

# COMPARISON BETWEEN THE CRIME OF FRAUD AND THE CRIMES OF FORGERY

Alexandru STAN\*

## Abstract

*This article aims to analyze and comparatively comment on the crimes of fraud and forgery in the Romanian Criminal Code from theory and from older and more recent judicial practice. As can be seen from the examples cited in this paper, there are numerous contradictory solutions and controversial aspects relative to the analyzed crimes, which have not disappeared with the advent of the new Criminal Code of 2014. For this reason, we believe that this paper can be useful for both theorists and practitioners, and the purpose of this material is not only the presentation and comparative analysis of the crimes of fraud and forgery, but also the proposal of solutions that, even if they will not be embraced by theorists and practitioners of criminal law, can at least constitute a basis for discussion for the unitary application of criminal law. Even if we cannot exhaust the subject through this work, we believe that we have reached the essential points that can generate controversy and debate, and depending on the opinions that will be expressed later on the issues addressed, we will return with a more complex work, which will also take into account the other points of view of criminal law specialists or practitioners.*

**Keywords:** *deception, forgery, patrimony, misleading, forgery, concurrent crimes.*

## 1. Introduction

This paper proposes a comparative analysis of the crime of fraud and the crime of forgery in the Criminal Code. This comparison is necessary because, both in doctrine and in judicial practice, there have been debates and contradictory solutions regarding the two types of crimes. We aim not only to analyze the controversial aspects, but also to propose solutions for the uniform application of the law. We will take into account the opinions expressed so far in the specialized literature, which we will comment on in relation to the jurisprudence before and after the emergence of the new Criminal Code.

## 2. Content

Forgery crimes are closely related to the crime provided for in art. 244 CP because:

- both types of crimes distort or alter the truth<sup>1</sup>, by attesting to unreal facts or circumstances which, in the case of the crimes provided for in Title VI of the Criminal Code, may consist either in the forgery of coins, payment instruments, seals, stamps, etc., or in the counterfeiting of the writing or signing of a document or in the incorrect declaration of the truth before an authority, respectively presenting oneself under a false identity;
- in both fraud and forgery crimes, the author's intention is to, by altering the truth, produce certain legal consequences, in most forgery crimes the aim being (as in the case of the act provided for by art. 244 CP) to obtain a material advantage to the detriment of a natural or legal person;
- the material object of the forgery offenses can be used to commit the offense of fraud, being incident to the provisions of art. 244 para. (2) CP, which provides that, if the act is committed by fraudulent means, the rules regarding the concurrence of offenses will apply in the situation where the fraudulent means constitutes by itself an act provided for by the criminal law.

Our opinion is that any similarities and controversies related to the concurrent retention of the crime of fraud and the acts provided for in Title IV can only arise in the case of the actual use of forgeries, the simple falsification of documents, payment instruments, coins or computer data (even if the corresponding crime of forgery is retained) cannot be relevant with regard to the crime of fraud, these activities being able to constitute only preparatory acts that are not sanctioned in the case of the act provided for in art. 244 CP.

We will analyze, in the following, only those forgery crimes that have interacted in practice with the crime of fraud.

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\* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: av.alexandrustan@gmail.com).

<sup>1</sup> M.C. Dobrilă, *The Crime of Fraud in the Old and New Criminal Code*, Hamangiu Publishing House, Bucharest, 2014, pp. 344-345.

## 2.1. Putting counterfeit securities into circulation

According to art. 313 CP, the putting into circulation of counterfeit values (*i.e.*: coins, credit instruments, payment instruments, stamps and postal items), as well as the receipt, possession or transmission thereof for the purpose of putting into circulation, is punishable.

As noted in the specialized literature<sup>2</sup>, the relationship between the two acts provided for by the criminal law is controversial both in doctrine and in judicial practice, the cited author indicating several decisions of the High Court of Cassation and Justice that concerned the possibility of concurring the two offenses<sup>3</sup>. If, initially, the Supreme Court considered that the circulation of counterfeit values constitutes only the offense provided for by art. 313 CP<sup>4</sup>, subsequent practice became uniform, in the sense of the existence of a concurrence between deception and the circulation of counterfeit values, in the situation where the person to whom the counterfeit values were handed was misled and also suffered damage. We agree with this latter interpretation, as it is in accordance with the provisions of art. 244 para. (2) CP, final sentence, which provides for the simultaneous retention of deception and the crime that constitutes the fraudulent means.

In a more recent case, the Supreme Court upheld the concurrent offenses of putting counterfeit money into circulation and the offense of fraud against the defendant who sold the victim a banknote, knowing it to be counterfeit<sup>5</sup>. Although the judges of the Court of Appeal considered that it was necessary to remove the offense of fraud, on the grounds that putting counterfeit coins into circulation would in fact be „*a fraud committed in connection with monetary circulation*”, the High Court of Cassation and Justice considered that it was necessary to return to the initial legal classification<sup>6</sup>, since the defendant sought to mislead the injured person and achieve an unjust material benefit, a conclusion to which we also agree.

In order to also retain the crime of fraud, alongside that provided for by art. 313 CP, we consider it necessary that the person who acquires the counterfeit values be in good faith. In this regard, the concurrent crimes were retained with regard to the defendant who handed the injured person several counterfeit banknotes (EURO), representing the equivalent of the price established in a contract for the sale and purchase of a car<sup>7</sup>. The good faith of the seller of the car, who did not know, at the time of payment, that the money handed over was counterfeit, determined the retention of both crimes in the concurrent crimes. In our opinion, in the hypothesis in which the buyer would have known, or at least suspected, that the banknotes were counterfeit, he would have become an accomplice of the seller, the crime of fraud not being an incident in the case.

## 2.2. Material forgery in official documents, intellectual forgery, forgery in documents under private signature and the use of forgery

The offenses dealt with under this sub-item are similar in terms of legal object, material object, objective side and subjective side, with differences only regarding the official status of the active subject and the characteristic of the material object – official document, in the case of offenses provided for in art. 320 and 321 CP.

Thus, as we have stated above, it is not the falsification of documents that attracts the possible incidence of the provisions of art. 244, but the use of these documents in order to produce legal consequences, sanctioned according to the provisions of art. 323 CP. It should be noted here that, if in the case of the crimes of material forgery in official documents and intellectual forgery, these will be punished even without the use of forged documents or acts, the crime provided for in art. 322 is punished only if the perpetrator uses the forged document or entrusts it to another person for use, in most situations the use of forgery being absorbed into the crime of forgery in documents under private signature. In this regard, analyzing an appeal for annulment filed

<sup>2</sup> C. Duvac, *Similarities and differences between fraud and other incriminations in the new Criminal Code*, in Dreptul no. 2/2012, pp. 92-94.

<sup>3</sup> HCCJ, crim. s., dec. no. 1913/1998, in Dreptul no. 3/1990, p. 38; HCCJ, crim. s., dec. no. 2048/1995, in Dreptul no. 8/1996, p. 142; HCCJ, crim. s., dec. no. 367/1996, in Dreptul no. 9/1990, p. 120.

<sup>4</sup> HCCJ, crim. s., dec. no. 1913/1998, above cited.

<sup>5</sup> HCCJ, crim. s., dec. no. 1934/2000, in M. Vasile, G. Moloman, R. Schmutzer, *Deception, collection of judicial practice*, Moroşan and Nicora M. Publishing House, 2007, pp. 210-211.

<sup>6</sup> The legal classification established by the prosecutor, through the indictment, and confirmed by the first instance, was that of fraud in competition with the placing into circulation of counterfeit coins or other values.

<sup>7</sup> Closing of the Bolintin Vale Court on November 17, 2023 – [www.politiaromana.ro](http://www.politiaromana.ro).

regarding the defendant who misled several economic agents, presenting them as true a false act, causing them to pay her amounts of money that were not owed, using forged documents in this regard, the supreme court held that, as long as the forged documents do not come from a public institution or of public interest, the crimes of intellectual forgery and use of forgery cannot be held in competition, together with deception, but only the crime of forgery in documents under a private signature, which absorbs the crime of use of forgery.<sup>8</sup>

In another case, the Supreme Court ruled that misleading a bank employee by presenting a stolen checkbook filled with inaccurate data in order to obtain a sum of money unjustly constitutes the crimes of fraud and forgery of private documents<sup>9</sup>. The defendant cannot also be convicted of the crime of use of forgery, as long as the use of the forged document is part of the objective element of the crime of forgery of private documents.

*Per a contrario*, the crimes of forgery and deception will not be considered in the competition in the situation where the existence of damage is not proven. Thus, if the defendant falsified certain mentions in the work book in order to transfer to a position that brought him additional income, as long as he successfully fulfilled his job duties and, in this way, did not cause any damage to his employer, even if there was a misrepresentation and the use of forged official documents, the constitutive elements of the crime of fraud are not met, but only of the crimes of material forgery in official documents and use of forgery<sup>10</sup>.

In a more recent case, the High Court of Cassation and Justice held that there was a concurrence between the crime of forgery of documents under a private signature and fraud regarding the act of the lawyer who forged a power of attorney and used it to wrongfully appropriate a sum of money<sup>11</sup>. Through the act of notifying the court, the prosecutors held that the defendant Ș.CA assisted PM in his capacity as a civil party lawyer in a case of the Satu Mare Court in which she obtained compensation of 10,000 euros (to which the defendant in the respective case and the Insurance and Reinsurance Company A were jointly and severally liable). Although he was not authorized by his client PM to collect the amount of 10,000 EURO, lawyer Ș.CA forged a power of attorney that gave him the right to perform fiduciary activities on behalf of his client, and requested and received the full compensation to which the civil party PM was entitled, subsequently spending the money in personal interest. Both the lower court (Oradea Court of Appeal) and the High Court of Cassation and Justice held that there was a concurrent crime of forgery in documents under a private signature – consisting in the preparation and use of the power of attorney without right and the crime of fraud – consisting in misleading the insurance company and causing damage to its assets, respectively the amount of 10,000 EURO paid to the defendant Ș.CA, although it was not owed to him.

The concurrence between the crime of forgery of documents under private signature and fraud was retained and with regard to the defendant who, although he was suspended from the legal profession, hid this aspect from his clients and concluded a legal assistance contract with them by which he falsely attested that he had the capacity of a lawyer, the damage being created by collecting significant amounts of money as fees<sup>12</sup>. With regard to the crime of fraud, the courts considered that the defendant misled the injured parties, presenting them with a false act, namely his capacity as a lawyer. With regard to the crime of forgery, this was committed by issuing the legal assistance contract and the power of attorney from which it falsely results that he would have the capacity of a lawyer and used these documents in order to produce legal consequences. It should be noted that the retention of the qualified form of the crime provided for by art. 244 CP was not determined by the use of forged documents, but by the false capacity under which the defendant presented himself, namely that of a lawyer. The preparation of the legal assistance contract and the powers of attorney were not likely to contribute to misleading the injured parties, which is why – in relation to these documents – only the offense provided for in art. 322 CP was retained.

Regarding the crime of forgery, the Supreme Court established through a guidance decision<sup>13</sup> that misleading a person by using a forged document (under a private or official signature) constitutes both the

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<sup>8</sup> HCCJ, crim. s., dec. no. 2441/2004, pronounced in appeal for annulment, in L. Lefterache, I. Nedelcu, F.-M. Vasile, *Supreme Court Jurisprudence in the Unification of Judicial Practice*, Universul Juridic Publishing House, 2008, pp. 218-219.

<sup>9</sup> HCCJ, crim. s., dec. no. 486/1984, in the Romanian Law Review no. 4/1985, p. 69.

<sup>10</sup> Timiș Court, crim. s., dec. no. 164/1974, in the Romanian Law Journal no. 5/1974, p. 66.

<sup>11</sup> HCCJ, crim. s., dec. no. 51/2015, available at [www.scj.ro](http://www.scj.ro).

<sup>12</sup> HCCJ, crim. s., dec. no. 120/2021, available at [www.scj.ro](http://www.scj.ro).

<sup>13</sup> Guiding dec. no. 9/1971 pronounced by the Plenum of the Supreme Court, in the Romanian Law Journal no. 2/1972, p. 136.

aggravated version of the crime of fraud, namely fraud committed by fraudulent means, and the crime of forgery, the two acts provided for by the criminal law being to be held in real competition.

In the same sense, the judicial bodies assessed that misleading a banking institution with the help of forged documents, meets the constitutive elements of the crimes of aggravated fraud, provided for by art. 244 para. (2) in competition with the crime of forgery in documents under private signature, provided for by art. 322 para. (1) CP<sup>14</sup>. In the case of the defendant SM, it was held that, based on forged documents, he obtained a loan of 88,000 CHF from SCVRS Piatra Neamț, an amount that he did not return to the civil party. The court confirmed the legal classification established by the criminal investigation body, respectively art. 244 para. (2) CP and art. 322 para. (1) CP, with the application of art. 38 CP.

Our opinion, in the sense of concurring the two offenses, is also indirectly confirmed by the considerations of a decision of the High Court of Cassation and Justice – Panel for resolving legal issues in criminal matters<sup>15</sup> which, even though it concerned the offenses provided for in art. 18<sup>1</sup> para. (1) of the Law no. 78/2000 and art. 322 CP, contains arguments that can also be taken into account in our analysis. The considerations of the cited decision indicated that the concurring offenses of forgery of documents under private signature and the use or presentation in bad faith of false documents should be considered because:

- the absorption of the crime of forgery into the crime of forgery in documents under private signature does not imply that the crime provided for in art. 322 CP can also be absorbed into the crime provided for in art. 18<sup>1</sup> of the Law no. 78/2000, even if the typical content of both crimes includes the action of using a document;
- the two crimes have different constitutive contents, distinct nature, but also different social values that are harmed by the commission of the act provided for by the criminal law;
- to admit the existence of a complex corruption offense whose constitutive content would include the offense provided for in art. 322 CP would imply placing the counterfeiting action outside the criminal illicit.

In summary, regardless of whether we are referring to official documents or documents under private signature, judicial practice is unified in assessing that, as long as the constitutive elements of the offense provided for in art. 244 CP are met, and the act is committed with the help of forged documents, the offenses of aggravated fraud and forgery or use of forgery will be retained in the competition<sup>16</sup>, in this situation the more serious offense (fraud) cannot absorb the offenses of forgery due to the incidence of art. 244 para. (2) CP, final sentence.

### 2.3. The crime of computer forgery

According to art. 325 CP, computer forgery consists of the unauthorized introduction, modification or deletion of computer data or the unauthorized restriction of access to such data, resulting in data that is not true, with the aim of being used to produce legal consequences.

The differences between the two acts provided for by the criminal law are multiple and obvious, what they have in common is the alteration of the truth, a necessary condition for meeting the objective side with regard to both crimes. It should be noted that, in order to apprehend computer forgery, it is sufficient to have the purpose of using unreal data in order to produce legal consequences, without the need for the perpetrator to take subsequent action to use those data. As a rule, the use of computer data that is not in accordance with the truth and the production of legal consequences, determines the apprehension, in competition, of another act provided for by the criminal law, including deception.

Thus, the court ordered the conviction of the defendant TGC for committing, in competition, 46 crimes of fraud, provided for by art. 244 para. (2) CP and 46 crimes of computer forgery, provided for by art. 325 CP, considering the following factual situation<sup>17</sup>. During 2014, the defendant posted several false advertisements on the internet in the name of commercial companies, offering jobs abroad. Subsequently, the defendant concluded false employment documents in the name of the same companies, which he sent to the persons who applied for the respective advertisements, from whom he requested various amounts of money and commissions for the services provided. In reality, both the employment advertisements and all subsequent steps

<sup>14</sup> Neamț Court, crim. s., sent. no. 76/2014, final by non-appeal, which admitted the plea agreement concluded between the Prosecutor's Office attached to the HCCJ - DNA and the defendant SM - [www.pna.ro](http://www.pna.ro).

<sup>15</sup> HCCJ, Panel for resolving legal issues in criminal matters, dec. no. 3/2020, published in the Official Gazette of Romania no. 138/21.02.2020.

<sup>16</sup> R. Bodea, B. Bodea, *Criminal Law. Special Part*, Hamangiu Publishing House, Bucharest, 2018, p. 262-263.

<sup>17</sup> CA Timișoara, crim. s., dec. no. 416/2016, available at [www.juridice.ro](http://www.juridice.ro).

constituted only actions by which the defendant misled the injured persons, having no connection with the companies whose names he used to attract the respective victims.

On the contrary, only the crime of computer forgery was retained with regard to the defendant AVA who, as an employee of Hospital L in Ploiești and SCDCND Ploiești, entered into the company's server unreal data regarding an acquaintance of hers, named VE, through which she attested data that was not in accordance with the truth, namely the quality of employee of the latter, a person who was going to request a loan from a banking institution by using documents showing that she was employed at SCDCND Ploiești.<sup>18</sup> Our opinion is that, in the situation where VE had obtained a loan with the help of falsified documents, which would have also contained mentions related to her quality of employee, the judicial bodies should have retained, along with the crime provided for in art. 325 of the Criminal Code, forgery of documents under private signature (for filling in and using the forged certificate, which did not correspond to the truth) and the crime of fraud, the latter only if the intention of the said VE was to obtain the loan and not to return the sums of money received from the banking institution. It is irrelevant, with regard to the crime provided for in art. 244 of the Criminal Code, the circumstance that the bank officials were misled regarding the credit applicant's employee status, as long as it would result from the evidence administered during the criminal trial that there was no intention to cause damage to the banking institution. *Per a contrario*, if the loan applicant's intention was to wrongfully appropriate the respective amounts and not to return them, even if the bank officials had noticed the forgeries in time, or the criminal prosecution bodies had intervened before the loan was granted, in the situation where the documents had already been submitted to the banking institution, the crime of fraud should also be retained, in the form of an attempt.

The cited decisions confirm, from our point of view, the existence of a natural link between the two crimes analyzed, our opinion being that deception constitutes one of the crimes of purpose in relation to computer forgery, a situation in which a contest between the two crimes will be retained. The author of the act provided for by art. 325 CP alters computer data with the aim of using them to mislead a natural or legal person, in order to obtain an unjust material benefit. As we have specified above, only in the situation in which the perpetrator is discovered or gives up the criminal idea before actually using the falsified data, the judicial bodies will retain only the crime of computer forgery, the preparatory acts not being sanctioned in the case of the act provided for by art. 244 CP.

Since our opinion is that computer fraud represents an aggravated variant of the crime of fraud, we agree with the point of view expressed in the specialized literature, in the sense that the solution of retaining the concurrence of crimes regarding fraud and computer forgery must be maintained also in the case of committing the crime of *computer fraud*, respectively the computer fraud provided for in art. 249 CP.<sup>19</sup>

## 2.4. The crime of false statements

According to art. 326 CP, the crime of false statements is the improper declaration of the truth made to a person among those provided for in art. 175 or to a unit in which he carries out his activity in order to produce a legal consequence, for himself or for another, when according to the law or the circumstances, the declaration made serves to produce that consequence.

In order to retain the crime of fraud in competition with that of false declarations, it would be necessary to accept that a public authority can be misled, in the sense provided for in art. 244 CP. The issue of the incidence of the provisions on fraud with regard to authorities will be analyzed separately, within another subsection of this work, but we will show some examples through which the judicial bodies have found the existence of a competition between the two acts provided for by the criminal law:

Thus, the concurrence between the crimes of forgery and fraud was retained, in the conditions of the declaration not corresponding to the truth, made before the notary public, in order to obtain material advantages<sup>20</sup>. The defendant CL requested the opening of the succession from the deceased GG, as his sister. At the time of presentation before the notary public, the defendant knew that the deceased had two children from a cohabitation relationship, but she falsely declared before the notary that she was his sole heir, unjustly

<sup>18</sup> CA Ploiești, crim. s., dec. no. 101/2015, available at <https://www.legeaz.net>.

<sup>19</sup> R. Răducanu, *Computer Forgery. Interferences and Connections with Other Crimes*, in the Scientific Annals of the „Alexandru Ioan Cuza” University of Iași, vol. LXVII Supplement 2, Legal Sciences, 2021, at [www.pub.law.uaic.ro](http://www.pub.law.uaic.ro).

<sup>20</sup> CA Galați, crim. s., dec. no. 1823/2011, in Jurisprudence of the Galați Court of Appeal, at [www.portal.just.ro](http://www.portal.just.ro).

becoming the owner of an apartment – to the detriment of the two legal successors. The court found that, through the untrue declaration made before the public authority (notary public), the constitutive elements of both the crime of false declarations and the crime of fraud were met, since there was (beyond the false declaration) the intention to mislead in order to obtain an unjust patrimonial benefit – the apartment thus acquired being alienated, the entire price representing the damage caused to the injured persons.

The conviction was ordered for both the crime of false statements and the crime of fraud (in attempted form) against the person who tried to mislead the representatives of an insurance company, in order to unjustly collect the insurance premium<sup>21</sup>. Even though, as a result of the vigilance of the employees of the insurance company, the defendant did not manage to take possession of the requested amounts of money, by improperly declaring the truth in front of them, followed by the request to pay the insurance premium, he committed, in competition, an attempted fraud and a crime of false statements.

In another case, the crime of fraud and false statements were held in parallel, regarding the defendant who declared before the notary that he was not married, in order to induce his concubine to conclude a sale-purchase contract by which he alienated half of his apartment (without the defendant paying the corresponding price)<sup>22</sup>. The crime of false statements was committed, in this case, against the notary public, but the fraud did not target the authority, but the individual, namely the defendant's concubine, who agreed to cede half of her property to the person she was going to marry, based on the defendant's false declaration from which it emerged that he was not married.

From the analysis of constant judicial practice, but also of the opinion expressed in the doctrine, it results that the crimes of fraud and false declarations can be held in the competition also in the situation where the authority before which the false declaration is made suffers damage as a result of the misrepresentation, and if the damage will be found in the assets of another natural or legal person.

Our opinion is that, regardless of the manner in which the concurrence between the two offenses will be retained, if the false declaration contributed to the commission of the offense of fraud, the aggravated variant provided for by art. 244 para. (2) CP, final sentence, will be applicable in the case, since the respective declaration constitutes a fraudulent means, in the sense described by the incriminating norm.

## 2.5. Identity fraud

According to art. 327 CP, identity fraud consists of presenting oneself under a false identity or attributing such an identity to another person made to a public official by fraudulently using an act that serves for identification, legitimation or to prove civil status, in order to mislead the respective official in order to produce legal consequences for oneself or for another. The act is more serious if it was done by using the real identity of a person, the mitigated version aiming at entrusting an identity or legitimation act to another person, for its unlawful use.

As noted in the specialized literature<sup>23</sup>, the new Criminal Code provided for the mandatory presentation of an identification document as an essential requirement of the offense provided for in art. 327 CP, also establishing a differentiation of the sanctioning regime, depending on the use of a fictitious identity or the fraudulent use of a person's real identity.

Referring to the crime of fraud, we note that, in the case of the aggravated variant provided for in art. 244 para. (2) CP, one of the modalities presents similarities with the act provided for in art. 327 CP, namely fraud committed by using false names.

As in the cases analyzed above (of the use of forgery or false statements), in relation to the provisions of art. 244 para. (2) CP, final sentence, the presentation under a false identity made before a public official [or a person assimilated to a public official, according to art. 175 para. (2) CP] for the purpose of obtaining an unjust patrimonial benefit, will attract the retention in competition of the crimes of fraud and false identity.

<sup>21</sup> Decision of the Supreme Court of Justice no. 5137/2001, in G. Tudor, *op. cit.*, 2007, p. 352.

<sup>22</sup> CA Bucharest, crim. s., dec. no. 1227/1998, in M. Dumitru, *Economic and Financial Offenses Provided in the Criminal Code*, Hamangiu Publishing House, Bucharest, 2012, p. 93 and in the Collection of Criminal Judicial Practice of 1998, p. 176.

<sup>23</sup> C. Duvac, *op. cit.*, p. 100.

In this sense, the crime of fraud (in attempted form) and identity fraud was recorded, regarding a person who showed up at a pawnshop with a false identity card, trying to pawn some jewelry made of a yellow metal that he claimed was gold<sup>24</sup>.

The crime of identity fraud can be held in the same case, both together with the crime of fraud and with the crimes of material forgery in official documents and use of forgery. Thus, in a recent case, the courts ordered the conviction for all the crimes described, committed in the same case, retaining the following factual situation<sup>25</sup>: The defendant AA forged an identity document allegedly issued in the name of the injured person VV, but which contained the signature and photograph of the defendant (material forgery in official documents), presenting herself with it to several notaries under the false identity of VV, causing them to authenticate powers of attorney and notarial declarations in the name of the injured person, documents that were used to produce legal consequences (false identity and use of forgery). Subsequently, with the help of forged documents, the defendant AA sold several properties in the name of the injured person VV, receiving the sum of 60,000 EURO (fraud committed by fraudulent means).

Conversely, in the situation where, although a forged identity document is used in order to produce legal consequences, no unjust material benefit is sought, only the crime of identity fraud will be considered<sup>26</sup>. Thus, the defendant BV presented himself at the headquarters of a banking unit, declining a false identity by using a passport issued in the name of another person on which he added his photo. Subsequently, he received the amount of 976,000 EURO in the respective account, which he withdrew in full. Although the prosecutors considered that the constitutive elements of the crime of fraud were met, in conjunction with the crime of identity fraud, the courts considered that, by opening an account, funding it with a sum of money and, subsequently, withdrawing the money in cash, no damage was caused to the respective banking unit, which, moreover, specified during the trial that it was not a civil party since it had not suffered any damage.

### 3. Conclusions

The comparative analysis of the crime of fraud and the 5 crimes of forgery revealed notable differences regarding the material element, the object of the crimes, and the value protected by the criminalization of the two types of acts provided for by Romanian criminal law.

The delimitation between the crimes subject to comparison is essential for the correct establishment of the legal classification and the eventual criminal liability of those who are guilty of one or more of the crimes that are the subject of our analysis.

Although, mainly, as we have shown in this paper, the solution proposed by us is that, if the existence of the crime of fraud committed through forgery is found, the two acts provided for by the criminal law should be considered in conjunction, in relation to the provisions of art. 244 para. (2) CP, final sentence, there are also controversial situations that have been analyzed and commented on in this material.

This paper can be used by both practitioners and theorists to substantiate certain claims or pronounce certain solutions in criminal cases. We do not claim to have exhausted the subject of the comparison between the crime of fraud and forgery, but we appreciate that the analysis carried out and the solutions proposed by us can be taken into account for the drafting of future papers that target the same legal issues.

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<sup>24</sup> The decision of the Calafat Court from 03.10.2013 ordering the preventive arrest of the defendant MF, Press release of the Dolj IPJ from 03.10.2013 - [www.cvlpress.ro](http://www.cvlpress.ro).

<sup>25</sup> CA Cluj, crim. s., dec. no. 7/2020, in Bulletin of Jurisprudence of the Cluj Court of Appeal of 2020, Hamangiu Publishing House, Bucharest, 2021, p. 961-973.

<sup>26</sup> HCCJ, crim. s., dec. no. 1636/2003, available at [www.scj.ro](http://www.scj.ro).

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