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Original Scientific Paper
DOI: 10.47152/ns2024.16

THE NEW AGGRAVATING CIRCUMSTANCES REGARDING HOMICIDE AND BODILY HARM, A NEW VISION OF THE ROMANIAN CRIMINAL LEGISLATOR

A series of laws amending the Romanian Criminal Code and the Criminal Procedure Code, adopted in summer of 2023 surprised the legal practitioners. It is not so much the opportunity of the amendments that is surprising, some being necessary for some years, but above all the incoherent way they were adopted, from some more consistent laws (Law no. 200/2023) to others containing a single article (Law no. 217/2023). The enactment of some norms to those decided by the Romanian Constitutional Court was, indeed, an imperative, which, unsatisfied in time, led for a long time to the direct application of the decisions of the Constitutional Court. And with regard to the substance of the changes, a series of clarifications can be made. Law 248/2023, on which we will dwell, is part of this veritable "avalanche" of changes, which rightly confuses the professionist. This document implies new circumstantial elements of aggravation of some delicts and also modifying some criminalization rules. We aim to analyze in our paper the new aggravating special circumstances, among which the "bodily harm", delict, when the victim is in the care, protection, education, or treatment of the perpetrator, if the victim is a minor, if the act is committed in public or if the perpetrator detains a firearm, an object, a device, a substance or an animal that can endanger life, health or bodily integrity of people. Furthermore, we will observe that, in these situations, the prosecutor can draft the accusation even if the victim remains in passivity, and that is, in our opinion, a very important step in protecting the victim rights.

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We will conclude that some of these criminal policy options are useful, but others raise serious problems of predictability and will lead to certain inequities.

***Keywords**: right to integrity, aggravating circumstances, personal injury, minor, public place, vulnerability.*

1. Introductory remarks

Consulting the new criminal policy of the Romanian legislator, Law 248/2023[1] is included in a veritable "avalanche" of changes, which rightly confuses the professionists. This implies the insertion of new circumstantial aggravating elements regarding some crimes and also modifying some criminalization rules.

It is a real difficult discussion regarding the context of this changes, that is one of we can call a populist criminal regime, increasing the punishment for a lot of offences against person, road traffic offences and sexual offences. This was remarked some years ago also in Serbian legislation. It was observed by scholars that "As the right to life is the most valuable human right, in the context of current expansive and explosive populism as a suitable technique of governing, penal populism related to demands for harsher punishment of those who endanger or violate another's right to life has flourished. It is not only harsher punishment that is associated with increasing penal populism and moral panic over fear of crime (especially as serious as murder or another offense resulted in death of another human being), but phenomena that should also be viewed in the same light are new incriminations that cannot always be justified by social or criminal justice needs and requirements" (Jovanović, 2021:148).

We will observe in this paper the recent aggravating circumstances regarding homicide and personal bodily harm in Romanian Criminal law.

2. The new aggravating circumstance in the case of homicide

The aggravating circumstances are, according to the romanian doctrine, factual circumstances which, although not part of the legal content of the crime, are part of its concrete content, attributing to it an aggravated character (Pașca, 2015: 557). After 2014, the main novelty brought to the Romanian Criminal Code was that the judicial aggravations were eliminated, because they would not be predictable (that is, any circumstance could be considered aggravating, even without it being clear at the time of committing the act).

[1] Official Gazette no. 673 from 21 july 2023.

Scholars pointed that "The right to life is the highest civilizational value and the supreme human right. Therefore, human life is in the first place of the scale of values. All the modern states by their highest legal acts protect the right to life which cannot be limited and thereby this most important human right receives a planetary significance. The murder is a general criminal act that endangers mostly the foundations of every society although criminal legal protection of human life did not exist for all members of the human species in the earlier socio-economic formations. In the sense of criminal law the protection of life represents the fundamental dimension of criminal law" (Rakočević, 2017: 517).

According to point I of the abovementioned amending law, in article 189 paragraph (1) Criminal Code, after letter h) a new letter is inserted, letter i), with the following contents:

"i) taking advantage of the obvious vulnerability of the injured person, due to age, health, infirmity or other causes".

It is the crime of "aggravated homicide", which will be met in this version in the situation above. We point out that, given that aggravated murder is, in essence, the most serious crime within the criminal codes, with the most severe sanctioning regime (life imprisonment or even death), the expansion of the circumstantial elements must be done with caution.

According to art. 188 Criminal Code, "murder of a person is punishable by imprisonment from 10 to 20 years and prohibition of the exercise of certain rights".

According to art. 189 Criminal Code, "murder committed in any of the following circumstances:

a) with premeditation;
b) of material interest;
c) to evade himself or another from criminal liability or from the execution of a penalty;
d) to facilitate or conceal the commission of another offence;
e) two or more persons;
f) on a pregnant woman;
g) by cruelty;
h) it is punishable by life imprisonment or imprisonment from 15 to 25 years and the prohibition of the exercise of certain rights".

We observe the legislative technique of "converting" a general circumstance, provided for in art. 77 para. (1) lit. e) Criminal Code[2], in a "special" circumstantial element. In accordance with the romanian contemporary doctrine (Cioclei, 2023: 8), we believe that it will not be possible to retain the two elements of aggravation at the same time, having the source of the same situation.

So, in order to retain this element of aggravation, we distinguish several stages.

First, the victim of the murder must be in a state of vulnerability caused by age, health, infirmity or other causes.

Regarding the aspect that the state of vulnerability is "obvious", some clarifications are required. Analyzing the legal provisions in force, in a short comparative research, we note that in art. 20 para. (2), regulating the "state of necessity", the Criminal Code refers to "obviously more serious consequences" that would occur if the danger were not removed[3].

Regarding the justifying cause regarding the exercise of a right or the fulfillment of an obligation, it speaks of the nature of the action not to be "manifestly illegal". Regarding the unattributable excess (art. 26 Criminal Code) reference is made to the "obviously more serious" consequences of which the perpetrator was not aware. Even when it provides for confiscation in part as a security measure, art. 112 para. (2) Criminal Code refers to the value "obviously disproportionate" to the seriousness of the act of the goods subject to the measure[4].

As a circumstance of aggravation of some crimes [person trafficking, art. 210 para. (1) lit. b) Criminal Code, art. 220 para. (3) lit. b), art. 220 para. (4) lit.

[2] "The following circumstances constitute aggravating circumstances: (...) e) committing the crime by taking advantage of the obvious vulnerability of the injured person, due to age, health, infirmity or other causes".

[3] "The person who commits the act is in a state of necessity in order to save from an immediate danger and which could not be removed otherwise the life, bodily integrity or health of himself or another person or an important asset of his or another person or a general interest, if the consequences of the act are not obviously more serious than those that could have occurred if the danger was not removed".

[4] "In the case provided for in para. (1) lit. b) and letter c), if the value of the assets subject to confiscation is clearly disproportionate to the nature and seriousness of the act, confiscation is ordered in part, by monetary equivalent, taking into account the consequence produced or that could have been produced and the contribution of the asset to it. If the assets were produced, modified or adapted for the purpose of committing the act provided for by the criminal law, their entire confiscation is ordered".

b), art. 220 para. (5) lit. b), art. 221 para. (2) lit. b), art. 247], refer to the "obviously vulnerable" situation of the injured person[5]. In art. 272 Criminal Code the act of influencing the statements must have an "obviously intimidating" effect. Then, the justifying cause from art. 277 para. (3) refers to "obviously illegal" activities[6], and art. 443 Criminal Code speaks of "manifestly disproportionate" damages.

However, no provision explains the meaning of the term "obvious" in any other sense than the common one, that of "evident". It seems that it sets a certain standard of evidence by transferring the object analysed to the field of probatory, and it will be assessed on a case-by-case basis, the intensity of the state that would justify attributing the act to a more serious character. It was noted in classic doctrine (Dongoroz, 1970, I,:323), in this register, regarding the case of special confiscation from the old Criminal Code - art.118 letter e), which referred to "things manifestly acquired by the commission of the offence" that, in this respect, "a simple assumption is not sufficient. The proof of the obvious acquisition can be made with any evidence and means of proof regarding the material situation of the offender before and after the perpetration of the act".

We believe that the term has been removed from that text, given that all decisions on a criminal sanction must exclude the assumption and be close to certainty or at least to conviction beyond reasonable doubt, as is the case of conviction, as is the case of conviction, postponement of penalty enforcement or waiver of penalty enforcement.

Contemporary doctrine (Streteanu, Nițu, 2018: 431) understood by "obvious vulnerability", "the special situation of the injured person that is exposed in relation to the commission of some crimes, being unable to defend himself or to express his will, involving a state of physical or mental helplessness, which does not allow him to react, to defend himself in front of the aggressor, thus facilitating the commission of the crime".

[5] E.g., trafficking a person is more dangerous if "taking advantage of the impossibility of defending oneself or expressing one's will or of the state of obvious vulnerability of that person".

[6] "It is not an offence to disclose manifestly illegal acts or activities committed by the authorities in a criminal case".

Serbian doctrine talks about "injured parties who belong to vulnerable categories, such as minors, pregnant women, persons with disabilities, etc" (Škulić, Miljuš, 2024: 27).

An interesting opinion (Kolaković-Bojović, Baranowska, 2024: 63) is in sense of considering the migrants as persons in a state of vulnerability, due to their special situation. We agree with this opinion, as we also consider that, especially when the migrants are victims of physically abuse, violence or even murder, the perpetrators have in mind their special situations as source of vulnerability.

While we accept that criminal law may use terms in their common sense, we nevertheless consider that keeping the term "obvious" in the places shown and even extending its application affects the predictability of the criminal law rule.

Moreover, with regard to "other cases", as a source of manifest vulnerability, a number of objections can be made in terms of predictability, the text actually constituting, in our opinion a veritable "open content norm", which reminds us of the old art. 75 para. (2) of the Criminal Code from 1968, which stated that "the judge may retain as aggravating circumstances any other aspects which give the act a serious character".

The vulnerability should therefore have as its source one of the situations listed by law (for example, we would say), such as: young age, advanced age, an illness that makes movement difficult, intoxication, etc.

Then, the perpetrator must take advantage of this state of "obvious vulnerability". We appreciate that "taking advantage" of a circumstance has the meaning of conceiving the commission of the act in such a way that the respective state facilitates its commission. If the law had aimed the form of aggravation to be automatically incident in all cases when the victim presents a certain condition, we believe that it would not have inserted the term "taking advantage".

Thus, the action of "taking advantage" is, in our view, compatible exclusively with the direct intent form of guilt. "Taking advantage" of a certain state represents a circumstantial element that places the activity in the immediate vicinity of a premeditation, although, obviously, it does not have to be identified with it.

Moreover, we would say that "to profit" has the meaning of pursuing a benefit, not necessarily a material one, but obviously it is about projecting a profit, an advantage from the commission of the crime.

We also believe that by "taking advantage" of a circumstance, the legislator understands an action of defeating the will of the passive subject, of exploitation, of capitalizing on this state and creating an advantage for the perpetrator of the crime.

In this sense, a practical solution attracts our attention[7]. One Court of Appeal argued that "both through the indictment and through the appealed criminal sentence, it was held that the defendant committed the act (attempted murder, n.n.) with indirect intent. Moreover, in addition to the circumstance that the defendant committed the deed with indirect intention (although she foresaw, did not follow the result of her deed consisting in the death of the victim), she also acted with a spontaneous (sudden) intention, being troubled by a previous quarrel with his common-law partner, because he left the hotel room, leaving the defendant to take care of the child alone. Therefore, considering that the defendant did not aim to kill the victim and acted in a state of disorder, with spontaneous intent, the Court considers that the aggravating circumstance consisting in the commission of the act taking advantage of the victim's obvious vulnerability due to age is not incident. If the defendant wanted to take advantage of the child's obvious vulnerability to kill him, she committed the act in the room where she was alone with him and she could have taken full advantage of the victim's vulnerability, and not by throwing the victim to the floor in the presence of several people, who immediately gave him first aid. In relation to the above, the Court will admit the defendant's appeal and in the retrial will establish a punishment without taking into account the application of the aggravating circumstance of art. 77 lit. e) from the Criminal Code".

The decision seems fair to us, for the reasons explained above.

[7] Decision no. 214/2021 from 10.02.2021, Curtea de Apel Timișoara, cod RJ 48e38d23 (https://www.rejust.ro/juris/48e38d23), accessed 9.09.2024.

The judicial practice, in analysing this circumstance, noted that "the defendants successfully attacked the injured person, taking advantage of the vulnerability of the latter (the injured person was intoxicated)"[8], or "taking advantage of the obvious vulnerability of the injured person due to the early age - 6 years, the defendant ran after it, the victim sliding and falling, then lifted it from the ground, the defendant, he applied a slap to her hand, hit her head against the wall of the house, slammed her to the ground and kicked her back again"[9], or "the act was committed after dark, on a public road, in the presence of several people, including children and the elderly, by applying repeated blows to the injured person, on a public road, the act of the defendants provoking outrage and repulsion among the community, as well as a state of fear, the defendants taking advantage of the vulnerability of the injured person who was alone and defenseless from other people, as well as the fact that their chances of success were higher as they acted together"[10].

3. The new aggravating circumstances regarding the offence of bodily harm

According to art. 193 Criminal Code, "hitting or any violence that causes physical suffering is punishable by imprisonment from 3 months to 2 years or a fine. The act by which traumatic injuries occur or the health of a person is affected, the severity of which is assessed by days of medical care of no more than 90 days, is not, it is punishable by imprisonment from 6 months to 5 years or with a fine".

According to point II of the amendment law, in article 193, after paragraph (2), a new paragraph is inserted, paragraph (2^1), with the following content:

"(2^1) The special limits of the punishment provided for in para. (1) and (2) are increased by one third when:

[8] Decision no. 807/2024 from 23.05.2024, Judecătoria Tulcea, cod RJ 7292g2623 (https://www.rejust.ro/juris/7292g2623), accessed 10.09.2024.

[9] Decision no. 1606/2024 from 22.04.2024, Judecătoria Baia Mare, cod RJ ee7569682 (https://www.rejust.ro/juris/ee7569682), accessed 10.09.2024.

[10] Decision no. 349/2022 din 08.07.2022, Judecătoria Sibiu, cod RJ eeed9g486 (https://www.rejust.ro/juris/eeed9g486), accessed 9.09.2024.

a) the victim is in the care, protection, education, guard or treatment of the perpetrator;
b) the victim is a minor;
c) the act is committed in public;
d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that can endanger the life, health or bodily integrity of persons".

The text of the law above introduces a new aggravated version of each of the previous form, the standard form from art. 193 para. (1) Criminal Code, respectively the aggravated form from art. 193 para. (2). It includes, in the sanctioning register, a case for increasing the penalty limits in the event of the meeting of one or more of the four hypotheses.

Also, the circumstances regard the "aggravated bodily harm", incriminated by art. 194 Criminal Code[11].

In the first case, the victim must be in the care, protection, education, custody or treatment of the perpetrator.

We note some views of the doctrine regarding this circumstance, which is not recent in romanian criminal legal system.

It was stated in an opinion (Udroiu, 2021: 297) that "beeing in care of the perpetrator refers to persons who care for the victim regardless of the form in which they are employed, for example contract of service provision/work or bilateral agreement".

It has also been said (Antoniu, 2015: 219) that "the perpetrator has obligations of care by virtue of the function he performs under the employment contract (for example, care staff in hospitals, sanatoriums, social settlements) or on the basis of a service contract (people employed by individuals) or by virtue of kinship relations, that is, the legal, contractual or moral duty to care for the victim.

[11] "The act provided for in Article 193, which caused any of the following consequences:
a) an infirmity;
b) traumatic injury or damage to a person's health that required more than 90 days of medical care to heal;
c) serious and permanent aesthetic damage;
d) abortion;
e) the endangerment of the person's life is punishable by imprisonment from 2 to 7 years".

Another author showed that "is the question (in the case of aggravations, n.n.) of the rape committed by the tutor, teacher, educator, teacher, doctor, caregiver, guard, guard, on the persons they have in care, protection, supervision, guarding or treatment. Important is that at the time of committing the act to check the dependency of the victim".

It has also been shown (Cioclei, 2016: 187) that "reaction of aggravations is given by the relationship between the offender and the victim, a relationship of dominance, which gives the perpetrator a certain power or influence over the victim. Such situations are based on either some service relationship or some contractual relationship, in which the perpetrator has an obligation to care for the victim".

According to another author (Dobrinoiu, 2016: 165), "victim is in the care of the perpetrator if he was required to provide assistance, such as, for example, health or social care staff (situations, asylum, boarding schools) or persons employed in particular to care for sick or elderly people".

From the reading of the abovementioned doctrine, it follows that essential for determining the incidence of this circumstance is the establishment of a duty of care, legal or contractual. The existence, in certain situations, of a moral duty is also accepted, but it must be based on a certain dependence between the victim and the defendant, on certain relationships established between them, contextual assessment and factual situation, including the ability of the victim to manage the necessary things for the duration during which it is supposed to have been in the care of the accused.

As it can be seen, the aggravation element is specific to crimes against sexual freedom and integrity, but the legislator preferred to adapt it also to crimes against bodily integrity.

However, as the recent doctrine noted (Cioclei, 2023:70), the aggravated variant of the crime of "abusive behavior" [art. 296 par. (2) Criminal Code] will cover practically a series of situations from those covered by the new cause of aggravation, and in other situations, the act will be part of the pattern of domestic violence, provided by art. 199 romanian Criminal Code.

It is therefore difficult to understand the legislator's intention to provide additional protection to victims who previously found benefits under other rules.

We can say that the variant is part of a genuine "overregulation", which did not appear necessary.

Regarding the minor victim, we note, together with other authors, the increased interest of the legislator in the recent period to increase the criminal reaction against crimes that have as victims persons under 18 years old. In comparative law, we note a general aggravating circumstance in the Italian penal code (art. 61-11-quinquies) according to which " aggravates the crime, when there are no constituents or special aggravating circumstances, the following circumstances for offences intended against personal life and integrity, against personal freedom, and the offence referred to in Article 572, have committed the act in the presence or against a minor under 18 or against a pregnant person" (Manna, Ronco, 2017: 213).

As a comparative observation, we remark the legislation in Republika Srpska. When it comes to the Republika Srpska, scholars pointed out that the legal penal policy for the suppression of sexual violence against children and minors was extremely tightened with the adoption of the latest Criminal Code of the Republika Srpska from July 2017. Thus, in the Criminal Code of Republika Srpska, in its special chapter XV separated from criminal offenses against sexual integrity, under the title: "Criminal offenses of sexual abuse and exploitation of a child" (Mitrović, Ikanović, 2024: 185).

The romanian law does not distinguish about the age of the perpetrator, so that even if the offender were himself a minor, we would be subject to aggravating. However, the aggravating may be uneffective, because of the special "educative measures" that are, in romanian legislation, applied to minor offenders.

There was noted that "The protection of dignity and bodily integrity of the child, apart from being closely linked to the right to life and the right to family life, cannot be observed in isolation from the principle of equality of rights. Children, as human beings, also have the right to equal legal protection without discrimination, and this stage in the development of legal thought and legal practice has not been reached immediately and easily, at least when it comes to understanding childhood as a concept and position and rights of children within families. Traditional practices of allowing corporal punishment of a child in the family did not measure physical confrontations with an unknown adult with the same yardstick. The admissibility of corporal punishment of a child and the demand

for the sanctioning of equal treatment of an adult have long and persistently been maintained at both the legislative and practical levels in a large number of democratically governed countries, although the consequences of violation of dignity are unquestionable in both cases" (Vujovic, 2020:79).

Further, according to the new amendments, the offense of bodily injury will be more serious also if committed in public. The term is defined in the General Part of the Criminal Code. According art. 184:

"The act is committed in public when committed:

a) in a place which by its nature or destination is always accessible to the public, even if no person is present;
b) in any other place accessible to the public, if two or more persons are present;
c) in a place not accessible to the public, but with the intention that the act be heard or seen, and if this result occurred against two or more persons;
d) during a meeting of several persons, except for meetings which may be considered to be of a family nature, due to the nature of the relations between the participatins".

Few offenses include among the conditions of place of the objective side committing "in public". We identify in romanian legislation the act of "disorder of public order and tranquility", provided by art. 71 Cr. Code, meaning "the act of the person who, in public, through threats or serious touches to the dignity of persons, disturbs the public order and tranquility", or, in aggravated version, "the act of the person who, in public, through violence committed against persons or goods, disturb the order and tranquility of public", the outrage against public moral (art. 75 Criminal Code), as "the act of the person who, in public, exposes or distributes without right images that explicitly present a sexual activity other than that to which Article 374 refers, as, or commits acts of exhibitionism or other explicit sexual acts", or the offense of art. 438 para. (4), according to which "incitation to commit the crime of genocide, committed directly, committed, in public, it is punishable by imprisonment from 2 to 7 years and prohibition of the exercise of certain rights".

The aggravated version also existed in the anterior Criminal Code, regarding the crime of murder [art. 175 para. (1) letter i) C.pen 1968], the aggravated theft and robbery, but that was abandoned by the legislator later, in 2014.

We think the aggravation hypothesis is useless. Most of the offences provided by art. 193 Cr. Code are committed in public, in the sense of the above-mentioned definition norm. The protection of public order is already provided by art. 371 Criminal Code, so we consider that it was not necessary to establish this aggravated circumstance.

Moreover, as has been observed, a series of confusions will arise, in the sense of absorbing or contrary to the crime against public order in the offense of bodily harm committed in public. After all, we believe that their double apprehension would lead to a double capitalization *in peius* of a single circumstance of place.

According to art. 193 par. (2¹) letter d), the act is more serious if "the perpetrator has a fire weapon, an object, a device, a substance or animal which may endanger the life, health or bodily integrity of persons".

We note that the same aggravated circumstance was introduced in terms of art. 371 Criminal Code.

Apart from these assumptions, we also identify in the Criminal Code other variants of aggravation that involve the detaining of weapons. Dangerous object *per se* and with a strict regime of possession and use, the weapon supposes a greater danger of the one who carries it, by the risk of imminent use. Thus, art. 229 para. (2) Cr. Code more seriously sanctions the theft committed "by a person carrying a weapon", desertion will be sanctioned more severely if the author has a military weapon [art. 414 par. (2) letter b) Cr. Code].

In a comparative approach, we remark (see Nikolic, 2021: 296) the Criminal Code of the Federation of Bosnia and Herzegovina that criminalised more severe forms of extortion, It prescribes the case if weapons or dangerous tools were used in the commission of the basic form of the criminal offence. "This classifying circumstance of extortion, when life and limb of the injured party is endangered by the use of weapons or dangerous tools in the commission of coercion, by using force or threat as a manner of committing extortion, has been criminalised in many other comparative legislations. In addition to classified forms of the offence with regard to the value of acquired property gain and whether they have been committed by a group, the Criminal Code of Republika Srpska incriminates as such the following forms: if, during the commission of the criminal of-

fence, a person was negligently inflicted a bodily injury, if the offence was committed in a dangerous manner - by threatening to directly attack life and limb of a large number of persons, even if the act of commission was undertaken with the use of weapons or dangerous means".

Going back to Romanian legislation, in other cases, the legislator used another normative technique. Kidnapping in the aggravated form is more serious if committed "by an armed person" [(art. 205 para. (3) a) Criminal Code], the same applies to domicile violation [art. 224 para. (2) sentence I Criminal Code] or violation of the professional office [art. 225 para. (2) sentence I Criminal Code] or in the variant of art. 234 para. (1) letter a) of the qualified robbery "by using a weapon or explosive substance, narcotic or paralytic", or, the weapon must be used effectively for the attack.

Under art. 342, the Criminal Code criminalizes "ownership or port of non-lethal weapons in the category of those subject to authorization". Then, it punishes "detaining arms provided in par. (1) and par. (2), without right, in the headquarters of public authorities, public institutions or other legal entities of public interest or in the spaces reserved for the electoral process".

At the same time, art. 372 criminalizes "detaining or the use without the right of dangerous objects", as "the act of wearing without right, at public gatherings, cultural-sporting manifestations, as well as, in specially arranged and authorized places for entertainment or leisure or in public transport:

a) the knife, dagger, box or other such objects manufactured or made specifically for cutting, pricking or striking;
b) non-lethal weapons not subject to authorisation or electrical shock devices;
c) irritant-lacrimogenic or paralyzing substances".

Detaining one of the listed above objects involves only their wearing, even without assuming their use. The primary hypothesis here is that the wearing of these objects generates more boldness to the agent in his violent action.

So, the crime of art. 193 Criminal Code in the qualified form will be retained together with the abovementioned, if the object owned or used will be among the expressly provided. Although not lethal, weapons will represent objects capable of harming. However, this "injurious aptitude" has to be reviewed by the courts, on a case-by-case basis.

If the objects will be used, we will also find ourselves in the situation of aggravating form, because *qui potest plus, potest minus*. If the law deems the possession more serious, it is obvious that it will be serious and their use at harmfull activities. After all, we find that the classic form of the offence will be practically reserved for the violence committed "empty-handed".

The "firearm" is defined by Article 2 item 2 of Law no. 295/2004 on the regime of weapons and ammunition[12], as being "any portable weapon with a pipe that can throw, it is designed to throw or can be converted to throw alice, a bullet or a projectile by the action of a propulsion fuel; it is considered that an object can be transformed to throw a shot, bullet or projectile by the action of a propulsion fuel if it has the appearance of a firearm and, as a result of its construction or the material from which it is made, it can be transformed for this purpose; for the purposes of this law, it, firearms are not included in the definition of firearms in categories D and E of Annex".

Except for the term "firearm", all other items, as has been noted recently, are presented as unclear. According to the new circumstance in discuttion, any object, device, substance or animal may, under certain conditions, endanger the life or bodily integrity of a person, from this perspective the text proving unpredictability and will transform, in, as we have already said, quasi-total type crimes, classic bodily harm or other violence in their qualified forms.

Further, we are surprised by the provision of paragraph 4^1, according to which "in the case of deeds committed under par. (21), the criminal action can be set *ex officio*".

With regard to the minor victim, the provision is a "double" of that of Art. 157 para. (4) Cr. Code, according to which "if the injured person is a person without exercise capacity or with restricted exercise capacity or a legal person who is represented by the perpetrator, or, criminal proceedings may be initiated also *ex officio*". The legislator, by instituting both the "special" norm, intends, we believe, to highlight the possibility of the prosecutor to exercise public action, even in the case of the passivity of the victim of the offence.

[12] Official Gazette no. 425 from 6.10.2014.

With regard to the exercise of *ex officio* criminal action under the assumption in letter a) ("care of the victim"), the norm seems to us justified. However, most of the practical situations are covered by the provisions of art. 199 C.pen (family violence), however, will become the norm of art. 199 para. (2), which stipulates that "in the case of offences provided in art.193 and art. 196 committed on a family member, the criminal action may be initiated also *ex officio*".

In accordance with abovementioned doctrine, we consider that the possibility of *ex officio* criminal proceedings for aggravated forms under letter c) and d) is completely meaningless, representing a manifestation of an authoritarian, even repressive criminal policy, we would say, on some offences where the attitude of the victim should prevail and constitute the rule. Moreover, in case of *ex officio* exercise, reconciliation is not provided, similar to the situation of art. 199 Criminal Code.

4. Conclusions

We notice the legislator's preference to adopt a series of new aggravating circumstances regarding crimes against life and integrity of individuals.

Some of them rightly appear useful and justified, but others can be criticized, because they are find among the general aggravating circumstances and others present questionable predictability.

The research I have undertaken presents a critical view of them. Some of these circumstances are found in the matter of other crimes, such as those against sexual integrity. others concern the age of the victim (minor), and others the increased danger of the aggressor, who uses weapons or other objects.

In our opinion, the amendmens are instituted in a true manifestation of the authoritarian criminal policy, which increases the protection of the bodily integrity and life of individuals, increasing the punishments in these special cases.

So, we conclude the romanian legislator provides an important interest for protection of victims of offences against body integrity.

Bibliography

Pașca, V, Drept penal. Partea generală. Ed. Universul Juridic, 2015.

Cioclei, V, Drept penal. Partea specială I. Infracțiuni contra persoanei și infracțiuni contra patrimoniului, Ed. CH Beck, 2023.

Streteanu, F, Nițu, D, Drept penal. partea generală, vol. II, Ed. Universul Juridic, 2018.

Dongoroz, V, Explicații teoretice ale Codului penal, Ed. Academiei RSR, vol. I, 1970.

Antoniu, G, în Vasiliu, T, Pavel, D, (coord.), Codul penal al RSR comentat și adnotat, partea specială, vol. I, Ed. Științifică și enciclopedică, 1975.

Cioclei, V, Drept penal. Partea specială I, Ed. CH Beck, 2016.

Dobrinoiu, V, în Colectiv, Noul Cod penal comentat. Partea specială. Ed. Universul Juridic, Ed. a III-a, 2016.

Manna, A., Ronco, M., Codice penale anotato, Ius Pisa University Press, 2017.

Mitrović, L, Ikanović (2024), V, Criminal offenses of sexual abuse and exploitation of children in Republika Srpska - normative and legal framework and current situation, in The Position of Victims in the Republic of Serbia, Institute of Criminological and Sociological Research Belgrade, Serbia, p. 185 DOI: 10.47152/Palic2024.13.

Škulić, M, Miljuš, I (2024), The impact of basic victimological conceptions and the idea of restorative justice on the position of the injured party in criminal procedure: a review of international standards, in The Position of Victims in the Republic of Serbia, Institute of Criminological and Sociological Research Belgrade, Serbia, DOI: 10.47152/Palic2024.1.

Kolaković-Bojović, M., Baranowska, G (2024), Migrants as victims of enforced disappearances, The Position of Victims in the Republic of Serbia, Institute of Criminological and Sociological Research Belgrade, Serbia, DOI: 10.47152/Palic2024.4.

Jovanović, S. (2021), Criminal law protection of life in Serbia: necessity or penal populism?, in Yearbook Human Rights Protection - Right to life, Novi Sad, Republic of Serbia, Ed: Pavlović Zoran, Provincial Protector of Citizens.

Nikolić, G. (2021), An attack against life and limb as a manner of committing extortion, in Yearbook Human Rights Protection - Right to life, Novi Sad, Republic of Serbia, Ed: Pavlović Zoran, Provincial Protector of Citizens.

Rakočević, V. (2017), Criminal activities murder and aggravated murder in Montenegro legislation, in vol. "Freedom, security: the right to privacy", Novi Sad, Republic of Serbia, Ed: Pavlović Zoran, Provincial Protector of Citizens.

Vujović, R. (2020). The child's right to dignity and bodily integrity - european standards and case law. Yearbook 2020 Human Rights Protection, The right to human dignity, Number 3, Novi Sad. Republic of Serbia, Autonomous Province of Vojvodina, Provincial Protector of Citizens - Ombudsman, Institute of Criminological and Sociological Research.