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**Legal and Administrative Sciences  
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**Forgery of Documents under Signature**

**Ion Rusu<sup>1</sup>**

**Abstract:** In this paper we have examined the crime of forgery in private documents, in terms of elements of the structure of the crime, such as the objective side, the subjective side, forms, ways of sanctions and some procedural aspects. We also considered the comparative examination of the current provisions in relation to those of the previous law. Given the references to recent judicial practice, the paper may be useful to students in the country's faculties, as well as to practitioners in the field of criminal law. The paper is part of a university course to be published by a recognized law firm.

**Keywords:** The objective side; the subjective side; forms; modalities; procedural aspects

## **1. Introduction**

Provided in the provisions of article 322 of the Criminal Code, the offense of forging documents under private signature is the act of a person who falsifies a document under private signature by counterfeiting the writing or the subscription or alters it in any way, as well as the act of the civil servant falsifying an official document by attesting facts or circumstances that do not correspond to the truth or by knowingly failing to insert certain data or circumstances, after which he uses that document or entrusts it to another person to be used, in order to produce legal consequences.

In the doctrine of the end of the last century, it was noted that probative features.

The deed undoubtedly presents a social danger, because a huge number of social relations materialized in various legal relationships regarding individuals are facilitated and ensured by using privately signed documents. Although the privately signed document is considered singularly of interest only to the subjects of the legal relationship to which the document refers, nevertheless considered in their universality the privately signed documents are of interest to the public trust and therefore affect these social values (Dongoroz, line1972, p. 440).

We note that the crime under examination was provided for under the same marginal name as the 1969 Criminal Code.

We specify that between the two regulations there are some elements of similarity as well as others of difference.

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<sup>1</sup> Professor, PhD, Danubius University of Galati, Romania, Address: 3 Galati Blvd., Galati, 800654, Romania, Corresponding author: ionrusu@univ-danubius.ro.

As regards the similarities, we retain the marginal title, the sanctioning of the attempt, the reference to the crime of forgery in official documents (as regards the incriminated actions) and the provision of a fine as an alternative to imprisonment.

As elements of differentiation, we note that, unlike the previous regulation, the new law refers to the actions incriminated in the first two offenses in this chapter, respectively the offenses of forgery in official documents and forgery of intellectual property.

Thus, in order to apprehend this crime, it is necessary that the forgery action be carried out through one of the variants expressly shown in the two incriminating texts, respectively: counterfeiting the writing or the subscription; alteration in any way of a document; attestation of facts or circumstances untrue and knowingly omitting certain real facts or circumstances.

The current provisions are likely to put an end to “the non-unitary jurisprudence which, in an orientation, considers that the forgery of documents under private signature can be achieved only by material falsification taking into account the reference in article 290 Criminal Code from 1969 to the modalities provided by art. 288 of the same Code, while, in another orientation, it considered that it is achievable also by intellectual falsification [the offense provided in art. 290 C. pen. from 1969 consists in the falsification of a document under private signature by any of the ways shown in art. 288 C. pen. from 1969 - counterfeiting the writing or the subscription or altering the document in any way - if the perpetrator uses the forged document or entrusts it to another person for use, in order to produce legal consequences. Counterfeiting of the writing also includes the making of a private signature document, which contains statements that do not correspond to the truth. Consequently, the act of drawing up the articles of association and the statute of a foundation - documents under private signature - in which the perpetrator included the improper statement that the patrimonial asset of the foundation consists of a building, although the co-owner of the building did not agree to its entry in the patrimonial assets of the foundation, documents that the perpetrator authenticated and used before the public authorities, in order to produce legal consequences, consisting in acquiring the legal personality of the foundation, its fiscal registration and tabulation of the property right on the building, meets the constitutive elements of the crime of forgery in documents under private signature provided in article 290 Criminal Code from 1969 - I.C.C.J., Criminal Section, decision no. 2696 of July 12, 2011 (www.scj.ro)].” (Bodoroncea, line 2020, pp. 1501-1502).

Elements of differentiation between the two regulations are also found in the sanctioning regime which in the new law is imprisonment from 6 months to 3 years or a fine, while in the previous law the sanction is imprisonment from 3 months to 2 years or a fine.

## **2. The Objective Side**

The *material element* of the objective side consists in the alternative actions by which the material element is realized in the case of crimes of false material in official documents and intellectual forgery, completed by using the forged document or entrusting it to another person for use, in order to produce a legal consequence.

According to the incriminating text, these actions consist of:

- falsifying a document under private signature by counterfeiting the writing or the subscription or by *altering* it in any way, likely to produce legal consequences;

- falsification of a document under private signature by attesting to facts or circumstances untrue or by knowingly failing to insert certain data or circumstances;

- use of the forged document in one of the ways mentioned by the author of the forgery or entrusting the forged document to another person for use, in order to produce a legal consequence.

We will continue to briefly examine each of these alternative actions to accomplish the material element of the crime.

Thus, the forgery committed by *counterfeiting* (shaping, plotting), involves “the reproduction, by imitation, of the forged object.” (Udroiu, 2021, p. 1056).

Please note that the counterfeiting action may concern both the writing (content of the document, the document) and the subscription (signature).

*Alteration* is another way of forging a privately signed document (in addition to counterfeiting), which consists of making changes to those mentioned on a document, erasures or additions.

The notion of *attestation* means the mention, the provision, the indication that a certain fact or circumstance existed or that it exists by “mentioning the data necessary for the identification and characterization of that fact or circumstance. The attestation is therefore a certificate regarding facts or circumstances related to the state of affairs that determined the elaboration of the document” (Dongoroz, line 1972, p. 435).

The attestation is “untrue and therefore false when it shows in a distorted manner (that is, otherwise than in reality) the fact or circumstance on which the attestation is based.” (Dongoroz, line 1972, p. 435).

*The omission* means “the non-insertion (i.e. the passing over of silence) of certain data or circumstances to which the other findings of the document are related.

The omission is not allowed when the data or circumstances had to be ascertained or mentioned in the official document.

For the existence of the material element, a single attestation contrary to the truth or a single omission of any data or circumstance that must be inserted in the official document is sufficient.” (Dongoroz, line 1972, p. 435).

If the false attestation refers to several facts or circumstances or the omission concerns several data or circumstances, a single offense of forgery of documents under private signature will be retained.

In order to complete the material element of the crime, it is necessary to execute another subsequent action, namely either *to use the forged document or to entrust it to another person for use, in order to produce legal consequences*.

Therefore, the mere possession of such a forged private document, without its use by the person who forged it or without entrusting it to another person for use in order to produce legal consequences, does not meet the conditions of objective typicality of the examined crime.

Also, the typicality conditions will not be met even in the event that a third party enters into possession of a forged private signature, in another way than the one of entrustment (by the perpetrator). We are considering here the possibility of taking possession by theft, fraud, etc.

The conditions of typicality will not be met even if the forged document under private signature is entrusted by the perpetrator to another person, with a purpose other than that of use in order to produce a legal consequence, respectively for storage, for photography, etc.

It has been held in judicial practice that “It is an offense to falsify a private signature by falsifying a privately signed document by counterfeiting the writing or the subscription or by altering it in any way, if the perpetrator uses the forged document or entrusts it to another person for use with a view to producing a legal consequence. Therefore, the filing, in Xerox copy, of a forged document in private signature, in a civil action in which no judicial debate took place, as the person who filed the document waived the trial, does not meet the constitutive elements of the crime of false in documents under private signature, the document not having probative value in the civil process and not being able to produce legal consequences.”<sup>1</sup>

Likewise, “The offense consists in falsifying a privately signed document by counterfeiting the writing or the subscription or altering the document in any way, if the perpetrator uses the forged document or entrusts it to another person for use, in order to produce a legal consequence. Counterfeiting of the writing also includes the making of a private signature document, which contains statements that do not correspond to the truth. Consequently, the act of drawing up the articles of association and the statute of a foundation - documents under private signature - in which the perpetrator included the improper statement that the patrimonial asset of the foundation consists of a building, although the co-owner of the building did not agree to its entry in the patrimonial assets of the foundation, documents that the perpetrator authenticated and used before the public authorities, in order to produce legal consequences, consisting in acquiring the legal personality of the foundation, its fiscal registration and tabulation of the property right on the building, meets the constituent elements of the crime of giving false documents under private signature.”<sup>2</sup>

### **Essential Requirements**

In order to complete the objective side, it is necessary to meet some essential requirements.

Thus, one of those *essential requirements* presupposes that the forged document is capable of producing legal consequences.

In this regard, it has been decided in judicial practice that “The forgery of a document under private signature must be carried out in one of the ways indicated by law and be used in order to produce a legal consequence. Failure to sign a petition addressed to a state institution, which disclosed unrealistic data about a plot of land for which a title deed was to be issued, could not produce legal consequences, as such a petition must be filed.”<sup>3</sup>

Another *essential requirement* is that the forged document show at least the appearance of a true document, which can be used for the purpose for which it was forged.

In court practice it was decided that “The offense of falsifying documents under private signature is not committed if the document does not have the appearance of a true document and any person may realize

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<sup>1</sup> I.C.C.J., s. pen., dec. nr. 1142/2011, available on [www.scj.ro](http://www.scj.ro), *apud* (Udroiu, 2021, p. 1058).

<sup>2</sup> I.C.C.J., s. pen., dec. nr. 2696/2011, available on [www.scj.ro](http://www.scj.ro), *apud* (Udroiu, 2021, p. 1058).

<sup>3</sup> C.A. Suceava, s. pen., dec. nr. 549/2007, available on [www.scj.ro](http://www.scj.ro), *apud* (Udroiu, 2021, p. 1053).

that he is not fit to produce legal consequences, in which case the objective side of the offense is not met.”<sup>1</sup>

*The immediate consequence* is the creation of a state of danger for “protected social relations, danger arising from the production of a privately signed document with the appearance of a true document used by the forger himself or which he entrusted to another person for use; in other words, the state of danger must be the result of the forgery of the document followed by its use or release for use.” (Dongoroz et al., 1972, pp. 443-444).

*The causal link.* For the existence of the crime it is necessary that between the action of forgery of the document followed by the use or entrustment for its use and the socially dangerous consequence (the state of danger) there must be a causal link.

In the event that “the false document came to be used by any other circumstance than by the will of the forger or of a person to whom the document was entrusted for use, the objective side of the offense of forgery is not realized without causation” (Dongoroz, line 1972, page 444).

In the jurisprudence it was noted that “By indictment no. (...), In the charge of the defendant, it was noted that, on September 12, 2015, he drew up a handwritten document attesting that, as a Physiotherapist Authorized Individual, he performed several physiotherapy sessions with the minor HVA, he signed this document and applied on it the round stamp that had the impressions “Authorized natural person, authorisation No....”, although the respective PFA had had the unique registration code xx had been deleted since October 29, 2013, as a result of the defendant's will, and then handed this document to the said DG, who submitted it to the Vălenii de Munte Court to be taken into account when solving the file no. XX. The deed was classified as meeting the constitutive elements of the crime provided by article 322 paragraph (1) Criminal Code (...).

In agreement with the first instance, the appellate court finds that the action of falsifying a document under private signature followed by its use or by entrusting another person to use it, the latter hypothesis being the normative variant of the evidentiary thesis in this case, falls under the incidence of the criminal law only if it meets the essential requirements imposed by article 322 paragraph (1) penal Code, i.e. to have a content with legal relevance: date and signature, to be able to produce legal consequences, to have probative value in the sense of being susceptible even partially to prove the fact for which was invoked and used.

Equally, the material element of the crime of forgery of privately signed documents consists of two distinct but successive actions: first, the forgery of the document or by counterfeiting the writing (defined by one of the normative ways of imitating or fraudulently reproducing the writing to make to be believed to be the original) either by counterfeiting the signature i.e. imitating the signature of the person who was actually supposed to sign the deed - if it had not been forged either by altering the text with additions, substitutions, deletions, juxtapositions, etc., or by attesting facts or circumstances that do not correspond to the truth, that is, to the objective reality that can be demonstrated.

After the consummation of one or more of the above actions, the subsequent, successive and subsequent action of using the document, after its execution, is necessary, either by the author himself or by another person to whom it was entrusted precisely for the purpose of using it. (...).

The Court of Appeal, confirming the correctness of the interpretation given by the judge on the merits of the rule of incrimination, as analysed in terms of its constitutive content in all elements provided by

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<sup>1</sup> C.A. Braşov, s. pen., dec. nr. 349/2002, in B.J. 2002, p. 118, *apud* (Udroiu, 2021, p. 1053).

the legislator (legal object, material object, objective side, essential requirements and causation) finds that the act of affixing an expired stamp to a document constituting, within the meaning of the law, a document under private signature, if this document has not been falsified by counterfeiting the writing (by fraudulently imitating or reproducing the writing to make it appear to be the original) by counterfeiting the signature consisting in imitating the signature of the person who was actually supposed to sign the deed - if it had not been forged, by altering the text with additions, replacements, deletions, juxtapositions, etc., or by attesting facts or circumstances that do not correspond to the truth, i.e. to the objective reality that can be demonstrated, does not constitute the crime provided by article 322 paragraph (1) C. pen. and, as a result, does not attract the criminal liability of the person who, in fact, having the professional training of a physiotherapist, proved by the bachelor's degree... and the free practice authorization... has performed repeated specific therapy sessions at the date, location and circumstances listed in the document dated October 12, 2015, personally written and signed by DIR.”<sup>1</sup>

At the same time, the offense under examination, as well as the offense of forgery, may be included in the constitutive content of other offenses, in which case their retention is no longer required.

In this regard, the Supreme Court ruled that “The act of disclosing in the accounting documents or other legal documents the expenses that are not based on real operations or highlighting other fictitious operations, by using falsified invoices and tax receipts, in order to evade fulfilment of fiscal obligations, constitutes only the crime of tax evasion provided by article 9 paragraph (1) letter c) of Law no. 241/2005 for preventing and combating tax evasion, not the crime prev. of article 322 Criminal Code or the offense prev. of art. 323 Criminal Code.”<sup>2</sup>

The same court ruled that “The use or presentation in bad faith of forged private signature documents, which has resulted in the unjustified obtaining of funds from the budget of the European Union or from budgets administered by it or on its behalf, committed by the same person who, as author or secondary participant, contributed to the commission of the forgery, realizes the content of the offenses of using or presenting in bad faith false documents or statements, inaccurate or incomplete, provided by article 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) Criminal Code, in real competition.”

In another case “Analysing the objective side of the crime, the court held that the material element consists in the falsification action costing in concluding the contracts of legal assistance of defendant with lawyer E.D.N. and lawyer P.D., on behalf of the injured party S.R., by counterfeiting the signature and replacing the statement of appeal by writing and signing it on behalf of the injured person S.R.”<sup>3</sup>

### 3. The Subjective Side

The form of guilt with which the examined crime is committed is the *direct intention*.

In this sense, in judicial practice it was decided that “The subjective side of the crime of forgery in documents under private signature presupposes the guilt of the perpetrator in the form of direct intention, because, by committing the deed, he seeks to produce a legal consequence. The intention concerns both the act of forgery and the act of using or entrusting the forged document to another person for use in

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<sup>1</sup> C.A. Ploiești, s. pen., dec. no. 788/20.08.2018, available on [www.scj.ro](http://www.scj.ro), *apud* (Iugan, 2020, pp. 443-444).

<sup>2</sup> I.C.C.J., RIL, Decision no. 21/2017, published in the Official Monitor no. 1024 of October 27, 2017.

<sup>3</sup> I.C.C.J., Criminal Division, decision no. 135/16.04.2015, available on [www.scj.ro](http://www.scj.ro), *apud* (Iugan, 2020, p. 446)

order to produce legal consequences. The subjective side of the crime is also realized when the forged document was used to prove a true fact, because a forged document always creates a state of danger for the public trust that the legislator sought to defend by criminalizing the forgery in documents.”<sup>1</sup>

## 4. Forms, Ways, Sanctions

### 4.1. Forms

*Acts of preparation are possible, but not punishable by law.*

*The attempt is possible and is punished.*

The act of falsifying a document under private signature “does not constitute an offense unless the false document has been used by the perpetrator himself or has been entrusted to another person for use, the attempted offense exists only after the commencement of the subsequent action for use). The fact that the perpetrator did not use the false document and did not entrust it to another person for use is tantamount to a voluntary withdrawal from criminal activity. “(...) (Dongoroz et al., 1972, p. 445).

It will be an attempt “when the perpetrator tried to use the document but failed; or tried to entrust it to another person, but the person refused or denounced it. (...)” (Dongoroz, line 1972, p. 445).

In other words, there will be an attempt only in the event that the action for forgery of a document under private signature (by one of the alternative methods provided in the incriminating text), has been executed in full, and the subsequent action of use of the document forged by the perpetrator or entrusted to another person, in order to produce a legal consequence has been interrupted, for various reasons.

In judicial practice it was decided that “With regard to the offense of forgery of documents under private signature, the following were retained:

Defendant A., determined by E., signed a copy inconsistent with the reality of Decision no. 5 of January 21, 2011 of the Executive Bureau of the M.M., which he later handed over to his lawyer for use in court. It was also specified that, through his actions, the defendant E. sought to ensure that Decision no. 5 of January 21, 2011 complies with the provisions of art. 20 pt. C, Thesis II of the Rules of Organization and Conduct of Football Referees, according to which “the decisions of the Executive Bureau shall be applied within the time limits established and validated by M.M. at the next meeting”.

In the indictment, it was noted, in essence, that on September 26, 2011, the respondent defendant E., as the chosen defence counsel of the respondent defendant A. - investigated in a state of pre-trial detention in File no. x/P/2011 of the National Anticorruption Directorate for committing the crime of bribery in a continuous form - he went to his place of detention and handed him a copy of Decision no. 5 of January 21, 2011 of the Executive Bureau of the M.M., inconsistent with the reality, in order to establish untrue evidence, hinder the prosecution in the case in which the defendant A. was investigated pronounced on September 25, 2011 in File xxx, by which the Bucharest Tribunal admitted the prosecutor's proposal and ordered the pre-trial detention of the defendant A. for a period of 30 days for the crime of bribery.

The prosecutor noted that the deed of the defendant E. who, on September 26, 2011 as the chosen defence counsel of the defendant A., investigated in pre-trial detention in the criminal case no. x/P/2011 of the National Anticorruption Directorate under the aspect of the crime of bribery (19,000 euros from the defendant B. through the defendant D.), handed him for signing a copy inconsistent with the reality of Decision no. 5 of January 21, 2011, the Executive Bureau of the M.M., in order to establish untrue

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<sup>1</sup> I.C.C.J., s. pen., dec. no. 3999 from November 10, 2010, available on [www.scj.ro](http://www.scj.ro), *apud* (Udroiu, 2021, p. 1060).

evidence and hinder criminal prosecution, meets the constituent elements of the offenses of instigating forgery in documents under private signature and favouring the perpetrator.

The court held that the aid given by the respondent defendant E. to the respondent defendant A. consisted in making available to him the Decision no. 5 of January 21, 2011 to be signed and filed in the court of appeal in order to obtain a favourable solution for the release of defendant A. Relevant in this regard is the statement of witness C.C., which shows that defendant E. requested Decision no. 5 of January 21, 2011 because he defends A. and “let's help him in some way”.

With regard to the offense of forging documents under private signature, the intervention of witness H.H. interrupted the criminal activity of the respondent defendant A., this remaining in the attempt phase, reason for which the change of the legal classification was ordered. “

The doctrine states that “The almost unanimous opinion in the doctrine is that there is an attempt at the crime of forgery of documents under private signature only after the completion of the forgery, the simple forgery (and a fortiori not the attempt at forgery) does not fall under criminal law; see Dobrinoiu, p. 585 and Cioclei II, p. 376” (Iugan, 2020, p. 446).

The *consummation* of the crime takes place at the moment of the immediate consequence, respectively the moment of the state of danger by committing the subsequent action of use “by the perpetrator of the false document in order to produce a legal consequence, or of entrusting the document to another person for use for the same purpose” (Dongoroz, line 1972, p. 445).

In order to establish the consummation of the crime, “it does not matter whether or not the legal consequences considered by the perpetrator occurred, it being sufficient that he used the document falsified by him for those consequences. Also, if the false document has been entrusted to another person for use, it does not matter, for the existence of the crime of forgery in privately signed documents, whether that person used or did not use the false document, and if the document has been used, whether or not the intended legal consequences have been obtained” (Dongoroz, line 1972, p. 435).

The offense may also have a moment of exhaustion, which will be identified with the time of the last act of execution.

#### **4.2. Ways**

The offense presents a standard normative modality that will be retained in case a privately signed document is falsified by one of the alternative actions provided by law (counterfeiting of the writing or subscription, alteration in any way, attestation of facts or circumstances untrue or by knowingly omitting certain data or circumstances), after which the document is used by the perpetrator or entrusted to another person for use in order to produce legal consequences.

The *factual modalities* are diverse, depending on the actions performed by the perpetrator.

#### **4.3. Penalties**

The sanction provided by law is imprisonment from 6 months to 3 years or a fine.



## **5. Some Procedural Aspects**

For the crime of forgery of documents under private signature, 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 crime, 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<sup>1</sup>, republished with the subsequent amendments and completions and of art. 1 of Law no. 78/2000 for the prevention, detection and sanctioning of acts of corruption, as subsequently amended and supplemented<sup>2</sup>.

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).

## **6. Conclusions**

In the content of the paper we proceeded to the examination of the crime of forgery in private signature documents, considering the objective side, the subjective side, the forms of the crime, the manner of committing, as well as some procedural aspects.

Wanting to come to the aid of practitioners (and not only), we also proceeded to the comparative examination of the provisions contained in the two laws (the law in force and the previous law), this approach can be useful in the process of identifying and applying the more favourable criminal law.

We appreciate that at the moment the mention of this fact in the Criminal Code is fully justified, given the crime rate which remains at a fairly high level.

On the other hand, the maintenance of this crime in the Criminal Code is also justified by the need to defend these social values through criminal law.

In a general conclusion, we consider that the current incrimination is fully in line with the state's criminal policy in terms of defending protected social values.

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<sup>1</sup> Published in Official Monitor no. 244 of April 11, 2002.

<sup>2</sup> Published in Official Monitor no. 219 of 18 May 2000.

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