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## LEGAL-CRIMINAL ANALYSIS OF THE CRIME OF FALSE IDENTITY

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### Summary

*In the digital age and amidst the rapid growth of online interactions, identity protection has become a major challenge for both criminal and civil legislation. The exponential increase in the use of social media platforms, electronic services, and remote communication tools has enabled new means by which a person's identity may be falsified or used fraudulently. The illegal presentation under a false identity, or assigning such an identity to another person, whether through official documents or digital instruments (e.g., online accounts, email addresses, or phone numbers), raises complex legal issues concerning criminal liability, the protection of individual rights, and information security.*

*This article aims to provide a criminal legal analysis of the act of illegal presentation under a false identity or the assignment of such identity to another person using official documents, user accounts on social platforms, email addresses, phone numbers, access cards, or other information society services. It will particularly highlight the distinction between fraudulent use of identity and the use of pseudonyms that do not infringe upon others' rights.*

**Keywords:** *identity fraud, criminal liability, criminal-legal analysis, false identity.*

**Introduction.** The identification of individuals by name is as old as the emergence of social life itself. From the earliest times, the name has been one of the fundamental elements by which natural persons have been individualized within society [1, p.11].

Legal scholars I. Dogaru and S. Cercel assert that to “identify” a natural person means to “ascertain their identity”, to distinguish the individual within society and within the totality of social relationships in which they engage. This necessity arises throughout an individual's life, not only in their legal life but also in their “extrajudicial” existence [2, p.140-141]. A person holds the potential to be a subject of rights in all branches of law, and accordingly, their identification is necessary and undertaken across all these branches. Thus, within the legal domain, identification is all-encompassing. The legal system cannot, in the normal course of civil transactions, allow for the “concealment of identity” whereby anonymity constitutes an exception. The concrete designation of the holder of a subjective right or the party bound to fulfill an obligation effectively constitutes their legal identification. Hence, identifying a natural person means the individualization of a human being, that is determining their legal status and identity [2, p.108].

In accordance with Article 36(1) of the Civil Code of the Republic of Moldova, “every natural person has the right to a name established or acquired under the law”. The Moldovan legislature has considered this means of identification to be paramount, further stipulating in Article 37(3) of the same legislative act that, “whoever uses another’s name is liable for all confusion or damages resulting therefrom. Both the bearer of the name and their spouse or close relatives may object to such use and seek reparation for the damage caused” [3, Art.36-37].

In this regard, it is to be appreciated that in any country, every natural person should possess a defined identity, recorded in an official document, which serves as proof of the person’s actual existence and which produces numerous legal consequences. A person’s identity holds exceptional significance in the relationships established between individuals, as well as between individuals and public authorities.

These relationships are protected by numerous legal norms, including criminal provisions [4, p.144]. Consequently, any harm to public trust in the veracity of a person’s identity represents a significant social danger. For this reason, on June 6, 2024, the Parliament of the Republic of Moldova adopted Law No.136 amending various legislative acts, thereby supplementing the Criminal Code with Article 177<sup>1</sup>, titled “Identity Fraud” [5, Art.38].

Identity fraud constitutes a dangerous and unlawful practice involving the creation of a false identity entirely distinct from the real one, with the aim of obtaining confidential information or committing other criminal acts. This method is frequently used to conceal the true identity of the perpetrator, thus facilitating illicit activities such as espionage, fraud, or other forms of manipulation of social, economic, or political systems. Essentially, identity falsification serves as a cover that enables illegal acts to be committed without detection, thereby endangering the safety and security of individuals, institutions, and society as a whole. Additionally, this type of offense may have devastating effects on public trust, adversely affecting interpersonal relationships and the integrity of official institutions.

Therefore, according to the Moldovan legislator, the offense of identity fraud consists of the illegal presentation under a false identity or the attribution of such an identity to another person through the use of official documents in the name of another, the registration and/or use of user accounts on social networking platforms, web portals, email addresses, phone numbers, access cards, or other information society services. This is with the exception of the use of pseudonyms that do not infringe upon another’s identity or the pseudonyms of other data subjects, done for the purpose of deceiving or maintaining deception in order to produce legal consequences [6, Art.177<sup>1</sup>].

Thus, the illegal presentation under a false identity or the attribution of such an identity to another person infringes upon the civil rights of the individual, in accordance with the provisions of Article 37(1) and (3) of the Civil Code, which state that every person has the right to the protection of their name. Whoever uses another person’s name is liable for all resulting confusion or damage [3, Art.37].

A person’s name is a non-patrimonial personal right, characterized by the traits of absolute rights. Accordingly, all individuals are under a negative obligation to refrain from acts that would violate the name holder’s right, which consists of the respect and protection of that name.

The European Court of Human Rights, in its jurisprudence, has ruled that a name, as an identifying attribute of a person and as a signifier of familial ties, falls within the

scope of the concept of private life. The guarantee provided under Article 8 of the European Convention on Human Rights is, in essence, intended to ensure the development of everyone's personality in relation to others, free from external interference [7, Art.8]. Likewise, under Article 28 of the Constitution of the Republic of Moldova, the state respects and protects intimate, family, and private life.

The European Commission of Human Rights provided the following interpretation of the notion of private life: the right to respect for private life is the right to intimacy, the right to live as one chooses, protected from public exposure [8, p.62]. The individual's right to self-determination, as well as their right to protection of intimate, family, and private life, carries some of the most remarkable and far-reaching practical and legislative implications [9, p.77]. Interpretive literature regarding these notions, as found in the International Covenant on Civil and Political Rights, shows that respect for intimate and private life protects a distinct sphere of human existence and autonomy, which does not extend to the realm of the freedom and private life of others, and outlines the following essential aspects [10, p.294-295] for understanding the concept of intimate and private life:

- *Identity* – a sphere of individual existence that entails the protection of life, physical and mental integrity, freedom of conscience and thought, and the recognition of legal personality. The protection of private life also includes the safeguarding of the personal qualities of human existence and the way a person expresses their identity (for example, name, clothing, hairstyle, gender, feelings, and thoughts).

- *Intimacy* – the non-disclosure to the public of a person's characteristics, actions, and personal data. In determining the degree of privacy of certain information, a range of factors must be considered, including the individual's specific conduct and subjective emotional experiences. In a narrow sense, intimacy is ensured through respect for the home and correspondence, as well as the protection of personal data. In a broader sense, intimacy is also expressed through respect for the confidentiality of confessions and the guarantee of secrecy, for example, the secrecy of individual voting.

Based on the points outlined above, it is important to note that Article 8 of the Convention has a horizontal characteristic, meaning that it protects individuals not only against arbitrary interference by public authorities, but also against violations committed by private people. Thus, states may adopt measures aimed at ensuring respect for private life even in the context of relationships between individuals. This is also applicable to the protection of the right to one's image and name against abuses by third parties (see *Schüssel v. Austria* No.42409/98, of 21 February 2002) [11, para.27].

Accordingly, the legislator has determined that the *general legal object* of the offense described in Article 177<sup>1</sup> of the Criminal Code – which falls under Chapter V, “Offenses against political, labor, and other constitutional rights of citizens” of the Special Part of the Criminal Code – consists of social relations related to the exercise of constitutional rights of citizens.

The *special legal object* of this offense concerns social relations related to the exercise of the right to intimate, family, and private life, in accordance with Article 28 of the Constitution.

It is also important to highlight that the offense provided under Article 177<sup>1</sup> of the Criminal Code has both a non-material (immaterial) and a material object.

The *immaterial object* of the offense is the information protected by law regarding a person's identity, which, in a broader sense, encompasses personal data. In this regard,

Article 3 of Law No.133/2011 on the Protection of Personal Data defines personal data as any information relating to an identified or identifiable natural person (the data subject). An identifiable person is someone who can be identified, directly or indirectly, by reference to an identification number or to one or more elements specific to their physical, physiological, psychological, economic, cultural, or social identity [12, Art.3].

The *material object* of the offense stipulated in Article 177<sup>1</sup> CC, consists of official documents, user accounts on social media platforms, web portals, electronic mail addresses, telephone numbers, access cards, or other services of the information society.

The term “official document” should be understood as a document that:

- Contains information that has been developed, selected, processed, systematized, and/or adopted by official bodies or individuals, or made available to them in accordance with the law by other legal subjects;
- Certifies facts that have legal significance;
- Circulates within a system of registration, strict recordkeeping, and circulation control [13, p.41-42].

Additionally, the term “official document” also includes electronic documents. According to Article 2 of the Law on Electronic Identification and Trust Services, adopted by the Parliament of the Republic of Moldova on May 19, 2022, an electronic document is defined as content in electronic form, particularly in the form of text, or audio, visual, or audiovisual recordings, to which an electronic signature or seal has been applied [14, Art.2].

However, the notion of an “official document” refers not only to documents issued by public authorities, but also to those submitted to public authorities.

It should be emphasized that documents originating from private individuals must also be considered official documents when such documents are subject to a public authentication procedure. It is precisely this procedure that confers upon the document an official character, meaning it becomes a matter of public law. This includes, for example, a power of attorney issued by a natural person to another individual or legal entity, which is authenticated by a notary or a duly authorized official. Furthermore, documents from private individuals are to be regarded as official documents when such documents are formally received by a public legal entity, and subsequently remain at its disposal in connection with resolving matters addressed in the submitted documentation [15, p.1109-1110].

Apparently, in the case of the offense under analysis, the documents that would serve to establish a person’s identity and that meet the conditions of an official document would, at first glance, be identity documents. According to Article 1(1) of Law No.273/1994 on identity documents within the national passport system, the identity documents in this system include: all types of passports, identity cards, residence permits, travel documents for stateless persons (under the Convention Relating to the Status of Stateless Persons of September 28, 1954), refugee travel documents (under the Convention Relating to the Status of Refugees of July 28, 1951), and documents issued to beneficiaries of humanitarian protection [16, Art.1]. In addition, a driver’s license can also be considered an identity document. It is issued in accordance with the Regulation on the Procedure for Obtaining the Right to Drive Vehicles, the Issuance, and Validity of Driving Licenses, approved by Government Decision No.181/2022.

Additionally, other documents that confirm a person’s identity and meet the re-

quirements of an official document may include student cards issued by relevant educational institutions, pensioner IDs, and employee IDs, among others.

A “user account on social media platforms” is understood to be an access unit within a social networking platform, created and managed to allow a user to interact with the respective online services or informational resources. A user account involves the registration and storage of information used to identify and authenticate the user, such as a username, password, or other authentication data. It may also include personal data or the history of the user’s interactions within that system.

A social network is a web-based service designed to create virtual connections between users, for social, commercial, political, or educational purposes. Thus, a social network is understood as an informational network of Internet users, based on certain websites where users can register and interact with other already-registered users.

The notion of “*electronic mail*” is defined by the Moldovan legislator in two separate normative acts. According to Article 2 of Law No.241 of 15 November 2007 on Electronic Communications, electronic mail refers to any message – text, voice, or containing sound or images – sent via a public electronic communications network and which can be stored in the network or in the recipient’s terminal equipment until it is accessed by the recipient [17, Art.2] The same definition is provided in Article 4 of Law No.284 of 22 July 2004 on Information Society Services [18, Art.4].

As for the term “*telephone number*”, it is not explicitly defined in the legislation of the Republic of Moldova. However, two related concepts are regulated by both national and European legislation: 1) A “geographic number” refers to a number within the National Numbering Plan, in which part of the digits have geographical significance and are used to route calls to the physical location of a network terminal; 2) A “non-geographic number” refers to a number within the National Numbering Plan that does not have geographical significance. These include, among others, mobile phone numbers, toll-free numbers, and premium-rate numbers [17, Art.2; 19, Art.2 let. d) and f)].

Likewise, the term “*access card*” is not defined in national legislation. However, an access card generally refers to a physical device (usually a plastic card or another type of electronic medium) used to grant a person access to a particular system, location, or computer network. The access card typically contains authentication data or encrypted information (such as a code or chip) that allows the user to gain authorization to enter a restricted area or interact with a protected system. Frequently, the access card is integrated into an access control system, which manages permissions based on the authorizations assigned to the individual.

The final concept, which also constitutes the material object of the offense stipulated in Article 177<sup>1</sup> of the Criminal Code, is the information society service. According to Law No.284 of July 22, 2004 on Information Society Services, an information society service is defined as any service provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service, including online sales of goods. Information society services are not limited exclusively to services that result in the conclusion of online contracts. As long as they constitute an economic activity, they also include services that are not remunerated by those who receive them, such as services that provide online information, commercial communications, or services that offer search, access, and data retrieval tools. Also considered information society services are those that involve the transmission of information via an electronic communications

network; the provision of access to such a network or the hosting of information supplied by the recipient of the service. Point-to-point services, such as video on demand or the provision of commercial communications via electronic mail, are likewise considered information society services.

The following do not constitute information society services, within the meaning of this law:

- a) Services provided in the physical presence of both the provider and the recipient, even if this involves the use of electronic equipment;
- b) Services with material content, even if delivered through electronic devices;
- c) Services rendered without the use of the internet (offline services), such as the distribution of software on storage devices;
- d) Services not provided via electronic data processing and storage systems, such as:
  - Voice telephony services;
  - Fax/telex services;
  - Services provided via voice telephony or fax;
  - Direct marketing by telephone or fax.
- e) Services transmitted by data transfer without individual request, intended for simultaneous reception by an unlimited number of individual recipients (point-to-multipoint transmission), such as:
  - Transmission or retransmission of audiovisual broadcasting services;
  - Teletext [18, Art.4].

The **objective element** of the offense provided in Article 177<sup>1</sup> of the Criminal Code has the following structure: a prejudicial act that may take two forms. The first form is the presentation under a false identity through inducement or maintenance in error, and the second form is the attribution of a false identity to another person.

It is important to note that the first form of the prejudicial act consists of two actions:

- a) The main action, which is the presentation under a false identity;
- b) The adjunct action, which is the inducement of a person into error or maintaining that person in error.

Inducement into error refers to the act of deliberately or negligently creating a false perception of reality, thereby causing another person to adopt a particular course of action based on a mistaken belief. This can be achieved through false statements, relevant omissions, exaggerations, or other means that affect the person's free and informed consent.

Maintenance in error involves failing to correct a mistaken belief that a person already holds, with the purpose of influencing them to act in favor of the one maintaining the error. This can manifest through fraudulent silence (intentional omission of relevant information) or through tacit confirmation of false information.

Additionally, the legislator, within the text of the provision, has outlined the methods of committing the offense, which are as follows:

- a) Presenting oneself under a false identity by using official documents bearing the name of another person, through inducement or maintenance in error;
- b) Presenting oneself under a false identity by registering and/or using user accounts on social media platforms or web portals, through inducement or maintenance in error;

c) Presenting oneself under a false identity by registering and/or using email addresses, through inducement or maintenance in error;

d) Presenting oneself under a false identity by registering and/or using a phone number, through inducement or maintenance in error;

e) Presenting oneself under a false identity by registering and/or using access cards, through inducement or maintenance in error;

f) Presenting oneself under a false identity by registering and/or using information society services, through inducement or maintenance in error.

With respect to presenting oneself under a false identity by using official documents bearing the name of another person through inducement or maintenance in error, this should be understood to mean that the perpetrator presents themselves under an identity other than their own and additionally uses an official document in the name of another person. These actions are carried out by means of inducing or maintaining a person in error. In this regard, the legislator did not specify whether the false presentation must occur before a public authority or a private entity. However, it did explicitly require the presence of prejudicial consequences, in this case taking the form of legal consequences, which are subject to analysis under the subjective element of the offense.

Furthermore, presenting oneself under a false identity through the registration and/or use of user accounts on social media platforms or web portals, by means of inducement or maintenance in error, is understood to mean that the perpetrator, knowing the personal data of another person, enters that person's data – rather than their own – when registering a user account on a social media platform. Thus, the perpetrator presents themselves on the platform using another person's identity, accompanied by the act of inducing or maintaining the error. The same actions apply to the registration and/or use of email addresses, phone numbers, access cards, or services of the information society. As previously stated, the legislator made it clear in all such cases that prejudicial consequences must result, specifically the production of legal consequences, which, as previously noted, falls within the scope of the analysis of the subjective element of the offense.

On a different note, the second modality of identity fraud is the attribution of a false identity to another person, which may be carried out both through the act of using the real identity of another person, and the act of entrusting an official document that serves to establish identity.

The act of “*using*” a person's real identity means that the perpetrator employs authentic information regarding the identity of an existing individual, information that may be found in the State Population Register or in another information system.

The act of “*entrusting*” may be expressed through the direct or indirect handing over of an official document that serves to establish identity.

Furthermore, criminal law distinguishes between the use of a false identity and the use of a pseudonym. The latter may be used as long as it does not infringe upon the identity of another person or the pseudonyms of other data subjects.

Considering the elements outlined in the objective component of the present offense, the crime provided in Article 177<sup>1</sup> of the Criminal Code will not be committed in situations where, for example, a divorced woman presents herself under the surname acquired through marriage, even though the marriage has been dissolved, especially if the court decision dissolving the marriage does not contain any provisions regarding the

spouses' surnames after the divorce.

The *subjective component* of the offense of identity fraud is characterized by direct intent. Additionally, the legislator has provided for the presence of a special purpose pursued by the perpetrator, namely the production of legal consequences.

Regarding legal consequences, according to Constitutional Court Decision (CCD) No.194 of December 21, 2023, "the Court considers that it is neither possible nor reasonable for the Criminal Code to provide an exhaustive list of legal consequences that may arise from the commission of the offense of computer-related forgery. In fact, an exhaustive list of legal consequences could omit the regulation of situations that would reasonably justify criminal liability for computer forgery (see, *mutatis mutandis*, CCD No.78 of June 16, 2022, § 26; CCD No.179 of December 15, 2022, § 24; CCD No.89 of July 25, 2023, § 24)" [20, para.24].

At the same time, according to the same Decision, paragraph 25 states that the European Court has found that a law may still meet the requirement of foreseeability even if the person concerned must seek appropriate legal advice in order to reasonably assess the consequences that a particular action might entail [20, para.25].

Taking into account the observations made by the Constitutional Court in the aforementioned case, where it was emphasized that there is no exhaustive list of legal consequences that may result from the commission of a criminal offense – in this case, identity fraud – it follows that the existence of such a comprehensive list could omit the regulation of situations that would reasonably justify holding a person criminally liable for committing identity fraud.

The *subject* of the examined offense is a natural person who, at the time of committing the offense, has reached the age of 16.

**Conclusions.** The analysis of the offense of illegally presenting oneself under a false identity, or fraudulently assigning a false identity to another person, reveals several legal challenges generated by technological developments and the growing complexity of digital interactions. The use of official documents, online accounts, email addresses, or other services of the information society to deceive or maintain a person in error – with the intent of producing legal consequences – requires clear and effective regulation, adapted to current social and technological realities.

Furthermore, it can be concluded that, when criminalizing this offense, the legislator adopted a vague definition, which creates difficulties for law enforcement and judicial authorities in effectively preventing and combating the phenomenon of identity fraud.

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