THE 16TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Some Aspects Regarding the Application of the More Favourable Criminal Law when the Acts Were Committed under the Rule of the 1968 Criminal Code

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Abstract: Like any other normative act, the Criminal Code must respond to the need of being in line with the evolution of society and when this evolution requires the adoption of a new one, there is, in practical terms, the situation in which the intervention of a new criminal law from the moment the crime is committed until the moment a final ruling in set out for it, imposes to the court the application of the more favorable criminal law. This paper is useful to both theorists and practitioners of law because it brings into question the way in which a more favorable criminal law is applied to a specific case

Keywords: hitting or other violence; threats; court ruling

Introduction

The present paper has as a starting point a sentence of a court. More precisely, we do not want to comment upon the court's solution, this being in accordance with the manifestation of will of the injured party to withdraw its prior complaint, but we would like to make some clarifications regarding the legal classification of the facts that were brought to trial.

According to art. 5 para. (1) of the Criminal Code[2]: "if, between the moment a crime is committed and the moment the trial comes to an end for the case, one or more criminal laws have intervened, the more favourable law shall apply". As ruled by the Romanian Constitutional Court by the decision[3] no. 265 of 2014: "(...) the provisions of art. 5 of the new Criminal Code are constitutional insofar as they do not allow the combination of the provisions of successive laws in establishing and applying the more favourable criminal law". Thus, if concretely the acts were committed on May 20, 2013, the provisions of art. 5 para. (1) of the Criminal Code shall apply, the final trial of the case being positioned in time after February 1, 2014, when the new Criminal Code[4] entered into force.

Specifically, in the act of notification of the court, on the above mentioned date, it was noted that "the defendant (...) threatened with death and hit the injured party (...) causing injuries to the person that

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[2] Represented by Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, as subsequently amended and supplemented.
[3] Regarding the exception of unconstitutionality of the provisions of article 5 of the Criminal Code, published in the Official Gazette of Romania no. 372 of May 20, 2014.
[4] Represented by Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, as subsequently amended and supplemented.

required a number of three to four days of medical care for healing"[1]. The legal classification of the facts, included in the same act of notification of the court, was that according to which the facts meet the constitutive elements of the crime of hitting or other violence, provided in art. 180 par. (2) of the 1968 Criminal Code[2], and of the crime of threat, provided in art. 206 of the Criminal Code[3], with the application of art. 38 para. (1) of the Criminal Code, in the sense that the offenses in question were committed before the defendant being convicted for either of the two.

The court invested with judging the case in question ordered the change of the legal classification given to the facts in the act of notification, from the offenses of hitting or other violence in the manner provided in art. 180 par. (2) of the 1968 Criminal Code and threat, provided in art. 206 of the Criminal Code, in the offenses of hitting or other violence provided in art. 193 para. (1) of the Criminal Code and threat, provided in art. 206 of the Criminal Code, with the application of art. 38 para. (1) of the Criminal Code.

A first relevant aspect is that regarding the need to change the legal classification given to the facts in the act of notification, in the sense that, in accordance with the decision of the Romanian Constitutional Court no. 265 of 2014, mentioned above, one could not combine the provisions of successive laws, respectively those of the 1968 Criminal Code with those of the Criminal Code in force, in establishing and applying the more favourable criminal law. From this perspective, we consider correct the option of the court to make the legal classification of the facts by applying the legal provisions of only one law.

However, related to this legal classification, we believe that considering one of the two facts as the offense of hitting or other violence, in the basic version, provided in art. 193 para. (1) of the Criminal Code, does not correspond either to the concrete circumstances in which the deed was committed, nor to the correspondence between the provisions of art. 180 para. (2) of the 1968 Criminal Code, provisions criminalizing the act of "hitting or acts of violence which have caused an injury requiring medical care for healing for not more than 20 days", and those relating to the criminalization of the act of hitting or other violence by the rules of the Criminal Code in force. Specifically, by committing the hit of the injured party by the defendant, there have been caused injuries to the person that required three to four days of medical care to heal. For these reasons, the correct legal classification of the committed deed would be in accordance with the provisions of art. 193 para. (2) of the Criminal Code in force because "the act by which traumatic injuries occur or the health of a person is affected, the severity of which is assessed by days of medical care of no more than 90 days, shall be punished by imprisonment from 6 months to 5 years or a fine".

The immediate consequence of the deed actually committed exceeds the immediate consequence provided in the art. 193 para. (1) of the Criminal Code, being in the legal text the production of physical suffering to a person. However, if the deed actually committed results in the occurrence of traumatic injuries whose severity is assessed by a maximum of 90 days of medical care, we understand that a day of medical care is sufficient for the legal classification of the deed in the aggravated version of the crime of hitting or other violence, provided in art. 193 para. (2) of the Criminal Code. Thus, the court should

[1] Excerpt from the criminal sentence no. 1803/2015 of the Court of Brăila, available on the website: http://www.rolii.ro/hotarari/589c0004e49009482e000e55, last accessed on April 13, 2021.

[2] Represented by Law no. 15/1968 regarding the Criminal Code of Romania, published in the Official Gazette no. 79-79 encore of June 21, 1968, normative act currently repealed. In art. 180 para. (2) of the 1968 Criminal Code it was provided: "*Hitting or acts of violence that have caused an injury that requires medical care for healing for no more than 20 days are punishable by imprisonment from 3 months to 2 years or a fine.*"

[3] According to art. 206 of the Criminal Code: „*(1) The act of threatening a person with the commission of a crime or a harmful act directed against him or another person, if it is likely to produce a state of fear, shall be punished by imprisonment from 3 months to a year or with a fine, without the applied punishment being able to exceed the sanction provided by law for the crime that formed the object of the threat. (2) The criminal action is initiated upon the prior complaint of the injured person*".

have applied the provisions of art. 193 para. (2) of the Criminal Code, not those of art. 193 para. (1) of the Criminal Code.

A second relevant aspect is the one related to the identification of the more favourable criminal law in question. Carrying out a comparative analysis of the legal provisions incident in the respective case, we believe that the more favourable criminal law is the old law, respectively the 1968 Criminal Code, in force at the time of the facts.

Thus, the provisions of the 1968 Criminal Code are more favourable on the sanctioning of the situation in which two or more offenses are committed before the defendant is being convicted for at least one of them because they do not contain the obligation for the court to apply a mandatory and fixed increase of the punishment. The sanction provided for the crime of hitting or other violence in the aggravated version, as set out in art. 180 para. (2) of the 1968 Criminal Code is imprisonment from 3 months to 2 years or a fine, more favourable than the provisions regarding imprisonment from 6 months to 5 years or a fine, as they are found in art. 193 para. (2) of the Criminal Code. With regard to the sanction provided for the offense of threat, both in the provisions of the 1968 Criminal Code and in those of the Criminal Code in force, this is imprisonment from 3 months to one year or a fine.

As for the aspect of carrying out the criminal investigation upon prior complaint, in the provisions of both normative acts in question we find these legal statements both regarding the crime of hitting or other violence, as well as the crime of threat. However, considering that in the provisions of art.180 para. (4) of the 1968 Criminal Code it is stated the reconciliation of the parties as a cause of removal of criminal liability, which is not provided by the Criminal Code in force regarding any of the offenses committed by the defendant before conviction for either of them, we consider once again that the more favourable criminal law in the case brought before the court was the 1968 Criminal Code, respectively the law in force at the time of the commission of the deeds. Although in the case brought before the court, the solution was to terminate the criminal proceedings following the withdrawal of the prior complaint by the injured party, the analysis of the correct legal classification is still relevant because, if the situation that removed criminal liability had not intervened, the problem would have been raised, on the basis of all the administered evidence, of the establishment and application of a sanction, under the law, applying both the provisions of criminal law, general part, relative to the individualization of the punishment, and those of special part, taking into account the special limits of the imprisonment, as established in the incrimination norm, alternatively with the penalty of a fine.

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