

# **LEGISLATION IN TOURISM**



# LEGAL CONSIDERATIONS ON JUDICIAL OUTRAGE

Gheorghe PINTEALĂ  
Valentina Larisa TODERESCU

**Abstract:** *The term of outrage implies its association with terms such as offense, insult, threat. More specifically, outrage is an offense consisting of an offense, defamation, insult, threat or other acts of violence or bodily injury against public servant while on duty.*

*In these crimes, we can notice that the authorities are also specially protected by the fact that any threat or violence against a person exercising a state authority, while exercising their duty, for intimidation or revenge, leads to an increase of the punishment by one-third - this offence being called "outrage".*

*In this paper, we wish to analyse the two offenses from a perspective that makes us understand the difference between them, but also a clear understanding of the offenses of outrage and judicial outrage, by resorting to issues related to judicial practice.*

**Keywords:** *Outrage; Offense; Crime; Judicial practice.*

## 1. Introduction

According to the law, the outrage is defined as the *threat directly committed by means of direct communication, hitting or other violence, bodily injury, hitting or injury causing death or killing committed against a civil servant performing a function involving the exercise of state authority, while exercising their duties or in connection with carrying out of these duties*. Unlike the outrage, the new offense of judicial outrage is found in the act of *threatening, hitting or other violence, bodily injury, hitting or injury causing death or killing committed against a judge or a prosecutor while exercising their duties, against a lawyer while exercising their profession*.

The importance of criminal law and the adoption of the New Criminal Code is understood by the fact that the lawfulness of criminalization is a fundamental principle of Romanian criminal law and clearly establishes that only the law stipulates which acts constitute offenses, the penalties applicable to offenders, the measures that can be taken in case of committing these crimes. Therefore, the amendment of

criminal legislation by the entry into force of the New Criminal Code appears necessary as a result of "profound transformations suffered by the Romanian society in the four decades that have passed since the adoption of the previous Penal Code, especially in the period after 1989" .

## **2. Theoretical research.**

### **2. 1. Concept. Definition. Text comprehension.**

In order to make a brief historical presentation of the outrage offense, we have to mention that the Romanian penal doctrine has expressed serious reservations towards the removal of the outrage by injuries or defamation, based on the following considerations:

- In the old Romanian Criminal Code, from 1937 and from 1969 (until the amendment), the insult and the defamation were present.
- The French Criminal Code criminalizes the outrage committed through the following: words, gestures, threats.
- The Italian Penal Code criminalizes any act that offends the honour of a civil servant.

The outrage is a complex offence with a protected legal object - the social relations regarding the respect due to the state authority, by committing such an offense infringing the legal order.

It has definitely a main passive subject - the Romanian State - defender of the legal order, and a passive secondary qualified subject - a public servant fulfilling a function involving the exercise of state authority. Thus, by committing an offense of outrage, the social values recognized by the law are harmed, first of all the State and the legal order, and second, the life, health and integrity of a person.

For a good understanding of the incriminating text, we would like to introduce the concepts contained in this offense.

Under these circumstances, the concept of 'function involving the exercise of State authority' means that function that confers a civil servant certain tasks which could not be fulfilled without the exercise of State authority, that is without the power to make a provision and to take measures necessary to comply with them.

There can be no dissociation between the authority as such and the person who represents it and on whose behalf they perform their legal duty. Criminal protection is a kind of guarantee of the exercise of their duties, not a privilege, and its legitimacy derives precisely from the legitimacy of the existence of authority. That is why the legal treatment differently applied to different conditions is justified precisely because it is necessary that equality before the law should not discriminate against or create privileges.

Based on the legal text, we see that threatening action must be committed either directly or through direct communication. The threatening action is "direct" when the public servant is physically present at the place and during the outrage action, but it is not necessary for him to perceive the threat, it is sufficient for the action to be committed so that it can be perceived.

The "direct communication means" involve the use by the perpetrator of technical means of communication without the physical presence of the civil servant (letters, telephone, e-mail, etc.).

The term "intimidation" has the meaning of action by which a person scares or frightens another person causing them to act in the indicated purpose and direction.

By "revenge" we understand the action of a person to do their own justice by punishing the one they consider to have done something wrong, an injustice.

There is also an attribution of the term of "outrage" and it is given by the Explanatory Dictionary of the Romanian Language that further defines the outrage using the notion of "act of violence against someone", in our case, this someone being the civil servant.

If the victim is a judge or a prosecutor, the penalty is increased by half, and this new offense is called judicial outrage. Thus, a new offense finds its status in the criminal code, the offense of judicial outrage, and the legislator defines it in art. 257.

The offense of judicial outrage is an aggravated form of the outrage and seeks to protect persons with important judicial attributions in justice against manifestations of mental or physical violence during the exercise of these duties.

## **2.2. The structure of offenses analysed comparatively**

### **2.2.1. Pre-existing conditions**

The legal object of outrage concerns the social relations regarding the respect for the state authorities and the civil servants who carry out an activity within them, in other words, it brings prejudice to the prestige of the position exercised by the protected person. We also notice that the social relations related to psychological freedom or to bodily integrity or health of the civil servant are also prejudiced.

By analysing the structure of offenses in a comparative manner, we say that the main legal object of the offense of outrage lies within the social relations related to finding justice, but also within the social relations related

to psychological freedom or to bodily integrity or health of the judge/prosecutor/lawyer.

The material object is represented in both offenses by the person's body, unless the act is committed by threat, and in the case of the assimilated variants, the material object can be also the civil servant's asset or their family member's asset, namely the asset of the judge/prosecutor/lawyer or of another member of their family.

The active subject can be any person who can be held criminally liable and who has criminal capacity, and criminal involvement is possible in all ways.

As for the passive subject, it will be presented separately. Thus, in the case of an offense of outrage, the passive subject is the unit or institution that performs state authority, while the offense of judicial outrage has as its main passive subject the state, which may be represented by a judge, a prosecutor or a lawyer. The legal person cannot be a passive subject. In both offenses, the plurality of secondary passive subjects attracts the retention of the plurality of offenses.

### **2.2.2. Constitutive content**

The objective side of the outrage offense has as element of the form the perpetration of one or several of the five alternative modes.

The first mode is focused on the threat of a civil servant who performs a function involving the exercise of his duties (even for acts unrelated to the job) or in connection with the exercise of these duties.

To understand this mode from a practical point of view, we believe the following example will shed better light to it. Therefore, the offensive attitude towards a police officer and a public guard is not considered an outrage offense when this is a reaction to the abusive action of the two civil servants to attempt to force a person to accompany them at the site of an accident in relation to which the person has nothing to do. By being outside the law with their abusive act, the two public force agents cannot benefit from the protection established by art. 239 of the Criminal Code (C.S.J., Criminal Section, Decision No. 1564/1999)

Another example would be the hitting of several civil servants in the exercise of state authority, under the same circumstances, they constitute as many offenses committed, and not a single offense in an aggravating form (CSJ, criminal section, decision no. 1136/2003).

A second alternative mode is given by the hitting or any acts of violence committed against a civil servant who performs a function involving the exercise of state authority in the exercise of their duties or in

connection with the performance of such duties. We would like to mention non-compliance with the decision, being committed by violence or threat against the executing body includes, on the objective side, the elements of the outrage offense.

The other modes are bodily injury committed against a civil servant who performs a function involving the exercise of state authority in the exercise of his duties or in connection with the exercise of these duties; the murder committed against a civil servant who performs a function involving the exercise of state authority.

The objective side of the judicial outrage offense has as material element the perpetration of one or more of the following five alternative ways: the threatening of a judge or prosecutor in the exercise of their duties or a lawyer in connection with the exercise of the profession; hitting or any violence committed against a judge or prosecutor in the exercise of their duties or a lawyer in connection with the pursuit of the profession; bodily injuries committed against a judge or prosecutor in the exercise of their duties or a lawyer in connection with the exercise of the profession; hitting or death-related injuries committed against a judge or prosecutor in the exercise of their professional duties or a lawyer in connection with the exercise of the profession; murder committed against a judge or prosecutor in the exercise of their professional duties or a lawyer in connection with the exercise of their profession.

The immediate consequence of these crimes is the state of danger created for the authority of the Romanian state.

The causal link results from the materiality of the deed or *ex re*.

### **2.2.3. Subjective side**

The subjective side of the outrage offense and of the judicial outrage is similar. Therefore, it shows the direct/indirect intention or *praeterintentiona* if the offense is committed with this form of guilt (for example, hitting or death-causing injuries).

We point out that the motive or the purpose of the offense is of no importance, except for the assimilated forms when the deed is committed for intimidation or revenge.

The forms of the offense are the same for both analysed offenses; the preparatory deeds being possible, but not incriminated, and the possible and incriminated attempt to the extent that it is possible and criminalized for the offenses taken.

The offense is deemed to have been consumed at the time of the completion of the typical deed, but it may also be committed in a continuing

form, in which case the offense is exhausted at the date of the last act of execution.

#### **2.2.4. Penalty**

The punishment is regulated differently between the outrage offense and the judicial outrage offense. Thus, for the outrage offense, the penalty limits are given by those of the absorbed offenses whose minimum and maximum are increased by one third, and in the aggravated version, the penalty limits are given by those of the offenses committed whose minimum and maximum increase by half.

Regarding the judicial outrage offense, the penalty limits are given by those of the absorbed offenses whose minimum and maximum increase by half.

### **3. Practical research**

To add the practical aspects, we shall render the case at hand that we think will have more auspicious effects for a good understanding of this offense. (ICCJ, Criminal Section, Decision No 3845/2011)

Being a complex offense, the outrage offense regains its expression, first of all, in the objective aspect of the constitutive content of the offense. In order for the harming deed that makes the material element of the outrage offense to carry out the content of the objective side, certain conditions must be met, namely it must be exercised against a civil servant while they are on duty or for deeds performed in the exercise of the function. The requirement in any of its variants originates in the judicial object of the outrage offense, which the law protects. In such a case are the social relations whose existence and development are provided by defending the respect due to authority, which requires the protection of persons performing a function involving the exercise of state authority. Of course, the law does not intend to provide unlimited protection in favour of the civil servant so that, when they exceeds their duties or perform them in an abusive manner, they are performing their duties and do not act in the interest of authority, so they no longer under the protection of the legislator.

Or, in the present case, it was unambiguously proved, contrary to the defendant's assertions, that on December 8, 2008, being under the influence of alcoholic beverages, he physically assaulted the injured party P.I., a policeman within the M. Police, who was together with his colleague, witness B.I. in the exercise of his duties. The fact that the injured party was with his colleague in the defendant's courtyard was due to his wife's

emergency phone call, M.M., who, after being asked for documents by agent P.I., asked the two police officers for help in relation to the violent behaviour of her husband who has destroyed several household goods and threatened both her and her minor son with death. The fact that the two police officers refused to leave the defendant's courtyard does not constitute an abusive of duties, as the defendant argues, since the chronological evolution of events shows that the two police officers were preparing to leave the courtyard together with the defendant's wife and minor son, when the defendant attacked the injured party by twisting his right arm at the back, pushing him towards the fence, where he compressed his arm with his body weight, causing him a muscular-tendon rupture which required 30-35 days of medical care. The violent action of the defendant against the injured party P.I., a police officer within the M. Police, was due to his wife's decision to leave the home with their son, accompanied by the two police officers, and not because of the violent action exercised by the police officers. In view of these considerations, the High Court of Cassation and Justice finds that the first criticism of the defendant who challenges the legal classification of the deed is unfounded, his deed constituting the constitutive elements of the offense committed against a policeman, and not those of bodily harm in the second degree, because he knew the quality of the injured party, the policeman, the purpose of his arrival at his home, namely to ensure order and public peace and to prevent the commission of a more serious deed, so that the injured party did not exceed his service duties at the time of the incident. At the same time, the High Court of Cassation and Justice observes that, in relation to the actual manner in which the defendant incurred the injury against the police officer on duty, he committed the deed in the form of the indirect intention, as correctly understood by the two courts, even if he did not pursue the production of the result, he provided it and accepted its production.

#### **4. Conclusions**

The respect due to the state authority and implicitly to those who are invested with this authority must be defended by all means and all the more as the social values are dual, on the one hand the ones regarding the state authority, and on the other hand those regarding the social values of the bearers of this authority.

We conclude by pointing out the two offenses analyzed in the present paper, the outrage offense and the judicial outrage offence, stating that criminal law defends our country, Romania, its sovereignty,

independence, unity and indivisibility against offenses, but it also defends the persons, their rights and freedoms, their property as well as the entire rule of law.

### References

- Drept penal Partea Specială Noul Cod Penal – Sinteze și Grile , Mihail Udriou, ed. C. H. Beck, Buc., 2014;
- Drept Penal Român. Partea Specială, ediția a 7-a revizuită și actualizată, Tudorel Toader, ed. Hamangiu, 2012;
- Drept Penal Partea Specială, vol. II – Teorie și practică judiciară, Vasile Dobrinou și Nicolea Conea, ed. Dacia Europa Nova Lugoj, 2000;
- Drept Penal. Partea Specială, vol. II, Themis, Craiova, 2000.

### NOTES ON THE AUTHOR

**Gheorghe PINTEALĂ**, PhD. lecturer at “Dimitrie Cantemir” Christian University Bucharest Faculty of Management in Tourism and Commerce Timișoara, and University “Dragan” Lugoj Romania.