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## **Blackmail in Romanian and Moldovan Criminal Law: Comparative Perspective and Contemporary Challenges**

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**Abstract:** The article analyses the crime of blackmail from the perspective of substantive criminal law, through the prism of the regulations in force in Romania (art. 207 Criminal Code) and in the Republic of Moldova (art. 189 Criminal Code). The approach aims to: delimit the constitutive elements; identify convergences and divergences in criminal policy and incrimination techniques; reflect the relevant judicial practices (ÎCCJ/CSJ) and the main doctrinal approaches; proposals for lege ferenda and recommendations for unitary judicial application, including in the context of new forms of blackmail (cyber blackmail, sextortion). The methodology combines normative, jurisprudential and doctrinal analysis with a comparative approach.

**Keywords:** blackmail; art. 207 Criminal Code; art. 189 Criminal Code of the Republic of Moldova; non-pecuniary benefit; cyber crime

### **1. Introduction**

Like any other social phenomenon, crime is always in motion, increasing or decreasing, depending on the specific circumstances of its occurrence (Pasat, 2016a, pp. 202–215).

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The phenomenon of blackmail, placed in the systematics of crimes against personal freedom (Romania) or against property (Republic of Moldova), has a practical incidence that has increased with the digitalisation of communication. The emergence of operating modes based on technologies (sextortion, doxing, ransomware with a disclosure component) calls for an updated reading of the incriminating texts and judicial practices.

The scientific interest of the comparative study Romania – Republic of Moldova is justified by the legal and linguistic proximity, the mutual historical influences of criminal policies, as well as the differences in the systematics and content of criminalisation (special legal objects, nature of benefit, aggravating circumstances, etc.).

Studying the experience of foreign states in legislative matters, including criminal law, allows the national legislator to focus on improving the existing regulatory framework, which is necessary for the development of ideas for reforming the legal system. (Pasat, 2017, pp. 101–117)

The objectives of the article are the presentation of the normative framework and legislative evolution; analysis of the constituent elements in both systems; synthesis of relevant jurisprudence; identification of areas of dogmatic friction (delimitations from related crimes); proposals for *lege ferenda* and benchmarks for practice.

## **2. Regulatory Framework**

The legal systems of Romania and the Republic of Moldova treat the crime of blackmail with increased severity, recognising that any criminal act requires effective preventive and sanctioning measures. Among the first measures are legislative ones (Pasat, 2016b, pp. 8–20).

### **2.1. Romania – art. 207 Criminal Code (Law no. 286/2009)**

Text of the incrimination:

—Para. (1): ‘Compelling a person to give, do, refrain from doing or suffer something, in order to unjustly obtain a non-pecuniary benefit, for oneself or for another.’

—Para. (2): aggravated variants (for example, the act committed by threatening to disclose really/imaginary facts, likely to cause a serious violation of dignity or private life, etc.).

—Para. (3): increased punishment in qualified cases (for example, if the act had particularly serious consequences/in relation to certain qualities of the victim).  
Systematic observations: blackmail is included in “Crimes against personal freedom”, emphasising the protection of freedom of will and action.

## **2.2. Republic of Moldova – art. 189 Criminal Code**

In the Republic of Moldova, crime does not usually have a class character and the notion of crime includes in its content the need to defend general human goods against criminal attempts (Pasat, 2021a, pp. 49–63).

Text of the incrimination:

—Para. (1): “Blackmail, i.e. the request to transfer goods or rights thereto or the commission of patrimonial actions accompanied by a threat...”, with listed forms of manifestation, including the disclosure of defamatory information, damage to property and other means of coercion.

—Para. (2)–(3): aggravated forms (e.g. repeated commission, by a group, causing considerable damage, the act against vulnerable persons, etc.), with increased upper limits of punishment.

Systematic observations: blackmail is placed among crimes against property, which shifts the emphasis from freedom of will to the patrimonial sphere.

## **2.3. Criminal policy developments and options**

Romania: the option of the post-2014 legislator to separate blackmail from extortion (in the classical sense) by focusing on non-pecuniary benefits as the typical purpose. Pecuniary benefit is possible, but it is not the typical premise of the text; The practice has correctly qualified coexistence with property crimes in competition.

Republic of Moldova: maintains a tradition of extortion as patrimonial damage, in which coercion is the means and the patrimonial result – the defining element. The aggravating circumstances reflect emphasised values of protection of patrimony and psychic integrity.

### **3. Classification of the Crime**

#### **3.1. Special Legal Object**

Romania: the person's mental and freedom of action; secondarily, dignity, private life and reputation. (Cioclei, 2018, pp. 45–67)

RM: the person's patrimony; secondarily, dignity and mental integrity, to the extent that they are affected by means of coercion. (Popescu, 2017, p. 67)

#### **3.2. Subjects of the crime**

- Active subject: unqualified; can be any person liable. Aggravated forms are provided for group commission (RM) or in certain circumstances (both).
- Passive subject: any natural person; in certain cases, legal person (especially in the context of reputation or trade secrets – doctrinal and practical discussion, more pronounced in Romania at the level of competing classifications).

#### **3.3. Objective Side**

When we analyse the objective side, we are distracted from the subjective moments (although they are also necessary for the recognition of a criminal act, but we take them into account in the analysis of the subjective side) (Pasat, 2023a, pp. 41–49).

Typical action: coercion, usually by threat (with unjust harm), but also by other means (disclosure of compromising information, likely to cause serious harm to dignity/private life – Romania; disclosure of defamatory news, threats of destruction, etc. —RM). The typical action of the crime of blackmail consists of coercion of the victim, usually by the threat of unjust harm, but may also include other means of pressure, such as disclosure of compromising information or likely to cause serious harm to dignity or private life in Romania; in the Republic of Moldova, this may include disclosure of defamatory news, threats of destruction or other similar forms of coercion.

Final requirement:

—Romania: the purpose of obtaining a non-pecuniary benefit (e.g. obtaining a behaviour, a statement, the victim's silence, maintaining a relationship, withdrawing a complaint, etc.). Pecuniary benefit is not excluded; it frequently occurs in practice

(such as the remittance of money), but the legislative text places the emphasis on non-pecuniary.

—RM: obtaining a patrimonial benefit (the transfer of assets/rights or patrimonial shares), thus being a typical patrimonial crime.

Thus, we conclude that the objective side is formed by the forms of action chosen by the aggressor (Pasat, 2021b, pp. 392–403).

- Immediate consequence: restriction of the victim's freedom of decision (RO)/damage to property or creation of a danger to it (RM), in conjunction with the state of fear.
- Causal relationship: direct result of the coercion on the victim's behaviour.

### **3.4. Subjective Side**

The purpose and motive for committing the analysed crime do not count as optional signs of the subjective side for establishing the existence of the crime. (Pasat, 2023b, pp. 209–228).

- Form of guilt: direct intent, as a rule; it is necessary to represent the purpose of obtaining benefits (non-patrimonial – RO ; patrimonial – RM). Indirect intent may be sufficient in certain cases, according to doctrine and practice.
- Motive: regardless of the penalties, but may be relevant to the individualisation of the punishment.

## **4. Delimitations from Related Crimes**

### **4.1. Distinction from Threat (RO art. 206)**

A simple threat protects the state of psychological security, without the requirement of a benefit pursued by the author. Blackmail involves the purpose of obtaining a benefit (especially non-pecuniary) and determining the victim to a behaviour.

### **4.2. Distinction from Robbery/Extortion**

Robbery involves physical violence and the immediate theft of property; blackmail operates through psychological pressure and, in the RM, by conditioning a patrimonial performance. In Romania, obtaining money through psychological coercion can be classified as blackmail; depending on the context, there may be

overlaps with other crimes, such as threats, harassment or patrimonial crimes. (Matei, 2020, p. 78)

### **4.3. Harassment (RO art. 208<sup>1</sup>) and violation of privacy**

When the threat/insistence does not pursue a specific benefit, the classification itself may migrate to harassment. If the threat aims at the disclosure of personal data/intimate images (sextortion), the classification as blackmail is justified, with possible concurrences with crimes regarding privacy or child pornography (where applicable).

## **5. Relevant Judicial Practice (Summary)**

### **5.1. Romania**

- Questions of law/HP: the supreme court has emphasised, in recent decisions, the relevance of the purpose pursued and the delimitation from other crimes; also, the concurrence of crimes when coercion aims at the remittance of money or other patrimonial benefits has been discussed.

- Guiding jurisprudence:

- cases concerning the threat of disclosure of intimate images (sextortion), qualified as blackmail; the courts have assessed that the serious violation of dignity/private life is met;

- cases of “reputational” blackmail (the threat of media coverage of real/imagined facts) – analysis of the proportionality and the existence of “non-pecuniary benefit” (e.g. forcing the victim to conduct/renounce);

- situations of competition with computer crimes (illegal access, violation of privacy, disclosure of professional secrets) in a cyber context.

### **5.2. Republic of Moldova**

- Explanatory decisions of the Plenum of the SCJ: unified interpretations regarding the constitutive content of art. 189, aggravating elements and the delimitation of other property crimes.

- Jurisprudence:

-cases regarding monetary demands under the threat of disclosure of compromising information;

-cases regarding group/organised commissions and the amount of “considerable damage”;

-interaction with data protection and privacy in sextortion (especially when the victim is a minor/vulnerable), with corresponding concurrent offences.

## **6. Contemporary Typologies: Blackmail in the Digital Environment**

What characterises cybercrimes is the lack of empathy, but also of physical and real contact with the victim. For example, compared to traditional bullying, electronic bullying completely cancels out the space and distances between people, as well as the emotional dimension. (Pusat, 2023c, pp. 41–53)

### **6.1. Sextortion**

Sextortion is the threat of publishing intimate images obtained either consensually or through social engineering, in order to obtain a benefit: money, maintaining the victim’s silence or continuing the relationship. The essential element is coercion, which can be explicit or implicit. In Romania, such acts can be classified under art. 207 of the Criminal Code, which regulates blackmail, and electronic evidence or digital communications are essential to prove intent.

In the Republic of Moldova, art. 189 of the Criminal Code applies when there is a patrimonial claim; in its absence, the facts can be analysed under other categories, such as violation of privacy, harassment or non-consensual sexual acts, depending on the circumstances of the case and the nature of the coercion. Judicial practice highlights difficulties in delimiting sextortion from other related crimes, which underlines the need for clear procedures and adequate protection of victims.

### **6.2. Doxing and “Reputational Blackmail”**

The threat of revealing personal or compromising data in order to obtain retractions, resignations or waivers of complaints represents contemporary forms of blackmail with a major impact on the integrity of individuals and organisations. In Romania, these acts can be analysed through the lens of concurrence with crimes regarding the

protection of personal data or violation of professional secrecy, especially if there is the intention to obtain a patrimonial benefit or to coerce the victim. In the Republic of Moldova, if no patrimonial benefit is sought, the legal analysis is oriented towards other related incriminations, such as violation of privacy or threat, depending on the circumstances of the case and the manner of exercising coercion. Judicial practice reveals difficulties in the doctrinal and procedural framing of this type of fact, underlining the need for legislative clarifications and an integrated approach between criminal law and data protection law.

### **6.3. Ransomware with a Disclosure Component**

When, in addition to blocking data, the perpetrator threatens to publish the stolen data, a type of hybrid blackmail is emerging, which combines digital extortion with reputational threats. In Romania, these acts can be classified as blackmail according to art. 207 of the Penal Code, related to crimes of unauthorised access to computer systems and data theft, and electronic evidence is decisive for proving the intent to coerce. In the Republic of Moldova, art. 189 of the Criminal Code can be applied similarly, but the analysis is adapted depending on the nature of the data and the intended purpose (property or non-property). The practice highlights challenges in delimiting between classic blackmail and cyberextortion, underlining the need for digital investigation procedures and cross-border collaboration to protect victims and prevent the spread of compromised data.

## **7. Conclusion**

The crime of blackmail, in its classic and modern forms, represents a complex phenomenon involving both legal and social aspects. The comparative analysis between Romania and the Republic of Moldova highlights that, although the regulatory framework is similar to the constitutive elements of blackmail, the existence of contemporary forms – such as doxing, cyberstalking and ransomware with a disclosure component – raises significant challenges for practitioners and legislators.

Judicial practices indicate the need for a flexible interpretation of the concept of “use” and the manner of coercion, especially in the digital context, where victims can be pressured without a direct patrimonial benefit. International cooperation and



digital investigation procedures also become essential to prevent the spread of data and protect the reputation of victims.

The proposals for *lege ferenda* include clarifying the demarcation between classic blackmail and digital forms of extortion, integrating personal data protection into criminal procedures and developing effective mechanisms to sanction cybercriminals. In conclusion, blackmail remains a crime with a significant impact, and adapting legislation and judicial practices to contemporary technological realities is imperative for protecting fundamental rights and maintaining social order.

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