

Distinguishing Between the Crime of Inciting or Facilitating Suicide and the Criminal Offense of Homicide

Simona Franguloiu

*Associate Researcher, "Acad. Andrei Rădulescu" Institute of Legal Research of the Romanian Academy,
Trainer at National Institute of Magistracy, Bucharest, Romania
Lecturer, Ph.D, Faculty of Economic and Legal Sciences, "Constantin Brâncoveanu" University of Pitești,
simonafranguloiu@yahoo.com, ORCID 0009-0004-0659-0512*

Abstract: The two offenses result in the death of a person, except where the offense of incitement or facilitation of suicide results in an attempted suicide. Sometimes, in practice, the manner of commission is very similar and it is difficult to establish the correct legal classification, so that it can be accurately determined whether a particular situation falls within one of the two offences, the line of demarcation being very fine. This scientific approach aims to delimit these crimes, specifying that incitement or facilitation of suicide is not assisted suicide, particularly given the dual nature of suicide, as defined in the "texting suicide case" (Commonwealth v. Carter, 52 N.E.3d 1054, 1056–57 (Mass. 2016)) where suicide is seen both as harm to be prevented and as an individual choice to be respected. This raises the question of where the line should be drawn between determining or facilitating suicide and murder, and what the standards of foreseeability should be.

Keywords: Criminal Law, Determining or Facilitating Suicide, Murder

Introduction

In a high-impact case in the United States, Michelle Carter was charged with manslaughter and appeared before the Massachusetts Juvenile Court (Commonwealth v. Carter, 52 N.E.3d 1054, 1056-57 (Mass. 2016)). The charge was upheld by the Massachusetts Supreme Judicial Court (*id.* at 1065) and, in 2017, Carter was sentenced to 15 months in prison. Massachusetts state law, like the law in most federal states, provides that a person who causes death with intent is guilty of first-degree murder and is liable to life imprisonment (Nolan & Sartorio, 2017, pp. 174, 190, apud. Binder & Chiesa, 2019, pp. 65-133). The authors cited have shown that, in the legislation of some federal states, liability for murder in the event of the suicide of another person is rare and almost always involves a more concrete and tangible contribution to the execution of the act of killing than that made by Carter (Nolan & Sartorio, 2017, pp. 174, 190). The same authors stated that they had not found any previous case in the United States in which the victim had made the decision and committed suicide intentionally and the defendant had been convicted of the crime of murder consisting solely of verbal encouragement. They also stated that they had not identified any other case of liability for murder in a situation where the person who encouraged suicide was not present at the time of the suicide. The authors further pointed out that, in most federal states, participants in another person's suicide (without performing acts directly contributing to the suicide) risk being prosecuted for a lesser offense, rather than for complicity in suicide. However, they found that only a few laws contain provisions expressly prohibiting the encouragement of a person to commit suicide. At the same time, courts have often sought concrete guidance from legal doctrine when applying these limited provisions.

On the other hand, in another relatively recent case, the Minnesota Supreme Court struck down a legal provision criminalizing the act of encouraging suicide on the grounds that it violated the First Amendment (*State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014)). The court held that speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern and, given current US Supreme Court First Amendment jurisprudence, is therefore entitled to special protection as "the highest rung of the hierarchy of First Amendment values." Nor should we overlook the fact that suicide rates

are steadily rising: statistics show that “Suicide was responsible for nearly 46,000 deaths in the US in 2020. That is about 1 suicide every 11 minutes. Suicide is a leading cause of death for people ages 10–64 years. Suicide rates rose 30% from 2000 to 2020 and 17% of teenagers seriously considered doing so” (CDC, 2022).

Given the clear and growing interest in suicide among teenagers, it is inevitable that many of them will accept, decide, and adapt to suicide. Bearing in mind that incitement to suicide is very common, concrete and detectable, it can be argued that it should be punished, and in cases where death occurs, criminal liability should probably be more severe. In our opinion, regardless of the approach, it should reflect fundamental concepts of the legal system and a clear configuration of the crimes that produce this result, in the sense of a clear, precise, and predictable description of the act, in accordance with the principle of legality of criminalization – “*nullum crimen, nulla poena sine lege*” (Dubber, 2011).

In the Romanian legal system, there is a similar offense, criminalized in Art. 191 of the Criminal Code - Determining or facilitating suicide:

(1) The act of determining or facilitating the suicide of a person, if the suicide took place, is punishable by imprisonment of 3 to 7 years.

(2) When the act referred to in paragraph (1) is committed against a minor between the ages of 13 and 18 or against a person with diminished discernment, the punishment is imprisonment for 5 to 10 years.

(3) Determining or facilitating suicide committed against a minor under the age of 13 or against a person who was unable to understand the consequences of their actions or inactions or was unable to control them, if the suicide took place, shall be punished by imprisonment of 10 to 20 years and the deprivation of certain rights.

(4) If the acts of incitement or facilitation referred to in paragraphs (1) to (3) were followed by an attempt at suicide, the special limits of the penalty shall be reduced by half.

The Carter case

“In 2014, 18-year-old Conrad Roy committed suicide, two years after a previous unsuccessful attempt. Police soon discovered that, in the preceding week, 17-year-old Michelle Carter, who described Roy as her boyfriend, had sent him many text messages urging him to develop and carry out a plan to kill himself. Moreover, Carter had pressed Roy to proceed in a phone call when he hesitated in the very act of killing himself. Yet Carter had originally tried to talk Roy out of suicide and only changed her position after he persuaded her that nothing else could relieve his misery. Carter was charged with manslaughter in a Massachusetts juvenile court” (excerpt from the court ruling, cited above). She was convicted, and sentenced to a fifteen-month term of imprisonment. However, the Supreme Court’s decision to uphold the charge would have allowed for a much more severe punishment. The court held that if Roy had not died at that moment without Carter’s prompting, Carter would have caused his death: “On the specific facts of this case, there was sufficient evidence to support a probable cause finding that the defendant’s command to the victim in the final moments of his life to follow through on his suicide attempt was a direct, causal link to his death.” (Carter, 52 N.E.3d at 1064).

Under Massachusetts law, similar to the law in most states, a person who causes death with intent is guilty of first-degree murder and is subject to life imprisonment. On the other hand, liability for manslaughter in the case of another person’s suicide is rare and almost always involves a more concrete and tangible contribution to the killing than Carter’s (*Binder & Chiesa*, 2019, pp. 65-133). Thus, US doctrine has raised the issue of how to approach suicide and punish those who incite suicide from the perspective of utilitarian and libertarian theory (*Id.*). The first assumes that the state has a collective responsibility to serve the general good and considers criminal punishment as a social cost (in a conflict relationship) that must be borne to the extent that it discourages behavior that could have an even greater social cost. The second theory considers the state as a partial delegation of the inherent authority of

individuals to govern themselves, with the aim of better protecting this autonomy, by virtue of the principle of minimal state intervention in the lives of individuals. Criminal punishment is compatible with this type of political freedom to the extent that the punished person has renounced some of their rights to freedom, freely choosing to violate the rights to freedom of others. These two perspectives do not, of course, exhaust the values that influence the opinions that can be expressed and the arguments put forward regarding criminalization, including those that include value commitments based on religion and other philosophical values. However, they are sufficient to show that the criminalization of incitement to suicide is a criminal policy dilemma for states.

On the other hand, in doctrine (Calvert, 2019) the opinion was also expressed that courts should have applied the US Supreme Court's test for incitement, created half a century ago in *Brandenburg v. Ohio*, before such speech was considered to be outside the protection afforded by the First Amendment. The Supreme Court interprets the extent of the protection afforded to these rights; the First Amendment has been interpreted by the Court as applying to the entire federal government even though it is only expressly applicable to Congress. Furthermore, the Court has interpreted the Due Process Clause of the Fourteenth Amendment as protecting the rights in the First Amendment from interference by state governments – (Cornell Law School, n.d.). The author argues that this standard is useful and “appropriate even in cases of involuntary manslaughter, where the intent to produce the specific result is not required by criminal law.”

This scientific paper does not aim to analyze the causes of suicide, which are complex and varied, belonging more to the field of psychology and, sometimes, psychiatry. Rather it seeks to highlight that the phenomenon of suicide is on the rise in most countries around the world. Our aim is to attempt to draw a distinction between incitement or determination to commit suicide (as an activity that has criminal implications but is different from assisted suicide) and murder, as an activity that essentially consists of taking a person's life. It is then necessary to consider the extent to which incitement or instigation to suicide can be converted into a crime of murder (disguised as suicide) and what is the minimum threshold at which a person should be held criminally liable.

In the case presented above, Ms. Carter's initial activity was to convince Roy, who had decided that suicide was the only way to escape his unhappiness, not to commit suicide; it should be noted that Roy had attempted suicide two years earlier. Subsequently, observing his determination to see suicide as the only way to escape his suffering, she urged him to develop and implement a suicide plan through text messages and Facebook conversations. Several messages were discovered during a search of her phone. Carter, who described Roy as her boyfriend, sent him numerous text messages urging him to develop and implement a plan to commit suicide. Furthermore, it was claimed that she pressured Roy to go ahead with his suicide plan during a phone call when he seemed to be having second thoughts and was hesitant about going through with it. Essentially, in our view, Carter initially tried to convince Roy to abandon his suicide plan, changing her position only after her boyfriend convinced her that nothing else could alleviate his suffering. Without substituting ourselves for the court that has already determined the legal classification and imposed a 15-month prison sentence on Carter, comparing the provision of Massachusetts criminal law with that of Romanian criminal law, but also with that of continental law (the majority of European states) as an exercise in comparative law between the continental and common law systems, we note several differences.

In our view, the first and most important issue to be established is that of the concrete and effective contribution to the decision taken by the suicide victim. Was her insistence a factor in strengthening his decision to commit suicide, or was it a determining factor? Would Roy have committed suicide without Carter's insistence? Could this insistence be equivalent to a form of moral pressure on the suicidal person to carry out their suicide plan? We believe

that the answer to these questions will determine and establish not only the logic of the circumstances, but will also clarify the mental state of the person in relation to the suicidal act of the other person. This will provide a necessary answer to determine whether he intended to kill that person or merely accepted the idea of suicide, his actions being irrelevant to the decision and the act of suicide. This is because, in continental criminal law, the perpetrator's intent is essential in qualifying the crime and makes the difference, for example, between the crime of murder and manslaughter.

Romanian legislation

In Romania, unlike other forms of homicide, this crime punishes activities that indirectly lead to the death of a person who commits or attempts suicide. In the Romanian criminal system, suicide is not punishable by law (nor could it be if the suicidal act had been carried out), but not on the grounds that the right of the individual to freely dispose of his or her own life, which is a socially protected value, is recognized (Vasiliu et al., 1975, p. 117), but because the law regulates the relationships that individuals enter into with their fellow human beings (*relatio ad alterum*), and not with themselves (Antoniou, 2002, p. 11). However, the activity that falls within the typicality of the crime (of determining or facilitating suicide) is a way of contributing to homicide, an indirect way of suppressing a person's life (Toader, 2019, p. 52), and this support, this assistance, justifies criminalization, providing additional protection for the right to life. (Dongoroz et al., 1972, p. 212).

The crime of incitement or facilitation of suicide has two alternative modes of commission:

a. An act of incitement to suicide. Inducement means the act of urging or convincing the victim to decide to commit suicide by instilling the idea of suicide or by convincing them if they still had doubts (Cioclei, 2020, p. 43; Toader, 2019, p. 54; Bogdan & Șerban, 2020, p. 86). Determination is similar to instigation because, in fact, in this form, the agent's activity constitutes incitement to suicide. In any case, the victim must have complete freedom in deciding whether or not to commit suicide. If there is coercion, the act constitutes murder (Ibid.), also referred to as "murder by the victim's act" (Bogdan & Șerban, 2020, p. 89), because the essence of the crime is that the victim has complete freedom to decide whether or not to commit suicide. It is irrelevant whether suicide was suggested by the perpetrator or whether the idea of suicide already existed in the mind of the passive subject, but who had not yet decided, and the agent, taking advantage of this idea, managed to determine the act of suicide (Dongoroz et al., 1972, p. 214).

b. An act of facilitation. Facilitation means any help given to a person to commit suicide; the victim has decided to commit suicide, and the perpetrator merely facilitates this act, for example, by offering advice on the specific method of suicide, procuring a weapon or substance, providing a place to commit suicide, removing any obstacles, but not actually assisting in the act of suicide itself (Cioclei, 2020, p. 43). Acts of facilitation are limited to those acts of complicity in suicide that the legislator has criminalized separately in this form, given the seriousness of the act and the supreme value of the protected right. In the case of joint suicide, if one of the suicidal persons survives or is saved and it is found that he or she only simulated suicide, for example by ingesting insufficient poison to incite the other person to commit suicide, then the agent will be liable for the offense of incitement to suicide (Dongoroz et al., 1972, p. 214). Regardless of the manner in which it is committed, the suicidal act must be carried out entirely by the suicidal person, because if the agent carries out acts that are part of the actual act of suicide, then he will be liable for the crime of murder and not for this crime (Cioclei, 2020, p. 44; Toader, 2019, p. 55; Bogdan and Șerban, 2020, p. 88), even if the victim asked the agent to help them. In this situation, the victim's consent does not remove the essential feature of the unlawfulness of the crime of murder, but may be taken into account as a mitigating circumstance (Bogdan & Șerban, 2020, p. 89), depending on the

particularities of the case. It is necessary to establish the causal link between the perpetrator's actions and the attempted suicide or suicide, as it is possible that the actions of the agent who determined or facilitated the suicide had no effect, and the suicide may have occurred for other reasons and by other means, in which case the offense cannot be retained (Cioclei, 2020, p. 45). From the subjective point of view, the offense is committed with direct or eventual intent. The mere disregard of the agent's threat of suicide by the victim, even if the threat was made, cannot be considered indirect intent, as long as the agent considered the threat to be unreal. There can be no eventual intent, even if the agent describes a method of suicide, explaining exactly what a suicidal person should do to commit suicide (Vasiliu et al., 1975, vol. I, p. 119) or if he jokes about the victim's suicide or hands the victim a dangerous substance without knowing that the victim will ingest it out of a desire to commit suicide (Ibid). A relevant case, from the perspective of the legal classification of the act, is the following: The court (Decision No. 173/2024 of 26.06.2024 pronounced by the Galați Tribunal) established that there was indirect intent with regard to the defendant's actions consisting of moral coercion (with the prospect of breaking up the couple) of the victim K. in order to induce her to continue practicing prostitution and to cease her objections to the nature of her relationship with the defendant. Previously, he had recruited the victim by misleading her using the lover-boy method (initiating a friendship with the victim, which then turns into a romantic relationship and thus gains her trust. The lover-boy is charismatic and knows how to choose his victims from vulnerable groups, girls whose trust he can gain. He becomes a support person for the victim and even for her family. The couple's relationship is natural to a point and can last several months or several years. Then, the trafficker psychologically and emotionally manipulates the victim and convinces her to do whatever he asks. The trafficker promises the victim that her situation is temporary, until they have collected enough money to pay off her debts, buy a house, or even get married. Regardless of the promise made, it is all a lie, because the trafficker's ultimate goal is for the victim to earn money for him through prostitution). In this case, the defendant used this method to force her into prostitution, ignoring the victim's subjective accusations of psychological distress caused by prostitution and knowing the seriousness of the victim's suicidal thoughts (which were a common topic of discussion between the victim and the defendant) developed against a background of psychological instability, which was exacerbated by the situation in which she found herself. The victim acted on these suicidal thoughts and threw herself from the fifth floor of the building where she lived. In this case, the defendant had previously ignored the victim's pleas to mediate the new dispute at that time, leading the victim to believe that the defendant had indeed left her, thus fulfilling the material element of the crime of incitement to suicide. The court emphasized that the causal link between the material element and the immediate consequence results from the defendant's actions, which were likely to instill suicidal thoughts in an emotionally and mentally unstable person. In terms of subjective typicality, the defendant acted with indirect intent, because he foresaw the result of his actions and, although he did not pursue it, he accepted the possibility of its occurrence. The defendant foresaw the victim's suicide because he was aware of her suicidal thoughts and that she had previously attempted suicide. The defendant accepted the possibility of the victim's suicide because, in the circumstances, there were no other objective circumstances on which to base his belief that the victim would not carry out his suicidal thoughts (and the seriousness of the victim's thoughts had been shared with him by the victim, but the defendant chose to ignore them, insisting on imposing his own agenda on the victim). The court also pointed out that the defendant's mere hope that the victim would not commit suicide was not such as to rule out the possibility of suicide. Intentional action in a state of doubt (considering two equally possible scenarios - that the victim will commit suicide vs. that the victim will not commit suicide) is in itself indicative of a subjective position of acceptance. That the defendant simply ignored the victim's mental state, hoping without any objective basis that the victim

would conform to her new status as a prostitute and forget her suicidal thoughts is shown even by the defendant's own words, in a sincere manner during telephone conversations with the victim, and therefore convicted the defendant for this offense (among others).

Conclusions

This paper cannot exhaust all the theories or factual situations that could raise the issue of distinguishing between these crimes. However, we consider that if the perpetrator's actions caused the idea of suicide to arise in the mind of the person or reinforced the idea of suicide already decided by the suicidal person, the perpetrator is guilty of committing the crime of incitement or facilitation of suicide, regardless of the *nomen juris* used in different legislations. To the extent that, through their actions, the perpetrator forces the person to commit suicide, we consider that the act will take the legal form of the crime of murder, even if this is difficult to establish in practice. Consequently, the judicial authority may use any means of evidence necessary to establish the perpetrator's intent and mental state with regard to the act of suicide to be committed by another person.

However, the doctrine raises other issues that could be debated in academic forums, such as, for example, the act of a person who sells a book on suicide to the general public, using appropriate means and methods, or of a person who posts such a book or advice on their personal page (Instagram, Facebook, blog) together with guidance on suicide. The doctrine has held that in such situations, the act is not sufficiently well characterized (Bogdan & Șerban, 2020, p. 88) and that it is difficult to establish a causal link between the act of one person and the suicide of another. However, the French legal system has criminalized such an act, consisting of propaganda or advertising, regardless of the specific manner, in favor of products, objects, or methods that could be used as means of suicide.

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