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# THE CRIMINAL LAW IN BULGARIA

N. DOLAPTCHIEFF\*

Bulgaria has existed as an independent state for fifty-three years, after about five hundred years under the Turkish yoke. In 1878 the country was liberated and organized as a modern constitutional monarchy. The Bulgarian constitution, accepted by the first Constituent Assembly in 1879, is of a most progressive nature. The position of the "Tzar" is very much like that of the English king. Bulgaria has a democratic parliamentary form of government. The law-making power belongs to the king and to the parliament which consists of only one house, the *Narodno sobranie*. The executive power belongs to the king and to ten ministers forming the cabinet. The king, however, can not exercise any of his powers without the contra-signature of the particular minister who is responsible for this act before the parliament, a typical characteristic of any parliamentary regime. In addition to their political responsibility, the ministers are for offenses as private persons responsible before the common courts, but for offenses committed in their capacity of ministers they are liable before a special Supreme State Court. The judicial power belongs to the tribunals rendering their judgments in the name of the king. In virtue of Art. 14 of the Constitution the king has the right of pardon either partially, by commutation, or completely. Sentences of death cannot be executed until confirmed by the king.<sup>1</sup>

By the Statute of 1912 there was established in Bulgaria a Supreme Administrative Court dealing with the cases involving illegal administrative acts. Thus the administrative power is placed under the control of the judicial authorities but only for ordinary administrative acts. The acts of supreme government do not fall within the jurisdiction of this Administrative Court, but within that of the Supreme

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<sup>1</sup>It is worth mentioning that Tzar Boris, the present ruler of Bulgaria, very seldom and only in extreme cases confirms the capital penalty. In most of the cases he makes use of his right of pardon and commutes the penalty to life or to fifteen years imprisonment.

State Court which functions only if the law-making power decides to prosecute. In Bulgaria the courts have no right to control the legislative power. The tribunals cannot examine the question whether the Statutes are in accordance with the constitution or not. In conformity with Art. 79 of the Constitution only the parliament may consider whether all of the essential constitutional elements of a given Statute exist.

According to Art 73 of the Constitution, one can be tried only by a competent judge; the establishment of extraordinary tribunals is not allowed under any pretext. The regular courts are either common or special. The former are of three types; those of first instance, District Courts; those of second instance, Courts of Appeal (three in number) and that of last instance, the Supreme Court of Cassation. Petty, civil and criminal cases are tried by Justices of Peace. The special courts are the Military courts, Ecclesiastical tribunals, the Supreme Administrative court and the Supreme State Court. There are two classes of military courts; the District Courts and the Supreme Military Court of Cassation. They have jurisdiction only over those in army service. Civilians can be brought before them only when martial law has been declared and only for those offenses which are expressly stipulated either in the corresponding legislative Act or in a special decree. The Ecclesiastical courts are competent to try not only the clergy charged with offenses against church discipline, but also cases involving divorce. The Supreme State Court tries ministers in cases when they have committed high treason or offenses against the state or the constitution.

Judges are appointed by the Minister of Justice for life. The minister has no right to dismiss any judge unless he is found guilty by the disciplinary court which is especially established in the Ministry of Justice for this purpose. Only a Bulgarian citizen may be appointed judge. The candidate must be a graduate of a law school and besides passing an examination must have two years practice before the courts. All the courts, except the Justice of the Peace courts, are collegiate. In the criminal courts there is a number of public prosecutors who, like judges, are appointed by the Minister of Justice although they are removable. The Minister of Justice is considered the Attorney General of the Realm. The general attorney in the Supreme Court of Cassation is subordinate to the Minister; the attorneys in the Courts of Appeal are subordinated to the attorney in the Court of Cassation, and so on. Thus, it is apparent that a hierarchical principle is followed. In every District Court

there are several investigating magistrates who do the preliminary examination in criminal cases under the supervision of the public prosecutor. The police officers are subordinated to the public prosecutor. But in Bulgaria there is no special judicial police, i. e., officers independent of the administrative power, appointed by the Minister of Justice, and subordinated to him. The functions of the judicial police are performed by the regular police appointed by the Minister of the Interior. The police is either administrative or criminal, the latter being either uniformed or secret.

Until the liberation of Bulgaria the Turkish penal law was in force. It was based on the *Code Napoleon* and remained in force in Bulgaria a few years after the liberation. Since it became impractical for the new needs of the independent Bulgarian people, there was drafted in 1896 a new criminal code which is still in force. Its provisions aimed at harmony with the latest in the tendencies in the field of criminological thought of that time with the result that it continues even at the present time to be one of the rather modern penal codes. Obviously enough, the modern conceptions of the Italian Anthropological School could not have influenced it. The Bulgarian penal code is based on the principles of the neo-classical school. Penal responsibility is determined by the culpability of the criminal.

Article I of the penal code provides that the crime is an act which is declared such by the law and Article II states that only such punishment may be implied which is provided by the law for a given crime under the condition that this law was in force before the crime has been accomplished. As one may see, the principle *nullum crimen nulla poens sine lege* is accepted by the Bulgarian law. Only that Statute can be applied which has been in force at the time when the crime has been committed. An exception to this rule is found in Part 2 of Article 2 providing that the principle of retroactivity is applicable only when the new law is milder. This means that if it is between the accomplishment of the crime and the passing of the final sentence a new and milder law is introduced, the latter must be applied, though the crime has been accomplished before its coming into force.

Crimes are generally classified according to the grade of the offense as crimes in the narrower sense and misdemeanors. As is apparent, in Bulgaria the two-fold, not the three-fold division of crimes is adopted.

A crime in the wider sense of the term is any punishable, culpable illegal act (commission or omission). This means that the essential

elements of any crime are the act, the illegality, the culpability and the punishability.

An act is any action of human will free from physical or physiological compulsion and manifested in the external world. The act is nothing else but *genus proximum* of the notions of commission and omission. An act is commissive or omissive according to whether its manifestation in the external world is a corporal motion or an omission of any expected physical movement. In other words, the corporal motion is not an essential element of every act. It is only *differentia specifica* of the one kind of acts, namely of the commissive acts. The same acts can be viewed also from another angle: as formal and material acts. A formal act has no other effect besides the immediate manifestation of the will. The material act has a far-distant effect, hence only in the material crime do we have to state whether there is a link of causation between will and effect. This statement is necessary because in every material crime the causal relation is an essential premise for imputability.

Illegality is the second essential element in the conception of crime. It consists in any disaccord between the objective phase of the human act and the normative law. There are several grounds for exemption from illegality. Among them the following can be mentioned: necessary defense, necessity, public authority, the execution of lawful official orders issued by a competent authority and not constituting an evident crime, domestic authority, consent of the injured person in case of certain crimes, self-injury, etc. The penal code indicates only the first four grounds; the remaining are contained either in other laws, like civil or administrative law, or in the common law. Thus it becomes clear that the common law in Bulgaria has only a limited and indirect importance for the criminal law: an act cannot be incriminated, but be discriminated, i. e. justified by the common law.

According to Article 45 of the Bulgarian Penal code, a man has the right to defend his own or any other's life, liberty and property against any illegal aggression at the time it takes place. In case the defender has done more than was reasonably necessary for that purpose, he can be excused only if that excess was done by fright or confusion.

Article 46 provides: I. An act which would otherwise be a crime may be excused if it was done in order to save his life or the life of his relatives from immediate danger arising from extreme necessity or threat or insurmountable force (*vis major*) if that danger could not otherwise be avoided. II. Under the same conditions, an act is not

considered as crime if committed by some one in order to save his life, health, liberty, chastity, personal goods or property, if the harm inflicted by him would be recognized as unimportant in comparison with the saved goods. III. Those rules cannot be applied when the mere avoidance of the danger is a crime.

There is an essential difference between the juridical characteristics of the act in section I and those in section II of Article 46. In the first case, the act remains illegal, but excusable; in the second case the act is not only excusable, but lawful. In juridical practice the actual consequences of this difference are that a necessary defense is permissible against an act committed under the circumstance mentioned in the section I, but not against any act enumerated in Section II of Article 46. The reason for that is Article 45 which allows necessary defense only against an illegal act.

In respect to crime committed by a wife in the presence of her husband, the Bulgarian penal law differs diametrically from the English and American laws. The latter hold that a wife is not guilty of a crime, except in case of treason or murder, if the act is done under coercion by her husband; if an act is committed by her in the presence of her husband, there is a rebuttable presumption of coercion. The Bulgarian law determines the responsibility on the principle of individuality.

The third essential element of the crime is culpability. It is understood as conflict between the subjective side of the unlawful act, or better, between the motivation of the criminal's will and the law as motivating norms, as imperatives. The necessary presupposition of culpability is the capacity to commit crime, the *doli-capacitas*, imputability. Article 41 of the Bulgarian Penal Code defines imputability as the criminal's capacity to understand the factual nature and the meaning of his act and the capacity to guide his conduct in accordance with this understanding.<sup>2</sup>

In other words, it is the capacity to distinguish between the right and wrong and to harmonize his behavior with the imperatives of the law. Every circumstance which deprives him of one of these capacities excludes imputability. Such circumstances are: (1) underdevelopment, both physical and mental, such as age, idiocy, deafmuteness, etc.; (2) mental diseases and aberrations, such as insanity, etc.; (3) physiological or pathological state of unconsciousness, such as dream, hypnotism, intoxication, etc.

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<sup>2</sup>With this definition the Bulgarian law-maker has avoided the disputable notion of the freedom of the will.

As to age, children under the age of ten are conclusively presumed to be *doli-incapax* and no evidence at all can be received to show this capacity in fact. Children between ten and seventeen are presumed to be imputable but the presumption is not conclusive; it may be rebutted by showing in the particular case that the accused was of sufficient intelligence to distinguish between right and wrong and to understand the nature and illegality of the particular act. Children over seventeen years of age are substantially in the same position with regard to imputability as an adult but their punishment has to be reduced.

No principle of Bulgarian criminal law is better settled or more generally applicable than the principle that an act is not a crime if the mind of the person doing the act is innocent. The maxim is, "There is no responsibility without culpability". A person cannot be held criminally responsible for an act which was the result of an unavoidable accident which by the exercise of ordinary prudence he could reasonably have anticipated or guarded against. There are two kinds of culpability: intentional and negligent. The intent (*dolus*) includes the doer's knowledge of all essential elements of the criminal result. Generally, only the intentional act is a crime; acts of negligence are not punished unless the statute provides to the contrary. In fact, there are very few crimes of negligence (*luxuria* and *negligentia*). In these cases, the punishment is always less than for the intentional crime.

Ignorance or error is the reverse of culpability or better of intent and negligence. The mistake is excusable only when it deprives the doer of the possibility to possess the knowledge which is necessary for the intent, or when it is not due to negligence, i. e. when it has been unavoidable. As the intent includes the knowledge of all essential elements of the special crime and the knowledge that the act is forbidden, the mistake excludes the intent when the doer does not know any of the mentioned elements or when he thinks that his act is not forbidden. As negligence includes the doer's possibility of this knowledge, the mistake excludes negligence if the doer could not know any of the elements of the concrete crime, though he has exercised the ordinary prudence. The Bulgarian penal code does not distinguish between the error in fact and error in law because the knowledge (possibility) that the act is forbidden is considered as essential for any criminal intent (negligence). But this does not mean that the doer has to know that his act is a crime and therefore a punishable act. On the contrary, Article 47 provides that the ignorance or the false

knowledge of the "penal statute", i. e., that the act is punishable, "does not excuse anybody".

An attempt to commit a crime is an act with which the execution of an intentional crime has begun though it is not yet completed. The beginning of the execution the "commencement d'execution" of the French Code penal, forms the dividing line between the attempt and the mere preparation for a crime. The non-realization of all of the essential elements of the particular crime forms the dividing line between the attempt and the accomplished crime. Only the attempt at a crime and not the attempt at a misdemeanor is punished in Bulgaria. The punishment for the attempt is always less than for the completed crime.

There are three kinds of accomplices; principals, instigators and aids. A principal is one who realizes the essential elements of the concrete crime. An instigator is one who abets the principal i. e. who originates the criminal intent in the principal's mind, provided that the principal commits (accomplishes or at least begins the execution of the crime.) An aid is the person who, without partaking of the execution of the crime, helps the principal by supplying him with the means for committing the crime or by removing the obstacles or by advising him, and so on. The circumstance, whether the accomplice was present or absent when the crime was committed, is without any importance for the distinction between principals, instigators and aids. The aid always must be punished more mildly than a principal or instigator.

The fourth essential element of the crime is punishability. There are in Bulgarian law the following punishments: (1) capital punishment; (2) life imprisonment; (3) imprisonment from one to fifteen years; (4) close confinement from one day to three years; (5) arrest; (6) fine; and (7) reprimand (only for children). Capital punishment is inflicted by hanging, with the exception of military crimes punishable by shooting. There are a very few crimes for which the Bulgarian law threatens capital punishment. Imprisonment is the principal kind of punishment in the kingdom. A short time after the liberation of Bulgaria, the prisons were very poorly organized, which may be considered as a sad inheritance from Turkey. Old buildings of former Turkish barracks were used as prisons. The whole prison system was very primitive. One decade later the reforms were under way and now Bulgaria has very modern penal institutions. The grade or progressive system has been introduced in the reformatories. Schools, workhouses, agricultural colonies have also been organized. The following principles in the organization of the labor in the penal

institutions are adopted: (1) labor is obligatory for every prisoner, except political offenders; (2) labor must be expedient and productive; (3) labor must be paid.

It is worth mentioning that the income from the shops in the reformatories is so large that it is sufficient to cover all of the expenses for the maintenance of prisons and prisoners, with a sufficient balance for improvements and for the construction of new penal institutions.

The Bulgarian law knows also the conditional sentence, probation, and parole. Besides punishment, there are some measures of social defense for the irresponsible adult criminals and for the juvenile delinquents. Two educational institutions especially for juvenile delinquents have been erected: one in Sofia and the other in Plodir. But there are not yet special juvenile courts, this being the next problem which the Bulgarian lawmaker has to solve in the near future.