

Determining guilt as an element of criminal offense

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Abstract

Criminal responsibility means that the criminal offense can be personally charged to its perpetrator, the basic content of the principle of guilt is that there is no crime, no punishment without guilt - (nullum crimen, nulla poena sine culpa).

A criminal offense may be committed by either an omission to act or a voluntary act, also a criminal offense may be committed by an individual, jointly with or through another person, regardless of whether that other person is criminally responsible.

Criminal responsibility is the individual and subjective responsibility of the perpetrator and his action that meet the legal features of the criminal offense. Capable of guilt is the perpetrator who is responsible at the time when crime is committed.

Further on, responsibility, implies a reciprocal relationship between two entities: the one who responds and the one to whom it is accountable. No one can be held accountable for his actions in front of himself, except in the form of responsibility in front of his conscience.

Keywords: criminal responsibility, liability, irresponsibility, punishment.

1. Introduction

Man in his life has different experiences, he experiences hope for a happier future - a desire to achieve something in life (Ejup Sahiti, *Psikologjia gjyqësore*, Prishtina, 2007, pg. 5). These are just a few emotional experiences from their unlimited number and as such they are part of psychic reality. All the emotional, intellectual operational actions of man are his conscious experiences, and they are subject to the control of his consciousness, however, psychic reality includes other phenomena - experiences in which subconscious and unconscious factors perform influence, which the individual cannot control.

The notion of criminal responsibility and the notion of guilt is the result of the contemporary view of criminal responsibility based on the principle of guilt; (The notion of criminal responsibility is a synthetic notion, which in addition to guilt contains all other objective and subjective elements for punishment (V. Kambovski & I. Zejneli, *E drejta penale*, pg. 134, Tetovo, 2018). No crime, no punishment without culpability (*Nullum crimen, nulla poena sine culpa*). No punishment without fault (*nulla poena sine culpa*), is the basic content of the principle of guilt, according to which punishment as a form of state constriction will be imposed only if the criminal offense can be personally charged to its perpetrator.

The principle of guilt also means "**regressive prohibition**", which means that: the perpetrator is responsible within the limits of guilt for the crime committed, no one can be called and held accountable for the guilt of another due to the acquittal. In criminal law there is no supportive, collaborative, or shared responsibility. Liability is always **individual, subjective, and limited to** guilt for the act committed. When it is an act of minor significance, due to the lack or insignificance of the harmful consequences and **the low level of criminal liability** of the offender it represents a basis for *excluding the existence of a criminal offense (minor offense, Article 8 of CCRNM)*.

A person indicted for an offence shall be considered innocent until his/her guilt is established by a legally valid court verdict. (Article 13 of the RNM Constitution).

According to the Criminal Code of the Republic of North Macedonia, which uses the term "criminal responsibility", this notion is defined as follows: "A offender, who is considered accountable and who has committed a premeditated crime or crime due to negligence and who was

aware or was obliged and could have been aware for the prohibition of the activity, shall bear criminal liability” (Article 11, p.1).

1.1. The principle of guilt

Is one of the basic principles of criminal law: *nullum crimen, nulla poena sine culpa*. Only the guilty perpetrator can be punished and only within the limits of his guilt (Vlado Kambovski, E drejta penale, Skopje, 2010, pg. 254). Not only punishment have to answer for guilt, but *guilt makes the punishment necessary*.

The material basis of guilt as a reprimand is *the violation of the requirement to respect the legal goods* protected by criminal law. This notion is a consequence of the material approach to the general notion of criminal offense as a violation of legal goods. *Objective injustice* of the offense expresses the objective violation of those goods with the behavior of the perpetrator, whereas *subjective injustice* expresses guilt - violation of the requirement for their observance (V. Kambovski & I. Zejneli, E drejta penale, pg. 134, Tetovë, 2018).

Concerning the definition of the *composition of the notion of guilt* and its understanding as a descriptive or ascriptive notion, two concepts are confronted: the psychological one and the normative one.

1.2. The psychological theory of guilt

Starts from the understanding of guilt as a real phenomenon, something material, as an object of observation with a psychological structure. It is therefore also called the *naturalistic study* of guilt. The ontological structure of this notion consists of *responsibility and psychic relationship* of the perpetrator to the act and its consequences, which consists of *intent or negligence* (Ibid). It is enough for the responsible perpetrator to be aware of his act by distinguishing the objective elements from the subjective ones: the objective elements include action, realization of the legal figure and illegality, while the subjective elements include will and carelessness.

In the normative aspect, guilt must possess a *real core* based on which the trial for guilt will be built. According to this requirement, after the introduction of this concept in theory began the distinction between the *psychological* and *ethical* or normative composition of this notion (Ibid). In the case of *premeditated guilt*, the perpetrator is charged due to the formation of his will in the direction of committing the crime, while in the

case of guilt due to the *basic negligence* of the reprimand, the lack of awareness and will in terms of causing the harmful consequence.

CCRNM accepts the **normative-psychological** concept of guilt (Article 11): An offender, who is considered *accountable* and who has committed a *premeditated crime* or *crime due to negligence* and who *was aware or was obliged and could have been aware for the prohibition of the activity*, shall bear criminal liability. With this, with the combination of the psychological element (responsibility, intent, and negligence) and the normative one (awareness of prohibition), the structure of guilt, of its psychological substratum and values are determined, what is the object but also the "window" of guilt as a reprimand for the offense committed.

The following rules are important for determining guilt:

Ability for guilt (responsibility) is assumed for each perpetrator. It is a destructive assumption: *irresponsibility* is provided by law as a circumstance for exclusion of guilt (Article 12 p.1 CCRNM).

Intent and negligence must always be proven, because they are provided as subjective elements of the offense, given that negligence must be proven only in cases where the law provides for punishment for committing the offense by negligence (Article 11 p.2).

Awareness, respectively duty and the possibility of **awareness of illegality** is also a presumed element in the structure of guilt. Even the assumption that everyone is aware of the illegality of the offense is devastating: legal error is envisaged as a circumstance for exclusion of guilt (Article 17 IMC). After ascertaining all these elements, the court determines the degree of reprimand, i.e., of guilt, assessing the subjective relationship of the perpetrator to his offense: is and how much is the offense with its consequences included in such a subjective report and whether and how much the perpetrator can be charged.

Capable of guilt is the perpetrator who is responsible at the time when crime is committed. Accountability is one of the basic elements of guilt (see Article 11 p.1 of CCRNM: "An offender who is accountable shall bear criminal liability).

Unlike *objective responsibility*, in subjective terms the offense can be charged to the perpetrator only if he is generally able to create a certain psychological relationship with it, respectively to build his will in accordance with the requirements for respecting the legal benefits of protected *Impossibilium nulla obligatio est* (V. Kambovski & I. Zejneli, *E drejta penale*, pg. 139, Tetovo, 2018). However, to a person who does not

have a stable (regular) psychic apparatus, and cannot be responsible for what he does, or cannot lead his actions in accordance with the awareness of their social importance, no grounded social-ethical reprimand can be sent to him.

The law initially links the possibility of guilt with the **age of the perpetrator** at the time the crime was committed. Criminal legal sanctions may not be applied to persons who *have not reached the age of fourteen (children)* at the time of the commitment of the criminal offense. According to this, children are outside the criminal law and the inviolable presumption that they cannot be capable of guilt.

The reprimand that is sent to the perpetrator, always has as its object the *psychological relationship of the perpetrator* to the offense. As an element of guilt, responsibility must necessarily be assessed as **concrete guilt ability**. It is possible for the perpetrator to be *under the level of ability of others* in conscious self-determination and free action, so that due to *certain bio-psychological situations* of the personality, he may not understand the importance of his act and not be able to lead by his actions (n.20, i Ligjit për të drejtat e fëmijëve i R. Maqedonisë, Skopje, 2013).

According to the CCRNM (Article 12 p.1), *"The perpetrator is not responsible, if when committing the crime, he could not understand the significance of his act or could not control his actions due to permanent or temporary mental illness, temporary mental disorder or retarded mental development, or other especially severe mental impediments (mental incompetence)."* With this definition, our legislator is defined for the **biological-psychological** concept of irresponsibility, which starts from the combination of biological states - mental illness or mental retardation and their psychological action on the ability of the perpetrator to judge and guide his actions during the act of the criminal offense.

2. The biological basis of irresponsibility

2.1 Permanent mental illness in contemporary psychiatry is defined as a *progressive, irreversible, irreparable* disorder of psychic life. It is such a disease of the *central nervous system* that results in pathological disorders of psychic functions, hence the lack of *self-control* and *criticism* of one's own actions, which make one incapable of behaving in accordance with the demands of society. Permanent mental illness cannot be cured *spontaneously* or with the

application of *modern medical methods* (For more: Novotni, 35; Hajduković, 104; Mezger, 6; Jorda, 64).

Such characters have:

- *Schizophrenia* (manifested as “separate personality” and a disorder of consciousness, feelings and behaviors, *epilepsy* (exclusion of consciousness during an epileptic attack, accompanied by major changes in the character of the person),
- *Organic psychoses* of the type of progressive paralysis (chronic softening of the brain),
- *Endogenous psychoses* such as paranoia (ideas of insanity shaped in the system),
- *Alcoholic psychosis* (disorder of psychic functions due to prolonged use of alcohol), etc.

Antisocial personality disorders usually occur due to the large difference between existing social behaviors and norms (Edmon Dragoti, *Psikologjia ligjore e krimet*, Tirana, 2007, pg. 149). We will have social personality disorders when at least three points from the following data are met.

- Solid calm for the feelings of others,
- Vulgar and persistent attitudes of irresponsibility and disregard for social norms, rules, and obligations,
- Inability to maintain stable relationships, having difficulty establishing them,
- Low tolerance for failures and a small threshold for discharging aggression, including violence,
- Inability to experience guilt and to benefit from experience, especially from punishments,
- The tendency to distinguish and blame others or to offer convincing reasons that lead the patient into conflict with society.

The group of antisocial personality disorders includes (Ibid)

1. Depressed spiritual state.
 - Drug use,
 - Dramatic, irregular, or antisocial personality,
 - Some disorders that have similar symptoms.
2. Disorders related to the substance from which the following result:
 - Schizophrenia,
 - Manic episodes,

- Narcissistic personality disorders,
- Histrionic personality disorders,
- Paranoid personality disorders,
- Antisocial behavior of adults.

By mental disorders we mean the state which has been presented as a damage to the psychic process of the perpetrator of the criminal offense, so that he is therefore not able to judge and decide correctly (Borisllav Petrovic, E drejta penale, Prishtinë/Sarajevë, 2006, pg. 69). Spiritual disorders are inherited, inborn and acquired over time. The causes of mental disorders can be organic and of a psychological-social nature. As causes of organic nature most often appear; heredity, injuries, diseases that occur during life, especially diseases of the brain and endocrine glands. While as a cause of psychological - social nature most often appears spiritual shock due to conflict in the social environment and due to unexpected life events, which have the character of drama, stress, tragedy and the like.

In the absence of guilt, the punishment of the perpetrator of the criminal offense cannot be imposed and the punishment loses its meaning in criminal law (Ismet Saliu, E drejta penale, Prishtinë, 2010, pg. 290). Guilt is one of the basic determinants that makes possible and justifies the imposition of punishment on the perpetrator.

In this regard, the principle *nullum crimen nulla poena sine culpa* - No crime, no punishment without culpability - is an indication and guarantee of a progressive criminal law. According to this principle, courts have the right to punish only the guilty perpetrators of criminal offenses, not to punish persons who accidentally or under the influence of violence or any other circumstance against their will have committed illegal acts, which in law are provided as criminal offenses.

2.2. Criminal-legal action of irresponsibility

Irresponsibility excludes guilt. The perpetrator who has not been able to understand the importance of the offense or to guide his actions, cannot be given any *reprimand*.

Irresponsibility is an institute through which criminal law is related to the medical sciences, more precisely to *psychiatry* (V. Kambovski & I. Zejneli, E drejta penale, pg. 142, Tetovo, 2018). The law operates with psychiatric notions (permanent mental illness, mental disorder, etc.) for

which the judge has only superficial knowledge, so to establish irresponsibility he needs help from an *expert - psychiatrist*.

The state of irresponsibility *before* or *after* the commitment of the criminal offense is irrelevant to the *guilt*. A guilty verdict is a concrete trial, concentrating on the perpetrator's ability to commit a crime *at the time when* the offense was committed and *in relation to the specific offense*. In order to the commitment of a criminal offense in an irresponsible state to have criminal-legal significance, it is necessary to ascertain the **cause-and-effect** relationship between such a situation and the committed offense. Only then can we talk about "*committing a criminal offense*" by an irresponsible person.

Whereas the offense was committed in a state of substantially reduced responsibility when the perpetrator had any of the biological grounds of irresponsibility, as a psychological effect there was a substantial reduction of the ability to judge and lead his actions. The perpetrator with substantially reduced accountability **is accountable**.

In contemporary legislation which recognize this institution, the *notion of substantially reduced responsibility* is associated with the operation of the biological basis of irresponsibility. CCRNM (Article 12 p.2): "The offender of a crime whose ability to understand the significance of his action and the ability to control his actions was significantly decreased because of the condition as referred to in paragraph 1 (irresponsibility), may be sentenced more leniently (significantly decreased responsibility).

Essentially reduced liability **does not preclude guilt**, but reduces the **degree of guilt**, whereas the lowest degree of guilt should logically result in a **milder sentence**. In this respect, substantially reduced liability is also defined as a *responsibility with a reduced guilt*.¹⁶

New trends in dealing with irresponsibility. Contemporary criminal legislation remains in the position of the dual system of sanctions, accepted in the early nineteenth century (Norwegian CC, 1902): *punishments for responsible and guilty perpetrators - security measures for irresponsible perpetrators* (Shih Kambovski, 1, 302).

3. Conclusion

Criminal responsibility is the individual and subjective responsibility of the perpetrator and his action that meet the legal features of the criminal offense.

Further on, responsibility, by definition, implies a *reciprocal* relationship between two entities: the one who responds and the one to whom it is

accountable. No one can be held accountable for his actions in front of himself, except in the form of responsibility in front of his conscience.

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