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The Break of Seals in the New Romanian Criminal Code

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Abstract: In the present study, we have investigated the sealing breaking in the light of the new regulations brought in with the entry into force of the new Criminal Code. Thus, we have examined the elements of the offense, the constitutive content, with direct reference to the judicial practice in the field and the recent doctrine. The novelties consist in examining the pre-existing elements of the offense, its constitutive content, as well as the legislative precedents in the Romanian law, which we have insisted on highlighting, the consistency of the Romanian legislator over time for the incrimination of this deed. The present work is part of a complex work to be published at a publishing house recognized in the field. The work may be useful to both theoreticians (academics***, PhD students, master students, and students) as well as to the practitioners of criminal law.***

Keywords: offense; constitutive content; legal precedent

1. Introduction

Included at art. 260 of Title III Special part of the Criminal Code in force, with the marginal name "Offenses regarding state frontier and state authority", the break of seal offense consists in the action of a person that removes or destroys a legally applied seal.

The offense is considered to be more severe, being penalized consequently, if the incriminated action is committed by the custodian.

In the older doctrine it was appreciated that the "seal is the instrument that state or community organizations use to ensure the preservation or the identification of certain movables or immovables. The seal applied on these constitutes evidence and warranty concerning the measure imposed by an organ exerting authority and it symbolically expresses authority so that its removal or destruction represents an attack against a measure imposed by the authorities.

The action of breaking seals is, thus, a great danger for the maintenance of prestige and authority owed to authorities and to social relations whose protection is insured by the defense of this prestige against manifestations that breach this respect owed to authorities" (R.M. Stănoiu, 1972, p. 54).

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2. The Criminal Code in Force in Relation to Prior Legislation

The new incrimination text fully reproduces the text of art. 242 of the 1969 Criminal Code (including the marginal title), the only difference consisting in the modification of the minimal limits of the sanctions mentioned in the law.

Thus, in the case of the typical modality the minimal limit is increased from 1 month to 3 months imprisonment, and in the case of the aggravated normative modality the minimal limit is increased from 3 to 6 months imprisonment, while the maximal limits and the alternative sanction with fine in the case of both modalities remain the same.

3. Pre-existing Elements

3.1. Legal Object

The special legal object consists in the social relations that regard the respect that must be owed to authority, relations that also involve the respect owed by every person to the integrity of the legally applied seal.

3.2. Material Object

The material object consists in the legally applied seal, "that is, more precisely, the imprint applied of a seal of the state authority on a certain material susceptible to preserve the trace, such as lead, wax etc. etc." (Griga, 2016, p. 43).

The material object will only exist if the respective seal has been legally applied, which means in compliance with the provisions of the law.

If the seal has not been legally applied, meaning that it has been abusively applied by a public servant, the action of breaking or destroying such a seal cannot constitute an action through which the material object of the objective aspect is fulfilled, so the deed does not comply with the constitutive elements of the break of seals.

In this sense, older legal practice, but that is still up to date decided that "the breaking of a legally applied seal does not constitute an offense, since it lacks this particular requirement that the seal is legally applied." (Griga, 2016, p. 43).

3.3. Offense Subjects

The active subject of the offense in the typical modality is not qualified, as it can be any person that fulfills the general criteria required by the law to have this quality.

In the aggravated modality, the active subject is qualified, his quality being that of custodian over the good on which the seal has been applied.

4. Judicial Structure and Content of the Offense

4.1. Prerequisite

The existence of the offense of break of seals is conditioned by the preexistence of a legally applied seal.

According to older legal practice, but that is still up to date, "committing the offense involves not only the preexistence of the instrument called seal belonging to a state or community organization (see art. 286 Criminal Code), but also its application in the conditions of the law as means of preservation and identification of goods.

In the category of official instruments called seals we do not include other official instruments (such as: stamp, marking instruments, embossing stamps), whose existence does not comply with the prerequisite.

If it is legally acknowledged that the seal has not been legally applied, and so the prerequisite is not fulfilled, the deed loses its criminal character.

The conformation, the functioning and the usage modality of the seal are regulated through different normative acts." (Stănoiu and col., 1972, p. 55).

4.2. Constitutive Content

4.2.1. Objective Aspect

The material element of the objective aspect is fulfilled through two alternative actions, that is, the removal or the destruction of a legally applied seal.

Through *removal* we understand any deed through which the legally applied seal is removed from its place.

The removal can be made through any means or procedures (taking, detaching and throwing, hiding)" (Stănoiu and col., 1972, p. 56).

By *destruction* "we mean the material liquidation of the applied seal through any means (shattering, burning, filing)" (Stănoiu și col., 1972, p. 56).

Both actions (removal or destruction) must be inflicted only against the legally applied seal, not on the good that the seal has been applied to.

In case, along with or after the removal or the destruction of the seal, the good on which the seal was applied is stolen or destroyed, we are in the presence of a conjuncture of offenses.

Thus, in legal practice, as well as in the specialty doctrine, the issue of the legal classification of the deeds of stealing freight from the CFR wagons through the break of seals was raised and of the deeds of stealing electric power by removing the seals from the electricity meters.

It was correctly claimed that the seal applied by the SNCFR organs do not have the meaning and the purpose of a closing system for the wagon and of a means of preventing access in the wagons, so that the action of removing such a seal and stealing freight from the wagon fulfills the constitutive elements of the break of seals and of simple theft, being in conjuncture. (Griga, 2016, p. 45).

We also appreciate that, in the case of the legally applied seals from the closing systems of freight wagons, deed followed by the stealing of goods that were transported, fulfills the constitutive elements of two offenses, theft and break of seals, in real conjuncture.

This opinion expressed in the doctrine has been agreed by most Romanian courts.

Regarding the seals applied to closing systems of freight wagons, we mention that these are not applied only by the commercial departments of the freight transport company, but also by customs institutions and by legal persons owners of the transported freight.

The purpose of these seals is to ensure the integrity of the transported goods. However, the ascertainment of the offense is not conditioned by the possibility that the seal ensure the closure of the wagon or the prevention of access in the wagon, as expressed in the Romanian doctrine, but by the fulfillment of the conditions required by the law for the existence of the offense of break of seals.

We support this opinion, because in legal practice, the seals are applied to all wagon closing systems, and their role is also to prevent access inside the wagon of unauthorized persons.

To round up the material element of the objective aspect it is also necessary to fulfill the *essential requirement* that means the action of removing or destroying has the object of a *legally applied seal.*

In Romanian doctrine, as well as in legal practice, the interpretation of the expression "legally applied seal" was only partial, meaning that the institutions that have the right to apply a seal, when it is considered to be legally applied etc. have not been the object of focus.

Thus, both doctrine and legal practice suggested that a seal is legally applied only when it is applied by a state institution or organ, such as: prosecutor's office, police, fiscal institutions, judicial executor, specialty departments of railways, customs institutions etc.

We appreciate that this interpretation is wrong, since a seal can be legally applied even if it is applied by another legal or natural person than the legal persons acting under state authority.

In this sense, we consider that, in order to establish the existence of this essential requirement in the content of the objective aspect, it is necessary to establish the following elements:

- the legal or natural person that applied the seal and if that person had the competency of applying that seal;

- the provisions of the law that allows the application of the seal by the natural or legal person in that particular case;

- the document drafted when applying the seal.

Thus, if we refer to the legal practice in the field of railway transport, also taking into consideration the legislation ruling over the activity of freight transport, we notice that a freight wagon is ensured with seals on all its closing systems (lateral doors and shutters). In practice, these closing systems are ensured with seals, as follows: the seal of the person handing over the freight and the seal of the commercial departments of the freight transport company from the site where the freight was loaded in the wagon. If the freight is for exportation, a seal of customs authority will also be applied.

In these circumstances, if only the seal of the institution handing over the freight is removed, which can be a private or state company, while the seal of the freight transport company is intact, the issue of whether or not the offense of break of seal was committed is raised.

The seal of the natural or legal person can be considered, in the sense of the criminal law, a legally applied seal?

We appreciate that, in such a case, the seal of the legal person owner of the transported freight is legally applied and, in consequence, the constitutive elements of the offense of break of seals are fulfilled. Moreover, we appreciate that the offense can also exist if the transported freight belongs to a natural person that applied its own seal.

It is important to retain that, for the existence of the committed offense in this modality, it is necessary to make explicit mentions about the application of these seals in the bill of lading. The lack of this mention leads to the inexistence of the offense.

We consider that, in all situations, the judicial institutions must acknowledge also the existence of a new *essential requirement that* consists in the mentioning of the application of the seal in a special document, mention that is made immediately after applying the seal.

This interpretation is incidental and in the case of the seal applied by the institutions that measure the electricity or gas consumption.

The immediate consequence is the creation of a state of danger for the authority that applied the seal in compliance with the provisions of the law.

The causal connection results from the material of the deed *(ex re)*, thus it is not necessary that the judicial institutions prove it.

In legal practice it was acknowledged that, most of the times, the offense of break of seals was accompanied by other offenses, such as theft, destruction, breaking and entering or disturbance of possession, case in which the real conjuncture of offenses was retained.

Thus, „the criminal offenses the defendant is held responsible for are destruction, break of seals and disturbance of possession. The defendant is held responsible for the fact that, being on trial with different persons to whom she owed money, in 2008 the court decided to organize a bid for the apartment of the defendant. On 14.04.2011, the defendant was notified by the judicial executor that the apartment had to be evacuated and that he could live in it until 10.05.2011. Since on 10.05.2011 the defendant had not left the apartment, the judicial executor applied the legal seal and notified the defendant that, in order to take the sealed goods, he had to notify the judicial executor. However, claiming that he had nowhere to live, on 10.05.2011, after approximately one hour since the judicial executor had left, the defendant broke the door and entered the apartment, broke the seals that were on the door and the goods and continued to live in the apartment until 12.05.2011. The defendant was held responsible for the offense of destruction because the judicial executor changed the locks before applying the seals, and the defendant forced the new locks to enter the apartment. ” (C. Rotaru și col., 2016, p. 28).

Also, “The deed of the defendant of stealing freight from a wagon, after previously destroying the seal, constitutes the aggravated theft offense in conjuncture with the break of seals offense; since the seal applied on the wagon does not the character of a lock, it is wrong to retain, concerning the same deed, theft through break-in” (Toader, Stoica, Cristuș, 2007, p. 390)

4.2.2. Subjective Aspect

The guilt form with which the active subject acts is the intent that can be direct or indirect.

For the existence of the offense, the mobile or the purpose has no relevance, but the acknowledgement of their existence is important to individualize the criminal code penalty.

5. Forms, Modalities, Sanctions

5.1. Forms

Although possible, *preparation actions*, like the attempt, are not sanctioned by the law.

The consummation of the offense takes place when the incriminated action is performed, moment in which the immediate consequence was produced.

In theory (very rarely in practice), there can be a moment of *depletion*, in case the applied seals are removed or destroyed one at a time (when goods are ensured with several seals, such as in the case of a freight wagon). This moment coincides with the moment of the removal of the last seal.

5.2. Modalities

The analyzed offense presents a typical normative modality (simple) and an aggravated normative modality.

Mentioned in the provisions of art. 260 par. (1) Criminal Code, the typical normative modality consists in the removal or the destruction of a legally applied seal.

The aggravated normative modality is mentioned in the provisions of art. 260 par. (2) Criminal Code and it consists in the removal or destruction of a legally applied seal committed by the custodian.

The most important aspect of this modality consists in the existence of a qualified active subject, that is its quality of custodian of the goods ensured by sealing.

5.3. Sanctions

In the case of the typical modality, the sanction provided by the law is imprisonment from 3 months to one year or fine, and in the case of the aggravated normative modality the sanction is imprisonment from 6 months to 2 years or a fine.

6. Complementary Explanations

6.1. Connection to other offenses

The examined offense presets some similarities and also differences with the offense of destruction.

6.2. Some adjective law aspects

The competency of performing criminal prosecution belongs to criminal prosecution institutions of the judiciary police, under the supervision of the prosecutor from the court in the area of which the offense was committed.

Criminal prosecution starts ex officio, and the first instance trial competency belongs to the District Court.

Depending on the quality of the active subject at the time the offense was committed or sometimes on the case trial, the trial competency may belong to superior courts.

7. Legislative Precedents and Transitory Situations

7.1. Legislative Precedents

The examined offense was mentioned at art. 198 and 199 of the Criminal Code of 1864, as well as at art. 263 and art. 265 of the Criminal Code of Carol the Second.

Thus, at art. 198 of the Criminal Code of 1864, as modified by the Law of the 17th of February 1874 the following incrimination is mentioned: *"When the seals, applied by the order of an administrative institution or court, will be broken through the recklessness of the custodians, these custodians will be punished by prison from 15 days to 4 months"* (Bădulescu, Ionescu, 1911, p. 270).

Art. 199 of the same code mentioned the aggravated modality of the offense mentioned in the previous art. for which the defendant was held responsible: *"If the break of the seals will be made for documents or goods of another person that, either will be reported and punished with forced labor or punished himself with this punishment, the reckeless custodian will be punished with imprisonment from 3 months to one year."* (Bădulescu, Ionescu, 1911, p. 271).

At art. 263 of the Carol the Second Criminal Code the offense was mentioned marginally *"The Break of seals and the stealing from seizure of goods",* having the following legal content:

"The person removing or destroying legally applied seals commits the offense of break of seals and is punished with correctional imprisonment from 2 months to one year and fine from 2.000 to 4.000 lei.

The same punishment is applied for the custodian too, when the break of seals was committed by his fault.

If the deed is committed by the custodian, the punishment is correctional imprisonment from 6 months to 2 years, fine from 2.000 to 4.000 lei and correctional interdiction from one to 3 years" (Rătescu & col., 1937, p. 167).

Art. 265 mentions the offense of *theft from seals,* whose legal content is the following:

"The person stealing, completely or partially, goods that have been legally seized by the application of seals, commits the offense of theft from seals and is punished with correctional imprisonment from 6 months to 2 years and fine from 2.000 to 5.000 lei.

If the deed was committed through one of the means shown at art. 263, the punishment is correctional prison from one to 2 years and fine from 2.000 to 6.000 lei.

If the deeds mentioned in the previous paragraphs are committed by the custodian of the seizure, or the owner who was responsible for keeping the seized goods or, with their knowledge, another person, the punishment is correctional prison from one to 3 years and fine from 2.000 to 8.000 lei" (Rătescu and col., 1937, p. 171).

In a vast analysis, past doctrine retained that: *"At art. 263-265, the Criminal Code deals with three offenses that are often committed in performing the same criminal intention; the offense of break of seals, the offense of theft from seizure and the offense of theft from seals of seized goods.*

The illicit activity for committing these offenses is directed against the authority of public administration and a penalty is applied in order to ensure the respect for it.

Indeed, the seal applied on goods that are seized are signs of public administration and those not complying with these signs or measures of the administration, by deteriorating or stealing the goods are directed against the authority of the public administration and lack the respect owed to authorities.

Garraud considers that this measure taken by the administration for certain goods analogous to that of placing people in prison and, since one cannot facilitate escaping from arrest without sanction, one cannot steal goods under seizure or seal.[1].

It is obvious that for the existence of the offense the seal or the seizure must be legally applied. If the seals would have been applied by private persons, their breaking does not fall under the sanction of the law.

As material element of the offenses in art. 263-265, the lawmaker asks that the breaking or destruction of the seal is effective; that the theft of goods has effectively taken place, totally or partially (…)

The attempt to commit these offenses is not incriminated by the law maker, but the culpable form is incriminated, when the break of seals or the theft from seals was committed by the recklessness of the custodian, he shall be punished for it.

The law aggravates punishment when the break of the seal or the theft was committed by the custodian, because he breaches the trust he was given; also when the theft of seized goods is committed by the owners when he was custodian, or it was stolen with his knowledge or that of the custodian" (Ionescu-Dolj, 1937, p. 168).

We have to notice the consistency of the Romanian law maker in incriminating these deeds, as well as the evolution of the Romanian legislative system from the 1864 Criminal Code to the Carol the Second Criminal Code.

7.2. Transitory Situations. Application of the more Favorable Criminal Law

Taking into consideration the penalty limits more reduced in the previous law, most of the times, the more favorable criminal law will be the old one.

The same law will be more favorable also if the case presents mitigating circumstances or in the case of conjuncture of offenses.

8. Conclusions

The research on the offense of break of seals revealed, first of all, the consistency of the Romanian law maker in incriminating offenses of the kind.

On the other hand, there has been an evolution of the incrimination from the 1864 Criminal Code to the present one.

At the same time, the analysis also focused on the necessity of maintaining the offense within the limits of the criminal law, since criminality is maintaining at quite a high level.

As a general conclusion, we appreciate the necessity of incriminating this deed, and, at the same time, the necessity of maintaining it within the limits of the rightful sanctions of the current criminal law.

[1] Traité théorique et practique de droit pénal vol. IV, edit. II/Theoretical and Practical Treaty of Criminal Law vol. IV, 2 Ed. II, p. 311.

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