

INVOLUNTARY MANSLAUGHTER IN THE NEW ROMANIAN PENAL CODE

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Abstract: The defense of the person's life and health represents a constant concern for all legal systems. The person's life and health were protected as primary and absolute values of any society in any social regime, and state had the task of creating some mechanisms that would ensure the protection of the social values against some approaches that are not according to the law.

Key words: involuntary manslaughter, guilt

Introduction

Life and health represent social values that designate the person's main attributes. *As an expression of the society's will, the penal law defends the person's life and health not as individual values but as social values that are primarily meant for the existence of the collectivity itself.*

1. General aspects

The legislator included the simple murder and the qualified murder, the murder at the victim's request and the involuntary manslaughter in the chapter "Infringements of the law against life".

The social value protected in the case of this group of infringements of the law is the life of a person.

The positioning of the infringements of the law against life in the first chapter of the Special Part of the new Penal Code shows the legislator's desire to underline the fact that a person's life represents the most important social value that has to be protected through means of penal law.

The Special Part began with infringements of the law against the safety of the state in the previous Penal Code.

The right to life, a basic right of one person, has to be protected against all facts through which it could be touched, including the unintended ones because the killing of a person, even unintended, causes serious consequences for society and for the victim's family¹.

The reason for incriminating resides in the necessity to protect human's life against those that do not manifest the necessary precaution and prudence, especially in the deployment of the activities that can cause a man's death².

Identified through result with the crime of murder, manslaughter differs from this through the form of guilt. In the case of murder law requests the existence of the

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direct or indirect intention whereas in the case of manslaughter the guilt has to exist as form of guilt under each of the two of its ways (neglect or guilt with prediction). Although the social danger of manslaughter is considerably more reduced than that of intended homicide, law sanctions these facts because they represent a serious threat for a humans' life and there is the necessity to act through penal constraint on the people's conscience, causing the forming of a group attitude and maximum attention towards the life of those near us.

It imposed itself even more as the technical progress is accompanied by an increase of the factors of threat on humans' life which obliges at an increase attention from all of us. It is relevant from this point of view that millions of persons lose their life or get hurt only in the domain of causeway circulation. On the other hand, the railway, aerial or naval accidents, the unintended explosions or fires from various units, especially those from industry also lead to the loss of human lives.

The regulation of manslaughter was simplified in report with the previous legislation, giving up at a part of the aggravated variants that can be supplemented without problems by applying the rules of sanction of the contest of crimes.

Only two aggravated forms will exist compared to the old regulation, respectively the so-called professional guilt [Article 192 In-line (2) Penal Code] and the case of the plurality of victims as result of the same reprehensible action [Article 192 In-line (3) Penal Code]³.

As far as the more favorable criminal law is concerned, giving the identity of content and the sanctionary regime with the previous regulation, under the aspect of the basic form, under the aspect of basic form of the crime of manslaughter one will not raise the problem of the more favorable criminal law.

Also from this perspective, given the identity of content, and that of sanctionary regime, under the aspect of the worsened form of the crime of manslaughter [Article 192 In-line (2) Penal Code] one will not raise the problem of the more favourable criminal law⁴.

2. The structure of incrimination

The infringement of the law is regulated by Article 192 of the Penal Code, in a type variant, an aggravated variant and a common aggravated variant of the two initial variants. The type variant is foreseen at Article (1) and consists in the manslaughter of a person. The first aggravated variant, foreseen at In-line (2), consists manslaughter as result of not respecting the legal regulations or the measures of provision for the exercise of a profession or job or for the effecting of a certain activity.

The common aggravated variant, foreseen at Article (3), consists in committing one of the facts foreseen at Article (1) or (2) through which one has caused the death of two or more persons.

3. Pre-existing conditions

A. The object of the crime

- a) **The special judicial aspect** of the infringement of the law of manslaughter as that of the infringement of the law of murder is represented by the person's right to life, right protected even against the acts committed by guilt.
- b) The material object is constituted from the body of the person on which the perpetrator's action (lack of action) is exerted.

B. The subjects of the crime

- a) **The active subject** is the person that fulfills the legal conditions to answer penal. Sometimes law requires that the active subject have a certain quality – a person found in the exercise of the profession but not for the existence of the simple variant but of the aggravated variant of the infringement of the law. The penal participation is possible under all forms even in the form of the co-author (more persons contribute by guilt at the committing of a circulation accident – own participation). In the hypothesis of an instigation or complicity we are in the hypothesis of an improper participation, the perpetrator and the accomplice acting with intention and being punished for committing the infringement of the law of murder, and the author acting from guilt and being sanctioned for committing the infringement of the law of manslaughter⁵.
- b) **The passive subject** can be any physical person, regardless of health, social status, marital status, civil status, citizenship, the legal request being for that person to be alive.

4. The constitutive content

A. The objective side

- a) **The material element** is realized through an activity of killing also in the case of murder. Although both crimes are committed through an activity of killing, there are essential differences between the intended act and that of guilt. The act of killing gives the expression of a violent behavior which is not encountered in involuntary manslaughter where a mistaken behavior on the part of the perpetrator intervenes in a dangerous situation, likely to cause serious consequences for the person's life under certain circumstances⁶. The material element of the analyzed crime may consist both in an action (made up of one or more material acts) and in a lack of action (the not-fulfilling of one or more acts that the active subject was obliged to fulfill).

b) The immediate consequence

The infringement of the law of manslaughter is an infringement of the law that depends on the producing of a specific result, the victim's death.

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If this result does not occur, the fact does not constitute the crime of manslaughter⁷.

c) **The connection of causality** between the activity of killing and the produced result has to exist in all cases. One requires a connection of causality between the perpetrator's action and the lack of action for the existence of the crime of manslaughter.

Under this aspect, one established in the judicial practice the guilt of the driver of the motor vehicle in case of a deadly car accident can be retained only in the situation in which he broke a rule regarding circulation on public roads and if one established a rapport of causality between this breach and the victim's death. If the accident is due to the victim's guilt, the finding of an alcoholic saturation in the blood of the driver of the motor vehicle is irrelevant under the aspect of guilt of manslaughter.

Sometimes the fact is produced through the concurrent guilt of two car drivers. So, in a cause⁸ one has decided that the fact of the car driver to drive in the night without the functioning of the signaling system as well as the fact of other driver to circulate with excessive speed and without paying attention because of which he couldn't notice on time the presence of the unsignalled car and, in the attempt to avoid it, he enters in collision with the car that was circulating according to the rules from the opposite sense, having as result the death of more persons, constitutes the crime of manslaughter for both car drivers.

In most cases one has retained the perpetrator's exclusive guilt when committing the act. So, the driver of a motor vehicle that carries out the maneuver of going backwards without being steered by another person, although the visibility backwards was blocked, as result of the victim's deadly accident, is guilty of committing the infringement of the law of manslaughter in qualified form.

The connection of causality has to be demonstrated in each case in part.

The victim's exclusive guilt in causing the result eliminates the perpetrator's penal responsibility as happens in the case of the incautious, sudden apparition in front of a motor vehicle and the driver cannot avoid the circulation accident.

B. The subjective side

The infringement of the law is committed by guilt under the form of the guilt with prediction (easiness) or the simple guilt (neglect)⁹.

There is guilt with prediction (easiness) when the perpetrator foresees the result of his act (the victim's death) but does not accept its production but he believes without ground that it does not produce. For example, the driving of the motor vehicle with excessive speed or in a state of fatigue or disease and so forth.

The simple guilt (the neglect) exists when the subject does not envisage the result of his act – the victim's death, although he had to envisage in rapport with the

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hypothetical behavior of the normal person and in rapport with the person he could have had his prevision¹⁰.

A person that although was not hunter and did not shooting license, began to hunt, killing another person found nearby because of lack of attention is found in such a situation.

In the situation in which the perpetrator's guilt under the two forms cannot be retained, his penal responsibility for the infringement of the law from guilt is eliminated.

5. Forms. Modalities. Sanctions

A. The forms of the crime

a) The attempt

The analyzed infringement of the law is not susceptible of attempt, being characterized in subjective plan through guilt. The attempt is not possible at the infringements of the law committed through guilt because in the case of such infringements of the law the perpetrator does not premeditate the committing of the penal facts, he does not foresee, does not accept and does not follow the suppression of the victim's life.

b) The consumption of the crime

The infringement of the law is consumed in the moment of the victim's death. If the death occurs immediately after the committing of the crime or later does not have relevance for the existence of the crime, but there has to be a connection of causality between the criminal action or lack of action and the cause consequence: the suppression of the victim's life¹¹.

B. Modalities (means)

a) Normative means

The simple (typical) variant of the crime, incriminated in In-line (1) of Article 192 Penal Code, has in views the (involuntary) manslaughter of person by prevision or simple guilt.

The first aggravated way - Article 192 - Article 192 In-line (2) - consists in the manslaughter as result of not respecting the legal provisions, the anticipation measures for the exercise of a profession, job or for the exertion of an activity.

In the specialty literature¹² one has retained that the following four conditions foreseen by law have to be fulfilled for this way to exist:

- the perpetrator has to fulfill a profession, job or to effect certain activities;
- certain legal provisions or measures of foresee have to exist for the exertion of these activities;

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- the fact has to be committed during the exertion of the profession, job or activity; there has to be a causality connection between the deployed activity (realized by the author) and the immediate consequence.

No other than the professional's guilt is what makes the manslaughter be serious.

The fact has to be committed in the exercise of the profession or job.

The professional guilt consists in the lack of skill in mastering a certain profession or activity, in not knowing the main rules of the profession, in not appropriating the skills specific to the activity, profession or job in which the author deploys his activity¹³.

The second normative method is foreseen at Article 192 In-line (3) Criminal Code and it is given by the plurality of victims. In the case of this way, law foresees that the special limits of the punishment foreseen at Article 192 In-lines (1) and (2) is increased with a half.

In the judicial practice, one has retained the crime of guilt when: the driver of a car did not reduce the speed up to the limit of avoiding any danger when he was surpassing a bus that stopped in the bus station, he mortally accidents a pedestrian that goes in front of the car; the fact of the car driver who mortally injured the victim that was driving his car according to the law when he did not reduce the speed when entering a crossing although there was an indicator „Right of Way” constitutes homicide.

The same infringement of the law is committed also by the car driver that wants to surpass two carts on a road with peak of slope and does not have visibility, he mortally accidents the victim that was driving a motorbike and that was driving from opposite sense, there is also crime of homicide.

b) **The factual means** are numerous and determined by the concrete surroundings in which the facts are committed.

The factual ways of committing the analyzed crime are numerous, for example throwing materials from a block of flats without checking if there is a person near the block of flats by the perpetrator (perpetrators) during the process of processing the materials through chipping, the turner does not fix the piece in the turn and it detaches and hits another worker at high turation and so on and so forth.

C. Sanctions

The sanctionary regime of the crime of manslaughter is differentiated in the simple form and the aggravated form in rapport of the normative way.

So, the fact committed in the conditions of the type way is punished with prison from 1 year to 5 years; in the first aggravated way one foresees the punishment of prison from 2 years to 7 years and at the second normative way the special limits of the foreseen punishment are increased with half.

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6. Procedural aspects

The penal action is exerted by office.

The acts of penal following are effectuated by the organs of police and the judgment in first resort is of the Court's competence.

Conclusion

Having in view the frequency and the diversity of the factual means of perpetrating the crime of involuntary manslaughter through which more and more victims are caused from one period of time to another because of the lack of attention with which some physical persons act and manifest themselves in society, the new Penal Code has simplified the norm of incrimination making it more accessible and easier to apply.

Notes

¹Alexandru Ionas, Alexandru Florin Magureanu, Cristina Dinu, Penal Right. *The Special Part*, Universul Juridic Publishing House, Bucharest, 2015, page 58

²Vasile Dobrinioiu si colab., *The new Penal Code commented. The Special Part*, Second edition revised and added, Universul Juridic Publishing House, Bucharest, 2014, page 41

³Sergiu Bogdan, Doris Alina Serban, George Zlati, *The new Penal Code. The Special Part. Analyses, explanations comments*, Universul Juridic Publishing House, Bucharest, 2014, page 42

⁴Tudorel Toader si colab., *The new Penal Code. Comments on Articles*, Hamangiu, Bucharest, 2014, pages 338-339

⁵Nasty Marian Vladioiu, *Romanian Penal Law*, Universul Juridic Publishing House, Bucharest, 2014, page 35

⁶Vasile Pavaleanu, *General Penal Right. According to the new Penal Right*, Universul Juridic Publishing House, Bucharest, 2012, page 285

⁷Alexandru Boroi, *Penal Right. The Special Part*, C.H. Beck Publishing House, Bucharest, 2011, page 61

⁸C.A. Bucuresti, *second edition of the Penal Code*, December No. 1507/2001

⁹Vasile Pavaleanu, *Special penal right*, Universul Juridic Publishing House, Bucharest, 2014, page 33

¹⁰Ion Ristea, *Penal Right. The Special Part*, Universul Juridic Publishing House, Bucharest, 2014, page 48

¹¹A. Boroi, quoted work, page 63

¹²Gheorghita Mateut, *Special penal right*, vol. I, Lumina Lex Publishing House, Bucharest, 1997, page 150

¹³Petre Dungan, Tiberiu Medeanu, Viorel Pasca, *Penal right. The Special Part*, vol. I, Universul Juridic Publishing House, Bucharest, 2012, page 61

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