

INFRINGEMENTS AGAINST THE PATRIMONY IN THE ITALIAN LEGISLATION

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Abstract:

The Italian Penal Law distinguishes among the infringements against the patrimony, depending on the violence against a person, and or things, or has as a fundament the fraud.

This classification became traditionally has been took over from the Middle Age's jurists who used to make difference between the facts against patrimony committed by violence and those committed by fraud (aut vi, aut frauda delinquitur).

However, the Italian penologists have underlined however that this classification of the infringements against the patrimony doesn't include all the infringements being multiple infringements that could not be placed in any of these categories. Hence, the efforts of some authors to identify other larger classifications of infringements against patrimony.

Opinions have been expressed in the sense of inutility of any classifications, given that the permanent grow, under the modern life conditions, of the forms and methods of aggression against the patrimony.

Key words: patrimony, fraud, Italian legislation, penal law.

The Italian Penal Law distinguishes among the infringements against the patrimony, depending on the violence against a person, and or things, or has as a fundament the fraud. This classification became traditionally has been took over from the Middle Age's jurists who used to make difference between the facts against patrimony committed by violence and those committed by fraud (aut vi, aut frauda delinquent). However, the Italian penologists have underlined however that this classification of the infringements against the patrimony doesn't include all the infringements being multiple infringements that could not be placed in any of these categories. Hence, the efforts of some authors to identify other larger classifications of infringements against patrimony. Opinions have been expressed in the sense of inutility of any classifications, given that the permanent grow, under the modern life conditions, of the forms and methods of aggression against the patrimony. The argument that the purpose of the special part of the criminal law to facilitate the profound knowledge of penal law and the correct solution of disputes arising out of

its interpretation has been also added , any other preoccupations ,such as those of systematization, classification of these infringements being without any importance¹²⁵. However, the latter idea has been remained singular, the Italian majority doctrine having a contrary opinion, in the sense that the division of these infringements against patrimony, even it does not contribute to a more profound knowledge of these infringements (it has not any dogmatic significance), is useful for didactic purposes, contributing to a more serious fixation of the notions which the legislator operates in the this matter.

Many of the Italian authors classify the infringements against patrimony into:

A. Unilateral aggression Infringements , among them are located stealing infringements (theft , robbery),abuse infringements on patrimonial assets(abuse of confidence), infringements of destruction, infringements of possession interference and abuse on other's asset; B. Infringements committed in cooperation with the victim , among whilst are found the black mail infringement, person sequestration for blackmailing , cheat, usury, and the person debility status abuse; C. Infringements of patrimonial damage making and consolidation ,among which are situated the infringement originated money hiding and recycling¹²⁶).

From the first group of infringements, of unilateral aggression against the patrimony (infringements of stealing), make part, as already specified above, the theft which regulated in several variants (common theft, small thefts, theft from common property, theft in the military life, the theft committed to the board of the ships (by a member of the crew). We will analyze the first 3 categories of theft only, incriminations that have their center in the penal code, last two being included in special laws.

The theft, in the conception of the Italian legislation includes the following fundamental elements: the existence of a stealing of a mobile good from the detention of another, the transfer of the good in the detention of the agent, the existence of a material object (that it must be a mobile good of the other), should exist a property damage, and the agent should have been operated with specific malice, that is in the purpose of getting a profit.

As in the Romanian penal law, the theft implicates a dispossession of that that previously had the possession or the detention of the good. The Romanian penal law considers that the immediate continuation of the crime, under penal aspect, is not the patrimonial damage, but the illicit change in the situation of crime that the good used to previously had, the damage is the consequence of the civil law of the theft; if the agent gives the good back or reimburses who he had the good taken from, the infringement will subsist. The Romanian penal law ,under

¹²⁵ Francisco Antolisei, *Manuale di diritto penale, parte speciale I*, Milano, 1996, pp. 278- 281.

¹²⁶ Ferrando Mantovani, *Diritto penale, Delitti contro il patrimonio con appendice di aggiornamento*, CEDAM , Padova, 1994, p. 59; *Giovani Fiandaca, Enzo Musco, Diritto penale, parte speciale*, Zenichelli, Editore,Bologna, 1996, pp. 46,141,217.

the subjective aspect, also pretends that it should exist a specific malice (a qualified purpose intent), but the purpose must not be getting a profit(as in the Italian penal law), but the purpose is to unfairly appropriate the good , and in the case of a vehicle stealing, it should exist the purpose of unfairly make usage of the vehicle¹²⁷ without interesting if the agent had got or not a profit

The active subject of the infringement, according to the Italian law, can be any person; only in the case of the theft in the military life or on the board of a ship, the active subject should be qualified.

The Italian doctrine does not deal with the juridical object specific to any infringement, but only with the material object (the juridical object problematic is exhausted within the general explanations given as to the infringements against the patrimony). The material object of the theft is not only the object that the holder has in his hand or in his vicinity, that is in a sphere where he has the possibility of an immediate access, but also, if the object is found at the distance , if the subject it preserves the possibility to establish the physical contact with the good itself (for example, in the case of the forgotten things, the knowing the place where the good is found and being in measure to get it back in any moment; or in the case of the things left without overseeing ,but which are located in the sphere of immediate access of the holder (such as his/her own boat anchored to the shore, or the vehicle left ahead railroad the station to continue the trip by train, the table companion's steal of the dishes ,the steal of the house servant of the good from her landlord's house ,the steal of the commodity from the part of a customer, of books from the reading room, the steal of the gasoline from the part of the driver and so on).

Under the aspect of the material element, the theft is consumed through stealing, and the agent's dispossession as well, elements that the doctrine and jurisprudence distinctly analyze them directly, because they may exist in an autonomous way ; if both effects are not carried out, then the theft infringement does not exist.

In the conception of the Italian doctrine as compared to the Romanian doctrine, which adopted an adverse thesis, their no theft (but theft tentative), if the good continued to remain in the sphere of the holder's surveillance (for example, it is still found in the house, hidden by the agent, or it is found even on him), because in such situations the passive subject has not lost yet the material contact to the said good, and the agent has not acquired the possibility to freely dispose on the stolen good. There will be a consumed theft, if the agent, even he has not left the territory of a farm, has acquired the possibility to automate dispose of the stolen good¹²⁸. Thus, the Italian doctrine was situated on the point of view according to which the carrying out of the theft is not estimated depending on a space material criterion, but on a personal criterion, that is the active subject should have got the

¹²⁷ F. Mantovani, cited paperwork, p. 59 ; Antolisei, cited paperwork, p. 286 ; G. Fiandaca,E. Musco, cited paperwork, p. 46

¹²⁸ Vintila Dongoroz e coll.,Spiegazioni teoretiche del Codice Penale Romeno, vol.III,Editura Academiei, Bucarest, 1971, pp. 464-466.

possibility to dispose of a good freely, and the passive subject should be deprived of such possibility.

In the Romanian doctrine, these moments are not dealt separately, considering implicitly, that once with the stealing, that is the change in the situation of the good, the latter is not found any more available for the person who used to previously have in his possession or detention, and it is also carried out the transfer of the good at the agent's disposal (dispossession)¹²⁹

In such a concept, it is justified to be admitted the possibility of theft carrying out, even if that one is hidden by the agent in the house enclosure where it was previously, bringing it, at an opportune moment, to another place. Such a position is disputable with regards to the Italian vision. According to some Italian authors, the two moments may intervene to a distance of time one from another and even in different places (for example, if the agent throws in the court or from the train the stolen things, that he will go to pick them later on). Between the two moments the voluntary desistment or the impediment of the production of the result may occur, since, up to the moment of the effective taking of the good (dispossession), the infringement has not carried out, failing to produce the result required by the law¹³⁰.

The theft is qualified, according to the Italian penal law (art.625), under the following circumstances:

- a. if the agent uses violence on the things or it makes use of any other fraudulent means
- b. if the agent, in order to commit a theft, enters an edifice or other place with the destination of dwelling
- c. if the agent is in possession of guns, or narcotic substances, without use them;
- d. if the crime is committed with ability (pickpocket theft or tearing the object from the hand or from the victim (for example, the theft of the tie, necklace, and so on).
- e. If the crime is committed by three or more persons, or by a disguised person, or simulating an official quality or by a person in charge with a public service
- f. When the crime is committed on travelers' luggage of any vehicle, on the stairs, on the bank, of in hotels or other places, where food and drinks are consumed
- g. If the crime is committed on things found in public units or subject to sequestration or exposed by necessity, custom or destination to the public confidence or destined to a public service, or designated to a public utility service, or for defense purpose against collectivity damaging events or for demonstration of the veneration, of the respect towards specified things;
- h. If the crime is committed against three or more animals gathered in herd or on cattle, horses even not in herd;

¹²⁹ Vintila Dongoroz e coll., Spiegazioni teoretiche del Codice Penale Romeno, vol.II, pp. 464-466.

¹³⁰ Ibidem, p.464

- i. If the crime is committed on guns, ammunitions, or explosive substances in arsenals or warehouses or other places designated to their storage.

As one can noted, some aggravate circumstantial elements are similar to those of the Romanian penal law, others are different in comparison with the traditions and the repressive needs of the Italian society. We would draw attention on the aggravate as to the violence on things, which circumstance makes the difference between the theft and the robbery, where violence is exerted on people. Lack of such an aggravating act in our penal law has determined the rendering of controversy solutions in the interpretation of the material element of the robbery infringement.

The common theft is punished by the Italian penal law with prison up to 3 years and a fine from 60,000 to 1,000,000 LIT, and in the assumption of the qualified theft with prison from 1 to 6 years and a fine from 200,000 to 2,000,000 LIT. In the case of the aggravating act as to the gun, ammunitions or explosive theft, the penalty is with prison from 3 to 10 years and a fine from 100,000 to 400,000 LIT. In the case of aggravating act concurrence the penalty is with prison from 3 to 10 years and fine from 400,000 to 3,000,000 LIT, and if the gun, ammunitions or explosive theft infringement is in concurrence thereof, the penalty is prison from 5 to 12 years and fine from 200,000 to 600,000 LIT.

Minor thefts. Under this name there are included thefts punished in the previous claim. In this category is included the theft from a residence (when the theft has been committed for an immediate utilization and the thing has been given back at once; the theft committed on low value things and to meet a serious and urgent need; the abusive harvesting of vegetable rests from other's land, tough the harvest has been collected by the owner.

The theft of common property assets(art. 625 Penal Code) refers to the common property stealing committed by a co-owner, co-heir , partner .This is not an infringement ,if it is a question of fungible things, and their value is not higher than the value due to the agent. These crimes are also pursued, at the previous claim.

The penalty for theft in all hypotheses, when they are opuses at previous claim, is prison up to 2 years, and fine from 40,000 to 400,000 LIT.

We note that the sphere of thefts under pursue at previous claim is larger in the Italian penal law (model to which the Romanian legislator may reflect on). The differences made by the Italian law between the common theft and the theft of low importance values or for meeting an urgent and serious need ,or the common property theft , meet to objective realities, such situations relevant a lower danger of the crime and the agent as well. The Italian law does not make a difference between the common theft and that committed between the spouses or close relatives or in the other assumptions of art.210 Romanian Penal Code, the more favorable proceeding regime being conditioned by some essential requirements of the material element or of the agent's co-owner, partner or co-heir quality. On the other hand, the more favorable proceeding regime in such situations is

accompanied by a gentler punishing regime, which the Romanian law recognizes in the assumptions under art.210 Penal Code.