



Some Common Issues and the Application of more Favorable Criminal Law for Crimes against the Person according to the New Criminal Code

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Abstract: The paper examines the main common issues of crimes against the person, and some other situations of more favorable criminal law enforcement. The innovations consist in the conducted examination and the views expressed on some situations in which the more favorable criminal law should be applied. The main change with a strong preventive feature is to introduce the two institutions, namely, the renunciation of applying the punishment and postponing the punishment, which generally is given a favoring regime to physical or legal entities being at their first conflict with the law or in the case of committing crimes whose degree of seriousness is reduced. The paper continues other papers published in the field, and it can be useful both to academics and practitioners in the domain of preventing and combating crime of this kind.

Keywords: objective side; the subjective side; criminal ways; sanctions

1. Introductory Considerations

The way in which the legislator intended to regulate the offenses that are part of Title I of the Criminal Code, Special Part, differs fundamentally from the existing rules in the Criminal Code of 1969, regarding the systematization of material, the marginal titles of some rules of incrimination and provided sanctions.

As it will be noted, the fundamental difference between the two laws consist in the fact that the vision of the new Criminal Code, the offenses against the person, are part of Title I, unlike the previous criminal law (Criminal Code of 1969), where those crimes were covered by Title II, after the offenses against state security.

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According to the doctrine, proceeding as such, “the new Romanian legislator has appropriated the French and Spanish systematization solution, unlike the Criminal Code of 1969, which was according to the German and Italian Criminal Code, prioritizing the crimes against state security.” (Antoniou, 2013, p. 11)

Therefore, contrary to the solution adopted by the 1969 Criminal Code, the Criminal Code in force legislator has given priority to the protection of the individual under the detriment of protecting the social values which concern the state security.

Besides the reported difference between the two regulations there are others, among which we mention the way of grouping the crimes by chapters, entitling these chapters and the enforcement regime.

Thus in the Criminal Code of 1969 the offenses are grouped into three chapters with different names, including: Crimes against life, bodily integrity and health (Chapter I), Crimes against person’s freedom (Chapter II) and Crimes regarding sexual life (Chapter III), while the Criminal Code in force provided nine chapters, with different marginal titles categorizing certain groups of offenses of this kind.

Also, there are elements of differentiation also regarding the name of chapters included in the two codes; the only chapter that has counterpart in the new Criminal Code under the same name is Chapter II of the Criminal Code of 1969 entitled “Crimes against person’s freedom” (the chapter correspondent to the new Criminal Code is Chapter VI of the same name).

Other elements of differentiation relate to the minimum and maximum sentences that were changed, most often in the new Criminal Code in relation to the Criminal Code in 1969, being more reduced.

2. Some Common Aspects of the Offenses in this Group

As part of the same group, the offenses contained in this title have some common aspects (similarities), on which we will make some general clarifications.

A. The Legal Object

According to the Romanian doctrine (Boroi 2014, p. 22), *the generic legal object* of the incriminations is built by the social relations whose training, deployment and development are conditioned by the existence of the human person. The importance and necessity of protecting the values result from the concrete way in

which the man is viewed in a general context, in the sense that the existence of the society and hence its progress cannot be conceived without the human being.

Given the importance of this value, the actual defense could only be achieved through effective combating by means of criminal law of the main facts that tarnish the human being.

The special legal object for each of incriminations contained in this group consists of specific social relationships that are born and developed in relation to the protected value of each of these incriminations (Antoniou, 2013 p. 20).

The protected social values are collated in a certain order, starting from their importance; thus, firstly it is protected the life, then the physical integrity and the health of the person following personal liberty, exploitation, freedom and sexual integrity and the domicile and privacy.

B. The Material Object

Most often, *the material object* in the case of the offenses against the person is the person's body, on which the active subject (subjects) of the offense acts every time.

C. The Subjects of the Offense

The Active subject of the crime in this group may be any physical and sometimes legal entity, unless the law stipulates the need for a certain quality.

The Passive subject may be any physical entity on which it is executed the action or inaction of the active subject. For the offenses referred to in art. 225 and 227 of the Criminal Code (violation of professional headquarters and disclosure of professional secrecy), the passive subject is a legal entity.

D. The Place and Time of the Offense

In the case of this group of offenses, the time and place of the offense usually have no relevance as regards the existence of the crime. However, in the process of individualization of the criminal law sanction to be applied, the court may consider these elements.

However, there are situations where time and place are mentioned explicitly (either both or only one of them), in the contents of the incrimination norm; to these circumstantial elements we will refer when examining certain crimes, such as murder or injury of the newborn by the mother (art. 200 of the Criminal Code), fetus injury [art. 202 para. (1) - (4) of the Criminal Code], breaking and entering

[art. 224 para. (2) Criminal Code], violation of professional headquarters [art. 225 para. (2) Criminal Code] and invasion of privacy [art. 226 para. (1)].

E. Premise Situation

In the doctrine it was argued that in the case of crimes against the person “there is a premise situation consisting of the existence of realities previous to the commission of the incriminated act and amid which it is conducted the illicit action such as, for instance, in the case of the offenses of hitting, injury, bodily injury causing death, the existence of a man alive or the existence of a state of pregnancy of the victim in the case of interruption of the pregnancy or the existence of a recent birth in the case of infanticide, the existence of a residence in case of trespassing, the existence of a correspondence, conversations or communications in case of violation of secrecy of correspondence (Antoniou, 2013 pp. 21-22).

F. The objective side

a) *The material element* is most often in an action, but there are cases, rare, where it can be identified with an inaction (such as the offense of leaving without help a person in distress (art. 203, Criminal Code).

b) *The essential requirements.* For these offenses, the material element of the objective side is completed with certain essential requirements without which there can be no crime. This applies to offenses of trafficking minors (211 Criminal Crime), using a minor for begging (art. 215 of the Criminal Code), sexual harassment (art. 223 of the Criminal Code), killing at request of the victim (art. 190 of the Criminal Code) etc.

c) *The immediate result* is different in relation to the value defended by the incrimination rule. The general rule is that, usually, the immediate consequence consists in bringing prejudice to the person's body (the passive subject of the crime) by the active subject. The immediate result may consist of a material result (as is the case for murder), or creating a state of danger (such as the threat of criminal offenses, leaving without help a person in distress etc.).

d) *The causal connection* lies in the relation which must be held between the action or inaction of the active subject of the offense and the immediate consequence. In most cases, causation resulting from the materiality of the offense (the mode of execution of the offending action or inaction). There are also crimes, the existence of which is necessary for producing an immediate consequence, which can be characterized by the emergence of a result or a situation of danger.

G. The Subjective Side

Unlike other categories of offenses, the offenses against the person, in subjective terms, they are committed most often with the intention that can be direct or indirect, sometimes willfully exceeded and rarely at fault (involuntary manslaughter or injury at fault).

In case of offenses against the person (using a minor for begging (art. 215 of the Criminal Code), sexual corruption of minors (art. 221 of the Criminal Code), recruitment of minors for sexual purposes (art. 222 of the Criminal Code), the subjective side of the offense completes with certain *essential requirements* of the subjective element.

H. Forms, Ways, Sanctions

a) *Preparatory acts* are not punished, but under certain circumstances of each specific fact, where they were executed by another person, it has helped concretely in the commission of the offense, there may be criminal liability for acts of complicity.

b) The *Attempt* is incriminated in the case of the offenses of: murder (art. 188 (Criminal Code), murder (art. 189 of the Criminal Code) bodily injury [art. 194 par. (2) Criminal Code], aggressions on fetus [Art. 201, para. (1) and (2) of the Criminal Code] unlawful deprivation of liberty [Art. 205 para. (1) - (3) of the Criminal Code] slavery, human trafficking, child trafficking and pimping [art. 209-2011 and art. 213 par. (2) Criminal Code], rape [Art. 218 para. (1) - (3) of the Criminal Code] and sexual assault [Art. 219 para. (1) - (2) of the Criminal Code].

For the other offenses covered by this title, the attempt is not incriminated.

c) *The consummation* of a crime of this kind occurs at the moment where after the execution of the incriminated action or inaction, there was immediate consequence.

d) *Depletion* may exist for certain crimes.

Thus “in the cases of offenses of personal injury, bodily injury, damages and injuries causing death, the criminal activity may take the form of continuous activity when this activity is extended in time by its nature and after the time of consumption by the amplification of immediate result, or in the cases of continued or progressive offenses. In this case, criminal acts against the person appears as a repeated activity with the same resolution and against the same passive subjects. In

this situation, the depletion moment is that of ceasing the action or inaction (continuous crime) or of the last component action of the continued offense.

Also, for some crimes against a person the immediate consequence can be amplified without the intervention of the author, through the addition of new original track (progressive offenses). In this case, the moment of depletion will be to cease any subsequent result of the criminal activity” (Antoniou, 2013, p. 22).

A part of crimes against life, presents besides the basic form and some aggravated ways. Such ways can be found in the contents of the offenses described in art. 191 para. (2) and (3), art. 192 para. (2) and (3), 193 para. (2) art. 205 para. (3) of the Criminal Code, and so on.

Given its seriousness, one of the offenses in this group is provided with life imprisonment or imprisonment from 15 to 25 years; this applies to the most serious of these, murder (art. 189 of the Criminal Code).

In the case of the offenses considered by the legislator to be more serious, in addition to the main penalty (imprisonment) it is also provided the additional punishment of prohibition of exercising certain rights; these crimes are: murder (art. 188, Criminal Code), manslaughter (art. 189 of the Criminal Code), maltreatment of a minor (art. 197 of the Criminal Code) aggression on the fetus (art. 201 of the Criminal Code), slavery (art. 209 of the Criminal Code), human trafficking (art. 210 of the Criminal Code), trafficking in minors (art. 211 of the Criminal Code), pimping (art. 213 of the Criminal Code), rape (art. 218 of the Criminal Code), sexual assault (art. 219 of the Criminal Code), sexual intercourse with a minor [art. 220 para. (2), (3) and (4) of the Criminal Code] and sexual corruption of minors [art. 221 para. (2)].

Some crimes are provided with alternative punishments (imprisonment and fine), such as the following: hitting or other violence (art. 193 of the Criminal Code), injury at fault (art. 196 of the Criminal Code), brawl (art. 198 of the Criminal Code), abortion [art. 201 para. (1) Criminal Code] leaving without helping a person in distress (art. 203 of the Criminal Code), preventing aid (art. 204 of the Criminal Code), threat (art. 206 of the Criminal Code), harassment (art. 208 of the Criminal Code), exploitation of begging (art. 214 of the Criminal Code), using a minor for begging (art. 215 of the Criminal Code), using the services of an exploited person (art. 216 of the Criminal Code), recruitment of minors for sexual purposes (art. 222 of the Criminal Code), sexual harassment (art. 223 of the Criminal Code), violation of domicile (art. 224 of the Criminal Code), violation of professional headquarters

(art. 225 of the Criminal Code), invasion of privacy (art. 226 of the Criminal Code) and disclosure of professional secrecy (art. 227 of the Criminal Code).

For other offenses considered by the legislator as having a low degree of seriousness, putting in motion the criminal action, it is achieved a preliminary complaint of the injured party; these offenses are: hitting or other violence (art. 193 of the Criminal Code), bodily injury at fault (art. 196 of the Criminal Code), threat (art. 206 of the Criminal Code.), harassment (Art. 208 C. pen.), rape [art. 218 para. (1) and (2) of the Criminal Code], sexual assault [art. 219 para. (1) Criminal Code], sexual harassment (art. 223 of the Criminal Code) and the offenses referred to in Chapter IX (Offences which affect the home and private life, art. 224-227 of the Criminal Code).

3. Application of a More Favorable Criminal Law

The transition situation in which we are, which will exist in the future, implies the need to establish and enforce the more favorable criminal law in the case where a crime is part of the title which was committed under the influence of the Criminal Code of 1969 and it is tried or will be dealt with under the provisions of the Criminal Code in force.

The same thing applies, in some cases also for the offenses already prosecuted, for which a final judgment was passed under the old law until the entry into force of the new Criminal Code.

Considering the complexity and variety of situations, we think that most problems will be found in the case where it is imposed the application of a more favorable law to the final judgment of the case.

Such statement results from the objective situation in which the judicial authorities of the state are (both the prosecution and the courts), meaning that in the prosecution phase there are investigated many people for the commission of crimes under the influence the old law, a similar picture applies to courts, cases pending, representing the crimes committed before the entry into force of the new Criminal Code.

Another situation is identified with cases under investigation of the prosecution in which the authors are unknown, in which case after identifying and proving the

criminal activity, they will be judged during the period of the new law, involving also the enforcement of a more favorable criminal law.

Referring only to the application of more favorable criminal law for crimes of this title, we will make a few general references to some groups or even offenses, which we consider to be most important in terms of frequency of their commission and their importance in measuring the crime rate at national level.

Thus in the case of the offenses from Chapter I, we find that the most favorable criminal law, depending on the specific circumstances of their commission, the seriousness of the offense, the offender's dangerousness, the retention of mitigating circumstances or the legal or judicial aggravating circumstances etc., the more favorable criminal law may be the new or old law.

Regarding the offenses of murder and manslaughter referred to in art. 188 and 189 of the Criminal Code, which we relate to the incrimination of the Criminal Code of 1969 provided for in art. 174, 175 and 176 (murder, manslaughter and aggravated murder), the more favorable criminal law will be identified in relation to each specific case pending before a court; these crimes have a special feature that cover the prescription; thus, in the case of these crimes until the entry into force of Law no. 27/2012, the limitation period will not remove the criminal liability, if it has not reached the general or special limitation period since the entry into force of this legislative act.

The offenses contained in Chapter II were set out in the Criminal Code of 1969, even if the offense of infanticide legal content was redesigned and its name was changed. Applying the more favorable criminal law will be achieved in the general context without other features.

The first offense of Chapter III was provided in the Criminal Code of 1969 under a different name, and the second offense is a novelty in the Romanian law. Under the conditions of examining the objective and subjective conditions, the more favorable criminal law can be any of them.

Even if some of the following chapters have or not been previously provided for in the Criminal Code or were taken with the same name or with others from other acts with criminal provisions, the most favorable criminal law enforcement is performed under the same conditions.

4. Conclusions

As provided for in the new Criminal Code, the offenses against the person have a particular importance because of the importance of the social values which it defends. The amendments and additions adopted by the entry into force of the new Criminal Code represent, in our opinion, an important step made by the Romanian legislator in terms of the ranking of the most important social values protected by the criminal law rules. Thus, we can say that currently the systematization of this group of criminal offenses corresponds to the new criminal policy of Romania.

The main change with a strong preventive feature is to introduce the two institutions, namely, the renunciation of applying the punishment and postponing the punishment, which generally is given a favoring regime to physical or legal entities being at their first conflict with the law or in the case of committing crimes whose seriousness is reduced.

The evolution of the crime in this area will confirm or deny the objectivity of the Romanian legislator's vision.

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