

A COMPARATIVE ANALYSIS OF “MENS REA” OF THE ASSAULT ON CIVIL SERVANTS

Mihai DRĂNICERU ¹

¹ Cross-Border Faculty, *Dunarea de Jos* University of Galati, Romania
Scientific researcher at the Institute for Legal, Political and Sociological Research,
Chisinau, Republic of Moldova

Abstract

The social danger of the assault against public officials consists in undermining the authority of the state and obstructing the work of civil servants, a situation that prevents the effective performance of the functions and tasks of the state. No matter how dangerous the Act would be for society, without the element of a spiritual nature that links the author to the “actus reus” of the crime, called the “mens rea”, there is no crime, at the same time, the person cannot be held criminally responsible for the act that does not meet all the signs of the “corpus delicti”, so in the present research are analyzed in comparative aspect the mens rea of assault against a public official.

For carrying out the purpose of the research, was revealed the concept of the subject of the crime and its characteristics, the mens rea and its secondary signs. Emphasis was placed on the purpose of the offense of assault, which consists in stopping or changing the character of the service activity of the civil servant.

The results of the study will contribute to the development of proposals to amend the current legislation of the Republic of Moldova.

Keywords: mens rea, subject of crime, guilt, purpose, motive, assault, obstruction of performance of service duties.

Historical and general aspects

Prosecution of a person is possible only if the illicit acts committed meet the constitutive signs of the composition of the crime. Despite the significant differences between the legal systems of the states of the world, the fundamental concepts of criminal law are similar. In particular, almost every doctrine perceives crime as two organically combined elements - the material component and the mental component.

Composition of the crime is a concept that has its origins in Roman law, so in Latin „corpus delicti” (literally translated as “body of crime”), initially indicated the presence of a bodily, material, external manifestation of a criminal act and was considered to be the main indication of the crime. (Galiakbarov, 2019, p.37)

The concept of *corpus delicti* began to designate not only the sum of the material traces of the crime but also the external action of the offender, except for everything that happened in the soul of the criminal.

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In Anglo-Saxon criminal theory, we can observe the lack of a systematic, doctrinal approach to the composition of crime. *Corpus delicti* continues to be approached primarily in the procedural sense and is based on the reference character of the established judicial precedents in judicial practice. The above partly explains the fact that English law retains the position that the rules of substantive criminal law may still be contained in criminal procedural laws. (Krylova, 2015)

In continental criminal law, the first researchers and developments of the concept of the criminal component were German criminalists, who divided the analysis of the criminal component into determining and characterizing the objective elements and the subjective elements of the crime.

Romanian law school, being of French inspiration, also took over the characteristic signs of the subjective side of the crime which are: guilt, purpose and motive.

The subjective side represents the reflection in the offender's consciousness of the objective signs of the deed and characterizes the subject's attitude towards them.

Any dangerous act is not just a movement of the body. Crime is a category of human behaviour that expresses a person's negative attitude toward the environment, society, or other people. Therefore, each crime has certain psychological content. Psychological content is the awareness of a person about the real nature and social significance of the act, providing or dangerous consequences from a social point of view their actions, a certain strong attitude towards them, the reasons that guide the subject, is the subjective part of the crime.

The psychological content is the awareness of the person of the real nature and social significance of the facts, predicting or unforeseen dangerous consequences from the social point of view of their actions, a certain strong attitude towards them, the reasons that guide the subject, is the subjective part of the crime.

The subjective side includes the most subtle signs of the composition of the crime, without whose thorough knowledge, in all respects, cannot be conceived a scientific establishment of criminal liability in any specific case and, consequently, the achievement of the general purpose of the crime. the activity of the judicial bodies, that of defending, against crimes, the rule of law. (Gladchi , 2016, p.19)

The subjective side represents in itself the internal essence of the crime and consists of a certain psychic attitude, made up of intellectual, volitional and affective elements, which determine and accompany the physical act of execution.

The exact determination of the subjective side allows the qualification of the criminal act according to the concrete article from the Special Part of the Criminal Code which incriminates the criminal act that the person actually wanted to commit.

In the case of outrage, the subjective side is the intentional nature of the perpetrator's actions or the application of violence and the criminal threat can only take place intentionally, this idea is supported by some local authors who believe that violence can only manifest intent in relation to the prejudices they involve (Brînza, Stati, 2015, p.5), moreover, some doctrinaires use the phrase intentionally in defining violence. (Serdyuk, 2002)

Although the doctrine considers that the purpose and motive of the crime are optional signs of the subjective side, in the context of comparative research of the crime

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of outrage, we find that in most criminal regulations in other states, the purpose is a mandatory sign for the offense of outrage.

Starting from the condition that the purpose and the motive of the crime are organically connected concepts, but which do not overlap, in the context of the analysis of the subjective side of the offense of outrage, we consider it necessary to characterize them succinctly.

Not only guilt in the form of direct intent is a mandatory sign of the subjective side in the case of the offense of outrage, but also the purpose and motive of the perpetrator, relevant in this regard is the statement of A.V. Kladkov considers that „alternatively mandatory signs of the subjective side are either the purpose - to obstruct the legal activity of the representative of the authorities, or the reason - revenge for the activity carried out.” (Zdravomyslova, p.587)

In general, the purpose of the crime means the objective pursued by the perpetrator, usually the change in the objective reality, by committing the action or inaction that constitutes the material element of the crime. The purpose differs from the mobile, although it is closely related to it. Nor is it confused with the result of the deed committed, this being the way to achieve the goal.

The purpose of the crime is to represent mentally the result that will appear after the commission of the criminal act, (Zavidov, 2003, pp.36-37) a result pursued by the offender, while the motive of the crime is the inner impulse, that need, desire, passion, emotion, that feeling which causes the person to commit the crime and directs his will at the time of the crime. (Grama and others, 2012, p.328)

It is not necessary for the purpose of the offender to be achieved; it is sufficient that it existed. The existence of the purpose must be proved because in the absence of such evidence the committed deed will not be able to be framed in the legal disposition that stipulates the respective crime or aggravating variant.

The purpose can be immediate and final, it is irrelevant from the point of view of the crime, but from its knowledge one can draw conclusions about the motive of the crime.

Romanian criminal law doctrinaires define the motive of the crime as the motive, the inner impulse that determines the criminal decision and, therefore, implicitly the commission of the crime. (Bulai, 1997, p.69)

The reason for the crime expresses that decisive incentive in making the criminal decision to achieve the satisfaction of the person. (Copețchi, p.67)

The motive of the crime characterizes the subjective need to commit the crime. (Pavliuc, 2018, p.46-51)

Romania

The subjective side of the offense of outrage provided in art. 257, may be committed with direct or indirect intent. The perpetrator realizes that by insulting the civil servant carrying the state authority, he is violating the incriminating text, pursuing or accepting the possibility of immediate prosecution. Ignorance of the above circumstance precludes the offense of outrage. The variant par. 2 and 3, the form of guilt consists of direct intention since the intention is qualified by the purpose pursued by the perpetrator, that of intimidating the civil servant or of taking revenge on him, in

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connection with the exercise of his duties. The guilt of guilt is excluded. The existence of the subjective element does not depend on the purpose and the motive with which the perpetrator commits the deed. The existence of these two factors will be taken into account in the operation of judicial individualization of the punishment. (Dungan, p.35-42)

In the opinion of Professor Ivan Gh. "The subjective side presupposes guilt in the form of intention, which can be direct or indirect. In the case of assimilated forms, the intention can only be direct (qualified by purpose). Even if some of the absorbed offenses can only be committed with outdated intent, the outrage can only be committed with direct or indirect intent, as the active subject must pursue or only accept the occurrence of the main immediate consequence. "(George, 2019, p.260)

One possible criterion for delimiting other offenses would be the special purpose required by the rules on criminalization of outrage and judicial outrage: intimidation or revenge. Thus, in the absence of this purpose, the provisions of art. 131 of Law 78/2000. (Herinean, 2018, p.37)

In verifying the subjective side of the offense of insult, it is necessary to establish, on the basis of the evidence administered, that the perpetrator knew the quality of the victim by providing that in fact there will be a violation accepted these results of his deed. (Boroi, 2011, p.257)

In order for the intention to exist, it is necessary for the perpetrator to know both the situation of the person against whom he is directing his action (the defendant knew G. V., he was dressed in uniform), and the fact that he is in office, or for acts committed in office. (defendant's background). (Dobrinioiu, 2002, p.8)

Guilt. The form of guilt with which the crime can be committed is intent, direct or indirect, but also premeditated (when the manner of committing it is that of the blows or injuries causing death). Given the fact that the crime of outrage is a complex one, but without its own identity, the form of guilt with which it is committed is always that of the crime to which it refers.

In order to apprehend the crime of outrage, the perpetrator must know the aspect that the passive subject is a civil servant, as well as the aspect that he is in the exercise of the function or that his acts have been performed in the exercise of the function. Ignorance of these circumstances leads to the detention of one of the offenses to which the offense of outrage refers (threat, hitting or other violence, etc.).

Purpose. The law requires the existence of a purpose in the case of the variants provided by par. (2) and (3) of art. 257, where the commission of the crime against the official or a member of his family must be committed for the purpose of intimidation or revenge. In reality, just bullying is a goal. revenge being a motive in this situation.

The purpose of intimidation or revenge refers to the main immediate consequence, in the sense that the perpetrator seeks to commit an offense against the representative of the authority, but the subjective side of the offense of outrage in the variant dc in para. (2) and (3) shall be that of the offense to which it refers (as such, direct or indirect intent or pre-intent). (Cioclei, 2020, p.16)

With regard to the active subject of the crime of outrage, we note that the crime can be committed by any person. The crime can also be committed by a civil servant

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against another civil servant, provided that the other requirements of the law for the existence of this crime are met. (George, 2019, p.255)

The Republic of Moldova

In the Criminal Code of the Republic of Moldova, the act of assault against civil servants is included in the provision of art. 349 entitled “Threat or violence committed against a person with a position of responsibility or a person who is fulfilling his public duty”.

The subjective side of the offenses specified in paragraph (1), (1¹) and para. (2) lit. a) -c) of art.349 CP RM is characterized by direct intention. The intellectual moment of the direct intention, in this case, is characterized by the fact that the perpetrator realizes the prejudicial character of his actions and stipulates that by committing them he attacks the protected social relations.

The exception is the aggravation provided in par. (2) letter d) of the article in question, when the perpetrator shows recklessness towards other serious consequences.

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The secondary subjective signs of the analyzed crime are the motive and the purpose of the crime, so Brînză thinks that “most of the times, the motive of the analyzed crime consists in revenge in connection with the fulfillment by the responsible person or by the person public service or debt obligations.” (Brînză, 2015, p.1069)

In this sense, we agree with the specification of Pavliuc, who states that the reason for revenge can be invoked only in the situation when the deed was committed after the fulfillment of public duties. (Pavliuc, 2015, p.222)

In the event that the victim of the crime is the person in charge or his / her close relative, the purpose of the crime is a special one. It takes either of the following two forms:

1) the purpose of stopping the service activity of the person with a position of responsibility;

2) the purpose of changing the character of the service activity of the person with a position of responsibility in the interest of the person threatening or of another person. In the absence of this purpose, paragraph (1) art. 349 of the Criminal Code of the Republic of Moldova is inapplicable. (Brînză, 2015, p.1069)

In accordance with the provisions of art. 21 of the Criminal Code of Moldova, the subject of the offenses provided for in art. 349 of the Criminal Code of the Republic of Moldova is the responsible natural person liability based on art.349 of the Criminal Code of the Republic of Moldova, because the legislator considered that persons of such age are not able to realize the significance of: 1) the normal activity of public authorities, along with 2) mental (moral) freedom, bodily integrity, the health or life of the person, or the integrity, substance and potential use of the goods. (Pavliuc, 2016)

France

In French doctrine, the subjective side is identified with the moral element of the crime and refers to the psychological attitude of the perpetrator towards the

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commission of acts punishable by criminal law. The perpetrator may act with intent (recklessness), recklessness, or negligence.

Intention (deceit) can be defined as the will of the perpetrator to commit deeds, knowing their criminal nature.

In the case of the offense of threats and acts of intimidation committed against persons exercising public office (art. 433-3 French Penal Code), the moral element is characterized by the perpetrator's intention to interrupt a person in the exercise of a mission of public interest, for qualification being necessary to prove that the perpetrator is aware that through his threats he creates turmoil in the mind of the victim, being irrelevant whether or not he intended to pursue his threat or whether or not he had the means to carry it out.

The perpetrator realizes that he is threatening to use violence or is using violence against a representative of the authorities or his relatives and wishes to commit such acts. Depending on the attitude towards the consequences in the form of harm to health, the intention may be direct or indirect.

The subjective side of the crime is characterized by direct intent. For the purposes of the law, the offender either pursues the purpose of preventing the performance of official duties by a representative of the authorities or is guided by the motive of revenge for the performance of these duties.

An obligatory sign of the subjective side is the reason for the perpetrator's behavior. It must be associated with the official performance of the victim's duties. The use of violence in connection with the unlawful acts of a representative of the authorities does not constitute a criminal offense for the offense in question.

In most cases, the incriminating text is imprecise in terms of the content of the moral element, and the exact outlines of the intention are determined by the criminal court.

In French doctrine, the subject of the crime is not recognized as an element of the composition of the crime, issues related to the age of criminal liability, liability are analyzed by lawyers in relation to the characterization of the moral element of the crime.

Spain

Spanish criminal law is based on the Criminal Code which was adopted by the Spanish Parliament on 8 November 1995 and published in the Official State Gazette (BOE) on 23 November, coming into force on 25 May 1996, as well as other special laws (Law of 26 December 1984 On the fight against terrorism (Law of 12 January 2000 on the regulation of the criminal liability of minors, etc.).

In Spanish doctrine, the criminal body of the crime has a procedural character which means the set of all the elements by which a crime was committed and which allow its proof in the investigation, giving the certainty of committing a specific criminal act.

The objective and subjective aspects of the crime are analyzed in the context of the criminal concept, which includes the following elements:

1. Protected legal good (legal object).
2. The quality of the active subject.

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3. The quality of the passive subject.
 4. Number of active subjects required in type.
 5. Material object.
 6. Subjective elements (malice (intentionally identified) or negligently identified guilt).
 7. Result (in types that require it)
 8. Endangering the legal right (in dangerous crimes).
 9. Conduct of an action or omission.
 10. Number of acts and time of execution. (Bacigalupo, 1999, p.220-239)
- Illicit acts analogous to *utraj* are governed by Articles 550-554 of Chapter II “Attacks on the Authority, its Agents and Civil Servants and Resistance and Insubordination” of Title XXII entitled “Crimes against Public Order”.

The protected legal object is the dignity of the public authorities, which is a necessary requirement for the proper functioning of the state.

Regarding the subjective elements we mention the following, the crime can be committed with guilt in the form of intent (*dol*) in the following situations:

1. Knowledge by the active subject of the quality and activity of the passive subject, ie his condition of authority, agent or civil servant, and whose protection cannot depend on the use of the uniform at the time of the aggression, being sufficient to identify the agent as such and for the active subject to be aware of it.
2. The purpose of offending, denigrating or discrediting the principle of authority, which shall include both knowledge of the illegal meaning of the action and knowledge of the outcome of the action.

The active subject of the crime can be any person who carries out the typical action. The punishment will depend on the passive subject, who suffers the consequences of the attack. (Guillermo, 2015, p.576)

In accordance with art. 19 of the Criminal Code, may be prosecuted for committing the crime provided by art. 550-554 only the person who has reached the age of 18.

The Russian Federation

The Russian Criminal Code contains several rules that criminalize illegal behavior against the representatives of the authorities, provided by art. 317 (Attempt on the life of the collaborator of law enforcement agencies), 318 (Application of violence against the representatives of the authorities) and 319 (Insulting the representatives of the authorities), in the following we will analyze the subjective signs of the crime provided by art. 318.

The deeds are committed only intentionally. The perpetrator realizes that he is threatening to use violence or is using violence against a representative of the authorities or his relatives and wishes to commit such acts.

Depending on the attitude towards the consequences in the form of harm to health, the intention may be direct or indirect.

A. P. Kuznetsov is of the opinion that since the legislature protects the civil servant against violence during the exercise of his duties, it indicates the obligatory

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existence of the purpose - the cessation or modification of the service activity and the reason for the crime - the revenge for its accomplishment. (Kruglikov, 2005, p.988)

The purpose of the offense in question is to discontinue or change the nature of the activities carried out by a representative of the authorities. At the same time, the perpetrator may pursue such a purpose as to compel the victim to perform manifestly illegal actions, to act contrary to the interests of the service.

Thus, a mandatory sign of the subjective side of this crime is the reason for the perpetrator's behavior. It must be associated with the official performance of the victim's duties. The use of violence in connection with the unlawful acts of a representative of the authorities is not part of the offense in question.

The subject of the crime is general - a responsible natural person who has reached the age of 16. The actions of a person under the age of sixteen who has committed violence against a representative of the authorities shall be qualified in accordance with the rules on offenses against the life and health of the person.

Conclusions

As a result of the analysis of the characteristics of the subjective signs of the offense of assault against a civil servant in a comparative aspect, the following conclusions can be drawn:

1. In all, the analyzed legislation are incriminated the illicit deeds that threaten the physical and mental inviolability of the civil servants in connection with the fulfillment of their duties, a situation that demonstrates the importance of regulating this crime in order to ensure the proper functioning of state institutions and public order.

2. As an element of the composition of the offense, the subjective side falls within the scope of criminal liability and therefore delimits the criminal conduct from the non-criminal one: only if it is committed intentionally.

3. Identifying the motive and purpose pursued by the offender is imperative in order to determine the degree of social danger of the act, the criminal nature of the perpetrator and as a consequence for the individualization of liability and criminal punishment.

4. In the case of the offense of assault, the perpetrator must be aware that the act of violence or the threat of violence is directed against a civil servant or his relatives in order to change the nature of his work.

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