

CONSIDERATIONS ON THE THEFT OFFENSE IN REGULATION OF NEW CRIMINAL CODE AND ASPECTS OF COMPARATIVE LAW

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Abstract: *Known as one of the most common crimes encountered in all times and in all legislation, the crime of theft was changed following the entry into force of the new Criminal Code in order to adapt on the one hand the contemporary realities in which the object and how commit, and the perspective offered by the criminal provisions of other states.*

Keywords: *theft, criminal code, comparative law*

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1. INTRODUCTION

Known since the classical era of Roman law concept of theft, *furtum* was defined as the taking of another's thing, with the intention of winning (Hanga V., Jacotă M., 1964, pp.334). Under Title II of the Romanian Criminal Code, entitled "Offenses against the patrimony" through a group of similar crimes Romanian Penal Code of 1936, the first chapter deals with the offense of theft, the main act of the category aimed at theft of goods.

And other European criminal codes stipulate the offense of theft, included in different categories as diverse classification criteria are used, for example in the French Criminal Code, adopted by Law no.92-683 of 22 July 1992 and entered into force on 1 March 1994, with subsequent amendments, is in Book III entitled "Crimes and offenses against property" title "Misappropriation of goods"; Italian Penal Code is contained in Title XIII entitled " Offenses against the patrimony " in the category with violence against property or persons; the German Penal Code of 1871, as amended, is contained in Section 19 - "Theft and taking of goods"; the Spanish Penal Code, adopted in 1995, by Law no.10/1995, published in the Spanish Official Gazette no.281 of 24/11/1995, is contained in Title XIII "Offenses against patrimony and against the socioeconomic order"; Netherlands Penal Code, under Chapter XXII "Theft and robbery"; the Belgian

Criminal Code adopted in 1867, with subsequent amendments, under Title IX "Offenses and delicts against property"; Criminal Code of Kosovo, entered into force in 2004, under Chapter XXIII "Crimes against property".

2. THE BASIC FORM OF THE OFFENSE OF THEFT

With regard to the offense of theft, for the simple form, the new Penal Code has kept the contents of the previous Criminal Code, is maintained and punishing the offense committed by the holder of the asset belongs wholly or in part against the one who has possession or legitimate detention of goods. Changing made had in consideration the material object by including electricity, to avoid discussions existing judicial practice (C. Voicu, et. Al, 2014, pp.376).

The sanction provided is milder than that of the previous Criminal Code, with limits between six months and three years or a fine, beside 1 to 12 years in prison.

As we mention, the French Criminal Code, under Chapter I of Title I define in the art.311-1 a simple theft as fraudulent stealing of thing that belongs to another, assimilated form of energy theft under Article 311-2.

In art.624 of the Penal Code Italian incriminated the offense of theft, assuming that the theft of movable good witch belongs to another man's and causing a property damage, unlike Romanian legislation for the specific purpose of obtaining a profit for himself or for another. Is incriminated also the stealing electricity or other energy with economic value.

German Penal Code § 242 punished in a similar way Romanian law, the offense of theft as taking without right of a movable in the possession of another person, with intent to get it for himself or give it a third parties. Similar Romanian Criminal Code, crimes provided by § 289 refers to the unlawful taking of a good deed that the person steal illegally, his moveable property or other person in favor of the owner of the property, from a usufructuary, a Pawn creditor or if another person has the right to use or retain the object.

In the Spanish Penal Code, art.234 is sanctioned theft as a person who, to obtain a benefit, take another's movable property without the consent of their owner, and the owner who steal being penalized a movable found in legitimate possession of a person, causing injury to him or to a third, according to art. 236.

Unlike the Romanian Criminal Code, Articles 237-242 in the Spanish include forms of theft committed with violence. The definition of this offense or act of one who, to make a profit, take possession of movable property belonging to others using force to accede to where they are, violence or intimidation of persons, indicate the two situations envisaged the use of force to achieve a good or on the person.

The concept of force does not coincide with grammatical meaning, it is irrelevant whether they are used directly to acquire goods or if the idea of taking is posterior, for example when after climbing a hurdle, to recover a ball that fell, the authors take and some goods (Cuesta, 2010, pp.151).

In the current discussions on the robbery committed by exercising violence over the asset continues to keep its currency, based on interaction with the injured person's

body (Bodoroncea G. et. Al, 2014, pp.477), which is regulated at European level and sanction situations aggravated forms of theft, such as for example the Italian Criminal Code, the Criminal Code of Kosovo (Buzea M., 2014, pp.263-268).

3. AGGRAVATED THEFT

It is provided in art.229 amendments set by legislators are considering giving up some aggravating circumstances, such as by committing two or more persons, against a person who was unable to express their will or to defend, a public place during a disaster, theft an act that serves to legitimize or identification, with the argument that they are embodied with the same content or similar one legal category of aggravating circumstances provided for in art.78 Criminal Code.

Like new aggravating circumstances were foreseen committing the disablement of alarm or surveillance system, since many properties are equipped with such systems and the committed by trespassing or professional office, on which there non unitary jurisprudence in relation to its absorption in case of committing theft, burglary or escalation (Explanatory Memorandum to the new Criminal Code, pp.28-29).

Has been dropped also at the criminalization of the offense of theft committed in a public place, considering that it does not show a high degree of social danger and that it would shall lead to forfeiture of almost all situations as qualified forms of the offense of theft (Cioclei, 2011, pp.64). Not stipulates punishment as a form of theft that has produced qualified serious consequences.

For all forms qualified penalties are reduced compared to the current regulation, and theft committed in the circumstances provided for in paragraph 1 to 1-5 years to 1-12 years in the current regulation, and theft committed in the circumstances provided for in paragraph 2 2-7 years to 3-15 years in the current regulation, and theft committed in the circumstances provided for in paragraph 3 to 3-10 years to 4-18 years in the current regulation.

By comparison, other legislation criminalizing same or similar qualified forms with the existing Romanian criminal law (Penal Code. Italian - theft committed by entering into a building or in another place intended, in whole or in part, private housing, if the author is carrying weapons or drugs without using them, if the act is committed by a person disguised or simulating an official capacity or by a person entrusted with a public service; French Penal Code: theft committed in a place that is serving as a home or used or intended for storage of money, values, goods or materials agent being introduced into these places through cunning, burglar or escalation; theft committed in a common vehicle for transport of persons; theft preceded, accompanied or followed by acts of destruction, degradation or deterioration, theft committed by a person who voluntarily hides his face in whole or in part to avoid being recognized) or features (for example, the Penal Code Italian- the use of violence or the use of things any other fraudulent means, the act skillfully; French Penal Code - theft committed by a person holding the public authority responsible for providing a public service, while exercising or during performing their functions or services or who falsely attributed such quality; theft preceded, accompanied or followed by violence against neighbor, punished more

severely when he caused a disability, it resulted in the death of the person, torture, barbarity, theft or committed on the grounds of belonging or not belonging, real or alleged, victim to an ethnic group, a race, a particular religion or their sexual orientation, committed theft in schools or education, or entering students out or very close to this moment).

4. THEFT FOR THE PURPOSE OF USE

The legislature chose the alternative of incrimination in a separate article, namely 230, theft for the purpose of use, milder sanction than the one committed with the purpose of acquiring unjustly. In addition to how existing in the previous legislation, the theft of a vehicle for the purpose of unjustly use (sanctioned however with a lesser penalty, reduced by one third compared to that provided for the simple or qualified form), was introduced a new variation by using a communication terminal which belong to other or an electronic communications terminal, unjustly connected to a network, if there was a loss.

As regards theft for the purpose of use of a vehicle, similar regulations are contained in the German Criminal Code, § 248 lit.b, which provides the offense consisting of unauthorized use of a vehicle, i.e. the act of one who takes a vehicle or bicycle use, without the consent of the rightful person, which seeks to prior complaint.

And article 244 of Chapter IV of the Spanish Criminal Code penalizes theft or use without authorization of a motor vehicle or motorcycle stranger, with no intention to master it, if the property is returned within a period that not exceeding 48 hours, without a penalty imposed that may be equal to or greater than the penalty imposed for the definitive acquisition of the vehicle. If restitution is not performed in the term provided, the act is sanctioned offense of theft or theft with use of violence, as appropriate.

Thus, contrary to Romanian legislation, the Spanish set certain criteria to make the distinction between theft in the base form and theft of use, respectively within 48 hours and includes the situation in which a person uses a vehicle received in custody for repairs, that law does not find a previously qualified as an act of appropriation (Cuesta, 2010, pp.157-158). Under the new Romanian Criminal Code, this last variant constitutes the offense of breach of trust, provided in art. 238, the new way of committing crime by using, without authorization, a good entrusted under a title for a particular purpose.

In the second new introduced hypothesis, arguments considered by the legislature aimed at problems in the judicial practice in order to resolve controversies, starting with the illegal connection of a telephone network and a cable network at an internet network, regarding qualification of energy concept with economic value, in terms of an increase numerical value (Explanatory Memorandum to the new Criminal Code, pp.28-29).

From this perspective, in terms of electricity theft and others analogous, Spanish criminal law is among the most detailed, with provision in art.255-256 Spanish Criminal Code offenses committed in this way, punishable can't be greater than or equal to that provided for the definitive acquisition of the property.

Throughout the French Criminal Code there is a distinct criminalization of the theft of use, it is considered as a form of burglary, estimating that, temporarily, the holder

behaved towards good as would have been the owner (D. Auger, 2005, pp.46), but was distinct incriminated stealing electricity.

Considering the absence of an objective criterion in order to delimit the scope of use of that appropriation, examining only the existence of the subjective criterion of the restitution intention of the good, legal doctrine has proposed the waiver of the provisions article 230 Criminal Code (D. Dinu, MK Guiu, 2015, pp.136-154)

5. THEFTS PUNISHED AT THE PRELIMINARY COMPLAINT AND RECONCILIATION

In article 231 Criminal Code provided for thefts between family members, in the sense of article 177 of the Criminal Code, by a minor against the tutor or the person who lives with person or hosted by the injured person, which are punishable only upon the complaint of the injured person.

The provisions of other European legislation containing special provisions, however limited, unlike Romanian law to a more restricted category appreciated as minor thefts, e.g. Italian Criminal Code penalizes at the preliminary complaint the theft of the use and theft of common property, provided by article 627, which refers to stolen goods of the part owner, the coheir or the partner from the things common property and the German Penal Code provides that where goods, subject to theft or appropriation offenses provided at article 242 and article 246, have a reduced amount, criminal proceedings shall be initiated only upon prior complaint, if the prosecuting authority not deems it necessary to intervene to protect public interests.

Regarding the offenses provided by article 228, article 229 para 1, para. 2 letter b, c and article 230 of the Criminal Code, reconciliation of the parties removes criminal liability.

From this perspective the report and the new concept of Romanian legislator on individualization of criminal judicial punishment, reflecting the harmonization of European legislation, following the consecration of new institutions, abandonment of the application of the punishment and the continuance of the application of the punishment and the principles of humanism and individualisation of criminal law and personalization of the criminal sanctions (R. Panaite, 2014, pp.689-695), reveals that for the offense of theft the enforcement regime is more gentle, with application including to a reconciliation institution for most of the forms provided.

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