

Droit Public

Mistake of Fact in Turkish Criminal Law

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I- Introduction

In modern criminal law, the act forms the basis of the crime (Koca & Üzülmmez, 2010, p. 124). But there should be a mental connection between the act and the offender who commits the act. In other words, without a mental connection, a behavior would not have the characteristic of an act and consequently it would not constitute a crime (Özgenç, 2010, p. 213; Koca & Üzülmmez, 2010, p. 178). This mental connection between the offender and the act emerges either as intention or negligence.

The intention is a form of committing the injustice and occurrence of a crime depends on the existence of intention. Intention is committing the elements of crime in the legal definition willingly and purposely. If the offender does not know the objective elements in the definition of the crime, he would not act intentionally.

In criminal law, if the offender's conception and the fact do not comply with each other, it is called a mistake (Önder, 1992, p. 325). The mistake might stem from the fact that a person does not know the fact at all or it might also arise out of the fact that he knows it defectively or wrongly. In this regard, two kinds of mistake, not knowing the fact or knowing it wrongly, are two distinct forms (Gropp, 2005, § 13, n. 4; Dönmezer & Erman, II, 1999, n. 1039). However, the offender conceives the fact wrongly in both of these cases. It should be examined that whether the wrong conception of the offender affects his punishability? In other

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words, will the incongruity between the offender's will and the fact be valued in the criminal law? We should answer this question in the following way: The consequences of the offender's wrong conception might be different; the wrong conception might eliminate the offender's intention, it might be of importance for his culpability (reproachability) or it might not be of importance for the criminal liability (Jescheck & Weigend, 1996, p. 306; Heinrich, II, 2005, n. 1064). Thus, it cannot be generalized that the mistake would eliminate the criminal liability by all means, or it would be completely ineffective in punishment. It should be evaluated according to the content of the offender's mistake. But criminal law has to take into consideration the case of mistake which affects the offender's will and has to demystify the mistake's effect on the offender's liability.

The subject of the offender's conception might be related to anything belonging to the external world, it might also be related to a fact belonging to the normative world. If anything belonging to the external world is conceived differently than what it is, it is called mistake in perception, if a reality related to the normative world is evaluated differently than what it is, it is called mistake in evaluation (Toroslu, 2005, p. 217; Heinrich, II, 2005, n. 1066–1067). Perceiving or knowing the presences belonging to the external world wrongly is a matter related to the person's intention; and such a mistake eliminates the intention. Since the intention is knowing the objective elements in the crime's legal definition (typicality) (TPC¹ art. 21/1), this mistake is generally called as *mistake of element* or *mistake of typicality*. On the other hand, the mistake in evaluation belonging to the normative world is a mistake related to the person's comprehension and thus it is relevant to culpability. Consequently this mistake type is characterized as the *mistake of injustice* (TPC art. 30/4) or *mistake of prohibition*. Thus, it is possible to divide the mistake into two categories, namely the *mistake affecting the culpability* and the *mistake eliminating the intention* in respect to their consequences (Özgenç, 2010, p. 393; Artuk/Gökçen/Yenidünya, 2007, p. 683; Koca & Üzülmöz, 2010, p. 254).

¹ Turkish Penal Code.

In the article 30 of TPC, titled “*mistake*”, the mistake eliminating the intention and the mistake eliminating the culpability are regulated together. In the this article consisting of four paragraphs mistake of objective elements, mistake of aggravating and mitigating factors, mistake of objective conditions of the reasons mitigating or eliminating the culpability and the reasons of justification and mistake of prohibition (mistake of injustice) take place respectively.

II- Cases of Mistakes Eliminating Intention

In our opinion, intention is a concept forming the injustice in the examination of the structure of crime in terms of injustice and culpability. In other words, the intention is neither a type of culpability nor an element of it, but a form of committing the injustice. Occurrence of crime depends on the existence of intention. Since the intention is acting knowingly and willingly in respect of of all elements of the typical injustice by the offender (TPC art. 21/1), ignorance or disinformation regarding one of these elements shall eliminate the offender’s intention. The mistake eliminating the intention is a matter arising out of the offender’s ignorance concerning the subjects in the scope of intention. The offender perceives any subject in the definition of crime differently than it is. Thus, determining the cases of mistake eliminating the intention means determining which elements of the injustice are in the scope of intention.

When we examine the regulation in the article 30 of TPC, in its first paragraph it is said that the person who did not know the elements in the legal definition of crime would not act intentionally. Likewise the offender should also know the aggravating and mitigating factors of crime. Thus, without hesitation, ignorance in these matters would eliminate the intention. The mistake made in the objective conditions of justification also eliminates the intention. Similarly, we should consider the mistake of the limits of justification as a mistake eliminating the intention (TPC art. 27/1). Thus, there are four types of mistake eliminating the intention in the new legal system. These are *mistake of objective elements*, *mistake of*

aggravating and mitigating factors, mistake of objective conditions of justification and mistake of limits of justification (Koca & Üzülmmez, 2010, p. 254).

In this article, we will only examine the mistake of objective elements.

III- Mistake of Objective Elements of Crime (Mistake of Element)

The important subjects that are to be within the scope of the intention are objective elements of the typicality. Every type of crime gives a definition of the behavior to do or not to do. In accordance with the assurance function of criminal law, it should clearly be understood from the criminal code what types of behavior are subject to criminal liability. When the typicality is materialized together with the objective and subjective elements, as a rule, the injustice constituting the crime occurs. In case of ignorance or wrong information about subjects concerning the objective elements of typicality, mistake of objective element arises.

The mistake of element is regulated in the 1st paragraph of article 30 of TPC: *“the person who does not know the objective elements in the legal definition of crime when committing the act would not be considered as acted intentionally. The liability for negligence is reserved.”*². The subject of this mistake entails the objective element of the crime. The objective elements of crime are material facts and events that have to be included to consider an act typically injustice (Öztürk & Erdem, 2006, p. 211, n. 319; see Dönmezer & Erman, II, 1999, n. 1040). The crime’s subject, characteristics belonging to the offender, or injured party, the act, the manner of committing, the result and the causality are included within these matters. These matters that are included in the scope of the intention are the elements characterizing the special injustice content of a specific crime (S/S-Cramer/Sternberg-Lieben 2006, § 16, n. 8/9). In case of wrong conception regarding any of these matters, the offender’s criminal inten-

² There is no difference between this regulation relating the mistake of element of TPC and 1st item of 16th paragraph of the German Criminal Code regulating the same subject.

tion is eliminated (Heinrich, II, 2005, n. 1073; S/S-Cramer/Sternberg-Lieben, 2006, § 16, n. 10). These matters that are in the scope of the intention might be “definable” (*descriptive*) matters that can be perceived through the senses, without requiring a specific legal evaluation (for example: human, animal, woman, man, movable goods, buying, killing etc.). They might also be the (*normative*) matters that are not definable materialistically but can only be conceived via a norm (private life, personal data, official document, being married, public official, etc.) (see. Jescheck & Weigend, 1996, pp. 269.; Koca & Üzülmöz, 2010, p. 147). But these matters are not the elements that are abstractly formulated in the typicality, but the matters related to the external world’s observable subjects or real occurrences determined as the element of crime.

The offender’s intention is also required in respect of the normative elements of typicality, as a rule. Although knowing natural meanings of the definable elements is enough for the existence of intention, the social meaning content of the typicality’s normative elements should also be in the conception of the offender. If the offender does not have this information, it shall be required to accept the presence of mistake in the objective elements of crime. But here it is not required that the offender interpret the relevant matter in conformity with the law rightly either, because it is the duty of the jurist (Maurach & Zipf, 1, 1987, § 37, n. 44; Öztürk & Erdem, 2006, p. 212, n. 319). For example, knowing that the document which forms the subject of the forgery crime (TPC art. 204) is only a piece of writing on paper is not enough in the intention, it should also been known that this document includes a person’s thought explanation (Öztürk & Erdem, 2006, p. 212, kn. 319). If the offender does not know the social meaning of the normative element in typicality, as a rule, he is mistaken in the crime’s objective elements³. On the other hand when any definable element is mentioned; it is rather different, for example in a case of theft it is enough that the offender knows that the thing he stole is a portable good. In sum, although it is enough to perceive the definable elements within the intention, the normative elements should

³ It is accepted that in the normative elements of typicality might be considered in limitation of the prohibition mistake exceptionally. (See. Maurach & Zipf, 1, 1987, § 37, n. 50).

also be understood. The offender should act by knowing these elements for the occurrence of crime.

The important thing for the intention is that the offender knows the characteristic of the subject in the legal definition of the crime. Otherwise, it is not related to the intention when the offender is mistaken about the legal characterization of the crime's subject. The mistake in the legal characterization is not a mistake of element, it is a mistake of legal interpretation. For instance, it is not important in terms of intention when the offender does not know that the sheep stolen by him is considered as "portable good" as an element of crime of theft or that the shed he entered is characterized as a residence protected by law. The important thing is that the thing stolen by the offender is a sheep belonging to someone else or the place he entered is a building belonging to somebody else, because it is not required that the offender correctly interpret the element of the crime, for the existence of intention. Such mistakes, as a rule, are not related to the elements of crime but the punishability of the act. If the offender is consciousness of illegality in spite of the presence of his information about the meaning, it is called the mistake of prohibition (Jescheck & Weigend, 1996, p. 315; Koca & Üzülmöz, 2010, p. 323; Öztürk & Erdem, 2006, p. 212, n. 319).

This mistake includes the defective or wrong information or ignorance about the issues related to the objective elements of crime in the present case. The offender's thought related to the present case does not overlap with the fact (İçel/Sokulu-Akıncı/Özgenç/Sözüer/Mahmutoğlu/ Ünver, 2., 2000, p. 276; Jescheck & Weigend, 1996, p. 307; Özgenç, 2010, pp. 394, 395; Heinrich, II, 2005, n. 1072; Köhl, 2002, § 13, n. 7). Thus, the mistake in these issues should not be confused with the suspicion about the presence of the typicality's objective elements. Being unsure of the existence of objective elements is not a mistake, but on the contrary it points out the presence of the conscious negligence or recklessness (*dolus eventualis*) (Jescheck & Weigend, 1996, p. 307). For example, although there is mistake of subject of murder, in case of a hunter who shoots an object moving behind the thicket thinking that it is an animal; there is recklessness (*dolus eventualis*) if he shoots at the mov-

ing object while foreseeing that it might be a human being but thinking that it might not be either.

In Turkish doctrine, the intention is accepted as a matter of culpability, it is required that there must be *an essential mistake* in the objective elements of the typicality in intentional crimes in order to be able to eliminate the offender's culpability. The following formula is used on this matter; if it can be said that "*if the offender's conception or knowledge comply with the fact, the act performed by him would not constitute a crime*" the mistake is essential. However, if the offender was not mistaken, in other words if the event happened as he meant, provided that the act performed by him will also form a crime, it is accepted that the mistake is not essential. However, it is also concluded that he would be punished due to the crime intended to be committed, not the crime actually committed by him in case of an essential mistake. For example, if the offender insults the President without knowing that he is the President, even if he will not be punished due to the crime of insulting the president (TPC art. 299), he will be punished due to the crime of insulting a normal person (TPC art. 125) (Soyaslan, 2005, p. 446). Likewise, the offender, who had a sexual relationship with a person whom he thought was older than fifteen years old upon her consent, shall be punished for the crime of having sexual relation with somebody who has not come of age (TPC art. 104), not for the crime of the sexual abuse of a child (TPC art. 103). Because even if the offenders were not mistaken in these cases, the acts would still constitute a crime. If the offender was mistaken by his negligence, in other words, he did not pay the necessary and careful attention, in this case the characteristic of the committed crime should be examined; if this act was also a punishable act when it was committed in negligence, being mistaken prevents the offender from being punished for intention, but the offender can be punished for being negligent (Dönmezer & Erman, II,1999, n. 1041, 1042; Önder, 1992, p. 327).

Let us state that the arrangement set by the new TPC in relation with the mistake in the crime's objective elements, overlaps with the general understanding accepted in doctrine. In fact, in the second sentence of the 1st paragraph of article 30, it is regulated that "*The liability*

for negligence is reserved due to this mistake” after it was stated in the first paragraph that any person who does not know the objective elements of the crime “*cannot act intentionally*”. Thus, in a case that a hunter kills a human being moving behind the thicket slightly the thinking that it was a hunting animal, it is not possible to punish the offender due to killing intentionally as the hunter’s mistake would eliminate his intention because the offender should know that the person killed by him was a human being in order to the crime of murder occurs. However, if it is possible for him to foresee that the object shot by him was a human, if he paid the necessary and careful attention, in this case the offender should be punished due to killing with negligence (*manslaughter*) because the negligent form of homicide is also regulated (TPC art. 85). On the contrary, in cases that someone take a personal belonging of somebody thinking that it is his own good or enter into somebody else’s residence, thinking that it is his own residence, intention does not exist within the act committed by the offender because he should know that the good taken by him belongs to somebody else for the occurrence of larceny or the residence entered by him is somebody else’ property to commit burglary. However in the present case the offender has wrong information concerning these subjects. In these examples, even if it is said that it was possible for him to foresee that the residence he entered into somebody else’ property or the good taken by him belongs to somebody else if he paid the necessary and careful attention, it is still not possible to punish him because the negligent forms of these acts are not defined as crimes in TPC (Hakeri, 2007, p. 291).

The 1st paragraph of article 30th is criticized because it only mentions about the ignorance about objective elements. However, ignorance can be caused by a mistake and this case is not regulated. So it is said that this paragraph is an unnecessary provision explaining the absence of intention, not the mistake case (Ünver, 2006, p. 47). Moreover, for the second sentence of the paragraph, it is said that it is not right to accept the presence of mistake in every case including negligence (Ünver, 2006, p. 47) and claimed that the mistake eliminating the intention in any event should also eliminate the imprudent person’s liability.(Ünver, 2006, p.

63). As aforementioned, the mistake occurs when the fact is not known or known defectively or wrongly. Since the mistake is related to the the element 'knowingly', if the objective elements in the legal definition of crime are not known, there cannot be any injustice committed intentionally (S/S-Cramer/Sternberg-Lieben, 2006, § 16, kn. 8/9). Certainly not knowing abstractly does not always mean a mistake; but not knowing the objective elements of the crime in the present case, that a person does not know the fact in relation with his/her own act, always means a mistake (see Früh, 1962, p. 17. Likewise, it is clearly determined that not knowing in the first sentence means a mistake by saying "*due to this mistake...*" in the second sentence of the first paragraph. Since this last sentence is also sa reference to the conditions in the article 22 ,these conditions should be met in order to be able to say that there is any punishability due to negligence. Thus, not determining in the 1st paragraph of article 30, that the crime should be a punishable act when performed intentionally is not a defect. Because in the 1st paragraph of the article 22. this matter is stated clearly. Repeating them in every article where the subject is mentioned is also both unnecessary and against the codification technique since the conditions of negligence is determined generally. In this regard, if any judgment can be reached in the way that he/she would not fall into mistake about the crime's objective elements if he acted prudently, he would be liable for his negligence. But in this case, in accordance with the 1st paragraph of the article 22, the imprudent form of the act should be defined as a crime in a criminal code. Otherwise, falling into mistake in negligence would not require the criminal liability. On the contrary, if there is not even negligence of the offender for falling into mistake; he would not be liable. Because in this case the injustice element of the imprudent crime does not exist (Koca & Üzülmöz, 2010, p. 260).

Furthermore, it cannot be disregarded to punish the mistake of element based on the negligence by distinguishing the ignorance about the objective elements of crime whether it is culpable or not. In other words, it is not required that the mistake eliminating the intention is to be unavoidable, in contrastto the mistake of injustice (mistake of prohibition) (Öztürk & Erdem, 2006, p. 211, n. 319; compare Dönmezer & Erman, II,

1999, n. 1041). Thus, it is not important whether the mistake related to the objective elements is based on any defect depending on evaluation or comprehension (Jescheck & Weigend, 1996, p. 310; Heinrich, II, 2005, n. 1073; S/S-Cramer/Sternberg-Lieben, 2006, § 16, n. 12). For example, a drunk might also make a mistake in the crime's objective elements and it eliminates the intention. If a drunk enters into somebody else's house thinking that it is his own house while he is in this case, he cannot be punished. Similarly, when a drunk kills a human being by supposing that he was hunting an animal, he should be responsible due to his crime to kill with negligence even if his drunkenness is inculpable (Koca & Üzülmöz, 2010, p. 258).

The mistake of objective elements rather occurs about the crime's subject. The offender should also know the crime's subject in order to say that he acts intentionally. As the crime's subject might be an object or person, the mistake in the subject might also be about the person (error in persona) or object (error in objekto) (Heinrich, II, 2005, n. 1099). We will emphasize the mistake in person here briefly..

The mistake about the victim should be evaluated considering two distinct situations. If the typical subject and the subject conceived by the perpetrator have the same (equal) value, there would not be any characteristic differences between these two subjects. And the mistake made would be only a mistake of motive and it is not essential in terms of punishability. (Kühl, 2002, § 13, n. 24–25; Öztürk & Erdem, 2006, p. 213, kn. 320; Hakeri, 2007, s. 300; see in the same way. Ozansü, 2007, p. 78). For example, if the offender kills B as a result of a mistake while he wishing to kill A or kidnap B while wishing to kidnap A, the situation is such a one. The offender acts intentionally here because he does not fall in an inessential mistake. In other words, the mistake of person can never be acceptable as a fundamental essential mistake (Hakeri, 2007, p. 300; Soyaslan, 2005, p. 450). In these cases it should be inquired whether the evaluation of the criminal law would be changed if the offender's was right about his imagination. If the offender did not mistaken the identity, he/she would kill or kidnap A. In this case, the acts would constitute the crime. In fact the lawmaker does not continue to concretize the persons

whose freedom is restricted in the crime's legal definition. It is mentioned about "killing a human" and "restriction of someone's freedom". In this case, as there is not any difference between killing A and B according to the TPC, the offender who kills B supposing that he/she was A, acts intentionally. As a result if the offender kills A or B, he/she knows that the living thing killed by him/her is a human. This information is enough for intention. Consequently since the law protects everybody equally, it is not important that the crime committed against a concrete victim (Dönmezer & Erman, II, 1999, n. 1055). However, if the identity of the victim is an aggravating factor it should be considered (TPC art. 30/2).

On the contrary if the subject conceived by the offender and typical subject do not have the same value, if there is any characteristic difference between these two subjects, in this case the mistake is important and should be taken into consideration. For example, as in the example of classical hunter mentioned above with various occasions, if a human was shot by thinking that he/she was hunting an animal, it cannot be said that the offender acted intentionally. Because in this case he does not know that the object he shot was a human being (compare Hakeri, 2007, p. 30). If the offender has any negligence inhere, he might be punished due to intentional murder.

Aberratio ictus must not be confused with mistake on the person (see for the detailed information related to legal characteristic of *aberratio ictus*; Roxin, I, 2006, § 12, n. 160.; Kühl, 2002, § 13, n. 31; Heinrich, II, 2005, n. 1106). Because in the case of *aberratio ictus*, there is not a mistake. Thus in case of *aberratio ictus* the article 30 cannot be applied. In the *aberratio ictus* the outcome does not occur on the wished subject due to insufficiency of the vehicles selected or not using them skillfully or any other reason but on another subject. (Dönmezer & Erman, II, 1999, n. 1039; İçel/Sokulu-Akıncı/Özgenç/Sözüer/Mahmutoğlu/ Ünver, 2, 2000, p. 278). For example, if the offender wishing to shoot his enemy A, shoots B sitting near him supposing that he aimed at him, it is mentioned that the person's mistake is not essential. On the contrary, if he kills B as the bullet hits B sitting next to him because of his shaking hand or any other reason although he aimed at A, in this case it is *aberratio ictus*. Because it is projected that

the offender's act would also lead to a result upon B. In other words, there is not any disinformation upon the crime's subject. The subjects out of target are also included in the offender's conception. The offender projects that B was a human being and might also kill B sitting next to him when he shot A. In this regard, the offender is liable for B's death because of his recklessness (*dolus eventualis*). Likewise, if another family member eats the candied fruit sent in order to kill a specific family member, or another person drinks the poisonous tea, here is not error in persona but *aberratio ictus*. In such cases, if the same crime (exp: murder, a. 81) is committed against more than one person with one act, the problem should be solved by the *ideal concurrence* rule⁴.

Let us state that the result produced on another subject by the act directed towards a specific target because of *aberratio ictus* can be imputed both objectively and subjectively if the consequence is foreseeable (compare Ozansü, 2007, p. 82). For instance, in the example above, if B is not the person sitting next to A, but a person passing through the way and the bullet shot A hits a stone and skips the stone and injures or kills B, the ideal concurrence rule should be applied as evaluating whether it is possible for the offender to foresee this outcome according to the conditions where the event occurred. Consequently also if a subject was not foreseen by the offender but was foreseeable there is *aberratio ictus* and the offender should be liable for negligence (see. Jescheck & Weigend, 1996, p. 314).

In other words when *aberratio ictus* exists, there is more than one crime whether the act has one result or more and the ideal concurrence rule should be applied. In the Turkish doctrine there is a separation between two types of *aberratio ictus* with one result and with multiple

⁴ Likewise also in the statement of reasons of article 30 it is clearly determined that in case of *aberratio ictus*, the problem should be solved according to the ideal concurrence rule. Also the Court of Cassation, applies the ideal concurrence rule very appropriately except attribution to the article 30: "*In the event that the defender injured Hüsamettin passing near him with a shot aimed at Hasan in the way to form vital danger, when the articles 30, 43, 44. of TPC. Are considered, as he should be punished ... By holding the defender responsible for Hüsamettin because of the result occurred according to the possible decrees of the criminal intention, attempt to kill Hasan intentionally...*" (Y. 1. CD., 24.05.2007, 2315/4088; see for judgment. Yalvaç, 2008, p. 262).

results, and it is said that in case of one result there is one crime but in case of multiple results there are more than one result and more than one crime so the ideal concurrence rule shall not be applied. (Dönmezer & Erman, II, 1999, n. 1054, 1068; Hakeri, 2007, p. 302)⁵.

Falling into mistake about subject that takes place in legal definition of crime but that does not form an objective element of injustice is not important. Thus, the ignorance of the offender about the existence of objective conditions of punishability, the personal reasons decreasing or eliminating the punishment or the personal impunity reasons shall not have any effect on liability. Because these matters are not needed to be known by the offender, in other words, his intention does not have to contain these matters (Jescheck & Weigend, 1996, s. 315–316; Koca & Üzülmez, 2010, p. 259). For example, even if the offender does not know that the goods stolen by him belong to his father, he would benefit from the personal impunity reason (TPC art. 167/1). Likewise, a person shall benefit from the nonliability of deputies rule (AY. art. 83/1) due to his speech including an insult in the assembly corridor, even though he does not know that he was assigned as a deputy.

⁵ In opinion of *Öztürk/Erdem* an intentional crime at the attempt stage in the subject aimed in case of aberration ictus with one result, should be accepted as the presence of an imprudent crime completed in the subject is attacked. If the imprudent way of the crime was completed in law in the subject, there is the ideal concurrence relationship between both crimes. Otherwise the offender is punished due to the intentional crime at attempt level only in the subject aimed by it. In case of any aberration ictus with multiple reasons, they determine that there is any crime in number of results and the ideal concurrence cannot be mentioned in this case (Öztürk & Erdem, 2006, s. 214, n. 321). It is not possible to participate in this opinion. In the example, given by the authors that the thick stick flung by A to injure B breaks the window glass, it is not right to tell that the window glass would be broken in negligence surely. In this example if B is behind the window glass, in other words, if it is not possible for the stick thrown hit to B inside without breaking the window glass, the glass is broken in negligence directly. In response to it, if B stands near the window glass and A unwillingly accepts this result to occur although he foresees that the stick thrown by him in order to injure B would hit to the window glass, it is considered that he broke the glass with recklessness. In our opinion in both situations it should be accepted that more than one different crimes were committed in one action and the ideal concurrence rule of different kind should be applied. Likewise it is understood that the Court of Cassation applied in this direction in its judgments aforementioned above.

Finally, let us state that the mistake of the objective elements might occur in the opposite way (*reversed/negativemistake of element*). For example, the person might take his own coat from the checkroom by mistake while he/she wishes to take the coat belonging to another person. As the person's intention aims to commit the crime of larceny, the condition that the object should belong to somebody else, is not met. In such cases where the reversedmistake of element exists, even if the offender showed his immorality with his behaviors, he should not be punished since an injustice was not committed in the present case (Koca & Üzülmöz, 2010, p. 259).

IV- Conclusion

Mistake is one of the main issues of the crime theory. Criminal law should solve the problem whether or not the offender's ignorance or disinformation will affect liability. It is called in criminal law literature "mistake of typicity", "mistake of element" or "mistake of objective elements". New Turkish Penal Code, Article 30 has solved this issue according to the understanding of modern criminal law. Someone who does not know the objective elements of crime, does not acts intentionally. Because, intention requires information about everything in the scope of these elements. In other words, ignorance about objective elements invalidates the offender's intention and eliminates the injustice. However, this mistake may come out of negligence. For example, someone who takes another person's coat instead of his from vestuary while supposing that it belongs to him makes a mistake on the element "belonging to someone else" of the crime of larceny. The offender's mistake will invalidate his intention. However, if we can say that "if he acted more carefully, he would not mistake", the mistake is caused by negligence. To hold the offender liable for negligence, there has to be an article in the penal code which regulates the negligent form of larceny. The Penal Code ppunishes larceny offenders if they act intentionally. Thus, in our example there will be no punishment for the offender. However, when a hunter who kills someone as he thought he was a ground game although there is no intention, there may be negligence and he may be held responsible for manslaughter.

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