

Counterfeiting of the EU Digital Covid Certificate. Offenses and Penalties for Forgery and Use of False Documents

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ABSTRACT: This article focuses on counterfeiting offenses committed by some persons who commit such offenses to conceal the fact that they are not vaccinated or take advantage of those who are not vaccinated and want to procure such documents in exchange for money. In the case of forgery, the social value that criminal law protects is public trust in things that have the legal authority to prove.

KEY WORDS: European COVID certificates, criminal concurrence, forgery, use of forgery, public health

Introduction

At European Union level, vaccines used in vaccination campaigns against COVID-19 are those approved by the European Medicines Agency. In Romania, the authorized vaccines are as follows: Comirnaty – Pfizer, Spikevax – Moderna, Vaxzevria – AstraZeneca, Janssen – Johnson&Johnson. All vaccinated persons receive a certificate of vaccination. This certificate contains the following information: name and surname of the vaccinated person, date of birth, age, county of residence, Identity Card number and series, vaccine data: dose 1 (vaccine type, product, series/batch, expiry date), dose 2 (type vaccine, product, series/batch, expiry date), data on the vaccination center

(name of vaccination center, county, coordinating/vaccinating doctor), electronic signature of the National Electronic Vaccination Register.

Evidence of vaccination is provided to the vaccinated person either electronically or on paper to enable him to keep track of the two visits to the vaccination center (initial dose and booster) and to provide him with essential information about the characteristics of the vaccine administered (Government of Romania 2021).

Vaccination is free, voluntary/optional, and the certificate is not issued for the purpose of subsequently conditioning or restricting the rights of vaccinated persons. Human rights and fundamental freedoms are one of the key pillars of democratic societies. Fundamental rights and freedoms are the common legal heritage of mankind, because they refer to values universally recognized in international relations (Corlăţean 2015, 1; Corlăţean 2018, 69-83). Vaccination is not mandatory for minors either (also see Corlăţean 2021, 13-19).

When the rate of infection with the SARS-CoV-2 virus rose to 6 per thousand inhabitants, certain restrictions were imposed, by Government Decision, such as, for example, the obligation to wear a mask in open spaces, in offices, the establishment of the night quarantine, between 22.00 - 05.00. Shops, restaurants, cafes or cinemas were open until 9 pm, while bars and clubs were closed and the green COVID certificate became necessary for most activities or for entering public institutions.

Exceptions were those who had been vaccinated against the SARS-CoV-2 virus and for whom 10 days had elapsed since the completion of the complete vaccination schedule, respectively those who were in the period between the 15th and the 180th day subsequent to confirmation of SARS-CoV-2 virus infection (see GD no. 1130 of October 22, 2021, published in the Official Gazette of Romania no. 1013 of October 22, 2021). In order to avoid these restrictions, some people have decided to procure false European COVID certificates or attestation, or to use other people's certificates, in other words to violate all legal principles (see in detail Ciochină and Vedinaş 2012), ethics, morals, etc. These facts are incriminated in the Romanian Criminal Code. Depending on the mode of operation, these persons were charged with fraud, forgery, use of forgery, false statements, computer offenses, identity offenses, formation of an organized criminal group, in the

manner of initiation and constitution, bribery, illegal access to a computer system, computer forgery, and intellectual forgery, influence peddling, bribery, intellectual forgery and money laundering, etc.

Therefore, the staff of the Ministry of Administration and Interior together with the employees of the other institutions with attributions in the field continued to carry out verifications and intensified the control actions in case of economic operators, passenger transport operators, objectives of interest, including public catering spaces, crowded areas, stations, bus stations, markets, terraces, cafes, game rooms, gas stations and more. They checked the green certificate (QR code check) where it was needed.

As a result of these actions, where irregularities were found, sanctions were applied, in particular for not wearing a protective mask and non-compliance with travel bans. At the same time, criminal cases were opened for several crimes, such as:

- Committing the crime Thwarting Disease Control (see in detail, Hegheş 2020, 90-98);

- Forgery of identity, in the case of persons inside premises (for example in the mall), who, at the request of law enforcement, presented a green certificate, only that during the investigations carried out, it was found that presented to the police officers did not belong to the person in question, but to another person, who were used without right;

- Criminal cases have been set up regarding possible frauds registered in the process of issuing vaccination certificates and certificates. These facts were discovered when several people went to the hospital with severe symptoms of SARS-CoV-2 virus infection and showed vaccination certificates at the hospital, which later admitted to the medical staff that in fact they were not vaccinated. Thus, it was found that there were green certificates issued as a result of “vaccination in the sink”. This practice emerged and spread with the authorization of the single-dose vaccine, produced by Johnson & Johnson, which provided the opportunity for family physicians and nurses to make arrangements with people who wanted to officially register as vaccinated without to inject for a sum of money, and the corresponding amount of serum was thrown into the sink. These persons were registered in the National Electronic Vaccination Register, thus having the possibility to download their

European Green Certificate, on the basis of which they could travel and have access to public spaces in the country and abroad. According to the Romanian Criminal Code, those who falsify vaccination certificates or certificates risk up to 5 years in prison on charges of intellectual forgery. And those who use them risk not only getting sick, but also being charged with misuse, which can lead to three months to three years in prison or at least a criminal fine. People who sell fake vaccination certificates have also been found on social networks, who close their account after collecting the money. This type of fraud is facilitated by the anonymity offered by secure communication and payment applications, as well as by the reluctance of deceived persons to report the facts, as they are of a criminal nature;

- To the extent that many GPs received free tests for COVID-19 free of charge from the Ministry of Health, some of them (few in number) falsified the results of tests for certain patients, unrealistically attesting that they are infected and thus they have been on paid medical leave for 14 days and have obtained the green certificate, although in reality they have not been infected;

- Also, the border policemen from various crossing points of the Romanian state border discovered Romanian citizens with certificates that falsely attested the performance of some PCR tests at various clinics.

Counterfeiting offenses

Counterfeiting offenses are provided for in Title VI of the Special Part of the Romanian Criminal Code (see in detail Cristiean 2017, 237-273):

- Chapter I – Counterfeiting of currency, stamps or securities (art. 310 - Currency counterfeiting, art. 311 - Counterfeiting of bonds or payment instruments, art. 312 - Counterfeiting of stamps or postage, art. 313 - Circulation of counterfeited securities, art. 314 - Possession of tools used for the counterfeit of securities, art. 315 - Fraudulent issuance of currency, art. 316 - Counterfeiting of foreign instruments);
- Chapter II – Counterfeiting of authentication or marking instruments (art. 317 - Counterfeiting of official instruments, art. 318 - Use of counterfeit instruments, art. 319 - Counterfeiting of foreign authentication instruments);

- Chapter III – Counterfeiting documents (art. 320 - Tampering with official documents, art. 321 - Creating false documents, art. 322 - False deeds under private signature, art. 323 - Use of false documents, art. 324 - Tampering with a technical record, art. 325 - Tampering with computer data, art. 326 - False statements, art. 327 - False identity, art. 328 - Offenses of falsification committed in relation to the authority of a foreign state).

The offenses under the name of “Counterfeiting” constitute a well-defined and extremely varied category in the vast sphere of facts considered to be dangerous. False acts seriously undermine the truth and trust that must lead to the formation and development of human relationships (Duvac 2016, 395). The above-mentioned offenses consist in the falsification of certain values whose authenticity, veracity or accuracy are of great social interest and which must therefore be protected by criminal law. Also included in this category are related offenses, and other acts such as circulation, use of counterfeits, etc., as derivative and correlative actions, antecedent or subsequent to counterfeits (Dongoroz et al., Vol. IV, 358).

By criminalizing the facts that make up the group of counterfeiting, the criminal law understood to protect the social relations that are born, develop and develop in connection with public trust in things of probative value. The social project presented by the facts incriminated in this title derives from the alteration of the truth committed on things that have the legal property to serve as a means of proof, to constitute proof of realities, the existence and veracity on which depend the formation and development of various social relations. By criminally sanctioning the alteration of the truth on such things with probative properties, the criminal law creates a legal protection for these things, strengthening the trust that people must have in their probative value, trust that contributes to the protection and, implicitly, to the development of social relations and therefore to social progress (Dongoroz, vol. IV, 360; Pascu and Gorunescu 2009, 530).

From the point of view of the *generic legal object* of the counterfeiting, the social value that the criminal law defends is the public trust - *public fides*, in the things that have the legal property to prove.

The direct *active subject* to these counterfeiting is, in principle, any person, without any qualification, but who has criminal capacity. A

characteristic of these crimes is that they can be committed by a legal person, with the limitations and under the conditions provided in art. 135 Romanian Criminal Code.

Criminal participation is possible in all its forms - co-perpetrators, instigators, accomplices, in all crimes of counterfeiting.

The objective side

The action that constitutes the *material object* of the crime must consist in an operation of alteration of the truth committed in any way - material, written or oral, but which always materializes in the object that contains the alteration of the truth.

In terms of *immediate follow-up*, all counterfeiting offenses are offenses that create a state of danger.

The *causal link* between the action and the immediate consequence must exist and result from the materiality of the act - *ex re*.

The subjective side

From a subjective point of view, all counterfeiting offenses are intentional criminal offenses. The acts of altering the truth do not constitute offenses when the alteration occurred through fault.

Penalties

For all the offenses of counterfeiting, the punishment of imprisonment was stipulated, alone or alternatively with the criminal sanction of the fine. However, the special limits of the prison sentence and implicitly of the fine differ in relation to the abstract social danger established by the legislator for each deed incriminated separately.

Procedural issues

From a procedural point of view, all counterfeiting offenses are prosecuted *ex officio*. With regard to the jurisdiction of the courts, there are some differences, in the sense that in the case of counterfeit offenses, in principle, the usual rules apply, while for some offenses in Chapter I, committed in certain circumstances, the criminal prosecution is carried out in mandatory by the prosecutor (Duvac 2016, 401).

There is a natural correlation between the actual counterfeiting offenses and the derived offenses, in the sense that the existence of the subsequent offense depends on the existence of the previous one, such as the use of forgery presupposes the existence of the offense of forgery in documents, from a procedural point of view, the provisions regarding the reunification of cases will be applied (art. 43 of the Romanian Code of Criminal Procedure). In criminal proceedings with the object of committing false offenses, it is usually necessary to order, as the case may be, a technical-scientific finding or an expertise, finding the truth and therefore the existence of forgery, often requiring knowledge technical and specialized. If, after the discovery of the forgery, the forged object has disappeared or been destroyed, the existence of the forgery may be proved by any other evidence (Duvac 2016, 402).

Conclusions

At this time, vaccination is not mandatory in Romania. It is up to each person to decide what is best for himself/herself and his/her family, but the recommendations of the state/authorities is to get vaccinated. Using a false European COVID digital certificate is not a solution but a crime punishable by imprisonment. The EU digital certificate on COVID is free of charge, is valid in all EU Member States and is available in Romanian and English. As vaccination is not mandatory, the EU digital certificate on COVID is not a mandatory document either, but is accepted at European level as an authorized proof of vaccination, tested negatively or recovered after COVID-19 infection.

Police need to step up checks. Although the number of cases where customers use false certificates is limited, the involvement of the police in double-checking actions (certificates and bulletins) is a useful initiative.

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