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Threatening Offense in the New Criminal Code

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Abstract: In the present paper we have proceeded in examining the offense of threat provided by the new Criminal Code. The examination also took into consideration the highlighting of the main elements of similarity and the difference between the existing regulation in the Criminal Code of 1969 and the new provisions. The novelty elements of the present paper consist in the comparative examination of the differences between the two regulations (the old law and the law in force), as well as in the examination of the constitutive elements of the offense stipulated in the new Romanian law. The work may be useful to law students and practitioners in terms of violation of the provisions under consideration.

Keywords: Constituent elements; objective side; subjective side

1. Introduction

Provided in the provisions of art. 206 of the new Criminal Code, the offense of threat consists in the act of a natural or legal person who makes known to another natural or legal person that he will commit against him or another person a crime or other degrading deed which is likely to Produce a state of fear.

So, in essence, the threat is a dangerous, intimidating action that affects a person's psychic freedom.

In the earlier doctrine, it was argued that "the dangerous character of the threat is emphasized by the circumstance that, by doing so, the threatened person no longer possesses the mental freedom necessary for a natural behavior, because under the fear or fear that the threat instilled, The person is no longer able to decide and act freely on what to do.

Secondly, the dangerous character of the threat is the result of the antisocial defeat for the collectivity that brings it to the freedom of the person (V. Roşca, 1971, p. 315).

In a new opinion, it is alleged that the offense consists in "direct or indirect intimidation of a person, either explicitly or implicitly, by threatening that in the near future a committed or indefinite crime or detriment will be committed against him or another, if it is likely to cause him a state of fear" (Udroiu, 2014, p. 108).

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2. Similarities and Differences between the Two Laws

The offense of threat to be examined, with some exceptions, presents identity elements with the same offense provided in art. 193 of the Criminal Code of 1969.

Among the elements of identity we mention the marginal name, the subjects of the offense and the limits of punishment.

The distinction between the two regulations relates to the evil that threatens the active subject, which in the old law could be directed against the person concerned or his spouse or close relative, while in the law in force the perpetrator's action is directed against the active subject or another person's without the legislator expressly nominating the relationships that must exist between the person threatened and the person who will bear the consequences of the perpetrator's action; No doubt, in this circumstance, between the person directly threatened and the person who would bear the evil with which the perpetrator is threatened, there must be a series of special relationships of affection (friendship, kinship, etc.).

It may be appreciated that the new law "extended the sphere of the persons concerned by the deed to which it threatens, including in this case both the spouse or close relative of the threatened person, and any other person (for example, a friend, the concubine) Of fear is determined by the deed directed against them" (Udroiu, 2014, p. 108).

3. Examination of the Offense

3.1. Preexisting Elements

3.1.1. The Legal Object

The legal object is the social relations that concern the person's psychic freedom.

In a more elaborate definition, another author considers that the legal object consists in "the social relations relating to the psychological, moral freedom of a person, to his or her decision-making power and manifestation without the fear that there may be any bad. As part of the category of fundamental rights and freedoms, the right to psychological integrity is guaranteed by the provisions of art. 22 par. (1) of the Constitution, according to which the right to life and the right to physical and mental integrity of the person are guaranteed " (Toader, 2014, p. 132).

3.1.2. The Material Object

The offense examined has no material object, since the perpetrator's action is directed against the freedom of the person.

3.2. The Subjects of the Offense

3.2.1. Active Subject

An active subject of this crime may be any natural or legal person who has criminal capacity.

In relation to the quality of the active subject (criminal investigative body, prosecutor or judge), in the circumstances described in Article 280 C. Pen, the threat is absorbed in the content of the abusive investigation crime.

Except when the action by which the material element of the objective side is realized is by direct address (live), the offense can be committed in criminal participation.

3.2.2. The Passive Subject

The passive subject of the offense can be any natural person in life.

In cases where the passive subject of the offense has a certain quality and the perpetrator's action occurs under certain circumstances expressly provided for by law, the offense of threat is absorbed into the constitutive content of other offenses. We have here the quality of judge, prosecutor, lawyer, civil servant, policeman or gendarme, situations in which the threat will meet the constitutive elements of the judicial jail or, as the case may be, the *ultra* (Article 279 and Article 257 C. pen.).

In this respect, in the judicial practice it was decided that the defendant's act of threatening three police officers who were in regular working hours during their working hours was dressed with the specific uniforms and had the armament in their possession was the crime of outrage . The defendant had the idea that the police officers were representatives of the state authority, who were in the exercise of their prerogatives, pursued and accepted that by its deed it would affect the state authority (M. Udriou, 2014, p. 109).

The doctrine expressed the view that, in principle, the plurality of passive subjects attracts the retention of a plurality of crimes (M. Udriou, 2014, p. 109)

3.3. Constitutive Content

3.3.1. The Objective Side

The material element of the objective side is accomplished by a threat action of the active subject. This can be done in a variety of ways, such as direct addressing, letters, phone, sms, e-mail, social networking, etc. The action can also be accomplished by gestures, attitudes, behaviors or some symbolic signs (when they have a clear meaning and commonly used in collectivity, which in essence poses a threat).

Another author considers that the material element of the offense consists in "intimidating a person, directly or indirectly, explicitly or implicitly, through the threat by any means that a crime (no matter the nature or gravity Or an act by which a material (non-moral) injury can be determined or determined against her, his spouse, a close relative, or another person (for example, against a friend, fiancée, concubine etc.) .) (M. Udriou, 2014, p. 109).

In order to establish the existence of the offense, it is of no legal relevance that the incriminated action was determined by a possible legitimate interest of the perpetrator (for example, the threat of a person who previously committed a crime against the active subject).

When the threat is carried out under the law, as in the case of the use of a weapon of use (act that can be committed by police officers or military personnel in the exercise of their duties), the deed does not meet the constitutive elements of the threat of crime, in these cases Incidents the provisions of art. 21 C. pen. (The exercise of a right or the fulfillment of a justifiable obligation).

Essential requirements. According to the recent doctrine, for the existence of the offense it is necessary to fulfill the following essential requirements: to have a crime or a detrimental act committed, to be directed against the person threatened or another person, Threatened a state of fear, have an unfair character, and be realizable in a not too distant future (T. Toader in G. Antoniu et al., 2013, pp. 133-134).

In another opinion, the existence of the following three essential requirements was supported: the framework of facts, which may be the subject of a threat of criminal relevance, the intimidating effectiveness of the threat action that must be susceptible to threaten the victim and the persons against whom the offense may be offended; The damaging act, which is the subject of the threat (V. Roșca in V. Dongoroz et al., Vol. III, 1971, pp. 317-319)

In my opinion, the examination of the two opinions, supplemented by the provisions in force, leads to the finding that there are the following essential requirements, which must be fulfilled cumulatively:

A) the action by which the material element of the objective side is made must relate directly to the commission of a criminal offense or detrimental act, for the passive subject or other person;

B) If this threat is directed against another person, there must be a certain state of affection between the person to whom the threat was sent and the person threatened (husband, child, close relative, friend, fiancée, fiancée, concubine, Former professor, head or colleague, etc.);

C) the action by which the threat is to be carried out must be such as to cause the person threatened, either for himself or for another person, a state of fear;

D) the action by which the threat is carried out can be carried out immediately or in the near future and have an unfair character,

E) the action by which the threat is made to be serious, achievable and not followed by another action by which the active subject passes to the materialization of the threatened threat.

If one of these requirements is not met, the constitutive elements of the offense will not be met objectively.

Thus, in the judicial practice it was decided that the action of the bailiff who chooses the debtor to pay a sum of money and at the same time informs him that in case of non-payment of this amount, he will proceed to the sale by public auction of the building, does not meet the constitutive elements of Threatening crime, because the threat of having a right against the threatened, using a legal path, even if it expose the one threatened to some damaging consequences, is not a crime.

In the other case, the court ruled that, in order to commit the offense of threat, it is necessary for the threat action to induce the victim to fear that the person would be exposed to actual danger. Consequently, the threat must be serious, likely to alarm the victim, that is to provoke a restriction of psychic freedom, protected by establishing the criminal norm.

In another case, the court ruled that spraying the victim with a flammable liquid in order to fire him meets the constitutive elements of the crime of attempted murder and not those of the offense of threat. In the present case, it is clear from the statements of the witnesses in question that the defendant threw

a flammable liquid on the injured party, then put his hand in his pocket to remove a lighter, telling him to fire and kill it.

Therefore, any such act will meet the constitutive elements of the threat of threat only if the essential requirements mentioned are cumulatively met, the supreme court establishing that as long as the activity of the defendant confined itself to the threat of the victim of death without having done acts of nature To indicate his intention to suppress his life (in this case, the defendant went into the kitchen with a knife, which he held up, telling his wife that he was killing her, but without making a knife movement to prove that intention) , In his / her task can only be detained the offense of threat, provided in art. 193 C. pen., Not attempted the crime of qualified murder, provided in art. 20 combined with art. 174, 175 lit. C C. pen.

3.3.2. Subjective Side

The form of guilt with which the active subject acts is intent in both forms.

For the existence of the offense, the mobile or purpose has no legal relevance, these being important in the process of individualizing the criminal law sanction to be applied by the court.

4. Forms, Modalities, Sanctions

4.1. Forms

Training and attempts are not sanctioned; If the act is committed by direct address (live), they are not possible.

The offense is consumed when the injured person learns of the offense of threat that is likely to cause him a state of fear.

This offense can also be committed in a continuing form, in which case there will be a moment of exhaustion that will identify itself with the last act prohibited by law.

If, immediately after the threat the active subject commits and the offense threatened by the victim, the offense of threat will be absorbed in the content of the offense (for example, the active subject threatens the victim to kill her with a knife and threatens to attack the victim and stab her A vital area of the body).

The doctrine expressed the view that the offense of threat can be detained in concurrence with the offense that was threatened if the offense is subsequently committed after a certain period of time from the threat (Udroiu, 2014, p. 111).

4.2. Ways

The offense of threat has only one type of way and several factual ways.

4.3. Penalties

As a less serious offense, the penalty provided by law is imprisonment from 3 months to one year or fine.

5. Complementary Explanations

5.1. Link to Other Offenses

The offense of a threat has some links with the offenses that are part of this group, namely illegal deprivation of liberty, blackmail and harassment, because all these incriminations protect the physical and mental freedom of the person.

5.2. Some Procedural Aspects

Jurisdiction in the first instance belongs, as a rule, to the district court in whose district the act was committed.

In relation to the quality of the active subject, jurisdiction may lie with the tribunal, the court of appeal or the supreme court.

In cases where the jurisdiction in the first instance belongs to the court, the criminal investigation is carried out by the criminal investigation bodies of the judicial police under the supervision of the prosecutor or the prosecutor, and in all other cases only by the competent prosecutor.

The offense of the threat is absorbed in the complex content of other offenses, namely, the ultrajudge (Article 257 of the Penal Code), the judicial offense (Article 279 of the Penal Code), the abusive investigation (Article 280 of the Penal Code) Abusive [art. 296 par. (2) C. pen.], Robbery (Article 233 C. pen.), Rape (article 218 C. pen.), Sexual assault (article 219 C. pen.), Blackmail (article 207 C Pen.).

6. Legislative Precedents and Transitional Situations

6.1. Legislative precedents

The offense of threat was also provided in previous criminal codes. Thus, in the Criminal Code of 1865 the threat was provided in art. 235-237, and in the Criminal Code Carol II in art. 494.

6.2. Transitional Situations. Applying More Favorable Criminal Law

In view of the limitations of punishment and the timing of this course, we consider that the transitional situations are no longer of practical significance, which is why we do not insist on their examination with reference to the more favorable criminal law.

However, in didactic terms, we only specify that the more favorable criminal law can be any of the two.

7. Conclusions

We examined the threat offense in the light of the new amendments and additions made by the new Criminal Code, trying to identify some elements of similarity but also a differentiation between the provisions of the two laws (Article 193 of the 1969 Criminal Code and Article 206 of the new Code criminal).

Even though there are many elements of similarity between the two incriminations, we considered it worthwhile also to emphasize some elements of differentiation, which are extremely important from the point of view of applying the provisions of art. 5 par. (1) of C. pen. (More favorable criminal law).

On the other hand, we stress that the examination is also of major importance to practitioners, as this crime continues to record a fairly high crime rate.

We appreciate that the examination carried out may constitute a reference point for persons studying crimes against the freedom of the person in view of the latest amendments and additions made with the entry into force of the new Criminal Code.

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