

GENERAL ASPECTS OF THE JUSTIFIED CAUSES IN ROMANIAN CRIMINAL LAW

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ABSTRACT:

SUPPORTING CAUSES ARE THOSE CASES COVERED BY CRIMINAL LAW, WHEN AN OFFENSE IS COMMITTED, CORRESPONDING LEGAL MODEL INCRIMINATION BECOMES PERMITTED (LAWFUL) IN RELATION TO THE WHOLE ORDER OF LAW. THESE CAUSES ARE: SELF-DEFENSE, NECESSITY, EXERCISE ANY RIGHT OR PERFORMANCE OF AN OBLIGATION, CONSENT OF THE INJURED PARTY.

KEY WORDS: JUSTIFIED CAUSES, OFFENSE UNDER THE CRIMINAL LAW, ILLICIT NATURE

CONCEPT

Justified causes, also known as the „causes which removes the illicit act” exclude criminal liability in situations where, although after committing an offense under the penal law, shall bear the conditions are formally met, the deed is not illegal because it is character justified, permitted or ordered by law. Therefore, in certain circumstances committing an act that meets all the elements of an offense, the perpetrator is not responsible because he had the right or duty to commit the act, therefore have legal justification.

The provisions of art. 18 para. 1 C.p.² establishes the rule that „An act provided for in criminal law has been committed under any of the cases evidence provided by law”. These causes are: self-defense, necessity, exercise any right or performance of an obligation, the injured person's consent). Once the deed is found that under the criminal law, that meets all elements of the rule of criminality, the next step in establishing the existence of the offense is to establish unjustified nature of the offense, of the fact that it has illegal character. Unjustified implies a contradiction between the offense committed and the legal order, ie the offense is not authorized by a statutory provision.

To define supporting causes, to understand the nature and effects of their distinct is necessary overview on the evolution in time of doctrinal conceptions of the causes which exclude the offense, their evolution in law³.

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² Law no. 286 of 17 July 2009 on the *Criminal Code of Romania*, published in the Official Monitor of Romania, Part I, no. 510 of 24.07.2009, as amended and supplemented (into force 01.02.2014).

³ The legislation, which excluded offense cases were regulated more or less systematic and coherent way: Romanian Criminal Code of 1864 provided for in Title VI, art. 57-65 „defending penalty cases or reduced

The old doctrine of foreign criminal, mainly the French and Italian cases eliminating criminal law were grouped into two categories, namely:

1. Nonculpability causes, which included lack of capacity and lack of guilt psychophysical (some authors use other terms but „irresponsibility”);
2. Justified causes, including the causes that lead to the removal of unlawful act committed legitimizing them⁴.

The oldest Romanian criminal doctrine, of the causes which exclude the offense or otherwise called, causes *incidednța* removes criminal law (the Criminal Code of 1936 „causes which removes criminal liability”) with their counterpart in the light of the Criminal Code of 1968, the „cases eliminating the criminal nature of the act”, there were two views on classification.

In the first opinion⁵, these cases were divided into three categories namely:

1. Causes of irresponsibility in the presence of missing psycho-physical capacity of the offender to realize his actions and understand the repressive reaction (dementia, minority, sleepwalking, deaf-mutism).
2. Causes of irresponsibility in the presence subjective element lacking guilt (physical restraint, if fortuitous error of fact);
3. Cases (facts) supporting the presence of which exclude the unlawful nature of the act (state of necessity, self-defense, law and order command legitimate authority).

In this view, the reasons (facts) are supporting an objective real effect *in rem* (on it), and extending the effects on participants⁶.

In another opinion⁷, those cases were classified into two categories:

1. Causes of criminal incapacity, in the presence of the offender to understand the skills shortages and will lead to a conscious, be liable to punishment (Insanity, drunkenness, sleepwalking, sleep hypnosis, minority etc.).

punishment”, covering in this way and „the causes which exclude criminal liability” (loss of use of reason, self-defense and minority), along with „causes shrinking punishment” (apology and extenuating circumstances). Romanian Criminal Code of 1936 included a comprehensive regulatory general exclusion causes crime, but a systematic defect, contained in the same chapter II, title II (art. 127-159) as „defending the causes of punishment” and „punishment, causes decreases”. Romanian Criminal Code of 1936 under the influence of EU legislation and doctrine without explicitly adopt a classification of causes of defending criminal liability, however implicitly, a division devoted to these causes in cases of *neculpabilitate* (for *neresponsabilitate* of innocence) and supporting causes, using the phrase „not responding” causes offense if *neculpabilitate* (unconsciousness - art. 128, drunkenness - art. 129, moral coercion - art. 130, physical coercion - art. 133, error of fact - art. 136, minority - art. 139, deaf- mutism - art. 154) and the phrase „does not count” if the facts supporting offense (state of emergency - art. 131, self defense - art. 132, order law and order legitimate authority - art. 137). Romanian Criminal Code of 1968, devoting a substantial definition of the offense, with three key features (social danger of the crime, guilt and provide for the offense of criminal law) a regulated unit general rule all causes offense in art. 44-51 , chapter V of title II , as „cases eliminating the criminal nature of the act” using the phrase „not a crime” offense under the criminal law, if the circumstances of the offense is found to any in these cases. The general causes of eliminating the criminal nature of the act, includes Romanian Penal Code of 1968 the same causes as the Criminal Code of 1936, excluding law and order command legitimate authority (art. 137) and deaf- mutism art. 154). In 1968 the legislature *conceția* was considered the first of these cases had not expressly provided as an act ordered by law or by the competent body is not under the criminal law, and the second of these causes are the psychological cripple lacks capacity and physics and is found in the case called „irresponsibility” (art. 48).

⁴ V. Dongoroz, *Drept penal. Partea generală*, reissue edition 1939, Publishing Society “Tempus” Romanian Association of Penal Sciences, Bucharest, 2000, p. 306; The author makes reference to French authors, Belgian, Italian and German.

⁵ I. Tanoviceanu, *Tratat de drept și procedură penală*, second edition, (Bucharest, 1924, vol. I), 975; T. Pop, *Drept penal comparat. Partea generală*, (Cluj, 1923, vol. II), 389 - 390.

⁶ I. Tanoviceanu, *op. cit.*, vol. I, p. 973; T. Pop, *Drept penal comparat. Partea generală*, vol. II, 391-392.

⁷ Dongoroz, *Drept penal. Partea generală*, 334 - 337.

2. Causes of irresponsibility the presence of missing guilt as a positive condition for the existence of crime (irresponsibility explicit or obvious causes: ignorance or error of fact, fortuitous, physical restraint) or a negative condition which removes intervening unlawful nature of the act (irresponsibility causes default or reflection: moral coercion, necessity, self-defense, law and order legitimate authority, forbearance default law, consent of the victim).

In this view all causes of irresponsibility, as that removes criminal law cases have a subjective character, acting in personam (on the person); their effect is not transmitted to the participants⁸. Later there was criticism on the classification of cases in the above categories, the classification is considered artificial, formal, without going into the substance of the issue of these causes. It was argued that all cases eliminating the criminal nature of the act excludes offense, including guilt, is unscientific to define only some of these causes as causes represented to (irresponsibility).

It was also claimed that all cases eliminating the criminal nature of the offense acting under the provisions of the law, so that all are supporting, rejecting the recognition as a distinct category of causes supporting causes⁹.

Romanian criminal latest literature, the majority opinion was criticized in turn, starting from the need for a new concept of the offense, the „typicality” and „unlawfulness” are regarded as essential features in the definition of the offense and on Consequently, individualized clearly distinct category of cases supporting¹⁰.

Thus, a simple definition „supporting reasons” appear to situations covered by the law, in the presence of a norm that an act of criminality (and typical) ceases to be in contradiction with the whole order of law (to be illegal) becomes allowed¹¹. This concept is expressed in the doctrine of French¹²; an offense charged may become lawful under the law when committing them is justified by supporting a cause; In this situation, the rule of criminality is paralyzed by another rule which authorizes, permits the agent to commit what incrimination rule prohibits.

In another opinion supporting causes can be defined as those situations covered by criminal law that an act committed in the presence and corresponding legal model (rule of criminality) becomes permitted (lawful) in relation to the whole order of law¹³. The cause supporting an obstacle appears in ansambulul law puts them in the way to prevent criminal legislature to consider the offense a certain act, even if it apparently meet standard features incrimination.

CLASSIFICATION

In relation to the site rules and the scope of the incident, supporting causes can be classified into: *Supporting causes general* governed by the Criminal Code, the general (art. 19 C.p. - self-defense, art. 20 C.p. - curfew, art. 21 C.p. - exercising any right or performance of an obligation, art. 22 C.p. - consent injured), apply in relation to all existing rules criminalizing criminal Code, the special criminal law special or non-criminal laws that include criminality and punishment; *Supporting special causes* covered by the Criminal Code, the special or specific criminal laws. Their applicability is incident only with facts that have been provided, for example: art. 198 para. 4 C.p. - Participation in the brawl of a person

⁸ Dongoroz, *Drept penal. Partea generală*, 334 - 337.

⁹ Dongoroz, *Drept penal. Partea generală*, 339 - 340.

¹⁰ G. Antoniu, *Tipicitate și antijuridicitate*, in *Revista de Drept Penal*, no. 4/1997, 15-30; G. Antoniu, *Cauze justificative în proiectul noului Cod penal*, in *Revista de Drept Penal*, no. 2/2004, 9-20.

¹¹ G. Fiandaca, E. Musco, *Diritto penale*, (Bologna: Zanichelli Editore, 1995), 156, 219.

¹² J. Pradel, *Manuel de droit pénal général*, (Paris: Editions Cujas, 2000), 286-287.

¹³ I. Pascu, *Cauzele justificative*, in I. Pascu (coordinating) V. Dobrinioiu, T. Dima, M. A. Hotca, C. Păun, I. Chiș, M. Gorunescu, M. Dobrinioiu, *Noul Cod penal comentat. Partea generală*, vol. I, Legal Publishing House, Bucharest, 2012, 139.

who tried to divide others; art. 201 para. 6 C.p. - Termination of pregnancy for therapeutic purposes; art. 202 para. 6 C.p. - Harm the fetus in the interests of the pregnant woman or the fetus; art. 203 para. 2 C.p. - Leaving without assistance of a person in distress, if by granting the author would be exposed to a serious danger to the life, physical integrity or her health; art. 272 para. 2 C.p. - Influencing statements, understanding heritage of the offender and the injured party; art. 277 para. 4 C.p. - The disclosure or the disclosure of documents or manifestly illegal activities committed by the authorities in a criminal case; art. 282 para. 6 C.p. - Pain or suffering arising only from legal penalties and sanctions that are inherent in or incidental to, art. 302 para. 5 C.p. - Violation of secrecy of correspondence, if the perpetrator captures a crime or contribute to prove an offense or if the public interest so surprised.

CONDITIONS

In order to become a cause supporting incident, when committing an act described in incriminating norm, it is clear the following conditions¹⁴:

- Legal act committed to match the pattern in terms of all factual incrimination rule set;

- Act to be committed in the presence of either general supporting causes (for example, to commit an injury to remove an attack or to commit destruction to save a person from danger) or supporting special causes (eg was entered into private homes, under conditions approved by law or deprived of liberty to a mentally ill person to be subjected to medical treatment or hospitalization);

- Provide offender and willing to act as described in the rules governing probative because so: if self-defense, the defense exercised „to remove an attack”; where the state of emergency, rescue action occurs „to save from immediate danger and could not be removed in any other way”; when exercising a right, it must be recognized by law; for consent, that the consent must know the importance of social values on which consents to be without prejudice.

EFFECTS

Supporting causes have the effect of removing the criminal nature of the act (the act is not a crime). Removing the nature of unfair, unlawful act causes me to lose not only supporting criminal responsibility, and civilian. In fact, the existence of supporting causes not only removes the possibility of a criminal sanction, and any criminal penalties or civil penalties. With regard to civil penalties stated that the presence or absence of supporting causes *antijuridicității* is not an impediment to prevent absolutely imposing civil. In this regard, exemplified by the obligation to repair the damage caused by the victim in a state of necessity, obligation on grounds of fairness, non- punitive. Supporting causes removes the illegality, unjustified crime, but not the typical character of the act; fact remains typical by the criminal law, but not contrary to the rule of law is based. This case makes an act evidence to be admitted, regulated or ordered by law; Under these conditions, against an act permitted by law can not be conceived self-defense. They are objective reasons justifying acts in rem, causing a general justification. This means that the presence of a supporting causes can be invoked by all participants. This is the significance of the evidence and causes effects on participants, contained in art. 18 para. 2 C.p. If the incidence of cases supporting sphere is exceeded (exceeding the limits of self-defense, the state of emergency according to art. 26 Cp - excess imputable), the facts are unjustified *antijuridice*. In this case, such facts (typical

¹⁴ Pascu, *Cauzele justificative*, 139-140.

and illegal) are not charged to their author because of exceptional circumstances which prevent a reproach to him that he committed, intervening as reasons not attributable to.

CONCLUSIONS

In dealing with these justified causes, legislature Romanian Criminal Code aligns Romanian criminal law to the European doctrine expresses current tendencies in accordance with current European doctrine.

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