AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
Vol. 18, No. 2 (2024), pp. 295-299

THE FAULT, FORM OF GUILT IN THE ROMANIAN LAW

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Abstract: *In this paper, I briefly presented the definition of the crime, its structure, and its features will be briefly addressed. the notion of guilt and its 3 forms: intent, culpa, and overriding intent. Guilt is an important example of perspective differences in legal life. In the following lines, I will try to offer a small gateway to the infinite land of human perception of reality. Kind of a glass half full or empty situation. Crimes against life are the most serious, because by committing them, man is robbed of the most valuable thing, namely life, Titus Lucretius Casus, a Latin poet and philosopher, said "life is not the property of anyone, but the usufruct of all". And yet, although no one disputes this great truth, crimes against life have occurred and continue to occur in society, therefore acts directed against human life have been criminalized since the most remote times, always being punished with great severity.*

Keywords: *crime, fault, guilt.*

1. Features of the crime

To be able to start talking about fault in the legal light, as an individual element, I will briefly present what exactly constitutes a crime and I will give a brief description of each element that it contains.

The Criminal Code (C.P) brings a reform to the definition of the crime, leading to the modification of the general theory of the crime in Romanian criminal law. According to the old Penal Code, art 17, paragraph 1, the crime was the deed presenting a social danger, committed with guilt and provided for by the criminal law. Starting from this description, the crime is characterized by three fundamental features: provision in the criminal law, social danger and guilt.

According to art. 15 paragraph 1 C.P., the crime is the deed provided by the criminal law, committed with guilt, unjustified and imputable to the person who committed it.
The first observation that can be made is that the current Criminal Code abandons social danger as a general feature of the crime, a feature specific to Soviet-inspired legislation, unrelated to the traditions of our criminal law.

Abandoning the regulation of the social danger of the crime does not bring with it the bringing into the scope of the punishable offense of some clearly unserious facts, because their situation will be resolved, in the context of the regulations of a new code of Criminal Procedure (C.P.P), based on the principle of the opportunity of criminal prosecution (Streteanu, Morosanu, 2010).

a) Provision of the act in the criminal law

By the provision in the criminal law of the facts, the crime is differentiated from other forms of legal wrongdoing. This aspect is also known in criminal doctrine as typicality.

The act must correspond to the abstract model described in the law. In order for the deed to constitute a crime, it must meet all the conditions described in the criminal law, i.e. there is a perfect overlap between the conditions in which the deed was committed in reality and the abstract, typical model (pattern) shown in the criminal law (Mitrache, Mitrache, 2014).

b) The act committed with guilt

Guilt represents the subjective aspect of the crime and includes the public attitude of the perpetrator towards the committed act and its consequences (Petrovici, p.295). As a mental attitude, guilt is the result of the interaction of two factors: consciousness and will. Consciousness is the feeling, the intuition that the human being has about his own existence and the will is the psychic function characterized by the conscious orientation of man towards the achievement of goals and by the effort made to achieve them. While consciousness is an abstract element, intimate and specific to each individual, will is a concrete element, denoting firm decision and perseverance.

c) The act is unjustified

This element is also called "illegality", which indicates the existence of a contradiction between the committed deed and the requirements of the legal order.

d) The fact must be imputable

Unlike guilt, imputability is not susceptible to forms, it may or may not be ascertained by judicial bodies.

If we are dealing with an act that is typical, but not illegal, its imputability will no longer be checked. The constitutive elements of the offense are checked in cascade. When one of the elements is not checked, the act can no longer represent a crime.

2. The guilt

Guilt comes in three forms:

a. Intention

b. Blame

c. Exceeded intention (praeterintenie)

a) Intention is the form of guilt that leaves the least room for interpretation by the litigant. This is divided into two other sub-notions: direct intention and indirect intention.

b) Guilt is the form of guilt with an exceptional, subsidiary character, having a lower degree of danger than intention. This is clear from the fact that there are no offenses provided for in the Penal Code that can be committed exclusively through negligence, because criminalizing acts committed through negligence and not criminalizing the same act committed with intent would be absurd.

c) Exceeded intention is characterized by intention (direct or indirect) with regard to the sought or accepted result and guilt with regard to the worse result. The worse result is only foreseen but not accepted by the perpetrator. If the result is foreseen by the perpetrator, the act will be considered to have been committed with indirect intent.

3. The fault. The concept of fault and its methods

Fault is a mistake that consists in the non-compliant fulfillment of an obligation or in its non-fulfilment; wrong that consists in the commission of an act that is harmful or punishable by law.

Fault is a form of guilt that highlights a lower degree of subjective dangerousness of a person who has committed an incriminated act.

According to art. 16 paragraph (4) of the Criminal Code, the legislator established two main ways of fault:

a) Fault with provision

b) Fault without provision

Thus, according to the Criminal Code, art. 16, paragraph 4, letter a, we can find ourselves in the situation of fault with provision when the perpetrator foresees the result of his deed, which he does not accept, considering without grounds that it will not occur.

The assessment is made according to the experience, development or mental training of the perpetrator, based on certain objective or subjective factors, but there is an overestimation of the role played by these factors, which means that they unfoundedly assess the non-production of the result, it being produced and leading to the apprehension of the deed committed based on this form of fault, the one with foresight.

The fault with provision presents problems of delimitation in relation to the indirect intention, being similar in that it foresees the result of the deed, a result that is not accepted.

Unlike indirect intent, in the case of premeditated guilt, the perpetrator does not accept the eventual consequence, but considers, based on certain objective grounds, wrongly evaluated, that he can avoid or prevent the consequence. In the situation where the perpetrator's assessment is based on chance, and not reasonable objective foundations, it will be considered that he committed the crime accepting the result of his action or inaction, so with indirect intention (Udroiu, 2017, p.54).

Indirect intention and fault with foresight have as a common element the existence of foresight of the possibility of the occurrence of socially dangerous consequences. But in the case of indirect intent, the offender accepts the possibility of the eventual consequence, being regardless of whether it will be realized or not, while in the case of premeditated guilt, the consequence is not accepted, because it is based on the existence of a real, objective circumstance, and not by chance, as in the case of indirect intention, but which they estimate inaccurately (Bulai, 1992, p. 255-256).

In criminal law, no distinction is made between the modes of intent and guilt in terms of their severity and criminal treatment. They are however defined in order to differentiate the indirect intention from culpa with provision and culpa without provision and the fortuitous case, because they have different legal consequences.

"Guilt without foresight is the form of guilt of the perpetrator who did not foresee the result of the act, although he should and could have foreseen it." (Criminal Code, art. 16, paragraph 4, letter b).

Fault without foresight is the only form of guilt that lacks foresight of dangerous consequence, because in this situation the breach of duty of care is not done knowingly.

Although the criminal law mainly criminalizes acts committed with intent, some acts committed out of imprudence are also criminalized, and this is expressly provided for in such cases. Such acts are also criminalized, because they manifest a mental attitude of carelessness, lack of discipline, attitudes that generate dangerous consequences for society.

It is important to delimit the crimes committed by fault or with intent, for several reasons.

First of all, the criminalization of acts committed by fault, are sanctioned less severely and only when the law provides for this form of guilt in the structure of the crime.
The crimes of murder and manslaughter are part of the group of crimes against the person and the subgroup of crimes against life, bodily integrity and health.

These two crimes have the same special legal object, namely the life of the person and the social relations regarding the right to life protected by the criminal law by criminalizing the facts that harm or endanger them, as well as the same material object, the body of the living person. The crime of manslaughter, like murder, is a comissive act, which can result from a positive activity, as well as from negative attitudes and a material crime.

For any of the two crimes to be apprehended, it is necessary that the immediate consequence is the death of the victim.

However, the two crimes are, and remain, essentially different in terms of the degree of social danger, as well as in terms of the criminal treatment that was intended for them by the legislator. These criminal acts are particularly dangerous due to the consequences they produce, suppressing a person's life, jeopardizing the security of social relationships. From the subjective aspect, they differ fundamentally, manslaughter being an unintentional crime, and murder, a crime committed with intent. The social impact produced by the crime of murder is indeed deeper than that determined by the crime of manslaughter, the social significance of the two crimes being differentiated.

The specialized literature also distinguishes certain degrees of guilt:

1. grave(lata),
2. light (levis),
3. very light (levissima),

as well as other classifications, for example – as the form of guilt of guilt characterizes committed acts:

- by action (in agenda),
- by omission (in omittendo),
- common, when the result is the result of the culpable activity of both the perpetrator and the injured person
- concurrent when the result is caused by the culpable activity of several people.

Conclusions

Guilt is a mistake that consists in the non-compliant fulfillment of an obligation or in its non-fulfilment; wrong that consists in the commission of an act that is harmful or punishable by law. According to art. 16 paragraph (4) of the Criminal Code, the legislator established two main ways of guilt, culpa with provision and culpa without provision.

In any of its ways, guilt must be proven just like any other constituent element of the crime. This implies for the judicial body, the verification of all the circumstances in which the acts were committed, both objectively and subjectively, if the agent could foresee the result and follow the rules of diligence to avoid repercussions. If a negative answer is given to the first action, namely the objective aspect of fault, the subjective aspect is no longer checked. The fault cannot be explained only by a deficiency of attention, as there are culpable acts that are committed with increased attention, nor exclusively by not observing the rules of diligence, since such an omission can be intentional.

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