

## FUNDAMENTAL INSTITUTIONS OF CRIMINAL LAW

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**Abstract:** *The article entitled "The fundamental institutions of criminal law" presents a particularly generous and important theme. I will present the three fundamental institutions from a theoretical point of view and by exemplifying them practically through cases. These fundamental institutions are the main pillars of criminal law, around them gravitate all the other specialized institutions that form criminal law as a branch of law. Criminal law provides, as a consequence of committing crimes, specific criminal law sanctions that are applied to criminals through the most severe (legal) form of legal liability, criminal liability. Thus, in the synthesis of the essential features most often indicated by doctrine within the definition of criminal law, it can be appreciated as representing a branch of law that aims to ensure social defence (social order and discipline), carrying out a control of an individual's conduct and behaviour from society to the highest degree undesirable, through the action of preventing and combating the criminal phenomenon, establishing and regulating: the categories of acts that are assessed, at a given moment, as crimes, the corresponding (legal) liability for committing them; the specific sanctions in which this legal-criminal liability is to be realized.*

**Key words:** *criminal law, crime, criminal sanction, legal liability*

### 1. The fundamental institutions of criminal law

It is known that the notion of illicit appears in the specialized language in relation to a certain action that is permitted or not by the social order, that is, by the rules that discipline social life. It can be stated that this notion concerns a reality prior to the appearance of law.

"At a time when the social order was ensured by traditional rules (customs), or by ethical or religious rules, the attitude of disobedience, non-respect of these rules constituted an impermissible act, i.e. illicit (licere - to allow) against which the coercive measures ordered by the primitive authority that ensured order within the social group (the advice of the elders), measures that went as far as excluding the recalcitrant from the group, which was equivalent to the death penalty, the isolated individual not being able to face the difficulties of material life" (Antoniou, 2010:21). The emergence of law determined the emergence of the notion of illegality, i.e., non-compliance with the rules established by means of legal norms. The rule of law ensures the realization of the legal order, that is, an order based on the rule of law and which took over the most important regulations that ensured the social order in the past. Just as the legal order is a part of the social order, coexisting in social life with it, so the notion of illicit continues to exist alongside the notion of illegal (Antoniou, 2010:21).

"The first notion expresses a disobedience to the rules that govern the social order, and the second disobedience to the rules that govern the legal order, that is, the order that is achieved through the rules of law.

The sphere of non-permitted (illegal) acts is much larger than illegal acts, being included in this sphere also acts that are not violations of the law (for example, they are violations of the rules of politeness, coexistence, etc.). An act may be ostensibly illegal, but in essence be permissible (for example, an act committed in self-defence or necessity). If everything that is legal is also allowed, there are also exceptional situations when the apparently illegal act is still allowed" (Antoniou, 2010:22). The most serious violation of what is allowed in society forms the field of reference of criminal law.

According to a panoramic view of the legal-criminal field of reference, criminal law could be conceived as being polarized around two dimensions:

a) a material or substantial one, representing the acceptance of the criminal law definition

b) another, formal or procedural, represented by the regulations, the whole of which configures the system of criminal procedural law (the procedural side of criminal law) (Michinici-Mărculesu et al., 2017:4).

As the main instrument of criminal policy, criminal law aims to defend social values essential for the existence and development of a society against the criminal phenomenon (Michinici-Mărculesu et al., 2017:4). The defence of the behavioural order, as a social goal, belongs to the state, which will repress any individual opposition that deviates from the regulation of a certain kind of social relations. Penal law criminalizes those manifestations of persons that constitute crimes, that is, serious acts in society, antisocial manifestations with a high social danger, considered and appreciated as criminal activities.

Therefore, criminal law, from an institutional point of view, is the fundamental branch of the legal system, which includes all the legal norms regarding crime, criminal liability and criminal sanctions.

From the very definition of law as it is formulated by law theorists, its three fundamental institutions emerge:

- the crime
- criminal liability
- criminal sanctions.

## **2. The crime**

The first of the fundamental institutions of criminal law has an express definition contained in the provisions of the Criminal Code.

According to art. 15 para. 1 Criminal Code "The crime is the deed committed by the criminal law, committed with guilt, unjustified and imputable to the person who committed it". This definition abandons the material concept of the crime and realizes the orientation towards the formal concept of the crime.

The definition of the crime as it is formulated by the Romanian legislator presents four essential features at first glance:

- a) First of all, for an act to be a crime, it must be prescribed by the criminal law.

The existence of typicality indicates that a certain deed presents a danger to society, so that it must be criminalized, all its recipients must know it and adopt a behaviour according to it (Rinceanu, 2010:20). Otherwise, they would be subject to the rigors of the criminal law, which provide for the application of sanctions.

The typicality of the act forms a necessary condition.

From the "provision of the act in the criminal law" the objective side and the subjective side of the content of the crime can be deduced.

b) Secondly, from the definition of the crime, the characteristic regarding the attitude of the perpetrator is deduced, consisting of guilt.

The act provided by the criminal law and committed by a person through action or inaction is not a simple mechanical act, but a conscious manifestation.

The facts are externalizations of the complex mental processes that occurred in the subject, starting from the processing of sensations and inner impulses to the formation of the reasons for action or inaction, to the specification of the goal, the adoption of the decision, its transmission to the effector organ, and ending with the correction of the volitional act (the reverse connection) to the extent of the realization of the act of will (Vasiliu, 1972:88).

All the while, the subject has the representation of how his action or inaction is unfolding and has the opportunity to direct his will.

Only by using these skills does the person manifest himself consciously, and the crime can only be conceived as a conscious manifestation of the person.

To the extent that the person does not manifest in this way, for example in the case of reflex acts or subconscious impulses or in any other situations when the person's behaviour is not conscious, we are not faced with an action or inaction likely to attract the incidence of the criminal law.

c) Thirdly, the act must be unjustified.

This means that the act must be illegal.

Indeed, there are situations in which the deed, although it is prohibited by law, does not have an illegal character.

It is about those situations in which the law allows and does not sanction the commission of an act provided for by the criminal law. This happens when one of the justifying causes is incident in a case: self-defence, state of necessity, exercise of a right or fulfilment of an obligation, consent of the injured person

d) Fourthly, the deed must be imputable to the person who committed it.

This essential feature of the crime is the foundation of the principle of subjective responsibility in criminal law.

In order for a person to be liable from a criminal point of view, it is necessary that the deed he committed can be blamed on him, that is, he had the representation of the deed and its consequences and the opportunity to act according to the law, but he did not.

Attributability is removed in the presence of the causes of non-attributable: physical coercion, moral coercion, non-imputable excess, minority of the perpetrator, irresponsibility, intoxication, error, fortuitous event.

The essential features of the crime are not confused with the content of the crime.

The content of the offense consists of four elements:

1. The subjects of the crime are the natural or legal persons who are involved in the criminal activity:

- either actively, in which case they are called active subjects of the crime
- either passively, by bearing the consequences of the crime, in which case they are called passive subjects.

2. The object of the crime consists of social values and the set of relationships that arise around these values that are protected by law and that are damaged by committing the crime.

3. The objective side of the crime which in turn consists of the material element, i.e., the action or inaction prohibited by the criminal law, i.e., the criminal act. Only the external actions of the person, seen as manifestations of will, as concrete acts aimed at achieving a goal, do not constitute an act in the sense of the criminal law. People's thoughts or the mere outward expression of the intention to commit a crime will never have this criminal character.

Only from the moment when a person's harmful plans have materialized, in actions or inactions likely to produce socially dangerous consequences, we can speak of the existence of a deed in the sense of the criminal law (Boroi, 2010:102). By the notion of deed is meant not only the external activity of man, but also the result produced by this activity, i.e., the change it produced or could produce in the surrounding world (Vasiliu, 1972:89).

The act susceptible of criminal consequences is regarded by the law in the complex of its dynamic process, as an energy in action with an obvious causal aptitude. So, the causal relationship between the deed and the socially dangerous consequence produced is also part of the objective side of the crime. Finally, the notion of deed in the sense of criminal law presupposes an action or an inaction of man, committed either directly or by means of another energy set in motion by man. The requirement is explainable because criminal law regulates social relations, that is, relations that are born between people. It follows from this that any other source of changes in the external world (such as: natural events, animal reactions) does not fall within the scope of criminal acts (Vasiliu, 1972:89).

4. The subjective side of the crime includes guilt as the mental attitude of the criminal before the crime and the consequences of the crime (Pașca, 2012:174). In order for a crime to exist, it is necessary that the deed provided for by the criminal law be committed with guilt.

This presupposes that the subject has acted with that mental position on which the law conditions the existence of the crime:

- intention
- blame
- intention exceeded.

Guilt presupposes a certain evaluation in the conscience of the subject of the character of the action or inaction and its consequences as provided by the criminal law. Only to the extent that the deed is committed with guilt, it can be said with grounds that it reflects the personality of the offender, and the criminal sanction will effectively contribute to his correction.

### **3. Criminal sanctions**

The socially dangerous act constitutes a crime only if the law provides for the application of a criminal sanction. The criminal sanction constitutes, therefore, the obvious proof of the existence of a generic social danger of the deed, and the limits of the sanction represent the measure of this danger.

An antisocial manifestation, no matter how embarrassing, does not have the character of a crime if the criminal law does not incriminate it and does not punish it (Popoviciu, 2014:345).

With a more synthetic, but comprehensive formula, it can be said that the criminal sanction is the sanction specific to criminal law, a sanction that the judge applies to the one who disregards a rule of criminal law (Vasiliu, 1972:383). As a legal institution, sanctions are a creation of positive law that exists only when the law provides for it (*nulla poen sine lege*).

From an institutional point of view, criminal sanctions constitute the third basic institution of criminal law, along with crime and criminal liability. As a means of achieving the purpose of the criminal law through coercive measures, criminal sanctions represent the negative assessment of the act committed by the criminal, as well as the equivalent of the degree of social danger of the respective crime (Vasiliu, 1972:383).

The legislator considers one of the following sanctions in terms of criminal sanctions:

- the punishments
- safety measures
- educational measures.

Penalties are those measures provided for in Title III of the criminal code and which include penalties that apply to the natural person and penalties that apply to the legal person.

The penalties are:

- main punishments
- complementary punishments and
- accessory penalties.

The safety measures, like the educational measures applicable to the minor, have a protective nature (preventive measures) and are not included in the notion of punishment. However, when the term criminal sanction or criminal law sanction is used, both punishments and safety measures and educational measures are understood.

As far as security measures are concerned, the basis for taking them is the state of danger of the person who has committed an act provided for by the criminal law, a state that must be removed (Duvac et al., 2019:678). Committing a crime or an act provided for by the criminal law is not proof that the perpetrator presents a state of danger, this is only a symptom that shows that he can be dangerous and at the same time the starting point of this state. The state of danger must be proven in order to impose a safety measure against a perpetrator.

Safety measures are those measures provided for in Title IV of the Criminal Code and they are:

- "a) obligation to medical treatment;*
- b) medical hospitalization;*
- c) prohibition of occupying a position or exercising a profession;*
- d) special confiscation.*
- e) extended confiscation".*

In the science of criminal law, it has become indisputable that minor criminals have to receive, first of all, through measures with a predominantly educational content, and not through measures with an accentuated repressive character, such as punishments.

That is why, in order to respond to the needs of the fight against juvenile delinquency, a special sanctioning system consisting exclusively of educational measures was regulated.

Within this system, the following educational measures were instituted, in relation to the needs of the re-education of the minor offender:

- non-custodial educational measures
- custodial educational measures.

*"The non-custodial educational measures are:*

- a) civic training;*
- b) supervision;*
- c) registration at the weekend;*
- d) daily assistance.*

*The custodial educational measures are:*

- a) incarceration in an educational centre;*
- b) incarceration in a detention centre".*

#### **4. Criminal liability**

The institution of criminal liability is imposed by the need to ensure a full match between the seriousness of the act and the responsibility of the perpetrator. The characteristics it presents and the legal and social function it fulfils make criminal liability an important legal institution, with its own configuration and features.

Criminal responsibility has a deep social content and reflects the state's concern to hold accountable those who have committed crimes (Mircea, 1987:11).

Criminal liability as a form of legal liability consists in the offender's obligation to bear the consequences (main penalties, accessory and complementary penalties, safety measures, educational measures) of the offense committed. This obligation is correlative to the state's right to prosecute and sanction the perpetrator.

Both, the right and the obligation, make up the content of the criminal legal report.

Criminal liability, like any type of liability, determines the requirement to bear the consequences of an act that does not comply with the rules of conduct and consists in the obligation of a person who has committed an act provided for by the criminal law, to suffer the consequences of the act committed, namely to submit to criminal sanctions (Vasiliu, 1972:500).

Criminal liability is regulated in the Romanian Criminal Code in several provisions (Neagu, 2021:299):

- According to art. 15 para. 2 Criminal Code: "the offense is the only basis for criminal liability". This aspect means that criminal liability can only arise if a crime has been committed.

Other regulations regarding the offense in the Criminal Code are also found in the case of minors, when it is a cause of non-attributability, in the case of competition between the causes of aggravation and those of mitigation, when the criminal liability of the minor is regulated, or the criminal liability of the person legal, or in Title VII of the General Part of the Criminal Code where "Causes that remove criminal liability" are provided (Neagu, 2021:299).

#### **5. Criminal liability as a result of the commission of a crime**

Felony is the most serious violation of the law. This cannot go unpunished, which is why the law provides for the penalties that apply to each individual crime. In order to be able to hold the perpetrator accountable, it is necessary for him to commit the act with guilt.

Guilt presupposes, first of all, a voluntary action or omission of the subject. If the subject did not want the act committed, it cannot be imputed to him, because there is no guilt and therefore the incidence of the criminal law is excluded.

I will exemplify with a case in which the data was modified to be adapted to the theme:

Based on art. 233 Criminal Code with the application of art. 38 para. 1 Criminal Code, the defendant BA was sentenced to 6 years in prison (injured party BA).

Based on art. 233 of the Criminal Code, with the application of art. 38 para. 1 Criminal Code, the same defendant was sentenced to 8 years and 6 months in prison (injured party TA).

Thus, the court held:

1. In the evening of 03.06.2021 at around 22.30, while the injured party BA was moving towards her home, on AF str. near the pedestrian crossing, she was accosted by the defendant, who scratched her arms and in the area chest, trying to snatch her purse, but the injured party resisted and managed to escape. The defendant followed the injured party and reached her on street B. where he snatched her purse containing a mobile phone and a wallet containing the sum of 2000 lei, a Raiffeisen Bank card and an identity card.

During the same evening, the injured party filed a complaint with the Oradea Municipal Police. From the conclusions of the medico-legal report, it follows that the injured party suffered post-traumatic injuries that required 4 days of medical care to heal.

On 07/06/2021, during the presentation for recognition from the group, carried out by the police, in the presence of assisting witnesses, the injured party indicated the defendant BA, as the one who, on the evening of 06/03/2021, dispossessed her by violence of her possessions. In the minutes concluded on this occasion, signed by all parties, in the presence of the defender, without any objection, the statement of the injured party BA was recorded, as follows: "the person who attacked me by snatching my bag of goods, is definitely the one from position 4 -a from the group. I am 100% that this is the author".

2. On the night of 3.12.2021 at around 11:20 p.m., the injured party TA went to the home on Transylvania Street in the municipality of Oradea, entered the staircase of the building and then the elevator, intending to go up to the 7th floor.

As soon as she got into the elevator, the defendant came in after her and grabbed her by the neck, hit her several times in the face and head, after which he snatched her purse containing a mobile phone, the purse in which she had the amount of 2500 lei and an identity card. The injured party, following the blows received, suffered injuries (his jaw was broken), being hospitalized between 4.12.2021-16.12.2021 at the Surgery Clinic of the Oradea County Emergency Clinical Hospital.

On 04.12.2021, the injured party filed a complaint with the Oradea Municipal Police.

From the conclusions of the forensic report, it follows that the injured party suffered post-traumatic injuries that required 70 days of medical care to heal.

On 25.07.2022, on the occasion of the presentation for recognition from the group, carried out by the police bodies, in the presence of assistant witnesses, the injured party indicated the defendant BA, as the one who entered with her on the evening of 3.12.2021 in the elevator of the building, and after the elevator started to move, he hit her several times and stole her purse containing several goods.

In the minutes concluded on this occasion, signed by all parties, without any objection, the statement of the injured party TA was recorded, as follows: "the person from the fourth position in the group, from left to right, is the person who on 03.12. 2021 at around 11:20 p.m. he entered the elevator of the Bxx building on Transylvania Street no. xx and after he started moving, he punched me several times and stripped me of a purse in which I had several goods"

The injured party heard, in the public hearing on 09.11.2022, indicated the defendant BA as the person who attacked her in the elevator of the building on the night of 3.12.2021. The guilt of the defendant is retained, from the evidence administered in the case, following which the sanction provided for by law will be applied as a result of the criminal liability.

### **CONCLUSIONS**

From the very definition of law as it is formulated by law theorists, its three fundamental institutions emerge:

- the crime
- criminal liability
- criminal sanctions.

The first of the fundamental institutions of criminal law has an express definition contained in the provisions of the Criminal Code. The institution of criminal liability is imposed by the need to ensure a full match between the seriousness of the act and the responsibility of the perpetrator. The institution of criminal sanctions complements the application of the Romanian criminal law by committing crimes.

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