

<https://doi.org/10.52326/csd2025.43>

DEFINING ELEMENTS OF THE PERPETRATOR'S INNER MANIFESTATION IN THE CONTEXT OF GENERATING CONFLICTS AND AGGRESSIONS IN THE CASE OF GATHERINGS

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Abstract. Guilt is the central element of the subjective side of the crime, constituting an essential characteristic of any criminal act. It is based on the ability of a person to understand both the factual and social consequences of his actions, as well as their legal significance, to anticipate their immediate outcome and to be aware of their socially dangerous nature.

To understand that the committed act is dangerous for society means to be aware of the concrete situations related to what is being violated and how the crime occurred, as well as their social significance. The person who committed the act realizes that by his actions he infringes on rights and interests protected by law — of other persons, organizations, society or the state. He is also aware of all other legally important circumstances in which the act was committed, such as the time, place, manner of action, environment, tools and means used.

Keywords: *subject of law, public order, public peace, assembly, disorder, legal framework, judicial bodies.*

Introduction

A priority element of the composition of a crime is the subjective side, which generally represents the inner manifestation of the perpetrator both in relation to the illicit act committed and the harmful consequences that have occurred. Therefore, the subjective aspect conditions the person consciously to manifest a certain conduct. Human behavior is expressed through emotions, feelings, experiences, and reactions to the environment. The analysis of the subjective element of a crime is characterized by a complex study because it is complicated to deduce the sphere of human psychophysics, which is made up of the connection between reasoning and the physical factor. However, legal conduct is practically formed like criminal conduct, having in itself objective and subjective components.

On the other hand, the subjective side is in a rigorous connectivity with other constituents of the crime component, especially with the subject of the crime, as he directly manifests a certain psychological attitude towards the criminal activity.

Basic content

The author C. Ghidchi reveals that „between the objective and subjective sides of the crime there is an indissoluble and interdependent connection. The conscious act of the person is always directed, directed by his/her psychic processes (consciousness and will). Thus, the subjective side generates, directs and directs the objective side of the crime” [1].

The author D. I. Lămășanu argues that „psychic (internal) manifestations do not affect social coexistence relations, criminal law excluding the punishable nature of some manifestations that occur in the intimate sphere of the person. In this context, two important practical aspects are highlighted:

- 1) one cannot punish the criminal thought or the simple criminal idea;
- 2) no one can be punished only for preventive purposes, that is, to avoid a crime that risks being committed” [2].

The authors C. Bulai, C. Mitrache and A. Filipaș are of the opinion that „the subjective side of the constitutive content of the crime includes all the conditions regarding the perpetrator's psychological attitude towards the objectivity of his own act of conduct, the conditions required by law for this act to constitute a crime. These conditions or elements therefore concern the attitude of

the perpetrator's conscience and will towards the action or inaction that constitutes the material element of the crime, towards the immediate consequence and towards the causal link between them” [3].

The author O. Burlacu supports the idea that „the subjective side of the crime consists of a certain psychic attitude, made up of intellectual, volitional and affective elements, which determine and accompany the physical act of execution. Compared with the objective side of the crime, which involves an external act of execution, the subjective side expresses the subjective moment, the psychic position of the subject of the crime towards the material activity carried out by him” [4].

A general opinion regarding the subjective side of the crime is given by the author C. Niculeanu, who highlights that „the subjective side as a constitutive element of the crime consists of a complex of specific states of consciousness that precede and accompany external acts that are directed towards producing socially dangerous consequences, or which, even if they are not directed in such a direction, produce such consequences” [5].

In the context of what is highlighted in the legal and criminal doctrine, we conclude that the subjective side of the crime represents a manifestation at the psychological level, which includes emotional, intellectual and volitional aspects, which directly condition and materialize the external criminal activity of the perpetrator.

With reference to the structure of the subjective side, authors G. Madchi and C. Greu point out two hypotheses: „according to the first variant, the subjective side of any crime includes in its structure guilt, motive and purpose, guilt being the core of the subjective side of the crime. According to the second variant, the subjective side of the crime includes only guilt and only in certain cases, along with guilt, it includes motive and purpose. Motive and purpose are components of the subjective side of the crime only when they are mandatory signs of the crime composition” [6].

From here, we can deduce that the structure of the subjective side includes mandatory signs and optional signs, as follows: guilt, motive and purpose. Respectively, in all cases guilt constitutes a mandatory sign, and motive and purpose – optional signs, since they must be determined only if they are mandatory components of the subjective side of a crime.

So, for an illicit act to be considered a crime, it is important that the perpetrator acts with guilt, regardless of its form.

Consequently, the authors M. Colymbak and M. I. Michinici concisely state that „guilt is the perpetrator's psychological attitude towards the act and the consequences produced by it” [7].

The author N. Giurgiu supports the idea that „guilt is the result of the interaction between the volitional and intellectual factors. The intellectual factor or the ability to understand implies the full representation of the content, meaning and finalities pursued or accepted by committing the act, as well as the provision of its entire causal development. The volitional factor implies the capacity of the individual who understands and perceives the content and meaning of his act, to freely direct and fully master his acts of conduct” [8].

From a normative perspective, Art. 6 para. (1) of the Criminal Code of the Republic of Moldova (CP RM) establishes that a person is subject to criminal liability and criminal punishment only for acts committed with guilt [9].

Just as in the case of all components of a crime, the subjective side and its elements also belong to the crime of mass disorder, which are decisive in the fair legal classification of the criminal act, the individualization of criminal liability and punishment, and the differentiation from other similar criminal activities.

In order to fully and precisely elucidate the type of guilt, the motive and the purpose of the crime of mass disorder, we will explain each element of the subjective side unilaterally.

In art. 6 para. (2) of the Criminal Code of the Republic of Moldova, it is stipulated that only the person who intentionally or recklessly committed an act provided for by the criminal law is subject to criminal liability and criminal punishment [9]. Therefore, from the cited norms, two forms of guilt are distinguished: intention and recklessness.

According to art. 17 of the Criminal Code of the Republic of Moldova, it is considered that the crime was committed intentionally if the person who committed it was aware of the harmful nature

of his action or inaction, foresaw its harmful consequences, desired them or consciously admitted the occurrence of these consequences [9]. Therefore, it is attested that the intention has two forms: direct and indirect.

Taking into account the incriminating norm of mass disorder, legal and criminal specialists A. Borodac, S. Brînză, V. Stati, X. Ulianovshi, I. Țurcanu, V. Grosu, I. Macari, etc. unanimously argue that, regardless of the type of action committed by the perpetrator, the offense regulated by art. 285 of the Criminal Code of the Republic of Moldova is committed with direct intent. Therefore, we conclude that among local doctrinaires there are no disputes regarding the form of criminal guilt in the case of the offense of mass disorder.

Direct intention, notes the author A. Ungureanu, „presupposes an intellectual moment (foreseeing the result) and a volitional moment (pursuing the production of the result). The foresight of the result is anticipated or concurrent with the commission of the act, as arising from the life experience of the perpetrator, from the knowledge proven and verified in the practice of human life, according to which a certain act, under certain conditions, necessarily produces a certain result; consequently, the foresight of the result also implies knowledge of the causal relationship between the act and the result” [10].

Therefore, in relation to the crime under investigation, the intellectual factor includes two psychological processes, the first being the awareness of the harmful nature of mass disorder, and the second – the predictability of the harmful consequences that may result from their commission. While the volitional factor is directly reflected in the perpetrator's desire to produce certain harmful consequences as a result of committing mass disorder.

So, in the case of the act regulated in paragraph (1) of Article 285 of the Criminal Code of the Republic of Moldova, the perpetrator is aware of the harmful nature of the actions committed, in the case of organizing, leading or actively participating in mass disorders, accompanied by actions such as: applying violence against persons, causing pogroms, arson, destroying property, using firearms and other objects used as weapons or offering violent or armed resistance to representatives of the authorities [9]. Therefore, it is obvious that the perpetrator has a clear and unequivocal representation of the illicit and harmful nature of his conduct, which results from the manifestation of the actions taken. His clearly antisocial and disruptive behavior makes it impossible to invoke ignorance or misunderstanding of the legal and criminal significance of the committed act. Moreover, both the organizer and the leader of the mass disorder certainly understand the antisocial nature of their behavior, and from a legal and criminal perspective, this awareness is not only presumed by the nature of the act committed, but also by the active and determining role they play in triggering and carrying out the mass disorder.

In the case of active participation in mass disorder, the perpetrator's actions imply not only a simple physical presence in the crowd but an active contribution to the production of the harmful social effect, which implies a high degree of social dangerousness. For this reason, active participation in mass disorder implicitly implies the awareness and will to disturb public security, excluding the idea of a possible error regarding the illegal nature of the act.

In the situation where the perpetrator publicly addresses incitements to violent disobedience to the legitimate demands of the authorities, to mass disorder or to commit acts of violence against individuals, he manifests in particular a clearly hostile attitude towards public security, as well as towards the fundamental values protected by criminal law in general. Incitement to violent disobedience to authority, through the media, social networks, etc., implies a demonstrated awareness of the negative social impact and the seriousness of the consequences that may be generated. Thus, the perpetrator not only understands the illegal nature of the incitements made, but also deliberately uses them to destabilize public security.

The foreseeability of the consequences of the act consists in a mental representation of the person, through which he anticipates in general, more or less specific terms, the prejudice (damage) that will result from the act he has committed.

The desire for the occurrence of socially dangerous consequences can be determined by the presence of a goal to cause certain specific consequences. The presence of the desire to obtain a

certain result can be evidenced by the fact that the criminal result constitutes an intermediate stage, but necessary in achieving the final goal pursued by the perpetrator.

In the event of the commission of the illicit act incriminated in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova, the organizer or leader of mass disorders, by mobilizing people in advance and anticipating the illegal actions to be carried out by the participants, indisputably foresees the harmful consequences that may occur.

In the circumstance of active participation in mass disorders, the perpetrator, likewise, foresees the consequences of the act and desires their occurrence.

As a rule, in both cases, the perpetrator is aware of the nature of his actions, and this is evident during mass disorders, depending on the level of involvement. It is specified that the mere presence at the scene of mass disorder is not sufficient to incur criminal liability, but active participation, manifested by the use of violence against persons, causing pogroms, arson, destruction of property, use of firearms and other objects used as weapons, offering violent or armed resistance to representatives of the authorities, implies the anticipation of the result of the committed act. In this way, the perpetrator foresees, assumes and desires the antisocial effects of the act voluntarily contributing to their achievement.

In the case of committing the act incriminated in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova, undoubtedly, when the perpetrator calls for active violent disobedience to the legitimate requirements of representatives of the authorities and for mass disorder, as well as for the commission of acts of violence against persons, he foresees in advance the harmful results of his actions and, respectively, desires them.

Such behavior demonstrates a clear representation of the illegal nature of his act, since it is intended to produce harmful consequences, such as disrupting public security, violating state authority, endangering the bodily integrity, health or life of persons and their property.

For example, a person who incites active violent disobedience to the legitimate demands of representatives of the authorities obviously knows that his actions will generate violent conflicts and, as the case may be, possible bodily harm or damage to property. This fact undoubtedly presupposes an awareness of the harmful consequences of his action.

In the part that refers to the desire for illegal acts to produce harmful consequences, the main goal of the perpetrator is to provoke a direct conflict with representatives of the authorities and to encourage collective violence. The desire for harmful consequences to occur can be observed in the perpetrator's behavior, which directly incites violence, encourages aggressive and disobedient behavior in order to depress the authority of state institutions, promotes by any means an atmosphere of hatred and frustration towards the authorities, etc. In such a situation, the perpetrator cannot invoke ignorance of the illegality of the act, as it is clear that his actions are deliberately aimed at creating a tense climate of disobedience towards the representatives of the authorities.

For example, the volitional and intellectual aspects must intersect, so as to ensure the interconnection between them, or, only in such a situation, the criminal activity is committed with direct intent. In such circumstances, it is materialized that the perpetrator is aware of the criminal nature of mass disorders and the socially dangerous consequences that can be produced by them, as well as wants them to occur. Guilt, in the form of direct intent, specific to the crime incriminated in art. 285 of the Criminal Code of the Republic of Moldova, is demonstrated, including from the jurisprudential aspects, which, further, are to be presented through eloquent practical examples, for each separate action.

So, in the Sentence of the Chisinau Court (Buiucani seat) of February 3, 2020, the court establishes that „X., on September 3, 2015, starting at 9:00 p.m., together with other convicts in respect of whom the criminal case was severed, being detained in Penitentiary X., organized and led mass disorders, expressed by active violent disobedience to the legitimate demands of the collaborators of the indicated institution to cease illegal actions, calling the collaborators of the indicated institution with uncensored and obscene words, destroying cell doors, video recording cameras, lighting lamps in the corridor and detention cells, chairs and other objects, including damaging the plaster on the walls, using objects as weapons in this regard, thus causing material

damage to the penitentiary institution. In terms of the subjective side of the crime provided for by art. 285 paragraph (1) of the Criminal Code, [...] the court finds that the defendant X. foresaw and intended the violation of social values protected by criminal law, acting with guilt in the form of direct intent, having as its reason the non-acceptance of the rules imposed by the administration of Penitentiary X regarding the circulation of tobacco products” [11].

At the same time, in the Decision of the Criminal Panel of the Chisinau Court of Appeal of July 20, 2020, the court indicated that „X., by mutual agreement and by agreement with XX., being on Y Street, in the immediate vicinity of the headquarters of the Prosecutor General's Office, acting with direct intent, aware of his actions, with the aim of destabilizing the situation, acting in complicity with other persons unidentified by the criminal investigation body, called for violent disobedience to representatives of the authorities, for mass disorder, as well as for committing acts of violence against persons, expressed by applying blows with objects on them, used as weapons” [12].

Likewise, in the Decision of the Enlarged Criminal Panel of the SCJ of December 13, 2022, the court held that „X., together with other persons, starting at 2:00 p.m., by mutual agreement and by common understanding, being on XXX Street, in the immediate vicinity of the headquarters of the Prosecutor General's Office, acting with direct intent, aware of their actions, for the purpose of destabilizing the situation, acting in complicity with other persons unidentified by the criminal investigation body, actively participated in violent resistance to representatives of the authorities, expressed by pushing and hitting them with objects on them, used as weapons” [13].

In the highlighted cases, it is demonstrated that, in the case of the standard variants of the offense regulated by art. 285 of the Criminal Code of the Republic of Moldova, criminal guilt manifests itself in the form of direct intent. Thus, the fair determination of the form of guilt is of great importance for the legal qualification of the criminal act and the individualization of criminal liability and punishment.

The authors A. Mariș, E. Simionescu, I. Dolea et al. also distinguish other types of intent, such as: simple intent (general intent) and special (qualified) intent, initial intent and supervening intent; unique intent and complex intent; spontaneous intent and premeditated intent.

So, simple (general) intention is the one that meets the conditions of existence provided by law for direct intention and, respectively, for eventual intention. In contrast, qualified (special) intention was considered to be that form of direct intention, characterized by the provision in the criminalization norm of a special purpose [14].

Initial intention occurs when the perpetrator foresees the result of his act from the beginning, from the moment of committing it, and with supervening intention, the foreseeing of the result occurs after an initial decision and determines the subsequent decision to produce it [15].

The intention is single, when the offender has decided to commit a single crime, and complex, when he has decided to commit multiple crimes or has decided to produce multiple results [16].

In the case of spontaneous intention, the commission of the crime occurs immediately after the adoption of the criminal resolution. And premeditated intention represents one of the species of the non-normative modality of intention, based on the criterion of the moment of appearance of the intention and combines two components:

- 1) the chronological component, designating the realization of the decision to commit the crime not immediately, but after a certain period of time has passed since the moment of its appearance,

- 2) the ideological component, designating the specific mental activity of the perpetrator during this period [17].

From the point of view of the crime of mass disorder, we consider that, mainly, in the case of paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova, active participation in mass disorder can be committed with spontaneous intent, because the participation itself is committed with celerity, following the addressing of calls for participation, the leadership or organization of mass disorder. The intention becomes premeditated in the case of the commission of the illicit acts provided for in art. 285 paragraph (1) and (3) of the Criminal Code of the Republic of Moldova, since in the case of organizing or leading mass disorders and calls for active violent disobedience to the

legitimate requirements of representatives of the authorities and mass disorders, as well as in the commission of acts of violence against persons, there is the diachronic element, which involves the preparation of criminal acts, with the subsequent making of the criminal decision, as well as the ideological element, which occurs in the human psyche in the reference interval, through the analysis of its possible illicit actions.

Following the identification of guilt, as the main sign of the subjective side of the crime, it is imperative to elucidate the motives and goals that determined the perpetrator to proceed to commit a crime. These can be specified with the help of identifying the optional signs of the subjective side: the motive and the criminal purpose. These are not explained from a legislative point of view, but in the legal-criminal doctrine there are several definitions referring to them.

The emotions of the perpetrator are in direct correlation with the motive and purpose and make the subjective side of the crime indivisible from a structural aspect [18].

Motive and purpose are two psychological concepts that are closely connected.

Just like a criminal act, any human activity is determined by a motivational or conscious desire to satisfy a certain need, thus the purpose of behavior is conceived. Criminal motivation generates the birth of socially dangerous goals in human reason.

The motive for a crime is a person's internal motivations, determined by his needs and interests, which create an incentive for the person to commit a crime, guiding him in committing it. In other words, the motive creates a person's internal motivations aimed at forming volitional aspirations or making a decision to commit a crime.

The main characteristics of the motive are:

- „1) volitional and, most often, conscious character;
- 2) at the origin of the emergence of the motive are human needs, and physical and material needs often take priority over spiritual ones;
- 3) the motive for behavior is constantly changing under the influence of internal and external factors” [19]. As a result, we can highlight that the motive for the crime represents an endogenous cause of human behavior, generated by certain needs, regardless of their nature, which consists of emotions, feelings, passions that provoke the person to commit an illegal activity.

The appearance of the criminal purpose depends on the motive of the illicit act, both of which constitute a foundation for the formation of the intellectual and volitional factor of the perpetrator.

The purpose of the crime represents the assumed ideal and subjectively desired result of the harmful (socially dangerous) act, to achieve which the subject acts with antisocial means, proceeding from certain considerations. The purpose, as a model represents the acceptor of the result, which triggers the command to act, compares the actual behavior with the model and corrects it [20]. Thus, we conclude that the criminal purpose constitutes an effect of the motive and is strictly related to it, appears at the moment when the decision to commit the criminal act is made and not in all cases materializes exactly in the manner desired by the perpetrator, having either a deficient or an exaggerated character.

However, authors R. Cojocaru and N. David draw attention to the indispensability of elucidating the difference between purpose and motive, noting that „the delimitation between the motive and purpose of the crime consists in the fact that the former reflects the psychological elements that determine the criminal conduct, while the latter characterizes the result towards which the perpetrator strives. The motive answers the question of why the crime was committed, what determined the perpetrator to commit the crime, and the purpose – what did the criminal want to obtain by committing the crime?” [21].

Unquestionably, Moldovan judicial practice serves to strengthen the opinions that prevail in the doctrine. Thus, in the Decision of the Enlarged Criminal Panel of the Supreme Court of Justice of the Republic of Moldova of February 11, 2020, the court establishes that „X. , on 06.09.2015, starting at 14:00, by mutual agreement and by understanding with XX. and XXX., being on XXX Street, in the immediate vicinity of the headquarters of the Prosecutor General's Office, acting with direct intent, aware of his actions, with the aim of destabilizing the situation, organized and led mass disorders, in which several people participated, including by applying violence and opposing violent

resistance to representatives of the authorities, expressed by pushing and hitting them with objects on them, used as weapons. [...] In terms of the subjective side of the crime provided for by art. 285 para. (1) Criminal Code, X. together with other defendants envisaged and pursued the violation of social values protected by criminal law, acting with guilt in the form of direct intent, having as its motive the desire to disapprove of the activity of the Prosecutor General's Office” [22].

Therefore, we deduce that the reasons for committing the act incriminated in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova may be: challenging the activity of the state authority or a political regime; opposition to government decisions or policies; promotion of radical ideologies, collective dissatisfaction with living conditions, corruption, unemployment, etc.; obtaining concessions or social changes, manipulating the masses for financial gain, the will to attract notoriety or influence among a group; external instigation or geopolitical interest, etc.

In parallel, in the Decision of the Criminal Panel of the Chisinau Court of Appeal of March 21, 2023, the court assesses that „X., being convicted, serving his sentence in Penitentiary XX., approximately between 7:30 p.m. and 9:00 p.m., being on the 4th floor of block no. 1 of the Penitentiary, pursuing the purpose of violating the proper conduct of the Penitentiary's activities, intentionally, following a prior agreement and together with the convicts of the Penitentiary, regarding whom the criminal case was severed, actively participated in the mass disorder, organized in the respective penitentiary institution and destroyed material goods - doors, wardrobes, chairs, tables, bedside tables, beds, mattresses, pillows, including by arson, damaged and set fire to the walls of the rooms on the 4th floor, insulting the Penitentiary's collaborators with uncensored words, threatening to self-mutilate, offering violent resistance to the representatives of the penitentiary institution, they threw various objects at them, including by applying violence to the Penitentiary employee, resulting in causing minor injuries. [...] In terms of the subjective side of the crime provided for by art. 285 paragraph (2) of the Criminal Code, the defendants X. and XX. foreseen and pursued the infringement of social values protected by criminal law, acting with guilt in the form of direct intent, having as a motive the desire to disapprove of the activity of the Penitentiary administration” [23].

Therefore, we conclude that the reasons for committing the act incriminated in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova may be: poor living conditions; unfavorable government measures; corruption; administrative abuses; external influence; disinformation; false manipulation that the action is justified; active opposition to the political regime; frustration or anger towards the authorities; material interest; desire for gain or to steal goods in the chaos created, etc.

In the Sentence of the Chisinau Court (Buiucani seat) of August 3, 2020, the court assessed that „X. , being in a location currently not established by the criminal investigation body in the municipality of Chisinau, holding a virtual account with the name „YYY” on the website Y., which represents an online communication platform on the electronic network Internet, on August 15, 2018, at 4:05 p.m., initiate a live (online) session, calling it „XX”, through which he filmed three video clips, in which he presents himself next to an interactive whiteboard, giving speeches, the content of which results in calling for active participation in mass disorders, accompanied by the application of violence against persons and representatives of the authorities, for active violent disobedience to the legitimate demands of representatives of the authorities, by using various objects to annihilation of the role of state representatives involved in maintaining public order at the protest actions that were to take place on August 26, 2018. From the analysis of the mentioned videos, it was established that X. promoted the violent way of conducting protests, by preventing representatives of public authorities from carrying out measures to maintain public order, by attacking police officers and applying violence to them (kicking and punching), by depriving them of the special means they had (shields, helmets, rubber batons) and using them against them, damaging the uniform and creating impossible conditions for carrying out the mission of ensuring public order by using various objects (ropes, plastic bottles filled with liquids, sticks). [...] The subjective side of the crime specified in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova is characterized by direct intent. The reasons for this crime are: the perpetrator's desire to facilitate his criminal activity; material interest involving the execution of an order in exchange for material remuneration, etc.” [24].

In the case of paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova, the motives for the illicit act consist of: the perpetrator's desire to facilitate his illegal activity; material interest assuming the execution of an order in exchange for material remuneration, etc.

Further, in the following cases, the purposes of committing the crime of mass disorder will be crystallized.

In the Decision of the Enlarged Criminal Panel of the Supreme Court of Justice of the Republic of Moldova of February 11, 2020, the court determined a premeditated purpose of the crime, as follows: „X., on 06.09.2015, starting at 14:00, by mutual agreement and by understanding with XX. and XXX., being on Y Street, in the immediate vicinity of the headquarters of the Prosecutor General's Office, acting with direct intent, aware of his actions, with the aim of destabilizing the situation, organized and led mass disorders, in which several people participated, including by applying violence and opposing violent resistance to representatives of the authorities, expressed by pushing and hitting them with objects on them, used as weapons. [...] The premeditated purpose of the defendant X. in committing the crime of organizing and leading mass disorders on 06.09.2015 in front of the headquarters of the Prosecutor General's Office, is also proven by the failure to comply with the Provision of the City Hall X. regarding the granting of permission and the necessary assistance in order to carry out the organized protest march, where the protesters were to move on a single lane of the road on the route [...], as well as the failure to comply with the preliminary statement no. Y. signed by the defendant X., in which the route is indicated” [22].

In the Sentence of the Chisinau Court (Buiucani Seat) of January 27, 2020, the court established that „The Accused X. [...], pursuing the purpose of violating the proper conduct of the penitentiary's activity, knowing the rights and obligations of the convict [...], intentionally, following a prior agreement and together with the convicts of Penitentiary Y. including XX. and other convicts in respect of whom the criminal case was severed, actively participated in the mass disorders organized in the respective penitentiary institution. [...] continuation of the illegal actions, through violence, pursuing the purpose of destroying the property of the penitentiary and offering violent resistance to the penitentiary collaborators, he, together with other convicts, in respect of whom the criminal case was severed, prevented the access of the Penitentiary collaborators to the corridor in which they were. The criminal trial regarding the accusation of X. of committing the offense provided for in art. 321 is terminated Criminal Code in connection with the defendant's failure to reach the age at which he can be held criminally liable. [...] found guilty of committing the offense provided for in art. 285 paragraph (2) of the Criminal Code and is sentenced to imprisonment for a term of 2 (two) years, with the sentence to be served in a semi-closed penitentiary” [25].

In the context of the objective side of the crime under consideration, a diverse range of purposes can be pursued, namely: achieving certain changes in the political, social, economic fields, etc., weakening certain branches of activity, undermining public order and security, etc.

Based on the case law, we conclude that there cannot be an exhaustive list of the motives and purposes of the crime of mass disorder. However, both the motives and the purposes of the respective crime can be diverse, depending on the causes that determine the perpetrator to commit the criminal act, as well as his interests in this regard.

At the same time, local judicial practice demonstrates that the crime of mass disorder can be committed in the absence of participation. For example, in such circumstances, motives and purpose take on a very important role in the division of roles, as criminal participation includes not only an agglomeration of illicit actions committed by the participants, but also psychological interdependence between them.

Conclusion

We can conclude that, in the case of the crime of mass disorder, we are in the absence of a qualified motive or purpose, because in the provision of the incrimination norm the legislator does not precisely establish the motive and/or criminal purpose, aspects that can be deduced from the legal-criminal doctrine and, more precisely, from the case law.

All participants must have known about the motive and purpose of the crime in order to be considered participants, since this is in accordance with the fundamental principles of criminal law. The stated position is based on the following arguments:

1) the principle of individualization of criminal liability is based on the fact that each person can be held criminally liable only for his actions, or, in order to be considered a participant in the crime, it must be demonstrated that the perpetrator had the intention and knowledge necessary to contribute to the commission of the crime. In the absence of knowledge of the criminal purpose, the existence of criminal intent ceases;

2) the interconnection between direct intent, motive and criminal purpose implies that without knowledge of the motive and purpose of the crime, the person's intention to commit the crime cannot be demonstrated, which would make it impossible to incur criminal liability. Therefore, ignorance of the purpose and motive of the crime denotes the absence of intent, which generates the absence of guilt. However, without the existence of circumstances that prove guilt, it is impossible to incur criminal liability.

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