

THE NOTION OF TERRORISM IN ROMANIAN CRIMINAL LAW

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Abstract

Terrorism is a complex phenomenon which describes some of the most serious criminal acts facing humanity, through the degree of social danger, the purpose and impact of its reprehensible consequences, both in terms of the territory affected and of the manner and means of its perpetration, as well as the significant number of potential/concrete victims.

The contradictorily nature of terrorism, as an antisocial activity that disrupts national security, public order and peace, including the rudimentary normal life of various human communities – as a precursor to organized, state-type society – has put the conception of this destructive human behavior at the forefront of research.

Thus, the difficulty of defining and conceptual boundary of terrorism from other prohibited acts is, in part, in various ideological interpretations, the current predisposition of political/state actors to give, when referred to, a diabolic connotation that increases the ambiguity and unclarity of this process.

Romania has not been a stranger to normative proposals or formal provisions that prohibit criminal offenses that are currently legally classified as acts of terrorism, in which sense such acts have been regulated and punished since the second half of the 19th century.

The purpose of this paper is to analyze the Romanian legal precursors of criminal rules banning and sanctioning terrorist offenses, to observe their beginnings, evolution, and any gaps or irregularities that may be corrected in the future.

Keywords: terrorism, degree of social danger, definition, legislation, criminalization.

1. Introduction

1.1. What matter does the paper cover?

The paper focuses on the notion of terrorism in Romanian criminal law, from the perspective of its historical evolution, from the first way of criminalizing these unlawful acts to the legislation currently in force in this matter.

1.2. Why is the studied matter important?

This study was developed for the purpose of making a thorough analysis in relation to one of the greatest threats the world had and still has to cope with, namely: terrorism.

Furthermore, the topic of the paper was chosen to make a foray into the way in which the regulations in this matter have evolved in Romanian criminal law, to analyze the provisions currently in force and, last but not least, in order to understand, as a whole, this phenomenon global.

1.3. How does the author intend to answer to this matter?

For the purpose of understanding terrorism as a global phenomenon, it is necessary to assess firstly the premises of the current legislation on terrorism in Romania.

In view of this approach, a historical perspective on the Romanian criminal legislation is presented by

means of this study, which also illustrates the continuous evolution of the applicable law, given the overall evolution of the world, as well as the developing techniques and methods for preparing and carrying out terrorist acts

1.4. What is the relation between the paper and the already existent specialized literature?

This paper addresses specialist literature which has covered the various aspects considered in its contents by scrutinizing the conclusions of the authors referred to, by presenting the concepts defined and explained by the aforesaid, and finally presenting the point of view of the author of this work, either to give an opinion or to express a possible disagreement, not least by giving an opinion on the complex thematic spectrum addressed, in relation to the phenomenon of nowadays' terrorism.

2. Defining terrorism from a regulating perspective

2.1. Preliminary

Terrorism is a topical issue on which, unfortunately, humanity has been debating intensely and incessantly for at least the last two decades since the September 11, 2001 attacks in the United States. This event was heartwarming and, at the same time, terrified an entire world, given the unique and gloomy possibility offered to individuals to watch it in full

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swing, by broadcasting and redistributing it live by local and international press.

The atrocious contemporaneity of this international phenomenon is maintained and amplified by a number of factors, such as fanaticism, misinformation, migration and manipulation for political, pecuniary or other purposes, which contribute to the spread of intense collective fear, with unprecedented speed facilitated of the mass media and the progressive but undeniable digitization of human life¹.

An essential component of this form of manifestation is the notion of “security” which, as stated within the legal literature, exceeds any other specific threat, “taking into account that in various areas, threats or vulnerabilities may occur, military or non-military, but in order to meet the condition of a significant fundamental security threat, they must be assessed as existential threats against a reference object”.

The difficulty in defining and conceptually delimiting terrorism from other normatively prohibited facts lies, in part, in the various ideological interpretations, the current predisposition of political/state factors to give, when referring to this term, a “demonizing connotation”², increasing the ambiguity and the difficulty of this process.

In addition, at the doctrinal level, the opinion was expressed that the term “terrorism” is currently used for discredit purposes rather than to “describe a specific type of activity” and is, as a rule, attributed to expressing social disapproval, while the concern to establish an unequivocal definition of terrorist behavior disappears³. Similarly, another author pointed out that “terrorism is used as a synonym for rebellion, street fighting, civil strife, insurrection, rural guerrilla warfare, coups, and so on. The indiscriminate use of the term not only inflates statistics, but also hinders understanding of the specific nature of terrorism”⁴.

The doctrine which examined the manifestation of terrorism at the international level, emphasized that by provoking panic and fear, “terrorists are trying to obtain concessions or weaken and discredit governments by proving that they are incapable of

protecting their citizens, both in the country and in the country. apart from that, on the one hand, and that they are vulnerable no matter how strong their states are from a military and economic point of view, on the other hand”⁵.

Thus, it may be thought that terrorism is a phenomenon that essentially affects fundamental human rights, such as the right to life and bodily integrity, a criminal activity that “undermines the importance of the law and democracy in general by imposing measures by states to restrict certain individual rights and freedoms. However, there must be a balance between restricting certain rights as a result of the particular danger posed by terrorism and respecting the individual rights and freedoms ensured by the relevant legal framework, as well as its application in a fair trial in criminal matters”⁶.

Precisely because of the major difficulty of investigating, prosecuting and sanctioning these acts, as well as in the light of the rapid evolution of the means and means of committing terrorist acts, it is not yet possible to form and accept, officially, a universal definition of terrorism.

2.2. First steps towards theorizing of terrorism

A first attempt to define the notion of terrorism was made in Roman law, in the “*Lex Apelia (103 BC)*, which criminalized *Crimen Majestatis*, i.e. any internal or external action directed against the integrity of the state”⁷.

The criminalization of terrorism from the perspective of a recent legal framework took place in 1856 in Belgium, given the widespread revolt of the peoples of Europe against their own monarchs, which manifested itself in unprecedented acts of violence, terrorist type, whose artisans could go unpunished by including these facts in the category of political crimes. Thus, through the newly introduced clause, an express and clear delimitation was made between acts of terrorism and political crimes, the former being subject to extradition procedures, “this being the first measure to combat terrorism”⁸.

¹ Grigore-Rădulescu, Maria-Irina, Popescu, Corina-Florența, *Some Observations regarding the notion of terrorism*, in the Journal of Criminal Law no. 2/2014, Universul Juridic Publishing House, Bucharest, 2014, p. 51.

² Chaliand, Gérard, Blin, Arnaud (coord.), *History of Terrorism from Antiquity to Daesh*, Polirom Publishing House, Bucharest, 2018, p. 14.

³ In this respect, please see Merari, Ariel, *About terrorism as a strategy of insurrection*, comment in Chaliand, Gérard, Blin, Arnaud (coord.), *History of Terrorism from Antiquity to Daesh*, Polirom Publishing House, Bucharest, 2018, p. 23.

⁴ Laqueur, W., *The Terrorist Reader: A Historical Anthology*, Meridian Publishing House, New York, 1978, p. 262, quoted in Dănilă, Olga Neagoe, Visarion, *Terrorism: a psychosociological approach*, Military Publishing House, Bucharest, 2011, p. 15.

⁵ Mureșan, Mircea, *International terrorism. Some effects and evolutionary trends*, comment in Strategic Impact no. 2/2004 (11), p. 29.

⁶ Popa, Rodica Aida, *Terrorism between reality and specialized justice*, April 19, 2013, p. 1, article published on: <https://www.juridice.ro/255369/terorismul-intre-realitate-si-justitie-specializata.html>.

⁷ Grigore-Rădulescu, Maria-Irina, Popescu, Corina-Florența, *Some Observations regarding the notion of terrorism*, in the Journal of Criminal Law no. 2/2014, Universul Juridic Publishing House, Bucharest, 2014, p. 52.

⁸ In this regard, please see Arădăvoaice, Ghe., Iliescu, D., Niță, L.D., *Terrorism, Antiterrorism*, Antet Publishing House, 1999, p. 304, quoted in Alexandru, Marian, *Regulation of terrorism by acts of domestic and international law*, Acta Universitatis George Bacovia. Juridica, vol. 5, no. 2/2016 - <http://juridica.ugb.ro/>, footnote no. 1.

One cannot speak of a proper normative definition, at the level of the international society, until the interwar period, marked by manifestations of an unprecedented aggression that were practiced by fascist organizations, which used terrorism as a political weapon. Thus, on November 20, 1926, Romania discussed within the League of Nations, through a project of the Romanian jurist, Vespasian C. Pella⁹, the need to study and elaborate an International Convention for The Universalization of the Repression of Terrorism¹⁰. However, Romania's initiative was not particularly considered, given the need to clarify some fundamental issues in the International Conferences for the Unification of Criminal Law. This process has resulted in a regrettable failure caused by the inaccuracies created between the states participating in the process of defining political crime and/or what constitutes a terrorist act¹¹.

2.3. Terrorism as a criminal phenomenon: legislative evolution and current regulations in Romania

Romania was no stranger to normative proposals or official provisions that incriminate criminal acts that are currently legally qualified as acts of terrorism. In this sense, it is noteworthy the regulation of the attack against the king, as an “*act of great gravity*”, in the Criminal Code of 1865, in the chapter “*Crimes against the internal security of the state*”. Subsequently, this

legal provision was maintained in the Criminal Code of 1885¹².

In 1936, through the provisions of art. 204¹³ of the Criminal Code of Carol II¹⁴, the incrimination of the attack against the king's person is maintained, but with the specification that this deed constitutes an “*act of great treason*”, the punishment being forced labor for life. Further, art. 219¹⁵, art. 220¹⁶ and art. 221¹⁷ of the same normative act, incriminates the attack or the offense brought on the Romanian territory to the head of a foreign state or to the representative of a foreign state.

As a result of the aggravation and frequency of acts of terrorist violence in the interwar period, the criminalization of these acts in the Criminal Code has intensified. Thus, as a result of the actions of the Iron Guard, Marshal Antonescu incriminated, for the first time, the instigation of rebellion, imposing the death penalty¹⁸.

In Chapter II, entitled “*Application of criminal law in space*”, Section IV - “*Crimes committed by aliens abroad*” – art. 11 expressly refers to acts of terrorism, but the language used is at least reprehensible, from the perspective of abstract expression and the lack of definition and delimitation of the notion of “*acts of terrorism*”, which made possible the arbitrary application of this normative text¹⁹.

⁹ Considered the artisan of the conventions adopted in 1937. In this regard, please see Alexandru, Marian, *Regulation of terrorism by acts of domestic and international law*, Acta Universitatis George Bacovia. Juridica, vol. 5, no. 2/2016 - <http://juridica.ugb.ro/>, p. 539.

¹⁰ In this respect, please see, Bodulescu, Ion, *The Scourge of International Terrorism*, Military Publishing House, 1978, p. 117-119, quoted in Alexandru, Marian, *Regulation of terrorism by acts of domestic and international law*, Acta Universitatis George Bacovia. Juridica, vol. 5, no. 2/2016 - <http://juridica.ugb.ro/>, p. 538.

¹¹ Alexandru, Marian, *Regulation of terrorism by acts of domestic and international law*, Acta Universitatis George Bacovia. Juridica, vol. 5, no. 2/2016 - <http://juridica.ugb.ro/>, p. 539.

¹² In this respect, please see the Criminal Code of 1885, Guttenberg Publishing House, p. 90, quoted in Alexandru, Marian, *Regulation of terrorism by acts of domestic and international law*, Acta Universitatis George Bacovia. Juridica, vol. 5, no. 2/2016 - <http://juridica.ugb.ro/>, footnote no. 15, p. 546.

¹³ Please see the provisions of art. 204 of the Criminal Code Carol II, according to which: “*Any attack on the life, bodily integrity or freedom of the King, constitutes a crime of high treason and is punishable by forced labor for life. Attempts of the same kind against the Queen, the Crown Prince or other members of the royal family are punishable by 10 to 25 years' hard labor, unless the offense is punishable by law with a greater penalty*”, text available by accessing the following link: <https://lege5.ro/App/Document/heztqzvu/art-261-rebeliunea-codul-penal>.

¹⁴ Named “*Carol II*” according to the law entitled: “*Name of the Unification Codes of Legislation*”, decreed under no. 577/1936 and published in the Official Gazette, part I, no. 73 of March 27, 1936. In this version, the Criminal Code was in force from March 18, 1936 to February 1, 1948.

¹⁵ Please see the provisions of art. 219 of the Criminal Code Carol II, according to which: “*The one who, on the territory of the Romanian State, commits, against the head of a foreign state, the attack provided by Article 204, shall be punished with severe imprisonment from 10 to 15 years of age, unless a more severe punishment is due, according to this code, and when the attack resulted in the death of the head of the foreign state, with forced labor for life*”, text available by accessing the following link: <https://lege5.ro/App/Document/heztqzvu/art-261-rebeliunea-codul-penal>.

¹⁶ Please see art. 220 of the Criminal Code Carol II, according to which: “*The one who, on the territory of the country, brings an offense against the person of the head of a foreign state, shall be punished with correctional imprisonment from 6 months to 3 years*”, text available by accessing the following links: <https://lege5.ro/App/Document/heztqzvu/art-261-rebeliunea-codul-penal>.

¹⁷ Please see art. 221 of the Carol II Criminal Code, according to which: “*Whoever commits a crime against the bodily integrity, liberty or honor of a foreign diplomatic agent, accredited to the Romanian government, or of a member of a foreign diplomatic mission, knowing their quality, shall be punished with the punishment provided by law for the act committed, whose maximum is increased by a quarter. Injury, slander and defamation can only be pursued if the injured party has expressed this wish*”.

¹⁸ Please see the Criminal Code “*King Mihai I*”, R. Ciofetcu Publishing House, Bucharest, 1947, quoted in Alexandru, Marian, *op. cit.*, footnote no. 17, p. 546.

¹⁹ See, in this respect, art. 11 of the Carol II Criminal Code, according to which: “*art. 11. - Any other crimes or offenses, apart from those provided in art. 10, committed by foreigners abroad, are punished, according to art. 8, if the criminal alien is in the country and if his extradition is not requested or if the extradition cannot be executed. Prosecutions for such offenses may be prosecuted only at the request of*

Also, the realities that the Romanian society was facing at that time, is reflected also by the facts incriminated in the content of Title VII (*“Crimes and crimes that produce public danger”*), Chapter I - entitled *“Crimes and crimes that produce public danger by the use of explosives and by destruction”*- art. 352. This text expressly provides, *inter alia*, for the guilt of direct intent qualified by purpose, where the purpose is similar to acts of terrorism in the contemporary sense (*i.e. “for the purpose of causing a public danger”*)²⁰.

Following the amendment of the Criminal Code in 1948²¹, severe punishments were also imposed for the *“crime of conspiracy against the social order”*²², largely keeping the previous provisions of the Carol II Code. Moreover, in the latest version of this normative act.

The end of the communist regime marked a period of legislative vacuum in Romania, the legislation being, for the most part, anachronistic compared to the new social relations that appeared. In this sense, the first defining stage in the process of

updating the Romanian legislation was the adoption of the Constitution on November 21, 1991²³. The fundamental law establishes, in the content of Article 1, that Romania is a national state, sovereign and independent, unitary and indivisible, guaranteeing at the same time the dignity of man, the rights and freedoms of the citizens and the free development of the human personality.

Acts of terrorism infringe precisely on these fundamental social values and, therefore, it must be criminalized and severely punished by criminal law. The fight against terrorism has become the central concern of the international communities, a context in which Romania had, as a priority, to ensure a proper repression of acts of terrorism, in accordance with the rigors of international society²⁴.

In 1995, the Government submitted to the Romanian Senate the draft law on the punishment of acts of terrorism, requesting its adoption in the emergency procedure, but the Association for the Defense of Human Rights in Romania (A.P.A.D.O.R. - C.H.), considering the provisions of that bill as a

the Ministry of Justice, except for the following offenses which are prosecuted and punished in accordance with the provisions of this Code, regardless of the criminal provisions in force at the place of the offense:

1. Counterfeiting of metallic currency, banknotes, public bills, banknotes, stamps or foreign marks;
2. Trafficking in women and children;
3. Acts of terrorism considered as offenses under this Code;
4. Drug trafficking;
5. Trafficking in obscene publications (pornography);
6. Abandonment of family;
7. Participation in acts committed in order to enslave a person;
8. Piracy;
9. Breaking or destroying submarine cables, as well as circulating false signals or false calls;
10. Any other offenses provided for in this Code, for which Romania has been obliged by international conventions to punish them”.

²⁰ Please see the provisions of art. 352 of the Criminal Code of 1936, according to which: *“A person who, in order to cause a public danger, throws bombs or uses explosive substances, corrosive, asphyxiating or flammable gases or liquids, commits the crime of provoking a public danger and is punishable by correctional imprisonment from 3 to 7 years, a fine of at 5,000 to 10,000 lei and correctional ban from 2 to 5 years. One commits this crime and is punished with the same punishment as the one who demolishes, destroys, in whole or in part, buildings, buildings or any other construction, in order to cause a public danger. When the act was committed on a public building or intended for public use, monument, public statue, cemetery, factory, floating vessel or aircraft, the penalty is correctional imprisonment from 5 to 10 years, a fine from 10,000 to 20,000 lei and a correctional ban on every 3 to 5 years.*

This constitutes a crime of public danger and is punishable by:

1. with forced labor for life if a person has died;
2. with severe imprisonment from 5 to 10 years, a fine from 10,000 to 15,000 lei and civic degradation from 3 to 5 years, if a serious injury to one's health or bodily integrity has been caused”;

²¹ Published in the Official Gazette, Part I no. 48 of February 2, 1948, available online by accessing the following link: <https://lege5.ro/App/Document/g42doobz/codul-penal-din-1936>.

²² Please see the provisions of art. 209 of the Criminal Code of 1947, according to which: *“It constitutes a crime of conspiracy against the social order and is punishable by correctional imprisonment:*

- I. From 6 months to 3 years, a fine from 2,000 to 20,000 lei and a correctional ban from 1 to 3 years for preaching by word of mouth the change of the democratic form of government of the State.
- II. From 3 to 7 years, a fine from 2,000 to 20,000 lei and a correctional ban from 3 to 5 years:
 - a) the fact of making propaganda for the violent overthrow of the existing social order in the State;
 - b) the fact of establishing or organizing secret associations for the purpose indicated in the previous paragraph, whether or not they have an international character;
 - c) the fact of working, by violent means, to produce terror, fear, or public disorder, in order to change the economic or social order in Romania;
 - d) the fact of contacting any person or association of an international character, from abroad or from the country, in order to receive instructions or aid of any kind for the preparation of a reversal of the democratic order of the State;
 - e) the fact of helping, in any way, an association from abroad or from the country, which would aim to fight against the economic or social order in Romania, by the means shown in letters a and c;
 - f) the fact of joining or becoming a member of any of the associations provided for in letters b and c.
- III. Those who initiate, organize, activate or participate in fascist political, military or paramilitary organizations are punished with forced labor from 15 to 25 years and civic degradation from 5 to 10 years”;

²³ Published in the Official Gazette of Romania, Part I no. 767 of October 31, 2003.

²⁴ See, in this regard, Alexandru, Marian, *op. cit.*, footnote no. 15, p. 548.

violation of Human Rights. Thus, it submitted to the Defense Committee and the Senate Judiciary Committee its own analysis of the bill²⁵.

However, after the attacks in 2001, in New York, the Romanian Government issued an emergency ordinance, which resumes the bill proposed to the Parliament in 1995, respectively the GEO no. 141/2001 for the sanctioning of acts of terrorism and acts of violation of public order (hereinafter referred to as “GEO no. 141/2001”)²⁶.

This normative document defined acts of terrorism as “*the perpetration of the following offenses for the purpose of seriously disturbing public order by intimidation, terror or by creating a state of panic*”²⁷, by reference to the offenses of murder, bodily injury or grievous bodily harm, most often also the crimes of destruction, hijacking, nuclear terrorism, non-compliance with the arms and ammunition regime and threats to commit such acts.

The doctrine was praiseworthy for the language used in art. 1 of the GEO no. 141/2001, being “*obvious the intention of the legislator to use in “order to separate the acts of terrorism from other identical material acts, the special purpose of the agent. Thus, the phrase «when committed for the purpose of the disorder» provided in art. 1 para. (1) lit. d) does not leave room for interpretations*”²⁸. However, given the insufficient regulation of this matter, as well as the need to adopt a separate normative act, the GEO no. 141/2001 was repealed and replaced by Law no. 535/2004 on preventing and combating terrorism, on December 10, 2004.

Law on the Criminal Code no. 301/2004 brought a series of essential amendments, in terms of criminalizing the acts of terrorism in the Criminal Code²⁹. Thus, an entire title of the Special Part was devoted to acts of terrorism, namely: Title IV, entitled “*Crimes and offenses of terrorism*”. In this title, six articles incriminated acts such as: acts of terrorism, association for committing acts of terrorism, financing

of acts of terrorism, threat and alarm for terrorist purposes. At the same time, the legal persons were criminally liable for committing any of the aforementioned deeds.

However, with the increasing frequency and scope of terrorist acts, international and especially European regulatory trends have highlighted the need for a special legal framework for the prevention and repression of acts of terrorism, including internal level.

In this context, we reiterate the adoption of Framework Decision no. 2002/475/JHA on combating terrorism, as a consequence of the need to harmonize the laws of the Member States which at that time did not have special rules in this area, the only provisions under which acts of terrorism could be investigated and tried classic crimes such as: murder, destruction, arson, personal injury, etc³⁰.

At national level, on November 25, 2004, Law no. 535/2004 on preventing and combating terrorism³¹ (hereinafter referred to as “*Law no. 535/2004*”), in order to transpose Framework Decision no. 2002/475/JHA. Law no. 535/2004 expressly defines, in its very first article, the notion of “*terrorism*”. In this sense, it constitutes “*terrorism*”³²:

“(…) *those actions, inactions, and threats to them, which pose a public danger, affect the life, bodily integrity or health of persons, material factors, international relations of States, national or international security, are politically motivated, religious or ideological and are committed for one of the following purposes:*

- a) intimidation of the population or a segment of it, by producing a strong psychological impact;*
- b) the unlawful compulsion of a public authority or international organization to perform, not to perform or to refrain from performing a certain act;*
- c) serious destabilization or destruction of the fundamental political, constitutional, economic or social structures of a State or international organizations.”*³³.

²⁵ See, in this regard, Drogoman, I., *International Humanitarian Law*, Andrei Şaguna Foundation Publishing House, 1999, p. 384, quoted in Alexandru, Marian, *op. cit.*, footnote no. 22, p. 549.

²⁶ Published in the Official Gazette of Romania, Part I no. 691 of 31 October 2001, available by accessing the following link: <https://lege5.ro/App/Document/gmzdcjy/ordonanta-de-urgenta-nr-141-2001-pentru-sanctionarea-unor-acte-de-terorism-si-a-unor-fapte-de-incalcare-a-ordinii-publice>.

²⁷ In accordance with the provisions of art. 1 para. (1) of the GEO no. 141/2001.

²⁸ See, in this regard, George Zlati, *Terrorism. Aggravated form or autonomous crime? Consequences. Conceptual analysis of Law No. 535/2004 on preventing and combating terrorism (I)*, published on July 18, 2012 in the publication *Criminally relevant*, available by accessing the following link: <https://www.penalmente.eu/2012/07/18/terorismul-forma-agravata-ori-infractiune-autonoma-consecinte-analiza-conceptuala-a-legii-nr-5352004-privind-prevenirea-si-combaterea-terorismului-i/>.

²⁹ See, in this regard, the Law on the Criminal Code no. 301/2004, published in the Official Gazette of Romania, Part I no. 575 of June 29, 2004, as subsequently amended and supplemented. This version of the Criminal Code was in force from June 29, 2004, to July 28, 2009.

³⁰ See, in this respect, Ceapă, Ion, *An examination of compatibility between terrorist offenses under domestic law and existing regulations in the field at European level*, in the Criminal Law Book no. 1/2009 (January-March), C.H. Beck Publishing House, Bucharest, 2009, p. 54.

³¹ Published in the Official Gazette of Romania, Part I no. 1161 of December 8, 2004, as subsequently amended and supplemented.

³² In accordance with the amendments introduced by Law no. 58/2019 for the amendment and completion of Law no. 535/2004 on preventing and combating terrorism, published in the Official Gazette of Romania, Part I no. 271 of April 10, 2019.

³³ In its initial version, the text of art. 1 of Law no. 535/2004 was as follows:

“*Terrorism is a set of actions and / or threats that pose a public threat and affect national security, with the following characteristics:*

By reading the text of art. 1 of Law no. 535/2004, it can be easily ascertained that the characteristic elements and conditions of the acts of terrorism, as incriminated by the Romanian legislator, are strictly stated and enumerated, namely:

1. the acts may consist of actions and abstentions, the threats related to them being assimilated to the first two;
2. the documents must:
 - presents a public danger;
 - affect the life, bodily integrity or health of persons, material factors, international relations of States or national or international security;
3. the documents have an alternative motivation, political, religious or ideological.

By referring to the way of establishing the purpose, the unfortunate expression used in the content of para. (3) in art. 37¹ of Law no. 535/2004, which may be considered to be abstract. In this respect, the aforementioned text establishes as a way of identifying the purpose of an action or inaction specific to acts of terrorism the deduction from objective factual circumstances. However, It may be thought that such an ambiguous language cannot serve the purpose for which the legal norm was enacted, but, on the contrary, leaves wide open a door to an extensive interpretation - given that it is in the state of “*objective factual circumstances*” is not defined - with consequences of a wrongful application of the law.

At the level of judicial practice, the High Court of Cassation and Justice³⁴ ruled, in assessing the factual circumstances, in the sense that:

„Thus, the court of judicial control finds that the action of the defendant falls, under the aspect of the objective side, in the pattern of the norm of incriminating the deed for which he was sent to court, respectively art. 32 para. (4) of Law no. 535/2004 in conjunction with art. 32 para. (3) letter a) of Law no. 535/2004 reported to art. 1 letter a) of Law no. 535/2004, the evidence highlighting that the defendant sought to intimidate the population by producing a strong psychological impact, in the sense that, speaking on behalf of an international terrorist organization respectively, ISIS (DAESH), initially in English and then in Romanian, with Arabic accent, the defendant

announced the placement of «three devices» in C., the threatening action being able to produce a serious fear and alarm several specialized state institutions.”.

However, if the factual situation is not obvious, as in the case in which the Supreme Court ruled, how are the factual circumstances assessed? According to what criteria, how long are they not provided by law? Doesn't it go through a purely subjective evaluation register? Of course, these questions remain rhetorical for the time being.

Also from the perspective of identifying the features of acts of terrorism, if acts of terrorism are committed: a) on the territory of at least two states; b) in the territory of a State, but part of their planning, training, management or control takes place in the territory of another State; c) on the territory of a state, but involves a terrorist entity that carries out activities on the territory of another state; d) on the territory of one state, but have substantial effects on the territory of another state; they are qualified as transnational, as provided by art. 3 of Law no. 535/2004.

However, in the specialized literature there have been controversies about the way in which the Romanian legislator regulated terrorism crimes, even raising the question of whether the new normative act provides for an “*aggravated form or an autonomous crime*?”³⁵. In the opinion of this author, the critique of the Romanian legislator's approach concerns a series of aspects, namely:

- restricting the special motive only in terms of political character - “unjustifiably limits the scope of the definition. The doctrine has highlighted the inadequacy of the political motive, since terrorism can be based on a multitude of factors, including ideological, religious, etc.”³⁶. Of course, the quoted criticism focused on the initial form of the text, an aspect that has already been corrected by the legislator, by including ideological and/or religious factors, along with the political factor;

- the aim was to sanction the criminal conduct, and not the person who committed it - by taking into account the principle of legality (*i.e. nulla poena sine lege*), in the sense that “the state must sanction the criminal conduct and not the criminal type. In other words, the principle in question concerns a person

a) are premeditatedly committed by terrorist entities, motivated by extremist conceptions and attitudes, hostile to other entities, against which they act in violent and / or destructive ways;

b) aim to achieve specific objectives of a political nature;

c) concerns human and / or material factors within the public authorities and institutions, the civilian population or any other segment belonging to them;

d) produce conditions with a strong psychological impact on the population, meant to draw attention to the pursued goals.”.

³⁴ Please see, in this regard, HCCJ, crim. s., Panels of 5 judges, Decision no. 40/2021, rendered on February 1, 2021, available online by accessing the following link: <https://www.scj.ro/1093/Detailii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Val ue=175812>.

³⁵ Please see Zlati, George, *op. cit.*

³⁶ In this regard, please see Cassese, A., *The Multifaced Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice*, vol. 4, 2006, p. 939 and MacDonald, E., Williams, G., *Combating Terrorism: Australia's Criminal Code Since September 11, 2001*, *Griffith Law Review*, vol. 16, no. 1, 2007, p. 31, quoted in Zlati, George, *op. cit.*, footnote 33.

given as a criminal because of his conduct, regardless of who he is and what that person is³⁷;

- conceptually, the author considers that terrorist acts should be seen as an aggravated form of traditional crimes already sanctioned internally, in line with the arguments listed below³⁸:

a) including before the adoption of Law no. 535/2004, terrorism could be sanctioned, the simple fact that this prosecution was already possible proving the lack of a conceptual autonomy of the incriminations of the special law;

b) comparatively analyzing the traditional crimes and the incriminations from Law no. 535/2004, it is found that the difference lies in the existence of the special purpose/mobile. Consequently, the objective pursued by the legislator is an obvious one, namely: the desire to sanction more severely the material side present in the common law, when there is a certain subjective element;

c) the aggravated sanctioning treatment would not derive from guilt, but from the abstract danger of the deed, which springs from the superior motivation of the agent, essential motivation in order to qualify the whole deed as a terrorist act;

d) the aim is to provide a unitary and aggravated sanctioning framework - in line with the danger of the phenomenon in question, to allow special means of

investigation and the development of international cooperation (procedural issues), not to “create new crimes”, etc.

Law no. 535/2004 expressly defines, in the content of art. 4, the meaning of terms and expressions used/used in its content, such as: terrorist entity³⁹, terrorist⁴⁰, structured group⁴¹, terrorist group⁴², terrorist organization⁴³, terrorist actions⁴⁴, funds⁴⁵, propaganda⁴⁶, material factors, specific human factors, etc.

The definition given to terrorist acts subsumes acts of preparation⁴⁷ (*i.e.* preparation, planning, promotion), acts of execution (*i.e.* committing, leading, coordinating and controlling the terrorist act), as well as any other activities carried out after committing the terrorist act, if related. On the one hand, the abstract expression of this rule can be noted as all-encompassing - given that it allows the extension of the interpretation to any other situation not provided for in its text. On the other hand, however, I appreciate that the criminal norm must be clear, and formulations such as the one found in art. 4 point 4 of Law no. 535/2004 must be clarified, in the sense of no longer allowing extensive interpretations that could lead to an abusive application of the legal norm.

Regarding the notion of funds, it is notable that, although it seems all-encompassing, the enumeration of

³⁷ Please see McSherry, B., *Terrorism Offences in the Criminal Code: Broadening the Boundaries of Australian Criminal Laws*, New South Wales Law Journal, vol. 27, no. 2, 2004, p. 364, quoted in Zlati, George, *op. cit.*, footnote 38.

³⁸ Please see Zlati, George, *Terrorism. Aggravated form or autonomous crime? Consequences. Conceptual analysis of Law no. 535/2004 on preventing and combating terrorism (II)*, published on July 18, 2012 in the publication *Criminally relevant*, available by accessing the following link: <https://www.penalmente.eu/2012/07/18/terorismul-forma-agravata-ori-infraciune-autonoma-consecinte-analiza-conceptuala-a-legii-nr-5352004-privind-prevenirea-si-combaterea-terorismului-ii/>.

³⁹ Please see art. 4, point 1 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 1. terrorist entity - a person, group, structured group or organization which, by any means, directly or indirectly: a) commits or participates in acts of terrorism; b) prepares to commit acts of terrorism; c) promotes or encourages terrorism; d) supports terrorism in any form;*”.

⁴⁰ Please see art. 4, point 2 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 2. terrorist - a person who has committed an offense under this law or intends to prepare, commit, facilitate or instigate acts of terrorism;*”.

⁴¹ Please see art. 4, point 3 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 3. structured group - the association of three or more persons, having their own hierarchy, set up for a certain period of time to act in a coordinated manner for the purpose of committing acts of terrorism;*”.

⁴² Please see art. 4, point 4 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 4. terrorist group - the association of two or more persons who, without necessarily having a formally established structure and hierarchy, were formed for the purpose of committing acts of terrorism;*”.

⁴³ Please see art. 4, point 5 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 5 terrorist organization - a hierarchically constituted structure, with its own ideology of organization and action, having representation both at national and international level and which, for the achievement of specific goals, uses violent and / or destructive ways;*”.

⁴⁴ Please see art. 4, point 7 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 7. terrorist acts - the preparation, planning, promotion, perpetration, conduct, coordination and control of the terrorist act, as well as any other activities carried out after its perpetration, if they are related to the terrorist act;*”.

⁴⁵ Please see art. 4, point 8 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 8. funds - goods of any kind, tangible or intangible, movable or immovable, acquired by any means and legal documents or instruments in any form, including electronic or digital form, attesting to a right of ownership or interest in such goods, credits banknotes, traveler's checks, bank checks, money orders, shares, securities, bonds, special drawing rights and letters of credit, without limiting this enumeration;*”.

⁴⁶ Please see art. 4, point 9 of Law no. 535/2004, according to which: “*For the purposes of this law, the terms and expressions below have the following meanings: 9. propaganda - the systematic spread or apology of ideas, concepts or doctrines, with the intention of convincing and attracting new followers;*”.

⁴⁷ For details on the delimitation of the preparatory acts from the execution ones, please see Dobrinou, Vasile, commentary in Chiș, Ioan, Dima, Traian, Dobrinou, Maxim, Dobrinou, Vasile, Gorunescu, Mirela, Hotca, Mihai Adrian, Pascu, Ilie, Păun, Costică, *The New Criminal Code commented. General part*, 3rd ed., revised and added, Universul Juridic Publishing House, Bucharest, 2016, pp. 245-247.

the different types of goods that are part of the category of funds, within the meaning of Law no. 535/2004, ends with the specification: “*without this enumeration being limiting*”. Thus, the legislator managed to include any category of goods that can be used to finance acts of terrorism, even virtual currencies.

Terrorist financing consists in the collection or making available, directly or indirectly, of funds, lawful or unlawful, with the intention of being used or knowing that they are to be used, in whole or in part, for committing acts of terrorism or for supporting a terrorist entity and is punishable by imprisonment from 5 to 12 years and the prohibition of certain rights, according to the provisions of art. 36 para. (1) of Law no. 535/2004.

Moreover, the perpetration of an offense for the purpose of obtaining funds, with the intention of being used or knowing that they are to be used, in whole or in part, for committing acts of terrorism or for supporting a terrorist entity, shall be punished with the penalty provided by law for that offense, the maximum of which is increased by 3 years. If these funds have been made available to the terrorist entity, the rules on concurrence of offenses shall apply.

In addition, the provisions of the Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts⁴⁸ (hereinafter referred to as “*Law no. 129/2019*”). This normative act repealed Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting forth of measures to prevent and combat the financing of terrorism⁴⁹, republished in the Official Gazette of Romania, Part I, no. 702 of October 12, 2012, as subsequently amended and supplemented⁵⁰.

According to art. 2 letter b) of Law no. 129/2019, by financing terrorism is meant the crime provided in art. 36 of Law no. 535/2004 on preventing and combating terrorism, as subsequently amended and supplemented. Therefore, the cited text of the law refers to art. 36, which is duly completed, meaning that it can be deduced that, insofar as the funds used to finance terrorism are illicit - resulting from the crime of money

laundering⁵¹ - money laundering is a prerequisite for the crime of terrorism.

In force legislation in the field of preventing and combating money laundering is particularly important, including from the perspective of combating terrorism, given that “*through this crime, the fuel necessary for the existence and functioning of organized crime and the financing of terrorist acts is produced*”⁵².

From the perspective of the degree of social danger of the acts of terrorism, this is reflected also in the distinct incrimination of some preparatory acts, the Romanian legislator regulating, in the content of art. 33 para. (1), the following activities:

a) the procurement, possession, manufacture, manufacture, transport or supply of dual-use products or technologies or military products or explosive or flammable materials, for the purpose of producing destructive means, explosive devices of any kind, as well as chemicals, biological, radiological or nuclear, likely to endanger the life, health of humans, animals or the environment;

b) providing instructions on the manufacture or use of explosives, firearms or any other weapons, harmful or dangerous substances, or on specific techniques or methods of committing or supporting the perpetration of an act of terrorism, knowing that those powers offered are or may be used for this purpose.

c) receiving or acquiring instructions through self-documentation on the manufacture or use of explosives, firearms or any other weapons, harmful or dangerous substances, or on specific techniques or methods of committing or supporting the perpetration of an act of terrorism;

d) the qualified theft committed in order to commit the offenses provided in art. 32 para. (1) and (3) and in para. (1) and (2).

The following paragraph of the same provision of the law regulates the attenuated version of para. (1), for acts such as:

a) *facilitating the crossing of the border, hosting or facilitating the access* in the area of the targeted objectives of a person who is known to have participated or committed or is to participate or to commit an offense provided in para. (1) or to art. 32

⁴⁸ Published in the Official Gazette of Romania, Part I no. 589 of July 18, 2019.

⁴⁹ Republished in the Official Gazette of Romania, Part I, no. 702 of October 12, 2012, as subsequently amended and supplemented.

⁵⁰ Please see the provisions of art. 65 letter b) of Law no. 129/2019.

⁵¹ Please see, in this regard, the provisions of art. 49 para. (1) of Law no. 129/2019, according to which: “(1) *It constitutes the crime of money laundering and shall be punished by imprisonment from 3 to 10 years:*

a) *the exchange or transfer of goods, knowing that they come from the perpetration of crimes, in order to conceal or conceal the illicit origin of these goods or in order to help the person who committed the crime from which the goods come to evade prosecution, trial or execution of the sentence;*

b) *concealment or concealment of the true nature, provenance, location, disposition, movement or ownership of property or rights thereon, knowing that the property is the result of an offense;*

c) *the acquisition, possession, or use of goods by a person other than the active subject of the crime from which the goods come, knowing that they come from the perpetration of crimes”;*

⁵² Hotca, Mihai Adrian, commentary in Hotca, Mihai Adrian, Hach, Elena, *Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts. Comment on articles. Second edition, revised and added*, Universul Juridic Publishing House, Bucharest, 2021, p. 17.

para. (1) or (3);

b) *collecting or possessing*, for the purpose of transmission, or making available data and information on targets targeted by a terrorist entity;

c) *falsifying official documents or using them* for the purpose of facilitating the perpetration of an act of terrorism;

d) *blackmail* committed for the purpose of committing an act of terrorism.

e) Regarding the attempt, art. 37 para. (1) of Law no. 535/2004 states that, for the facts provided in art. 32, 33, 34⁵³, art. 35⁵⁴, art. 36 para. (1)⁵⁵, the attempt is punished, the notion of attempt including the following:

- production or procurement of means or instruments,
- taking action as well
- the agreement reached between at least two persons in order to commit an act of terrorism, respectively the unequivocal expression, regardless of the modality or context, of the intention to commit an act of terrorism.

Thus, the legislator chose to regulate the attempt so that it absorbs, in its content, certain preparatory acts. Including from this point of view, the gravity of the facts regulated in the content of Law no. 535/2004. On this occasion, it is worth reiterating the criticism of the ambiguity of the language used in the last paragraph of this article, which allows an extensive and unobjective interpretation of the text of the law, with the possible consequence of wrong legal classification and application of Law no. 535/2004 to situations not regulated by it.

3. Conclusions

The international community has been witnessing an exacerbation of the phenomenon of international terrorism for several decades.

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Significant contributions to the realities of this century, from the perspective of security vulnerabilities, have factors such as: technological progress, destabilization of social, moral, confessional, ideological beliefs and, last but not least, distancing on all levels of the individual, which leads, slowly but surely to the dehumanization and brutalization of individuals.

Antiquity has known, for the first time, the phenomenon of terrorism, of course with a different motivation, purpose and other operational capabilities. Changes at the societal level have also been reflected in the manner and means of carrying out terrorist attacks.

Today, technology is part of the “normality” of society, so that any event, any information can be accessed or communicated / distributed in real time. Who would have thought that the beginning of the third millennium would present “live” a grotesque spectacle of death, terror and mass misinformation?

Terrorism has acquired new valences, which not even the doctrine can fully discern. Thus, there is still no accepted general definition of terrorism, and this difficult task falls on some states.

Of course, in recent years, at least within the Union framework, instruments have been adopted to harmonize the laws of the Member States which have proved their effectiveness, but apparently, no matter how much effort is made, terror and organized crime know no bounds. ingenuity.

By reference to the Romanian legislation, it can be concluded that the concern for conceptualizing the notion of terrorism has now taken a concrete but permanently perfectible form, in terms of international and national law, and judicial practice will facilitate the identification of possible regulatory deficiencies.

⁵³ „The act of requesting one or more persons, directly or indirectly, by any means, to commit or support the perpetration of an act of terrorism constitutes an offense and is punishable by the penalty provided by law for the offense which was the subject of the request.”

⁵⁴ “(1) The movement of a person from the territory of the State of which he is a national or from the territory of which he has his domicile or residence to or into the territory of a State other than that of which he is a national or resident for the purpose of committing, planning or preparing acts terrorism or to participate in them or to provide or receive training or preparation for committing an act of terrorism or to support, in any way, a terrorist entity, constitutes travel for terrorist purposes and shall be punished by imprisonment from 5 to 12 years, and prohibition of certain rights. (3) Any act of organization or facilitation by which assistance is offered to any person to travel abroad for terrorist purposes, knowing that the assistance thus provided is for this purpose, shall be punished by imprisonment from 2 to 7 years and the prohibition of certain rights.”

⁵⁵ „(1) It is an offense to finance terrorism by collecting or making available, directly or indirectly, funds, lawful or unlawful, with the intention of being used or knowing that they are to be used, in whole or in part, for the perpetration of acts of terrorism. terrorism or to support a terrorist entity and is punishable by imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights”.

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