

## APPROACHES OF BASIC INTENT IN THE ROMANIAN CRIMINAL CODE

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### **Abstract**

*In art. 16 paragraph (2) and (4), the new Romanian Criminal code provides „(2) Guilt exists when an action is committed with direct intent, with basic intent or oblique intent.” and „(4) An action is committed with basic intent when the perpetrator: a) can foresee the outcome of their actions but does not accept it, believing without reason that such outcome will not occur; b) cannot foresee the outcome of their actions, though they should and could have done so.”*

*In art. 16 paragraph (6), the Criminal code provides „(6) The act consisting of an action or inaction shall constitute an offense when committed with direct intent. The act committed with basic intent constituted an offense only when the law specifically establishes it as such.”*

*How to find out, the new romanian Criminal code regulates explicitly the basic intent with foresight and the basic intent whidout foresight. The Criminal code does not regulate other approaches of basic intent, which are analyzed in doctrine.*

*However, these are reference points to be taken into consideration when the judiciaries analyze the criminal guilt whenever an offence has been committed under the criminal law.*

**Keywords:** *guilt, basic intent, conscience, willpower*

### **1. Introductive aspects**

In art. 16 paragraph (2) and (4), the new romanian Criminal code provides „(2) Guilt exists when an action is committed with direct intent, with basic intent or oblique intent.” and „(4) An action is committed with basic intent when the perpetrator: a) can foresee the outcome of their actions but does not accept it, believing without reason that such outcome will not occur; b) cannot foresee the outcome of their actions, though they should and could have done so.”

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As can be seen, the essential changes to the text of the previous Penal Code consist in the express regulation of the form of guilt of oblique intent and the establishment of the rule that an act constitutes an offense only when committed with intent, both when it is an act and when it consists of an inaction. In the

previous Criminal Code, this rule was established only for acts of action, whereas in the case of omissions the rule was that they constituted an offense, whether committed intentionally or by fault.

Prior to the adoption of the new Criminal Code, one of the sketching no longer contained legal definitions of intent and fault, and it was considered that guilty should not be defined by the legislator by describing the psychic processes underlying the different forms and ways of guilt, but by doctrine. Apart from the historical argument of the lack of these definitions in the previous Romanian criminal codes, it is considered that they are neither stimulating for the development of legal thinking. This is valid in the present circumstances, when in the criminal doctrine there is ample discussion and controversy over the content of these concepts as well as their place, namely whether the psychic processes of the illicit action belong to the objective side or to the subjective side of the content of the criminality<sup>1</sup>.

Before analyzing the main doctrinal stories formulated in this respect, we would appreciate a useful review of the legal solutions enshrined in the previous Romanian criminal codes and those of other states.

## 2. Regulated ways of criminal liability

Although the criminal doctrine refers to several ways of culpability, the Romanian Penal Code explicitly regulates only two of them, namely, *the guilty with foresight* (ease) and *the guilty without foresight* (error).

The Romanian Criminal Code of 1968 regulates in Art. 19 par. 3 and 4 the other two ways of culpability referring to "the act of guilty action" and "the act consisting of inaction ... committed ... by fault." These are the ways of *culpa in agendo* and *culpa in omitendo*, which is in fact the result of the classification in relation to the nature of the behavior in which the culpability was manifested.

*Culpa in agendo* refers to a commissive activity (action), and *culpa in omitendo* to an omission (inaction) activity of the agent.

The legislature at that time made this classification particularly relevant by providing that the act consisting of a wrongful act constitutes an offense only when expressly provided by law, and that consisting in inaction in all cases (except in which the law expressly stipulates that only those committed intentionally).

In the new Criminal Code, this distinction was abandoned. Art. 16 par. 6 provided a general rule according to which "an act consisting of an act or inaction constitutes an offense when committed with intent. The culpable offense constitutes an offense only when the law expressly provides for it. "Thus the form of guilt of culpability has gained less criminal relevance than intention, as it was natural because of the social danger these facts reveal. The philosophy of the political regime existing in our country is known at the time of the adoption of the

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<sup>1</sup> G. Antoniu, *Reform of criminal legislation*, Romanian Academy Publishing House, Bucharest, 2003, p. 97.

1968 Criminal Code, which emphasized the interests of the collectivity and not of the individual. The provision I referred to created the premises for the suppression of all facts that could be considered harmful to the general interest, without distinguishing between the danger of a person committing an act of guilt and one who deliberately committed it. Thus, it has become blatant that the crimes of not committing offenses (Article 262 of the Criminal Code of 1968) and the omission of the judicial bodies (Article 263 of the same Criminal Code) to be punished with the same punishment, whether committed intentionally or fault<sup>2</sup>.

Also, as stated<sup>3</sup>, this regulation was also unequivocal as to the scope because an act may consist in a lack of action both in the ways underlying the material element (action or inaction) and in the modes which presents the precept of the rule of incrimination (do not do what the law orders, or do what the law forbids). Because of this ambiguity, it is possible to apply the mentioned law not only to incriminations where the precept involves a non-realization (own omission) but also in the case of improper omissions (omission).

### 3. Unregulated ways of criminal liability.

In the case report, which determined the perpetrator's attitude in the Criminal Code of 1864 in the Old Kingdom, but also in the specialized literature, a distinction was made between several ways of guilt, namely, *clumsiness*, *imprudence*, *inattention*, *negligence*, *incompetency*, *failure to comply with the legal provisions*.

Further criminal codes have no longer taken over these ways of guilt under Art. 248 of the Criminal Code of 1864, probably because the enumeration of the mental deficiencies that caused the behavior of fault could not be exhaustive. It is interesting, however, to analyze these deficiencies because most of the culpable facts can be explained by the intervention of one of these causes

*Clumsiness* is the lack of ability resulting from insufficient training and lack of experience; lack of skills or abilities needed for an activity.

The Criminal Court in France has established a relationship of cause to effect between the ship captain's deed and the death of the victims of the shipwreck, when the court's decision finds that the sinister is caused by faulty cargo shipments. Since the decision of the court of first instance found that among the mistakes attributable to the captain that resulted in the loss of balance is the fact that the wood was loaded incorrectly on the ship; that by placing on the deck a quantity of wood so large that the vessel was able to lose its balance under the influence of a not too strong wind, the captain committed an imprudence and a delusion that resulted in the shipwreck in which the three victims of the sinister<sup>4</sup>.

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<sup>2</sup> G. Antoniu, *op.cit.*, p. 98.

<sup>3</sup> *Ibidem*.

<sup>4</sup> Cas. Crim. Franc., 17 february 1928, *Bul. Crim.*, 1928, p. 130, Nr. 65-2, apud. M.I. Papadopolu, *Annotated penal code*, National Publishing House -S. Ciornei, Bucharest, 1930, p. 203.

Unlike clumsiness, *incompetency* implies the lack of knowledge required to perform an activity or its insufficiency. Dexterity does not necessarily mean that the one who causes a dangerous result of the awkwardness, does not have the knowledge necessary to carry out the respective activity; are some activities that, in addition to theoretical training, require some practical skill, which can only be acquired with experience.

The High Court of Cassation in Italy considered that it caused the death of a person, among other things, the mischief of the minor child who hauled a dangerous and dangerous horse with which a man had trampled<sup>5</sup>.

*Imprudence* (or *foolishness* as it is called) is a foolish behavior, the unreasonable way in which an activity has been performed.

Thus, the French Supreme Court in 1929 sentenced to murder the owner who, without resorting to the help of an architect or builder, built a house that did not respect the building permit and in a region struck by ocean winds and the roof thrown by sting has killed a passerby<sup>6</sup>.

He was also condemned for murder by imprudence by the Court of Appeal of Paris, the owner of a building that, knowing the bad condition of the chimney doors and the cracks, has committing serious imprudence to let it be installed without precaution, a stove with slow burning, in a ground of the ground floor, which caused the intoxication suffered by the roommate owner in a higher floor<sup>7</sup>.

*Inattention* (or *disturbing*) is the lack of attention that the agent should have in relation to the circumstances in which he performed the activity.

The court in Sena considered that he was guilty of the crime of imprudence, the pharmacist to whom a trainee student prepared, under the supervision of the pharmacy preparer and with the consent of the pharmacist, any medicine, was seriously burned by the explosion of the container containing the products they served in the preparation of the medicinal product even if it emerged from the circumstances of the case that accidentally it could have the cause of not observing the usual precautions to be taken for the preparation of such a medicine and since there was no doubt that the pharmacist and the trader lack of supervision, an inattention that engages their criminal responsibility<sup>8</sup>.

*Negligence* is the execution of an activity without care imposed by the sense of the provision, or by the natural duties.

The barrier guard, who neglected to open the barrier to a level crossing, is guilty of murder by imprudence when a fatal accident occurred<sup>9</sup>.

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<sup>5</sup> Cas. Pen. Ital, 15 october 1924, *General jurisprudence*, 925. Nr. 932 p. 488, apud. M.I. Papadopolu, *Annotated penal code*, op.cit., p. 213.

<sup>6</sup> Cas. Crim. Fr. 2 mai 1929, în *Recueil Hebdomadaire de jurisprudence*, Dalloz,1929, p. 318, apud. M.I. Papadopolu, *Annotated penal code*, op.cit., p. 205.

<sup>7</sup> Ibidem.

<sup>8</sup> Trib. Sena, 28 aprilie 1927, în *Gazette du Palais* 1927, 2 sem, p. 312, apud. M.I. Papadopolu, *Annotated penal code*, op.cit., p. 211.

<sup>9</sup> Trib. Bourg., 27 iulie 1927, *La loi*, 9 november 1927, apud. M.I. Papadopolu, *Annotated penal code*, op.cit., p. 209.

*Failure to comply with the legal provisions* consists in the fact that the agent does not take into account certain rules governing different activities which, if observed, would have prevented the production of the dangerous result.

Thus, according to art. 70 of the acrc instructions in force in 1914, and according to art. 343 of Instruction no. The twelve for the motion service of that time, the acrcs were kept while on duty, to set the needles for the free entrance of each train, so that if an unexpected train arrived, it could enter a free line without causing any accident. Article 341 provided that service and supervision of those being entrusted to the acrcy, are primarily responsible and then the control and oversight bodies are responsible. Regarding these statutory provisions, the violation of which directly and primarily leads to the criminal responsibility of the acrc, for accidentally happened, the Romanian Supreme Court decided that the court of law had condemned it to two months' imprisonment for the murder offense by reluctance, by having left his needle before the train arrived, who had grabbed another line left open by acrc and collided with another train, so it is indifferent whether other railways would in turn be responsible<sup>10</sup>.

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<sup>10</sup> Cas. II, Nr. 512/914, în *Romanian jurisprudence*, nr. 13/914, p. 199, apud. M.I. Papadopolu, *Annotated penal code*, op.cit., p. 204.