

Crimes which Can Favor the Spread of the SARS-CoV-2 Virus

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ABSTRACT: The criminal law is composed of the regulations which are meant to protect the fundamental social values of a society. Also, this branch of the law has the purpose to apply sanctions to crimes committed and to prevent the appearance of future cases. In regards to the current situation generated by the pandemic, the main social value which requires attention is the right for health protection, to be more precise the possibility of an individual to maintain its health without exposure to dangerous factors. As it is the case in every society, there are persons which are not able to understand the danger represented by a certain phenomenon, a similar case which we could refer to is the drug dealing and the illegal human trafficking. These two examples can be compared to the current global pandemic, since they present similarity in the proportion and frequency, at last, the virus being more harmful at this point. When such scenarios become reality the criminal law provides ways of working in order to solve cases that are represented by the misconduct of certain subjects of the law. Considering the present conditions, analysis and therefore, understanding of the regulations provided by the Romanian Criminal Code is necessary in these times of hardships.

KEYWORDS: Criminal Code, physical health, phenomenon, global pandemic, fundamental social values

Introduction

The moment when humans decided to coexist in order to assure the satisfaction of their basic needs, it was the starting point in which social structures were born. The biggest group is represented by society, working together towards a common goal. As the ancient Greek philosopher Aristotle used to say: “we can see that every state is a determined community and that each community was formed in order to create a determined good. Therefore, all communities tend towards a determined good” (Baumgarten 2015, 11). In this way of thinking, the reason we are born and raised amongst our siblings is to coexist and help each other in living a better life. One can achieve his/her goals by working with other people, thus we can state the fact that we are more interconnected and dependent on others than we would like to admit. Individuality may well be only a fake illusion, taking into consideration that every piece of our lives is in need of a service from another. For example, if we have an issue with the electricity at home, we must bring in a specialist. In the same manner, if a person is facing a criminal accusation, he will have to rely on help from his lawyer. Services make the world move and assure our survival and satisfaction. Not farfetched is the idea that in absence of our current methods of interaction, we would part ways with this world on an individual level in a matter of years. We have left the hardships of nature behind, and created our own reality, making the return to our roots almost impossible.

Jean Jacques Rousseau envisioned the need of humans to gather and form a bigger structure as a “Social Contract”, represented by the loss at some degree of the freedom at the individual level in order to gain security, company, and food (Grigorescu 2007, 32).

With reference to our debated subject, the common goal at this point is to make sure that we work together in order to preserve our health and wellbeing.

The right to live a healthy life is recognized and guaranteed by the Constitution of Romania and the international conventions in which our country is part of (The European Convention of Human Rights, The Fundamental Chart of the European Union).

The tackling with crimes committed towards it is handled by the Criminal Law.

The right for health protection

At a constitutional level, it is stated that the right for health protection is guaranteed and the state has the obligation to implement all the necessary measures in order to maintain a certain level of public hygiene and public health (Romanian Constitution, Article 34).

According to the doctrine, the state of Romania has to offer the legal and institutional instruments in order to see this objective realized, also the public must be permanently informed about any potential danger, and every citizen must have access to public health services (Deaconu 2011, 259).

For a state to be fully functional, the citizens need to be in a good health in order to perform their activities and assure the continuous movement of the economic circuit.

The SARS-CoV-2 represents a new type of threat to public health, at a global level, each state being caught off guard and not knowing how to handle the current spread.

Since not all subjects of the law understand the issue represented by this new planetary disease, they may act in such a way that can endanger the life of others. Based on this knowledge, the Criminal Law needs to make sure all the efforts are met so that any misconduct will be punished and future cases prevented.

Criminal Law – definition and principles

This branch of the law can be explained as that structure of legal dispositions which has the role to protect the social values of a society, by qualifying certain behaviors as illegal, applying sanctions to criminal conducts and restoring the order of law (Mitrache C. and Mitrache Cr. 2019, 22-23).

Criminal law has two main functions, an active one and a passive one.

Firstly, the active role is represented by the act of resolving a social report brought to reality by committing a crime. In this case, the responsible organisms work into discovering the truth about the illegal act and to punish the criminal in accordance with his guilt.

Secondly, criminal law acts as a discouraging factor for any potential illegal intentions. In this manner, one can observe the possible consequences of any misconduct by referring to past cases.

As it is the case for any activity, the criminal law has a series of fundamental principles.

The principles of law can be defined as guidelines with the role of ensuring that any actions taken are in accordance with the scope of a certain branch and remain within the realms of justice, equity and correctitude (Popa 2008, 90-95).

In the Romanian Criminal Code, we can find two main principles: the necessity that incrimination must be legal and the sanctions applied also must be within the legal limits (Romanian Criminal Code, Art. 1-2).

Incrimination is the final result of the entire process, of all the actions taken by the persons responsible for the discovery of the truth and the application of sanctions. It represents the verdict by which an individual can be declared guilty and forced to pay for his conduct.

Being condemned for a crime consists in a serious matter because it will affect a subject of law for the rest of his/her life, not only by the environment in which he will be forced to live in (prison), but also by the reintegration in society after the punishment will be

completed. Therefore it is very essential that the criminal process is completed in accordance with the law and with correct and complete data, in order to pronounce a good verdict.

Sanctions must also be pronounced in accordance with the law. For example, in Romania the punishment by death is not applicable anymore since the Revolution in 1989, thus a judge cannot condemn a criminal to a public execution, the most severe punishment available being detention for life. Also, this principle has in its context the application of a sanction proportionally with the guilt, the punishment of the author cannot be the same as the one pronounced for an instigator.

Crimes which can favor the spread of the new virus

In Romania's criminal legislation there are several illegal acts that can bring harm to public health. However, only one is relevant to the current scenario created by the SARS-CoV-2 virus, that being the thwarting of the fight against a disease.

It can be explained as that illegal act where the measures for the prevention and tackling with a contagious pathogen are not respected and the result is represented by the spread of the microorganism (Romanian Criminal Code, Article 352).

For this illegal act to be properly analyzed, we will have to look into its main components, based on the structure provided by the specialized literature: the objects; the subjects; the objective aspect; the subjective aspect; the punishment (Udroiu 2015, 40-44).

The object of a crime is formed by a legal and a material one. In this case, the main legal object is represented by the social relations which cover the public health, in terms of compliance with special measures to prevent or combat infectious diseases as this type of disease spreads easily among the population, in our case combating the spread of SARS-CoV-2 coronavirus and the secondary one consisting of the victim's wellbeing (Hegheş 2020, 94). Next, the material object relates to the actions taken in order to not respect the measures of prevention.

Subjects are present in every illegal act, some are certain, some are not. In this case, the active subject can be any physical or legal person. The passive subjects are the state and the individuals directly affected (Hegheş 2020, 94).

The objective aspect is formed by the material element (in our case, the act of thwarting), the immediate follow-up (a state of danger for the victims, plus for the fundamental social values), and the causal link (which results from the misconduct itself).

The subjective aspect covers the forms of guilt by which this crime can be committed.

We can safely say that direct and indirect intention is the most plausible form of guilt. Also, the crime can also be completed in a culpable manner.

As per the dispositions, one who commits this illegal act can end up in prison from 6 months to 2 years or to be obligated at paying a fine. In the same way, if the crime is committed in a culpable fashion, the author can be sent to prison for 1 to 6 months or can be forced to pay a fine (Romanian Criminal Code, Article 352).

Other considerations

Even if during these times the state borders are closed and the circulation is limited, authors of this crime can still manage to leave the country in order to avoid being caught. This being the case, the members of the European Union place an important accent on the collaboration and cooperation in the criminal area in order to make sure that the responsible individual is brought to justice (Fuerea 2011, 307).

We are clearly facing a period of uncertainty, but taking into consideration some main causes, it can be determined the majority of persons which can commit the debated illegal act.

Knowing that someone suspected of suffering from the SARS-CoV-2 virus requires to be put in quarantine, thus having his/her freedom reduced and being obligated to respect all the indications of the medical personnel, they are more likely to commit crimes which can lead to the spread of this disease (Cioclei and Dumitru 2020, 514). In this manner, the potential circle of suspects can be narrowed down.

The authorities have the legal and moral obligation to make sure that the pathogen is contained, researched and solved by either new developed treatments or by creating a vaccine.

On the other hand, the citizens must show understanding and guide their actions in such a manner that the virus is limited in its expansion. This is necessary in order to provide the researchers some extra time to be able to find a cure and make it with no risks for the human body.

The interdependence which was presented at the beginning must be used with the purpose of providing us with an advantage, and not the other way around.

Conclusions

Humans chose to live together in order to better their existence and to be able to reach new and higher goals.

At this point in our evolution, we are vulnerable alone and stronger when we stand by each other.

The systems created by our “social pact” have the objective to ensure our safety and means of self-realization.

SARS-CoV-2 represents a danger to our entire species and demands a series of sacrifices when it comes to our rights and freedoms.

For one to achieve his dreams and aspirations, he needs to have his/her health preserved.

In the context of the pandemic, not following the guidelines provided by the authorities and the medics can result in the harm of others and thus the committing of a crime.

The right to health protection is guaranteed at a constitutional level and protected by the regulations of the criminal law.

The system of the criminal law has the functions of punishing and prevention.

In order for potential illegal acts to be discouraged, the sanctions should be amplified.

International collaboration and cooperation is an important aspect which can help ease the gravity of the current public health issue.

Quarantine and isolation should not be seen as punishments, but more as a civic act, a statement by which an individual proves that he cares about his community and that he is willing to help protect the other members.

Delaying the spread of the virus is essential in order for the studies of treatments and vaccines to be done correctly and completely.

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