

A Study on the Regulation of the Crime of Usury in the View of the Current Criminal Code¹

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Abstract

The dramatic evolution of the Romanian society in the socio-economic field in recent decades has determined a fulminant expansion of the forms of organized crime, including usury, an activity that is part of the sphere of contemporary slavery, using as a method the subjugation of the burdened with the obligation to pay interest rates that reach exorbitant levels. Certainly, in order to discourage such practices, a strong criminal policy is needed first of all, but at the same time, the effective cooperation of the state authorities is also necessary. Although the crime of usury is characterized by a high degree of complexity in terms of the fact that its commission has multiple consequences both economically and financially, as well as psycho-sociologically (especially through the deception of trust), the criminalization formula fails to fully render this complexity. Also, the ways of committing this crime are extremely diversified and, for this reason, the current reality makes it practically inappropriate to attribute the generic name of usury to such extremely serious activities, contrary to the rule of law. Judicial practice has shown that people who engage in such activities are not satisfied only with the interest collected, even if they exceed several times the legal interest. The classic forms of usury find their expression in the present times only extremely rarely, their degree of danger being minor, as a rule, with limited implications in the tax field, in the form of evasion.

Keywords: usury, incrimination, Penal Code, giving money with interest, organized crime.

JEL Classification: K14

1. About the usury in usual terms

Usury is a phenomenon that has grown in recent years, the method practiced being the granting of a financial loan based on a notarial contract, with a real estate pledge, with an interest masked in the amount borrowed and penalties imposed that lead to a fabulous increase in the debt, finally justifying the real estate foreclosure. In most cases, if, on the due date, the debtor declares that he can pay the borrowed amounts and interest, the usurer is not to be found. If they pay monthly installments, the amounts returned are deducted from the interest, the borrowed money always remaining unpaid, a situation that will result in the foreclosure of the real estate with which the loan was

¹ This paper research is carried out with love, pride and respect in honor of the most altruistic and people-loving human being that I have known on the road of life, on the occasion of her 95 years of existence on this earth, a wonderful person with who I managed to take my first steps and say my first words: Mrs. Constanța Patriche, my grandmother – the cradle of my childhood, an inexhaustible source of positive energy, love, kindness, wisdom, guidance, inspiration, blessing, the magician who sprinkled stardust over my life as a child, making my childhood special, full of wonder and joy, a star who shines her love in my life and guided me the road to faith, love, hope, the person who held my little hands for such a short time, but always my heart.

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guaranteed.

Certainly, in order to discourage such practices, a strong criminal policy is needed first of all, but at the same time, the effective cooperation of the state authorities is also necessary. Unfortunately, however, not infrequently the practical reality has demonstrated links between some representatives of these institutions and the underworld. We cannot help but wonder why, countless times in practice, the same notary agrees to authenticate for the same person, in a very short time, dozens of loan contracts with real estate guarantee, when there are huge disproportions between the borrowed value and the value of the asset that is constituted as guarantee, without being notified in any way? Also, we cannot help but wonder why the tax authorities do not rigorously verify the income of such people, who, in record time, end up becoming the owners of so many real estates? Often, although they end up paying off their loans in full, people still fail to regain their assets, as the signed notarial documents contain provisions that disadvantage them, allowing usurers to evade the law.^t The usury activity represents a strong form of financial aggression, which constitutes a real abuse of power that dominates certain sectors of today's society, especially where the socio-economic pressure is very high. People end up resorting to loans because of the needs, the financial difficulties they face, believing that this will be the saving solution. Unfortunately, however, loans are not a help for the poor man, but only a brief postponement of material difficulties, because through the debts incurred, the deprivations increase, the interest rates increasing their poverty even more. If the rich have no reason to borrow, the poor should not, because poverty will prevent them from paying their debts, and debts will enslave them to creditors, losing even their most precious possession – freedom!

It is very true that the border between interest and usury is very sensitive. We must admit that both essentially involve one and the same thing, namely sums of money from granting loans to those in need. What differentiates them is only the legal framework, in the sense that the interest, being charged and collected by authorized credit institutions, has acquired its legality, while usury, being practiced by persons without authorization, retains its position in the sphere of criminal offense. In fact, credit institutions permanently launch the most diverse and attractive credit offers for potential customers, from loans for personal needs to loan refinancing, all in order to collect interest and profit-creating fees.

If we look at the situation at the international level, we see that it is similar, in the sense that developed countries allocate attractive loans to the poor or developing countries, indebting them endlessly, not to really support them, but to ensure constant income from the interest charged.

2. Research methods

The present research constitutes "an analytical, conceptual and statutory approach to a complex issue, [...] much debated at international level"³, whose objective is the study of the offence of usury " through the new vision of legislation in force and

³ Andrada Nour (2020). „Euthanasia – A Right of the Human Being or a Crime against Humanity?“, *Scholars International Journal of Law, Crime and Justice*, Dubai: Scholars Middle East Publisher. 3(5), 141. DOI: 10.36348/sijlcj.2020.v03i05.001. Available on <https://saudijournals.com/sijlcj>.

through the need to prevent and combat such offences under criminal law⁴.

"Based on the problems above, the specifics of this research, the author implements the normative legal research which is supported by the research method of the normative law"⁵, in order to obtain a detailed analysis of the offence of usury, "with particular importance both theoretically and practically, since it contributes to the development of legal doctrine and use in practice the ideas expressed"⁶.

"The personal contribution is reflected throughout the entire work and highlights the way in which the concepts used were analyzed, through how reasoned opinions were submitted to doctrines, by personal opinions and conclusions"⁷.

The nature of this study is analytical descriptive and the data used were selected "from literature, cases and reports [...] in order to explain, states the fact clearly in addition to avoid using irrelevant data"⁸, then carefully processed.

3. The content of the crime of usury in the new legislative vision, including in relation to the constitutional provisions

Without a counterpart in the previous Criminal Code, the Romanian legislator criminalized the crime of usury in Article 351, within Chapter IV "Crimes regarding the regime established for other activities regulated by law" of Title VII "Crimes against public security" of the special part of the current Criminal Code, as follows: "Giving money with interest, as an occupation, by an unauthorized person, shall be punished with imprisonment from 6 months to 5 years."

In the previous Criminal Code, this deed was regulated as a variant of the crime of speculation in the text of Article 295 letter d), which provided for the prison sentence from 6 months to 5 years for the act of giving money with interest as an occupation or with interest higher than the legal one, as well as for receiving interest at interest. Article 8 of Law no. 12/1990 on the protection of the population against illicit commercial activities, republished, repealed this regulation, usury no longer constituting a crime until the entry into force of Law no. 216/2011 on the prohibition of the activity of usury, which, in art. 3 para. (1), provided, in a manner identical to that of the current Criminal Code, that: "The giving of money with interest, as an occupation, by an unauthorized person, constitutes a crime and is punishable by imprisonment from 6 months to 5 years".

Moreover, during the period of about two decades of the legislative vacuum in this matter, usury had come to be officially recognized as a profession, being excluded from the list only in 2008, when the usurers were replaced by pawnbrokers⁹. In the

⁴ Andrada Nour (2019). „The Crime of Traffic of Influence in the New Incrimination Formula”, *Perspectives of Law and Public Administration*, Volume 8, Issue 2, December 2019, pp. 358-367.

⁵ Mediheryanto, Jemmy Rumengan, Fadlan (2020). „Analysis of Juridical Legal Protection of Women Reproductive Health in Family Planning: A Research Study in Batam City”, *Scholars International Journal of Law, Crime and Justice*, 3(7), 208-215. DOI: 10.36348/sijlcj.2020.v03i07.001.

⁶ Andrada Nour (2019). *op. cit.* (*The Crime of Traffic of Influence in the New Incrimination Formula*), p. 358.

⁷ Ibid, p. 358.

⁸ Iin Karita Sakharina, Aidir Amin Daud (2020). „Abolition of Child Marriage Practices in Indonesia According to the United Nations Convention on the Rights of the Child”. *Scholars International Journal of Law, Crime and Justice*, 3(6), pp. 202-207. DOI: 10.36348/sijlcj.2020.v03i06.009.

⁹ The pawnbrokers estimate the value of the pawned objects, calculate the interest and pay the sums of money; they return the pawned objects or deal with the sale of these objects. In this regard, consult the page:

nomenclature of trades, more precisely in the 1995 Classification of Occupations in Romania, under Major Group 4 – Civil servants in services to the public, in addition to cashiers, ticket sellers, counter operators, etc., there were also usurers with the code name 4214¹⁰.

The legislator of the current Criminal Code has provided for the crime of usury only one normative modality, namely the giving of money with interest, as an occupation, giving up the act of giving money with interest higher than the legal one or the fact of receiving interest on interest.

From the analysis of the text of Article 351 of the current Criminal Code, we notice that, for the incidence of this crime, three conditions are required to be cumulatively met, namely the giving of money to be made with interest, to constitute an occupation and, at the same time, the person granting the loan to be unauthorized.

In order to be able to achieve the material element of the objective side of the usury crime, the money must be related to a loan agreement with interest. In fact, including in civil matters, interest-free loan agreements are considered lawful. On the other hand, practice has shown that many of those responsible for committing the crime of usury have improved themselves from a legal point of view, drawing up simulated contracts, through which, in reality, money loans are made for which interest is charged.

The second condition that must be met for the act to constitute a crime is that it represents an occupation of the perpetrator. In other words, the actions of the perpetrator must be understood as a quasi-profession of the perpetrator, which implies that the giving of money is carried out repeatedly, being systematically organized. As it is not repeated, i.e. it is an isolated loan, the act cannot be considered a crime, even if that loan was granted with a significant interest in terms of value¹¹. We emphasize the fact that "the legislator did not expressly define the notion of "occupation" in the criminal law, not indicating exactly the frequency of the material acts that it entails"¹². In this context, it was stated that the provisions of art. 351 of the current Criminal Code are likely to violate the principle of legality of criminalization, since, not being indicated the frequency with which the material acts specific to this crime must be committed, the regulation lacks clarity, precision and predictability¹³. However, according to the "settled jurisprudence of the European Court of Human Rights, the notion of "law" also means the

https://www.consultanta-contabilitate.ro/index2.php?option=com_content&do_pdf=1&id=634, accessed on 25 November 2024.

¹⁰ To consult in this regard: <https://legislatie.just.ro/Public/DetaliiDocument/96483>, accessed on 25 November 2024.

¹¹ To see in this regard, Vasile Dobrinioiu, Norel Neagu (2011). *Drept penal. Partea specială. Teorie și practică judiciară. Conform Noului Cod penal*, Universul Juridic, Publishing House, Bucharest, p. 690.

¹² Constitutional Court of Romania. Decision no. 82 of February 23, 2016 regarding the exception of unconstitutionality of the provisions of art. 351 of the Criminal Code and art. 16 para. (1) of the Code of Criminal Procedure, published in the Official Gazette of Romania no. 370 of May 13, 2016, paragraph 14. Available on: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/178412>. Also, Constitutional Court of Romania. Decision no. 550 of September 26, 2019 regarding the exception of unconstitutionality of the provisions of art. 351 of the Criminal Code, paragraph 15, published in the Official Gazette of Romania, Part I, no. 111 of February 13, 2020. Available on: <https://legislatie.just.ro/Public/DetaliiDocument/223023>.

¹³ See the jurisprudence of the European Court of Human Rights, respectively in the judgments of January 5, 2010 and July 8, 2008, pronounced in the cases of *Beyeler v. Italy*, paragraph 109, and *Fener Rum Patrikligi v. Turkey*, paragraph 70.

jurisprudence of the courts that explain this law"¹⁴, and in the matter of the application of art. 351 of the current Criminal Code there is jurisprudence. Analyzing the crime of usury from a historical perspective, we observe the fact that, prior to the criminalization in force, usury was defined as a crime according to the level of interest with which the usurer granted a loan or extended it in relation to the legal interest¹⁵, the practice proving repeatedly that this crime was followed by the crime of blackmail, regardless of the amount of interest requested¹⁶.

On the other hand, the Court of Appeal of Pitesti - Criminal Section and for Juvenile and Family Cases argues that "from the interpretation of the criticized text it is easy to deduce, even without legal studies, that it sanctions the lending of money with interest by unauthorized persons, when this activity is not a singular one, but carried out in a habitual way, so that it becomes an occupation"¹⁷. Also, the Ombudsman considers that "the failure by the legislator to specify the frequency or number in which they must be carried out in order to achieve the constituent content of the crime of usury does not give the norm an equivocal, imprecise or unpredictable character, but, on the contrary, emphasizes that the repetition of an act of giving money with interest determines the criminal nature of the act"¹⁸.

"The phrase used by the legislator, "as an occupation", qualifies the act as a crime usually, therefore, the number of material acts of giving money with interest, by an unauthorized person, must be large enough to denote their commission frequently or constantly. Thus, the legislator left to the court vested with the resolution of the criminal case a margin of appreciation regarding the number of material acts that give the action the character of occupation. This margin of appreciation is justified by the particularities of the concrete conditions in which each usury offence is committed". Also, the High Court of Cassation and Justice held that "the establishment of the repetitive nature of the action of giving money with interest is a question of fact that can be confirmed or invalidated on the basis of the evidence administered by the court in charge of solving the case, just as the identification of the incriminating norms in which the possible activities of concluding fictitious loan contracts can be framed is the exclusive attribute of the court in charge of solving the case. of the cause"¹⁹.

In judicial practice, it was considered that it is necessary to commit a minimum

¹⁴ Constitutional Court of Romania. Decision no. 82 of February 23, 2016.

¹⁵ See article 2 of Decree-law no. 1,700/1938, published in the Official Gazette no. 102 of May 5, 1938. At the same time, to see also article 450 para. (2) from Law no. 301/2004 regarding the Criminal Code.

¹⁶ Regarding the competition with other offences, the practice of the Supreme Court is eloquent regarding competition with the offence of blackmail, according to a frequently encountered procedure: the usurer requests new interests when the borrowers failed to return the borrowed amounts by the agreed term, after which they resorted to physical and mental violence for the purpose of recovering the borrowed money and related interests (High Court of Cassation and Justice, Criminal Section, Decision no. 3,876 of November 2, 2011, available on: www.scj.ro).

¹⁷ Constitutional Court of Romania. Decision no. 82 of February 23, 2016.

¹⁸ Ibid. We specify the fact that the Ombudsman referred to the jurisprudence of the European Court of Human Rights, respectively, to the judgments of September 23, 1998 and March 29, 2000, pronounced in the *Rotaru v. Romania* and *Petra v. Romania* cases.

¹⁹ High Court of Cassation and Justice, Decision no. 26 of October 29, 2015 regarding the offence provided for in article 351 of the Criminal Code, pronounced in File no. 3050/1/2015, published in the Official Gazette of Romania, Part I no. 77 of 02/02/2016, available at: <https://www.iccj.ro/2015/10/29/decizia-nr-26-din-29-octombrie-2015/>.

of three material acts for the existence of the crime. Thus, the crime of usury is consummated with the commission of the third material act. The moment of exhaustion is represented by the moment when the last action that is part of the material element takes place, as a result of its cessation by the perpetrator or as a result of the discovery of the deed.

"Out of the arguments contained in the doctrine, the Court finds that the criminalization of the crime of usury, as a habitual offense, without specifying the necessary and sufficient number of material acts to be committed in order for judicial bodies to be able to withhold this crime and without reference to a certain level of interest, superior to the legal one, denotes that the legislator had in mind, in the context of the regulation of the criticized text, the increased social danger of lending money when its author does not have an authorization to do so."²⁰ At the same time, "Court holds that the provisions of Article 351 of the Criminal Code are the result of a certain dynamic of the needs for the protection of social relations by means of the norms of criminal law, but also that they represent the option of the legislator, according to his criminal policy"²¹, while emphasizing the clear, precise and predictable character of this regulation made in accordance with the constitutional provisions.

The last condition concerns the person, from the analysis of the text resulting that the legislator chose for this offense that the active subject to be qualified, respectively an unauthorized person. "Author of the usury offence may be any natural person who is liable from a criminal point of view and who is a party (loaner) to a loan agreement with interest"²². "It is prohibited for any natural person, legal entity or entity without legal personality that is not a credit institution, engage in an activity of attracting deposits or other repayable funds from the public, in an activity of issuing electronic money or in an activity of attracting and/or of managing amounts of money derived from the contributions of members of groups of persons established for the purpose of accumulating collective funds and of granting credits/loans from the funds thus accumulated for the purchase of goods and/or services by their members."²³ According to art. 192 points 1 of Law²⁴ no. 187/2012, article 410 has the following content: "Carrying out, without the right, activities from among those provided for in art. 5 paragraph (1) constitutes a crime and is punishable by imprisonment from one to 5

²⁰ Constitutional Court of Romania. Decision no. 82 of February 23, 2016. Also, Constitutional Court of Romania. Decision no. 550 of September 26, 2019.

²¹ Constitutional Court of Romania. Decision no. 82 of February 23, 2016. Also, Constitutional Court of Romania. Decision no. 550 of September 26, 2019.

²² Alexandru Boroi (2011). *Drept penal: partea specială. Conform Noului Cod penal*, C.H. Beck Publishing House, Bucharest, p. 539.

²³ Article 5, paragraph (1) of the Government Emergency Ordinance (O.U.G.) no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

²⁴ Law no. 187 of October 24, 2012 for the implementation of Law no. 286/2009 regarding the Criminal Code was published in the Official Monitor of Romania no. 757 of November 12, 2012. This amended article 410 of O.U.G. no 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments. Before the entry into force of the Law no. 187/2012, article 410 had the following content: Carrying out prohibited activities according to article 5 by a person, on his own account or on the account of an entity that is not a credit institution, constitutes an offence and it is punishable by imprisonment from 2 to 7 years.

years."

Therefore, according to the legislation²⁵, only the credit institutions, Romanian legal entities, can grant loans. They may be established and operate, in compliance with the legal provisions applicable to credit institutions, in one of the following categories: banks, cooperative credit organizations, savings and lending banks in the housing sector, mortgage credit banks, institutions issuing electronic money²⁶. "National Bank of Romania is the competent authority on the regulation, authorization and prudential supervision of credit institutions"²⁷, it is also able to determine whether or not "an activity represents attracting deposits or other repayable funds from the public, banking activity, activity of issuing electronic money or activity of attracting and/or of managing amounts of money derived from the contributions of members of groups of persons established for the purpose of accumulating collective funds and of granting of credits/loans from the funds thus accumulated for the purchase of goods and/or services by their members. Determining the nature of the activity, expressed by the National Bank of Romania, is mandatory for the interested parties."²⁸ We consider it necessary to specify the fact that, within the meaning of the law²⁹, banking activity has the meaning of "attracting deposits or other repayable funds from the public and granting credits on their own account".

Criminal participation is possible in all its forms, namely co-authoring, instigation, complicity.

The immediate consequence is the state of danger created for the social value protected by the criminalization norm and, at the same time, the material damage created to those who borrowed the money.

The offence of usury may be committed from the point of view of the form of guilt, only with intent, not through fault, and the existence of the offence is not conditioned by the purpose pursued by the perpetrator, namely that of acquiring an illicit profit.

Preparatory acts committed by persons other than the perpetrator, insofar as they constitute acts of complicity, will be sanctioned accordingly.

4. Particularities and discussions on the realization of the material element of the crime

We consider it necessary to analyze whether the moment of the consummation

²⁵ To see in this regard, O.U.G. no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

²⁶ To see in this regard, article 3 of O.U.G. no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

²⁷ To see in this regard, article 4 paragraph (1) of O.U.G. no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

²⁸ Article 5 paragraph (1) of O.U.G. no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

²⁹ Article 7 paragraph (1) pct. 1 article 4 paragraph (1) of O.U.G. no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.

of the crime should not be considered the time when remittance of a money amount with interest takes place. Therefore, the usury offence is considered to be consummated when at least three material acts have been carried out, from which it can be concluded that the giving of money with interest constitutes an occupation of the perpetrator, each subsequent activity representing only the continuation of the crime until it is exhausted, meaning until the moment when the perpetrator will grant the last loan with interest, being irrelevant for the existence of the offence the time when the interest was collected according to the contract/understanding. Given that any loan contract is part of the category of real contracts, by way of consequence, the moment of its conclusion is considered to be the moment when the money that is the subject of this contract is actually handed over to the borrower. Theoretically, as a result of this hypothesis, the action that characterizes the material element of the usury offence, namely the giving of money, it would be realized only when the perpetrator handed the borrower the amount of money that is the object of the loan contract, and not the moment of signing this contract. And, as we stated previously, since several such acts are necessary for the existence of the offence, from which the perpetrator's occupation can result, all this will be considered effectively consumed only on the occasion of handing over the money to the borrowed person. We consider it is necessary to underline also the fact that the term occupation used by the legislator in the criminalization norm does not imply the condition that the usury activity is the only source from which the perpetrator to earn his living.

In our opinion, the social danger of this offence arises at the very moment it takes place the signing of the loan agreement, even if the money will actually be handed over to the borrower at a later date, since by signing the act, the interest claim already becomes a contractual obligation. Considering these aspects, we express the opinion that, even if the perpetrator were to waive the collection of interest after the conclusion of the contract, the incidence of the usury offence in this case is preserved. However, we consider that, in the judicial individualization of the penalty, the court should take into account the moment when the perpetrator waived the collecting of interest, as well as whether or not this aspect was recorded in a possible addendum to the original contract.

In our opinion, it necessary to further analyze whether the collection of more interest is likely to attest to the perpetrator's occupation. Why? Because, in such a hypothesis, the perpetrator could collect more interest for the same borrowed amount, as a result of a single material act of giving money.

At first glance, one might think that, by collecting more interest, it could be established the occupation character of the deed, since, the legislator's intention was to sanction the giving of money with interest. The collecting of the interest distinguishes the illicit loan from the licit one, inscribing it in the sphere of the usury offence as a defining element. If interest-free loans are considered perfectly legal, it follows that the collecting of the interest constitutes the element subject to criminal sanction. Going on this reasoning, it could also be stated that regardless of what was stipulated in the loan contract and regardless of how many material acts of remittance took place, the crime is only consumed at the time of interest collecting. However, given that the perpetrator's intention to collect interest on borrowed money is proved by the conclusion of the loan agreement, as well as the fact that the socially dangerous outcome of the usury offence occurs at the very moment of the conclusion of that contract, in our opinion, it cannot be

considered that the offence of usury is only consumed at the time of collecting of the interest.

In the case of usury, the product of the crime (loan money and interest) is subject to special confiscation. By non-refunding of the money, it follows that the private person having the capacity of debtor is left outside the criminal protection. In addition, by referring to the value protected by the incrimination norm in the case of usury offence, we find that the legislator seeks to protect the public interest, not that of the private person who obtains a sum of money from a loan with interest. Basically, the legislator sanctions the conduct of the perpetrator who violates the prohibition to conclude loan agreements by which he gives money with interest, as an occupation. In addition to the fact that the infringement of this prohibition occurs right at the moment of the signing the contracts in question, it is susceptible to unfolding over time, continuously, throughout the period of execution of contracts, ending only on the occasion of the last act of execution, when the perpetrator collects the last interest.

All the material acts performed, which make up the content of the usury offence charged to the perpetrator, committed repeatedly, viewed as a whole and taken together, demonstrate the perpetrator's occupation, his habit of granting loans with interest, the continuous nature of this crime, and the fact that the moment of exhaustion of this crime can be located in time, much further from the moment of consumption, as a result of the contract concluded by the parties.

The legislator's intention being that of sanctioning the granting of loans by unauthorized persons, we consider that the social danger of this offence is maintained throughout the duration of the contract, until the moment when the perpetrator achieves the objective pursued by signing the act, namely collecting the interest set for the allocated loan.

By referring to the social value protected by the incrimination norm, we consider that in the judicial individualization of the punishment, the court must take into account not only the number of material acts that demonstrate the occupation of the perpetrator, but also the extent of his criminal activity in time, from the moment of consumption and up to that of exhaustion, which marks, in fact, the restoration of the rule of law.

Given that the value protected by the criminalization norm concerns the public interest, we consider that, although the legislation in force leaves out of the criminal protection the beneficiary of the amounts borrowed with interest, the legislator should also criminalize the receipt of money with interest in ways other than through credit institutions authorized in order to deter such acts, as it happens in the case with taking bribery and giving bribery offences.

5. Jurisprudence in the field of proof of the material element of the offence

As we have previously shown, usury being a habitual crime, for the existence of the material element it is required to commit repeatedly a minimum of three acts of execution, resulting in the habit, the occupation of the perpetrator of granting loans with interest. Each enforcement act taken individually does not fall within the sphere of this offence, as it does not fulfil the condition of habitability. Taken together, however, they will demonstrate the occupation of the perpetrator. Since in practice it is considered that "crime is consumed at the moment when sufficient acts of giving money with interest

have been committed, and the moment of the exhaustion of the criminal activity is that of the last execution act, being indifferent in this aspect the moment of the conclusion of the interest"³⁰. Consequently, in order to be able to affirm the existence of the usury offence, it is mandatory to provide proof/evidence of each execution act, respectively of each loan granted with interest, confirming the consumption of the crime. Therefore, in our opinion, it is not enough to actually prove only the character of habit. Moreover, including "in the opinion of the National Institute of Magistracy, the usury offence typicality implies the effective proof of the plurality of the acts necessary to reach consummation. Giving money with interest is a crime regardless of whether it is done on the basis of a loan agreement or through simulated documents and the percentage of the interest charged has no relevance, the interest obtained by the usurer (which can be any natural or legal person) is the product of the crime"³¹.

"Reporting to the criminal investigation bodies can be done either as a result of a complaint from the injured person, or as a result of a denunciation or an ex officio complaint can be made, the offence being governed by the principle of officialdom. The law does not allow the withdrawal of the prior complaint or the reconciliation of the parties, and the amounts of money obtained from the usury activity should be confiscated, insofar as they are not returned to the injured person"³².

Despite the fact that the extent of this phenomenon is known at the national level, however, there are acts that imitate legality, the usury is covered and becomes difficult to prove, some courts being forced to order the acquittal of the defendant, therefore, he remains unpunished.

An example in this regard is the Decision no. 289 pronounced by the Constanța Court of Appeal on the 8th of March 2016 in a case whose object was committing the usury offence, in which the acquittal solution pronounced by the trial court was maintained on the grounds that the deed does not exist, since the telephone conversations as material means of evidence could not be corroborated with other evidence. Analyzing the evidence in the file, the Court found that the witnesses were granted several loans by the defendant, but that they were not made in order to charge an interest. In the file, it was possible to prove the commission of a single material act specific to this crime, which does not meet the condition of the incrimination norm regarding the habit, the occupation of the perpetrator to grant money with interest.

In the referral act, the perpetrator's culpability was argued through evidence whose content was represented only by the minutes of the rendering telephone conversations that the defendant had with the witnesses, according to which the case prosecutor formulated a series of assumptions and deductions. "It is true that in the process of corroborating and evaluating the evidence, the court can establish with certainty a certain factual situation based on recourse to certain syllogisms, but this procedure must be based on certain elements and lead to a reasonable conclusion."³³ "The judicial truth cannot be established, however, only on the basis of interpretations

³⁰ <https://www.bihon.ro/opinii/infractiunea-de-camatarie-2779/>, accessed on 25 November 2024.

³¹ <https://www.politisti.ro/articole/politia/probarea-infractiunii-de-camata-r96/>, accessed on 25 November 2024.

³² <https://www.bihon.ro/opinii/infractiunea-de-camatarie-2779/>, accessed on 25 November 2024.

³³ Constanța Court of Appeal, Criminal Decision no. 289/8 March 2016, available on: <https://www.legal-land.ro/camatarie-achitare-necoroborarea-interceptarilor-convorbirilor-telefonice-cu-alte-mijloace-de-proba/>, accessed on 25 November 2024.

of the content of telephone conversations, since their factual elements contain reports of facts, and words, as a way of transmitting thoughts or ideas, cannot by themselves lead to the conclusion that the facts were objectively transposed into practice."³⁴

"The lack of corroboration of them with other evidence leads to the conclusion that the verbal account of a circumstance cannot be verified whether or not it was followed by the unfolding of the facts."³⁵ "Considering the nature of the usury offence for which the prosecution was ordered, the Court considers that, necessarily, in order to prove the accusations made, it must be proven that the defendant and witnesses had knowledge about some circumstances essential to the case in which they were heard."³⁶ "Considering the significant subjective character of the internal process of receiving information, in such situations it must be proved in addition that, in relation to the conditions and circumstances in which the information was recorded, it could not have been received by the witness under the conditions and in the manner in which the event or fact to which it relates took place."³⁷ "However, in addition to the equivocal nature of the telephone conversations, it is necessary to emphasize that, not in all cases/situations, the information transmitted by the transmitter, in the elliptical form in which this transmission took place, was based on the existence of pre-existing information of the receiver, in relation to which it had the meaning conferred by the accusation against the defendant, in the conditions where all the witnesses affirmed that the defendant lent them with various money amounts but without charging interest."³⁸

Another example of acquittal of the defendant on the grounds that the act is not provided by the criminal law in a case related to the crime of usury is the Criminal Sentence no. 1745 of the 1st of November 2019, pronounced by the Galati Court, which remained final by the Criminal Decision no. 834 of the 7th of October 2020, pronounced by the Galati Court of Appeal.

"The offence is consumed at the time of committing the last act of giving money with interest, which is able to outline the occupation of the perpetrator, which, as a rule according to jurisprudence and doctrine, is carried out on the third repetition. The subsequent collection of interest, regardless of how it is done, respectively in a single act or successively, or the collection of interest on interest are actions that are not circumscribe to the material element of this crime, these being subsequent acts, because the incriminated conduct is represented, exclusively, by the perpetrator's action of giving money with interest, as an occupation. These acts cannot constitute the socially dangerous consequence of the usury offence and, in this respect, it pleads its inclusion in the category of those of danger and not of result offences, essential being that the loan to be granted on condition that an interest is owed, even if it is not actually collected later. The socially dangerous consequence of the usury offence consists in the state of danger to social relations regarding the regime established for the lending activity."³⁹

In the present case, the court was notified of the defendant's act of constantly and repeatedly receiving sums of money totaling 50,000 euros, amounts that were

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Galati Court, Criminal Sentence no. 1745 of 01.11.2019. Available on: <https://www.jurisprudenta.com/jurisprudenta/speta-18uv5hz4/>, accessed on 25 November 2024.

claimed and received by him as interest calculated for an initial loan granted to the injured person in the amount of 8,000 euros.

Regarding the amount granted with interest, the court held that "the only evidence that can accurately elucidate the concrete conditions under which the loan contracts were negotiated in verbal form, including whether interest was charged, are the statements of the contracting parties"⁴⁰. The court also held that the statements of the witnesses constitute "indirect evidence, derived from the statements of the injured person, they declaring that the data they reported were obtained from the injured person and do not corroborate with the documents related to bank transactions"⁴¹. The court appreciated that "these indirect evidences are complementary to the statements of the injured person and are not able by themselves to clarify the concrete circumstances in which the loans between the injured person and the defendant took place, and their probative force was removed by the position adopted by the injured person during judicial investigation. Considering these arguments, but also the objective impossibility of administering other evidence relevant to the conditions under which the loan contracts intervened, the court held that the evidentiary material of the case proves that the defendant did not request interest for the loans granted to the injured person"⁴². Regarding the constant and repeated collection of interest, the court found that, although it represents an activity subsequent to the crime of usury, nevertheless the fact that was the subject of the referral act was grafted precisely on this activity of the defendant, the granting of the loan with interest passing into the subsidiary plan. At the same time, the court also found that the collection of interest "does not fall within the sphere of the material element of the usury offence, nor does it constitute the socially dangerous consequence of this crime, which, as it has been shown, is a dangerous crime and affects social relations regarding to the regime established for lending activity"⁴³. Therefore, taking into account the above, the court ordered the acquittal of the defendant on the grounds that the act is not provided for by the criminal law.

Following the appeal declared by the Public Prosecutor's Office attached to the Galati District Court, the court charged with resolving it emphasized that "the Court cannot order a conviction solution based only on some evidence administered during the criminal prosecution phase, unsupported by those evidence administered directly during the trial phase, under conditions of adversariality, publicity and orality"⁴⁴. According to art. 396 para. (2) of the Code of Criminal Procedure "conviction is pronounced if the court finds, beyond any reasonable doubt, that the deed exists, constitutes a crime and was committed by the defendant", and according to art. 4 para. (2) of the same code, "after the administration of all the evidence, any doubt in forming the conviction of the judicial bodies is interpreted in favor of the suspect or of the defendant". The court of appeal found that, "concretely, the evidence administered in the case did not prove the circumstance that the defendant offered the injured person different money amounts as a loan, for which he claimed interest, and he carried out this activity as an occupation"⁴⁵,

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Galati Court of Appeal, Criminal Decision no. 834 of 07.10.2020. Available on: <https://www.jurisprudenta.com/jurisprudenta/speta-18uv5hz4/>, accessed on 25 November 2024.

⁴⁵ Ibid.

as well as the fact that "no evidence proves beyond any doubt that the defendant's "activity" of lending the injured person is circumscribed to an occupation"⁴⁶. Thus, the Court of Appeal rejected the appeal⁴⁷, maintaining the decision of the substantive court.

6. Conclusions

The giving of interest-free money as an occupation or the giving of money with interest, but sporadically by unauthorized persons does not form the content of the usury offence, at most, it may be the subject of civil actions. The usury deeds can be sanctioned as offences only after proving the occupation character, through repeatability and extension in time, the granting of the loans being the reason for the collection of the interest. Therefore, what turns the granting of a loan into a criminal deed is the charging of an interest, regardless of the amount.

Basically, the interest charged being the purpose of the borrowed money amounts, it follows that these amounts become goods used to commit the deed, actively contributing to the realization of the material element of the objective side of the usury offence. The socially dangerous result occurs at the moment of the giving money and it consists in the unfair competition to the authorized credit institutions, as well as in obtaining benefits prohibited by criminal law.

We consider that, in order to be able to reveal the perpetrator's intention to establish and collect illegal interest, it is necessary to interpret the criminalization norm in a systematic way, by referring both to the part and to the whole. By part we mean the giving of money made through a single action and the claiming of related interests, both in an interdependent relationship, a relationship that contributes to the shaping of the usury offence. By the whole we mean the crime of usury as a whole, seen as a complex activity, which consists both in the remittance of several money amounts in a large enough number to result in the occupation, and in the claiming of the related interests.

In our opinion, although at first glance we might be tempted to consider criticizable the legislator's decision to leave outside the sphere of the criminalization the normative methods provided for in the previous criminal legislation, namely giving money with interest higher than the legal one, as well as receiving interest on interest, the criminalization of charging an interest above the legal one or the receipt of interest on interest does no longer constitute real anti-social phenomena, their criminalization becoming practically inappropriate.

By law ferenda, we consider that it is necessary to criminalize including the giving of money with interest by an unauthorized person that has an isolated character, respectively even when it is carried out in a number of material acts that are not capable to realize the material element of the regulation in force of the usury offence, indifferent if the action was carried out directly or it was disguised by an official document. The reasoning of our opinion is based on the fact that even one such act could present a high degree of social danger.

Considering that the value protected by the criminalization norm is aimed at the public interest, we believe that, although the legislation in force leaves out of the criminal protection the beneficiary of the amounts borrowed with interest, the legislator should

⁴⁶ Ibid.

⁴⁷ Ibid.

also criminalize the receipt of money with interest in other ways than through authorized credit institutions in order to deter such acts, as in the case of giving bribery and taking bribery offences.

The ways of committing this crime are extremely diverse and, most of the time, take forms that, rather, are circumscribed to the organized crime phenomenon. The current reality regarding the very complex manifestation forms of this crime makes it practically inappropriate to attribute the generic name of usury to such extremely serious activities, contrary to the legal order.

Bibliography

1. Boroi, Alexandru (2011). *Drept penal: partea specială. Conform Noului Cod penal*, C.H. Beck Publishing House, Bucharest.
2. Constanța Court of Appeal, Criminal Decision no. 289/8 March 2016, available on: <https://www.legal-land.ro/camatarie-achitare-necoroborarea-interceptarilor-convorbirilor-telefonice-cu-alte-mijloace-de-proba/>, accessed on 25 November 2024.
3. Constitutional Court of Romania. Decision no. 550 of September 26, 2019 regarding the exception of unconstitutionality of the provisions of art. 351 of the Criminal Code, paragraph 15, published in the Official Gazette of Romania, Part I, no. 111 of February 13, 2020. Available on: <https://legislatie.just.ro/Public/DetaliiDocument/223023>.
4. Constitutional Court of Romania. Decision no. 82 of February 23, 2016 regarding the exception of unconstitutionality of the provisions of art. 351 of the Criminal Code and art. 16 para. (1) of the Code of Criminal Procedure, published in the Official Gazette of Romania no. 370 of May 13, 2016. Available on: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/178412>.
5. Dobrinou, Vasile & Norel Neagu (2011). *Drept penal. Partea specială. Teorie și practică judiciară. Conform Noului Cod penal*, Universul Juridic, Publishing House, Bucharest.
6. Galați Court of Appeal, Criminal Decision no. 834 of 07.10.2020. Available on: <https://www.jurisprudenta.com/jurisprudenta/speta-18uv5hz4/>, accessed on 25 November 2024.
7. Galați Court, Criminal Sentence no. 1745 of 01.11.2019. Available on: <https://www.jurisprudenta.com/jurisprudenta/speta-18uv5hz4/>, accessed on 25 November 2024.
8. Government Emergency Ordinance (O.U.G.) no. 99/2006 regarding credit institutions and capital adequacy, published in the Official Gazette of Romania, part I, no. 1027 of December 27, 2006, approved, amended and supplemented by Law no. 227/2007, with subsequent amendments.
9. High Court of Cassation and Justice, Decision no. 26 of October 29, 2015 regarding the offence provided for in article 351 of the Criminal Code, pronounced in File no. 3050/1/2015, published in the Official Gazette of Romania, Part I no. 77 of 02/02/2016, available at: <https://www.iccj.ro/2015/10/29/decizia-nr-26-din-29-octombrie-2015/>.
10. Law no. 187 of October 24, 2012 for the implementation of Law no. 286/2009 regarding the Criminal Code was published in the Official Monitor of Romania no. 757 of November 12, 2012.
11. Mediheryanto, Jemmy Rumengan, Fadlan (2020). „Analysis of Juridical Legal Protection of Women Reproductive Health in Family Planning: A Research Study in Batam City”, *Scholars International Journal of Law, Crime and Justice*, 3(7), 208-215. DOI: 10.36348/sijlcj.2020.v03i07.001.
12. Nour, Andrada (2019). „The Crime of Traffic of Influence in the New Incrimination Formula”, *Perspectives of Law and Public Administration*, Volume 8, Issue 2, December

- 2019, pp. 358-367.
13. Nour, Andrada (2020). „Euthanasia – A Right of the Human Being or a Crime against Humanity?“, *Scholars International Journal of Law, Crime and Justice*, Dubai: Scholars Middle East Publisher. 3(5), 141. DOI: 10.36348/sijlcj.2020.v03i05.001. Available on <https://saudijournals.com/sijlcj>.
 14. Sakharina, Iin Karita & Aidir Amin Daud (2020). „Abolition of Child Marriage Practices in Indonesia According to the United Nations Convention on the Rights of the Child“. *Scholars International Journal of Law, Crime and Justice*, 3(6), pp. 202-207. DOI: 10.36348/sijlcj.2020.v03i06.009.