Law

UDC 343

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# ROBBERY OR COERCION

***Summary.*** *The article will discuss the decision of the Supreme Court of Georgia, where the act of robbery (Article 178 of the Criminal Code of Georgia) was reclassified as coercion (Article 150 of the Criminal Code of Georgia) [1]. In the article we will try to analyse the judicial argumentation regarding the reclassification of acts, focus on the content of the signs of robbery and coercion and their peculiarities. The decision is noteworthy in terms of the fact that at first glance, the issue of competition between these two corpus delicti should not be difficult to decide. But, as can be seen from the judicial decision under consideration, the issue is not so simple and requires special attention, especially since this issue has been the subject of different assessments and, accordingly, decisions in different instances of the court.*

***Key words:*** *Robbery, coercion, corpus delicti, crime, property, court, Criminal Code.*

**The Factual Circumstances of the Case.** Descriptive part: the following factual circumstances were determined by the verdict: on 13 May 2013, V. Kh., residing in the village … of Gurjaani District, who had been convicted twice for unlawful appropriation of another's property, with the aim of misappropriation and by means of violence that is not dangerous to life or health, evidently took

possession of a leather vest belonging to G. Ch., thereby causing damage worth GEL 50 to the victim. V. Kh. immediately handed over the stolen vest to T. M. Although, T. M. personally witnessed the fact of robbing G. Ch. By V. KH., he took possession of the thing obtained as a result of the crime, appropriated it and, despite the request of the victim, did not return it to the owner. For this action T. M. was sentenced to 7 months imprisonment under Article 186(1) of the Criminal Code of Georgia, while V. Kh. was sentenced to imprisonment for 8 years and 6 months under Article 178(3)(d), (4)(c) of the Criminal Code of Georgia. The verdict was appealed by the prosecutor S. G. and the convict V. Kh. The prosecutor requested to amend Gurjaani District Court's verdict of 20 November 2013: V. Kh. be found guilty under Article 178(3)(a), (d), (4)(c) of the Criminal Code of Georgia, and T. M. - under Article 178(3)(a) and (d) of the Criminal Code of Georgia. The convict V. Kh. filed an appeal for the cancellation of the sentence and acquittal. Tbilisi Appeal Court by its verdict of 26 September 2014 did not satisfy the demands of the appeals and remained unchanged Gurjaani District Court's verdict of 20 November 2013. The convicted appellant V. Kh. in his appeal notes that the sentence is illegal and subject to cancellation due to the following circumstances: a 70-year-old man was accused of forcibly taking a vest from a 30-year-old youth, while he did not use violence; G. Ch. himself handed over the promised vest to T. M.; The subjective aspect of the robbery presupposes the existence of intent and purpose of appropriation, while V. Kh. did not receive any material benefit and had no intention of appropriating the vest. On the basis of the above, the convicted V. Kh. demands the cancellation of the sentence of 26 September 2014 of the Tbilisi Court of Appeal and his acquittal. S. G., the prosecutor of the Gurjaani District Prosecutor's Office, by way of counterclaim requests to leave the appealed verdict unchanged on the grounds that the verdict is lawful; the Criminal Procedure Code

has not been violated in essence; the action of the convicted person is qualified correctly, and the type and extent of punishment correspond to his personality.

Motivational part: a reviewing Chamber reviewed an appeal in cassation with the participation of the parties at oral hearing, analysed the validity of the complaint and considered that the convicted V. Kh's appeal in cassation should not be satisfied, and the appealed judgment should be amended due to the following circumstances: the reviewing Chamber notes that robbery is an explicit seizure of another person's movable property for its unlawful appropriation. In order for a person to be accused of this crime, it is necessary to have all the elements of the composition of the action. In the present case, the prosecution did not present a sufficient set of evidence that would prove the presence of signs of a crime under Article 178 of the Criminal Code of Georgia in the act of V. Kh., namely: the victim G. Ch. testified that on 13 May 2013, during a party in the village of …, T. M. asked to present him with a vest that belonged to him, but he refused. Then V. Kh. asked him to take off the vest and give it to T. M. A fight broke out because of this, V. Kh. forcibly took off his vest and gave it to T. M. The defendant V. Kh. pleaded not guilty and explained that he told G. Ch. that if he was going to give M. the vest, he had to do it on the same day, after which G. Ch. voluntarily took off the vest and left it. No one used any force against him. The witness A. T. at the court hearing testified that on 13 May 2013, he was with T. M. in the village … of Gurjaani District. V. Kh., G. Ch. and A. M. were also with him. They hung out and drank alcohol. During the party, there was a dispute between V. Kh. and G. Ch. over the latter's vest, in particular: "Kh. told him to pleasure him with a vest, and Ch's answer was to give it tomorrow". The witness explained that V. Kh. and G. Ch. hit each other once or twice, although this happened after Ch. took off his vest and handed it to V. Kh., who threw the vest on the bed next to him. The witness A. M. testified that on 13 May 2013, he hung out at T. M's house with V. Kh., G. Ch. and

A. T. The owner of the house T. M. was with them. V. Kh. and T. M. asked G. Ch. to take off the vest. "V. told him because you promised, give him the vest". A dispute began about this. A. M. explained that a scuffle broke out between the three of them (M., Kh. and Ch.). He also explained that he had not seen and did not know whether Ch's vest was removed by force or not. The defendant T. M. explained that on 13 May 2013, he was at his residential place with V. Kh., A. M., A. T. and G. Ch., when V. Kh. caught G. Ch. by his collar and told him to give the vest to T. M. immediately. Ch. took off his vest voluntarily, left it and went away. As a result of the analysis of the above-mentioned evidence, the Chamber considers that it has been confirmed that V. Kh. had no intention to illegally appropriate the vest belonging to G. Ch. Accordingly, given the presence of not all the elements of the composition of the crime, it is legally impossible to accuse V. Kh. of a crime under Article 178 of the Criminal Code of Georgia. However, the reviewing Chamber does not share the appellant's reference that he simply asked the victim to present T. M. with the vest and indicates that the testimonies of the witnesses - A. T., A. M. and T. M. have unequivocally proven that V. Kh. with his actions (scuffle, catching by the collar) forced G. Ch. to take off his vest and give it to T. M., that is, physically forced him to perform an act that was his right to perform/refrain from performing. Based on all the above, the reviewing Chamber considers that the criminal act committed by the convicted V. Kh. provided for in Article 178(3)(d) and (4)(c) of the Criminal Code of Georgia, must be reclassified to Article 150(1) of the Criminal Code of Georgia [2].

**Analysis of the Decision of the Reviewing Chamber.** After reviewing the factual circumstances of the case, it must be said that the decision of the reviewing Chamber and its justification regarding the reclassification of the action are controversial. As we know, robbery is the "explicit seizure of another person's movable property for its unlawful appropriation" and coercion is the "illegal

restriction of a person's freedom to act, i.e. coercing him/her physically or mentally to perform or not to perform an action, performance of or abstaining from performance of which is his/her right, or to make him/her experience an influence against his/her own will". These are the legislative components of the coercion of robbery. Analysing the actual circumstances of the case and these two components, we must first focus on what legal interests each norm protects. The interest protected in robbery is property, and in coercion it is freedom of expression, or in other words, freedom to act at one's discretion (at one's own will) In our case, in order to correctly assess the action, first of all it is necessary to find out which legally protected interest was violated - property or freedom of expression of a person. As evidenced by the factual circumstances of the case: "V. Kh. with his actions (scuffle, catching by the collar) forced G. Ch. to take off his vest and give it to T. M., that is, physically coerced him to perform an action performance of or abstaining from performance of which was his right" [3. pp. 351-355, 484-487]. These factual circumstances show that the victim, as a result of the actions of the accused, was forced to give up the vest (thing), that is, his property was violated, and not freedom of action. Of course, he had to commit an action contrary to his will, but this action (the transfer of the vest) violated not the autonomy of his will, as the main legally protected interest, but the right to property, since as a result of the physical impact of the offender (scuffle, catching by the collar), the victim gave up his property, without committing the act, where only the freedom to express would be violated. As you know, coercion (Article 150 of the Criminal Code of Georgia) is a general norm and may be applied when a person is forced to commit an action or abstain from committing it, but in this case no other legal protected interest, except for the freedom of expression, as the main object of protection, is violated. The object is not manipulated. If, when coercing a person, in addition to freedom of expression, we also encounter an infringement on other legally

protected interests, then the action must be evaluated according to a special norm of coercion, where coercion is a method of crime or another sign of composition. The literature rightly points out that "the article of coercion must be applied in the case where coercion takes place, but at the same time none of the special norms of the Criminal Code allows for its punishment through them" [4. p. 267-282; 6. p. 231]. Accordingly, the composition of coercion is a general norm and is applied in the case when it is impossible to evaluate a person's action according to another special norm. As you know, a number of norms of the Criminal Code, including many crimes against property, provide for self-coercion as a way of committing a crime. Such a method is provided for by the composition of robbery when it comes to such violence which does not endanger human life or health, or the threat of such violence (Article 178(3)(d)). Unfortunately, the court does not say anything about this in its reasoning. The judicial argument is also not convincing in the part that "…V. Kh. had no intention to illegally appropriate the vest belonging to G. Ch. Accordingly, given the presence of not all the elements of the composition of the crime, it is legally impossible to accuse V. Kh. of a crime under Article 178 of the Criminal Code of Georgia" [5. p. 30-72]. It seems that such a court decision is based on the fact that V. Kh. did not keep the vest for himself, but made the victim to give it to T. M. This understanding of the purpose of appropriation may not be considered correct. It follows from this logic that if the perpetrator forces the victim to transfer the thing not to him, but to a third person, this action may be considered a crime against property. For example, a criminal noticed a man on the street and made him by force or threat of violence to give money or other things to starving, homeless children, but he did not take anything for himself. According to another example, A. bet with friends that he could steal something from the store to demonstrate his superiority and courage to them. He actually managed to steal this item from the store and showed it to his friends before throwing it in the trash. If

we follow the logic of the court, since there is no purpose of appropriation in these case (the criminal did not take anything for himself, did not add anything to his property), then these actions may not be recognized as a crime (robbery or theft) against property which is completely unjustified. [About the definition of property see 7. p. 688; 8. p. 73-75]. Therefore, it must be emphasized that the purpose of misappropriation does not mean only turning a thing into personal property and adding it to one's property fund. The purpose of appropriation is also understood as a situation when a person disposes of the fate of someone else's property at his/her discretion, as if it were his/her own. Therefore, we are faced with the intention of misappropriation every time, when without appropriate authority (legal grounds), the fate of someone else's property is disposed of at the discretion of the offender, in accordance with his/her desire and under the control of his will, in favour of himself/herself or another person.

**Conclusion.** As we saw from the analysis of the judicial decision, the reviewing Chamber made a mistake by reclassifying the action from robbery to coercion. Unfortunately, the arguments of the Chamber regarding the reclassification of the crime are very superficial. Apparently, the Chamber misunderstands the content of the intention of appropriating someone else's thing and paying no attention to the fact which legal interest was violated by the criminal act, against which interest the crime was committed - property or freedom of expression. The Chamber's decision is also important because it can become a dangerous precedent for lower courts when considering similar cases, since it can lay the foundation for incorrect practice.

**Literature**

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