

УДК 343.7

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ДО ПИТАННЯ КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРONI ВЛАСНОСТІ ЗА ЗАКОНОДАВСТВОМ РУМУНІЇ ТА УКРАЇНИ: ПОРІВНЯЛЬНО-ПРАВОВИЙ АСПЕКТ

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TO THE QUESTION OF CRIMINAL-LAW PROTECTION OF PROPERTY UNDER THE LAWS OF ROMANIA AND UKRAINE: A COMPARATIVE LEGAL ASPECT

The change of the legislation from the criminal point of view is, as in other domains, an issue that usually appears in the cases in which there are transformations of political, economic, social and cultural nature in the evolution of the society.

In the recitals that accompanied the draft of the new Criminal code, it was showed that the current sentencing regime regulated by the current Criminal code (come into force on January 1st 1969), submitted to some frequent legislative interventions on different institutions, led to a nonunitary enforcement and lack of coherence of the criminal law with repercussions on the efficiency and finality of the justice act [1, p.116].

After several years of wide-ranging social, professional, and political debates, on 1st February 2014 Law no.286/2009 entered into force, which deals with the Criminal Code ("New Criminal Code").

In old Romanian law are founded regulations most detailed relating to these crimes. Thus, Pravilele lui Vasile Lupu (Vasile Lupu Precepts) – "Carte pentru învățături" (Book for teaching) since 1646 – and Matei Basarab – "Îndreptarea legii" (Law correction) of 1652 – Codicele penale ale lui Alexandru Sturdza în Moldova (Criminal Codex of Alexander Sturdza in Moldova) – 1862 – and Barbu Știrbei -1850 – in Muntenia (Wallachia), contained provisions relating to offenses against property.

Romanian Criminal Romanian Penal Code of 1864, although mostly copied by French Criminal Code, contained in chapters on "Crimes and offences against property" numerous incrimination inspired by Prussian Criminal Code (art. 306-

380) relating to heritage protection in order to ensure by severe means its protection [2, p.174].

In the Romanian Criminal Code (1968) The Special Part, the offences against patrimony are to be found in Title III, entitled “Crimes against Patrimony”, structured as follows: Articles: 208-the offence of theft, 209-the offence of aggravated theft, 210-the punishment of theft on complaint, 211-the offence of robbery, 212-the offence of piracy, 213-the offence of embezzlement, 214-the offence of fraudulent management, 215-the offence of fraud, 216-the offence of misappropriation of found property, 217-the offence of destruction, 218-the offence of aggravated destruction, 219-the offence of negligent destruction, 220-the offence of disturbance of possession, 221-the offence of concealment.

The notion of “patrimony” is broader than the notion of “property”, including not only the property, but also all the rights and obligations of economic value [3, p.39].

In terms of criminal law, “patrimony” term has a different meaning as in civil law. In terms of civil law, the patrimony means all rights and duties of an individual that can have an economical value, that can be measured in money or in other words, all current and future rights and duties of a person [4] .

Legal generic object of offenses against patrimony is patrimony as social value and ensemble of social relationships which are born, develops and grows in relation to namely social value, especially in terms of real rights concerning to property, including the obligation of maintain the initial legal status of assets as part of that patrimony .

Some crimes such as robbery had a complex legal subject because as primarily is affected the social value, named patrimony, and secondary the social value represented by life, health, physical integrity or individual freedom.

Material object of crime in general is thing on which moves the material element of offense. Regarding the crimes against patrimony, the material object is represented by mobile or immobile assets against was directed the criminal activity. Some offenses can only had a mobile asset (the crime of theft, robbery, breach of trust, embezzlement or appropriation of found asset), while in others it may be an immobile asset (destruction in any variants or possession disturbance) [5, p.142].

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. 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 [6, p.99].

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.

According to Art. 208 par. 1 Romanian Criminal Code. The Special Part, simple theft consists in “taking a movable asset from the possession or custody of another, without the consent of the latter, for the purpose of unjustly appropriating it”.

The Romanian Criminal Code covers three types of theft: simple theft, theft of a vehicle as a variant of the category, and aggravated (qualified) theft as an aggravated form.

The New Criminal Code identifies and incriminates several new criminal offenses, answering to a certain extent, the requirements of constantly evolving social needs and values. The following points highlight the main new criminal offences regulated by the New Criminal Code: Crimes against property: breach of trust by defrauding creditors (art. 239); insurance fraud (art. 245); diversion of public tenders (art. 246); financial exploitation of a vulnerable person (art. 247); carrying out financial transactions in a fraudulent manner (art. 250); accepting financial transactions in a fraudulent manner (art. 251) [7].

There are a lot of crimes against property in Criminal Code of Ukraine and other states. All types of criminal offences against property are found in Chapter VI of Criminal Code of Ukraine. Criminal law of Ukraine distinguishes these crimes: theft, robbery, brigandism, extortion, fraud, stealing of power networks, cable communications lines, and related equipment by dismantling or otherwise and others [8].

In Articles 185-198 of the Criminal Code of Ukraine provides accountability for crimes against property of various types. Among the crimes of this system can identify a group of crimes that are committed intentionally by a person convicted of unlawful inversion of another's property for their own benefit or for the benefit of another person.

The first, penal doctrines considered that the theft ensured the protection of the ownership right. In the 19th century, a part of the doctrine started to criticize this conception, claiming that the object of protection should not be limited to the ownership right and should also include the lawful possession (Pop, Tr., 1937, p.401; Antolisei, Fr., 1996, p.285). That is why the majority of legislations gave up the term “crimes against property”, replacing it with other less restrictive ones, such as those of “crimes against heritage” or “crimes against assets”. At present, the governing doctrine considers that the crime of theft ensures the protection of possession or detention of movable assets (Rassat, M. L., 2006, p.100; Dongoroz, V., 1971, p.458; Pascu, I., 2013, p.300), namely to a simple state of fact, with no interest whatsoever to whether this state of fact is legal or illegal. In other words, this doctrine considers that, in case of theft, the protected value resides in the “physical affiliation of a movable asset to a certain heritage” [9, p. 362].

Romanian scientists such as Doinel Dinuică and Mioara-Katy Guiu note that For the existence of the crime of theft it is necessary that, at the moment of the crime the good should be in the legal possession of the victim. If, at the moment of the crime the good is in the legal possession of the defendant, there will be another crime (breach of trust, fraud management etc.); for the existence of the crime of

theft it is also necessary that the defendant should take the good in a clandestine way and with the purpose of having an unjust material profit.

In criminal law the concept of patrimony in relation to crimes committed against it, may have a narrower meaning and refers to assets not as universal, but individual, likely to be acquired by the offender through any fraudulent means or to be destroyed, damaged, concealed or fraudulently managed, etc.

An offense would never be committed against property as a universality of assets because will always exist regardless of assets number or value and even if the subject does not have any debts; no one can be deprived of heritage but up of one or few assets that form its patrimony.

Therefore, among the Romanian scientists widely believed that is more adequate to name these crimes, as offences assets belong to a property (patrimonial) than crimes against property as whole.

Thus, one of the first ways to improve criminal law as provided by Chapter V of the Criminal Code of Ukraine should be a revision of the section title, the development and definition of the characteristic features of this category of crime.

An analysis of the criminal legislation of foreign states suggests that the subject of crimes against property recognized not only things in the material sense, but the benefits are not of a material nature: rights, services (utilities, telephone, television, mail, transport and restaurant services and entertainment) documents, information, intellectual property, law requirements and other intangible assets, and the like.

REFERENCES:

1. *Hotca Mihai Adrian.* The new Romanian Criminal Code – changes suggested in the general part / Mihai Adrian Hotca // Lex ET Scientia. Juridical Series. – № XIX, VOL. 1/2012. – P.116 –127.
2. *Pocora Mihail-Silviu.* Historical incrimination of facts against patrimony / Mihail-Silviu Pocora // Challenges of the Knowledge Society. Legal sciences. – P. 173-180.
3. *Nechita1 Elena Ana,* Popescu-Brăila Nicolae Iancu. The Tactics of Hearings in the Case of Crimes Against Patrimony / Elena Ana Nechita1 & Nicolae Iancu // Journal of Politics and Law. – Vol. 5, No. 3. – 2012. – P. 39-47.
4. *Popescu-Brăila T.R.* Drept civil, vol. I . Bucureşti: Romcart S.A., 1993.
5. *Pocora Monica.* The concept of patrimony and common aspects of patrimony regulated by the criminal / Monica Pocora, Mihail-Silviu Pocora // Challenges of the Knowledge Society. Legal sciences. – P.140-145.
6. *Buzea Monica.* Considerations on the theft offense in regulation of new Criminal Code and aspects of comparative law / Monica Buzea // Journal of Public Administration, Finance and Law. – Issue 7/2015. – P. 99-104.
7. The criminal code of Romania // Electronic resource: www.selec.org/doc/present_Criminal_Code.doc.
8. Criminal Code of Ukraine // Electronic resource: <http://www.legislationonline.org/documents/action/popup/id/16257/preview>

9. *Dinuică Doinel, Guiu Mioara-Ketty. An Approach to the Crime of Theft and Its Connection with the Civil Theory of Possession.* / Doinel Dinuică, Mioara-Ketty Guiu // Journal of Social Sciences and Humanities. – Vol. 1. – № 4, 2015. – P. 361-367

Soloviova Alina. To the question of criminal-law protection of property under the laws of Romania and Ukraine: a comparative legal aspect

The article analyzes the question of criminal-legal protection of property rights under the laws of Romania. The author reveals the advantages of the current Criminal Code of Romania, compared to its predecessor.

Keywords: *crime, theft, robbery, other people's property, property damage.*

Соловйова А.М. До питання кримінально-правової охорони власності за законодавством Румунії та України: порівняльно-правовий аспект

У статті проаналізовано питання кримінально-правової охорони власності за законодавством Румунії. Розкриваються переваги чинного Кримінального кодексу Румунії порівняно із його попередником.

Ключові слова: злочин, крадіжка, грабеж, чуже майно, майнова шкода.

Соловьев А.Н. К вопросу уголовно-правовой охраны собственности по законодательству Румынии и Украины: сравнительно-правовой аспект

В статье анализируются вопросы уголовно-правовой охраны собственности по законодательству Румынии. Раскрываются преимущества действующего Уголовного кодекса Румынии по сравнению с его предшественником.

Ключевые слова: преступление, кражса, грабеж, чужое имущество, имущественный вред.

Стаття надійшла до редакції 03.09.2015.