

**ELEMENTS OF COMPARATIVE CRIMINAL LAW REGARDING THE CRIME
OF FALSE IDENTITY**

Dumitru TABACARU, Andrei NASTAS

PhD Candidate, „Ștefan cel Mare” Academy of MIA
mrtabacaru.dumitru@gmail.com

PhD, Associate Professor, Cross-Border Faculty, Dunarea de Jos University of Galați (Romania)
andrei.nastas@ugal.ro

Abstract

In recent years, the international community has been increasingly confronted with significant challenges in protecting individuals' personal data, both in digital environments and in everyday social interactions. The rapid development of information technologies, coupled with the expansion of online services and cross-border data flows, has created new vulnerabilities that have facilitated the emergence and proliferation of identity fraud as a distinct form of criminal activity. Against this background, identity fraud has evolved from a marginal phenomenon into a major concern for contemporary criminal law systems, necessitating coherent legislative responses and effective mechanisms of prevention and repression.

Within the legal framework of the Republic of Moldova, identity fraud represents a relatively recent incrimination, having been introduced into the Criminal Code only in 2024. This legislative development reflects an effort to align national criminal law with evolving social realities and with international and European standards, given that similar forms of conduct have long been criminalized in the legal systems of European Union member states. Consequently, the introduction of this offense marks an important step toward strengthening the protection of personal identity and enhancing the security of legal relations in the national context.

The present study is primarily grounded in the comparative method, which facilitates an in-depth examination of criminal legislation across various European Union member states in relation to the national provision enshrined in Article 177¹ of the Criminal Code of the Republic of Moldova. Through this comparative approach, the research aims to identify common patterns of criminalisation, structural similarities and differences in legal regulation, and best practices that may serve as reference points for improving the domestic legal framework. In addition to comparative analysis, the study employs the logical method to ensure the coherence and consistency of legal reasoning, as well as the case study method, which illustrates theoretical considerations through practical examples and hypothetical scenarios. Furthermore, a significant role is attributed to the prospective method of legal research, which is used to assess current trends in the evolution of criminal law norms and to anticipate future legislative developments in identity protection. By analyzing the content and scope of Article 177¹ in light of European legal models, the study seeks to highlight existing normative gaps, ambiguities, and potential inconsistencies within the national regulation. At the same time, it outlines general trends in the criminalization of identity-related offenses, emphasizing the increasing importance of

safeguarding both public trust and the integrity of personal identity in a highly digitalized society.

Ultimately, the alignment of the national normative framework with that of European Union member states has far-reaching implications, not only for enhancing the effectiveness of domestic criminal law but also for facilitating international judicial cooperation in criminal matters. Such harmonization contributes to strengthening mutual trust between legal systems, improving cross-border enforcement mechanisms, and ensuring a higher level of protection for individuals' fundamental rights, thereby exerting a positive impact on all spheres of social life within the state.

Keywords: identity fraud, identity, attribution of identity, false identity, personal data, use of identity, maintaining deception, inducing deception.

Introduction

A person's identity (name, marital status, identification data, biometric elements, or digital identifiers) is of major legal relevance: it enables the exercise of rights, access to services, and participation in legal relations. Inevitably, this importance attracts criminal conduct aimed at assuming another person's identity or using that person's data to obtain an advantage, cause damage, or produce other legal consequences.

"Identity fraud," however, is not uniformly defined in the legislation of the states within the European community. Some legal systems prefer a typical criminalisation of "personation" (impersonation/substitution of person), others predominantly sanction the unauthorised use of data (especially online), while others place the criminal-law response within the sphere of related offences (computer forgery, forgery of documents, fraud, misuse of documents).

MAIN CONTENT

At the national level, on 06.06.2024, the Parliament of the Republic of Moldova adopted Law No. 136 amending certain normative acts [1], marking an important step in modernising criminal-law protection instruments. Through this legislative act, the Criminal Code of the Republic of Moldova (hereinafter: the CC RM) was supplemented with Article 177¹, entitled "Identity Fraud", thereby introducing a distinct offence criminalising identity falsification. The new regulation seeks to address the increasingly frequent phenomenon of presenting oneself under a false identity or attributing another person's identity, especially in contexts where such acts are used to mislead and to generate legal consequences. In this sense, the provision contributes to strengthening the criminal-law protection of personal identity and to increasing the security of legal relations, including in the digital environment, where such conduct is easier to carry out and more difficult to prevent. At the same time, criminalisation is intended to eliminate potential regulatory gaps in situations where the act did not fully fit the patterns of related offences (for example, fraud or document forgery), even though it presented a clear degree of social danger. The offence of identity fraud is placed in Chapter V of the Special Part of the CC RM, entitled "Offences against political rights, labour rights and other constitutional rights of citizens", which underscores the legislator's orientation toward protecting identity as an essential attribute of the person and as a prerequisite for the effective exercise of constitutional rights.

Accordingly, under national law, the offence of identity fraud consists in unlawfully presenting oneself under a false identity or attributing such an identity to another person by

using official documents issued in another person's name; by registering and/or using user accounts on social media platforms, web portals, email addresses, telephone numbers, access cards, or other information society services—except for the use of pseudonyms that do not affect identity or pseudonyms of other data subjects—in order to induce or maintain a state of error, with the purpose of producing a legal consequence [2].

The sanctioning regime established for this offence is an alternative one, namely: a fine ranging from 500 to 2,000 conventional units or imprisonment from 6 months to 1 year, with the application—in both cases—of the complementary penalty of deprivation of the right to hold certain positions or to carry out certain activities for a period of up to 5 years [2].

In the specialised literature, the analysis of “identity fraud” for periods prior to 2024 must be conducted through the lens of related offences, since neither the obsolete Criminal Code of the Moldavian SSR (i.e., the 1961 Code) nor the CC RM of 2002 (in the versions applicable until 2024) established an autonomous criminal offence of presenting oneself under a false identity or attributing such an identity to another person as a distinct infringement of personal identity. Under the Criminal Code of the Moldavian SSR, the protection of identity—under the aspect of public trust accorded to findings concerning the identity of persons—was predominantly “documentary-administrative”, focused on the regime of documents and registries. As a result, identity substitution was, as a rule, sanctioned only insofar as it materialised in forgeries or unlawful uses of documents, an act provided for in Article 209, “Forgery or use of forged documents, stamps, seals or printed forms” [3]. Similarly, under the CC RM (in the versions applicable until 2024), public trust regarding a person's identity was addressed in a fragmented manner through provisions on forged official documents and other types of forgery, and in certain cases through property, economic, cybercrime, and offences against public authorities and state security. This generated difficulties of legal qualification/delimitation and proof, reflected also in doctrinal analyses by domestic researchers [4] concerning the practical application of the offence of producing, possessing or using official documents in conjunction with offences such as fraud or obtaining credit, a loan, or insurance compensation/benefit by deception.

In Romanian criminal legislation, the offence is regulated under Article 327 of the Criminal Code, under the marginal title “False statements regarding identity” and is placed by the legislator in the Special Part, Title VI – “Forgery offences”, Chapter III – “Forged documents” [5].

Thus, the offence under Article 327 of the Romanian Criminal Code (hereinafter: RCC) comprises three paragraphs, which entails criminalisation in a basic form, an aggravated form, and an assimilated form.

The basic form provided for in Article 327(1) RCC consists in presenting oneself under a false identity or attributing such an identity to another person, made to one of the persons referred to in Article 175 or communicated to the unit in which that person carries out their activity, by the fraudulent use of an instrument serving for identification, legitimation, or proof of civil status, or of such a forged instrument, in order to induce or maintain a public official in error, with a view to producing a legal consequence, for oneself or for another; it is punishable by imprisonment from 6 months to 3 years [5].

The aggravated form provided for in Article 327(2) RCC applies where the presentation under a false identity was carried out through the use of the real identity of a person; the penalty is imprisonment from 1 to 5 years [5].

The assimilated form provided for in Article 327(3) RCC concerns entrusting an instrument serving for identification, legitimation, or proof of civil status to be used without right; it is punishable by imprisonment from 3 months to 2 years or by a fine [5].

In the former Romanian Criminal Code of 1864, the offence of false statements regarding identity was not criminalised. As in the obsolete 1961 Criminal Code of the Moldavian SSR, this conduct was regulated within the content of other offences; as the case may be, the use of false names or capacities constituted a deceitful stratagem within the offence of fraud in its qualified form provided for in Article 334. In that text, among the statutory means of commission, it also provided for the use of “false names or capacities (...)” in order to mislead someone into giving “money, chattels or bonds (...)”, etc. [6].

Further, the Romanian Criminal Code of 1936 criminalised identity fraud under the designation “Substitution of persons” (art. 414), providing as follows: “Whoever induces or maintains in error a public authority or a private individual, unlawfully substituting himself for another person or attributing to himself or to another a false name or a false civil status, commits the offence of substitution of persons and is punishable by correctional imprisonment from one to three years, a fine from 2,000 to 5,000 lei, and correctional disqualification from one to two years. The same penalty shall also apply to the person who agreed to be substituted” [7].

The act of “entrusting a document to serve unlawfully as proof of identity” was criminalised, under the title “Alienation of documents”, in Article 257¹, which was introduced into the Code in 1954. The penalty for this act was imprisonment from 2 to 5 years [8].

The evolution of Romanian criminal legislation marked, in the 1968 Romanian Criminal Code, the criminalisation in Article 293 of identity fraud in two forms: the basic form under Article 293(1), consisting in “presenting oneself under a false identity or attributing such an identity to another person, in order to induce or maintain in error a state body or institution or another unit among those referred to in Article 145, with a view to producing a legal consequence, for oneself or for another, punishable by imprisonment from 3 months to 3 years”; and the assimilated form under Article 293(2), which involved “entrusting a document that serves as proof of civil status or for legitimation or identification, to be used without right” [9].

In the 2004 Romanian Criminal Code, the offence of identity fraud provided for in Article 475 criminalised the offence in two forms having the same content as Article 293 of the 1968 Romanian Criminal Code; however, this time the legislator established a harsher penalty for the commission of this criminal offence, providing for a sanction of strict imprisonment from 1 to 3 years [10].

An examination of certain foreign criminal laws shows that identity fraud is not criminalised by a dedicated provision. In such systems, the conduct is generally absorbed by the classic offences in the field of forgery, being classified—depending on the specific manner of commission—either as material forgery (where the documentary medium is falsified), as intellectual forgery (where identity is falsely recorded in a document drawn up by a competent person), or as use of a forged document (where a forged instrument or a document belonging to another person is used). Consequently, the criminal-law response does not target “identity” as a distinct protected value, but rather the authenticity and truthfulness of documents and the public trust placed in them.

This legislative approach has been adopted, for example, by the Spanish Criminal Code, the Swedish Criminal Code, and the Finnish Criminal Code.

Other foreign criminal laws criminalise identity fraud through several provisions, in different forms, as follows: the Italian Criminal Code devotes the entirety of Chapter IV, entitled “Personal forgery”, within Title VII, entitled “Offences against public trust”, to the criminalisation of acts of identity fraud. Article 494, under the marginal title “Substitution of persons”, criminalises the act of a person who, with the aim of obtaining for himself or for another an advantage or of causing others a prejudice, induces someone in error by unlawfully substituting his own person with that of another, or by attributing to himself or to others a false name, or a false status, or a capacity/quality to which the law attaches legal effects, where the act does not constitute another offence against public trust; it is punishable by imprisonment of up to one year [11].

Likewise, Article 495, under the marginal title “False attestation or statement to a public official regarding one’s own identity or status, or that of another”, provides that “any person who falsely declares or attests to a public official, in a public instrument, the identity or status or other qualities of himself or of another shall be punished by imprisonment of up to three years” [11].

At the same time, pursuant to Article 496, any person who—outside the cases indicated in the preceding articles—being questioned about his identity, status, or other qualities of himself or of another person, makes false statements to a public official or to a person entrusted with a public function in the exercise of their duties or service, shall be punished by imprisonment of up to one year [11].

In the criminal legislation of the Kingdom of Belgium, the offence of identity fraud is found in Title III, “Offences against public trust”, Chapter IV, “Forgeries committed in documents, in the IT system and in telegraphic dispatches”, Section II, “Forgeries committed in passports, firearms permit, booklets, travel documents and certificates”. Article 198 provides that anyone who counterfeits or falsifies a passport (a document required by the legislation on the possession of weapons) or a booklet, or who uses a counterfeit or falsified passport (a document required by the legislation on the possession of weapons) or booklet, shall be punished by imprisonment from one month to one year. Article 199 stipulates that anyone who has entered in a passport (a document required by the legislation on the possession of weapons) or a booklet a name other than his real name, or who participated as a witness in the issuance of these documents under a false name, shall be punished by imprisonment from 8 days to 6 months [12].

It should be noted that, on 8 April 2024, the Belgian legislator refined the legislation by adopting a new Criminal Code, which will enter into force on 8 April 2026; in the new version of Belgian legislation, the offence is found in Title V, “Forgery”, Chapter III, “Usurpation of functions, titles or names”, and, according to Article 462, this offence consists in the fraudulent public use of a name that does not belong to the person, and is sanctioned by a Grade I fine [13].

The German Criminal Code criminalises identity fraud in several provisions found in Division 23, “Forgery of documents”. Section (§) 273 criminalises the act whereby a person, with the intent to deceive in legal transactions, removes, alters, covers or deletes an entry from an official identity document, or removes a single page from an official identity document, or uses an official identity document that has been altered in this manner; the punishment is imprisonment of up to three years or a fine. Section (§) 276 provides for the acquisition of false official identity documents. Thus, any person who undertakes to import or export, or with the intent to use it to facilitate deception in legal transactions, procures for himself or for another person, stores, or transfers to another person a counterfeit or falsified

official identity document, or an official identity document containing a false notarised entry of the kind indicated in Sections 271 and 348, shall be punished by imprisonment of up to two years or a fine. Paragraph (2) states that, if the perpetrator acts on a commercial basis or as a member of a gang whose purpose is the continued commission of the offences provided for in paragraph (1), the penalty is imprisonment from 3 months to 5 years. Section (§) 283 refers to the misuse of identity documents. Paragraph (1) provides that anyone who, with the intent to deceive in legal transactions, uses an identity document issued to another person, or who, with the intent to deceive in legal transactions, provides another person with an identity document that was not issued to that person, shall be punished by imprisonment of up to one year or a fine. Paragraph (2) states that health certificates, other certificates, and other documents used as identity documents in legal transactions are equivalent to identity documents [14].

In the Spanish Criminal Code of 1973, what in contemporary terminology may be assimilated to “identity fraud” was treated mainly in the form of “usurpation of civil status”. The regulation was placed in Book II, Title XI – “Offences against the civil status of persons”, Chapter I, devoted to acts concerning false assumption of birth and usurpation of civil status. Specifically, Article 470 provided that anyone who usurps another’s civil status shall be sanctioned with minor imprisonment and a fine in the amount of 5,000 to 50,000 pesetas [15].

At present, in the Spanish Criminal Code in force, the legislator has repositioned this incrimination in Book II, Title XVIII – “On Forgery Offences”, Chapter IV – “On Usurpation of Civil Status”. Within this chapter there is, in essence, a single incrimination, set out in Article 401, according to which anyone who usurps the civil status/identity of another person is punishable by imprisonment from 6 months to 3 years [16]. Therefore, a continuity of the criminal-law protection of identity can be observed in Spanish law, albeit with a modern systematic reclassification within the sphere of forgery offences, reflecting an emphasis on protecting trust in the authenticity of identifying elements and in a person’s civil status.

In the case of Estonian legislation, the offence of identity fraud appeared only in 2009, compared to the Kingdom of Spain, and is in Chapter X of the Special Part of the Penal Code, entitled “Offences against political and civil rights”. Article 157², under the marginal title “illegal use of another person’s identity”, criminalises the act of transmitting personal data that establish or may enable the establishment of another person’s identity, granting access to such data or using them without that person’s consent, with the purpose of knowingly creating a false perception about that person by assuming his/her identity, if thereby damage is caused to the rights or interests of another person protected by law or in order to conceal an offence; it is punishable by a fine or by imprisonment of up to 3 years [17].

The French legislator has placed the offence in Chapter VI, entitled “Offences against personal rights”, in the Special Part of the French Penal Code. Thus, Article 226-4-1 provides a sanction for the act of usurping the identity of a third party or using any data or information that enables the identification of a person, committed with the intention of disturbing that person’s peace or that of others, or of harming that person’s honour or reputation. This act is punishable by one year’s imprisonment and a fine of EUR 15,000. The same sanction applies where the act is committed through an online communications network accessible to the public, which highlights the French legislator’s concern to prevent and repress identity usurpation in the digital environment. Where the act is committed by the victim’s spouse,

civil partner, or partner within a civil union, criminal liability is aggravated, with a penalty of 2 years' imprisonment and a fine of EUR 30,000 [18].

In the Polish Criminal Code, two forms of identity fraud can be found. Thus, the first case is found in Chapter XXIII, "Offences against liberty"; in Article 190a(2), the Polish legislator provides that anyone who impersonates another person by using that person's image or other personal data or other data by means of which the person is publicly identified, thereby causing that person pecuniary or bodily harm, is punishable by imprisonment from 6 months to 8 years. The second form of identity fraud is found in Chapter XXXIV, "Offences against the credibility of documents", a chapter dedicated to protecting public trust in documents and their evidentiary function within legal relations. Article 275 sanctions the use of a document confirming another person's identity or another person's proprietary rights, as well as the theft or unlawful appropriation of such a document. The penalty for this act is a fine, restriction of liberty, or imprisonment of up to 2 years. Furthermore, Article 275(2) criminalises the unlawful transport, carrying, or dispatch across the state border of Poland of a document confirming another person's identity or his/her property rights [19].

Accordingly, it is necessary to draw a distinction between these two forms of identity fraud, a distinction made primarily by reference to the legal interest protected and the typical conduct criminalised. From the perspective of the legal interest protected, the offence provided for in Article 190a (2) of the Polish Criminal Code safeguards social relations relating to a person's physical and psychological freedom, the right to self-determination, and personal security, with the protection of identity as an attribute of personality as its core. In essence, the provision guarantees that an individual cannot be "substituted" in the social or legal sphere by conduct consisting in the fraudulent assumption of a third party's identity where such conduct produces a legally relevant interference with the interests of the person concerned.

By contrast, the legal interest protected by the offence under Article 275 of the Polish Criminal Code consists in social relations concerning the credibility of official documents in civil circulation, especially documents attesting identity. In this hypothesis, the centre of gravity of protection is not identity as a personal value, but public trust in the evidentiary and identificatory function of official documents, which is affected through the unauthorised use of an instrument belonging to another person.

At the same time, the systematic argument derived from the different placement of the provisions within the Code confirms this criminal-policy distinction: for the Polish legislator, identity fraud with harmful consequences under Article 190a(2) is conceived as a form of aggression against personal liberty and integrity, whereas the use of another's identity document under Article 275 is treated as an infringement of the credibility of official documents. Consequently, although the two incriminations may factually intersect, the decisive criterion for delimitation remains the predominant protected social value and the type of social danger targeted: the protection of the person and his/her identity, respectively the protection of trust in documents.

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 this context, it may be noted that, in Romanian criminal legislation, the offence of identity fraud has its origins as early as the 1936 Criminal Code, where it was criminalized under the designation “substitution of persons”, and was subsequently maintained and developed in the 1968 codification. The current regulation thus reflects a relatively constant normative tradition aimed at protecting trust in identification mechanisms and in legal relationships that require the establishment of a person’s identity.

By comparison, in the criminal legislation of the Republic of Moldova, until the amendments introduced in 2024, identity fraud was not established as an autonomous offence, being subsumed under related incriminations, predominantly within the sphere of fraud/deception offences (e.g., fraud, obtaining credit/loans, or insurance compensation/benefits by deception), as well as offences concerning the regime of official documents (their production, possession, or use). At the same time, it is plausible to state that the French model, like the Moldovan one, explicitly anticipated the digital dimension of identity fraud, reflecting a criminal-policy choice aimed at covering conduct occurring in the virtual space.

In other legal systems of European Union Member States, regulation tends to remain predominantly “classical”, either through incriminations centered on identity usurpation, or through the dispersion of criminal liability across related provisions (for instance, forgery of documents, offences against property, cybercrime), depending on the concrete manner of commission and the predominant social value harmed. It can therefore be observed that each state configures its sanctioning response differently, according to its own legislative tradition and criminal-policy priorities.

From the perspective of improving the national incriminating framework, we consider it appropriate for the domestic legislator to provide a more rigorous delimitation of the offence of identity fraud, including by expressly structuring the main statutory modalities of commission (in a logic similar to the Romanian solution), so as to ensure a more predictable and coherent application of the provision, as well as an adequate differentiation of liability depending on the gravity of the conduct and the nature of the affected social values.

References

- Law No. 136 of 06.06.2024 amending certain normative acts (amendments to the Criminal Code and the Contravention Code), published on 07.06.2024 in the Official Monitor No. 245–246, Art. 353.
- Criminal Code of the Republic of Moldova, Code No. 985 of 18.04.2002, published on 14.04.2009 in the Official Monitor No. 72–74, Art. 195.
- Criminal Code of the Moldavian SSR of 24.03.1961, in *Veștile RSSM*, No. 10 of 24.04.1961 (repealed).
- Stati, V., “Competition between Articles 190 and 361 of the Criminal Code: Analysis of non-uniform judicial practice”, *Revista Națională de Drept* No. 10, 2016, pp. 5–13.
- Criminal Code of Romania of 17.07.2009 (Law No. 286/2009), published on 24.07.2009 in the Official Gazette No. 510.
- Criminal Code of Romania of 1864, published on 30.10.1864. Available at: <https://sintact.ro/legislatie/monitorul-oficial/codul-penal-din-1864-codul-penal-al-romaniei-republicat-16817263>.
- Criminal Code of Romania of 1936, published on 18.03.1936. Available at: <https://lege5.ro/Gratuit/g42doobz/codul-penal-din-1936>.
- Ionescu, G.; Ionescu, I., *Probleme de drept din jurisprudența Curții Supreme de Justiție în materie penală 1990–2000*, Juris Argessis Publishing House, Curtea de Argeș, 2002; Supreme Court of Justice, Criminal Section, Decision No. 775 of 26.03.1997.
- Criminal Code of Romania of 1968, published on 21.06.1968. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/38070>.
- Criminal Code of Romania of 28.06.2004, published on 17.07.1968. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/38070>.
- Criminal Code of the Italian Republic. Available at: <https://codexpenal.just.ro/laws/Cod-Penal-Italia-RO.html>.
- Criminal Code of the Kingdom of Belgium. Available at: <https://codexpenal.just.ro/laws/Cod-Penal-Belgia-RO.html>.
- New Criminal Code of the Kingdom of Belgium, in force as of 08.04.2026. Available at: <https://www.ejustice.just.fgov.be/eli/loi/2024/02/29/2024002088/moniteur>.
- Criminal Code of the Federal Republic of Germany. Available at: <https://www.gesetze-im-internet.de/stgb/index.html>.
- Criminal Code of the Kingdom of Spain (1973). Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-1973-1715>.
- Criminal Code of the Kingdom of Spain. Available at: <https://codexpenal.just.ro/laws/Cod-Penal-Spania-RO.html>.
- Criminal Code of the Republic of Estonia. Available at: <https://codexpenal.just.ro/laws/Cod-Penal-Estonia-RO.html>.
- Criminal Code of the French Republic. Available at: <https://codexpenal.just.ro/laws/Cod-Penal-Franta-RO.html>.
- Criminal Code of the Republic of Poland. Available at: <http://just.ro/laws/Cod-Penal-Polonia-RO.html>.