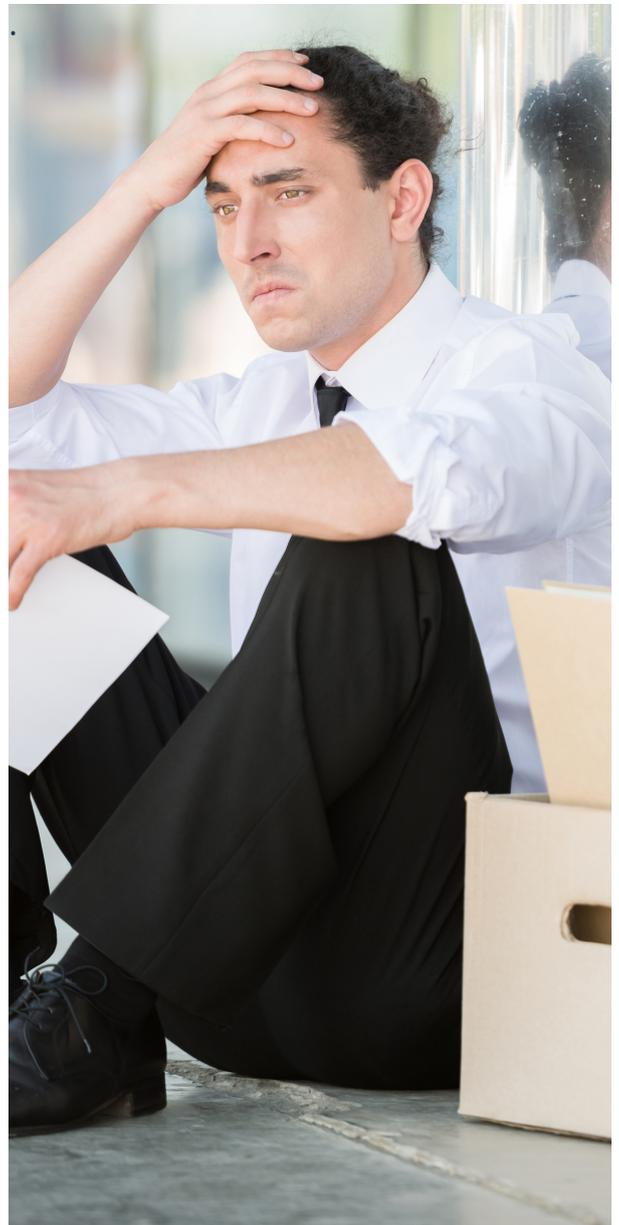


BRIEF COMMENTS ON THE VULNERABILITY OF THE VICTIM, THE PANDEMIC AND THE PANAMA CRIMINAL CODE

BY PUBLIO CORTÉS

The economic impact of the pandemic is already here; it is not something that is projected to happen anymore: it has actually arrived. In Panama, this has been reflected by a drop on the GDP that doubles Latin America's average in 2020. This, which is said to be easy, is a blunt event that not only upsets many financial statements, but obviously also has important social repercussions and a criminological consequence, especially with regards to the increase in the victimization of persons and groups of persons.

The ideal of full security, that is, the possibility for organizations and individuals to live free from all risks, whatever kind may be, is the goal to which all public policy should aim towards to. Obviously, that fate is almost impossible to reach, but you have to visualize as such, in order to at least try to get closer. The reality in the various societies is that, even the Presidents, with all the power of the state security apparatus, have been violated and even lost their lives.



These exceptional cases are illustrative to show that not all of us have the same level of protection in our personal or economic integrity. Even in those societies considered quite safe, there are citizens and organizations that, for various reasons, are safer and others less safe from risks. In Criminology and Criminal Law, those who have lower degrees of security and greater chance of being subjected to crimes are considered vulnerable.

On the vulnerability of the victims, Mexican jurists URIBE ARZATE and ROMERO SÁNCHEZ have written the following:

"It is logical to affirm that any impact on the rights of the inhabitants has an origin; whether the cause is in the very nature of people themselves or, on the contrary, is projected from the outside. Crimes that aggravate victims and those offended, are a good example of the latter. In the first case we mean people with different abilities (Linacero, 2004), women (Tobío, 2005), children (Fanlo, 2004), the elderly (Muñoz, 2004), to mention some who by simply "being" have certain characteristics that are their own (endogenous factors), from which they are put at a disadvantage and real risk of being aggrieved.

But also, the root cause of social exposure can come from exogenous factors. In this case, other elements that bring people to live and suffer undignified treatment are added to the



human condition itself. As we have mentioned, these elements are the socio-economic condition and legal context, herein called typical vulnerability and atypical vulnerability, respectively."^[1]

Can there be an exogenous factor greater than the economic and social cataclysm of the pandemic? Perhaps, but the truth is that in this third decade of the century and perhaps for a long time, there has not been an event of such a deep level that impacts all the factors of human life.

[1] URIBE ARZATE, Enrique and ROMERO SÁNCHEZ, Jesus, *VULNERABILITY AND VICTIMIZATION IN THE MEXICAN STATE*. In *REVISTA ESPIRAL*, vol. XIV, No. 42, May-August, 2008, pp. 75-95, UNIVERSIDAD DE GUADALAJARA, Guadalajara, Mexico.

It seems like a truth of Perogrullo, but it is useful to say that economic needs, uncertainty about the future and even a kind of widespread panic and anxiety arising from the pandemic [2], have upset the schemes of the whole society, increasing the amount of the population that by necessity (or without it) would be willing to violate the Law as well as the sectors of that population vulnerable to criminal action.

This is true in both individuals and organizations, which is strongly influenced by the decline in respect for authority during a crisis, Sociology explains, because if society notes that – for whatever reason – the State is limited in its primary duty to protect the life, health, honor and property of citizens, anarchy levels increase, even if it is transiently. Suffice to recall, to support it, the absolute uncontrollability of respect for other people's property that occurred during the tragic invasion of Panama in 1989.

As we will see below, this context of the pandemic can also have an impact on criminal matters when applying aggravators related to exogenous vulnerability conditions.

Exogenous vulnerability in pandemic and common aggravants in the Panama Criminal Code

The Panama Criminal Code provides for 14 common aggravating circumstances, i.e., they can only be applied to basic criminal types that do not have specific aggravants. Several of these aggravants,

in my opinion, are candidates to increase their presence in criminal proceedings, the result of the trauma of the pandemic and the increased vulnerability of victims. For example:

The first one we will mention is the "*abuse of superiority*". In a scenario of galloping unemployment, where much of the existing employment is precarious and even classified as underemployment, a worker will be more vulnerable to crime by his superiors, because the need to care for the source of livelihood becomes more desperate.

Very similar but different is this: "*Execute the fact with abuse of authority, public trust or the powers inherent in the profession exercised by the agent or the position he performs*". An unscrupulous Mayor uses his public authority in the midst of quarantine to hoard basic necessities, so that they go up in price.



[2] KONTOANGELOS, Konstantinos; ECONOMOU, Marina; and PAPAGEORGIU, Charalambos, *MENTAL HEALTH EFFECTS OF COVID-19 PANDEEMIA: A REVIEW OF CLINICAL AND PSYCHOLOGICAL TRAITS*. In *PSYCHIATRIC INVESTIGATION*, 2020 Jun. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7324731/>

The population, without resources and with a few hours to go buy food and intermediary traders, who do not have better suppliers at the moment, gets caught up in the circumstances and pay the artificially high price.

The last common aggravation we will cite is the following: "*Having committed the punishable event with abuse of domestic relations, provision of works or services, cohabitation or hospitality.*" The iron quarantine that was lived in Panama and that we hope will never return, produced countless cases of relatives to whom the matter took them by surprise in the homes of other relatives where they had to stay to live for months. A case of cohabitation and forced hospitality.

Suppose the case of an elderly young man who has to stay at his uncle's house, with whom he has not been very close with before. The uncle and owner of the house is a graphic designer who has always worked from home and has just finished a design of a logo commissioned by a client. Without authorization, the nephew takes the logo from his uncle's computer and launches a personal venture, using the logo, through social networks.

The copyright holder acted as usual, without over-protecting his files because he was at home, but by continuing with the way he did, he became vulnerable due to the pandemic and its quarantine, because he was forced to live inside his home for several months with a person he did not really know and did not have the malice of suspecting from.



Exogenous vulnerability in pandemic and some examples of specific aggravators in the Panama Criminal Code

Let's have the example of a rape. The basic type of this crime has fixed a sentence of 7 to 12 years in prison. However, there is a specific aggravating circumstance "*when the author is... a close relative*" that raises the penalty to the range from 10 to 15 years. As in throughout Latin America, in Panama there are economically depressed areas where promiscuity is high in customary circumstances.



As a given itself, in these urban areas the probabilities of rape crimes by relatives are high, because too many relatives live together in very small spaces. If we add to this sad and regrettable social reality the circumstances of the pandemic, where quarantine forced many families not to leave these small spaces for months, in circumstances of uncertainty about the future, rape offences are highly likely to have increased, because the vulnerability of potential victims has also increased.

In the case of the crime of fraud, the penalty of the basic punishment established by the Criminal Code is 1 to 4 years in prison. However, there are specific aggravating circumstances, one of which is "*when [the crime] is performed through a cyber or computer means*". We have all celebrated that the

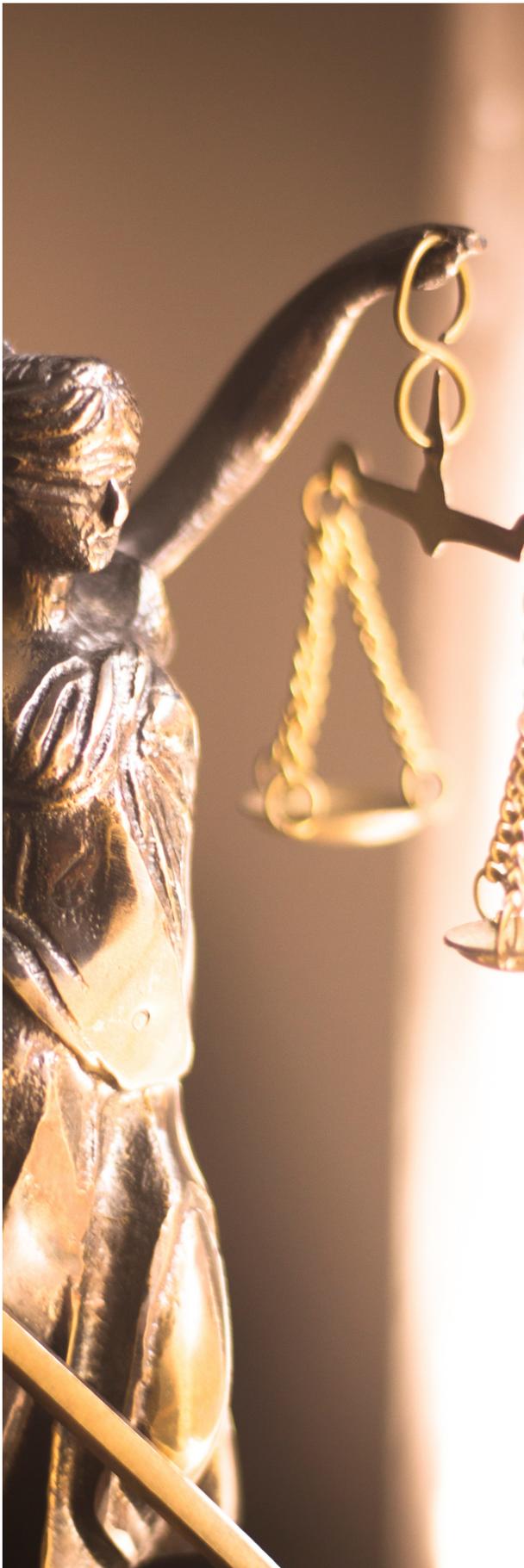
confinement and quarantine of the pandemic has led to a positive increase in e-commerce and further development of the digital economy. Entrepreneurs have multiplied via the Internet and social networks.

That reality also brings with it the increased likelihood of obtaining illicit profit through deception in that commercial arena. There is no doubt that a high percentage of the population acquiring goods and services via the Internet is also recently incursion into this environment, in fact, many have only become digital consumers, bound by the circumstances of the pandemic.

And they have had to do so in a rather anarchic environment where many transactions are made without an invoice and the supervisory capabilities of consumer protection authorities, designed for traditional non-digital commerce, have been overwhelmed. Reason for which, these consumers are more vulnerable in this new context because it has not been their usual means of acquiring goods and services.

Let's take a look at one last example: The pandemic has put a large number of companies in loss situations, and many have been left in an irreparable state of insolvency. Consequently, the likelihood of insolvency proceedings for reorganization or liquidation before an Insolvency Judge has increased.

The Criminal Code provides for a punishable insolvency offence incurred through various conducts. One of them



is when the troubled company performs a "simulation... losses," in which case a prison sentence of 5 to 10 years applies. However, there is a specific aggravating circumstance that arises when economic damage exceeds \$1 million, which would trigger a higher prison sentence: between 6 and 12 years.

Such business reorganization or liquidation proceedings before an Insolvency Judge, combined with unlawful loss simulation conduct, if not discovered, may be a means for traders to legitimize fraud. Let's put the case of a company that is actually in insolvency, however, according to its actual situation it is financially candidate for a business reorganization, which does not interest it.

To avoid this, through fraud and simulation they make the Insolvency Judge see that the loss is greater than the real one. Let's say you have a loss of a million and a half dollars, but with the complicity of a corporate finance advisor, you manage to make it look like the loss is actually \$3.25 million, which affects any business reorganization options and goes straight to liquidation.

This type of criminal conduct can occur at any time. However, in a pandemic scenario, with an economy in crisis, creditors who are victims of such a crime are more vulnerable to believing and accepting financial simulation, because we have a tendency, typical of the exceptional context, to accept as reasonable and normal that a company reaches the level of liquidation.

Final Comments

The Criminal Code describes conducts in abstract. The greatest or least possibility of such conduct being carried out cannot be anticipated because it depends on the socio-economic evolution of society where Criminal Law is applied, which, by constitutional and conventional mandate, must always exist before the facts occur.

The pandemic has produced social and economic trauma and I believe that this will bring out a greater range of vulnerability in potential victims of crime, in proportion and style different from what existed in the world prior to the emergence of the pandemic. Such a likely change in the criminological context must be taken into account by both the operators of justice and the potential victims, whether organizations or individuals, so that the necessary double precautions are taken to which the historical moment is obliged.

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