THE CRIME OF ROBBERY IN THE PROVISIONS OF THE CURRENT CRIMINAL CODE

Lecturer Romulus MOREGA, PhD.
Titu Maiorescu University Bucharest, Faculty of Law Tg-Jiu, Romania
romulusmorega@yahoo.com

DOI:10.51865/JOLAS.2025.24.13

Abstract:
For our rule of law, the defense of social relations regarding patrimony has been a permanent and priority concern, due to the fact that thefts, embezzlements, and thefts of any nature affect the interests of all citizens, are hostile acts against society, and can compromise living relationships, stability, and social order. In all legal systems, the human person with his inalienable attributes stands out clearly as a special object of legal and criminal protection, as an expression of the very reason for being of any legal regulation. A serious crime with a pronounced antisocial character and a high degree of danger, robbery consists of those socially dangerous acts that directly affect the relationships that ensure the existence of private or public patrimony. The crime of robbery is a complex one, because robbery targets two direct basic legal objects: the right to property and the health of the person.
Keywords: *rule of law, patrimony, crime, theft, violence, threat*

Theft may be committed by the use of violence or threat or other means likely to lead to the same result, or may be followed by the use of such means for the purpose of preserving the stolen property, removing traces of the crime or for the perpetrator to ensure his escape. Although both the theft and the violence or threat were used to commit the theft or followed it, there is a close connection between the theft and the violence or threat, which led the legislator to make these materially distinct activities a criminal unit.

This criminal unit in the form of a complex crime is provided for in art. 233 of the Criminal Code under the name of robbery.

In the complex content of robbery, theft constitutes the main activity, and the use of violence or threat, or other means indicated by law, constitutes a secondary activity, from which the main activity is particularized, acquiring a distinct and increased social dangerousness in relation to that of theft. [1]

What the perpetrator mainly aims at is the commission of theft, violence or threat constituting only a means to achieve this goal. Therefore, although it also affects social

relations relating to life, bodily integrity or freedom of the person, robbery was nevertheless included by the legislator in the category of crimes and offenses against property and not in that against the person.

According to art. 233 paragraph 1 of the Criminal Code, robbery, the typical variant, consists of theft committed by using violence or threats or by rendering the victim unconscious or unable to defend himself, as well as theft followed by the use of such means to preserve the stolen property or to remove traces of the crime, or for the perpetrator to ensure his escape.

Robbery in its **simple variant** retains its entire constitutive content from the old regulation. The legislator kept the simple form of the crime, preferring to modify the qualified variant.

The **qualified variant** of robbery was simplified, eliminating some discrepancies, such as the incrimination as a qualified variant of both the act of robbery committed in a public place and of robbery committed in a dwelling; of these two, the qualified robbery in a public place was eliminated.

Also, the qualified robbery committed by two or more persons together was eliminated; during a calamity, the reason for the amendment being that these two circumstances are provided, with a similar content, as legal aggravating circumstances according to art. 77.

Also, new aggravating hypotheses were introduced, incidents in the situation where the act is committed “on a means of transport” or by simulating “official capacities”, given that judicial practice has reported relatively frequent cases in which criminals resort to such procedures.

The variant regarding the means of transport was reformulated – aggravated robbery (art. 234) can take place:

- in a means of transport;
- on a means of transport.

The variant regarding the commission of robbery by an armed person was reformulated, in the new regulation being necessary, for the existence of the qualified variant, for the robbery to be committed by the actual use of the respective weapon.

Robbery can be committed by simulating official qualities – in other words by presenting oneself in a certain capacity, for example, as a police officer, which causes the victim to have a certain attitude that facilitates the perpetrator to commit the crime.

Robbery committed in a home has been replaced by that committed by violating the domicile or by violating the professional premises, granting equal protection, according to the provisions of art. 224 and 225 of the N.C.p., to the domicile of the natural person and the professional premises of the natural or legal person.

The criminalization of the crime of robbery that resulted in injuries is maintained, but in the variant of bodily harm that was assessed by the legislator as an aggravated variant of the crime.

Robbery having as material object the goods (of public utility) referred to in art. 229 paragraph 3 regarding aggravated theft constitutes an aggravating variant of the crime.

The preterintentional consequence consisting in the death of the victim in the case of robbery and piracy was provided for in a distinct and common text (art. 236, and the attempted robbery offense, in any of its variants, is punished according to art. 237).

The **special legal object** is complex, being constituted by a main legal object, namely the social relations relating to the patrimony and whose development is conditioned by maintaining the physical position of the property against acts of theft (as in the case of the theft offense) and by an adjacent legal object, namely the social relations relating to the defense of persons. [2]

It does not matter whether the goods against which the criminal act is directed are in the possession of a natural or legal person. It also does not matter whether they are in public or private property, the property rights over the goods comprising the prerogatives of property: disposition, possession and use.

As for the adjacent (secondary) legal object, it will be determined by the type of adjacent action: violence, threat, and the social value protected and harmed by this action (freedom, bodily integrity, health, honor, life of the victim).

In the case of the crime of robbery, the legislator considers the social values of maximum importance, such as the life, bodily integrity and health of the person, as secondary (adjacent), compared to the social values relating to the patrimony that form the main object of the act. This situation (reversal of the hierarchy of protected social

values) is explained by the fact that the perpetrator primarily seeks to appropriate movable property, violence or threat being only means to achieve the purpose proposed and pursued by the offender.

Some authors have objected to this legislative solution which reserves a secondary place for social values related to the human person and which, in any situation, should be considered more important than those relating to patrimony. [3]

The means crime is by its nature more dangerous than the purpose crime and, precisely for this reason, robbery is currently considered, from a criminological point of view, a crime of violence, because, although the offender seeks to deprive the victim of an asset, he commits violence with intention, accepting at least the more serious consequences, which are found in the characteristic consequence of the simple modality of robbery. [4]

The thesis presented above is debatable. All modern legislations criminalize as complex crimes the violent theft of goods within the framework of crimes against property (even the most recent Criminal Code, the French one, criminalizes, as an aggravating factor to theft, the violent theft of goods). The adjacent nature of social relations concerning the person does not mean an underestimation of them, but reflects an objective reality, namely that sometimes the perpetrator, in order to steal, uses violence as a way to take possession of the goods.

In establishing the limits of punishment, the legislator, however, had in mind that robbery should be sanctioned in such a way as to express the real gravity of the acts of violence. Even in the example given from the French Criminal Code, robbery followed by murder is punished in the same way as intentional murder, although in robbery the death of the victim is a non-intentional consequence. This means that in robbery, the killing of the victim is more severely punished than if it had not been committed as a means to commit the theft. [5]

The material object of the crime. Robbery being a complex crime, its material object can be viewed both in relation to the main action, of theft, and in relation to the adjacent action of violence, threats or other coercion.

a) in relation to the main action, the material object of the robbery crime is the same as in the theft crime, that is, a movable asset, a thing having patrimonial value, susceptible to being stolen.

b) the material object of the adjacent action can be, depending on the nature of this action, either a thing or the body of a person (violence can consist of: tearing clothes, tearing glasses; the threat can consist of pouring gasoline on the goods in a truck to set them on fire; in coercing the victim by tying them up or drugging them).

The active subject of the crime of robbery can be any person who commits the criminal act, regardless of its form (attempted robbery, completed robbery) or who participates, regardless of the capacity in which he does so, in its commission (author, co-author, instigator or accomplice), the law not requiring any special capacity to be fulfilled.

In principle, the person who commits robbery has no right to the property he steals from the sphere of possession of another person.

However, the crime of robbery may exist even when the perpetrator has, in whole or in part, a right of ownership over the stolen property. As a result, the active subject of the robbery could be the owner himself who commits the action of taking, by using the means provided for in art.233 paragraph 1 of the Criminal Code, over a personal movable property that at that moment is in the legitimate possession of another person.

Criminal participation in the robbery provided for in art.233 paragraph 1 of the Criminal Code is possible, but only in the form of instigation and prior material or moral complicity. This is because the crime is more serious, according to par. 21 letter a). when it is committed by two or more people together.

There is also co-authorship when some of the participants directly contributed only to the commission of acts of violence or threat, and others only to the theft of goods, because both the use of violence or threat, and the theft of goods being included in the content of robbery, by committing any of these activities, the objective side of the crime is partially accomplished. The fact that the three defendants participate differently in the commission of the objective side of the robbery - two committing only the violence, and the other committing both acts of violence and acts of appropriation of goods, is irrelevant, since they carried out in a consistent manner the material activities through which the

crime was committed, based on a plan conceived jointly; in such conditions, all three defendants are co-authors of the crime of robbery. [6] [7]

There is complicity in the situation where the accomplice provides certain data regarding the time and place of the robbery and promises the perpetrator that he will conceal the assets resulting from the commission of the crime as long as the accomplice no longer carries out any auxiliary activity concurrently with the execution of the crime.

The aggravating circumstance provided for in art.75 paragraph 1 C.Pen (the commission of the crime by a major offender, if it was committed together with a minor) operates regardless of the nature and extent of each person's participation in the commission of the crime.

Instigation to commit robbery exists when, for example, the defendant has determined a person to deprive the injured party of a sum of money by giving that person a tear gas spray to defeat any possible opposition from the injured party.

The **passive subject** of the crime can be any person against whom the robbery was committed, that is, the person whose goods were stolen by committing the robbery or the person or persons against whom only the adjacent action (violence, threat) was committed.

For example, when the subject of violence is the one who, without being the possessor or holder of the goods, intervenes to stop the perpetrator from taking them or tries to detain him. In such cases, there will be two passive subjects of this crime: the one whose goods were stolen and the one who was the victim of the acts of violence or threat.

If in these situations the victim of the acts of violence or threat can only be a natural person, the victim of the act of theft could also be a private or public legal person. [8]

Robbery is a complex crime, its content being made up of two actions that constitute acts provided for separately by the criminal law. The two absorbed actions have, in relation to the absorbing action (of robbery) a different legal value: theft - main action and violence - adjacent action.

Robbery usually has a single passive subject in the natural person whose movable property in his possession or custody was stolen under the conditions of art. 228 or 209, and on whom means of coercion were exercised.

Robbery can have several passive subjects, either in relation to the theft action or in relation to the action of exercising violence. Regarding the plurality of passive subjects, we distinguish the following hypotheses: [9] [10]

a) there is a passive subject of the main action, who is the natural or legal person who owns or possesses the movable property that constitutes the material object of the theft, and a passive subject who is the person to whom the stolen property belongs, or another person against whom the violence is exercised.

b) there are several passive subjects of the theft act and a single passive subject of the violence exercised as a means of committing the theft. The theft is committed to the detriment of different owners of the things, the theft being committed uninterruptedly and on the same occasion. It is considered that the plurality of persons injured by the theft does not influence the unitary nature of the theft act, or a concurrence of offenses is retained, since several patrimonies were damaged by the commission of the act.

c) there is a single passive subject of the theft action and a plurality of passive subjects of the secondary action. Some courts have held that there is only one robbery offense because a single patrimony is damaged, even if the violence was exercised against several people.

In the specialized literature, some authors have argued that in the case of robbery, the unity or plurality of crimes is established by the number of main actions, the adjacent actions being irrelevant. Therefore, regardless of the number of people on whom the violence is exercised, if there is only one main theft action, the robbery thus committed will constitute a single offense, and if several independent theft actions took place, a plurality of concurrent robbery offenses will emerge.

Whenever we identify several passive subjects of the secondary action in the case of the robbery offense committed within certain contexts, we impose the solution of the plurality of robbery, given the plurality of passive subjects of the violence or other forms of coercion.

As an expression of the complex nature of the crime, the material element of this crime is formed by two combined actions, namely: the theft action, being the main one, and the coercion action, being an adjacent activity.

The main action therefore consists of the theft action. In robbery, as in theft, the movable property is taken, removed from the patrimonial possession of the victim without his consent. A particularity that appears in the case of robbery is that, due to the use of violence and threats by the perpetrator, the taking can also take the form of the forced but apparently consented remittal of the property carried out by its possessor or holder himself.

Violence, threats, or rendering one unconscious or unable to defend oneself, constitute the secondary activity of the material element of the crime of robbery, only if they served as a means of committing the theft or as a means of keeping the stolen property or to ensure the escape of the perpetrator. It is precisely this connection that exists in real life that made the legislator unite the activities incriminated distinctly in the Criminal Code, in the content of one and the same complex crime of robbery. Therefore, the existence of robbery cannot be held, for example, if the threat occurred long after the perpetrator appropriated the property. It is noteworthy that, in the content of the incrimination of the act of robbery, the legislator exhaustively lists the ways in which robbery is carried out. When referring to "threat", the law understands the commission of the act incriminated in art. 206 C.pen., and by "violence" it means any form of physical or moral pressure on the person, even if that violence would not fall under art. 193 or 194 C.pen. [11] [12] Undoubtedly, the action of robbery will be carried out when the violence used was committed under the conditions set forth in art. 193 – 194 and 206 of the Criminal Code.

The crime of robbery is prosecuted and tried according to the rules of ordinary criminal procedure. The criminal action is initiated ex officio. Even when the complex content of the robbery includes a theft that is prosecuted upon the prior complaint of the injured person, the criminal prosecution is carried out ex officio, because robbery is a complex, unique crime with a high degree of danger.

CONCLUSIONS

Robbery is presented as a complex crime in which theft constitutes the main activity, and violence, threats or other means of coercion represent adjacent activities used to carry out the theft or to keep the stolen property or ensure escape. The legislator

treats these actions as a unitary whole due to the close connection between them, while maintaining a severe sanctioning regime that reflects the seriousness of the violence involved. Although it mainly protects property, the crime also has a secondary legal object – the integrity and freedom of the person – which justifies the inclusion of aggravated forms when the act is committed with weapons, by violating a home, in means of transport or by simulating official qualities. The analysis emphasizes both the possibility of plurality of participants and passive subjects, as well as the way in which the unitary or plural character of the crime is established depending on the main action of theft. At the same time, the conditions of the material element, the particularities of the violence used and the principles regarding criminal participation are highlighted. Overall, the text shows that robbery is regulated as a crime with a broad content, intended to cover various methods of theft by coercion, in accordance with practical realities and the need for firm protection of both property and the person.

References:

[1]Dongoroz V., Kahane S., Oancea I. ş.a. *Explicaţii teoretice ale Codului penal român*. Vol. III, Ediţia a-II-a. All Beck Publishing House, Bucureşti, 2003, p. 429
[2]Pascu Ilie; Ivan, Stelian. *Tâlhăria, aspecte de teorie şi practică judiciară*.: Ministry of Interior Publishing House, Bucureşti, 1992, p. 22-23
[3]Loghin, Octavian; Filipaş, Avram. *Drept penal român, partea specială*. Univers juridic Publishing House, Bucuresti, 2012, p. 118-119
[4]Loghin, Octavian; Filipaş, Avram. *Drept penal, partea specială*.: Didactic and Pedagogical Publishing House, Bucureşti 1983, p. 111
[5]Dongoroz V., Kahane S., Oancea I. ş.a. *Explicaţii teoretice ale Codului penal român*. Vol. III, Ediţia a-II-a. All Beck Publishing House, Bucureşti, 2003,, p. 456-457
[6]Butiuc, Constantin, *Coautoratul în situaţii deosebite*. In: "Revista de drept penal" nr. 4/1995, p. 69
[7]Daneş, Ştefan, *În legătură cu coautoratul la infracţiunea de tâlhărie*. In: "Revista de drept penal" nr. 2/1995, p.112
[8]Dobrinoiu, Vasile; Dima, Traian. *Drept penal*.: Lumina Lex Publishing House, Bucureşti, 2002, p. 412
[9]Pascu, Ilie. *Pluralitate de subiecţi pasivi*. In: "Revista de drept penal" nr. 3/2004, p. 64-65;
[10]Pavel, Doru. *Tâlhărie săvârşită împotriva mai multor subiecţi pasivi*. In: "Revista de drept penal" nr. 2/1995, p. 117
[11]Pascu, Ilie; Ivan, Stelian. *Tâlhăria, aspecte de teorie şi practică judiciară*. Ministry of Interior Publishing House, Bucureşti, 1992, p. 31;
[12]Soroceanu, Constantin. *Semnificaţia termenelor întrebuinţare de violenţe din textul care incriminează tâlhăria*. In: "Revista română de drept" nr. 4/1973, p.101