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Offences against order and discipline on board ships

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Abstract In the current international context, maritime transport in our country must be viewed within the global framework of which it is a part, as a vital link ensuring the smooth flow of international trade. Regulating an activity also involves defining the acts that constitute offences, with criminal liability serving as a last resort. Although national legislation in this area has not undergone recent changes, and judicial practice does not abound in case law, we consider that an analysis of the legal content of offences against order and discipline on board ships is necessary, from the perspective of the need to maintain maritime safety. We must also take into account the relevant international legal framework, particularly the legislative package on maritime safety adopted by the Council of the European Union in 2024. The analysis will focus on determining whether any legislative changes are necessary.

Keywords: offences; order; discipline; ships.

1. General Aspects

The legal framework for defining the acts that constitute offences under the maritime transport regime is established by Law No. 191/2003, bearing the same title (published in the Official Gazette of Romania No. 332 of May 16, 2003, as subsequently amended and supplemented). Although the legislator did not assign specific headings to the articles containing the criminal provisions, it established three categories of offences, placing them in three distinct chapters of the law in question, as follows: offenses against the safety of civil navigation, in Chapter II of the law, offences against order and discipline on board ships, in Chapter III of the law, and other offences, in Chapter IV of the law. In this paper, we will focus on the second category of offenses, although we believe that each offense is important, deserves to be analysed, and plays a role in ensuring the safety of all those involved in the smooth operation of maritime transport.

Article 1 of Law No. 191/2003, which defines the scope of the law, refers to another legal act concerning maritime transport, namely Government Ordinance No. 42/1997 on maritime and inland waterway transport (republished in the Official Gazette of Romania No. 210 of March 10, 2004, as subsequently amended and supplemented). Although the legislator has taken into account the text of the relevant Government Ordinance as amended and supplemented by Law No. 412/2002 for approving Government Ordinance No. 42/1997 on civil navigation (published in the Official Gazette of Romania No. 500 of July 11, 2002), we consider this to be an oversight, and we propose, *de lege*

ferenda, amending the provision of Article 1 of Law No. 191/2003 to refer to Government Ordinance No. 42/1997, without further reference to a specific version. Thus, regardless of how that legal act may be amended in the future, it will not affect the provisions of Law No. 191/2003, always taking into account to apply the version of the Government Ordinance in effect at the time the act constituting one of the offences described in the aforementioned law is committed. Our proposal takes into account the fact that the relevant government ordinance was both republished in 2004 and subsequently amended and supplemented in 2019, following the amendments introduced by Law No. 412/2002, including in the title, which now refers to "maritime and inland waterway transport" rather than "naval transport." Although there is no legal definition for the term "maritime and inland waterway transport," Article 2 of Government Ordinance No. 42/1997, when specifying the scope of application, refers to "maritime transport activities, related activities, and auxiliary activities thereto, carried out in navigable national waters and in Romanian ports."

2. Offences Provided for in Articles 23-25 of Law. No. 191/2003 on Offences Under the Maritime Transport Regime

As noted in the first section of this paper, offences relating to order and discipline on board ships are addressed in Articles 23 to 25 of Chapter III, bearing the same title, of Law No. 191/2003. In light of the final provisions of Article 2 of Government Ordinance No. 42/1997, from the perspective of ships—that is, the location where the offences we will examine may be committed—we will consider ships flying the Romanian flag, as well as ships flying a foreign flag and navigating in Romania's navigable national waters. The meaning of the term „ship" is that established by the legislator in the provisions of Article 23 of the Government Ordinance No. 42/1997. From the perspective of the individuals who may commit the offences under consideration, we will focus firstly on Romanian seafarers, as specified in Article 2 of Government Ordinance No. 42/1997, as well as on personnel engaged in maritime transport, related activities, and auxiliary activities. Secondly, in accordance with the provisions of Article 25 of Law No. 191/2003, we will also consider any passenger traveling on the vessel.

In accordance with the provisions of Article 8 of the Criminal Code represented by Law No. 286/2009 (published in the Official Gazette of Romania No. 510 of July 24, 2009, as subsequently amended and supplemented), regarding the principle of territoriality, from the perspective of the application of criminal law in space, an offence is considered to have been committed within the country's territory either when it is committed on land, in the territorial sea and in the waters, soil, subsoil, and airspace within the state borders, or on a ship flying the Romanian flag or on an aircraft registered in Romania.

Article 23 of Law No. 191/2003 sets forth the first of the three offenses that disrupt order and discipline on board ships; this offense has a basic form, as described in paragraph 1, and an aggravated form, as described in paragraph 2. Thus, Article 23(1) of Law No. 191/2003 provides that "refusal to comply with an order regarding duties related to the safety of the vessel and navigation is punishable by imprisonment for a term of 3 months to 2 years or by a fine." Article 23(2) of Law No. 191/2003 provides that "when the offense is committed by the ship's captain, the penalty is imprisonment for a term of 6 months to 3 years."

Each of the offences listed in Law No. 191/2003 has a generic legal object, as does any other offense, consisting of the totality of social relationships that arise and develop in connection with the proper conduct of maritime transport. For this reason, this generic legal object will not be analysed further for any of the offences under Law No. 191/2003.

The specific legal object of the offence under consideration is the set of social relationships that arise and develop in connection with maintaining order and discipline on board ships engaged in maritime transport, which implies that no member of the crew, not even the ship's captain, may refuse to carry out an order under the conditions specified in the criminal provision.

The offense has no material object because the protected social value is not embodied in a physical object.

From the perpetrator's perspective, in the basic form of the offense, a member of the crew who has duties related to ensuring the safety of the ship and navigation may commit the offense as author. In the aggravated form, the offense can only be committed by the ship's captain as author. Joint perpetration is not possible, as this involves a personal obligation to carry out an order; however, other individuals may participate in the commission of the act as instigators or accomplices.

The primary victim of the crime is the ship's owner, the ship's operator or the Romanian naval authority (article 7 of G.O. No. 42/1997), while the secondary victims are the crew members, who may be endangered by the perpetrator's refusal to comply with an order regarding their duties related to the safety of the ship and navigation.

In both forms of criminalization, *actus reus* consists of the refusal to carry out an order, which may take the form of either an act or an omission. The conditions that must be cumulatively met for the offence to exist are that the order must relate to duties concerning the safety of the vessel and navigation and must not be manifestly unlawful. The difference between those two forms of criminalization is represented by the perpetrator.

The immediate consequence of the offence is a state of abstract danger to the protected social value.

The causal link does not need to be proven because of the immediate consequence.

Mens rea is represented by both direct and indirect intent, in accordance with the provisions of Article 16(6) of the Criminal Code.

The motive and purpose are not factors on which the legal classification of the offense depends; however, if they are present in a specific case, the court may take them into account when determining the sentence.

The penalty for committing this offence is imprisonment for a term of 3 months to 2 years or a fine, for the basic form of the offence, and imprisonment for a term of 6 months to 3 years for the aggravated form.

Pursuant to Article 26(1) of Law No. 191/2003, for the basic form of the offence, criminal proceedings are initiated upon notification by the captain, owner or operator of the ship, as applicable. Pursuant to Article 26(2) of Law No. 191/2003, for the aggravated form of the offence, criminal proceedings are initiated upon notification by the shipowner, the ship's operator, or the competent maritime authorities, as appropriate.

Article 24 of Law No. 191/2003 sets forth the second of the three offenses that disrupt order and discipline on board ships, as follows: „assault or other acts of violence, or bodily injury committed by a subordinate against a superior or by a superior against a subordinate during or in connection with the performance of official duties shall be punishable by the penalty prescribed by the Criminal Code for such an offense, the limits of which shall be increased by one-third".

We consider this offence to be a specific form of the offence of outrage (Article 257 of the Criminal Code), given the way the criminal provision is drafted.

The specific legal object of the offence under consideration is complex because it primarily protects the set of social relationships that arise and develop in connection with maintaining order and discipline on board ships engaged in maritime transport, and, secondarily, the set of social relationships that arise and develop in connection with the physical integrity and health of both subordinates and superiors during or in connection with the performance of their official duties.

The material object of the offense is the body of the superior or subordinate against whom the blows or bodily injuries are inflicted.

The perpetrator is either the subordinate or the superior. Joint perpetration is possible, but this involves for all the authors to be either subordinates or superiors; however, other individuals may participate in the commission of the act as instigators or accomplices.

The primary victim of the crime is the Ministry of Transport, being the state authority responsible for maritime transport, as provided for in Article 4(1) of Government Ordinance No. 42/1997. The secondary victim is either the superior or the subordinate.

For the offence in question to exist, a temporal condition must be met, namely that the act must be committed either while the secondary victim is performing his or her official duties or in connection with those duties.

The *actus reus* consists of alternative acts, namely: assault or other acts of violence, or bodily injury. The first act of the two alternative ones is in fact the offence of assault or other acts of violence, described in Article 193 of the Criminal Code, the difference being the fact that it is committed in connection with the official duties of the victim or while he/she is performing the official duties. The second act of the two alternative ones is in fact the offence of bodily injury, described in Article 194 of the Criminal Code, with the same difference as mentioned above. In order to benefit from the enhanced protection afforded by this criminal provision, a superior or subordinate must act within the bounds of the law when performing their official duties. In the absence of this condition, the criminal provisions of Articles 193 or 194 of the Criminal Code will apply, as these are crimes against the person.

The primary immediate consequence is a state of abstract danger to the protected social value in question. The secondary immediate consequence is a result that depends on the immediate consequence corresponding to the act constituting the offence under consideration, namely: physical suffering, a disability, traumatic injuries or harm to a person's health that required no more or more than 90 days of medical care to heal, a serious and permanent disfigurement, an abortion or the endangering of a person's life.

The causal link does not need to be proven because we refer to the primary immediate consequence.

Mens rea corresponds to that of the acts constituting the offence under consideration, namely intent or praeterintent.

The motive and purpose are not factors on which the legal classification of the offense depends; however, if they are present in a specific case, the court may take them into account when determining the sentence.

The penalty for committing this offence is determined by increasing the special sentencing limits set forth in Articles 193 and 194 of the Criminal Code by one third.

Pursuant to Article 26(3) of Law No. 191/2003, criminal proceedings for the offense of assault or other acts of violence or bodily injury, as provided for in Article 24, shall be initiated upon the prior complaint of the injured party.

Article 25 of Law No. 191/2003 sets forth the last of the three offenses that disrupt order and discipline on board ships, as follows: „a passenger who fails to comply during the voyage with an order given by the captain, first mate, or another officer for the purpose of saving the ship shall be punished by imprisonment for a term of one to six months or by a fine".

The specific legal object of the offence under consideration is the set of social relationships that arise and develop in connection with maintaining order and discipline on board ships engaged in maritime transport, which implies that no passenger will fail to comply with an order for saving the ship, given by the person in charge to do so.

The offense has no material object because the protected social value is not embodied in a physical object.

The perpetrator is any passenger on board ship. Joint perpetration is not possible, as this involves a personal obligation to obey an order; however, other individuals may participate in the commission of the act as instigators or accomplices.

The primary victim of the crime is the ship's owner, the ship's operator or the Romanian naval authority, while the secondary victims are the other passengers or the crew members, who may be endangered by the perpetrator's failure to comply with the order regarding the saving of the ship. For the offence in question to exist, a temporal condition must be met, namely that the act must be committed during the voyage.

The *actus reus* consists of the failure to comply with the order for saving the ship, given by the captain, first mate, or another officer.

The immediate consequence of the offence is a state of abstract danger to the protected social value.

The causal link does not need to be proven because of the immediate consequence.

Mens rea is represented by both direct and indirect intent.

The motive and purpose are not factors on which the legal classification of the offense depends; however, if they are present in a specific case, the court may take them into account when determining the sentence.

The penalty for committing this offence is imprisonment for a term of one to six months or a fine.

Pursuant to Article 26(1) of Law No. 191/2003, for this offence criminal proceedings are initiated upon notification by the captain, owner or operator of the ship, as applicable.

According to the provisions of Article 36 of the Law No. 191/2003, for all the offences described in this law, the trial in first instance in carried out in court.

3. Maritime Safety Legislative Package Adopted by the Council of the European Union

When one refers to the maritime safety package adopted by the Council of the European Union in 2024, one should bear in mind the following directives: Directive (EU) 2024/3017 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/18/EC of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector, and repealing Commission Regulation (EU) No 1286/2011 (published in the Official Journal of the European Union L series of 6 December 2024) whose deadline for transposition into national legislation is June 27, 2027, Directive (EU) 2024/3101 of the European Parliament and of the Council of 27 November 2024 amending Directive 2005/35/EC as regards ship-source pollution and on the introduction of administrative penalties for infringements (published in the Official Journal of the European Union L series of 16 December 2024), whose deadline for transposition into national legislation is July 06, 2027, Directive (EU) 2024/3100 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/21/EC on compliance with flag State requirements (published in the Official Journal of the European Union L series of 16 December 2024), whose deadline for transposition into national legislation is July 06, 2027 and Directive (EU) 2024/3099 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/16/EC on port State control (published in the Official Journal of the European Union L series of 16 December 2024), whose deadline for transposition into national legislation is July 06, 2027.

Directive (EU) 2024/3017 improves the protection of fishing ships by clarifying the meaning of some definitions and by enhancing the capacity of accident investigation bodies. Directive (EU) 2024/3101 strengthens the legal framework for the effective application of administrative penalties to those who illegally discharge harmful substances in the marine environment, separating the administrative liability of the criminal one, the latter being taken into account in the new environmental crimes directive, namely Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (published in the Official Journal of the European Union L series no. 1203 of April 30, 2024).

Directive (EU) 2024/3101 reinforces the rules applicable to flag state at the level of the European Union by updating the digital solutions and ensuring adequate inspections of flagged vessels on behalf of the flag state in accordance with the international rules set out by the International Maritime Organization.

Directive (EU) 2024/3099 improves the inspections of foreign ships in ports of states other than the flag state in order to protect both fishing ships and the marine environment in accordance with the international rules as mentioned above.

In light of the provisions of these new directives, we believe that there is no need to amend or supplement any of the three criminal provisions analysed in the previous section of this paper.

4. Conclusions

There is a constant need to amend and supplement the legal framework at both the national and international levels in order to provide authorities with the best possible tools in the ongoing fight to prevent crime and protect the environment. There are situations in which a country's legislation already covers new legislative changes at the European level, as it is the case with the three criminalization provisions analysed above. However, monitoring the legislative process must be an ongoing effort.

References

1. Law No. 412/2002 for approving Government Ordinance No. 42/1997 on civil navigation
2. Law No. 191/2003 on offences under the maritime transport regime
3. Law No. 286/2009 on the Criminal Code
4. Government Ordinance No. 42/1997 on maritime and inland waterway transport
5. Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC
6. Directive (EU) 2024/3017 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/18/EC of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector, and repealing Commission Regulation (EU) No 1286/2011
7. Directive (EU) 2024/3099 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/16/EC on port State control
8. Directive (EU) 2024/3100 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/21/EC on compliance with flag State requirements
9. Directive (EU) 2024/3101 of the European Parliament and of the Council of 27 November 2024 amending Directive 2005/35/EC as regards ship-source pollution and on the introduction of administrative penalties for infringements