



## Forging of Foreign Values

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**Abstract:** In this paper I analyzed the offence mentioned with a marginal title, offence that has been recently introduced in Romanian law. The analysis may be useful to students of law schools in the country, as well as to practitioners in the field of criminal law. The novelty element is the analysis of this offence, representing an absolute novelty in Romanian criminal law. The paper is part of a university course to be published in the future in the country.

**Keywords:** Romanian criminal law; offence; constitutive content

### 1. Introduction

Being included in the previous Criminal code, the incrimination of the acts that are part of the group regarding the forging of currency, stamps or other values, represents, in its essence, a continuity of incriminations in this field in Romanian law.

On the other hand, we emphasize that this incrimination fully contributes to preventing and fighting this type of criminality worldwide. In the European Union, for the purpose of ensuring the protection of the euro currency a series of normative acts have been adopted, that impose certain obligations in this sense on member states. The most recent European legal instrument adopted in this field (protection of the euro currency) is Directive no. 2014/62/UE of the European

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Parliament and of the Council of 15 May 2014 regarding the protection through criminal law measures of the euro currency and other currencies against forgery<sup>1</sup>.

Without examining this European normative act, we remark that it provides that the member states are obliged to take necessary measures to ensure that a series of acts are incriminated as offences. These acts are the following:

“(a) any fraudulent action of fabrication or alteration of currency, irrespective of the means used;

(b) fraudulent circulation of forged currency;

(c) import, export, transport, receiving or procuring forged currency in order to circulate knowing that it is forged;

(d) fraudulent fabrication, receiving, procuring or owning:

(i) instruments, objects, computer programs, informatics data and any other means adapted specifically for fabrication or alteration of currency; or

(ii) security elements, such as holograms, filigrees or other elements of the currency that serve as protection against forging”.

Also, member states shall take necessary measures “to make sure that the acts mentioned at paragraph neatul (1) letters (a), (b) and (c) are incriminated concerning banknotes or coins that are or that have been fabricated using legal installations or materials without complying with rights or conditions in which competent authorities may issue banknotes or coins”.

At the same time, according to par. (3) “Member states take the necessary measures to make sure that the acts mentioned in paragraphs (1) and (2) are also incriminated concerning banknotes or coins that have not yet been issued, but that are meant for circulation as legal means of payment”.

Concerning the individualization of sanctions for natural persons that commit such offences, the European law maker mentions a maximal limit, that may be of 8,5 years or another reduced sanction. These provisions are mentioned at art. 5 par. (3) – (5), as follows:

“(3) Member states take necessary measures to guarantee that the offences provided ar article 3 paragraph (1) letter (a) and at article 3 paragraph (3), involving acts mentioned at article 3 paragraph (1) letter (a), may be sanctioned with a maximum punishment of imprisonment of at least eight years.

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(4) Member states take the necessary measures to guarantee that the offences mentioned at article 3 paragraph (1) letters (b) and (c) and at la article 3 paragraph (3), involving acts mentioned at article 3 paragraph (1) letters (b) și (c), may be sanctioned with a maximum punishment of imprisonment of at least five years.

(5) Concerning the offence mentioned at article 3 paragraph (1) letter (b), member states may provide for effective criminal sanctions, that are proportional and deterrent, others than those mentioned in paragraph (4) of this article, including fines and imprisonment, if the forged currency was received without knowing that it is fake, but it was transmitted knowing this fact”.

Other European legal instruments adopted for the purpose of protecting the euro currency are the Regulations (CE) no. 1338/2001 of the Council of 28 June 2001 for the definition of necessary measures for the protection of the euro currency against forging and the Regulations (CE) no. 1339/2001 of the Council of 28 June 2001 concerning the extension of the effects of the Regulations (CE) no. 1338/2001 for the definition of necessary measures for the protection of the euro currency against forging in member states that have not adopted euro as single currency<sup>1</sup>.

## 2. The Provisions in Force in Relation to the Previous Law

In the 1969 Criminal code, the offence of forging foreign values was provided at art. 284 that stated that “the provisions included in this chapter are also applied in the case in which the offence involves coins or stamps of other states or other foreign values”.

We mention that the text is part of chapter I with the marginal title “Forging of currency, stamps or other values” at title VII “Forgery offences”.

We mention that, even if by its formulation it seems that the text refers to several offences, in fact it refers only to two offences, forging of currency or other values (art. 282) and forging of stamps, marks of transport tickets (art. 283).

In the doctrine of that period that referred to the provisions of art. 284 of the 1969 Criminal code (text that resembles the current one), it was appreciated that the text “expresses the provisions of the Geneva convention of 20 April 1929, signed by Romania, in which currency forging is considered an offence *jus gentium*, affecting universal values; it oes not represent one aspect of the legal assistance that our country grants to other states in their fight against offences” (Vasiliu, Pavel,

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<sup>1</sup> Published in JOUE L no.181 din 4 July 2001.

Antoniu, Daneş, Dăringă, Lucinescu, Papadopol, Popescu & Rămureanu, 1977, p. 228).

Thus, the law incriminates “through this text, the same acts – forging, circulating or, as applicable, owning in order to circulate – provided at art. 282 and 283 Criminal code, when committed in relation to currencies of other states, public credit titles, checks, titles of any kind used to make payments, other titles or similar values, stamps, post marks, post envelopes, postcards and tickets, issued abroad”.

In the law in force the offence is provided at art. 316 Criminal code, as it was modified and added by the provisions of art. I point 11 of the Law no. 207/2021<sup>1</sup>, where it is indicated that “the provisions included in this chapter are also applied if the offence concerns currencies, stamps, value titles or payment instruments, including cash payment instruments issued abroad”.

As we can remark, the text is similar to that in the previous law, but unlike that one, it considers several offences: currency forging (art. 310), forging of title values or payment instruments (art. 311), forging of stamps or postal effects (art. 312), circulating forged values or obtaining non cash payment instruments that have been forged (art. 314) and fraudulent emission of currency (art. 315).

Since the offence of forging electronic currency is not provided in this chapter of the Criminal code, and the text of art. 316 refers only to the offences included in this chapter, the conclusion that rises is that the action of forging foreign electronic currencies remains outside incrimination.

### 3. Brief Analysis of the Offence

*The legal object* of the offence is identical to that of the offences in this chapter, thus we make no other mentions.

Concerning *the material object* it is made up of the currencies, stamps, value titles or other payment instruments, including non cash payment instruments, issued abroad. These can be both Romanian or foreign.

*The active subject* may be a natural or legal person that the Romanian or foreign criminal capacity.

We remark that this quality may be both of a Romanian natural or legal person, as well as of a foreign natural or legal person.

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Concerning the passive subject, this is different, in general, it can be a foreign legal person that suffered the consequences of the act.

Concerning the *material element* of the objective aspect we mention that for the offence to exist it is not legally relevant if the currencies, the stamps, the value titles or the payment instruments, including non-cash have been forged in the country or in another state.

The doctrine previous to the entry into force of the Criminal code retained that “The assimilation – with regards to criminal protection – of the currency, the stamps and of other foreign values, with corresponding Romanian values, creates indeed, through the application of art. 3, 4 și 6 Criminal code, the possibility of sanctioning the discussed acts, irrespective of the place where they have been committed and of the citizenship of their authors” (Vasiliiu, Pavel, Antoniu, Daneș, Dăringă, Lucinescu, Papadopol, Popescu & Rămureanu, 1977, p. 229).

Thus, “if forging currencies, stamps or other foreign values, or correlated offences have been committed in Romania by a foreign citizen or by a person with no citizenship, the Romanian law will be applied based on the principle of the territorial character of the criminal law, stated by art. 3 Criminal code” (Vasiliiu, Pavel, Antoniu, Daneș, Dăringă, Lucinescu, Papadopol, Popescu & Rămureanu, 1977, p. 229) (at present art. 8 – s.n.).

If the same acts “have been committed abroad by a Romanian citizen or by a person with no citizenship but who resides in our country, the Romanian law shall be applied based on art. 4 Criminal code that states the principle of the personality of criminal law (at present art. 9 – s.n.). For this reason, it is obvious, if the foreign law incriminates or does not incriminate the committed act (such a situation may occur, for example, in case one Romanian citizen forged, on the territory of another foreign state, the currency of another foreign state), since, in this case, the rule of double incrimination does not apply. With regards to the personal condition of the authors – Romanian citizenship or lack of any citizenship and residence in the country – legal literature has shown that this must be met at the time when the offence was committed abroad, since only in this case can we discuss breaching an obligation imposed by the Romanian criminal law” (Vasiliiu, Pavel, Antoniu, Daneș, Dăringă, Lucinescu, Papadopol, Popescu & Rămureanu, 1977, p. 229; Stănoiu, 1969, p. 61).

Older doctrine retains that “if the forging of the currency, the stamps or of other foreign values, or the correlated offences have been committed abroad, by a foreign citizen or by a person with no citizenship that does not reside in our country, the Romanian law shall be applied based on art. 6 Criminal code, that regulates the

principle of the universal character of the criminal law, if the act is provided as offence by the criminal law in the country where it has been committed and that the perpetrator is in Romania (at present art. 11 – s.n). Consequently, in this case, in order to apply the Romanian law in the case of the perpetrator, it is necessary to have, on one hand, the existence of double incrimination – in the sense that the offence is provided not only by the Romanian law (*lex fori*), but also by the law of the place where it was committed (*lex loci*) -, and, on the other hand, the actual presence of the perpetrator on the territory of our country. Once these conditions have been met, Romanian criminal law will be applied in all regards – legal classification of offences, main sanctions, complementary sanctions, accessory sanctions, safety measures – irrespective of the provisions that may be more favorable or not of the foreign law” (Vasiliu, Pavel, Antoniu, Daneş, Dăringă, Lucinescu, Papadopol, Popescu & Rămureanu, 1977, p. 229).

In the legal practice it was decided that “forging some Austrian ducat coins, issued in 1915 and circulating them by sale, entails the application of art. 284 previous Criminal code against the solution, it was claimed that forging foreign currency entails the incidence of art. 284 previous Criminal code (art. 310 or art. 316, in the new regulation) only if it has a legal exchange rate in that country and, as such, the act is susceptible to create liabilities for monetary circulation. In this case, since Austrian ducat coins have no such exchange rate, forging them and selling them may constitute the offence of fraud provided at art. 244 par. (2) Criminal code”<sup>1</sup>.

The analysis made based on the old law remains in force at the current time.

According to current provisions of the law, the provisions included in the examined chapter shall be applied in the case in which the offence refers to currencies, stamps, value titles or non cash payment instruments issued abroad.

The law maker also considered currencies, stamps, value titles or payment instruments issued by the European Union.

The preexisting elements and the constitutive content of this offence are relatively the same as in the case in which the forged values are issued on national territory.

However, we mention that for the offence to exist it is necessary that the foreign currency, the credit titles or the other forged, manufactured etc. values, that are circulated have a legal exchange rate, must be in circulation on the territory of that state or of the European Union.

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<sup>1</sup> Timiș Court, criminal sentence no 70/1978, in R.R.D. no. 10/1979, p. 54, critical note by Vasile Papadopol, *apud*, Ion Ristea, *op. cit.*, p. 155.

In case one of the offences included in this chapter have been committed on Romanian territory by a foreign citizen or by a person with no citizenship, the Romanian law shall be applied based on the principle of the territorial character.

In the same sense, in the case of offences of forging currencies and circulating forged values or obtaining forged non cash payment instruments, if these have been committed on the territory of another state by a Romanian citizen or by a Romanian legal person, the Romanian law shall be applied with the incidence of the principle of personality of the Romanian criminal law.

For the other offences included in this chapter, Romanian criminal law shall be applied only if these have been committed by a Romanian citizen or by a Romanian legal person and if the act is provided as offence also by the law of the state where it has been committed or if it was committed in a place that is not submitted to any state.

If one of the offences in this chapter is committed outside the territory of the country by a foreign citizen or by a foreign citizen or a person without citizenship, Romanian criminal law shall apply in accordance with the principle of the reality of Romanian criminal law. In legal practice it was decided that “the act of the defendant O who, during 15.12.2009-19.02.2010, based on the same offence resolution, forged several copies of identity documents and of individual salary files, documents that he gave to be used in order to obtain loans from “PROVIDENT”, meets the constitutive elements of the offence of document fraud under private signature in continual form and of the offence of complicity to fraud in continual form.

The acts of the defendant O who, in October 2010, at different time intervals, based on the same offence resolution, forged, with a printer, several banknotes of 100 USD, 100 lei and 50 lei, meet the constitutive elements of the offences of forging of currency or other values and forging of foreign values.

The acts of the defendant O who, in March 2010, based on the same offence resolution, forged 23 receipts, in an amount of 25 lei each, issued by the Evangelical Church, receipts that he gave to be used by R and D, meet the constitutive elements of the offence of document fraud under private signature in continual form”<sup>1</sup> (Iugan, 2020, p. 432).

As critical note it was appreciated that “it is debatable if, when both Romanian, as well as foreign currencies are forged, two offences may be retained. In our opinion,

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<sup>1</sup> Sibiu County, criminal sentence no. 569/20.11.2014.

the solution of the court is wrong, since art. 326 Criminal code, represents a cross-referre rule, not regulating an offence in itself” (Iugan, 2020, p. 432).

#### **4. Some Aspects of Proceedings**

The criminal action is set in motion and is exerted ex officio.

In general, the criminal charge competence belongs to criminal prosecution organs of the judicial police under the supervision of the competent prosecutor, and the judgement competence at first instance belongs to the notified court.

If the analyzed offence is the purpose of an organized criminal group, in the sense of art. 367 par. (6) Criminal code, the competence of performing criminal prosecution belongs to the Department of Investigation of Organized Crime and Terrorism Offences and the judgement competence at first instance belongs to the notified court.

A problem related to competence occurs in the case in which, by committing the offences analyzed in this chapter, a prejudice was created concerning the financial interests of the European Union, case in which the competence of criminal prosecution belongs to the European Public Prosecutor’s Office and the judgment competence in the proceedings on the merits belongs to the notified court.<sup>1</sup>

#### **4. Critical Opinions and *de Lege Ferenda* Proposals**

Although, at first glance, it may seem that the texts in the two laws are identical, we notice that their legal structure is different.

Thus, the old law sanctions forging of currency, stamps of other states or other foreign values.

From the interpretation of the text, we conclude that this will be incident in case one currency or one stamp that have been forged belong to a different state or when the forged values are foreign, issued by a foreign state.

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<sup>1</sup> The provisions of the two European legal instruments shall apply: Regulations (EU) 2017/1939 of the Council of 12 October 2017 of application of a form of consolidated cooperation concerning the institution of EPPO, published in the Official Journal of the European Union L 283/1 of 31.10.2017; Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 for fighting fraud against EU financial interests through criminal law means, published in the Official Journal of the European Union L 198/29 of 28.7.2017; Directive 2014/62/UE European Parliament and of the Council of 15 May 2014 concerning the protection through measures of criminal law of the euro currency and of other currencies against forging, published in the Official Journal of the European Union L 151/1 of 21 May 2014.



The text in force sanctions the action of forging currencies, stamps, value titles or payment instruments, including non cash payment instruments issued abroad.

If the material object is clear, no other interpretations being necessary, using the expression “issued abroad” requires some explanations.

Thus, as the law maker states, these currencies, stamps etc., must be issued abroad which means that it is not important where the incriminating action of forging took place, since it can take place both abroad, as well as on national territory.

The expression *issued abroad* entails that these values are actually issued in another state, but the text does not tell us if these belong to another state than the Romanian state.

In this case, it is noticed that in the case of issuing a stamp or other values abroad that have been subsequently forged, but that belong to and are used by the Romanian state, the act will be under the incidence of the analyzed text.

In the category of forged currencies we can include the euro, the American dollar, the British pound etc.

*De Lege ferenda* we propose adding to the incrimination text the expression “*issued abroad and belonging to other states or international entities*”.

Another problem is that the action of issuing electronic currency without right, in another state, is not sanctioned.

*Lege ferenda* we propose adding to the incrimination text provisions that sanction the action of forging electronic currencies issued in a different state than Romania.

### **Conclusions**

The incrimination in Romanian law of the acts through which currencies, stamps or other values issued in other states are forged, concretely represents an essential contribution brought on by Romania to prevent and fight this type of criminality worldwide. On the other hand, the euro enjoys special protection at the EU level, the three legal instruments ensuring increased production.

At the same time, we appreciate that maintaining this incrimination in Romanian law represents an absolute necessity that creates a feeling of security regarding the population’s trust in currencies, stamps and other values issued abroad. As a general conclusion, we consider that the incrimination of such acts is necessary, but

the text will need to be modified and added in the sense in which we previously made our proposals of *lege ferenda*.

### **Bibliography**

\*\*\* Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 for fighting fraud against EU financial interests through criminal law means. *Official Journal of the European Union* L 198/29 of 28.7.2017.

\*\*\* Directive 2014/62/UE European Parliament and of the Council of 15 May 2014 concerning the protection through measures of criminal law of the euro currency and of other currencies against forging, published in the *Official Journal of the European Union* L 151/1 of 21 May 2014.

\*\*\* Regulations (CE) no. 1338/2001 of the Council of 28 June 2001 for the definition of necessary measures for the protection of the euro currency against forging published in *Official Journal of the European Union* L no. 181 of 4 July 2001.

\*\*\* Regulations (CE) no. 1339/2001 of the Council of 28 June 2001 concerning the extension of the effects of the Regulations (CE) no. 1338/2001 for the definition of necessary measures for the protection of the euro currency against forging in member states that have not adopted euro as single currency published in *Official Journal of the European Union* L no. 181 of 4 July 2001.

\*\*\* Regulations (EU) 2017/1939 of the Council of 12 October 2017 of application of a form of consolidated cooperation concerning the institution of EPPO, published in the *Official Journal of the European Union* L 283/1 of 31.10.2017.

Iugan, Andrei Viorel (2020). *Codul penal adnotat, Partea specială, Include jurisprudența națională 2014-2020/ Annotated Criminal Code, Special Part, Includes national case law 2014-2020*. Bucharest: Universul Juridic Publishing House.

Papadopol, Vasile; Vasiliu, Teodor; Pavel, Dorul; Antoniu, George; Daneș, Ștefan; Dăringă, Gheorghe; Lucinescu, Dumitru; Popescu, Dumitru C. & Rămureanu, Virgil (1977). *Codul penal al Republicii Socialiste România, Comentat și adnotat, Partea specială, Vol. II/ Criminal Code of the Socialist Republic of Romania, Commented and annotated, Special Part, Vol. II*. Bucharest: Scientific and Encyclopedic Publishing House.

Stănoiu, Rodica (1969). *Explicații teoretice ale codului penal român, Partea generală, vol. I/ Theoretical explanations of the Romanian penal code, General part, vol. I*, Bucharest: Publishing House of the Academy of the Socialist Republic of Romania.