

SOME CONSIDERATIONS RELATING TO THE CRIMINAL OFFENCE OF DEPRIVATION OF LIBERTY PROVIDED BY THE ROMANIAN CRIMINAL CODE AS COMPARED TO THE CRIMINAL OFFENCE OF KIDNAPPING REGULATED BY THE HUNGARIAN CRIMINAL CODE

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Abstract

The article presents the criminal offence of kidnapping provided in the Hungarian Criminal Code, in Chapter XVIII entitled “Offences against Personal Freedom”, in section 190, as compared to the criminal offence of illegal deprivation of liberty regulated by the Romanian Criminal Code, Chapter VI, entitled “Offences against Personal Liberty”, in Article 205.

Keywords: *deprivation of liberty, kidnapping, criminal offence*

Introduction

In Chapter XVIII of the Hungarian Criminal Code, next to the crime of kidnapping, the following offences are provided restrictively: human trafficking, subjection to forced labour, violation of personal freedom, violence and non-disclosure of kidnapping (abduction), while the Romanian Criminal Code includes in Chapter VI, next to the criminal offence of illegal deprivation of liberty, the following criminal offences: threat, extortion and harassment.

In the legislation of any state that we may speak of, the right to liberty, together with the right to life, health and bodily integrity, is a fundamental right of every individual. The grounds for the protection of the personal liberty by means of criminal law are the constitutional provisions of every country.

1. A brief historical overview

The Romanian Criminal Code of year 1865 also called the “Cuza Code” marks the beginning of Romanian criminal law, sources such as the French Criminal Code of year 1810 and the Prussian Criminal Code of year 1859 being used in its drafting. This code remained in force until year 1937 when complementary penalties, accessory penalties, security and educational measures were first introduced in the Romanian law system.

To date, the Romanian Criminal Code has undergone a number of changes, new institutions, as well as principles of criminal law (the principle of the legality of incrimination and of sanctions of criminal law, the principle of penalty individualization – regulated through the entry into force of the Criminal Code of year 1969) were introduced. The last update took place in February 2014 through the drafting of the New Romanian Criminal Code, whose entry into force was planned for July 2010, but the occasion was put off to a later date by the authorities.

Just like the Romanian Criminal Code, the **Hungarian Criminal Code** has undergone numerous changes over the years. Thus, the first Hungarian Criminal Code appeared in year 1978 and remained in force until year 1983. In 1990, four parliamentary committees tried to amend the criminal code, but to no avail, until year 2010 when the current government agreed to change the Criminal Code, a version that entered into force in year 2013.

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The new Hungarian Criminal Code is based on regulations provided by the previous codes, but changes have been made, such as: the reduction of prescription periods; as regards minors between 14 and 18 years milder punishments were regulated; minors under 12 are also criminally liable, but only in certain special cases; self-defence was also included in the code.

2. A comparative analysis of the criminal offence of deprivation of liberty contained in the Romanian Criminal Code and the offence of kidnapping contained in the Hungarian Criminal Code

2.1. Regulation

As regards the Romanian Criminal Code, the criminal offence of illegal deprivation of liberty is regulated by Chapter VI entitled “Criminal Offences against Personal Liberty”, in Article 205, next to the offences of threat (Article 206), extortion (Article 207) and harassment (Article 208).

The Hungarian Criminal Code regulates the offence of kidnapping in Chapter XVII entitled, as in the Romanian Criminal Code, “Offences against Personal Freedom” in section 190, next to the offence of misprision of kidnapping, trafficking in human beings, subjection to forced labour, violation of personal freedom and duress.

The Romanian Criminal Code describes the criminal offence of deprivation of liberty in its typical form, in paragraph (1) of Article 205, by the following formula: “the deprivation of liberty of a person is punishable by imprisonment from 1 to 7 years. The kidnapping of a person who is unable to express their will or to defend themselves is also considered deprivation of liberty”. The deed is aggravated and is punishable by imprisonment from 3 to 10 years, as provided by paragraph (3) of that Article, if committed by an armed person, against a minor or by endangering the health or life of the victim. However, if the deed resulted in the victim's death, the punishment is imprisonment for 7-15 years and the denial of certain rights. The attempt is punishable in the case of para. (1) and (3).

The Hungarian Criminal Code defines the crime of kidnapping in paragraph (1) section 190 as follows: “any person who deprives another person of his personal liberty by the use of force or direct threat against life or bodily integrity, or rendering him defenseless or unable to express his will, or by taking advantage of such condition”, is guilty of a felony punishable by imprisonment between 2 and 8 years. The deed is aggravated if it was committed against a person under the age of 18 years, in criminal association with accomplices, by displaying a deadly weapon, by carrying a deadly weapon, or against a public official or a foreign public official, in which case the punishment is imprisonment between 5 and 15 years. If the deed is committed against a person under the age of 14 years, results in particularly great damage or results in the death of the victim, the punishment is imprisonment between 5 and 20 years or even life imprisonment. The penalty shall be imprisonment between 10 and 20 years or life imprisonment, if the kidnapping also involves the murder of the victim. Also, the Hungarian Criminal Code provides in this article that any person who engages in preparations for kidnapping is punishable by imprisonment not exceeding 3 years. If the deed was voluntarily terminated before grave consequences have resulted thereof, the punishment may be reduced without limitation.

2.2. Constituent elements of criminal offences

a) The legal object of both criminal offences is represented by the social relations that protect the right to liberty of the person.

b) The material object is represented by the body of the person against whom the act of deprivation of liberty is exercised¹. The material object is common to both criminal offences that were analyzed.

c) The objective side

Both for the criminal offence of deprivation of liberty and the criminal offence of kidnapping, the material fact can be achieved by action or commission as well as by inaction or omission. The action can be achieved by one or more acts of immobilization, confinement or prevention of the person from moving or travelling, by the use of force or by threat. The deed can be achieved by omission in case the perpetrator omits to restore the liberty of the individual after the legal basis for the deprivation of liberty has expired². However, we find this situation only in the case of the criminal offence of deprivation of liberty of the Romanian Criminal Code, not in that of the offence of kidnapping contained in the Hungarian Criminal Code.

In both criminal offences, the deed must result in a person's physical, motor deprivation of liberty, and, of course, it should have been committed illegally.

d) The subjective side

As regards the subjective side of these two criminal offences, there are no differences between them, and this side consists in committing the deed with direct or indirect intent.

e) Subjects

There are similarities and differences in terms of the subjects of these criminal offences. One similarity concerns the active subject, which is the same with both criminal offences, i.e. it may be any person who is aged over 14 years.

Also, the passive subject may be any person, but here we find some differences between the two offences.

First, the passive subject of these offences may be a minor too, but in the Hungarian Criminal Code the minority status is specified by indicating age, so that in para. (2) letter a) the deed is committed against a person aged under 18 years, and the offence is more serious if committed against a person under the age of 14 years [para. (3), letter a)], whereas in the Romanian Criminal Code, only the notion of "minor" is used, which, according to the current code, includes any person aged under 18 years.

The Hungarian Criminal Code provides that the passive subject of the crime of kidnapping may also be a person who has the capacity of a public official or foreign public official [para. (2) letter e)] – a situation that is not provided in the Romanian Criminal Code, as well as any person that is unable to express their will – a situation found in both Criminal Codes.

Participation, in both cases, is possible in all forms.

f) Sanctions

We also find differences in terms of the sanctions for committing the two crimes.

Thus, there is a heavier penalty for the simple offence of kidnapping of the Hungarian Criminal Code than for the simple offence of deprivation of liberty of the Romanian Criminal Code. In the first case, the punishment is imprisonment between 2 and 8 years, while in the second case the punishment is imprisonment from 1 to 7 years. In the Hungarian Criminal Code the penalty for committing such an offence may be up to 20 years or even life imprisonment (in aggravated cases), but in the Romanian Criminal Code the maximum penalty, in aggravating circumstances, is of 10 years.

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Radu Bodea, Drept penal. Partea specială (Criminal Law. The Special Part), Ed. Hamangiu (Hamangiu Publishing House), Bucharest, 2008, p.145

² Radu Bodea, Drept penal. Partea specială (Criminal Law. The Special Part), Ed. Hamangiu (Hamangiu Publishing House), Bucharest, 2008, p.145

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g) Aggravated forms

Both the offence of deprivation of liberty contained in the Romanian Criminal Code and the offence of kidnapping provided by the Hungarian Criminal Code have several aggravated forms that are provided in the article, in the order of their seriousness.

The aggravating circumstances of these deeds relate to their objective side. Thus:

➤ in the Romanian Criminal Code, the offence is more serious if committed by an armed person [para. (3) letter a)]; against a minor [para. (3), letter b)]; by endangering the health or life of the victim [para. (3), letter c)]. The punishment provided by the law in this case is imprisonment between 3 and 10 years. However, if the deed resulted in the death of the victim (Article 205, para. 4), the punishment is imprisonment for 7-15 years and the denial of certain rights.

➤ the Hungarian Penal Code provides in para. (2) a penalty of 5 to 15 years if the offence was committed against a person under the age of 18 years [para. (2), letter a)]; in criminal association with accomplices [para. (2), letter b)]; by displaying a deadly weapon [paragraph (2), letter c)]; with a deadly weapon [para. (2) letter d)] or against a public official or foreign public official [paragraph (2), letter e)]. The punishment is imprisonment from 5 to 20 years or even life imprisonment if the kidnapping is committed against a person under the age of 14 years [para. (3), letter a)]; results in particularly great damage [para. (3), letter b)]; or results in the death of the victim [para. (3), letter c)]. Another aggravating form provided by the current code is that of a kidnapping involving the killing of the victim, in which case the penalty is imprisonment between 10 and 20 years or even life imprisonment.

So, we notice that the Hungarian legislator has provided much harsher penalties for the commission of such acts, by applying drastic sanctions corresponding to the multiple ways of committing the criminal offence in aggravated forms, thus protecting the social and fundamental values that make up the object of this crime.

The Romanian Criminal Code provides no mild penalties for committing this criminal offence either, but by developing the New Criminal Code, the Romanian legislator restricted the forms of committing it in aggravating circumstances, creating, in my opinion, an advantage for the active subject, which, according to the previous Criminal Code, if committing the crime together with one or more persons, for example, would have been held liable for the aggravated form of the offence, whereas in the current Criminal Code, they are held liable for the simple form of the offence.

Conclusions

Citizen's rights and liberties are enshrined and guaranteed by the Constitution and other laws and manifest themselves as attributes of the human personality, but they are reflected in legal terms in the form of subjective rights which are called personal and social-political liberties.

By incriminating these unlawful acts, both the Romanian and Hungarian legislators aimed to protect the social relationships that regard one or another aspect of the right to freedom, but secondly, they also wanted to protect relationships regarding other social values, such as: the right to life, health and bodily integrity of each person.

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3. Romanian Criminal Code;
4. Hungarian Criminal Code