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ROBBERY. THEORETICAL AND PRACTICAL ISSUES

Abstract

In front of the paper are found and presented some similarities and difference between criminal law of Romania and the Republic of Moldova on example - plurality of crimes and the crime.

To interpret the provisions of the Criminal Code of the Republic of Moldova, bring some critics on the reason the existence of certain provisions relating to unit the crime and is the author's personal views regarding establishment justness of Punishment, goals of criminal law, and respect the principles of national law .

Are presented and opinions existing in the literature and some data solutions practice law in the Republic of Moldova cases which fall within the certain provisions of the Criminal Code of it.

Showing personal views relating to possible changes of the provisions related to speech was made in this paper.

From the definition given in paragraph art.221. 1 Criminal Code that robbery is a particular way of theft, which contains in addition to the making of a good mobile in possess or detention of another in order taking wrongly, a series of adjacent, expressly provided by law , which carried out in order to achieve the theft (violence, threat or placing the victim in a state of unconsciousness or impossible to defend). This is why it is included in the category of crimes against heritage , although prejudice and life , limb, health or freedom of the person .

Unlike theft, robbery is a complex content whereas, according to the definition, affect both the detention and possession of movable (subject to legal principal) and life, limb, health or freedom of the person (subject to legal secondary). In this way, is to hold material mainly mobile asset held by imprisonment or another, and cover the body of secondary material on which the person does the activity of secondary (violence , threat , etc.) . It is possible ,

however, the threat that person to achieve through the use of violence on a good (for example, cutting the victim car tires so that it can not save the escape) in which it will retain robbery in competition with destruction. ¹

Robbery can be perpetrated by any person. In case of participation for the existence robbery's , it is necessary for all participants , regardless of the form of participation, to know the circumstances that theft is done through the means provided by law for robbery, regardless of being at the same time, if the author has committed or not theft in the manner envisaged by accomplice (violence, threat or other means).

As for coauthor, is sufficient, because of the complex, directly commit any of the activities are part of the objective side of robbery (eg only the achievement of violence or threat or unlawful removal only asset) . So , to coauthor there is not necessary that each of the perpetrator may have committed an activity to cover the entire side of the offense objective robbery , but it is enough that each direct perpetrate to an element of it , that is the main , or an adjacent . ²

If one of the defendants exercising violence and uproot bag victim and the other is away and receiving stolen property, even if this mode of operation has been established previously indicted, we believe that there is a coauthor, but an author and an accomplice. ³

Has been criticize ,in relatively recent legal literature correctly in our view and argued, a solution adopted by the Supreme Court , which decided that the fact the person who, under a Criminal Section prior agreement , transported by car, two other people near the victim's home and then discontinued electric lighting , giving their ability to deprive the victim through violence, a significant amount of money and to ensure escape, the acts of coauthor to commit the offense of robbery.

Certainly not believe that the activities of the defendant could be considered acts of enforcement action or adjacent to the main characterizing the material side of the objectives of the crime robbery, even if they had been determined in advance and distributed, being essentially acts typical of support for helping the perpetrators to commit robbery , so acts of complicity.

Content objective of the crime robbery is composed of the following actions:

1. Action purpose: the making of a good mobile in possess or imprisonment of another, without his consent, identical to that of theft , to signify main action in the case robbery . It is so petty larceny and theft qualified, which can be committed in order to take unjustly, or in order to use wrongly, if the vehicle.

Linked to this matter, in practice, decided that the existence of the crime of robbery is necessary, in addition to the existence of violence or threat to execute a removal action likely to be placed in art.208 Criminal Code, and not any other act of circumvention. If operation of steal considered independent , falling in the range into special law, as is the Forest Code, no longer can hold that the offense robbery, but the two crimes retain their autonomy, achieving a competitive crimes. In particular it noted that the defendant was surprised by the ranger and forester after stealing trees in the forest to escape a threatened the two with a axe 6, to consider finally forestry crime and the outrage in the contest, not the robbery.

Because the means specific robbery , action-making is done, sometimes, and forced submission to the mobile asset, made even the property owner or holder , which call into question the difference between robbery and blackmail. Between the two offenses there are similarities, since both objects that have special legal freedom and imprisonment and possession of a good mobile, but if blackmail is affected primarily freedom of the individual (hence Blackmail is part of the category of crimes against individual freedom) and only a subordinate other values, while the reverse is the case robbery (mainly affected assets and is in a subordinate person). On this basis it is considered that if the perpetrator, required under threat, a good remission, and the victim immediately meet this demand, is not blackmail but robbery.

By the same token, the practice decided that it is not robbery and blackmail accused of threat, and therefore to the deed itself coat person injured by knife determine the victim under threat of death, to remit a good what belonged . To stressed that if robbery danger which threatens the victim must be imminent, soon, the victim of having an alternative than to comply immediately demand the perpetrator to regain freedom, while the danger of blackmail in

which a victim is exposed should be one future rather than immediate, and the result of violence or threat followed the perpetrator must be in a range longer to the action of coercion.

The making is indispensable in its lack not able to talk about robbery.

2. Shares means: that an alternative, meaning that the realization of any of them is sufficient for the existence robbery. They are:

a) Use of violence by "violence" it mean any physical constraint put on the person. It must meet the following conditions:

_ To be committed against a person (If violence is committed on the property, the deed constituting thievery. However, violence against property would be a threat, which means that the deed could be robbery, but how the threat);

_ To be effective;

_ To have the ability to defeat the resistance of the victim, not necessary that the violence has an irresistible force.

In connection with the meaning of the concept of "violence" in practice a gave contradictory solutions, as well as the views expressed in legal literature, especially about making a good hand or from the victim's body, through pluck. Dominant opinion, which is gaining ever more ground is that if rending unexpected object in your hand or body on the injured person remain robbery specific violence, as in this case, seizure of property by mobile perpetrator is done by violence.

Thus, a decided that rend a chain of the neck injured person against it constitutes an act of violence, within the meaning of art.211 Code penal 9 also, that the theft of a bicycle by rend it in the hands of a minor offense of robbery, rend because it is an act of violență¹⁰

b) the use of threats

The threat lies in any act by which the moral coercion of a person should be made in this regard refers both to the art.193 Criminal Code, which criminal the act as a distinct threat and Art.46 Criminal Code, whereas, practically a mental or moral coercion.

In this respect, a decided that the fact the defendant to take the threat, goods on the victim, the crime of tâlhărie¹¹.

The threat may be not only explicit, but implicit, for example, on the assumption that the accused, being accompanied by three friends and met people injured on a dark street after a requested a cigarette in circumstances where it was surrounded him and his friends, took advantage of darkness and fear created by the presence of the victim group of people, to stealing glasses and a sum of money.

Also, a felt that using a special device to break the tires to determine stopping vehicles a unintentionally created a stressed state of panic and fear of drivers, equivalent to a state of threat specific content offender robbery ¹².

c) Putting the victim in a state of unconscious which means bringing the person injured in the no to see the perpetrator, and to not charge (by intoxication with alcohol, through the use of narcotic drugs, sleeping pills or other substances).

The state of unconsciousness, must be due action perpetrator and not other causes independent of the action, and the perpetrator to push against the person who has good mobile possession or detention, on which is heading the making. Also, the perpetrator for the victim in a state of unconsciousness must be prior to taking the property.

d) Putting palsy victim to defend itself - lies in bringing the injured person in a position to use the possibilities to no defense which as otherwise could use (for example, by linking immobilization victim hand and foot table in order to circumvent an amount of money in your wallet under the pillow or push the victim to the access door in the basement and then scale, providing the door with latch , because then back in the home and to acquire more goods, etc.).

In this connection, the legal literature to conducted discussions on the issue of whether the case robbery the way absences which takes the form of freedom illegally will retain the offense provided by art. 189 Criminal Code in competition with the robbery, provided by art. 211 Criminal Code or will not hold more than one offense of robbery, which absorbed the content of the complex deprivation of liberty unlawfully.

According to an opinion 13 , in this case face a competitive ideally will be to retain both the offense of robbery and the deprivation of liberty unlawfully, while alții¹⁴ have argued that deprivation of liberty unlawfully, to the extent that it was necessary to commit robbery is included in the material of its action as adjacent , loss of autonomy.

We believe that this latter view is correct, so to the extent it is established that deprivation of liberty unlawfully is indispensable for the theft or other purposes set out in art.211 Criminal Code, it is absorbed naturally into the offender robbery.

This does not mean, however, that there may be situations when it is able to retain , separately, in real competition , and the offense of deprivation of liberty unlawfully, along with the robbery.

Shares middle, and actions called adjacent to the theft (or the use of violence, threats, putting the victim in a state of unconsciousness or failure to defend) to be part of the objective of the crime of robbery, must meet on the conditions mentioned above, the following general requirements:

To serve as effective means for:

- perpetrate theft;
- for keeping stolen property;
- to eliminate all the offense;
- to guarantee escape of perpetrator;

To take place concurrently with the time perpetrate theft or at most a short period of time in relation to the theft, that is, whether before or after committing theft, so as to establish links in the middle to end these actions between secondary and primary action .

When the theft and the adjacent there is a big departure time, no one speaks of the existence of the crime robbery, but a plurality of crime, depriving the unit has operations (primary and secondary) is in essence a complex crime (eg , The perpetrator commits a robbery, and after three days, meeting with the injured party, to ensure escape, a hit).

To be directed against either the owner or holder of the mobile asset or against any other person who would intervene to prevent theft or perpetrate for catching and dispossess of perpetrator of stolen property.

As for the subjective side, as well as to theft, robbery can not do than with the guilt of a direct intention, because specific purpose theft (wrongfully appropriating, or use unfair if the vehicle) , and of her own (use violence, threat, putting the victim in a state of unconsciousness or impossible to defend , to commit theft , for keeping stolen property , or to delete all the offense or insurance escape perpetrator)

To take goal wrongly there must be at perpetrate crime without the need while his actual achievement. If this goal can not be missing speak of the existence robbery , because theft is not done, which is absorbed into the main content robbery. In this respect, a considered that there can be no crime of robbery when taking property through violence, threat, etc. , not conducted in order to take unjustly , but to determine the person injured in fulfilling certain obligations to author 15.

But despite a constant practice in this regard, even the supreme court decided in to a similar case, that there is robbery. It is no decision. 1732 from June 15 1995 the criminal department of the Supreme Court of Justiție¹⁶ the reasoned that "wrongfully appropriating referred to the Criminal Code art.208 exist and where the property is wrongfully detained by the defendant in order to determine outside the legal framework , the injured party to meet its claims deriving from litigation activities , whereas , the person injured is constrained to meet the perpetrator claims to recoup a things , so the perpetrator will have them. "

It retains that is no purpose to which the goods were taken , the defendant following to resolve a dispute activities outside the legal framework , namely to done alone , which is inadmissible. "

But do not believe that is not relevant order in which the goods were taken, which was not in any case the of taking , so failing that we can not talk robbery (or , theft).

For that crime , robbery is not relevant whether the defendant has sought dispossess injured party for a good before using violence or threat , or whether this effect occurred with the use of such means in order to achieve the theft , since by law, any robbery is theft committed by violence or threats. Therefore, there will initially hold even if the perpetrator intended to commit only one of the

components of the objective (either theft or the acts of violence or threat) and then during its perpetrate or shortly thereafter , intervened and decision to commit on the other.

When theft is followed by use of means shown in art . 211 Criminal Code (for keeping stolen property or to remove traces crime, or to ensure that the perpetrator to escape) decision robbery consummation of the birth, usually after consuming theft . As regards the other end (of use violence, threat, etc.) it must exist even when the perpetrator use a violence , threats , etc. , because without them the work is not done the secondary (middle) has robbery . If the criminal activities affect more people , asked whether so many crimes Note how many people are injured or a single offense.

Thus, in the question a decided that the theft committed by the use of violence on several people, but the purpose of material goods of their common heritage constitutes an offense single robbery, not a plurality of crimes in the contest, in relation to the number agrsate.17 persons in question, defendants have entered the housing victims, a family consisting of four persons, which they hit and stolen goods in their value 2 000 000lei.

Supreme Court reasoned that are not completed all the special features of the crime of robbery in relation to each of the injured , so we are in front of a contest of crimes, since stolen goods constituted their common heritage , and no distinct heritage of each of them.

In another case it was also decided that the one offense of robbery in a situation where the defendant removed a bag of sugar wagon injured party , hitting her when she tried to resist, and then another intervention people to keep stolen property , hit her and this . 18

In another case it was decided that committing the crime of robbery , while the more people injured, the threat and impact , constitutes as many crimes of robbery, in perfect competition , how many subjects are passive , and not a single crime. 19

In paragraphs 2 and 2¹ of art. 211 Criminal Code (as amended by Law 169/2006) are provided more qualified forms of crime robbery, in which some (in paragraph 2. A, b, c and alin.2¹ point . A , B and D) have content identical to those of qualified theft .

In terms of paragraph 2 . c) to commit robbery in a public place or in a public place or in a vehicle, regardless of its nature.

With regard to aggravating the paragraph . 2¹ item (robbery was one of the consequences shown in art. 182 Criminal Code) does not believe that it raises special problems, the clear wording of the text.

Remains in question only exacerbated by the same paragraph letter . c , which penalizes more serious robbery committed in a home or office thereof (this was aggravated provided by the entry into force of Law nr.169/2006 in Article 211. 2. f Criminal Code).

Since the introduction of the aggravated by Law no. 140/1996, literature and legal practice has expressed views and solutions adopted contradictory apple discord represent it matter if in this situation, the author entry into a dwelling or outbuildings it, followed by robbery victim, the only offense of robbery , Or should retain the contest, that means crime and violation of domicile.

By decision no. 2494 of 17 June 1999 Supreme Court decided that the robbery committed in a home or office thereof does not constitute the crime of home invasion and robbery in the qualifying competition , but a simple offense complex , prev. of Article 211. 2. f Criminal Code , the decision based on the motivation that according to Article 41 al .3 Criminal Code, the crime is complex when its contents enter the element or as an aggravating circumstance action or inaction that constitutes in itself an act provided for criminal law . This means that , absorbed in the complex offense, that element or aggravating circumstances must be stated expressly in statute incriminating . Or , in accordance with Article 211. 2. f Criminal Code, the offense is aggravated robbery , whether it was committed in a dwelling or outbuildings of these .20

Leaving to a situation when entering the house the injured party has made with its consent, which everyone agrees is that not only can lead to detention robbery offense, in other cases it was considered that he should retain or not the violation of domicile, as penetration in the home or dependency was made without the consent of the injured party or breaking , climbing or use without a real key or a key of lying .21

In what concerns us, we believe that the aggravating of art. 211 aligns with 211 points. Criminal Code that relates to the perpetration of robbery and not how to commission and that, since it supports the idea that robbery as shown above and when the housing enters the injured party with its consent, then you must accept and the idea that penetrating without the injured party, regardless of whether the entry was made simpler or breaking, climbing, etc. and committed robbery in the house, the author has committed the crime and the violation of domicile.

The position that we express is consistent with trends increasingly insistent to practice it is considered injustice - conform more than that, in terms of theft, where penetration in the home was made by breaking, climbing, etc., will be Note only qualified theft, and if penetration has not been done by these rules, and to retain the offense of violation of domicile.

Therefore, regardless of the views expressed and solutions adopted in practice, we believe that if penetration without consent in the victim's house (no matter how penetration) and robbery it must retain the contest, the offenses of breach of home and robbery in the manner prescribed by art.211 alin.2¹ point. c Criminal Code.

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