

THE CONCEPT OF GUILT: ITS NOTION AND ESSENCE

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Abstract:

The doctrine of the guilt has occupied a special place in law since ancient times. As the foreign specialty literature as the national literature have developed the issues about its nature, content and forms not only in the general theory of law, but also in the legal branch sciences. It would seem that among the legal scholars once and forever the conception of guilt as an element of the subjective side of the offenses was formed and it became almost chrestomathy. This particular interpretation of the concept of guilt is offered in many modern legal textbooks.

Key-words: *fault, guilt, liability, negligence, intention, crime.*

The problem of the guilt seems to be exhausted and definitively resolved only at first glance. In fact, with a deceptive external simplicity, it causes serious difficulties in knowledge. The correctness of this conclusion is confirmed in particular by the difficulties arising from the definition of the guilt. Finally, there are significant differences in the interpretation of the nature of the guilt in some areas of legal sciences, although, apparently, it would be more correct to speak only about the nuances and the peculiarities of the guilt arising from the specifics of the legal regulation subject.

The guilt is a multilateral and multidimensional phenomenon, characterized by an approach on several lines of its determination.

To clarify the guilt we will try, first of all, to make the systematization and the analysis of the most common views on the definition of guilt, starting with the interpretation of this term in religion, philosophy, psychology and law, and to identify factors influencing the ambiguity of the term.

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According to the philosophical dictionary², "Fault (guilt) is something worthy of charge. When the person is convicted, he (she) is charged that behaved wrongly and decided poorly, although he/she could behave and decide otherwise".

The explanatory dictionary of V. Dali gives us several meanings of the word "guilt": 1) the beginning, the cause, the source, the reason, the excuse; 2) the infringement, the misdemeanor, the felony, the sin; 3) the obligation, the duty. In turn, the derivative word "guilty" is used with several meanings: 1) the one who made himself guilty, who committed a particular unlawful act; 2) one that was a reason or cause for something³. This is probably the explanation for the fact that in everyday consciousness, sometimes in the most professional and sometimes even in the scientific conscience guilt is identified, on the one hand, with murder, delinquency, i.e. the act itself, but on the other hand - with cause or reason. Often the fault is viewed as a causal link between the act and its negative consequences, or the confusion occurs with one of the act's signs - with its illegality.

The guilt, according to DEX (2009)⁴, is an act which constitutes a deviation from what is (considered) right or good; mistake, guilt; sin; fault.

In religion, in the Old Testament the guilt was identified with the notion of liability. So Adam sought to put the blame on Eva and even God, who gave the woman (God entrusted Adam the care of the garden in which they lived, and in particular commands Adam not to eat from the tree of good and evil knowledge). In this formula can be traced pretty clearly the lack of delimitation between the guilt and the liability, as well as the fact that the fault is the cause of the God's anger and the subsequent hardships and deprivations which he has pounced on people.⁵

² Helmut Schmidt., *Dicționar filosofic* (Moscova, 2003), 76

³ В. Дали, *Толковый словарь живого великорусского языка. Vol. 1.* (Москва,1982), 204-205

⁴ DEX 2009(Dicționarul explicativ al limbii române

⁵ Юрчак Е. В., *Эволюция понятия вины в историческом контексте, Современные исследования социальных проблем*, 10 (2013):30, 262.

However the theologians talk about the sin and its effects, and that the sin is associated with the concept of *guilt*, conviction, separation from God, judgment and death.⁶

In the New Testament the term guilt is not used directly, but the guilt was understood as the liability for the act and the human's attitude towards this act. The feeling of guilt is a powerful and incredibly complex state. "In small doses, it is necessary and healthy and when it is in excess, it damages and its complete absence is harmful".⁷

Namely the divine submission of the guilt over Adam and Eve became the cause of humanity's prosecution for their deeds. The idea about the sinful nature of human life and the idea of the essence of the guilt as the deed of the God's appreciation of the sin were fundamental in the history of philosophical thought.

In philosophy, the guilt is understood as a category of ethics and morality, which reflects the social attitude and moral quality of the society toward the result of the inhuman behavior of the person, so it feels indebted to God and society.⁸

But the origins of philosophy there talked about the sin, which has its origin in the will, which decide against the laws of reason, the change of the deeds or the good works. The will is induced into error of self love, so this works as a motive in every sin. The will allows anyone to fall into sin and to draw the penalty conviction for sin. The sin, however, is original. The first sin of Adam is passed over the whole human race; because he is the "beginning" of the human race and "by virtue of procreation of the human nature it is transmitted with each or by everyone". As the sin is contrary to the divine will, it is the fault, but also the subsequent penalty. The *guilt* and the punishment must correspond to

⁶ Priebe Dennis, *A păcătui sau a nu păcătui* //<http://www.resursecrestine.ro/predici/59095/a-pacatui-sau-a-nu-pacatui>, accesat la 15.03.2016

⁷ Braun S., Harrison L. *Binecuvantare de cealaltă parte. Cuvinte de înțelepciune și consolare din viața de apoi*. (Moscova: Sophia, 2004), 152

⁸ Гусейн Идрисов, *Вина как условие гражданско-правовой ответственности на русском языке*, диссертация, <http://www.dissercat.com/content/vina-kak-uslovie-otvetstvennosti-v-rossiiskom-grazhdanskom-prave>, accesat la 20.03.2016.

each other; and since the *guilt* is infinite or endless the punishment is eternal.⁹

The decisive role in the motivation of the theory of the nature of the fault (guilt) belongs to the classical German philosophy. The dualism of the fault (guilt) is also apparent in its appearance due to I. Kant's and G. Hegel's contemporary concepts.¹⁰

Kant writes that, "When a man commits a crime, the *guilt* is totally his, because, aside from all the empirical conditions of the act, the mind was free". In his work 'metaphysics of Substantiation (*Grundlegung zur Metaphysik der Sitten*, 1785), "*der Sitten* 1797 criticism), he demonstrates that, on the one hand, the man is a being of the material world and of the practical reason" (*Kritik der praktischen Vernunft*, 1788)," The metaphysics of the moors" (*Die Metaphysik*), on the other hand the man is a highly super sensual, moral being. Judging the moral value of the human behavior in society, Kant formulates the following rule: "Act in such a way as your attitude towards humanity in your person and in the person of any other man to be in respect of a purpose, but not as a means towards it".¹¹ So in another context Kant formulates the principle of "the categorical imperative", considered as the foundation of morality: "act in such a way that the maximum of your actions may be imposed as a universal law."

Georg Wilhelm Friedrich Hegel (1770-1831) a remarkable German philosopher had a significant contribution to the study and the foundation of guilt. In his "Philosophy of right" he investigates the legal nature of the intention and guilt. Hegel comes to the conclusion that "the guilt is a completely foreign judgment, I made myself something wrong or I didn't. The fact that I am to be blamed for something, it does not follow that the offence may be charged ". He considers that, if a person's objects or things cause damage to other people or society, they do not

⁹ Ursu Viorica, *Evoluția conceptului de vinovăție cu valoare juridică în teologie și filosofie, în contextul istoric*, în *Legea și viața* 10 (2015), 37-41

¹⁰ Ursu Viorica, *Evoluția conceptului de vinovăție cu valoare juridică în teologie și filosofie, în contextul istoric*, în *Legea și viața* 10 (2015), 37-41

¹¹ Ursu Viorica, *Evoluția conceptului de vinovăție cu valoare juridică în teologie și filosofie, în contextul istoric*, în *Legea și viața* 10 (2015), 37-41

refer to the deed of this man, although when the issue of liability of this fact is examined, this should be taken into account. The philosopher wrote: "If things, whose owner I am, cause injury to others, the latter does not constitute my own deed. However, I am responsible to an extent higher or lower for this injury". In this context, he comes to the conclusion that it must be considered guilty the one who knows and understands that he has committed. And when the person committing the deed does not know that what he/she does is not allowed to do, it should not be considered guilty: "The guilt from my wish is mine as long as I know about it." ¹²

In **psychology**, the guilt is described as an antisocial phenomenon, a deviant behavior of the person and it is associated with the behavior of the unconscious desire to cause pain, sometimes without any reason. *Sigmund Freud* considered the guilt as a type of anxiety, "anxiety of consciousness", which is able to divide its own "me" in justice and sacrifice. The source of feeling the guilt is fear, which turns into consciousness and occurs in two forms - two sources of guilt: 1) the fear towards authority that imposes to abandon the primary satisfaction desires; 2) the fear of the "super-ego" which later leads to abandoning the wishes of prohibited and enforces the death penalty. ¹³

In the conception of another author¹⁴, the guilt is the psychological state of the person that takes place in the situations where he/she feels personal responsibility, negatively appreciates his/her actions due to violation imperatives established and acts as a regulator of internal and interpersonal relationships.

In **law**, the guilt is a condition of legal liability either civil or criminal. The justification of the legal liability on the perpetrator is one of the grounds of legal liability, it is generally accepted that the application of the liability when the element of the guilt is missing,

¹² G. Hegel, *Filosofia dreptului*, (Moscova: Mysli, 1990)

¹³ Z. Freud. *Eu și Id-ul* (L: Academia, 1924)

¹⁴ Гусейн Идрисов, *Вина как условие гражданско-правовой ответственности на русском языке*, диссертация, <http://www.dissercat.com/content/vina-kak-uslovie-otvetstvennosti-v-rossiiskom-grazhdanskom-prave>, 161, accesat la 22.03.2016

would annihilate one of the functions recognized by the legal liability, the educational function.¹⁵

In *Digesta* (or *Pandectae*) it is stated that: "The guilt is present when there was not provided what should be provided by a caring person, or when it announces something only when it was already impossible to avoid the danger."¹⁶

When he had to characterize the guilt in Roman law in general, *D. Grimm*¹⁷ wrote: "The guilt is the illegal targeting of the person's will. The guilt may be the fact that a person knowingly commits this action, being aware of its illegality. In this case we are talking of *dolus* or *dolus malus*, the intention". Or "the guilt is the lack of proper care and attention, the lack of effort to avoid undue effects without direct intention to commit evil. In this case we are talking about the *guilt narrowly, by negligence*".

According to the Roman law the liability of the debtor in the case of non-execution or improper execution of an obligation, usually occurs when there is the guilt of the debtor. The guilt (fault) was understood as the failure to observe the behavior required by law, what was expressed in the following provision: "there is no guilt if everything necessary has been respected."¹⁸

The author¹⁹ mentioned that "in the Roman law the debtor had the obligation to be responsible towards the creditor for the damage that had occurred because of the impossibility to fulfill completely or partially his obligation because of himself/herself and, in addition, in the cases where the performance of the obligation has become impossible due to *dolus in faciendo* or *non faciendo*, as well when its execution has become impossible due to his *fault*. This obligation of the debtor was deemed to be unconditional as much as the agreement to exempt from liability was considered void as being immoral, although the agreement for

¹⁵ Eugenia-Carmen Verdeș, *Răspunderea juridică. Relația dintre răspunderea civilă delictuală și răspunderea penală*, (Bucharest: Universul Juridic, 2011)

¹⁶ Charles Henry Monro, trans. *The digeste of Justinian*, vol. II, (Cambridge at the University Press, 1909), D.9.2.31

¹⁷ Гримм Д. Д., *Лекции по догме римского права* (Москва: Зерцало, 2003), 179

¹⁸ Новицкий И.Б., Перетерский И.С., *Римское частное право*, (Москва 1996), 349

¹⁹ Новицкий И.Б., Перетерский И.С., *Римское частное право*, 349.

forgiveness of the losses which had already been caused by the debtor was admissible and, on the contrary, it was considered valid."²⁰

Those who share the psychological theory define the guilt as the subjective mental attitude of the person who commits the illegal act against this act and its consequences. According to a Russian author²¹, although in some cases the guilt is missing, however, there is an objective element and namely the awareness of the person who caused the injury, and he is obliged to repair the violated subjective right because being conscious, he assumed the risk, thus the risk was considered the subjective reason of the objective liability, but the objective basis - the wrongful deed.

Thus, the guilt represents the mental position that a certain man has towards a certain deed and its consequences; it is not something generic, ideal, abstract, but on the contrary, it is something concrete, manifested on the existential plan of a certain illicit deeds related psychologically to its perpetrator.

*Gh. Mihai*²² defined the guilt as an attribute of a human being, who is responsible, free in spirit and deed toward the word, deed and/or thought, which gives them a subjective and valuable interpretation inconsistent with the universal values.

*N. Popa*²³ characterizes the guilt as the psychological attitude of a person who commits an unlawful act towards his deed, and against the consequences of such deeds.

I. Dogaru and *P. Drăghici*²⁴ define the guilt as "the mental attitude of the author of the illegal or unlawful deed against the cohabitation rules as toward the action or inaction deemed as well as to its consequences (toward the result).

²⁰ Анненков К., *Система русского гражданского права. Том III. Права обязательственные* (С.-Петербург: М. М. Stasiulevici, 1901)

²¹ Ойгензихт В.А., *Презумпции в советском гражданском праве* (Душанбе: Ирфон, 1976), 190

²² Gh. Mihai, *Teoria generală a dreptului* (Bucharest: All Beck, 2001)

²³ N. Popa, *Teoria generală a dreptului* (Bucharest: Lumina Lex, 1992)

²⁴ I. Dogaru și P. Drăghici, *Drept civil. Teoria generală a obligațiilor* (Craiova: Themis), 237

*The professor D. Baltag*²⁵ defines the guilt as an objective state of the individual, a free mental attitude expressed towards his/her unlawful act and its consequences, which has a degree of social danger and the misrepresenting on the intellectual level of the causal relationship between the deed of the conduct and the outcome of material due to this deed, even though it did not have the representation of the facts and the consequences, had a real possibility of this representation.

With regard to normative theory, the professor *Antoni*²⁶ is the one who appreciates the German doctrine, which has exerted and continues to exert a strong influence over the entire Western European and he does not define any longer the guilt as a psychic link between the author and the wrongful deed (the psychological theory), but as "the internal link between the author - as the recipient, and the legitimacy of the rule", by virtue of which it appears "the emotional component of deception for violating the rule". In other words, according to this theory, the guilt is defined as a "reproach" addressed to the author for his illegal behavior and that reveals a missing or insufficient statement of reasons for the purposes of compliance with the rule.

With more concise and clear terms, the professor *U. Rindhauser*²⁷ states that the guilt is defined, in this view, as a "reproach" addressed to the author for his illegal behavior and that reveals a lack or an insufficient motivation in respecting the norm. If the author formed as the dominant reason to respect the rule, he would manage to avoid breaking it.

In a similar sense, the professor *C. Voicu*²⁸ said that "the guilt, regarded as constituent and the basis of the legal liability, suggests recognizing people's capacity to act with discernment to choose how to behave in relation to the aim pursued consciously".

²⁵ Dumitru Baltag, „*Vinovăția – temei sau condiție a răspunderii juridice?*” *Revista națională de drept*, 6 (2006.)

²⁶ Gh. Antoniu, *Raportul de cauzalitate în dreptul penal* (București: Ed. Științifică, 1968).

²⁷ Rind Hauser, *Derecho penal de la culpabilidad y conducta peligrosa*. (Bogota: Universidad Extrado de Columbia, 1996)

²⁸ C. Voicu, *Teoria Generală a Dreptului* (București: Universul Juridic, 2008), 418.

For example, in the civil law textbook of the State University of St. Petersburg²⁹, published in 1996, we find the well-known provisions of the literature of the Soviet period, according to which the guilt "is such a mental attitude of a person towards his illicit behavior that manifests negligence in relation to the interests of the society or the individuals. Such a concept of guilt is equally applicable both to citizens and legal persons ", and that" as a subjective condition of civil legal liability it is associated with mental processes that occur in the human mind", etc. The authors claimed that the people's guilt cannot be manifested itself in another way than through "a wrongful conduct of the organization's employees to its functional obligations (work) because the actions of employees of the debtor for the performance of his duties shall be deemed as actions of the debtor".³⁰

In general, the problems with the concept and the forms of the guilt are developed meticulously in the theory of criminal law. The study of the guilt problem has revealed the extreme diversity of approaches to the definition of the guilt and the clarification of its relationship with the separated elements of the composition of the offense and as a natural consequence of this, the weight of the formulation of a universal definition. Thus, some authors believe that the concept of the guilt should include causation, intention, recklessness reasons, personality and environment. According to other authors, the guilt and the subjective side of the offense are identical concepts.³¹ It is easy to see that in these conceptions the category "guilt" was interpreted too vast.

As you know, the lack of unanimity in the views on a particular issue does not contribute to the weakening of scientific interest to it, but it intensifies it. Therefore, taking into consideration the above context,

²⁹ Рассолова Т.М., *Гражданское право. Учебник для студентов вузов* (Москва: ЮНИТИ-ДАНА, 2012), 498-499

³⁰ Рассолова Т.М., *Гражданское право*, 498-499

³¹ Дагель П.С., Котов Д.П. *Субъективная сторона преступления и ее установление*, (Voronezh, 1974), 41-59; Спиридонов Л.И., *Теория государства и права*. (М.Проспект, 1997); Е. Кузнецов, В. Сальников, *Наука и государственный закон*. (S-P., 1999), 27, 152.; Черданцев, А. Ф., *Теория государства и права: Учебник для вузов*, (М.: Юрайт, 1999), 309

our study of the theoretical aspects of the guilt seems justified and appropriate.

The guilt is a conscious and volitional process, so as to determine its concept we must concentrate not only on mental attitude, but also on the person's *conscious* and *volitional* attitude toward the deed and its consequences.

Only the *conscious* and *volitional* attitude of the person to his/her actions and their consequences has a legal value during the crime in order to clarify the deed. Therefore, in order to formulate the concept of the guilt it is logical to make conscious and volitional focus on the attitude of the person toward the deed that is committed and its consequences.

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