



Counterfeiting Stamps or Postal Effects

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Abstract: In this paper we have examined one of the crimes that are part of the group of counterfeiting offenses provided by Romanian law, respectively the offense of counterfeiting stamps or postal effects. The paper itself includes an introductory part in which we have made an overview of this incrimination, by reference to the provisions of the previous law, as well as a brief examination of the legal and material object, the constitutive content and the forms and modalities of its commission. I also highlighted the consistency shown by the Romanian legislator, who incriminated this deed since the Criminal Code of 1864. As part of a university course to be published later, the paper can be useful for students of the profile faculties as well as for practitioners in the field.

Keywords: Legal object; material object; objective side; legislative precedents

1. Introduction

Counterfeiting offenses are provided for in Title VI of the Criminal Code, Special Part, with the same marginal name.

Given the variety of such offenses, this group has been divided into three subgroups, each of which is included in some chapters with suggestive marginal titles.

Thus, the crime of *counterfeiting stamps or postal effects* is part of the subgroup of counterfeiting offenses provided in Chapter I with the marginal title “Counterfeiting of coins, stamps or other values”, art. 312.

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According to the indictment, the offense consists of falsifying stamps of any kind, postage stamps, postal envelopes, postcards or international response coupons.

As for the attempt, we mention that it is punishable.

This crime was also provided in the initial wording of the Criminal Code of 1969 in art. 283 with the marginal title “*Counterfeiting of stamps, marks or transport tickets*”.

It is important to note that, compared to other incriminating texts, from the initial drafting of 1969 until the entry into force of the Criminal Code (01.02.2014), the text has not undergone any modification or completion.

The examination of the two texts reveals some similarities, as well as some differences.

Thus, among the similarities, we note the identical mention of the material object which may consist of stamps, postage stamps, postal envelopes and postcards.

In the previous regulation, tickets or travel or transport sheets are also mentioned.

Also, in the previous regulation, it was incriminated in the incrimination text also putting into circulation of such values, an action which was abandoned in the text in force.

Regarding the sanctioning regime, we mention that it differs, in the sense that in the previous law it was more severe (imprisonment from 6 months to 5 years), compared to imprisonment from 6 months to 3 years or a fine in the law in force.

2. Pre-Existing Elements of the Crime

2.1. The Legal Object

The legal object consists in the social relations regarding the public trust that is granted to stamps, postal effects, as well as in the specific operations that are carried out through them.

In the earlier doctrine which referred to the provisions governing this offense in its original wording, it was held that “The offense of forgery of stamps, trademarks or transport tickets has as its general legal object of criminal protection the social relations whose formation, progress and development are conditioned by the defense of the social value of public trust, a trust that is constantly needed in the complex relations between people” (Dongoroz, et al., 1972, p. 389)

2.2. The Material Object

The material item consists of the stamp, the postmark, the postal envelope, the postcard, and counterfeit authentic international response coupon.

In the older doctrine it was argued that the material object consists of “materials (paper, ink, colors, rubber, etc.) that were used to counterfeit (shape) stamps, marks or tickets.

Exceptionally in the case of counterfeiting by *alteration* of the true stamp, mark or note on which a change has been made, the counterfeit stamp, mark or note shall also be the material and product object of the counterfeiting (...) (Dongoroz, et al., 1972, pp. 389-390).

The same author considers that “Counterfeit stamps, trademarks or transport tickets are the product of the crime of counterfeiting these values, and not their material object.” (Dongoroz, et al., 1972, p. 389)

In the recent doctrine, in the same sense it is stated that “the stamp, the postmark, the envelope, the postcard and the counterfeit international response coupon by counterfeiting represent the product of the crime, and not its material object; in that case, the goods used for the purpose of counterfeiting may constitute a material object of the offense” (Udroiu, 2021, p. 1019).

In the same vein, another author states that “If the act is committed by counterfeiting, the material object of the crime is the materials from which the stamps, postage stamps, envelopes, postcards or international response coupons were made. When the act was committed by altering the stamp, the postage stamp, the true international response coupon, on which a change was made, the stamp, the postmark or the international response coupon is also the material and product object of the counterfeiting” (Ristea, 2020, p. 136)

As for the *stamps*, they are printed with value, issued by the Romanian state or by any other state in the world or by another institution (Romanian or foreign) authorized for this purpose, which are used as means of payment.

Postage stamps “are stamps issued by the central postal authorities of a country which, by correspondence, show proof of advance payment of the cost of transport.” (Ristea, 2020, p. 137)

Envelopes and postcards “are objects made of paper or paperboard, in which correspondence can be induced or recorded, with the postage stamp corresponding to the cost of transport.” (Ristea, 2020, p. 137)

International response coupons “represent a specific means of payment for letters sent abroad.” (Ristea, 2020, p. 137)

2.3. Subjects of the Crime

An active subject of this crime can be any natural or legal person who meets the general conditions required by law to have this quality.

Criminal participation is possible in all its forms, co-authorship, instigation and complicity.

A passive subject is the institution that issues stamps, postage stamps, envelopes, postcards or international response coupons.

We believe that in certain situations, we may have another passive subject who identifies with a natural or legal person who has purchased under the law postage stamps, postage stamps, envelopes, postcards or counterfeit international response coupons, being misled, having representation that they are authentic, not counterfeit.

In the doctrine of the end of the last century, it was noted that the examined crime “may have as a possible passive subject the one who, being misled, acquired false stamps, marks or transport tickets, believing them to be true. The certain passive subject is the institution to which the stamps, marks or transport tickets are issued and put into circulation.” (Dongoroz, et al., 1972, p. 390)

3. Legal Structure and Content

3.1. The Prerequisite Situation

The prerequisite situation is the pre-existence of stamps, postage stamps, envelopes, postcards or international response coupons, authentic, true.

3.2. Constitutive Content

3.2.1. The Objective Side

The material element of the objective side is achieved by an action of falsification of stamps of any kind, postage stamps, postal envelopes, postcards or international response coupons.

According to judicial doctrine and practice, forgery can be achieved by two alternative actions, namely by counterfeiting or alteration.

Counterfeiting “shall be carried out by means and means similar to those used for counterfeiting coins or other valuables.” (Dongoroz, et al., 1972, p. 392)

Alteration “can be achieved either by reducing a value that has been used (e.g. stamp or stamped mark) to its previous form (washing, erasing or retouching, skillfully operated), or by changing the terms to give a true piece an increased value (e.g. change of destination in a travel sheet or quantity of goods in a transport sheet).” (Dongoroz, et al., 1972, p. 392)

The essential requirement. In order to complete the material element of the objective side, it is necessary to meet an essential requirement which is the actual situation of the material object of the crime, namely stamps of any kind, postage stamps, envelopes, postcards or international response coupons, which must be in legal circulation.

The immediate consequence is the creation of a state of danger for the social relations protected by the norm of incrimination, respectively the public, social trust in these values.

The causal link results from the materiality of the deed, so its existence does not have to be proved by the judicial bodies.

3.2.2. The Subjective Side

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

We note that the acts committed through guilt do not meet the conditions of subjective typicality of the examined crime.

4. Forms, Ways, Sanctions

4.1. Forms

Although possible, the *preparatory acts* are not sanctioned by law.

The attempt is possible being incriminated as such.

Consumption occurs when the counterfeiting or alteration of stamps of any kind, postage stamps, postal envelopes, postcards or international response coupons is fully carried out, at which time those values may be put into circulation.

If the counterfeiting action continues and after the first forgeries have been committed, the incriminated activity will become continuous, which will lead to a moment of exhaustion, which is identified with the one in which the counterfeiting activity ended for various reasons.

4.2. Ways

The examined crime has a single normative method which consists in falsifying (by alteration or counterfeiting) stamps of any kind, postage stamps, postal envelopes, postcards or international response coupons.

If they are forged stamps of any kind issued by the European Union or other states in the world, according to the provisions of art. 316 of the Criminal Code, the deed will meet the conditions of typicality of the examined crime, in the legal framework reference will be made to the mentioned text.

4.3. Sanctions

The sanction provided by law is imprisonment from 6 months to 3 years or a fine.

5. Some Supplementary Explanations

5.1. Similarities and Differences with other Crimes

The offense under consideration bears certain elements of resemblance to the other offenses belonging to this group.

Also, the examined crime also presents elements of resemblance to the crime provided in the provisions of art. 7, par. (2) of Law no. 241/2005 for the prevention and combating of tax evasion, with subsequent amendments and completions¹.

¹ Published in the Official Monitor no. 672 of July 27, 2005.

We specify that in the mentioned text it is incriminated the act of printing, use, possession or putting into circulation, willingly, of stamps, banners or standardized forms used in the fiscal field, with special regime, falsified.

In this sense, in the judicial practice it was decided that “Art. 7 par. (2) of Law no. 241/2005 for the prevention and combating of tax evasion (Official Monitor no. 672 of 27 July 2005), as amended, incriminates the act of knowingly printing, using, possessing or putting into circulation stamps, banners or standardized forms used in the field tax, in a special regime, *falsified*.”

The stamps, together with the banners, are used to mark excisable products (processed tobacco, ethyl alcohol), thus representing markings of these products.

The markings show a number of authentic elements that prevent counterfeiting. Printing counterfeit stamps is counterfeit. In this context, with regard to the legal framework, the provisions of the special law will be incidental, and not those of the Criminal Code”¹.

5.2. Procedural Issues

In the case of this crime, as a rule, the criminal investigation is carried out by the criminal investigation bodies of the territorially competent judicial police under the supervision of the prosecutor from the prosecutor's office attached to the court in whose district the deed was committed.

The trial in the first instance usually belongs to the court in whose district the deed was committed.

Depending on the quality of the active subject of the crime, the jurisdiction to prosecute may belong to the prosecutor, and that one to trial also to other higher courts.

¹ Timiș Court, criminal sentence no. 459 / PI of December 13, 2013, final by decision no. 227/A of March 20, 2014 of the Timișoara Court of Appeal, Criminal Section, upheld on appeal in cassation by decision no. 332 / RC of November 21, 2014 of Î.C.C.J., Criminal Section, available on www.scj.ro, apud (Bodoronca, et al., 2020, pp. 1473-1474).

6. Legislative Precedents and Transitional Situations

6.1. Legislative Precedents

The examined crime was also provided for in the provisions of the previous laws, respectively in the previous criminal codes.

Thus, in the Criminal Code of 1864 the crime was provided in art. 118, amended and supplemented by “Leg 17, February 74” and art. 120 amended and supplemented by “Leg 17 February 74”.

According to the provisions of art. 118 “They will be punished with imprisonment from 3 to 5 years and with a ban for a limited time (Criminal Code 27).

“Those that will be forged or altered any national stamp, or any public trademark, intended for silver or gold proofs” will be punished.

Likewise, those who, knowingly, have been served with papers or effects may be punished with false stamps, or with marks, or forged or altered stamps (Criminal Code 119; art. 89 leg. 22 March 80; art. 64 and 67 leg., July 31, 81; p. fr. 140) (Badulescu & Ionescu, 1911, p. 157)

Art. 120 “(Law 17 February 74)” stipulates that “It will be punished with imprisonment for 3 years and with the interdiction for a limited time: (Criminal Code 27).

a) Those who have falsified marks intended to be placed on behalf of the government on products or goods, or who have knowingly used such false marks.

b) Those who have forged the seal, stamp or mark of an authority which, or of a particular bank or commercial establishment, or who have knowingly used them (art. 252 of the Military Justice Code; art. 12 leg. 15 April 79, Article 89, Telegr. art. 92 leg. Monop. Tutun; p. fr. 142)” (Badulescu & Ionescu, 1911, p. 158).

In the jurisprudence of the time it was noted that “Art. 120 Criminal Code Punishes the one who will falsify the mark of an authority, that is, the instrument with which civil servants, on behalf of the government, put seals on products or goods. It also punishes those who knowingly use such a counterfeit trademark.”¹

In the Carol II Criminal Code, the crime was provided in art. 392 where it was provided that “The provisions of art. 385, 386, 387, 388 and 389 also apply when the acts prescribed in these articles are committed on postage stamps, postage or

¹ Case II, 132 of 12 March 70, B p. 82), *apud* (Badulescu & Ionescu, 1911, p. 158)

tax stamps and stamped papers, national or foreign, as well as on stamps or trademarks issued under a special law, by legal persons. under private law, which are intended to satisfy a public interest.”¹

We specify that the provisions of art. 385, 386, 387, 388 and 389 referred to in the said text shall regulate the offenses of counterfeiting currency. Therefore, the provisions governing counterfeiting offenses will also apply in the case of counterfeiting of postage stamps, postage or tax stamps and stamped papers, national or foreign, as well as stamps or marks issued under a special law, by legal entities of private law, which are intended to satisfy a public interest.

In the doctrine of the time it was appreciated that “The provisions regarding the counterfeiting of money also apply to stamps or postage stamps, or fiscal, stamped sheets, Romanian or foreign, such as e.g. stamps on letters, stamps, aviation, money orders, etc. stamps applied to bread, stamps issued by the Municipality of Bucharest, or to Romanian stamps or trademarks issued under a special law, by private legal entities whose purpose is to satisfy a public interest, such as stamps of the company for the prevention of tuberculosis, stamps pleadings issued by bars, etc.”²

6.2. Transitional Situations

We specify that the incrimination text was not modified, having the same legal construction as the one from its first wording (art. 283 of the Criminal Code of 1969).

In these conditions, considering the minimum and maximum limits of the penalties provided in the two laws (6 months to 5 years imprisonment in the old law and 6 months to 3 years imprisonment or a fine in the new law), as well as other elements that consider the circumstances concrete law of the commission of the deed, the more favorable criminal law will be able to be both the old law and the new law.

¹ Ministry of Justice, Carol II Criminal Code, Official Edition, prepared according to art. 608 of the law decreed under no. 3274/1938 published in the Official Monitor no. 222 of September 24, 1938, with the introduction in the text of the amendments made by: decree-law no. 3629/1939, published in the Official Monitor no. 233 of October 7, 1939 and decree-law no. 652/940, published in the Official Monitor no. 52 of March 2, 1940, Penit Printing and Cardboard Workshops. “Văcărești”, Bucharest, 1940, pp. 128-129.

² M. I. Papadopolu comments, in (Rătescu, et al., 1937, p. 551)

Thus, in the event that the court considers that it can apply the alternative punishment of the fine, the more favorable criminal law will be the new law, and when a mitigating circumstance is retained, the more favorable criminal law will be the old law.

7. Conclusions

In a similar manner which highlights the Romanian legislator's tradition in this matter, the offenses of forgery were provided for in a separate title with the same marginal title. Being part of this large group of offenses, forgery of stamps or postal effects is one of the offenses whose legal content has been partially preserved in the incriminating text, with little change over time. In fact, the only change from the original wording of the 1969 Criminal Code concerns the current legislature's refusal to incriminate the counterfeiting of tickets or travel or transport tickets and the circulation of counterfeit securities. Undoubtedly, the renunciation of the incrimination of the mentioned actions did not lead to their de-incrimination, as they appear mentioned in the wide incriminating texts.

Representing one of the crimes that has been provided in Romanian law since the adoption of the Criminal Code of 1864, its maintenance is justified, the social values defended by this rule of incrimination continue to be of major importance given the trust of the population (society) in some documents issued by certain institutions.

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