

False Deeds under Private Signature

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ABSTRACT: The crimes under the name of “False Offenses” constitute a well-defined and highly varied category in the vast sphere of facts considered to be dangerous. 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 difficult precautions and inevitable risks. Therefore, the criminal law considered that it is necessary that, in order to protect social relations, to ensure the normal formation and development of these relations, to be incriminated the deeds by committing which, altering the truth, creates a serious danger or harm certain social relations. These categories of facts can be determined either on the basis of the special way in which the truth is altered or on the specifics of the social relations reached by the act of altering the truth, or due to the nature of the trust that is given to the truth. These differences obviously appear in the sphere of crimes that involve an alteration of truth. In the group of false crimes, the alteration of the truth is made on some entities (things) which are legally attributed the property of serving as evidence of the truth they express or attest on the occasion of various social relations (coins, stamps, credit titles, seals, marking tools, documents, etc.), and trust is objectively given to the thing which in itself constitutes the proof of the truth.

KEYWORDS: false, social relations, crime, truth, criminal code, documents, alteration

Introduction

The notions of “false”, “falsification” and “trust”

The term “false” comes from literary Latin, more precisely from the adjective “falsus” and means something contrary to the truth or which has the appearance of truth; any labor, any procedure used by one person to mislead another person.

False, in a broad sense, is everything that does not correspond to the truth. The notion of “false” is an antinomy concept, derived from the notion of “truth”. There can be no falsehood, that is, an alteration of truth, except where the existence or possibility of the existence of truth is conceivable (Dongoroz et al. 1972, 358).

In other words, falsehood consists in altering or distorting the truth; it is called false what has only the appearance of truth, what is untrue, inauthentic, artificial, counterfeit (Stoica 1976, 327).

In the very comprehensive sphere of social relations, regardless of their importance and scope, individuals and legal entities necessarily use different things, signs or documents (coins, stamps, credit titles, trademarks, official documents, etc.), which due to their value evidence, imprints certainty and stability to these relations, thus making possible their very formation and development, in accordance with the general interests of society; for this it is necessary, on the one hand, that the said things, signs or writings, really reflect the truth which they are called upon to express, and, on the other hand, that they enjoy the general confidence of the public, considered in masse in terms of their authenticity and veracity.

Counterfeiting is the operation by which the act of altering the truth is performed. Counterfeiting presupposes, like falsehood, the existence of a truth and things, entities that serve to prove it and on which the action of altering the truth is performed. Nothingness cannot be falsified (Dongoroz et al. 1972, 352).

Not every false is a criminal false. Therefore, in criminal law, only the forgery is incriminated, which, through the consequences or the possibility of producing legal consequences, presents a certain degree of social danger (Stoica 1960, 35).

Regarding the reason for incriminating these antisocial facts, it was argued (Papadopol 2007, 12-13) that the criminal law does not criminalize any distortion of the truth, any lie, its intervention takes place only when the lie may infringe one of the social values provides them with protection (patrimony, person, administration of justice, etc.). But even in these cases the criminal law does not create from false a general crime, but, compared to the more accentuated social danger that certain procedures of distorting the truth present, it confines the incrimination only to these.

The facts incriminated as false crimes concern the alteration of the truth and therefore the falsification only when it bears on any of the entities (things) with probative properties shown in the incriminating dispositions (Dongoroz et al. 1972, 359).

The words “false” and “falsification”, accompanied by certain specifications, are also used in the case of other incriminations provided in the Criminal Code, for example: destruction or false signaling (art. 332); counterfeiting or substitution of food or other products (art. 357), but these deeds do not constitute false crimes. They are also committed by an alteration of the truth, but they do not regard in their materiality things which have the legal property of serving as evidence (*Ibidem* 358).

The legal content and the constitutive content of the false deeds under private signature

False deeds under private signature is the act of the person who falsifies such a document by counterfeiting the writing, the subscription or by altering it in any way or by attesting facts or circumstances untrue or by knowingly omitting to insert certain data or circumstances, if the forged document is used or entrusted to another person, in order to produce legal consequences.

If the criminal law did not criminalize the false deeds under private signature, the probative power of these documents would become completely random and social relations, in the formation and development of which the need for documents under private signature is undisputed, would suffer a serious harm (Dongoroz et al. 1972, 440).

Pre-existing element

The special legal object

The special legal object of false deeds under private signature is the same as in the case of tampering with official documents and crime of creating false documents, namely those special relations relating to public trust which, this time, must be inspired by privately signed documents (Antoniou and Toader 2016, 520).

The material object

The material object is the false deeds under private signature. As with the other previous crimes (tampering with official documents and crime of creating false documents), the falsified document is also the product of the crime (Pascu and Lazăr 2004; Pascu and Gorunescu 2009, 520).

Considering these provisions, we can define the documents under private signature as those documents that emanate from other persons than those mentioned in art. 176 of Romanian Criminal Code or from other persons than those provided in art. 175 para. (2) of Romanian Criminal Code which bear a signature and are likely to produce legal consequences.

In this sense, there are documents under private signature: unauthenticated documents, which include expressions of will of a particular person regarding patrimonial or other rights and obligations (for example, deeds of sale, holographic wills, receipts, contracts of hire); acts by which commercial operations carried out by different persons are ascertained, in general, all

private acts likely to constitute the basis of some claims, to serve to establish a right or which cause a right to be presumed or to cause a prejudice.

If the documents under private signature are authenticated, they are converted into official documents.

Subjects of the crime

The direct active subject and the criminal participation

The direct active subject of the crime of the false deeds under private signature may be any person who meets the conditions of criminal liability and who has a certain skill or dexterity in counterfeiting or alteration or attestation of facts or circumstances untrue or omits the insertion of data or circumstances. The act may be committed directly by several persons (co-perpetrators) or in criminal participation, in the form of instigation or complicity. Improper participation is not excluded either (Pascu and Lazăr 2004; Pascu and Gorunescu 2009, 521).

The passive subject

The passive subject of the crime is that natural or legal person holding the social value which was harmed by committing the criminal act suffered the harm produced by committing it.

In principle, a passive subject can be any natural person regardless of age, even irresponsible, because any member of society is the holder of social values protected by criminal law. However, only the living man can be a passive subject. Legal persons holding certain social values may be passive subjects of the crime.

Since the existence of the crime of false deeds under private signature is conditioned by the use of the forged document or by entrusting it to be used, in order to produce a legal consequence, the passive subject - certain or possible - of this crime is a natural or legal person whose interests, material or moral, were or would be affected by the use of the forged document in its materiality or in its content (Pascu and Lazăr 2004; Pascu and Gorunescu 2009, 521).

The structure or legal content of the crime

The structure of criminalization of false deeds under private signature includes: the premise situation and the constituent content, as component parts.

The constitutive content of the crime

It consists of: the objective side and the subjective side.

A. The objective side

The objective side includes the material element, essential requirements, immediate follow-up and causation.

a) The material element

The material element of the crime of false deeds under private signature is made up of two actions committed successively, namely: the forgery of the document under private signature in any of the ways provided in art. 320 or art. 321, namely by counterfeiting the writing or the subscription or by altering it in any way or by attesting facts or circumstances untrue or by knowingly omitting to insert certain data or circumstances, and using the forged document or entrusting it to another person.

Counterfeiting of writing means fraudulent reproduction of the writing of an act to make it appear that the writing, as it was imitated, is the original one expressing the will of the author of the act. Completing a paper on which a person's signature is located, either without their consent or in a different way than agreed - the so-called abuse of signature in white is also a forgery by counterfeiting the document (Vasiliu et al. 1977, 276).

Counterfeiting the subscription involves imitating the signature of the person who should have signed the document if it was not forged.

It is irrelevant the degree of resemblance - greater or lesser - of the forged writing or signature to the writing or signature of the person to whom it is attributed.

The alteration of a document under private signature consists in the material modification of the wording of such a document, by additions, replacements, erasures, in any way, of numbers, words, and phrases or even by the use of juxtaposition procedures, such as bringing a paper with original signature and its paste on the bottom of the typed text.

The writing of the forged document in its materiality can be by hand or typed, written in Romanian or foreign language.

The falsification of a document under private signature by attesting facts or circumstances that do not correspond to the truth presupposes the presentation in the content of the document, in a distorted way, of the deed or circumstances on which the attestation is based.

The scientific omission to insert in the content of the document some data or circumstances occurs if the perpetrator does not include in the document these data or circumstances, although they should have been found in that document.

The falsification action, regardless of the manner in which it is carried out, constitutes a material element of the false deeds under private signature only if the author, after the execution of the forgery, uses the document himself or entrusts it to another person, but with the specified purpose of using it (Pascu and Lazăr 2004; Pascu and Gorunescu 2009, 522).

If in the case of the crime of tampering with official documents and crime of creating false documents the action of falsification, by any of the modalities provided in the incriminating texts, constitutes the material element of this crime, independent of the action of using these forged documents, in the situation of the crime of false deeds under private signature the material element implies, in addition to the action of forgery, the use of the forged document by the perpetrator or entrusting it to another person, but with the specific purpose of using it (*Ibidem*).

Only the cumulative but successive commission of both actions gives rise to the crime.

Essential requirements

In order for the act of forgery followed by the use of the forged document or entrusting it to another person to use it to complete the objective side of the crime of false deeds under private signature, several essential requirements must be met (Dongoroz et al. 1972, 443).

A first requirement is that the document under private signature must present all the features of such a document, namely to have a content with legal relevance, signature and date of writing. The character of the legal relevance does not matter (holographic will, rental contract, deed of receivable, certificate of receipt of a payment). A document without legal relevance, without a signature or without another possibility to be attributed to a person cannot be the object of a forgery in private documents.

The immediate result

The immediate result is the consequence of the criminal action or inaction which consists either in a state of danger for the value protected by law, or in a physical modification of the surrounding reality (Antoniou 1999, 28-31).

The action of falsifying a document under private signature has as an immediate consequence the creation of a state of danger for the social relations whose formation and normal development are stimulated by the public trust given to the probative value of the documents under private signature.

This state of danger to social relations regarding public trust in the probative value of a document under private signature is generated by the production of such a document with the appearance of a true document used by the forger or which he entrusted to another person for use. If the forged document is not suitable for use, the existence of immediate consequence is excluded and, consequently, it is not possible to realize the objective side of the crime in its entirety.

The norm of criminalization of false deeds under private signature does not require the production of other consequences. If the use of a forged private signature document causes other consequences, such as, for example property damage to a person, either a competition of offenses or a civil liability can be retained, as the case may be.

In the case where the forged private signature is entrusted to another person for use, and he does not use it or another circumstance beyond his control prevented him from using it, the immediate consequence of this crime occurred and become incidents the provisions of art. 322 of Romanian Criminal Code.

The causal link

There must be a causal link between the act of falsifying a document under private signature followed by its use or entrustment for use and the state of danger regarding the public trust granted to the probative value of such a document (Pascu and Lazăr 2004; Pascu and Gorunescu 2009, 523).

If the false private signature document came to be used by another circumstance than by the willful deed of the forger or of a person to whom the document was entrusted for use, the objective side of the crime provided in art. 322 from Romanian Criminal Code it is not realized, lacking the causal link.

B. The subjective side

a) The subjective element

The subjective element results from art. 16 para. (3) in conjunction with art. 322 of the Criminal Code, in the sense that false deeds under private signature is committed only with direct intent, which presupposes that the forger provides and prosecutes, both by the act of forgery and by the consequent action of using the false document or entrusting that document to another person for use, a production of legal consequences.

Therefore, in the case of false deeds under private signature, the perpetrator voluntarily commits both the forgery action, through one of the ways provided in art. 320 or art. 321 of the Criminal Code, as well as the action of using or entrusting for use the forged document; at the same time, he acts in this way “in order to produce a legal consequence”, thus having the representation of the occurrence of a legal action as a result of his actions caused - implicitly, of course, and of the danger that his deeds create for social relations by the damage done to the trust given to the documents - and pursues this result. The characteristic feature of the specific intention of false deeds under private signature consists precisely in the will to capitalize as evidence against a protected legal interest such a document with untrue content (Vasiliu et al. 1977, 280).

From the above, it is understood that the indirect intention to this crime is excluded. The subjective element of the crime of false deeds under private signature is realized even if the forgery was committed to prove a true fact, as a forged document always creates a state of danger to public trust, but such a circumstance may be considered as a mitigating circumstance [art. 75 para. (2) lit. b)] (Dongoroz et al. 1972, 444).

Judicial practice

False deeds under private signature. Crime of creating false documents. Use of false documents. Unofficial documents. The falsification of documents belonging to SNP Petrom SA and their use does not constitute the crime of creating false documents and use of false documents, because this company is not in the public interest, and its assets are also not in the public interest within the meaning of art. 145 and art. 150 para. (2) Criminal Code. As such, the mentioned facts constitute the crime of false deeds under private signature, provided by art. 290 old Criminal Code (SCJ 660/2002).

False deeds under private signature. Crime of creating false documents. Use of false documents. Unofficial documents. The act of the employee of a private company to draw up

unreal invoices for the delivery of some goods and to use them in order to justify some deficiencies in management constitutes the crime of false deeds under private signature provided by art. 290 of the Criminal Code, and not the crime of creating false documents provided by art. 289 and art. 291 of the Criminal Code, the documents forged and used in order to produce some legal consequences not having an official character (Antoniou and Toader 2016, 366).

False deeds under private signature. Forgery of the husband's signature. The act of a husband who, by submitting an application for a change of residence, signs it in two variants, in order to make it be believed that one of these signatures belongs to his wife, from whom he was in fact separated, constitutes the crime of false deeds under private signature (Supreme Court, s. pen., dec. no. 285/1974, in CD 1974, p. 430).

False deeds under private signature. Conditions for the detention of the continued crime

Criminal Code, art. 41 para. (2), art. 215, art. 290, art. 291

The fact of presenting several times a power of attorney on which the term of validity has been modified and misleading several persons from whom sums of money have been received represents the crime of fraud in a continuous form in competition with the crime of false deeds under private signature in continued form.

Conclusions

The commission of the crime of false deeds under private signature is possible only on the condition of the pre-existence of a state of fact or law against which the altered or counterfeit document under private signature is to be used as evidence.

The material element consists in the action of false deeds under private signature by counterfeiting the writing or the subscription or by altering it in any other way.

When the false occurs through counterfeiting, it is essential to imitate the signature on the document, this being the sign of the veracity of the document. Also, in the case of falsification by alteration, an imitation of the writing is necessary. In order for the act to constitute a material element of this crime, it is necessary to satisfy the essential requirement that the forged document be used by the perpetrator or be entrusted by him to another person for use. The requirement is not fulfilled if the false document was not entrusted by the author to the one who uses it, but was lost and found or stolen by him.

Unlike tampering with official documents which is committed by simply falsifying the document, regardless of its use, false deeds under private signature is not an offense unless the false document is used by the person who forged it or is entrusted by him to another person to be used. Therefore, if the perpetrator of the forgery himself uses the forged private signature document, he cannot be charged with the crime of use of false in competition with the crime of false deeds under private signature, but only the latter offense.

The subjective element consists of the intention that must characterize both the action of falsifying and that of using the false document or entrusting it for use to another person.

The attempt to falsify documents under private signature is incriminated. There is an attempt when the action of using the false document by the author or the action of entrusting it for use to another person, an action that failed.

A false deed under private signature is punishable by imprisonment from 6 months to 3 years or a fine.

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