

# CRIMINAL TERRORIST GROUP IN THE NEW CRIMINAL LEGISLATION OF ROMANIA

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## Abstract

*In the Romanian criminal law, there is a specialized regulation that defines criminal terrorist group, as variant of plurality of offenders. The present study presents this kind of criminal group by identifying the elements of differentiation compared to the organized crime group regulated by the Criminal Code).*

**Keywords:** *terrorism, organized criminal group, plurality set up, criminal law.*

## 1. Introduction

The terrorist phenomenon has always been a threat perceived as such by the world's states and for this reason considerable efforts have been undertaken to prevent and fight against it. Thus, one of the first countries that have taken legislative measures in this regard is Belgium, which since the 19th century has adopted an action plan to fight the phenomenon by introducing, in its criminal law, the "attack clause" which allowed the extradition of the perpetrators of political murders<sup>1</sup>.

International organizations have also adopted several of legal instruments which have as their main objective the prevention and fight against terrorism. Naturally, one of the most active organizations is the United Nations which, through its regulatory arrangements, succeeded in creating a coherent framework to enable the signatory states to fight efficiently against acts of terrorism.

At the European level, on 27 January 1977, the European Convention for the suppression of terrorism was adopted in Strasbourg<sup>2</sup>, amended by the amendment protocol to the European Convention for the suppression of terrorism, adopted in Strasbourg on 15 May 2003<sup>3</sup>. The preamble of this legal instrument shows that the member states of the European Council, signatories of the convention, „considering that the purpose of the European Council is to achieve a closer union between its members, conscious of the growing unease caused by the multiplication of the acts of terrorism, wanting to take efficient measures so that the perpetrators should not escape prosecution and punishment, being convinced that extradition is a particularly efficient means to reach this result”, have decided to adopt the measures included in the convention.

The main approach taken by this legal instrument was to exclude terrorist offenses from the

category of political offenses, which would have made extradition ineffective. The very first article of the Convention shows that: „For extradition between the contracting states, any offense mentioned below will not be deemed a political offense, as an offense related to a political offense or as an offense inspired by political purposes: a) the offenses contained in the scope of the Convention for the suppression of the illicit taking of aircraft, signed in Hague on 16 December 1970; b) offenses covered by the scope of the Convention for the suppression of unlawful actions directed against civil aviation safety, signed in Montreal on 23 September 1971; c) offenses contained in the scope of the Convention on the prevention and suppression of offenses against persons enjoying international protection, including diplomatic agents, adopted in New York on 14 December 1973; d) offenses contained in the scope of the International Convention against the taking of hostages, adopted in New York on 17 December 1979; e) offenses included in the scope of the Convention on the physical protection of nuclear material, adopted in Vienna on 3 March 1980; f) offenses covered by the scope of the Protocol for the suppression of unlawful actions of violence at airports used by civil aviation, concluded in Montreal, on 24 February 1988; g) offenses within the scope of the Protocol for the suppression of unlawful actions against the safety of maritime navigation, concluded in Rome on 10 March 1988; h) offenses within the scope of the Protocol for the suppression of illegal actions against the safety of fixed platforms located on the continent, concluded in Rome on 10 March 1988; i) offenses within the scope of the International Convention for the suppression of terrorist attacks with explosives, adopted in New York on 15 December 1997; j) offenses within the scope of the International Convention for the suppression of the financing of

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<sup>1</sup> The legislative framework to prevent and fight terrorism, <https://www.sri.ro/fisiere/studii/cadrullegislativ.pdf>.

<sup>2</sup> Ratified by Romania by law no. 19/1977, published in the Official Gazette of Romania, Part I, no. 34 of 4 March 1977.

<sup>3</sup> Ratified by law no. 366/2004, published in the Official Gazette of Romania, Part I, no. 913 of 7 October 2004.

terrorism, adopted in New York on 9 December 1999.”

Paragraph 2 of the same article also extends the scope of the European Convention on: a) attempt to commit any of these main offenses; b) complicity to one of these main offenses or attempt to commit one; c) organization activity to order others in committing or attempting to commit one of the offenses listed.

Through this regulatory technique, the Convention establishes the area of offenses which it considers terrorist phenomenon and it excludes these from the area of political offenses that have special regime with regard to international judicial cooperation in criminal matters.

The doctrine notes that terrorism today has acquired a global dimension with two aspects. The first concerns the possibility of the terrorists to move comfortably in any part of the world, making use of false identities and enjoying travel facilities similar to those of tourists or business people. This allows them to study in detail the objectives that they seek to attack, to make various monetary and banking operations, attract the proselytes to the side of the military cause of the terrorist group to which they belong, etc. The second aspect of the terrorism globalization takes into account the fact that terrorists have spread to a maximum the area of their own logistics activities, but also of the actions taken, causing a difficult monitoring of their organization and planning activities by the structures for the prevention of terrorism<sup>4</sup>.

In the national legislation, the prevention and fight against terrorism is achieved mainly by Law no. 535/2004, and other regulatory documents as Law no. 656/2002 on prevention and sanction of money laundering, and the establishment of measures to prevent and fight against financing terrorism<sup>6</sup>. However, given that, according to art. 2 letter b of the latter regulatory document, it is shown that „the financing of terrorism means an offense under art. 36 of Law no. 535/2004 on preventing and fight against terrorism“, we believe that the regulatory document that mostly provides for the fight against terrorism in Romania is still Law. 535/2004.

## 2. Outline of the terrorism phenomenon in the national legislation

The very first article of Law no. 535/2004 includes a definition of terrorism, which is presented as: „the range of actions and/or threats that are public danger and affect the national security, having the following characteristics: a) are committed with

premeditation by terrorist entities, motivated by extremist beliefs and attitudes, hostile to other entities against which they act violently and / or destructively; b) aim to achieve specific political objectives; c) concern human and / or material factors within public authorities and institutions, civilian population or any other segment belonging to them; d) cause states with a strong psychological impact on the population, meant to draw attention to the aims pursued.” Given the wording of the definition, we appreciate that the four traits of the terrorist acts must be met cumulatively, not being enough that only one or some of them to be found on one occasion. The conclusion is also claimed by the way article 2 of Law no. 535/2004, is worded, according to which: „the actions committed by terrorist entities are sanctioned under the provisions of this law, *if they fulfill one of the following conditions* (s.n.M.G.): a) they are usually committed with violence and cause unrest, incertitude, fear, panic or terror among population; b) seriously infringe upon human specific and nonspecific factors, and material factors; c) pursue specific objectives, political, by determining state authorities or international organizations to order, renounce or influence decisions in favor of the terrorist entity.”

## 3. About “terrorist entity and other varieties of plurality of offenders formed

Law no. 535/2004 provides about certain varieties of the plurality formed which may manifest in the regulatory area of the law. The plurality formed is that the criminal law incriminates the mere composition of a group of people, which aims at committing offenses. In this case, it shows that, contrary to the hypothesis of natural plurality, according to which the gravity of the offense is determined by what is being actually done (present activity) by the participants (incest, bigamy, etc.), in case of the plurality formed, the seriousness of the offense is generated by what the members of the group propose to do in the future (future activity)<sup>7</sup>. This form of plurality is created by the will of the legislator, because the purpose pursued by those who have associated poses a great social danger (for committing crimes). The doctrine also identifies the conditions of existence of the plurality formed to be fulfilled cumulatively: a) there should be a group of at least three persons; b) the group should have the same criminal purpose; c) the group should have a significant duration of existence over time; d) the

<sup>4</sup> M. Atanasiu, F. Repez, “Securitatea și apărarea țării în contextul amenințărilor teroriste”, [http://cssas.unap.ro/ro/pdf\\_studii/securitatea\\_si\\_apararea\\_tarii\\_in\\_contextul\\_amenintarilor\\_teroriste.pdf](http://cssas.unap.ro/ro/pdf_studii/securitatea_si_apararea_tarii_in_contextul_amenintarilor_teroriste.pdf), p. 18.

<sup>5</sup> Published in the Official Gazette of Romania, part I, no. 1161 of 8 December 2004.

<sup>6</sup> Republished in the Official Gazette of Romania, part I, no. 702 12 October 2012.

<sup>7</sup> M.I. Rusu, Drept penal. Partea generală, Ed. Hamangiu, București, 2014, p. 270.

group should have some organization with leadership and hierarchical structure<sup>8</sup>.

Law No. 353/2004 defines “the terrorist entity” as: “the person, group, structured group or organization that: a) commits or takes part in terrorist acts; b) is preparing to commit terrorist acts; c) promotes or encourages terrorism; d) supports terrorism in any form”. In turn, the terrorist group is: “a structured group of more than two persons, established for a certain period of time and acting in concert to commit terrorist acts”. A structured group in accordance with this regulatory document is a group that is not randomly formed to immediately commit an act of terrorism, does not require a constant number of members and does not require establishing, beforehand, of their role or a hierarchical structure”. The terrorist organization is a “hierarchical structure, with its own ideology on organization and action, having representation both nationally and internationally, and that, in order to achieve specific goals, uses violent and/or destructive ways”. We have to notice that these definitions do not do anything other than contribute to the lack of clarity of the incrimination standards which they complete.

The statement is supported, all the more so, art. 367 Criminal Code also includes a para. (6), which has the value of interpretative rule, in that it defines the concept of “organized criminal group” as: “structured group, consisting of three or more persons, formed for a specific period of time and to act in a coordinated manner in order to commit one or several offenses”.

Paragraph (1) of article 367 Criminal Code, in the basic variant, the following is incriminated: “The initiation or set up of an organized crime group, joining or supporting, in any form, of such a group”, which is punishable by imprisonment from one to five years and the prohibition on the exercise of certain rights. The deed becomes more serious: „when the offense within the purpose of the organized crime group is punished by law with imprisonment for life or punishment of imprisonment for over 10 years”, for this variant, the penalty being imprisonment from 3 to 10 years and the prohibition on the exercise of certain rights.

Still, as in the previous Criminal Code, the provision according which “where the actions referred to in paragraph (1) and paragraph (2) were followed by committing a crime, the concurrence of offense shall apply” has been maintained in article 367 para. (3) Criminal Code.

The text of art. 35 of Law no. 535/2004 is added to all these texts, in accordance with which: “(1) The association or initiation of an association establishment for the purpose of committing acts of terrorism or joining or supporting, in any way, such

an association shall be punishable by imprisonment from 5 to 12 years and the prohibition of certain rights, without being able to exceed the maximum penalty prescribed by law for the offense falling within the purpose of the association.” The legal definition above-mentioned shows that the element that makes the difference between the regulation of art. 367 Criminal Code and art. 35 of Law no. 535/2004 considers that “acts of terrorism” are found in the program of the organized crime group. In accordance with art. 32 of the Special Law, the commission of one of the following acts shall be acts of terrorism which, by their nature or context of their commission, may lead to a serious damage of a country or international organization, when they are committed to intimidate the population or to coerce a public authority or an international organization to perform, not to perform or abstain from performing any act or for seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a state or international organization, and shall be punished according to the law for the crime committed, whose special limits are increased by one third, and with the prohibition of certain rights: a) murder, manslaughter or injury; b) threat or deprivation of liberty; c) destruction; d) communication of false information which endangers the safety of flight or navigation of a ship or aircraft; e) the commission, by using a device, a weapon or substance, of an act of violence against a person in a civil airport, if the act endangered the safety and security of the airport, as well as the commission of any act of physical or psychological violence against a person on board a civilian aircraft in flight or in flight training or on its navigation personnel; f) destruction or serious deterioration by using a device, a weapon or a substance, of the installations of a civil airport or an aircraft in service or not in service, but which is at an airport or causing damages that make the aircraft unavailable for flight or which are likely to endanger its safety in flight and airport service interruption, if the act is likely to jeopardize or compromise the safety and security at that airport; g) destruction or damage to installations or air navigation services or disrupting their operation, if the act endangered the flight safety; h) placing on a civil aircraft, by any means, of a device or substance able to destroy that aircraft or to cause damages which make it unfit for flight or which is likely to endanger its safety in flight; i) taking an aircraft without right, by any means, and without the right to exercise control over it; j) seizure of a ship or a fixed platform or control over it, by violence or threat; k) committing violence against a person on board of a ship or a fixed platform, if that act is likely to endanger the safety of the ship or fixed platform; l) destruction of a fixed platform or a ship or causing

<sup>8</sup> V. Dobrinoiu, I. Pascu, M.A. Hotca, C. Păun, I. Chiș, M. Gorunescu, N. Neagu, M. Dobrinoiu, M. Sinescu, Noul Cod penal comentat, Partea specială, Editura Universul Juridic, București, 2014, p. 857.

damage to a fixed platform or the cargo of a ship, which jeopardize the safety of the platform or navigation vessel; m) placement on a ship or fixed platform, by any means, of a device or a substance able to destroy or cause damages to the platform, ship or cargo that compromise or are likely to endanger the safety of the platform or the navigation of the ship; n) destruction or seriously damaging the fixed platform or navigation facilities or services or causing serious disruptions in operation, if any such act is likely to endanger the safety of the fixed platform or navigation of a ship; a) failure to comply with the regulations on weapons and ammunition, the regime of nuclear and other radioactive materials, and failure to comply with the regime of explosives; p) attack that endangers national security, attack against a community and acts of diversion; q) fraud committed through computer systems and electronic payment means and offenses against the security and integrity of computer systems and data; r) takeover without right of the collective passenger transport means or cargo. Paragraph 3 of the same article completes the regulation in the sense that "the commission of certain actions, for one of the purposes provided for in para. (1) shall also be deemed acts of terrorism and shall be punished by imprisonment from 7 to 15 years: a) manufacture, acquisition, possession, transport, supply or transfer to other persons, directly or indirectly, of chemical or biological weapons, explosive devices of any kind, and research in the field or development of such weapons or devices; b) introduction or spread into the atmosphere, soil, subsoil or water of products, substances, materials of any kind, microorganisms or toxins likely to endanger human health or animal health or the environment or the intent to fire, floods or

explosions that have the effect of endangering human life; c) interfering with or disrupting the supply of water, electricity or any other fundamental natural resource, which has the effect of endangering human lives." Although the listing is consistent, we chose to include it in the present study because the element that distinguishes the offense provided for in art. 367 Criminal Code and one in art. 35 of Law no. 535/2004 is exactly the specificity of the action in the context of association. Whenever the subject of association commits such an offense, the special text shall be incident, but only if the association fulfills its characteristics found in the law.

Given this complex regulations, we believe it is not difficult to outline the organized crime terrorist group. However, we do not see the usefulness of subdividing this type of group depending on the size and the level of organization found in real situations, especially given that these terms may not be found in any text of the present criminal law.

#### 4. Conclusions

The terrorist group is an aggravated form of the offense of establishing a criminal organization, as the action is defined in art. 367 Criminal Code. The elements that make the delimitation of the two offenses are connected to the situation of each, but also to the purpose for which each was created with special attention to the nature of the crimes falling within the program of the criminal group. The level of abstract danger is included in the same range of punishment, but the level of real danger is related to the elements indicated by the texts in the special law and they may be found as related to the analyzed actions.

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