Jurnalul de Studii Juridice

JOURNAL OF LEGAL STUDIES

ISSN: 1841 – 6195 (print), ISSN: 2067 – 8509 (electronic)

Coverd in: CEEOL, Index Copernicus, Ideas, RePeC, EconPapers, Socionet

---

THE CONSTITUTIVE CONTENTS OF ROBBERY

Dinu LAZARESCU

Jurnalul de Studii Juridice, Anul VI, Nr. 3-4,
Decembrie, 2011, pp: 193-207

The online version of this article can be found at:

http://jls.upa.ro/

Published by:

Lumen Publishing House

On behalf of:

Legal Research Center of Petre Andrei University from Iasi

THE CONSTITUTIVE CONTENTS OF ROBBERY

Dinu LĂZĂRESCU*

Abstract:

All human societies have thoroughly disapproved of robbery as a deed through which a person appropriates a good belonging to somebody else.

In various law systems, this deed has been vehemently incriminated, and when the robber used violence to accomplish his action the crime was called robbery and was drastically sanctioned. Since it has a high degree of social hazard, robbery is rejected by most citizens, its accomplishment trenching upon the elementary human rights.

Through its concrete contents, robbery trenches upon a person's fundamental attributes: on the one hand, property, on the other hand, freedom, bodily integrity, health, and sometimes even life itself.

Therefore, robbery is a complex crime because its contents join, according to the law-maker's will, robbery, on the one hand, and violence and threat on the other hand, crimes which are distinctly incriminated by the penal Code. However, when violence or threat was used to do the robbery, or when they followed it, there is a close connection between robbery and violence or threat, which has led to an approach that considers it one criminal unit.

Keywords:

robbery, theft, complex crime, violence, threat.

* ABD University Instructor, "Petre Andrei" University, Faculty of Law, Iasi; lawyer – the Bar of Iasi, dinulazarescu@yahoo.com

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

The Objective Side. Two actions which are in close connection to each other come together to form the objective side of robbery, of which theft is the main action, while the latter – the use of violence or threat by putting the victim in a state of unconsciousness or impossibility of self-defense – looks secondary in relation to the former.

The main action – theft – is, as in the case of robbery, the action of taking the portable good away from somebody else's possession or detention without the respective person's consent. The action of taking away, though it is one action only, is achieved through two acts:

a. *dispossession* – taking the good away from the possessor's or owner's sphere of possession;

b. *appropriation* – passing that good onto the doer's possession sphere as a consequence of violence or threat.

As a rule, these acts occur in a succession which makes them hard to set apart. Nevertheless, establishing whether only the first act or both acts occurred in each case, usually after the violence or threat took place, is essential, because it is in relation to these that the distinction between the attempt and the completed crime which is robbery happened.

A peculiarity of robbery is that as a consequence of the doer's use of violence and menace, the act of taking the good away can occur in the form of forced relegation, though apparently consented, of the respective good, done by its very possessor or owner.

Theft is the main activity of the objective side of robbery, no matter if it is unqualified or qualified; when a vehicle is concerned, it does not matter whether the act is performed with a view to appropriating it unjustly, or to using it unjustly (Vasiliu, T., Pavel, D., Antoniu, G., Lucinescu, D., Papadopol, V., Ramureanu, (1975): 294).

The adjacent action of the material element of robbery is the use of violence or menace, or the action of putting the victim in a state of unconsciuousness or impossibility of self-defense. For the adjacent crime to be considered as part of the action taken the use of either one of the two means is sufficient; their cumulative use does not alter the unitary character of the crime, but it will be considered when the concrete degree of social hazard implied by the deed is evaluated (Pascu, I., Ivan, S., (1992): p. 30).

In order to explain the adjacent element of robbery, we apprieciate that an analysis of each means provided by the law be done, to see what elements were used when robbery was committed.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

As a constitutive element of robbery, *violence* has been a focus of our legal literature, which has explained both the meaning of the notion and the conditions the deed must meet in order for it to be considered robbery.

The notion of violence is not defined by the penal law, which is why we believe that it must be given the most comprehensive meaning possible, i.e. its meaning in everyday language. However, it is undebatable that the action adjacent to robbery will be accomplished when the violence used has been committed under the conditions treated in article 180-182.

Nevertheless, the term "violence" fails to express the material element of the criminal act of hitting or other forms of violence; it covers a larger sphere, which includes other manifestations that, though they are committed through acts of violence against the person (for instance, the act of immobilizing a person, of laying them by the arms, of tying one's arms up) do not cause physical sufferance and would not characterize the material element provided by art. 180, para. 1 *Penal Code*.

Coming back to the notion of violence as a manifestation of human conduct, this is characterized by the fact that it uses brutal force, coercion, violation, breaching legal order. In the older German literature which is relevant to the topic (Vergleichende, F., : 19), violence appeared as "that activity which takes place with a view to subduing the resistance of the person robbed."

It has also been argued (Dongoroz, V., Kahone, S., Oancea, I., Fodor., I., Petrovici, S., (1963): 174) that violence is the material act through which physical force is used in order to cause sufferance or to put pressure upon somebody.

According to another definition, violence is any act of physical coercion directed against the victim or other persons which tampers with one social value or another – life, bodily integrity, health – with a view to creating a state of fear, to paralysing the victim's reaction (Soroceanu, C., Biro, L., (1973): 112).

It has also been argued that violence typical of robbery is a factual and psychical relation between persons, between aggressor and victim, between subjects able to act, to judge, to have an attitude and to make decisions, be those licit or illicit (Poenaru, I., (1973): 114).

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

According to art. 211 para. 1 *Penal Code*, violence is any act of physical or moral coercion, direct or indirect, which must have a certain intensity and a certain finality.

In the literature relevant to the topic written in the interwar period (Pastion, I. P., Papadopolu, I. M., (1992): 582), distinction was made between violence and cunning. Nevertheless, we believe that this distinction is topical and of a particular interest since it can shed light on whether the notion of cunningness can support the adjacent action of the material element of robbery.

Grabbing the hat off one's head or the watch out of one's pocket was considered to be an act of cunningness, where no bodily violence was performed; in this case, it was deemed that the deed met the characteristics of theft.

According to another opinion, the deed was considered to be robbery, because the use of moderate force is enough for violence to appear; subduing resistance is enough for the deed to be an act of robbery, which would occur even when somebody is rushed into doing something without being able to resist it.

With regards to this issue, today's legal literature and practice do not adopt a unitary solution. One opinion (Vasiliu, T., Pavel, D., (1997): 225) holds that the notion of cunningness, characterised by the act of grabbing the good, fails to achieve the objective side of robbery, which is a situation when the deed is considered to be theft. In support of this view, it is argued that by grabbing the object, without the owner being able to oppose any resistance, the doer, after committing the deed, runs away and tampers in no way with the social relations concerning life, bodily integrity, health, freedom, honour that come together into the legal object adjacent to robbery. According to this opinion, grabbing a necklace off a person's neck as well as grabbing a wallet from the victim's hand and other such deeds commintted in the conditions mentioned would be theft.

In the same line of argument, jurisprudence has considered that if the defendant tried to take the victim off guard in order to be able to take the victim's purse and run away with it before the victim could rally and oppose resistance, the defendant committed theft, not robbery (High Court of the City of Oradea, (1957): 173). It has also been decided that dispossessing the injured person of the hat in one's possession by grabbing it off the victim's head without performing any aggressive action

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

meant to subdue opposition is theft, not robbery, because it does not imply the use of violence (C.S.J., (1990-1991): 154).

In supporting these solutions, the following are taken into account.

According to the definition of complex crime (art. 41, para. 3 *Penal Code*), as long as violence took place only by grabbing the object off the owner's hand, cutting off the physical relation between the material object and its owner is not a penal deed. Therefore, the theft committed in such conditions cannot become robbery since there are no elements characteristic of complex crime there (Soroceanu, C., Biro, L., (1973) : 108).

Another argument also finds its source in the concept of complex crime. As long as robbery has a special legal object, which lies in the social relations whose protection is ensured through the person's defense, it is logical that violence means any act of coercion directed against the respective person.

Another opinioin has promoted the idea that, when the object was suddenly grabbed off the victim's hand, there are certain signs there which are typical of robbery because in this situation, too, the goal, which is dispossession and appropriation, is achieved through violent means.

In legal practice we find such solutions. Thus, the court ruled that the defendant's deed of having snatched from the civil part a bag containing various goods and having run away with it is robbery because, by snatching, the material element of crime, *violence*, which is characteristic of robbery, is committed (Supreme High Court, (1972): 170).

In another case, the court convicted he defendant for robbery noting that he armed himself with a metal staple meaning to attack the victim in order to snatch her money case, but when she got out of the store, he grabbed the case from behind without hitting her. (Braşov County Court, (1973): 107)

Through a more recent decision, the Supreme Court of Justice ruled that snatching a necklace from an injured person's neck against her will is an act of violence in the sense of the provisions of art. 211, para. 1 *Penal Code*, the deed being robbery and not theft. The violence mentioned by the text as adjacent actions do not necessarily have to take any of the forms provided by article 180-182 *Penal Code*; they can be other aggressive actions directed against the injured person, such as snatching the good one holds if that was contrary to the person's will (C.S.J., (1995): 147).

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

Several arguments can be presented in support of this solution.

One first argument is that the violence characteristic of robbery is committed, no matter if it was exerted directly upon the person or through the object, as long as the victim is cut off from the respective object or good.

This calls for a distinction between two different situations, though the conclusions we can reach are the same.

One first aspect is that of the brutal physical relation between agent and victim when it is achieved, as we have seen, through the object and not directly, the deed implying, nonetheless, an act of violence against the person. We give as an example the case when the agent, without touching the victim, brutally snatches a bag in order to take it away from the victim, while the victim opposes the act, trying to hold it. It is considered that the violence acquires aspects typical of robbery because these forces which oppose it through the object reflect upon the victim (Soroceanu, C., Biro, L., (1973): 108).

However, we have noted the situation when snatching the object (the case, the bag) from the victim's hand was achieved without a warning, subduing only the victim's resistance, which is natural for a moving person, in order to be able to hold and carry an object. In this case, the deed may be considered theft and not robbery.

In order to do a correct legal evaluation of the deed mentioned, we have to take into account the provisions of art. 211, para. 1 *Penal Code*; the law provides as robbery "the theft accomplished through the use of violence..."

We notice that the legal stipulation provides the generic notion of "violence," taking into account in the first place and in most of the cases the acts of violence against the person, and secondly and less frequently the acts of violence through which the doer takes the victim by surprise or uses the victim objectively to accomplish the crime.

We do not mean a violence against the good, but a violent attitude, a brutal and instant action committed by force, because this is the only way in which the doer is able to dispossess the victim of the good desired.

We believe that we must not judge robbery only in relation to the acts of violence directed against the person, but also in relation to other acts of violence of which the doer takes advantage and which help him to accomplish the deed.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

Another argument is that, by giving a restrictive interpretation to the provisions of article 211, para. 1 *Penal Code* no clearcut distinction would be possible between theft and robbery, in the case of theft the act of dispossession being accomplished without violence. What seems to be characteristic of theft is the fact that the possessor or the owner does not know in advance that they are the victims of dispossession and because of that they do not consider protecting the good, opposing or resisting the author in order to prevent him from taking the object away.

Last but not least, as follows from the provisions of article 211, para. 1, it is not necessary that both elements which are the contents of the complex crime be penal deeds. If the goal (theft) is always an incriminated deed, the means (violence) can also occur as an action which is not provided by the penal law (for instance, snatching).

As long as the relation means – purpose is there, the brutal action – snatching – being exerted for the very purpose of committing the theft, that will undoubtedly be robbery.

In order for robbery to be the material element of robbery, it needs to pursue the end provided by art. 211, para. 1. If the violence was committed to another purpose, the deed will not be robbery.

Legal practice (T.S.,(1969): 328) has shown that the constitutive features of robbery are not met when the indictee, though he used violence, did not do it with a view to unjustly appropriate goods belonging to someone else, but with a view to coercing the injured person, who was the indictee's debtor, to pay the debt he owed to the defendant.

It was also the Supreme Court (T.S., (1966): 396) which decided that when hitting the victim, which occurred at a certain interval after the theft was committed, appears as a return to the violence exerted by the victim upon the indictee and not as a means of appropriating the stolen good, or of destroying the crime's traces, or of ensuring the indictee's escape, there is no robbery. The legal evaluation places the crime somewhere in between theft and serious injury of bodily integrity. Apart from violence, the material element of crime is also accomplished by threatening the victim with a view to unjustly appropriating a good. Menace is understood, according to the provisions of article 193 *Penal Code* "the deed of threatening a person with committing a crime or an impairing action directed against the respective person, the spouse, or a close relative, if that is meant to worry the person." Threatening the

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

victim, the doer puts her in the situation of no longer being able to make the decision or to take action in order to defend the good.

However, for the threat to accomplish the material element of robbery, its effect has to be the restriction of the physical and psychic freedom of the person threatened.

Therefore, by threatening a person we understand the action of menace, which consists in making the victim aware that something evil is going to happen to her, while instilling the victim's apprehension about the danger lying ahead.

The action of threatening may be achieved verbally, by gestures (for instance, the doer takes the knife or pistol out of the pocket), or by deeds (accosting the victim in the street).

The threat also has to worry the person threatened. This condition is met when the deed inspires a serious and sound apprehension meant to paralyse the person's reaction to the doer's action of taking the good away.

In all cases, when judging the ability of the threat to stir apprehension, heed must be paid to the kind of person the threatened person is, what kind of subjective qualities one has, the state of mind at the moment when the deed was committed. According to these elements, a menace is susceptible of stirring apprehension in one person, while it may not have the same effect in another.

Sometimes the action of threatening is exerted directly upon the victim when the doer commits acts of violence upon the goods.

For instance: the action of puncturing the tyres of the vehicle used by the victim as a means of transport, cutting the electric cords or cutting off the phone. To the extent to which, by performing these actions, the victim experiences fear, then the victim is threatened. The goods upon which destructive action is taken are the material object of this action, which frequently meets the constitutive elements of the crime provided in art. 217 *Penal Code* (destruction), or even the crime provided in article 218 *Penal Code* (qualified destruction).

These deeds are distinct crimes, they are not absorbed by robbery, and they compete with it.

Menace will be the adjacent action of the material element of robbery only if it is a means to an end – i.e. committing the theft.

Jurisprudence ruled that the deed of the indictees of pulling the victim aside when the victim went out of a public space and forcing the

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

victim by pointing a knife at her to give away the coat she was wearing is robbery. (T.S., (1976-1980): 138)

Contrary to this case, it has been shown that if the menace was done after an interval since the theft was committed, and if it was not determined by the purposes provided by art. 211 *Penal Code*, the idictee cannot be charged with robbery.

The secondary activity within the material element of crime can also be achieved by putting the victim in an uncosncious state of mind or in the incapacity of self-defense.

Putting the victim in an unconscious state of mind by the use of narcotics or other substances means getting the victim in the state of being unconscious, unable to perceive. In order for it to be the adjacent action of theft achieved in this way, the victim's unconscious state of mind must be the result of the doer's deed. If the state of unconsciousness preexisted and was caused by other factors, and the doer only took advantage of this to take the good away, the deed will no longer be robbery.

For instance, if the doer appropriates a good from another person who is sleeping, he does not commit robbery but theft.

Putting the victim in an incapacity of self-defense means getting the victim in the situation of not being able to use one's defense skills as a consequence of immobilization, arm dispossession, muffling, as well as any other action depriving the victim of the skills of self-defense.

Theft followed by the use of violence, threat, etc. in order to keep possession of the stolen good, to remove the traces of the crime, or for the doer to ensure escape will also be robbery

Thus, the indictee's deed of unjustly appropriating a pistol and, pursued by the doorkeeper, shooting the gun at him in order to keep the stolen object for himself is robbery. (T.S., (1969): 179).

The indictee's deed of using violence against a police officer in order to ensure escape because he was caught upon the act of theft is also robbery (T.S.(1968): 318).

An essential condition for robbery is the effective committment of the adjacent action, irrespective of the ways in which this is achieved (violence, threat).

Apart from this, violence, threat, menace, etc. must serve as a purpose for the theft to be committed or the good to be kept, the removal of the crime's traces or in order to ensure the doer's escape.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

Therefore, between violence, threat, etc. and theft there must be a relation of means to purpose. This relation occurs and the deed is robbery if violence, threat, etc., were used by the doer a bit before, during or after the theft took place.

In legal literature there is also the opinion according to which violence, threat, etc. cannot precede theft, but they must occur simultaneously or subsequently (Dongoroz, V., (1963) : 489).

We believe that the secondary action can also occur before the theft has been committed, at a short interval, because in such a case the necessary connection we have mentioned may exist. Thus, for instance, the doer threatens the victim asking for a good the victim has with her, or exerts violence upon her, which results in the loss of the good desired by the doer, which he appropriates subsequently, or, in order to make his task easier, the doer puts the victim in an incapacity of self-defense, after which he dispossesses her of a valuable good.

In these situations,the adjacent action occurs before any act of dispossession takes place, but the deed will undoubtedly be robbery, because between threat, violence, putting the victim in an incapacity of self-defense and theft there is a means-purpose relation.

If violence, threat occurred at a longer interval, between the performed deeds being no means-purpose connection, the deeds do not meet the provisions of art. 211, para. 1 *Penal Code*, but they are concurrent crimes.

Likewise, if the adjacent action takes place long after the theft occurred that is not a case of robbery.

Legal practice showed that when theft occurred during the month of September, and violence in the latter half of October for the doer to be able to get away with the deed – when the defendant returned to the place where he had hidden the good taken away – that is not a case of robbery, but a case of theft and assault, two concurrent crimes (T.M.B., (1994): 263-264).

The Supreme Court has also decided that if the threat occurred after a certain time interval after the theft was committed, i.e. after the doer had taken the stolen good to his place and returned to the place of the person injured, to whom he had admitted the deed committed, then the threat does not seem to be caused by the purposes provided by art. 211 *Penal Code*, which is why that is not a case of robbery (T.S. (1970): 16).

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

In order to complete the objective contents of robbery it is necessary that violence, threat, etc. be committed with a view to facilitating the theft. If this purpose is missing, then the deed is not robbery.

The Court of Appeal of Bucharest ruled out the crime of robbery of which the indictees were charged on the grounds of the following circumstances: seeing the victim collapsed and in a state of stupor near a bar entrance, the indictees drew close to him and when the victim tried to hit them while rising, they punched and kicked him after which they carried the victim to a side lane; later on – after longer than one hour – leaving the bar, the indictees returned to the place where they had left the victim, and as he was still there, lying unconscious, they took away his coat, shoes and belt. Judging the circumstances, it can be noticed that when they hit the victim, the indictees did not mean to dispossess him of certain objects, this decision being made spontaneously and later, when they saw the victim again. Under these circumstances, it cannot be considered that violence served the porpose of theft. There are two distinct resolutions, resulting in two concrete actions which, in absence of a unique subjective position which may have drawn them together, remain autonomous.

We should also bear in mind that if the coercing actions are taken after the good was appropriated, they must be committed by the doer with a view to keeping the stolen object, removing the traces of the crime or ensuring one's getaway.

Robbery does not imply that the purpose of the adjacent action be actually acheived; it is sufficient for this action to have been performed with a view to achieving one of the purposes shown in art.211, para. 1 *Penal Code*. Thus, the situation when the doer who was caught by the injured person trying to commit theft exerts violence upon the victim in order to get away, but is caught right away by other persons alerted by the victim's cries, is also a case of robbery.

This is because when the doer was caught, the main action – theft – was committed, and through the violence exerted later upon the victim the adjacent action was also accomplished.

Robbery may compete with assault (art. 239 *Penal Code*), association to the purpose of committing crimes (323), felony murder (art. 176 *Penal Code*), breaching the weapon and ammunition system of use (art. 279 *Penal Code*).

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

Through decision no. 29 of January 17, 1995 ruled by the Court of the Agricultural District of the County of Ilfov, which is peremptory for lack of appeal, the four indictees were convicted for qualified theft provided by art. 208, para. 1 referred to art. 209 letter a, and assault provided by art. 239 para. 2, applying article 33 letter b and 34 letter a of *Penal Code*.

The court actually recorded that the indictees stole 132 kg of plums from an orchard; being caught by two police officers, they hit the officers in order to get away.

According to the evidence, the court's decision is partly illegal. The indictees were correctly charged with assault (art. 239), but the provisions of article 208 are not incidental because after committing the theft, they used violence against two police officers in order to keep the stolen good and get away. Consequently, it is necessary that whenever the doers are caught upon the act of stealing and they use violence or threat to intimidate one or more than one person whose task is to take action in the name of the authority of the state, in this case two police officers, the indictees be sanctioned for robbery concurrent with assault, also applying the provisions of art. 38 letter b and 34 letter a *Penal Code*.

Robbery can be concurrent with the crime of association to the purpose of committing crimes.

The legal institution understood the task of incriminating this penal deed, being determined by the social hazard it implies for society. Therefore, the crime of association to the purpose of committing crimes implies the consented agreement of the doers to commit one or several antisocial deeds, shared planning of the deeds, the role cast to each.

This crime implies a twofold social hazard: one which is characteristic of crime, as well as one typical of the committed crimes or crimes to be committed.

The criminals' association has in view the crimes of a certain degree of seriousness: crimes against the patrimony, crimes against life, crimes related to sexual life, crimes against the person's freedom, crimes of forgery. The doers who are thus associated may plan to accomplish robbery among other crimes, which is a situation when, according to the provisions of art. 323, para. 2 *Penal Code* the rules of concurrent crimes shall be applied.

There will be a concurrence between robbery and felony murder when the doer acted intentionally with regards to the victim's death in

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

order to accomplish robbery without impediments; if in order to take the victim's life they used, without paying heed to legal provisions, a firing weapon, for intsance, there will also be concurrence in relation to the crime provided by art. 279 *Penal Code*.

The subjective side. Robbery is committed on unmediated purpose, both in what concerns the main action and the adjacent action; the doer plans and pursues to commit the theft through violence and menace, or by putting the victim in a state on unconsciousness or incapacity of self-defense, as well as by the use of some of these means in order to keep the solen good, remove the crime's traces or ensure getaway.

The doer's decision to accomplish robbery can be made from the beginning, or it can appear during or after theft completion. In the case of theft followed by the use of one of the means indicated in art. 211 *Penal Code*, the doer's resolution of committing the crime appears as a rule after the theft was committed, because it depends only on the extent to which somebody intervenes to dispossess him of the good stolen for the doer to make the decision of using violence, threat, etc. in order to keep the stolen object or to ensure getaway.

The subjective side of crime includes the purpose of using violence, threat in the sphere of the purpose typical of theft. Violence exerted to another purpose than the limitating one provided by the law can no longer constitute the adjacent action of the material element of robbery. If this purpose is missing, the main action, which is theft, is not accomplished, and consequently provisions of art.211 *Penal Code* are not applicable.

However, it cannot be argued that the purpose of unjust appropriation did not exist when the indictee holds that he kept the victim's coat as a forfeit for a debt occasioned by a game. This does not exclude the criminal nature of the act on the grounds that its subjective grounds would be missing (T. m. Bucuresti, (1992): 340-341).

In support of this argument, it is shown that the doer conditioned the return of the good taken away through violence, threat, on a certain imposed request – a debt. In this case, the agent has the representation of the fact that in case the victim fails to accomplish the request, he will keep the good for ever, which implicitly means that, by formulating the condition, he pursued the goal of unjustly appropriating the good as a consequence of the victim's failure to accomplish the request.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

For the act to be considered a crime it is not relevant if the indictee pursued the victim's dispossession of a certain good before the use of violence or threat, or if this goal appeared during the use of such a means with a view to achieving another goal – i.e. to force the victim into sexual intercourse – because, according to the law, any theft committed through the use of violence or threat is robbery (Papadopol, V., (1996): 300-301).

Conclusions

Robbery, one of the toughest and most insidious crimes, is a serious attempt at the person's possessions and intergrity. It is a crime typical of the itinerant unspecialized criminals, those who are coward, ruthless, lacking a well defined "modus operandi."

As argued, through its contents, robbery trenches upon the individual's essential values, in the first place property and more often than not bodily integrity, health or even life.

Of the criminal deeds recorded by statistics, robbery has been rising continuously.

With regards to the means used to accomplish it, it has been noticed that most crimes were committed through menace and the use of means of high risk, such as firing weapons, toxic and tear gas substances.

With regards to the active agents, more than one half of the crimes were committed by criminal gangs, most of them unemployed.

The explanation for the criminal etiology related to robbery lies in the precarious conditions in which the personalities of those who end up being criminals are formed.

It has been noticed that the deeds are originated by a certain attitude to work and to what belongs to others, by negative behavioural models and educational deficiencies, though the psychological tests reveal the lack of the sense of guilt in these subjects.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207

References

Dongoroz, V., Kahane, S., Oancea, I., Fodor, I., Petrovici, S., (1963), *Infractiunile contra avutului obstesc,* Editura Academiei, Bucuresti, Romania.

Nistoreanu, Gh., Boroi Al., Molnar, I., Dobrinoiu, V., Pascu, I., Lazar, V., (1997), *Drept penal. Partea speciala*, Editura Europa Nova, Bucuresti, Romania.

Pascu, I., Ivan, S., (1992), Aspecte teoretice si practice privind infractiunea de talharie, Editura M. I., Bucureşti, Romania.

Pastion, I. P., Popadopol, I.M., (1992), *Codul penal comentat si adnotat,* Editura Librariei Socec, Bucuresti, Romania.

Poenaru, I., Violenta ca element al infractiunii de talharie, R.R.D. nr. 10/1973.

Soroceanu, C., Biro, L., Semnificatia termenului „intrebuintare de violenta" din textul care incrimineaza talharia, R.R.D. nr. 41/1973.

Vasiliu, I., Pavel, D., Antoniu, G., Lucinescu, D., Papadpol, V., Ramureanu, V., (1975), *Codul penal comentat si adnotat, Partea Speciala,* vol. I, Editura Stiintifica si Enciclopedica, Bucuresti, Romania.

LAZARESCU, D., (2011) THE CONSTITUTIVE CONTENTS OF ROBBERY, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 193-207