

**THE GENERIC LEGAL OBJECT AND THE SPECIAL LEGAL OBJECT
OF THE OFFENSE OF IDENTITY FRAUD**

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Abstract

The present study undertakes a comprehensive and systematic examination of the generic legal object and the special legal object of the offense of identity fraud, with a particular emphasis on their doctrinal configuration and practical implications within contemporary criminal law. The research is grounded in a thorough analysis of national legal provisions, complemented by a comparative perspective that highlights the similarities and divergences between domestic regulations and those enshrined in Romanian criminal law.

At the theoretical level, the paper explores the multifaceted nature of the generic legal object, identifying it as the ensemble of social relations concerning the protection of personal identity, legal certainty in civil circulation, and public trust in identification mechanisms. The study critically evaluates divergent doctrinal opinions on the scope and content of this legal object, addressing whether it primarily safeguards patrimonial interests, personal non-patrimonial rights, or a hybrid structure that integrates both dimensions.

In parallel, the special legal object is analyzed in relation to the concrete social values directly affected by the commission of identity fraud, namely the integrity of individual identity attributes and the authenticity of identification data used in legal and social interactions. The paper emphasizes the functional distinction between the generic and special legal objects, underlining their relevance for the legal qualification of the offense and for differentiating identity fraud from related incriminations.

Methodologically, the research employs doctrinal analysis, comparative legal interpretation, and the examination of relevant scholarly literature, thereby providing a nuanced synthesis of existing viewpoints. Particular attention is paid to the contributions of Romanian legal doctrine, which serve as a valuable benchmark for assessing the evolution and conceptual clarity of the national framework.

The conclusions of the study underscore the necessity of a coherent and clearly defined understanding of both the generic and special legal objects, as this distinction directly influences legislative precision, judicial interpretation, and the effective protection of individuals against identity-related offenses in the digital era. Ultimately, the paper contributes to the consolidation of legal theory in this field and offers a refined conceptual framework for future academic and legislative developments.

Keywords: identity fraud, identity, attribution of identity, false identity, personal data, use of identity, special legal object, generic legal object

Introduction

An indispensable condition for ensuring compliance with criminal legality is that any specific offence committed by a person must correspond to the content of an offence provided for in criminal law [1]. Accordingly, any person who commits a socially dangerous act stipulated by criminal law causes harm to society and to the relations within it; by committing such acts, the perpetrator encroaches upon the legal object of the offence. *Ex debito iustitiae*, in society there are no offences without an object of encroachment.

The legal object of the offence is referred to as "...the target at which the offence strikes; a target determined by the social relations subject to criminal-law protection" [2]. In criminal-law doctrine it is argued that the object of the offence is the social value and the social relations formed around and because of that value, against which the act constituting the material element of the offence is directed, and which are harmed or placed in danger by its commission [3].

At the same time, author V. Drăghici shares the same view, namely that the legal object of any offence consists of the relations that are formed, unfold, and develop around and because of certain realities which, by virtue of their capacity and role in the formation, unfolding, and development of social relations, constitute social values [4].

Consequently, criminal law criminalises acts that infringe upon the social values it protects and, implicitly, protects social relations against such manifestations, thereby distinguishing offences from contraventions, civil delicts, and disciplinary misconduct.

The criminal act, as an individual act, cannot be directed against all social relations at once; it targets specific values or social relations. Its antisocial character derives from the fact that it harms or endangers a part or a bundle of the values or relations upon whose integrity, ultimately, the existence and proper functioning of social life as a whole depends [5].

Regarding the relationship between social relations and social values, in the opinion of S. Brînză, social relations are realities external to the social value; they pre-exist the social value and serve as a factor for evaluation and for attributing the quality of "value" to certain entities that correspond to society's interests. Thus, he considers that the object of the offence is formed not only by social relations, but also by the social values protected by criminal law. In such a conception, social relations are placed on the same level as social values and are no longer viewed as distinct realities, with social relations being capable of being harmed only through the intermediary of social values [6].

A similar position is expressed by A. Boroi: in the case of an offence, the harming or endangering of social relations through an act of conduct occurs through the harming or endangering of the social value around and because of which those relations exist, just as the protection of those same social relations against the same act of conduct occurs through the protection of that respective social value. This demonstrates the connection and interdependence between

fundamental social values and the social relations that enshrine their existence and functionality [7].

According to V. Stati, in the most general sense, the object of the offence is that against which the criminal act is directed—that to which harm is caused or may be caused as a result of committing the offence. In criminal-law scholarship, the thesis is quasi-unanimously accepted that the object of the offence is made up of the social relations against which the criminal conduct is directed and which it harms or endangers [8].

Further, we endorse the ideas formulated by the cited authors, namely, that the object of the offence comprises both social relations and the social values protected by criminal law. At the same time, it is very important to note when a good or an interest attains the quality of a social value. This quality is determined by the transformations that occur throughout the development of society as a whole, as well as by the demands and needs advanced by society and by its members individually.

From another perspective, criminal-law theory distinguishes among several categories of objects of the offence, taking into account certain theoretical and practical issues concerning the structure of the Special Part of criminal law, the determination of the degree of harmfulness of offences, and their correct legal classification. Thus, the following categories are known: legal objects and material objects; generic (group) legal objects and specific (special) legal objects; principal legal objects and secondary (adjacent) legal objects [9].

The general (legal) object of the offence consists of the social value and the social relations relating to it, protected by criminal law through the criminalisation of acts that infringe upon them or place them in danger [10]. For any offence provided for by criminal law, the social relations and the values corresponding to those relations protected by law have a common character.

Thus, by referring to the provisions of Article 2(1) of the Criminal Code of the Republic of Moldova [11] (hereinafter: the CC RM), the following social values protected by criminal law with regard to the entire legal order may be identified—namely: the person, their rights and freedoms, property, the environment, the constitutional order, the sovereignty, independence and territorial integrity of the Republic of Moldova, peace and the security of humankind, as well as other such social values, all of which together form the general legal object of the offences set out in the Special Part of the CC RM.

From the general legal object of the offence derives the generic or group legal object of the offence. This object consists of the group of homogeneous social relations, mutually connected by a generic or kindred feature, at which an entire series of offences is directed. Precisely depending on the generic object, the legislator divides the totality of offences into large groups, forming chapters of the Special Part of the Criminal Code, such as “Offences against life and health of the person” (Ch. II), “Offences against liberty, honour and dignity of the person” (Ch. III), “Offences concerning sexual life” (Ch. IV),

“Offences against the political, labour and other constitutional rights of citizens” (Ch. V), “Offences against property” (Ch. VI), etc.

Compared to the general legal object, the generic legal object has a narrower character. It consists of a bundle of social relations formed around and because of certain fundamental values of society, such as the state, property, the life and health of the person, the constitutional rights of citizens, etc.

As has been shown in doctrine, the generic legal object can be easily inferred either from the content of the legal provision itself, or even from the title of the chapter or section of the Criminal Code in which the offence is included.

With reference to our study, the offence of identity fraud is provided for in Article 177¹ and forms part of Chapter V, “Offences against the political, labour and other constitutional rights of citizens,” of the Special Part of the CC RM. From the title of this chapter, it follows that the generic legal object of the offences provided for therein consists of the social relations regarding the exercise of citizens’ constitutional rights.

The *sui generis* infringement of citizens’ constitutional rights by committing the above-mentioned offence is also emphasised in Estonian specialised doctrine. Thus, M. Nimmo argues that “by committing the offence of identity fraud, an attack is made on the values protected by the Constitution of the Republic of Estonia, namely the individual’s right to honour and good reputation, as well as the inviolability of family and private life” [12].

From a comparative perspective, foreign legislators, for the most part, do not share the same position *vis-à-vis* the content of the generic legal object of the offence provided for in Article 177¹ CC RM. In concreto, we note the following legislative approaches regarding the placement of this offence within criminal law: in Austrian legislation, this offence is placed in Section 12, “Offences against the credibility of documents and evidence,” of the Special Part of the Criminal Code [13]; in the legislation of the Kingdom of Belgium—in Title III, “Offences against public trust” [14]; the same approach is found in Italian legislation, where the offence generically termed “identity fraud” is placed in Chapter IV, “Offences against public trust,” of the Special Part of the Criminal Code [15]; in Cypriot legislation—Chapter VIII, “Forgery offences. Coinage. Counterfeiting. Similar offences and identity usurpation” [16]; in Finnish legislation—Chapter XXVI, “Offences against public authorities” [17]; in Swedish legislation—Section 15, “Offences concerning false testimony, false accusation and other untrue statements” [18]; in Latvian legislation—Chapter XXII, “Offences against administrative order” [19]; in Polish legislation—Chapter XXXIV, “Offences against the credibility of documents” [20]; and, according to Portuguese legislation, the offence concerning identity forgery is reflected in Title IV, “Offences against life in society,” Chapter II, “Forgery offences,” Section II, “Forgery of documents” [21].

In another order of ideas, the generic legal object of the offence of identity fraud cannot be inferred directly from the title of the respective heading or chapter, as is the case in Romanian legislation, as well as in other states such

as Spain or Germany. Therefore, doctrine has been tasked with determining the social value harmed by the commission of this offence.

In Romanian law, although the legislator does not establish what protected legal object is involved in the category of offences concerning identity-related falsification, it can be observed that there is a genuine doctrinal consensus regarding the social value protected in the case of forgery offences in general, and in the case of the offence of identity-related forgery in particular. Thus, it has been considered—both under the former Criminal Code of Romania [22] and under the new regulation [23]—that by criminalising this act, the law protects the social relations concerning the social value of public trust enjoyed by certain documents to which the law attributes the capacity to express the truth, as well as the activities carried out by public officials or other categories of officials for the purpose of drawing them up.

On the other hand, this issue of the protected social value has, over time, benefited in comparative law from extensive doctrinal analyses, with numerous opinions taking shape. Thus, the discussion began with consideration of an almost indeterminate legal object, such as the right to truth, and then moved toward somewhat better-defined concepts, such as public trust. For example, as stated above, in Italian law, the generic legal object of the offence of identity-related forgery is expressly established by the legislator in the title of the chapter, and doctrine has further addressed this subject in detail, seeking to define and determine the content of the notion of “public trust,” given its high degree of generality [24]. This issue has also been addressed by the Italian Constitutional Court [25], which essentially held that the offence of identity-related forgery has the nature of an intermediary (means) offence that protects an intermediate social value expressed through the notion of public trust.

In Spanish doctrine, the generic legal object of identity fraud, according to the Spanish Criminal Code of 1973, consisted of the social relations concerning a person’s civil status, as reflected in the title of Title XI of Book II, Chapter I, “Offences against the civil status of persons.” At present, following the adoption of the new Criminal Code, the Spanish legislator decided to place this offence in Title XVIII of Book II (On falsifications), Chapter IV, “On the usurpation of civil status” [26]. Thus, according to the numerous Spanish doctrinal classifications, the generic legal object has been described as “personal falsifications,” which made it possible to distinguish it from other forgery offences that involved or affected purely physical objects (banknotes, coins, documents, etc.). Thus, author Q. Olivares states, as a “minimal idea,” that a common element for offences with the generic legal object termed “personal falsifications” would be that the perpetrator presents themselves, or attributes to themselves in society, an identity other than their real identity [27].

An approach similar to that of the Republic of Moldova regarding the generic legal object of the offence of identity fraud can be observed in the legislation of Estonia and the French Republic. In Estonia, the offence of identity fraud is

in Chapter X of the Special Part of the Criminal Code, entitled “Offences against political and civil rights” [28]. The French legislator follows the same approach, placing the offence of identity fraud in Chapter VI, entitled “Offences against personal rights,” of the Special Part of the Criminal Code [29]. It should be noted that, in the legislation of both states, the criminal code contains chapters protecting social values from different domains, which were previously enumerated in the legislation of European states. Despite this, the legislators of the two states decided to place the offence of identity fraud in the chapter of the Special Part dedicated to protecting political and civil rights.

In this context, we support the legislative position of Estonia and the French Republic, as well as the orientation of the Moldovan legislator regarding the placement of the offence of identity fraud in Chapter V of the Special Part of the CC RM. The offence of identity fraud primarily concerns the constitutional rights of the citizen. By committing this offence, the perpetrator encroaches upon the social values protected by the supreme law—namely, a person’s identity, complemented by the right to private life. The state plays a crucial role in protecting identity and private life, as this constitutes a vital sphere for a democratic state.

As regards the special legal object of the offence of identity fraud, we note that it has an organic interdependence with the generic legal object.

Ab origine, the name as an attribute for identifying a person is not expressly provided in the supreme law of the Republic of Moldova as a constitutional right; rather, it finds its place in the provisions of Article 28 of the Constitution of the Republic of Moldova, namely that the state respects and protects intimate, family, and private life. As a concept, one might argue that the special legal object of the offence of identity fraud consists of the social relations concerning the exercise, in accordance with Article 28 of the Constitution, of the right to intimate, family, and private life; however, in the case of the offence of identity fraud, the special legal object must be concretised.

We note that, in Moldovan doctrine, authors S. Brînză and V. Stati have mentioned that the special legal object of the offence provided for in Article 177¹ CC RM, at first glance, would be identical to the special object of the offences provided for in Article 177 CC RM; however, the authors likewise maintain that the special legal object of the offence concerning identity fraud must be concretised and, to this end, they referred to Romanian criminal legislation and doctrine [30].

A fortiori, it is not possible for two different offences (even if they are placed in the same chapter by the legislator, or are provided for in the same article or paragraph of criminal law) to have the same special legal object. Certain details and particularities, even if very minor, will allow the special legal object of one offence to be distinguished from the special legal object of another offence. We note that researchers O. Ungureanu and C. Munteanu observed that “identity cannot be completely conflated with private life, [...] [although] the ECtHR’s decisions and part of the doctrine connect identity with private life.”

Certainly, the two categories do not overlap entirely. Nevertheless, they are indissolubly linked to one another [31].

As mentioned above, in order to clarify the special legal object of identity-related forgery, we will refer to the doctrine and criminal legislation of the neighbouring state.

Thus, as the special legal object of the offence of identity-related forgery, provided for in Article 327 of the Romanian Criminal Code (hereinafter: the RCC), Romanian authors mention: “the social relations concerning the public trust that society places in the findings of the competent bodies regarding a person’s identity” [32]; “the social relations concerning public trust in the truth regarding persons’ identity, in the correspondence between the identity under which persons present themselves before a competent public official for the purpose of identification and their real identity” [33]; “social relations whose existence and development are based on the public trust accorded to findings made, under the conditions provided by law, by competent public officials regarding persons’ identity—findings based on the correspondence between the identity under which they present themselves before those authorities or units and their real identity” [34]; “the ensemble of social relations whose emergence and normal course are based on the public trust accorded to findings made by state bodies or institutions, or other units referred to in Article 145 of the Criminal Code, regarding persons’ identity” [35]; “the social relations whose formation and normal unfolding are based on the public trust accorded to findings made by the bodies of competent public authorities or public institutions regarding persons’ identity—findings based on the correspondence between the identity under which they present themselves before those bodies and their real identity” [36]; “the social relations whose emergence and unfolding are based on the public trust accorded to findings made by public officials or by a person exercising a service of public interest regarding persons’ identity—findings based on the correspondence between the identity under which they present themselves before the official or the unit in which the latter carries out their activity and their real identity” [37], etc.

In this vein, Romanian authors take the view that the social value specific to the offence of identity-related forgery consists in public trust in the findings of the competent bodies and of competent public officials regarding persons’ identity.

Both S. Brînză together with V. Stati, as well as we, consider that this idea does not correspond to the hypothesis described in Article 177¹ CC RM. This is because, in the CC RM, the offence of identity-related forgery does not employ the wording “made before a public official, or before a public authority,” which the Romanian legislator uses in the provisions of Article 327 RCC. Accordingly, the scope of application of Article 177¹ CC RM is much broader than that of Article 327 RCC. Therefore, the Moldovan legislator considered that a person’s identity may be ascertained not only by competent

bodies or competent public officials, but also by other subjects who are not competent bodies or public officials [30].

On the basis of all these considerations, it may be inferred that the special legal object of the offence provided for in Article 177¹ CC RM consists of the social relations concerning the exercise, in accordance with Article 28 of the Constitution, of the right to intimate, family, and private life, under the aspect of the public trust accorded to determinations regarding persons' identity.

Thus, the social value specific to the offence of identity-related forgery is public trust with respect to the identification of persons and their real identity; or, as previously mentioned in Italian and Spanish doctrine, the offence generically termed identity-related forgery belongs to the sphere of social relations concerning "public trust."

At the same time, it has been shown that the origin of the notion of public trust should be sought in what was called the right to truth [38]. Thus, because "forgery" represented a very broad concept that could not be delimited from fraud (deceit), it was considered that forgery in the strict sense (what today is sanctioned through forgery offences) protects a so-called right to truth, the violation of which is sufficient for the existence of the offence, whereas, for the completion of fraud, the occurrence of damage is necessary.

The acceptance of the existence of this right to truth, and its inclusion within the protective scope of the incriminating provision, was criticised in doctrine, at least because it would require determining what is meant by the concept of truth—an exercise that is philosophical rather than legal. Nevertheless, recognition of this right to truth, together with its "correlative duty" to tell the truth, formed the basis for the subsequent conceptualisation of the notion of public trust [38].

In conclusion, the comparative analysis highlights that, although the criminalisation of identity-related forgery is positioned differently within the structure of the criminal codes of the states examined, the core of the protected social value remains convergent: the protection of public trust/public faith in the veracity of determinations regarding a person's identity. At the same time, it is necessary to underline the particularity of the Republic of Moldova, where this offence is placed in Chapter V, and the axiological foundation of its protection may be correlated with the provisions of Article 28 of the Constitution of the Republic of Moldova, according to which the state respects and protects intimate, family, and private life, under the aspect of the public trust accorded to determinations regarding persons' identity. This dual perspective—protecting public trust and the private sphere of the individual—confirms the complex character of the criminalisation and justifies treating the act, in most states, as a forgery offence aimed at guaranteeing the security of legal relations.

Materials and methods

Methods

The present article is grounded in a set of methodological approaches specific to legal science, ensuring a rigorous, coherent, and scientifically substantiated analysis of the legal object of the offense of identity fraud:

Doctrinal analysis method – enabled a critical examination of the viewpoints expressed in specialized legal literature regarding the content of the generic and special legal object, highlighting both convergent and divergent interpretations.

Comparative method – employed to analyze national criminal law provisions in relation to those of Romanian criminal law, facilitating the identification of structural similarities as well as normative particularities.

Legal interpretation (exegetical method) – applied to interpret the relevant legal norms, including constitutional provisions, particularly those concerning the protection of private life.

Systemic method – allowed for the integration of the analyzed offense within the broader framework of criminal law, emphasizing its place and role among offenses against public trust.

Logical method – used to structure the argumentation, clarify conceptual distinctions, and substantiate the relationship between the generic and the special legal object.

Historical method (where necessary) – contributed to outlining the evolution of both the legal regulation and the doctrinal understanding of identity-related offenses.

Conclusions

In conclusion, the comparative analysis demonstrates that, despite differences in legislative technique and the systematic placement of identity-related forgery within the criminal codes of the examined states, the core axiological foundation of criminal protection remains largely convergent. This foundation resides in safeguarding public trust (*fides publica*) in the accuracy and authenticity of determinations concerning a person's identity, a value that is essential for ensuring the stability and security of legal relations.

At the same time, the particular legislative approach of the Republic of Moldova, where the offense is situated within Chapter V, reflects a distinct conceptual orientation that allows for a direct correlation between criminal protection and constitutional guarantees. In this regard, Article 28 of the Constitution of the Republic of Moldova provides a normative basis for extending the scope of protection to the individual's intimate, family, and private life, viewed through the lens of the credibility and integrity of identity-related data.

This dual axiological perspective—encompassing both the protection of public trust and the safeguarding of the individual's private sphere—confirms the complex and multifaceted nature of the criminalisation of identity fraud. The offense should therefore not be understood solely as an infringement upon social relations based on public confidence, but also as a direct interference with the legal and

personal identity of the individual, with potential repercussions in both patrimonial and non-patrimonial dimensions.

Furthermore, the doctrinal and comparative analysis supports the rationale for maintaining this offense within the category of forgery-related crimes, as it plays a crucial role in ensuring the security of legal transactions and in preventing increasingly sophisticated forms of fraud, particularly in the context of rapid digitalization. Nevertheless, the study also highlights the necessity of a clearer and more precise conceptual delineation of the legal object, in order to avoid overlaps with adjacent offenses and to ensure consistent judicial interpretation and application.

From a prospective standpoint, it becomes evident that both legislative and doctrinal frameworks must evolve in response to technological developments and emerging risks associated with identity misuse. Such an evolution should aim at strengthening the protection of both public trust and personal identity, thereby reaffirming the role of criminal law as a fundamental instrument in safeguarding the core values of modern society.

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