

THE IMPUTABLE DEED / THE IMPUTABLE ACTION

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Abstract

The criminal standards, meant to the protection of the social values, establish the objectives and subjective conditions that must be fulfilled as a behavior to be illicit. Therefore, finding the illicit/the unlawful character of the behavior does not means that this can be already considered infringement of law, for the existence of the offense needful to establish if the agent can be made responsible for that illicit behavior, in other words should be analyzed if the deed is imputable.

Keywords: *Imputability, risk, behavior, legislator.*

Introduction

The objective imputable theory tries to resolve the doubtful assumptions of causality relation based on some conceptual paradigms subsequent to causal criterion and takes into account that being a real legal problem of causality the establishment if and in which conditions a causal connection is enough to justify the result imputability of a certain author.

This conception/view is in used in some states from the Western Europe (Germany, Austria) but knows many variants, interpretations, sometimes so various that makes practical impossible their reduction to a common denominator.

The present theory's presentation must have as starting point the influence exercised by the so-called theory of the final action formulated in the 1940's by Hans Welzel¹. The author sustained that the final activity is distinguished by the common causal process due to the fact that the first is lead by setting of a purpose and the carrying out of a certain actions in order to achieve that objective, while the causality is seen only as an accidental resultant of the pre-existing various factors. From those stated result an essential stroke of the human action, those that can't be appreciated exclusively reference to the cropped up result but it is necessary to keep into account even by the meaning in which the agent has been transmitted.

It is known and accepted the fact that the criminal standards that has as purpose the protection of the social values establish the objectives and subjective conditions that must be fulfilled as behavior even illicit. Therefore, the finding/the establishment of the illicit character of behavior does not means that this can be considered already infringement of the law, that must established that the agent could be made responsible for that illicit behavior, in other words, must be analyzed if the deed is imputable.

The objective imputable theory supposes an exam in several stages:

a) first of all it is checked if the action has created a relevant danger from the juridical point of view for the protected value.²

Thus, the behavior must be dangerous, to have created a certain probability of producing such wound or putting into dangers the protected social value. The probability is

decided having in view all the known circumstances by a careful human being in the moment of action, but even those that have been known in concrete to the author.¹

In the existence opinion of such condition is used the permitted risk concept and the unpermitted risk concept¹.

The concept of the permitted risk² is used to designate those situations in which the legislator tolerates a behavior with causal potential, that bears risk of some harmful results for the social values protected by the criminal standards, having in view the existence of other superior reasons, which the law must give priority.

Such situations are found (again) within those human activities, useful and necessary from the social point of view to which the legislator restricted itself in establishing of certain due diligence rules thus that the risk to be kept under control and, **as far as possible**, to be avoided. The eventual negative results that occur despite the observance of these rules will not attract the penal responsibility /criminal liability (e.g. the possible/eventual deadly injury to a pedestrian might not offend the driver, to the extent that it has been respected the legal speed and other traffic rules).

A possibility/a modality of the permitted risk is the concept of the main life risk³, situation that excludes the objective imputation on the grounds that the result appearance can be considered a hazard creation /an work of chance (e.g. the nephew who convinces the uncle to make a walk in the forest hoping that he will be surprised by the storm and will be struck by the lightning, that what is actually it happened).

Finally, a last case of removal of the objective imputable application is the increasing of the risk of the victim to the extent that the person agrees to be exposed to a known risk (e.g. If a person accepts consciously and unwillingly sexual relations with a person with AIDS).

The unpermitted risk concept occurred in all other cases than those previously exposed, in which, through its action, the agent created an increased risk, additional for the social value protected by the criminal law owing to which has been produced the harmful result (e.g. the author of such body injury is responsible for the death of the victim, even if this has been occurred due to an explosion intervened at the hospital to which the person has been subject to medical care).

b) Subsequently it is checked if the produced result is a consequence of the danger situation created through the perpetrator/culprit action.

To the extent in which the result produced does not constitute any longer a materialization of the danger caused by the action, but is because of other circumstances, the imputation is excluded

To be able to justify the objective imputation is not enough to ascertain only the unpermitted risky character of the agent's action, but it is necessary as well to check the specificity, respectively, if the result caused coincides with the one which the standard at least followed to prevent it

c) Therefore, it has been introduced a new imputation criterion/norm those of the norm/standard „the purpose of protection (warden)”. For a better understanding of this concept we must refer to some concrete examples. First of all, in the situation previously exposed, the subject cannot, by applying this corrective/reserve, be made responsible for the accidental death of the victim. Another case under doctrine's discussion is those of the drug seller responsibility towards the drug addict's death as a result of the powerful narcotic consumption, since it created a necessary condition of the result and, besides this, he could not know the risks, even deadly, linked to drug use.

The objective imputation of the result can be excluded in a such case, only under the criteria of the warden purpose of norm that obliged to observe that the reason that imposed the

¹ M. Guiu, Raportul de cauzalitate în dreptul penal, Bucharest, 2001, p. 59.

² F. Streteanu, op. cit., p. 420.

incrimination of drugs traffic already includes reference to the dangers of the consumer's health, and the possibility of the production of some lethal results were taken into account by the legislator at the penalty determination for this offence, whose maxim is comparable to that stipulated for the murder offence.

d) In addition has been imposed the introduction of a new criterion called the avoidable criterion with the application especially in the case of the infringement of law guilt. Thus it is considered that is not enough that the agent to create unpermitted risk, but is more necessary to prove that in the case of the behavior maintaining in the limits of the permitted risk, the results would not be produce. For example, in the German judicial practice¹, has been established that the driver which engaged itself in going beyond a bicyclist to lateral distance of only one meter (instead of 1,5 m as law prescribes), and the bicyclist turn unexpectedly to the right and is deadly injured will not be responsible if, ex post is established that the bicyclist would have been anyway wounded/injured, even in the condition in which would have been complied the legal distance of 1.5 meter.

Conclusions

The objective imputable theory supposes an exam in several stages:

a) First of all it is checked if the action has created a relevant danger from the juridical point of view for the protected value

b) Subsequently it is checked if the produced result is a consequence of the danger situation created through the perpetrator/culprit action.

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