

# ASPECTS REGARDING THE INCRIMINATION AND INVESTIGATION OF THE DECEIT OFFENCES IN ROMANIAN LEGISLATION

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## **Abstract**

*Starting from the incrimination of the deceit offences in the Romanian legislation, the article aims to present and analyze the main issues that need to be clarified by investigating the deceit offences, as well as carrying out probative procedures often disposed by the judicial bodies in the forensic investigation process.*

**Keywords:** *offences; deceit; forensic investigation; criminal prosecution.*

## **Introduction**

The deceit is incriminated in the content of Article 244 of the Romanian Criminal Code in a variant type and an aggravating variant. According to Article 244 para.1 of the Romanian Criminal Code, the type variant consists in "misleading a person by presenting as true a false fact or as a liar a true fact, in order to obtain for himself or another a patrimonial use and if a loss has been caused ". The aggravated variant is provided in Article 244 paragraph 2 of the Romanian Criminal Code and is retained when "the deception is committed by the use of false names or qualities or other fraudulent means" [1].

Unlike the other crimes against the patrimony, in the case of the crime of fraud, the damage is caused by misleading the person by the perpetrator who wishes through various fraudulent manoeuvres, obtaining an unjust patrimonial benefit for himself or for another [2].

The notification of the criminal investigation bodies, regarding the committing of the fraudulent offences is carried out according to the provisions of Article 288 paragraph

1 of the Romanian Criminal Procedure Code, by complaint or denunciation, by the documents concluded by other bodies established by law or ex officio.

The criminal prosecution in the case of fraudulent offenses is carried out by the local prosecutor's offices, and the jurisdiction in the first instance belongs to the courts. The economic and financial crime fighting service of Direction of Investigation of Organized Crime and Terrorism Offenses –DIOCTO- within the Prosecutor's Office attached to the High Court of Cassation and Justice, investigates the crimes of deception, in the event that their perpetration came within the scope of an organized criminal group, within the meaning provided by Article 367 paragraph 6 of the Romanian Criminal Code and if these offences have produced particularly serious consequences, within the meaning of Article 183 of the Romanian Criminal Code.

When the criminal prosecution is carried out by DIOCTO in the case of deceit offenses, in accordance with the provisions of Article 36 (1) (c) of the Romanian Criminal Procedure Code, the jurisdiction in first instance of these offences belongs to the tribunals.

### **1. The main issues that need to be clarified by investigating the deceit offences**

The main issues that need to be clarified through the investigation of the deceit offences refer to: determining the special legal object and the material object of the crime, establishing the elements of the objective side and the subjective side, identifying the subjects of the crime, establishing the causes and conditions that favoured the crime.

#### *1.1. Determining the special legal object and the material object of the crime*

The special legal object of the crime of deception consists of the social relations of patrimonial type that involve good faith and the mutual trust of the subjects of these relationships.

The material object of the deceit offence can be represented by a movable or immovable property, as well as by the documents that have a patrimonial value (any goods, rights, obligations, actions of patrimonial character, etc.). Also, it may be a material object of the deceit offense a document that incorporates a patrimonial value (pass book, bonds, proof of winning a lottery prize, etc.) [3].

#### *1.2. Establishing the elements of the objective side and the subjective side*

In relation to establishing the component elements of the objective side, we are interested in the ways in which the deceit offence was committed. Thus the material element in the case of the crime of deception in the type variant consists in a misleading action, by presenting as true a false fact or as a lie a true fact.

The presentation of a false fact as true means to believe, to pass as a real, existing, fact or circumstance that does not exist, that was made up. To present a true deed as a lie means to believe that there is a fact or circumstance that does not exist in reality [4].

This fraudulent, distorted or altered presentation of reality must be capable of inspiring the victim's confidence, good faith and misleading, deceiving or keep it in the error previously produced.

The offence of deceit in the aggravating variant consists of the fraud committed by the use of false names or qualities or other fraudulent means.

The use of false names refers to the use of names that do not actually belong to the offender. Thus, these false names are "borrowed" from other people instead of which the perpetrators are recommended and claim that they are those people, or the false names are made up, they are imagined so that in this way they hide their true identity.

The use of lying qualities refers to the use of titles, functions that the offender does not have in reality, such as, for example, the offender presents himself as a prosecutor, a police officer, or he can attribute his unreal quality of a family member's friend, messenger of a knowledge, and so on [5].

By fraudulent means is meant the means that is true and inspires confidence, removes any suspicion, but which in reality is a liar (for example, the presentation of recommendations by personalities in a field, which have been obtained through false or other illegal procedures, pledge of objects belonging to another person, use of false documents, etc.) [6].

During the last years, the most common modes of operation found in committing deceit offences are the following [7]: substitution of official qualities; the promise of purchasing some goods; intermediation of the sale-purchase of real estate with fake documents; the promise of obtaining work contracts at home and abroad; practicing self-help and gambling games; sale and registration of foreign cars with false documents of

provenance; the sale of jewellery of common metals as of precious metals; conclusion of false insurance contracts; payment of insurance contracts based on false documents.

According to the speciality literature [8] and practice in the field of the investigation of deceit offences, the places most frequented by the perpetrators, from where their victims are gathered are the following: commercial banks, foreign exchange houses, pawnshops, gambling agencies, markets, insurance companies, hotels, travel agencies, Romanian Auto Registry, Western countries embassies and consulates, commercial complexes and companies, tourist resorts, and so on..

The offence of deceit is committed only with the form of guilt, of the direct intention. The offender foresees the results of his actions, carrying out an activity of misleading and thereby producing a loss, aiming to produce that result by committing the deception, the text referring to the purpose of obtaining an unfair material use, the intention being qualified by purpose.

The immediate consequence is the production of material damage to the person who was deceived. We highlight the fact that, in the absence of an action aimed at causing harm, the act does not constitute the offence of deceit.

For the existence of the deceit offence there must be a causality link between the misleading action and the damage caused or the immediate consequence.

The preparatory acts are possible, but they are not criminalised and thus they are not punishable.

The attempt is possible and is punished according to the Article 248 of the Romanian Criminal Code.

The consumption of the offence of deceit takes place at the moment when the immediate consequence occurred, that is, the actual damage occurred in the property of the one who was deceived.

We emphasize that the deceit crime is consumed only at the date of the damage, and not at the date of the victim's misleading.

### *1.3. Identifying the subjects of the crime*

The active subject or the perpetrator of the deceit offence can be any person, who commits the crime by misleading the victim to whom a damage occurs, the criminal law

does not condition on the existence of the deed of a certain quality that the criminal must fulfill. In most forms of deception, the offenders act verbally, by convincing the data subjects, the future victims. They are intelligent criminals, well aware of the psychology of the people and have a high level of general training. Also, the perpetrators of the crime of deceit have a high elasticity of thought, quickly discovering the weaknesses of the victims and finding spontaneous solutions, which remove them from any confusion. Therefore, in order to make it more difficult or difficult to identify them, the offenders act under a false identity, so that they make every effort to gain possession of the identity documents of other persons, which are obtained by theft or by the various promises they make [9]. The offenders, after obtaining the identity papers, will apply on them their photographs and present themselves under the respective identities, which they change from one period to another.

Also, the criminals falsify the documents used by various procedures, from the simple deletion of letters or words and the writing of others by adding text, until the forms are completely completed [10].

The passive subject or the injured person may be the natural or legal person, whose heritage was affected as a result of committing the deceit offence.

#### *1.4. Establishing the causes and conditions that favoured the crime*

In order to establish the most important measures for preventing and combating deceit offences, it is important to know the causes that led to their committing and the conditions that favour the commission of these crimes.

The main conditions, causes and circumstances that favour the committing of deceit offences are the following [11]: the negligence or the ease manifested in the verification of the false documents presented by the perpetrators; diminishing the attention of the officials of the banks, the customs offices, the notaries, by requesting to perform some operations in the busy hours, due to the rush and the increased workload; the negligence of some persons or officials in keeping credit cards, documents of study and identity, documents of property, which allows their use for fraudulent purposes; the desire of some people to get rich quickly and easily.

## **2. Performing the acts of criminal prosecution**

### *2.1. The hearing of the injured person*

The identification and hearing of the injured person in the case of the crime of deception is a problem for the investigating bodies, since there are situations when the victims do not immediately notice the commission of the crime.

From the statement of the injured person, the criminal prosecution body must identify the following aspects: the circumstances in which the injured party met the offender; the identification data of the offender, in case the injured party knows the offender or his traits, these being very necessary for the judicial bodies to identify him; the goods that the injured party has alienated to the offender; if the injured party constitutes a civil part in the criminal case and the amount of money with which a civil party constitutes in the criminal case; the existence of eyewitnesses when committing the crime of deception; the possibility of recognizing the offender.

### *2.2. The hearing of the suspect or defendant*

In carrying out this act of criminal prosecution, the judicial bodies must take into account both the concrete circumstances in which the defendants acted and their psycho-behavioural traits.

The main issues to be clarified when performing this procedural act are the following [12]: the circumstances in which the suspect or the defendant met the victim; the qualities that the suspects or the accused assigned to them and the documents used by them to mislead or keep the victim in error; the amounts of money and other objects received from the victim as a result of his deception; the way in which the suspects or the defendants obtained the documents they used to commit the crime.

### *2.3. The hearing the witnesses*

The witnesses can be identified from persons who have witnessed the perfect understanding between victim and offender or who were present at the time of handing over the unfair patrimonial use or from persons who have seen various documents from the offender.

The purpose of hearing the witnesses is to establish the following aspects: how the witnesses became aware of the deed; the circumstances in which the victim met the offender; if the witnesses were acquainted with the offender; if the witnesses also know other persons deceived by the criminals; the amounts of money or other benefits obtained

by the offenders as a result of the victim's deception; the qualities assigned by the criminals and the documents which they presented to the injured persons in order to commit the crime of deception.

#### *2.4. Conducting searches and forensic expertises*

In the case of the crime of deceit, the home search carried out by the judicial bodies aims to discover the goods (money, values, objects, documents) that have constituted the unjust patrimonial use received by the offender as a result of the illegal activity carried out.

The forensic expertise contributes to establishing the truth in question, by clarifying the circumstances regarding the conditions in which the crime was committed.

### **3. Conclusions**

The deceit offences are a category of crimes frequently committed in Romania. Because of this, we believe that law enforcement agencies should continually improve their techniques and methods of forensic investigation, taking into account that criminals in the field of deceit offences are constantly improving their modes of operation.

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