



Theoretical and Judicial Aspects of Judicial Practice Regarding the Offense of Concealment. Comparative Study with Money Laundering and Favoring the Perpetrator

Ana Alina Ionescu Dumitrache¹

Abstract: This article analyzes the relevant aspects regarding the content of the crime of concealment, a crime that endangers the social values regarding the administration of justice and patrimony. The study also includes relevant examples from judicial practice regarding the constitutive content of this crime. There are also analyzed the main elements that distinguish the crime of concealment from the crime of money laundering and that of favoring the perpetrator.

Keywords: pre-existing conditions; the object of the crime; the administration of justice

1. The Legal Content

Art. 270 - Concealment

(1) The receipt, acquisition, transformation or facilitation of the capitalization of an asset, by a person who either knew or provided from the concrete circumstances that it comes from committing an act provided by the criminal law, even without knowing its nature, shall be punished with imprisonment from one to 5 years or with a fine.

(2) The punishment applied to the concealer may not be higher than the punishment provided by law for the deed committed by the perpetrator.

(3) The concealment committed by a family member shall not be punished.

¹ Senior Lecturer, PhD, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654 Galati, Romania, Corresponding author: alinadumitrache@univ-danubius.ro.

2. The Pre-existing Conditions

2.1. The Object of the Crime

The main legal object consist in the social relations regarding the administration of justice. As it has been pointed out in the specialized literature, concealment is a “multi-offensive” crime (Udroiu, 2020, p. 314), by incriminating this deed, the social values regarding the patrimony are defended, relations that are affected by the concealment or hiding the assets resulting from the commission of an act provided by the criminal law.

The material object of the crime of concealment consists in the asset derived from the commission of an act provided by the criminal law which is acquired, transformed or whose capitalization is facilitated.

Any movable asset can be the material object of the crime of concealment.

The material object of the concealment may be the same asset concealed successively by several perpetrators.

2.2. The Subjects of the Crime

The active subject of the crime can be any natural or legal person who meets the conditions of criminal liability.

The participant in the commission of the crime from which the concealed asset comes from cannot be an active subject of the crime.

If the deed is committed by a family member of the participants for the deed provided by the criminal law from which the property comes from, the special impunity clause becomes incidental.

Criminal participation is possible in all its forms.

The complicity will be retained in the crime of concealment in the situation where between the participant in the deed provided by the criminal law from which the asset comes and the concealer there was an agreement prior to or concomitant with the commission of that act in the sense of concealment of the asset.

The main passive subject is the state and the secondary passive subject is the person whose patrimony was affected by committing the deed provided by the criminal law from which the concealed asset comes.

There will be a real competition between complicity in the crime of theft and concealment if, after a first act of concealment, there are promises from the concealer that he will ensure the continued capitalization of other stolen assets¹.

3. The Constitutive Content

3.1. The Objective Side

The material element of the objective side consists in the following alternative ways: *receiving, acquiring, transforming or facilitating* the capitalization of a good, by a person who either knew or provided from the concrete circumstances that it comes from committing an act provided by criminal law, even without knowing its nature.

Receiving the asset means accepting the good, with any title - garage, deposit, loan (Rotaru, Trandafir, & Cioclei, 2020, p. 82).

The receipt of the asset can be achieved directly or through other people.

The offense of favoring the perpetrator will be retained if, immediately upon receipt, the facilitator destroys the asset in order to prevent the discovery or prosecution of the perpetrator of that act (Toader, 2019, p. 411).

According to a case, the act of the defendant S.C. "MONEY FOR YOU" S.R.L. which in the period ----, S.C. "MONEY FOR YOU" S.R.L. which has as main object of activity, "granting loans with receipt of assets for storage and pledge through pawnshops", facilitated the capitalization by sale of several Novatech laptops, by: storing them in the spaces belonging to the company, by selling laptops resulting from the crime of aggravated theft mentioned above, in these spaces, and by posting some of them on the website OLX, as well as on the website www.amanetgalati.ro (associated with the company), for the purpose of sale, meets the constitutive elements of the crime of concealment, deed provided and punished by art. 270 para. 1 of the Criminal Code. The court finds that the committed deed meets the essential features of the aforesaid crime, respectively, is provided by the criminal law as a crime, is committed with guilt, is unjustified and is imputable to the defendant, having no incident in question any of the limiting cases provided by art. 18 and art. 31 Criminal Code.

¹ HCCJ, United Sections, Dec. no. 2 of January 21, 2008, quoted by (Toader, 2019, p. 412).

The material element was achieved by receiving and facilitating the capitalization of the laptops by the defendant, knowing that they come from theft. Although several alternative forms of crime have been committed, these activities constitute a single crime of robbery.

The knowledge by the defendant of the illicit origin of the assets results from the following factual elements: the receipt of the assets from persons other than the owner, in a clandestine way and their capitalization in order to obtain sums of money illegally¹.

The acquisition of the asset implies its transfer into the property of the concealer.

The transformation of the asset refers to the modification of its substance so that it can no longer be recognized.

By facilitating the capitalization of the asset, the concealer helps in the sense of achieving the benefit pursued by committing the deed.

According to the law, the deed of the defendant AA, who on 06.05.2019, pledged to capitalize a gold chain knowing that it had been stolen by EE during the night, meets the constitutive elements of the crime of concealment, provided by art. 270 paragraph 1 of the Criminal Code with the application of art. 41 paragraph 1 of the Criminal Code reported to art. 43 para. 5 of the Criminal Code².

In another case, it was noted that the deed of the defendant MN who during several months in 2015, bought the assets stolen by the defendants DRC and IC from the injured person TT, for small amounts or other products (cigarettes, drinks), knowing that the respective goods come from the commission of a deed provided by the criminal law, it is noted that it meets the constitutive elements of the crime of concealment in a continuous form, a deed provided by art. 270 para. 1 Criminal Code, with the application of art. 35 para. 1 Criminal Code. The material element of the objective side consists in the action of buying the stolen goods for insignificant sums or other products. From the point of view of the subjective side, the guilt of the defendant takes the form of direct intention, as he foresaw and pursued the result of his deed³.

¹ Decision no. 1524/2020 of 24-Nov-2020, Galati Court, www.rolii.ro.

² Decision no. 2311/2020 of 15-Dec-2020, Arad District Court, www.rolii.ro

³ Decision no. 1299/2019 of 04-Dec-2019, Bacau Court of Appeal, www.rolii.ro.

The immediate consequence is the creation of a state of danger for the administration of justice. Also, by committing this deed, a state of danger is created for the state of fact of the hidden good.

The causal link results from the materiality of the deed.

3.2. The Subjective Side

The crime of concealment is committed with direct or indirect intent. The concealer must know at the moment of committing the deed, in any of the normative ways, that the good comes from committing a deed provided by the criminal law.

The illicit origin of the asset can be known from different factual circumstances: the clandestine sale, the location of the good, the non-existence of prior authorizations, etc. (Toader, 2019, p. 413)

4. Delimitation of the Crime of Concealment from the Crime of Money Laundering¹

In the judicial practice and in the doctrine, there have been numerous controversies regarding the delimitation of these crimes considering the fact that art. 49, para. 1 letter c) of Law no. 129/2019 for preventing and combating money laundering and terrorist financing as well as for amending and supplementing normative acts², sanctions *the acquisition, possession or use of assets by a person other than the active subject of the crime from which the assets come, knowing that they come from committing crimes*.

Starting from the legal content of the crime of money laundering as regulated by art. 49 par. 1, letter c), we find that money laundering has the appearance of a special form of concealment.

From the point of view of **the legal object**, in the case of both crimes, it consists in the social relations regarding the administration of justice and in the social relations of patrimonial nature.

¹ For details on the comparative analysis of the two crimes, as previously regulated by legislative changes in criminal law before 2012, see (Dumitrache, 2013, pp. 262-266).

² Published in the Official Monitor of Romania no. 598 of July 18, 2019.

The concealment and money laundering differ in the aspect of the **material object**. If in the case of money laundering, *the material object may consist only of property arising from the commission of the offenses*, any tangible or intangible, movable or immovable assets, legal documents or instruments in any form, including electronic or digital, attesting title or a right or interests regarding them, in the case of concealment, *the material object consists in the movable assets resulting from the commission of a deed provided by the criminal law*.

Judicial doctrine and practice are oriented towards the retention of the crime of concealment regardless of whether a court decision has been issued on the premised offense from which the property that was the object of concealment is presumed to have originated or whether the act provided by the criminal law from which the property originates constitutes or not a crime, whether or not the perpetrator was discovered or whether or not he was prosecuted¹.

The active subject of both offenses may be any person who meets the conditions of criminal liability except the participant in the offense or deed provided by the criminal law from which the assets originate.

In judicial practice, it was noted that the participant in the commission of the main crime - *delictum principale* - generating dirty money, cannot be an active subject of the money laundering crime - *delictum subsequens*. The expression “knowing that the assets come from the commission of crimes”, excludes from the sphere of active subjects the persons involved in the commission of the crime from which the goods come (Nicolae- Cătălin & Cristiu Ninu, 2020).

We observe a similar expression of the criminal legislator in the case of the crime of concealment, the person who participated in the commission of the crime from which the concealed property comes, not being able to have the quality of active subject of the crime of concealment.

The criminal participation is possible in all forms, in the case of both offenses.

The main passive subject is the state and the secondary passive subject, in case of concealment, is the person prejudiced by the deed provided by the criminal law from which the asset comes; in the case of money laundering, the secondary taxable person is the person whose assets have been affected by the crime from which the goods subject to the money laundering process originate.

¹ Constanta Court of Appeal, Criminal Section, criminal sentence no. 94 / 16.05.2018, unpublished, quoted by (Iugan, 2020, p. 292)

The two crimes differ in terms of premise situation. In the case of concealment, there must be a pre-existing deed provided by the criminal law from which the concealed goods come. The deed provided by the criminal law must not fulfill the essential features of the crime etc.) nor that this deed provided by the criminal law from which the concealed goods come should be directed against the patrimony, having no relevance the nature of the criminal act from which the concealed assets come (Udroiu, 2020, p. 556; Rotaru, Trandafir, & Cioclei, 2020, p. 82).

In the case of the crime of money laundering, the premise situation consists in the pre-existence of a crime from which the goods come. We agree with the opinion expressed in the literature in the sense that they cannot constitute the main offenses of money laundering, offenses that are not likely to produce dirty goods (for example: non-reporting, perjury, etc.).

Both crimes analyzed are autonomous in relation to the offense or deed provided by the criminal law from which the goods hidden or subject to money laundering come.

From the subjective point of view, in the case of both crimes, the form of guilt is the direct or indirect intention, the perpetrator having to know the origin of the goods he hides or submits to the money laundering process.

In conclusion, if the act committed meets the constitutive elements specific to both concealment and money laundering, the offense provided in the special criminal law will be retained.

5. Delimitation of the Crime of Concealment from Favoring the Perpetrator

The two offenses are similar in terms of a lack of prior or concomitant arrangement between the concealer or facilitator and the participant in the pre-existing act.

The premise situation in the case of concealment consists in the pre-existence of a deed provided by the criminal law, and in the case of favoring the perpetrator, the premise situation consists in the fact that a certain person is in the phase of investigations in a criminal case, criminal prosecution, execution of a sentence or deprivation of liberty measures (Toader, 2019, p. 413).

The material element of the objective side of the crime of concealment consists in receiving, acquiring, transforming or facilitating the capitalization of an asset

compared to the material element of the crime of favoring the perpetrator which may consist of any action or inaction specific to the aid.

6. Forms. Sanctions

The acts of preparation and attempt are possible, but they are not punishable.

The consumption of the crime occurs when any normative way of the material element is achieved.

In the acquisition modality, the concealment is consumed at the moment when the tradition of the asset is achieved, which confers the quality of the concealer as the owner of the good coming from the commission of a deed provided by the criminal law (Udroiu, 2020, p. 565).

The exhaustion of the crime takes place at the moment of the last execution act.

7. Procedural Aspects

The criminal action is initiated *ex officio*. The criminal investigation is carried out by the criminal investigation bodies of the judicial police under the supervision, leadership and coordination of the prosecutor.

The jurisdiction of the court of first instance belongs to the court.

8. Conclusion

Understanding the specific aspects of the crimes of concealment, money laundering and the perpetrator's favoring is relevant in the context of confusions in delimiting these deeds by committing endangered social values of major interest to society: the administration of justice and wealth. Also, the topicality and importance of the approached topic are certified by a jurisprudence in which there are many criminal offenses that have as object the analyzed crimes, observing an increase of these crimes in the context of specific crime groups.

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