

OBSERVING THE LAW AND BREAKING THE LAW

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Abstract

The normal social attitude of the individual is the observance of the borough's laws and the rights of others. It is normal, whereas that is clear that breaking the law and the rights of others lead to social chaos, and the chaos means denying the normality, with a direct and negative effect against the one who is breaking the law at a certain time¹.

Key Words: *law, human action, criminal sanction*

However, life shows that there are a significant number of situations in which the individual breaks the law, his or her actions drawing out from the sphere of normality.

The acts of breaking the law are, by their nature, objective, meaning that they always produce an objective, a fair result, or at least assessable.

The legislator, through the legal norm, introduces into the social life a series of rules which individuals must follow. These rules may consist either in specifying some of the actions that must

¹ I. D. Romo an, *The Guilt in the Romanian Civil Law (Vinovăția în dreptul civil român)*, All Beck Publishing House, Bucharest, 1999, p. 2

be carried out, either in the setting out some interdictions, in which case certain actions should not be carried out, the individual having to refrain from committing them.

This is the principle, the general rule of the legal norm.

Breaching this principle by not observing the legal norm realizes the illicit. When it is produced in the penal area, we talk about the most serious illicit, the penal illicit embodied in committing a crime.

The study of the crime is included in the criminal law which, in its turn, comprises all the legal norms in which it is shown under what conditions an act is considered a crime, the sorts of crimes, the penalties that are applied if they are committed, and the criminal liability to protect the order of the law against such acts².

This set of legal norms is structured in a system around the fundamental institutions of the criminal law:

- Offence
- Criminal sanctions
- Criminal liability.

Human acts determined and prohibited by the law under the sanction of applying a penalty is considered an offence³.

A crime represents a regulation with general features of the human action through which the rules of conduct were breached and which attracts an appropriate criminal sanction⁴.

The term of crime means an act through which a rule of conduct with an imperative character is breached.

To establish the acts to be prohibited, the legislator starts from observing that such acts were once committed, in reality, and there is a reason to fear that they could be repeated.

By prohibiting such acts, it is shown to the members of the society, in a specific form of expression, which is the conduct they should have towards certain social values, what actions are prohibited or, on the contrary, they are commanded to them to protect those social values.

Showing the necessary social conduct is realized therefore, not by a direct prescription of this conduct, but in an indirect way, by describing and prohibiting a conduct contrary to the required

² V. Mirisan, *Criminal Law, general part (Drept penal partea general)*, Lumina Lex Publishing House, Bucharest, 2004, p. 14

³ C. Bulai, *Romanian Criminal Law, General Part (Drept penal român, Partea general)*, Volume 1, Sansa Publishing House and Press, Bucharest, Bucure ti, 1992, p 111

⁴ I. Oancea in V. Dongoroz and association, quoted work, p. 92

one, this legislative technique being considered the most explicit and suggestive form of criminal judicial regulation of the conduct for the members of the society⁵.

The offence is exactly the commission of the act of conduct prohibited by the incriminating norm. It is an act contrary to the rule of conduct, generating a social conflict, which attracts the appliance of the sanction provided for its commission.

The normal classical form of the offence is the one that is committed in the form of guilt intent, because the offender enters the criminal field with intent or deliberately.

The criminal activity is carried out in time, a period in which it goes through certain stages, each of them being characterized by a certain degree of committing the criminal decision.

In any way we would define the offence it is not possible to omit that the actual act must be related to an incriminating norm, to a legal model to be able to assign it the character of the offence.

Because of the importance of the institution of the offence in the criminal law, the legislator has defined specifically the offence. In the criminal law in force, the general designation of the offence has been adopted for any act, which meets the features provided for in Article 15 paragraph 1 Criminal Code.

Representing a human activity directed against the rules of social cohabitation, the offence constitutes the only grounds for criminal liability and application of penalty.

The criminal act as a material phenomenon is carried out in a given space and over a certain period of time⁶, producing antisocial outcomes after the exteriorization of the criminal resolution.

The offence is carried out not only in the domain of the material structures, but also in the domain of the intellectual structures (both forms constituting an object of knowledge), being defined by the intellectual activity and individual practicable activity.

These two types of human action mingle in the sense that one's efficiency conditions the other's efficiency⁷.

The offence produces special consequences from a legal point of view, thereby attracting the criminal liability which constitutes the most severe form of the legal liability.

The most dangerous acts for society have been provided for and sanctioned by the law, the severity of the applied sanctions for committing these acts being determined by the offender's identity and the social peril of these acts⁸.

⁵ C. Bulai, quoted work, p. 98

⁶ I. Oancea, *Treaty of criminal law, general part (Tratat de drept penal, partea general)*, All Publishing House, Bucharest, 1994, p. 165

⁷ I. T n sescu, C. T n sescu, G. T n sescu, *General Criminal Law (Drept penal general)*, All BeckPublishing House, Bucharest, 2002, p. 253

Once the offence is committed, and the criminal relation appears, it has to be brought up in front of the court, a procedure that is carried out through the criminal procedural law.

This studies the entire procedural activity carried out by the judicial bodies and parties and the relations between them from the initial moment of observing the acts which constitute offences to the final moment of applying and executing the sanctions and the other criminal measures⁹.

The objective ground of the criminal liability is the illicit conduct of a person, a conduct that is characterized and defined by the law as an offence, and the committed act attracts a liability towards the society¹⁰.

The criminal sanction represents a measure of social defence, a reaction of the society against those who commit antisocial acts, and not a way of satisfying the interests of the victim of such an act.

Because this, when a decision of the court settles a criminal cause and brings the offender to account for, it has in its attention the identity of the offender, his or her degree of injuriousness and the severity of the committed act¹¹.

Not only the offence is a human activity prohibited by the law, in this category being also the contraventions and disciplinary delinquencies.

The major difference between these illicit acts consists in their seriousness, in their degree of social peril¹².

The legal provisions do not provide the criteria by which they can be distinguished from one another, but the judicial doctrine stated the differences between the illicit acts provided for by the different areas of the law (criminal, administrative, labour, and civil):

Thus, a criterion of distinction refers to the social values and relations which are harmed or are put to the risk by committing illicit acts.

The acts directed against the social relations that protect values of which the existence of the society depends on (national security, individual and his rights, property, etc.) show the highest degree of social peril and, against such acts, the legislator cannot act otherwise than by the criminal law¹³.

⁸ L. R. Popoviciu, *Liability... (R spunderea...)*, quoted work, p. 15

⁹ Gh. Mateut, *Criminal procedure, general part (Procedur penal , partea general)*, Volume I, Funda iei Chemarea Publishing House, Ia i, 1997

¹⁰ I. Pitulescu, T. Medeanu, quoted work, p. 103

¹¹ Idem

¹² C-tin Mitrache, C. Mitrache, quoted work, p. 86

¹³ I. Pitulescu, T. Medeanu, quoted work, p. 103

Another criterion of distinction between an offence and a contravention or a disciplinary delinquency consists in the different social resonance which they cause in society.

Acts that injure individual's life, liberty and health, acts of diversion, of undermining the economy, of currency forgery or official documents have a special social resonance, thereby producing in the society anxiety, civic uncertainty.

On the other hand, contraventions or disciplinary delinquencies have a restricted, mild resonance, sometimes insignificant for most of the members of the society and do not cause society's reaction to act repressive¹⁴.

Another criterion is how to restore public order disturbed by committing the illicit act.

For the criminal offence, it is restored by the application of penalties, most of the times with executing them at the place of detention, in prisons, but, in the case of the contraventions or disciplinary delinquencies, being sufficient to apply a much easier penalty¹⁵.

Criminal acts are provided for only in normative documents, which emanate from the supreme body of the state power, from the legislative power, but contraventions and disciplinary delinquencies can be provided for by the government's decisions, orders and regulations of the ministers, decisions of the prefectures and city halls¹⁶.

¹⁴ I. Pitulescu, T. Medeanu, quoted work, p. 104

¹⁵ I. Pitulescu, T. Medeanu, quoted work, p. 104

¹⁶ Idem