

## CRIMES AGAINST THE CARRYING OUT OF JUSTICE IN THE CONTEXT OF THE CURRENT CRIMINAL LAW

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**Abstract:** The passing of the new codes was justified by the legislator by taking into account both the comparative law in the field, as well as the social and economic realities, the evolution of the doctrine and jurisprudence, the need for readjusting the punitive treatment within the normal limits, the simplification of the incriminatory texts and the need to avoid the overlapping of various criminal provisions.

The current paper aims to analyze the offenses against the justice process, which have come to know new nuances in the current penal configuration, being distinctively specified in Title IV of the Penal Code's Special Part; the syntagm "Crimes hindering justice" has been replaced with "Crimes against the carrying out of justice", since these crimes have not always effectively prevented justice from being carried out; sometimes they only posed a threat to the justice process. The changes regarding these offenses were justified by the legislator by invoking the need to ensure the legality, impartiality, independence and unwavering nature when carrying out the justice process, new incriminations being brought up and other criminal acts being rethought, which were already criminalized by the previous legislation.

**Keywords:** *offenses, justice achievement, act of justice, new offense*

### 1. Preliminaries

In the current Criminal Code, under Title IV, the following acts are criminalized as offenses against the carrying out of justice: failure to denounce (art. 266), notification omission (art. 267), misleading the judicial authorities (art. 268), encouraging the offender (art. 269), concealment (art. 270), obstruction of justice (art. 271) influencing statements (art. 272), perjury (art. 273) taking revenge on someone for aiding the justice (art. 274), theft or destruction of documents or evidence (art. 275), exerting pressure on the justice (art. 276), compromising the interests of justice (art. 277), violation of the hearing's solemnity (art. 278), verbal or physical judiciary violence (art. 279) abusive investigation (art. 280) subjection to harsh treatments (art. 281), torture (art. 282), unjust repression (art. 283), unfair assistance and representation (art. 284), escape (art. 285), facilitating the escape (art. 286), failure to comply with judicial decisions (art. 287) and failure comply with and execute the imposed criminal sanctions (art. 288).

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In the following we intend to present, as a element of novelty for the current criminal legislation, the newly criminalized European-inspired offenses, namely the obstruction of justice offense; taking revenge on someone for aiding the justice; exerting pressure on the justice and compromising the interests of justice, each of these affecting the independence of the justice, *lato senso*.

## 2. Obstruction of justice

The special judicial object consists of the social relations regarding the carrying out of justice, an activity that is prevented by the hindrance of the criminal investigation or the indictment. The offense has no material object.

The active subject of this offense can be any natural or legal person that meets the criminal responsibility criteria and who has been warned of the consequences of their act.

By noticing someone we refer to the warning, prevention, information regarding the consequences which could occur if a certain conduct were to be violated. The participation is valid under all forms.

The passive subject is the state as guardian of the carrying out of justice; a secondary passive subject could be the legal or natural person in favor of whom the prosecutorial authority or the court is administering the evidence.

The material element of the objective side is achieved by two alternative ways of perpetration: *preventing the criminal investigative body or the court to perform a procedural act or refusal to provide the criminal investigative body, the court or the syndic judge with the data, information, documents or owned assets, in order to solve the case.*

Preventing the criminal investigative body or the court to perform a procedural act can be done by various actions of omission or commission, which consist of any action through which the perpetrator prevents or completely blocks<sup>1</sup> the completion of the procedural<sup>2</sup> act by the criminal investigative body or by the court.

Refusal to provide the criminal investigative body, the court or the syndic judge with the data, information, documents or owned assets, in order to solve the case is done via the refusal or rejection omission to provide the authorities, stipulated in the incrimination norm, with the requested documents or information.

The essential requirements for achieving the material element of the objective side are:

- the prevention of the procedural acts must be done without right;
- the refusal to provide the criminal investigative body, the court or the syndic judge with the data, information, documents or owned assets, in order to solve the case, partially or entirely;
- the existence of an explicit request from the criminal investigative body, court or syndic judge;
- the request must be made within the confines of the law;

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- the request must be intended to solve a case.

The immediate result consists of the creation of a state of danger for the achievement of the justice in a criminal case. The causality relation implicitly results from committing the act.

In both cases, the form of guilt is the intent.

### 3. Revenge on someone aiding justice

The special judicial object consists of the social relations regarding the carrying out of justice, a social value which excludes the exercise of acts of vengeance on account of the aid offered to justice.

The material object is the body of the person against whom revenge is carried out.

Any natural or legal person meeting the general criminal responsibility criteria can be an active subject, participation being possible under any form.

The state is the main passive subject, as an authority carrying out justice; the secondary passive subject is the natural person or family member thereof, against whom revenge is carried out and who has contributed to the act of justice.

The material element of the objective side is achieved by a criminal action consisting of the committing of offenses (absorbed in its content), regardless if it is a consumed or attempted form of offense against the person or their family member.

A few cumulative essential requirements have to be met in order for the offense to exist<sup>3</sup>:

- the offense must be directed against a person or the family member thereof;
- the offense must be determined by the existence of an internally generated inquiry of the criminal investigative bodies (via complaint or denunciation), by giving statements (as a witness, expert, interpreter, plaintiff claiming damages or injured party) or by presenting evidence in a criminal or civil case, or in any other procedure in which witnesses are heard;
- the notification of the prosecutorial bodies, giving statements or presenting evidence in a criminal, civil case or any other procedure in which witnesses are heard constitutes the reason of the crime committed against the person or their family member.

The immediate result consists of a state of danger for social relations regarding the fulfillment of justice in a broad sense, as well as a possible damaging of the social values regarding the person or the family members of the one who has contributed to the act of justice.

The causality relation is achieved by jeopardizing the social relations regarding the fulfillment of justice.

Intent is the form of guilt in both methods.

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#### **4. Pressures on justice and the compromising of the interests of justice**

In the case of the first offense, the special judicial object is complex. On the one hand, it is comprised of the social relations regarding the fulfillment of justice in a broad sense and, on the other hand, of the social relations regarding the mental freedom of the judge or of the criminal prosecutorial body.

Being a formal offense or a danger-related one, the offense of pressuring the justice has no material object.

Any natural or legal person who meets the general criteria of criminal responsibility and who commits acts in order to influence or intimidate the judge or criminal prosecutorial body can be an active subject; participation is possible under all forms.

The main passive subject is the state as the authority achieving justice; the passive secondary subject is qualified, namely the judge or the criminal prosecutorial body.

The material element of the objective side is achieved by an action consisting of *making false public statements regarding the commission of an offense or serious disciplinary violation related to the prosecution of said case.*

A few cumulative essential requirements have to be met in order for the offense to exist<sup>4</sup>:

- the public statements must be false;
- the statements must cover certain types of offenses: of a criminal nature and a disciplinary nature by the committing of serious misconducts;
- the offense must be determined by the existence of a juridical procedure in progress;
- the offense must be committed with the intent to influence or intimidate the judge or the criminal prosecutorial body.

The immediate result consists of a state of danger for the social relations regarding the fulfillment of justice in a broad sense, as well as of a state of intimidation of those involved in the achievement of justice.

The causality relation is achieved by jeopardizing the social relations regarding the fulfillment of justice.

The form of guilt is the direct intent qualified by purpose – *the influencing or intimidation.*

In the case of the offense constituting the compromising of the state's interests, the special judicial object is complex: the main one consists of the ensemble of social relations regarding the safeguarding of the achievement of justice and the secondary one consists of the ensemble of social relations regarding the freedom of the individual to have the right to privacy regarding the data and information entrusted to those who, by virtue of their position are bound to confidentiality of these data. Other social relations can also be damaged additionally, such as the patrimonial relations (if any damage occurs), the social relations regarding the dignity of the person (provided the person's dignity is violated).

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In the case of this offense, the official documents and evidence can be the material object.

As is obvious from the content of the regulation, the active subject is qualified and namely, the magistrate or another public servant, witness, expert or interpreter.

Since they are a qualified active subject, the participation can only present itself as instigation or complicity.

The main passive subject is the state, the secondary one the natural or legal person harmed by the disclosure of confidential information.

The material element is achieved alternatively, by divulging or disclosing the evidence or official documents, the confidential information entrusted to the offender or those of which he has been made aware about by virtue of his position.

Disclosure involves the divulgence or confession, the transmission or disclosure, by any means, of confidential information regarding the date, time, place, manner or means through which evidence is to be administered. It is not relevant whether the divulgence was made directly or indirectly or whether all the facts or only a part of them have been divulged. What is important is that all this data be brought to the attention of another person or more.

## 5. Conclusions

Divulgence implies the revealing of or unlawful disclosure, usually to the press<sup>5</sup>, of a certain something, an operation which has a broader temporal spectrum (until the final resolution of the case) than the divulgence aimed at just preventing or hindering the criminal action.

The essential requirements that have to be met according to the incrimination norm are:

- the divulgence or disclosure has to be unlawful;
- the magistrate, public servant, witness, expert or interpreter should have been aware of the confidential information, in virtue of their position;
- the disclosure of the evidence or official documents should be made before prescribing a solution of non-indictment or a final resolution of the case.

The immediate result is a state of danger for the act of justice.

A causality relation must exist between the perpetrator's action and the immediate consequence.

The offense is committed only intentionally, directly or indirectly.

## 6. References

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4. Law no. 286/2009 - The Criminal Code of Romania

**Notes:**

1. A. Filipas, *Crimes Against the Carrying out of Justice*, Academiei Publishing House, Bucharest, 1985; S. Bogdan (coord.), D. A. Serban, G. Zlati, *The New Criminal Code. The Special Part. Analyses, Explanations, Comments. The Cluj Perspective*, Juridical Universe Publishing House, Bucharest, 2014, p. 345.
2. By procedural act we understand the operation which ensures the carrying out of a procedural act and the achievement of the consequences it must produce; in other words, the procedural act refers to the documentary aspect of the process, for example, the registration of a complaint to the competent entity or serving a subpoena and compiling the evidence in question, the examination of the witnesses, the preparation of a report or the drafting of a ruling.
3. P. Dungan, Medeanu T., V. Pasca, *Criminal Law. The special part. Comparative presentation of the new Criminal Code and Code of 1968*, vol. I, Legal Publishing House, Bucharest, 2012, p. 467.
4. *Ibidem*, p. 487
5. *Ibidem*, p. 493.