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OFFENCES AGAINST PATRIMONY IN THE NEW CRIMINAL CODE. COMPARATIVE EXAMINATION. SOME CRITICAL OPINIONS

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Abstract: In this study we have examined the regulatory framework of crimes against patrimony provided for in the new Criminal Code. We have also considered a comparative examination between the regulation of offenses of this group in the current Criminal Code and the Criminal Code of 1969, and the formulation of some critical opinions.At the same time we have highlighted the developments of incriminations of these acts that are part of the group of crimes against patrimony, by mentioning them in Title II, immediately after the offenses against the person.The paper continues previous research, represented by studies published in scientific journals or proceedings of international or national conferences on the matter.Considering the set objective, the innovation elements that consist in the conducted examination, the comparative examination and the expressed critical opinions, the paper can be useful to the academic environment, to the legislator from the perspective of completing the legal regulations and also to the practitioners in the field.

Keywords: the systematization of incriminations; some common features, very serious consequences.

1. Preliminary Considerations. The Systematization of Incriminations

As stated in the explanatory proposal, in the draft the norms of incrimination of acts against patrimony were systematize in four chapters, taking into account the factual situations in which the assetscan be found as patrimony entities, and the character or the nature of illicit actions by which it may change the factual situation. Besides, this systematization is not a first for the Romanian criminal law, but a return to tradition: the Criminal Code of 1864 systematized the crimes and property misdemeanors on 9 sections; 1936 Criminal Code provided crimes and misdemeanors against patrimony in Title XIV which contained four chapters.

The patrimony as social value is protected by the rules of incrimination contained in Title II of the project, equally, regardless of its owner.

As already stated in the general considerations, the penalties provided for in the incrimination norms of the acts against property in the projectare much lower than the current Criminal Code,a reduction that took into account:

a) thepenalties imposed by the courts specifically for this type of crime;

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b) a correlation with the general provisions relating to the operation mechanisms of the plurality of offenses and the penalty limits laid down for applying alternative methods of individualization of sanctions enforcement;

c) theneed to reflect in the legal limits the penalty of the natural hierarchy of social values that are the object of criminal protection;

d) the need to come back to the tradition of previous Criminal Code (Criminal Code of 1864, the one of 1936 and the Criminal Code in force as envisaged at its adoption in 1968) [1].

We specify, however, that compared to the wording in the structure of this title there were amendments, the last being that of introducing a new chapter, i.e. Chapter VI marginally entitled*Offenses that produced severe consequences* [2].

Unlike the Criminal Code of 1969 where crimes against patrimony were provided for in Title III of the same marginal title, in an order chosen by the legislator without being structured on chapters, in the New Criminal Code these crimes are grouped in several chapters "taking into account both the factual situations in which assets can be found as patrimonial entities, and the character or nature of the illicit actions which may change these facts. In the criminal doctrine there are considered that the crimes against property are classified, taking into account the specific of the material activity, in crimes against patrimony based on evasion (theft, robbery, piracy), crimes against patrimony based on fraud (breach of trust, cheating) and crimes against patrimony based on arbitrariness (destruction, degradation, disturbance of possession)"[3].

According to the recent doctrine "Title II of the new Criminal Code is divided into five chapters, two relating to offenses against patrimony based on evasion (theft or robbery and piracy), two relating to offenses against patrimony based on fraud (separated by the manner of committing fraud or through electronic systems or electronic means of payment or by traditional methods), and the last chapter relates to offenses against property based on arbitrariness. Incidentally, this systematization is not a first for the Romanian criminal law, but a return to tradition: the Criminal Code of 1864 systematized the property crimes and misdemeanors on nine sections; the 1936 Criminal Code provided against patrimony crimes and misdemeanors in Title XIV, comprising four chapters"[3]; still the quoted author showed that: the solution of crimes classification against patrimony in several categories is promoted also in the criminal codes of countries members of the European Union adopted more recently, such as the French Criminal Code (Book III - Crimes and offenses against assets - has two titles, each divided into four chapters) or the Spanish Criminal Code (Title XIII - Crimes against patrimony and order socioeconomic order - comprising no fewer than 14 chapters), but also the older codes (e.g. Italian Criminal Code, the German Criminal Code, etc.).

Currently, given the latest changes and additions, this title is divided into six chapters as follows:

- Chapter I marginally entitled *theft*, where there are three offenses, namely: theft (art. 228), aggravated theft (art. 229) and theft for the purpose of use (art. 230), plus some provisions on prior complaint and reconciliation (231) and sanctioning the attempt (art. 232);

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- Chapter II entitled marginally*robbery and piracy*, which include four offenses and certain provisions concerning that sentencing the attempt, as follows: robbery (art. 233), armed robbery (art. 234), piracy (art. 235), robbery and piracy followed the death of the victim (art. 236) and that sanctioning the attempt (art. 237);

- Chapter III called marginally*Crimes against patrimony through disregarding trust*, includes a total of ten offenses and sanctioning attempts, as follows: abuse of confidence (art. 238), breach of trust by defrauding creditors (art. 239), simple bankruptcy (art. 240), fraudulent bankruptcy (art. 241), unlawful administration (art. 242), acquiringfound property or reached in error to the perpetrator (243), deception (art. 244), fraud on insurance (art. 245) misappropriation of public auctions (art. 246) patrimony exploitation of a vulnerable person (art. 247) and sanctioning the attempt (art. 248);

- Chapter IV with the marginal title *fraud by means of computer systems and electronic payment*, comprising two offenses and certain provisions regarding sanctioning the attempt in art. 249 (computer fraud), art. 250 (accepting financial transactions fraudulently conducted) and art. 252 (sanctioning the attempt);

- Chapter V marginally entitled *destruction and disorderinto possession* includes offenses of: destruction (art. 253), aggravated destruction (art. 254), negligent destruction (art. 255) and disturbance in possession (art. 256);

- Chapter VI marginally entitled *offenses that have produced serious consequences*, including article 256^1 marginally entitled facts that have produced serious consequences [4].

2. The New Criminal Code in Relation to the Previous Law. Comparative Examination

The way of regulating the offenses that are part of this title, show some elements of similarity and others of differentiation under the rules of the Criminal Code of 1969.

If we refer to the original version of the Criminal Code of 1969, we find that the offenses against property are provided in two separate titles, namely: crimes against personal wealth and in particular Title III, and offenses against public property.

In the Title III structure there are summarized in the following offenses: burglary, aggravated burglary, robbery, piracy, breach of trust, fraudulent management, fraud, appropriation of found property, destruction, aggravated destruction, negligent destruction, possession disorder; under this title there were provided some provisions on punishment of thefts to prior complaint, concealment and sanctioning the attempt.

In title IV there were included the following offenses: embezzlement, theft for damaging public property, robbery for damaging public property, piracy for damaging public property, breach of trust for damaging public property, unlawful administration for damaging public property, destruction for damaging public property,fraud for damaging public property, ownership for the damaging public property, destruction at fault of public property damage, destruction, damaging public property by negligence, possession disorder for damaging public property, concealing for damaging public property; also in a separate article it was provided sanctioning the attempt for some offense in this group.

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Studying the structure of the two titles of the Criminal Code in 1969, it leads to the conclusion that the distinction between the two regulations by which it is protected the patrimony lies in the penalty limits which are higher for offenses against public property.

On the other hand, we see that all offenses under Title III of the Criminal Code of 1969 are provided in the Criminal Code in force.

After the change of political regime produced in December 1989, Title IV (the offenses against public property - art. 223-235) was repealed, and in the structure of Title III (Crimes against property - art. 208-222) in particularcrimes many changes were made.

These changes and additions focused on the introduction in the constitutive content of certain crimes of new sanctioning actions or inactions, and also increasing (sometimes exaggerating) the minimum and maximum limits of sanctions.

A first differentiation elementbetween the two regulations is that in the current Criminal Code the offenses against property are grouped in Title II, while in the Criminal Code of 1969 they are grouped in Title III.

The second element of differentiation regards the title structure, in the new law appears in six chapters, unlike the previous law where crimes were not grouped into chapters.

Another element of differentiation between the two regulations aimed at introducing new offenses in the new law, namely: theft for use purposes, armed robbery, robbery or piracy followed by the death of the victim, breach of trust by defrauding creditors, simple bankruptcy, fraudulent bankruptcy insurance deception, misappropriation of public auctions, patrimonial exploitation of a vulnerable person, computer fraud, conducting financial fraudulent operations, accepting fraudulent financial transactions.

Meanwhile, throughout this title, into the new law it no longer appears as regulatedthe crimes of embezzlement and concealment.

Another differentiating element regards the introduction of the possibility of reconciliation of the parties in the case of theft offense and some ways of aggravated theftoffense, provisions which could not be found in the previous law.

A final element of differentiation regards the penalty limits that are lower in the new law.

3. Some Common Features

The offenses against patrimony presents also some common features which we will examine briefly in this section.

A. The Juridical Object

*The generic juridical object*of the crimes against patrimony consists of social relations whose training and development are ensured by defending patrimony. It has no legal relevance if it is considered the patrimony of legal or physical entity, or whether theassets are in public or private property.

In the recent doctrine it has been highlighted that “Under the global name of “Crimes against patrimony” there are summarized those facts affecting any assets likely to be protected by the incrimination of offenses against public property, i.e. both assets privately and publicly

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owned property. These fundamental forms of property subject to criminal protection are established even by the constitutional norms (art. 136 par. (1) of the Constitution), which means that in our society there are not conceivable other forms of ownership than those listed by the Constitution"[5].

According to the doctrine, "outside the scope of legal generic, each criminalization of those contained in Title II of the new Criminal Code, Special Part, it has*also a special legal object*, which consists of specific social relations which are born and developed in relation to the social value protected by each such incriminations"[5].

B.The Material Object

The *material object*represents the asset over which it is exercised the activity ofincriminated action or inaction.

In relation to the specific circumstances of committing the offense, the material object may be an asset belonging to a physical of legal entity or it may represent an asset belonging to public patrimony.

So "the material object of crimes against patrimony is the moveable asset (in the case of the offense of theft, embezzlement, robbery, piracy, fraud, appropriation of found property) or as a movable and an immovable asset (the offense of destruction, fraudulent management, fraud, deceit on insurance) or only immovable asset (the offenses of disorder in possession). The goods which are the material object may be in the hands of another person in the time of the offense (the offense of theft, robbery, piracy, fraud, disorder in possession), but they can be even on the perpetrator (in case of abuse of trust, fraudulent management, acquiring found property or reached by error to the offender, destruction) entrusted, under any title by the injured party (in case of abuse of trust or destruction) or entrusted for management or preservation (in the case of the offense of fraudulent management) or reaching in the hands of the perpetrator by mistake (in the case of misappropriation of found property offense)" [5].

In the case of complex crime (e.g. robbery), there will be a material object of the adjacent action (e.g. a person's body).

In the case of other offenses, a certain quality of the material object represent an essential requirement without its fulfillment the offense is not possible (e.g. destruction of property belonging to the national cultural patrimony, etc.).

C. Subjects of the Offense

The *active subject* of offenses that is part of this group can be, most often, any natural or legal person who meets the general requirements required by the law.

In the case of fraudulent management offense, the active subject must be a person entrusted with the management or preservation of the assets of other natural or legal persons, and in the case of the offense of breach of trust, the active subject can only be a person who has a special position in relation to the victim, under which he holds that asset entrusted by the victim.

Also, in the case of the offense in the art. 231, par. (1)of the Criminal Code, the active subject, in order to benefit from the derogatory regime, it must have special quality required

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by the incrimination rule, namely: family member, minor who commits theft for the damage of the guardian, or to live with the injured person or to be housed therein.

A special quality must have the active subject in the case of the offense of piracy, namely, a member of the crew or passenger of the ship in high seas.

Offenses that are part of this group can be committed in either form of criminal participation.

Passive subject of the crimes that are part of this group may be both natural and legal persons and also the State (only for assets belonging to public property).

For the offenses of "robbery and piracy, in addition to the person whose property was damaged by the violence, and who is the main passive subject, there may be a secondary passive subject, namely the human person who, without being directly affected in his patrimony, suffer from the violence exercised by the perpetrator (i.e. the person who opposes the perpetrator to flee with stolen property and is subject to violence). For the offenses of destruction we can also distinguish both a main passive subject in the person of whom to the property belongs, and a secondary passive subject, which may be the one who has upon the destroyed good certain rights that cannot be performed (the pledgee, the mortgagee, usufructuary)" [5].

For the existence of the crime referred to in art. 247 (the patrimonial exploitation of a vulnerable person), it is necessary for the passive subject to have a special quality, namely to be able to manifest vulnerability.

D. Place and Time

Place and time of the offense, in some cases, may have particular relevance both in terms of existence of the offense and under the individualization of the penalty in terms of criminal law.

Thus, according to recent doctrine, "In case of offenses against patrimony, the place can be an element of the basic content of the offense [i.e. the offense provided for in art. 235, par. (1)] or circumstantial element in the content of the aggravated crime [for example, art. 229, par. (1), letter a), art. 234, par. (1), letter e)].

Also, the time may be an element of the basic content element of the offense (e.g. art. 243, par. (1) and (2) or a circumstantial element of the aggravated content of some crimes [e.g. in the case of art. 229, par. (1), letter b), art. 234, par. (1), letter d)]" [5].

E. The Objective Side

The objective side of the crimes against patrimony contains the material element, the essential requirements, the immediate consequence and the causal connection.

The material element is achieved through distinct actions or inactions, presenting a great diversity, determined by the multiple methods that can affect the defended social values.

Thus, in the event of infringements, the material element is performed through one action which may consist of: taking (theft), employment abuse (possession disorder), infliction of damage to a person (fraudulent management) etc.

For other offenses, the material element is achieved through alternative actions, such as: the crime of robbery (theft committed by the use of violence or threats), breach of trust to

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the detriment of creditors (action of disposing, conceal, damage or destroy) deception (misleading by presenting as being true a false fact or false presentation of facts as being true) etc.

Some offenses against patrimony"constituting a material and legal unit (theft, breach of trust, unlawful administration, fraud, appropriation of found property, simple destruction), while other crimes against property, although it is a legal unit of the offense, from the constitutive content of type variant or of the aggravated variants of these crimes belong also to distinct actions incriminated distinctly under the criminal Code (robbery, piracy, aggravated destruction and at fault)" [5].

In most cases, the offenses that are part of this group are committed by action, rarely by inaction (acquiring the found property or reaching by mistake to the offender and simple bankruptcy).

Also, there "are crimes against patrimony that, although the material element consists of an action, this does not exclude the possibility of some acts of omission by which to realize the incriminated action to be committed under art. 17 of the Criminal Code (commission by omission), such as fraudulent management and destruction" [5].

In the case of crimes against patrimony, the material element of the objective side is completed with certain essential requirements. Such requirements whose existence determines the existence of the crime are: in case of burglary it is necessary to find the essential requirements which consist of the existence of a movable asset owned by another person or in his detention and lack of consent of the injured party; in the case of the offense of fraudulent management, the action must be on the occasion of good management or preservation of the asset, etc. In all cases, the declaration of the non-existence or essential requirements of the constitutive content of the crime it will lead to the declaration of non-infringement.

In case of offenses against patrimony, *the immediate consequence* differs from one crime to another, in relation to the social value defended by the incrimination rule.

Thus, "the robbery offense, beinga complex crime we distinguish an immediate consequence specific to the main action, which consists of removing the property from the possession of the person who had detention or possession of the asset and making it unable to use that asset, and therefore adjacent own action, including, for example, hitting or injury or suppressing a person's life; the offense of fraudulent management, the immediate consequence is to change the facts of the assets due to the damaging behavior of the perpetrator; the offense of cheating, the immediate consequence is the creation of a situation contrary to the previous one, by determining the injured party to make a decision damaging its economic interests, that decision would not have consented if they had known the truth; damage offense requires changing for the worse in existence or status of the object; the offense of possession disorder, the immediate consequence consists in the illicit modification of the previous situation of the asset" [5].

According to the same author, "In case of offenses against patrimony, the immediate consequence should not be confused withthe damages or other civil consequences of the acts. These requirements are also consequences, but consequences subsequent to the act, a sort of

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consequences of the immediate consequence. The existence of immediate consequence is conditioned the very existence of the offense, while subsequent consequences may have the character of a circumstantial element of the aggravated variant of the offense against patrimony" [5].

The causal connection results in the case of most crimes of this group ex re, "that is the very conduct of the action or inaction, given the indisputable causal ability of those actions (inactions)" [5].

In the case of other offenses the causal connection must be established specifically by the judiciary bodies, as its absence will lead to the absence of the crime [4].

F. The Subjective Side

The subjective side includes the subjective element and sometimes some essential requirements.

The subjective element of the subjective side content in the case of crimes against patrimony is, in most cases (except destruction at fault), the intention, with both forms (direct and indirect).

In connection with *the essential requirements* in the recent doctrine it argues that the"subjective aspect of crimes against patrimony, in addition to the subjective element, claims also an essential requirement, namely the existence of a particular purpose. For example: the crime of theft requires for the action of taking to be achieved in the purpose of acquiring unfairly stolen property or for using unfairly, if a vehicle is the material object or a communication terminal of another; in the case of robbery, main proceedings pursues the same goal as the theft and the secondary action is required for this to take place in order to achieve theft or to keep the stolen action; for piracy, the action of capturing a ship in high seas to be carried out in order to be appropriated to its cargo; for deceit, misleading must be done in order to obtain for himself or for another an unjust material benefit; the for deceit on insurance, the charged offense is for the purpose of obtaining for himself or another, the sum insured; misappropriation of public auctions, the incriminated act is committed in order to hijack the price of adjudication. To all these crimes, the intention is being characterized also by the purpose of the perpetrator, it gives the character of aggravated intent to the subjective position of the author" [5].

In the Romanian doctrine it was insisted that "the provisions from the special part stating the pursuit of a goal must be examined carefully, because the term "purpose" exists also in the criminal law, as in everyday speech, with different meanings. In the strict sense, *purpose* means a finality that is outside the crime so that it is sufficient to prove that that finality was pursued by the perpetrator, whether it was achieved or not, that the aggravated intention exists (example: in the case of the acts provided in art. 155, 185 par. 5, 208, 254 and others). In the broad meaning, by purpose we can understand *a result* (e.g.in the case of the act referred to in art. 182, par. 2) or *destination* (e.g.in the case of the act referred to art. 157, par. 1); in such cases the term purpose must be understood as indicating an essential requirement on the objective side and therefore without influencing the subjective element, a requirement that must be actually achieved in order to make it complete the offenses" [6].

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G. Forms Ways, Sanctions

*The Forms of crimes. Preparatory acts*although possible, they are not incriminated; in certain circumstances they may be considered as acts of previous complicity, if performed by a person other than the author, and there were used by the author in committing the incriminated offense.

The attempt is possible and it is punishable for most offenses as follows: theft, aggravated theft, theft for purposes of use, robbery, armed robbery, piracy, breach of trust by defrauding creditors [only in the case of par. (1)], fraudulent bankruptcy, fraud, deceit on insurance, misappropriation of public auctions, patrimony exploiting of a vulnerable person, computer fraud, conducting fraudulent financial operations, accepting financial transactions made fraudulently and destruction [only in the case of par. (3) and. (4)].

Consumption takes place with "the completion of the concrete act of all elements of the content of an offense of this nature, including the immediate consequence required in the incrimination rule" [5].

In the case of crimes against patrimony it can occur also a moment of exhaustion, at which it coincides every time with the termination moment for the extension of the unlawful activity of the perpetrator (in the case of continuous offense) or when it is executed the last component action of the continuous offense (in the case of continued offense).

The offenses that are part of this group take the form of some type ways, aggravated or mitigated, and the various factual ways specific to every offense.

Thus, the crime of theft presents a normative type way provided for in article 228, par. (1), a normative aggravated way to be withheld when the theft had serious consequences (art. 256^1 of the Criminal Code) and several factual normative ways.

The offense of cheating presents a normative type way provided for in article 244, par. (1)of the Criminal Code, three aggravated ways referred to in paragraph (2), of art. 244 of the Criminal Code, another normative aggravated way is when there have been serious consequences (art. 256^1 of the Criminal Code) and several factual normative ways.

We should mention that these methods to commit any offense will be examined each time by the analysis of each offense from this group.

The penalties provided by law vary from one offense to another, the minimum limit of one month or fine (in the case ofcrime of misappropriation of property found or reached by mistake to the perpetrator), while the maximum limit is of 18 years (for the offense of robbery or piracy followed by the death of the victim).

4. Acts that have Produced Serious Consequences

Among other shortcomings criticized in the specialized literature, the new Criminal Code did not provide for the punishment of the acts which caused serious consequences, although the term itself was mentioned in the provisions of the law.

Thus, according to art. 183 of the Criminal Code *serious consequences* mean a material damage exceeding 2,000,000 lei.

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In this context, the High Court of Cassation and Justice through the complete unraveling of points of law in criminal matters passed two decisions meant to ensure uniform application of the law by the courts in terms of determining the value of the prejudice also in the case of offenses of theft and deception.

Thus, by Decision no. 12/2015 [7], the High Court of Cassation and Justice, the complete for unraveling points of law in criminal matters, admitted the notification formulated by the Bucharest Court of Appeal, Criminal Division II, in a ruling prior to unraveling matters of law"if, under art. 6, par. (1) of the Criminal Code regarding the punishment of an offense that produced serious consequences according to the previous Criminal Code to determine the special maximum provided by the new law is to retain the cause of increasing the punishment prescribed by art. 309 of the Criminal Code, even if the damage caused by the infringement does not exceed the threshold of art. 183 of the Criminal Code" and it has established:

"In interpreting the provisions of art. 6, par. (1) of the Criminal Code, in the case of final punishment for offenses that produced serious consequences according to the previous Criminal Code, determining the special maximum provided by the new law is achieved, even if the damage is below the threshold value provided by art. 183 of the Criminal Code in relation to the aggravated variant of the offenses specifically listed in art. 309 of the Criminal Code".

By Decision no. 30/2015 [8], the High Court of Cassation and Justice, the Complete for unraveling points of law in criminal matters, admitted the notification formulated by the Brasov Court of Appeal, Criminal Division, which called for a ruling prior to unraveling the principle of the following legal issues: if, in the case of an offense of fraud (and other crimes, for instance, aggravated theft) committed under the rule of the previous law, modifying the content of the notion of "serious consequences" and the existence of a damage under the threshold of 2,000,000 lei, it is applied partial de-incrimination (of the aggravated form) by modifying the requirements of typicality as an essential feature of the offense and it has established:

"in the situation of an offense of fraud committed under the rule of the Criminal Code of 1969, which caused damage below the threshold of 2,000,000 lei, changing the concept of serious consequences in the Criminal Code produces no effects under article 4 of the Criminal Code, nor the provisions of art. 3, par. (1) of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code and it does not lead to the de-incrimination of the offense of deceit".

By adopting E.G.O no. 18/2016 amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Code of Criminal Procedure and supplementing art. 31, par. 10 of Law no. 304/2004 on judicial organization [9] among other changes and additions, under Title II of the Criminal Code, it has introduced a new chapter, Chapter VI marginallyentitled "Crimes that have produced very serious consequences".

The newly introduced chapter provides a single article,i.e. 256^1marginally entitled"*The facts that have produced very serious consequences*"according to which"If the deeds stipulated in art. 228, 229, 233, 234, 235, 239, 242, 244, 245, 247, art. 249-251 have produced very serious consequences, the special limits of the sentence provided by law shall be increased by half.

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The offenses to which it refers are: theft (art. 228), aggravated (art. 229), robbery (art. 233), armed robbery (article 234), piracy (art. 235), breach of trust by defrauding creditors (art. 239), unlawful administration (art. 242), deception (art. 244), fraud on insurance (art. 245), patrimony exploitation of a vulnerable person (art. 247), computer fraud (art. 249), conducting fraudulent financial operations (art. 250) and accepting fraudulent financial transactions (art. 251).

In this context, when considering the offenses referred to in Chapter VI we will proceed to mention the new aggravated normative ways of the regulations imposed by law.

5. Transitional Situations. Applying More Favorable Criminal Law

As mentioned previously, the transitory situation in which we are, which will exist in the future, implies the need to establish and enforce the more favorable criminal law, in the case of a crime that is part of this title has been committed under the rule of the Criminal Code 1969 or is judged or is to be dealt with under the current criminal law provisions.

The same situation applies, in some cases, for the already judged crimes, for which a final decision was passed according to the old law, pending the entry into force of the new Criminal Code.

Considering the complexity and variety of situations, we consider that most problems will be found in the case where it is imposed to apply the more favorable criminal law to the final judgment of the case.

Referring only to the application of more favorable criminal law in the case of the crimes of this title, we will make a few general references to some groups or even crimes, which we consider to be most important in terms of the frequency of their perpetration and their importance in measuring the crime rates nationwide.

Thus, in the case of offenses of Chapter I, if we consider that the penalty limits are reduced substantially by the new law (compared to the old law), we find that the most favorable criminal law will be mostly the new law.

Also, the new law will be more favorable and also in the context in which, according to art. 231, par. (2), in the case of the facts set out in art. 228 (theft), 229, par. (1), par. (2), letters b) and c) and 230 (aggravated theft and theft for the purpose of use), reconciliation removes the criminal liability.

For the offenses referred to in Chapter II, given the limits of punishment lower in the new law, most of the times the more favorable criminal law will be the new law.

We do not exclude however the possibility in the case of robbery committed in the type way, in case of detention of mitigating circumstances, the more favorable criminal law to be the old law, even if the minimum penalty is higher than in the new law (3 years to 2 years in the new law).

For some of the offenses contained in Chapter III, it did not raise the question of applying the more favorable criminal law, as it was not provided for in the old law (breach of trust by defrauding creditors - art. 239, deceit on insurance - art. 245, misappropriation of public

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auctions - art. 246 and patrimonial exploitation of a vulnerable person - art. 247), so it does not require further clarification.

For other offenses included in this chapter, having regarded primarily the minimum and maximum punishment limits provided in the two laws, the more favorable criminal law will be mostly the new law.

Thus, for the offense of cheating, the more favorable criminal law will be in all circumstances the new law, given the incrimination conditions that allow the reconciliation of the parties and thus removing the criminal liability.

For the offenses contained in Chapter IV, even if they were not provided for in the Criminal Code of 1969, instead being set in some special laws with criminal provisions, the more favorable criminal law can be both the new law and the old law, depending on the specific circumstances the commission of each crime and the existence and retention of aggravating or mitigating circumstances.

The offenses included in Chapter V, provided for in the old law, in a similar formulation, with punishments below the limits of the new law.

In those circumstances, the more favorable criminal law may be both the old law and the new law, depending on the circumstances of the commission of each crime and the existence and retention of some aggravating or mitigating circumstances.

As within the introductory title, in Chapter VI we have conducted a brief examination of the provisions concerning the application of more favorable criminal law, we recommend studying them for further information.

Moreover, given the transitory situation, we will examine briefly, within the analysis of each offense, the institution of applying the more favorable criminal law enforcement; we have particularly regarded the offenses which have high rates of crime, and those whose maximum limit is higher.

6. Some Critical Opinions

A first critical opinion concerns the aggravated theft, in the contents of which it can no longer be found the act committed by two or more people together.

So, unlike the previous law that incriminated the act as aggravated theft, in the new law the legislator has waived this circumstantial aggravating element.

No doubt it is correct the reasoningof the decision referring to the provisions governing the aggravating circumstances, but only regarding the crime committed by three or more persons together, as provided in article 77 letter a) of theCriminal Code.

The commission of the act by two people together remained unpunished in the aggravated theft and the aggravating circumstances, something which leads to the conclusion that a theft committed by two persons will no longer be aggravated theft, but simple theft.

We believe that it is necessary, to supplement the ways of sanctioning the aggravated theft by punishing the theft committed by two people together, by supplementing the provisions of art. 229, par. (1) of the Criminal Code, or of art. 77, letter a) of the Criminal Code; the latter

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option would mean for the legislator to replace the phrase *three or more persons together*with *two or more persons together*.

A somewhat similar problem occurs in the case of crime of armed robbery, where also it is no longer incriminated the act committed by two or more people together.

The problem can be solved either by supplementing the provisions of art. 77, letter a) as mentioned above, or by completing the provisions of art. 334, par. (1) of the Criminal Code.

A final critical opinion concerns the minimum and maximum penalty which are too small for theft and burglary in the ITP way (simple).

7. Conclusion

Given their specific peculiarities arising from the importance of the protected social values, the offenses against patrimony were a priority for the Romanian legislator, since the adoption of the Criminal Code of 1864.

Regulating this group of offenses in one distinctive title, separate from other types of crime, it is a tradition in the Romanian law, that with the adoption of the new Criminal Code it was put into its rights.

We believe that the new regulation, although contested by some authors, is an important step made by the Romanian legislator.

Although some provisions by which there are incriminated certain acts are questionable, which could be improved in the future, we consider the evolution of this group of crimes incriminations as being positive and in line with the general evolution of the science of criminal law.

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