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Forgery and Fraud Offenses in Romanian Law

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Abstract: The present paper is a brief analysis of the crimes included in the group of counterfeiters in Romanian law. In the analysis, we have insisted on highlighting the tradition of incriminating this kind of deeds, a tradition that materialized in the provision of this group of crimes starting with the Criminal Code of 1864, continuing with the Criminal Code Charles II and the Criminal Code of 1969. Regardless of the political regime, the Romanian legislator continued to defend through criminal law these values, which in their essence led to increasing the trust of citizens in documents issued by state institutions or documents emanating from other entities. Out of the desire to present a paper through which we examine the current legal provisions, we have also considered highlighting the amendments and completions brought to some incriminating texts in Chapter I by Law no. 207/2021. The paper will be included in a criminal law course to be published in the future in volume IV at Universul Juridic Publishing House. Given the addressed topic, the paper may be useful to students of the country's faculties, as well as to practitioners in the field.

Keywords: Systematization of incriminations; objective side; subjective side

Introduction

The incrimination of some acts that led to forgery was a clear concern of the Romanian legislator, his intention being to ensure the protection of values, as well as to create a sense of trust in the documents issued by state institutions.

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In this regard, we recall that in the Criminal Code of 1864 the group of fraud crimes was provided in Title III with the marginal name "Crimes and offenses against the public interest", Chapter I "On forgery and Counterfeits", a chapter which was divided into three sections, each comprising sub-groups of specific offenses.

Thus, in section I "Currency forgery", several facts were incriminated by which counterfeits of currency were criminally sanctioned (art. 112-116).

In the second section, with the marginal title "*Transfers of seals of the state or other authorities, banknotes, public bills, etc*.", several such offenses were provided (art. 117-122).

Section 3 was divided into three subgroups, respectively: §I "*On the forgery of public or authentic documents and trade or banking*" art. 123-126, §II "*On forgery in private writings*", art. 127-128, and §III "*On forgery of passports, roadmaps and certificates*" art. 129-139.

As we can see, the legislator of the time pays special attention to the defense of these extremely important values for the functioning of a state at its beginnings that felt the need to trust some acts emanating from its institutions (after the Union of Principalities).

In the Criminal Code of Carol II, these offenses were provided for in Title IX with the marginal name "*Crimes and offenses against the public interest*".

The offenses referred to in this title were structured in three chapters, namely: Chapter I "*Counterfeiting of currency, public credit securities, trademarks, stamps, stamped papers, seals or signs of authentication, certification or recognition*". This chapter was further subdivided into four sections: Section I, "*Counterfeiting Currency*", Section II "*Counterfeiting of Public Credit Securities, Trademarks, Stamps and Stamps*", Section III "*Counterfeiting of Seals or Authentication Signs, certification or recognition*"; in the last section some common provisions were mentioned.

Chapter II "*Forgery in documents*" included three sections, as follows: section I "*Forgery in public and private documents*", section II "*Forgery in passports, roadmaps, certificates, translations, expertise and travel registers*" and section III "*The use of forgery*".

Chapter III "*Falsification by substitution of persons and usurpation of titles or honors*", includes two offenses, and Chapter IV provides for the sanctioning of the attempt for all forgery offenses contained in this title.

In our doctrine of the second half of the last century, which referred to the offenses of forgery provided for in the Criminal Code of 1969, in a broad analysis it is argued that "The offenses under the name of "forgery" constitute a well-defined and extremely varied category in the vast sphere of acts considered to be socially dangerous. False acts seriously undermine the truth and trust that must lead to the formation and development of human relationships. Any social relationship looks at and is grafted onto a certain reality that the subjects of the relationship have in mind and whose existence therefore implies a mutual good faith and trust on the part of these subjects; without the duty of respect for the truth and without the feeling of trust that the truth is actually respected, social relations would be possible only with difficult precautions and inevitable risks. That is why the criminal law considered it necessary that in order to protect social relations, and in order to ensure the normal formation and development of these relations, it should be incriminated those acts which by altering the truth creates a serious danger or harms certain social relations" (Dongoroz in Dongoroz et all., 1972, p. 357).

If for other groups of offenses the alteration of the truth can be done by various means conceived and executed fraudulently, "*In the special group of false crimes, the alteration of the truth is made on some entities (things) to which are legally attributed the appropriation and therefore the functioning to serve as proof of the truth that they express or attest on the occasion of various social relations (coins, stamps, credit securities, seals, cash registers, documents, etc.) and the trust is objectively given to the thing which in itself constitutes the proof of the truth"* (Dongoroz in Dongoroz et all., 1972, p. 358).

The doctrine holds that by the notion of "*false*" it is understood that "everything that does not correspond to the truth. The notion of "*false*" is an antinomic concept, derived from the notion of truth. There can be no "*false*", that is, an alteration of truth, except where the existence or possibility of the existence of truth is conceivable" (Dongoroz in Dongoroz et all., 1972, p. 358).

As for the term "forgery", it qualifies as "the operation by which the act of altering the truth is carried out. *Forgery* presupposes, like *falsehood*, the existence of a truth and of things, entities, which serve to prove it and on which the act of altering the truth is carried out; nothingness cannot be falsified" (Dongoroz in Dongoroz et all., 1972, p. 358).

With regard to the act of counterfeiting, this can be done by "any means likely to produce an alteration of the truth (shaping, counterfeiting, alteration, distortion, etc.).

Counterfeiting can be material or intellectual; total or partial; essential or helpful; successful or likely to raise suspicion, etc." (Dongoroz in Dongoroz et all., 1972, p. 358)

Regarding the truth altered by forgery, "it can regard things, people, events, situations, rights, obligations, commitments, finally any entity likely to generate consequences with legal relevance. The alteration of the truth may, in turn, concern various aspects, specific to each of the entities mentioned, e.g.: as the case may be, their existence or non-existence, their qualitative properties, their extent, quantity or value, main features, data on origin or provenance, time and place, etc." (Dongoroz in Dongoroz et all., 1972, p. 359).

Regarding the notion of *trust*, it was noted that this is "*the mental state determined by the presumption of good faith that people give in their relations with each other and by the presumption of veracity regarding the existence and value of things; trust can therefore be personal (given to a person) or objective (given to a thing)*" (Dongoroz in Dongoroz et all., 1972, p. 359).

The protection of trust in interpersonal social relations "is achieved not only by sanctioning forgery offenses, but also by incriminating other acts which, without containing an alteration of truth, are committed by disregarding the trust granted to a person (Offenses of: embezzlement, breach of trust, fraudulent management, breach of seals and abduction by custodians, disclosure of economic secrecy and others)" (Dongoroz in Dongoroz et all., 1972, p. 359).

1. Systematization of Incriminations

In the Criminal Code in force, the offenses of forgery are provided in Title VI of the Special Part (art. 310-327 of the Criminal Code), with the marginal name "*Forgery offenses*", after the offenses of corruption and service.

The offenses covered by this title are grouped into three distinct chapters, with specific marginal titles, respectively: Chapter I "Counterfeiting of coins, stamps or other valuables", Chapter II "Counterfeiting of authentication or marking instruments" and Chapter III "Counterfeiting in document".

Chapter I, entitled "Counterfeiting of coins, stamps or other valuables", provides for the following offenses:

- counterfeiting of coins (art. 310 Criminal Code);
- forgery of credit titles or payment instruments (art. 311 of the Criminal Code);

- forgery of stamps or postal effects (art. 312 of the Criminal Code);
- putting into circulation counterfeit securities or acquiring counterfeit non-cash payment instruments (313 Criminal Code);
- possession of instruments for counterfeiting securities (art. 314 Criminal Code);
- fraudulent issuance of money (art. 315 of the Criminal Code);
- forgery of foreign values (art. 316 Criminal Code).

The following offenses are covered by Chapter II, with the marginal name "forgery of authentication or marking instruments":

- forgery of official instruments (art. 317 of the Criminal Code);
- use of false instruments (art. 318 of the Criminal Code);
- forgery of foreign authentication instruments (art. 319 of the Criminal Code).

Chapter III, entitled 'Forgery of documents', includes the following offenses:

- false material in official documents (art. 320 Criminal Code);
- intellectual forgery (art. 321 Criminal Code);
- forgery in documents under private signature (art. 322 Criminal Code);
- the use of forgery (art. 323 Criminal Code);
- forgery of a technical registration (art. 324 of the Criminal Code);
- computer forgery (art. 325 Criminal Code);
- false statements (art. 326 of the Criminal Code);
- false identity (327 Criminal Code);
- crimes of forgery committed in connection with the authority of a foreign state (art. 328 Criminal Code).

We note that against the background of the evolution of crime in the field, the emergence and evolution of cashless payment instruments, as well as the need to transpose into national law a European legal instrument, compared to the initial wording (from 01.02.2014), the Romanian legislator amended and completed some texts in the first chapter.

Thus, the offense with the marginal title "Putting counterfeit securities or acquiring counterfeit non-cash payment instruments (313 Criminal Code)" Was introduced, as well as the offense of "Counterfeiting of foreign securities", both by the

provisions of Law no. 207/2021 for the amendment and completion of Law no. 286/2009 on the Criminal Code, as well as on measures to transpose Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting in relation to cashless and replacement means of payment of Council Framework Decision 2014/413/JHA[1].

Also, through the same normative act, changes were made in the structure of the texts from art. 311, respectively par. (2)[2], in the structure of the text from art. 313, respectively par. (4)[3], in the structure of the text from art. 313, respectively par. (5)[4] and in the structure of the texts from art. 314 para. (2), (3) and (4)[5].

2. The Criminal Code in Relation to the Previous Law

In the Criminal Code, the systematization of forgery offenses is different from the way in which these offenses were provided for in the initial wording of the 1969 Criminal Code.

As elements of similarity, we note the mentioning of this group of offenses in a separate title with the same marginal title, as well as their grouping in three distinct chapters.

Thus, in the 1969 Criminal Code in its original wording, the offenses of forgery under the same marginal name are mentioned in Title VII.

This group of offenses is in turn structured in three distinct chapters, as in the current Criminal Code, each marginal name of each chapter being identical to those in the law in force.

However, there are some significant differences in the marginal title of offenses and their legal content.

To briefly highlight these differences, we will refer to each chapter below.

In the first chapter of each law is kept the marginal name, instead, the number of crimes provided differs, in the previous law being mentioned 4 (four) such crimes, while in the law in force there are provided 6 (six) crimes.

[1] Published in the Official Monitor of Romania, Part I, no. 720 of July 22, 2021; art. I, point 7 and point 11 of the law.
[2] Art. I point 6 of Law no. 207/2021.
[3] Art. I point 7 of Law no. 207/2021.
[4] Art. I point 8 of Law no. 207/2021.
[5] Art. I point 9 and 10 of Law no. 207/2021.

Without referring to the legal content of these offenses, however, we point out that their marginal titles differ, the old law mentioning the following offenses: counterfeiting of currency or other values (in the new law only counterfeiting of currency appears), counterfeiting of stamps, marks or transport tickets - art. 283 (in the current law appears the title - forgery of stamps or postal effects), forgery of foreign values (in the new law the crime is kept under the same marginal name) and possession of tools for counterfeiting (in the new law the crime is kept under the same marginal name).

Chapter II retains its marginal name, but while the previous law includes two offenses, the law in force includes three offenses. The two offenses of the previous law have the same marginal name, in the new law being incriminated another fact, namely the forgery of foreign authentication tools.

Chapter III with identical marginal names includes 7 offenses under the old law and 9 offenses under the new law. Thus, 6 of these offenses have identical marginal names (false material in official documents, intellectual forgery, and forgery in privately signed documents, use of forgery, false statements and false identity). The old law includes the crime of forgery regarding the use of the Red Cross emblem (which is not provided in the new law) and the new law regulates the offenses of forging a technical registration and false information (which do not appear in the previous law).

3. Some Common Features

a) The Object of Criminal Protection

The object of all false offenses is the social value of the *public trust* that must be given by any person to the things to which the law assigns a probative function, regardless of whether the attribution of this probative function is explicitly provided by law (written evidence, recorded official statements, diplomas, etc.), whether it derives implicitly from the nature of the work (currency, stamp, credit title, etc.)" (Dongoroz in Dongoroz et all., 1972, p. 361).

b) The Legal Object

The generic legal object in the case of forgery consists in the social value defended by the criminal law, respectively the public trust in "things (entities) that have the legal property to serve as proof (coins, titles, authentication tools, documents, etc.)" (Dongoroz in Dongoroz et all., 1972, p. 361).

c) The Material Object

In the case of counterfeiting offenses, *the material object* consists of the counterfeit currency, stamp, official document or private signature, etc.

d) Subjects of the Crime

In the case of forgery, *the direct active subject* (perpetrator), as a rule, is not qualified, and can be any natural or legal person who meets the general conditions required by law to have this quality.

However, there are also crimes where the active subject is qualified, his qualification having to consist in the quality of a civil servant, as is the case of the crime of intellectual forgery.

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

The main passive subject is the state in its capacity as holder of the protected social values, and the secondary passive subject can be a natural or legal person who has suffered as a result of the execution of the incriminated action or inaction.

e) Place and Time

In the case of offenses belonging to this group, the place and time of the commission are usually of no legal relevance.

f) The Objective Side

The material element of the objective side consists in an action (commission) of the active subject.

The material element of the objective side consists "in an operation of alteration of the truth performed in any way (material, written, oral) but which always materializes in the thing (object) that contains the alteration of the truth. Even in the case of oral alteration, e.g. false statements, the operation of altering the truth is sublimated in the content of the document prepared by the body that received the statement, a document that will serve as a means of proof" (Dongoroz in Dongoroz et all., 1972, p. 364).

In most of the offenses in this group, the structure of the objective side includes one or more *essential requirements*, such as: the need for counterfeit currency to have circulating value, the need to know that the values put into circulation are counterfeit, the seal, the stamp or the marking instrument must be used by the persons provided in art. 176 of the Criminal Code etc.

The immediate consequence is the creation of a state of danger for the protected social relations.

In the Romanian doctrine regarding the provisions of the Criminal Code of 1969, it was noted that with regard to the immediate consequence, of danger; even the offense of forging documents under private signature produces a state of danger in the tentative form. Offenses of putting into circulation or misuse may become injurious when they have been misled; but it takes the form of a crime that generates a state of danger if their attempt is sanctioned" (Dongoroz in Dongoroz et all., 1972, p. 361).

The causal link between the criminal action and the immediate prosecution must not be demonstrated by the courts, as it results from the materiality of the act (*ex re*).

g) The Subjective Side

For most of the crimes that fall into this group, the form of guilt is *intent* that can be *direct* or *indirect*.

The act of guilt is not punishable.

The doctrine stated that "the subjective element must be ascertained and verified in relation to each individual act, when the acts of forgery come into competition with its derivatives. Thus, it is possible for a document altered at fault and therefore it would not constitute an offense for the perpetrator, could later be used intentionally by him or another person knowing that the document contains an alteration of truth, in which case there will be the crime the use of forgery. Conversely, a coin or a document was intentionally counterfeited and there is therefore an offense, but the person who puts that coin into circulation or who uses that document does not know that there is an alteration of truth, in which case the act does not constitute the offense of use of forgery, even if the perpetrator could be blamed" (Dongoroz in Dongoroz et all., 1972, p. 364).

h) Forms, Ways, Sanctions

Preparatory acts are possible for most crimes, but they are not punishable.

The attempt is also possible in the case of crimes, being punished, as in the case of crimes: counterfeiting currency, forgery of credit or payment instruments, forgery of stamps or postal effects, circulation of counterfeit securities, fraudulent issuance of currency, forgery of official instruments, forgery of material in official documents, forgery of intellectual property and forgery of documents under private signature; in the case of other forgery offenses, the attempt shall not be punished.

The consumption of the crimes that belong to this group takes place when, after the execution of the incriminated action or inaction, the dangerous consequence appears, which is identified with the state of danger for the social value protected by the incrimination norm.

Exhaust. In the case of some of the offenses, after the moment of consumption there is also a moment of exhaust, which is identified with the moment when the criminal activity ceases (use of forgery, forgery of identity, use of false instruments, etc.).

Regarding the normative ways, we find that some of the offenses have only one normative way, such as the offenses of forgery of stamps or postal effects, use of false instruments, intellectual forgery, etc., while other offenses have normative ways assimilated to their type: attenuated or aggravated (counterfeiting currency, fraudulent issuance of currency, counterfeiting currency, counterfeiting of securities or payment instruments, etc.)

Depending on the seriousness of the offenses committed, the penalties are different. Thus, some are punished only with imprisonment and others with imprisonment alternatively with the penalty of a fine.

For some offenses, the law also provides for the complementary punishment of banning the exercise of certain rights (counterfeiting of currency, forgery of credit titles or payment instruments, fraudulent issuance of currency, etc.).

i) Some Procedural Aspects

Offenses belonging to this group are prosecuted *ex officio*.

The competence to prosecute belongs to the criminal investigation bodies of the judicial police under the supervision of the competent prosecutor.

Also, the Offenses provided are included in the jurisdiction of the Directorate for the Investigation of Organized Crime and Terrorism, regardless of the quality of the person, the offenses provided in art. 310, art. 311, art. 313, if the falsified values are among those provided in art. 310 and 311 and those of art. 314, art. 31 and art. 316, if the falsified foreign values are among those provided in art. 310 and art. 311, if their commission was for the purpose of an organized criminal group, in the sense provided in art. 367 para. (7) of the Criminal Code[1].

[1] Article 11 para. (1) § 1 lit. a) of the E.G.O. no. 78 of November 16, 2016 for the organization and functioning of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the modification and completion of some normative acts, published in the Official Monitor no. 938 of November 22, 2016.

If the criminal investigation was carried out by DIICOT, the jurisdiction in the first instance belongs to the notified court.

Depending on the quality of the active subject of the crime, the jurisdiction in the first instance may also belong to the superior courts.

4. Transitional Situations. The Application of the more Favorable Criminal Law

The transitional situation we are in, which will continue to exist in the future, implies the need to establish and apply a more favorable criminal law if an offense under this title has been committed under the 1969 Criminal Code and is being tried or is to be tried after the entry into force of the new law.

We will also be in the presence of this situation and in the hypothesis that, after the entry into force of the new law, the legislator promotes a series of changes in the legal content or limits of punishment in case of crimes, or repeals some of the existing ones in the Criminal Code in force or there are incriminated other acts.

We will be in this situation in the case of the offenses provided in art. 311, art. 313, art. 314 and art. 316, recently amended and supplemented.

It is interesting to note that if one of the above acts is committed after 01.02.2014 and is to be tried after amending the texts mentioned above, the identification and subsequent application of the more favorable criminal law will be considered the two incriminations we referred to above.

On the other hand, we mention that due to their specificity, the application of criminal law differs from one crime to another, even if in terms of their legal content it is similar and the special limits of the sanctions provided are quite close.

Last but not least, we appreciate that in the process of individualizing the more favorable criminal law, the concrete, comparative examination of the criminal law norms of the two laws is required, with the possibility of identifying the actions that fall within the content of the objective side of some offenses, which were non-incriminated in the new law.

Starting from the different conditions of incrimination and the special limits of punishments, it can be seen that the most favorable criminal law in the case of crimes included in this group can be both the new law and the old law.

However, we specify that in the case of crimes whose special limits of punishment are lower, the search for ways to identify and apply the more favorable criminal

law has only a theoretical, didactic importance, because in judicial practice, for these crimes the prescription of criminal liability or execution of the sentence has intervened.

Since in the introductory title, in Chapter VI we have made a brief examination of the provisions regarding the application of the more favorable criminal law, for other information we recommend studying them.

We specify that in the case of the analysis of each of the crimes included in this group, we will also present some more favorable hypotheses for the application of the criminal law, reason for which we do not insist on other clarifications.

Conclusions

Forgery offenses have always been in the attention of the Romanian legislator, a retrospective look at the way they were mentioned in previous laws unequivocally demonstrates this constant concern.

The analysis highlighted the evolution of the incrimination of this kind of acts, as well as the progress registered by the Romanian law.

On the other hand, during the examination, we made a systematization of the incriminations as they are highlighted in the separate title of the Criminal Code in force.

In order to support the practitioners, but also the students, we also carried out a comparative examination between the current texts and those of the previous law, trying to highlight some elements of similarity, as well as others of difference between the two groups of crimes.

Last but not least, we tried to capture some elements common to this group of crimes, proceeding to a brief examination of them.

As a general conclusion, we appreciate the maintenance of these crimes in a distinct group that has been highlighted over time in the Romanian criminal law, where we note first of all the constancy of incriminations and sometimes even the marginal titles of some crimes included in this group.

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