



## Forgery of Official Instruments

**Bogdan Bîrzu<sup>1</sup>**

**Abstract:** This study presents a brief analysis of the forgery of official instruments offence, through the lens of new regulations. The analysis included some resembling provisions, as well as differing provisions between the regulations in force and the previous one. Both the objective, as well as the subjective aspect of the offence have been taken into consideration, as well as some opinions about forms, modalities and legal precedents. Novelty elements concern both the analysis itself in relation to recent doctrine, as well as recent and relevant case law. The paper may be useful both for the academic environment, as well as for practitioners, and it will be published in the volume of a university course.

**Keywords:** Constituent elements; objective aspect; subjective aspect

### 1. Introduction

The offence of forging of official instruments is provided in title VI with the marginal title “Forging of coins, stamps or other values”, chapter II “Forging authentication and marking instruments”, at art. 317.

The act provided in par. (1) consists in forging a seal, a stamp or a marking instrument used by the persons mentioned at art. 176 or the natural persons mentioned at art. 175 par. (2) of the Criminal Code.

We mention that at art. 176 Criminal Code, the law maker gives a legal interpretation of the term de *public*, meaning “all that concerns public authorities,

---

<sup>1</sup> Senior Lecturer, PhD, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654 Galati, Romania, Corresponding author: bogdan\_birzu@yahoo.com.

public institutions or other legal persons that administer or use goods that are public property”.

Art. 175 par. (2) Criminal Code includes norms that show that “it is considered to be a public servant, in the sense of the criminal law, the person that performs a service of public interest for which he/she was invested by public authorities or who is submitted to their control or supervision related to the performance of that public service”.

At the same time, the offence shall exist, in an alleviated normative modality, in the case of forging seals, stamps or other marking instruments used by other persons than those previously mentioned.

For both offences, the attempt is punished.

The second half of the past century doctrine claims that “Seals, stamps and marking instruments that are officially used are meant to ascertain, through the imprint left by them on a document or on an object, the authenticity of that included in that document or the real properties or characteristics of the marked object. The seal, the stamp or the marking instrument, thus, serve to attribute the proving characteristic of thing (entity), the documents or the objects on which the imprint is applied. Forging a seal, a stamp or a marking instrument constitutes not only an alteration of the truth concerning the seal, the stamp or the marking instrument, but also a source of alterations of the truth concerning all documents and objects on which the forged seal, stamp and marking instrument shall be applied” (Dongoroz, et al., 1972, pp. 405-406).

We mention that similar provisions that criminally sanction actions of forging of official instruments are to be found in other normative acts too.

In this sense, we mention the provisions of art. 17 of the GEO no. 190/2000 regarding the regime of precious metals and precious stones in Romania, republished, with subsequent amendments and additions<sup>1</sup>, according to which, forging individual marks, using them, as well as using unregistered marks constitute offences and are thus punished in accordance with the Criminal Code, as well as by confiscating that stock of merchandise.

In the same sense, art. 107<sup>1</sup> par. (2) of the Law no. 46/2008 – Forestry Code, with subsequent amendments and additions<sup>2</sup>, provides that in the case of forging special marking instruments provided at art. 63, the provisions of art. 317 in the Criminal Code apply.

---

<sup>1</sup> Published in Official Monitor no. 77 of 29 January 2004.

<sup>2</sup> Published in Official Monitor no. 611 of 12 August 2015.

So, as it is explicitly provided also in the incrimination texts, for both situations, the sanctioning regime is the one provided at art. 317 Criminal Code.

Other similar provisions are to be found in the Law no. 227/2015 regarding the Fiscal Code, with subsequent amendments and additions<sup>1</sup>, at art. 452 par. (1) let. d) it is provided that marking with forged marks of excise tax products that are submitted to marking or owning such marked products in fiscal warehouse constitutes an offence.

Not lastly, according to provisions of art. 7 par. (2) of the Law no. 241/2005 for preventing and combating fiscal evasion, with subsequent amendments and additions<sup>2</sup>, *it is an offence punished by imprisonment from 2 to 7 years and forbiddance of certain rights, knowingly owning and circulating forged stamps, standard bands or forms, used in the fiscal field, with a special regime.*

In the case of the latter two offences, the sanctioning regime shall be the one provided in the previously mentioned laws.

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

This offence was also included in the 1969 Criminal Code at art. 286, with the marginal title “Forging of official instruments”.

At the time of the entry in force of the Criminal Code, one change was made in the initial text (in relation to the provisions of previous laws), without generating, though, legal consequences, precisely replacing the expression “organizations mentioned at art. 145” with “units to which art. 145 refers).

A brief analysis of the two incriminations leads to the conclusion that there are resemblance elements, but also differentiation elements between them.

Among resemblance elements we mention the content of par. (1) of the two texts, that sanctions forging a seal, a stamp or a marking instrument of those used by public institutions.

Other resemblance elements refer to the marginal name and the sanction of the attempt.

Regarding some differentiation elements, we mention the incrimination of the committed act by some public servants, precisely the categories provided at art.

---

<sup>1</sup> Published in Official Monitor no. 611 of 10 September 2015.

<sup>2</sup> Published in Official Monitor no. 672 of 27 July 2005.

175 par. (2) Criminal Code, as well as other categories of persons, incrimination that did not exist in the previous law.

One last difference consists in the inclusion of the replacement of sanctioning by imprisonment with the alternative sanction of the fine, aspect not to be found in the previous law.

In recent doctrine, it was appreciated that “both incriminate forging a seal, a stamp or a marking instrument used by public authorities, institutions or legal persons that administer or use goods of public property.

Also, as a resemblance, we mention the fact that the attempted offence of forging of official instruments is incriminated in both the previous and the current Criminal Code. The differences are to be noticed, on one hand, concerning the extension of the content of the incrimination, and, on the other hand, concerning the sanctioning system.

Thus, according to art. 286 previous Criminal Code, forging authentication instruments was incriminate only in one variant, but at art. 317 New Criminal Code, forging authentication or marking is incriminated in two variants: the typical variant and the alleviated variant” (Ristea, Drept penal, Partea specială, Curs universitar, vol. II/ Criminal law, Special part, University course, vol. II, 2020, p. 157).

### 3. Constitutive Content

#### 3.1. Objective Aspect

According to the incrimination text, *the material element* of the objective aspect is performed by the action of *forging a seal, a stamp or a marking instrument*.

The action of forging is committed, “in general, by counterfeiting (creating, manufacturing) that is by imitating the real seal, stamp or instrument. Forging by *altering* a real seal or a real stamp, or a real marking instrument is more rarely possible, but it is not excluded, for example in cases in which the alteration concerns elements susceptible to being easily altered” (Ristea, Drept penal, Partea specială, Curs universitar, vol. II/ Criminal law, Special part, University course, vol. II, 2020, p. 408).

Also, “performing the action of counterfeiting requires materials, procedures and means that correspond to the specific aspects of each authentication and marking instrument. What must be imitated (forged) is the part meant to express the *imprint* of the forged instrument, and not the substance or the irrelevant form of the

instrument. Seals and stamps have as particular sign a so called symbol (image) and a legend (inscription), either embossed or inlaid, so that by application they leave an *imprint* (dry or humid) that constitutes the proof of authenticity or marking. Thus, counterfeiting an official authentication or marking instrument means to manufacture an instrument through which one can illicitly obtain, by forging, an identical imprint with that of an official authentication or marking instrument” (Ristea, Drept penal, Partea specială, Curs universitar, vol. II/ Criminal law, Special part, University course, vol. II, 2020, p. 408).

In the same sense, “forging the imprint of an official instrument made directly on a document or on an object does not comply with the material element of forging of official instruments, because what was forged is not an instrument, but an imprint; forging an imprint made directly on a document may constitute forgery in official documents, and the direct forging of the mark on an object may potentially constitute fraud if a person will be misled with that object” (Ristea, Drept penal, Partea specială, Curs universitar, vol. II/ Criminal law, Special part, University course, vol. II, 2020, p. 408).

According to DEX *the seal* is “an object in a plate (fixed on a handle) on which a monogram is engraved, an emblem, an effigy etc. and which is applied on an official document, as proof of its authenticity or sign imprinted on something (with ink or red wax) by applying a seal etc.” (DEX, 2009, p. 985)

*The stamp* is an “instrument made up of a rubber, wooden or metal plate fixed on a handle, on which a sign, an inscription or an emblem are engraved and that is applied on a document to grant it validity, on merchandise or on the body of animals, to show their source or their belonging etc. (DEX, 2009, p. 1060)

*Essential requirement.* So that the “action of counterfeiting an authentication or marking instrument to constitute the material element of the offence, the forged instrument must correspond to an official instrument of authentication or marking. This essential requirement is the reflection of the premise situation in the offence’s constitutive content” (Dongoroz, et al., 1972, p. 409).

Certainly, this essential requirement is valid only in the case of the typical offence provided in par. (1) of art. 317 Criminal Code.

So, the forged seal, stamp, marking instrument must be part of the official category, so they must be actually used by the organs and institutions mentioned in the two incrimination texts.

In the case of the offence at par. (2) the essential requirement is that the forged seal, stamp or marking instrument is used by another natural or legal person than those mentioned at par. (1).

Legal practice has decided that “The defendant’s act to determine, based on the same criminal revolution, an unidentified person to manufacture stamps with the imprints public notary, embossing stamp, certification, stamps of the National Agency for Land Registry Office, meets the constituting elements of the offence of instigation to forgery of fake official instruments, provided at art. 47 Criminal Code related to art. 317 par. (1) Criminal Code with applicability to art. 35 par. (1) Criminal Code. (16 material acts).

The defendant’s act to determine an unidentified person to forge 4 stamps with the imprint lawyer, meets the constituting elements of the offence of instigation to forgery of fake official instruments in the modality incriminated by art. 317 par. (2) Criminal Code, act provided at art. 47 Criminal Code related to art. 317 par. (2) Criminal Code with applicability to art. 35 par. (1) Criminal Code. (4 material acts).

The acts of the defendant to apply on the elaborated documents forged stamps meet the constituting elements of the offence of use of forged instruments, provided at art. 318 C. Criminal Code with applicability to art. 35 par. (1) Criminal Code”<sup>1</sup>.

Concerning this solution, the doctrine appreciated that “From the information in this case it is not clear if the persons that forged the stamps have committed the forgery at different moments (in this case, it is justified to consider that the offence is continued) or in the same circumstance (thus imposing just a simple offence)” (Iugan, 2020, p. 433).

*The immediate consequence* consists in the creation of a state of danger for public confidence, “state that results from manufacturing an instrument that has the ability to falsely reproduce the imprint of a real official instrument” (Dongoroz, et al., 1972, p. 409).

In case “the action did not have such a consequence or it could not potentially produce it (in the case of an attempt), the objective aspect of the act of forgery of official instruments of authentication or marking is not met and so, there is no offence.

Thus, the immediate consequence is not met, meaning there is no state of danger when the product of the forgery is obviously unsuccessful and could not be usefully used” (Dongoroz, et al., 1972, p. 409).

*The causal connection* results in the material character of the acts, no proof being needed.

---

<sup>1</sup> Court of Appeal Bucharest, criminal section II, decision. no. 1866/15.12.2016, unpublished, *apud* (Iugan, 2020, p. 433).

### 3.2. Subjective Aspect

The guilt form with which the offence is committed is *intention that may be direct or indirect*.

The object and the purpose have no relevance, they may have some importance in the activity of individualizing the criminal law sanction that is to be applied by the court.

## 4. Forms, Ways

### 4.1. Forms

Although possible, *the preparation acts* are not sanctioned by the law. However, if they were performed by another person with the intention of being used (and have been used) in committing the act, the act will meet the constituting elements of the offence of complicity to forging official instruments.

*The attempt*, according to the provisions of art. 317 par. (3) is punished.

There will be an attempt each time the forging action has begun, but during it, until the end, it has been interrupted by causes independent of the will of the perpetrator or the forging action was completed but it has not produced effects (in the sense that the danger state for public confidence in the official instrument was not provoked).

We mention that it is also an attempt “when the product of forging is unsuccessful, because the counterfeiting action, if it would have been more attentively performed, could have led to the production of a forged instruments corresponding to the real one and so to the creation of the immediate consequence” (Dongoroz, et al., 1972, p. 410).

*The consummation* of the offence will take place at the moment when there is immediate consequence, so a state of danger was created by forging a seal, a stamp or a fake marking instrument, able to be used to obtain a forged imprint of the official instrument.

In order for the offence to exist “it is not required that the forged instrument represents a perfect (impeccable) imitation, it is sufficient that the imprint left by this instrument can be apparently considered to be real and so be susceptible to mislead those towards whom it was used” (Dongoroz, et al., 1972, p. 410).

*Exhaustion* “is a phase that cannot be achieved by the criminal activity of forging of official instruments, since the counterfeiting action always has the purpose of obtaining a unique piece (seal, stamp or marking instrument). In case of repeated forging of several official instruments there will be conjuncture of offences” (Dongoroz, et al., 1972, p. 410).

#### 4.2. Ways

The analyzed offence presents a typical normative modality, provided in the provisions of art. 317 par. (1) Criminal Code that consists in forging a seal, a stamp or a marking instrument used by the persons provided at art. 176 or those provided at art. 175 par. (2) Criminal Code.

In par. (2) of art. 317 Criminal Code, an assimilated modality is provided that will be retained if a stamp, a seal or a marking instrument used by other persons than those mentioned in par. (1) is forged.

*Offence modalities* are numerous, depending on the method and the circumstances for committing the offence.

#### 5. Legal Precedents

The analyzed offence was included in the 1864 Criminal Code, modified by the Law of 4 May 1895, in title III with the marginal name “Crimes and felonies against public interests”, chapter I “On creations or forgeries”, section II with the marginal title “Creation of state or other authorities’ seals, bank tickets, public effects and others”, art. 117 point. I.

Thus, in accordance with the quoted text “Will be punished with maximum imprisonment, without admitting mitigating circumstances, with forbiddance on a limited amount of time and with a fine of more than 500 lei:

D) Anyone who has forged State seals or who, knowingly, has used such forged seal (...)”<sup>1</sup>.

In the Criminal Code of Carol II, in title IX with the marginal name “Crimes and felonies against public interests”, chapter I “Forging of coins, public credit titles, marks, stamps, stamped papers, seals or authentication, certification or recognition signs”, section III with the marginal title “Forging of seals or authentication,

---

<sup>1</sup> Art. 117 point I Criminal Code of 1864, in (Badulescu & Ionescu, 1911, p. 156).



certification or recognition signs”, at art. 393-398 several such acts are incriminated.

Thus, at art. 393 it is provided that “The person who forges State seals or uses such forged seals commits the felony of state seal forging”<sup>1</sup>.

The doctrine of those days retained that “Art. 393 incriminates forging or using State seals. First, it should be noted that by seal, in the sense of art. 393, we refer to that which is destined to be applied on government documents; in practice, says Garraud (ed. III, tom. IV No. 1338 p. 66), along with *Garçon* (op. cit. art. 139 No. 9, p. 289) and *Blanche*, (op. cit. tom. III No. 81), we must differentiate between the *great seal* to be applied with red wax fixed on a cord hanging on the document, the little seal to be applied directly on the document as embossing stamp. Forging is punished irrespective of use, this is very clear from the terms used by the law maker”<sup>2</sup>.

Art. 394 mentions the offence of public seal forgery consisting in the act of forging a seal belonging to “an authority or a public office, or using such a forged seal”<sup>3</sup>.

Concerning the provisions of art. 395, the doctrine claimed that “Art. 395 incriminates forging a seal, stamp of mark of a private entity and its use. This text includes the old provisions in the law on factory and trading marks of 1879 (Papadopolu, 1932, p. 452), the law of invention patents of 1906, with subsequent amendments (Papadopolu, 1932, p. 388) and the law against disloyal competition of 1932 (Papadopolu, Vol II, 1932, p. 53), that is implicitly repealed, of course only those that are in contradiction with the criminal code”<sup>4</sup>.

Further, in the same section at art. 396 the act of the person who “forges the instrument made to verify and publicly certify precious metal objects, measuring and weighing devices, devices for taxing merchandise or products submitted to public verification and certification” (Justice, 1936, pp. 129, art. 396) (felony of forging marking instruments) is incriminated.

At art. 397 we find another offence that consists in forging “the imprint or the sign of a seal or of a marking instrument, through other means than the use or application of a forged seal or marking instrument” (Justice, 1936, pp. 129, art. 397, pp. 129-130) (offence of forging the imprint of a seal or of a marking instrument).

---

<sup>1</sup> Criminal Code Carol II, art. 393 in (Justice, 1936, p. 120).

<sup>2</sup> M.I. Papadopolu comment, in (Rătescu, et al., 1937, p. 553).

<sup>3</sup> Criminal Code Carol II, art. 394 in (Justice, 1936, p. 129).

<sup>4</sup> M.I. Papadopolu comment, in (Rătescu, et al., 1937, p. 555).

The doctrine of that time retains that “This text incriminates the forging of the imprint or of the sign of a seal or of a marking instrument, through other means than the use of application of a forged seal or marking instrument. Through this, the law maker wanted to ascertain the general theory that considers counterfeiting not only the action of fabricating, through technical means, a real stamp, seal or marking instrument etc., but also the creation, through any other means different from forging, of the applied imprint, for example drawing, copying somehow – even by photographing - a real stamp (...)”<sup>1</sup>.

The last offence part of this group consists in illicitly using, to one’s own profit, a real seal or a real marking instrument<sup>2</sup> (offence of abusive use of the seal or of the marking instrument).

The brief analysis of the mentioned texts allows us to notice that this group sanctions acts of forging of the following values: State seal, seal of a public authority or office, seal, stamp or mark of a private institution or entity, instruments for verification and certification of precious metal objects, weighing and measuring devices, devices for taxing merchandise and products submitted to public verification and certification, the imprint or the sign of a seal or marking instrument, as well as the illicit use of the real seal or of the real marking instrument, to one’s own profit or to one’s damage.

## 6. Conclusions

As noticed, the incrimination of this act in Romanian law represents an element of continuity, the first incrimination being mentioned in the Criminal code of 1864.

As time passed, along with the evolution of the science of criminal law, the incrimination changed significantly, all imposed by the evolution of criminality in this field, as well as by the necessity to prevent and fight this type of criminality more effectively.

The analysis made emphasized especially some aspects related to the constituting content of this offence, as well as

The current incrimination is fully justified and will remain in force for many years to come, taking into consideration the values protected by the incrimination norm.

---

<sup>1</sup> M.I. Papadopolu comment, in (Rătescu, et al., 1937, pp. 557-558).

<sup>2</sup> See art. 398 of (Justice, 1936).

**Bibliography**

Badulescu, G. S., & Ionescu, G. T. (1911). *Codul penal adnotat /The Annotated Criminal Code, Romanian and French jurisprudence and doctrine, with a preface by I. Tanoviceanu, professor of law at the University of Bucharest*. Ed. Tip Ziarului CURIERUL JUDICIAR 5, Rahovei, 5.

DEX. (2009). *Dicționarul Explicativ al limbii române/The Explanatory Dictionary of the Romanian language*. Bucharest: Univers, Enciclopedie Gold.

Dongoroz, V., Kahane, S., Oancea, I., Fodor, I., Iliescu, N., Bulai, C., Roșca, V. (1972). *Explicații teoretice ale Codului penal român/ Theoretical explanations of the Romanian Criminal Code*. Bucharest: Romanian Academy Publishing House.

Iugan, A. V. (2020). *Codul penal adnotat. Partea specială. Jurisprudența națională 2014 – 2020/Annotated criminal code. The special part. National jurisprudence 2014 - 2020*. Bucharest: Universul Juridic.

Justice, M. J. (1936). *Codul penal Carol al II-lea/Criminal Code of Carol II*. Bucharest: Monitorul Oficial si Imprimeriile statului.

Papadopolu, M. (1932). *Codul legilor penale/Code of Criminal Law*. Bucharest: Tipografiile Romane Unite.

Rătescu, C. G., Ionescu-Dolj, I., Periețeanu, I. G., Dongoroz, V., Aznavorian, H., Pop, T., Pavelescu, N. (1937). *Criminal Code Carol II, Annotated, vol. II, Special Part I, art. 184-442/Codul penal Carol al II-lea, Adnotat, vol. II, Partea specială I, art. 184-442*. Bucharest: Librăriei SOCEC& Co., S.A.

Ristea, I. (2020). *Drept penal, Partea specială, Curs universitar, vol. II/ Criminal law, Special part, University course, vol. II*. Bucharest: Universul Juridic.