagon de încărcare depăşit, care se încadrează în gabaritul 0-VM, destinat transportului de persoane, publicat în M. Of. nr. nr. 1150 din 18 noiembrie 2024;
12. Ordinul m.t.i. nr. 1826/2023, pentru aprobarea Instrucţiunilor privind procesul de mentenanţă a instalaţiilor feroviare de control-comandă şi semnalizare terestre utilizate pe reţeaua feroviară din România aflată în administrarea Companiei Naţionale de Căi Ferate "CFR" - S.A., publicat în M. Of. nr. 926 din 13 octombrie 2023;
13. Ordinul m.t.i. nr. 1825/2023 pentru aprobarea Condiţiilor pe care trebuie să le îndeplinească subsistemul de control-comandă şi semnalizare terestre al sistemului feroviar din România, publicat în M. Of. 924 din 13 octombrie 2023;
14. Ordinul m.t.i. nr. 1561/2022 privind lista funcţiilor şi meseriilor cu atribuţii şi responsabilităţi în siguranţa circulaţiei feroviare sau cu metroul, publicat în M. Of. nr. 917 din 19 septembrie 2022;
15. Ordinul m.t.i. nr. 1.151/1.752/2021 pentru aprobarea cadrului general privind examinarea medicală şi psihologică a personalului cu atribuţii în siguranţa transporturilor, publicat în M. Of. nr. 848 din 06 septembrie 2021;

16. Ordinul m.t. nr. 1853/2018 privind aprobarea Normelor specifice pentru deservirea trenurilor de marfă de către un singur agent - mecanicul de locomotivă şi modificarea şi completarea unor regulamente şi instrucţiuni din domeniul feroviar, publicat în M. Of. nr. 22 din 09 ianuarie 2019;
17. Ordinul m.t. nr. 615/2015 privind aprobarea Procedurii pentru obținerea permisului de mecanic de locomotivă, Cerințelor privind procedurile de eliberare și actualizare a certificatului și Cerințelor și procedurii de recunoaștere a persoanelor și organismelor, publicat în M. Of. nr. 346 din 20 mai 2015;
18. Ordinul m.t. nr. 256/2013 pentru aprobarea Normelor privind serviciul continuu maxim admis pe locomotivă, efectuat de personalul care conduce şi/sau deserveşte locomotive în sistemul feroviar din România, publicat în M. Of. nr. 198 din 08 aprilie 2013;
19. Ordinul ministrului sănătății nr. 1512/2013 pentru aprobarea Normelor metodologice privind recoltarea, depozitarea şi transportul mostrelor biologice în vederea probaţiunii judiciare prin stabilirea alcoolemiei sau a prezenţei în organism a substanţelor psihoactive în cazul persoanelor implicate în evenimente sau împrejurări în legătură cu traficul rutier, publicat în M. Of. nr. 812 din 20 decembrie 2013;
20. Ordinul m.t.i. nr. 815/2010 pentru aprobarea Normelor privind implementarea şi dezvoltarea sistemului de menţinere a competenţelor profesionale pentru personalul cu responsabilităţi în siguranţa circulaţiei şi pentru alte categorii de personal care desfăşoară activităţi specifice în operaţiunile de transport pe căile ferate din România şi pentru actualizarea Listei funcţiilor cu responsabilităţi în siguranţa circulaţiei, care se formează-califică, perfecţionează şi verifică profesional periodic la CENAFER, publicat în M. Of. nr. 716 din 27 octombrie 2010;
21. Ordinul m.t. nr. 103/2008 privind aprobarea Instrucțiunilor pentru admiterea și expedierea transporturilor excepționale pe infrastructura feroviară - nr. 328, publicat în M. Of. nr. 180 din 10 martie 2008;
22. Ordinul m.t.c.t. nr. 2229/2006 privind aprobarea Instrucţiunilor pentru activitatea personalului de locomotivă în transportul feroviar nr. 201, publicat în M. Of. nr. 23 din 15 ianuarie 2007;
23. Ordinul m.t.c.t. nr. 1482/2006 pentru aprobarea Regulamentului de semnalizare nr. 004/2006, publicat în M. Of. nr. 814 din 03 octombrie 2006;
24. Ordinul m.t.c.t. nr. 2262/2005 privind autorizarea personalului cu responsabilităţi în siguranţa circulaţiei care urmează să desfăşoare pe propria răspundere activităţi specifice transportului feroviar personalului cu responsabilităţi în siguranţa circulaţiei, publicat în M. Of. nr. 113 din 07 februarie 2006;
25. Ordinul m.t.c.t. nr. 1817/2005 pentru aprobarea Instrucţiunilor privind revizia tehnică şi întreţinerea vagoanelor în exploatare nr. 250, publicat în M. Of. nr. 1039 din 23 noiembrie 2005;
26. Ordinul m.t.c.t. nr. 1816/2005, publicat în M. Of. nr. 1064 bis din 28 noiembrie 2005 de aprobare a Regulamentului nr. 5/2005 pentru circulaţia trenurilor şi manevra vehiculelor feroviare;
27. Ordinul m.t.c.t. nr. 1815/2005 pentru aprobarea Regulamentului de remorcare și frânare nr. 006, publicat în M. Of. nr. 1043 din 24 noiembrie 2005;

28. Ordinul m.t.c.t. nr. 417/2004 pentru aprobarea Instrucţiunilor pentru restricţii de viteză, închideri de linie şi scoateri de sub tensiune - nr. 317;
29. Ordinul m.t. nr. 679/1999 pentru aprobarea Instrucției pentru exploatarea mijloacelor de intervenţie nr. 632, publicat în Foaia Oficială a C.F.R.;
30. Ordinul m.t.t. nr. 855/1986 privind unele măsuri pentru întărirea disciplinei în unitățile Ministerului Transporturilor și Telecomunicațiilor (nepublicat).

C. Regulations, directives

1. Regulamentul de punere în aplicare nr. 773/2019 al Comisiei din 16 mai 2019 privind specificaţia tehnică de interoperabilitate referitoare la subsistemul "exploatare şi gestionarea traficului" al sistemului feroviar din Uniunea Europeană şi de abrogare a Deciziei 2012/757/UE, publicat în J.O.U.E. nr. 139 din 27 mai 2019;
2. Regulamentul delegat (UE) 2018/762 al Comisiei din 8 martie 2018 de stabilire a unor metode comune de siguranță privind cerințele sistemului de management al siguranței, în temeiul Directivei (UE) 2016/798 a Parlamentului European și a Consiliului, și de abrogare a Regulamentelor (UE) nr. 1158/2010 și (UE) nr. 1169/2010 ale Comisiei, publicat în J.O.U.E. nr. 129 din 25 mai 2018;
3. Regulamentul (UE) 2016/796 al Parlamentului European și al Consiliului din 11 mai 2016 privind Agenția Uniunii Europene pentru Căile Ferate și de abrogare a Regulamentului (CE) nr. 881/2004, publicat în J.O.U.E. nr. 138 din 26 mai 2016;
4. Directiva nr. 798/2016 privind siguranța feroviară a Parlamentului European și a Consiliului din 11 mai 2016, publicată în J.O.U.E. nr. 138 din 26 mai 2016;
5. Directiva nr. 797/2016 privind interoperabilitatea sistemului feroviar în Uniunea Europeană a Parlamentului European și a Consiliului din 11 mai 2016, publicată în J.O.U.E. nr. 138 din 26 mai 2016.

D. Law corpus

1. G. Alexianu, C. St. Stoicescu, *Vol. IV. Coduri, legi, decrete şi regaulamente (1861-1906), ediția III* în C. Hamangiu, *Codul General al României (Coduri, Legi şi Regulamente), 1858-1939,* Monitorul Oficial și Imprimeriile statului. Imprimeria centrală, Bucureşti, 1941;
2. Consiliul Legislativ, *Colecțiune de legi și regulamente. Tomul XXVI, 1948, 1-31 Ianuarie 1948, legi nr. 1-12, Anexe nr. 1-10*, Monitorul Oficial și Imprimeriile statului, Imprimeria centrală, București, 1948;
3. Ministerul Justiției, *Codul penal Carol al II-lea, Ediție oficială*, Imprimeria Centrală, București, 1936;
4. Ministerul Justiției, *Legea nr. 289/2000 privind Codul penal - mențiuni și precizări* (https://www.just.ro/wp-content/uploads/2021/11/noul-cod-penal precizari_01022013.pdf).

E. Legislation of other states

1. Codul penal al Argentinei;
2. Codul penal al Bulgariei;
3. Codul penal al Canadei;
4. Codul penal al Cehiei;
5. Codul penal al Croației;
6. Codul penal al Danemarcii;
7. Codul penal al Estoniei;
8. Codul penal al Finlandei;
9. Codul penal al Germaniei;
10. Codul penal al Italiei;
11. Codul penal al Letoniei;
12. Codul penal al Olandei;
13. Codul penal al Portugaliei;
14. Codul penal al Spaniei;
15. Codul penal al Ungariei;
16. Codul penal al Venezuelei;
17. Codul penal al Noului Wales de Sud (Australia);
18. Decretul Regal 929/2020, din 27 octombrie 2020, privind siguranța în exploatare și interoperabilitate feroviară, publicat în B. Of. al Statului (spaniol, n.n.) nr. 286 din 29 octombrie 2020, Sec. I;
19. Legea nr. 38/2015 privind sectorul feroviar, publicată în B. Of. al Statului (spaniol) nr. 234, din 30 septembrie 2015.

VI. Jurisprudence

A. Supreme Court jurisprudence

1. Î.C.C.J., Completul pentru dezlegarea unor chestiuni de drept, dec. pen. nr. 25 din 27 ianuarie 2025, publicată în M. Of. nr. 70 din 28 ianuarie 2025;
2. Î.C.C.J., s. pen., dec. pen. nr. 48/A din 8 martie 2022;
3. Î.C.C.J., s. pen. dec. pen. nr. 369/RC din 28 septembrie 2021;
4. Î.C.C.J., Completul pentru dezlegarea unor chestiuni de drept, dec. pen. nr. 48 din 9 iunie 2021, publicată în M. Of. nr. nr. 698 din 14 iulie 2021;
5. Î.C.C.J., s. pen., dec. pen. nr. 1/RC din 7 ianuarie 2020;
6. Î.C.C.J., s. pen., dec. pen. nr. 220/RC din 6 iunie 2019;
7. Î.C.C.J., s. pen., sent. pen. nr. 377/2018 (nepublicată)
8. Î.C.C.J., s. pen., dec. pen. nr. 4/A din 10 ianuarie 2017;
9. Î.C.C.J., dec. R.I.L. nr. 1 din 15 februarie 2016, publicată în M. Of. nr. nr. 258 din 06 aprilie 2016;

10. Î.C.C.J., Completul pentru dezlegarea unor chestiuni de drept, dec. pen. nr. 16 din 22 mai 2015, publicată în M. Of. nr. 490 din 03 iulie 2015;
11. Î.C.C.J., s. pen., dec. nr. 77/A din 5 martie 2015;
12. Î.C.C.J., s. pen., dec. nr. 238/A din 5 septembrie 2014;
13. Î.C.C.J, s. pen., dec. pen. nr. 44/A/2014 din 5 martie 2014;
14. Î.C.C.J., s. pen., dec. pen. nr. 4442 din 09 decembrie 2010;
15. Î.C.C.J., s. pen., dec. pen. 2933/2009;
16. Î.C.C.J., dec. R.I.L. nr. I din 23 februarie 2004, publicată în M. Of. nr. 404 din 06 mai 2004;
17. C.S.J., s. pen., dec. pen. nr. 3162/1998;
18. Trib. Sup., s. pen., dec. pen. nr. 390/1989;
19. Trib. Sup., s. pen., dec. pen. nr. 476/1983;
20. Trib. Sup., s. pen., dec. pen. nr. 466 din 26 februarie 1982;
21. Trib. Sup., s. pen., dec. pen. nr. 1505/1980;
22. Trib. Sup., s. pen., dec. pen. nr. 2594 din 12 decembrie 1979;
23. Trib. Sup., s. pen., dec. pen. nr. 127 din 21 ianuarie 1978;
24. Trib. Sup., s. pen., dec. pen. nr. 3296 din 28 august 1972;
25. Trib. Sup., s. pen., dec. pen. nr. 2670/1975;
26. Trib. Sup., s. pen., dec. pen. nr. 1843 din 23 martie 1971;
27. Trib. Sup., s. pen., dec. pen. nr. 6285/1970;
28. Trib. Sup., Decizia de îndrumare nr. 1 din 14 martie 1968.

B. Jurisprudence of the courts of appeal

1. C. Ap. Timișoara, s. pen., dec. pen. nr. 92 din 19 februarie 2025;
2. C. Ap. Bacău, s. pen.c.m., dec. pen. nr. 92 din 30 ianuarie 2025;
3. C. Ap. Pitești, s. pen.c.m.f., dec. pen. nr. 1255 din 23 decembrie 2024;
4. C. Ap. Craiova, s. pen.c.m., dec. pen. nr. 1352 din 08 noiembrie 2024;
5. C. Ap. Brașov, s. pen., dec. pen. nr. 286 din 10 aprilie 2024;
6. C. Ap. Suceava, s. pen.c.m., dec. pen. nr. 72 din 19 ianuarie 2024;
7. C. Ap. Bacău, s. pen.c.m., dec. pen. nr. 789 din 11 octombrie 2023;
8. C. Ap. Alba Iulia, s. pen., dec. pen. nr. 763 din 15 septembrie 2023;
9. C. Ap. București, s. a II-a pen, dec. pen. nr. 1274/A din 20 iulie 2023;
10. C. Ap. Târgu Mureș, s. pen.c.m.f., dec. pen. nr. 347 din 8 iunie 2023;
11. C. Ap. București, s.a II-a pen., dec. pen. 955 din 10 mai 2023;
12. C. Ap. Suceava, s. pen.c.m., dec. pen. nr. 599 din 10 aprilie 2023;
13. C. Ap. Suceava, s. pen., dec. pen. nr. 807 din 22 iulie 2022;
14. C. Ap. Ploiești, s. pen.c.m., dec. pen. nr. 497 din 19 aprilie 2022;
15. C. Ap. Pitești, s. pen.c.m.f., dec. pen. nr. 202 din 23 februarie 2022;

16. C. Ap. Pitești, s. pen.c.m.f., dec. pen. nr. 783 din 9 noiembrie 2021;
17. C. Ap. Suceava, s. pen.c.m., dec. pen. nr. 653 din 8 octombrie 2021;
18. C. Ap. Ploiești, s. pen.c.m.f., dec. pen. nr. 1028 din 10 noiembrie 2020;
19. C. Ap. Constanța, s. pen.c.m.f., dec. pen. nr. 748 din 25 septembrie 2020;
20. C. Ap. Timișoara, s. pen., dec. pen. nr. 872/A din 21 septembrie 2020;
21. C. Ap. Cluj, s. pen. și de minori, dec. pen. nr. 622 din 24 iunie 2020;
22. C. Ap. Constanţa, s. pen.c.m.f., dec. pen. nr. 480/P/ din 18 iunie 2020;
23. C. Ap. Iaşi, s. pen.c.m., dec. pen. nr. 1006 din 19 decembrie 2019;
24. C. Ap. Galați, s. pen.c.m., dec. pen. nr. 1318 din 19 noiembrie 2019;
25. C. Ap. Constanța, s. pen.c.m.f., dec. pen. nr. 973 din 7 noiembrie 2019;
26. C. Ap. Alba Iulia, s. pen., dec. pen. nr. 695 din 23 octombrie 2019;
27. C. Ap. Suceava, s. pen.c.m., dec. pen. nr. 747 din 11 septembrie 2019;
28. C. Ap. Ploiești, s. pen.c.m.f., dec. pen. nr. 739 din 11 septembrie 2019;
29. C. Ap. Timișoara, s. pen., dec. pen. nr. 528 din 16 mai 2019;
30. C. Ap. Constanța, s. pen.c.m.f., dec. pen. nr. 309/P din 28 martie 2019;
31. C. Ap. Galați, s. pen.c.m., dec. pen. nr. 147 din 6 februarie 2019;
32. C. Ap. Suceava, s. pen.c.m., dec. pen. nr. 955 din 31 octombrie 2018;
33. C. Ap. Brașov, s. pen., dec. pen. nr. 664 din 25 octombrie 2018;
34. C. Ap. Timișoara, s. pen., dec. pen. nr. 1140 din 16 octombrie 2018;
35. C. Ap. Timișoara, s. pen., dec. pen. nr. 943 din 20 septembrie 2018;
36. C. Ap. București, s. a II-a pen., dec. pen. nr. 423 din 21 martie 2018;
37. C. Ap. Timișoara, s. pen., dec. pen. nr. 305 din 12 martie 2018;
38. C. Ap. Brașov, s. pen., dec. pen. nr. 126 din 07 martie 2018;
39. C. Ap. Cluj, s. pen. și de minori, dec. pen. nr. 135/A/2016;
40. C. Ap. Bacău, s. pen.c.m., dec. pen. nr. 1160 din 1 noiembrie 2016;
41. C. Ap București, s. I-a pen., dec. pen. nr. 1528 din 17 octombrie 2016;
42. C. Ap. Craiova, s. pen.c.m., dec. pen. nr. 1018 din 17 iunie 2016;
43. C. Ap. Timișoara, s. pen., dec. pen. nr. 538 din 25 aprilie 2016;
44. C. Ap. Alba Iulia, s. pen., dec. pen. nr. 224 din 1 martie 2016;
45. C. Ap. Cluj, s. pen. și de minori, dec. pen. nr. 228 din 19 februarie 2016;
46. C. Ap. Timișoara, s. pen., dec. pen. nr. nr. 73 din 21 ianuarie 2016;
47. C. Ap. Galați, s. pen.c.m., dec. pen. nr. 1057 din 12 octombrie 2015;
48. C. Ap. Alba Iulia, s. pen., dec. pen. nr. 695 din 30 iunie 2015;
49. C. Ap. Timișoara, s. pen., dec. pen. nr. 226 din 25 februarie 2015;
50. C. Ap. Ploiești, s. pen.c.m.f., dec. pen. nr. 803 din 9 septembrie 2014;
51. C. Ap. Ploiești, s. pen.c.m.f., dec. pen. nr. 484 din 8 mai 2014;
52. C. Ap. Brașov, s. pen.c.m., dec. pen. 37 din 25 februarie 2014;

53. C. Ap. Craiova, s. pen.c.m., dec. pen. 2458 din 12 decembrie 2013;
54. C. Ap. Iași, s. pen.c.m., dec. pen. nr. 1258 din 3 decembrie 2013;
55. C. Ap. Bacău, s. pen.c.m.f., sent. pen. nr. 104 din 9 octombrie 2013;
56. C. Ap. Brașov, s. pen.c.m., sent. pen. nr. 18 din 20 februarie 2013;
57. C. Ap. Bacău, s. pen.c.m., dec. pen. nr. 917 din 17 septembrie 2012;
58. C. Ap. Craiova, s. pen.c.m., sent. pen. nr. 71/2010;
59. C. Ap. Cluj, s. pen. și de minori, sent. pen. nr. 37/D din 29 martie 2010;
60. C. Ap. Brașov, s. pen.c.m., dec. pen. nr. 390/R din 11 iunie 2009;
61. C. Ap. Iași, s. pen., dec. pen. nr. 528 din 1 septembrie 2005;
62. C. Ap. București, s. I. pen., dec. pen. nr. 62/2005;
63. C. Ap. București, s. pen., dec. pen. nr. 380/1996;
64. C. Ap. Timișoara, s. pen., dec. pen. nr. 114 din 20 octombrie 1994.

C. Jurisprudence of courts and tribunals

1. Jud. Suceava, sent. pen. nr. 245 din 01 aprilie 2025;
2. Jud. Brașov, sent. pen. nr. 372 din 07 martie 2025;
3. Jud. Brăila, sent. pen. nr. 263 din 28 februarie 2025;
4. Jud. Sfântu Gheorghe, sent. pen. nr. 30 din 04 februarie 2025;
5. Jud. Timișoara, sent. pen. nr. 3742 din 09 decembrie 2024;
6. Jud. Cluj-Napoca, sent. pen. nr. 1333 din 11 octombrie 2024;
7. Jud. Onești, sent. pen. nr. 748 din 30 august 2024;
8. Jud. Ploiești, sent. pen. nr. 1485 din 23 august 2024;
9. Jud. Brezoi, sent. pen. nr. 157 din 18 iulie 2024;
10. Jud. Constanța, sent. pen. nr. 462 din 12 aprilie 2024;
11. Jud. Motru, sent. pen. nr. 33 din 10 aprilie 2024;
12. Jud. Mediaș, înch. j.c.p. nr. 36 din 9 aprilie 2024;
13. Jud. Chișineu Criș, înch. j.c.p. nr. 77 din 2 aprilie 2024;
14. Jud. Petroșani, sent. pen. nr. 119 din 18 martie 2024;
15. Jud. Brașov, sent. pen. nr. 339 din 8 martie 2024;
16. Jud. Blaj, sent. pen. nr. 42 din 07 martie 2024;
17. Jud. Miercurea Ciuc, sent. pen. nr. 143 din 29 februarie 2024;
18. Jud. Medgidia, sent. pen. nr. 401 din 27 februarie 2024;
19. Jud. Câmpulung, sent. pen. nr. 47 din 19 februarie 2024;
20. Jud. Hațeg, sent. pen. nr. 64 din 9 februarie 2024;
21. Jud. Lehliu-Gară, înch. fin. din 07 februarie 2024;
22. Jud. Târgu Jiu, înch. j.c.p. nr. 30 din 29 ianuarie 2024;

23. Jud. Buftea, înch. nr. 141 din 22 ianuarie 2024;
24. Jud. Brașov, sent. pen. nr. 25 din 15 ianuarie 2024;
25. Jud. Sf. Gheorghe, sent. pen. nr. 496 din 28 decembrie 2023;
26. Jud. Gura Humorului, sent. pen. nr. 369 din 21 decembrie 2023;
27. Jud. Brașov, sent. pen. nr. 1879 din 15 decembrie 2023;
28. Jud. Constanța, sent. pen. nr. 1472 din 6 decembrie 2023;
29. Jud. Sector 3 București, înch. j.c.p. din 15 noiembrie 2023;
30. Jud. Ploiești, înch. j.c.p. nr. 1011 din 8 noiembrie 2023;
31. Jud. Alexandria, sent. pen. nr. 329 din 08 noiembrie 2023;
32. Jud. Târgu-Mureș, înch. j.c.p. nr. 872 din 27 octombrie 2023;
33. Jud. Suceava, sent. pen. nr. 763 din 29 septembrie 2023;
34. Jud. Călărași, sent. pen. nr. 378 din 21 septembrie 2023;
35. Jud. Baia Mare, înch. j.c.p. nr. 3591 din 19 octombrie 2023;
36. Jud. Arad, sent. pen. nr. 1378 din 25 august 2023;
37. Jud. Buhuși, înch. j.c.p. nr. 132 din 12 iulie 2023;
38. Jud. Suceava, sent. pen. nr. 526 din 30 iunie 2023;
39. Jud. Reghin, sent. pen. nr. 243 din 23 iunie 2023;
40. Jud. Bolintin Vale, înch. j.c.p. din 22 iunie 2023;
41. Jud. Târgu Cărbunești, sent. pen. nr. 106 din 9 iunie 2023;
42. Jud. Orăștie, înch. j.c.p. nr. 164 din 6 iunie 2023;
43. Jud. Strehaia, înch. j.c.p. nr. 105 din 30 mai 2023;
44. Jud. Deva, sent. pen. nr. 745 din 24 mai 2023;
45. Jud. Buhuși, sent. pen. nr. 62 din 3 mai 2023;
46. Jud. Sibiu, înch. j.c.p. nr. 765 din 26 aprilie 2023;
47. Jud. Tecuci, sent. pen. nr. 166 din 20 aprilie 2023;
48. Jud. Pucioasa, sent. pen. nr. 61 din 20 aprilie 2023;
49. Jud. Brezoi, sent. pen. nr. 74 din 12 aprilie 2023;
50. Jud. Câmpina, sent. pen. nr. 65 din 11 aprilie 2023;
51. Jud. Beclean, sent. pen. nr. 116 din 11 aprilie 2023;
52. Jud. Vișeu de Sus, sent. pen. nr. 295 din 10 aprilie 2023;
53. Jud. Lehliu Gară, înch. j.c.p. din 20 martie 2023;
54. Jud. Miercurea Ciuc, sent. pen. nr. 202 din 15 martie 2023;
55. Jud. Sector 3 București, sent. pen. 103 din 10 februarie 2023;
56. Jud. Bacău, sent. pen. nr. 1386 din 29 noiembrie 2022;
57. Jud. Sighișoara, sent. pen. nr. 325 din 29 noiembrie 2022;
58. Jud. Cluj-Napoca, sent. pen. nr. 1203 din 11 noiembrie 2022;
59. Jud. Bacău, sent. pen. nr. 1227 din 21 octombrie 2022;

60. Jud. Suceava, sent. pen. nr. 791 din 11 octombrie 2022;
61. Jud. Onești, sent. pen. nr. 567 din 21 iulie 2022;
62. Jud. Lipova, sent. pen. nr. 89 din 3 iunie 2022;
63. Jud. Satu Mare, sent. pen. nr. 584 din 11 mai 2022;
64. Jud. Urziceni, sent. pen. nr. 145 din 7 aprilie 2022;
65. Jud. Timișoara, sent. pen. nr. 902 din 4 aprilie 2022;
66. Jud. Chișineu Criș, sent. pen. nr. 43 din 25 martie 2022;
67. Jud. Sector 1, București, sent. pen. nr. 90 din 18 februarie 2022;
68. Jud. Câmpulung Moldovenesc, sent. pen. nr. 5 din 20 ianuarie 2022;
69. Jud. Topoloveni, sent. pen. nr. 240 din 20 decembrie 2021;
70. Jud. Răcari, sent. pen. nr. 239/2021 din 16 decembrie 2021;
71. Jud. Lipova, sent. pen. nr. 147 din 16 noiembrie 2021;
72. Jud. Lipova, sent. pen. nr. 138 din 3 noiembrie 2021;
73. Jud. Bistrița, sent. pen. nr. 892 din 27 septembrie 2021;
74. Jud. Brașov, sent. pen. nr. 1291 din 12 august 2021;
75. Jud. Buzău, sent. pen. nr. 505 din 18 iunie 2021;
76. Jud. Gura Honț, sent. pen. nr. 49 din 2 iunie 2021;
77. Jud. Miercurea Ciuc, sent. pen. nr. 334 din 28 aprilie 2021;
78. Jud. Gura Humorului, sent. pen. nr. 54 din 16 aprilie 2021;
79. Jud. Brăila, sent. pen. nr. 584 din 8 aprilie 2021;
80. Jud. Topoloveni, sent. pen. nr. 78 din 5 aprilie 2021;
81. Jud. Filiași, sent. pen. nr. 15 din 2 februarie 2021;
82. Jud. Rădăuți, sent. pen. nr. 52 din 20 ianuarie 2021;
83. Jud. Onești, sent. pen. nr. 923 din 22 decembrie 2020;
84. Jud. Făgăraș, sent. pen. nr. 199 din 15 septembrie 2020;
85. Jud. Râmnicu Vâlcea, sent. pen. nr. 184 din 25 iunie 2020;
86. Jud. Vatra Dornei, înch. j.c.p. din 9 iunie 2020;
87. Jud. Fetești, sent. pen. nr. 55 din 12 martie 2020;
88. Jud. Lugoj, sent. pen. nr. 806 din 20 decembrie 2019;
89. Jud. Târgu Mureș, sent. pen. nr. 1086 din 18 decembrie 2019;
90. Jud. Gura Honț, sent. pen. nr. 85 din 11 decembrie 2019;
91. Jud. Timișoara, sent. pen. nr. 3852 din 4 decembrie 2019;
92. Jud. Caracal, sent. pen. nr. 304 din 20 noiembrie 2019;
93. Jud. Huedin, sent. pen. nr. 339 din 15 noiembrie 2019;
94. Jud. Focșani, înch. nr. 1212 din 30 septembrie 2019;
95. Jud. Chișineu Criș, sent. pen. nr. 178 din 12 septembrie 2019;
96. Jud. Timișoara, sent. pen. nr. 2305 din 3 iulie 2019;

97. Jud. Timișoara, sent. pen. nr. 2300 din 3 iulie 2019;
98. Jud. Buzău, sent. pen. nr. 570 din 13 iunie 2019;
99. Jud. Huedin, sent. pen. 259 din 6 iunie 2019;
100. Jud. Rădăuți, sent. pen. nr. 400 din 15 mai 2019;
101. Jud. Timișoara, sent. pen. nr. 889 din 14 martie 2019;
102. Jud. Timișoara, sent. pen. nr. 880 din 14 martie 2019;
103. Jud. Bârlad, sent. pen. nr. 78 din 7 martie 2019;
104. Jud. Babadag, sent. pen. nr. 24 din 28 februarie 2019;
105. Jud. Babadag, sent. pen. nr. 262 din 20 decembrie 2018;
106. Jud. Onești, sent. pen. nr. 1014 din 18 decembrie 2018;
107. Jud. Timișoara, sent. pen. nr. 4574 din 25 septembrie 2018;
108. Jud. Galați, sent. pen. nr. 1091 din 27 iunie 2018;
109. Jud. Câmpulung Moldovenesc, sent. pen. nr. 90 din 22 iunie 2018;
110. Jud. Reșita, sent. pen. nr. 157 din 14 iunie 2018;
111. Jud. Brașov, s. pen., sent. pen. nr. 1001 din 29 mai 2018;
112. Jud. Drobeta-Turnu Severin, sent. pen. nr. 833 din 11 mai 2018;
113. Jud. Sighișoara, sent. pen. nr. 118 din 4 mai 2018;
114. Jud. Chișineu Criș, sent. pen. nr. 6 din 15 ianuarie 2018;
115. Jud. Brașov, sent. pen. nr. 2232 din 16 noiembrie 2017;
116. Jud. Urziceni, sent. pen. nr. 164 din 24 august 2017;
117. Jud. Tîrgu Mureș, sent. pen. nr. 591 din 30 mai 2017;
118. Jud. Câmpulung Moldovenesc, sent. pen. nr. 53 din 07 aprilie 2017;
119. Jud. Deva, hot. pen. nr. 1115 din 28 noiembrie 2016;
120. Jud. Fetești, sent. pen. nr. 55 din 06 iunie 2016;
121. Jud. Bacău, sent. pen. nr. 772 din 24 mai 2016;
122. Jud. Cornetu, sent. pen. nr. 190 din 6 mai 2016;
123. Jud. Orăștie, hot. pen. nr. 48 din 20 aprilie 2016;
124. Jud. Fetesti, sent. pen. nr. 31 din 06 aprilie 2016;
125. Jud. Fetești, sent. pen. nr. 22 din 17 martie 2016;
126. Jud. Drobeta Turnu-Severin, sent. pen. nr. 483 din 11 martie 2016;
127. Jud. Gura Honț, sent. pen. nr. 4 din 10 feburarie 2016;
128. Jud. Oravița, sent. pen. nr. 13 din 02 februarie 2016;
129. Trib. Bistrița-Năsăud, s. pen., sent. pen. nr. 45/2015;
130. Jud. Lugoj, sent. pen. nr. 550 din 29 decembrie 2015;
131. Jud. Orăștie, sent. pen. nr. 127 din 24 decembrie 2015;
132. Jud. Lugoj, sent. pen. nr. 462 din 03 noiembrie 2015;
133. Jud. Focșani, sent pen. nr. 114 din 19 mai 2015;

134. Jud. Alba Iulia, hot. pen. nr. 99 din 04 martie 2015;
135. Jud. Mediaș, hot. pen. nr. 40 din 24 februarie 2015;
136. Jud. Cluj-Napoca, hot. pen. nr. 7 din 07 ianuarie 2015;
137. Jud. Rădăuți, sent. pen. nr. 386 din 22 decembrie 2014;
138. Jud. Lugoj, sent. pen. nr. 453 din 15 iulie 2014;
139. Trib. Alba, s. cont. adm. fisc. și insolv., dec. nr. 289/A din 19 iunie 2014;
140. Jud. Câmpina, sent. pen. nr. 124 din 8 mai 2014;
141. Jud. Ploiești, sent. pen. nr. 2401 din 19 noiembrie 2013;
142. Jud. Moinești, sent. pen. nr. 68 din 8 februarie 2012;
143. Jud. Lehliu-Gară, sent. pen. nr. 256 din 21 decembrie 2011;
144. Jud. Târgoviște, sent. pen. nr. 332 din 26 octombrie 2009;
145. Jud. Iași, sent. pen. nr. 3866 din 16 decembrie 2008;
146. Trib. Timiș, dec. pen. nr. 117 din 25 mai 2011;
147. Trib. Iaşi, dec. pen. nr. 111/A din 5 martie 2009;
148. Trib. jud. Dîmbovița, sent. pen. nr. 56 din 18 septembrie 1981;
149. Trib. jud. Dolj, sent. pen. nr. 85 din 28 august 1979;
150. Trib. jud. Arad, sent. pen. nr. 59 din 9 noiembrie 1977;
151. Trib. jud. Hunedoara, sent. pen. nr. 12 din 3 martie 1981;
152. Trib. jud. Prahova, sent. pen. nr. 39 din 27 aprilie 1972;
153. Trib. jud. Dolj, sent. pen. nr. 124 din 30 martie 1970.

D. Jurisprudence of the Constitutional Court of Romania

1. Decizia nr. 283 din 17 mai 2023, publicată în M. Of. nr. 488 din 6 iunie 2023;
2. Decizia nr. 231 din 6 aprilie 2021, publicată în M. Of. nr. 613 din 22 iunie 2021;
3. Decizia nr. 571 din 1 octombrie 2019, publicată în M. Of. nr. 184 din 06 martie 2020;
4. Decizia nr. 101 din 28 februarie 2019, publicată în M. Of. nr. 405 din 23 mai 2019;
5. Decizia nr. 138 din 14 martie 2017, publicată în M. Of. nr. 537 din 10 iulie 2017;
6. Decizia nr. 405 din 15 iunie 2016, publicată în M. Of. nr. 517 din 08 iulie 2016;
7. Decizia nr. 793 din 17 noiembrie 2015, publicată în M. Of. nr. 49 din 22 ianuarie 2016;
8. Decizia nr. 363 din 7 mai 2015, publicată în M. Of. nr. 495 din 6 iulie 2015;
9. Decizia nr. 732 din 16 decembrie 2014, publicată în M. Of. nr. 69 din 27 ianuarie 2015;
10. Decizia nr. 456 din 28 octombrie 2005, publicată în M. Of. nr. 60 din 18 ianuarie 2005.

E. Foreign jurisprudence

1. BGH, decizia din 11 noiembrie 2021-4 StR 134/21;
2. Cass. pen., Sex. IV, 14 martie 2012, nr. 18678;
3. Cass. pen., sez. I., 22 decembrie 2009- 5 ianuarie 2010, nr. 49, CED 245928;
4. OLG Hamm 16 iunie 2009- 3 Ws 140/09, Beck Rechtsprechung, 2009, 20043;
5. Cass. pen., Sez. IV, 9 decembrie 2008 nr. 45499, ședința din 14 octombrie 2008;
6. Decizia Secției penale a Curții Supreme din Letonia nr. PAK-231 din 28 februarie 2007;
7. Oberlandesgericht Oldenburg, Hotărârea din 6 decembrie 2004 -Ss 398/04;
8. AG Regensburg 13 septembrie 2004-25 Ds 141 Js 13122/04, 266;
9. OLG Karlsruhe 26 februarie 2001-3Ss 15/00, 1661 (1662);
10. OLG Karlsruhe, 2001 1661;
11. BayObLG 14 aprilie 1993-1 St RR 59/93, 239 (240);
12. La Corte Suprema di Cassazione, sec. IV, 31 mai 1990, nr. 7817, ședința din 4 aprilie 1990;
13. Vgl. BGH 18 ianuarie 1990- 4 StR 292/89;
14. BGHSt 36, 341 (348), 1990, 1245 (1246);
15. Cass. pen., sec. IV, 11 februarie 1989, nr. 2085, ședința din 28 martie 1988;
16. BGH, hotărârea din 26 aprilie 1988- 5 StR 102/88;
17. BGH, hotărârea din 10 decembrie 1987- 4 StR 617/87;
18. Cass. pen., sez. IV, sentința nr. 13727 din 5 decembrie 1986;
19. LG Mainz MDR 1982 597, 598;
20. AG Hamburg VersR 1981 195;
21. AG Hamburg VersR 1981 195, 196;
22. Cass., sez. I, 27 noiembrie 1968, 27 martie 1969, nr. 1569, CPMA 70;
23. Cass. 16 septembrie 1964, în Foro it., 1965, II;
24. Cass., 28 februarie 1958, Bressan, Arch. Pen., 1959, II;
25. Cass. pen., 26 martie 1952, Taglini, GCCC XXX;
26. Cass, 2 aprilie 1938, Di Salvatore și alții, GP 39, II;
27. Cass., 18 iulie 1932, Amateis, Giust. Pen., 1933, II;
28. Cass., 11 iunie 1941, Arrigoni (Giust. Pen., 1942, II);
29. Cass, 2 aprilie 1938, Di Salvatore și alții, GP 39, II;
30. BayObLG 14 aprilie 1993-1 St RR 59/93, 239 (240);
31. C 11 iunie 1941, Arrigoni, GP 194, II, 356;
32. C 24 februarie 1943, Colla, GP 1943, II, 447;
33. C 17 aprilie 1947, Carpani, GComplCP 1947, 1144;
34. BGH vom 2 decembrie 1978 – 4 StR 518/77;
35. Curtea din Amsterdam, 24 ianuarie 1894, W6550;
36. Curtea Supremă din Olanda, decizia din 8 octombrie 1861.