

# COMPARATIVE ASPECTS BETWEEN THE CRIME OF ROBBERY AND OTHER CRIMES PROVIDED BY THE CRIMINAL CODE IN ROMANIA

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***Abstract:** The robbery constitutes a serious prejudice to the bodily integrity of the person and his patrimony. The written and unwritten laws of all times have protected the person and all his attributes, including the patrimony, since their defense is a constant feature, common to all the legal systems. In a community where social harmony prevails, people act daily to meet needs considered natural, without embarrassing other members of the community who act for the same purpose.*

***Keywords:** robbery, criminal, code, Romania.*

## Introduction

Often, some people act in contempt of this social harmony, preventing the balanced and sustainable development of the community and are responsible for disrupting the quality of life and creating a state of insecurity for those around them, hence, deriving the need to impose on them a reaction of removing their antisocial behavior, containment and re-education, which seek to restore the state of equilibrium with which they have interfered as a result of harmful actions.

Over time, several theories of crime have spread in the field of criminology. The theological theory has long held that the inclination to crime would be the consequence of original sin, while others, J. J. Rousseau, for example, blamed society for justifying the behavior of criminals, claiming that they are born good people but society is pushing them towards crime.

Science, however, is of the opinion that at the base of the offenders' behavior are either certain biological deformities that do not allow the perpetrator to master his antisocial outbursts, or various social and economic factors.

## 1. The robbery

The robbery is a regulated crime under Article 233 of the current Criminal Code as: „, the theft committed using violence or threats or by putting the victim unconscious or unable to defend herself or himself or, as well as the theft followed by using such means to preserve the stolen property or to remove traces of the crime.”

The robbery is part of the category of crimes against the patrimony and it represents the most serious form in which the theft can be committed since it involves the simultaneous violation of two categories of legal norms, on the one hand, the rules that are intended to protect

the life, the bodily integrity and the health of the person and, on the other hand, those that ensure the protection of a person's heritage.

The robbery presupposes a high level of social danger, the perpetrator's goal is to commit the theft and the violence is just a way in which he reaches his goal.

## **II. The robbery and the blackmail**

The Criminal Code defines the blackmail in Article 207 as: "the constraint of a person to give, to suffer something in order to unjustly acquire a non-patrimonial use for oneself or for another", the assimilated form of the blackmail is the constraint consisting in "the threat of revealing a fact that can be real or imaginary, compromising for the threatened person or a family member."

Despite the fact that the use of threats and acts of violence are the essence of the crime of robbery and also of the crime of blackmail and that both of the crimes have special legal objects, social relation relating to the freedom of the person in the case of blackmail and social relation relating to the property of the person, in the case of robbery, these are two crimes that differ in many ways.

The robbery is a crime against the patrimony while the blackmail is a crime against the freedom of a person.

The robbery presupposes an immediate, imminent danger, as opposed to blackmail that involves a future danger which will occur if the victim does not adopt the behaviour claimed by the perpetrator.

In regard to the material object, it always exists in the case of the crime of robbery (mainly, the property owned, possessed or detained by another and the body of the person, in the secondary) unlike blackmail that in principle does not have one (except for the victim's body in the situation in which acts of coercion are exercised directly on it and not just threats are involved)

From the analysis of the objective side of these crimes, it follows that blackmail requires the existence of a time interval between the exercise of coercion and the activity of the victim to give, to do or not to do while the robbery does not provide the victim with time of thought between the moment of the theft of the good and the moment of the use of acts of violence.

Although both crimes are committed with direct intent, it qualifies for different purposes, obtaining an unpatrimonial and unjust benefit for oneself or for another in blackmail and appropriation of the stolen good, keeping the stolen good, ensuring the escape, respectively removing the traces of the crime in robbery.

The attempt is possible in both crimes but it is only incriminated for robbery, not for blackmail.

## **III. The robbery and the piracy**

The Article 235 of The Criminal Code defines the piracy as: "the theft committed by violence or threat, by a person who is part of the crew or passengers of a ship on the high seas, goods found on that ship or another ship."

The piracy is therefore the robbery committed on the high seas or in airspace against ships or aircraft and naturally its content is similar to that of robbery but it has some specific particularities.

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The first difference between robbery and piracy is given by the fact that the secondary legal object of piracy, namely the use of violence, can be directed against goods as well, unlike robbery where it refers only to the integrity of the person (Bodea et al., 2018:228).

Another difference between these two crimes is that in the case of piracy, the legal provision that incriminate this act provides for a special active subject, respectively “a person who is part of the crew or passengers of a ship or aircraft” while the legal provision that incriminates the robbery, the Article 233 of The Criminal Code, does not assume a determined active subject which means that it can be any person (Bodea et al., 2018:228).

Regarding the subjective side, we find direct intention both at piracy and robbery but in the case of piracy, it is necessary that the action of theft meets a special requirement, namely to be carried out for personal purpose, to the advantage of the perpetrator, the lack of this requirement entails the criminalization of another criminal act.

Regarding the sanctions, the criminal law is tougher in case of piracy, punishing the perpetrator with imprisonment from 3 to 15 years while the robbery is punishable by 2 to 7 years in prison.

The objective side of these crimes is similar because two activities are included in the composition of both crimes: the removal of goods from the ship or aircraft and the perpetration of acts of violence against persons or property on the ships, for example: lifeboats, parachutes, etc. or even against the ship as a whole.

What these crimes also have in common is the fact that they are consumed at the same moment, that is, when the act of taking with the help of violence has been completed and that the attempt is punished both at the robbery, as well as the piracy.

#### **IV. The robbery and the murder**

The murder is incriminated in Article 188 of the Criminal Code and it constitutes “intentionally suppressing the life of a person.” (Udroiu, 2020:1)

The legislator considers that killing for the purpose of obtaining a material benefit or an advantage is a particularly serious act.

The gravity of this act results from the motive of the crime.

The material interest is the objective pursued by the perpetrator by committing the crime and it may consist of money, things of patrimonial value, advantages at work, debt settlement, inheritance of wealth, etc.

In the doctrine it was argued that what distinguishes the killing committed from material interest from the robbery that resulted in the death of the victim ( The article 236 of the Criminal Code in relation to The article 233 of the same Code) is the way in which the perpetrator acts in order to obtain the material interest.

In the case of murder committed for material interest, the perpetrator will obtain the material benefit by apparently legal means, for example the estate vacation, while in case of robbery, the perpetrator acquires certain goods or rights by using violent means, which is why the material use is unjust and the goods are not even apparently due to him, hence the fact that he will be reserved when it comes to their use, for the fear of their origin to be discovered.

As regards the liability of the perpetrator, it is not relevant whether the material benefit was actually obtained or whether it is of a third party, it is only important that he acted for this purpose.

Thus, in judicial practice, it was decided that the defendants who acted intentionally in connection with the crime of robbery, but in the form of guilt against the more serious consequences they caused, this is, the death of the victim, which they did not foresee but they had to and could have to, acting with *praeterintenti*, will be liable for the crime of robbery followed by the death of the victim stipulated in Article 236 of The Criminal Code in force (Decision no. 239/2011).

The life of the person is the central element of the value system that the law protects, therefore, the legislator also granted the committed murder in order to facilitate or hide the commission of another offense a place on the level of crimes against the person, the, it is committed either to facilitate the commission of another crime or to conceal the previous commission of a crime.

## **V. The robbery and the trespassing**

The trespassing is a crime that belongs to the class of crimes that affect home and private life and is regulated both in the Criminal Code and in the European Convention on Human Rights.

According to Article 224 of the Criminal Code, the trespassing is: “Parting without right in any way, in a house, room, outbuildings or fenced place, taking them, in, without the consent of the person using them, or the refusal to leave them at its request”

Art. 8 para (1) of the European Convention on Human Rights states that: “Any person has the right to respect for his private and family life, his or her domicile and correspondence.” (Radu, 2018:143). Over time, several guidelines have been outlined in the specialist practice regarding the application unitary legal provisions incriminating the crime of robbery.

In a first orientation, the applicants claimed that the crime of home violation is not absorbed by the crime of robbery committed in a house or in its dependence, there being a contest of crimes. On the same matter, some courts have argued that the crime of trespassing is absorbed by the crime of robbery committed in a dwelling or in its dependencies.

Other courts have also adopted a contrary solution claiming that the person who enters without right into the courtyard of a dwelling and, subsequently, into the dwelling for the purpose of committing a robbery, he'll be liable for one crime, namely robbery.

The different way in which the courts approached this subject led in practice to different solutions with different legal frameworks and different sanctioning treatment for identical facts, which led to the complaint The High Court of Cassation and Justice with appeal in the interest of the law in order to interpret the legal provisions.

Currently, the courts no longer face this problem of interpretation because they have at their disposal the current Criminal Code which is drafted in an explicit manner and which expressly specifies in art. 234(1) f) that the robbery committed by home violation is a qualified robbery and according to Decision no. 2194 Of 2014 pronounced by the Criminal Section of the High Court of Cassation and Justice the qualified robbery offense absorbs the crime of home violation, with a unique offense of qualified robbery.

## **Conclusions**

From my point of view, the causes leading to the commission of the robbery can be classified into objective cases and subjective causes.

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Objective causes refer to the big problems that are well known in our country such as poverty, corruption, unemployment and alcoholism, and those of a subjective nature refer to the person of the perpetrator and imply lack of interest in acquiring the necessary things honestly, desire for rapid and laborless enrichment, behaviors that are based on deficiencies in education, conduct and deviant parental attitudes, lack of supervision from parents, etc.

Despite the fact that there are a lot of rules of conduct in society and that it is not by chance that we also find among the ten commandments, known as the law of God, such rules, such as, for example: “Do not steal!”, “Do not kill!”, official statistics show significant increases in the crime rate.

I believe that, in order to limit the worrying dynamics of the criminal phenomenon, the state authorities must be more involved in movements to prevent and combat antisocial facts in this regard, we need more information campaigns aimed at helping to identify criminogenic risk factors in a timely manner and to raise awareness of the consequences of committing a crime.

Also, in my opinion, the state is obliged to provide its citizens with a sense of security, which is a primary element when it comes to quality of life, therefore, in order to make it harder for robbers to work and deter them, they must invest more in public lighting infrastructure or the installation of more surveillance cameras in public.

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