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Summary

**THEORETICAL AND JUDICIAL PRACTICE
ASPECTS IN THE MATTER OF THE CRIME OF
FRAUD**

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THE NEED AND RELEVANCE OF THE RESEARCH

The crime of fraud is part of the triumvirate of the main crimes against property,¹ being, at the same time, one of the oldest illicit acts committed on our territory. From the period of antiquity to the present day, the methods of misleading have changed and even improved, the continuous economic and social development determining the emergence of new fraudulent means. If at first the fraud aimed, rather, at the retail sale and exchange of goods, the continuous technological development has contributed to the development of modern tools for carrying out the criminal plan of the swindlers, most of the crimes of fraud being committed today through computer systems.

The entry into force of the new Criminal Code brought important changes regarding the crime that is the subject of our study, the reduction of penalties, the modification of aggravating variants, the provision of the possibility of removing criminal liability through reconciliation of the parties, the regulation of insurance fraud, but also the introduction of new crimes that have provisions similar to those of the crime provided for in art. 244 of the Criminal Code. are all reasons that gave rise to debates in the specialized literature.

From the analysis of the solutions pronounced from 2014 to the present, but also of the specialized works, we noticed that there are contradictory solutions and different opinions regarding the establishment of the legal classification by retaining the crime of fraud or other crimes with a partially similar content or the incidence of the concurrence of crimes, the definition of the notion of fraudulent means, the moment of exhaustion of the act provided for in art. 244 of the Penal Code or the method of resolving the civil action in a criminal trial targeting fraud.

At the same time, there have been numerous criticisms regarding the opportunity to introduce the crime of insurance fraud, as well as doctrinal debates and contradictory solutions regarding the need to cause damage in order to retain the incidence of the provisions of Article 245 of the Penal Code.

In this context, an analysis of the crime of fraud according to the new regulation, by reporting to the legislative amendments, but also to the controversial aspects that emerged with the practical application of the new criminal provisions, appears not only as an option of the authors of the law, but is – in our opinion – a necessity, especially since a

¹Traian Pop in C.Rătescu, I.Ionescu-Dolj, I.Gr.Perițeanu, Vintila Dongoroz, H.Aznavorian, Traian Pop, Mihail I.Papadopolu, N.Pavelescu, *The annotated penal code of Carol II* Vol.III, Libr.Socsec Publishing House, Bucharest, 1937, pg. 548

substantial increase in the number of notifications by criminal prosecution bodies regarding the commission of the crime of fraud is observed².

THE PURPOSE AND MAIN OBJECTIVES OF THE WORK

The main purpose of this work is the detailed analysis of the crime of fraud, both in relation to current and previous legislation, as well as through the prism of similar provisions found in regulations from other countries, and the identification of legislative and legal solutions to simplify regulation and avoid the issuance of contradictory decisions by judicial bodies.

Since the title of the work refers to both theoretical and practical aspects, we have tried to examine each legal issue by referring to solutions provided by criminal prosecution bodies and courts. Also, when analyzing the fraud provided for in the criminal codes of other states, we have sought to indicate the similarities and differences with the provisions of our legislation by referring to court decisions pronounced by the courts of each country, which represents a novelty aspect, by referring to other scientific works published on the subject.

For each controversial legal issue, we sought to identify the contradictory opinions and, in turn, express our opinion regarding the fairness of each argument, allowing us to express our point of view including on the solution that should be adopted by the judicial bodies.

Since, during the research, we identified several provisions that were incomplete or had similar content to other articles in the criminal legislation, as well as cases in which, in our opinion, it would be necessary to introduce new incriminating norms, we formulated, both throughout the work and in the chapter reserved for conclusions, several proposals for lege ferenda whose content and opportunity are to be analyzed by qualified specialists, this being **the main objective** of the doctoral thesis.

This paper does not aim to find solutions to all legal problems concerning the crime of fraud, but we hope that our reasoned opinions and formulated proposals, even if they will not be adopted in judicial doctrine and practice, can at least constitute a foundation for a subsequent analysis that will lead to the uniform application of the law in this matter.

² According to address no. 297.147 of May 12, 2025 issued by the Ministry of Interior, the General Inspectorate of the Romanian Police, the Information and Public Relations Center, in 2023, 25,113 reports were filed regarding the crime of fraud, in 2024, 30,985 were filed, and in the first 3 months of the current year, 8,344 new complaints have already been registered.

Even if we do not claim to have exhausted the chosen topic, we appreciate that through the doctoral thesis we have analyzed the essential aspects that have generated controversies and debates in judicial theory and practice, and that, in relation to the opinions expressed by criminal law specialists and future solutions adopted by judicial bodies, we will return with a more extensive work, which will also contain references to new points of view.

On the other hand, the reduction of the punishment limits with regard to the crime provided for in art. 244 of the Criminal Code, the provision of the possibility of reconciliation as a way of removing criminal liability, but also the lack of a more drastic regulation in the situation where the damage concerns vulnerable victims, deprives the punishment of part of its purposes, namely coercion, prevention, re-education or isolation. We are aware of the existence of a European *trend* of reducing the punishment limits, of transferring some crimes targeting property to the civil sphere, or of providing the possibility of reconciliation for certain less serious acts, but we consider that such a vision should not be applicable to the crime of fraud. Some of the *lege ferenda* proposals that we will formulate aim to protect victims of the crime of fraud from the possibility of being left with significant damage to their assets, given that there is a risk that the offender will not even be held criminally liable, or that a symbolic sanction will be applied to him.

RESEARCH METHODOLOGY

In this paper, we combined several research methods, the predominant one being the comparative analysis of the opinions formulated in the specialized literature and the solutions pronounced by the judicial bodies regarding each legal issue that was the subject of the research.

In the first part of the doctoral thesis, I primarily used the historical method, as an analysis of the protection of heritage in the criminal legislation of our country was necessary, as well as the history of the crime of fraud.

In Chapters II and V, the grammatical method, the scientific documentation method, the logical method and the systemic method were mainly used.

To substantiate the study and drafting of the content of Chapter III, which aimed at analyzing the crime of fraud in relation to other acts provided for by the criminal law, the comparative method was mainly used, indicating the similarities and differences between the act provided for by art. 244 and other crimes, relating them to different solutions provided for by the judicial bodies.

When developing the content of Article IV, which concerns aspects of comparative law, the methods used were predominantly scientific documentation and the comparative method, as we aimed to identify the crime of fraud in the various criminal codes of other states and, subsequently, compare them with the similar provision in our legislation.

Regarding the last chapter, dedicated to the conclusions and proposals of *lege ferenda*, in addition to the indicated research methods, we also used the statistical method, using in this regard the data made available by the judicial bodies in Romania regarding the offenses provided for in articles 244 and 245 of the Penal Code.

The research sources that we consulted for the preparation of this work are laws, treaties and criminal law courses, articles published in specialized magazines or online, court decisions of the Constitutional Court, the High Court of Cassation and Justice and other national courts, indictments or ordinances issued by criminal prosecution bodies, but also court decisions and specialized works from other states.

RESEARCH STRUCTURE AND CONTENT

The doctoral thesis is structured in six chapters containing several sections, and each section is composed, in turn, of several subsections and paragraphs. The last chapter was devoted to the conclusions and proposals of *lege ferenda*, and at the end we indicated the bibliography of the work.

CHAPTER I concerns the protection of property in Romanian criminal law, as well as the history of the crime of fraud in Romanian law, aspects that will be briefly explained below:

1. Protection of patrimony in Romanian criminal law

A. General considerations regarding heritage

The term *patrimonium* comes from the Latin *patrimonium*, a derivation of the term *patrius*. The very etymology of this word leads us to civil law (or, rather, to its ancestor – Roman law), since *patrius* means *father's*, symbolizing the transmission of wealth (patrimony) from the *pater familias*. Moreover, even in newer dictionaries, in the

definition of the word patrimonium, we also find the mention of wealth originating from the father or mother ³.

B. Heritage protection in the classical era

Regardless of the historical moment and the socio-political and economic situation, there has always been a concern for the defense of heritage, with certain differences existing, however, in relation to the criteria stated above, between the protection of public and private heritage.

Beyond the existence of laws (written or unwritten) that sanctioned persons who committed acts that harmed public or private property, there are regulations – both of acts against property and of punishments – that appear in the first source of European law, the Bible ⁴. In addition to the inclusion among the commandments of the exhortation *not to steal* which, when recorded in the biblical text, referred to most of today's criminal acts against property, the Bible also contains a special chapter entitled *The Punishment for Theft and Other Sins* ⁵, which explains in great detail the punishments for each act of theft (possible at the time), including the method of resolving potential disputes that could arise from a case of force majeure.

In Roman law, the most important classification of things was into patrimonial and non-patrimonial (**res in patrimonium and res extra patrimonium**), with the mention that non-patrimonial were those which by their nature could not be appropriated or which, by their destination, were not susceptible to being the property of a single person (such as temples or city walls) ⁶.

C. Heritage protection on the territory of Romania before the Union of the Romanian Principalities

The first testimonies regarding the protection of private property in Romania come from general sources, which refer to several populations that lived on the territory of our country and the way their families were organized, the most important author who allows us to perceive some of these customs being, of course, the famous historian Herodotus ⁷.

³ Online dictionary – <http://dexonline.net>

⁴ Anticipating possible religious/anti-religious criticism or polemics, we would like to point out that the first book printed in mass (for the public) in Europe was Gutenberg's Bible.

⁵ The Bible or Holy Scripture, Publishing House of the Biblical and Orthodox Mission Institute, Bucharest, 2013, pg 91-92

⁶ Emil Molcuț, Dan Oancea, *Romanian Law*, 4th Edition, Șansa Publishing House, Bucharest, 1996, pg. 108

⁷ Laurențiu Nistorescu, *Clans and families in the Geto-Dacian world*, Annals of the West University of Timișoara no. 17/2021, West University of Timișoara Publishing House, pp. 25-36

Within the communities formed on the current territory of Romania , private property appeared early, evidence being that sons could demand what was due them from the common property, and theft of private property was considered a serious violation of the rules of coexistence of that period ⁸.

Later, after the formation of Dacia, norms also appeared that regulated patrimonial protection, the institution of property (whether we are talking about private or common property, of the community) becoming one of the important concerns of the state leadership ⁹.

After the conquest of Dacia by the Romans, many of the institutions of Roman law that also aimed at the protection of public and private property were taken over or assimilated by the local population, without them losing their old customs. In fact, for a fairly long period of time, Dacian customary law and Roman law were applied in parallel, before a new system was created ¹⁰that, in practice, only combined the two regulations. We can thus say that the Dacian-Roman symbiosis, which was also manifested in terms of the ways of defending patrimonial rights, was one of the sources of law, without distinguishing here between the two main branches – civil and criminal.

After the Romans left Dacia, the main source of law that historians speak of is the Law of the Land (or custom), taken as a norm and later recognized in the feudal period as *jus valachorum*.

D. The regulation of the protection of patrimony in the Criminal Code of 1865 and the Criminal Code of 1936

The unification of the Romanian Principalities by the act of January 24, 1859 brought with it the need to adopt legislation that would meet the demands of a newly established state, as well as the socio-political and economic problems of the time. The changes in the country's leadership structure, the more or less beneficial influence of the boyars and the continuous changes at the social, political and economic levels in the region required the drafting of modern norms.

The 1865 Penal Code ¹¹or "*Cuza's Code*" was adopted on October 30, 1864 and entered into force on May 1, 1865, being inspired by the French Penal Code (in force since 1810) and the Prussian Penal Code (in force since 1859), being a combination of the

⁸Emil Cernea, Emil Molcuț, *History of the Romanian State and Law. Terminology of Old Romanian Law* , Universul Juridic Publishing House, Bucharest, 2013, pg.10

⁹Emil Cernea, Emil Molcuț, *op.cit.* , pg. 19

¹⁰ Ion Negru, *History of Romanian Law* , Nagard Publishing House, Lugoj, 2014, pp. 15-17

¹¹The Penal Code, published in the Official Gazette on October 30, 1864

penal regulations already applied in the two Romanian countries and the most important European penal norms at that time.

Regarding crimes targeting property, these were included under Title V, entitled *Crimes and Offenses against Individuals*, Chapter II of this title being devoted to *Crimes and Offenses against Property* ¹².

Unlike the previous norm, which had a chapter dedicated to crimes against property, named as such (*Crimes and Offenses Against Property*), **the 1936 Code** introduces for the first time the notion of *patrimony* within the crimes that are the subject of this study (in Title XIV ¹³which contains the name *Crimes and Offenses Against Property*), the renowned professor Traian Pop, also specifying the essence of this notion, within the specialized comments from the time of the appearance of the new regulation: " *Patrimonial rights or goods differ from moral rights or goods in that the former are not inseparably linked to the person, are not essential manifestations of human personality like the latter, and are transmissible and susceptible to pecuniary valuation* ." ¹⁴

E. The regulation of the protection of heritage in the 1969 Criminal Code

The 1969 Criminal Code ¹⁵entered into force on January 1, 1969, more than 6 months after its publication, in order to be assimilated by both the judicial bodies and the population, which had to adapt to the new requirements of the legislator.

Following the regulations in the criminal legislation that emerged after 1945, among which we mention Decree 192/1950, the 1969 Code devoted Title III of the special part to crimes against personal or private property, and in Title IV, crimes against public or community property were regulated. The legislator's concern for the defense of public property results from the very explanatory memorandum, where it is stated that the new law " *...provides for appropriate penalties against thieves and embezzlers, against those who waste or show a lack of care for public property.* " ¹⁶ The dedication of a chapter to these crimes is naturally justified by the nationalization (mainly by Law no.

¹² Chapter I concerned crimes and misdemeanors committed against persons, this order being preserved in the current code.

¹³ Title XIV is part of Book III, which is entitled Crimes and Offenses in particular.

¹⁴Traian Pop's commentary in C.Rătescu, I.Ionescu-Dolj, I.Gr.Perițeanu, Vintila Dongoroz, H.Aznavorian, Traian Pop, Mihail I.Papadopolu, N.Pavelescu, *The Annotated Penal Code of Carol II* Vol.III, Libr.Sococ Publishing House, Bucharest, 1937, pg. 398

¹⁵Published in the Official Gazette no. 79-79 bis of 21 June 1968

¹⁶ Explanatory memorandum published in the Official Gazette no. 79-79 bis of 21 June 1968.

119 of June 11, 1948) of enterprises, banks, transport and, subsequently, the main means of production ¹⁷.

The differentiated protection of property continued after the fall of the communist regime, although Romania moved to a market economy, in which *public property* was no longer relevant since the adoption of the 1969 Criminal Code. Since the legislator did not take significant steps to adapt criminal legislation to the new political, social and economic conditions, after the entry into force of the 1991 Constitution, it was the duty of the Constitutional Court of Romania to remove these regulations that had become antagonistic. By decision no. 1 of 7 September 1993, ¹⁸it was found that the provisions relating to public property are partially repealed in relation to the provisions of art. 150 paragraph 1 of the Constitution, these being applicable only with regard to the goods provided for by art. 135 paragraph 4 of the fundamental law ¹⁹, thus appreciating that only goods that are exclusively the object of public property can be considered as part of public property.

Following the continuous transformations at the social and economic level, the legislator substantially amended the criminal law regarding crimes against property, through Law no. 140 of November 5, 1996. Thus, the notion of ²⁰*public property*, which had become obsolete, was eliminated, being replaced by the term *public*. The most important novelty regarding the field that is the subject of this work was provided for in article 100 of the law, which provided for the repeal of Title IV, called *Crimes against Public Property*, respectively of art. 223-235 of the Penal Code in force at that time, thus marking the moment when the protection of property in Romanian criminal law remained unitary, regardless of the form of ownership.

F. Regulation of the protection of patrimony in the 2014 Criminal Code

The continuous development of society, the emergence of new means of payment, economic changes and the quasi-permanent interaction between people were the elements that determined, among others, the multiplication of the number of potential crimes

¹⁷Dumitru Lucinescu in Teodor Vasiliu, Doru Pavel, George Antoniu, Dumitru Lucinescu, Vasile Papadopol, Virgil Rămureanu, *The Penal Code of the Socialist Republic of Romania commented and annotated*, Scientific Publishing House, Bucharest, Vol. I, 1975, pg. 353.

¹⁸ Decision of the CCR no. 1 of 1973 published in the Official Gazette no. 232 of 27 September 1993.

¹⁹ According to art. 135 paragraph 4 of the Romanian Constitution of 1991, *the riches of any nature of the subsoil, communication routes, airspace, waters with exploitable energy potential and those that can be used in the public interest, The beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other assets established by law, are the exclusive object of public property*.

²⁰ Law No. 140 of November 5, 1996 published in the Official Gazette No. 289 of November 14, 1996.

against property. With the drafting of the new Criminal Code, it was necessary, along with other legislative changes or novelties, to adapt the crimes provided for in Title III to contemporary realities.

Beyond preserving the name of Title II (Crimes against property), as originally provided by the 1936 Code (Title XIV) and by Law No. 140 of 1996, it is worth noting that one of the chapters within this title (Chapter III – which also contains the crime of fraud which will be analyzed in detail in this work) is called *Offences against property through breach of trust*, thus returning to the wording of the Code of Charles II, the only difference being the phrase "offences" replaced, naturally, by the term "crimes".

2. History of the crime of fraud in Romanian legislation

A. Definition of the concept

According to art. 244 of the Penal Code, fraud is defined as "*misleading a person by presenting a false fact as true or a true fact as false, in order to obtain for oneself or for another an unjust patrimonial benefit and if damage has been caused*."

Similar definitions are also found in the explanatory dictionaries of the Romanian language, taking the wording from the criminal norm²¹. And in older dictionaries²², prior to 1990, when defining the notion of fraud, the wording from the criminal regulations was also taken into account, and the first synonyms associated with this term are *fraudă* and *escrocherie*, i.e. the English and French translations of the crime of fraud (fraud, respectively *escroquerie*).

Analyzing the historical, semantic and legal connotation of the term *fraud*, we believe that it would be necessary to change the name of the crime provided for in Article 244 of the Criminal Code for *fraud*.

The first argument, the historical one, is determined by the use of the name *swindle*, for the crime that is the subject of this research, in the very first Penal Code, namely the Penal Code of 1865. Within Title IV, called *Crimes and Offences against Private Persons*, Chapter II (*Crimes and Offences against Property*), Section V was called *Fraud or Swindle*. This joining of the two words was not accidental, especially since, before the Union of the Principalities, the term *swindle* was used more often in the

²¹ In the 1996 Explanatory Dictionary of the Romanian Language (Univers Enciclopedic Publishing House), deception is defined as a deception, the same explanation being found in the online form of the Explanatory Dictionary.

²²The Romanian Encyclopedic Dictionary (Political Publishing House, 1964) reproduces the definition from the Criminal Code in force at that time, and in the Small Encyclopedic Dictionary (Scientific and Encyclopedic Publishing House, 1978) deception is also defined as misleading.

regions of Moldova, the use of both names being determined by the desire of the 19th century legislator to facilitate the understanding and application of the new regulations throughout the territory of the Principalities.

Regarding the semantic argument, the meaning of the notion of *deception* in the dictionary is that of *misleading, deception* ²³, while the term swindle is defined as *a crime that consists of deceiving a person by fraudulent means in order to obtain profits* ²⁴, which demonstrates that, from a linguistic point of view, the crime provided for in art. 244 of the Criminal Code is already called *escroquerie*. An additional literary and legal argument would be that, unlike robbery and embezzlement, where the perpetrator of these crimes is called a robber or embezzler, in the case of the crime of deception the perpetrator is called a swindler, without there being a natural and natural terminological correspondence between the perpetrator of the act and the crime.

From a legal point of view, the term fraud is not sufficiently descriptive, as it does not include the intention to defraud, the purpose of obtaining an unjust material benefit. Simple fraud (a term derived from the verb to deceive), can also designate a misrepresentation without a patrimonial character, especially since in common language and even in civil law, fraud has a broader character, being able to designate any distortion of reality, even if it is not done with an illicit purpose.

Referring to all the arguments presented here, we intend to formulate a proposal for a *lege ferenda* in the sense of changing the name of the crime provided for in Article 244 of the Criminal Code from fraud to *escroquerie*.

B. Deception in the Classical Era

As we previously stated, the study of a criminal act during the classical era cannot ignore the first European source, the Bible.

If biblical texts give us the possibility of identifying deception at a certain moment in history and, as we have shown above, the act is specified as such in the content of several passages, the same cannot be said about secular testimonies from the same period.

It is obvious that the attempt to deceive one's fellow man belongs to man from the most ancient times, even if the methods were very different from what we understand today by the notion of deception, but not much evidence has been preserved of what today would be called *modus operandi* . On the other hand, we must bear in mind that theft represented, even in those times, the typical activity through which social relations

²³ *Explanatory Dictionary of the Romanian Language* , Romanian Academy. Iorgu Iordan-Al. Rosetti Institute of Linguistics, Univers Enciclopedic Gold Publishing House, Bucharest, 2009, pg. 554

²⁴ *Ibidem* , p. 360

regarding patrimony were damaged ²⁵, the same conclusion being drawn regarding the present.

The Code of Hammurabi ²⁶ makes no mention of fraud, but it did provide for the death penalty for accusing another person without providing any evidence. Indirectly, such a provision (beyond the lack of mention of fraud in the laws) constituted a rather important protection for those who intended to deceive, since the victims who accused them risked being killed if it was found that they had failed to prove their claims.

During the ancient Greek and Roman periods, most acts of deception were related to the sale and exchange of goods. Whether the quality of the products was exaggerated or the exchanges were made at a total disadvantage to one of the traders, illicit acts certainly targeted such commercial relationships.

In the Roman period, in the primitive phase and the beginning of the classical one, acts of deception were included in the general term of theft which was considered a private crime, and the way to resolve such a conflict was most often left to the discretion of the injured person ²⁷. Later, following the intervention of the praetors, new private crimes were recognized, which in the previous era were either unknown or not punished, namely *metus, dolus, rapina and fraus creditorum* ²⁸.

C. Regulation and punishment of the crime of fraud on the territory of Romania before the Union of the Romanian Principalities

As we have shown in the analysis of heritage protection on the territory of Romania, the testimonies of historians of antiquity show that among the customs of the Geto-Dacians was that of sanctioning theft, which, being a general act, also included part of what is today defined as the crime of fraud.

Later, after the conquest of Dacia by the Romans, Dacian customs mixed with Roman legislation, the Dacian-Roman symbiosis thus also manifesting itself in terms of law.

There is no evidence regarding the sanctioning of acts of deception during the period of the village councils or the Law of the Country, but it is very likely that it

²⁵ Vasile Dobrinoiu, Norel Neagu, *Criminal law, special part*, Universul Juridic Publishing House, Bucharest, 2014, pg. 201

²⁶ Horia Radu Oprea, *op.cit.*, pg.1

²⁷ Emil Molcut, Dan Oancea, *op.cit.*, pg 317-318

²⁸ *Ibidem*, p. 327

continued to be punished as an act of theft since, as we stated above, the Roman influence on subsequent regulations was, however, overwhelming ²⁹.

D. Regulation and punishment of the crime of fraud in the Criminal Code of 1865

The unification of the Romanian Principalities brought with it the need to unify criminal legislation. As we mentioned in the similar subchapter on the protection of heritage, the Criminal Code of 1865 ³⁰(French and Prussian inspiration) achieved the combination of the criminal regulations in force in the two Romanian countries and the most important European criminal norms at that time.

The crime of fraud was found within Title IV, entitled *Crimes and Offenses against Individuals*, Chapter II (*Crimes and Offenses against Property*), Section V – entitled *Fraud or Scam*.

Articles 332 and 334 of the Code are similar to the current provisions, with some insignificant differences, except for paragraph 3 of Article 334 which condemns blackmail, calling it fraud.

Also within the framework of the crime of fraud, acts such as fraud in the measurement or quality of goods (art. 336 and 337), destruction of documents (art. 338) and also crimes regarding copyright (art. 339 – 342) were also provided. It is worth noting that, according to art. 342 para. 1 and 2 of the Criminal Code, the act of a theater director or manager who represented theatrical writings on stage without the consent of the author of the respective work was punished as fraud or swindle, the latter receiving as compensation all the amounts obtained in the respective performance.

E. Regulation and punishment of the crime of fraud in the 1936 Criminal Code

The coming to power of King Carol II generated several transformations at the social, economic and political levels. The approach of war, the dictatorial style of the King, the discrepancies between the inhabitants of *Little Paris* and the other Romanians, but also the need for a unification of criminal legislation after the Great Union of 1918, determined the adoption of a new Penal Code.

²⁹ Igor Botezatu, *Legal-historical analysis of the regulations regarding the crime of fraud* in the National Law Review no. 1/2010, pg. 80

³⁰The Penal Code published in the Official Gazette on October 30, 1864

In the new regulation, fraud was provided for under Title XIV (*Crimes and Offences against Property*) in Chapter III (*Offences against Property through Breach of Trust*), Section VII, Article 549.

Article 550 provided for higher penalties for the qualified perpetrator of the act, Article 551 described fraud in conventions, Article 552 regulated fraud regarding emigrants, Article 553 regulated the crime of issuing a check without cover (in conditions where the issuer knew that he did not have the necessary provision or withdrew it fraudulently), and Article 554 provided for fraud regarding insurance.

F. Regulation and punishment of the crime of fraud in the 1969 Penal Code

Maintaining the amendments brought by Decree no. 192/1950 regarding the delimitation of crimes committed against public property from those targeting private property, the legislator dedicated Title III to crimes against personal or private property. Regarding the crime of fraud, the new regulation achieved a compression of the articles of the 1936 Criminal Code, providing for a single crime, within article 215.

The failure to indicate all the ways of committing the crime of fraud provided for in the previous legislation did not imply, in any case, the decriminalization of these acts, but only a systematization of the regulation, they being still sanctioned under Article 215 of the new regulation, especially under paragraph 2, which refers to fraudulent means³¹.

The emergence of cases with a great social impact (such as the Caritas or Gerald cases) led the legislator to drastically modify the penalties for the crime of fraud. Thus, through GEO no. 140/1996, in addition to increasing the penalties for the already regulated acts of fraud, paragraph 5 was introduced (within article 215), which provided for penalties from 10 to 20 years for the crime of fraud with particularly serious consequences. In addition, due to the ineffectiveness of the sanctions of Law no. 59 of 1934 on checks, another method, referred to in the specialized literature as fraud by issuing checks without coverage³², was regulated in paragraph 4 of article 215 of the Criminal Code.

Even the change in the quantum of penalties for the crime of fraud did not deter criminals, the most eloquent example being the case of FNI (National Investment Fund), a company that operated between 1996 and 2000. According to the final conviction

³¹ Vintilă Dongoroz, Gheorghe Dărăngă, Siegfried Kahane, Dumitru Lucinescu, Aurel Nemeș, Mihai Popovici, Petre Sârbulescu, Vasile Stoican, *The New Penal Code and the Previous Penal Code. Comparative Presentation*, Politica Publishing House, Bucharest, 1968, pg. 141.

³²Vasile Dobrinou, Norel Neagu, *op.cit.*, pg. 331

decision ³³, the defendants developed a plan to mislead depositors, based on aggressive advertising, guaranteeing them very high interest rates and constantly mentioning that the deposits were guaranteed. In addition, the phrase *National Fund* and the use of the logo SC CEC Valori Immobiliare were likely to increase the unjustified trust of depositors in this pyramid scheme ³⁴. Although the entire affair turned out to be a scam and the defendants were sentenced to prison for fraud with particularly serious consequences (the maximum penalties being 10 years), the damage that the depositors suffered could not be recovered.

The examples presented demonstrate, from our point of view, the fairness of increasing the punishment limits for the crime of fraud.

In **Chapter II**, we analyzed the crime of fraud provided for in Art. 244 of the current Criminal Code:

1. Preliminary aspects

According to art. 244 of the Criminal Code:

" Misleading a person by presenting a false fact as true or a true fact as false, in order to obtain for oneself or for another an unjust patrimonial benefit and if damage has been caused, is punishable by imprisonment from 6 months to 3 years."

Deception by the use of false names or qualifications or other fraudulent means is punishable by imprisonment for one to five years. If the fraudulent means constitutes a crime in itself, the rules on concurrent crimes apply.

"Reconciliation removes criminal liability"

³³ Decision no. 2098 of June 4, 2009, pronounced in file no. 24632/3/2006 of the Supreme Court of Justice, unpublished

³⁴ In the reasoning of the decision of the Supreme Administrative Court, the following were noted, among others: *With regard to the advertising materials distributed and addressed to investors, a flagrant violation of the provisions of Title III, Chapter 3 of Regulation no. 9/1996 was found. Starting with June 1998, SC Sov Invest SA no longer requested the CNVM's approval, so that from December 1999, the approval would be made, according to the law, by the National Union of Investment Institutions (UNOPC), whose president was even the defendant VIM, until May 2000. The defendant, in the advertising materials, unrealistically mentioned that investors are guaranteed the return of the invested amounts in any situation, disseminating through the media information regarding the conclusion of an insurance policy between SC Omnisig SA and FNI, which would insure the amounts deposited by investors, although, in reality, the insurance policy ended its validity on 01.12.1998, so that after this date, investors' deposits no longer had any guarantee. Also to increase investor confidence, starting with August 1999, the SC CEC Valori Mobiliare logo was used in advertising materials, given that this company began distributing for SC Sov Invest SA in March 2000. Although this company was independent of SC CEC SA, its name misled investors, creating the appearance that the FNI distributor was actually CEC, a state-owned company that enjoyed the trust of the population.*

2. The structure of the criminalization

According to art. 244 of the Criminal Code in conjunction with art. 256, index 1 of the Criminal Code, the crime of fraud contains a standard variant and two aggravated variants.

The standard variant, provided for in paragraph 1, consists of "*misleading a person by presenting a false fact as true or a true fact as false, in order to obtain for oneself or for another an unjust patrimonial benefit and if damage has been caused.*"

The aggravated variant, provided for in paragraph 2, consists in committing the crime of fraud by using false names or qualities or other fraudulent means. The legislator specified in this paragraph that, in the situation where the fraudulent means constitutes a crime in itself, a contest of crimes will be retained, without the deception absorbing, in its content, the act provided for by the criminal law that was committed to facilitate the misleading of the injured person. In this situation we are in the presence of an etiological connection, provided for in art. 38 paragraph 1 sentence II of the Criminal Code.

The last aggravated variant common to both modalities provided for in paragraphs 1 and 2 of Article 244 is the provision of Article 256, index 1 of the Penal Code, which concerns particularly serious consequences, namely material damage exceeding 2,000,000 lei (as follows from the explanatory provisions of Article 183 of the Penal Code). It should be noted that Article 256, index 1 of the Penal Code is applicable to most crimes against property provided for in Title II.

3. Pre-existing conditions

A. Object of the crime

a) The generic legal object of the crime of fraud, common to all crimes provided for under Title II of the Criminal Code, is the social relations whose existence, development and conduct depend on the defense of property.

b) The special legal object of the crime provided for by art. 244 of the Criminal Code is represented by social patrimonial relations that can only be carried out under conditions in which the persons involved manifest good faith. On the other hand, there must be full mutual trust between the subjects of patrimonial relations, any of the persons who act by misleading one or more participants in the described social-economic relations, may determine (independently of the criminal liability for the act provided for by art. 244 of the Criminal Code) a doubt regarding the carrying out, in the future, of similar activities.

c) The material object of the crime of fraud is movable or immovable property or documents with patrimonial value, including rights, obligations or actions of a patrimonial nature, which were obtained through the activity of misleading the victim.

In the situation where the material object of the crime concerns a document with a material value (such as a bank bond, shares or a lottery ticket) that concerns a real right or claim, it can be stated that the indirect material object of the crime of fraud is represented by the asset over which that right is held ³⁵.

B. Subjects of the crime

a) The active subject of the crime of fraud can be any natural or legal person, if they meet the general conditions of criminal liability - capacity, responsibility and freedom of will (in the case of a natural person), respectively legal personality and criminal legal capacity (in the case of a legal person) ³⁶.

b) The passive subject of the crime of fraud is the natural or legal person whose property was damaged by the commission of the act provided for by criminal law.

In the specialized literature, it has been noted that the passive subject can even be a person who unlawfully owned the property, if he is the victim of the perpetrator's deception and adopts a conduct through which his unjust patrimonial benefit is affected ³⁷.

C. The time and place of the commission of the crime have no legal relevance, but there are situations in which they can be taken into account as criteria for individualizing the punishment.

4. Constitutive content

A. The objective side

a) The material element of the crime of fraud consists of an act of misleading, of deception, by presenting as true a false fact, or as false a true fact, which determines the victim to dispose of part of his patrimony for the benefit of the perpetrator of the act. It is irrelevant (with regard to the existence of the material element) whether the perpetrator used only one of the indicated methods of misleading, or both ³⁸.

³⁵ Constantin Duvac, *Fraud in the new Criminal Code*, in Law no. 1/2012, pg. 107

³⁶ Mihai Adrian Hotca, *Criminal Law Manual, general part*, Universul Juridic Publishing House, Bucharest, 2022, pg. 185-192

³⁷ Mihail Udrioiu, *Syntheses of Criminal Law, special part*, Volume II, CHBeck Publishing House, Bucharest, 2022, pg. 557

³⁸ Dumitru Lucinescu in Teodor Vasiliu, Doru Pavel, George Antoniu, Dumitru Lucinescu, Vasile Papadopol, Virgil Rămureanu, *op.cit.*, pg. 319

The aggravated variant provided for by art. 244 paragraph 2 of the Penal Code concerns the commission of the crime of fraud by using (by the perpetrator) false names or qualities or other fraudulent means.

The use of false names obviously implies that the offender presents himself under another identity – he may use the name of another person or an invented name. In the first situation, the aggravated variant will be considered, if the perpetrator, knowing that X has a debt to Y, goes to X's wife (who he has information about not knowing Y) and presents himself as Y, in order to collect the amount of money owed.

The use of false qualifications implies that the perpetrator uses functions or titles, which he does not actually have, in order to facilitate the misleading of the injured person. According to the legal dictionary ³⁹, false qualifications represent qualities that do not correspond to the truth that the subject of criminal law claims to fulfill (himself or another person) in order to mislead or maintain another person in error.

The aggravated variant common to several crimes against property (theft, larceny, breach of trust by defrauding creditors, fraudulent management, deception, insurance fraud and exploitation of a person's property) is provided for by art. 256 index 1 of the Criminal Code and aims at producing particularly serious consequences. By reference to art. 183 of the Criminal Code, particularly serious consequences represent material damage greater than 2,000,000 lei.

With the advent of the new Criminal Code, in addition to removing the alternative variants of the crime of fraud (which were analyzed above), the legislator also gave up the aggravated variant provided for by art. 215 paragraph 5 of the old regulation. This solution has been criticized in the specialized literature ⁴⁰– rightly, we believe – right from the moment Law no. 286/2009 entered into force, in relation to the impossibility of making a differentiation (through the penalty limits) between a crime with a very small damage (for example - 1000 lei) and one that caused significant damage (millions of lei) to the victim's assets.

Through GEO no. 18/2016, ⁴¹Chapter VI of Title II of the Penal Code was introduced (which contains a single article, namely art. 256 index 1), which sanctions, similar to the previous article 215 paragraph 5 of the Penal Code, the crime of fraud with particularly serious consequences.

The difference from the old regulation is determined by the current meaning of the notion of particularly serious consequences, as defined by art. 183 of the Penal Code,

³⁹Definition available at <https://legeaz.net/dictionar-juridic>

⁴⁰Constantin Duvac, *op. cit.*, pg. 105

⁴¹ Emergency Ordinance no. 18 of 18 May 2016, published in the Official Gazette no. 389 of 23 May 2016

which is limited to damage of over 2,000,000 lei, without taking into account a particularly serious disruption of the injured person's activity ⁴².

The reasons why the legislator gave up part of the content of art. 146 of the 1969 Penal Code are easy to explain: on the one hand, the separate references to public authorities and legal entities of public interest were no longer justified ⁴³, and on the other hand, as long as the aggravated variant provided for in article 256 index 1 refers only to crimes against property, it seems natural that the protection granted by this criminal norm should only target social relations that correspond to the common generic object of Title II of the current regulation.

Beyond the arguments invoked above, we consider that it would be necessary to sanction in the aggravated version provided for by art. 244 in conjunction with art. 256 index 1 of the Penal Code, certain acts that have generated serious consequences regarding the life or development of a natural person.

Regarding the aggravated version proposed by the law *ferenda*, we should also consider the similar provisions in German, Spanish and Portuguese legislation regarding the crime of fraud, which confirm the possibility of applying an increased penalty in the situation where, as a result of the crime against property, the injured person remains in a difficult economic situation:

Thus, according to art. 263 para. 3 point 3 of the German Criminal Code, ⁴⁴the commission of the crime of fraud constitutes a particularly serious cause when the perpetrator causes another person to face financial difficulties.

In accordance with the provisions of art. 218 paragraph 2 letter d of the Portuguese Penal Code, ⁴⁵the crime of fraud is qualified if the injured person remains in a difficult economic situation.

Art. 250 paragraph 1 point 4 of the Spanish Penal Code ⁴⁶stipulates that fraud is particularly serious (being sanctioned with increased penalties) taking into account the

⁴² According to art. 146 of the 1969 Penal Code, particularly serious consequences were defined as damage exceeding 200,000 lei or a particularly serious disruption of activity, caused to a public authority or any of the units referred to in art. 145, or to another natural or legal person.

⁴³ As we have shown in Chapter I of this paper, the CCR has considered, in several decisions, that the different protection of public heritage compared to private heritage is not justified.

⁴⁴ German Criminal Code, adopted on 15 May 1871, entered into force on 1 January 1872, current version promulgated on 13 November 1998, published in the Federal Gazette No. I p. 3322, version of 2025 available at <https://www.gesetze-im-internet.de>

⁴⁵Portuguese Penal Code, approved by Decree-Law No. 400 of 23 September 1982, republished by Law No. 59 of 4 September 2007, version of April 2025 available at <https://diariodarepublica.pt>

⁴⁶Spanish Penal Code, adopted by Law No. 10 of 1995, published in the Official Journal on 23 November 1995, version of 2025 available at <https://www.conceptosjuridicos.com>

value of the fraud, the nature of the damage and the economic situation in which the victim or his/her family remains as a result of the fraud.

If this proposal *de lege ferenda* were to be accepted, it is obvious that the role of ascertaining, on a case-by-case basis, the difficult situation in which the victim of the crime has found himself would fall to the judicial bodies, there being sufficient elements for them to take into account in order to comply with the fundamental principles of criminal law. The criteria that should form the basis of the judicial body's assessment of the difficult economic situation of the injured person, as a result of the commission of the crime of fraud, would be the following:

- verification of the victim's financial situation before the crime was committed;
- analyzing the economic impact of the crime on the injured person's assets, by comparing them to their initial financial status;
- verification of the possibility of the injured person to support himself after the damage was caused by the commission of the crime provided for in Article 244 of the Criminal Code.

In addition, in order to assess the economic situation of the victim, as a result of the commission of a fraud crime against him, the following criteria, retained in Spanish legislation and judicial practice, could also be taken into account ⁴⁷: if the injured person is a pensioner and has no other income apart from the pension, if the fraud targeted all of the victim's savings or if, as a result of the commission of the act provided for by criminal law, the injured person's commercial activity was permanently disrupted.

In relation to the criteria set out above, it is obvious that this aggravated variant can only be an incident in the situation where, as a result of committing a fraud, the injured person reaches close to the subsistence limit, the simple decrease in the patrimony not being sufficient to hold the existence of a difficult situation from an economic point of view. Only in the situation where the damage would be greater than 2,000,000 lei, would the provisions of art. 256 index 1 of the Penal Code apply, of course.

In light of these considerations, we consider that it would be necessary to supplement art. 244 of the Penal Code with the following paragraph:

If the acts provided for in paragraphs 1 and 2 have brought the injured person into a difficult economic situation, the penalty limits are increased by half .

⁴⁷ Below p. 190

b) **The immediate consequence** consists of causing material damage to the person who was misled.

c) **Causality.** For the crime of fraud to exist, there must be a causal relationship between the misleading action and the damage caused.

B. The subjective side

In our opinion, the crime of fraud can only be committed with direct intent, this being qualified by the purpose of obtaining an unjust patrimonial benefit.

Essential requirements. As we have stated above, in the case of the crime of fraud, the intention is qualified by purpose, which also represents the essential requirement for achieving the subjective side, namely to obtain for oneself or for another an unjust material benefit.

C. Forms, modalities and sanctions

a) Forms of the crime of fraud

The offense provided for in art. 244 of the Criminal Code is susceptible to all imperfect forms. The preparatory acts, the attempt, but also the stage of consummation and the stage of exhaustion are identifiable and possible.

Preparatory acts in the case of the crime of fraud are possible, but are not criminalized. In the event that the preparatory acts consist of acts of prior complicity that contributed to the activity of misleading the victim, they will be sanctioned as such ⁴⁸.

The attempt to commit the crime provided for in art. 244 of the Penal Code is possible and, according to art. 248 of the Penal Code (in relation to art. 244), is punishable.

Consummation

Unlike crimes of danger, where the consummation takes place instantly (respectively at the moment of the emergence of the state of danger - with regard to crimes of concrete danger ⁴⁹, or at the moment of the commission of the criminal action or inaction provided for by law - in the case of crimes of abstract danger), the crime of fraud is part of the category of crimes of result, it being obvious that the moment of its

⁴⁸Vintilă Dongoroz in Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, Victor Roșca, *op.cit.* , pg. 532; Ion Rusu, Ioana Rusu, Bogdan Bîrzu, *op.cit.* , pg. 238

⁴⁹ Mihai Adrian Hotca, *op. cit.* .. pg. 320

consummation is equivalent to that of the production of the result, respectively of the production of damage to the victim's property.

Exhaustion

In the case where the fraud is committed in a continuous form, it is considered exhausted only at the time of the last action, respectively the last act of the criminal activity⁵⁰. For example, in the case of the crime of fraud committed through a convention with successive benefits concluded between the perpetrator and the injured person, even if it is consumed from the first benefit of the victim⁵¹, the crime will be exhausted at the time of the full execution of the contract by the latter.

b) Modalities of the crime of fraud

Variants of the crime of fraud provided for by the Criminal Code

As we have stated above (when analyzing the objective side of deception), the offense provided for by art. 244 of the Criminal Code contains a simple variant (provided for in paragraph 1), an aggravated variant (provided for in paragraph 2) and a common aggravated variant, provided for in art. 256 index 1 of the Criminal Code, in relation to the provisions of art. 244 of the Criminal Code.

c) Sanctions

According to the new Criminal Code, fraud can be punished with imprisonment from 6 months to 7 years and 6 months:

In the simple version provided for by art. 244 paragraph 1 of the Penal Code, the penalty is imprisonment from 6 months to 3 years.

In the version provided for by art. 244 paragraph 2 and art. 29 paragraph 4 of Law no. 236/2018, the penalty is imprisonment from one to 5 years.

In relation to the provisions of art. 256 index 1 of the Penal Code, if the acts provided for in art. 244 of the Penal Code have produced particularly serious consequences, the punishment limits will be increased by half:

- in the case of art. 244 paragraph 1 the punishment will be from 9 months to 4 years and 6 months;

⁵⁰Vintilă Dongoroz in Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, Victor Roșca, *op.cit.* , pg. 532

⁵¹ Alexandru Boroi, *op.cit.* , pg. 99

- in the case of art. 244 paragraph 2 the punishment will be from 1 year and 6 months to 7 years and 6 months

According to art. 244 paragraph 3 of the Criminal Code, **reconciliation** removes criminal liability, the cited norm corroborating with the provisions of art. 159 of the Criminal Code, which provides that reconciliation may intervene for crimes for which the criminal action was initiated ex officio.

The possibility of removing criminal liability for the crime of fraud, through reconciliation, represents a new aspect established by the 2014 regulation, the legislator thus wishing to protect the interests of injured persons who suffered damage as a result of the commission of the crime provided for in art. 244 of the Penal Code.

In accordance with the provisions of art. 159 paragraph 3 of the Penal Code, reconciliation can only occur until the court's notification is read, and it only produces effects with regard to the persons between whom it intervened.

Regarding the possibility of eliminating criminal liability through reconciliation, we consider that this is not appropriate with regard to the crime of fraud. Even if we understand the reasons that underpinned the adoption of such a legislative solution, namely protecting the property of the injured parties, by determining the perpetrator to return the damage in order to reconcile with the victim and extinguish the criminal action initiated against him, we consider that there are solid opposing arguments:

- First of all, referring to the specifics of the crime of fraud, which involves manipulating and misleading the victim, we consider that there is a fairly high probability that the offender will determine the injured person to accept a reconciliation without returning any amount of money. Practically, the fraudster only has to resort to his skills and experience to mislead or keep the victim in error and reconcile, and the solution to terminate the criminal process is final, irreversible, the danger that the perpetrator of the act will escape unpunished without returning the damage being quite high;
- It is natural that criminal investigation bodies do not attach particular importance to conducting investigations into fraud crimes, given that they know that, although they allocate time and energy to administering the evidence necessary to prove the guilt of the persons under investigation, there is a possibility that at any time the perpetrator may reconcile with the injured person and, thus, the work done during the criminal investigation may no longer have any results.

Under these circumstances, we consider that in order to truly protect the interests of victims of fraud crimes, the removal of criminal liability through reconciliation should be possible only under the conditions in which the person investigated would fully reimburse the injured person for the damage caused by the act provided for by the criminal law, with the fulfillment of this obligation being verified, on a case-by-case basis, by the judicial bodies. In this regard, we already have the example of art. 10 of Law 241/2005 for the prevention and combating of tax evasion, which provides that in the situation in which the damage caused is less than or equal to 50,000 EURO, its payment removes criminal liability and implies the application of an administrative sanction, the proof of the payment to the ANAF account being sufficient for the criminal prosecution body or the court to apply art. 10 of the special law.

Regarding the deadline by which the damage can be fully covered in order to remove criminal liability, we consider that this should be the same as that provided for in art. 10 of Law no. 241/2005, namely the first trial term.

Considering the arguments presented, we formulate the following proposal de lege ferenda, regarding art. 244 paragraph 3 of the Penal Code:

Reconciliation removes criminal liability provided that the damage is fully covered.

5. Aspects of civil action in criminal proceedings regarding fraud

Fraud is an act provided for by criminal law whose existence depends on the occurrence of damage, as follows from the definition provided for in art. 244 of the Criminal Code, the occurrence of damage being a sine qua non condition for meeting objective typicality.

of the crime that is the subject of our analysis. As such, the criminal side of the trial conducted regarding this crime is closely linked to the resolution of the civil side.

It is natural that in the case of conviction of the defendant for the offense provided for in art. 244 of the Criminal Code, the court should also order him to pay the damage due to the civil party, in the event that it has not been recovered before the judge's decision. However, there are situations in which, although, from the point of view of criminal law, the civil party would be entitled to payment of the damage, the provisions of special non-criminal laws that establish another way in which the injured party can be compensated have priority over the criminal procedural provisions.

Chapter III was devoted to the analysis of the crime of fraud in relation to other acts provided for by criminal law:

1. Fraud and the crime of trading in influence⁵²

The importance of the distinction between the two crimes lies not only in relation to the different punishment limits or for determining the competence of the judicial bodies in the criminal process, but especially for establishing the procedural capacity of the person interacting with the perpetrator of the crime: if, in the crime of fraud, the person who is misled has the capacity of civil party/injured person in the criminal process, the person who is *the victim* of influence peddling will, in turn, be held criminally liable for committing the crime provided for in art. 292 of the Criminal Code.

2. Fraud and breach of trust

Being crimes that fall under the category of those against patrimony through disregard of trust, it is natural that abuse of trust and deception have a similar legal object. In addition, the condition of a pre-existing relationship between the perpetrator and the victim is a common element of the two acts provided for by criminal law.

The essential difference between the two crimes is the way in which the property comes into the possession of the perpetrator: through fraudulent, deceitful maneuvers – in the case of the crime of deception, or voluntarily – in the case of the crime of breach of trust. In our opinion, the fact that the property is held with a title (in the crime of breach of trust) is not necessarily a criterion for differentiating between the two acts provided for by the criminal law.

3. Fraud and breach of trust by defrauding creditors

If, as regards the standard variant of the crime of breach of trust by defrauding creditors, there is a visible difference from the crime that constitutes the subject of this paper, the assimilated variant of the act provided for by Art. 239 of the Criminal Code represents, in our opinion, a genuine crime of deception, having similar constitutive elements.

The fact that the crime provided for in Article 239 paragraph 2 of the Criminal Code requires the perpetrator to purchase goods or services from his victim does not

⁵²This subchapter was published, in full, in the Journal of the International Conference Challenges of the Knowledge Society 2024 (pp. 123-131)

constitute a differentiation from the objective side of the crime provided for in Article 244 of the Criminal Code, the legislator thus describing a special variant of deception.

Given that the act provided for in paragraph 2 of Article 239 of the Criminal Code has obvious similarities with the crime of fraud, our opinion is that there was no legal or socio-economic justification for the legislator to consider that the action of the person who purchases goods knowing that he cannot pay for them represents an abuse of office by defrauding creditors. We will show, below, the reasons why, from both a theoretical and practical point of view, the analyzed legislative solution is at least open to criticism:

As we have stated above, when analyzing the relationship between the offenses provided for in art. 244 of the Criminal Code and art. 238 of the Criminal Code, breach of trust presupposes the existence of a legal patrimonial relationship between the perpetrator and the victim, based on which the possession of an asset is transferred ⁵³which, subsequently, the perpetrator wrongfully appropriates or refuses to return. In the case of the offense of fraud, the asset comes into the possession of the perpetrator by misleading the injured person, which means that the commission of the offense begins from the moment of the transfer of the respective asset.

In relation to this essential differentiation between the two acts provided for by the criminal law, it is obvious that the purchase of goods by a person who, at the very moment of taking possession of them, knows that he will not be able to pay for them, constitutes fraud and not a breach of trust, there being no solid reason for the crime thus described to bear the marginal name of the text provided for in art. 239 of the Penal Code.

In addition, we consider that, in relation to the way in which it is described, the act provided for in art. 239 paragraph 2 of the Penal Code constitutes a complex variant of the crime of fraud, the perpetrator creates an appearance of legality at the time of purchasing the products or services, promising to pay their value, which determines the conclusion of an increased seriousness of the crime, compared to the simple presentation of a false fact as true.

In conclusion, in relation to all the arguments presented, we consider that the regulation of the act of purchasing products and services by a person who knows that he will not be able to pay for them, thus causing damage to the creditor, should be provided for by art. 244 of the Penal Code, which is why we propose, *de lege ferenda*, the repeal of

⁵³ Vasile Dobrinouiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiş, Mirela Gorunescu, Costică Păun, Maxim Dobrinouiu, Norel Neagu, Mircea Constantin Sinescu, *op.cit.* , pg. 275

art. 239 paragraph 2 of the Penal Code and the completion of art. 244 of the Penal Code with the following paragraph:

The act of a person who, knowing that he will not be able to pay, purchases goods or services causing damage to the creditor, is punishable by imprisonment from 6 months to 3 years.

4. Fraud and forgery crimes⁵⁴

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 can only constitute preparatory acts that are not sanctioned in the case of the act provided for in art. 244 of the Penal Code.

5. Deception and the crime of computer fraud

Although computer fraud is also part of the category of crimes against property, its specificity involves the interaction between the perpetrator and an information system, the social value protected by the criminal norm being (along with property) good faith and the trust of individuals in the processing and storage of data within an information system⁵⁵. We can state, in relation to the two social values protected by this regulation, that the crime provided for in art. 249 of the Penal Code has a complex legal object.

6. Fraud and the crime of theft

Although both crimes are part of Title II of the Criminal Code, having a common generic legal object, the delimitation of fraud from theft also results from its inclusion in Chapter III – Crimes against property, while Chapter I is dedicated only to the act of theft. The essential difference between the two acts provided for by the criminal law consists in the way in which the property ends up in the criminal's estate:

- in the case of the act provided for in art. 244 of the Penal Code, the proceeds of the crime are taken from the property of the injured person through an action of

⁵⁴This subchapter was published in the Journal of the International Conference Challenges of the Knowledge Society 2025

⁵⁵ Vasile Dobrinouiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiş, Mirela Gorunescu, Costică Păun, Maxim Dobrinouiu, Norel Neagu, Mircea Constantin Sinescu, *op.cit.* , pg. 324

deception, with the mention that, although there is an agreement, it is tainted by the author of the deception, who acts on the psyche of his victim - causing her to act in his interest (to obtain an unjust patrimonial benefit);

- In the crime of theft, the property leaves the victim's possession without their consent, there being no misleading activity, but only an unlawful dispossession carried out by the perpetrator of the act provided for by criminal law, who appropriates it through the simple act of *taking* without right.

7. Fraud, illegal obtaining of funds provided for by art. 306 of the Penal Code and the offense provided for by art. 18 index 1 of Law no. 78/2000

We analyzed together the two crimes cited above because they have almost identical content, except for the secondary passive subject (the state authority that grants the funds – in the case of the crime provided for by art. 306 of the Penal Code, respectively the European Commission ⁵⁶– in the case of the crime provided for by Law 78/2000).

Our opinion is that both the offence provided for in art. 306 of the Penal Code and that provided for in art. 18, index 1 of Law no. 78/2000 represent special forms of the offence of fraud since the only reason why they are not included in art. 244 of the Penal Code is that the misleading is directed at a state authority, within specific procedures for granting public funds or from the general budget of the European Communities. The use or presentation of false, inaccurate or incomplete documents or data resulting in the unjust obtaining of funds from a legal person under private law will be sanctioned as fraud committed by fraudulent means.

8. Fraud and the offence provided for in art. 84 of Act no. 59 of 1934 (Cheque Act)

There is an undeniable link between the crime provided for in art. 84 of the Cheque Law and fraud, enshrined by the legislator by regulating in art. 215 paragraph 4 of the 1969 Penal Code an aggravated variant of the crime of fraud, which consists of issuing a check to a credit institution or a person, knowing that there is no provision or coverage necessary for its use, as well as the act of withdrawing the provision after remittance or prohibiting the drawee from paying before the expiry of the presentation period.

⁵⁶ Daniel Grădinaru, Illegal Obtaining of European Union Funds, Jurisprudential Trends, December 22, 2016, article available at <https://www.juridice.ro>

Although the crime provided for by the special law on checks is not part of the subject of this paper, we allow ourselves to express a point of view regarding the futility of sanctioning the act provided for by art. 84 of Law no. 59/1934. The simple issuance of a check without having the authorization of the drawee, the necessary available funds or which lacks one of the essential elements does not represent, in our opinion, a sufficiently serious act to be part of the sphere of criminal illicitness. The possible subsequent use of such a check, with the intention of producing legal consequences, indisputably constitutes a crime (either fraud, in the situation where the purpose is to obtain an unjust material benefit, or another act provided for by criminal law – for example, a forgery, if the check used has a false date, but the constitutive elements of the crime provided for by art. 244 of the Penal Code are not met).

9. Fraud and the crime of human trafficking

The similarity between the two acts provided for by the criminal law concerns, in principle, the commission of human trafficking by misleading or deceiving the victim. If in other analyzed situations we have shown the reasons why certain crimes can be part of the complex content of deception committed by using fraudulent means, the crime provided for by art. 244 can be found in the constitutive content of human trafficking, whenever the trafficker uses methods specific to deception to achieve his criminal purpose, namely the exploitation of the vulnerable person.

10. Fraud and bribery crime

In analyzing this crime in relation to the act that is the subject of our study, we will not go into details regarding the legal object, the active subject, the objective side or the immediate consequence, as it is obvious that there is no similarity between the two acts provided for by criminal law.

Any difficulties in establishing the legal classification by judicial bodies have arisen (or may arise) only in the situation where the offender unrealistically denies his capacity as a public official who can resolve a person's request, requesting money or other benefits regarding an act that is not part of his official duties.

11. Fraud and abuse in service

From the analysis of the structure of the incrimination, the pre-existing conditions and the constitutive content of the crime provided for by art. 297 of the Penal Code, important differences result compared to the crime of fraud: the legal object of the service crime consists of social relations that cannot be carried out without ensuring the smooth

running of the activity of public institutions and civil servants, while, in the case of fraud, the special legal object concerns social relations of a patrimonial nature, the active subject of the abuse of office is qualified (civil servant) while, in the crime provided for by art. 244 of the Penal Code, the active subject can be any person.

12. Deception and blackmail

There are major differences between the two analyzed crimes, being provided for in different chapters of the Criminal Code, the special legal object of the crime of blackmail being mainly social relations relating to the person's psychological freedom, unlike deception - where patrimonial relations are those protected by the incrimination norm.

Possible similarities with the crime provided for by art. 244 of the Criminal Code may only arise in the case provided for by the aggravated version of art. 207 of the Criminal Code, namely the commission of the acts in order to unjustly obtain a patrimonial benefit for oneself or for another, since in this situation the crime of blackmail may also result in the creation of damage to the victim along with the illicit enrichment of the perpetrator. Even in this case, in our opinion, an important difference should be noted between the two acts provided for by the criminal law since the aggravated version provided for in paragraph 3 of art. 207 of the Criminal Code does not condition the existence of the crime on obtaining a patrimonial benefit, but only on the commission of blackmail for this purpose.

13. Deception and the crime of exploitation of a vulnerable person

The offences provided for in art. 244 and 247 of the Criminal Code are among the offences provided for in the criminal law that have in common the disregard of the trust of the victims who come into contact with their perpetrators. In this context, it is obvious that the generic legal object is common, but the specific legal object of the offence provided for in art. 247 of the Criminal Code is limited to the legal relations aimed at the proper execution of money loans ⁵⁷or (in the case of the aggravated variant) social relations aimed at the trust regarding the legal transmission of real rights and claims.

14. Fraud and the crime of usurpation of official capacity

The crime described above differs substantially from fraud, being provided for within the framework of crimes concerning the state authority and border. The special legal object of this act provided for by the criminal law is the social relations based on

⁵⁷ Constantin Duvac, *Exploitation of a person's assets in the new Criminal Code*, in Law no. 3 of 2012, pg. 30

public trust in public authorities and in the acts performed by public officials, which can be achieved through the exercise of official capacities only by the entitled persons.

Since the acts provided for by the criminal law subject to comparison harm different social values, in the event that a person falsely denies his/her status as a public official involving the exercise of state authority, both crimes will be held concurrently.

14. Deception and misleading of judicial bodies

We agree with the opinion that, in relation to the constitutive content of the act provided for by art. 268 of the Criminal Code, the name of the crime is somewhat forced⁵⁸. First of all, in relation to the crime provided for by art. 244 of the Criminal Code, the borrowing of the expression "*misleading*" is not justified, as it may create certain confusions given that there are fundamental differences between deception and the crime provided for by art. 268 of the Criminal Code.

From the analysis of the constitutive content of the crime of misleading the judicial bodies and the pre-existing conditions, no similarities are observed in relation to the crime of fraud, except for the fact that both acts provided for by the criminal law involve the alteration of the truth. Even in this context, we consider that the judicial bodies have sufficient elements to differentiate between the two crimes, and the possibility of retaining them in competition is only hypothetical.

15. Fraud and the crime of embezzlement

Although the commission of the act provided for in art. 295 of the Penal Code involves the production of damage, this was provided by the legislator within the framework of crimes concerning service, which constitutes an important element of differentiation from fraud, the natural consequence being the circumstance that, in the case of embezzlement, the active subject is a qualified one, namely a public official. Another important difference between the two acts under analysis is that, in the case of embezzlement, the active subject must also be an administrator or manager, the quality of manager or administrator and that of public official having to be fulfilled cumulatively⁵⁹, and the goods that are the object of appropriation, use or trafficking must be under his management or administration.

⁵⁸ Constantin Duvac, *op. cit.*, pg. 85

⁵⁹ Victoria Cristiean, *Criminal Law. Special Part II*, Universul Juridic Publishing House, Bucharest, 2017, pg. 185

16. Fraud and money laundering crime

Since there are clear differences between the two crimes, the question is not to make a comparison, but only to verify the manner in which, in the context of the material element of the act provided for by art. 49 of Law 129/2019 regarding an asset that comes from the commission of the crime of fraud, the judicial bodies can retain both crimes, in competition.

17. Tax fraud and evasion

Tax evasion offenses are provided for in a special law ⁶⁰, with particularities that clearly differentiate them from the offense that is the subject of this paper. The only situation in which, in our opinion, the issue of a parallel analysis of the two acts provided for by the criminal law would arise is that provided for in art. 9 para. 1 letter c of Law no. 241/2005, namely the recording in the accounting of expenses that have no real basis, or of other fictitious operations.

18. Fraud and the crimes provided for by Law No. 31/1990⁶¹

We do not intend to analyze all the offenses provided for by the Law on Commercial Companies, but only those that may be related to the offense that is the subject of this study. In this regard, we have identified two situations in which certain similarities can be observed, namely art. 271 paragraph 1 letters a and b and art. 272 index 1 paragraph 1 letter a of Law 31/1990 ⁶².

The main similarity between the two crimes and the one provided for by art. 244 of the Penal Code consists in the alteration of the truth, the purpose being generically the same, namely obtaining a material benefit for the criminal, the immediate consequence being the creation of damage to a person's property.

⁶⁰ Law no. 241 of 15 July 2015 on the prevention and combating of tax evasion, published in the Official Gazette no. 672 of 27 July 2005

⁶¹ Law no. 31 of 1990 on commercial companies, republished in the Official Gazette no. 1066 of 17 November 2004

⁶² According to art. 271 paragraph 1 letters a and b of Law no. 31/1990, *the founder, administrator, general manager, director, member of the supervisory board or of the board of directors or the legal representative of the company who acquires, on behalf of the company, shares of other companies, at a price that he knows is clearly higher than their effective value, or sells, on behalf of the company, shares that it holds, at prices that he knows are clearly lower than their effective value, in order to obtain, for himself or for other persons, a benefit to the detriment of the company or uses, in bad faith, assets or the credit enjoyed by the company, for a purpose contrary to its interests or for his own benefit or to favor another company in which he has direct or indirect interests, shall be punished with imprisonment from 6 months to 3 years or with a fine*. Art. 272 index 1 paragraph 1 regulates *the act of the administrator who spreads false news or uses other fraudulent means that have the effect of increasing or decreasing the value of the company's shares or bonds or other securities belonging to him, in order to obtain, for himself or for other persons, a benefit to the detriment of the company*.

In **CHAPTER IV**, comparative law aspects were analyzed, in this summary we limit ourselves to presenting only some of them:

Republic of Moldova

Fraud is provided for by Article 190 of the Penal Code, within Chapter VI entitled Crimes against Property ⁶³.

According to art. 190 of the Penal Code, fraud is “ *the illicit acquisition of another person’s property through abuse of trust, deception or deception .*” The act is more serious if it is committed by two or more people together, by using their position of office, by an organized criminal group, or if the property acquired through fraud is part of cultural heritage or archaeological sites.

The similarities between the regulation of the analyzed crime in the Republic of Moldova and in Romania are natural, as long as there have been common laws for a long time ⁶⁴, the current Criminal Code of Basarabia ⁶⁵being inspired by the legislation of European states to which we also referred.

The definition of the crime of fraud is similar to that provided for in art. 244 of the Romanian Criminal Code, the aggravated variants provided for in the Bessarabian Criminal Code being, for the most part, aggravating circumstances common to all crimes provided for in art. 77 of the Romanian Criminal Code. In this regard, it has been argued in the doctrine of the Republic of Moldova that article 190 of the Criminal Code is inspired by the criminal legislation of Romania ⁶⁶.

France

Fraud (called swindle) is provided for by art. 313 -1 of the French Penal Code in Book Three (Offences against property), Title I (On fraudulent appropriations), Chapter II

⁶³ The Criminal Code of the Republic of Moldova adopted on April 18, 2002 and published in the Official Gazette on September 13, 2002, entering into force on June 12, 2003. The Criminal Code was republished in the Official Gazette on April 14, 2009, the current form entering into force on May 24, 2009, the version of May 2025 being available at <https://www.legis.md>

⁶⁴ Common laws existed not only during the period 1918-1939, when Bessarabia was part of Greater Romania, but also during the existence of the Principality of Moldavia, a period in which several laws circulated both on the territory of the Moldavian region of present-day Romania and on the territory of Bessarabia, and were applied in both territories, regardless of whether they came from the Tsarist Empire or the Austro-Hungarian Empire.

⁶⁵ The current Criminal Code of the Republic of Moldova was adopted in 2002 and republished in the Official Gazette on April 14, 2009, as shown above.

⁶⁶ Xenofon Ulianovschi, *Scam in the new wording of art. 190 paragraph 1 of the Criminal Code* , in the National Law Review no. 4-6 of 2018, Chişinău, pg. 4

(On swindle and related offences), Section I⁶⁷ and consists of " *the use of a false name or a false capacity, either by the abuse of a real capacity, or by the use of fraudulent maneuvers, by which a natural or legal person is deceived and by which he is determined, to his detriment or that of a third party, to hand over funds, values or any good, to provide a service or to consent to an act producing an obligation or a discharge of obligation.* "

The aggravated variants (provided for by art. 313-2 of the French Penal Code) consist of the commission of the crime by a public official, by a person who attributes his/her status as a public official, by appealing to the public for humanitarian or social assistance, taking advantage of the victim's state of vulnerability, or against a public figure or a social protection body.

Unlike our legislation, in France the use of fraudulent means is not considered an aggravated variant of the crime of fraud, as these are part of the constitutive content of the basic variant of the crime, as we have shown above. In this regard, the French Supreme Court retained the simple form of fraud regarding a person who used forged documents to obtain amounts not owed from state institutions⁶⁸. Thus, the defendant GX requested and received unemployment benefits based on forged certificates from the workplace, from which it emerged that he had been employed by a commercial company and, subsequently, dismissed for economic reasons, given that, in reality, he had been dismissed for serious disciplinary offenses.

Italy

Given that Romanian criminal law was inspired by the Italian model, it is not surprising that there are similarities regarding the regulation of fraud. Thus, the Italian Code provides for fraud in art. 640 within Title XIII entitled *On crimes against property* in Part II entitled *On crimes against property through breach of trust*⁶⁹. According to the cited text, the crime of fraud is committed by someone who, through fraudulent or artifice-led manipulations, obtains for himself or for another an undeserved benefit.

In Italian doctrine, it has been shown that, in order to be in the presence of the crime of deception, the existence of misleading, the creation of damage and the causal link between them is sufficient, it being not necessary to establish the abstract adequacy

⁶⁷ The French Criminal Code was adopted by Law No. 92-683 of July 22, 1992, published in the Official Journal No. 169 of July 23, 1992, the version valid in April 2025 being available at <https://www.legifrance.gouv.fr>

⁶⁸ Decision of the Court of Cassation of France, Criminal Section No. 91-83.558 of 15 June 1992, published in Bulletin des arrêts de la Cour de Cassation, Chambre Criminelle No. 234/1992, p. 644

⁶⁹ Italian Penal Code adopted by Royal Decree No. 1398 of 19 October 1930, in force since 1 July 1931, version of March 2025 in Francesco Caringella, *Codice penale, Leggi complementare e Codice di procedura penale*, Editura Dike Giuridica, Rome, 2025

of the means used, and the victim's suspicion or doubt is not likely to remove the guilt of the author of the act provided for by criminal law ⁷⁰.

Aggravated variants consist of committing the act against the state or a public institution or under the pretext of exempting someone from military service, if the act is committed by instilling in the person the fear of an imaginary danger or the mistaken belief that he must execute an order of the authority, or if the act is committed remotely through computer tools.

Another aggravated variant, provided for by art. 643 of the Italian Criminal Code, consists in committing the crime of fraud against incapable persons, namely by abusing the needs, passions or lack of experience of a minor person or by abusing the state of infirmity or mental deficiency of a person, by forcing him to conclude an act that involves any harmful effect for him or for others. We note that, unlike the Romanian norm, which sanctions as an aggravating circumstance common to all crimes the commission of the act taking advantage of the victim's state of obvious vulnerability ⁷¹, the Italian legislator considered it necessary to specifically sanction the commission of the crime of fraud against incapable persons.

Germany

According to Art. 263 of the German Criminal Code, “ *a person who, with the intention of obtaining an undue advantage for himself or a third party, damages the property of another person by misleading or keeping him in error by presenting a false fact as true or by presenting a true fact as false* ” is punished for fraud. The crime under our analysis is provided for in Section XXII of the German Criminal Code, which concerns fraud and breach of trust ⁷².

The aggravated variants provided for in the same article apply when the perpetrator:

- *acts as a profession or as a member of a criminal group specialized in committing acts of intellectual forgery or deception,*
- *causes a large-scale patrimonial loss or acts with the intention of putting a large number of people in danger of losing their patrimony by committing the act of fraud in a continuous manner,*

⁷⁰ Luigi Alibrandi *Codice Penale comentato con la giurisprudenza*, La Tribuna Publishing House, Piacenza, 2022, pg. 2053

⁷¹ Art. 77 paragraph 1 of the Criminal Code provides that the commission of the crime taking advantage of the obvious state of vulnerability of the injured person, due to age, health, infirmity or other causes, constitutes an aggravating circumstance.

⁷² German Criminal Code, adopted on 15 May 1871, entered into force on 1 January 1872, current version promulgated on 13 November 1998, published in the Federal Gazette No. I p. 3322, version of 2025 available at <https://www.gesetze-im-internet.de>

- puts another person in financial difficulty,
- abuses his responsibilities or position as a public official or European official or
- simulates an insured event after the perpetrator or another person has set fire to a property of considerable value for this purpose or the property has been destroyed in whole or in part by arson or a vessel has been sunk or wrecked.

Section XXII of the German Criminal Code also provides for special variants of the crime of fraud, namely fraud in the field of capital investments (Art. 264 a. German Criminal Code), fraud in the field of insurance (Art. 265 German Criminal Code), obtaining a loan through fraud (Art. 265 b. German Criminal Code) and fraud in the field of sports betting (Art. 265c. German Criminal Code).

Spain

In Spanish criminal law, the crime of fraud (called swindle) is provided for in Title XIII, entitled *Crimes against property and against the socio-economic order*⁷³, in Chapter VI, entitled *Fraud*, with Article 248 punishing the act of persons who, with the aim of obtaining benefits, use deception in a manner sufficient to mislead a person, causing him to carry out an action to his or her detriment or that of another. As noted in the specialized literature in Spain⁷⁴, the definition of fraud in Spanish legislation was made relatively recently, with the advent of Law 8/1983 on the urgent and partial reform of the Criminal Code⁷⁵. The explanatory memorandum of the cited norm indicated the need to regulate a fundamental definition of such a crime, in order to avoid the problems of interpretation and application of the law that the judicial bodies have encountered. According to Spanish doctrine, the current definition includes the essential elements of deception: mystification, error, the purpose of obtaining a material benefit and damage, with a cause-effect relationship between the act and the harm to the victim's interests being necessary, so that deception is the reason or cause of the damage⁷⁶.

The assimilated variants of deception, provided for in art. 249 of the Spanish Penal Code, concern computer fraud, the use of debit, credit or travel cards or the data on them to carry out operations of any type to the detriment of the holder or a third party.

⁷³Spanish Penal Code, adopted by Law No. 10 of 1995, published in the Official Journal on 23 November 1995, version of 2025 available at <https://www.conceptosjuridicos.com>

⁷⁴ Antonio Pablo Rives Seva, Prosecutor of the Supreme Court of Spain, *The Crime of Fraud in the Jurisprudence of the Supreme Court*, article published on June 23, 2013, available at <https://seguridadpublica.es>

⁷⁵ Law No. 8 of 25 June 1983 on the urgent and partial reform of the Penal Code, in force since 16 July 1983, available at <https://vlex.es>

⁷⁶Francisco Munoz Conde, *Derecho Penal – Parte Especial*, Tirant lo blanc Publishing House, Valencia, 2021, pg. 415

In **CHAPTER V**, the crime provided for by art. 245 of the Criminal Code, namely Insurance Fraud, was analyzed:

1. Preliminary aspects

Even if insurance fraud was not found in the 1969 regulation, the provision of the acts provided for by art. 245 of the Criminal Code does not represent a new aspect in Romanian legislation, this crime being also provided for by art. 554 of the 1936 Criminal Code.

2. The structure of the criminalization

According to art. 245 of the Criminal Code in conjunction with art. 256, index 1 of the Criminal Code, the crime of insurance fraud contains a standard variant, a mitigated variant and an aggravated variant.

The standard variant, provided for in paragraph 1, consists of destroying, degrading, rendering unusable, concealing or alienating an asset insured against destruction, degradation, wear and tear, loss or theft, in order to obtain, for oneself or for another, the insured amount.

The mitigated variant, provided for in paragraph 2 of the analyzed article, consists of simulating, causing or aggravating bodily injuries or harm caused by an insured risk, by a person acting on his own body, in order to obtain the insured amount.

The last common aggravated variant, for both modalities provided for in paragraphs 1 and 2 of Article 245, is represented by the provision of Article 256, index 1 of the Penal Code, which concerns particularly serious consequences, namely material damage exceeding 2,000,000 lei (as follows from the explanatory provisions of Article 183 of the Penal Code).

In addition to the variants provided for by the Criminal Code, the Romanian legislator also provided a related provision, within the framework of Article 29 paragraph 4 of Law No. 236 of 2018 ⁷⁷.

Even if, according to the current regulation, the crime provided for in art. 29 paragraph 4 of Law no. 236/2018 is a related variant of the fraud provided for in art. 244 of the Penal Code, we consider that this act represents, in fact, an insurance crime, which is why it should be included in the provisions of art. 245 of the Penal Code.

There is no reason why a crime of fraud committed in connection with the activity of insurance companies should be provided for in a special law, as long as there is an act

⁷⁷ Law no. 236 of 5 October 2018 on insurance distribution, published in the Official Gazette no. 853 of 8 October 2018

called *Insurance Fraud in the Criminal Code itself* . It is true that, unlike the acts described in art. 245 of the Criminal Code, which target the actions of the insured person, the crime provided for by Law no. 236/2018 has in mind another active subject, namely natural or legal persons who unfairly use the names specific to the categories of intermediaries, but both crimes aim at misleading, the ultimate goal being to harm customers or insurance companies.

In addition, the cited text is cumbersome, its passage being arduous and unjustified by the complexity of the crime that is the subject of the incrimination. From the content of art. 29 paragraph 4 of Law no. 236/2018 it follows that the legislator wanted to sanction the performance of activities specific to insurers by unauthorized persons who, thus, mislead the beneficiaries of these services who consider (wrongly) that they have concluded contracts with authorized insurance companies.

In this sense, our proposal for lege ferenda is to introduce a new paragraph, within article 245 of the Penal Code, which would contain the incrimination provided for in art. 29 paragraph 4 of Law no. 236 of 2018 in a simpler form and, obviously, the repeal of the corresponding provision in the special law.

3. Pre-existing conditions

A. Object of the crime

a) The generic legal object of the crime of insurance fraud, common to all crimes provided for in Title II of the Criminal Code, is social relations whose existence, development and conduct depend on the protection of property. We consider it to be a pithy opinion that the generic legal object of the crime provided for in Art. 245 of the Criminal Code is property relations ⁷⁸, as long as the phrase cited does not include the component of the protection of property, essential for the delimitation of the act provided for by the criminal law from other illicit acts that exceed the scope of criminal law.

b) The special legal object of the crime provided for by art. 245 of the Penal Code is the social patrimonial relations in the insurance field, which can only be carried out under the conditions in which the persons involved manifest good faith. Similar to the clarification made on the occasion of analyzing the special legal object of the crime of fraud ⁷⁹, there must be full mutual trust between the subjects of the patrimonial relations in the insurance field, any of the persons who act by misleading one or more participants

⁷⁸ Nasty Marian Vlădoiu, *Romanian Criminal Law, Special Part* , University Course, Universul Juridic Publishing House, Bucharest, 2014, pg. 172

⁷⁹ Supra, p. 47

in the described social-economic relations, may determine (independently of the criminal liability for the act provided for by art. 245 of the Penal Code) a doubt regarding the carrying out, in the future, of similar activities.

c) The material object of the crime of insurance fraud provided for in art. 245 paragraph 1 of the Criminal Code is the movable or immovable property that is the subject of a valid insurance contract and which is subsequently destroyed, degraded, rendered unusable, hidden or alienated for the purpose provided for by the legislator.

B. Subjects of the crime

a) The active subject of the crime of insurance fraud in the standard version can be any natural or legal person, as the text provides that the act can also be committed by a person who is not the beneficiary of an insurance contract, but in the interest of the insured person.

b) The main passive subject of the crime of insurance fraud is the state. We do not agree with the majority opinion of the doctrine that the passive subject is the insurance company, even more so with the statement that *the passive subject is the insurer who suffered the damage*⁸⁰.

c) The time and place of the crime are not legally relevant, but there are situations in which they can be taken into account as criteria for individualizing the punishment.

4. The structure and legal content of the crime

A. The premise situation

The situation assumed in the case of both variants of the crime provided for in art. 245 of the Penal Code assumes the existence of an insurance contract for goods (paragraph 1) or for persons (paragraph 2).

B. The objective side

a) The material element of the standard variant of the crime of insurance fraud consists of the destruction, degradation, rendering unusable, concealment or alienation of an insured asset.

⁸⁰ Nasty Marian Vlădoiu, *op. cit.* . 2014, pg. 172; As we have stated several times in this chapter, the receipt of the insurance premium is not a necessary condition for the crime provided for in art. 245 of the Criminal Code. If the perpetrator, during or immediately after the occurrence of the insured risk, is caught by the Police and, from the evidence administered, it results that he destroyed or damaged an asset in order to obtain the insurance premium, he will be held liable for the crime of insurance fraud, even if he did not even request any amount of money from the insurer.

As for the mitigated variant, the material element consists of simulating, causing or aggravating bodily injuries or harm caused by an insured risk.

The aggravated variant common to several crimes against property is provided for by art. 256 index 1 of the criminal code and aims at causing particularly serious consequences, namely material damage exceeding 2,000,000 lei.

b) The immediate consequence consists of creating a state of danger regarding the insured's assets by causing the insured risk.

We do not agree with the opinions expressed in the specialized literature according to which the immediate consequence consists in creating a prejudice to the insurance company ⁸¹or creating the situation that caused a damage ⁸². As we have stated several times in this chapter, the offense provided for in art. 245 of the Penal Code is committed independently of obtaining the insurance premium from the company with which the respective contract was concluded, not being a crime of prejudice.

c) Causality. For the existence of the crime of insurance fraud, in both variants, it is not necessary to prove the existence of a causal relationship, as this results from the act.

C. The subjective side

The crime of insurance fraud, in both ways provided for by law, can only be committed with **direct intent**, this being qualified by the purpose of obtaining an unjust patrimonial benefit, namely the insured amount.

Essential requirements. As we stated above, in the case of the crime of insurance fraud, the intention is qualified by the purpose of obtaining the insured amount, which also represents the essential requirement for achieving the subjective side, namely to obtain an unjust material benefit.

D. Forms, modalities and sanctions

a) Forms of the crime of insurance fraud

Offense is susceptible of all imperfect forms.

Preparatory acts in the case of the crime of insurance fraud are possible, but are not criminalized.

The attempt to commit the crime provided for in art. 245 of the Penal Code is possible and, according to art. 248 of the Penal Code, is punishable.

Exhaustion. In the event that insurance fraud is committed in a continuous manner, it is considered exhausted only at the time of the last criminal act.

⁸¹ Nasty Marian Vlădoiu *op.cit.* , pg. 173

⁸² Marcel Ioan Rusu, *op.cit.* , pg. 343

b) Penalties

In its basic form, insurance fraud is punishable as the crime provided for in Article 244, paragraph 2 of the Penal Code, namely with imprisonment from 1 year to 5 years, while the mitigated version is punishable with imprisonment from 6 months to 3 years, alternatively with a fine.

CHAPTER VI of the doctoral thesis was dedicated to the conclusions and proposals of lege ferenda, of which we briefly present the following:

1. Conclusions

This study demonstrates, in our opinion, the need to give due importance to the crime of fraud, both by the judicial bodies and by the perpetrators of criminal law in Romania, given the increasing number of cases concerning the act provided for in art. 244 of the Criminal Code, but also the pronouncement of contradictory solutions by the judicial bodies in our country regarding the legal issues analyzed in this work. Recent statistics made available by the Ministry of Interior ⁸³reveal that in 2023, 25,113 reports were registered at the level of criminal prosecution bodies regarding the crime of fraud, in 2024 the number of reports increased to 30,985, and in the first 3 months of 2025, 8,344 new reports were already registered.

The statistics submitted by the Prosecutor's Office attached to the High Court of Cassation and Justice ⁸⁴show that, out of the 86,231 fraud cases pending before the Romanian criminal prosecution authorities in 2024, 18,149 cases were resolved, of which 15,029 were dismissed, 2,460 were dismissed, 601 were referred to court and 59 were referred to the court with plea agreements. The simple mathematical interpretation of these statistics leads to the conclusion that, at the beginning of this year, there were over 70,000 cases pending at the prosecutor's offices in Romania regarding the crime provided for in art. 244 of the Penal Code.

The large number of fraud cases that are in the criminal investigation phase can be explained both by the lack of sufficient personnel in prosecutors' offices and judicial police units, but also by the lack of (natural) aplomb of criminal investigation bodies in resolving cases expeditiously in which it is up to the parties to terminate the criminal action (as a result of reconciliation).

⁸³ Address No. 297.147 of May 12, 2025 issued by the Ministry of Interior, General Inspectorate of the Romanian Police, Information and Public Relations Center

⁸⁴ Statistics on the crime of fraud, made available by the Prosecutor's Office attached to the High Court of Cassation and Justice, by address no. 7353/E/2025 of April 24, 2025

In addition, the signal given by the legislator by drastically reducing the punishment limits, but also by introducing provisions regarding the possibility of reconciliation, was received by the courts as a desire to bring the crime of fraud closer to the sphere of civil wrongdoing more than criminal, the solutions pronounced after the appearance of the new Criminal Code being, rather, favorable to criminals, both with regard to the amount of the punishments applied and the method of execution.

Beyond the very large number of fraud cases that are in the criminal prosecution phase, it is obvious that, as a result of the development of technology and electronic means of communication, the methods by which perpetrators mislead victims have diversified and improved. Without being accused of encouraging or giving ideas to criminals, we cannot help but anticipate an explosion of the crimes provided for in art. 244 of the Penal Code as a result of the use of artificial intelligence (AI), given that it is increasingly difficult to differentiate between real images and recordings and those that are made with the help of AI.

A recent statistic from the main company investigating fraud committed through electronic means of communication (Feedzai) shows that over 50% of frauds in the last year were carried out with the help of artificial intelligence ⁸⁵.

We believe that the judicial bodies should pay more attention and importance to cases involving the crime of fraud. The delayed resolution of criminal prosecution cases involving the crime provided for in art. 244 of the Criminal Code, the multitude of solutions for the dismissal and termination of criminal proceedings, as well as the non-application of custodial sentences to defendants who have committed fraud with particularly serious consequences against a significant number of injured persons, are favorable signals for those who have made a living from committing scams. It remains for the legislator to find the optimal option for regulating the crime of fraud and the limits of punishment in order to reduce the criminal phenomenon which, at least with regard to the crime that is the subject of our analysis, is worrying, both with regard to the increase in the number of cases and with regard to the commission of frauds that have an impact on a community or a very large number of injured persons.

2. Proposed laws

Since, during the course of this work, there have been several legislative proposals, we will divide this chapter into two parts:

⁸⁵ " *More than 50% of fraud involves the use of artificial intelligence* ", article published on May 6, 2025, available at <https://www.finextra.com>

- developed proposals for lege ferenda formulated and developed within the doctoral thesis, which we will only indicate, making references to the sections where the motivation of our proposal is found;
- proposals of lege ferenda that were not specified in the previous chapters, which we will argue in this section;

A. Lege ferenda proposals developed in previous chapters

a) As we stated above, from the analysis of the historical, semantic and legal connotations of the term *fraud*, we consider that it would be necessary to change the name of the crime provided for in art. 244 of the Criminal Code from fraud to *escroquerie*.

b) Supplementing art. 244 of the Penal Code with the following aggravated version:

If the acts provided for in paragraphs 1 and 2 have placed the injured person in a difficult economic situation, the penalty limits are increased by half .

c) Amendment of art. 244 paragraph 3 of the Criminal Code for the real protection of victims of the crime of fraud by making reconciliation conditional on the restitution of the damage:

Reconciliation removes criminal liability provided that the damage is fully covered.

d) Amendment and completion of art. 245 of the Criminal Code in order to introduce the essential requirement of requesting the insurance premium by the perpetrator and to include in the crime of insurance fraud the provision provided for in art. 29 paragraph 4 of Law no. 236/2018 on insurance distribution:

The destruction, degradation, rendering unusable, concealment or alienation of an asset insured against destruction, degradation, wear and tear, loss or theft, in order to obtain, for oneself or for another, the insured amount, followed by the request for the insurance premium, is punishable by imprisonment from one to 5 years.

The act of a person who, for the purpose provided for in paragraph (1), simulates, causes or aggravates bodily injuries caused by an insured risk and, subsequently, requests the insured amount, is punishable by imprisonment from 6 months to 3 years or a fine.

Carrying out activities specific to insurance companies by persons not authorized by the Financial Supervisory Authority is punishable by imprisonment from 6 months to 3 years.

Reconciliation removes criminal liability for the acts provided for in paragraphs 1 and 2.

*

In the event that Article 245 of the Penal Code will not be amended in the indicated sense, we consider that it is necessary to repeal paragraph 3 of the cited article (in the proposed de lege ferenda, paragraph 4), as long as, in its current form, insurance fraud is a dangerous crime, reconciliation between the perpetrator and the insurance company cannot have the effect of removing criminal liability, as long as the insurer does not have the status of injured party in the case.

e) Repeal of art. 239 paragraph 2 of the Criminal Code and supplementing art. 244 of the Criminal Code with a new paragraph with the following content:

The act of a person who, knowing that he will not be able to pay, purchases goods or services causing damage to the creditor is punishable by imprisonment from 6 months to 3 years.

B. New proposals for law ferenda

a) Supplementing art. 244 of the Penal Code with the aggravated version of committing the crime of fraud against a vulnerable person.

The Romanian legislator has given particular importance to crimes committed against vulnerable persons. The regulation of the aggravated circumstance provided for in art. 74 para. 1 letter e of the Penal Code ⁸⁶and the appearance of Law no. 217 of 2020,

⁸⁶ According to art. 74 letter e of the Criminal Code, it is an aggravating circumstance to commit the crime by taking advantage of the obvious vulnerability of the injured person, due to age, health, disability or other causes.

⁸⁷which supplemented the provisions of the Criminal Code and Criminal Procedure Code with regulations on the protection of vulnerable persons, prove the legislator's concern regarding their rights.

Currently, the commission of the crime of fraud by taking advantage of the victim's state of vulnerability is punishable by imprisonment from 8 months to 4 years for the standard variant and by imprisonment from 1 year and 4 months to 6 years and 8 months, for the aggravated variant, by applying (to both variants) art. 74 para. 1 letter e of the Penal Code.

Our opinion is that, in the case of the crime of fraud, the penalty limits regarding the act targeting a vulnerable person should be doubled, not increased by a third, as provided for in the current regulation.

The seriousness of the act of misleading a person whose capacity is affected by age, illness or other causes that influence their judgment is obvious, given that deceiving such a person is much easier to achieve compared to a victim whose discernment is unimpaired. In addition, the consequences of committing the crime with respect to a vulnerable victim are also reflected on their psyche (who, realizing that they have been deceived due to their reduced thinking capacity, could suffer more than an ordinary person), but also on the possibility of notifying the criminal prosecution authorities (lower, in the case of vulnerable persons ⁸⁸).

Referring to the arguments expressed and to the examples from the cited European legislations, we propose de lege ferenda to supplement art. 244 of the Penal Code with a new paragraph with the following content:

If the acts provided for in paragraphs 1 and 2 were committed by taking advantage of the injured person's obvious vulnerability, caused by health, disability, age or other causes, the punishment limits are doubled .

⁸⁷ Law no. 217 of 29 October 2020 amending and supplementing Law no. 286/2009 on the Criminal Code, as well as amending art. 223 paragraph 2 of Law no. 135/2010 on the Criminal Procedure Code, published in the Official Gazette no. 1012 of 30 October 2020

⁸⁸ In 2019, I participated, as an expert of the National Union of Bars of Romania, in the drafting of an interdisciplinary manual for the assistance of vulnerable groups, on which occasion I found, together with the other editors of the material, that there is a reluctance of vulnerable persons to notify the criminal prosecution bodies or the courts regarding the illicit acts committed against them. The interdisciplinary manual, which also includes a guide developed to support citizens and the justice system, is available on the website of the Legal Resources Center - <https://www.crj.ro>

b) Regulation of the crime of misleading advertising

According to art. 3 letter b of Law no. 158 of 18 July 2008 ⁸⁹, misleading advertising is advertising that, in any way, including through the manner of presentation, misleads or may mislead the persons to whom it is addressed or who come into contact with it and which, due to its misleading nature, may affect their economic behavior or which harms or may harm a competitor.

The act of misleading advertising constitutes a misdemeanor and is punishable by a fine of 3,000 lei to 30,000 lei, in accordance with the provisions of art. 10 paragraph 1 of the same law.

The cited definition has many similarities with the objective side described by art. 244 of the Penal Code:

- misleading;
- deceptive character;
- the economic impact on the victim;
- the existence of harm or potential harm (equivalent to attempted fraud).

The only reason why, we assume, the act described by the special law does not constitute a crime is the lack of social danger that the legislator had in mind at that time. The arguments why such a consideration can no longer be accepted today are the following:

- at the time of the entry into force of Law no. 158/2008, the old Criminal Code was in force, which defined the crime as an act that poses a social danger ⁹⁰, art. 18 indice1 C.pen.1969 providing that the act does not constitute a crime which, by its content and the minimal impact on the protected social value, does not present the degree of social danger. Currently, social danger is no longer provided as a necessary condition for the regulation of a crime and the criminal liability of the perpetrator;
- The continuous development of technology and forms of advertising requires increased attention from society to the harm caused to those who are misled by the means of communication used to promote products by traders.

Regarding the last argument, it should be borne in mind that, lately, aggressive advertising has become the rule, the multitude of products and goods of the same kind

⁸⁹Law no. 158 of 18 July 2008 on misleading advertising, published in the Official Gazette no. 454 of 24 July 2013

⁹⁰ The definition of the crime was provided by art. 17 of the 1969 Penal Code.

existing in the markets leading retailers to resort to any means to convince customers of the superior qualities of their offers ⁹¹.

Facebook accounts, TikTok pages, mailboxes (including electronic ones), TV or radio shows are "bombarded" with advertising materials like *The only product that...*, *The best option...*, *The best value for money*, *Don't miss the opportunity*, manufacturers' promises regarding the quality and content of the products are also exaggerated.

In this context, the victims of misleading advertising are increasingly numerous, the possibilities for information and verification, although apparently omnipresent (access to information being an undisputed gain of current technology), being rather illusory, as the quantity of information is not directly proportional to its quality.

Our proposal for a *lege ferenda* does not consist in regulating a new offense in the Criminal Code, but only in transforming the contravention provided for in art. 4 of Law no. 158/2008 into a crime. It can be criticized because it could be argued that, with the regulation of the offense of misleading advertising, following the multitude of notifications of the criminal prosecution bodies, their activity would be hindered. We note that the main purpose of this rule is prevention, namely the deterrence of those who use manipulative techniques and unrealistic information in the field of advertising and the protection of bona fide persons who can at any time become victims of these fraudulent practices.

Another argument against this regulation would be that, in the event that misleading advertising causes damage, the injured person could file a complaint with the criminal prosecution authorities regarding the commission of the offense provided for in art. 244 of the Criminal Code. In reality, misleading advertising affects the entire community, the legislator considering that, in order to sanction such a practice, it is not necessary to prove the existence of damage, but only the possibility of its occurrence. In addition, the existence of a provision that administratively sanctions such an act deprives the criminal prosecution authority of the possibility of analyzing it as a crime.

We would like to point out that the crime of misleading advertising is also provided for, in different forms, in the legislation of some European Union countries:

⁹¹ An article published on January 17, 2025 by Roxana Istudor on the website of the Union of Professional Journalists of Romania shows that 54% of young people between the ages of 18 and 35 in the US have experienced dreams influenced by advertising, the article called *Shocking Study: Aggressive Advertising Has Reached People's Dreams* is available at <https://uzpr.ro>

According to Art. 255 of the **Croatian Penal Code**, the crime of misleading advertising is committed by any person who provides inaccurate or incomplete information in an offer of goods or services addressed to a wider circle of persons, if this information is essential for concluding a contract and may mislead a reasonable consumer.

In the legislation of the Netherlands, the act of the seller who deceives a buyer by using fraudulent maneuvers regarding the nature, condition, quality or quantity of the products is also **punished**, according to art. 329 paragraph 2 of the Dutch Penal Code.

In relation to all the considerations set out in this sub-point of our paper, we propose, de lege ferenda, the amendment and completion of art. 10 of Law no. 158/2008 on misleading advertising and comparative advertising.⁹²like this:

- (1) Failure by traders to comply with the provisions of art. 4 constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine.**
- (2) Failure to comply with the provisions of art. 6 constitutes a contravention and is punishable by a fine from 3,000 lei to 30,000 lei.
- (3) The determination and application of the sanctions provided for in paragraph 2 are made by representatives of the Ministry of Public Finance or, as the case may be, of the National Authority for Consumer Protection.

⁹² In its current form, the cited article provides for the sanctioning of misleading advertising (art. 4) and comparative advertising (art. 6) with a fine from 3,000 lei to 30,000 lei.

Abbreviations

paragraph	- paragraph
Aft.	- after (quote)
art.	- the article
C. Ap.	- Court of Appeal
Civil Code.	- Civil Code
C. pen.	- Criminal Code (Law no. 286/2009)
C. pr.pen.	- Criminal Procedure Code
SCJ	- Supreme court
CCR	- Constitutional Court of Romania
Dec.	- decision
pen.	- criminal decision
The law.	- "Justice" magazine
And so on	- <i>etc.</i>
GD	- Government Decision
<i>Ibid</i>	- in the same place
The CCJ	- High Court of Cassation and Justice
infra	- below, further
County	- Courthouse
LIT	- letter
M. Of.	- Official Gazette of Romania
n.n.	- our note
no.	- number
GO	- Government Ordinance
GEO	- Government Emergency Ordinance
op. cit.	- cited work
page	- page
over	- above
sn	- our emphasis
saddle.	- and others
Tribe.	- Court
volume	- volume

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