

# PATRIMONIAL EXPLOITATION OF A VULNERABLE PERSON

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**ABSTRACT:** *Finding justification in social reality, the new Romanian Criminal Code criminalises the patrimonial exploitation of a vulnerable person in art. 247. Two variants of the offence are brought under regulation: a basic and an aggravated one. The Lawmaker provides the specific conditions for the existence of each of the variants of the offence. If the basic form of the offence requires that the passive subject should be in a visibly vulnerable situation before the offence takes place, in the case of the aggravated variant, the state of vulnerability does not exist before the offence, but is caused by the active subject.*

**KEY WORDS:** *patrimonial exploitation, vulnerable people, creditor, debtor*  
**JEL CODE:** *K14*

## 1. INTRODUCTION

As a response to the new social realities, the Lawmaker considered it necessary to criminalize the offences against patrimony in Chapter III – Offences against patrimony by disregarding trust in Title II – which the Lawmaker named ‘the patrimonial exploitation of a vulnerable person’. This offence had not been mentioned in the Criminal Code of 1969.

According to art. 247 of the new Criminal Code<sup>1</sup> the offence consists of:

1. The action of the creditor who, when lending money or assets, takes advantage of the debtor’s obvious state of vulnerability due to age, state of health, infirmity or the debtor’s relationship of dependency upon the creditor, and makes the debtor constitute or transfer, to himself or another, property rights or receivables of a visibly disproportionate value in comparison to the benefit shall be punished with imprisonment from one to five years.

2. Causing alcohol poisoning or using psychoactive substances on a visibly vulnerable person in order to induce that person to consent to constitute or transfer property rights or receivables or to give up a right, if damage occurred, shall be punished with imprisonment from two to seven years.

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<sup>1</sup>Law286/2009published in theOfficial Gazette. no.510/2009, inforcefrom01.02.2014.

The need to criminalize the patrimonial exploitation of vulnerable people emerges from the explanatory memorandum to the new code. It is shown that, by criminalizing the offence in question, “it is intended to repress offences which have proliferated in recent years and which have occasionally led to devastating social consequences for the people who have fallen victim to such acts, press reports showing almost daily cases of elderly people or of people with poor health who ended up losing their houses as a result of such disproportionate patrimonial deals”<sup>2</sup>(Hotca, 2009)

The Lawmaker’s concern with protecting vulnerable people not only by criminalizing patrimonial exploitation, but also by introducing a new general aggravating circumstance is noteworthy. Thus, under art. 77 letter e of the new Romanian Criminal Code, committing the offence by taking advantage of the visibly vulnerable status of a person, due to age, state of health, infirmity, or other causes is considered an aggravating circumstance. Accordingly, when taking advantage of the vulnerability state of a person for the purposes and under the conditions stipulated by art. 247 of the Criminal Code, the newly regulated offence will be retained, the aggravating circumstance of art. 77 letter e being maintained in the case of any other offence that does not stipulate it in its basic or aggravated content.

Although the doctrine has stated that the offence of patrimonial exploitation of a vulnerable person has no counterpart in the previous criminal legislation we contend that such a claim can only envisage the Criminal Code of 1969 because we can find a similar offence in the Criminal Code of 1937, in art. 542, under the name of the exploitation of the weaknesses of incapacitated people (Neagu, 2012).

The person committing the offence of exploitation of the weaknesses of incapacitated people was “he who, in order to obtain material benefits, for himself or another, exploiting the needs, passions, vices, or the lack of experience of an underage person or the inferiority or mental infirmity of a person, makes that person commit an act that would produce, for himself or another, detrimental legal effects.”

The offence of exploiting the weaknesses or vices was punishable by “correctional imprisonment from one to four years, fine between 2,000 and 10,000 lei and correctional ban from one to three years.”<sup>3</sup>

The Criminal Code of 1969, out of force since 1 February 2014, no longer made provisions for the offence of exploiting the weaknesses of incapacitated people because, at the time, it was considered that, even though the Code did not make “specific provisions,” in some cases the offence could be subsumed under the legal provisions regarding blackmail or deception, while in other cases it did not represent such a social threat as to be considered a crime (Dongoroz, et al., 1968).

Hence, the authors of the new Criminal Code, based on the considerations exposed in the explanatory memorandum, have thought it necessary to expressly criminalize this offence, adapting it to current realities.

At the same time, an additional motivation for the criminalization of the offence is represented by the fact that such acts are regulated by the majority of European

<sup>2</sup>The explanatory memorandum is available at [www.just.ro/.../Coduri/Expunere%20motive%20-%20proiect%20-%20C...](http://www.just.ro/.../Coduri/Expunere%20motive%20-%20proiect%20-%20C...)

<sup>3</sup>See *Codulpenal. Textoficialcumodificărilepână la data de 20 mai 1955, urmat de o anexă de legipenalespeciala*.

legislations (Bogdan, et al., 2014). Even if under different names, art. 157 of the Swiss Criminal Code, art. 226 of the Portuguese Criminal Code, art. 644 of the Italian Criminal Code, art. 223-15-2 of the French Criminal Code, § 295 of the Norwegian Criminal Code, all criminalize such acts. As stated, the Swiss and the Portuguese Criminal Codes have inspired the drafting of the new Romanian Criminal Code (Duvac, 2012) (Panaite, 2014) (Dungan, et al., 2010).

In regard to the criminalization of the patrimonial exploitation of a vulnerable person, the recent doctrine has shown that the text is meant to sanction specific cases of lesion, as vice of consent under civil law, and that the entry into force of the Civil and Criminal Codes renews the perspective on sanctioning the lesion (Bogdan, et al., 2014). The cited authors show a shift from accepting the lesion in the civil and criminal law to sanctioning it, under certain circumstances.

## **2. THE CRIMINALIZATION OF THE OFFENCE IN THE NEW ROMANIAN PENAL CODE**

As shown by the content of art. 247, the Lawmaker criminalised the offence both in its basic (art. 247 para. 1) and its aggravated form (art. 247 para. 2).

Given the Lawmaker's choice to situate the offence among those against patrimony by disregarding trust, its juridical object is represented by the social values relating to the patrimony of the person of whose state of vulnerability the offender takes advantage (for the basic form) or who is made vulnerable by the offender (for the aggravated form).

One author (Neagu, 2012) shows that the specific juridical object of the offence is similar to that of other crimes of fraud and that it lies in the social relations of good faith and mutual trust of subjects engaged in patrimonial relations, protecting mainly people who are vulnerable due to age, state of health, infirmity or dependency, alcohol or psychoactive substances intoxication. Other authors consider that the juridical object of the offence is complex, the Lawmaker meaning to primarily protect patrimonial social relationships based on the mutual trust and good faith of the parties to a compulsory civil legal relationship, excluding any of the creditor's actions directed towards the speculation of the debtor's vulnerability, in order to obtain material benefits, and, on the side, the social relations regarding a person's moral freedom (Gherghe, 2011).

With respect to the material object of the offence, the opinions expressed in the doctrine are divided. Thus, some authors contend that the material object of the offence can be any moveable or immoveable property<sup>4</sup>, as well as documents that have patrimonial value (Neagu, 2012) (Boroi, 2014). Other authors, with whose opinion we agree, consider that the offence does not have a material object, and that the money and the assets constituting the derived object of the loan agreement between the two parties are not equivalent to the material object of the offence since this material object is not directed against them (Vasiu, 2014) (Gherghe, 2011) (Dungan, et al., 2010). The same author claims that the assets that form the object of the property rights or of the

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<sup>4</sup>According to art. 539 para. 1 Civil Code, assets which the law does not consider immoveable are moveable assets. In accordance with para. 2 art. 539, electromagnetic and assimilated waves, as well as energy of any kind, produced, captured and transmitted, under the law, by any person and set into operation for that person's benefit, regardless of the moveable or immoveable nature of their source, are considered moveable property.

receivables constituted or transferred by the debtor do not make the material object of the offence, but its product, since they have been acquired after the criminal act (Gherghe, 2011). Likewise, in the French doctrine it has been claimed that the offence of fraudulent abuse of the state of ignorance of weakness, regulated by art. 223-15-2 of the French Criminal Code, is formal. (Malabat, 2013).

The active subject of the offence, in its basic form, is the creditor, be it a natural or a judicial person, thus making it an offence that has a special active subject (Bogdan, et al., 2014)(Duvac, 2012). In this case, the person who is not a creditor under the law, but who takes advantage of the obvious state of vulnerability of another person and acts within the scope of the law shall not be held criminally liable for the offence referred to in art. 247 para. 1 of the new Criminal Code. However, the same person shall be considered an accomplice if the action of convincing the person (the debtor) is made on behalf of the creditor(Bogdan, et al., 2014).

In reality, the task of proving that the direct active subject was aware of the obvious state of vulnerability of the victim and that he or she took advantage of it falls on the judicial authorities (Malabat, 2013).

Unlike the basic form, in the case of the aggravated form, any person can be the active subject; in this case the text does not specify any special quality of the active subject.

Criminal participation is possible in all three forms: incitement, complicity, and confederate in crime, with the specification that, in the case of the type form, the confederates in crime must have the special quality required by law (Neagu, 2012)(Gherghe, 2011)(Păvăleanu, 2014).

The passive subject of the offence, in its basic form, is the debtor, a natural person in a obvious state of vulnerability.

Although a new phrase has been introduced, namely "obvious vulnerability", the Lawmaker has failed to define it, thus leaving this task to the doctrine and practice.

Starting from the definition of "vulnerable,"<sup>5</sup> a person is vulnerable when he or she has weaknesses, is susceptible to harm, easy to attack, defenceless against criticism, and susceptible to emotional injury.

For the offence to exist it is not enough for the passive subject to be in a state of vulnerability, but it is also necessary, as defined by the Lawmaker, that the passive subject should be in a state of obvious vulnerability. The state of vulnerability of a person is obvious when it is explicit, clear, and noticeable at first glance (Duvac, 2012). In other words, the state of vulnerability of the debtor must be evident to the creditor; the creditor has to be aware of this state in order to take advantage of it.

The state of obvious vulnerability of the victim of the offence in question involves, according to some authors, a significant vitiation of his or her discernment, to the point that he or she should become incapable to discern the justness or the adequacy of the duties he or she agrees to by concluding the contract(Bogdan, et al., 2014).

The legal text also provides that, for the offence to exist, it is necessary that the state of obvious vulnerability pre-existing the offence should be due to age, state of health, infirmity or dependency upon the creditor. We contend that the wording of the Lawmaker is deficient, because the Romanian equivalent of the word *due* precedes positive ideas in Romanian, which is not applicable for the present case. A more appropriate wording

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<sup>5</sup>See the definition given by: <http://dexonline.ro/definitie/vulnerabil>, accessed on 3 July 2014.

would be “the state of obvious vulnerability caused by circumstances such as age, state of health, infirmity, dependency...”.

From all the legal provisions, one can draw the conclusion that the state of obvious vulnerability due to age refers mainly to the “elderly” and not to people underage, who lack the legal capacity necessary, among others, to constitute or transfer property rights or receivables (Neagu, 2012) (Bogdan, et al., 2014). Nevertheless, the opinion according to which it can cover “too young an age” has also been expressed (Gherghe, 2011).

An underage person is the passive subject of the offence of fraudulent abuse of the states of ignorance or weakness regulated by the French Criminal Code, art. 223-15-2. Under the above mentioned provisions, the fraudulent abuse of the state of ignorance or the state of weakness of an underage person, or of a person with special vulnerability, due to age, illness, infirmity, physical or mental disabilities, or pregnancy, apparent or known to the offender, or of a person in a state of mental or physical submissiveness resulting from the exercise of serious or repeated duress or of techniques meant to alter their judgment, in order to determine either the underage person or the person described to commit an act or to hold back, which will cause that person serious damages. As can be seen, the reference to an underage victim of the offence is expressly provided for in the French Criminal Code.

We believe that, in this case, the Lawmaker had in view the vulnerability caused by the old age of potential victims who, having various needs, are “convinced” to enter into contracts in completely disadvantageous conditions. Regarding these aspects, we believe that it would be appropriate to consider other possible legislative measures to protect vulnerable people, such as the institutionalization of limited legal capacity for those who have reached a certain age (80 years, for example). As in the case of young people, such a measure would significantly diminish the number of abuses of those who are no longer capable to defend their own interests, to an acceptable level.

The obvious vulnerability due to the state of health should be preserved in the case of any condition that affects the health of the person, thus making him or her vulnerable. The condition can be either mental or physical. Regarding this issue, one author claimed that the text refers to any physical or mental condition that results in primary or secondary alteration of the victim’s discernment (Bogdan, et al., 2014). We cannot agree to such an opinion because we believe that the Lawmaker has also considered those cases in which the disease does not affect the discernment of the victim in any way. Here we refer to illnesses that do not impair discernment, but which require expensive treatments and precisely for these reasons make the sick person vulnerable and willing to agree to acts they would not consent to otherwise (Neagu, 2012).

Moreover, in our opinion, the text of the law should not have been limited to the situation in which the vulnerable person is one whose health is affected. We believe that the Lawmaker should consider making amendments and additions to the text so that the offence should include the case of a person who is in a state of obvious vulnerability due to the state of health when the sick person is a family member (for instance, the child, parent, sibling, etc.), and not only the person who, because of his or her poor health, is made to act as shown in art. 247 of the Criminal Code. We hold the same opinion on the question of infirmity.

Infirmity as the cause of obvious vulnerability of a person should be understood as physical or mental infirmity.

Medical literature understands infirmity as “bringing a person in a state of physical or mental inferiority (difficulty walking, speaking, cognitive disorders, etc.)” (Jung & Ardeleanu, 2007).

In other words, infirmity represents the state of a person who, congenitally or as the result of an accident, has lost his or her bodily or functional integrity, without the overall state of health being compromised<sup>6</sup>.

Some authors have shown that, in order to have medico-legal and juridical value, the notion of infirmity presupposes permanence (Jung & Ardeleanu, 2007).

However, criminal doctrine shows that, for the offence to occur, it does not matter if the infirmity is permanent or temporary, so long as the offender takes advantage of the situation in order to demand disproportionate consideration (Neagu, 2012) (Duvac, 2012).

The obvious state of vulnerability can also be caused, as we have seen, by the debtor’s dependency upon the creditor. In the absence of legal clarification of the meaning of the relationship of dependency, various opinions have been expressed in doctrine. Thus, according to some authors, the state of dependency can be determined by some of the causes listed by the Lawmaker in paragraph 1, art. 247 of the new Criminal Code, when the offender takes care of the old, sick, or infirm victim, but also by other causes such as when the victim is unemployed and maintained by the offender, or when the concubine determines his or her partner to sell the house etc (Neagu, 2012).

Other authors consider that such a relationship can be determined in the event of objective circumstances under which the victim is subordinated to the offender, and which lead to the victim’s incapacity to make contractual decisions, but also when the victim is in an extremely precarious financial situation and perceives the offender as a saviour, or when the victim needs money to deal with critical family situations; the examples given in this regard are cases when the victim has a sick child or spouse, the victim had lost his or her house etc (Bogdan, et al., 2014).

We contend that the relationship of dependency presupposes the existence of a link between the victim-debtor and the offender-creditor. Thus, in our opinion, the case in which the victim needs money to deal with critical family situations cannot always be counted among the cases of vulnerability in question.

The dependency relationship between the victim and the offender can be economic (material), emotional, physical etc.

In the case of the aggravated form, anyone who has been brought to a state of obvious vulnerability by the offender through alcohol poisoning or by use of psychoactive substances can be the passive subject.

Drawing on the prerequisite required from the subjects by the basic form of the offence, the existence of a legal relationship of obligations based on a loan contract for money or goods between the parties is deemed necessary. Regarding the nature of the contract, it is shown in the doctrine that both the loan for use and the loan for consumption are covered (Gherghe, 2011) (Duvac, 2012) (Boroi, 2014). However, a contrary opinion states that, given the existence of some consideration on the part of the vulnerable person, only the loan for consumption regulated by art. 2158 of the Civil Code shall be taken into

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<sup>6</sup>Definition available at: <http://dictionar.romedic.ro/infirmitate>, accessed on 10 July 2014

account, thus putting aside the loan for use, the essence of which is its being free of charge (Bogdan, et al., 2014).

We concur with the authors that criticise the Lawmaker's choice to limit the possibility of criminalizing the offence to the cases in which a loan contract exists because there can be – and reality is proof of this – a number of other contractual relationships that allow or facilitate the exploitation of a vulnerable person (Bogdan, et al., 2014)(Gherghe, 2011)(Duvac, 2012).

In the case of the basic form, the material element consists of the offender's action to determine the debtor who is in a state of obvious vulnerability to act in one of the alternative manners prescribed by the legislation, namely:

- to constitute, for the offender or for another, a property right<sup>7</sup> or an assignment of debts, in exchange for some benefit from the creditor; for example, usufruct, easement, mortgage, etc.

- to transfer a property right or a receivable in exchange for some benefit from the creditor. For example, transfer of ownership of an asset, assignment of debts.

Unlike lesion, whose scope is limited to commutative acts by onerous title the offence under consideration does not include liberalities and random acts as means of transferring property rights or receivables (Reghini, et al., 2013).

For the offence to exist, it is necessary to meet the following requirements cumulatively:

- the benefit offered by the creditor should consist of a loan of money or goods;
- the property right or the receivable should have a value visibly disproportionate to the benefit offered by the creditor.

We note again the Lawmaker's failure to define "the obvious disproportion" required, as we have seen above, between the benefit offered by the creditor and the constituted or transferred property right or receivable. Under these circumstances, some authors(Bogdan, et al., 2014)consider that, in order to clarify the meaning of this wording, we can refer to the provisions of art. 1221 of the Romanian Civil Code (Ciurtin, 2012)<sup>8</sup>. In accordance with art. 1222 para. 2 of the Civil Code, in order for the type of lesion occurring when some form of "exploitation" of another person takes place to be punishable, the following conditions have to be met: the price should exceed half of the benefit promised or performed by the aggrieved party and the disproportion should subsist until the date of the request for annulment(Ciurtin, 2012).

Thus, according to the authors cited, the threshold of half of the value of the benefit, although not absolute, can, in most cases, "function as a value criterion in determining whether the offence is typical" (Bogdan, et al., 2014):

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<sup>7</sup>Under the provisions of art. 551 of the Civil code, property rights include the right of ownership, the right of superficies, the right of usufruct, the right of use, the right of habitation, easement rights, management rights, concession rights, the right of use, the right to use as security interest, other rights which the law regulates as such.

<sup>8</sup>Art. 1221 distinguishes between two types of lesions: a general type, occurring only when a certain "exploitation" of the state of the other person took place, and a special type, referring to underage people with limited legal capacity, in whose case it is enough to demonstrate a considerable imbalance between benefits.

In another opinion, the disproportionate value can be estimated in terms of general legal principles, regulations of commercial law or by specialised experts (Dungan, et al., 2010).

Along with other authors, we believe that, given the Lawmaker's silence, the judicial authorities are responsible for assessing, in each case, the existence of obvious disproportions between the benefits specified in art 247 of the new Romanian Criminal Code (Duvac, 2012).

In the case of the aggravated form, the material element consists of bringing a person into a state of obvious vulnerability. The state of vulnerability of the passive subject of the offence does not exist before, but is a consequence of the offence.

For this form of the offence it is necessary that the state of vulnerability should be caused directly by the author, by intoxicating the victim with alcohol or psychoactive substances (Bogdan, et al., 2014)<sup>9</sup>.

If alcohol does not need further clarification, according to art 241 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code<sup>10</sup>, psychoactive substances refer to those substances regulated under the law, following the proposal of the Ministry of Health<sup>11</sup>.

Consuming alcohol and psychoactive substances can have deleterious effects since they affect the ability to reason, act, and think (Tănăsescu & Tănăsescu, 2006)<sup>12</sup> thus involving the alteration of the victim's discernment (Gherghe, 2011)<sup>13</sup>, to the point that he or she accepts, to his or her detriment, the constitution or the transfer of a property right or receivable or to give up rights (Bogdan, et al., 2014).

It should be noted that in the provisions of para. 2 of art. 247, the Lawmaker does not condition the existence of the offence to the existence of a loan contract between the parties, as set forth by para. 1. Thus, the offence exists in this form even when the self-damaging behaviour consists of making the victim to enter a unilateral act (Bogdan, et al., 2014).

At the same time, we notice that the Lawmaker did not specify in para. 2 of art. 247 that making the victim to consent to the constitution or the transfer of property rights or receivables or to give up his or her rights, can be done either for the benefit of the offender or for a third party. Even if the Lawmaker omitted such a specification, we believe that, for the righteous enforcement of the law, the offence should be considered,

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<sup>9</sup>The cited authors show that if the victim is the one to cause the psychoactive substances or alcohol poisoning, and the offender only encourages him or her, the act does not fall under the legal text.

<sup>10</sup>Published in the Official Gazette no. 757/2012

<sup>11</sup>See also Law 143/2000 on preventing and combating illicit drug trafficking, republished in the Official Gazette no. 163/2014

<sup>12</sup>According to the authors, "alcohol poisoning causes changes in the psychological behaviour, manifested through disruption of consciousness, loss of temporal and spatial orientation, distortion of perception, the inability to walk or stand." In accordance with the provisions of art 2 letter e of Law 194/2011 on countering the operations with products susceptible of having psychoactive effects, others than the ones provided by the documents in force, republished in the Official Gazette no. 140/2014, psychoactive effects refer to one of the following effects a product might have when consumed by a person: stimulation or inhibition of that person's central nervous system affecting psychological processes and functions, changes in behaviour, or creating a state of physical and psychological addiction.

<sup>13</sup>The doctrine has shown that, because of the manoeuvres mentioned, the person is brought to a state in which he or she is not aware of his or her actions and of their legal implication, due to lack of discernment.

regardless of the beneficiary of the constitution or transfer of property rights, receivables, or giving up one's rights.

From a subjective perspective, the offence in its basic form can be committed with direct or indirect intention (Bogdan, et al., 2014) (Neagu, 2012) (Duvac, 2012). The opinion that the offence is committed with direct intention has also been expressed (Gherghe, 2011).

In the case of the aggravated form, the offence is committed with direct intention, thus qualified by the purpose of the offender (Păvăleanu, 2014) (Vasiu, 2014). Therefore, for the existence of the aggravated form of the offence, it is necessary that the offender's act should envisage influencing the passive subject of the offence, alternatively to consent to the constitution or the transfer of property rights or receivables or to give up a right.

From this we see that, unlike the basic form, in the case of the aggravated form, the Lawmaker specifies another self-damaging behaviour of the passive subject, namely, giving up a right. This may refer to giving up inheritance rights, assignment of debts etc.

The basic form of the offence takes place the moment its immediate effect occurs, namely when a property right or a receivable with a visibly disproportionate value in comparison to the benefit offered by the creditor is constituted or transmitted (Bogdan, et al., 2014).

Under the law, the aggravated form takes place the moment when the patrimonial prejudice of the vulnerable person occurs (Vasiu, 2014). On this account, it should be noted that the wording used by the Lawmaker in para. 2 is ambiguous and, in our opinion, will lead to non-unitary practice.

Therefore, although it has been provided that bringing a person in a state of obvious vulnerability through alcohol or psychoactive substance intoxication must be done with the purpose of making that person to consent to the constitution or the transfer of property rights or receivables or to give up a right, which leads to the conclusion that for the offence to occur, it is enough to determine the existence of the purpose, at the end of the text, the Lawmaker set forth the condition "if there was a prejudice," which suggests that the purpose must be achieved, i.e. one of the self-prejudicial actions has to materialize (Bogdan, et al., 2014).

Starting from the fact that the Lawmaker included the offence in the group of crimes against property, some authors, with whom we agree, contend that the contradiction embedded in the wording of the text must be solved, in the sense that the existence of the purpose is insufficient and that it is necessary that the offender should succeed in making the victim act in a self-prejudicial manner (Bogdan, et al., 2014).

The Lawmaker's regulation of the two paragraphs of art. 247 also caused the discussion about the relation between them.

One opinion states that if the same person commits acts included in both of the normative forms of the offence, the rules of multiple offences apply (Gherghe, 2011). On the other hand, it has been shown that, in this case, the offender is held liable, under para. 2, for a single offence, the one being punished more severely (Bogdan, et al., 2014) (Duvac, 2012). In our opinion, in such a case we are in the presence of a single offence, in its aggravated form, and for the judicial individualisation of the sentence it should be taken into account that the offender has committed acts typical of the basic form.

Due to its specificity, the offence can also be committed in a continuous form, ending with the last action of the offender (Duvac, 2012)(Gherghe, 2011).

As regards the attempt to commit the offence, under the provisions of art 248 of the Criminal Code, in the case of the offence of patrimonial exploitation of a vulnerable person it is possible and punishable.

### 3. CONCLUSIONS

The criminalisation of the patrimonial exploitation of a vulnerable person under the Criminal Code is necessary given the large number such cases within the past few years. Although we appreciate the Lawmaker's solution to expressly regulate such offences, we cannot overlook that the wording of art. 247 has already raised questions concerning interpretation in the doctrine. We believe that, in order to avoid non-unitary practice, the Lawmaker should take action regarding the provisions analysed and make the required amendments and additions.

Thus, we believe that, in addition to those cases in which physical or mental conditions results in primary or secondary alteration of discernment of the victim, we should also take into consideration the situations in which the disease requires expensive treatment, thus rendering sick person vulnerable and willing to agree to acts they would not consent to otherwise.

Concurrently, it would be appropriate for the Lawmaker to consider other possible legislative measures to protect vulnerable people, such as the institutionalization of limited legal capacity for those who have reached a certain age (80 years, for example) that makes them vulnerable, as it has been done for underage persons.

Furthermore, as mentioned, the text of the law should not have been limited to the situations in which the vulnerable person is the one whose state of health is impaired, but it should have made provisions for the case in which a person is in a state of obvious vulnerability due to the state of health or infirmity of a family member.

With regard to the Lawmaker's failure to define "the obvious disproportion" which should exist, as we have seen, between the benefit offered by the creditor and the constituted or transferred property right or receivable, we believe that the task of assessing the existence of the disproportion in each particular case comes to the judicial authorities.

### REFERENCES

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- Bogdan, S., Serban, D. & Zlati, G., 2014. *Noul Cod penal. Partea specială. Analize, explicații, comentarii*. București: Universul Juridic.
- Boroi, A., 2014. *Drept penal. Partea specială. Conform noului Cod penal*. București: Universul Juridic.
- Ciurtin, H., 2012. Noțiunea de preț în noul Cod civil: o perspectivă comparatist-critică. *Studia Universitatis Babeș Bolyai Series Iurisprudentia*, Issue 4.
- Dongoroz, V. și alții, 1968. *Noul Cod penal și Codul penal anterior. Prezentare comparativă*. București: Politică.

- Dungan, P., Medeanu, T. & Pașca, V., 2010. *Manual de Drept penal. Partea specială vol. I*. București: Universul Juridic.
- Duvac, C., 2012. Exploatarea patrimonială a unei persoane vulnerabile în noul Cod penal. *Revista de drept penal*, 3, Issue 3, pp. 29-43.
- Gherghe, V. R., 2011. Infrațiunea de exploatare patrimonială a unei persoane vulnerabile în noul Cod penal. *Dreptul*, 11, pp. 62-75.
- Hotca, M. A., 2009. *Noul Cod penal și Codul penal anterior. Aspecte diferențiale și situații tranzitorii*. București: Hamangiu.
- Jung, H. & Ardeleanu, M., 2007. Infirmitatea permanentă psihică, criteriologie medico-legală psihiatrică. *Romanian Journal of Legal Medicine*, XV(4).
- Malabat, V., 2013. *Droit pénal spécial*. 6 ed. Paris: Dalloz.
- Neagu, N., 2012. Exploatarea patrimonială a unei persoane vulnerabile. În: V. Dobrinou, ed. *Noul Cod penal comentat. Partea specială*. București: Universul Juridic, pp. 324-328.
- Panaite, R., 2014. The Criminal Safeguard of Vulnerable Persons. The New Conception of the Romanian Criminal Legislator. *Buletin Științific*, 23(1), pp. 61-70.
- Păvăleanu, V., 2014. *Drept penal special*. București: Universul Juridic.
- Reghini, I., Diaconescu, S. & Vasilescu, P., 2013. *Introducere în dreptul civil*. București: Hamangiu.
- Tănăsescu, I. & Tănăsescu, G., 2006. Considerații privind toxicomania. *Revista de studii juridice*, Issue 4.
- Vasiu, I., 2014. *Drept penal. Partea specială*. I ed. Cluj-Napoca: Albastră.

**Other sources**

<http://dexonline.ro/definitie/vulnerabil>, viewed 03.07. 2014.

<http://dictionar.romedic.ro/infirmitate>, viewed 10.07.2014.

[www.just.ro/.../Coduri/Expunere%20motive%20-%20proiect%20-%20C](http://www.just.ro/.../Coduri/Expunere%20motive%20-%20proiect%20-%20C), viewed 06.06. 2014.