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PLURALITY OF CRIME

Some aspects of the forms that you can wear plurality of crime and crime unit in accordance with existing criminal the laws of Romania and Moldova.

Abstract

In front of the paper are found and presented some similarities and difference between criminal law of Romania and the Republic of Moldova on example - plurality of crimes and the crime.

To interpret the provisions of the Criminal Code of the Republic of Moldova, bring some critics on the reason the existence of certain provisions relating to unit the crime and is the author's personal views regarding establishment justness of Punishment, goals of criminal law, and respect the principles of national law .

Are presented and opinions existing in the literature and some data solutions practice law in the Republic of Moldova cases which fall within the certain provisions of the Criminal Code of it.

Showing personal views relating to possible changes of the provisions related to speech was made in this paper.

Studying criminal provisions relating to the plurality of crime and the crime in our law and in the Republic of Moldova, I found similarities but also some other issues.

I. In regard to the plurality of crime, found that in our legislation and in the Republic of Moldova, it takes several forms.

According to art. 32 Romanian Criminal Code, the plural forms are the offenses and relapse.

Similarly, the Moldovan Criminal Code provides in art. Article 32. 2 as forms of crime plurality of the crimes (which can be ideal and real, according to Article 33 align.2-4) and relapse (which according to art. 34 align 2-3 could be "dangerous" and "very dangerous "). With regard to these forms of crimes plurality between the two laws are so many similarities.

However, with regard to the crimes we could predict a point of differentiation, related to the categories of crimes that may be in the contest. Thus, according to Romanian criminal law, could be competitive in two or more crimes which can be provided in the Criminal Code or in special laws or laws no-penal with criminal provisions, since the law does not make any distinction.

In criminal law of the Republic of Moldova, however, expressly provided in Article 33 Criminal Code that may be in competition only crimes specified in articles strictly from the special penal code. ¹

II. Differences exist with respect to the kinds of crime unit. In criminal law of our country unit offense may be natural and legal. Natural forms unit offense under our laws are ²:

- Simple offense (characterized by a single action / inaction and a single form of guilt);

- Crime continues (characterized by extension the natural, natural action / inaction that is the subject side targets after consuming them and to an intervention force contrary);

- Deviated crime (committed by the diversion action in the subject or the person against whom it was facing due to fault the perpetrator of his error on another person or object than the perpetrator wanted to damage him).

The establishment of laws are:

- Continued infringement (that is committed by the same person at different intervals of time and achieve the same criminal judgments, of shares / no action which, in each hand, the same crimes);

- Complex offense (which includes content that constituent or aggravated an action / inaction that itself constitutes an act of criminal law provided for (;

- Progressive offense (after consumption, without any intervention from the perpetrator, is rising gradually follow, or track production in November, matching a more serious crime)

- Usually offense (whose content is achieved by repeating the crime by a number of times to highlight the habits, occupation author).

According to the Criminal Code of Moldova offense may be:

- Single (represented by "the action / inaction or system actions that qualify under the provision of a single rules of criminal law" according to art. 28 Criminal Code of the Republic of Moldova);

- continuous (characterized by the commission "uninterrupted period of time, criminal activity and, in this case there is no plurality of crime" as a provision art. 29 align (1) of the same Criminal Code;

- extended (committed with intent and one characterized by two or more identical criminal acts, committed by a single goal, the whole constituting a crime according to Article 30 paragraph 1 of the Criminal Code.

The Criminal Code of the Republic of Moldova provides in addition to the above crimes exposed as forms of crime and the establishment of "repeat offender".

Since this is not listed among forms of crime plurality , limiting exhibited in art. 32 of the Criminal Code of the Republic of Moldova, means that it can be a form of crime unit.

In accordance with Article 31pct.1 and 2 of the Criminal Code Rep. Moldova is considered "repeat offender" committing two or more identical or similar crimes ³ provided by the same criminal standard, provided that the person was not convicted of any of them and have not expired limitation period.

Meanwhile, everything will be considered "repeat offender" commit "two or more crimes in different articles of this Code, in cases provided for in a special part of this code."

It may be noted that in some cases expressly provided for a special part of the Criminal Code Rep. Moldova is regarded as being repeated offenses are not identical, but homogeneous. For example make reference to the art. Criminal Code 186, Paragraph 4 Rep. Moldova believes that "repeated" offenses in art. 186-192 same Criminal Code, if author has previously committed one of (where the form□the facts set out in paragraph. (1) of the articles mentioned is submitted simple no getting worse them).

Basically, as establish and criminal doctrine of the Republic of Moldova, robbery (stipulate of art. 188 Criminal Code) will be considered "repeated" if its author has previously committed a petty larceny (stipulate the same code art.186

), Or a simple robbery (stipulate of art. 187), which has not been convicted nor has reached the limitation period of criminal liability.

Regarding the sentencing of duplicative offence , mention that the legislation of the Republic of Moldova there is no express provision relating to the application of punishment in case of repetition crime "or as a form of plurality offenses, as any form of crime unit. Express provisions relating to the application of punishment appear in connection with cases of relapse (Article 82 Criminal Code-Rep. Moldova) and competitive crimes (Article 84 the Criminal Code) as the only forms of plurality of crime (according to art. 32 align (2) Criminal Code-Rep. Moldova).

Of the criminal law of the Republic that if the contest offenses, each offense will receive a qualification own, following the court to decide the punishment for each crime separately, and subsequently to establish punishment for the final contest by totally or partially overlapping the punishment applied, or, where appropriate, through absorb punishment easier for the stern, as the nature of crimes committed.

In the repetition of the crime, if the repetition is made up of the same crime, all will receive a single qualification, according to a single article of the Criminal Code. If, however, repetition is made up of similar crimes, then you will need, we believe, be applicable while the rules related to repeat offender, as well as those of the offenses. This is because repetition can form and crimes that are provided and sanctioned by various articles of the Special Criminal Code of the Republic. Moldova, in which case will be taken into consideration, we believe, the provisions of Article 84 of the Code on the application of punishment for offenses contest, and the circumstances relating to the commission repeatedly, which increase criminal liability.

In this respect there is a recommendation by the decision of the Supreme Court of Justice of the Republic of Moldova (at point 24) on the practice in criminal matters in criminal cases on the unlawful removal of goods, the number 23/28.06.2004.

By decision is recommended for cases where one of the crimes referred to in paragraph. (1) of art.186-192 Criminal Code-Rep. Moldova was committed after the event:

- a) an offense homogeneous (like a theft followed by a robbery)
- b) an offense referred to a paragraph of the same article of law (such as a simple theft followed by a theft committed by two or more people)
- c) an offense that was interrupted in another phase of criminal activity (such as when a theft consumed was followed by an attempt at theft or theft of a training viceversa6 times,
- d) an offense in which the perpetrator was "another legal role (such as in the first case was the author, and in the second organizer, instigator or accomplice, or vice versa), the qualification to be made in accordance with the rules of competition offenses.

Other provisions relating to repeat offense than those mentioned in art. 31 Criminal Code-Rep. Moldova and paragraphs some of the specific items of the same code no longer appear. We have in mind that many of the crimes sanctioned in the special code that the legislature has provided qualified form or aggravated committing "repeated" the same crime (in simple form) and as such, has ordered for these . We believe that the presence of □cases the application of a heavier penalties such terms would help to understand the necessity of distinguishing the crimes of duplicative offense, and also to understand the difference between the two, □as they are currently exposed to the Criminal Code Republic of Moldova.

In fact , researching and doctrine of criminal Rep. Moldova in the matter, found that Article. 31 of the Criminal Code of the Republic and are criticized by some experts, who propose to take the "repeated crime", considering that, in fact, this is practically a way of the real contest of crime. They believe the term "repeated" is actually a real avoidance of liability offender a criminal who committed crimes in the same way, stressing that "the legal system of criminal liability for repeated offense is more gentle than for competition, which not and find a logical explanation, because in both cases shows the same trend of anti offender "9.

And interpreting the specific provisions of the Criminal Code to which we, the authors believe that, being implemented provisions of paragraph (4) of the Criminal Code art.186, is no longer comply with the provisions of art. 16. (1) of the same Cod10 relating to the classification of crimes. Also, they consider that

being implemented those provisions of art. Article 186. (4) of the Code, is produced and a violation of the principles of criminal law, mainly of equality before the law. He moved the point of view of those considerations that according to provisions robbery will be repeated if the person has previously committed a theft, and its author will receive a more severe penalty compared with the reverse situation, when the perpetrator that committed a robbery and later a do what will be regarded as repeated, will receive a lighter penalty.

We consider this critical to fair legal provisions which make reference. Indeed, according to these laws, theft no getting worse is considered a less serious offense, being punished with a maximum penalty of which may particularly be 3 years in prison. If it is followed by a robbery in simple form, the committed will be qualified as a crime of robbery committed repeatedly (provided by art. Article 188. (2) Criminal Code-Rep. Moldova), which is a serious crime (being punished with whose maximum jail particular is 15 years). If, however, hold no getting worse (which is a serious offense) and followed by swindle no getting worse, then those committed under Article 186 paragraph. (4) the same code, will be qualified as a crime of theft committed repeatedly, which is punished with imprisonment which may reach the maximum of 5 years especially, is considered an offense "less serious".

From this example we conclude that the danger of concrete social facts committed just is not always appreciated and practically rights and individual freedoms are violated, applying different treatments to those who have committed the same terms, the same act punishable by criminal law.

This "repeated offender" as a form of unity of crime has no correspondent in the criminal law of Romania, it may not be identical with any forms of unity, be it natural or legal infringement.

Performing an analysis of the unit forms of crime in criminal law of Romania, found that it could find some elements of comparison between the existing repeat offender law in the Republic of Moldova and the offense continued "existing law Romania.

Thus it is found that both forms of legal crime unit, are legal actions. However, unlike 'offense continued, as represented by "repeat offender" in the legislature Rep. Moldova has assimilated phenomena that are not identical: the

plurality of crime and crime unique because it is considered "repeat the offense and committing two or more crimes in different articles of the Criminal Code. Unlike this form, shape 'offense continued "is characterized in that all actions or failures to form the content of a single crime.

Also, unlike 'offense continued "(as seen in law Romania), in the" repeat offender ", Rep. of the legislature. Moldova makes no reference linked to the existence of any intentions or single purpose single in the commission of crimes forming recurrence.

Another distinction between the two forms of crime were provided in the laws of the two countries concerns the length of time elapsed between action or inaction committed: according to the law of criminal Rep. Moldova, the only condition related to this issue is not to have reached the limitation period of criminal liability. In different ways, the Romanian legislation a prerequisite for the continued existence of the crime as a form of crime unit, refers to the intervals of time between drained action / inaction, which should be neither too short nor too long to not there is suspicion of a single criminal or decisions of various criminal offenses and some distinct.

Another difference lies in how and sentencing of the two forms of crime unit:

- Where "duplicative crime" - if the offenses committed are covered by a single article of the Criminal Code of the Republic of Moldova, the repetition is made up of the same crimes and all will be qualified in accordance with one-time criminal. If, however, repeat offenses is made up of homogeneous, it will be concurrent application of rules relating to "repeat offender", and "the crimes". It notes so that in case of repetition of similar offenses.

In Romania legislation does not appear this problem the way for sanctioning the crime continued to form a unity of crime, the perpetrator being applied to the penalty provided by law for the offense (single) which has committed an action or inaction by it.

Analyzing criminal provisions in the two countries on the crime unit and plurality of crime, we appreciate that the existing provisions in the legislation of the Republic of Moldova, referring to "repeat offender" would be desirable to be repealed. These provisions not help, we believe in establishing the just, equitable

sentencing, and the goals of criminal law. Yes, on the contrary, by applying their principles are violated some of the criminal law, such as equality before the law, since there is the possibility of applying different penalties for committing the same crimes, but in a reverse order.

Moreover, we believe that "repeat offender" as a form of unit offense and would have had reason if it were made from a recurrence of acts which, viewed separately, not as separate crimes and whether the legislature should be stressed the need for a single criminal judgments and a single purpose. But the provisions of the Criminal Code of the Republic of Moldova is not any of these conditions, we believe essential to be in the presence of a unit of offense.

In conditions described as "repeat offender" in the current legislation of the Republic. Moldova, we appreciate that it appears rather as a manifestation of plurality offenses, as shown in the Criminal Code of Romania, in art. 33 (a) (as two or more crimes which were committed by the same person before it was finally convicted for one of them).

For this reason we appreciate that the existing criminal law of the Republic of Moldova on repeat offender and have no sense and should not be adopted and the Romanian legislature. On the contrary, we believe that it would be desirable that they be removed from the criminal law of the Republic of Moldova, will be effectively yeah, and in these circumstances the provisions relating to the offenses. Thus, we believe, would avoid confusion and controversy arising in practice and doctrine on the subject. Also, there should no longer differentiate between the legal treatment of "repeat offenses" and "the crimes", as currently exist. In accordance with the current crime for a "repeated" the legal system is more gentle, we believe that unduly in relation to the competition of crimes.

In our opinion the provisions of the Criminal Code of Romania on the offenses (listed in art. 33 (a) - (b) Criminal Code) are sufficiently clear with regard to situations where there is plurality of crime in the form of competition (real and ideal) in practice no problems related to the identification of situations in which they committed more crimes in the contest.

For these reasons, dared to believe, perhaps, a research and the provisions of the Criminal Code Romanian would be a real help legislator from Moldova in

the event of change in the future of criminal force on the forms of crime unit, the plurality offenses within the meaning of provisions relating to the elimination of "repeat offender".

REFERENCES

In Article 33 paragraph. 1 Criminal Code of the Republic of Moldova stipulates: "The contest is considered by committing crimes by a person or two more crimes, in different articles or different paragraphs of a single article of special part of this code, if the person has not been convicted of any of them and if it has not expired limitation period. In paragraph. 2 provides that: "the ideal person there when ... commit two or more crimes in different articles or different paragraphs of an article of this Code "; in paragraph. 4 shows "real competition exists when a person through various actions / no action rule, commit two or more crimes in different articles or paragraphs of a different article of this code.

See and C-tin Mitrache, "Romanian criminal law. Part general, "House Press imprint and" Chance LLC, Bucharest 1994, p. 112-122.

In the doctrine of criminal Rep. Moldova are defined:

- Homogeneous crimes as those crimes that are committed by different facts, but with common features and out rage the same general objective. "

- See Stela Botnaru, Alina Savga , Vladimir Grosu, Mariana Geană , "Criminal Law. P. General ", vol I, second edition, edit. Legal Cartier 2005, p. 290-291

- Offenses identical-signs with those crimes falling under the same article of the penal law (for eg-theft no getting worse followed by aggravated robbery) to see Sergiu Brînză, Vitalie Stafi, "The repeat offender: arguments in favor of exclusion The Criminal Code of the Republic. Moldova, the National Law Journal "No. 2, 3 / 2007, p. 14-19; 6-12.

- Offenses-homogeneous as those crimes that are committed by different facts, but with common features and to attack to the same general objective is to see stars and team Botnaru, op. cit. , p. 290-291.

By analyzing the art. 31 Code pen.-Rep. Moldova, the doctrine considers uniform crime, those crimes that have signs which are subject to various paragraphs of the same article of the penal law, for example. The offense of theft no getting worse followed by a theft committed by two or more people, so qualified. All homogeneous but are valued and crimes that have signs that fall under different articles of the penal law as eg. The offense of theft followed by the robbery - see Sergiu Brînză, Vitalie Stafi , op. cit..

It is crimes of theft (Article 186), robbery (art. 187), robbery (art. 188), blackmail (art.189), extortion (Article 190), embezzlement of foreign assets (art.191), theft (Article 192) for the Code. Rep.. Moldova. Noted that for these crimes in paragraph. (4) of art. 186 same Code provides that the paragraph. (2) of art. 186-192 (where no-states that form and aggravated the commission of the offense repeatedly), is considered repeated those crimes that were committed by a person which had previously committed a crime stipulate the paragraph. (1) of the articles mentioned, but was not convicted for them.

Such as a provision art. Article 84. (1) Criminal Code-Rep. Moldova.

According to art. 26. (1) Criminal Code-Rep. Moldova is considered preparation for offense, understanding prior to commit a crime, purchase, manufacture and adaptation of means or instruments, or the intentional creation of the other way, of Conditions for committing them if, due to factors beyond the perpetrator, not the offense - The effect of the product. Is punished with a penalty which may not exceed half the maximum most harsh punishments prescribed by law for the offense consumed, according to art. Article 81. (2) Criminal Code-Rep. Moldova.

For example make reference to art. Article 152. (2). (A) Code pen.-Rep. Moldova on the injury of average limb or health, Article 159 paragraph. (2). (a) the challenge of illegal abortion, art. Article 165. (2). (A) on human trafficking, art.166 section (2). (3) the deprivation of liberty.

Code enacted to 6. 09. 2002, implemented through the law no. 1160-xv/21.06.2002 and published in the Official Gazette of the Republic. Moldova, no. 128-129 (1013-1014) of 13.09.2002 as amended by Law no. 211/29.05.2003 into force on 13.06.2003, Official Gazette of the Republic. Moldova. 116/2003.

Sergiu Brînză , paper cit., National law no. 2, 3 in 2007, p. 14-19, 6-12.

According to art. 16. (1) Criminal Code-Rep. Moldova, depending on the nature and extent of injury, crime stipulate by this Code are classified into the following categories: mild, less serious, serious, very serious and exceptionally serious. In (2) - (6) of the same article explained that the legislature deems it means each of the categories listed in the first paragraph.