



THE 16TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Difference between Money Laundering and Procuring

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Abstract: The study is a critical-analytical approach regarding the judicial practice, the author analyzing and presenting the arguments underlying the determination of criminal liability in the situation of acquiring material goods from the practice of prostitution. The conclusion drawn consists in determining the criteria that must be considered upon the legal classification of this crime. This study was determined by the change of orientation of the criminal policy on the part of the Romanian legislator regarding criminalization of procuring and prostitution, as well as relating the current legal situation to the offense of money laundering.

Keywords: concurrence; offenses; money laundering; criminalization

Introduction

Thus, while in the Criminal Code of 1969² the procuring and prostitution offenses were criminalized in Article 329 - *procuring* and Article 328 - *prostitution*, being located in Title IX entitled “Offenses affecting relationships on social coexistence”, in the Criminal Code in force³ the offense of procuring was criminalized within Title I “Offenses against the person”, Chapter VII entitled “Trafficking and exploitation of vulnerable persons”, in Article 213, and prostitution was decriminalized by waiving criminalization.

Both from a criminological and a legal point of view, from the perspective of the use of money or goods originating from the practice of prostitution, decriminalization of prostitution produces multiple effects.

Thus, since in the legal content of the money laundering offense, provided in Article 49 of Law 129/2019 for preventing and fighting money laundering and terrorist financing⁴, it is stipulated as a premise condition that the goods or money, object of the laundering, come from committing offenses, it is obvious that the exchange or transfer, concealment or dissimulation of the origin of those goods obtained from the practice of prostitution, activities carried out by the person who obtained them by practicing

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² The Criminal Code of 1969 was adopted by Law 15/1968, republished in the Official Gazette of Romania, Part I, no. 65 of 16.04.1997;

³ The Criminal Code of 2014, adopted by Law 286/2009, published in the Official Gazette of Romania, Part I, no. 510 of 24.07.2009;

⁴ The Law 129/2019 on preventing and fighting money laundering and terrorist financing was published in the Official Gazette of Romania, Part I, no. 589 of 18.07.2019;

prostitution, do not constitute the offense of money laundering, since the premise condition in the criminalization norm of money laundering is not fulfilled¹.

The controversies regarding the differentiation between the offenses of procuring and money laundering arise when the material acts committed are for obtaining patrimonial benefits from the practice of prostitution, covering both the objective element of typicality described in the legal content of Article 213 para. (1) of the Criminal Code, as well as the one from Article 49 para. (1), letter c) of Law 129/2019².

Thus, in the legal content of criminalization of procuring from Article 213 para. (1) of the Criminal Code of 2014, procuring was qualified as “obtaining patrimonial benefits from the practice of prostitution”, an alternative form to “determining or facilitating the practice of prostitution”, the way of “acquiring and owning” goods being at the same time a material element of the money laundering offense.

The identity of the material element criminalized in the two texts has generated a unitary practice at the level of the judicial prosecution bodies, and even at the level of the courts, some of them ordering the prosecution and punishment of the acquirer of such benefits for an ideal concurrence of offenses (procuring and money laundering), while others have ordered initiating criminal proceedings and prosecution only for the offense of procuring.

We believe that, in order to determine the legality of these solutions, it is necessary to analyze the criteria for differentiating between the two offenses in terms of the subjective side and the material element.

Thus, in the case of procuring, the author is aware that the material benefits obtained, although obtained through the practice of an immoral act (prostitution), do not come from an offense, thus achieving a simple form of intent, while in the case of money laundering, the acquiring author is aware that the money or goods acquired come from the commission of an offense, which determines a qualified intention on their part (the acquisition by the third party is made in order to hide their origin and not to compensate the injured party by the predicate offense, as a result of which those goods were procured).

The non-existence of the predicate crime, typical of the offense money laundering, entails the legal classification of the acquisition of goods from prostitution only in relation to the offense of procuring, so criminal liability must be entailed for a single offense and not for concurrence of offenses.

Another issue on the legal classification of the crime could arise when the acquirer of the money resulted from prostitution would use them in economic activities, typical of those described at letter a) or b) from Article 49 of Law 129/2019 in order to conceal their origin.

We are of the opinion that even in those situations we would not be in the situation of a concurrence of offenses, because, on the one hand, those activities represent a consequence and an extension of the acquisition, and on the other hand, not even in the case of these activities committed by the same author (the original acquirer), the goods do not come from the commission of a offense, but from the practice of an immoral activity, a premise element that is not part of the legal content of the money laundering offense.

Other theoretical discussions could arise if the third party acquiring the material benefits obtained by practicing prostitution in turn transmits to another person those goods or values in order to use them (for

¹ In judicial practice, in such a situation, in case of transfer or dissimulation of money resulted from prostitution committed by the person who obtained it by practicing prostitution, related to the offense of money laundering, the solution would be of closing the case, pursuant to Article 16, para. (1), letter b) of Criminal Procedure Code, since one of the objective conditions of typicality is lacking, namely the non-existence of the offense from which those sums of money originate.

² The acquisition, possession or use of goods by a person other than the active subject of the offense from which the goods originate, knowing that they come from the commission of offenses.

example, for the purpose of purchasing real estate which they subsequently rent) or to conceal them or to change the nature of their origin.

We consider that these activities could entail criminal liability for the offense of money laundering against the second acquirer, in the form criminalized in Article 49 para. (1), letter a) or b) of Law 129/2019, not in relation to the origin of the sums of money resulted from prostitution, but to the origin of the offense of procuring, in the alternative variant of this offense.

References

*** (1997). *Official Gazette of Romania*, Part I, no. 65.

*** (2019). *Official Gazette of Romania*, Part I, no. 589.