Forgery from the Point of View of Criminal Illicitness, Putative Deeds and Disregarding Fides Publica

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Abstract: Forgery by its nature, always harms the trust that people are forced to have and need to grant one another in the relations among themselves or which they should show for the things usually considered as the expression and evidence of truth. While for the offenses committed by violation of trust, this is the rule applied intuitu personae, taking into account the personal condition of the person to whom trust is granted, in forgery crimes trust is given in rem, meaning to the thing perceived as being the expression of truth. Thus, we are not in front of a violation of trust given to certain people, but in front of the trust granted to the thing which is assumed legally the characteristic of expressing the truth, but truth which has been altered. This paper aims to be an interdisciplinary approach, starting from the criminological meaning rendered to public trust and up to its legal effects produced, set into criminal or extra-criminal content, an approach derived from applying the method of observation.

Keywords: documents; banknotes; crime; public trust

1. Introduction

Without a minimum of mutual trust, the fulfillment of human relations would be constantly hindered, lack of trust dictating everywhere to perform investigations, check statements and accept guarantees. Basically, it is common for the two forms of trust to meet one another in the developing of a criminal activity; in such cases, one has to distinguish between the circumstances where that activity constitutes a single crime and the circumstances where there are several crimes at the same time.

Usually, in such cases one can resort to objective means, intended to inspire trust, so as to obtain more easily the granting of personal trust, which could have been obtained even without these means, but harder. Whenever the objective means

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meet the element of a crime of forgery, which helped or masked the committing of another crime by deceiving personal trust, there will be a case of simultaneous crimes (Chappell & Polk, 2009). On the contrary, when the objective means, although contain an alteration of truth, do not constitute a crime of forgery, it is the case of a single crime, regarding the deception of personal trust.

2. Fides Publica – Social Rule or Weakness

Public trust, also known as “fides publica” represents the social value specific to the rule of law. Once acquired this value, it must be shown towards anything, sign, or document registered with probative value. Often, because of this confidence, there are people taking advantage of the human relationships established on it, as well as of the economic activities derived later, such as financial and banking operations.

Public confidence harmed by forgery is not a simple matter of fact, a sense born spontaneously among members of society, but an “oriented, organized trust, limited to certain things, signs or inscriptions,” which the law recognizes as having a certain probative value and from which it causes to result certain legal effects.

Without the complete defence of confidence granted by people to every official document, the rhythm of social relations would decrease, because the official records would no longer inspire trust, they would have to resort to difficult, actual check-up and there would be constant and serious hesitations in forming any social relations producing legal effects.

Truth altered by tampering can relate to things, people, events, situations, rights, obligations, commitments, and finally to any entity capable of generating consequences with legal relevance. In turn, altering the truth can regard different specific aspects of each of the entities mentioned, for example: their existence or inexistence, their qualitative attributes, the extent, amount or value, their main features, data about origin or provenance, time and place etc.

In terms of their concept, every forgery crime involves referring to a certain, apparent truth, supposed to be proved, but which in fact is altered by committing the forgery; a forged document produces legal effects because it is apparently supposed to express the truth etc. When there is no truth to be assumed proved, there is no forgery crime, but a crime of initial or putative forgery: for e.g. a debtor forges a receipt of paying a debt, which was ruled out by status of limitations or received by the deceased creditor’s testament).

The official document stands to prove by itself all of its content; therefore it is required to be authentic, meaning that it has to originate from the authority invested with the right to issue it and it has to include all the original signatures and stamp
granting it the legal investiture of authenticity (Mitrache & Mitrache, 2011). Such an original record meets all the requirements to be granted due confidence of a public document and to have corresponding probative force. Surely the forgery of such a record means the guarantee and the inherent proving force of the official records are used to promote and prove a situation that is not according to the reality. This seriously undermines the role played by the official records and the confidence generally granted to them.

3. Punishment or Putative Fact

It does not constitute crime of forgery in official records, the deed of the person making a copy after an existing public document, which in order to certify its accordance, is stamped with the official stamp of the unit, and no signature (Pocora, Pocora, Dragu & Bocânia, 2011). Also, one cannot punish for the crime of fraud, the person who in order to prove his studies corresponding to the position he holds, he uses a supposed copy of a high school diploma – not real in fact – with which he manages to deceive the unit and obtain an unlawful benefit, if it turns out that he was a graduate of a secondary school whose studies are equivalent with high school ones, necessary for getting the respective position. This deed falls under the category of putative offenses, because the decision to do the offense (criminal thought) was followed by doing a deed which objectively does not violate the criminal law, hence does not constitute crime.

Money, which is part of people’s everyday life, represents possibly the most interesting economical instrument, which man studied in order to understand its nature, role and functions. Moreover, money is an important instrument of the economy, but equally so, it personifies wealth (Mackenzie, 2010). Money travels constantly and continuously, and people possessing it, have the power to obtain different goods and services.

The Romanians’ need to earn all the more money is constantly growing. People give more importance to money, all the more so when they have less social interest and they fear more and more not to become poor. Thus, we can say that obsession with money is linked to low levels of social adaptation.

According to a Scottish proverb, that “some people find it better to steal than to lower themselves by asking money”, the ingenuity of the people intending to multiply money in a relatively short time has no limits.

When one asks: “what is deceived by making proceeds from criminal activity, specific to coin forgery or of other valuables?” the answer is none other than: public trust!
Coin counterfeiting, as well as the related offenses, or those derived from it, present a high degree of social danger for several reasons. Thus, the proceeds of crime - the counterfeit currency - are likely to surprise and deceive the trust of the people placed in a position to receive such values.

This kind of deeds - including derived offenses - seriously harm public trust when it comes to currency, the existence of fake parts in circulation leads invariably to the hindering and even preventing of a normal cash movement, with all the negative consequences arising from it, economically, socially and politically. So by incriminating this profoundly antisocial deed, the criminal law protects social relations whose training, development and normal progress implies confidence in the authenticity of the coins. Also, the criminal law defends the civil interests of individuals and state institutions authorized to issue currency and providing money circulation.

As part of the group of alleged misconduct categorized under the generic name of “forgery crimes”, coin counterfeiting constitutes a well-individualized and specific category in terms of both structure and legal content, as well as the factual ways of committing. In addition to coins, the criminal law grants equal, legal protection to “other values” as well, by it understanding “public debt securities, checks, securities of any kind for making payments”, too. The derived crimes – placing in circulation and/or possession of forged coins, counterfeited with the intention of putting them into circulation, remain and can be traced even if against the author of the main action criminal proceedings could not be started (e.g. he died or is a minor under the age of 14). Both theoretically and practically, there may be situations where currency counterfeiting or a part of the operations of counterfeiting or alteration was performed abroad, and placing the currency in circulation (implicitly the possession) was made within the Romanian territory. In relation to the specific social value which they affect, some of the facts incriminated of alteration of truth were included in the category of crimes against property (deception) or against the person (slander, seduction), others were included in the category of crimes that obstruct justice (false allegations, perjury) or of the crimes in the regime established for certain economic activities (Ciobanu, 2001).

The Romanian criminal law imposed an equal sanctioning treatment for counterfeiting domestic and foreign currency as a result of considering such criminal offenses as being part of the “jus gentium”. It is possible that a coin or value apparently true to be the product of errors made when imprinting the real coin or imprinting the title of a true real value, and not an act of forgery. In general, the causality is always obvious and needs no special evidence. The act of forgery of a coin or value is not criminally relevant unless committed with guilt, i.e., by will and intention. Therefore, the subjective side is made up of the offender’s will to perform the action of forgery (counterfeiting or alteration) and his intention to make through that action a coin or a value that apparently corresponds to a coin or
true values, so that if entering the normal movement may be accepted as such. Basically, it is not required that the forger to have intended exactly the placing into circulation of the counterfeit currency or forged value (direct intent), it is enough if he realized (foreseen) that this result is possible and accepted its production (indirect intent).

Since the action of counterfeiting is generally performed by several people with different roles, the existence of the subjective element, meaning will and intention have to be inquired and verified in relation to each participant. When one of the co-operators in making the forgery was misled about his contribution, the provisions of improper participation shall apply.

It was found that one cannot fight as classifying forgeries, the personal acknowledgements mentioned in the authentic record, concerning the presence of the parties, the way of identification or asking for consent. Same as there can only be attacked as false, the actual records of the parties’ statements (for example: renouncing to inheritance) and acknowledging a deed happened before a notary public. But, as for the validity of the consent, one can prove otherwise, without having to classify it as false, since the notary acknowledges the parties’ volition, without having the possibility to check if the parties’ intent is affected by any cause of absolute or relative nullity.

The records with private signatures are those completed between parties without the intervention of the public clerk, concern legal relations and are asked to stand as their proof; the only form asked for validity refers to the mandatory signing them by the parties. But by authentication, the document becomes an official record, and its forgery constitutes material forgery crime in official records. Official records are those coming from public institutions or of public interest, or belonging to such units. Either of them has to be dated, registered, possibly numbered, to have a term of validity, to assume the existence of elements of protection or security, meant to certify the authenticity of a document and to prevent the forgery or counterfeiting it, to bear the stamp or seal of that authority, as well as the signature of the person issuing it.

4. Prevention and Control

As for the necessity of establishing some preventive measures, one can mention activities, such as: continuation of activities of support, guidance and control at the regional services in complex cases, permanent analysis of the evolution of the criminal phenomenon on the lines of work within the competence of the service and the operative intervention where there are drawbacks and deficiencies of activity for the identification and taking the proper measures for preventing and fighting them. Also, supervising the most active domestic and foreign elements about which there are data and information obtained and held that they have
preoccupations in the line of national or foreign currency and of their qualified work by every means of investigation, analyzing the services keeping records of a larger number of cases and criminal works with unknown authors, the continuation of their own professional training and of the territorial services, the methodology concerning forgery, the continuation of the collaboration with the structures from the territorial-financial services and other structures with duties and responsibilities in the field of ensuring the security of the financial circuit, for the operative change of data and information and taking the most effective measures of fighting the forgeries.

Improving the collaboration with the foreign judicial organs, in view of securing the knowledge internationally of the characteristic of identification of forgeries in the competence of the service and establishing the networks of their entering the country, the display in mass-media of some aspects with preventive character and of the cases more specially conducted both by the service from the Direction, as well as by the territorial services, in view of preparing the population against crimes, with the observance of the line orders in the field.

5. Conclusions

The respect for the rules cannot be reduced to mere moral correctness, but must be integrated into a moral conviction (meaning-oriented and having humanistic grounds) and, simultaneously, in a moral responsibility towards the consequences of our deeds. Therefore, it can be said that through beliefs, moral values are individualized, and manage to express not only virtual action accepted by the community, but also personal tendencies of structuring and significance of the deeds, with a sense of obligation (which should be done) and of an aspiration - the good; The fundamental law concludes that “all citizens, regardless of the position they hold in society and state have to observe the Constitution and laws.”.

6. References


