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CRIMINAL LAW PROTECTION OF THE HERITAGE.
COMPARATIVE STUDY ROMANIA - REPUBLIC OF MOLDOVA

Summary of the PhD thesis

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Doctoral thesis “*Criminal law protection of property. Comparative study Romania - Republic of Moldova*” is an analytical and comparative scientific research on the protection of property through the criminal law system of Romania and the Republic of Moldova, through the constitutional law norms and the jurisprudence of the Constitutional Courts of both countries, through the European Convention for the Protection of Human Rights and the jurisprudence of the European Court for the Protection of Human Rights, as well as through the comparative criminal law system on the protection of property.

At the same time, for a complete analysis of the subject proposed for research, we also analyzed the historical development of property protection legislation in Romania and the Republic of Moldova.

The first chapter of the PhD thesis, entitled “*Constitutional guarantees relating to the protection of property*”, refers to the norms of constitutional law on the protection of property contained in the Constitution of Romania and the Republic of Moldova, as well as the case law of the Constitutional Courts of both states, regarding the constitutionality of the incriminating norms provided in the Criminal Code of Romania and the Criminal Code of the Republic of Moldova.

The right of property is not an absolute right, and the limitations that can be placed on it are expressly provided for and have been grouped into two categories: with reference to property (*in rem*) and with reference to persons (*in personam*), with inherent guarantees as well as obligations placed on the owner.

Thus, public heritage is inalienable, according to Article 136 para. (4) of the Constitution, but may be transferred, under the conditions of the law, to the administration of autonomous regions, public institutions, concessioned or leased or given free of charge to public utility institutions.

The right of private property is the main real right which, according to Article 555 of the Civil Code of Romania, confers on its holder the attributes of possession, use and disposal (*jus possidendi, jus utendi, jus fruendi, jus abutendi*) of the property appropriated, attributes which may be exercised absolutely, exclusively and perpetually, subject to material and legal limits.”¹

¹ Valeriu Stoica, *Civil law. Principal rights in rem*, Ed. C.H. Beck, Bucharest, 2009, page 93.

In certain circumstances, the national, county or local interest proves to be superior to the private one, and thus the situation arises where privately owned real estate is forcibly transferred to public ownership.

Expropriation is possible under Article 44 para. (3) of the Constitution, but only for a cause of public utility, with a fair and prior compensation, being prohibited nationalization or any other methods of forced transfer to public heritage of private property on the basis of social, ethnic, religious, political or other discriminatory membership of the owners.² Expropriation is the only way, accepted in democratic countries, of transferring property from the private to the public sphere.³

As distinct from expropriation, Art. 44 para. (5) of the Constitution recognises the right of the public authorities to use the subsoil of any immovable property for works of general interest, subject to the compulsory condition of compensating the owner for damage to private property and other damage caused and attributable to the authorities.⁴

The establishment of the right of use and easement on properties affected by energy capacities constitutes a justified limitation ensuring the valorisation of the energy fund which is a public good of national interest.

Also relevant is the measure of extended confiscation, which is ordered by the court under Article 112¹ of the Criminal Code when “*where a person is convicted of an offence likely to bring them material benefit and for which the penalty prescribed by law is imprisonment for 4 years or more, the court is satisfied that the property in question is derived from criminal activity. The court's conviction may also be based on the disproportion between the lawful income and the person's wealth*”.

By Decision No 85 of 3.09.1996, published in the Official Monitor No 211 of 06.09.1996, the Constitutional Court ruled that the presumption established by para. (8) of Art. 44 of the Constitution does not constitute an obstacle in the verification of the illicit character of the acquisition of wealth, which shows that this presumption is not absolute. The Court stated that the prohibition of confiscation of lawfully acquired wealth and the presumption of the lawful nature of the acquisition, rules established by para. (8) of Article 44 of the Constitution, do not exclude

² Gheorghe Iancu, *Constitutional law and political institutions*, the 5th ed., Editura Lumina Lex, Bucharest, 207, page 174.

³ Elena Simina Tanasescu, *Revised Romanian Constitution*, All Beck Publisher, 2004, page 93.

⁴ Gheorghe Iancu, *op.cit.*, page 174

the possibility of confiscation of property intended for, used in or derived from contraventions under para. (9).

Limitations on persons are represented by the establishment of the obligation to comply with the tasks concerning environmental protection, ensuring good neighbourliness, other tasks that by law or custom are incumbent on the owner, according to Article 44 para. (7) of the Constitution and the fact that foreign citizens and stateless persons may acquire private ownership of land and other international treaties to which Romania is a party, on the basis of reciprocity, under the conditions provided for in the organic law as well as legal inheritance, according to Art. 44 para. (2) of the Constitution.

The right to property is a fundamental right guaranteed both in Romania and in the Republic of Moldova by the supreme law - the Constitution.

According to Article 9 of the Constitution of the Republic of Moldova on “*Fundamental principles regarding property*” para. (1) “*Property shall be public and private.*” Para. (2) provides that property “*shall be constituted of material and intellectual goods.*” This is different from the Romanian Constitution as it does not regulate this differentiation.

According to Article 476 para. (1) of the Civil Code: “*Any result of intellectual activity, confirmed and protected by appropriate rights of use, shall be considered to be intellectual property.*”

According to Article 33 para. (2) of the Constitution of the Republic of Moldova: “*The right of citizens to intellectual property, their material and moral interests related to various types of intellectual creation shall be protected by law.*”

Similarly to the Romanian Constitution, the Constitution of the Republic of Moldova guarantees the right to private property through Article 46 on the Right to Private Property and its Protection, according to which: “*(1) The right to possess private property and the debts incurred by the State shall be guaranteed. (2) No one may be expropriated unless for a matter of public utility, established, under the law, against a fair and previously determined compensation. (3) No assets legally acquired may be seized. The legal nature of the assets' acquirement shall be presumed.*”

According to the Decision of the Constitutional Court of the Republic of Moldova on reviewing the constitutionality of certain provisions of the Criminal Code and the Code of Criminal Procedure (extended confiscation and illicit enrichment) of 15 April 2016⁵, para. 41: *“The provision establishing the presumption of lawful acquisition of property is a fundamental element of Article 46 of the Constitution of the Republic of Moldova.”*

According to paragraph 42: *„The presumption of the lawful acquisition of property is a general guarantee aimed at protecting the property rights of all citizens against unjustified interference by the State.”*, and according to paragraph 43: *“This presumption, ensuring legal certainty and the legality of the person's property, implies the responsibility of the authorities to present evidence that would demonstrate the illegality of the acquisition of property”*.

The Constitution of the Republic of Moldova regulates public property in Article 127 para. (3) *” Public property shall belong to the State or to the territorial-administrative units. (4) All the underground resources, airspace, waters and forests used to the benefit of the public at large, natural resources of the economic regions and continental shelf, lines of communication, as well as other domains stipulated by law, shall constitute the exclusive province of the public property.”* and establishes in Art. 127 para. (1) and (2) that the State shall protect property and guarantee the realisation of the right to property in the forms requested by the owner, if these do not conflict with the interests of society.

Another important issue is that the Constitution, Art. 128 para. (1) in the Republic of Moldova: *“the property of the foreign states, international organizations, foreign citizens and stateless persons shall be protected by law.”*

As regards the practice of the Constitutional Court in relation to offences concerning the criminal protection of property, it can be summarised as follows:

- A) Equal protection of private property versus public property
- B) Lack of clarity and predictability regarding certain terms used in the content of these offences

⁵ Decision of the Constitutional Court of the Republic of Moldova on reviewing the constitutionality of certain provisions of the Criminal Code and the Code of Criminal Procedure (extended confiscation and illicit enrichment) of April 15, 2016

C) Application of the principle of formality

In the Republic of Moldova, as in Romania, the only authority of constitutional jurisdiction⁶ is the Constitutional Court, which exercises upon referral the constitutionality of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and provisions of the Government, as well as international treaties to which the Republic of Moldova is a party, interprets the Constitution⁷, as well as other duties. Thus, as in Romania, the Constitutional Court is the first and main interpreter of the Fundamental Law, and, through the obligation of interpretation, ensures its development and the development of constitutional law.⁸

An analysis of the acts of the Constitutional Court of the Republic of Moldova on the constitutionality review of the incriminating norms of criminal acts committed against property shows a lower volume of referrals, decisions or judgments. This may be due to the fact that, previously, until the adoption of Decision No 2 of 09.02.2016⁹, the Constitutional Court of the Republic of Moldova could be referred only through the Supreme Court of Justice of Moldova, which could make a preliminary review of the constitutionality of certain legal norms and had the power to reject *ab initio* as unfounded these referrals, without further review by the Constitutional Court.

Thus, by decision No 2 of 09.02.2016 of the Constitutional Court on the interpretation of Article 135 para. (1) (a) and (g) of the Constitution of the Republic of Moldova (exception of unconstitutionality) it was decided that the exception of unconstitutionality may be raised before the court directly to the Constitutional Court by any of the parties or its representative, as well as by the court of its own motion, and the ordinary judge is not allowed to consider the merits, being limited exclusively to verifying the fulfillment of the following conditions: (1) the subject of the exception falls within the category of acts covered by Article 135 para. (1) (a) of the Constitution; (2) the objection is raised by one of the parties or its representative, or indicates that it is raised by

⁶ Law No 502 of 16.06.1995 on the Code of Constitutional Jurisdiction, published on 28.09.1995 in the Official Monitor No 53-54, art. No: 597.

⁷ Law No 137 of 13.12.1997 on the Constitutional Court, published in the Official Monitor No 8 on 07.02.1995.

⁸ Tudorel Toader, Maria Safta, *The Evolution of Constitutionalism in Romania*, *Constitutional Law Journal no.1-2015*, Universul Juridic Publisher, page 199.

⁹ Decision of the Constitutional Court of the Republic of Moldova No 2 of 09.02.2016 on the interpretation of Article 135 para. (1) (a) and (g) of the Constitution of the Republic of Moldova (exception of unconstitutionality) (Complaint no. 55b/2015).

the court of its own motion; (3) the contested provisions are to be applied in the resolution of the case; (4) there is no previous judgment of the Court on the contested provisions.

In the Criminal Code of the Republic of Moldova, offences against property are regulated in Chapter VI, including 18 offences, of which the subject of the complaint on the exception of unconstitutionality made the incriminating rule of the offence of extortion and swindling, several times, under various aspects.

Chapter II of the doctoral thesis reflects the historical development of legislation on the criminal protection of property and Chapter III of the doctoral thesis, entitled: “*The protection of property in the system of the european convention on human rights and the case-law of the european court of human rights*”, analyses the provisions of the Convention relating to the protection of property and the case law of the European Court of Justice.

The first Protocol concerns the establishment of international control of the way in which the national authorities of the Member States of the Convention guarantee respect for the exercise of the right to property. It establishes the general principle of the obligation to respect the right to property.

In this regard the Court for the first time in the case of *Marckx v. Belgium*, paragraphs 63-64, stated that: „[...] *Recognising that everyone has the right to respect for their property, Article 1 essentially guarantees the right to property [...]*”

The European Court, through its case-law, has shown the utmost caution in verifying the violation of Article 1 of the Additional Protocol to the Convention, analysing the real situations of the cases, beyond the apparent framework. (*the case of Papamichalopoulos v. Greece, para. 46*)”.¹⁰

The notion of equitable satisfaction, refers to the compensation of material and moral damage, assessed by the court as a result of the violation of the right invoked.”¹¹

¹⁰ Jurisconsulting Directorate of the European Court of Human Rights, *Guide to Article 1 of Protocol No 1 - Protection of Property European Court of Human Rights 61/85*, page 12, available on the website https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ROM.pdf.

¹¹ Corneliu Barsan, *European Convention on Human Rights. Commentary on articles, Vol. II, Proceedings before the Court. Enforcement of judgments*, Publisher All Beck, Bucharest, 2006, page 1049.

Chapter IV, which is the basic chapter of the doctoral thesis, called: “*Criminal law protection of the property by the penal code and special laws*”, includes scientific and analytical research on the legal norms on criminal protection of property through the Criminal Code and special laws of Romania and the Criminal Code of Moldova.

The criminal protection of property in Romanian criminal law is achieved by incriminating certain acts in the Special Part of the Criminal Code under Section II: “*Crimes against property*” and by criminal provisions contained in special laws.

In the criminal law of the Republic of Moldova, the criminal protection of property is achieved by incriminating certain acts in the special part in Chapter VI of the Criminal Code, which according to Art. 1 para. (1) is “*the only criminal law of the Republic of Moldova*”.

Section II of the Romanian Criminal Code contains 28 offences and is divided into 5 chapters, namely, Chapter I – “*Theft*”, Chapter II – “*Thievery and Piracy*”, Chapter III – “*Offences against property by breach of trust*”, Chapter IV – “*Fraud committed through computer systems and means*”, Chapter V – “*Destruction and disturbance of possession*”, Chapter VI – “*Offences with particularly serious consequences*”.

According to the Criminal Code of the Republic of Moldova, the structure of offences against property falls under a single chapter, the sixth of the Special Part of the Criminal Code and includes 18 offences.

Pre-existing conditions:

1. The generic legal object of all offences against property is the social relations whose emergence, development and development are ensured by the protection of property.¹²

In other words, the main legal object of offences against property is social relations relating to public or private property. The secondary legal object consists of the social relations relating to the possession of property, trust and good faith which must characterise social relations with property.¹³

¹² George Antoniu, Tudorel Toader, Explanations of the New Criminal Code, Publisher Universul Juridic, Bucharest, 2015, page 280;

¹³ Tudorel Toader, *Romanian Criminal Law. Special part*, Publisher Universul Juridic, Bucharest, 2019, page Bucharest 255.

Sometimes, offences under this section may have as a secondary legal object social relations relating to moral freedom, bodily integrity, personal life, etc.¹⁴

Therefore, some crimes, such as robbery, piracy, aggravated destruction, swindling (Criminal Code of the Republic of Moldova), have a compound legal object, because, primarily, they affect the social value of property, and secondarily, the social value of life, health, bodily integrity, personal freedom, etc.

Offences with a compound legal object include those of “*misappropriation of foreign property*”, “*misappropriation or unlawful use of electricity, heat or natural gas*” and “*acquisition or sale of property known to have been obtained by crime*”.¹⁵

2. Material object. In the case of offences against property, the material object is the property to which the unlawful act or omission is directed. In some offences the material object may be only movable property, as for example in the case of theft or appropriation of found property. In other property offences the material object may be only immovable property, such as disturbing possession. There are also property offences, the material object of which may be both movable and immovable property, such as fraud, swindling (Criminal Code of the Republic of Moldova) or destruction.

In some property offences there is also a secondary material object, such as robbery, where the secondary material object is the body of the person on whom violence is inflicted, accompanying the theft of the property.

The subject of property crimes. The active subject of most property offences can be any person, provided the law does not establish their special status. For some offences, such as embezzlement of foreign assets committed by the administrator of a bank (Article 191, paragraph 21 of the Criminal Code of the Republic of Moldova), or culpable destruction (Article 255 of the Criminal Code of Romania), the criminal law establishes a special capacity of the active subject, namely that of the administrator of the bank; in the first case, in the case of the second offence, this capacity must be fulfilled even by those who are co-offenders in these offences.¹⁶ Criminal participation can, as a rule, take all three forms: co-perpetration, instigation and complicity.

¹⁴ Ibidem, page 255-256.

¹⁵ Sergiu Branza, Vitalie Stati, *Treatise on Criminal Law*, Volume I, Chisinau, 2015, page 817.

Improper participation is also possible, insofar as the instigator or accomplice acted intentionally or without fault.

3. The passive subject of the offence against property may be any natural or legal person, as the case may be, as well as the State, insofar as the property to which the criminal activity has been directed is exclusively public property.

The question of the passive subject can be interpreted in certain ways, in so far as, in addition to the main passive subject, there is also a secondary (adjacent) passive subject. Thus, in the case of destruction offences where the main offender is the natural or legal person to whom the property belongs, there may also be a secondary offender in the person of the person who had certain rights over the destroyed property which can no longer be enforced, as in the case of the mortgagee or usufructuary.

A particular problem arises with complex crimes: robbery and piracy. In view of the objective characteristics of these offences, there will be some diversification of the passive subject of the offence when, in addition to the main passive subject, whose property has been damaged by violence, there will also be a secondary passive subject, namely the natural person who suffers the violence inflicted by the perpetrator, even if his property rights have not been damaged.¹⁷

4. The objective aspect. The material element of the objective aspect is achieved for the majority of offences against property through an action, consisting of: taking movable property from the possession or custody of another person, in the case of theft (Article 228 of the Romanian Criminal Code); theft committed by use of violence or threats, in the case of robbery and piracy (Articles 233 and 235 of the Romanian Criminal Code); appropriating or using movable property of another person or disposing of such property, in the case of breach of trust (Article 238 of the Romanian Criminal Code).

The material element can also be achieved through an inaction, consisting of: refusal to return the property, in the case of breach of trust (Art. 238 Romanian Criminal Code); failure to return the property found, upon appropriation of the property found (Art. 243 Romanian Criminal Code).

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Some offences have alternative contents, the material element can be achieved by committing any of them, e.g. misappropriation, wrongful disposal or refusal to return property, in

¹⁷ Alexandru Boroi, *Romanian Criminal Law. Special part*, Publisher C. H. Beck, Bucharest, page 215.

¹⁸ Tudorel Toader, *Romanian Criminal Law. Special part*, vol. I, Publisher Universul juridic, 2019, page 256-257.

the case of breach of trust (Art. 238 Romanian Criminal Code), destruction, degradation, rendering useless, preventing the taking of measures to preserve or save the property or removing the measures taken, in the case of destruction offences (Art. 253 Romanian Criminal Code), etc. In some cases, the time or place of the offence is an aggravated circumstance, such as, for example, in the case of aggravated theft, robbery, etc.¹⁹

Criminal doctrine has expressed the view that, depending on the specifics of each action constituting the material element of the offence, offences against property can be grouped into three main categories: theft (theft, robbery and piracy), fraud (breach of trust, fraudulent management, deception) and criminal mischief (destruction or disturbance of possession).²⁰

5. The subjective aspect. The subjective aspect. Property offences are committed intentionally, and this may be direct or indirect, with the exception of the offence of culpable destruction. In some cases, the subjective aspect also includes a special purpose pursued by the offender, for example, the purpose of appropriating property in the case of theft. In the case of aggravated forms of robbery or piracy, guilt may also take the form of malice aforethought and, in particular, may also take the form of culpability in the form of culpable destruction.²¹

6. Attempt and consummation. Attempt and consummation. Preparatory acts are not punishable under criminal law, except for preparatory acts carried out with a view to committing aggravated theft of petroleum products Art. 229 para. (3) Romanian Criminal Code, in relation to para. (3) letter a) of the Romanian Criminal Code.

According to the Criminal Code of the Republic of Moldova, preparatory acts are punishable only for less serious, serious, particularly serious and exceptionally serious offences.

Attempt is possible in most cases. It is not possible in the case of culpable destruction, in the case of breach of trust in the case of refusal to return the property, nor in the case of appropriation of the property found in the case of failure to return the property. Consummation takes place at the moment of the commission of the criminal offence, when the dangerous social consequence occurs. Some offences may be continuous or continuing, in which case, in addition to the moment of consummation, there is also the moment of exhaustion.

¹⁹ Tudorel Toader, *Romanian Criminal Law. Special Part, 7th revised and updated edition*, Publisher Hamangiu, 2012, page 176.

²⁰ Vintila Dongoroz and collaborators, *Theoretical explanations of the Romanian Penal Code, volume II*, 2nd edition, Publishing House of the Romanian Academy, Publisher All Beck, page 449.

²¹ Alexandru Boroii, *op.cit.*, page 216.

7. Sanctioning. Sanctioning. All property offences are punishable by imprisonment, while some, such as breach of trust or misappropriation of found property, are punishable by a fine. For some offences, in the aggravated cases, the additional penalty of disqualification is also applied (robbery, piracy, aggravated destruction). If the conditions of Article 112 of the Romanian Criminal Code are met, special confiscation may also be applied.

An exception to the punishment is the offence of concealment, where the legislator has established that the act committed by the spouse or a close relative is not punishable.

8. Extended confiscation. According to Art. 112¹ para. (1) of the Criminal Code¹, in the case of offences against property, confiscation may also be ordered of property other than that referred to in Art. 112 of the Criminal Code on special confiscation, if the offence is likely to provide the convicted person with a material benefit and the penalty prescribed by law is imprisonment for 5 years or more and if the other conditions laid down in para. (2) of the same article.

9. Aggravated forms. In the case of some property offences, the law provides for aggravated forms in addition to the simple form. Aggravated circumstances are given either by the material object and the subject of the offence, or by the objective aspect.

10. Procedural aspects. Criminal proceedings are initiated ex officio for most offences against property. Criminal proceedings shall be instituted upon prior complaint by the injured party for the following offences: theft punishable upon prior complaint, committed under the provisions of Article 231 of the Criminal Code of Romania; breach of trust by defrauding creditors (Article 239 of the Criminal Code of Romania); simple bank fraud (Article 240 of the Criminal Code of Romania); fraudulent bank fraud (Article 241 of the Criminal Code of Romania); fraudulent management (Article 242 of the Criminal Code of Romania); destruction (Article 253 (1) and (2) of the Criminal Code of Romania); fraudulent misappropriation (Article 253 (2) and (3) of the Criminal Code of Romania). (2) of the Romanian Criminal Code) and disturbance of possession (Article 256 of the Romanian Criminal Code).

The reconciliation of the parties removes criminal liability in the case of the following offences provided for in the Romanian Criminal Code: theft under Article 231; misappropriation of property found or obtained by mistake by the perpetrator under Article 243; fraud (Article 224) and insurance fraud (Article 245).²²

²² Tudorel Toader, *Romanian Criminal Law. Special part, vol. 1*, Publisher Universul Juridic, Bucharest, 2019, page 259

According to the Criminal Code of R. Moldova, reconciliation removes criminal liability for the commission of property offences if they are less serious or light offences (for which the maximum penalty is imprisonment of 5 years or 2 years respectively), and in the case of minors it also applies for the commission of a serious offence, in both cases, provided that the perpetrator has no previous criminal record for similar offences committed with intent and that the criminal proceedings against them have not been terminated in the last 5 years on the basis of reconciliation of the parties for the intentional commission of similar offences.

I have also carried out, in a detailed and comparative manner, an analysis of all the offences against property contained in the Criminal Code of Romania and the Criminal Code of Moldova. For a better structuring of the analytical and comparative study between the offences against property of both legal systems, I referred to the classification of offences against property in the 5 chapters of Section II of the Criminal Code of Romania - called "*Offences against property*".

In each chapter, the component offences of the Romanian Criminal Code and the offences against property of the Criminal Code of the Republic of Moldova have been examined through analysis and comparison with those of the Romanian Criminal Code.

In addition, I referred to the offences against cultural and archaeological heritage, which are regulated separately in the Criminal Code of the Republic of Moldova within the same categories of offences, and to the special Romanian laws protecting heritage from a criminal point of view.

By scientific research of the offences against property in the Criminal Code of the Republic of Moldova and the Criminal Code of Romania, through the analytical and comparative method, starting from the idea that both legal systems have a common legal origin and we are the same nation, the incriminating norms are very similar, but also contain marked divergences.

In this context, both Romanian and Moldovan criminal codes contain offences with identical names, such as "Theft", "Robbery", "Possession disorder", with similar names, e.g. "Destruction" (art. 253 Criminal Code of Romania)/"Intentional destruction or damage of property" (Art. 273 Criminal Code of Moldova), "Theft of electricity" (Art. 228 para. 3 Criminal Code of Romania)/"Misappropriation or use of electricity" (Art. 194 Criminal Code of the Republic of Moldova), "Theft for the purpose of use" (Art. 230 Criminal Code of Romania)/"Kidnapping of means of transport" (Art. 192¹), or offences with different names but almost

similar incriminating content: “Fraud” (Art. 244 Criminal Code of Romania) versus “Swindling” (Art. 190 Criminal Code of Moldova), “Abuse of trust” (Art. 238 Criminal Code of Romania)/ “Embezzlement of foreign property” (Art. 191 Criminal Code of Moldova).

At the same time, in each criminal code, under the chapter: “*Offences against property*”, there are regulated offences that are found in other chapters of the corresponding criminal code, such as for example: the offence of “extortion” (art.207 Criminal Code of Romania), which is part of the chapter “*Offences against personal freedom*” and the offence of “Extortion” (Art. 189 Criminal Code of the Republic of Moldova), which is part of the category “Offences against property” or the reverse situation “computer fraud” (Art. 249 Criminal Code of Romania), which is an offence against property/”Computer fraud” which is considered an economic offence. This discrepancy is explained by the fact that the main legal object of the given offences differs, which is social relations regarding the protection of property in the case of offences against property or social relations regarding psychological freedom, regarding the correctness of business relations, in the case of the offence of extortion (Criminal Code of Romania) or computer fraud (Criminal Code of Moldova).

The last category of offences against property are those for which there is generally no corresponding criminal code. Moldova) and the reverse situation, the Criminal Code of Romania does not regulate the crime of “robbery” (Art. 187 Criminal Code of the Republic of Moldova), “Stealing of animal-powered means of transport, as well as of draft animals” (Art. 192² Criminal Code of the Republic of Moldova) and the crimes having archaeological goods as material object.

If the offences against property whose main legal object is built from social relations with reference to public or private property, the Criminal Code of Romania also contains other offences whose secondary legal object may be built from social relations of a property nature. In my doctoral thesis I have analysed several such offences, such as:

1. The offence of extortion, provided for in Art. 207 para. (3) of the Criminal Code may have as a secondary legal object social relation of a pecuniary nature, when the perpetrator seeks pecuniary gain. Thus, according to Article 207 of the Criminal Code of Romania concerning the offence of “Extortion”: “(1) *Forcing a person to give, do, not do or suffer something, in order to unjustly acquire a non-pecuniary benefit, for themselves or for another person, is punishable by imprisonment of one to five years. (2) The same penalty shall be imposed for*

*threatening to reveal a real or imaginary fact that is compromising for the threatened person or a member of his family for the purpose referred to in paragraph 1. (1).” And according to para. (3) of Art. 207 of the Criminal Code: “If the acts referred to in para. (1) and para. (2) have been committed with **the aim of unjustly acquiring a pecuniary benefit, for themselves or for another person**, the punishment shall be imprisonment from 2 to 7 years.”*

2. The offence of “**outrage**”, is part of the category “Offences against authority” in Section III of the Criminal Code called: “Offences against authority and state border - Section III of the Criminal Code of Romania”. According to Article 257 of the Criminal Code: “...(2)The commission of an offence against a public official who performs a function involving the exercise of state authority or against his property, for the purpose of intimidation or revenge, in connection with the exercise of official duties, shall be punishable by the penalty prescribed by law for that offence, the special limits of which shall be increased by one third.”

3. Another offence whose secondary legal object may be constituted by social relations relating to property²³, is the offence of “**Judicial outrage**”, which is part of the category of “Offences against justice”, contained in Section IV of the Romanian Criminal Code. Thus, according to Article 279(2): “Committing an offence against a judge or prosecutor or against his or her property, for the purpose of intimidation or revenge, in connection with the exercise of his or her official duties”.

In the Criminal Code of the Republic of Moldova, as in the Criminal Code of Romania, a series of offences are regulated, the secondary legal object of which is constituted by social relations with regard to property. Some of these offences are found in the Romanian Criminal Code in the category “Offences against property”, as they have as their main legal object social relations concerning the protection of property. There are also reverse situations, when offences against property in the Criminal Code of the Republic of Moldova are found in other categories of offences in the Criminal Code of Romania.

The Criminal Code of the Republic of Moldova regulates a series of so-called economic offences, all of which have as their primary legal object social relations regarding the correctness of the legal-economic relations that must govern the legal relations between the participants, and

²³ George Antoniu, Tudorel Toader, *Explanations of the New Penal Code, vol. IV*, Publisher Universul Juridic, Bucharest, 2015, page 279.

the secondary legal object - social relations regarding the protection of property. Thus, some of these economic offences are:

1. “Acquisition of credit, loan or insurance compensation/indemnity by fraud” (Art.238 Criminal Code of the Republic of Moldova), which consists of *“(1) Intentional submitting false information with the aim of obtaining a credit, loan or insurance indemnity/indemnity or increasing the amount thereof, or obtaining a credit or loan on advantageous terms, if this has caused damage to the financial institution, non-bank financial organization, savings and loan association or insurer in an amount greater than or equal to 500 conventional units.”*

As an economic crime, the main legal object consists in the social relations concerning the fairness to be shown by the participants in the legal-economic relations and the special legal object consists in the relations concerning the protection of property.

2. “Violation of the provisions on the manner of concluding transactions with the company's assets” (art. 245⁴ of the Criminal Code of the Republic of Moldova), which consists of *“(1) Violation of the manner of concluding large-scale transactions and/or transactions with conflict of interest within the company, if these actions have caused large-scale damage,...”*

The primary legal object consists of social relations with regard to the correctness of the conclusion of transactions involving the assets of a company and the secondary legal object consists of social relations with regard to the protection of the assets.

3. “Piracy” (Art. 289 Criminal Code of the Republic of Moldova) is part of the category of Offences against Public Security and Public Order and consists of: *“(1) Robbery committed for personal purposes by the crew or passengers of a ship against persons or property on that ship or against another ship, if the ships are on the high seas or in a place not under the jurisdiction of any State,....”*

The primary legal object consists of social relations with regard to the safety of maritime, air and sea traffic and the secondary legal object consists of social relations with regard to the physical integrity and health of persons and the protection of the property of persons in maritime, air or sea traffic.

In the final chapter I have carried out a comparative analysis of how the criminal protection of property is carried out in several EU Member States, namely France, Italy, Austria, Germany and Spain. This analysis gave me the opportunity to observe and identify interesting solutions offered by the criminal legislation of these countries, solutions that I believe would be useful to be adopted by both Romania and the Republic of Moldova.

In conclusion, starting from the idea that the term “heritage” exceeds the meaning of the term “property”, referring to “the totality of rights and obligations that have economic value”, its protection is ensured by the European Convention on Human Rights and, in a complex way, by the legislation of each State, starting with the supreme law - the Constitution and continuing with extra-criminal legal means, such as civil, administrative and criminal law, the Criminal Code and special criminal laws.

By way of proposals for *de lege ferenda*, I consider that, first of all, it would be necessary for the Romanian legal system to unify criminal legislation into a single criminal law, namely the Criminal Code, given that the dispersion of offences in other special laws also creates difficulties in identifying, applying and interpreting them in conjunction with other legal norms.

Having familiarised myself with the Austrian criminal law system, I welcome the Austrian legislator's idea of including the offence of “*Defamation*” in the category of criminal offences against property, which consists of: “(1) *The act of a person who makes false claims and thereby damages or endangers the reputation or professional development of another person.*”

This option seems innovative and I think it is justified, because defamatory actions are directly aimed at the person's heritage, especially at freelancers. In this respect, the European Court of Justice has also recognised in its case law that a self-employed person's “clientage” is property within the meaning of Article 1 of the Additional Protocol to the European Convention, which guarantees the right to property. For these reasons, I think that it would be a good idea to include this criminal offence in the criminal codes of both Romania and the Republic of Moldova in the category of offences against property.

With regard to the regulations on the matter provided for in the Criminal Code of the Republic of Moldova, I consider that the content of the offence of swindling, qualified in Article 190 of the Criminal Code, should be amended, as it is uncertain, ambiguous and creates difficulties

of interpretation and application. It is also significant in this respect that the criminal text of the offence of swindling has undergone several legislative amendments, which have not been successful, in my opinion, and has been subject to constitutional review several times by the Constitutional Court.

At the same time, I believe that there should be in the criminal legislation of the Republic of Moldova a similar regulation of the offence of judicial outrage existing in the Criminal Code of Romania, including the passive subjects of the offence, with the inclusion of lawyers in this category, justified by the fact that lawyers, like judges and prosecutors *“by the will of the law. ... have the most important judicial duties, and the manner how they are carried out depends decisively on the proper course of a trial and its outcome, so that the provision of greater protection against any form of violence exercised against them is, from this perspective, justified”*.²⁴

Finally, in connection with the fact that the Republic of Moldova is not a member state of the European Union, but has the status of candidate for accession to the European Union, assigned on 23 June 2022 by the Council of the European Union, it will have to harmonize its entire legislation, including criminal legislation, (in part inadequate) to European Union standards.

²⁴ Alexandru Boroi, *Drept penal. Partea specială*, Editura C. H. Beck, Ediția a cincea, Editura C. H. Beck, București, 2021, pag. 421.