

Some Considerations Regarding the Crime of False Statements

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ABSTRACT: During the state of emergency, but also in the state of alert established due to the coronavirus pandemic, in Romania prosecutors have prepared special cases relating to the crime of thwarting the fight against disease, for false statements, abuse or negligence in office, disclosure of secret service or non-public information, for fraud, theft, failure to take legal measures for safety and health at work. This article is dedicated to one of the measures of criminal law that the Romanian state has proposed to adopt in the current context, namely the amendment and completion of Article 326 of the Romanian Criminal Code - False statements. The increase in punishment limits is justified, as the coronavirus pandemic has proved to be more severe than anticipated both for the life and health of the entire population and for the economy, generating numerous unprecedented restrictions. By committing this crime, the trust that must be inspired by the official documents drawn up on the basis of the statements made before the public authorities or institutions is infringed.

KEYWORDS: false, false statements, public health, social danger, pandemic

Introduction

Emergency Ordinance no 28 of March 18, 2020, amending and supplementing Law no. 286/2009 regarding the Criminal Code published in Official Gazette no 228 of March 20, 2020, was amended and completed the Criminal Code regarding the crime of false statements, the crime of thwarting the fight against diseases and the crime of omission to declare information.

Counterfeiting offenses are provided for in Title VI - *Counterfeiting* in the Special Part of the Criminal Code, in Chapter III entitled *Counterfeiting documents*.

The offenses under the name of “False offenses” constitute a well-defined and extremely varied category in the vast sphere of facts considered to be dangerous. False facts seriously undermine the truth and trust that must lead to the formation and development of human relationships. Any social relationship concerns and is based on 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 great precautions and inevitable risks (Duvac 2016, 395).

The Romanian Criminal Code of 1864 did not contain any provision criminalizing the act of false statements. The Romanian Criminal Code from 1936 incriminated the false statements in two texts, namely: in art. 404 incriminated the act of a person who, in front of a civil servant, made false statements for drawing up a public document regarding the marital status or establishing the identity of a person or regarding any legal relationship between other persons and was punished with correctional imprisonment from three months to one year, a fine from 2000 to 5,000 lei and a correctional ban from one to two years, and according to the provisions of art. 405, was false in statements the deed of the one who, on the occasion of an interrogation on the identity or other qualities of his person or another, made false statements in front of a civil servant in the exercise of his function, being sanctioned with the punishment provided in art. 404. The same penalty applies to a person who made false statements, in order to mislead the public authority on the identity of his marital status or other qualities of his person or another, even if the fact occurred before an individual who has the duty to register his identity people. The Romanian Criminal Code from 1968 incriminates the false statements in art. 292 in a concise but precise and comprehensive wording, the text succeeding in containing all possible variants of

false in statements producing legal consequences: *”The act of giving a false statement to an individual as mentioned in Article 145 or before a body in which they carry out their activity, in order to produce legal consequences either for themselves or for another, when, according to the law or to the circumstances, the statement made is used to produce such consequence, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine”*.

After the entry into force of the current Romanian Criminal Code, in 2014, we find that the text of the law from art. 326 has the same content as the previous one from 1968 and the same punishments as nature and special limits: *”The act of giving a false statement to an individual as mentioned in Article 175 or before a body in which they carry out their activity, in order to produce legal consequences either for themselves or for another, when, according to the law or to the circumstances, the statement made is used to produce such consequence, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine”*. There is, however, a difference in the wording of the content of the two texts, namely, if according to the provisions of art. 292 of the previous Criminal Code, the statement not corresponding to the truth was made to a state body or institution or to another unit of those referred to in art. 145, in art. 326 of the current Romanian Criminal Code, the improper declaration of the truth is made to a person from those provided in art. 175 or a unit in which it operates. These differences in the wording of the text criminalizing false statements are explained in the different content given to the expression *civil servant* or the *public* term in the two criminal codes.

After the amendment and completion of the Romanian Criminal Code by Emergency Ordinance no 28/2020, Article 326 - *False statements* shall read as follows: align. (1) *”The inaccurate statement of the facts, made to a person other than those indicated in article 175 or to an entity in which those persons activate, with a view to producing legal effects, for oneself or for others, done when, in accordance with the law or due to the circumstances, the statement made would produce such effects, is punishable with imprisonment from 6 months to 2 years or with a fine”*, and align. (2) *”The act indicated at paragraph (1), committed in order to hide the existence of a risk of infection with an infectious-contagious disease, is punishable with imprisonment from 1 to 5 years or with a fine”*.

Thus, as can be seen, the minimum sentence was increased for the basic option, which was previously 3 months, and a new form of criminalization of the crime was introduced, which consists in *The inaccurate statement of the facts, made to a person other than those indicated in article 175 or to an entity in which those persons activate, committed in order to hide the existence of a risk of infection with an infectious-contagious disease, is punishable with imprisonment from 1 to 5 years or with a fine*.

The text of the law was introduced to hold accountable persons before the state bodies regarding the country from which they left, the place from which they left, the date of departure, the territories they passed through, the symptoms of coronavirus they present (fever, difficulty swallowing, difficulty breathing, intense cough), people they have come in contact with, if they have come into direct contact with people suffering from the new coronavirus infection at work, in the vicinity of the home or visiting medical facilities or other places in the last two weeks, if they have lived or visited areas in which people were suffering from the new coronavirus infection if they had been hospitalized in the last three weeks etc.

The notions of *false* and *trust*

False, in the broadest sense, is all that must 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 1972, vol. IV, 358). Falsehood consists in altering or distorting the truth. Not every false is a criminal false. Therefore, in Criminal law, only the false is incriminated, which, through the consequences or

the possibility of producing legal consequences, presents a certain degree of social danger (Stoica 1960, 35).

Confidence is the mental state determined by the presumption of good faith that people give in their relationships with each other and by the presumption of veracity regarding the existence and value of things (Dongoroz vol. IV, 359).

Considering that, anywhere in the world, confidence is affected and jeopardized by misleading, misleading, abusive behavior States have an obligation to adopt common measures to defend this safety need by setting limits within to whom people manifest themselves freely. The freedom of the will of persons is reflected in their actions, which must not exceed the standard adopted and imposed by the states. Thus, trust must be recognized as a value protected by criminal law, becoming a special object of facts that exceed the accepted limit, leading to the adoption of a conduct as a result of sanctioning the changes and actions to the contrary (Tănăsescu 2019, 66).

Pre-existing elements of the crime of false statements

The special legal object consists of those social realities that concern public trust in the statements made by individuals to a civil servant or a unit in which he carries out his activity in order to produce legal consequences for himself or for another, when according to law or circumstances, in our case the coronavirus pandemic, the statement made serves to produce those consequences.

The material object. False statements are usually committed by the author orally, in which case the act has no material object. If the perpetrator submits to the civil servant or the unit in which he carries out his activity a statement that does not correspond to the truth, in written form, that statement will constitute the material object of the crime false in statements.

From the analysis of the text of the law, it results that in order to be in the presence of this crime, the following conditions must be met cumulatively: the person must give a statement in front of one of the persons provided in art. 175 of the Criminal Code or against the unit within which the civil servant carries out his activity; the statement given does not correspond to the truth; the statement should be given in order to conceal the existence of a risk of infection with an infectious disease. The reason for the declaration on one's own responsibility is to warn the declarant on the importance of its content, on the real character that this declaration must have, especially considering the purpose for which the obligation to draw it up was established.

Subjects of the crime

The active subject can be any person criminally responsible and who is entitled to make the statement in front of a person from those provided in art. 175 of the Romanian Criminal Code or to a unit in which it carries out its activity in order to produce a legal consequence. Therefore, the active subject of the crime of false statements is general, the area of applicability is not limited to people already infected, the crime of false statements can be committed by any person who intends to alter the truth contained in the statement he makes on his own responsibility, has it on him during the trip and presents it to the competent body to request it. As an example we mention the situation in which a person leaves the home for another purpose (walk, visits) than those explicitly listed by law, but draws up a statement in which he inserts one of those cases and presents it to the competent body to justify his move, committing the offense of making false statements.

Co-authorship is not possible for this crime, each perpetrator making the statement in his own name. Criminal participation is possible in the form of instigation or complicity, when the untrue statement is made by a person instigated by another person who knows the truth or supported by another person who knows the false nature of the statement.

The passive subject of the above-mentioned crime is, on the one hand, the public authority or public unit empowered to issue official documents on the basis of a statement from a

responsible person and entitled, according to law, to give that statement, and on the other hand, the natural person or person whose rights or interests have been affected as a result of the assessment of the legal consequences actually produced by the false declaration.

Constitutive content

The objective side

The material element consists in the action of making a statement that does not correspond to the truth of a person from those provided in art. 175 of the Romanian Criminal Code or to a unit in which it carries out its activity, competent to take note of the respective declaration. A statement is considered untrue when it, in whole or in part, does not correspond to the truth. For example, the person includes in the statement only one of the reasons provided by law, but the move extends to other purposes provided or not provided by law in the sense of partial alteration of the truth. The statement may not reflect the truth both in the case in which the author made statements contrary to reality in relation to data, facts or situations generating legal consequences, and in the version in which the author knowingly failed to include in the statement such data, facts or situations, although he had the obligation to make them known as well. Thus, the inadequate statement of the truth about any of the elements contained in the statement - the country where he comes from, the place where the declarant lives, the hours or locations between which he travels, the people he came in contact with etc. - may lead to the detention of the crime of false statements, so that its commission may take various forms.

Immediate consequence it consists in producing a state of danger to public confidence in the truth which must be represented by a statement of a person made to a civil servant or to the unit in which he carries out his activity under the conditions required by law.

The causal link between the act of declaring a person untrue to the truth to the civil servant, in accordance with the law, and the immediate consequence of creating a state of danger to public confidence that such a statement must represent results from the materiality of the deed.

The subjective side

The subjective element. The form of guilt with which the crime of false statements is committed is the direct intention because the action of the perpetrator of improper declaration of the truth is done in order to produce a legal consequence for himself or for another, without being relevant if in concrete these consequences have occurred or not. In order for the intention to be the subjective element and to complete the content of the subjective side of the crime of false statements, the essential requirement regarding the purpose pursued by the perpetrator must be fulfilled: the declaration is made in order to produce a legal consequence, for oneself or for another when, according to the law or the circumstances, the declaration made serves to produce that consequence. The motive and the purpose pursued by the perpetrator, other than the immediate purpose provided in the criminalization norm, are indifferent to the existence of the crime and have value only in terms of its judicial individualization.

Forms, modalities, sanctions

The offense of false statements being a commission and intentional is an objective likely to go through the phase of preparatory acts, the phase of enforcement acts, the phase of consumption and possibly the phase of exhaustion.

Normative modalities derive from the provisions of the norm of criminalization of the false deed in declarations as provided by article 326 of the Romanian Criminal Code, namely: the manner of the improper declaration of the truth in order to produce a legal consequence for the perpetrator, the manner of the statement not corresponding to the truth made by the perpetrator, but in order to produce a legal consequence for another; how to make a statement that is not true in order to produce consequences, for oneself or for another, according to the law and how to make a statement in which the consequences are determined by circumstances.

The actual ways there are different variants, depending on the unit in which the official carries out his activity or depending on the legal consequence pursued by the author of the declaration, on its content, on the way in which the declaration is made.

The two types of ways in which the crime of false statements was committed will be taken into account when individualizing the punishment of the perpetrator or participants in the crime.

In align. (2) of Article 326 is also provided an aggravating modality, namely the deed provided in align. (1), committed to conceal the existence of a risk of infection with an infectious disease.

Sanctions

The sanctioning of such a criminal act is justified, on the other hand, by the value protected by its criminalization, namely the public trust which represents the core of social relations and the guarantee that everything will take place in conditions of predictability.

According to the provisions of art. 326 of the Romanian Criminal Code, false statements are punishable by imprisonment from six months to two years. In determining the nature, duration or amount of the sentence, the court will take into account the general criteria for individualizing the sentence. Also, the court has the possibility to apply, in addition to the prison sentence, the fine as provided in art. 62 of the Romanian Criminal Code. The complementary punishment of the prohibition of the exercise of certain rights is optional.

In align. (2) of Article 326 where the aggravating factor is provided, namely *The act indicated at paragraph (1), committed in order to hide the existence of a risk of infection with an infectious-contagious disease, is punishable with imprisonment from 1 to 5 years or with a fine.*

It was designed to hold accountable and more severely punish persons who enter the territory of Romania and give unrealistic statements to state bodies regarding the areas from which they come or have transited and/or persons who do not declare or declare unreal any symptoms of coronavirus that they have, the crime having, in this case, an express purpose - hiding the existence of a risk of infection with an infectious disease.

It is important to specify that they will be able to be criminally liable for the deeds provided by Article 326 of Criminal Code in the new form, only persons who committed the offense of false statements after the publication of the Emergency Ordinance no 28/2020 in the Official Gazette of Romania. For those who gave statements that did not correspond to the truth prior to this moment, the establishment of a more favorable criminal law is being discussed. Persons coming from high-risk areas and who have declared the truth at border crossing points prior to the publication of the Emergency Ordinance no in the Official Gazette, will be criminally liable within the limits provided by the old law, namely between three months and two years or a fine.

Conclusions

The crime of false statements can be committed very easily in the current context, especially given the reluctance of some Romanian citizens to comply with the authorities' recommendations in order to stop the spread of the SARS-CoV-2 virus. Therefore, in the current context, the amendments to the Criminal Code were not only timely but also necessary. While health professionals are fighting a fierce battle every day with the SARS-CoV-2 virus and the indifference of some people, much of this effort can be thwarted by irresponsible human action, and the authorities have limited resources to prevent such behavior. Economic and social factors, education and respect for others will play a more important role than the punishment limits provided for these acts.

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