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THE INFRACTION

TO THE OBJECTIVE DUTY CARE AND IT´S LEGAL INSECURITY IN THE ECUADORIAN CRIMINAL SYSTEM

LA INFRACCIÓN AL DEBER OBJETIVO DE CUIDADO Y SU INSEGURIDAD JURÍDICA EN EL SISTEMA PENAL ECUATORIANO

Diego Fabricio Tixi Torres[1]
E-mail: ur.diegotixi@uniandes.edu.ec
ORCID: https://orcid.org/0000-0003-2995-0926
Mesías Elías Machado Maliza[1]
E-mail: ur.mesiasmachado@uniandes.edu.ec
ORCID: https://orcid.org/0000-0001-7861-4676
Janneth Ximena Iglesias Quintana[1]
E-mail: ur.mesiasmachado@uniandes.edu.ec
ORCID: https://orcid.org/0000-0001-7861-4676
Jessica Reveca Silva Arellano[1]
E-mail: dr.jessicarsa24@uniandes.edu.ec
ORCID: https://orcid.org/0000-0002-3200-0107
[1] Universidad Regional Autónoma de Los Andes. Ecuador.

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ABSTRACT

The criminal normative system in Ecuador has criminalized fraudulent and negligent types of crime, which are included in the Comprehensive Organic Criminal Code, within these criminal types there is a bad criminal legislative technique since the requirements for determining the violation of duty were not established objective of care, and only requirements that have to be verified, were determined for a criminal type. In the article, a review was made of the law, jurisprudence and criminal dogmatism on the existence of these requirements, determining that there is still no one in Ecuador who defines these requirements and only the dogmatism has determined them. The essential point that was developed are the strata of the theory of objective imputation that closely resemble the requirements. It was established that these requirements are perfectly applicable to all criminal offenses that exist in our criminal law, thus giving confidence and creating legal certainty on the part of the jurisdictional bodies.

Keywords: The infraction to the objective duty care, legal security, objective imputation, wrongdoing.

RESUMEN

El sistema normativo penal en Ecuador, tienen tipificado tipos penales dolosos y culposos los cuales constan en el Código Orgánico Integral Penal, dentro de estos tipos penales existe una mala técnica legislativa penal ya que no se establecieron los requisitos para la determinación de la infracción al deber objetivo de cuidado, y solo se determinó para un tipo penal requisitos que se tienen que comprobar. En el artículo se hizo una revisión en la ley, jurisprudencia y dogmática penal sobre la existencia de estos requisitos, llegando a determinar que no se existe aún en Ecuador quien delimite estos requisitos y solo la dogmática los ha determinado. El punto esencial que se desarrolló son los estamentos de la teoría de la imputación objetiva que se asemejan en gran medida a los requisitos; se llegó a establecer que es perfectamente aplicable estos requisitos a todos los tipos penales culposos que existen en nuestra legislación penal, dando de esta manera confianza y creando seguridad jurídica por parte de los órganos jurisdiccionales.

Palabras clave: Infracción al deber objetivo de cuidado, seguridad jurídica, imputación objetiva, delitos culposos.

INTRODUCTION

Inside the penal right they are spoken of the denominated penal types that chord to the most current doctrine is born from an infraction to the objective duty of more commonly well-known care as blame. We have this way, the cases of negligence on the part of the doctors where the society is stunned, they ask that an investigation is taken to depth on the case, to discard if that happened was or it doesn't accuse of the doctor, and not alone in these suppositions in fact but in all the penal types.

As regards responsibility it is not enough with showing a simple cause relationship - effect between the medical performance and the production of an unfortunate result, which one can remark in the lesion or death of the passive fellow; therefore, besides a causal physical relationship, it is necessary in all the cases to analyze a series of elements so much legal that allow to determine the existence or not of responsibility of the active fellow, for this way to be able to determine the artificial imputation of the result that is to say of those who are investigated, to settle down if one can obtain a certain result.

It is as well as the legislative believes penal types in which it is not determined in a clear way which the requirements are so that it is fulfilled the infraction to the objective duty of care, creating this way an artificial insecurity to the moment that the judge subsume the fact to the penal type and establishes penal responsibility.

DEVELOPMENT

To begin this work it is essential to locate us in the theory of the crime and we will understand that the theory of the crime is work of the juridical-penal doctrine and it constitutes the more characteristic and elaborated manifestation of the dogmatic one of the penal Right. This has as higher theoretical objective, the search of the basic principles of the positive penal Right and their articulation in an unitary system. The theory of the crime constitutes an intent of offering a system of these characteristics.

It is not, because, fundamentally an inconditional proposal on what the crime should be -no it is a construction-, but a systematic elaboration of the general characteristics that the positive Right allows to attribute to the crime, in view of the regulation that it makes of this" (Mir Puig, 2014), and this way to locate us where this artificial insecurity is presented, we will leave it with the entrance in validity of the Organic Penal Integral Code (COIP), brought to the schools of the thought of the penal right mix and with it, the dogmatic foundations vary when each one of the juridical institutions is analyzed. It is so based on today, they admit wide sectors, the systematic finalist -the deceit and, therefore, the imprudence affects to the unjust one- doing without of the final conception of the action and of the methodology of the finalism" (Jescheck, 1975) and we can appreciate this way that our normative up to the moment to analyze the tipicity opens the way to the denominated unfolding of the penal type.

That this way can settle down that the tipicity is objective and subjective. Objective in the sense that the types describe the elements of the behaviors penally excellent (active fellow, passive fellow, verb rector, normative elements and descriptive elements) and subjective in connection with that the penal types are deceitful and guilty (Infraction to the objective duty of care).

That is why the topic here treated is located in the second dogmatic category of the crime (Tipicity), in the part of the subjective thing and it is there, where this investigation work was focused giving light and approaches of the reason of an artificial insecurity it is believed in the penal types, which belong to a system of closed numbers, the technique of the numerus clausus allows to know with more security when the imprudence is punishable, since in the system of open incrimination it is doubtful if a series of crimes admits or not its modality. This way, the jurisprudence and the doctrine denied the possibility of imprudence regarding the types that require subjective elements of the unjust one, but we also discussed if certain criminal figures were compatible with their imprudent commission for other less sure reasons" (Mir, s.f), that is to say that only the legislator settles down that they are guilty, a deceitful penal type will never be able to be guilty if the legislator didn't establish this way in the catalog of penal types.

Of that pointed out in previous lines he settles down that the penal types or imprudent differs of the other class of penal types in the subjective environment (Deceitful), since the active fellow in the deceitful penal types has the knowledge and the will of carrying out the type of the unjust one. While in the penal types, the active fellow doesn't want to make that settled down in the penal type, but however it carries out for not keeping in mind its objective duty of care that personally corresponds.

Some commentators consider that the Blame consists on a voluntary, generic behavior or specifically contrary to the police or to the discipline that causes a harmful or dangerous event foreseen by the law like crime, taken place unwittingly or for effect of erroneous inexcusable opinion of carrying out it in circumstances that exclude penal responsibility". (Manzini, 1948)

They also say that there is blame when a result takes place typically, for lack of the duty of attention and forecast, not only when it has missed the author the representation

of the result that it will happen, but when the hope that it doesn't happen has been decisive foundation of the activities of the author that take place the unintentionally result and without ratifying it". (Jiménez of Asúa, 1990)

A great commentator and always mentioned by our jurisdictional organs says that he understands each other for blame as the will, diligence omission in calculating the consequences possible and foregone of the own fact". (Carrara, 1997) and the classic commentator in the right tells us that in wide sense she understands each other for blame any lack, voluntary or not of a person that produces a bad or damage: in which case it is equal to blame". (Cabanellas, 1998)

It is necessary to delimit that the word accuses it in similar to that of imprudence and it doesn't cause any type of confusion when being him in that way and it is understandable for all us, while if the word guilty is used it could end up confusing with the guilt question that they are completely different, a thing it is the guilty and other the guilt understood as the fourth dogmatic category of the crime.

Inside the dogmatic field, it settles down that several blame forms exist which are a blame it consents it is given when, although it is not wanted to cause the lesion, their possibility is noticed and, however, we act: the danger of the situation is recognized, but it is trusted in that won't give place to the prejudicial result. If the fellow stops to trust this, it already converges eventual deceit" (Mir Puig, 2014) and an unconscious blame supposes, on the other hand that not alone the prejudicial result is not wanted, but rather not even we see its possibility: the danger is not noticed.

As it will be seen in later lines, the national legislation doesn't have differentiation to the moment the penal types, acting with conscious or unconscious blame, this discussion settled down it in the dogmatic penal and it was very excellent this discussion when it was spoken of the theory of psychology of the guilt. Now at the present time it is good to differentiate relating questions to the blame it consents with relationship to the eventual deceit that has not still been clear in spite of all the dogmatic discussions, the panorama of these two subjective interferences in the field of the penal right.

The legal definition of the Blame is in the Art. 27 (COIP), inside the section first tipicity, of the first chapter that textually says: "It acts with blame the person that infringes the objective duty of care that personally corresponds, producing a harmful result. This behavior is punishable when infraction in this code". (Ecuador. National Assembly, 2014)

If this definition is analyzed, given by the legislator, from a systematic point of view of the COIP, one has that the juridical norms will be interpreted starting from the general context of the normative text, to achieve among all the dispositions the due coexistence, correspondence and harmony" (Ecuador. National Assembly, 2009), then we can appreciate that said in previous lines, since we are inside the second dogmatic category of crime that is the tipicity. Now then, if we analyze this definition in a literal way we will have that The penal types and the hardships were interpreted in strict form, this is, respecting the literal sense of the norm". (Ecuador. National Assembly, 2014), we can appreciate what continues.

It begins settling down that only a person (Natural) can make a crime, this when it infringes the objective duty of care (it doesn't define when the objective duty of care is infringed) and tells us that only when personally it corresponds that is to say here from this definition it is welcomed to author's unitary doctrine for crimes, in few words participation is not admitted in these penal types.

Likewise in the same definition we can appreciate that for these penal types it will always require of a typical result, which closes the possibility to process a person for tentative in guilty types. And lastly of the blame definition you can appreciate that is to say on the system of closed numbers that they will be punishable this behaviors when they are specified in the COIP.

Of the analysis of literal fact, we can see that this definition doesn't specify of how or which are the requirements to be able to observe the infraction to the objective duty of care, of here several queries are born, Who defines the requirements for the infraction to the objective duty of care? Does it maybe define it the same law, the jurisprudence or the dogmatic one?, these questions are essential of giving answer, since do give this the artificial insecurity created in these penal types is born.

The foundation of the blame is born in the infraction of an objective duty of care and, therefore, a contradictory action to the duty of extracted diligence of the context of the juridical classification. If we revise our COIP from article 79 to the article 397, we will find the range of penal types so much deceitful, inside which the penal types are minority, but only in the article 146 of the body legal mentioned Guilty Homicide for bad professional practice in their parenthesis, third you can appreciate that four requirements exist for the demonstration from the infraction to the objective duty of care.

This parenthesis settles down that… to the determination of the infraction to the objective duty of care, the following thing will converge: 1. the mere production of the result

doesn't configure infraction to the objective duty of care. 2. the neglect of laws, regulations, ordinances, manuals, technical rules or lex applicable artis to the profession. 3. the harmful result should come directly from the infraction to the objective duty of care and not of other independent or related circumstances. 4. it will be analyzed in each case the diligence, the degree of professional formation, the objective conditions, the predictability and evitability of the fact". (Ecuador. National Assembly, 2014)

Of that exposed we can appreciate that law doesn't exist inside the Ecuadorian normative system that settles down as or which the requirements are to determine an infraction to the objective duty of care inside the penal types, but only exists requirements inside the homicide for bad professional practice, leaving in the limbo the other existent types in the COIP, to give an example guilty death (Article 377 of the COIP) in the one which neither the infraction is defined to the objective duty of care, but only it is announced.

Inside the Ecuadorian jurisprudence when talking about the infraction to the objective duty of care has not been none in which settles down requirements to determine this subjective aspect of the tipicity, it has not even been able to observe juridical approaches on the part of the ordinary jurisdictional organisms in headquarters, appeal and of first instance, information that was found in the year 2019 - 2020, months of December and January respectively.

It has been able to find that the maximum organism of ordinary justice (National Court of Justice) was not pronounced by means of resolution. 1, published in Registration Official Supplement 246 of May 15 the 2014, Official Supplement 246 of May, 2014, 15 page 12. On the same requirements of the article 146 of the COIP, third in which was solved: "The Organic Penal Integral Code that in their article 146, it establishes the simple and qualified penal types of homicide for bad professional practice, it should be understood in their integrity. Art. 2. -understand each other that the simple homicide for bad professional practice, in the first parenthesis of the article 146 of the Organic Penal Integral Code, it is configured by the neglect of the objective duty of care, according to their final parenthesis. Art. 3. -understand each other that the homicide qualified by bad professional practice, in the third parenthesis of the article 146 of the Organic Penal Integral Code, it is configured by the neglect of the objective duty of care; and, also, for the concurrence of the unnecessary, dangerous and illegitimate actions. Final disposition. -This resolution will go into effect with the Organic Penal Integral Code". (Ecuador. National Assembly, 2014).

In the resolution before exposed the maximum jurisdictional organism carries out a reach of the interpretation of the requirements of the article 146 of the COIP, and in any moment it was pronounced the requirements will be for the determination from the infraction to the objective duty of care in the other penal types on which, this way we can appreciate that, from the point of view, neither it has been possible to solve the artificial insecurity created by the Ecuadorian legislator to the moment the penal types, leaving to light their bad technique of penal legislation and opening the way here to the legal hole analyzed.

In the field of the dogmatic prison, it is where it is bigger study of the topic, this from all the optics of the schools thought of the penal right, this work would not reach us to develop the whole rich history developed on this. But, what will analyze in this work is from the point of the theory of the objective imputation, in which is also focused legally the analysis of the theory of the creation of a disapproven risk.

The theory of the objective imputation is not a new theory as erroneously it is believed but this theory Hegel it was already discussed by the philosopher where was to impute to the subject of the causal, group of courses that can be considered as its work (Causes - Result).

Then, this theory was also discussed by professors like Engisch in 1931 in its denominated text Die Kausalität als Merkmal der strafrech tlichen Tatbestände and for Welzel, 1939 (Schünemann, 2002). Ending up being a theory worked by Claus Roxin who take out all the ontologic one and in turn opened the way to the analysis of the theory of the risk.

Now then, this theory like all dogmatic aspect is believed with the purpose that the causes are solved with justice, that is to say to be able to solve the things with logic and justness, for the same thing will begin to analyze the theory.

We begin without a doubt with the denominated relationship of causation, keeping in mind that, to be able to attribute a result to a certain behavior, it requires to settle down in first term, if between that action and that result a relationship of causation exists. Several theories have existed to determine this relationship of causation, the well known ones are:

a) Theory of the equivalence of conditions.

b) Individualized Theories.

c) Theory of the adaptation.

d) Theory of the appropriate causation.

e) Theory of the excellent causation.

f) Theory of the return prohibition.

g) Theory of the causal nexus.

Without a doubt some all these theories have been good for the dogmatic growth, but problems of difficult demonstration have always been presented between one and another question, these problems will be developed in another work.

The main problem to which the judge can face is to not having enough knowledge to know if the causal relationship is completed in certain case, this because natural sciences unaware to the right can turns involved, in the case of study. (Vargas González & Grove, 1998), and by virtue of this, the judge should have clear in a first moment which the possible cause would be so that it can be determined in the result, since of this possible cause a trial of normative valuation is born the other requirements of the objective imputation of result that is to say.

With an example one could say that María undergoes an aesthetic operation of nose and you suckle, already in the day and hour of the operation María dies then as always raisin in way so arbitrary that who cause him the death is the doctor, but before she is born it the normative analysis of the objective imputation to determine in a fair way if the doctor's action was who produced the result death.

Another example and no longer in the medical environment but in the traffic one could say that Juan drove to France of the city of Riobamba down the street (he remains silent secondary) and when arriving to the Olmedo street (he remains silent main), he stops for the signal it gives birth to. Once it is detained the march of the vehicle proceeds to observe if the traffic or non vehicles down the main street, in that moment he observes that two buses are parked picking up passengers in the street in its right rail, this because a signal of traffic of stop of buses exists. When being parked the buses (great volume) they take place in Juan an obstaculization of vision that doesn't allow him to see if for the left rail of the main street they approach or non vehicles. After remaining 1 minute waiting to see if the buses advance and when not advancing it begins to traffic in a minimum way until trying to see the traffic of the left rail of the main street and to the moment to try to see the traffic it is impacted by another car producing a traffic accident in which the vehicle driver that circulated down the street dies. Without a doubt some in this example most of the district attorneys, judges take it that who infringed the objective duty of care is the driver of the secondary street, to this, it is that he has to be carried out a normative analysis with the other requirements of the objective imputation to verify if that action gives the final result.

Creation of a risk legally disapproven

This is the first normative adornment of this theory, in which settles down that the author should have created a risk legally disapproven, that is to say not that this action is allowed inside a society of risks (allowed risk), it is for it the doctrine to tinge in a better way this element and to solve several types of cases.

The first element of this, it is the creation of a risk that without a doubt some this action injures protected juridical goods, for this first element it can be solved the example given by the doctrine and that emphasis was made in this work when a person sent her nephew to the field so that a ray and power fall him to inherit their goods, then that supposition created risk is an allowed risk and it could never take the responsibility to that person for its nephew's death.

The second element is the increase or decrease of the allowed risk, this making reference that we are in a society of risks and this risks are assumed in our daily life, example walking in the sidewalks, to drive vehicles, works with explosive, to practice sports, among others. That is to say, if this risk in a law and we surpass that risk it could take the responsibility to that person for the caused result, clear example when driving a vehicle in the city, the risk of driving is allowed but this risk is also limited to a certain range that is to say at 50 km if we surpass that risk and a traffic accident takes place one would have to make responsible to this driver.

The third element settles down that the caused result this protected that is to say by the norm the end for which this norm was created, although it is certain this element it is discussed by the legal prohibition of the literary interpretation, when applying this element it is carrying out the interpretation that without a doubt some is essential to value to arrive to a justice with artificial logic, point in which we are agreement. In this element it is necessary to take into account that when a fellow produces a lesion to a very juridical one protected alone that direct lesion can be imputed more won't be been able to impute indirect lesions of juridical goods.

An example could be that a driver runs over a pedestrian B, this pedestrian is injured, the paramedics warn to their relatives of the accident and product of that emotion the mother B dies from the pedestrian, here he won't be been able to it imputes to the driver to the death of the pedestrian's mother, since the norm that was infringed and

we believe a risk legally disapproven it doesn't protect to life of third but only of the pedestrian in the smooth traffic.

Principle of trust

This is the second normative requirement of the objective imputation, of that which can be necessary that each person is responsible for what makes or is trusted that each one completes of her list, and if of this actions a typical result is born it will be responsible who is guilty in the society. This principle is very used when one wants to make a penal imputation in institutions that complete an organized system of functions, example it could be a clinic or hospital where each one completes its list, that is to say a list belongs to the doctor, another list belongs to the porter, another of the guard, etc.

With an example one could speak that, in the neighboring country of Colombia, it was carried out several operations to people of their eyes with relationship to several illnesses that suffered, after these patients left the operations they suffered the lost of their eyes and with it, a penal investigation began against the surgeon that operate them, after diverse investigations it could be necessary and to prove that the operations made by the doctor were a success.

But the lost of the eyes of the patients was caused by a bacteria that was in the atmosphere, who didn't complete their list, it was the personnel of this house of health, it is for it that won't be been able to impute the results since to the doctor that operated these patients, the result (lost of eyes) it was not for their action but for the personnel's of toilet and with it, the doctor trusted that it was carried out with the corresponding health measures for the place where he operate.

As it can be necessary in this normative requirement the dogmatic one has gone contributing points of view, presently the denominated list is observed and defining as list to a system of positions specified normatively" (Jakobs, 2002). Of equal it forms current in contrary it gives points of view against the theory of the list, since it was settles down that in many cases when one gives a chaotic field, this element cannot work, since it cannot be facilitator of a typical result.

Example in this case is when five people are fighting in the central square of the city, in that moment one of them leaves the fight and he goes to a hardware store that was open to five meters of the clatter, in that moment the owner of the hardware store sells a hammer to the fellow that left the fight and that he perfectly saw it, in these cases it is said that he doesn't close the execution of the list because clearly the result could be imputed at least as accomplice to the owner of the hardware store. It is more, in that type of cases it is asked that apart from completing their list one has to make something more, for example to call to the police to that it stops this clatter that is to say not alone it serves to complete the list but demanding something more in protection of the fundamental rights.

The victim's intervention

This is a normative approach whose main figure is the victim that participates in a typical causal course for the penal right, inside this we can speak of the denominated car put in danger and the victim's danger and this based on that all the people have a responsibility of like we act inside the society denominated in the doctrine like principle of responsibility.

The principle is given when the holder of the very juridical one consents in the lesion, if the victim is free and acts in a responsible way, we lacks the objective imputation for the author of the lesion, because the result, in such a case owes to the sphere of the victim's risk. Example: who participates in the consumption of drugs with other, which is dead as a consequence of the consumption of the drug". (Castle, 2008)

To have clear what is a car put in danger has to be necessary that it is when the victim believes her own risk, of a risk beginning for another person, example of this, one could say that when they are cutting trees in a street and the workers didn't put tapes of danger, in this case the risk is created by another person. In spite of it, the victim considers that she didn't pass anything and she decides for her own will to pass running below the tree that is being cut, in those cases the victim's irresponsibility exists and she is who car subjects to that lesion and for it could not be imputed it its lesions or its death to the workers that were cutting this tree.

Meanwhile that we speak of a person in danger when the victim lets that a third manage a risk where could also be injured her very juridical one protected. Example of this type of cases one could give when a group of youths decides to be injected with drugs to the vein, but they don't know how to use the syringe they let that a third manage that risk, after this one injects them of them the dogmatic one dies for overdose he has said that it could not impute himself a responsibility in this case because the victim consented in this act that fulminate his very juridical one protected.

Now then, cases can be given where car put in danger and danger exists, as an example and case of the real life that it happened in our county of Chimborazo it is that 6 youths decide to go for a walk in moto for the city of Guano leaving the National University of Chimborazo, of these

alone one 3 had moto that is to say when they undertook the trip each one had a copilot, they arrived to Guano, they drove the motos and they had their papers in order and they were the proprietors of this motos. They proceeded to descend and to eat something in a local of this city, after it when leaving a copilot requests the moto to a proprietor for driving and manifests him that if he knows how to drive and that if hehas c onduction papers. To that which the proprietor of the moto consents to give him so that he drives, in this case the proprietor passes to make copilot, after driving two blocks the driver touches to a vehicle and for it undertakes it an escape to speed (In this case the risk believes the driver), after moving two kilometers the owner of the moto tells him that it gives birth to and that he will manage the moto for that which the proprietor of the moto takes the control and it proceeds to manage, they circulate a kilometer more and he takes place an it skids in the road of that which comes out taken off in that moment the copilot and his skull fractures, producing the death of him. (In this second moment we have a danger).

Of the case that was related in previous lines one can see aspects like, the presence of the car and the danger on the part of the victim, one can also observe that the objective imputation would fall in this cause against the proprietor of the moto, since who underwent and believe to these risks it was the same victim.

Return prohibition

This normative approach is developed by the professor Jakobs who establishes that a penal responsibility cannot be imputed at a third that participates in a fact where a risk is believed disapproven legally provided it is not this who manages the source of danger. Inside this approach we can appreciate the denominated source of danger that is not more than the means with which will injure a very juridical one protected.

Example of this requirement is when an owner of a pharmacist jointly with its worker (Lover) decides to give death to the spouse of the proprietor of the pharmacy and for it the lover provides him a medication (source of danger) so that she administers him. The pharmacist proceeds an alone Sunday at home to put him in his drink to his spouse this medication and with which the result death is given, in these cases for the professor Jakobs the responsibility cannot be returned to the lover, since she doesn't manage the source of danger because the pharmacist simply could stop it to give and not to produce the result in spite of it followed it with his performance.

But in contrary sensu the professor Roxin doesn't agree with this normative approach because it would be left many performances in the impunity, this contrary to the function of the penal right.

The artificial security

This is a principle of the positive right that allows and it demands that the states have precise clear right norms and we sum up so that they can be applied by the jurisdictional organs of each one of the states of the world.

Some authors have referred about this topic like a radical security that we need because, in fact, that for the time being are that is given us to the given service of life, it is radical insecurity" (Ortega and Gasset, 1988), likewise it is said that it is a desire rooted in the man's psychic life" that feels terror in the face of the insecurity of their existence, in the face of the imprevisibility and the uncertainty to that it is subjected" (Pérez, 1994).

This way one has that one of the biggest lacks that the contemporary Ecuador suffers is the lack of artificial security that is fundamentally in the inconsistency of its normativity, affected by multiple, sudden and of the situation reformations, and an institutional weakness that projects the image of a country in which the limits of the civic chore are only given by the possibility of leaving harmless when the law is infringed or the institutions are harmed". (Narváez Ricaurte, 2007)

Also the right to the artificial security is based in the respect to the Constitution and in the existence of previous, clear, public juridical norms and applied by the competent authorities" (Constituent National Assembly, 2008); likewise this principle is linked with the principle of legality that is from supreme importance to the moment to create penal types in penal matter, which should respect its four characteristics that is to say that they are written, certain, previous, strict.

Already in connection with our topic outlined in this work it can settle down that artificial security doesn't exist for when a fact is made that is in our legislation like an imprudent penal type, since there are not imprudent penal types defined in the form of conceiving the infraction to the objective duty of care that one needs for these penal types.

With the result that artificial insecurity is believed that doesn't allow to have approaches of penal imputation in topics related with the imprudence, since the dogmatic one is the only one that has developed this normative approaches to be able to solve cases in which the subjective tipicity is highly guilty.

Along this work one could observe that the imprudent penal types that are in the normative system ofnEcuadorian

prison have a bad technical penal legislation, since it is not had like or which the requirements are for the demonstration from the infraction to the objective duty of care, essential element of the subjective tipicity in the imprudent types.

In turn, a revision was made in the law and the Ecuadorian jurisprudence where neither settles down the requirements for the determination from the infraction to the objective duty of care, and only the dogmatic penal has developed it. Although it is certain a single penal type establishes elements for the determination from the infraction to the objective duty of care, this is the article 146 parenthesis 3 of the Organic Penal Integral Code.

The position that takes in this work is that to respect the artificial security one would have to analyze the requirements of the article before 146 of the norm mentioned in all the imprudent penal types, that is to say in few words that those requirements would be not to demonstrate in all the imprudent penal types only in the homicide for bad professional practice, question that is perfectly applicable.

In turn when the theory of the objective imputation of result was developed, we could appreciate that all the elements of the theory before mentioned are present in the third parenthesis of the article 146 of the COIP, that is to say one has the legal inputs to apply and to create in the judges lineal and legally correct right points. But, they are not either applied by the jurisdictional organs by ignorance or in turn fearing not having a norm that allows them to apply this requirements in all the penal types.

In the parenthesis of the article 146 four requirements settle down which will be analyzed by the light of the normative elements of the theory of the objective imputation, to leave clear their appropriate application.

The first requirement tells us that the mere production of the result doesn't configure infraction to the objective duty of care, that is to say here the norm makes us notice that it cannot impute itself to a person an only result for the fact of having been given, but it would necessarily plays us to analyze the relationship of causation among action - result and it stops this we need the other normative elements developed in the other ones numeral of the article 146, third parenthesis of the COIP and as well as in the other normative elements of the objective imputation.

The second requirement is that said result has been given by the neglect of laws, regulations, ordinances, manuals, technical rules or lex applicable artis to the profession, that is to say here in this numeral 1 is speaking to our legally of the risks disapproven, created then by the fellow that will be imputed, we are in the first theory of the objective imputation and that one has to apply.

Third, we have that the harmful result should come directly from the infraction to the objective duty of care, not of other independent or related circumstances, in this numeral one can appreciate that inserts the principle of trust, the victim's participation in the criminal event.

And in the numeral room is settled down that it will be analyzed in each case the diligence, the degree of professional formation, the objective conditions, the predictability and evitability of the fact, for it here enter the other normative approaches created for example by the theory of objective imputation it is perfectly applicable the denominated return prohibition for questions of professional formation, predictability and the evitability of the fact.

CONCLUSIONS

The penal right is born from a political conception, this based on the law reservation that is in charge of the power legislative, for the case in analysis can settle down that a bad technical penal legislation exists for the creation of the imprudent penal types.

Likewise it could settle down that the penal imprudent types in the COIP don't have defined the form the infraction is determined to the objective duty of care for all the penal types of how, but only for the penal type of homicide for bad legislative technic.

Also, we could verify that the requirements of the homicide for bad professional practice are good to define the requirements of all the imprudent penal types and these they resemble each other to all the normative requirements of the theory of the objective imputation.

When not having a good technical penal legislation, as well as when not being had the requirements for the determination from the infraction to the objective duty of care they open the way to an artificial insecurity, since the jurisdictional organs to the moment to solve concrete cases don't have a single interpretation of this topic but it is varied, that which takes to create a juridical, accompanied chaos that neither the jurisprudence has made it to avoid outrages.

Likewise we concludes that it is perfectly applicable the theory of the objective imputation on the part of the jurisdictional organs, since with the budgets says in the law and in turn welcoming a systematic interpretation of the COIP, it could be valued to solve specific cases.

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