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False Offenses Committed in Connection with the Authority of a Foreign State

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Abstract: In this paper we have tried to draw attention to the offenses provided for in Chapter III of Title VI of the Romanian Criminal Code, in the event that they were committed in connection with the authority of a foreign state. In this context, we have taken into account in particular the objective and subjective side of the offenses in question, as well as the power to prosecute and try in the first instance. The novelty elements are represented precisely by the depth of the examination carried out in the light of the new provisions provided in the Criminal Code. The paper is part of a university course to be published by a recognized publishing house in the field in the country. Given the depth of the examination, it may be useful to law school students in the country and the European Union, as well as to legal practitioners.

Keywords: False; the objective side; the subjective side; the authority of a foreign state

1. Introduction

According to the provisions of article 328 of the Criminal Code, *“The provisions contained in this chapter also apply when the act concerns acts issued by a competent authority of a foreign state or by an international organization established by a treaty to which Romania is a party or declarations or identity assumed in front of it”*.

Please note that this text was not provided for in the previous law.

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The offenses of forgery committed in connection with the authority of a foreign state consist in the deeds of some Romanian natural or legal persons who falsify an official document, by counterfeiting the writing or the subscription, falsifies an official document on the occasion of its preparation, falsifies a document under private signature, uses an official document or under private signature knowing that it is false, etc., in order to produce legal consequences, documents that are elaborated or that concern the competent authorities of another state or international organization established by a treaty to which Romania is a party.

By these provisions, the Romanian legislator “extended the incidence of the provisions of criminalization of forgeries in documents when the deed concerns documents issued by the competent authority of a foreign state or by an international organization established by a treaty to which Romania is a party or declarations or an assumed identity in front of her. The provisions of article 328 Criminal Code is justified; they ensure the principle of legality of incrimination and make it possible to prosecute according to the principle of the personality of the criminal law and that of the universality of the criminal law for forgery offenses committed abroad and in connection with the authority of a foreign state” (Pascu et al., 2016, pp. 718).

Another opinion states that “The provisions contained in the said legal text ensure the principle of legality of incrimination and make it possible to prosecute according to the principle of the personality of criminal law and the universality of criminal law for forgery offenses committed abroad and in connection with the authority of a foreign state” (Ristea, 2020, p. 207).

In order to apply the provisions of article 328 of the Penal Code, “the judicial bodies must ascertain, first of all, the fulfilment of the objective and subjective conditions provided in the texts of criminalization of the facts of false material in official documents, intellectual forgery, forgery in documents under private signature, use of forgery, falsification of a technical record, computer forgery, false statements, false identity, and secondly, that the documents (documents) which constitute the material object of these offenses are issued by an authority of a foreign state or the false documents are presented to such authorities in order to produce a legal consequence (Pascu in Antoniu, Toader, 2016, p. 578).

2. Examination of the Offense

As noted in our doctrine, this incrimination leads to the opportunity to apply the principles of territoriality, personality, reality and universality of Romanian criminal law, given that the incriminated action was committed abroad by a Romanian or foreign citizen.

The *legal object* consists in the social relations regarding the public trust that must be granted to the official documents, the documents under private signature, etc., used by the foreign authorities or legal or natural persons.

The *material object* usually consists of the official document or private signature, the declaration of identity card, etc., forged.

We note that this time, the material object is a special one, in the sense that the official document or under private signature, technical registration, etc., forged, must be adopted in a foreign state or even in Romania, but it is necessary that they belong that foreign state (or a foreign legal or natural person).

Official documents, etc., adopted by the institutions of the European Union or of any Member State or third party, an international organization established by a treaty to which Romania is a party, etc., will have this quality.

The *active subject* of this crime can be any Romanian or foreign natural or legal person who forged an official document, under private signature, a technical registration, etc., which were issued by the competent authorities of a foreign state.

In this sense, 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 art. 293 paragraph (1) Thesis I Criminal Code”¹.

Given the changes in the structure of the incrimination norm in the case of the crime of false identity, the decision remains relevant only if the active subject of the crime, a Romanian citizen, executes the incriminated action under the conditions expressly mentioned in the new incrimination text.

If the Romanian citizen makes only a simple statement about his identity, even if it is recorded by the competent authorities of another state in a document, without it being supplemented by a document to try to mislead that authority in terms of

¹ I.C.C.J., RIL, Decision no. XIX / 2007, published in the Official Monitor of Romania no. 503 of July 3, 2008.

identity, the act will not meet the typical conditions of the crime of forgery of identity.

The *main passive subject* is the foreign state, the European Union, or another world organization (exp. UN, etc.) or continental, and the *secondary passive subject* is the institution, legal or natural person belonging to the foreign state whose registration, technical registration, etc., was forged or used.

The *premised situation* consists in the existence of an official document or under private signature, of a technical registration, etc.

The *material element* of the objective side, the immediate follow-up and the causal link is identical to those analysed during the examination of the crimes that are part of this group.

Thus, in the case of this group of crimes, the *material element* may consist in: *falsifying an official document issued by a foreign authority*, by counterfeiting the writing or the subscription or by altering it in any way likely to produce legal consequences; *falsification of an official document on the occasion of its preparation* by a public servant in the performance of his duties, by attesting to facts or circumstances untrue or by knowingly failing to insert certain data or circumstances (such as the transmission of a certificate of criminal record for a Romanian natural person, at the request of the competent judicial authorities of a foreign state, which does not correspond to reality, being falsified by the person who draws it up); *the use of a forged document or its entrustment to another person for use by the person who forged it, in order to produce legal consequences*; *the use of an official document or under private signature, knowing that it is false, in order to produce some legal consequences*; *falsification of a technical record by counterfeiting, alteration or the determination of attestation of circumstances untrue or omission to record data or circumstances*, if it was followed by the use of the record by the perpetrator or entrusting it to another person for use, in order to produce a consequence legal; the introduction, modification or deletion, without right, of computer data or the restriction, without right, of the access to these data, resulting in data that do not correspond to the truth, in order to be used in order to produce legal consequences; the declaration not corresponding to the truth made to a person from those provided in art. 175 Criminal Code., Or a unit in which it carries out its activity, in order to produce a legal consequence, for itself or for another, if the declaration serves to produce that legal consequence; *the declaration not corresponding to the truth made to a person from those provided in art. 175 of the*

Penal Code, or a unit in which he carries out his activity, committed to hide the existence of a risk of infection with an infectious disease and the *presentation under a false identity or assigning such an identity to another person, made to a person the art. 175 of the Penal Code, or transmitted to a unit in which it carries out its activity, through the fraudulent use of an act that serves to identify, legitimize or prove the marital status or such a falsified act*, in order to mislead or maintain a civil servant, in order to produce a legal consequence.

In order to complete the material element of the objective side, certain *essential requirements* are also required to be met.

Thus, the essential requirement specific to each of the offenses mentioned is the need for the official document or private signature, technical registration, etc., to be such as to produce a legal consequence.

Failure to comply with this essential requirement will lead to the non-existence of the crime of forgery in official documents, intellectual forgery, forgery in documents under private signature, etc.

Another *essential requirement* specific only to certain offenses belonging to this group is that the action in question be carried out without right, as is the case with the offense of forgery.

The *immediate consequence* is the creation of a state of danger for the social value protected by law.

The *causal link* results from the materiality of the deed, not being necessary to be proved by the competent judicial bodies.

Against the background of the appearance of different interpretations of some actions, that fall within the constitutive content of some of these crimes, in the last years several decisions have been pronounced by the Supreme Court.

Thus, regarding the crime of forgery in documents under private signature, by Decision no. 21/2017¹ pronounced by the High Court of Cassation and Justice, the panel competent to judge the appeal in the interest of the law established that “ , *by using forged tax invoices and receipts, in order to evade the fulfilment of tax obligations, constitutes the crime of tax evasion provided by article 9 paragraph (1) lit. c) of Law no. 241/2005 for preventing and combating tax evasion*”.

¹ Published in the Official Monitor of Romania, Part I, no. 1024 of December 27, 2017.

Also, by Decision no. 3/2020¹ the same court, the Panel for resolving legal issues in criminal matters, ruled that “*The use or presentation in bad faith of forged private documents, which resulted in the unjust obtaining of funds from the Union budget Or from budgets administered on its behalf or on its behalf, committed by the same person who, as the perpetrator or secondary participant, contributed to the forgery, commits the offenses of misuse or misrepresentation of false documents or statements, inaccurate or incomplete, provided by art. 181 paragraph (1) of Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, and forgery in documents under private signature, provided by article 322 paragraph (1) of the Criminal Code*”.

Regarding the crime of computer forgery, by Decision no. 4/2021², the High Court of Cassation and Justice, the Panel for resolving legal issues in criminal matters, established that “*The act of opening and using an account on a social network open to the public, using as username the name of another person and by introducing real personal data that allow its identification, meets two of the essential requirements of the crime of forgery provided in article 325 of the Criminal Code, namely that the action of entering computer data be performed without right and that that the action of entering computer data should result in data that does not correspond to the truth.*”

The form of guilt with which the crime is committed is the intent which may be direct or indirect.

Although possible, the *preparatory acts* are not sanctioned. If they are committed by another person, he will be an accomplice.

The *attempt* is sanctioned only in the case of the offenses of forgery in official documents, *intellectual forgery and forgery in documents under private signature*.

The *consummation* of the crime takes place at the moment when the incriminated action was executed in its entirety and the socially dangerous consequence appeared, the state of danger was created for the public trust in the official documents, declarations, technical records, etc., which were falsified.

For these offenses, there may be a time of *exhaustion* that will coincide with the time of the execution of the last incriminated action.

¹ Published in the Official Monitor of Romania, Part I, no. 138 of February 21, 2020.

² Published in the Official Monitor of Romania, Part I, no. 171 of February 19, 2021.

For the offenses included in this group, the criminal action is initiated *ex officio*, and the competence to exercise criminal prosecution usually belongs to the criminal investigation bodies of the judicial police under the supervision of the competent prosecutor.

Depending on the circumstances of the commission of the acts, the quality of the perpetrator, as well as the existence of a possible concurrence of crimes, the competence to carry out the criminal investigation may also belong to the prosecutor.

Also, depending on the quality of the active subject, the competence to carry out the criminal investigation may also belong to National Anticorruption Directorate, according to the provisions of art. 3 lit. a) of GEO no. 43/2002, regarding the National Anticorruption Directorate, republished with the subsequent amendments and completions¹ and of art. 1 of Law no. 78/2000 for the prevention, detection and sanctioning of acts of corruption, with subsequent amendments and completions².

As a rule, the jurisdiction in the first instance belongs to the court in the district in which the crime was committed or which was notified.

Jurisdiction in the first instance may also belong to other higher courts in the case, in the event that the criminal investigation is carried out by the prosecutor, Directorate for the Investigation of Organized Crime and Terrorism or National Anticorruption Directorate.

If the competence to prosecute belongs to the European Public Prosecutor's Office and the criminal investigation is carried out by this prosecutor's office, the jurisdiction in the first instance belongs to the court notified according to the provisions of art. 20 of Law no. 6/2021 on the establishment of measures for the implementation of Council Regulation (EU) 2017/1.939 of 12 October 2017 implementing a form of enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO).

We note that in the conditions in which the incriminated action took place outside the territory of the Romanian state, the principles of personality, reality or universality of the Romanian criminal law will be applied.

¹ Published in the Official Monitor of Romania, Part I, no. 244 of April 11, 2002.

² Published in the Official Monitor of Romania, Part I, no. 219 of 18 May 2000.

Conclusions

The offense under examination was not provided for in the 1969 Criminal Code, being mentioned for the first time in Romanian law in the Criminal Code in force.

According to the provisions provided in article 329 of the Criminal Code, the offenses contained in Chapter III of Title VI of the Criminal Code will be incidental even if they are committed acts issued by a competent authority of a foreign state or by an international organization established by a treaty to which Romania it is a party or statements or an identity assumed before it.

We notice that the Romanian legislator does not define any of the passive subjects, because their area is quite wide and complex at the same time.

It should be noted that in terms of the active subject, it may be a Romanian natural or legal person or belonging to another state.

Regarding the place of the crime and implicitly the competence of criminal prosecution and trial, this implies some clarifications, in the sense that if the deed is committed in Romania the competence will belong to the Romanian judicial bodies, and if the deed is committed abroad, there will be incidents (in depending on the concrete circumstances of the commission of each act, as well as on the active subject), the provisions by which are regulated the principles of reality, personality and universality of the Romanian criminal law.

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