THE RELATIONSHIP BETWEEN LOAN SHARK AND EXTORTION – CONCEPT OF CRIMINAL OFFENSES, SIMILARITIES,DIFFERENCES, SOLVING AND PROVING

Gordana Nikolić, PhD[1]
Ministry of the Interior of the Republic of Serbia

Abstract: The criminal offenses of loan shark and extortion are incriminated in the same chapter of the Criminal Code in the group of offenses against property, in special articles with precisely defined action, conceptual and more serious forms. However, in addition to the different legal incrimination of these acts and their different practical manifestations, these crimes show certain similarities, and are sometimes difficult to determine in practice, especially if the connection of these acts has led to a number of their closeness to the object of protection, a special subjective element on the part of the perpetrator. The manner of obtaining material gain, the specificity of the manner of execution, different punishments and different ways of initiating criminal proceedings indicate evident, clear, but sometimes difficult to detect differences between these acts.

The author gives definitions of the crime of loan shark and extortion incriminated by the Criminal Code of the Republic of Serbia, their more difficult forms, and notices the similarities and differences between these acts that indicate easier, more efficient and clearer elucidation of their commission, possible prevention, solving and proving.

Keywords: loan shark, extortion, Criminal Code, solving, proving.

INTRODUCTION

Although the acts of committing criminal acts of loan shark and extortion are differently defined in the law, in rich practice they are conditioned, connected, and often intertwined with each other. The similarities and differences that are grounded between these acts, sometimes helped, and sometimes did not help in determining the acts in practical manifestation, and thus in their solving and proving.

1 chupka84@gmail.com

Although both acts are placed in the group of crimes against property in different articles, their analyses, as well as the features that connect and separate them, are the basis for efficient, fast and thorough solving and proving in criminal practice.

The criminal offenses against property are general, archaic, conventional, classic crimes that know all criminal laws from ancient times to modern times. In the Republic of Serbia, they are systematized in a special part of the Criminal Code, in Chapter Twenty-one.

The title: "The criminal acts against property" indicates the nature, type and character of the group object of protection of these crimes - and that is property or the right to property (as one of the basic human rights guaranteed by a number of international documents of universal or regional character). The object of protection in these crimes is, as their name suggests, property.

The crime of extortion are included in hybrid crimes (Jovašević, 2010) - acts that have a dual legal nature. Thus, these acts are simultaneously: a) a form of property crime - with regard to the object of protection, i.e. the object of attack, and b) a form of violent crime or crime of violence - with regard to the manner and means of undertaking the act of execution.

Although loan shark is legally defined as a form of property crime, in practice this criminal act is often accompanied by violence, bearing in mind that victims are afraid of violence that may be inflicted on them by perpetrators of loan shark.

The paper reviews the incrimination of criminal offenses of loan shark and extortions in the Criminal Code of the Republic of Serbia, emphasizing similarities and differences of this property offense, pointing out more efficient, better and simpler solving with valid material and personal proving that would be used in further criminal proceedings and would be the subject of proving.

CRIMINAL LAW DETERMINATION OF EXTRORTION

Extortion in the criminal law of the Republic of Serbia is regulated by the provisions of the Criminal Code ("Official Gazette of the RS", No. 85/05, 88/2005, 107/2005, 72/2009, 111/2009, 121/12, 104/13, 108/14, 94/16 and 35/19) and prescribed in the group of criminal offenses against property, in Article 214. The offense has one basic and four difficult (qualified) forms (Jovašević, 2011). The basic form of the crime consists in the following: "Whoever, in order to obtain illegal property gain for himself or another, by force or threat forces another to do or not do something to the detriment of his or someone else's property, shall be punished by imprisonment for one to eight years"(paragraph 1).

The action of committing this criminal act is coercion a passive subject to do or not do something to the detriment of his or someone else's property (Jovašević, 2017). Coercion (the act coercion) is performed in two ways: by force or threat, which are marked alternatively in the incrimination of the act with the possibility that the perpetrator uses both force and threat cumulatively (Stojanović, 2014).

According to its characteristics, extortion is a specific criminal offense because coercion appears here only as a means to achieve the basic goal of extortion, which is to obtain illegal property gain (Lazarević, 2011). Considering that the goal of extortion is to obtain illegal property gain and that is the reason why this criminal offense is classified as criminal offenses against property.

The perpetrator can be any person, and in terms of guilt, direct intent is required, which qualifies direct intent (obtaining illegal property gain for oneself or another). If force or threat is used without such intention, it will not be extortion but some other criminal act, primarily coercion.

The first and second more severe forms of extortion are qualified by the amount of material gain obtained. If the extortion obtained an illegal property benefit in the amount exceeding four hundred and fifty thousand dinars, the perpetrator shall be punished by imprisonment for a term between two and ten years (paragraph 2), and if by committing the basic form of the crime an illegal property benefit in the amount exceeds one million and five hundred thousand dinars, the perpetrator shall be punished by imprisonment for a term between three and twelve years (paragraph 3).

In addition to these more serious forms, which are qualified by the amount of property gain obtained, there are two other more serious forms of the crime of extortion. The third serious form of crime (paragraph 4) exists in one of two alternatively prescribed cases: 1) if the perpetrator is dealing in committing basic or more serious, previously mentioned, forms of extortion (which implies continuous commission of this crime, i.e. in the form of craft) or 2) if the act was committed by a group, qualifying circumstances of this form of crime consist in "dealing" in the commission of the crime, so for this notion it is not enough that extortion is committed only once, even in those situations when the intention to repeat the crime can be repeated (Stojanović, 2019) or committing acts by a group (not a single perpetrator). For this qualified form of crime, a prison sentence of five to fifteen years is prescribed.

Fourth, the most serious form of crime, which was introduced into the legal text by the most extensive amendment to the Criminal Code in 2009, and as such is the only form of organized crime, exists if extortion (basic or more serious forms qualified by the amount of material gain obtained) is committed by organized crime groups (paragraph 5). This form of extortion is one of the typical activities of organized crime, which is slang for "racket" or "racketeering" (Škulić, 2015). For this most severe form of extortion, a prison sentence of at least five years is prescribed, which means that a special minimum sentence is set, while the legislator did not prescribe a special maximum sentence, but the maximum sentence is equal to the general maximum prison sentence of twenty years.

CRIMINAL LAW DETERMINATION OF LOAN SHARK

The criminal offense of loan shark is also prescribed in the group of criminal offenses against property, in the provision of Article 217 of the Criminal Code. An act is a person who, for lending money or other consumables to another person, receives or contracts for himself or another disproportionate material benefit, taking advantage of difficult financial situation, difficult circumstances, necessity, recklessness or insufficient ability to reason passive subject.

In this criminal offense the object protection (Đorđević, 2011) is the property (movable or immovable) of a person who is in a difficult situation or necessity. The essence of the act of loan shark is in fact lending money to another person with "interest" which is disproportionately high in relation to the money given and which the perpetrator of the criminal act determines himself, and very often during the time until the debt is repaid, often increases its amount and thus achieves a disproportionate property benefit. It is important to emphasize that the perpetrator performs this action using the difficult financial situation of another person, his difficult opportunity, necessity, recklessness or insufficient ability to reason.

From the legal definition of the crime we may conclude that the category of victims of the criminal offense of loan shark includes persons who are in a difficult financial situation, as well as persons with the characteristics prescribed by the incrimination of this offense. In most cases, these are people who do not earn a permanent income, because in that case they would take the money "on loan" from the bank, with the legally prescribed interest rate harmonized with the state regulations, and not "on the street "from unauthorized persons. However, in the rich criminal practice, not only these persons do not have to be found in the capacity of victims, but they can also be persons who cannot realize the funds they need at that moment. In this way, the passive subject, due to their difficult financial situation borrows more and more money bearing in mind that the perpetrators often increase the interest on the debt and reduce the deadlines for repaying the debt, so the damaged parties often decide to sell the remaining property they own and thus make their difficult financial situation even more difficult.

The act of execution is alternatively set: receiving or contracting a disproportionate property benefit for lending money or other consumables. Considering such an alternatively set act of execution (receipts or contracts), this is at the same time a tort of violation, the execution of which leads to reduced property of the passive subject and a tort of endangerment, if the contract is not realized (Stojanović, 2019). For the existence of the act, it is important that this action refers to the disproportionate property benefit, which in this way is obtained by the perpetrator of the act.

For the existence of a criminal offense, it is necessary that two more elements are met. These are: a) the action of execution is undertaken in connection with the giving of money (domestic or foreign) or other consumables (of value) on loan (provided that they are returned in a certain time and under certain conditions) and b) the action of execution is undertaken by the perpetrator who knows about the difficult condition of the passive subject, which is precisely the exploitation for the commission of the act. These are: difficult financial situation, difficult circumstances, necessity, recklessness or insufficient ability to reason.

For this offense the sentence is a cumulative prison of up to three years and a money punishment are prescribed for this crime, whereby the legislator explicitly determined that criminal prosecution for this crime be undertaken at the proposal of the injured party.

The act has two more difficult forms of manifestation. The first serious form of crime exists in two cases: a) if the undertaken act of execution caused severe consequences for the passive subject and b) if the perpetrator thus obtained material gain in the amount exceeding 450.000 dinars. This amount of use is determined according to market conditions at the time of the commission of the act. This offense is punishable by imprisonment from six months to five years with a cumulative money punishment.

Another serious form of crime also exists in two cases: a) if the perpetrator obtained material gain in the amount of over 1.500.000 dinars by the undertaken act of execution and b) if the act was committed by a group. A cumulative prison sentence of one to eight years and a fine are prescribed for this crime.

SIMILARITIES BETWEEN THE CRIMINAL OFFENSES OF EXTORTION AND LOAN SHARK

The similarities between the criminal acts of extortion and loan shark seem to be very large, but essentially very small, so with a careful analysis of the legal incriminations of their actions, these acts can be more easily distinguished in practice. However, it is important to point out some of the similarities of these crimes in order to help criminal solution of these crimes, find and provide proving.

First of all, both crimes belong to the group of crimes against property. What brings these property crimes closer is the fact that the consequences of the undertaken actions in these cases do not occur immediately, they are not simultaneous with the undertaken action, but there is a time lag between the undertaken act of execution and the consequences of the act. These acts differ from some other property acts (theft, aggravated theft, robbery and robbery theft) where the consequences occur immediately after the action taken to commit the act.

The similarities of loan shark and extortion is also reflected in the identical object of protection - property in the form of movable or immovable property; consequences - causing property damage to the passive subject and a special subjective element on the part of the perpetrator - the intention to obtain illegal property gain by undertaking an act of execution for oneself or another.

The crime of loan shark and extortion and some of the same qualifying circumstances that indicate the gravity of these acts are the amount of obtained property gain, so in both parts the amount exceeding 450.000 dinars is considered, as well as the amount of 1.500.000 dinars, while the second identical qualifying circumstance of both parts is considered execution by the group. Punishment is of course different for these forms of execution having in mind the different gravity of these acts.

DIFFERENCES IN LEGAL DEFINITION AND PRACTICAL MANIFESTATION OF CRIMINAL OFFENSES OF EXTORTION AND LOAN SHARK

Although the legislator has clearly and precisely defined the criminal acts of extortion and loan shark in his legal text, in practical manifestation there are often difficulties in their qualification, so in order to more easily differentiate these acts, it is important to point out some of their differences. This is important not only because of the determination of the work, but also because of their easier clarification and more efficient collection of proving.

First of all, loan shark differs from extortion in the way of obtaining material gain, bearing in mind that in extortion it is coercion, which is why there is no connection between these two acts (extortion and coercion), while in loan shark it is done arbitrarily money on loan, on which the perpetrators very often use coercion to negotiate a disproportionate debt, and loan shark can occur in conjunction with coercion. The acquisition of criminal acts of loan shark and coercion is also reflected in the fact that perpetrators of loan shark often use forms of coercion (force and threat) in order to receive a disproportionately agreed property benefit due to the delay in repaying the debt by the person to whom they lent money with interest.

The difference between extortion and loan shark is also reflected in the type of obtained illegal property gain. While extortion is related most often for movable and immovable property, such as an apartment, cottage, shop, house, car and money, loan shark is exclusively about money or other consumables, which the legislator prescribed when incriminating loan shark.

In the case of extortion, the perpetrator practically finds the injured party, while in the case of loan shark, the injured parties find the perpetrator themselves in order to borrow money from them. The victims of the criminal act of extortion are most often persons who have material means, while the victims of the part of loan shark are mostly persons who do not work anywhere or do not earn a permanent income.

In criminal practice, perpetrators of the crime of loan shark often become perpetrators of extortion. Namely, these are situations when loan shark (usury) in some way initiates and inspires the execution of extortion which achieves the settlement of a "given loan". This indicates that in the specific case, it is a matter of a real acquisition of these criminal acts, where loan shark precedes extortion.

It often happens in criminal practice that extortion precedes loan shark, and that persons over whom the act of extortion has begun, and who do not have a permanent income and cannot regularly provide money, borrow money from loan shark in order to give the same money to the perpetrator of extortion and thus, in addition to the status of the aggravated criminal acts of extortion, they become the aggrieved persons of the criminal act of loan shark.

Regarding the organized form (Ignjatović & Škulić, 2012) of these acts, the legislator prescribed the commission of an act by an organized criminal group only in the criminal act of extortion as its most serious form, and in this regard in the circle of organized crime extortion is included the most difficult form. The legislator did not include loan shark in the form of organized crime, so there is no such act by an organized group in this act, but as one of the alternatively most difficult forms of this act there is a case of committing an act by a group.

The legislator prescribed the cumulative punishment of imprisonment and a fine for the commission of the criminal act of loan shark. Such a case is not foreseen in the criminal offense of extortion, although it is logical for the court in this case to impose a fine on the perpetrator of this criminal offense in addition to the prescribed prison sentence, bearing in mind that it is a property criminal offense.

And finally, no less important, the difference between loan shark and criminal acts of extortion is reflected in the manner of initiating criminal proceedings. While this procedure for the criminal offense of extortion is initiated ex officio, in the case of loan shark, criminal prosecution is initiated upon the proposal of the injured party.

SOLVING AND PROVING CRIMINAL OFFENSES OF EXTORTION AND LOAN SHARK

The correct qualification of the criminal offenses of extortion and loan shark to which the previously analyzed legal definitions of the offense contribute, as well as their similarities and differences, are the initial steps in undertaking criminal tactical, methodical and technical actions in order to solve and prove their acts. For solving and proving the criminal acts of extortion and loan shark it is important to organize a criminal investigation in a proper manner (Bošković, 2015) with respect to the principles of criminology (especially the principles of efficiency and speed and the principle of legality), as well as golden issues of criminology (Krivokapić, 2010).

In criminal practice, three modes of manifestation of the criminal act of extortion appear most often (Marinković & Lajić, 2016). These are: 1) the case when an individual and a group of persons extort money from a person who owns a certain property or property value, which can also be called classic extortion; 2) a case in which extortion occurs as a result of unsettled property relations between individual persons - the perpetrator and the victim, and 3) a case of forced offering of "protection" by an organized criminal group with appropriate compensation - the so-called "Racket" (Radović & Vuković, 2012). Unlike extortion, loan shark is done with the self-willed consent of the injured party and finding a "loan shark" who lends money or other consumables, in which case he contracts a disproportionate property benefit (in the form of loan repayment, debt) taking advantage of difficult financial situation, opportunities, necessity, recklessness or insufficient ability to reason with the injured party.

During the execution of extortion, the perpetrators threaten the injured party in various ways, such as threats: murder, kidnapping (kidnapping of children and women), infliction of bodily injuries, destruction or burning of a house, apartment, and shop. For forced protection - "racket" they are looking for money, valuables, cars, and even real estate. Force and threat as forms of coercion appear as ways of committing an act, so in this case there is no confluence between extortion and coercion, while perpetrators of loan shark use coercion (force or threat), so in this case coercion and loan shark appear in the acquisition.

A number of criminal acts of extortion and loan shark are not known, having in mind the fear that the victims have due to the force or threat, as well as the fact that the victims themselves are often "on the border" of the law, and the victims of loan shark in a difficult and unenviable position . In this regard, the dark number is very emphasized. The most common information about the commission of these acts is obtained by reporting the injured (Škulić, 2017). In practice, often, the first knowledge is obtained on the basis of the report of close relatives of the injured person, but also other persons who have such knowledge. In addition to this knowledge, the operational activity of the internal affairs bodies is a very common source of knowledge. In the case of the criminal offense of loan shark, the legislator prescribed that for the basic form of the offense, prosecution be undertaken at the proposal of the injured party (while in the case of more serious forms of crime, ex officio).

In criminal practice (Bošković, 2005), two situations are distinguished with regard to the report: a) when the report is filed after the use of force or threat by the perpetrator, i.e. borrowing money by contracting disproportionate property gain, more money than borrowed and b) when the crime is reported after it has been committed. Accordingly, criminal tactical actions are taken (Žarković, 2010).

It is necessary to clarify all the facts relating to the place, manner and time of the crime, knowledge of the perpetrator, description of the perpetrator, manner of the crime, possible telephone conversations and correspondence between the perpetrator and the injured party, witnesses, etc., how much money (or other property benefits) the injured party was asked to hand over, i.e. return, as well as where, when, to whom and in what way he should hand over money or other property benefits (personal handover to the perpetrator or some other person, leaving at a pre-agreed place).

It is difficult to catch extortionists and loan shark in action. Therefore, the prosecuting authorities base their activities on the permanent use of indicative methods, with the setting of criminal versions about the perpetrators of the act of extortion, while some information about the perpetrator is known in loan shark. The motives for committing these acts are clear, having in mind that these are property crimes, and the motives also refer to obtaining illegal property gain, i.e. disproportionate property gain. The aim of the investigation (Krivokapić & Krstić, 1999) is for the internal affairs bodies, together with the injured party, to provide personal and material evidence of the committed crime and to deprive the perpetrators of their liberty, as a rule during or immediately after handing over money or other valuables, disproportionate property benefits. On that occasion, the injured parties are given certain instructions regarding handing over money, meetings, etc.

Very often experienced extortionists agree on a place to leave the money or a person to whom it should be handed over, while in the case of loan shark, the money is very often returned to the perpetrator "in a simpler way", mostly at the agreed place and time. Successful criminal investigation is supported by the exceptional conspiracy of conducting the investigation, professionalism, skills and ability of police officers to deprive the perpetrators of these acts of freedom, respecting criminal principles and legal provisions (Bošković & Banović, 2001).

The money intended for the perpetrators of extortion and loan shark before the surrender is listed (serial numbers of banknotes), with the possibility of sprinkling silver nitrate or other powdered substance on it, which has the property of coloring the skin in contact with the fingers, when taking banknotes, which is prove of the contact of money and hands (chemical trap).

The person who carries the money is immediately followed by police officers upon departure to the agreed place, controlling the surrender. After taking over the money, i.e. disproportionate money given on loan by the perpetrator, he is deprived of liberty, as well as persons who are brought into contact with the perpetrator. The items are temporarily confiscated from the person who took over the money. Visible changes in the hands of the person who took over the money can be ascertained by taking photographs and through the minutes (Feješ & Lajić, 2014).

In case of direct physical contact between the perpetrator and the victim at the scene (Delibašić, 2017), it is possible to find clues that can provide prove such as e.g. traces of blood, broken objects on the spot, as well as the presence of a specific person: by determining papillary lines, biological traces, DNA analysis, etc.

The apartment of a person deprived of liberty must be searched in order to find the items that had been previously handed over, usually money and other traces, lists of debtors, requested amounts, agreed deadlines, payment slips, contracts, bank statements and various documents indicating the handover or misappropriation of money, or other valuable items of the perpetrator, that is giving money to the injured party with an agreed disproportionately higher compensation when repaying the loan.

In case of extortion, it is also important, both from the injured party and from the competent state body that performed the certification, to obtain documents signed by the injured party under pressure of the perpetrator of extortion, in order to change ownership of valuable movables or immovable property, after which documents are excluded for the purpose of further expertise.

Important criminal, but also procedural action (Škulić, 2011) in order to detect and prove the criminal acts of extortion and loan shark, especially in the case when the injured party and the perpetrator do not know each other, but had direct contact during the commenced act (in the unfinished act) or finished act is the method of recognizing faces.

Further criminal proceedings (Bošković, 2012) against the perpetrators of the criminal offense of extortion are identical to other criminal offenses, which in addition to the pre-investigation procedure conducted by the public prosecutor, consists of two phases: a) investigative procedure and b) main trial, respecting the provisions of criminal procedure rights (Bošković & Kesić, 2015), with the emphasis that in the case of loan shark, the prosecution for the basic form of the crime is taken over according to the proposal.

CONCLUSION

The incrimination of the criminal offenses of extortion and loan shark, as well as the qualifying circumstances that make up their more severe forms analyzed in the paper, is the first and important step in their solving and proving. Bearing in mind that these are criminal offenses that are in the same group of criminal offenses, a group of offenses against property, as well as their frequent practical interconnection during execution, the indicated similarities and differences between these offenses are important for a more precise course of criminal proceedings.

The analyzed legal definitions of these acts, as well as their similarities and differences, contribute to the successful conduct of criminal investigations and adequate undertaking of criminal tactical actions, which are analyzed in the paper, all in order to solve and prove the crimes of extortion and loan shark, as well as for further efficient criminal proceeding.

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