

The Fait Accompli Crime

Maxim Vasile¹

Abstract: In this paper we have presented the concept of crime fait accompli result that helps to complete typicality nature of the act provided by the incrimination rule. Although it is a subject debated in the prior doctrine and in the contemporary one, the importance of this concept is undisputed, because the moment of consuming a crime marks the time of the final generation of the socially dangerous outcome, and also the time that we have in mind on solving several problems, such as: determining the applicable criminal law in transitional situations, the calculation the period of limitation of criminal liability, the incidence of amnesty or **cleremency law, etc.**

Keywords: Preparatory act; attempt; dangerousness; committing the offense

1. Introduction

The crime fait accompli is a typical or perfect form of the crime, this being done in the final moment of execution and represents the full realization of the crimes' contents (Dongoroz & alli., 2003, pp. 121-122), so the performing of the specific objective side of that crime. Unlike the attempt, which is an atypical form of the offense, the consumed offense is its typical form under which is entirely performed the objective side and therefore there is a perfect overlap with its subjective side ever since the moment of the criminal resolution.

In other words, crime fait accompli is the fact that presents the content of a certain crime in its typical form. Since the form of the consumed of crime is the usual form of offense, the legal provisions on regulating social defense relations naturally refers to it. (Bulai & Bulai, 2007, p. 438)

Crime fait accompli has the highest degree of dangerousness in comparison with the other forms met in inter criminis, preparatory acts and attempt, in consequence it always attracts criminal liability of the criminal. (Mitrache & Mitrache, 2012, p. 273)

¹ BA, "Danubius" University of Galati, Romania, Address: 3 Galati Boulevard, 800654 Galati, Romania, Tel.: +40.372.361.102, Fax: +40.372.361.290, E-mail: manvonmaximus@yahoo.com.

2. The Moment of Consuming the Crime

In order to know that in a certain case we are or not in the presence of a crime fait accompli, it is necessary to research if to a certain material activity corresponds the result, social dangerous consequence foreseen by the incrimination rule. Considering that some offenses are of danger (formal) and others of outcome (material), it means that also the moment of consuming these crimes will be different. (Corlățeanu, 2007, p. 86)

Consuming in case of result offenses will occur at the time when consequence socially dangerous occurs described by the incrimination rule.

Thus, in case of offense of murder, committing the offense does not occur when hitting the victim, but when its death was actually produced. (Streteanu, 2008, p. 665)

In the crime of fraud provided by art. 244 par. (1) Penal Code, its consumption occurs at the time of damage. In other words, the fraud is consumed when the action of the author managed to persuade the misled to take a patrimonial provision through which a situation detrimental to him was actually created. Thus, in practice it was retained the existence of the offense of fraud in consumed form and not attempt, when the authors presented themselves at Department of Labor and Social Protection with false certificates that revealed that they did not possess agricultural land in ownership in order to thus benefit from unemployment benefits. (Ivan & Ivan, 2013, p. 213)

In case of charge of theft, Romanian criminal law adopted the theory of appropriation, so if the material element of the crime is made up of several acts of enforcement, the offense is consumed when the action of theft has been completed and the goods left from possession of the owner or the possessor and passed within the grasp of the offender. (Corlățeanu, 2007, p. 88)

Consuming danger crimes differs as they are of abstract danger or concrete danger.

Thus, abstract danger crimes are consumed when the action or inaction described by the incrimination rule is achieved, whereas at that time the state of danger for the protected social value is also produced. (Streteanu, 2008, p. 665) For example: non-denunciation crime foreseen by art. 266 Penal Code, which is consumed when the author acknowledged committing a crime against life or had as a consequence the death of a person, but does not immediately, informed the authorities¹.

Regarding the concrete danger crimes, their consummation takes place when the state of danger effectively occurred; this moment regularly coincides with the moment of finishing the execution act².

¹ Law no. 286/2009 on Criminal Code, published in the Official Monitor no. 510 of 24 of July 2009.

² *Idem*, p. 665.

It is also necessary to know also the moment of consuming complex crimes; thus, in case of these crimes for consuming the offense it is also necessary the production of both main and secondary action result.

For example, robbery crime is consumed when both the activity of hitting the victim and taking the goods aimed by the author are achieved.

Obviously it cannot be retained a consumed complex crime when, even if the secondary action was consumed, the main one, aimed by the author was not consumed. (Costin, 2007, p. 94) Consequently, complex offenses are consumed when the main action is achieved through the secondary action which, in some cases, is absorbed in the complex crime. (Corlăţeanu, 2007, p. 89)

For instance, in practice it was shown that the degradation of the harmed victim as a consequence of the violence exercised over him by the author in his attempt to insure his way out is a robbery complex crime in whose content the destruction act is absorbed¹.

3. The Importance of Establishing the Moment of Consuming the Crime

Once noticed the consuming of the crime, the *fait accompli* is the only form of that crime that can be retained for the author. Therefore, if the author previously committed an attempt of the same offense, for him only the *fait accompli* crime can be retained, not the attempt of the same crime, if he achieved the act based on the same criminal resolution. (Bulai & Bulai, 2007, p. 439) Thus the attempt is absorbed by the consumed crime done by the same author. (Simionescu, 2013, p. 28)

Establishing the moment of consuming a crime has a special legal relevance. Firstly, the moment of consuming a crime marks also the moment of definitive production of the socially dangerous result; secondly, the date of committing a crime has a practical interest on solving several issues, as: establishing the applicable criminal law in transitory situations, calculation the limitation period of criminal liability, the incidence of amnesty or clemency law etc. (Boroi, 2010, p. 191)

4. Delimitation of the *Fait Accompli* from the Attempt

Since consumed offense corresponds perfectly to the abstract model of incrimination rule delimitation from the attempt generally does not meet difficulties. For example: if an offense of murder is enough to verify whether the

¹ The Supreme Court, Criminal Division, Decision no. 3411/2000, in (Ivan & Ivan, 2013, p. 189)

victim died or not to establish the existence of an offense consumed or attempted murder.

There are also situations when the delimitation of the consumed crime has some difficulties, the best known example being the one of theft crime. Thus, in the case of this crime, a perfect attempt is not possible, the act being consumed when the action of taking the good is finished.

In criminal doctrine several theories on the time of consumption the charge of theft have been developed. Among them we mention: the theory of moving goods, according to which the theft is committed by moving goods from the place where they are located; ablation theory, according to which the theft is consumed when the author transports the asset in the place he wishes to hide. Romanian criminal law consecrated on theft the theory of appropriation. Thus, according to this theory, the theft is consumed when the good left the possession of his legitimate registered keeper and actually came into the possession of the author.

In judicial practice the offense of consumed theft was retained also when the offender after he broke into a shop, took a sum of money which he hid it in his pants pocket, being caught by the police before leaving shop. (Streteanu, 2008, pp. 667-669)

In one case the Court of Appeal of Bucharest has decided that it was an offense of consumed theft in the case of defendants who entered the premises of a company to steal aluminum bars. They were surprised by police while they were on metal scaffolding, dismantling bars in the immediate vicinity being found several aluminum components already dismantled¹.

In some cases theft can be consumed even if the owner would theoretically have eye contact with his good. For example: the damaged person sees the author of the crime while leaving with his good, recognizes the good as belonging to him, but no longer has it. It is irrelevant as this persists, the act being consumed even if the author was restrained by bystanders or police before leaving with the good of the sight of the victim, the theory of appropriation being fully applicable.

We also note that, once consumed, the offense cannot go back in one of the previous forms (*preparatory act or attempt*). (Streteanu, 2008, pp. 669-670)

5. Conclusions

Crime fait accompli is a typical form of crime, being performed in the final moment of the execution and its effect is the full achievement of the crime contents.

¹ Bucharest Court of Appeal, Criminal Section II, Decision no. 1409/2000, in (Streteanu, 2008, p. 669)

Crime fait accompli has the highest degree of dangerousness in comparison with the other forms met in *inter criminis*, preparatory acts or attempt, so it always criminal liability for the criminal.

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