

SUMMARIES
of reviewed publications
of Asst. Prof. Krasimir Nikolov Manov, PhD

I. *Krasimir Manov (2022). CRIMINAL MENTAL IMPACT*, Sofia, Published by Foundation for Bulgarian Literature, scientific editor - Prof. Dr. Plament Panayotov.

The monograph takes a comprehensive look at the mental impact brought to bear during a criminal activity. It lends a different perspective to concepts of criminal law and individual categories of crime and addresses the nature of crime as a socially harmful activity through the prism of the interaction between the offender on the one hand, and the victim and other individuals, on the other. The monograph comprises an introduction, three chapters and a conclusion, and has an annotated table of contents and exhaustive bibliography. It is 254 standard pages long (1,800 characters per page) and the printed copy has 268 pages.

The **INTRODUCTION** sets out the object of scientific enquiry, i.e. to discuss certain criminal law concepts from a specific angle that has previously not been explored in the scientific literature and the case law.

In the majority of crimes the perpetrator impacts on another individual or a group of people, be it physically or mentally. When mental impact is exerted on other people, the criminal offence may relate to a number of specific features and circumstances that are not always listed amongst the elements of the crime and are thus frequently neglected in the theory and practice of law. Currently, there is no systematic approach in the theory and practice of criminal law to the study of these hidden aspects of the mental impact during a criminal activity.

The monograph analyses the elements of a crime involving mental impact from a more different angle, identifies problem areas and makes the case for rethinking and breaking away from the one-size-fits-all approach to the analysis and application of the elements of such crimes.

CHAPTER ONE: MENTAL IMPACT AND SOME CONCEPTS OF CRIMINAL LAW reviews some concepts of criminal law in terms of their specific manifestations or interconnections upon exertion of mental impact.

Mental impact is construed as any impact on an individual which affects in a certain fashion the mental processes that take place in his/her mind. These are the processes related to thinking, emotions, motivation and behaviour. Such mental aspects are considered, at least in certain cases, relevant to the criminal law features of an offence.

§ 1.1. looks into the **role mental impact plays in affecting social relations being the object of crime**. The case is made for splitting mental impact into two main categories: **1. direct mental impact**, i.e. where the perpetrator's actions are directly perceived, and **2. indirect mental impact** - where the result of the offence is perceived and this generates certain mental processes in the perceiver.

§ 1.2. analyses the specificity of **the subject of crimes involving mental impact**. In the event of direct mental impact, the offender impacts directly on the perceiver. The latter, i.e. the victim or a third party, is the subject of the crime. Analysis has been carried out of specific cases where the elements of a crime do not indicate initially any mental impact.

§ 1.3. deals with the **actus reus** in cases of mental impact – the way in which criminal offences may influence accordingly the mental processes in other individuals. The matter clarified here is which kind of actus rei can lead to a transfer of information that will give rise to or alter the perceiver's ongoing mental processes. Actus rei have been classified according to the sensory reception channel - eyesight, hearing, smell, taste, touch.

The concept of hidden mental impact has been defined to cover cases where there is mental impact but it is not mentioned as an element of the crime. Analysis has been made into the role of physical impact as hidden mental impact; the use of force or violence - as hidden threat. The possibility of omission being an instrument for mental impact has also been explored.

§ 1.4. studies the **criminal result in crimes involving mental impact**. Indirect mental impact requires the perception of something caused by the offence itself. This perception is separate from the actus reus as such and is therefore a result of the crime. This is true even if the elements of the crime foresee the occurrence of a certain different result.

§ 1.5. analyses the **classification of crimes into conduct (formal) and result (material) crimes**. It has been established that different criteria may be mixed and it would make more sense to employ two separate classifications. One covering the categories of *conduct and result crimes* depending on whether the offence itself provides sufficient grounds for its own criminalisation, and a second classification dividing the compositions of a crime into conduct- and result-related, depending on whether the elements of a crime foresee a criminal result other than the offence itself, i.e. a distinction should be made between the following two concepts – 1) conduct or result crimes, and 2) conduct- or result-related compositions of a crime.

The conclusion arrived at is that one may speak of conduct crimes only by way of exception, and when it comes to crimes involving mental impact – not at all.

In crimes involving mental impact the result is, at the very least, the perception of the offence by another individual and possibly, the adoption of a certain behaviour afterwards or generation of certain mental experiences.

§ 1.6. approaches **the corpus delicti** in the light of **mental impact**. Offences involving mental impact may be divided into two main groups: 1) offences motivating the perceiver to adopt a certain behaviour, and 2) offences causing certain inner experiences. The analysis leads to the conclusion that any offence involving mental impact has direct bearing on those specific aspects that are related to the normal operation of mental processes leading to free will and a choice of behaviour suited to the individual needs or that provide a framework for the exercise and the guaranteeing of strictly personal rights and legally enshrined values related to certain inner experiences of the individual.

§ 1.7. explores the possibility of delivering **restorative justice** in addressing the responsibility of a perpetrator. On the one hand, this issue has been viewed in the context of further developing the proposed new approach aimed at a more flexible interpretation and application of the criminal code. On the other hand, an attempt has been made to identify a larger category of individuals other than the primary victim, who may have experienced the mental impact of the crime, be it directly or indirectly, and should therefore be involved in the conflict resolution process. As response to a crime, this approach, coupled with the future adoption of restorative justice as a complement or an alternative to criminal liability, would contribute greatly to reducing the overall level of conflict and restoring society's sense of justice.

CHAPTER TWO: MENTAL IMPACT AND SOME GENERAL CONCEPTS OF CRIMINAL LAW looks into the specific aspects of these concepts from the viewpoint of mental impact.

§ 2.1. approaches the issue of **guilt formation** and, more specifically, the prediction of the social harm of a criminal offence in different scenarios involving different types of guilt. Special importance has been attached to predicting the behaviour of other individuals affected by a crime's mental impact, where such behaviour is the result thereof.

§ 2.2. analyses the concept of **non compos mentis victim**, which is relevant to the mental impact exerted on the victim of a crime. The usage of this concept has been put into a historical perspective and its content has been clarified in the light of the current Penal Code. It has been argued that this concept is not linked to guilt formation unlike the concept of unsound mind specified in the general provisions of the Penal Code. When the special provisions refer to non compos mentis with respect to the victim of a crime, its interpretation has to be readjusted for it to be construed as "an individual who does not understand the nature or significance of what has been done or is incapable of controlling its actions".

§ 2.3. has been dedicated to specific issues concerning **complicity**. It sheds light on the specifics of the mental impact exerted by or on an accomplice. Some special cases raising theoretical and practical issues have also been analysed.

§ 2.4. looks into the so-called **indirect perpetration**. The meaning of this concept has been put into the historical perspective of the theory propounded by academician N. Dolapchiev in respect of the 1896 Criminal Law. It has been concluded that this legal construct is incompatible with the existing legal framework of perpetration. Possibilities have been explored to solve the problem in different cases and proposals for legal amendments have been made.

Aspects of mental impact may be observed in certain cases in all circumstances excluding social danger, guilt, wrongfulness or punishability of the act. These have been dealt with in § 2.5, which analyses certain issues related to **actions taken by an undercover agent, execution of an illegal official order and duress targeted at the victim of a crime**. Analysis has been made of the mental impact exerted by or on the doer under the above circumstances. Criticism has been levelled at the regulation in the Penal Code, more specifically, the new Art. 16A thereof.

CHAPTER THREE: CRIMES INVOLVING MENTAL IMPACT systematises crimes according to mental impact-based criteria and analyses the main categories of crimes or actus rei in the light of this classification.

A **systematisation** of crimes according to the mental impact involved has been presented in § 3.1. Depending on whether the impact on the perceiver is exerted during the perpetration of the crime itself, through the actus reus itself or indirectly, i.e. via the perception of a certain result of the offence, crimes can be divided into two broad categories: **1. direct mental impact crimes**, and **2. indirect mental impact crimes**.

Depending on the intended or actual result of mental impact, i.e. the manner in which it influences the perceiver, there are also two broad categories of crimes **1. motivating crimes**, where the individual at the receiving end of mental impact is motivated to adopt a certain behaviour, and **2. crimes causing certain mental states or experiences of the perceiver**. The first category can, according to the kind of behaviour motivated, be subdivided into: a) **crimes motivating subsequent criminal or other illegal activities**, and b) **crimes motivating another kind of behaviour**.

The next paragraphs look at the various main categories of crime by actus reus, which involve mental impact, without purporting to be exhaustive.

§ 3.2. looks into different types of actus rei which involve **mental impact motivating the commission of a crime or another illegal activity**. Amongst the specific issues discussed are the content of concepts used in the Penal Code and their differentiation from similar concepts, the specifics of the mental impact

exerted upon the commission of the relevant crime. There are 10 sections that analyse the following:

1. **Persuasion** – in the broad and narrow sens of the term;
2. **Abetting and openly abetting** of a crime;
3. **Preaching** (the meaning of this concept has been clarified and it has been differentiated from incitement and explicit incitement);
4. **Procuring** – the content of this term has been specified;
5. **Directions to do something** – this section discusses a group of crimes with similar actus reus, as well as their relation to the provisions of Art. 16 of the Penal Code;
6. **Setting conditions for a third party** – this section sheds light on practical and theoretical issues concerning a group of crimes, and mostly the mental impact on individuals for whom the offender sets certain conditions;
7. **Bribery** – this section looks into the specifics of the various forms of actus reus in active and passive bribery in the light of both the interconnection between the two types of bribery and also the mental impact involved in them. It also analyses the main aspects of **provocation** and **extortion in bribery** that are relevant to mental impact and to the culpability of a perpetrator;
8. **Provocation of a crime**;
9. **Intermediation in a criminal activity**;
10. **Criminal deals** – this section discusses a number of topical issues arising from a large number of crimes where the actus reus is the conclusion of a deal or a component of a deal involving a declaration of intent addressed to another individual.

§ 3.3. studies categories of crimes with actus rei involving exertion of **mental impact motivating another individual to adopt subsequent behaviour which, in itself, is not criminal or illegal**. In certain cases motivating what is generally considered to be legal behaviour may be unlawful and socially harmful if it represents an encroachment on an individual's freedom of choice to behave in a certain manner depending on their needs and judgement and to act or not to act as they see fit. The main methods of impact identified by the legislator as significant from the standpoint of criminal law have to do with fraud and duress.

Four sections have been dedicated to the following categories of crime according to the specific method of mental impact:

1. **Fraud, deception** – this part discusses the specifics of mental impact in the various forms of fraud, including other crimes committed in a fraudulent manner in addition to the ones referred to in the special provisions of the Penal

Code (Chapter 5, Section IV *Fraud*). It also talks about the need to align criminal law with modern computer-based management and control processes with no involvement of a human being that may be deceived;

2. Document crimes – an analysis is made of the specifics of crimes involving documents both as subject or as a crime tool, from the perspective of mental impact. From the standpoint of criminal law, a document used as a crime tool is generally intended to mislead with respect to certain legally significant facts, whereas a document being subject of the crime may basically be considered to be prepared for subsequent deceptive use;

3. Crimes involving misstatements – this section analyses the specifics of mental impact in a number of crimes involving provision of false information, including concealment of necessary information;

4. Duress – this section is about a large number of crimes involving duress as the most common criminal technique to motivate an individual to perform a certain activity. It looks at the different forms of duress - physical violence, threats and abuse of authority. Special attention has been paid to threats, which are viewed as mental violence exercised in different ways in a large number of crimes. The features of threats common to various crimes have been identified. Physical violence has been shown to be hidden mental impact in essence.

§ 3.3 has been dedicated to **crimes involving exertion of mental impact causing certain mental or physiological states or experiences.**

This part discusses categories of crime where mental impact is exerted on an individual not to motivate him/her to adopt a certain subsequent mode of behaviour, but rather to give rise to certain mental processes - thoughts, emotions, feelings, states, etc. In a large number of crimes this is possible with certain forms of actus reus. This increases considerably the elements of a crime that fall into this category. This is why, only the more significant ones have been analysed.

There are five sections covering the following categories of crime:

1. Crimes against honour and dignity. Special attention has been paid to defamation and the specific issues arising in respect of the impact exerted by the perpetrator of such a crime.

2. Crimes provoking fear. This section looks into crimes that do not involve any threats to motivate the victim to adopt a certain subsequent behaviour, but rather focus on the very provocation of fear and the resultant special mental state. The content of the concept of fear and its relationship with similar concepts have been discussed. Special attention has been given to terrorism and the theoretical and practical issues associated with it.

3. Mental impact through particular treatment or placement under specific conditions. This section identifies other elements of crime provoking specific unintended mental states and experiences of the victim, which inevitably affect the victim psychologically. The crimes relevant here involve **cruel or inhuman treatment, illegal confinement, servitude-oriented human trafficking**, etc.

4. Mental impact through physical actions. This section deals with crimes involving specific mental experiences of the victim, which are basically the result of physical actions.

It covers crimes with such actus rei as **torture, hooliganism, xenophobia and similarly motivated crimes, engaging or using the victim for the purpose of particular activities or actions** - e.g. some sexual offences, etc. Attention has been given to the specifics of mental impact in some sexual offences and what might provisionally be called *demonstration-oriented/show* crimes where either the criminal activity itself is intended to be displayed to a target audience or the end result, in the case of hooliganism, for instance.

5. Causing physical consequences through mental impact. The issue raised here is rather specific and has hitherto not been analysed profoundly in the scientific literature, i.e. the possibility for the constituent elements of a crime to include instances where the victim also sustained physical damage as a result of the mental impact. This may be health issues, death, etc. Exposure to stress factors has also been discussed here, mainly in its relation to crimes affecting health or life, as well as crimes involving threats/discrediting.

II. Krasimir Manov (2021). Preaching as Actus Reus of Crimes Under the Bulgarian Criminal Code. In: Scholarly Readings: Law and Religion. Sofia, University Press "St. Kliment Ohridski", 2021, 368-376.

The object of study are the provisions of the Bulgarian Penal Code, criminalizing activities for which the legislator has used the term "preaching". It concerns a form of mental impact from the perpetrator of the crime on other persons and is usually associated with religious rhetoric. The article analyses the meaning of this term used as a criminal law concept, discussing the tradition of its use in Bulgarian criminal laws in the past, the historical influences of this tradition and the context of its use in the current law. An attempt has been made to identify problems that arise in practice in the interpretation of these legal norms and to offer a solution to the corresponding issues.

III. *Krasimir Manov (2019). CRIME AS PUNISHMENT AND PUNISHMENT AS A CRIME. SOME THOUGHTS ON THE NEED FOR ALTERNATIVE MEANS OF REACTION AGAINST CRIMES* – In: Scholarly Readings: Sanctions in Law. Sofia, University Press “St. Kliment Ohridski”, 2019, 391-402.

In the context of a crisis of confidence in the State institutions and the judiciary, the tendency towards self-settling conflicts displaces justice. The aim is to punish the other party in the conflict by means of criminal assault, and the imposition of punishment by the court is seen as a tool to deliver a corresponding amount of suffering as was caused by the crime. A way to return the sense of fairness is that the parties to the conflict are returned in the process of resolving their own conflict through the methods of restorative justice. The acting Law on mediation is still not applicable for criminal cases. The article discusses the problems and opportunities that arise before the introduction of the means of restorative justice in criminal proceedings. The question of the admissibility of the mediation is usually considered in the light of the criminal procedure, but here the emphasis is placed on the criminal law perspective.

IV. *Manov, K. N. (2018). MENTAL IMPACT IN BRIBERY AS GROUNDS FOR EXEMPTION FROM CRIMINAL LIABILITY ACCORDING TO THE BULGARIAN CRIMINAL CODE* – In: "Topical issues of anti-corruption: the view of the scientist and practice": Materials of the International correspondence scientific-practical conference. Казахский гуманитарно-юридический инновационный университет, 2018, 23-26.

The article deals with the circumstances that may lead to exemption from criminal liability for bribery and are related to the mental impact exerted by the opposing party in bribe - blackmail for bribery and provocation to bribery - according to the Bulgarian Penal Code.

V. *Krasimir Manov (2017). THE INTERDEPENDENCE BETWEEN THE PRINCIPLES OF CRIMINAL LAW AND PRINCIPLES OF PENAL POLICY* – In: Scholarly Readings: Legal Norms and Legal Principles. Sofia, University Press “St. Kliment Ohridski”, 2017, 323-332.

The principles of penal policy and the principles of criminal law have different nature, but they are often mixed unreasonably. Although they are interlinked and influence each other, it is certainly necessary to distinguish them precisely in order to prevent an unjustified influence on law enforcement contrary to the rule of law.

VI. *Krasimir Manov (2017). ON THE INDIRECT PERPETRATION OF CRIME* - In: *Scholarly Readings in memory of Venelin Ganev and Nikola Dolapchiev*. Sofia, University Press “St. Kliment Ohridski”, 259-277.

The article tackles with the legal issue of the indirect perpetration of crime. The problems discussed by prof. N. Dolapchiev in his fundamental monography, published in 1932 were compared with the challenges faced by the modern theory and judicial practice. The different cases of crimes committed through an innocent agent were assessed. The paper also puts the question whether this legal concept constitutes an application by analogy of criminal law and if there is a need for an explicit regulation.