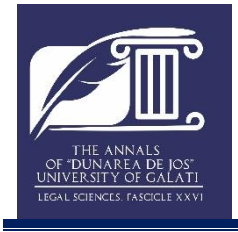

The Check in the Light of the Provisions of the Criminal Law

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Abstract: The changes made in the Criminal Code, as well as in other normative acts, because of the need to harmonize national legislation with that at the European level, by transposing into our legislation the various directives adopted at the level of the European Union, have generated non-unitary interpretations of the respective norms, in the specialized literature, an aspect that also affects the solutions in judicial practice. Moreover, there are different opinions regarding the applicability, at present, of the solutions pronounced by the High Court of Cassation and Justice, in appeals in the interest of the law, before the entry into force of the current Criminal Code.The changes made in the Criminal Code, as well as in other normative acts, as a result of the need to harmonize national legislation with that at the European level, by transposing into our legislation the various directives adopted at the level of the European Union, have generated non-unitary interpretations of the respective norms, in the specialized literature, an aspect that also affects the solutions in judicial practice. Moreover, there are different opinions regarding the applicability, at present, of the solutions pronounced by the High Court of Cassation and Justice, in appeals in the interest of the law before the entry into force of the current Criminal Code.

Keywords: check; criminal law; crime; non-cash payment instrument

1. General Aspects

The present paper arose in the context of the successive amendments to some provisions of the Romanian law both from the perspective of the rules[2] applicable to the check, and from the perspective of the criminalization rules applicable when the concrete facts committed are related to the check. For this hypothesis, we consider.

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[2] We consider Law no. 59/1934 on the check, published in the Official Gazette of Romania no. 100 of May 1, 1934, with subsequent amendments and additions, the most recent of which were implemented by the provisions of Law no. 182/2022 for the amendment and completion of Law no. 59/1934 on the check, published in the Official Gazette of Romania no. 599 of June 20, 2022.

the criminalization rules from the special part of the Criminal Code[1], but also those contained in Law no. 59/1934 on the check, as well as the legal definition found in the general part of the Criminal Code, more precisely in art. 180 para. (1) of the Criminal Code, regarding the phrase „cashless payment instrument".

In this paper, we would like to address the following issues, namely:

- delimitation of the basic variant from the aggravated variant, with reference to the check, in the case of the crime of forgery of credit titles or payment instruments, described in art. 311 of the Criminal Code, taking into account the change[2] made in the norm of criminalizing the aggravated variant, regarding the falsification of a non-cash payment instrument;

- the hypothesis of apprehension or not of the crime of computer forgery, described in art. 325 of the Criminal Code, when a falsification of the check is committed when it is presented for payment by truncation[3];

- the possibility of committing the crime of forgery in documents under a private signature, with reference to the forgery of a check;

- maintaining or not the validity of the decision[4] pronounced on appeal in the interest of the law by the High Court of Cassation and Justice no. IX/2005 in relation to the act of fraud committed in connection with the issuance of a check, in the context of the legal provisions in force regarding the crime of fraud and the one described in art. 84 point 2 of Law no. 59/1934;

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[1] Represented by Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, with subsequent amendments and additions.

[2] The provision in art. 311 para. (2) of the Criminal Code was modified by point 6 of art. I from Law no. 207/2021, published in the Official Gazette of Romania no. 720 of July 22, 2021.

[3] According to art. 32[1] of Law no. 59/1934, by "truncation" we mean "the IT procedure that consists of the following successive operations: a) transposition into electronic format of the relevant information from the original check or from the check remitted for cashing by the beneficiary through a secure electronic channel; b) the reproduction of the image of the original check or the image of the check remitted for cashing by the beneficiary through a secure electronic channel, as it was received under the conditions of art. 32^4; and c) the transmission of electronic information obtained through the operations provided in letters a) and b) to the paying credit institution. Documentation made using the website: https://legislatie.just.ro/Public/DetaliiDocument/19 (last accessed: May 8, 2023).

[4] The decision of the High Court of Cassation and Justice no. IX/2005 regarding the application of the provisions of art. 84 point 2 of Law no. 59/1934 in relation to the given regulation, by art. 215 para. (4) of the Criminal Code (O.N.: previous Criminal Code), acts of fraud committed in connection with the issuance of a check, published in the Official Gazette of Romania no. 123 of February 9, 2006, available on the website: https://www.iccj.ro/biblioteca-digitala/decizii-pronuntate-in-recurs-in-interesul-legii/comunicate-privind-deciziile-pronuntate-in-recurs-in-interesul-legii-in-cadrul-sectiilor-unite-pana-la-data-de-17-ianuarie-2011/?Anul=2005&_page=2 (last access: May 8, 2023).

- analysis of the norm of criminalization from art. 84 point 4 of Law no. 59/1934, considering the recent changes[1] made in the latter normative act.

2. Delimitation of the Basic Variant from the Aggravated One, in the Case of the Crime of Forgery of Credit Titles or Payment Instruments

With regard to the first issue brought into discussion, namely the delimitation of the basic variant from the aggravated one, in the case of the crime of forgery of credit titles or payment instruments, described in art. 311 of the Criminal Code, we consider that, in the context of the legislative amendment of the rule from the aggravated version, the falsification of a check sheet will fall under the provision of the aggravated version, not the basic one, because the check is also a non-cash payment instrument, so as defined in art. 180 para. (1) of the Criminal Code, namely: "a device, an object or a record, protected, material or immaterial, or a combination thereof, other than a currency with circulation value and which alone or together with a procedure or a set of procedures, allows the holder or user to transfer money or monetary value, including by electronic currency or virtual currency". Therefore, from the perspective of the criminal law, the check is a protected material object that, alone, allows the holder to transfer money, according to the definition in art. 180 para. (1) of the Criminal Code. According to the provisions of art. 311 para. (1) of the Criminal Code, in the specialized literature" (Dobrinoiu, Neagu, 2011, p. 542) the check was analyzed as a "title for making payments" (Dobrinoiu, Neagu, 2011), the reference being made regarding to the falsification of a check sheet. According to art. 2 let. b) from Directive[2] 2019/713 on combating fraud and counterfeiting in relation to non-cash means of payment and replacing Council Framework Decision 2001/413/JAI, the "protected object" is that which „is protected against imitation or fraudulent use, for example by signature".

From the perspective of Law no. 59/1934, although it does not have a legal definition, according to the provisions of art. 1 point 7 II thesis, respectively of art. 4 II thesis, the check is a title for making payments. However, according to the provisions of art. 1 point 6 last thesis, as well as those in art. 78[1] of Law no. 59/1934, the check is an instrument for making payments. According to the rules of legislative technique[3], since there is no legal definition for the notion of "title" or for that of

[1] Through the provisions of Law no. 182/2022 for the amendment and completion of Law no. 59/1934 on the check, published in the Official Gazette of Romania no. 599 of June 20, 2022.
[2] Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32019L0713&from=EN (last access: May 13, 2023).
[3] We have in mind the rules of Law no. 24/2000 regarding the legislative technical norms for the elaboration of normative acts, republished in the Official Gazette of Romania no. 260 of April 21, 2010, with subsequent amendments and additions.

"instrument", their meaning is that from current speech. So, by "title" for making payments we mean the "written document representing an obligation"[1] to pay a certain amount. By "instrument" for making payments we mean "the written certificate by which a payment is ordered or made"[2]. In the specialized literature (Rotaru, Trandafir & Cioclei, 2020, p. 336), the difference that was made between these two notions was under the aspect according to which the title directly allows the making of a payment (Rotaru, Trandafir, Cioclei, 2020), and the instrument is the one through which a disposition to make a payment is given, the payment thus being made indirectly. Although from the perspective of the criminal law, this delimitation is welcome and necessary to understand the will of the legislator that the norm of incrimination has as wide an area of application as possible, however, we cannot fail to note that from the point of view of Law no. 59/1934, the two notions in question are synonymous. This statement is also supported by the provisions of point 2 of Framework Norm[3] no. 7/1994 regarding the trade made by credit institutions with checks, in the sense in which it is stipulated that: "The check is a payment instrument used by the holders of bank accounts with appropriate funds in these accounts".

Although from the statement of reasons[4] of Law[5] no. 207/2021 for the amendment and completion of the Criminal Code and for the transposition of Directive 2019/713 (Non-cash Directive) on combating fraud and counterfeiting in relation to non-cash means of payment we find that the reference to physical non-cash payment instruments is made with regard to bank cards[6], however we consider that we must also take into account the checks because in their case too the payment is made without using cash[7]. Moreover, although from the same source we also learn about the fact that "the Non-Cash Directive replaces the Council's Framework Decision of May 28, 2001 on combating fraud and falsification of means of payment other than cash, which was transposed in Romania by Law[8] no. 365/2002 on electronic

[1] Available at: https://dexonline.ro/definitie/titlu/definitii (last access: May 13, 2023).
[2] See: https://dexonline.ro/definitie/instrument/definitii (last access: May 13, 2023).
[3] Published in the Official Gazette of Romania no. 119 bis of June 14, 1995, with subsequent amendments and additions.
[4] Available at: https://cdep.ro/proiecte/2021/100/60/2/em188.pdf (last access: May 13, 2023).
[5] Published in the Official Gazette of Romania no. 720 of July 22, 2021.
[6] In the summary on the non-cash Directive, with reference to physical non-cash payment instruments, bank cards are only one example, so checks are not excluded. For details see: http://publications.europa.eu/resource/cellar/a0ad270f-83db-11ea-bf12-01aa75ed71a1.0020.02/DOC_1 (last accessed: May 13, 2023).
[7] For details see: https://www.bnr.ro/Mijloace-de-plata-fara-numerar--305-Mobile.aspx (last accessed: May 13, 2023).
[8] Republished in the Official Gazette of Romania no. 959 of November 29, 2006, with subsequent amendments and additions.

commerce", the legislator's option to make no changes to the aforementioned law, but only to the Criminal Code, is interesting.

Therefore, we consider that, in accordance with the legal provisions in force, the forgery of a check sheet will be included in the aggravated version of the crime of forgery of credit titles or payment instruments, described in art. 311 para. (2) of the Criminal Code.

3. The Incidence of the Rule of Criminalization of the Act of Computer Forgery

With regard to the second issue brought up for discussion, we consider that the crime of computer forgery[1] can be apprehended, as it is described in art. 325 of the Criminal Code, when acting without right[2] on the computer data represented by the relevant information from the original check or from the cashed check, which are transposed into electronic format, or on the computer data represented by the reproduction of the image of the original check or the image of the check remitted for collection by the beneficiary through a secure electronic channel. We can consider any of the ways of committing the material element of the crime of computer forgery, i.e. the introduction, modification, deletion, without right, of computer data, as well as the restriction of access to them without right, thus resulting in data inconsistent with the truth, with the aim to be used in order to produce legal consequences. On the one hand, acting without right on the image of the original check or on the relevant information on the original check transposed in electronic format can be duplicated by the falsification of the original check, which can lead to the apprehension of both crimes, namely the crime of computer forgery and the one of falsifying credit titles or payment instruments, considering that, by virtue of the legal provisions in force, the credit institution that presents the "image of the original check, by truncation" for payment, having the obligation to "guarantee the accuracy and the conformity of the relevant information for truncation, transmitted

[1] According to art. 325 of the Criminal Code, it constitutes the crime of computer forgery, "the act of entering, modifying or deleting, without right, computer data or of restricting, without right, access to this data, resulting in data that does not correspond to the truth, for to be used in order to produce a legal consequence (…)".

[2] According to art. 35 para. (2) from Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption, published in the Official Gazette of Romania no. 279 of April 21, 2003, with subsequent amendments and additions, "the person who is in one of the following situations acts without right: a) is not authorized, based on the law or a contract; b) exceeds the authorization limits; c) does not have the permission, from the competent natural or legal person, according to the law, to grant it, to use, administer or control an IT system or to carry out scientific research or to perform any other operation in an IT system".

electronically, with the data in the original check, as well as the conformity of the check image with the original check. The use of a forged check for the purpose of making a payment constitutes the offense of circulating forged values, an act described in art. 313 of the Criminal Code, which will be apprehended along with the crime of falsifying the said non-cash payment instrument.

On the other hand, the falsification of the original check followed by the transposition, to truncate, of the relevant information from the forged original check or the image of the forged original check, will only lead to the apprehension of the crime of forgery of credit titles or payment instruments, described in art. 311 para. (2) of the Criminal Code. The use for the purpose of making a payment of the forged original check and the relevant information on the forged original check, transposed in electronic format, in the truncation procedure, constitutes the offense of circulating forged values, which will be apprehended along with the offense of forgery of the respective non-cash payment instrument.

4. The Possibility of Apprehending the Crime of Forgery in Documents under Private Signature

With regard to the third issue brought up, we believe that the crime of forgery in documents under a private signature cannot be apprehended in any situation when a check sheet is forged and used for payment because the check sheet does not have the value of a registered document under a private signature, but of a title for making a payment, and its falsification followed by its use, leads to the apprehension both of the crime of forging credit titles or payment instruments and of putting counterfeit values into circulation. In this sense, we agree with the recent opinion (Dobrinoiu & Neagu, 2011, p. 543) expressed in the specialized literature according to which, in the current context of criminalizing the act of forgery of credit titles or payment instruments, the emphasis is not on the circulation power of the title, but on its suitability to serve when making a payment (Dobrinoiu, Neagu, 2011). Therefore, today, regardless of the method of falsification, whether material or intellectual, of the title for making the payment, it should be considered, if the other conditions provided in the criminal law are met, the commission of the crime of falsification of credit titles or payment instruments, described in art. 311 of the Criminal Code. Therefore, the material falsification of the title for making the payment involves counterfeiting or altering the printout of the check sheet, in the case of our analysis. Its intellectual falsification involves entering untrue data in relation to the information required to be filled in on the respective check sheet to have the ability to deceive public trust in the truth value that the title must have for making the payment in question. We have in mind, in this last sense, the information inconsistent with the truth, according to art. 1 of Law no. 59/1934, relative to "the

name of the check expressed in Romanian, the unconditional order to pay a certain amount, the name of the draft, the signature of the issuer[1], having the capacity of drawer, the name/designation of the drawer, the code of the drawer", because in the absence of any of the these elements, according to art. 2 of Law no. 59/1934, "the check (...) will not be considered a check". Another mandatory element that must be written on the check is the date of issuance, but we believe that its falsification falls under the provisions of art. 84 point 3 thesis I of Law no. 59/1934, in the sense in which we consider that it is a crime and is punishable by imprisonment from 6 months to one year or by a fine, if the act does not constitute a more serious crime, the commission of one of the following acts: (...) issuing a check with a false date (...)". The falsification of the other elements we referred to above, from the perspective of the intellectual falsification of the check sheet, is a distinct situation from that of their absence from the check sheet. In the latter case, the lack of these elements leads not to the apprehension of the crime described in art. 311 of the Criminal Code, but of the one described in art. 84 point 3 letters a)-e) from Law no. 59/1934, as follows: "issuance of a check (...) which lacks one of the following essential elements: a) name of the check; b) the amount of money to be paid; c) the name of the drawer; d) check issuance date; e) the signature provided in art. 11." According to art. 11 of Law no. 59/1934, "any signature on a check must comply with the provisions of art. 1 point 6", i.e. "it means the holographic signature of the person having the capacity of the drawer or of his proxy, respectively the holographic signature of the legal representatives or the proxies of the legal entities that obligate themselves or of other categories of entities that use such instruments, as it is the case".

The checkbook, including the check sheets, is issued by the bank or credit institution to the holder of an account at that institution. Checks do not have the value of a document under a private signature, such as a tax invoice or a receipt issued by a person, dated, and signed, representing the will of that person, but are titles or instruments for making payments. For these reasons, we consider that in the case[2] of issuing a check sheet by a person who did not have the capacity to represent a company, using the checkbook of the respective company, but writing the name and surname in the check sheet, as well as his signature, attesting thus, a situation that does not correspond to the truth, a check that he later sent to another person as a title for making the payment, in exchange for receiving a product, should lead to the apprehension both of the crime of falsification of credit titles or instruments of

[1] According to art. 1 point 3 of Law no. 59/1934 the drawee is the credit institution that must pay.

[2] On the contrary, apprehending only the crime of forgery in documents under private signature, described in art. 323 of the Criminal Code, see the decision of the Criminal Section of the High Court of Cassation and Justice no. 4012/2009, cited by (Udroiu, 2021, p. 500).

payment, described in art. 311 of the Criminal Code, and of the crime of circulating counterfeit values, described in art. 313 para. (2) of the Criminal Code.

Also, even in the case of falsifying a checkbook, the crime of forgery in documents under private signature cannot be apprehended, but the crime of forgery of credit titles or payment instruments, because the checkbook is the "passbook issued by the houses of savings to people who deposit their savings here and on the basis of which the depositors can withdraw (with legal interest) the money deposited"[1], so it is an instrument for making a payment.

5. Validity and Binding for the Courts of a Solution Pronounced by the High Court of Cassation and Justice, in an Appeal in the Interest of the Law

Regarding the fourth issue brought up, we consider that the legislative solution contained in the appeal decision in the interest of law no. IX/2005, pronounced by the High Court of Cassation and Justice maintains its validity and binding for the courts[2], in the sense that "1. The fact of issuing a check on a credit institution or on a person, knowing that there is no provision or cover necessary for its realization, as well as the act of withdrawing, after issuance, the provision, in whole or in part, or prohibiting the drawee to pay before the expiration of the presentation term, in order to obtain for himself or for another an unfair material benefit, if damage has occurred to the holder of the check, constitutes the crime of fraud provided in art. 215 para. 4 of the Criminal Code.

2. If the beneficiary of the check is aware, at the time of issuance, that there is not enough available to cover the check, the act constitutes the offense provided by art. 84 para. 1 point 2 of Law no. 59/1934"[3].

In art. 215 para. (4) from Law[4] no. 15/1968 regarding the adoption of the Criminal Code of Romania, it was stipulated that "issuing a check on a credit institution or a

[1] For details, see: https://dexonline.ro/definitie/libret/definitii (last accessed: May 14, 2023).
[2] As provided in art. 474[1] of Law no. 135/2010 regarding the Criminal Procedure Code, published in the Official Gazette of Romania no. 486 of July 15, 2010, with subsequent amendments and additions, as follows: "The effects of the decision cease in the event of repeal, unconstitutionality or modification of the legal provision that generated the unsolved legal issue, unless it exists in the new regulation".
[3] Available at: https://www.iccj.ro/biblioteca-digitala/decizii-pronuntate-in-recurs-in-interesul-legii/comunicate-privind-deciziile-pronuntate-in-recurs-in-interesul-legii-in-cadrul-sectiilor-unite-pana-la-data-de-17-ianuarie-2011/?Anul=2005&_page=2 (last accessed: May 23, 2023).
[4] Published in the Official Bulletin no. 79-79bis of June 21, 1968. Currently this normative act is repealed.

person, knowing that for its capitalization there is no provision or the necessary coverage, as well as the act of withdrawing, after issuing, the provision, in whole or in part, or to prohibit the drawee from paying before the expiration of the presentation term, for the purpose shown in paragraph 1, if damage has been caused to the owner of the check, it is sanctioned with the penalty provided in para. 2."

It is true that in the Criminal Code in force, in the provisions of art. 244, in which the act of fraud is described, there is no longer the distinct aggravated version of criminalizing the act of fraud by checks, however, this act has not been decriminalized, as long as we consider that through this behavior it is achieved the "misleading of a person by presenting a false fact as true or a true fact as false, in order to obtain an unjust patrimonial benefit for himself or for another and if damage has been caused (...)", the perpetrator acting with direct intent qualified by purpose. This is in accordance with the content of the basic version of the crime of fraud, described in art. 244 para. (1) of the Criminal Code. Moreover, currently, the content of art. 84 point 2 of Law no. 59/1934 differs only from the point of view of the reformulation of the legal text, not from the point of view of the criminalized behavior as it is essentially still about "issuing a check without having sufficient available funds or disposing of available funds before the deadline set for the presentation"[1]. For these reasons, we believe that the arguments of the decision in question are still valid today, the legal issue that was resolved also being maintained in the current regulation. Therefore, we affirm once again the validity and binding for the courts of the decision pronounced by the High Court of Cassation and Justice no. IX/2005 in appeal in the interest of the law[2].

6. Analysis of the Rule of Criminalization of the Act Described in art. 84 point 4 of Law no. 59/1934

Regarding the fifth and last issue brought up, we state that in art. 84 point 4 of Law no. 59/1934 it is provided as follows: "it constitutes a crime and is punishable by imprisonment from 6 months to one year or a fine, if the act does not constitute a more serious crime, the commission of one of the following acts: (...) 4. issuing a check in violation of the provisions of art. 6 para. 3". These provisions were modified by the provisions of point 1 of art. 23 of Law no. 187/2012. In the form prior to this

[1] According to art. 84 point 2 of Law no. 59/1934, as this article was amended by the provisions of point 1 of art. 23 of Law no. 187/2012, published in the Official Gazette of Romania no. 599 of June 20, 2022. In the form prior to this amendment, the content of art. 84 point 2 of Law no. 59/1934 was as follows: "anyone who issues a check without having sufficient available funds, or after having drawn the check and before the deadlines set for presentation, disposes otherwise, in total or in part of the available funds".

[2] In the opposite sense, see (Udroiu, 2021, pp. 257-258).

amendment, the content of this point of art. 84 of Law no. 59/1934 was as follows: "shall be punished with a fine from 5,000-100,000 lei and imprisonment from 6 months to 1 year, except when the fact constitutes a misdemeanor punishable by a higher penalty, in which case it applies this punishment: (...) 4. Anyone who issues a check contrary to the provision of the last paragraph of art. 6".

The content of art. 6 of Law no. 59/1934 was amended in 2022, through the provisions of point 5 of the single article of Law[1] no. 182/2022 for the amendment and completion of Law no. 59/1934 on the check. The original form of this article was as follows: "The check can be made payable to the drawer himself. The check can be drawn for the account of a third party. The check cannot be drawn on the drawer himself, except in the case of a check drawn between separate establishments of the same drawer. In this case the check cannot be bearer".

The last paragraph of art. 6, which was referred to in the rule of criminalization of the act described in art. 84 point 4 of Law no. 59/1934, in the form before the modification made by Law no. 187/2012, corresponds to the initial form of the norm in art. 6 of Law no. 59/1934, mentioned above.

At the time when the legislator opted to change the content of point 4 of art. 84 of Law no. 59/1934, by Law no. 187/2012, referring from that moment to "violation of the provisions of art. 6 para. (3)", we had in mind the same content of art. 6 meaning that the last paragraph of art. 6 was actually para. (3) of art. 6.

The content of art. 6 of Law no. 59/1934, in its current form, after the amendment made in 2022, is as follows: "The check cannot be drawn on the drawer himself". We therefore find a mismatch of the incrimination provisions contained in art. 84 point 4 of Law no. 59/1934 with those of art. 6 of the same normative act. We propose by *lege ferenda* the modification of the norm of criminalization from art. 84 point 4 as follows: "issuance of a check in violation of the provisions of art. 6", because the latter article contains only one paragraph. Moreover, prior to the 2022 amendment of art. 6 of Law no. 59/1934, there was an exception according to which the issuance of the check on the drawer himself was not a crime in the case of a check drawn between different establishments of the same drawer[2], a situation in which the check could not be bearer. In the context of the other changes made in the contents of Law no. 59/1934 by Law no. 182/2022, and considering the statement of reasons[3] to Law no. 182/2022, we believe it appropriate to amend art. 6 of Law no. 59/1934, in the

[1] Published in the Official Gazette of Romania no. 599 of June 20, 2022.
[2] We understand that it is about the different headquarters of the drawer, with different legal personality, an aspect highlighted by point 46 para. (2) from the Rules of the National Bank of Romania no. 7/1934.
[3] Available at: https://www.cdep.ro/proiecte/2022/100/30/5/em156.pdf (last accessed: May 23, 2023).

sense of removing the exceptional situation. This does not mean that the scope of applicability of the criminalization rule from art. 84 point 4 of Law no. 59/1934 has increased, but that, in fact, the exceptional situation is no longer possible. This happens because, on the one hand, from the statement of reasons mentioned above, we learn that "the payment of debit instruments is made at the level of the credit institution, regardless of the place where it is presented for payment" and, on the other hand, according to art. 3 paragraph (1) from Law no. 59/1934 "the check can only be drawn on a credit institution", and according to art. 3 paragraph (2) of the same law, "the check cannot be issued unless the drawee has it available in his account open for drawing". From the interpretation of these rules, the drawer is a distinct person from the drawee, even when the drawer is a legal person. The same reasoning is also expressed in point 46 of the Rules of the National Bank of Romania no. 7/1994, as follows: „By its very essence, the check presupposes the availability of funds of the drawer at a credit institution in the drawee position. That is why it is not allowed to issue a check where the drawer and the drawee are one and the same legal entity". The exceptions to this rule, referred to in the same point 46 para. (2)[1] from the Rules of the National Bank of Romania no. 7/1994 no longer have a legal basis in Law no. 59/1934 because the rules governing these types of check were repealed by Law no. 182/2022. The reason for the repeal can be found in the statement of reasons for the latter law, in the sense that they are no longer used in current banking activity, thus requiring an update of the legal norms. Because only a credit institution can be able to draw, and the check, in the absence of the place of payment, is considered payable at the registered office of the drawee, according to art. 2 para. (2) from Law no. 59/1934, moreover the check cannot be drawn on the drawer himself.

7. Conclusions

The current methods of making payments involve less and less the use of physical non-cash payment instruments, such as the check, but if they are still used, and there is legislation regulating the way they are used, we believe that criminalization rules must also exist, through them certain social values being protected.

Certainly, in the future, as check sheets are no longer used for payment operations, there will no longer be the possibility of their forgery.

[1] According to point 46 para. (2) from the Rules of the National Bank of Romania no. 7/1994: "Traveller's checks, circular checks, as well as checks drawn between different establishments of the same drawer, but which have different legal personality, can be an exception to this rule".

The constant intervention of the legislator is necessary to update the legislation, by amending and supplementing it, to always respond to the need for protection also from the perspective of criminal law, as an *ultima ratio*, of what it is important in society.

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Law no. 182/2022 for the amendment and completion of Law no. 59/1934 on the check.

Law no. 207/2021 for the amendment and completion of the Criminal Code and for the transposition of Directive 2019/713 (Non-cash Directive) on combating fraud and counterfeiting in relation to non-cash means of payment.

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