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Punishments in the Crimes against Patrimony matter

Andrei Emil Moise

PhD. Candidate Constantin Stere University, Department of Law

andrei_e_moise@yahoo.com

Abstract. In the process of drafting the law and, subsequently, in its application, the principle of legality of incrimination requires compliance with certain conditions. Because of this, in the process of creating the law, it is mandatory that depending on the social realities, the legislator to incriminate deeds of certain gravity, committed over time, facts that raise the issue of risk and fear that they could repeat, endangering or even harming social values that must be protected by criminal law. Articles 228-230 of the National Criminal Code go beyond prohibition of the retrospective application of criminal is susceptible of several meanings, these terms or expressions will be explained even in the law, as the case may be, in the General Part or in the Special Part of the Criminal Code. The court has the obligation to comply with the criteria for individualizing the sentence, as well as the methods of execution as they were provided by law. These principles are held together by the importance of preserving the values of patrimony and to sustain the base principles of the Constitution and even the Human Rights Carta.

Keywords. criminal law, incrimination, interpretation , Constitution, Criminal Code, Patrimony

1. Introduction

The principle of legality of incrimination is well known defined and presented in article 1 par. (1) of the current Romanian Criminal Code, which stipulates that “the criminal law provides for the deeds that constitute crimes”. In such manner, regardless of the gravity of a deed, it cannot be held as object of an offence, if the criminal law does not regulate it in this way (*nullum crimen sine lege*). Furthermore, as stated by the Constitution of Romania, crimes are only established by organic law. In regard to crimes against patrimony, the material object of such consists in “the social relations that are placed in danger or harmed directly by damage to the material object, or good towards which the incriminated material activity is carried out.”

Taking into consideration art. 173 of the current Criminal Code, which clearly states that the criminal law regards any provision of a criminal nature contained in laws, emergency ordinances or other normative acts that at the date of their adoption acquired the force of law. As a result of such, for an offense against patrimony to constitute a crime, it is mandatory that it be expressly provided in the criminal law in use.

In the process of drafting the law and, subsequently, in its application, the principle of legality of incrimination requires compliance with certain conditions. Because of this, in the process of creating the law, it is mandatory that depending on the social realities, the legislator to incriminate deeds of certain gravity, committed over time, facts that raise the issue of risk

and fear that they could repeat, endangering or even harming social values that must be protected by criminal law. And, what more important law than those which regard the safe usage of property in the establishment and consolidation of democracy and social values to start with? Another criteria is that the criminal norm to be elaborated clearly and predictably, in a way that any person to be able to understand which is the prohibited conduct as defined by the incriminating text.

In this sense, it is more than needed to determine all the ways of committing a crime against the patrimony of another and at the same time without excessively oversizing the legal text, the material element of the crime will contain the enumeration of all prohibited actions taken by the criminal. At the same time, tin accordance to Civil Law generic terms, which allow the recipients of the norm to identify patrimony in a respective as “the total rights and obligations which an individual has and represent an economical value, meaning they can be evaluated in money”¹. If the terminology used in drafting the norm is susceptible of several meanings, these terms or expressions will be explained even in the law, as the case may be, in the Special Part or in the Special Part of the Criminal Code. A last condition necessary in the process of creating the law in the spirit of legality of incrimination concerns the accessibility of the law, in the sense that any individual must have the chance to learn about the existence of the criminal law, as well as about its provisions and consequences.

2. Content

As we said before, in the sense of applying the criminal law in regard to the protection of patrimony, a number of conditions must be respected. In consequence, benefiteres from the competence to apply the criminal norm or those who apply it have the duty to observe exactly the provisions of the norm without extending the incrimination by analogy, since, otherwise, it could lead to situations of abuse and to abusive incriminations.

In regard to crimes against patrimony, the material object of such consists in “the social relations that are placed in danger or harmed directly by damage to the material object, or good towards which the incriminated material activity is carried out.”² The significance of the extension of the criminal law by analogy is that of its application in similar situations, but which are not expressly regulated as is the case in regard to the theft felony. However, we do not have to understand by this an extensive interpretation, but one which regards only the principle of law to be protected only in the scope and the meaning of the terminology used for the incrimination norm to be applied.

On the other hand, it must be remembered that the criminal law is of strict interpretation. By such interpretation it is to be regarded a logical and rational operation carried out during the per se application of the criminal law, with only the aim to establish the meaning and limits of application in a specific matter. The interpretation of the criminal law in the case of theft for example can be made by the legislator, in the very content of the normative act, during the elaboration process or later, finding its expression in art. 228-229 of the National Criminal Code.

This is the case of the legal interpretation. Regarding such criminal offences the interpretation can be made by the judicial bodies (judicial interpretation), but without being held with binding force in other cases brought before the court or for other courts, with the exception of related offences. At the same time, in regard to the doctrinal interpretation regarding penal

¹ George Antoniu, Tudorel Toader, *Explicatiile Noului Cod Penal*, Ed. Universul Juridic, 2015, pp. 278

² *Ibidem*, pp281

punishments, which are the subject of studies or specialized works of theorists, it is much to be said about theft altogether. In accordance with the existing provisions found in art. 1 para. (2) of the National Criminal Code, “no person may be criminally sanctioned for an act that was not provided by the criminal law at the date when it was committed”.

Committing a crime involves committing an act incriminated by criminal law as an attempt or as a crime, regardless of the perpetrators, instigators or accomplices of the participants as long as the material object is in any way harmed. Furthermore, “Article 2 of the Romanian Criminal Code regulates the principle of legality of criminal sanctions, in the sense that the applicable penalties and their limits can be established only by criminal law and that no punishment can be established and applied if it was not provided by criminal law at the time of the act. The court has the obligation to comply with the criteria for individualizing the sentence, as well as the methods of execution as they were provided by law.”³

These principles are regarding primarily material values but have been extended by the law maker in such manner as to regard other fields such as intellectual property deeds and so forth. In what follows, we aimed to analyze the extent to which these principles of criminal law, enshrined in the text of the Criminal Code by the Romanian legislator, find their expression in the social protection of the rights most valued by humanity.

The guarantee enshrined in Article 228, which is an essential element of the rule of law, occupies a prominent place in the National Criminal Code as well as the Romanian Constitution, as is underlined by the fact that no derogation from it is permissible under Article 44 para(2) of the Constitution with the except of minor derogations regarding times of war or other public emergency threatening the life of the nation. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards individuals against arbitrary prosecution, conviction and punishment in regard to their material possessions.

Articles 228-230 of the National Criminal Code go beyond prohibition of the retrospective application of criminal law is susceptible of several meanings, these terms or expressions will be explained even in the law, as the case may be, in the General Part or in the Special Part of the Criminal Code. A last but not least condition necessary in the process of drafting the law in order to safeguard the patrimony is the principle of legality of incrimination in the matter of accessibility of the law. In that reason, any person must have the chance to find out about the existence of the criminal law, about its provisions as well as safeguarding what is rightfully theirs no matter the circumstances “when the perpetrator hits the injured person as a result of some misunderstandings, after which he appropriates an object of this person, it constitutes the crime of theft and not robbery”⁴.

As we said before, also in the process of applying the criminal law in regard of patrimony, a number of conditions must be respected. Thus, the one who benefits from the competence to apply the criminal norm or the one who interprets it has the duty to observe exactly the provisions of the norm without extending the incrimination by analogy, since, otherwise, it could lead to situations of abuse and to abusive incriminations. Hence, the lawmaker allowed and introduced within the norm the mediation institution in order to help extinguish minor conflicts which pose no real social danger.

³ Andrei Emil Moise, The “Nullum Crimen, Nulla Poena Sine Lege” Principle and Foreseeability of the Criminal Law in the Jurisprudence of European Court of Human Rights, https://www.saudijournals.com/media/articles/SIJLJC_37_240-247.pdf

⁴ C.S.J., sectia penala, decizia nr. 642/2001

The meaning of the extension of the criminal law by analogy means is to maximize its application in similar situations, but which are not expressly regulated. In regard to theft regarded as a criminal offence, the penalty is 6 months-3 years detention and is doubled by aggravating circumstances.

However, we do not have to understand by this an extensive interpretation, because in such situations only an extension of the scope of the meaning of the punishment used in the incrimination norm is achieved in regard of safeguarding the public interest. On the other hand, it must be emphasized that the criminal law is of strictly interpretation. Interpretation is both a logical and a rational operation carried out during the application of the criminal law, with the aim of establishing its meaning and its limits of application in a given case. The interpretation of the criminal law in the case of crimes against patrimony is made by the legislator, in the very content of the norm, the elaboration process and after that, finding its expression in other another normative acts.

The very role of such normative acts is to support, enforce and refine the norms content in way in which it can accommodate both new forms of the crime as well as to enrich the legal content in order to safeguard society. This is the case of the legal interpretation. Also, the interpretation can be made in the sense of “the movable asset (by its nature or by anticipation) corporeal animate or inanimate, in the possession or custody of another (not the abandoned asset - *res derelictae* - or the one that does not belong to anyone - *res nullius*)”⁵, but without being endowed with binding force in other cases brought before the court or for other offences.

3. Conclusions

To conclude, we can also talk about a doctrinal interpretation of the crimes against patrimony altogether, which is the subject of studies or specialized works of theorists more and more. As the law text states in art. 1 para. (2) of the National Criminal Code, “no person may be criminally sanctioned for an act that was not provided by the criminal law at the date when it was committed”.

Being convicted for committing a crime of theft let’s say involves committing an act incriminated by criminal law as an attempt or as a crime, taking into consideration the quality of perpetrators, instigators or accomplices of the participants.

Article 2 of the Romanian Criminal Code founds the principle of legality of criminal sanctions, in the manner that the applicable penalties and their limits can be established only by criminal law and that no punishment can be established and applied if it was not provided by criminal law at the time of the act. That being said, given the frequency of such crimes in society the lawmaker conceived the punishments and furthermore the reconciliation procedure as to ease both the serving of the sentence and to encourage the conciliation between the parts. The court has the obligation to comply with the criteria for individualizing the sentence, as well as the methods of execution as they were provided by law. These principles are held together by the importance of preserving the values of patrimony and to sustain the base principles of the Constitution and even the Human Rights Carta.

In our analysis, we aimed to have a bilateral analyses to the extent to which the principles of criminal law, enshrined in the text of the Criminal Code by the Romanian legislator, find their expression in the national jurisprudence regarding punishment and the importance of enforcing the law in regard of Crimes against Patrimony.

⁵ Mihail Udriou, *Drept Penal, Partea Generala*, editia 3, ed. C.H.Beck, Bucuresti, 2016, Pp.213

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