



THE 13<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

## Violence, on Element of Aggravation of Some Categories of Crime

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**Abstract:** Violent crime or crime of violence are illicit antisocial actions involving the use of force or constraint in order to obtain the illicit result, respectively, in order to suppress the life of the person, damage his integrity, or create material or moral damages (murder, battery or injuries resulting in death, bodily injury, robbery, etc.). The paper focuses on presenting multiple ways of influencing the severity of some crimes committed through various forms of violence.

**Keywords:** violence; crime; robbery; Criminal Code

### 1. General Point on Violence

#### 1.1. Violence as a Concept

Eric Debarbieux (1996, pp. 45-46) believes that “violence is the brutal or continuous disorganization of a personal, collective or social system that translates into a loss of integrity, which may be physical, mental or material. This disorganization can operate through aggression, using force, consciously or unconsciously, but there can be violence only from the point of view of the victim, without the aggressor having the intent of doing harm.”

A necessary delimitation is between the instrumental and the emotional aspect of violence. The instrumental form differs from the emotional one by planning aggressive action. The primary goal is not to do harm, but to achieve certain results, to maintain or enforce its power or status. Emotional (or hostile) violence is done with the intent of harming someone, causing him or her sufferance, and to reduce the psychic tension of the aggressor. This delimitation penetrates deep, up to the motivational constellation of the aggressive act. To these forms is added the violence as symbolic aggression, which means “to aggress the sign or object that materializes the identity of the other detested”<sup>2</sup>, the signs of power or what is defined as such. They are assaulted and destroyed to signify an opposition to the values these symbols imply.

Violent crime is characterized by the high degree of social danger, a factor considered to be of great importance by researchers in the field. Thus, when we remember the social danger, we refer to the damage to social values that pertain to the existence and physical security of the person (Dongoroz, 2012, p. 175). This touch may result in the most serious consequence, that

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<sup>2</sup> Amirou R., *Considerații psihosociologice asupra noțiunilor de agresivitate și frustrare comparativă/ Psychosociological considerations on the notions of aggressiveness and comparative frustration*. In (Ferréol & Neculau (eds.), 2003, p. 43)

is to say the extinction of life, that is, the physical dismantling of the person, but it may also have less serious consequences, that is damage to bodily integrity or health. The Criminal Code incriminates the facts relating to life and bodily integrity in relation to the quality of the subject, the severity of the consequences, the scope and the way in which it was committed.

In the works of the Conference of Directors of Criminological Research Institutes organized by the Council of Europe in 1975, E. Harremo (1975, pp. 327-342) came to the following conclusions:

1. There is no formal evidence of a worldwide increase in social violence with the general proportion of the increase in crime. The objection manifested in public opinion on the grounds that violence is growing may be partly attributable to media coverage of spectacular events such as organized crime, sexual offenses, hijacking, and hostage-taking.

2. It is very difficult to analyze the multiple and complex issues that generate acts of violence (the role of instinct, the importance of the environment, social conditioning, frustration) in the absence of concrete essential data.

As a phenomenon, violent crime is extremely heterogeneous. The relationship between the increasing violence on the one hand and the industrialization and urbanization and the resulting anomy on the other hand is complex and indirect. Obviously, industrialization and urbanization are not, the causes of violence per se. The increase in the number of violent behaviors must be considered in the more general context of the social issues that contemporary societies face.

Violence must be seen in the broader context of social issues (unemployment, discrimination of various social groups, barriers forbidding access to a particular social situation, etc.); certain violent behaviors are the expression of social crises generated by contemporary social infrastructure. Thus, some individuals who see closing the ways of social success conclude that the legal means are ineffective, admitting violence as a quick solution and justifying both violent reactions and aggression through its own conception of social justice.

Violence is often generated by alcohol consumption, especially among young people, who, with the effect of alcohol, commit some antisocial deeds; drinking is actually one of the main causes of violent behaviors.

Mass media can play a conditioned role, so in the front of violence in its most brutal and sadistic forms, some individuals, especially young people, are tempted to accept more easily the use of violence in a conflict situation;

Violence as a phenomenon is present in all contemporary societies, concerning, due to its harmful effects, both state organizations, institutions for the maintenance and restoration of public order, as well as researchers from various fields of activity. In order to control and reduce this phenomenon, sociological violence research has a determining role in knowing this social phenomenon. In a sociological sense, violence can be seen as “the use of force and constraint by an individual, group or social class for the purpose of imposing will on others.” (Rădulescu, 1993, p. 670)

## **1.2. Forms of Violence**

For Jean-Claude Chesnais, violence is “a direct or indirect action, massaged or distributed, intended to harm a person or destroy it, either in her physical or mental integrity, in her possessions or in her symbolic participations.”<sup>1</sup> The French specialist, trying to establish the

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<sup>1</sup> Chesnais, Jean-Claude, *Histoire de la violence*, apud (Păunescu, 1994, p. 18)

semantic areas included in the definition of violence, exposes, in a geometric view, three circles”: **physical violence, economic violence and moral violence.**

Finally, we will stop at the typology of violence proposed by the World Health Organization and Interpol (Neamțu; Câmpeanu & Ungureanu, 1998, pp. 205 – 205)

### **A. Private Violence**

1. Criminal violence: a. deadly (homicides, murders, poisonings, capital executions); b. bodily (battery and other acts of violence); c. sexual (rape).
2. Non-criminal violence: a. suicidal (suicides and attempts); b. accidental (traffic accidents).

### **B. Collective Violence**

1. Citizens’ violence against power: a. terrorism; b. strikes and revolutions.
2. Power’s violence against citizens: a. state terrorism; b. industrial violence.
3. Paroxysmal violence – war.

These typologies cover a tough reality, revealed by the various statistics released to the publicity. Thus, FBI statistics showed, for the US in the 1980s, a serious crime every three seconds and a violent crime every 25 seconds. In 1987, there were 19.000 homicides and 87.000 rapes, 500.000 people were involved in robberies and 725.000 in maltreatment or rape<sup>1</sup>. As far as Romania is concerned, the crime rate has increased from 414 in 1990 to 1.039 in 1994 and to 1.765 in 1998. Although for the first time since 1990 the number of crimes committed has been decreasing in 1998, daily were committed an average of: 3 murders or attempted murders; 3.8 serious body injuries; 8 robberies; 3.2 rapes. The Criminal Police’s scoreboard, for 1998, is edifying: murders - 559; attempted murder - 501; deadly blows - 203; rapes - 1,267; robberies - 3,548<sup>2</sup>.

### **1.3. Factors Generating Violence**

As factors generating violence (criminal), three categories of factors can be distinguished: a) internal factors - temperament, character, heredity, intelligence, passions, mental state, person’s education

b) external (exogenous) factors, including the objective conditions of life, the degree of civilization, the deficiencies of socio-professional integration, the conflicting situations, etc.

c) trigger factors (immediate) - those who connect the motivation of the phenomenon as a whole and the individual (Mircea, Borcan, & Poenaru, 1996, p. 7).

From the studies conducted by the judicial police units on the cases solved, it was found that the most frequent triggering factors are:

excessive consumption of alcohol;

spontaneous conflicts, arising in the face of the momentary challenge;

exacerbating feelings of hatred or revenge;

<sup>1</sup> Heslin, James M, *Social Problems*. apud (Rădulescu, 1999, p. 184)

<sup>2</sup> Adevărul, nr. 2699, 8 February 1999.

fighting between groups;  
extra conjugal relationships;  
the location of bars and restaurants in crowded areas;  
the consumption of alcoholic beverages outside specially organized places;  
high flow of persons during certain periods of time (passengers in train stations), especially on religious and secular holidays, school start or finish, summer season, sporting events;  
low number of law enforcement officers acting at a given moment in a delimited area.<sup>1</sup>

## **2. Violence in the Acceptance of the Romanian Law System**

Considering the complexity of the violent manifestations, the theoreticians of the Romanian criminal law appreciate as a generic legal object of the crimes committed with violence against the person “The general assembly of social relations that is constituted and unfolds in connection with the defense of the person, viewed as a whole of its attributes (life, bodily integrity, sexual inviolability, freedom, dignity) (Dobrinou & Neagu, 2014, p. 9).”

Criminal law has the main purpose of defending the social values represented by the life, health and integrity of persons, as well as the protection of their patrimony. In this respect, certain levers, ways and means are in place in the criminal law systems to ensure both the coercion of the criminals and the criminal repression towards them, as well as identifying and diminishing the causes of crime.

### **2.1. Incrimination of Violence in Crimes against the Person under the New Criminal Law**

Murder is provided by art. 188 of the Criminal Code and the incrimination of murder is done in the same way as in the previous regulation. The degree of social danger that the murder poses is particularly high, affecting the most important attribute of the person, life. Endangering or suppressing a person's life concerns not only the victim's person, but the person in general, because without respecting the person's life, neither the peaceful existence of the community nor the coexistence of its members can be conceived.

Aggravated murder

Aggravated first degree murder [art. 189 letter a)].

In the common sense of the word, a premeditated act means an action based on a previous deliberation, anticipated thinking. Premeditated action involves a criminal resolution and a prior decision, followed by material acts to enforce the judgment. These acts which precede the commitment of the crime, such as the purchase or adaptation of instruments to commit murder (for example, procurement of the weapon, adaptation of the instrument or even its manufacture) or the creation of conditions necessary to commit the deed (such as attracting the victim in a trap or catching it). In the terminology of some authors and criminal laws (the

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<sup>1</sup> Plan of Measures to Prevent and Combat Violence at the level of S.R.P.T. Galați, 2016.

French Criminal Code, the Spanish Criminal Code), homicide committed intentionally is called “assassination.” The murder committed on two or more persons (art. 189 letter f)] There is this circumstance whenever the intentional killing activity has resulted in - consciously pursued or accepted - the death of at least two persons (multiple passive subjects). This plurality of victims gives the murderer an increased gravity and characterizes the author as particularly dangerous. c) Murder committed by cruelties [art. 189 letter h)] “Cruelty” means brutal, violent procedures, acts of violence that, over time, cause extreme torments or physical suffering, which denotes sadism, a barbarous manner of committing murder, such as: crushing of bones, peeling off skin, whiplash, lack of food or drink, prolonged burning, hair or nail extraction, total or partial cut of non-vital areas of the body.

C. Bodily injury. The offense of bodily injury is a variant of the offence of battery or other acts of violence, which has been given its own name (*nomen juris*); with the exception of the more serious result, the structure and legal content of the offense of bodily injury are similar to those of the offense of battery or other acts of violence. The criterion for distinguishing between the various variants of violent crimes is in this case the nature of the consequences produced. Thus, if the deed only caused physical suffering or caused injuries requiring for healing up to 90 days of medical care, will fall within the provisions of Article 193 of the Penal Code, and if it had a more serious consequence, from those shown in Article 194, will fall within according to this text.

D. Injuries or death-causing injuries - the offense of injuries or death-causing injuries, although located in the section on offenses against bodily integrity and health, resembles the result produced, the death of the victim, the crime of murder. Therefore, the sanction for this offense approaches the legal limits of punishment for murder. The offense is regulated in the same way as in the previous legislation, with the only differences in sanctioning. The offense is provided in one type variant, there being an offense, according to Article 195 of the Criminal Code, if any of the facts provided in Article 193 and Article 194 resulted in the death of the victim.

## **2.2. Incrimination of Violence in Crimes against Sexual Freedom and Sexual Integrity**

E. Rape is incriminated in Article 218 of the Criminal Code as part of Chapter 8, which is devoted to crimes against sexual freedom and sexual integrity. The offense provided in Article 218 of the Criminal Code has a standard version, an assimilated variant, an aggravated variant with six alternative ways of committing, and an aggravated variant common to all previous variants. The type variant is provided in paragraph 1 and consists in the sexual intercourse, oral or anal intercourse with a person, committed by coercion, impossibility of defending or expressing the will or taking advantage of this state. The assimilated variant referred to in paragraph 2 shall consist of any other vaginal or anal penetration perpetrated under paragraph 1. The aggravated variant provided in paragraph 3 is made when: the victim is in the care, protection, education, guard or treatment of the perpetrator (letter a), the victim is a direct relative, brother or sister (letter b), the victim has not reached the age of 16 (letter c), the act was committed in the purpose of producing pornographic material (letter d), the act resulted in bodily injury (letter e), the act was committed by two or more people together (letter f). Paragraph 4 provides for a common aggravation of all the above-mentioned committal variants, namely when the deed results in the victim's death.

## **2.3. Incrimination of Violence in Crimes against Patrimony**

F. Robbery - The offense provided by Article 211 of the old Criminal Code consisting of the theft committed through the use of violence or threats or by putting the victim in a state of unconsciousness or impossibility to defend himself, as well as the theft followed by the use of such means to preserve the stolen good or to remove the traces of the crime or for the perpetrator to secure his escape.

The aggravated forms of the robbery offense are the deeds committed in the following circumstances:

- by a masked, disguised or transvestite person;
- during the night;
- in a public place or in a means of transport;
- by two or more people together;
- by a person with a weapon, a narcotic or paralyzing substance;
- in a dwelling or its dependencies;
- during a calamity;
- when it has caused particularly serious consequences or has resulted in the death of the victim.

In the new Criminal Code, Article 234 lists “qualified robbery”:

(1) Robbery committed in the following circumstances:

- a) using an explosive, narcotic or paralyzing weapon or substance;
- b) by simulating official qualities;
- c) by a masked, disguised or transvestite person;
- d) during the night;
- e) in a means of transport or against a means of transport;
- f) by violation of a domicile or professional placement, shall be punished by imprisonment from 3 to 10 years and the prohibition of exercising certain rights.

(2) The robbery committed under the conditions of Article 229 paragraph (3) shall be punished by imprisonment from 5 to 12 years and the prohibition of exercising certain rights.

(3) The same punishment shall be punished the robbery which resulted in bodily injury.

The New Criminal Code updated by:

Law 187/2012 - for the implementation of Law no. 286/2009 on the Criminal Code of 24 October 2012, Official Gazette 757/2012; (<https://legeaz.net/noul-cod-penal/art-234>).

Being a complex crime, the robbery has as its material object, first of all, a mobile good. The main legal object, which is identical to that of the theft, is the social relations regarding possession and detention on movable goods. The secondary legal object is the social relations related to life, bodily integrity or the freedom of the person. Because acts of violence, threats, or other means of annihilating the will of the person are being used, robbery may have as its material object, secondly, its body. If robbery always has as material object a movable good, instead, the body of the person does not appear as a material object of the offense except in those cases where the secondary activity is carried out by an action directly exercised on a

person's body. The robbery offence is committed with direct intention; the perpetrator realizes and wants to commit theft through violence or threat or by putting the victim in a state of unconsciousness or the inability to defend himself.

#### 4. Bibliography

- Gheorghe, Alecu & Barbăneagră, Alexei (2006). *Reglementarea penală și investigarea criminalistică a infracțiunilor/ Criminal regulation and forensic investigation of criminal offences*. Bucharest.
- Alexandru, M.; Borcan, N. & Poenaru, T. (1996). *Curs de Poliție Judiciară/ Judicial Police Course*. Internal Affairs Ministry's Publishing House.
- Antoniou, G. & Bulai, C. (1992). *Practica judiciară penală, vol III, Partea Specială/ Criminal Court Practice, Vol. III, special part*. Romanian Academy Publishing House.
- Antoniou, G.; Duvac, C.; Lămășanu, D.I.; Pascu, I.; Sima, C.; Toader, T. & VasIU, I. (2013). *Explicații preliminare ale noului Cod Penal, vol. III, Partea Specială/ Preliminary explanations of the new Criminal Code, vol. III, Special part*. Bucharest: Universul Juridic.
- Antoniou, G.; Dobrescu, E.; Dianu, T.; Stroe, G. & Avrigeanu, T. (2003). *Reforma legislației penale/ Reform of criminal law*. Bucharest: Romanian Academy.
- Barbu, A.; Tudor, G. & Șinc, A.M. (2016). *Codul de procedură penală adnotat cu jurisprudență națională și europeană/ Code of Criminal Procedure annotated with national and European jurisprudence*. Bucharest: Hamangiu.
- Beziz-Ayache A. (2008). *Dictionnaire de droit penale general et de procedure penale/ Dictionary of general Criminal Law and criminal Procedure*. 4 Ed. Paris: Ed. Ellipses.
- Boroi, Alexandru, (2011). *Drept penal. Partea Specială, conform noului cod penal/ Criminal Law. Special part, according to the new Criminal Code*. Bucharest: C.H. Beck.
- Bulai, C. (1975). *Curs de drept penal. Partea speciala/ Criminal Law. Special part, vol II*. Bucharest: Ed. Universitara.
- Chesnais J.-C. (1981). *Histoire de la violence/ History of violence*. Paris: Ed. Robert Laffont.
- Ciolei V. (2013). *Drept penal, Partea specială, Infracțiuni contra persoanei și infracțiuni contra patrimoniului/ Criminal law, special part, crimes against persons and offences against patrimony*. Bucharest: C.H. Beck.
- Debarbieux, Eric (1996). *La violence en milieu scolaire T.1: état des lieux*. Paris: ESF.
- Diaconescu, Gheorghe & Duvac, C. (2009). *Tratat de drept penal/Treaty of Criminal law*. Bucharest: C. H. Beck.
- Dima, T. (2004-2005). *Drept penal. Partea generala/Criminal Law. General part, vol. I & vol. II*. Bucharest: Lumina Lex.
- Dobrinou V.; Pascu, I.; Hotca, M.A.; Chiș, I.; Gorunescu, M.; Păun, C.; Neagu, N. Dobrinou, M.; Sinescu, M.C. (2014). *Noul Cod penal comentat. Partea speciala/ The new Criminal Code commented. Special part*. Bucharest: Universul Juridic.
- Dobrinou V. & Neagu, N. (2014). *Drept Penal Partea Specială/ Criminal Law. Special part*. Bucharest: Universul Juridic.
- Dobrinou V. & Neagu, N. (2011). *Tratat de drept penal. Partea specială, Teorie și practică judiciară/ Criminal Law Treaty. Special part, theory and judicial practice*. Bucharest: Universul Juridic.
- Dongoroz V. (2003). *Explicații teroetice ale Codului de procedură penală roman/ Teroetic explanations of the Code of Romanian Criminal Procedure*. Vol. V, VI, ed. A 2-a, Academy's Publishing House. Bucharest: All Beck.
- Dongoroz V.; Kahane, S.; Oancea, I.; Fodor, I.; Iliescu, N.; Bulai, C.; Stănoiu, R. & Roșca, V. (1971). *Explicații teoretice ale Codului penal roman. Vol III, Partea speciala/ Theoretical explanations of the Romanian Criminal Code. Vol III, Special part*. Bucharest: Editura Academiei.
- Drilea-Marga M. (2014). *Urmărirea penală în Noul Cod de procedură penală/ Prosecution in the new Code of Criminal Procedure*. Universul Juridic.
- Harremos E. (1975). L'activite du Commitee europeen pour les problemes criminels du Conseil de l'Europe (1966-1974)/The activities of the European Committee on Criminal Problems of the Council of Europe. *Revue de science criminelle et de droit penal compare/ Review of criminal Science and Compared Criminal Law*, no. 2.

- Kuglay I. (2014). Controlul judecătoresc asupra actelor și soluțiilor procurorului și asupra lucrărilor de urmărire penală/ Judicial review of the Prosecutor's acts and solutions and criminal prosecution activities. *Analele Universității București, Seria Drept, Supliment/ Annals of the University of Bucharest, Law series*.
- Merle R. & Vitu, A. (1997). *Traite de Droit criminal. Procedure penale/ Criminal Law Treaty. Criminal Procedure*. Vol II, 7 Edition. Paris: Cujas.
- Neamțu G.; Câmpeanu, I. & Ungureanu, C. (1998). *Intervenție și prevenție în delincvență/ Intervention and prevention in delinquency*. Iași: Fundația Chemarea.
- Pascu I.; Gorunescu, M. & Mitrache, C. (1995). Pluralitatea de victime în cazul tâlhăriei/ Plurality of victims in the event of robbery. *RDP*, no. 2.
- Păunescu, C. (1994). *Agresivitatea și condiția umană/ Aggressiveness and human condition*. Bucharest: Technical Publishing House.
- Poenaru, I. (1999). *Problemele legislației penale/ Problems of criminal law*. Bucharest: Lumina Lex.
- Pop, Traian (1946 – 1948). *Drept procesual penal/ Criminal Procedural Law*. Vol. I-IV. Cluj: National Printing House,.
- Tanoviceanu I. & Dongoroz, V. (1947). *Tratat de drept penal și procedură penală/ Criminal Law Treaty and Criminal Procedure*. Vol. II, Bucharest: Curierul Judiciar Academy's Publishing House.
- Toader T.; Michinici, M.-I.; Răducanu, R.; Rădulețu, S. & Dunea, M. (2014). *Noul Cod penal. Comentarii pe articole/ The new Criminal Code. Comments on articles*. Bucharest: Hamangiu Academy's Publishing House.
- Tonini, P. (2010). *Manuale de Procedura penale, undicesima edizione/ Manual of Criminal Procedure, eleventh edition*. Milano: Giuffrè Editore.
- Trechsel, S. (2006). *Human Rights in criminal proceedings*. Oxford: Oxford University Press.
- Volonciu N. & Uzlău, A. (2014). *Codul de procedură penală comentat/ Code of Criminal Procedure commented*. Bucharest: Hamangiu.
- Volonciu N.; Vasiliu, A. & Radu, G. (2014). *Codul de procedură penală adnotat. Partea generală/ Code of Criminal Procedure annotated. General part*. Bucharest: Universul Judiciar Academy's Publishing House.
- Volonciu, N. (1998). *Tratat de procedură penală. Partea generală. Partea specială/ Treaty of Criminal Procedure. The general part. Special part*, vol. I-II, Bucharest: Paideia Publishing House.
- \*\*\* Bucharest Court House Judicial Practice Collection 1994 – 1997, All Beck Publishing House.
- \*\*\* The Romanian Journal of Sociology, New series, year XI, nr. 1–2, Bucharest, 2000.