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**Aspects Concerning the Offense
of Theft or Destruction of Writings in Romanian Law**

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Abstract: This paper analyses the offense of theft or destruction of writings, as it is included in the Romanian legislation in force. In order to focus on a new perspective of judicial practice, I made a comparative analysis that took into consideration the provisions of the both the previous and the current law. The novelty is represented by the examination of the elements before the offense, of the constitutive content, according to the provisions of the new law, as well as the legislative precedents in Romanian law. This paper is part of a complex work that will be published in the future at a recognized publishing house in this field. The paper can be useful both to theoreticians, as well as practitioners of criminal law.

Keywords: preexisting elements; constitutive content; legislative precedents

1. Introduction

The offense of theft or destruction of writings is part of Title III of the Romanian Criminal Code, Special part, with the marginal title of “Offenses regarding state authority and border”.

According to the provisions of art. 259 par. (1) Criminal Code, the offense consists in the deed of a person that steals or destroys a writing that is in conservation or custody of a person mentioned at art. 176 or art. 175 par. (2) Criminal Code

We mention that at art. 176 Criminal Code, the meaning of the term public in the criminal law sense, consists of “*everything regarding public authorities, public institutions or other legal entities that manage or exploit goods that are public property.*”

Art. 175 par. (2) gives the second interpretation of the expression “*public servant*” in the sense of the criminal law, this being the “*person that performs the public interest services for which he was invested by public authorities or that is submitted to their surveillance regarding the performance of that particular public service*”.

From the interpretation of the provisions that we referred to, it results that, for the existence of the offense, it is necessary that the respective writings are in conservation or custody of a public authority, public institution or another legal entity that manages or exploits goods that are public property or in conservation or custody of a public servant.

The offense is considered to be aggravated being sanctioned as such, if it is committed by a public servant.

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Art. 259 par. (3) Criminal Code provides that the attempt is punished.

2. Some Similarities and Differences between the Regulation in Force and the Provisions of the 1969 Criminal Code

The comparison between the incriminations in the law in force and the previous law show both the existence of similarities, as well as of differences.

The first differentiating element consists in the definition of the material object, a writing that is in conservation or custody of an authority or of a public institution or of a legal entity that manages or exploits goods that are public property.

In these circumstances, we notice that the material object no longer consists in a file, registry, document, that is in conservation of an organization of those mentioned at art. 145 of the 1969 Criminal Code, as it was provided in the previous law.

At the same time, we notice that the new law replaces the notions of file, registry, document with the term writing, which has a larger meaning referring to any type of document, including files, registries, as well as other documents that are in conservation of public institutions.

Another difference from the provisions of the previous law consists in the fact that the law maker of the new Criminal Code eliminates the sanctioning of the destruction by fault of writings with scientific, historic, archive value or any other value of the kind.

Also, there are some differences between the two regulations concerning the sanctioning regime.

The similarities refer to the marginal name of the offense that is also maintained in the new law, in the actions through which the material object of the objective aspect is fulfilled (theft or destruction), as well as in the keeping of the aggravated normative modality if the deed is committed by a public servant.

3. Pre-existing Elements

3.1. Legal Matter

The special legal matter is made up of the social relations whose formation and development cannot take place in the absence of the ensuring of a proper criminal protection against some deeds that may affect the conservation in normal conditions of some documents that are in conservation or legal custody of a person mentioned at art. 176 and art. 175 par. (2) Criminal Code

3.2. Material Object

The material object is made up of any writing (file, registry etc.) that is in conservation or custody of a public authority or institution or of a legal entity that manages or exploits goods that are public property, „or of a person performing a public interest service for which he was invested by public authorities or that is submitted to their control or supervision concerning the fulfilling of that public service if the stolen documents are connected to a judicial procedure, the offense mentioned at art. 275 NCP can be retained” (Udroiu, 2016, pp. 320-321).

According to the same author, „The following cannot constitute the material object of the offense: titles issued to make payments, credit instruments, currencies and, in general, any writing that has economic value; in reference to these goods, the theft is equivalent to committing the theft offense, and the destruction is mentioned at art. 253 NCP; consequently, in relation to the nature of the material

object, we cannot consider that the offense of theft or destruction of writings is a complex offense that absorbs theft or destruction” (Udroiu, 2016, p. 321).

3.3. Offense Subjects

The active subject of this offense may be any person that fulfills the general terms required by the law to have this quality (criminal capacity).

In the case of the aggravated normative modality the active subject is qualified, having the quality of public servant that commits the deed in the process of performing his service duties.

Criminal participation is possible in all its forms (co authorship, instigation, complicity), even in the form of improper criminal participation.

In the case of the aggravated modality, for the existence of co authorship it is necessary to bring evidence that certifies that all participants have the quality of public servants, and the incriminated actions have been committed in the performance of service duties.

The passive subject is the „ public authority, public institution or any other legal entity that manages or exploits goods that are public property or the person that performs a public interest service for which he was invested by public authorities or that is submitted to control or supervision regarding the performance of that public service” (Udroiu, 2016, p. 321).

4. Judicial Structure and Content of the Offense

4.1. Prerequisite

The prerequisite consists in the pre-existence of some writings, that are in conservation or custody of one of the legal or natural entities provided by the law (public authority, public institution or another legal entity that manages or exploits goods that are public property, or the person performing a public interest service for which he was invested by a public authority or that is submitted to control or supervision regarding the fulfilment of that particular public service).

4. 2. Constitutive Content

4.2.1. Objective Aspect

The material element of the objective aspect is fulfilled through two alternative actions, that may consist in the stealing or destruction of a writing of those that constitute the material object of the existing offense.

The theft „means the existence of a dispossession that consists in the removal of the good from the factual control of the possessor or of the detainer without his consent and of an entry in possession, consisting in the actual passing of the good under the control of the perpetrator” (Udroiu, 2016, p. 321).

The destruction means that the writing ceases to exist totally or partially.

In the older doctrine it was appreciated that by destruction “we understand – as in current speech – any action that results in the total or partial obliteration of an object, so that it becomes totally or partially unusable for its initial destination. To destroy a writing, of those mentioned at art. 242, means to perform any activity meant to totally or partially liquidate the object: breaking, cutting, burning etc.” (Rămureanu and col., 1977, p. 39).

In the judicial doctrine and practice from the middle of the second half of the past century, the issue of the difference between the theft and the stealing of some documents, on one hand and, on the other hand, between the destruction of documents and destruction to damage community goods was raised.

Thus, related to this topic, the doctrine of that time claimed that, the “law maker did not understand to give the offense a complex character, so that the content of the offense of theft or destruction of writings becomes constitutive element, the offense of theft to damage community goods (art. 231 c. pen.). Indeed, the two offense categories exclude each other, their material object being different: while the offenses of theft and destruction to the damage of community goods refer to those writings that constitute value titles (paper, coin, bonds etc.), the offense of theft or destruction of writings refers to other types of writings. In fact, it would be hard to admit that the assimilating offense– theft of writings – should be sanctioned *more lightly* (prison from 3 months to 3 years) than the assimilated offense – theft to the damage of community goods (prison from 6 months to 4 years), or that the assimilating offense - theft of writings– should be sanctioned *identically* with the assimilated offense– destruction to the damage of community goods (prison from 3 months to 3 years). Consequently, the actual deed will constitute one or the other of the two offense categories, in relation to the nature of the writing on which the theft or destruction was exerted. In case the same action of theft or destruction is exerted on different types of writings – including value titles– we will have an ideal conjuncture of offenses” (Rămureanu and col., 1977, p. 39).

Besides these elements of resemblance and difference, between the offenses mentioned above, we must also examine the resemblances between the offenses provided at art. 242 of the 1969 Criminal Code and the offense provided at art. 272 of the same code (retaining or destroying writings), by referring them to the provisions of the criminal law in force.

In this sense, legal practice prior to the entry into force of the current Criminal Code decided that “the offense mentioned at art. 242 Criminal Code is an offense against authority, whose material object is constituted by any writing that is in conservation or in custody of a state institution or of another unit mentioned at art. 145, except for the writings issued by a criminal investigation institution, a court or another jurisdiction organ, or destined to those.

The destruction of the latter writings, or preventing, in any way, one of the above mentioned institutions from obtaining the writings, when these are necessary for solving a case, constitutes the offense mentioned at art. 272 Criminal Code and constitutes an offense that prevents the achievement of justice.

As such, the destruction of some records of findings of a traffic accident and of the biological samples taken for analysis falls within the provisions of art. 272 Criminal Code” (Vasile and col., 2016, p. 745).

In the same sense, in another case, it was decided that “the legal framing mentioned at art. 242 par. (1) of the 1969 Criminal Code is not in accordance with the evidence administered in the case and the actual situation that was retained. Thus, the statement given by the respondent to the police and, then, the retention of that statement to be destroyed fulfils the constitutive elements of the offense mentioned at art. 272 C. of the 1969 Criminal Code, the respondent, through his deed, not doing other than preventing, in any way, that the writing destined for the police reaches this institution as long as such writings are necessary for solving the case. Consequently, the Court retained that the case fulfils the constitutive elements mentioned at art. 272 Criminal Code and order the modification of the juridical framing.” (Vasile and col., 2016, pp. 745-746).

Even in the context of the new incrimination, this issue is still important, the difference between the offenses of theft or destruction of writings, on one hand, and the stealing and destruction of some writings, on the other hand, consisting in a different material object, in the active subject (which in the aggravated modality is qualified), as well as the passive subject, which is also, different.

To complete the material element of the objective aspect, it is necessary to fulfill the *essential requirement* which is that the writing that is the object of the action of destruction or theft is in conservation or custody of one of the persons mentioned at art. 175 par. (2) and 176 Criminal Code

The expression *to be in conservation or in custody* “does not involve that the good belongs to that institution, public authority or legal entity. The writing may belong to another institution, public authority or legal entity that manages or exploits goods that are public property.

The place where the writing was at the moment of the action of theft or destruction (in the office or headquarters, in the archive or the file of a public servant of that institution, public authority or legal entity is not relevant” (Griga și col., 2016, p. 40).

The immediate consequence consists in the creation of a state of danger for the passive subject, due to the theft or destruction of the writing.

The causality does not need to be proven by judicial institutions, this results from the materiality of the deed (it results *ex re*).

In legal practice it was decided that “in the framework of the privatization contract, the removal of some documents from the headquarters of the seller of stocks by a delegate of the buyer that, according to the agreement of the parties, had the right to consult the documents only at the headquarters of the seller, committed after the cancelation of the sales and purchase agreement, constitutes the offense of theft or destruction of writings” (Udroiu, 2016, p. 322).

In order for a document to be assimilated to a writing in the sense of the criminal law, it is necessary to have a certain value and to bear the signatures of the persons mentioned by the law.

In this sense, in legal practice it was decided that “the deed of the respondent which, upon being heard by a prosecutor in relation to committing a robbery offense, when presented with the declaration to be signed, crumpled and tore it apart, saying that it is not in accordance with the facts, does not constitute the constitutive elements of the offense of theft and destruction of writings. The declaration that constitutes the object of the accusation of the respondent does not fit into the category of writings, because, not being signed by him, presents no value and it cannot be assimilated to a writing. On the other hand, the offense of theft or destruction of writings is committed only with intention or, in this case, it cannot be considered that the respondent intended or accepted such consequences; he tore the declaration saying that it *was not in accordance with the facts* (Udroiu, 2016, pp. 321-322).

4.2.2. Subjective Aspect

The guilt form with which the active subject acts is *intention* that may be *direct* or *indirect*.

The mobile and the purpose have no relevance for the existence of the offense, these being important in the activity of individualizing the criminal law sanction.

5. Legal Precedents

The first mentions of the analyzed offense in the typical modality (simple) can be found in the 1864 Criminal Code, in Title III (Crimes and offenses against public interests), Chapter IV (Resistance, non-compliance and other misbehaviors against public authority) Section V with the marginal name “On breaking seals and stealing acts or objects in public deposits”, art. 198- 205.

Regarding the aggravated modality, this was mentioned in the same title, Chapter II with the marginal name “Crimes and offenses committed by public servants in the performance of their duties”, Section 1 under the name “Thefts committed by public depositaries”, art. 140 (amended and completed by the law no. 17 of February 1874 and by the Law no. 21 of February 1882).

We mention that in the typical modality, among the active subjects the following are mentioned: “any preceptor, any public servant responsible for tax collection, any public accountant or depositary”.

The incriminated actions consist in: “peculation or theft of public or private funds,, or effects replacing money or acts, titles and other moving things that are in his hands, under his responsibility.

In the aggravated modality the active subject were “any judge, administrator, public servant or public officer”, while the material element of the objective aspect was fulfilled through actions such as: breaking, destroying, stealing or peculating acts or titles whose depositary he was or that had been entrusted to him in virtue of his duty” (Băulescu & Ionescu, 1911, p. 191).

An especially important element concerns the applicable sanction that, besides maximum imprisonment also mentioned the loss of the right to occupy a public function for the entire period of one’s life, as well as the loss of the right to “pension”.

In the Carol the Second Criminal Code the examined offense was mentioned in a similar mode in the provisions of art. 562, under the name of “destruction of acts” where the deed of the person that “to the purpose of causing another person damage, destroys an authentic act under private signature, that does not belong to him or that does not belong to him exclusively, or hides an act that does not belong to him” (Rătescu and col., 1937, p. 620).

6. Conclusions

The incriminating text at art. 259 Criminal Code is included in the previous law, but its content has numerous changes, including regarding the minimal and maximal limits of the sanction.

As emphasized, these modifications present major importance if we discuss the application of the criminal law more favorable in the case of the succession of criminal laws in time.

The evolution of criminality in the field amended by the necessity of defending through specific criminal law means the particular social value, recommends the maintenance and even the perfecting of the incrimination of this deed.

As a general conclusion we appreciate that, at the time being, the incrimination of this deed is necessary, the text could be perfected in relation to the evolution of criminality in the field.

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