

CERTAIN CONSIDERATIONS REGARDING CURRENCY COUNTERFEITING

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Abstract:

The author mentions the novelty aspects introduced by the Criminal Code of 2009 in the matter of currency counterfeiting and heir consequences over the criminal illegality and the correct and unitary enforcement of criminal law.

Keywords: *criminal law, offense, the new Criminal Law, currency counterfeiting, keeping of instruments for counterfeiting goods.*

A. 1. The New Criminal Code (hereinafter referred to as the Criminal Code of 2009), adopted under the Law no. 286/2009 regarding the Criminal Code¹, according to art. 246 of the Law no.187/2012 for the enforcement of the Law no.289/2009 regarding the Criminal Code², entered into force on 1 February 2014, when the Law no. 15/1968 regarding the Criminal Code of Romania, as republished, was repealed³ (hereinafter referred to as the Criminal Code of 1969 or the previous Criminal Code or the previous criminal law).

2. The provisions of the new Criminal Code are included in 446 articles, as opposed to 363 texts, representing the special part of the previous Criminal Code.

The incriminations provided in the special part of the new Criminal Code, the so-called common law offenses, are supplemented by the incrimination rules of the extra-criminal special laws containing criminal provisions⁴ and forming together the **special part of the criminal law**.

From this point of view, the new Criminal Code kept the system according to which some antisocial deeds may be provided as well, by some provisions of extra-criminal laws when the respective deeds represent a criminal phenomenon specific to the field of activity and to the social relationships, namely those relationships disciplined and protected under those laws or emergency ordinances.

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¹ Published in the "Official Journal of Romania", part I, no. 510 of 24 July 2009, as subsequently amended and supplemented.

² Published in the "Official Journal of Romania", part I, no. 757 of 12 November 2012.

³ Republished in the "Official Journal of Romania", part I, no. 65 of 16 April 1997, as subsequently amended and supplemented.

⁴ Those provisions setting forth some deeds which are criminally sanctioned are deemed to be of criminal nature. Sometimes the special laws provide that in case the breach of those laws represents an offense the provisions of the Criminal Code shall apply. As this is a reference rule, it does not represent a criminal law provision in the content of the special law, but rather a simple calling of attention, as the provisions of the Criminal Code are incidental even in the absence of such a mention. However, when a provision of the special law incriminates a certain offense, but for its classification and sanctioning a reference is made to a text of the Criminal Code, the respective provision, assimilating the incriminated offense with one of the offenses provided in the Criminal Code, has the character of criminal provision and represents a reference rule [see, to this end, Vintilă Dongoroz, *Fapte incriminate prin legi speciale (Dispoziții finale)*, in „Explicații teoretice ale Codului penal român. Partea specială”, vol. IV by Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, Victor Roșca, Academiei Române Publishing House, Bucharest, 1972, p. 963].

The Law no. 187/2012 reexamined all the incriminations provided in the non-criminal special laws so that they were fully consistent with the provisions of the new Criminal Code.

The special criminal rules provide in all cases the proper, specific elements of each offense and shall be supplemented by the rules mentioned in the general part of the new Criminal Code.

B. The offenses of counterfeit (art. 310-328) were systematized in title VI of the special part of the new Criminal Code and, as opposed to the previous regulation, they were divided into three chapters [chapter I – Counterfeiting of currency, stamps or other valuable goods (art. 310-316); chapter II – Counterfeit of the authentication or marking instruments (art. 317-319) and chapter III – Forgery of documents (art. 320-328)] and supplemented by new incriminations [counterfeit of a technical recording (art. 324), computer forgery (art. 325)].

The incriminations adopted from the previous Criminal Code were reexamined, especially those regarding the counterfeit of currency, stamps or other valuable goods or the forgery of documents.

Chapter I – *Counterfeit of currency, stamps or other valuable goods* – included the counterfeit of currency (art. 310); the counterfeit of debt securities or payment instruments (art. 311); the counterfeit of stamps or postage (art. 312); the putting into circulation of the counterfeited valuable goods (art. 313); the holding of instruments for the purpose of counterfeiting valuable goods (art. 314); the fraudulent issue of currency (art. 315) and the counterfeit of foreign valuable goods (art. 316).

The counterfeit of currency or of other valuable goods, provided in art. 282 of the previous criminal law, was divided into three distinct texts: one regarding the counterfeit of currency (art. 310), another text regarding the counterfeit of debt securities or payment instruments (art. 311), and the last text regarding the putting into circulation of the counterfeited valuable goods (art. 313), this solution being determined by the distinct social danger of the two offenses, reflected also in the duration of the punishments provided for them.

1. The currency counterfeit (art. 310) represents an offense both in relation to a currency in circulation and when the respective currency is issued by the relevant authorities, however it has not been yet put in circulation (a new assumption of incrimination, an assimilated and species variant, adopted for the harmonization of the domestic law with the Framework Decision no. 2000/383/JHA of the Council of the European Union on increasing protection by criminal penalties against currency counterfeiting).

The legislator of 2009 did not retain the assumption which could cause or caused a significant damage to the financial system as an aggravating circumstantial element.

The solution promoted by the doctrine in compliance with the previous regulation, namely that of the actual concurrence of offenses between the currency counterfeiting and its putting in circulation by the same person was consecrated from the legal point of view, and the putting in circulation of the counterfeited valuable goods was designed as a stand-alone offense as opposed to the offense provided in art. 310.

2. Due to the social danger of the deeds to which it refers, the Romanian legislator established an exception from the sentence of the non-incrimination of preparatory acts and provided the deed of **holding instruments for the purpose of counterfeiting valuable goods** as a stand-alone offense together with all the consequences arising here from (art. 314).

The content of paragraph (2) of the text adopted the deed of holding any equipment for counterfeiting the electronic payment instruments, provided in art. 25 of the Law no. 365/2002 on electronic commerce.

As opposed to the previous regulation, the legal content of this incrimination, in its two incriminating variants, was supplemented with two normative means regarding the *receipt* or the *transmission* of instruments or materials serving for counterfeiting.

In the interests of criminal law policy, a cause of special non-punishment was attached to the offense of holding instruments for the purpose of counterfeiting valuable goods (art. 314), which is incidental when the perpetrator delivers the respective instruments to the authorities or advise them about their existence before committing the offense of counterfeit.

3. In relation to the similar provisions of the previous criminal law we could appreciate that the new regulation of the currency counterfeit represents an improvement due to the extension of the scope of these incriminations in this matter and also due to an efficient reconfiguration of other incriminations.

Furthermore, the manner of drafting these rules of incrimination provided the legal framework needed for a correct and unitary enforcement of the criminal law in this matter.