

THE OFFENSEN FACTORS

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Abstract:

The study discusses the offense conduct external factors act on the subject, subjects, time and place of the offense. As the name indicates, pre-existing conditions are at the time of execution of the deed prior acts, which constitute the offense, fulfill the conditions required by the rules incriminating.

Key- words: legal object, material object, active subject, passive subject, individual person, legal person, celebrating the place and time of the offense

Clasificare JEL : M40, M41

1. Preliminary considerations

In a general sense of the term, the offense is an act of man, an act outside its conduct, prohibited by law under a specific penalty called punishment, she is anti-social activity, inconvenient for social relations.

The concept of crime has no counterpart in objective reality a complex phenomenon, the phenomenon of crime, which is at the same time, a material phenomenon, human, social, moral, political and legal material, for that offense, the act of external conduct is a manifestation physical energy, capable of producing changes in the objective world, human, because human behavior is an act of conscious expression of the offender's personality, social, because it is harmful and dangerous to social value, the generator also relations social conflict between the offender and the injured party and between offender and society, moral and political, for it expresses moral - political attitude of the perpetrator to social values and to the rule of law, legal, because it constitutes breach of a legal obligation to comply provided in rule incriminating, generating a report in the criminal justice and causing its legal consequences.

For the science of criminal law only legal aspect of crime is the subject of research. Offense occurs, the legal phenomenon as a fact of law criminalized and punished as such [1], which are related to certain legal effects, or criminal liability. By criminality, social fact of the crime, going from office in a legal plan becomes a legal fact, a legal category.

The legal definition of the crime is a legal instrument of absolute necessity for the theory of criminal law, but also for legal practice as competent authorities to enforce the law, reporting their data to the hard facts from [2] the legal concept of crime solving will determine whether they realize it or not features essentials of the offense, whether or not they fell within criminal illicit [3]. The offense involves a full line of concrete features of the offense with criminality rule [4]. Abstract pattern or model of the offense is equivalent to the concepts of various crimes. In the offenses set out conditions on certain elements that the fact the perpetrator, social value and prejudice, the circumstances of time and place where the offense is committed.

2. The object of the crime is the social value and social relations created around that value endangered or injured by thcriminal act [5]. Also, the legal object of the offense means the social value protected from criminal legal norm which is adversely affected by the crime. Thus, the social value protected is central in building the type of legislator criminalization criminal norm and therefore, in the theory of the crime [6]. The object of the offense is a pre-existing factor necessary any offense. Its absence leads to lack of offense.

In the literature [7] considers that the object of the offense performs several functions:

- a) statutory construction is the foundation of the offense. Any time the indictment is built around a social value that the legislature intends to assign criminal protection.
- b) provides a criterion to establish the legal limits of punishment. You mention that the importance of social values is violated only one of the elements are considered when determining the law. For example, all actions involving the killing of a legal person the same object, but the legal limits of punishment are differentiated according to other criteria (subjective element, the circumstances in which the offense was committed and so on).
- c) is the citation order offenses in the special part of the Criminal Code.
- d) is an important element in the interpretation of legal norms. Based on the social value of which protection is sought through the criminalization of certain acts can be reached at circumscribing the correct way to interpret the scope of this rule, limiting it to actions that undermine social values.

e) is the element on which the passive subject of the crime shall be determined as the holder harmed social value.

Specialized legal literature [8] the object of the crime is presented in several forms:

a) legal subject, which refers to the values and social relations protected by criminal laws, threatened or harmed by the offense. It may be:

- Generic (group) that relates to a beam of the same kind of social relations protected by criminal laws;

- Specific (special), ie the concrete social value is adversely affected by crime; Any infringement prejudice, in addition to its specific subject and an object or group legal generic. For instance, all offenses against the person, whatever their specific object, the object of social relations on mutual legal person. The major difference between subject and object specific legal legal generic is built on hierarchy and links that are established in the system of values. Once protected social group relations and who are adversely affected by crime, in particular the Criminal Code [9] offenses are divided in titles, chapters, sections and distinguish: offenses against the person, crimes against property, crimes of authority and border state, crimes against justice, corruption offenses and service, forgery, crimes against public security offenses against the relations of social life, crimes against national security offense against fighting capacity of the armed forces, crime of genocide against humanity and war.

- Complex: mainly the main social concerns the relationship is adversely affected by crime, eg robbery, bombing) and second (adjacent) when targeting secondary social relationship is adversely affected by crime. This object is specific legal complex crimes such example is the crime of robbery, where the main subject is the social relations law relating to private assets and public defenders and legal subject is formed adjacent social relations concerning bodily defense, life and health of the person.

b) material object (direct, direct) is the physical entity on the physical energy that goes perpetrator [10], or victim's body or any object or thing, an animal, the amount of which is materiality moving act of conduct.

- There are only offenses result (materials) that harm or endanger social relationships affect physical object, eg offenses against property, theft, embezzlement, destruction, crimes against life, murder, rape, abuse of trust, outrage committed by violence.

- There is no danger offenses (offenses formal attitude) that threatened the value is not incorporated in a material entity: offenses against dignity, against freedom, threats, blackmail, professional secrecy disclosure.

- Not to be confused with the means that were used to commit the offense (tools, weapons, money), produced or acquired through crime. For example, the offense of forgery of official documents, where a document is counterfeit, it is not material object of the crime, but its product. Conversely, if the forgery is done by altering a document, the document on which it occurred is preexisting material object of the crime.

- The existence of the crime is necessary sometimes material subject to certain conditions provided by the law, otherwise the act is not a crime, even if all other conditions are met.

3. Subjects are people involved in crime or offense by the act itself or through the consequences, the harm caused.

Depending on how they are involved in crime distinguish between active subjects and passive subjects. Thus we have the subjects of crime natural or legal persons who have complied with the obligation under the legal compliance and committed criminal act prohibited, and natural or legal persons who are beneficiaries of protection and criminal law, deed prohibited bear the consequences of that.

The notion of subjects offense not to be confused with the subjects of criminal law, which means people involved in reports of criminal law, either as recipients compliance obligation under the criminal legal relations of cooperation or as beneficiaries of legal protection proceedings. In this regard it may be noted that the concept of legal subjects is larger, it includes people not involved in a crime, but the concept of crime subjects. The subjects of criminal law through their involvement in a crime are subject to crime. In other words, all subjects are subjects offense of criminal law, but not all subjects are subjects of criminal offense [11].

3.1. The active subject is the person (the offender) who commits directly and immediately (the author) or participating (instigator accessory) commission of an offense under the criminal law and the criminal offense (punishable actually used or attempted).

Acts as an active subject of an offense both individual and legal person [12].

To be an active subject of the offense, the person must meet certain general and special conditions.

The general conditions are:

a) minimum age required by law;

b) responsibility;

c) freedom of will and action.

a) Ownership biopsihice active requires skills of the person to consciously direct the actions and inactions.

Under the provisions of art. 113 C.p., criminal liability [13] are:

- Minor under the age of 14 years is not criminally responsible.

- Minor who is aged between 14 and 16 criminally liable only if it is proved that he committed the act with discernment.

- Minor who has attained the age of 16 criminal responsibility according to law.

Minor under 14 years is presumed that he has absolute discretion, that no psycho-physical development necessary to realize his works, hence the minority situation is a cause of neimputabilitate perpetrator. According to art. 27 C.p. is not responsible for the event under the criminal law committed by a minor who does not meet the commission on legal requirements for criminal responsibility.

Minor aged 14-16 criminally liable if it proves that he committed the act with discernment. It is a rebuttable presumption, failure must be proven by the fact that in reality there was such a capacity, it meets the legal requirements of criminal responsibility.

Minor over the age of 16 is presumed to have criminal capacity, but this presumption is relative and can be countered by evidence to the contrary. The minor criminal charge can take only an educational measure (non-custodial or custodial) [14].

b) Accountability is the normality of an individual psycho-physical fitness of the person to realize his actions by their social resonance, can determine and direct the conscious will. Responsibility can be appreciated in the light of two factors: one that involves the intellectual capacity to understand the significance of individual actions or inactions them, their aftermath and another involving volitional capacity of the person to be the master of its actions or inactions, which directs the consciously.

Lack the intellectual factor leads to irresponsibility caused by neimputabilitate. Under the provisions of art. 28 C.p. is not responsible for the event under the criminal law committed by a person who, at the time of its commission, he could not realize his actions or inactions or could not control them, either because of mental illness or other causes.

c) Freedom of will and action is the general condition of the active subject of the offense, which implies that he decided freely on the offense and had freedom of decision and freedom to act according to his own will.

The lack of volitional factor neimputabilitate lead to other causes: physical and moral coercion. Under the provisions of art. 24 C.p. is not responsible under the criminal law offense committed because of physical constraints offender could not resist. According to art. 25 C.p. is not responsible for the event under the criminal law committed due to moral constraints exerted by a serious threat to the offender or the person of another and could not be removed otherwise.

The special conditions for the existence of active subject refers to certain qualities. Active subject it is necessary to fulfill a particular condition is called qualified active subject or circumstantial. Example, for offenses like treason (art. 394 C.p.), betrayal by state intelligence transmission (art. 395 C.p.), betrayal by helping the enemy (art. 396 C.p.), active subject must be a Romanian citizen. For crimes like espionage (art. 400 C.p.), hostile actions against the Romanian state (art. 399 C.p.), active subject must be foreign citizens. For corruption and service as bribery (art. 289 C.p.), the subject must be active public servant. For offenses committed by military personnel as unjustified absence (art. 413 C.p.), the subject must be active military.

In relation to the subject of active criminal offenses are classified by topic general activities and crimes particularly active topic [15]. Offenses are generally those active subject, according to the rule of criminality, can be committed by any person, without being asked its special quality. Example: murder (art. 188 C.p.), theft (art. 228 C.p.) and can be committed by any person. Offenses, however, are particularly active topic crimes can not be committed only by a person holding the quality specified in the standard of criminality. Example: the crime of desertion can not be accomplished only by military, embezzlement may be committed only by a person who is an official who administers or manages the property.

Sometimes offenses are particularly active subject, in turn, classified into their offense and improper [16]. I own crimes especially those active subject, where the absence of statutory quality makes deed to be irrelevant in terms of criminal law. Example: disclosure of secrets or non-public information (art. 304 C.p.), bribery (art. 289 C.p.), embezzlement (art. 295 C.p.) which in the absence of special quality do not correspond to any type criminality. For example, if the person does not have civil servant status, acceptance of gifts, promises to perform a certain act does not constitute any offense of bribery or other criminal act. Likewise, consented intercourse (incest art. 377 C.p.) is irrelevant as far as the criminal does not have quality people in direct line relatives, brothers or sisters. Offenses are those unfit particular topic, where it causes a special quality mitigation or aggravation of the criminal, but the act constituting the offense and the absence of this quality. Example: if the offense of abusive behavior (art. 296 C.p.), if a public servant is missing the active subject, we have a criminal threat (art. 206 C.p.), hitting or other violence (art. 193 C.p.) after case.

Romanian criminal law stipulates in article. 135 C.p., terms of criminal liability of legal persons: legal, except for state and public authorities criminally responsible for crimes committed in achieving the object of activity or interest or on behalf of the legal person. Public institutions are not criminally liable for offenses committed in the exercise of activities that may not be the private domain. Criminal liability of legal persons does not exclude criminal liability of individuals who contributed to the commission of the same act.

It is difficult to make a clear distinction between public authorities and public institutions, taking into account, on the one hand, that some laws, such as Law no. 554/2004 on administrative procedure, using a very broad sense of the term public authority assimilating public authorities or the public utility establishments providing a public service, on the other hand, the concept of a public institution has no legal definition, can itself be understood in a very broad sense. It is very important to establish a clear delineation between the two concepts used by criminal legislature since

only public authorities are exempt from criminal liability, while among public institutions are exempt only those self that may not be the private domain.

Both doctrine and case law have held that the criminal liability of legal persons may still be conceived without the intervention of an individual, but not every individual having a relationship with the legal person may be held liable. This responsibility can attract acts committed by bodies, representatives, and the representatives, servants or persons not officially working for that body, but acting under its authority or legal person whose documents received, as may engage criminal liability of legal persons for offenses committed by the manager actually.

As for the relationship between the legal person and the responsibility of the individual, the law establishes as a rule two overlapping responsibilities. In terms of penalties for law legal person established a single principal penalty, fine, and several additional penalties [17].

3.2. Passive subject is the victim holds social value against which the offense turned that suffer harm by the offense. The criminal doctrine [18] passive subject is defined as the natural person or legal entity holding the protected social value and is injured or threatened by the offense.

Passive subject should not be confused with the injured person, a concept which means any person who, after the commission of an offense, suffered an injury. In most cases the quality of the passive subject aggrieved person shall meet the same person as in the case of theft. Sometimes, however, the two qualities belong to different people. For murder, the passive subject of the crime is the person killed, while the victims are, for example, the victim's dependents.

Passive subject can therefore be any natural or legal person, even the state.

Passive subject of the crime must also meet certain general and special conditions.

As a general condition in mind that, to be the subject of the offense, the person or entity must possess criminal protected social value. Most times the passive subject of the crime is the person injured by the offense.

Special Conditions refer to certain qualities. Example , the crime of attempted endangering national security (art. 401 C.p.), the passive subject is the person who holds a public dignity , to offenses against persons enjoying international protection (art. 408 C.p.), passive subject is representative of a foreign State or a person who enjoys the protection official missions in Romania, the killing or injury of newborn committed by the mother (art. 200 C.p.), the subject is passive newborn baby, at termination of pregnancy (art. 201 C.p.), passive subject is the fetus, the assault (art. 257 C.p.) passive subject is the public official who performs a function involving the exercise of state authority.

Depending on the subject passive offenses are likely classification into several categories. Thus, similar to the situation the active subject, distinguish offenses passive subject: general, as the state, particularly natural or legal person injured, mainly the state, eg the attack, secondary or adjacent to, the person (victim); simple (circumstantiated) qualified (circumstantial).

An offense can have a unique passive subject or a plurality of passive subjects.

4. Place and time of the offense are Background crime, without which we can not conceive of an offense . In criminal law provisions were placed on its scope in relation to the place of committing the crime (art. 8-14 C.p.) against time (art. 3-7 C.p.). Place and time may appear a criminal offense affecting the existence or content making qualified offense.

Place offense appears as a prerequisite to the achievement of a criminal offense which depends the very existence of the offense. Example: driving a motor vehicle with mechanical traction without driving an offense if the vehicle is driven on public roads (art. 335 C.p.). Failure condition of the act in a certain place leads to the absence of the infringement, the absence of one of its constituent elements. The place is an offense that does not depend on the existence of circumstantial offense but the offense making a qualified choice. Example: theft is theft committed in the qualified version is committed to a transport means (art. 229 C.p.). Failure of this condition on the act in a certain place does not lead to the absence of that crime, crime remains a crime in variant type (plain), but not achieved qualified version.

Under the provisions of art. 184 C.p., the act committed is considered public when it occurred:

- a) a place which by nature or destination is always accessible to the public, even if not present any person;
- b) in any other publicly accessible place, if present two or more persons;
- c) in a place inaccessible to the public, but with the intent that the act be heard or seen and that this result was produced from two or more persons;
- d) in an assembly or meeting more people, except for meetings that may be considered to have a family, because of the nature of relations between individuals.

Time of committing the crime is primarily a prerequisite for the implementation of which depends on the existence of the crime. Example: for the existence of crimes of treason by helping the enemy (art. 396 C.p.) - in war, lowering the flag (art. 429 C.p.) - during the fight; unjustified absence (art. 413 C.p.) - in wartime, the during a state of siege or emergency, it is required that these facts be committed in a certain time. Time of the offense constitutes an aggravated circumstantially in the content of certain crimes. Example: theft or robbery is qualified (art. 229 C.p., art. 234 C.p.) where the offense is committed at night. Under the provisions of art. 185 C.p., the expression means wartime mobilization during a state of armed forces during a state of war.

5. Conclusions

Since it is an antisocial offense manifested in the sphere of social relations, note that contents can not be included individuals involved in committing the offense, subjects the offense, and no social value and prejudice, subject offense. Objective and subjective offense, the offense factors are extrinsic elements the offense, any offense preexisting conditions.

6. References

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- [2] O. M. Cilibiu, *Justitia administrativă și contenciosul administrativ*, Legal Publishing House, Bucharest, 2010, p. 212: accordance with art. 214 para. 1 Fiscal Procedure Code, the body that carried out the controls, notified law enforcement authorities of the existence of an offense cues whose hotărâtoate finding would have an influence on the solution to be given in the administrative procedure.
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- [7] Ibidem.
- [8] C. Mitrache, *Drept penal. Partea generală*, Publishing House and the press "Chance" SRL, Bucharest, 2002, p. 98.
- [9] Law no. 286 of 17 July 2009 on the Criminal Code of Romania, published in the Monitorul Oficial of Romania, Part I, no. 510 of 24 July 2009, as amended and supplemented.
- [10] For example, the subject material may consist of theft of movable by nature, but also the property that are converted into mobile and then removed, the material object of the crime of murder victim's body is, for details see, I. C. Rujan, *Drept penal. Partea specială I*, Didactic and Pedagogic Publishing, Bucharest, 2007, p. 84, p. 21.
- [11] V. Dongoroz, work cited, 2000, p. 407.
- [12] Idem, p. 147: If the legal person have been controversies regarding the status of an active subject. In this regard, relevant are negative sentence (fiction theory partisans claimed that businesses do not have a life of its own: will, conscience, can not commit crimes; penalties provided by law can not be applied only to individuals, if it applies they inevitably have an impact on some innocent members) and thesis statement (proponents of the theory argued that reality: the legal person is a legal reality with a life of its own, there are crimes that are committed mainly by it (all team members) example: fraudulent bankruptcy, unfair competition, counterfeiting of goods, tax offenses, there are penalties that may apply: dissolution, suspension, fine, there are other sanctions that may cause members of the legal entity change behavior.
- [13] V. M. Frîntu, *Răspunderea penală a minorilor în reglementarea noului Cod penal / Criminal liability of minors in the new criminal Code regulations*, Annals of the University “Constantin Brancusi” University of Targu Jiu, Legal Sciences Series, no. 2/2013, p. 128.
- [14] Art. 114 C.p.: *Consequences of criminal liability*
“ (1) the minor, at the time of the offense, be aged between 14 and 18 years and a non-custodial Measures educational. (2) the minor Referred to in para. (1) May make the educational custodial Measures in the Following Cases: a) That has Committed a crime for Which He was year educational measure has been executed or the execution of Which Began Before the offense for Which it is judged; b) Where The punishment provided for the offense is Imprisonment for seven years or more or Life Imprisonment”.
- Art. 115 C.p.: *Educational measures*
“ (1) Educational measures are non-custodial or custodial. Custodial educational measures are: a) civic training course; b) supervision; c) depositing on weekends; d) daily assistance. (2). Custodial educational measures are: a) placement in an educational center; b) placement in a detention center”.
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