

**THE OFFENSE PROVIDED IN ARTICLE 12 OF THE
GOVERNMENT EMERGENCY ORDINANCE NO. 55/2002
ON THE REGIME OF KEEPING
DANGEROUS OR AGGRESSIVE DOGS**

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ABSTRACT: *Every aspect of social life is regulated. In the field of social protection, the safety of the population in the public space and the protection of life, bodily integrity and health are essential. In this context, the system of keeping dangerous or aggressive dogs is also regulated by Government Emergency Ordinance¹ No. 55/2002.*

KEYWORDS: *crime; dangerous dog; failure to take preventive measures; negligence; intent.*

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1. LEGAL BACKGROUND

The present proposal has arisen in the context of the almost non-existent judicial practice and the difficulties in understanding and applying the legal provisions in force in this area to concrete cases.

In the above-mentioned normative act, we find three incriminations, in art. 12-14. In essence, these incriminations are intended to protect social values such as social coexistence and the life, bodily integrity and health of any person, values that are affected by the violation of certain rules expressly laid down in the regulatory act in question.

As with any other offense, they also have a generic legal object which, in our opinion, is the set of social relations that arise and develop with regard to the proper conduct of social coexistence, and to the undeniable right of every citizen to own and care for animals, without, however, infringing the right of other citizens to safety in the public space.

Article 12 of G.E.O. no. 55/2002 describes an offense as follows:

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¹Government Emergency Ordinance no. 55/2002 regarding the regime for keeping dangerous or aggressive dogs, republished in the Official Gazette of Romania no. 146 of February 27, 2014, with subsequent amendments and supplements.

- in a basic version, in para. (1): „ Failure by the owner of the dog or its temporary keeper to take the measures to prevent canine attack on a person, provided in art. 6, if the attack has occurred";
- an aggravated variant, in para. (2): „ "If the act referred to in para. (1) has produced consequences referred to in art. 193 para. (2), art. 194 or 195 of the Criminal Code";
- an aggravated variant, in para. (3): „ "If the act referred to in para. (1) is committed by negligence, the provisions of art. 192 or 196 of the Criminal Code shall apply accordingly".

2. PRE-EXISTING CONDITIONS

The specific legal subject-matter is complex, being mainly the set of social relations that arise and develop with regard to the smooth conduct of life in the community, protecting public order and public peace by guaranteeing people's safety in the public space. Secondly, it ensures the protection of the life, physical integrity or health of each person.

The offense has a material object, represented by the body of the person on whom the attack is committed, in any of the variants of the offense.

The direct active subject is circumstantial, as, in addition to fulfilling the general conditions of criminal liability, he must be either the owner of the dog or its temporary keeper. Criminal participation is possible in the form of instigation and complicity. Co-authorship is not possible because the obligation to take measures to prevent dog attack is a personal one. In the case of the aggravated variant, provided in para. (3) of art. 12, it is possible to have an improper criminal participation, as the offense is committed by negligence.

We consider that a legal person may also be an active subject of this offense, as it is not excluded that it is the owner of the dog or its temporary keeper.

The passive subject of the offense is the natural person on whom the attack took place, in any of the variants of the offense.

3. ACTUS REUS

From the point of view of the material element, which is part of the actus reus, in any of the variants of the offense, it is represented by an omission, namely failure to take measures to prevent a canine attack on a person. In order for the act to be a crime, the fact of remaining passive means to not respect the measures provided in art. 6 of G.E.O. no. 55/2002. We have in mind that it is forbidden the access of dangerous dogs of category I² in public premises, means of public transportation and other public places. There is also an exception to this measure to prevent dog attacks, expressly provided in Art. 6 para. (1) of the G.E.O. No. 55/2002, namely that the above-mentioned dangerous dogs are allowed

² According to art. 1 of G.E.O. no. 55/2002: "For the purposes of this emergency ordinance, dangerous dogs are understood to mean dogs belonging to the following breeds, grouped into two categories, as follows: a) category I: fighting and attack dogs, assimilated by morphological characters to dogs of the Pit Bull, Boerbull, Bandog type and their crossbreeds; b) category II: dogs of the American Staffordshire Terrier, Tosa, Rottweiler, Argentinean Dog, Mastino Napolitano, Fila Brasileiro, Mastiff, Caucasian Shepherd, Cane Corso and their crossbreeds".

on public roads and access routes to them. In view of the meaning of the term 'premises'³, according to the Romanian explanatory dictionary, we consider the reference to 'public premises' to be pleonastic and propose that the phrase be replaced by 'premises'. We consider that no further explanation is needed for the phrase 'means of public transportation', since its meaning is the same as in everyday speech. Moreover, it was also explained in the specialized literature⁴ (Ionaș, Măgureanu, Dinu, Rotaru 2024), taking into account that in the criminal law there are incriminations⁵ that have as aggravating circumstantial element the commission of the crime in a means of public transportation. In order to understand the meaning of the term "public place", the provisions of art. 184 of the Criminal Code, relating to the offense committed in public, are essential.

However, we note that dangerous dogs are allowed on public roads and access roads to them, although these are also public places. According to art. 14 of G.E.O. no. 195/2002⁶, by "public road" we mean "any land communication route, with the exception of railways, specially designed for pedestrian or vehicular traffic, open to public circulation".

However, the access of dangerous dogs from the above-mentioned category to the common parts of the buildings in which they are kept (e.g. on the staircase of the block of flats, on the entrance path to the block of flats, etc.), on public roads and on the access paths to them is permitted under certain cumulative conditions, namely if they are muzzled and kept on a collar and leash or harness by the owner or temporary keeper. Failure to comply with all these conditions, with the ensuing attack, will result in the perpetrator being held criminally liable, even if the dog is on the public road or access route to it.

It should also be borne in mind that, although access to the common areas of the buildings in which they are kept is permitted, dangerous dogs in category I are prohibited from being kept in these areas, in accordance with the provision of Art. 6 para. (3) of G.E.O. no. 55/2002.

Another measure to prevent canine attack envisages the access of dangerous dogs of category II to public transportation, public places and common parts of buildings only with the cumulative fulfilment of the conditions that they must be muzzled and leashed by the owner or temporary keeper who, in turn, must fulfil the conditions set out in Art. 3 para. (1)⁷ of G.E.O. No. 55/2002.

We also note the legislator's passivity with regard to bringing the legal provisions of the above-mentioned Emergency Government Ordinance in line with the provisions of the

³ By "local" we mean "public utility building".

Definition available at: <https://dexonline.ro/definitie/local/definitii> (last accessed: February 3, 2025).

⁴ For details, see Alexandru Ionaș, Alexandru Florin Măgureanu, Cristina Dinu, Mihaela Rotaru, *Criminal Law. Special Part*, 2nd edition, revised and added, Universul Juridic Publishing House, Bucharest, 2024, p. 243.

⁵ See art. 229 para. (1) letter a) of Law no. 286/2009 on the Criminal Code (published in the Official Gazette of Romania no. 510 of July 24, 2009), with subsequent amendments and completions, regarding aggravated theft committed in a means of public transport.

⁶ Government Emergency Ordinance no. 195/2002 regarding traffic on public roads, republished in the Official Gazette of Romania no. 670 of August 3, 2006, with subsequent amendments and completions.

⁷ According to art. 3 para. (1) of G.E.O. no. 55/2002: "The owners or temporary holders of the dogs provided in art. 1 must meet the following conditions: a) be at least 18 years old; b) have full legal capacity; c) have not been convicted of a crime against the person".

Constitution of Romania, the phrase "of potentially aggressive specimens" ceasing to have legal effect as of April 3, 2020⁸.

Dangerous dogs of category II are allowed access without muzzle and leash only in places specially designed for dogs.

In art. 6 para. (5) of G.E.O. no. 55/2002, there is an exception from all the obligations analysed so far and found in art. 6 para. (1)-(4), which concerns dangerous dogs of both categories, in the sense that the owner or temporary keeper of the dog is not subject to the obligations analysed above when accompanied by the dog, on public roads where access is allowed, when driving isolated animals, in herds or in packs. On the other hand, the owner or temporary keeper of the dog is obliged, in these circumstances, to supervise it and prevent it from attacking a person.

The difference between the basic and the aggravated version is the immediate consequence, although in both versions of the offense there is a result. Thus, in the basic version, the immediate consequence is the canine attack on a person. The canine attack can come from either a category I or a category II dangerous dog. We consider that the occurrence of the attack supposes the existence of specific consequences of the offense of assault or other violence, in the basic version, provided in Art. 193 para. (1) of the Criminal Code, i.e. physical suffering for the assaulted person.

In the aggravated version, under para. (2), the immediate consequence is an alternative one, either that of the offense of assault or other violence, in the aggravated version of art. 193 para. (2) of the Criminal Code, i.e. traumatic injuries or damage to the person's health, the seriousness of which is assessed by a maximum of 90 days of medical care, or one of the offenses of bodily injury, since the legislator does not distinguish between the offenses of bodily injury when referring to art. 194 of the Criminal Code, or the death of the victim, given the immediate consequence in the case of the offense of assault or battery causing death, described in art. 195 of the Criminal Code.

From the point of view of the legal construction, identical to that of the offense of outrage, provided in art. 257 of the Criminal Code, or that of the aggravated version of the offense of abusive behaviour, described in art. 296 para. (2) of the Criminal Code, we consider that the offense described in art. 12 of G.E.O. no. 55/2002 is a complex offense, in both the basic and the first aggravated variant.

As regards to the aggravated variant of para. (3) of art. 12 of O.U.G. no. 55/2002, we would like to point out that, in our opinion, the legal text does not meet the requirements of clarity and predictability and we propose to amend it as follows: "If the act referred to in para. (1), committed by negligence, has produced consequences among those provided for in art. 192 or 196 of the Criminal Code, the special maximum of the penalties provided in these articles shall be increased by 2 years". This proposal is intended to clarify the legal provisions mentioned above and to make them applicable to different concrete cases. We believe that this is what the legislator intended from the outset, but the wording is deficient. Thus, we consider that in this variant of committing, the offense is complex, as in the other variants analysed above.

⁸ We are considering the decision of the Constitutional Court of Romania no. 678 of 2019, published in the Official Gazette of Romania no. 126 of February 18, 2020, available at: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/223136> (last accessed: February 3, 2025).

The difference, in terms of the immediate consequence, which is also one of result, in comparison with the other incriminating variants, is that here we are considering the immediate consequence of negligent homicide and negligent bodily injury.

In the context of the legislative changes⁹ in the rules of criminalization of the offense of assault or other violence, respectively the offense of bodily injury, in the sense of being considered more serious if committed in public, or against a minor or a person who is in the care, protection, education, custody or treatment of the offender, respectively if the offender has an animal on him¹⁰ that may endanger life, health or bodily integrity of persons, we consider that these aggravating factors will be taken into account for the legal framing of the offense, considering the commission of the offense of assault or other violence, respectively bodily injury, in the version of the actual commission of the offense found in the case, the mere presence of the perpetrator accompanied by a dangerous dog of categories I or II leading to the consideration of the circumstance of art. 193 or 194 para. (2¹) let. d) of the Criminal Code, "the perpetrator is carrying an animal that may endanger the life, health or bodily integrity of persons"¹¹.

We also note an inconsistency in the aggravated version of art. 12 para. (2) of G.E.O. no. 55/2002, between the provision only of the immediate consequence under Art. 193 para. (2) of the Criminal Code and the reference to the whole of art. 194 of the Criminal Code, including, now, the provisions of para. (2¹) of art. 194 of the Criminal Code.

4. MENS RHEA

From the point of view of the form of culpability with which the offense is committed, in the basic version, there is both direct and indirect intent. In the first aggravated variant, the form of guilt can be direct or indirect intent, or the praeterintention, when the consequence of the assault or injury causing death, described in art. 195 of the Criminal Code, is produced. In the aggravated version of para. (3), the form of culpability is negligence, both simple and with provision.

The motive and purpose are not elements on which the legal classification of the act depends, but if they are established in concrete terms, they will be taken into account in the judicial individualization of the sentence.

⁹ Operated by Law no. 248/2023 amending and supplementing Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 673 of July 21, 2023.

¹⁰ On the deficient formulation of this legal provision, see Ionuț Andrei Barbu, Mihaela Rotaru, *Impact of Recent Legislative Changes on Crimes against the Person*, in the Journal of Criminal Sciences of the "Alexandru Ioan Cuza" Police Academy no. 1/2023, pp. 4-11, available at: <https://firebasestorage.googleapis.com/v0/b/revstipen-2023.appspot.com/o/articles-en%2FNO1%2F01IMPACT%20OF%20RECENT%20LEGISLATIVE%20CHANGES%20ON%20CRIMES%20AGAINST%20THE%20PERSON.pdf?alt=media&token=a8e2d639-da17-4b56-a05c-38e3c908e31d> (last accessed: February 3, 2025).

¹¹ Such an orientation was visible in the judicial practice prior to the entry into force of the Criminal Code represented by Law no. 286/2009, in the sense that the application of the incrimination norm of the Criminal Code was retained to the detriment of the norm of G.E.O. no. 55/2002, with specific reference to the crime of negligent bodily harm. For details, see decision no. 3547/2013, pronounced by the Criminal Section of the High Court of Cassation and Justice, available at: <https://www.scj.ro/1093/Detail-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=107061#highlight=##> (last accessed: February 3, 2025).

5. FORMS, MODALITIES, SANCTIONS

From the perspective of the forms of the crime, being an omissive crime, it is not susceptible to acts of preparation and attempt. The crime of consumption when, as a result of remaining passive, the immediate consequence occurs, in each of the incrimination variants. The single normative modality corresponds in concrete terms to a multitude of factual modalities.

From the perspective of the applicable sanction, in the basic variant, the crime is punished with imprisonment from 6 months to 3 years or with a fine, in the first aggravated variant, with one of the penalties provided for in art. 193 para. (2), art. 194 or 195 of the Penal Code, the special maximum of which is increased by 2 years, and in the second aggravated variant, with the penalties provided for in art. 192 or 196 of the Penal Code.

Also, according to art. 12 para. (4) of O.U.G. no. 55/2002, in the case of the crime provided for in paragraph (1), as well as in the case where the act produced the consequences provided for in art. 193 paragraph (2) or art. 196 of the Criminal Code, the criminal action is initiated upon the prior complaint of the injured person.

6. CONCLUSIONS

In the context of the extremely limited judicial practice in the matter, but with an unfortunately rich case history, in reality, in the context of people killed by dogs in different areas of the country, over time, we believe that the criminalization contained in art. 12 of G.E.O. no. 55/2002 should be reviewed and modified, in order to bring it into line with the provisions of the general criminal law. We understand the legislator's desire to include in the Criminal Code as many legal provisions as possible that would provide increased protection of citizens through the prism of criminal law, but all these legislative changes must be made in a unified manner so as not to leave inapplicable legal provisions that have been in force for more than 23 years.

REFERENCES

- Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009
- Law no. 248/2023 amending and supplementing Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 673 of July 21, 2023
- Government Emergency Ordinance no. 55/2002 on the regime for keeping dangerous or aggressive dogs, republished in the Official Gazette of Romania no. 146 of February 27, 2014
- Government Emergency Ordinance no. 195/2002 on traffic on public roads, republished in the Official Gazette of Romania no. 670 of August 3, 2006
- Alexandru Ionaș, Alexandru Florin Măgureanu, Cristina Dinu, Mihaela Rotaru, *Criminal Law. Special part*, 2nd edition, revised and added, Universul Juridic Publishing House, Bucharest, 2024
- Ionuț Andrei Barbu, Mihaela Rotaru, *Impact of Recent Legislative Changes on Crimes against the Person*, in the Journal of Criminal Sciences of the Police Academy "Alexandru Ioan Cuza" no. 1/2023

Decision of the Constitutional Court of Romania no. 678 of 2019, published in the Official Gazette of Romania no. 126 of February 18, 2020

Decision of the Criminal Section of the High Court of Cassation and Justice no. 3547/2019
www.dexonline.ro

www.iccj.ro

www.legislatie.just.ro

<https://revstipen.ro/>

