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## False Identity

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**Abstract:** In this paper, I proceeded to examine the crime of false identity regarding the text of the act of incrimination. Thus, we analysed the subjects, as well as the objective and subjective side of the crime with direct reference to the recent judicial practice in the matter. We also highlighted the elements of similarity as well as those of differentiation between the texts of the two laws, the analysis being useful both from a doctrinal perspective and for the identification and application of the more favourable criminal law. The novelty elements consist in the analysis performed, with reference to the recent judicial practice, as well as in the citation of several authors from the Romanian doctrine. The paper is part of a university course to be published by a recognized publishing house in the field of legal sciences. By the way of approach, the paper can be useful to the students of the profile faculties in the country, as well as to the practitioners of the criminal law.

**Keywords:** Crime; subjects of the crime; the objective side and the subjective side

### 1. Introduction

Identity forgery is part of the group of forgery offenses, the subgroup mentioned in Chapter III with the marginal name of “False documents”.

According to the incriminating text, the act consists in presenting under a false identity or assigning such an identity to another person, made to a civil servant or transmitted to a unit in which he carries out his activity, by fraudulent use of an act that serves to identify, legitimize or to prove the marital status or such a forged act, in order to mislead or maintain a civil servant, in order to produce a legal consequence, for himself or for another.

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In the aggravated manner provided in paragraph (2) the offense is retained in the event that the presentation under a false identity was made under the conditions described in the text of para. (1), but by using the real identity of a person.

In the attenuated manner provided in paragraph (3) the crime will subsist when it has been entrusted without right, an act, which serves to identify, legitimize or prove the marital status to be misused.

It has been pointed out in our doctrine that “presenting under a false identity or assigning a false identity, or using misleading evidence of identity is an alteration of the truth which can have serious consequences because the formation and termination of a significant number of relationships social.

The falsehood of identity therefore presents an obvious social danger that inevitably undermines the trust that people place in the means by which the identity of individuals is established” (Dongoroz et al., 1972, pp. 462-463).

We specify that the examined crime is also provided in the provisions of article 337 paragraph (11) of Law no. 95/2006<sup>1</sup> “according to which the retention at the level of medical service providers, medicines and medical devices of national cards and/or their use without right, for the purpose of reporting and validation of some medical services/medicines/medical devices, constitutes the offense of false identity, provided in art. 327 of the Criminal Code, and shall be punished according to the provisions of the Criminal Code”.

The crime subject to examination was also provided in the Criminal Code of 1969 in art. 293.

The initial wording published in the 1969 Criminal Code first underwent changes immediately after 1990, in the legal content of paragraph (1), where the phrase *an organization from those provided in art. 145*, was replaced by the phrase *a state body or institution or another unit of those referred to in art. 145*.

Regarding the legal content of paragraph (2), we specify that it has not been modified.

A comparative examination of the existing provisions prior to the entry into force of the Criminal Code reveals the existence of some similarities, as well as other differences.

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<sup>1</sup> Published in Romanian Official Monitor, Part I, no. 652 in August 28th, 2015.

Thus, we point out that the legislator has reformulated the content of paragraph (1).

Under these conditions, the crime will be retained only in the conditions in which the action of presentation under a false identity was carried out by fraudulent use of an act that serves to identify, legitimize or prove the marital status or such a forged act. We specify that in the previous law the crime could be committed only by simply presenting under a false identity, without the need to present a forged document certifying that identity.

The second difference is the introduction in the content of the crime of an aggravated normative modality that will be retained in the hypothesis in which the presentation under a false identity committed under the conditions described in the standard modality, was made by using the real identity of a person.

Another difference is the completion of the text with an aggravated normative modality, and the mention of an attenuated normative modality, instead of the assimilation modality (provided in the previous law).

The last difference consists in the sanctioning regime, which in the case of the standard modality of the minimum sentence was increased by three months, and in the case of the attenuated normative modality, different punishments were mentioned.

### **Subjects of the Crime**

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

The Supreme Court ruled that “The act of the Romanian citizen, abroad, to present him under a false identity to the authorities of a foreign state, constitutes the crime of false identity regarding the identity provided by article 293 para. (1) Thesis I Criminal Code”<sup>1</sup>

The solution remains topical, but only if the presentation under a false identity is made by fraudulent use of an act that serves to identify, legitimize or prove the marital status or such a forged act. The mere statement, even if it is recorded in writing by the authorities of a foreign state, not followed by the fraudulent use of

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<sup>1</sup> I.C.C.J., RIL, Decision no. XIX/2007, published in Official Monitor no. 503 in July 3rd, 2008.

such a document, will not meet the conditions of objective typicality of the examined crime.

*Criminal participation* is possible, but only in the form of instigation and complicity.

In judicial practice it was decided that “The act of the defendant M.H.Y. consisting in the fact that, based on the same criminal resolution, in the period 18.11.2003, so far he has appeared before several authorities, Bulgarian, Romanian or Syrian, under false identity, meets the constituent elements of the crime of false identity. , in continuous form. The facts of the defendant M.D.V. consisting in the fact that by participating as a witness in the conclusion of a new marriage, under the identity of A.C.H., called M.D.V. morally aided defendant M.H.Y. to commit the crime of forgery of identity on an ongoing basis meet the constituent elements of complicity in the commission of the crime of forgery of identity”<sup>1</sup>.

*Co-authorship* is usually not possible.

The doctrine states that when “when the perpetrator assigns a false identity to another person, if he is present, he will be, as the case may be, co-author or accomplice by assisting in the perpetrator's action; and when she is not present, but knows that she will be assigned a false identity and has consented to it, she will be a former accomplice (e.g. someone gave a false identity warrant to the perpetrator to represent him)” (Dongoroz et al., 1972, pp. 464).

If the crime “is committed by entrusting a real document to be used unjustly, and the recipient uses it by assigning a false identity, the one who entrusts the document is the author of the attenuated version, and the one who uses the document the quality of author of the basic form” (Udroiu, 2021, p. 1082).

*Passive subject* is the unit, institution, organization in which the civil servant carries out his activity, as well as the natural or legal person whose identity has been usurped.

Also, “the liable person may be the victim of the legal consequence of using a false identity” (Dongoroz et al, 1972, p. 464).

*The place and time* of the crime do not have any legal relevance as to the typicality of the crime.

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<sup>1</sup> Court of appeal, Bucharest, criminal section I, December no. 799/20.06.2014, available on [www.sintact.ro](http://www.sintact.ro)., *apud*, Mihail Udoiu, *cited works*, p. 1083.

### 3. The constitutive content of the crime

#### 3.1. The Objective Side

In the case of the standard (simple) modality provided in paragraph (1), the *material element* of the objective side can be achieved by two alternative actions, which consist in *presenting a false identity* or *assigning a false identity to another person*.

*Presentation* “means the appearance of a person before the failing body to ascertain his identity; and the presentation under a false identity means that the one who appears attributes to himself an identity that is not his” (Dongoroz et al., 1972, p. 465)

We specify that in this hypothesis, the identity under which the perpetrator presents himself must be a different identity than the real one (fictitious); if the real identity of another person is used, the aggravated normative modality from par. (2).

In order to meet the typicality requirements, it is necessary to establish the existence of *essential requirements*.

The first essential requirement is that the act of presentation under a false identity be carried out “*by fraudulent use (without right) of a real document (true document issued by the competent authorities) which serves to identify or prove marital status or by fraudulent use of a forged document that serves to identify (identity card / passport, passport), identification (service card, student ID, etc.) or proof of marital status (e.g. birth certificate, marriage certificate, etc.)*” ( Udroi, 2021, p. 1083).

Another essential requirement is that the *presentation under a false identity be made in front of a civil servant or be transmitted to a unit in which the civil servant carries out his activity*.

The last essential requirement is *that the presentation of a false identity must be intended to mislead or mislead a civil servant in order to produce a legal consequence*.

In judicial practice it was decided that “the act of false identity, for which the defendant was convicted, is not provided by the criminal law.

In the present case, defendant G presented himself under false identities, but the act was not committed for the purpose of misleading or misleading witness I (police officer at the time), given that the latter knew the real identity of the defendant, being otherwise participant in the commission of crimes committed in court. At the same time, the crime of false identity could not be retained in the report by the insurer, as

on the one hand the insurer is not a body or a state institution or another unit of those referred to in art. 175 of the Criminal Code and on the other hand in this case the defendant used his real identity when addressing the insurer”<sup>1</sup>.

Likewise, “The deeds of defendant A, who between 18.06.2010-13.03.2012, presented himself under a false identity, that of B, before the police (within the 16th Police Station) and the Local Police workers of Bucharest , in order to produce legal consequences for itself, namely evading the application of sanctions, on which occasions the police have drawn up a total of 38 reports of sanctions, which were issued in the name of a other persons, meet the constituent elements of the crimes of identity fraud and intellectual forgery in the form of improper participation”<sup>2</sup>.

Assigning “a false identity to another person means declaring that person has an identity that is not really his or her own” (Dongoroz et al., 1972, p. 465).

By *attribution* “the perpetrator depicts, in writing or orally, under an unreal identity a person who, for any reason, has difficulty or is unable to deny his identity” (Udroiu, 2021, p. 1084)

In order to meet the typicality requirements, it is necessary to establish the existence of essential requirements.

Thus, “*the assignment of a false identity must be made by fraudulent use (without right) of a real document (true document issued by the competent authorities) which serves to identify or prove marital status or by fraudulent use of a forged document serving as identification (identity card (passport), identification (service card, student card, etc.) or proof of marital status (for example, birth certificate, marriage certificate, etc.)*” (Udroiu, 2021, p. 1084).

In the event that this requirement is not met, the act will not meet the conditions of objective typicality of the examined crime.

In this sense, in the judicial practice it was noted that “*The false deed regarding the identity for which the defendant C was sent to trial through the indictment of the Prosecutor's Office attached to the District 3 Court of Bucharest is not a deed provided by criminal law, as not all requirements are met provided by law in terms of the objective side - the presentation under false identity was not made through the*

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<sup>1</sup> Court of appeal, Bucharest, 2nd criminal section, December, no. 235/17.02.2017, unpublished, *apud*, A.V. Iugan, *cited works*, p. 466.

<sup>2</sup> Court of appeal, Bucharest, 2nd criminal section, December, no. 1054/23.09.2014, unpublished, *apud*, A.V. Iugan, *cited works*, p. 465.

*fraudulent use of an act that serves to identify, legitimize or prove the marital status or such a forged act.”<sup>1</sup>*

Another essential requirement is that a false identity be presented to a *public official*.

The last essential requirement is that the presentation of a false identity must be intended to *mislead or mislead a civil servant in order to produce a legal consequence*.

Both actions must be carried out through one of the following options: fraudulent use of an act that serves to identify, legitimize or prove the marital status or such a forged act.

By Decision no. 20/2015 pronounced by the Panel for resolving legal issues in criminal matters within the High Court of Cassation and Justice, it was established that “The essential requirement of the material element of the crime of false identity an act that serves to identify, legitimize or prove the marital status or such a falsified act, is also mandatory in the event that the act of presentation was made by using the real identity of a person”<sup>2</sup>.

The doctrine stated that “the use of forgery is absorbed in the forgery of identity, when this act is committed by using a forged document, in which case it has the nature of a complex crime; this legal construction of the crime of identity forgery does not exclude the retention of this crime in competition with the forged material in official documents or with the intellectual forgery” (Udroiu, 2021, p. 1084).

The aggravated normative modality provided in par. (2) consists in *presenting oneself under a false identity by using the real identity of a person*, “orally or by using a document, before a civil servant, or transmitted to a unit in which he carries out his activity, *made by fraudulent use of an act real (issued by the competent authorities) which serves to identify, legitimize or prove the marital status or such a forged act*, in order to mislead or mislead a civil servant, in order to produce a legal consequence” (Udroiu, 2021, p. 1086).

The *material element* of the objective side consists in the *presentation under real identity of a person, whose perpetrator uses his identity*, both by fraudulent use of an act that serves to identify, legitimize or prove marital status (non-falsified act) and

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<sup>1</sup> Court of appeal Bucharest, 2nd criminal section, December, no. 888/23.06.2015, unpublished, *apud*, A.V. Iugan, *cited work*, p. 465.

<sup>2</sup> Published in the Romanian Official Monitor, Part I, no. 573 in 30 July 2015.

by using a falsified document that serves to identify, legitimize or prove the marital status” (Udroiu, 2021, p. 1086).

By decision no. 20/2015 High Court of Cassation and Justice, Panel for resolving legal issues in criminal matters<sup>1</sup>, in the interpretation of art. 327 paragraph (2) Criminal Code, established that: “The essential requirement of the material element of the crime of false identity regarding the regulated identity in the standard version, such a forged document is also mandatory in the event that the act of presentation was made by using the real identity of a person”.

The recent doctrine states that “in the event of a person appearing in court to be heard as a witness under the identity of another person, using his or her identity card (not forged), the offense of forgery of identity, not the crime of perjury or misleading the judiciary” (Udroiu, 2021, p. 1086).

The jurisprudence held that “The act retained in the charge of the defendant C.M.E. who, on September 2, 2016, obtained, within the radius of Bucharest, from an unidentified person, in exchange for the amount of 300 euros, a forged identity card (totally false), a document in which his photo was applied and were entered the identity data belonging to another person - D.M., meets objectively and subjectively the constitutive elements of the crime of complicity in false material in official documents. The facts retained in the charge of the defendant C.M.E., consisting in the fact that on 5.09.2016 he tried to fraudulently cross the state border from Romania to Hungary, under another identity, using in this sense a forged identity card, meets the objective and subjectively the constitutive elements of the false crimes regarding identity, provided by art. 327 paragraph (1) and (2) (using the real identity of another person) Criminal Code and attempted fraudulent crossing of the state border (for the purpose of evading criminal prosecution)”<sup>2</sup>.

In paragraph (3) is provided an attenuated normative modality, which will be retained in the hypothesis in which the active subject entrusts an act that serves to identify, legitimize or prove the marital status to be used without right.

The doctrine stated that it is an assimilated variant of the crime *to entrust* a document that serves to identify (identity card / passport, passport), identification (service card, student ID, etc.), or to prove marital status (for example, birth certificate, marriage certificate, etc.), *which is real*, to be used without right” (Udroiu, 2021, p. 1087).

<sup>1</sup> Published in Official Monitor no. 573 in 30 July 2015.

<sup>2</sup> Court of appeal, Bucharest, criminal section, 2nd, December no. 456/23.03.2017, www.sintact.ro, *apud*, Mihail Udroiu, *cited works*, p. 1087.



The active subject of this crime may be both the rightful owner of the act that serves to identify, legitimize or prove the marital status, to be used illegally, and a third party who came into possession of such a document in legal conditions or with breaking the law.

The *material element* of the objective side consists in the act of entrusting an act that serves to identify, legitimize or prove the marital status to be used without right.

For the existence of the crime, it is necessary to fulfil an essential requirement which consists in the need for the entrusted act to be real, obtained in accordance with the law by the right holder, to be able to produce legal consequences, through use.

The offense is committed when the act in question is entrusted for use and does not need to be used.

In the judicial practice it was decided that “The deed of the defendant who on 17.09.2014 entrusted to the investigator with real identity M.G. a false passport, in the name of M.M., in order to use the respective travel document without right, for the identification and identification of the investigator at the border points meets the constituent elements of the crime of forgery of identity, provided by art. 327 paragraph (3) C. pen. The act of the defendant consisting in the fact that between August and September 2014, through the defendant I.D. and in carrying out the same criminal resolution, in exchange for the amount of 21,000 euros (6 x 3,500 euros), of which he received 3,500 euros, he supported the criminal activity of forging passports, carried out by an unidentified perpetrator. The aid consisted of recruiting, through the whistle-blower Court of Appeal, six persons interested in obtaining false passports, with a “price” of 3,500 euros / passport, as well as providing photos and information (on age, height and eye colour), which followed be interested in travel documents. Material documents regarding the forged passport in the name of M.M. having applied the photo of the investigator with real identity M.G., realizes the consumed form of complicity in committing the crime of forgery in official documents, in which are absorbed, the tempted material acts, regarding the implementation of the criminal resolution to help forge another 5 passports the constituent elements of the crime of forgery in official documents, in a continuous form.”<sup>1</sup>

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<sup>1</sup> Court of appeal, Bucharest, ciminal section, 2nd, December, no. 87/26.01.2016, unpublished, *apud*, (Udroiu, 2021, p. 1088).

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

The *causal link* results from the materiality of the deed (ex re).

### 3.2. The Subjective Side

The form of guilt with which the examined crime is committed is the direct intention.

## Conclusions

During the examination of the crime of false identity, we took into account the opinions of some authors of the Romanian doctrine, making frequent reference to the recent judicial practice promoted by the courts in the country.

We also insisted on the elements of similarity and differentiation between the two texts, this aspect being of interest both in terms of promotion in our doctrine and in terms of identifying and applying the more favourable criminal law.

The recent jurisprudence, to which I referred, reveals a still high crime rate in this field, an aspect that promotes the idea of maintaining and improving the incrimination text in the Romanian criminal law.

The existence and maintenance of this incrimination in our criminal law will fully contribute to the defence of the social values specific to the field.

We also highlight the usefulness of the new changes made in the structure of the incrimination text, changes meant to ensure a better protection of the activities that require the presentation and assumption of responsibility of a real statement that must be given before a person authorized by law.

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