

Self-defense and Its Limits in Romanian Legislation

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ABSTRACT: From its beginnings, the human being has known the phenomenon of aggression, especially among members of the species, against the background of the ease with which certain primary needs could be met. This led to the need for a tailored response against constant attackers who threatened the proper conduct of the individual's life, which is why these defense mechanisms were coded in the genetic structure and passed down from generation to parent. With the emergence and development of human societies, as social roles became more hierarchical, tribal leaders were forced to find ways to control human impulses. Thus, during the evolution of the human species, legal norms have been developed to regulate social relations in ways that ensure peace, collaboration and mutual aid between citizens. However, due to the longtime of individual human existence compared to the new form of social organization, these animal instincts could not be completely eliminated, which is why the state offers citizens the opportunity to act with some degree of aggression. The article aims to analyze in detail the factors that determined the need for the Romanian state to allow aggressive behavior in the form of self-defense in response to existing social dangers and how this permission is legislated in legal norms belonging to the Romanian Criminal Code.

KEYWORDS: history, aggression, self-defense, overcoming self-defense, excess, psychology, Romanian legislation, environmental factors

Development, structure and limits of self-defense

Since its inception, the human being has presented a series of natural needs, immediate and particularly important for survival, such as food, shelter, reproduction and comfort. These aspects are called in psychology as primary needs, and their dissatisfaction leads to neural changes that affect the social behavior of people who feel that their normal functioning is threatened by external factors.

Once man perceives the external danger, a complex series of biological and psychomotor mechanisms for analyzing the situation are activated, and as a rule, those that come into operation immediately are closely related to aggression.

The need to develop aggressive defense systems against other members of the community that threatened human comfort was not felt from the beginning. This arose as a result of the technological evolution of the way of life in the community and the improvement of hunting tools, agricultural aid and others, which became tools of attack that offered considerable advantages to one person against another (Golu 2015, 58).

The phenomenon of aggression of one member of the community towards another has developed a lot in primitive human communities, due to the fact that it was much easier to obtain goods from hunting or those made from agriculture after the long process of planting and harvesting from a similar being in comparison to obtaining them through effective activities (Marr 2012, 61).

However, this anti-social behavior in the primitive period led to the decimation of entire human communities, which reduced the number of individuals who practiced hunting or agriculture naturally and, therefore, the possibilities of those who stole the goods obtained by them by using aggression. Thus, the need arose for a community social organization, around a single individual or a group of individuals to protect society, being the development of the first tribes, whose leaders were imposed on the one hand by the extreme aggressiveness they showed, and on the other hand, in some of them, through the wisdom and experience gained throughout life.

This is the period of emergence of a form of state in history that was the beginning of the social development of the human being based on rules of collaboration and rights and freedoms granted to each of the individuals in the relationships established with other community members.

In this way, the leader of the community was elected or imposed himself in front of its other members as the sole judge of the social and socio-economic relations established between the citizens of a human settlement, on the one hand, and on the other, of those established between citizens from distinct communities or those established between the rulers of different types of settlements.

Thus, a primitive form of domestic law and at the same time one of international law developed, the latter being constituted by certain acts of collaboration between tribes or by active measures of mutual aid and pooling of goods likely to ensure the good development of life, either by establishing non-attack pacts between settlements (Molcuț 2011, 21).

With regard to domestic law, it has been concluded that the head of the tribe or a very well-defined group of persons nominated by him are the only ones able to divide justice between individuals belonging to the community regardless of the nature of the object being tried.

As regards external law, it was reserved only for the tribal chief who could decide to exercise his right to judge in such matters either individually or by consulting with the sages of the community (Molcuț and Cernea 2006, 28).

However, the organized way in which society is known and today has happened in a very short time compared to the existence of the human being so that the mechanisms that facilitated aggression and that were genetically transmitted from generation to generation could not be changed, but only inhibited, they continuing to exist and produce their effects.

The development of societies in autonomous states and, implicitly, the emergence of a system of legal norms that strictly regulate human relations has made a particularly important contribution to the way in which individuals have adapted and learned to retain their violent beginnings.

Criminal law as the main branch of public law, consisting of all the legal norms governing public social relations between citizens and between them and the state was created as a superior mechanism for the administration of justice and the defense of citizens' rights and freedoms (Mitrache and Mitrache 2019, 18). Even so, certain aggressive actions could not be completely inhibited, so it was immediately felt the need to give citizens the opportunity to respond in case of danger from other individuals who threaten good social coexistence.

Specifically, the possibility of responding forcefully when danger is imminent is found today in the form of legal rules of criminal law governing self-defense in very specific situations, in proportion to the severity of the existing danger (Ristea 2020, 105).

Romanian legislation on self-defense

In Romania, self-defense is regulated in the Criminal Code – General Part, in situations where an external attack is directed against the life, property and values of oneself or others to the extent that the response to the attack is proportional to the magnitude of the danger threatening the social values (Boroi 2019, 173).

The need for an aggressive response from any individual who can help save the life, property or values of another person if they are affected stems from inequality of power between citizens, so that although a person may be unable to respond adequately can be helped by another able to respect the limits of self-defense (Neagu 2020, 131).

Self-defense can be assimilated, in the Romanian legislation, with the state of necessity or the fortuitous case, in which, the sacrifice of a good of a considerably lower value in order to save other goods or values that exceed in importance the characteristics of the sacrificed one, constitutes an exception from the criminal responsibility (Gheorghe and Ivan 2019, 136). Thus, the Romanian state is willing to sacrifice the property, bodily integrity or rights of a person whose aggressive behavior endangers the same social values of one or more innocent persons, in order to

fulfill the obligation of guarantor of civil rights and freedoms according to the Romanian Constitution (Deacon 2011, 113). However, self-defense has very well-established limits, so as not to exceed the level of aggression necessary to eliminate the danger, in which case a rescuer would become an aggressor himself injuring higher social values compared to those defended (Popa 2008, 86).

From this point of view, Criminal Law understands self-defense under two particularly important aspects to consider when taking into account the proportionality of the defense in relation to the corresponding attack. From the point of view of the conditions of the attack in order to require self-defense, it is expected that it will be material in the first place, then the existence of a direct form in which it is aimed at the defending person or another person, the unjustification of aggressive behavior being another particularly important feature and, finally, it must be immediate (Cioclei 2020, 183).

In these conditions, the material character of the attack is an element characterized by the fact that there can be no legitimate defense if the aggressor's aggression is not exercised against a person, his goods or social values, there is no real danger in this situation.

As regards the direct form in which aggressive conduct must be directed against a person, a good or a social value, this is explained by the fact that in the absence of a precise, well-defined objective and representing a social relationship, the conduct illegal would manifest its effects in a vacuum, not representing any social danger (Butoi 2019, 213).

Self-defense itself is an act of illegal conduct that justifies its necessity by defending social values in response with equal force and in the opposite direction to the aggression that leads to their destruction. It is therefore necessary to determine strictly the unfair nature of the attack against which the defense is directed.

The last constitutive element for an aggressive behavior to require an appropriate response is its immediate character, in the absence of which the defense loses its justification. This is because, once the act is committed, the element of danger that represents the way in which the illegal conduct occurred also disappears.

In terms of defense, Romanian legislation provides certain characteristics that lead to the conclusion of judging aggressive behavior in response to a danger that threatens the proper conduct of social relations. These characteristics are represented by the realization of a defense by an illicit deed, during which the specific aggressive behavior towards which it is directed to remove it is manifested, the need to adopt such a code in the absence of which the social values it defends would be harmed and the proportionality of the response with force to an aggressive act (Stănilă 2020, 156).

The importance of the defense by an act that, in turn, is unlawful results from the legitimacy that the respective answer must receive in order to be considered a necessary defense. In the absence of the unlawful nature of the defense, the person's conduct cannot be suspected of lack of legitimacy.

The temporal nature of the defense is also a very important element in determining legitimacy, as an aggressive response to the existence of a danger that threatens at least one social value or one that occurs after the act has been committed in full, when no longer there is the possibility of such a danger, it eliminates the justification of its manifestation. Also, aggressive conduct that aims to remove an evil that threatens one or more people, their property or any other social value, should be directed only against the person whose behavior is to be neutralized. Otherwise, the legitimate element of the response to the existing danger disappears.

The legitimacy of the defense is also given by the fact that the danger cannot be removed other than by responding with a certain force to the illegal behavior that determines the action. This element is of particular importance in determining the need for a response to illicit conduct.

The last element to be taken into account in establishing the legitimacy of the defense is the proportionality of the response to the attack that determines it. This is especially important because, in the absence of a proportionate response, a person who wants to remove a certain danger can cause another much greater one than if he had not acted at all.

However, in the moments when a response to an illegal conduct is necessary and occurs in self-defense, the only aspect not respected being that of the proportionality of the defense in relation to the attack that determined it, the Romanian legislation provides certain exceptions called excesses, taking into account the psychological impact that the danger exerted on the defender (Nour 2020, 120).

Conclusions

From the very beginning, the human being had to respond with an aggressive behavior towards all his fellow men who threatened to disturb his good life. With the organization of societies into tribes and the social hierarchy of their leaders, the mechanisms previously developed have undergone changes by inhibiting existing human impulses, prohibited by legal norms that strictly regulate social relations between people and states.

However, these beginnings could not be completely eliminated, as they are genetically coded and passed down from generation to generation, due to the longtime of separate human existence compared to the one in which societies developed.

In order to facilitate the elimination of the danger, the Romanian Criminal Code provides certain limits within which a person may respond with aggressive behavior against a danger that cannot be removed other than through illicit conduct and which comes from one or more persons.

In stating this limit called self-defense, the Romanian Criminal Code took into account a number of characteristics that must be met, both in relation to the danger to be eliminated and the response to be manifested for its removal.

However, there are situations in which these limits are violated by mistake, the psychological impact of the danger being far too great to allow accurate reporting to it. Under these conditions, the Romanian legislation also provides a degree of overcoming the legitimate defense, up to which a person can still be considered innocent.

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