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**Causes of Supporting. Causes
of Non-Imputability. Delimitations**

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Abstract: The new Criminal Code adopted by Law no. 286/2009, which entered into force on 01.02.2014, introduce regulation supporting causes and causes of non - imputability, unlike the Criminal Code of 1969, as a natural result of the changes the concept offense (art. 15 NCP). Implications knowledge of this concept, which characterizes the essential features of great importance for the activity of judicial enforcement of criminal law, criminal law and for recipients who are subject to its knowledge. This paper presents an analysis of newly introduced institutions Romanian criminal law, revealing the foundation concepts, the innovations and their justification based on legislative experience, doctrine and jurisprudence of other states, and the Romanian state. Result of these experiences is introduced into Romanian Criminal Code provisions designed to achieve a settlement of the concept of crime, its content, in agreement with the appropriate vision on offense. Study of the causes of justification and causes of non-imputability, based on analysis of the legal texts and authors analysis presents possible implications, the entry into force of these provisions. Also, the paper, making a presentation of the concepts may be of interest to both theoreticians and practitioners, but also for those involved in knowledge and reasoning criminal legal institutions (doctoral, masters, students etc.).

Keywords: causes of supporting; causes of non-imputability; anti-juridical; typicality; criminal nature of the act

I. Text art. 18 NPC establishes a new institution in relation to the previous regulation (Penal Code 1969), therefore supporting causes, stating that the act is not an offense under the criminal law committed under any of the cases provided by law supporting (self-defense, necessity exercise any right or performance of an obligation, and the injured person's consent).

The offense cannot exist unless there is missing one of the key features defining the existence of the crime, but when the facts, although it has all these features, be committed in circumstances which give a legitimate purpose, that is allowed in the light of higher requirements the legal system, being removed unlawful nature of the act. (Antoniou, 2010) The evidence system gives expression of needs regulatory objectives.

The doctrine of penal laws as experience has shown that, with the specific requirements of each area (branches) of legal regulation in relation to their social relations in these fields, there are requirements of the legal system as a whole, independent of the specificities of each branch of law.

These common requirements imposed by necessity legislature obliged to protect not only domain - specific social values, and social values common to all branches of law, an expression of the identity of interests of members of a social group.

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Thus, for instance, is common interest of the whole legal system to ensure prompt restoration of the rule of law, with the purpose of any person subject to aggression, the right to respond immediately, with force, to neutralize the aggressor, if the authority is not able to intervene and stop it. Respond, in such conditions, is also a manifestation of the instinct of preservation of any being subjected to aggression, not threatened, by the nature of things, will fight back and try to remove aggression. (Antoniou, 2004)

By recognizing self-defense as a reason supporting, operating *in rem*, the new Criminal Code Criminal Code of 1969 abandoned the concept that warrants self-defense on the idea of the impossibility of determining the free will of the retort. (Antoniou, 2010)

For this reason, the new Penal Code, unlike the Criminal Code of 1969, not assimilate excess due to disorder or fear defense (self-defense improper - art. 26 par. 1 NPC) own self-defense (Art. 19 NPC) considering that in the first case we are in the presence of non imputability causes, and in the second case in the presence of supporting causes. (Voicu, 2014)

Likewise, the person who is in a state of imminent danger, unavoidable and which threatens the life, limb, health or property is entitled to save, even illegal acts. In regulating the state of emergency in the new Criminal Code, which is not significantly different from the previous one is provided, as a novelty, provided the result that is not obviously worse than those that would have occurred if the danger was not removed (art. 20 par. 2 NPC).

This is in agreement with the separate regulation of excess justified by a curfew, which is included in the category of cases non imputability (art. 26 par. 2 NPC). (Voicu, 2014)

As in the case of self-defense, and if the state of emergency, exceeding their limits (excess excusable) is maintained as a statutory mitigating circumstance (art. 75 par. 1 lit. b and c NPC). (Udroiu, 2014)

Similar considerations underlying causes and other evidence; thus, the order of the law expressed interest legal order as a whole, ensuring order and discipline in every way throughout social relations, strengthen respect for the law and to legitimate authority and consent of the victim is justified in the interest of society to respect the will of the recipient law when he consents to personal interests strict action against the individual.

The exercise of any right or performance of an obligation has been settled and the criminal codes of 1864 and 1936 being addressed as the doctrine, law and order hierarchical order.

Criminal Code of 1969 has not provided law and order authority regime order among the causes which exclude the offense, considering that the ordering activity by law cannot be regarded as unlawful and execution of an order in the form prescribed by law has the same effect as law enforcement if illegal orders are incidental provisions relating to abuse, if the person executing the order, and on the instigation, on the person who gave the order.

The conflict between the rule of criminality and the rule allows or even requires committing the crime under the criminal law cannot be solved only by legal means, by law (I. Molnar, *apud* C. Voicu, 2014). Therefore, the new Criminal Code expressly regulates a cause justifying exercise of a right or performance of an obligation (art. 21 NPC).

The anti-legality in such situations is special (Antoniou, *apud* Molnar, 2010). The doctrine was raised incidence case as evidence of the exercise of the law criminalizing the act without legal or illegal (for example, the offense of violation of the regime of weapons and ammunition provided by art. 342 NPC or the offense of deprivation of liberty unlawfully provided by art. 205 NPC) and the offense is

committed in the exercise of a legal right of an obligation imposed by law or by the competent authority will be removed typicality offense.

Also, because supporting operating and if it is satisfied an obligation imposed by law (for example, if police work to maintain public order) and an obligation imposed by the competent authority (eg enforcement of an arrest warrant issued by the court). (M. Udriou, 2014)

Cause supporting the consent of the person injured is intended to reconcile the conflict that can arise between a rule criminalizing an act, on the one hand, and another legal rule, belonging to another branch of law under which a person may have a good, its right, even assuming that his right would be under the protection of a criminal-law rules (I. Molnar, *apud* C. Voicu, 2014)

Existence is one of the reasons supporting evidence that the offense charged is contrary to the right simultaneously. By contrariety law means not determined a position contrary to a branch of the law, but a contradiction with the law as a whole, all branches of law (*anti legality*).

Supporting causes, expressing requirements legal order as a whole unit requirements essentially could not conceive of an act to be considered permissible in an area of the legal system (the right branch) and disallowed in another, it would be inconsistent with interests unit that expresses the whole law, and liable to cause unrest in society.

Supporting reasons are based on the right to perform certain actions and are called objective causes of non-responsibility or removes the illegality or unlawfulness of the act, unlike the cases of non imputability, called non-culpability causes or causes non responsibility subjective - based on lack guilt.

In such a view, the contradiction between the facts and the rule of law, overall, also called anti legality becomes an essential feature of the offense. It exists only to the extent that facts whose features correspond to the facts described in the indictment norm does not entail applying a permissive rules (those supporting) that would remove criminal offense of the offense, although it corresponds to the norm of criminality. (Antoniou, 2010)

Consistency facts incrimination norm is called the doctrine typicality.

Supporting causes are considered: self-defense, necessity, to exercise a right or fulfilling an obligation and consent of the victim. The last two cases are institutions supporting newly introduced in the current criminal law, while the state of emergency self-defense and were regulated by the Criminal Code of 1969 as the causes that removes the criminal nature of the act.

Supporting causes ceases anti legal of action or inaction. The fact remains typical, but given the circumstances in which it was committed, is removed illegal nature, non being offense.

The legislature has provided supporting causes effects *in rem*, they will be extended to all participants. (Udriou, 2014)

If the incidence of supporting causes is excluded as a sentence or educational measures, since the act is not a crime, and application of security measures to the express provisions of art. 107 par. 2 NPC.

In addition to the cases provided for in the general overall supporting the new Criminal Code, there are certain special cases evidence provided in the special part of the new Criminal Code, for example, the provisions of art. 272 par. 2 NPC, that the offense is not influencing asset declarations understanding of the offender and the injured party, which took the offenses for which criminal proceedings are initiated upon prior complaint or who comes reconciliation. (Udriou, 2014)

The new Criminal Procedure Code does not distinguish between the solutions given in criminal proceedings as a result of supporting causes or non imputability causes - art. 16 letter d) NPPC, in both cases the court acquittal and the prosecution has the ranking.

Cases eliminating the criminal nature of the offense and consequently removes criminal liability which cannot be other grounds than an offense (art. 15 par. 2 NPC).

II. Unlike the causes supporting the non imputability causes (art. 23-31 NPC) are circumstances that exist in principle, the person of the offender, if their incidence deed, though under the criminal law and constituted an unlawful activity, no offense.

Imputability is a condition of guilt involves the ability to understand and you, and guilt is a prerequisite for criminal liability (Antoniu, 2010). Thus, you could be guilty of the breach; the offender must be able to understand the significance of his actions or inactions and to be master them. Also, it must be known at the time of committing the crime, states, situations, or circumstances on which the unlawful nature of his business and to be able to comply with the rule of conduct imposed by criminality.

Causes of non imputability remove the third essential feature of the offense, imputability. (Voicu, 2014)

The Criminal Code was previously provided as causes eliminating the criminal nature of the act. These are physical coercion, moral constraint, excess imputable minority perpetrator, irresponsibility, intoxication, mistake, fortuitous.

Cases eliminating the chargeability of the act removes the guilt, including fortuitous, but this, with objective causality operates *in rem*, while the other cases relate closely related conditions or circumstances of the person of the offender, so that effect in personam (Pașca, *apud* Voicu, 2014).

If a situation causes are currently supporting two conflicting social values or interests, of which only one can be saved, if the grounds for exclusion of guilt are an exceptional situation which excludes a reproach to the author for the act typical and anti-legal.

The novelty is the introduction into this category, excess justified as self-defense of exceeding the limits and boundaries of the state of emergency, if such excess is the result of fear or disorder (art. 26 NPC). Unlike supporting causes, permits, the non imputability causes not preclude the safety measures they not put any conviction of the perpetrator. In some cases, the perpetrators are civilly responsible as well. (Pașca, 2010)

III. Supporting reasons and causes of non imputability should not be confused with the general causes which removes criminal liability (amnesty, prescription criminal, no prior complaint withdrawal prior complaint and reconciliation), where the only crime is a crime and its consequences - criminal liability is removed, criminal policy reasons. They are always subsequent time offense, unlike in supporting and non imputability, on which the act is committed by the criminal law in terms of such cases. (G. Antoniu, 2010)

Also supporting reasons and causes of non imputability not confused with punishment cases (with impunity) are special cases, subjective considering offender behavior during and after committing the crime and punishment remove, the act is a crime, but criminal liability is removed.

Causes of impunity may be general and the largest effects are provided in the general penal code (e.g.: divestment and prevention of the result - art. 34 NPC, the crime prevention - art. 51 NPC and special provisions for certain offenses e.g: termination offense (art. 410 par. 3 NPC), withdrawal perjury (art.

273 par. 3 NPC), denouncing bribery (art. 290 par. 3 NPC), denouncing purchase influence (art. 292 par. 2 NPC).

Therefore, the intervention of a supporting causes, we are in front of an act permitted by society against a lawful act, no longer raises any question of guilt. (Antoniou, 2010). In the cases that removes chargeability of fact, it removes the guilt, as noted, imputability is a condition of guilt, and guilt is a condition of criminal responsibility, understood as an obligation of a person to be responsible for the consequences his acts. (Paşca, 2010)

References

- Antoniou, G. (2010). *Explicații preliminare ale noului Cod penal. Vol. I. Articolele 1-52/Preliminary explanation of the new Criminal Code. Vol. I, Article 1-52*. Bucharest: Universul Juridic.
- Antoniou, G. (2004). Cauzele justificative în proiectul Noului Cod penal/Causes of supporting the new Penal Code. *Revista de Drept penal/Journal of Criminal Law*, no. 2.
- Antoniou, G. (2010). Comments. In C. B.-t. G. Antoniu, *Explicații preliminare ale noului Cod penal. Vol. I. Articolele 1-52/Preliminary explanation of the new Criminal Code. Vol. I, Article 1-52*. Bucharest: Universul Juridic.
- Molnar, I. (2010). Comments. In C. B.-t. G. Antoniu, *Explicații preliminare ale noului Cod penal. Vol. I. Articolele 1-52/Preliminary explanation of the new Criminal Code. Vol. I, Article 1-52*. (p. 202). Bucharest: Universul Juridic.
- Paşca, V. (2010). Comments. In C. B.-t. G. Antoniu, *Explicații preliminare ale noului Cod penal. Vol. I. Articolele 1-52/Preliminary explanation of the new Criminal Code. Vol. I, Article 1-52*. (p. 219). Bucharest: Universul Juridic.
- Udroiu, M. & Constantinescu, V. (2014). *Noul Cod penal. Codul penal anterior/The New Criminal Code. Previous Criminal Code*. Bucharest: Hamangiu.
- Voicu, C.; Uzlău, A.S.; Moroşanu, R. & Ghigheci, C. (2014). *Noul Cod penal. Ghid de aplicare pentru practicieni/The New Criminal Code. Application Guide for Practitioners*. Bucharest: Hamangiu.