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Mihai STEFANOAIA

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HOLDING WITH THE PURPOSE OF GIVING TO CIRCULATION OF COUNTERFEIT CURRENCY

Mihai ŞTEFĂNOAIA*

Art.282 par. 2 rep. to art. 284 Penal Code with appl. of art. 41 par. 2 Penal Code

The penal sentence number 407 from 14.10.2009 of the Courthouse of Suceava, regarding the defendants B.P. and B.E., both of them being prosecuted for committing the crime of "holding counterfeit currency with the purpose of giving it to circulation", stated by art. 282 par. 2 rep. to art. 284 Penal Code with application of art. 41, par. 2 Penal Code.

Through the indictment number 38D\P\2006 from 09.09.2008 of the Bureau of Investigation of Organized Crimes and Terrorism-Territorial Service of Suceava, registered in this courthouse under number 3182\314\2008 from 15.05.2008, it was decided the arraignment of the defendants B.P. for having committed the crime of holding with the purpose of giving to circulation of counterfeit currency stated by art. 282 par. 2 rep. to art. 284 Penal Code with appl. of art. 41 par. 2 Penal Code and B.E. for having committed the crime of holding with the purpose of giving to circulation of counterfeit currency stated by art. 282 par. 2 rep. to art. 284 Penal Code with appl. of art. 41 par. 2 Penal Code.

In the notification of the Court it was stated that on the day of 03.04.2006, in the locality of Corocăieşti, commune Vereşti, Suceava county, the defendant B.P. gave in circulation the amount of 120 Euro, one bill of 100 Euro and one bill of 20 Euro, which were counterfeit, with the help of his mother B.E., and on the day of 13.04.2006 he once more gave to circulation, also with the help of his mother, the amount of 19,850 Euro in 100 and 50 Euro bills, for the amount of 10,000 real Euro.

The defendant B.E. was caught in the act on the day of 13.04.2006 in the locality Corocaiesti, commune Veresti, Suceava county, while she was offering for sale the amount of 19,850 Euro, in 100 and 50 Euro bills, for the amount of 10,000 real Euro.

* Phd's, assistant "Petre Andrei" University from Iasi, stefanoaiamihai@yahoo.com

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There was emitted an arrest warrant on the name of the defendant B.P. by the Courthouse of Suceava on the day of 18.08.2006 for 29 days, warrant which eventually was not put into practice because of the Italian authorities who refused to hand over the defendant, as most of the crimes had been committed on Italian territory.

The given situation described in the indictment of the prosecutor's office was proved with the following means:

- official reports of investigation;
- transcription reports of the telephone discussions between the undercover agent X and the defendant B.P.;
- transcription reports of the telephone discussions between the undercover agent X and the defendant B.E.;
- the official report of the catch in the act;
- the statements of witnesses;
- expertise report of BNR;
- technical and scientific expertise report;
- the statements of the defendant B.E.;
- the counterfeit bills.

At the first hearing, the defense attorney has invoked the exception of the irregularity of the notification, exception that was rejected by the Court.

In the stage of the inquiry, after the reading of the notification, the defendant B.E. and the witnesses from the file were heard, and the defendants, through their defense attorney submitted inscriptions.

The defendant B.P. did not show himself before the Court in order to be heard during the inquiry, because, from the documents presented by his attorney it could be understood that he had been living in Italy together with his family, wife and a child, where he had been working and had permanent residence for more than 4 years.

On the 31.03.2006, the police agents from the Control Brigade of Organized Crime from Suceava have noticed that the defendant B.P. was holding counterfeit euro bills that he intended to give in circulation in the city Suceava at half the value of the real euro.

In order to prove the criminal activity of the defendant B.P., an undercover agent was authorized to work on the case, under the name "X", with the purpose of identifying the false bills and establish the criminal activities of the persons involved.

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On the 01.04.2006, as a result of the infiltration of the undercover agent in the entourage of the defendants, "X" got from the defendant B.E. two bills of 100 and 20 Euro, which were sent by her son, the defendant B.P. from Italy, and in the following days he was to send her more bills that were going to be put in circulation.

On the day of 13.04.2006, as a result of researches and informative and operative activities undergone on the basis of monitoring with special means the activity of the two, the defendant B.E. was caught in the act, while she was offering for sale to the undercover agent "X", the amount of 19,850 Euro, in counterfeit bills of 100 and 50 Euro.

From the content of the audio and video recordings and the telephone interceptions made within the case, it results that the defendant B.E. knew that the bills that she had and intended to give in circulation were false.

As a consequence of the researches made it was clear that the amounts of money (counterfeit euro), had been sent by the defendant B.P. from Italy, by means of the witness Daniel Dumitru, who did not have any idea about the content of the delivery, this one being a driver on a car transportation on the route Romania-Italy.

It is to be mentioned that both the prosecutor's office and the court have reached the conclusion that the defendant B.P. would have sent the amount of counterfeit money only from the recording of the telephone conversations, and even in this case it was not very clear if it happened or not, as both the undercover agent "X" and also the criminal investigation officers have reached the conclusion from several expressions and have interpreted some phrases in the sense that it would be a case of counterfeit currency, but not even in a telephone conversation held between the people involved was it stated clearly that it would be the case of a deal with false money, evidence that could not be corroborated with any other evidence, as this one had been living and working in Italy, and the taking of digital fingerprints was impossible to be done, and his hearing even less.

From the statement of the defendant B.E. in the phase of the criminal investigation, it results that in the evening of 12.04.2006, the defendant B.P. called her from Italy and told her that he had sent her a parcel through Daniel Dumitru and that she would find inside a cloth, a sweater, three packs of coffee and 20,000 Euro, and that this money was

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to be given to a boy called "X" who, in return was going to give her 10,000 Euro.

The witness B.I., the husband of the defendant B.E. and the father of the defendant B.P., stated that he took from his fellowman Dumitru Daniel a parcel of the dimensions of a student's notebook, not only in length but also in width and height, but he states that he did not have any idea about the content of the parcel.

From the statement of the witness Daniel Dumitru it results that, on the day of 09.04.2006 he made a trip to the house of the defendant B.P. from Italy at his request, where the latter lived together with his wife and daughter, and that this one handed him a parcel wrapped in gift paper and wide scotch band, of small size, and which was to be taken to Romania and given to his parents.

The witness, Dumitru Daniel, has also stated that, as he has weekly transports from and to Italy and Romania, he has many times carried parcels and amounts of money (up to 500 Euro) from the defendant B.P. from Italy to his place where they were taken by the parents of the defendant. Moreover, the witness Dumitru Daniel has confirmed before the Court, when asked by the defense attorney, that many people from the bus he was driving had access to the parcel as it was placed together with other parcels in the place that was specially arranged for the transportation of the luggage. This way, the defense attorney wanted to underline the fact that, connected to the content of the parcel, this could have suffered any alterations after the moment of receiving by the courier and up to its delivery at the destination.

This fact, corroborated with the lack of the defendant B.P fingerprints from the counterfeit bills, was in the interest of the defendant, reason for which the defense attorney has insisted on underlining all these facts.

More than that, in the written conclusions deposited by the defense attorney in the judging of the case, this one asks from the Court to notice that from the content of the telephone conversations between the defendant B.E. and the undercover agent "X" one could not tell that the former knew details about what she was going to hand in and what she was going to get, the organs of criminal investigation referring to a phone conversation transcribed and explained 'we have deduced 'that the expression of the defendant B.E. "it isn't ready, you know what", means that she knew that she was going to make a deal with counterfeit money.

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At the same time, the defense attorney has showed the Court that from the phone conversations between the defendants and the undercover agent "X" it was very clear that these two were instigated to commit new crimes.

It was sustained by the defendant, through the defense attorney that the means of evidence would be illegally obtained, as, without the active intervention of the investigator, there are no details about the defendant having committed this crime, in this respect being mentioned the CEDO practice, the cause Romanauskas against Letvia and Teixeira de Castro against Portugal.

The Court observes that the Romanian procedural law is in full agreement with the mentioned decisions, art. 68 from the Criminal Procedure Code banning the instigation of a person with the purpose of committing a crime. So as to get under the incidence of the art. 68 from the Criminal Procedure Code, the activity of "instigation" of a crime must embrace true forms of challenging which would initiate in the mind of a person the idea of committing a crime.

The Court analyses that the CEDO jurisprudence does not ban, when the nature of the crime imposes it, the use of sources such as anonymous informers. The instigation by the police takes place when the involved officers do not stay to the investigation of the criminal activities in a passive manner, but put pressure on the people involved with the purpose of making them commit a crime, which normally would not have been committed.

From the analysis of the documents of the prosecution, the Court came to the conclusion that the dispositions of the Criminal Procedure Code have been met regarding the authorization of the undercover agent, the authorization of the phone interceptions, the obtaining of evidence being accordance with the criminal procedural stipulations.

The defense attorney shows the Court in the final pleading that in the indictment of the prosecution was retained that on the 03.04.2006, the defendants have committed the crime of "holding, with the purpose of giving to circulation, counterfeit currency", thing that would have led immediately and compulsory to the intimation of the criminal investigation officers, resulting in the beginning of the prosecution against the two defendants B.P. and B.E. As a consequence, the means of getting the evidence, following this day (03.04.2006) breaks the stipulations of the art. 68 from the Criminal Procedure Code. In this respect the prosecution

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officers, through the undercover agent "X" , have made the defendants continue the committing of the crime of "holding with the purpose of giving to circulation of counterfeit currency" after this deed had been done.

According to the art.68 from the Criminal Procedure Code "it is forbidden to make use of violence, threats and other means of restraint ad also promises and other guidance with the purpose of getting evidence. It is also forbidden to make a person commit or continue to commit a crime with the purpose of getting evidence."

In this respect, the defense attorney asks the Court to observe that from the phone transcriptions existing in the file, it is made clear that the undercover agent "X", contrarily to the stipulations of the Penal Code and the Criminal Procedure Code which forbid this practice, insists and even instigates on the ongoing of other transactions and for other amounts of money than those from the day of 03.04.2006.

On these terms, related to the stipulations of art. 197 from the Criminal Procedure Code, all the evidence obtained after the day of 03.04.2006 are declared null, and as a consequence, cannot be used in the case, and the judging of the present case should be made on the basis of the evidentiary material resulted from the removal of the evidence obtained after the day of 03.04.2006.

In what regards the defendant B.P., according to the phone transcriptions, he was made to commit the crime, as it was not proved that he would have committed any crime without the intervention of the undercover agent (repeated phone calls of the latter and also urges such as "come on, when are you going to do it?", "Do you no longer have courage?", "it is profitable", etc.)

The deed of the defendant B.P., who held the amount of 120 Euro, in 100 Euro and 20 Euro counterfeit bills, and the amount of 19, 850 Euro in 100 Euro and 50 euro counterfeit bills, with the purpose of giving it to circulation on the day of 03.04.2006, 13.04.2006 respectively, with the help of his mother, the defendant B.E. knowing the their false nature, meets all the elements of the crime of holding with the purpose of giving it to circulation of counterfeit currency stated by the art. 282 par. 2 rep. to art. 284 Penal Code with appl. of art. 41 par. 2 Penal Code.

The deed of the defendant B.E. who held the amount of 120 Euro, in 100 Euro and 20 Euro counterfeit bills, and the amount of 19, 850 Euro in 100 Euro and 50 euro counterfeit bills, with the purpose of

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giving it to circulation on the day of 03.04.2006, 13.04.2006 respectively, knowing the their false nature, meets all the elements of the crime of holding with the purpose of giving it to circulation of counterfeit currency stated by the art. 282 par. 2 rep. to art. 284 Penal Code with appl. of art. 41 par. 2 Penal Code.

Judging on the subjective part of the case, it was noticed that the crimes were committed with direct intention, qualified by the sought finality- the revaluation of the currency by giving it to circulation.

When talking about the individual punishment which is to be given to the defendants, the Court would take into account the general criteria of individualization stated by the art. 72 Penal Code, regarding the limits of the punishment for the committed crime, the degree of abstract and concrete social danger of the committed deeds by the defendants, the importance of the social values that were broken, the means and ways of committing the crimes, but also the data regarding the character of the defendants.

As a consequence, reading the documents from the criminal record, one can deduce that the defendants are at the first deviation from the rigors of the criminal law, and the Court is going to retain in their favor the circumstances stated by the art. 74 letter a Penal Code.

On the basis of the art. 282 par. 2 Penal Code rep. to art. 284 Penal Code with application of the art.41 par. 2 Penal Code, and with the appl. of art. 74 letter a Penal code and of the art. 76 letter c Penal code, the Court sentences the defendant B.P. , the son of I. and E., without criminal record, to the penalty of 2 years of jail for the crime of holding with the purpose of giving to circulation of counterfeit currency.

On the basis of art. 71 Penal Code, it bans the defendant the rights stated by art. 64 par.1 letter a, the second thesis and letter b Penal code.

On the basis of the art. 282 par. 2 Penal Code rep. to art. 284 Penal Code with application of the art.41 par. 2 Penal Code, and with the appl. of art. 74 letter a Penal code and of the art. 76 letter c Penal code, the Court sentences the defendant B.E. , the daughter of G. and E., without criminal record, to the penalty of 1 year of jail for the crime of holding with the purpose of giving to circulation of counterfeit currency.

On the basis of the art. 81 Penal Code the Court suspends the execution of the penalty applied to the defendant B.E. on a probation term of 3 years, calculated in conformity to the art.82 Penal code.

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On the basis of art. 359 par.1 Criminal Procedure Code, the Court draws the attention of the defendant on the stipulations of art. 83 Penal Code regarding the suspension of the parole and the execution of the initial penalty in jail in case the defendant commits another crime within the probation term.

On the basis of art. 71 Penal Code, it is forbidden that the defendant the stip[ulations of the rights stated by art. 64 par 1 letter a ,the second thesis and the letter b Penal code.

The Court applies the art. 71 par.5 Penal Code.

On the basis of art. 118, letter b Penal Code, the Court disposes the special confiscation of 297 bills of 50 Euro, 50 bills of 100 Euro, 1 bill of 100 Euro, 1 bill of 20 Euro, counterfeit bills which can be found in the 27 envelopes in the chamber of crime bodies and means of evidence of the Court.

With right to appeal within 10 days from the sentencing for those present and from the communication for those absent.

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