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## Premeditation to the Criminal Intention

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**Abstract:** In the present study the author is concerned, in the case of the perpetrator, on the states of consciousness and mental states that precede and accompany the external actions, justifying with good arguments the fact that guilt, as actual mental process must be seen as subsequent or after the criminal act, namely after typical elements or features have been identified. Consequently, the author emphasized the fact that these states of mind and of consciousness occurs first, or from the beginning, in an internal deliberative phase, but they are considered and judged in the end, because they are derived from factual thinking.

**Keywords:** intention; preparation; premeditation; deceit; perpetrator

Sometimes *intention* reveals *quantitative* differentiations regarding the *degree of guilt*, underlining *the higher or lower intensity of the intention*; in this regard it is noted the fact that there would be differentiations regarding the *clarity and the certainty of the representation*. Such differences reveal *the immediate deceit* unlike the *premeditated* one, in the first case *the decision to act being prompt*, while in the second case, the perpetrator *deliberates and prepares the commitment of the crime*.

Although in most of the situations the intention appears in its basic form, namely of the direct or eventual intention, there are also hypothesis in which, along the specific elements of the two forms, it is added also a certain psychical state of the author which determines an additional qualification of the intention. Thus, along the intention in its basic form, we can have, *according to the state in which the author is at the moment of the decision making*, and *the spontaneous decision (unpremeditated) or the premeditated intention* (Streteanu, 1999, p. 375).

Thus, it is debatable the fact *if the mental states as well* of the perpetrator could be likely to determine *quantitative differentiations of the intention*. The dominant opinion is that this, most of the times or, *not being under the perpetrator's control*, could not be imputed to him (Dongoroz, 1969, p. 115). In contrast, the premeditated intention (*the premeditated deceit*) or the premeditation, provided in art. 175 lett. a. of the Criminal code (first degree murder) as an aggravating circumstance, it is not defined in the current Romanian Criminal code. However, the French Criminal code on art. 297 shows that it consists of the *plan* (planning), formed *before the action*, of attempting to the person of a determined individual or to the one who will be found or encountered, even if the plan will depend of some circumstances or conditions (Basarab, 1988, p. 181), opinion which we consider to be the most appropriate and fully correct.

In the theory of the criminal law (Dongoroz, 1969, p. 123) and in the judicial practice<sup>1</sup>, it is noted the fact that they could also be differentiated also *after the moment of apparition of the intention*, so that we can differentiate *the intentions calculated in time* from *the suddenly appeared intentions*. In the same context as well, it could also be noted the fact that, after the *time passed after the decision making until the beginning of the action*, the *deceit* could have two modes such as the *deliberatinus (proposito)* deceit and the *repentinus (impeto)* deceit. Between the two, *the first is the deceit prepared in advanced which accompanies the premeditated act – the decoy, the lurch, etc.* - so that, *the exterior manifestation follows after a while after the decision making, during this time interval, the subject reflecting upon the mode of action and preparing the means to accomplish the decision made*, and the second we can find on the crimes committed in a moment of rage, pain, emotion, etc, thesis in which *the action follows immediately after the resolution adopted by the perpetrator. The spontaneous deceit*, it is also shown (Dongoroz, 1969, p. 123), can also be a result of a *passion* but it can also be identified on *calm persons*. In the judicial practice<sup>2</sup> it has also been decided that the *premeditation* means the fulfillment of *two conditions*: on one hand, the decision making which must precede in time the material activity, and on the other hand, this decision, previously made, has to be materialized in certain *activities of preparation of the crime*, such as obtaining information, acquiring the means, seeking accomplices, stalking the victim, drawing the victim into a trap, etc.

Other authors call the *spontaneous deceit* as being a *simple deceit*, and the *premeditated deceit* as being *aggravated deceit*, to this adding as well *the attenuated deceit (the provoked deceit)* (Antoniou, 1976, p. 145). In the same context it is noted the fact that, in the Romanian criminal law, the premeditated deceit constitutes a special aggravating circumstance (art. 175 letter a, of the Criminal code) or at least it can be a legal general aggravating circumstance (art. 75 paragr. 2 Criminal code). Likewise, *ibed ration*, it is brought the example of art. 221-3 of the New French Criminal Code in which *the murder committed with a premeditated intention* it is considered *an assassination*. Also, the premeditation is an aggravating circumstance as well in the case of *the crime of torture* and in *barbaric acts* as well as in the case of some violent crimes (art. 228-8, art. 222-10, art. 222-13.) (Merlè, Vitù, 1997, p. 274).

As a summary of all the previously mentioned facts, regarding the *forms, manners* or *degrees* of the intentional criminal guilt, we consider to be correct the opinion according to which both the use of *the formation mode, the duration of their formation* as well as *of the circumstances in which they are formed* (Biro, Basarab, 1963, p. 136) refers rather to *the degrees of the criminal intention* and not to its *forms or modes*.

As correctly argued, the circumstances of formation for the intention, cannot be considered as its criteria of individualization into *degrees* because it determines, along with other causes, *the mode of formation of the psychological processes from the contents of intention, as well as their development in the consciousness of the subject; they only create those mental states favorable for maintaining it into his consciousness and of making the criminal decision*, yet these degrees and situations must be valued more highly in relation to *the moment of their formation*.

The author mentions, correctly, that only the moment of formation of the intention is a criterion for its distinction into degrees is a unilateral one, because it *marks only the beginning of its existence as a form of guilt*, seen from a final point of view of the criminal action. This criterion places emphasis only on the duration of development of the psychological processes in the consciousness of the subject,

<sup>1</sup> Supreme Court, crim. depart. dec. no. 446 of 1974, in *R.R.D.*, no. 8/1974, p. 70.

<sup>2</sup> Supreme Court, crim. depart. dec. no. 446 of 1974, in *R.R.D.*, no. 8/1974, p. 70.

although, in a correct manner, it is also noticed the fact that it would be only a criterion for distinguishing it unilaterally into degrees of intention (Mircea, 1987, p. 11). While the real quantitative distinctions of the intention, will be made both by *the mode of formation of the processes of its contents*, and by *their duration of existence in the consciousness of the subject*.

The author also notices the fact that, in the literature, it has been mentioned that *the premeditated intention* it is usually *more dangerous to society* than the situation in which it has been committed a similar crime, but with an affective intention. However, contrary to that, the same author notices also the fact that in the literature existed a concept which asserted that *the person who decides more easily to commit a certain crime would be more dangerous (the unpremeditated intention)* than on *the premeditated intention* where there is a *longer* amount of time and in which *the subject decides with more difficulty and with more subjective efforts* upon committing the crime (Mircea, 1998, p. 85).

We appreciate the fact that, on *the premeditated intention*, it is mistaken *the existence of the intention* with *making the criminal decision*. *Premeditation* exists when the decision of committing the crime has been taken in a state of *relative calm, after a longer deliberation* as opposite to the usual mode, regarding the action which will be committed, on the time, the mode and the means of committing it, so that there are more chances to produce the foreseen and desired result, because from more possible options, the author selects *the one which is least risky* for him, more precisely, which is more difficult to be discovered. The premeditated intention (the premeditated deceit) or the premeditation provided by art. 175 lett. a. Criminal code (first degree murder) as an aggravating circumstance, it is not defined in the current criminal legislation. The French Criminal code, in art. 297 shows that it consists of the plan (planning), formed before the action, of attempting to the person of a determined individual or to the one who will be found or encountered, even if the plan will depend of some circumstances or conditions.

Related to its contents, in the doctrine and practice of the criminal law, there were outlined *two points of view*. According to one of them, *the premeditation has an objective character* because it is not enough to pass a longer amount of time between the decision making for committing the crime, its execution and the existence of a *state of relative calm*, but it must exist also *material acts or spiritual acts of preparation of the crime* which make the result to be concrete, namely, if the preparation is missing, the deceit is not deliberate<sup>1</sup> (Oancea, 1999, p. 189; Rîpeanu, 1969, p. 97-98; Grigoraş, 1969, p.152; Vasiliu, 1972, p. 86; Loghin, 1974, p. 127-128; Silaghi, 1992, p. 11; Daneş, Papadopol, 1985, p. 137; Tanoviceanu, 1924, p. 253)

According to the other point of view, which we share as well, premeditation *has a purely subjective character* and consists of *a longer deliberation* than the usual one and *in a state of relative calm*, regarding the action (inaction), time, place and mod of accomplishment, as well as passing of a longer amount of time from *the decision making until its application in order to exist more chances for the action to produce the desired result*<sup>2</sup> (Biro, Basarab, 1963, p.136; Basarab, 1977, p. 55; Niculescu, 1995, p. 48-51). When a decision *is immediately executed it cannot be considered premeditation*, even though, concretely, the development in time of the action would take longer.

*Even though in many cases the intention is exteriorized by material or spiritual preparation acts*, they are not related to premeditation, but are *only means with which its existence is proven* which remains

<sup>1</sup> Plen. Supreme Court, guidance dec. no. 2/03.04. 1976 (unpublished); Supreme Court, c.depart., dec. no.446 of 19.02.1974, in *R.R.D.* no. 8/1974, p.70, which in fact refers to proving the premeditation; dec. no. 1554 of 09.11.1978, in *R.R.D.* no. 2/1979, p. 67; dec. no.181 of 01.02.1975, in *CD./1978*, p. 386; dec. no. 862 of 24.04.1985, in *R.R.D.* no. 2/1986, p.79; C.S.J., crim. depart., dec. no.1047 of 21.09.1990, in *Dreptul/Law*, no.12/1991;

<sup>2</sup> Supreme Court, col. pen., dec. no. 433/1957, in *C.D.* of 1957, p. 432 and the following.

only an internal, exclusively psychological factor. For example, it can be proved that X premeditated the commitment of the crime because he stated, in the presence of more persons, that he will commit the crime without being actually prepared to commit it. Thus, X has in his care a person suffering from *general paralysis* for several years and decides to suppress that person by not providing food and care, which he does, and the ill person dies. In order to commit the crime *it is not necessary to make any act of preparation*, being a crime which can be committed by omission. If it would be otherwise, it would mean that the crime of first degree murder (aggravated) as a result of the premeditation would only be committed by action, which is not accurate.

Also, although there may be specific acts of preparation, we are not in the presence of premeditation. For example, the perpetrator, after he found the garden kiosk burnt and suspecting that the authors are the two victims, he decided to take revenge. After that he went home, armed himself with a hammer and left to the place he knew he would find one of the victims to whom he inflicted a hammer blow and then he pursued him running, up to his courtyard where he continued to inflict hammer blows. From there, the perpetrator went to the house of the other victim and inflicted hammer blows as well<sup>1</sup>.

In another case, the perpetrator, in order to revenge his father who has been hit by one of the victims, armed himself with a knife and came to the place where the witnesses believed that one of them was the man he was seeking. Finding out who was the real culprit he went to his home, after having consumed a quantity of alcoholic beverages, and there he committed the crime.

It has been decided that, *not being in the situation of meditating* regarding the commitment of the crime, upon the time, place and means of revenge and even of the legal consequences related to the *decision made* (Basarab, 1988, p.136), wrongfully the court has characterized the act committed by the perpetrator as being first degree murder<sup>2</sup>. Contrary to the reality, it has been argued that he "did not meditated" since "meditation" (deliberation) is *a moment of the intention*, more so while, subsequently, it is about "the decision made". While a decision can only exist with "meditating". This observation is valid also regarding the "deliberate deceit".

In another case, the perpetrators have agreed, at the suggestion of one of them, to beat the victim, without deciding from the beginning to murder the victim. In this purpose, armed with pieces of wood taken from a fence, they inflicted severe violent blows on the head of the victim causing a head injury which lead to the victim's death<sup>3</sup>.

Sometimes, "*preparation*" can take place exactly during the development of the criminal activity. For example, the perpetrator takes a stone or any other blunt object at hand, with which he strikes the victim whom he has attacked before without using any object, or the provoked person reacts spontaneously and uses an object at hand.

Thus it has been considered that there were not fulfilled the conditions of premeditation because the perpetrator commits the crime in an accidental manner, between the two phases of the conflict passing only a few minutes, "*insufficient time for the perpetrator to have reflected* (underlines M.B.) regarding the commitment of the crime". The motivation is unreal because, if he would have not been meditating upon the crime, then there would have been no intention. In fact, the conflict between the perpetrator and the victim appeared near the house of the perpetrator who, in order to take revenge, entered into his

<sup>1</sup> Supreme Court, crim. dep., dec. no.1554 of 09.11.1978, in *R.R.D.* no. 2 of 1979, p. 67.

<sup>2</sup> Supreme Court, c.dep., dec. no. 493 of 12.03.1980, in *R.R.D.* no.1 of 1981, p. 69; in *C.S.J.*, crim. department., dec. no. 1014 of 09. 06.1993, in *Dreptul* no. 7/1994, p. 99.

<sup>3</sup> Supreme Court, crim. dep., dec. no.97 of 17. 01. 1979, in *C.D./1979*, p. 392-394; in *C.S.J.*, crim. dep., dec. no. 1047 of 21. 09. 1990, in *Dreptul* no.12/1991, p. 104.

home, took a knife and begun pursuing the victim inflicting several blows, but the victim has been rescued by emergency surgical intervention. The crime committed under these circumstances, must be classified as simple attempted murder.

*The premeditation has to be proven*, and this is made, in most of the cases, *with the aid of the preparation acts, but without limiting itself to that, because it can also be proven with other evidences*. Otherwise, it would be limited the principle of freedom of the evidences from the Code of Criminal Procedure (art. 63).

To admit that the acts of preparation – as acts subsequent to the criminal decision making and which constitute evidences – are part of the intention, leads to their being mistaken with the object of probation itself (with the guilt which is to be proven). Also, in this case we would be in front of an exception from the rule of not punishing the acts of preparation, established in our criminal code, which is inaccurate.

All authors, with no exception, when analyzing the forms of the intentional crime, admit that the preparation acts are part of the external phase and take place after the criminal decision making (resolution) which concludes the internal phase, being its final moment. But, everything that it is happening after the decision making, is nothing more than its exteriorization by acts of preparation or execution, yet only the executed ones fall under the incidence of the criminal law.

We consider that, if in a future criminal legislation will be accepted the *objective theory*, it would have to be seen as aggravated not the premeditation, but the preparation of the murder. This way any discussion would cease, and the solution would be legal.

When other crimes than those provided in art. 175 lett. a of the Criminal code, are committed with premeditation, they will be able to be retained by the court as a legal aggravating circumstance (art. 75 paragr. 2 Criminal code). We consider that some crimes cannot be committed *in their simple form* (basic), but only with premeditation, which is, implicitly, a part of the contents of that crime, for example the most of the crimes against the security of the state.

It is necessary to be noted the fact that, on the *premeditated or planned* crimes, in the real practice are not so often encountered. In the opinion of the experts, very carefully planned are the crimes for material profit (54% in the opinion of the scientists and 49% in the opinion of the practical workers) the violent murders (23% and 30%), respectively 6.4% and 4.1% robberies.

Regarding *the incomplete and faulty planning* it is explained by not knowing the circumstances in which it will be necessary to act, incomplete information regarding the crime and the victim, the limited intellect of many of the criminals, the status of stress at the moment of committing the crimes, and others. (Cudreavţev, 1998, p. 53)

Those mentioned above do not refer to the organized crime, whose structures, within which very well trained persons deal with the planning of the operations, and sometimes specific sections are created (Ivanov, 1996, p. 330). Thus, it is obvious that the detection and the destruction of these criminal plans, is one of the most important issues of criminal prophylaxis of the criminal law.

From some data of the *criminology* which studies the process of planning of the crime and of the decision making, it has been evidenced several optimum criteria of the criminal plan which lead into action the perpetrators. Analyzing the cases of intentional murders in planned form, a series of criteria concern: rapidity of attaining the proposed goal 40%, efficacy in 45.5%, success in accomplishing the

planned actions 36.3%, safety and security of the perpetrators 18.12%, and in the crimes of robbery the efficiency of the criminal plan is higher than 80% (Dubovic, 1971, p. 154-155).

As it can be observed, these aspects which study the process of planning the crime and of decision making cannot regard the crimes committed by negligence (Cudrevțev, 1998, p. 55).

Thus, leading himself by certain motives of the behavior, the subject reflects upon a *model of activities* and this *makes possible a certain criminal plan* which takes into consideration the affective aspects and certain impulses for which the motive of behavior is *a momentary feeling of the subjective factor* (Cihartuşvili, 1958, p. 327).

*The planning of the crime* is in turn constituted of a number of operations and stages (Miller, Galanter, Pribram, 1965), and in this respect, it is first relevant *the purpose* of the criminal activity, the object, methods and means of committing the crime, foreseeing or prediction of the eventual difficulties which the author can encounter on committing the criminal act, as well as creating a certain *pattern of future behavioral activities* (Cudrevțev, 1998, p. 48).

Thus premeditation means, *a decision made, exteriorized and maintained a while* under the control of the perpetrator's reasoning, *a state of mind* which is capable *to allow him to reasonably assess the future activity with its consequences*. Therefore, *not only the passing of an amount of time since the decision making until its accomplishment* creates premeditation, but also *the creation of the necessary conditions in order to produce the result, the persistent meditation in cold blood* upon the possibilities of accomplishment and upon the consequences of the decision made<sup>1</sup>.

*The premeditated intention (the deliberated deceit) is the legal aggravating circumstance of the state of premeditation. The premeditated intention is situated on a diametrically opposed position towards the unpremeditated intention. Thus, in the case of the premeditated intention, the author takes the decision in a state of relative calm, and until the moment of its execution passes a longer amount of time. Of course, for the duration of this time interval, the criminal decision is maintained and even consolidated.*

The commitment of a crime characterized by premeditated intention means, usually, both the analysis of all variations of being committed as well as its preparation, regardless if the preparation takes the form of some material acts – acquirement of instruments, or intellectual – collection of information. It should be noted, however, that *the premeditation is not conditioned by the performance of some acts of preparation*, because it is possible also in the case of some crimes which are not susceptible of such acts. For example, in the case of a crime committed by omission - the murder of a newborn by the mother by not feeding it – it is not possible to perform material acts of preparation, by the crime is usually premeditated.

Therefore, it can be asserted that the acts of preparation do not consolidate the existence of premeditation, instead they help proving it<sup>2</sup> (Mantovani, 1988, p. 340).

The premeditated intention draws an aggravation of the criminal liability in comparison to the intention in its basic form, proving a more pronounced effect upon the value protected by the criminal law. In our legislation, the premeditation appears as a legal aggravating circumstance in the case of murders, but it can be retained as legal aggravating circumstance also in the case of other crimes, according to art. 75 paragraph 2 Criminal code.

<sup>1</sup> Supreme Court, crim. col., dec. no. 2848 of November 23<sup>rd</sup> 1967, in *R.R.D.* no. 4 of 1968, p. 173-174.

<sup>2</sup> On the contrary, G. Antoniu, *Comentariu / Comment*, in *Codul penal comentat 2 The Criminal Code Commented 2*, p.82.

We cannot agree to the assertion made by some authors in our doctrine, that both the *direct intention* and the *eventual intention* can take the form of the premeditated or unpremeditated intention. For example, in the state of provocation (characterized by a spontaneous intention) it can be committed not only a murder with direct intention, but a murder with eventual intention as well (Streteanu, 1999, (1), p. 375).

As far as we are concerned, we support the opinion according to which the two forms are specific only to the direct intention (Basarab, 1988, p. 182). We consider this to be correct based on the fact that specific to the direct intention is the volitional psychological process - the desire. And that is why the subject premeditates before committing the crime, exactly in order to satisfy his pursued wish or will, namely for accomplishing his own purpose or necessity.

On the other hand, the situation of the eventuality is a psychological state of insecurity or hazard manifested by the perpetrator, or the perpetrator premeditates, plans the commitment of the crime exactly in order not result from its achievement other undesirable events for him.

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