

# The Offense of False Identity in the Romanian Criminal Code

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**ABSTRACT:** The offenses of counterfeiting sanctioned in the Romanian Criminal Code refer to the set of illegal acts that harm social relationships of trust. The category of false includes such acts as counterfeiting of currency, stamps or other valuable instruments, counterfeiting validation or marking instruments, counterfeiting documents, and false identity. Trust between members of society, between them and state institutions, represents an essential value for the consolidation and smooth running of social relations. However, acts of falsification and the utilization of false information generate feelings of mistrust, undermining the foundations of societal trust. Serious damage can occur to both individuals and legal entities. This article analysis the offense of false identity as stipulated in the Romanian Criminal Code. False identity fraud is the deed of the person who presents himself under a false identity or assigns such an identity to another person with the intent to induce or mislead a public servant or the entity in which he works in order to produce a legal consequence.

**KEYWORDS:** false identity, offense, standard variant, aggravated variant, assimilated variant

## 1. Introduction

False identity is criminalized in the Romanian Criminal Code in a standard variant, an aggravated variant and an assimilated variant. The type variant consists of “The act of presenting oneself under a false identity or the act of ascribing such an identity to another individual, committed before an individual as set out in art. 175 or transmitted to a unit in which they carry out their activity, by fraudulent use of a document that serves for identification purposes or to prove one’s civil status or of such a forged document, to mislead or maintain the deceit of a public servant, in order to produce legal consequences for oneself or for another, shall be punishable by no less than 6 months and no more than 3 years of imprisonment.” – art. 327 para. (1).

The aggravated variant is retained: “When the document was produced by using the real identity of an individual, the penalty shall consist of no less than 1 and no more than 5 years of imprisonment”. – art. 327 para. (2).

The assimilated variant assumes that “The act of handing over a document that proves civil status or serves as identification, to be used unlawfully shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine”. – art. 327 para. (3).

False identity can be defined as the act of a person who presents himself under a false identity or attributes such an identity to another person, through the fraudulent use of a document that serves for identification, legitimization or proof of civil status or such a forged document, before a public servant or a person exercising, under the law, a service of public interest, in order to induce or misleads such persons, in order to produce a legal consequence, for himself or for another (Pascu 2016, 327).

Presenting under a false identity or attributing the false identity to another person or the fraudulent use of documents that serve to identify, legitimize or prove civil status, under the conditions and purposes provided in the criminal law, constitutes an alteration of the truth that can generate serious consequences, given the fact that the formation and development of an important number of social relationships are linked to the identity of persons (Dongoroz et al. 1972, 462-463).

False identity obviously undermines people's trust in the means by which people's identities are ascertained. That is why there is a rigorous system in which proof of identity is done by presenting identity cards or cards made in such a way that committing the offense of false identity is more difficult to commit, but not impossible, especially when it is allowed that identity must also be proven by other means, especially different cards, identification cards, certificates etc., which can easily be used by other persons than their holders (Pascu, Buneci and Buneci 2020, 207). Reality shows us that the technique of falsifying such documents is being perfected, which requires finding new countermeasures and justifies the criminalization of false identity (Dongoroz et al. 1972, 463).

## 2. Pre-existing elements

*The legal object* of the offense of false identity is the social relations whose birth and development are based on the public trust given to findings made by a public servant or a person exercising a public service, regarding the identity of persons, findings based on the agreement between the identity under which they present themselves to the public servant or the unit in which he carries out his activity and their real identity (Pascu 2016, 567-568).

*The material object* in the standard offense and the aggravated variant of the offense of false identity, as a rule, is missing. Identity is an immaterial attribute of the person. However, if false identity is committed by presenting false documents or by using them without the right, these documents, which constitute means of committing the act, can also be considered a material object of this offense (Pascu and Gorunescu 2009, 575). Here we mention as examples the identity card, passport, student ID card, employee card, etc. In the assimilated variant, the document entrusted to be used unjustly can be considered not only as a means of committing the act, but also as its material object.

*Direct active subject*, namely the perpetrator of the offense, can be any person criminally liable. Criminal participation is possible in the form of instigation and complicity.

If the author assigns under the conditions of art. 327 para. (1) a false identity for another person, the latter, if present and confirm that false identity, will be a co-author of that act. If, however, that person will not be present at the time of the act, but has consented to be presented with the falsified identity, he will have the role of an accomplice in the commission of the offense (Butiuc in Basarab and Pașca coord. 852).

When the perpetrator entrusts another person with a document to be used without right regarding the latter's identity, the first person will be liable for the offense provided for in art. 327 para. (3). If the person who receives the respective document uses it without the right for the purpose shown in the incrimination norm, he will be liable for the offense of false identity in the standard variant (Vasiliu et al. 1977, 303).

*The passive subject* of this offense is the authority or the institution or the person that performs a service of public interest, for which it was invested by the public authorities, and that was misled by a natural person, by presenting under a false identity or by assigning of such an identity to another person, but also the person whose identity was usurped, in the case of substitution of persons.

*The premise situation:* The act of false identity has as its premise the existence of a state of fact to which certain legal consequences are linked to a person or a category of persons who, in order to benefit from those consequences, must prove their identity. Without such a state of facts, presenting under a false identity or assigning a false identity to another person or entrusting a document that could be used unfairly to prove the identity would be completely irrelevant facts from a legal point of view and therefore not susceptible to constitutes a criminal offense (Pascu 2016, 569).

### 3. Constitutive content

#### *The objective side*

*The material element* can be achieved through the actions, with the means and under the conditions of art. 327 of the Romanian Criminal Code. In the standard and aggravated variant of the offense of false identity, the material element can consist either in the action of the perpetrator to present himself under a false identity to a person from those provided for in art. 175 of the Romanian Criminal Code, either in the assignment of such an identity to another person, made to a public servant or transmitted to a unit where the public servant carries out his activity, through the fraudulent use of an act used for identification, legitimization or proof of civil status or such falsified act, to induce or mislead a public servant, in order to produce legal consequences, for himself or for another.

The second action to achieve the material element of this offense in the standard variant is that of assigning a false identity to another person, i.e. declaring, attesting to a public servant entitled to establish the identity of that person, that the said person has an identity which, in reality, is not his.

In the variant assimilated to the offense, the material element consists in the act of entrusting a document that serves to identify, legitimize or prove the civil status, in order to use it unjustly.

*Essential requirements:* In the case of the type and the aggravated variant, the action must take place in front of a public servant competent to identify a person or be sent to a unit where the public servant carries out his activity. In the case of the assimilated variant, it is necessary that document be one of those that serve for identification, legitimization or proof of civil status and to be used unfairly.

The norm of criminalizing false identity also requires that the illegal activities be carried out with a view to producing legal consequences, in the case of the standard and aggravated variant, and in the assimilated variant, entrusting the act, which has a real content, is done with the aim of being used unfairly.

*The immediate consequence* consists in the creation of a state of danger determined by obtaining, in the case of the type variant and the assimilated variant, fraudulently, a finding regarding the identity that is not true and therefore likely to be the source of illegitimate legal consequences (Dongoroz et al., 1972, 466).

*The causal link.* There must be a causal link between the actions that constitute a material element and the immediate consequence.

#### *The subjective side*

*The subjective element:* The form of guilt in all three variants of criminalizing the act of forgery regarding identity is the intention, that is, the perpetrator knows that the identity under which he presented himself or that he assigned to another is false, or that the entrustment of an act that serves for identification, legitimization or the proof of another person's marital status was made to be used by him without right.

*Essential requirements:* In the type variant of the offense, it is required that the incriminated actions carried out under the conditions provided in para. (1) to have the purpose of inducing or maintaining in error a public servant who has the obligation to establish the identity of a person, in order to produce a legal consequence, for himself and for another.

In the case of the aggravated variant, the presentation must be made using the real identity of a person.

In the case of the assimilated variant, the intention must be accompanied by the essential requirement that the act of entrusting a document that serves to identify, legitimize or prove civil status is done for the purpose of unauthorized use by another person.

## 4. Forms. Modalities. Penalties

### *Forms*

*Preparatory acts* (moral and material), although possible, are not criminalized.

*The attempt* in the interrupted mode is possible but is not criminalized.

*Consummation* - with the execution of the incriminated action specific to each normative variant and the production of the immediate follow-up, namely that state of danger for the social value of public trust in the documents that serve to identify, legitimize or prove the civil status of a person.

For the consummation of the offense in the assimilated variant, it is not relevant if the document used to identify, legitimize or prove the civil status entrusted to another person to be used without right, was or was not used without right by that person because the use of that document constitutes the purpose and not the result of the action.

*Exhaustion.* If the state of facts that constitutes the premised situation in the structure of the offense of false identity involves the performance of a periodical benefit, in such a way that, at each term, the perpetrator, misleading the public servant or the unit in which he works, through the fraudulent use of an act that serves to identify, legitimize or prove civil status, it acquires the character of a continuing offense, at which we distinguish a moment of exhaustion corresponding to the date when the periodic benefits will cease or when the deed will be discovered (Dongoroz et al. 1972 , 467-468).

### *Modalities*

*Normative ways.* In the case of the type variant, there are four normative ways:

- presenting under a false identity in order to induce or mislead a public servant, in order to produce a legal consequence for oneself;
- presenting under a false identity in order to induce or mislead a public servant, in order to produce a legal consequence for another;
- assigning a false identity to another person in order to induce or mislead a public servant, in order to produce a legal consequence for himself;
- assigning a false identity to another person in order to induce or mislead a public servant, in order to produce a legal consequence for another.

In the aggravated variant, there is only one normative way, namely the presentation under a real identity of another person in order to produce a legal consequence.

The assimilated variant is entrusting a document that serves to identify, legitimize or prove the civil status to be used without right.

*Modalities in fact:* They are varied according to how the false identity concerns the person of the perpetrator, his nature, the beneficiary of the false identity or the nature of the created profile.

### *Penalties*

False identity is punishable by imprisonment from six months to three years. In the aggravated variant, the penalty is from one to five years in prison. When committed under the conditions of the assimilated variant, the penalty is imprisonment from three months to two years or a fine.

### **Procedural aspects**

From a prosecution and trial perspective, false identity is subject to the usual procedural rules. The criminal action is initiated *ex officio* (for more details see Bitanga, Franguloiu and Sanchez-Hermosilla 2018). The criminal investigation bodies of the judicial police operating under the direction or supervision of the prosecutor are competent to carry out the criminal investigation. The court has jurisdiction in the first instance.

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