

The Offense of Failure to Declare Information. Some Moral and Legal Issues

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ABSTRACT: The offenses of forgery are provided in Title VI of the Special Part of the Criminal Code, and the newly introduced offense, respectively the omission of declaring information was introduced in Chapter III - False documents, after the offense False statements. This legislative change was necessary in the context of the coronavirus pandemic, especially since the facts of falsehood seriously undermine the truth and trust that must lead to the formation and development of human relations. Without the duty of respect for the truth and without the feeling of trust that the truth is actually respected, social relations would be possible only with difficult precautions and inevitable risks. Nobody knows exactly what the future holds for us, but surely society will change the economy, the medical system, the legal system, our lifestyle, etc.

KEYWORDS: crime, moral-immoral, omission, pandemic, public health

Introduction

Moral attitude occupies a central place in the formation of personality because this attitude orients the entire behavior of the person, and this attitude or type of behavior is an indicator of its concordance with the moral and legal norms of the community in which he lives. The shaping of the moral personality is dependent on the fundamental experiences that a person has acquired in the family, in school, in the group of friends, in the community, at work, etc. Moral consciousness is a more or less unitary product, more or less consonant

of ideas, knowledge, attitudes, motivations and moral beliefs internalized in the structure of personality as an effect of the socialization process. With implications both intellectually and emotionally, the evolution of moral consciousness allows a person to adopt autonomous moral conduct, which expresses either the agreement or disagreement between the intellectual and the emotional (Piaget 1980; Voinea 1993).

It is very difficult to establish a precise boundary between morality and law. Morality is the canon of human suffering at the end of which is the rule of law, because society is based on the consciousness of solidarity, the idea of salvation in case of danger as well as an undisguised sense of justice, truth, thus accepting social rights as equal (Tănăsescu I., Tănăsescu C. and Tănăsescu G. 2010, 52). If the Superego has formed as a moral instance in being, it is very difficult for the individual to become a delinquent or aggressor. The loss of social position, economic, legal and emotional advantages, the success achieved through the individual's commitment to the community where he expresses and manifests reality and gains positive experience, happens only incidentally, exceptionally (Tănăsescu 2018, 243).

With the appearance of man on earth, he was confronted with both truth and falsehood. There have been many writings on this subject since antiquity, but as it is so current and so permanent, the subject seems inexhaustible.

People have the subtle ability to turn reality into a lie, depending on their interests, goals or to save a situation they have knowingly created, without realizing the perspective vision of things.

St. Augustine in his work *De mendacio* (About Lie) grouped the lies, according to their gravity, into eight categories: lies from religious texts, lies that hurt everyone and serve no one, lies that hurt everyone and serve someone, lies told for the pleasure of lying, lies told to "thank others in an elegant manner", lies that do hurt no one and serve someone, lies that do not hurt anyone and save someone's life, lies that do not hurt anyone and save someone's "purity" (Sfântul Augustin 2016).

Some people who have returned to the country because they lost their job in a country affected by Co-Vid-2 or because the companies they worked closed during the state of emergency in that country or those who returned from vacation etc. when crossing the border with Romania, they hid where

they came from, they lied by inventing a non-existent fact, by exaggerating, omitting, adding, diminishing or by confirming a lie told by someone else. In classifying the lie made by St. Augustine, we can frame these deeds as lies that hurt everyone and serve no one. These people proved to be completely disinterested in the good of the family, of their loved ones and in the end of the common good. The major problem of these people was the lack of respect for other people, which could also translate into contempt for the rule, legal rules, ethics, morals, etc. They have been violated in some cases out of ignorance, sometimes because of individualism and indifference, claiming that they are free to do as they please and what they want, claiming that their rights and freedoms are being violated. Most of the time, this has negative consequences not only for them, but for everyone, for the entire population of our country.

Given the evolution of the international epidemiological situation caused by the spread of SARS-CoV-2 coronavirus in more than 150 countries, where many people were infected and at the same time there were deaths due to this, as well as the declaration of "Pandemic" by the World Health Organization, on March 11, 2020, the President of Romania decreed the establishment of the state of emergency on the entire Romanian territory, for a period of 30 days, by Decree no 195 of March 16, 2020 on the establishment of the state of emergency on the territory of Romania, published in the Official Gazette no 212 of March 16, 2020. Subsequently, the president extended this state of emergency by another 30 days, and then the state of alert was established.

The offense of failure to declare information

At the beginning of this period, a series of amendments were made to the Romanian Criminal Code, published in the Official Gazette of Romania, Part I, no. 510 of July 24, 2009, as subsequently amended and supplemented, by O.U.G. no. 28/2020 for the amendment and completion of Law no. 286/2009 on the Criminal Code, published in the Official Gazette no 228 of March 20, 2020, in the sense that the penalties were increased in the case of offenses "False statements" - article 326 and "Thwarting disease control" - art. 352, and after article 352 a new article was introduced - article 352¹

respectively “Failure to declare information”. The measure was taken after several cases of hospital escapes of people infected with the SARS-CoV-2 coronavirus, of people who did not comply with the isolation measures or who did not declare upon entry into the country that they come from red areas. This revealed that the measures ordered by the authorities were not strictly observed and that the provisions of the existing Romanian Penal Code did not have a sufficient deterrent effect. From the explanatory memorandum above it is observed that these legislative changes were determined exclusively by the coronavirus pandemic that affected among other countries and Romania.

The text of article 352¹ of the Romanian Criminal Code provides the following: “The omission of the person to disclose to the medical staff or to other persons among those provided in art. 175 or a unit in which they operate some essential information on the possibility of coming into contact with a person infected with an infectious disease shall be punished by imprisonment from 6 months to 3 years or by a fine”.

This offense has no correspondent prior to the amendments made by the O.U.G. no 28/2020. For these reasons, only those persons who committed it, after the publication of the O.U.G. no 28/2020 in the Official Gazette ie after March 20, 2020.

Some crimes in the Romanian Criminal Code, but also those in special laws are commissive offenses, and others are omissive offenses (See Cristiean 2017 Part I and II). Criminal inaction (omission “*passio*”) consists in the absence of any action in doing no activity, in doing nothing, in not performing an act or in delaying the timely execution of an act. Inactive (omissive), passive (*intellectus passivus*) behavior does not generate by its simple relevance the “causal process”, in the sense that it does not cause a direct effect, does not apply, does not stagnate and does not reduce the effect but does not remove the intervention of other triggers, favorable or amplifying the effect that should have been “annihilated” by a dynamic, positive, effective behavior. Criminal inaction (omission) means opposition to criminal action (commission). Usually, the criminal law is based on “positive actions (commissions)” that produce an effect of harming the rights and benefits of other persons, by law imposing a certain human behavior. On the contrary, by incriminating

inactions (omissions) and considering them as elements of social danger, a certain behavioral requirement is imposed by law to achieve a certain human "solidarity". (Tănăsescu I., Tănăsescu C. and Tănăsescu G. 2002, 209).

The omission (inaction) has the legal significance *ratio particularis* only by referring to the norm of criminal law which, although it requires an action to remove social harm, proves the passivity of the offender, the socially dangerous act being achieved precisely by not protecting social interests by offender. The individual's ability to engage in inaction (omission) depends on the degree of understanding of the social, moral, legal, ethical, ideological, religious, economic motive protected by criminal law and the relationship to individual interests, stabilizing the subjective elements of a typical omission (in action) (Tănăsescu I., Tănăsescu C. and Tănăsescu G. 2002, 209-210).

A statement is considered untrue when it, in whole or in part, does not correspond to the truth. The statement may not reflect the truth both in the case where the author made statements contrary to reality in relation to data, facts or situations generating legal consequences, and the version in which the author knowingly failed to include in the statement such data, facts or situations, although he had the obligation to make them known as well.

The material element of the crime provided in art. 352¹ consists in the omission to disclose information. There have been cases where some people who showed up at the hospital emergency room or who were already hospitalized did not say or said much later that they had returned from countries affected by CoVid-19 or that they came in contact with people who traveled and returned from those countries to Romania. If in an epidemiological inquiry a person does not give complete information about the persons he has come in contact with, it is an omission to inform the authorities. The essential information refers, for example, to the identity of the persons with whom the offender was connected and the way in which they came into contact, the period in which they came into contact, the area (s) in which the perpetrator traveled, alone, accompanied and so on. This crime can also be committed when giving a statement and the essential information will only cover the issues on which it is asked.

The immediate consequence of the crime of failure to declare information is a state of danger to public health. The danger is abstract and arises from the simple omission to disclose information. In this case, the healer does not ask to prove the risk of infecting others or spreading an infectious disease.

The form of guilt of the crime provided in article 352¹ of the Romanian Criminal Code can be committed intentionally, both directly and indirectly. The direct intention results from the way the perpetrator identifies the result of the action-inaction, which he perceives directly, from the beginning (the intellectual factor), through the way of producing the harmful result, which he directly pursues (the factor affective). From the aspect of the report between the will of the perpetrator and the legal order, the direct intention is characterized by his will to commit the act with any risk, but also to produce the desired result regardless of consequences, in the emotional evaluation finding the anticipated representation. The incriminating norm defines the term of direct intention by foreseeing the result by the perpetrator following his production by committing that deed (Tănăsescu 2014, 114).

The indirect (eventual) intention results from the way the perpetrator identifies the result of the deed, which he perceives directly (the intellectual factor) and, although he does not pursue it, accepts the possibility of its production (the volitional factor), and by evaluating the result directly accepts (the affective factor). From the point of view of the relationship between the will of the perpetrator and the legal order, the indirect intention indicates his way of acting, anticipating the harmful consequence that could occur by committing the act and accepting the risk of determining (*determinatur eventus*) its consequences (Tănăsescu 2014, 115). Thus, the act is committed with indirect intent when the perpetrator does not seek to produce a state of danger to public health, but accepts such a possibility for various reasons, such as not entering quarantine.

An essential requirement must also be met, which is to be aware of the possibility of having come into contact with an infectious person of the person committing the crime. Otherwise, the deed will not constitute a crime.

Conclusions

I consider it appropriate and necessary to criminalize the crime of failure to provide information, especially in the context of the rapid spread of

the SARS-CoV-2 virus, its aggressive nature, the uncertainty of its long-term effects on the human body in both adults and children, as well as the irresponsible conduct and civic spirit of the citizens.

The facts presented above are of particular gravity in the context of a pandemic. The magnitude of the phenomenon and the negative consequences on the entire population generated by non-compliance with the regulations on social relations that concern the protection of public health and the prevention of SARS-CoV-2 coronavirus infection has led, among other things, to legislative intervention.

The population of Romania and all citizens on its territory, regardless of nationality, must respect the legislation in force and take into account that ignorance of the law cannot be invoked as an excuse and entails sanctions. Should inform only by official sources and at the same time we should not forget that it is essential to be responsible, to be aware that we are part of a community, and our actions can affect the community in which we live.

References

- Cristiean V. 2017. *Drept Penal. Partea specială I. (Criminal law. Special Part I)*. Bucharest: Universul Juridic Publishing House.
- Cristiean V. 2017. *Drept Penal. Partea specială II. (Criminal law. Special Part II)*. Bucharest: Universul Juridic Publishing House.
- Piajet J. 1980. *Judecata morală la copil. (Moral judgment in the child)*. Bucharest: E.D.P. Publishing House.
- Sfântul Augustin. 2016. *De mendacio (Despre minciună). De mendacio (About lie)*. Bilingual edition. Bucharest: Humanitas Publishing House.
- Tănăsescu G. 2014. *Drept penal. Partea generală. (Criminal law. The general part)*. Craiova: Sitech Publishing House.
- Tănăsescu G. 2018. "The Travali of Criminal Thinking, a Psychoanalytic Interpretation of the Absence of the Superego" în *The 10th International RAIS Conference on Social Sciences and Humanities, Princeton, The Erdman Center, NJ, USA*. Atlantis Press, Paris, France, Part of Series: ASSEHR; Volume 211.
- Tănăsescu I., Tănăsescu C. and Tănăsescu G. 2002. *Drept penal general. (General Criminal law)*. Bucharest: All Beck Publishing House.

- Tănăsescu I., Tănăsescu C. and Tănăsescu G. 2010. *Tratat de științe penale. (Treaty of Criminal sciences)*. Craiova: Sitech Publishing House.
- Voinea M. 1993. *Sociologia familiei. (Sociology of the family)*. Bucharest: Bucharest University Printing House.