

THE DISTINCTION BETWEEN THE OFFENCE OF MASS DISORDER AND THE OFFENCE OF HOOLIGANISM

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Chapter XIII of the Criminal Code of the Republic of Moldova (will still be used – Criminal Code) distinguishes different offences, which directly harm this social value. It is specified that, taken as a whole, the offences in this category are very similar, but a close examination of the many details that characterise them reveals essential differences between them. It is precisely these differences that give these offences their particular character, making it possible to classify violations of public security and public order in the correct legal sense. The present research aims to draw a parallel between two offences in the same field, namely a comparative study between the offence of mass disorder and the offence of hooliganism.

It is mentioned that the act of mass disorder is criminalised in Article 285 of the Criminal Code and the act of hooliganism is criminalised in Article 287 of the Criminal Code. In view of the content of the articles mentioned above, it should be noted that the procedure for distinguishing between the two offences must be based on certain criteria, in the order of the following considerations.

1. The first distinction between the offences under consideration will be examined in terms of their legal or, where appropriate, doctrinal concepts. Article 287 of the Criminal Code expressly defines the concept of hooliganism, but in Article 285 of the Criminal Code, the lawmaker proceeds directly to criminalise the three typical variants of mass disorder. According to Article 287 paragraph (1) of the Criminal Code, hooliganism is defined as intentional actions that violate public order, accompanied by the infliction of violence on persons or the threat of such violence, the violent resistance to representatives of the authorities or other persons who suppress the hooligan acts, as well as actions which, by their content, are distinguished by a special naughtiness.

Since the notion of mass riots is only understood at the level of doctrine, it is pointed out that the literature argues that mass riots are a negative social phenomenon, which materializes in the expression by society of negative opinions towards the activity of the authorities representing state power. As a rule, mass riots involve criminal activity on the part of a mob of people and are carried out by a mass violation of public order. In such a situation, the conditions are created for an attack on the material legal object of the offence, in this case the person's body and property.

2. The second criterion for distinguishing the offences of mass disorder and hooliganism is the object of the offence, which is similar for both. The offences mentioned are covered by Chapter XIII of the Criminal Code, their generic legal object is social relations in the field of public order and security. In general, the specific legal object of these offences is considered to be identical and is public order and security. At the same time, it is noted that the special legal object of the predicate offences is of a complex nature, respectively it includes both primary and secondary legal objects and is common to both offences. The special secondary legal object is represented by the social values that protect the health and physical integrity of persons and the fullness of their property.

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It is specified that some scholars mention that public security in essence differs from public order, supporting the theory that the offence of mass disorder provided for in paragraph (2) of Article 285 of the Criminal Code is a genuine act intended to harm public security, but not public order. In contrast, the offence of hooliganism is an attack on social relations organically linked to public order, but not to public health. In fact, hooliganism is the classic example of an offence against public order. Public security is the state of affairs inherent in a group of individuals or an entire community, designed to ensure peace in society and the necessary protection of all the rights and interests of the members of the group or the community as a whole against various unlawful influences from within or outside. Compared to public order, public security is affected by large-scale, high-profile acts, and it is precisely such acts that can affect the security of an entire society (community), but not of an individual person (Copețchi, 2020: 33).

As regards the material object of the specified offences, it is stated that it is similar for both offences and that it is the person's body or movable or immovable property.

In terms of the affected rights, it is pointed out that in the case of both offences the victim may be representatives of the public authorities. It follows from judicial practice of the Republic of Moldova that a representative of a public authority means the representative of the interests of any central or local public authority (Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova No. 11/2012).

With reference to the victim of the crime of mass disorder, it is stated that representatives of the authorities can be victims of the crime only when the perpetrator's actions are accompanied by violent or armed resistance to these categories of persons.

In the case of the offence of hooliganism, a further category of victim is defined as the person who actively suppresses the hooligan acts by taking measures to stop the unlawful acts, detain the person committing them or take other action to combat the criminal activity. This does not include persons who merely criticise, reprimand or otherwise passively express their disagreement with the hooligan acts.

Generally, in the case of hooliganism, the perpetrator's energy is directed towards a specific victim or victims who form a specific circle of people. In the case of mass disorder, not only representatives of the authorities but also other participants in the disorder, including non-participants and bystanders, are exposed to danger. From this perspective, mass disorder is similar to terrorism, which also involves the presence of potential (incidental) victims other than those targeted (Copețchi, 2020: 34).

In relation to movable or immovable property, it is noted that this may constitute the material object of both offences under consideration. In the case of mass disorder, movable and/or immovable property may be damaged by the use of firearms or other objects used as weapons, arson and other dangerous objects. In the case of hooliganism, it may be a material object if it is taken unlawfully and gratuitously for hooligan reasons, in order to extort the victim and not for the perpetrator's final possession. In this case, the unlawful and gratuitous taking of foreign property appears as a factual way of violating public order or as a manifestation of particular impudence (Brânză & Stati, 2015: 647).

It is pointed out that both in the case of hooliganism and mass disorder, movable and/or immovable property may have the status of a material object when it is damaged or destroyed. An exclusive condition arises in the case of hooliganism, respectively that the deterioration or destruction of the of the property constitutes a manifestation of a breach of public order and security or of particular impudence.



Although the difference seems to be non-essential, it is difficult to distinguish mass disorder from hooliganism involving the destruction or damage of property. From the provision in paragraph (1) of Article 285 of the Criminal Code shows that destruction or damage to property often takes specific forms during mass disorder: pogroms, arson or other similar actions. This means that, unlike hooliganism, the mass riots imply a higher probability that dangerous means will be applied to the life and health of several persons (for example: flammable substances, explosive charges and others) (Brânză, Stati, 2015: 583).

3. The objective aspect of the offence is another criterion for defining the offences analysed. Thus, it is clear from the text of the law that the two criminal offences are undeniably different in their objective aspects. It should be noted that Article 285 of the Criminal Code criminalises three typical variants of the offence of mass disorder, as follows:

- 1) organising or leading mass riots, accompanied by the use of violence against persons, riots, arson, destruction of property, the use of firearms or other objects used as weapons, and violent or armed resistance to representatives of the authorities;
- 2) active participation in the above actions;
- 3) calls for active violent disobedience to the legitimate demands of representatives of the authorities and for mass disorder and acts of violence against persons (Criminal Code of the Republic of Moldova - ZIP, Official Monitor of the Republic of Moldova, No. 985/2002).

It is pointed out that the commission of at least one of the three standard variants of the offence is sufficient for the existence of the criminal offence. The lawmaker has also ruled out the possibility of the offence in question being committed in the presence of aggravating circumstances. No less important are the obligatory actions accompanying the criminal act of mass disorder, which are of major importance in the process of its legal classification, which is why it is judicious to explain their significance.

The term “pogrom” is understood as a spontaneous group attack, manifested by beatings, harassment, damage or devastation of property, means of transport, buildings and others.

The term “arson” implies the deliberate ignition of a fire by means of a physico-chemical process, using various substances.

The term “destruction of property” refers to the partial or total destruction of material objects which, due to their poor condition, can no longer be used for their original purpose.

The term “application of firearms or other objects used as weapons” is explained under the aegis of Article 2 of Law No 130/2012 on the regime of weapons and ammunition for civilian use, which provides that a firearm is a portable barrelled weapon that can throw, is designed to throw or can be converted to throw buckshot, a bullet or a projectile by the action of a propellant (Law on the regime of weapons and ammunition for civilian use, Official Monitor of the Republic of Moldova, No. 130/2012).

The term “other objects used as a weapon” includes objects with which the victim has caused or could have caused life-threatening injuries (knives, including kitchen knives, kettles, axes, spears and others), as well as objects intended to temporarily disorientate the victim, such as revolvers, spray and other poison gas devices. It is specified that the use of dogs or other trained animals that present a danger to the life or health of the person being assaulted, or with the threat of their use, falls within the scope of this concept (Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova No. 12/2014)

In the case of armed resistance to the law enforcement authorities, the weapon is considered the only means of committing the criminal act.



In another sense, it is noted that Article 287 of the Criminal Code incriminates the following alternative normative modalities, namely:

- 1) actions committed with intent, which violate public order and are accompanied by the application of violence to persons;
- 2) actions committed with intent, which violate public order and are accompanied by the threat of violence against persons;
- 3) intentional actions, which violate public order and are accompanied by violent resistance to representatives of the authorities or other persons curbing hooligan acts;
- 4) actions which, by their content, are distinguished by particular impudence (ZIP, Official Monitor of the Republic of Moldova, No. 985/2002).

At the same time, in the case of hooliganism, the lawmaker admits the following aggravating circumstances:

- a) by a person who has previously committed an act of hooliganism;
- b) by two or more persons;
- c) on the territory or in the premises of a public or private medical institution;
- d) against a doctor or medical worker in the exercise of his duties;
- e) on grounds of prejudice (ZIP, Official Monitor of the Republic of Moldova, No. 985/2002).

In this respect, it is appropriate to clarify the terms which directly form the objective side of the offence of hooliganism. Bullying accompanied by resistance to representatives of the authorities or other persons who are curbing the acts of intimidation has been explained in terms of the categories of victims described above.

The term “hooliganism accompanied by particular insolence” is understood to mean acts of violation of public order accompanied by acts of violence against the person, destruction and degradation of the owner’s property, temporary interruption of the normal activity of companies, institutions or organizations. Based on the provisions of criminal law, the courts of the Republic of Moldova will distinguish three forms of hooliganism, liable to criminal responsibility, namely:

- 1) simple hooliganism, which is provided for in Article 287 paragraph (1) of the Criminal Code;
- 2) aggravated hooliganism, which is provided for in Article 287 paragraph (2) of the Criminal Code;
- 3) aggravated hooliganism, if this act is committed with the application or attempted application of a weapon or other objects to harm physical integrity or health and is provided for in Article 287 paragraph (3) of the Criminal Code (Institutul Național al Justiției, 2019: 241).

As a result of what has been described, it is clear that both mass disorder and hooliganism include actions accompanying the basic offence, without which legal classification under Article 285 of the Criminal Code or under Article 287 of the Criminal Code would be impossible.

In the content of both incriminating rules, it is pointed out that the legislator operates with the wording “infliction of violence against persons”, but does not specify the type of violence inflicted. In the case of hooliganism, the position of the Plenum of the Supreme Court of Justice of the Republic of Moldova sheds light, as it explains that violence is limited to causing minor or slight harm to the physical integrity or health of persons. As regards the violence applicable to the offence of mass disorder, certain inaccuracies are identified, since the content of the criminal law does not expressly state the type of violence applied (non-hazardous and dangerous to life or health) or its limits, and the analysis of judicial practice in this regard leaves room for an extensive interpretation.



Taking into account the similarities and differences between the objective sides of hooliganism and mass riots, it is concluded that in both cases, the commission of the crime is materialized including by resisting to representatives of the authorities. Although at first sight this appears to be similar, it is pointed out that the resistance of representatives of the authorities is different for each offence. In the case of hooliganism, resistance to representatives of the authorities is exclusively of a violent nature, whereas in the case of mass disorder it is both violent and armed.

Due to the similarity of the offence's components, there is a risk of inaccuracies with regard to the delimitation of the qualification of active participation in mass disorder (Article 285 paragraph (2) of the Criminal Code) and hooliganism committed by two or more persons in a public place (Article 287 paragraph (2) point b) of the Criminal Code) because the prosecution may encounter difficulties and uncertainties in assessing the nature of the committed offence. The components of the offence mentioned are distinguished in terms of quality and quantity. Thus, in the case of mass disorder, the quality aspect refers to the sole purpose of the crowd of people in committing the illegal acts, respectively to destabilise political, social and economic areas, weaken certain branches of activity, undermine public order and security and others. The quantitative aspect is based on the large number of people participating in the commission of mass disorder. Article 285 paragraph (2) of the Criminal Code implies in itself the involvement of a large number of participants. By comparison, it is noted that hooliganism does not involve the participation of a crowd of people, but is reduced to a group consisting of a small number of people.

By analogy, there are cases in international criminal law where the exact minimum number of persons participating in the criminal activity is determined for it to be considered a crime of mass disorder. Although the number of persons participating may be relative from case to case, it is considered irrelevant to regulate this fact in the content of Article 285 paragraph (2) of the Criminal Code.

In the part referring to the type of offence, a similarity is clearly established, since both mass disorder and hooliganism have a formal component, or they are consummated from the moment of the commission of at least one of the normative modalities of the offences, and it is not necessary for the harmful consequences to occur. The optional signs of the objective side (place, time, methods, means and circumstances of the offence) may in some cases be of major importance in the process of classifying the offence. In the case of mass disorder, the place where the offence is committed is a distinct public place allocated to the general public, whereas hooliganism does not necessarily have to be committed in a public place, but the public manner in which the offence is committed is essential, so as to ensure either the presence of the public or the subsequent information of persons about the consequences of the hooligan acts.

The time of the commission of the offences set out in Articles 285 and 287 of the Criminal Code are not indispensable for the legal classification of the offences in question, because the commission of the offences analysed does not depend on the season, calendar date, weekday, periods of the day (day, night) or hour.

With regard to the means of committing the offences, it should be noted that in the case of the criminal activity referred to in Article 285 paragraph (3) of the Criminal Code, indirectly it can be committed by a wide range of means, for example sending messages, posting advertisements, informing via social networks and other modalities. As these can be diverse and the criminal can use any means to commit the offence, they are not relevant to the qualification of the offence.

For committing the offence of aggravated hooliganism specified in Article 287 paragraph (3) of the Criminal Code, it is mandatory that the perpetrator in the process of committing hooliganism applies



or attempts to apply the weapon or other objects to harm bodily integrity or health. The application or the intention to apply in the commission of hooliganism firearms, knives or various bladed weapons, as well as other objects, including those specially adapted for bodily harm, shall serve as a basis for the qualification of the offence under paragraph (3) of Article 287 of the Criminal Code not only in cases where the perpetrator causes or intends to cause bodily harm by means of them, but also when the use of the aforementioned objects in the process of hooligan acts creates a real danger to human life and health (Pilat, 2018: 28).

As regards the consequences, methods and circumstances of committing mass disorder and hooliganism, it is stated that these are not relevant to the legal classification of these offences.

4. Another criterion for differentiating the two offences will be the subject of the offence. From the outset, the possibility of the offences in question being committed by a legal person is ruled out. From the analysis of Article 21 paragraph (2) of the Criminal Code, it is noted that the subject of the offence under Article 285 and the offence under Article 287 paragraph (2) and (3) may be a person, responsible one, who at the time of the commission of the offence has reached the age of 14 years. At the same time, it is indicated that the subject of the offence under Article 287 paragraph (1) is a responsible person who has reached the age of 16 years at the time of the commission of the offence.

5. The final criterion for the definition of research offences is the subjective aspect, which in both cases takes the form of direct intent. In the case of hooliganism, the perpetrator acts out of a hooligan motive, which may be based on a negative emotion, accompanied by an emotional outburst, apparently without any particular reason, without any pretext, or based on a trivial or invented pretext. The motives for hooliganism can also be manifested in a sense of terror, anger, self-assertion, the phenomenon of committing crimes for amusement and other reasons. In the case of mass riots, the motive is different. This may be: disapproval of state policy, dissatisfaction with the way of life, dissatisfaction with a particular public authority and others. Similarly, in hooliganism, as a rule, the perpetrator does not seek to demonstrate his hostile attitude towards public authorities or their representatives by committing the hooligan act, but rather his terrible attitude towards society (Copețchi, 2020: 35).

Essentially, mass riots are the actions of masses of people, used by interested individuals as a *sui generis* tool to achieve their goals, taking into account the psychology of the crowd and channelling its scientific conduct in the desired direction. In the case of mass riots, property is destroyed or damaged, attacks are made on individuals, the functioning of public authorities is paralysed and transport is blocked. In other words, it is the scale of what is committed that distinguishes mass disorder from hooliganism committed by two or more persons (Article 287 paragraph (2) point b) of the Criminal Code). Unlike mass disorder, hooliganism cannot be committed by a few dozen, hundreds or even thousands of people. This is even though mass riots can develop from an act of hooliganism, an act that attracts more and more participants in terms of quantity and quality, thus crossing the line between hooliganism and mass riots (Brânză & Stati, 2015: 582).

The circumscribing lines of the offences under investigation are also used to identify how the criminal acts under investigation were committed. Thus, it is stated that hooliganism is usually spontaneous, respectively it does not require the preparation stage of the criminal activity (it is committed in the form of simple participation), which is practically the opposite of the offence of mass disorder, which is premeditated. In the case of mass disorder, the stage of preparing the crime is important, which takes the form of dividing up roles and establishing the means and instruments for committing the offences.



CONCLUSIONS

Finally, the legal-criminal analysis of offences should not be limited exclusively to identifying and describing the constituent elements and signs of the offence, because this analysis is limited by theoretical explanations. A better understanding of the legal-criminal structure of offences is undoubtedly only possible through the comparison of the components of offences, since even the smallest legal-criminal aspects are examined in detail. The differences identified and described between the offence of mass disorder and the offence of hooliganism are of major importance for the legal classification of the examined offences.

Furthermore, it is reported that in practice there may be situations where even the perpetrator in the process of committing one of the offences under consideration may change his sole intention and adjust his attention to another purpose. For example, it is likely that, while participating in the offence of mass disorder, the perpetrator will also commit a hooligan act, which is to be qualified under Article 287 of the Criminal Code, only if it would be manifested by particular impudence. At the same time, the opposite situation is noted, respectively where, during the commission of a hooligan act, the perpetrator has the intention of committing mass disorder. Only the correct identification, through the comparative prism of the objective and subjective aspects of the offence will ensure the correct determination of the harmful act, with its subsequent legal classification in a precise manner.

This research contributes to facilitating the work of the prosecution authorities and the courts, since the differentiation criteria addressed in the content of the work are decisive in determining criminal liability and criminal punishment. The main purpose of this study is to support the process of justice by highlighting some advisory ideas on the delimitation of two similar offences in terms of their composition and the specificity of their legal object.

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