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THE CRIMINAL LAW ASSESSMENT OF EXTORTION IN THE LIGHT OF THE CSEMEGI CODE AND CONTEMPORARY JUDICIAL PRACTICE

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Abstract: *In this essay I would like to introduce the process of the causes leading to the creation of the statutory offence of extortion, the examination of the created offence and the development of judicial practice at the time. For this purpose, I primarily drew on the documents prepared during the codification of the Csemegi Code, the ministerial explanatory memorandum of the Act, the works of the classics of Hungarian criminal law scholarship and court decisions. The extortion first appeared in the Csemegi Code, so prior to its entry into force only extortion-like offences had been regulated. The offence of extortion criminalisation and hence its inclusion in the list of property offences is linked to the Act V of 1878, which name is Csemegi Code. Chapter XXVII of the Special Part of the Csemegi Code is entitled Robbery and Extortion. The Article 350 of the Penal Code is included the basic case of extortion. While the Article 353 of the Csemegi Code is included the qualified cases of extortion. By presenting these in this essay I would like to introduce the specificities of regulation and explain in detail the similarities and differences between robbery and extortion.*

Keywords: *criminal law, extortion, violent crime against property, Csemegi Code, legal history*

INTRODUCTION

"Among the various categories of offences and misdemeanours, there is hardly one which requires the examination of so many and so complex issues, the clarification of so many elements and the settlement of so many controversies as offences and misdemeanours against property. It is a peculiar and exceedingly sad fact that around these offences forming the greater part of the subjects of criminal legislation the most doubts arise, the most differences prevail, and the most intriguing controversies press to the fore." (1878. évi V. törvényczikk indokolása [Ministerial Explanatory Memorandum to the Csemegi Code]).

The emergence of violent crime against property can be said to be as old as the development of societies. After all, property is the most basic institution of all existing societies, defining the character of each society and ensuring the community's control over resources and material rights, as well as determining the redistribution of wealth (Földi et al., 2008:284). And crimes against property are a violation of the order of property relations, which justifies their early emergence. The offence of extortion is to some extent an exception to this rule, since its criminalisation and hence its inclusion in the list of property offences is linked to the Hungarian Criminal Code, the Act V of 1878 on the law on offences and misdemeanours, which is associated with the name of Károly Csemegi.

Regarding this I have chosen to examine the process of the causes leading to the creation of the statutory offence of extortion, the examination of the created offence and the development of judicial practice at the time. For this purpose, I primarily drew on the documents prepared during the codification of the Csemegi Code, the ministerial explanatory memorandum of the Act, the works of the classics of Hungarian criminal law scholarship, including László Fáyer, Ferenc Finkey and Pál Angyal, and court decisions.

1. Beyond codification - the emergence of extortion-like offences

As I mentioned above extortion as a violent offence against property first appeared in the Csemegi Code, so prior to its entry into force only extortion-like offences had been regulated. This is why Ferenc Finkey began his interpretation of the concept of extortion with the following sentence: 'extortion is a product of the criminal law of the latest era (Finkey, 1914). In my view extortion-like offences can be divided into two categories.

In the first category those offences are included which can only be committed by a specific group of persons. This is the case of Act XXIII of 1497, which made the acts of military troops who "enter and cause damage to the lands of others after war" punishable by death. The same punishment for acts against soldiers was provided for in Act XVII of 1729, which declared that "soldiers and officers stationed in the country shall not dare to demand or extort any kind of donation". And in the Act XXX of 1567 a provision for official extortion can be found.

Act XVIII of 1871 on the liability of judges and court officials can also be included. According to Article 11(c) of the Act extortion is considered an administrative offence, which is defined in Article 14 of the Act (Section 14: A judge or judge's clerk who abuses his official power to compel a person to do, tolerate or refrain from doing an act unlawfully commits the crime of extortion.).

The second group includes provisions which punish certain acts in order to protect a specific group of persons. Undoubtedly this includes Act XXVIII of 1545 which protected those who delivered food to castles against unauthorised collectors and extortionists, while Act XLIV of 1545 'protected the poor against extortionists'. Furthermore, the Act CI of 1715 "protected the poor people against oppression." (Angyal, 1934:58-59).

The offence of extortion first appeared in the 1843 bill, where it was placed in Chapter 34, Section 326 after the case of robbery (Section 326: Whoever, with the intent to unlawfully benefit itself or other person by its act, coerces any person, either by violence or by threats which are seriously dangerous to the person life, body, property or honour, or to the life, body, property or honour of any other person belonging to the subject person: (a) To sign or issue, destroy or alter any deed, whether of movable or immovable value, or by any other act to make any disposition of his property, whether to itself or to any other person, prejudicial to itself or to any other person; (b) To send or deposit any money or other movable property anywhere to the person threatened or to any other person, as an extortioner, shall be liable to the penalty provided in Section 320, 321 and 322 for robbery.).

2. Beyond codification - the legal concept of extortion

2.1. Taxonomy

The Codification Committee was not in an easy position to place the offence in a taxonomic context. Pál Angyal explained that extortion could be included in the offences of violation of personal liberty, offences against property and offences of exploitation. Similar to the fraud offence in a taxonomic context (Madai, 2008:22). However, the placement should not be based on a singling out of specific characteristics, but on the search for the criterion that is most common in practice. The conclusion to be drawn from an examination of the practice of the law enforcement authorities is that an infringement of property rights can be established in all cases (Angyal, 1934:69).

The Act divided the offences against property into ten chapters, and the ministerial explanatory memorandum further divided the offences into four categories. The first group included offences that involved the wrongful appropriation of other person's property, the second group included offences that deprived the owner of the property by unlawful retention or disposal of the wrongful appropriation of property of other person. The third group consisted of offences where the owner of the property was persuaded to surrender it by "trickery"; the fourth group consisted of offences where the offender unlawfully destroyed or damaged the property of other person. According to this classification, the first group included extortion, theft and robbery.

Chapter XXVII of the Special Part of the Csemegi Code is entitled Robbery and Extortion. According to Finkey the regulation under this common title was based on the mode of commission of both offences, i.e. violence and threats against the person. It is the use of violence or threats as an instrumental act that creates the affinity between the two offences and distinguishes them from other offences against property (Finkey, 1914:666-667).

The ministerial explanatory memorandum to the Act explains in detail the similarities and differences between robbery and extortion. The common feature is that the legal object of both offences is property, the means of violating the object being violence or threats. On the other hand, there is a difference in the way the offences are committed, since while robbery is committed by taking movable property, extortion is committed by "coercing" a passive subject into compliance, acquiescence or abandonment. There is a further difference between the offences in terms of the degree of completion, since the offence of robbery is committed by the taking of movable property, establishing extortion does not require the achievement of a material loss (Löw, 1880:680).

2.2. Cases of extortion

2.2.1. The concept and basic case of extortion

According to Article 350 of the Penal Code, "Any person with an intention for obtaining for itself or other person an unlawful pecuniary gain, compels a person, by force or threat, to do, take or leave anything, shall, unless his act constitutes a more serious offence, be guilty of extortion and liable to imprisonment for a term of up to three years."

In defining the concept of extortion, the codification committee copied word by word the definition of extortion from the German Reich Criminal Code of 1871, the only difference being that the German Criminal Code refers to the unlawful acquisition of pecuniary gain, whereas the Hungarian legislation focuses on the quality of the pecuniary gain (Angyal, 1934:75).

2.2.2. The "main" factual elements of the offence

It is clear from a reading of the factual elements that the offence does not require any personal qualification to be committed and can therefore be committed by anyone. But it is important to note here that, given the subsidiary nature of the offence, if the offence is committed by a public official, it is not extortion but abuse of office based on Article 475 of the Code.

The conduct of the offence is coercion, which takes the form of forcing the offender to act, to tolerate or to abandon. The Minister explains that coercion may be directed either to action or to compliance (Löw, 1880:680).

Both in the case-law and in the legal literature of the time, coercion meant nothing more than in the current legislation, the imposition of force or threats on the victim's will, capable of making it behave in a way which the offender requires of it. The existence of a causal link between the coercion of the offender and the temporary paralysis of the passive subject's freedom of action is essential to establish the offence.

It is also important to note that coercion constitutes extortion only if the perpetrator is motivated by the intention to obtain an unlawful pecuniary gain for itself or for other person. This circumstance brings extortion closer to fraud and at the same time distances it from robbery. The legal concept of fraud also includes the aim of obtaining pecuniary gain, but requires different conduct - deception and misrepresentation - whereas the means used in the case of robbery are the same as those used by the extortioner - violence or threats - but do not require the aim of obtaining pecuniary gain (Angyal, 1934:89).

Pál Angyal defines the concept of pecuniary gain as "a phenomenon manifested in goods (things, rights, positions, expectations, etc.) which is capable of enhancing the desire to eliminate a sense of lack." Thus, a property benefit is both an increase in wealth and a favourable phenomenon which is capable of securing existing wealth, facilitating the enforcement of a property claim, or preventing a threat to property without increasing the wealth (Angyal, 1934:92).

Since extortion is a crime against property, only the coercion to act, to tolerate or to refrain from acting can stipulate establishing of extortion, which is capable of achieving the offender's aim of obtaining a pecuniary benefit for itself or for other person and causing damage to property.

Furthermore, it is also need to be clarified which degree of violence and threats used in coercion. Both the legal literature and the case law are unanimous in their view that in the case of robbery the existence of vis absoluta i.e. violence which bends the will is necessary, in the case of extortion the existence of vis compulsive i.e. violence which paralyses the will is sufficient.

Pál Angyal defined the threat as nothing more than the prospect of future harm depending on the will and power of the threatener. In my view, this general definition can also be equated with the definition of the threat of extortion, since the law does not provide any further instructions to the direction and extent of the harm contemplated except in the qualified case, unlike the qualified threat used in the case of the threat of robbery (Angyal, 1934:83-86). It is irrelevant for the determination of the factual elements whether the threatened harm may actually occur, the essential element is that the passive subject perceives

the threat as "real" and acts in accordance with the will of the perpetrator. This view is supported by the Curia's case-law which states that the misdemeanour of extortion can be committed by means of an irredeemable threat (Vavrik, 1907:109).

In the legal literature of the time, extortion is also known as a "segment crime", since the legal definition of the offence is that the offender must coerce the passive subject without causing material damage, i.e. the law is satisfied with "a segment of the offence" (Angyal, 1934:83).

2.2.3. The "special case" of extortion

According to Section 351 of the Csemegi Code "a person who threatens to publish a defamatory or libellous allegation by means of a printed publication in order to obtain pecuniary gain for itself or other person commits the offence of blackmail and shall be punishable under Section 350.

The legislator criminalises what is known in the literature as 'revolver journalism'. The specificity of the offence compared with the basic case is on the one hand the specificity of the method of commission, since it is only the publication of a defamatory or libellous statement by means of the press that is threatened, on the other hand the aim of financial gain need not be unlawful and, furthermore, the act is deemed to be completed by the threat. Since in the present case the attempt to blackmail constitutes a separate offence, Section 352 of the Code (which provides that the attempt to commit the offence of blackmail is also punishable) shall not be applied to this particular case (Finkey, 1914:674).

According to the case-law of the time justification of the truth regarding this specific case of extortion is excluded (Büntetőjogi Határozatok Tára: 180-181).

In his monograph Pál Angyal explains that the original text of the law uses the term 'its allegation', not the term 'the allegation', which is used incorrectly by some legal scholars, although the two are interpreted in a completely different way.

The conduct of the offence in this case is not coercion but one of its means which is threatening. According to the legislation the offence is deemed to be completed as soon as the threat has been made. It should be noted that it is irrelevant for the purposes of the offence whether the threat was coercive or whether the perpetrator benefited financially from the act. In the case where the threatening person has carried out its threat and has actually published its defamatory or libellous allegation by means of a printed publication the offence of blackmail as described in this Chapter is no longer to be established. If the publication has not yet had the effect of coercion or the coercion has occurred the offence of attempted blackmail as defined in Article 350 or the completed offence of blackmail shall be established. In such a case defamation or libel shall also be found to have been committed in material accumulation with extortion.

2.2.4. Qualified cases of extortion

Under Section 353 of the Code, "extortion is a criminal offence punishable by imprisonment for up to five years if: 1. the extortioner threatens to commit murder, grievous bodily harm, arson or other serious damage to property; 2. the offence is committed under the

pretention of an impersonation of a public official or under the pretext of an official order of a public authority.

According to the Ministerial Explanatory Memorandum to the Act, this qualification brings extortion so close to robbery that the differences between the two "disappear". This raises the question why it was necessary to establish this qualified case. The answer in my view is given in the Ministerial Explanatory Memorandum itself, which states that such threats have become quite common. The first proposal which is similar to the Belgian system, set the minimum sentence at 5 years and the general maximum at 10 years, but the committee found this too strict and reduced the maximum sentence to 5 years (Löw, 1880: 686).

The first phrase of the qualified case covers the threat to cause harm by certain criminal offences. Murder and grievous bodily harm by their nature as substantive offences only define the result - death or causing injury which takes more than 8 days to heal. Threats of arson may be committed expressly, although the Ministerial Explanatory Memorandum does not say *expressis verbis*, by the threat of intentionally setting fire to the property defined in Section 422 of the Act. Regarding this for example the threat to set fire to movable property does not constitute a qualified offence of extortion. According to the legal literature other serious damage to property includes e.g. causing flooding, libel and the destruction of a document (Section 422: The offence of arson is punishable by imprisonment for a term of five to ten years, who: 1. deliberately sets fire to a house, hut, mill or any building or room used or intended for the habitation of people or for the assembly of several people at a time when no one is present in it; 2. intentionally sets fire to a warehouse, farm building, large quantities of goods or crops lying in the open air, grain lying undisturbed or in heaps or piles, woods, large quantities of building or heating materials, bridges, ships or mines).

In its judgment, the Curia ruled - and this position has also taken root in the legal literature - that in these cases, the relevant question for the qualification is not whether the perpetrator actually intended to carry out the acts in question in the absence of the desired effect, but whether his conduct was such as to lead the victim to infer that he had committed the acts (Angyal, 1934:131-134).

The second element of the qualified case is related to the offence of fraud, in that the offender seeks to create a deceptive appearance, contrary to the truth, by abusing the high degree of trust placed in persons performing public functions.

CONCLUSIONS

In my study of the literature and judicial practice of the time I found that the recurrence of the act of extortion gave emphasis to the criminalisation of the offence, which raised a number of theoretical questions given that the extortion-like behaviour that had occurred previously was mostly exploitative in nature.

These theoretical questions were addressed by taking into account the legislation of other countries and the conceptual elements of other offences known to legal doctrine and practice, which led to the creation of the legal concept of extortion.

In my view, the criminalisation of extortion has initiated a process in which legal theory and jurisprudence have together laid the theoretical foundations for the legal regulation of the currently effective offence of extortion.

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