

## THE CONCEPT, CONDITIONS AND FORMS OF GUILT

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***Abstract:** In the legal context, intention represents the mental state of the perpetrator at the time of committing an act and can be classified into several forms. Direct intention involves actions with an explicit purpose, while indirect intention involves anticipating consequences and eventual intention involves accepting the risk of an undesirable outcome. A specific form, outdated intent, occurs when the perpetrator sets out for an outcome, but the consequences significantly exceed initial expectations. These concepts are fundamental in assessing legal responsibility and the degree of guilt within the legal system.*

***Keywords:** guilt, intention, fault, forms, factors.*

### **Introduction**

This paper will present all forms of guilt, each of which is presented in detail.

In the legal field, the concept of guilt plays a crucial role in defining individual responsibility for committing crimes and determining appropriate sanctions. Guilt is often a central element of criminal justice systems and is closely linked to the idea of culpability. In a legal context, guilt refers to the degree to which a person is responsible for or aware of a crime.

Legal systems around the world often base their principles on the presumption of innocence, where the accused is presumed innocent until proven guilty. Guilt is assessed before the court where prosecutors must prove beyond reasonable doubt that the accused is guilty of the act. In this context, guilt is often defined in legal terms and criteria may vary depending on the specific legal system and legislation in force.

### **The concept of guilt**

Understanding the term "guilt" in the legal context involves examining in detail the psychological and normative aspects related to the anticipation and consequences of an act committed by an individual as well as the legal attribution of this act to the person responsible.

-Guilt (psychological aspects):

Psychological guilt refers to the mental state of the perpetrator at the time of committing the crime. It is associated with intent or awareness of the wrongfulness of the act. The analysis of psychological guilt involves evaluating aspects such as intention, knowledge and the capacity for discernment of the individual during the commission of the act. It can also explore circumstances that may influence the degree of guilt, such as impulsivity or psychological challenges faced by the perpetrator.

-Imputability (Normative aspects of guilt):

Imputability refers to the individual's ability to be subject to criminal responsibility for the act committed. This dimension focuses on normative criteria such as age, mental health and the ability to understand the nature and consequences of the act. The assessment of imputability is based on legal and psychological standards that determine whether the individual concerned can be considered guilty for the purposes of assigning legal responsibility for the crime committed. In this context, psychiatric expertise and other means of assessing the mental capacity of the perpetrator can be explored (Barbu, 2022).

### **Conditions of guilt**

#### **1. Factors of guilt**

Conscience or intellective aspect implies the ability of the perpetrator to anticipate the consequences of his deed. The defining characteristic of the perpetrator is the ability to foresee ("foreseeability") the consequences of the act, not necessarily the fact that the perpetrator concretely anticipated the consequences of his act. More precisely, the evaluation of the intellective factor does not focus exclusively on what the perpetrator actually knew, but also includes that knowledge that should have existed - that is that knowledge that a normal and diligent person would have had in a similar situation (Guiu, 2012).

The volitional will or aspect implies the freedom of will and action of the perpetrator indicating that he must carry out the impugned action or inaction of his own free will without being constrained by another person or external factors (Barbu, 2022).

#### **2. Forms of guilt**

Guilt implies a certain mental state of the perpetrator in relation to the socially dangerous action or inaction and its consequences. Thus, the perpetrator may or may not anticipate the socially dangerous outcome, may or may not pursue those consequences, thus creating the conditions for various forms of guilt. For there to be guilt, the law requires the act to be committed in three distinct ways: intentionally, culpably or with outdated intent. However, with regard to the criminalisation of acts in criminal law, the rule established by legislation is rare. More specifically, the law predominantly states that acts must be committed intentionally. Acts committed through negligence or with exceeded intent are less common in criminal regulation. This distinction emphasizes the importance of intent in guilt analysis, highlighting that most criminal acts are governed by provisions that require the perpetrator's knowledge and willingness to do so. At the same time, it is emphasized the rarity of situations in which guilt can be attributed to the act committed through negligence or with an outdated intention within the legal norms (Barbu, 2022).

### **Forms of guilt**

#### **1. Intention**

In order to establish the existence of intention, the legislature requires not only the provision of the action, but also a certain mental attitude towards its result: its express pursuit or acceptance. In this aspect, we can distinguish between two forms of intention: direct intention and indirect intention.

##### **a) Direct intention:**

Direct intention or direct mourning occurs when the perpetrator anticipates the outcome of his act and explicitly intends for it to occur. For example, the person who

commits a theft acts with direct intention or shoots a gun at the victim from a very close distance. In direct guilt, only one outcome, which is both possible and inevitable, is always anticipated namely the death of a person taking as an example the crime of murder (<https://legeaz.net/dictionar-juridic/formele-vinovatiei-si-gradele-culpei>). Example: A person fires a gun at another person with the clear intention of harming or killing them.

b) Indirect intention:

According to the provisions of the Criminal Code, when the perpetrator commits actions which by their nature or manner of execution, are capable of producing in concrete terms several consequences (some even licit), consequences to which the perpetrator is indifferent and lets them occur certainly, not acting to prevent them, a specific form of guilt emerges. In this situation, it is possible that the main consequence envisaged by the perpetrator is lawful and only subsidiary consequences are dangerous and illicit. However, if the perpetrator is aware and foresees these consequences, he will respond in the form of guilt of indirect intention. If through the complete inaction of the perpetrator, the foreseen consequences, whether main or incidental or inevitable, materialize the form of direct guilt will be retained. In the case of indirect intention, there are always two possible outcomes with the intervention of chance. For example, in the case of the crime of murder, indirect intent can occur when someone applies multiple blows to a person and then leaves them on the street in the hope that they will be discovered by someone. Therefore, two situations can occur: either the person dies or is discovered and survives (<https://jurisdictie.wordpress.com/tag/intentie-directa/>). Example: An individual applies repeated blows with the intention of hurting without having a specific purpose, but being aware that it can cause significant harm.

## 2. Guilt

Fault is a legal concept that refers to civil or criminal liability for negligent or reckless action causing damage or damage. It is the opposite of intention.

Form of guilt, provided for in the head. I, t. II, art. 16 al (4), C. Pen., "The act is committed by negligence, when the offender foresees the result of his act but does not accept it, believing without reason that it will not occur; when the offender does not foresee the outcome of his act although he should and could have foreseen it. It can be: fault with foresight, simple fault, recklessness, carelessness" (Criminal Code of Romania).

a) Fault with provision

For example, there is fault with foresight in the case of a driver who although driving a vehicle with a faulty braking system, drives on the public road, relying on the idea that by maintaining a low speed thorough signalling and use of the parking brake, given his rich experience as a professional driver, he will be able to avoid an accident. However, if an accident occurs resulting in the death of a person, the driver will be liable for manslaughter (according to Art. 192 C. pen.), given that he anticipated the outcome of his act, but did not accept it, hoping without reason that it would not materialize (Barbu, 2022).

The common element of this method of fault, compared to the modalities of intention, consists in foreseeing the socially dangerous outcome. The key difference, however lies in pursuit and acceptance. In the case of intention, the result is pursued or accepted, whereas in the fault with foresight, it occurs without the perpetrator explicitly accepting this possibility. Thus, the distinction is made in relation to the acceptance or non-acceptance by the

perpetrator of the socially dangerous result produced. This difference, being related to the mental attitude of the perpetrator can be difficult to establish even by analyzing in detail the concrete circumstances of committing the act (Barbu, 2022).

b) Simple fault

The easiest way to fault is simple fault or negligence. According to art. 16 (4), b) of the legislation "the act is considered to have been committed through negligence when the perpetrator does not foresee the outcome of his act, although he could and should have anticipated it."

A common example of simple fault would be a traffic accident caused by non-compliance with traffic rules or insufficient attention on the part of the driver. In cases of simple negligence, the perpetrator did not concretely foresee the results of his act, but due to his negligence or recklessness generated socially dangerous consequences.

Legislation differs in specific standards of culpability in different jurisdictions, but in general simple fault is often assessed against the average standards of care and attention of a rational person in the same situation. It is important to note that simple fault can be a relevant factor in establishing a person's civil or criminal liability for their actions.

Other classifications of fault may also be: "culpa lata, culpa levis and culpa levissima" (Barbu, 2022).

3. Outdated intention

It represents the 3rd form of guilt

"Outdated intent" is a specific form of intent in the legal context. This form of intent refers to a situation where the perpetrator, during the commission of the act, seeks an outcome, but the consequences of the action significantly go beyond what was originally foreseen or desired. It is characterized by the fact that the subject of the crime foresees and desires or accepts the occurrence of dangerous consequences, but a more serious outcome occurs that he did not foresee, but should and could have foreseen.

Crimes that can be committed subjectively with intent are provided for by criminal law.

Example: hitting or injury causing death which consists of an act of striking which results in bodily harm intended and desired by the offender, committed with direct intent, but as a result of the injuries caused a more serious result (death) which the offender did not foresee, but could and should have foreseen it: the offender hits the victim who becomes unbalanced, falls, bangs his head against a blunt body and dies (Popoviciu, 2020).

## **Conclusions**

There are several types of guilt recognized in the legal field such as intentional guilt (when the act was committed knowingly), negligent guilt (when the individual acted negligently or failed to comply with certain precautionary standards) and other specific forms depending on applicable law and case law.

In the judicial process, the determination of guilt is often accompanied by analysis of mitigating factors or exonerating circumstances which may influence the court's decision on the measure of punishment. Also, the idea of guilt can evolve over time with the development of criminal law and social changes, reflecting the adaptation of legal systems to the evolving values and norms of society.

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