

3. BACKGROUND KNOWLEDGE

3.1. Offence structure and application of provisions

This section will provide an overview of the offence structure, i.e. conditions which must be fulfilled in order to pass a guilty verdict and the steps which must be taken to verify whether those conditions have been fulfilled in a case or not.

Offence structure or the conditions of conviction

A court shall convict a person if he/she has committed an offence.¹ However, establishing whether a person has committed an offence is not a single-question issue. The legal concept of offence is often much more complex than it may appear. Besides the question of whether a person committed an act (e.g. took something that belonged to another) or caused a consequence (e.g. did something which led to someone's death) specified by the law, it should also be established whether he/she did this intentionally and whether there are grounds for excluding responsibility (e.g. self-defence).

Thus, an analysis of the *elements of an offence* must be carried out first in order to check whether a person's act met all the objective and subjective criteria set out in the law. This must be followed by a *responsibility check*, i.e. verification of whether there were circumstances which may exclude the person's responsibility.

For the sake of simplicity, this text uses the example of inducing (encouraging) a minor to drink alcohol as a crime that has to be analysed following the offence structure. Everything described here, however, applies equally to any crime punishable under the Rome Statute.

Elements¹

Objective elements

Objective elements are the actual circumstances which establish whether the specific person has performed the *specific act*.

Offences are divided into crimes and misdemeanours. As the cases in this simulation only involve the more serious of the two, i.e. crimes, the term „offence“ may be replaced with „crime“ in this context.

The basic elements of an offence are act and consequence. An offence always involves an act. For instance, manslaughter involves an act which results in another person’s death. Even if the act is not specified in the elements (eg causing serious health damage under Estonian criminal law), the act of the person must always be established (eg „stabbing in the shoulder“). Under the law, only a bodily movement of the person himself/herself shall be considered an act. Thus, if person A, who is standing with a knife in hand, is struck by person B and falls on person C who receives a stab wound, A has not performed an act and cannot be convicted for causing bodily injury.

Besides act and consequence, the elements of an offence often include several additional conditions which the offender, object or the act itself must fulfil.

Section 182 of the Estonian Criminal Code provides: „An adult person who induces a person of less than 18 years of age to consume alcohol shall be punished by a pecuniary punishment or up to one year of imprisonment.“ This Section provides the following objective elements: 1) the subject is an adult 2) the object is a minor 3) the act: one person induces another to consume alcohol.

The elements of this example include a specific act which must be performed, i.e the act of inducing. Consequence is not required, i.e. conviction does not depend on whether the act of inducing (e.g. persuading the minor) actually led to a consequence (the minor consuming alcohol). Adulthood of the inducer is an additional criterion for the subject and minority is an additional criterion for the object. Thus, a minor cannot be convicted for inducing another minor or an adult to consume alcohol.

1 Delictual elements according to the Rome Statute are given below. Estonian criminal law uses a three-tier structure: elements, unlawfulness and guilt.

Subjective elements

The subjective aspect indicates the person's attitude towards the offence, in other words, what was going on in his/her mind during performance of the act. Although this is not specifically provided in each section of the law (as this would not be practical), the objective criteria of each section are followed by a subjective criterion: intent. This means that in order to convict someone of an offence, the intentional nature of the act must be established.²

However, the legal definition of intention differs from its common meaning – that the offender specifically wanted to cause damage to the victim. Intent is also present when a person at least understands that his/her act may result in a specific consequence. This applies even if the person performing an act hopes that such consequence will not occur or is expecting another, positive result.

Intent must be present in all the objective elements. For example, if a person induces another to consume alcohol while assuming that the other person is an adult, he/she has not intentionally committed a Section 182 offence – the intent does not cover the element of object's minority.

Another example: a person grabs another person's suitcase from an airport, thinking it is his/hers as it looks similar to his/her own suitcase. The objective criteria of theft may have been fulfilled, but as there is no intent, the person shall be acquitted.

On the other hand, let us imagine that someone sets fire to a house while assuming there may be someone inside. In that case, if someone in fact dies in the fire, the manslaughter has been intentional – the arsonist was aware there might be someone inside the house.

Another important aspect of intent is that the perpetrator does not need to know that the act is a punishable offence. Intent means the person meant to perform the specific act, not that he/she actually wanted to break the law. I.e. wanted to set the house on fire or have the minor taste some alcohol.

² This does not mean that a person committing an offence by accident, i.e. without intent, could escape punishment altogether. Many categories of offences are also punishable in case of negligence, i.e. no intent required. However, the Rome Statute does not cover such offences and intent must always be established in order to convict someone under the Statute.

Responsibility

The fact that someone has performed an act fulfilling the elements of a crime does not automatically entail that the person can be punished for the act.

It is therefore necessary to establish the lack of circumstances which may exclude responsibility. This does not imply that all such circumstances should be analysed – only those circumstances need to be covered which might exist in view of the facts (i.e. if it is clear that a person was not coerced to perform an act, it is not necessary to analyse possible duress).

There are two types of circumstances which exclude responsibility: circumstances which exclude the unlawfulness of an act and circumstances which exclude a person's guilt.³ In the first case, an act fulfils the objective criteria of a crime but is permissible due to special circumstances, e.g. self-defence.

Circumstances excluding guilt are those which exclude the person's responsibility due to his/her personal characteristics (i.e. the person is mentally incompetent and cannot be held guilty). Such circumstances are usually the person's age (less than 14 in Estonia, less than 18 under the Rome Statute) or mental disorder.

For example, A is walking down an empty street and encounters B who who flashes a knife and yells „I will kill you!“. A punches B in the face and runs away. In this case, both the objective and subjective circumstances of physical abuse have been met, but A cannot be held guilty because of self-defence.

Conclusion

There are 3 steps that need to be taken in order to be convinced that someone should be responsible for a crime: the material element must be fulfilled, the mental element must be fulfilled and there must be no grounds for excluding the responsibility of the person.

This is true for almost all national legal systems and is also the correct way to approach crimes under the Rome Statute. The material elements of crimes can be found in articles 6, 7 and 8, the mental element is described in article 30 and several grounds for excluding responsibility are found in articles 31 and 33.