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BRIEF LEGAL ANALYSIS OF JUSTIFIABLE AND NON-IMPUTABLE CAUSES DURING MISSIONS TO RESTORE PUBLIC ORDER IN ROMANIA

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Abstract: *The paper analyses the legal and practical framework for the application of justifiable causes and non-imputability for Romanian Gendarmerie forces acting in missions to restore public order when it has been seriously disrupted. Based on current legal norms, in particular the criminal law provisions on justifiable causes and non-imputability, corroborated with the provisions of the organic law on the organization and functioning of the Romanian Gendarmerie, the working hypothesis is that the application of these causes, in the context of forceful intervention raises significant interpretative problems, which may lead to the risk of excessive use of force, abuse, or underprotection of gendarmes. The research method combines an analysis of the applicable legislation, doctrines, and case law decisions, as well as a representative case study. The conclusions reveal the need for procedural clarification and application criteria to ensure a balance between the fundamental rights of citizens and the need to ensure public order in a modern, democratic state.*

Keywords: *organic law; criminal law; sanctions; self-defense; exercise of a right*

1. Introduction

The interventions of European law enforcement agencies specializing in restoring public order, especially the Romanian Gendarmerie, when acting legally to manage situations of serious disturbance of public order, raise essential questions regarding the limitation of the use of force, respect for the fundamental rights and freedoms of citizens guaranteed by the constitution, and criminal liability. In the context of the relevant legislation in Romania, the applicable rules on justifiable causes and non-imputability regulated in the Criminal Code are essential instruments through which acts committed by law enforcement agencies during missions, which would otherwise be criminalized, may be legitimate, depending on the

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situation, circumstances, and manner in which they were committed. On the other hand, the Court of Appeal, as well as specialized legal doctrines, emphasize that a broad or formalistic interpretation of these causes may lead to impunity, while a restrictive interpretation may discourage the necessary intervention of law enforcement agencies in the future.

In this article, we have attempted to investigate the extent to which the rules on justifiable causes and non-imputability are applied consistently and fairly in the case of law enforcement and public safety structures, and whether there are legal mechanisms in place that provide sufficient guarantees against abuses that could be committed by the employees of these structures.

Based on these considerations, the working hypothesis of the investigation underlying this research is that, although legal rules allow for the justification of criminal acts committed by gendarmes in missions to restore public order, their application is vulnerable to divergent interpretations and the risk of abuse of power, which highlights the need for clear evaluation criteria and strict control procedures.

2. Applicable Legal Framework

A modern, democratic society can develop at all levels in a context where every individual who is part of it understands, accepts, applies, and respects the rules of social coexistence, leading a balanced life in which they can freely exercise their fundamental rights and freedoms enshrined in the Constitution, without affecting the proper functioning of public or private institutions and without restricting the rights of other individuals in society. Without privileges and without discrimination, all individuals in society are equal before the law and the state authorities, with the right to life and physical integrity being guaranteed and protected.

Every individual has the right to dispose of their own person, being free to choose and decide as they wish, without however violating the rights and freedoms of others, as guaranteed in the Constitution, and without violating the rules of social coexistence and those that ensure public order and national security. A particular case may be considered the freedom of citizens to participate in the organisation and conduct of public gatherings in the form of rallies, demonstrations and protests in public squares, activities which may only be carried out in accordance with the law, peacefully and without violating the obligations they have as participants.

We note that, in recent years, both at European and national level, public gatherings organized and held in the central squares of major capitals have tended to degenerate into violence, acts of vandalism, and attacks on individuals and institutions, illegal actions by participants that subsequently trigger the legal intervention of the competent police forces to restore order, such as the gendarmerie.

In Romania, the events of August 10, 2018, known in the public sphere as the "Diaspora Protest", were one of the most analyzed cases involving the forceful intervention of gendarmerie forces in a situation of rapidly deteriorating and seriously disturbed public order. Although the demonstration began peacefully, in the second half of the day, especially at night, as darkness fell, some of the participants in the public gathering resorted to acts of violence, throwing blunt objects, repeatedly assaulting law enforcement officers, and damaging public property in Victoriei Square, which led to the gendarmerie taking action to restore public order, resulting in violent clashes with protesters when force was used during the operation.

The complex context of these events and the manner in which they occurred provide an appropriate framework for investigating the extent to which the intervention of the gendarmes can be subordinated to the justifiable or non-imputable causes provided for in the Criminal Code[1], in relation to the obligations and limitations established by Law No. 60/1991[2] and Law No. 550/2004[3].

3. Legal Analysis on the Application of Justificable and Non-Imputable Causes

According to the legal provisions of the Criminal Code, the provisions of Title II – Chapter II define justifiable causes, namely: self-defense, necessity, the exercise of a right or the fulfillment of an obligation, and the consent of the injured party. Specialist criminal law doctrine emphasizes that the explicit inclusion of these causes in the Criminal Code is intended to clearly delimit which acts may be legitimate, but also to prevent confusion with other institutions of criminal law, such as non-punishment and exemption from punishment.

In order to understand the legal limits underlying the application of justifying and non-imputable causes in relation to the use of force by gendarmes in restoring public order, we will analyze the legal framework that gives them the legal right to use the technical means at their disposal, weapons, and/or ammunition to disperse aggressive protesters.

The main relevant articles in the organic law governing the organization and conduct of public assemblies, which grant the gendarmerie the right to intervene with force in situations such as that of August 10, are:

- Articles 2-3, which stipulate that public assemblies must be conducted peacefully, in compliance with the law, with acts of violence by participants being prohibited,

[1] This is Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, with subsequent amendments and additions;

[2] Law No. 60 of September 23, 1991, on the organization and conduct of public assemblies, republished in the Official Gazette No. 186 of March 14, 2014

[3] Law No. 550 of November 29, 2002, on the organization and functioning of the Romanian Gendarmerie, published in the Official Gazette No. 1175 of December 13, 2004;

- Article 19, which grants gendarmerie units the right to intervene to restore public order when participants commit acts of violence that constitute serious violations of the rules of social coexistence and seriously disturb public order,

- Article 20 stipulates that the technical means of protection and intervention available to the gendarmerie may be used to disperse violent protesters in accordance with the principle of proportionality.

- Article 21, according to which any action by law enforcement forces must be carried out only after a prior warning to protesters, except in situations of extreme violence.

We note, therefore, that Law 60/1991 provides the fundamental legal framework for determining the legality of intervention to restore public order when participants in a public gathering have violated the law, in conjunction with the provisions of the organic law governing the powers of gendarmes in their relations with citizens, namely the provisions of Articles 19 and 20, and Articles 27-30 of Law 550/20024, which allow gendarmes to use force to restore order when it has been seriously disturbed, using the technical means at their disposal (rubber batons, irritant-tear gas substances, non-lethal weapons with rubber bullets, water jets), provided that prior warnings have been given and that proportionality and graduality are respected in relation to the acts of violence of the aggressive participants.

Therefore, forceful interventions by gendarmerie personnel, which are violent in their consequences for those participants who consciously ignore prior recommendations/warnings and continue to behave aggressively, ultimately being immobilized by law enforcement as a result of the use of force, theoretically, may fall under justifiable causes such as the exercise of legal obligation or non-imputability, if there are exceptional circumstances such as coercion and/or necessity, but this theoretical legislative framework remains vague from a practical application perspective, especially in situations of mass disorder and chaos.

In most cases, citizens who have suffered as a result of the use of force during the restoration of public order present injuries which, according to the Criminal Code, would constitute bodily harm, in which case the citizen takes legal action against the Gendarmerie, alleging abuse of power or excessive use of force by those who acted in the line of duty.

Analyzing the relevant facts regarding the events of August 10 that led to the decision to intervene with force, according to official public reports from law enforcement agencies and the Military Prosecutor's Office, the court found the protesters guilty of violating their obligations as participants in a public gathering, which took the form of antisocial acts and deeds such as: throwing stones, pieces of concrete, firecrackers, and other objects at law enforcement officers; direct blows, snatching equipment and injuring law enforcement officers; repeated attempts to break through the public order cordon; setting fire to and destroying materials in the square and on the roads in the area.

The action taken by law enforcement officers engaged in the mission to restore public order consisted in using the means at their disposal to disperse the crowd of aggressive protesters, namely tear gas, based on an intervention order that allowed the gradual use of force by the gendarmes.

This information forms the basis for analyzing the justification for the actions of the gendarmes who intervened in the events of August 10, with the provisions of the Criminal Code, Law 550/2005, as well as the case law analysis of certain court decisions in this area, through which we observed and studied the specific manner in which they were assessed in court.

3.1. Exercising a right or fulfilling an obligation

This is the main justification applicable in the specific case of intervention by the gendarmes, as the gendarme accused by the injured citizen was on duty, carrying out a public order mission as a legal obligation deriving from the two organic laws mentioned above, namely Law 550/2004 and Law 60/1991. At the same time, he acted within the framework of an official mission of the unit to which he belongs, on the basis of a legal order given by his superior and on the basis of specific operational procedures, using force and the means at his disposal, proportionate to the acts of violence of the protesters.

We note, therefore, that the provisions of Article 21 of the Criminal Code are applicable, but do not operate automatically, since the proportionality of each act of use of force, including tear gas, must be verified at all times during the intervention.

3.2. Self-defense

In certain specific situations during the mission, such as those in which gendarmes are hit with stones or pieces of concrete, especially those in which gendarmes have been directly hit, these may constitute clear cases of self-defense. Throwing blunt objects constitutes a direct, immediate, and unjust physical attack, and the gendarmes' defense is necessary to avoid immediate injury and is proportionate to the violent actions of the aggressive protesters.

3.3. State of Necessity

The state of necessity differs from self-defense in that the danger may be impersonal, not necessarily a direct attack, and in the context of the events of August 10, there were situations of serious danger that endangered the life and physical integrity of the gendarmes, the safety of the public order device, and public security. Specifically, there were repeated attempts to break through the security forces, which could have resulted in mass casualties; more than 30 gendarmes were injured, indicating the intensity of the danger; and the firing of illegal fireworks into the security forces posed a major risk.

The state of necessity could justify the use of technical means of dispersal when other means were insufficient.

During the criminal investigation and the entire trial concerning the events of August 10, almost all legal debates highlighted and focused on identifying the limits of proportionality, the legality of the intervention order, and the assessment of situations within the aggressive crowd that posed a major danger and risk.

4. Conclusions

The specific conclusions of the legal analysis regarding the application of justifiable and non-imputable causes during the forceful intervention of the gendarmes to restore public order when it was seriously disturbed, with reference to the specific situations of the events of August 10, are as follows:

- The above-mentioned events constitute a typical case in which all three major justifying causes in the Criminal Code may be applied to the gendarmes in a differentiated manner.

- The forceful intervention by the gendarmerie to restore public order has a legal basis in Law 60/1991 and Law 550/2004, which allows for the invocation of Article 21 of the Criminal Code.

- Acts of direct violence against gendarmes may justify self-defense (Article 19 of the Criminal Code).

- Situations of collective danger may justify a state of necessity (Article 20 of the Criminal Code).

- Legal analysis depends essentially on the assessment of proportionality—a central criterion for the functioning of justifying causes.

An analysis of these relevant aspects of criminal law leads to the conclusion that the existing regulatory framework formally provides for the possibility of justifying criminal acts committed by gendarmes through the exercise of their rights/fulfillment of their legal duties or, in some cases, by invoking necessity. However, the ambiguity of the criteria—in particular "proportionality," "imminence of danger," or "legality of the mission"—creates the risk of divergent interpretations and potential abuse. In doctrine and jurisprudence, attention has been drawn to the need for a restrictive interpretation.

The lack of a clear procedural framework for reporting, documenting, and evaluating interventions, especially when physical force or weapons are involved, increases the risk of error or excessive use of force. The case study of the events of August 10 shows that, although it is possible to justify the intervention, the outcome depends essentially on how the legal conditions are demonstrated, which highlights the need for procedural clarification and the adoption of strict internal guidelines for law enforcement agencies. In order to ensure a balance between the need for public order and the protection of fundamental rights, clear procedural regulations are necessary, such as intervention protocols, proportionality criteria, mandatory reporting, and post-intervention reviews.

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