

THE CONCEPT OF PATRIMONY AND COMMON ASPECTS OF OFFENCES AGAINST PATRIMONY REGULATED BY THE CRIMINAL LAW

MONICA POCORA*
MIHAIL-SILVIU POCORA**

Abstract

This study aims to analyze in detail the concept of patrimony and then, will identify the common aspects of all offences against patrimony regulated by the actually Criminal Law. We presented elements of meaning of "patrimony" term, stipulated both by Criminal Law and Civil Law, under this point of view, it can be observed that incriminating the offences against patrimony, the Criminal Law takes into account the illicit action of offender and not the juridical position of victim. Continuing the conceptual analyze of "patrimony", we highlight although the Constitutional provisions. As regarding the common aspects of offences against patrimony, we presented a classification of these crimes, based on identity of material element, as well as result of some foreign criminal legislation (for example, the Italian Criminal Law, French Criminal Law).

Keywords: *patrimony protection, offence, comparative law*

Introduction

According to New Civil Code, any natural or legal person is a heritage owner which includes all rights and duties that can be measured in money belonging to it (Art. 31).

In case of division or offended the rights transfer and duties of an patrimony to other within the same property, is made under prescribed legal conditions and without prejudice the creditors rights on other property.

In terms of doctrine, "patrimony" term means a notion framed precisely of private law: all rights and duties valued in money of a person had an important utility¹ in major areas, such as inheritable transmissions.

Similarly, the property is regarded as an ensemble of assets, somehow separate by owner that can acquire, administer, but whenever he can sale it.

Generally, the property is a legal universality, an ensemble of individual subjective rights who may be converted in money and can be transmitted².

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 person³.

In this regard it can be noted that sanctioning facts affecting the property, criminal law considers illegal actions of perpetrator and not the legal position of victim. This means that offender has to justify he had the right to commit an illicit in relation with prosecution bodies, if he is owner or a simple legal holder of stolen, appropriated or destroyed asset, by committed crime⁴.

* Senior Lecturer, Ph. D., "Danubius" University of Galati, (email: monicapocora@univ-danubius.ro) .

** Ph. D. candidate, „A.I. Cuza” Police Academy, Bucharest, (email: silviupocora@yahoo.com).

¹ Dogaru, I., Cercel, S. *Drept civil. Teoria generală a drepturilor reale*. București: Editura All Beck, 2003.

² Djuvara, M. *Teoria generală a dreptului*. București: Editura All Beck, 1995 .

³ Popescu-Brăila, T.R. *Drept civil, vol. I* . București: Romcart S.A., 1993.

⁴ Dongoroz, V. *Explicații teoretice ale Codului penal Român, vol. III*. București: Editura Academiei, 1971.

Therefore, criminal law considered that in order to protect the patrimony and its rights. There is no doubt that an asset is keeps the facts situation established and known to those concerned, anyone could claim to have a right on that good and it can effectively exploit. If asset has lost the facts situation (for example, has been appropriated, removed, concealed, destroyed, stolen, etc.), any right capitalization regarding it becomes unenforceable This is the reason why criminal law punishes even the owner if its action helps to changing the facts situation of its asset in detriment of legitimate interests of others (for example, damages offences provided by Art. 217, par. 2-4 Penal Code, or theft sanctioned by Art. 208 par. 3 Penal Code.).

Therefore, the change by illegally means of entities economic situation are crimes provided in Title III of the Criminal Code. Another specificity of this category of crime is under global "crimes against property" name, are hide two important categories of assets likely to be protected by criminalizing acts against property, in relation to various forms of ownership.

Delimitation of basic forms of ownership, subject to criminal protection is stipulated even by constitutional rules; art. 136 par. 1, Constitution provides: "Property is public or private" which means that in our society are not developed other forms of ownership than those listed by Constitution.

As regard the specific objects belonging to one or other forms of property, constitutional norms using differential technique, they are not mentioned directly in categories of assets that belong to private property but only those which form public property. Knowing these types of assets indirectly, we realize the area of assets belonging to private property. In this category will include all assets which not form the public domain. Art. 136 par. 3 by Constitution is stipulates the exclusive assets belonging to public property: riches of public interest of the subsoil, air space, waters with hydropower of national interest, beaches, territorial sea, natural resources of economic area continental shelf area, and other assets established by law. Therefore, in addition to assets expressly provided in the text above can be included the category of assets belonging to public property. So for example, by Law no. 18/1991 on the land as by Law no. 243/2002 on OUG no. 243 of 2002 approving GEO no. 105 din 2001 on the state border of Romania, are listed and other goods.

These laws broaden the assets listed by Constitution through adding other assets which form exclusively public property, as is done by art. 5 Law no. 18/1991, on land as well as art. 7 par. (1) of GEO no. 105/2001 approved by Law no. 243/2002, which refers to the strip border protection and by art. 10 par. (2) on premises of border crossing points.

Another method of broadening the sphere of assets belonging to public property that call these special laws is to indicate the criteria by which it can determine the asset belonging to public property. Art. 5 par.1 of Law no. 18/1991 is states that land which by its nature is used or has a public interest and Art. 4 last par. stipulates that land "affected to a public utility"⁵ belong to the public property.

Thus, the nature assets of their by public utilities are the main criteria stipulated by laws referred to delimit assets exclusively belonging to public property. These goods under the Constitution and the law could be found in an autonomous administration, either a public institution or in a company detention that he was hired. If the special law provides otherwise, rental or lease may be made to a company with majority state, or any other company. Public property feature is that it is inalienable, that goods from this class should stay in a public property field. This does not mean it is not possible the movement, a certain transfer of such assets. As noted above even the Constitution in Art. 136 par. 4 provides under law, asset of public property can be managed by autonomous administrations, public institutions or may be leased or rented, also they can be put into free using to public institutions. According to criminal law in force, public property is not differentiated protected likely previously. This means that, within the legal sanction, judges should consider the quality of these assets and treat more harshly those affecting public property.

⁵ *Dec. pen.*, nr. 84-1995 (C. de Apel Pitești, 2/1996).

Unlike assets of public property that we can identify easily and directly on basis of constitutional norms and special laws, assets of private property is identified indirectly and all other goods non included in public property had this character. Does not matter if these assets are in possession of a individual or legal persons. Also does not matter if they are state property or a private person. As a result, private property can have both state and citizens and legal entities, such as companies. Assets of autonomous administration (other those belonging to public property and gave them for administration) are not state owned, but private property of state. As well as a company assets within state holds majority social capital (except for assets belonging to public property and assigned as concession or rent).

Common aspects of offences against patrimony regulated by the Criminal Code

Patrimony protection is provided mainly by other branches of law (civil law, administrative, labor, etc.) criminal law has just a subsidiary role. It acts only if others ways are ineffective (non-criminal means), but if criminal law is incident and is the most energetic and effective defense of property⁶.

For all these reasons, actually the legal framework governing the crimes against patrimony by Romanian Penal Code in force is found in Title III of the Special Part, which has even this name - "Crimes against patrimony". It is a title with no subdivisions, even the doctrine proposed such groups of crimes.

Thus, in relation to specific of each actions which represent the material element of offense, it is proposed a classification of crimes against patrimony in three main categories: *circumvention acts* (theft, robbery, piracy and concealment), *actions made by fraud* (breach of trust, fraudulent management, fraud, embezzlement and appropriation of found asset), and *arbitrariness acts* (destruction and disturbance of possession)⁷.

In some foreign criminal law, crimes against patrimony know a certain systematization or classification⁸. Thus, Italian criminal law distinguishes crimes against patrimony as based on violence against the person or things, or based on fraud. French criminal law divided offenses against patrimony in two main categories namely: fraudulent appropriation of property (theft, fraud, funds abduction) and other property attacks (concealment, destruction, degradation, aggression against treatment system of computer data).

1. 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 patrimony⁹.

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 offense¹⁰. 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).

⁶ Pascu, I., Gorunescu, M. *Drept penal, partea specială*. București: Editura Hamangiu, 2008.

⁷ Dongoroz, V., și colab., *Explicații teoretice ale Codului penal, vol. III*.

⁸ Antoniu, G. „Ocroțirea penală a patrimoniului în dreptul comparat.” *R.D.P.*, nr. 2/2000.

⁹ Boroî, Al. *Drept penal, Partea specială*. București: Editura C.H. Beck, 2006.

¹⁰ Pascu, I. *Drept penal, Partea generală*. București: Editura Hamangiu, 2007.

The perpetrator of most crimes against patrimony can be *any person who carried out general conditions of criminal responsibility*¹¹, if law not provides a special quality for it.

Some of Title offenses are proper in sense of requires a special skill to perpetrator - for example, embezzlement for which law establishes a special quality of perpetrator - the official administrator.

Criminal participation is possible of all crime against patrimony. If the offense requires a special qualification of perpetrator, for joint author existence is required all participants carried out this qualification. When condition is not fulfilled, the joint author is not possible and the simple participant is considered only an accomplice to crime. It is possible the *improper participation* when deliberate intervention of instigator or accomplice, the author has acted without fault or by negligence.

Some of crimes against patrimony had been characterized particularly by specialty doctrine. It is breach of trust crime that states it can be committed by joint author only if the mobile asset was entrusted to offenders. In case of the fraudulent administration only when offenders were required to manage or preserve assets in common.

Victim of offenses against patrimony can be any individual or legal person, as appropriate, and the state when assets against was directed criminal activity is an object exclusive of public property. It is possible that in certain cases to be a secondary victim, represented by individual or legal person that owns the asset, or who have certain rights on asset unable to turn account such as garnishment creditor or beneficent owner.

In case of complex crimes: robbery and piracy, given the objective particularities of these crimes, there is a mainly passive subject victim, whose patrimony has been harmed by violence, but there may be a secondary victim, namely, the individual that supports violence exercised by defendant, even if it was not injured in his patrimonial rights¹².

The most common crimes against patrimony are not found special conditions of place and time for crime existence. In case of theft or robbery, specific requirements regarding location and time during committed offense can be only aggravation circumstances of offense.

The problems occurred by offences against property can not be considered exhausted, and a new research is adequate owing to problems complexity, observed in connection about them.

Inclusively the structure of title including incriminations created in order to protect individual property, is subject to controversy. Although the New Criminal Code is intended to be an improvement of actually Criminal law, we believe that some incrimination text has an ambiguous content. Thus, we can see that breach of trust offence by creditors frauding is supposed invocation of fictitious documents (by material element), which can mean either an offences concurrence (if we talk about a false document), or a complex offence. In relation of these matters, we believe that penalty is too low (imprisonment not exceeding 3 years or fine). The *fraud* in the New Criminal Code is maintained only the first paragraph and aggravated according to, is punished more severely, respectively, the fraud committed by using false names or qualities, or other fraudulent means. As the same time, are repealed par.3-5, which refers to inducing or maintaining a person in error upon the execution or signing an agreement, issuing a check on a credit institution or a person, well knowing for its exploitation are no enough supply, both the fraud with extremely grave consequences.

2. Integrand content

Material element of objective side of crimes against patrimony can be either an *action*, or in most cases, an *inaction*. From the legal content of these crimes, it appears that some offenses had a single material element as an action (theft), other as alternative actions (embezzlement, destruction,

¹¹ Bulai, C., Bulai, B. *Manual de drept penal*. București: Editura Universul Juridic, 2007.

¹² Mitrache, C., Mitrache, C. *Drept penal, Partea generală*. București : Editura Universul Juridic, 2006.

concealment) or cumulative (robbery, piracy), and in other situations, alternative action or inaction (acquiring found asset).

The result socially dangerous is production of damage to patrimony of individual or legal private or public legal entity. In the case of complex crimes - robbery or piracy, other social values are affected which attracted and adjacent results. If some offences produce very serious consequences (in sense of Art. 146 Penal Code.), it will be retained as aggravated content of offense.

Causative relation between material element and immediate result often provides from materiality of committed offense, while in other cases it must be proved by evidence.

The form of guilt found in subjective side of most crimes against patrimony is usually direct or indirect intention. In case of aggravated forms of robbery or piracy the guilt form is superannuated intention. Just a crime against patrimony can be committed by negligence – destruction by negligence.

3. Forms, means and sanctions

a) **Preparatory acts** are not usually sanctioned they may have a criminal value, of complicity acts if were committed by other person than author and were used it to commit the crime. There are exceptions to this rule provided by art. 209 par. (5) Penal Code which provides as an attempt to perform certain acts (referred expressly by law) which can be used to commit qualified theft under provisions of Art. 209 par. (3) of Penal Code.

b) **Attempt**, possible for most crimes of this category (except destruction by negligence - art. 219 Penal Code), is sanctioned under provisions of Art. 222 of Penal Code.

c) **Crimes consumption** against patrimony occurs when the execution of intentional action is totally done, causing specific and dangerous consequence of these crimes.

c) **If references crimes** are committed in continuous form (for example, theft of electricity) or continued, will exist the exhaustion phase, when the extension acts were stopped or was committed the last action (inaction) of continued crime.

Crimes against patrimony, in order to an extension of generic social danger, can be punished alternative with imprisonment, in lower limits, and the fine penalty, or with imprisonment sanction until to maximum special limit of 25 years.

For some offenses in aggravated variants, it provides additional punishment of certain rights prohibition (qualified theft, robbery, piracy, fraud, embezzlement, qualified destruction).

If conditions of art. 118 C. of Penal Code will be fulfilled, it can be take into account the special seizure as a safety measure.

Conclusions

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, is more adequate to name these crimes, as offences assets belong to a property (patrimonial) than crimes against property as whole.

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