

COMMON ELEMENTS AND STRUCTURAL DIFFERENCES BETWEEN INTELLECTUAL FORGERY (ART. 321 CRIMINAL CODE), COMPUTER FORGERY (ART. 325 CRIMINAL CODE) AND THE INTRODUCTION OF UNREAL DATA IN SUMAL (ART. 149 FORESTRY CODE)

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RESEARCH ARTICLE

Abstract

The subject of this paper was generated by the considerations and, especially, the operative part of a criminal sentence pronounced by a court of first instance, which, having established the commission of the three offenses in concurrence, ordered a sentence of imprisonment to be served by a forestry engineer.

Keywords: (max. 5) legal consequences, forestry Code, forgery

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INTRODUCTION

All three analyzed offenses – **Intellectual Forgery** (Art. 321 Criminal Code - CP), **Computer Forgery** (Art. 325 CP), and **Introduction of Unreal Data into SUMAL** (Art. 149 Forestry Code - CS) – *protect public trust in the veracity of official records*. They sanction the introduction of false data with the aim of producing legal consequences, thus involving an intentional element (direct intent, as a rule) oriented towards a legal effect. Furthermore, all stipulate custodial sentences within a *similar basic range (1 to 5 years)*, which indicates the comparable gravity of these acts in the eyes of the legislator.

MATERIAL AND METHOD

The materials used in writing this paper are composed of legislation, web sites and specialized law courses. The methods used are legal, namely the formal method, the comparative method, the logical and sociological method, the analytical method. The use of these methods has the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSIONS

The differences relate to the scope, qualified active subject, and means of commission:

- **Intellectual Forgery** (Art. 321 CP) refers to the falsification of an official document during its drawing up, by a public official in the exercise of their duties, by attesting to untrue circumstances or omitting to insert real data [DOBRINOIU Vasile, collective, *The New Criminal Code Commented as of October 1, 2012*, Universul Juridic]. Therefore, the active subject is qualified, and the material object is an official document on a written medium (for example, an official form filled in with false data). The crime is committed at the time of drawing up the forged document and results in a physical document which, if used, may produce legal consequences. At the same time, attempt at Intellectual Forgery is explicitly penalized by law.

- **Computer Forgery** (Art. 325 CP) consists of the introduction, modification, or deletion of computer data, without right, or the restriction of access to data without right, resulting in information not corresponding to the truth, with the aim of producing a legal consequence. The legal object consists of the social relations concerning the trust in the truth expressed by computer data. According to Art. 181 para. (2) NCP, computer data means any representation of facts, information, or concepts in a form that can be processed by a computer

system. [collective, TOADER Tudorel, The New Criminal Code as of February 28, 2014, Hamangiu]

• Compared to Intellectual Forgery, here the **quality of public official is not required** – any person can be the active subject, provided they act without right (i.e., unauthorized or non-compliant with the law). The material object is represented by computer data from an information system (any set of automatic data processing devices legeaz.net). The essence of the offense is the alteration of the integrity and veracity of electronically stored information, undermining trust in computerized records. Attempt at Computer Forgery is not separately criminalized (in the current regulation is not provide its punishment).[legeaz.netlegeaz.net]

• **Introduction of Unreal Data into SUMAL** (Art. 149 Forestry Code) criminalizes any action of introducing, modifying, or deleting data in the integrated information system for forests (SUMAL), which generates data not corresponding to the truth, with the purpose of being used to produce legal consequences. This criminalization was recently introduced by Law No. 331/2024, as part of the new Forestry Code, to directly target the falsification of timber volume records. The scope is specific to the forestry domain – SUMAL being the official computerized register for timber traceability. The active subject is not qualified in the text (thus can be any person), and the law does not condition the act on the absence of right, unlike Art. 325 CP. This means that even persons authorized to operate in SUMAL (e.g., forestry personnel) fall under the incidence of Art. 149 if they knowingly introduce false data. The material object is constituted, similar to general Computer Forgery, by the computer data from the integrated system for forests. It should be emphasized that paragraph (2) of Art. 149 stipulates that when classifying the deeds, account must be taken of the tolerances allowed by normative acts, which implies the non-criminalization of minor deviations due to legally admitted errors (e.g., insignificant differences in volume during timber measurement). Thus, the special norm introduces a threshold of legal relevance, which is non-existent as such in the general definition of Computer Forgery. The prescribed penalty (1 to 5 years imprisonment) is equal in its limits to that of Intellectual and Computer Forgery in the Criminal Code. Attempt is not mentioned in the text of Art. 149, which means that, in accordance with the regime of Computer

Forgery, attempt at forgery in forestry records is also not separately penalized.

The common elements of the three offenses relate to their nature as forgery offenses: all involve the **alteration of truth** in documents or data with legal relevance, the direct intent to produce a legal consequence (e.g., justifying transport, evading control, or obtaining undue benefit) and, correlatively, affecting public trust in official records (whether on paper or electronic support). By their nature, Intellectual Forgery protects the security of the legal circulation of official documents, Computer Forgery protects the security and correctness of official computer data, and the offense provided by Art. 149 CS protects the accuracy of national forestry registers (SUMAL) and, implicitly, the legality of timber exploitation and transport.

Structural Differentiation: to summarize, Intellectual Forgery presupposes the special quality of public official and a forgery committed in a physical official document, Computer Forgery presupposes unauthorized actions upon computer data, without restrictions regarding the quality of the offender, while Art. 149 CS represents a special computer norm, applicable exclusively to forgeries related to the forest system (SUMAL), and can sanction even the abuse of authorization by persons who have the right of access to the system (for example, forestry officials who knowingly introduce false data).

Art. 149 of the Forestry Code can be classified as a **lex specialis** compared to the general forgery offenses in the Criminal Code, in the context of the forestry domain. According to the principle *lex specialis derogat legi generali*, a special norm (which covers a particular situation with its own rules) prevails over the general norm in case of overlap. [Decision No. 962 of March 12, 2014, pronounced in appeal by the Second Civil Section of the High Court of Cassation and Justice, by which it decided that setting aside the application of the general law whenever there is a special provision in a given matter does not have to be express, being self-understood, as it is the direct consequence of the principle *specialia generalibus derogant*]. Specifically, the **introduction of unreal data into SUMAL** (Art. 149) specifically covers a form of computer forgery particularized for the forestry system. The material element of this offense – the introduction or alteration of computer data resulting in untrue records – is practically identical to that in the definition of **Computer Forgery** in the Criminal Code, the difference

consisting in the limitation to the integrated forest records system and the elimination of the condition "without right". Thus, in the case of an act consisting of the falsification of data in SUMAL, there is an apparent dual classification: both under Art. 325 CP (the general computer forgery norm), and under Art. 149 CS (the special norm). In such a situation, the **special norm absorbs the general norm**, applying exclusively Art. 149, precisely to avoid the duplication of sanction for the same act. The legislator aimed, through the special criminalization, to offer a concentrated and adequate criminal response to the phenomenon of falsifying forestry registers, which would eliminate classification parallels. Therefore, the **introduction of false data into SUMAL must be classified only according to Art. 149 CS**, without also retaining Art. 325 CP, although the act would formally meet the elements of both texts. The unique application of the special norm is imposed by the mentioned principle and prevents the conflict of qualifications. In jurisprudential terms, *lex specialis derogat legi generali* translates into the priority of the special norm regardless of whether its penalty would be milder or harsher than that of the general norm.

The situation is more nuanced in relation to **Intellectual Forgery (Art. 321 CP)**, because it criminalizes a different aspect – the falsification of the written official document at the time of its drawing up. In the forestry context, we may be faced with **two correlated material acts**: 1. the issuance of a timber material accompanying notice (official paper document) containing false data – an act that would constitute Intellectual Forgery; and 2. the registration of the same unreal data in SUMAL – an act that falls under the incidence of Computer Forgery (general or, now, Art. 149 CS). The question that arises is whether these two closely related actions constitute a single offense or two distinct offenses.

Before the appearance of Art. 149 CS, practice and doctrine were faced with the dilemma: **does a public official who falsifies a timber transport notice and then introduces the false data into the electronic database SUMAL commit a single offense (Intellectual Forgery) or two concurrent offenses (Intellectual Forgery and Computer Forgery)?** The arguments gravitated around the principle of unity of the material offense and *non bis in idem*. It was emphasized that, if the

introduction of data into the computer system is only a technical-administrative consequence of the document falsification, imposed by legal reporting obligations, without generating a distinct legal effect, then the two acts are part of the same deed and should not be sanctioned separately. In other words, Computer Forgery "reproduces" Intellectual Forgery, without adding a new violation of social value, being a **means of continuing the initial criminal action**. In this view, Computer Forgery must be absorbed into Intellectual Forgery, considered the principal offense, to avoid the duplication of sanction. Specialty doctrine supported this solution, showing that if the electronic data in SUMAL do not produce additional legal consequences compared to the paper document (for instance, they do not cause a new prejudice, but serve the same purpose of making the transport appear legal), the distinct criminalization of Computer Forgery is not justified. The courts, in the absence of a special regulation, tended to retain the concurrence of offenses (considering the two as different material acts), however, this interpretation was criticized as being contrary to the principle **non bis in idem** – which prohibits the doubling of criminal prosecution for the same material act.

By introducing Art. 149 into the Forestry Code, the legislator practically settled this problem, offering a special computer norm that covers exactly the situation of falsifying data regarding timber transport. Currently, in the forestry context, forgery in primary documents and forgery in the forestry computer system are regulated unitarily by the special norm, which leaves less room for the concurrent application of Art. 321 CP. Although Art. 149 does not directly criminalize the act of falsifying the physical document, it targets the recording of unreal data in the official register (SUMAL) – which is the essential finality of the entire criminal process in the forestry domain. The issuance of exploitation/transport documents (APV, authorizations, notices) – is done based on the foreseen documents and flows (APV, initial notice, bordereau, DVI/FLEGT license, CMR/CIM/CONOSAMENT/T2L etc.) [2021 Methodology regarding the organization and functioning of SUMAL 2.0, the obligations of SUMAL 2.0 users, as well as the structure and modality of transmitting standardized information and the costs of issuing accompanying notices for the situations provided for in Art. 11 of the Norms regarding the provenance, circulation, and commercialization of timber materials, the regime of timber material

storage spaces and roundwood processing facilities, as well as those regarding the provenance and circulation of timber materials intended for the owner's own consumption and certain measures for the application of the provisions of Regulation (EU) No. 995/2010 of the European Parliament and of the Council of October 20, 2010, establishing the obligations of operators who place timber and timber products on the market, approved by Government Decision No. 497/2020, Official Monitor No. 97 of 29.01.2021]. In practice, a false accompanying notice without the introduction of data into SUMAL is almost useless, because SUMAL is the instrument by which the legality of transports is monitored and controlled. Conversely, the introduction of false data into SUMAL presupposes, as a rule, the existence of a supporting document (the notice) on the basis of which the operation is performed. The two actions are thus interconnected, serving the same purpose – covering up an illicit transport of timber material.

Applying the principle of specialty, it can be argued that Art. 149 Forestry Code absorbs both general Computer Forgery (Art. 325 CP) and Intellectual Forgery (Art. 321 CP) to the extent that the latter concerns the document underlying the data introduced into SUMAL, considering everything a single offense in the forestry context. Practically, the special norm “gathers” in a single text both the documentary forgery components and the computer forgery ones, unified by the special object of protection (forestry records). Such an interpretation prevents the situation where the same agent (for example, the forest ranger) would be sanctioned twice – once for falsifying the notice and a second time for entering the false data into SUMAL – even though, materially speaking, the act is continuous and unitary. In light of the principle non bis in idem [Thematic Note – Non

CONCLUSIONS

In light of the above analysis, we can conclude that:

- Intellectual Forgery (Art. 321 CP), Computer Forgery (Art. 325 CP), and the special offense of forgery in forestry records (Art. 149 Forestry Code) have a common core (the intentional disinformation of official records for legal purposes), but differ in the scope of incidence and specific requirements (quality of the offender, environment of forgery commission, authorization regime) [legeaz.netlegeaz.net].

bis in idem, European Institute of Romania, https://www.echr.coe.int/documents/d/echr/FS_No_n_bis_in_idem_ROM] a person cannot be sanctioned twice for the same act, and the genuine concurrence of offenses requires distinct material acts, with separate legal consequences. However, when the introduction of electronic data is a mandatory technical operation, consecutive to the falsification of the official document, without autonomous legal consequence, we are not in the presence of two distinct acts, but only one. Therefore, Art. 149 Forestry Code functions as a special norm in the given context and will exclude the application of Art. 325 CP, and Art. 321 CP will be applicable distinctly only if there is a documentary forgery without computer correspondence. In typical cases, however, when Intellectual Forgery and Computer Forgery are interdependent, the correct solution (after the new law) is the exclusive application of the special forestry norm, which covers the illicit conduct entirely. This ensures both the respect of *lex specialis derogat legi generali*, and the principle of non bis in idem (avoiding the duality of sanctions for the same violation of social value).

Final Considerations

In light of the above analysis, we can conclude that:

- Intellectual Forgery (Art. 321 CP), Computer Forgery (Art. 325 CP), and the special offense of forgery in forestry records (Art. 149 Forestry Code) have a common core (the intentional disinformation of official records for legal purposes), but differ in the scope of incidence and specific requirements (quality of the offender, environment of forgery commission, authorization regime) [legeaz.netlegeaz.net].

- Art. 149 Forestry Code acts as a special norm (*lex specialis*) that derogates from the general forgery norms of the Criminal Code in the particular context of SUMAL. Its introduction clarified the legislator's intention to treat unitarily those situations that previously could have been classified dually. As such, whenever the conditions of Art. 149 are met, this will be the preferred legal framework, absorbing the application of Art. 325 CP in case of overlap and, where applicable, unifying the documentary forgery aspect into a single offense, to avoid the duplication of sanctions contrary to the principle non bis in idem. Practically, the special forestry norm includes

general Computer Forgery and allows Intellectual Forgery to be retained distinctly only if it represents a separate act (not followed by special computer forgery) – otherwise, the latter is also considered implicitly integrated into the single forestry offense scheme (as a necessary preparatory act for the common illicit purpose).

- The change of legal classification in such cases becomes an essential issue: practitioners should carefully examine whether the elements are met to qualify the acts as a single offense or in concurrence. They must take into account the principle of classification legality (not to force a single classification if the law does not allow it) but also principles of law such as *lex specialis* and *non bis in idem*, which militate against over-classification.

- The principle *non bis in idem* must be constantly borne in mind: it has both a procedural dimension (no one should be tried twice for the same act – Art. 6 CPP, Art. 4 Prot. 7 ECHR), as well as a substantive one (not to double the offense classifications in a manner that sanctions the same material action twice). In the situation of successive written/computer forgeries in the forestry domain, as we have analyzed, it is crucial to determine whether we have two acts or a single one – if the evidence and context show that the action is unique, with two phases, then the classification must be unified. This honors the prohibition of double jeopardy and avoids defendants receiving multiple penalties for what is essentially a single offense (even if complex in manifestation).

Since it is a new criminalization, it is possible that in the initial phase the courts' solutions will vary. It would be useful to promote a preliminary question to the High Court (according to Art. 475 CPP), to obtain a mandatory resolution.

In conclusion, Law 331/2024 and Art. 149 Forestry Code mark a step forward in clarifying criminal liability for fraud in the forestry system. Applied correctly, the new provisions will prevent the double sanctioning of the same conduct and will offer a robust legal framework for holding accountable those who illegally manipulate timber records.

Respect for the principles *lex specialis derogat legi generali* and *non bis in idem* will guide practitioners towards just and coherent legal classifications, ensuring both the protection of the forest fund through the

sanctioning of serious acts, and the fairness of the criminal process for defendants.

The distinct regulation of the offense of introducing unreal data into SUMAL highlights the legislator's intention to avoid artificial overlaps of criminal classifications and to ensure a unitary legal qualification of acts committed in the forestry domain. The correct application of the principles *lex specialis derogat legi generali* and *non bis in idem* thus becomes essential for achieving a coherent and predictable system of criminal justice.

In conclusion, the comparative analysis of the incriminating provisions demonstrates that, despite their different regulatory frameworks, the offenses examined are grounded in the protection of the same fundamental social value—public trust in the authenticity and veracity of official records. The distinctions between these criminal norms are therefore primarily functional, deriving from the medium in which the falsification occurs and the particular domain regulated, rather than from differences in the protected legal interest.

Moreover, the introduction of Article 149 into the Forestry Code reflects the legislator's clear intention to address a specific category of criminal conduct through a specialized legal framework. This confirms the broader tendency toward the specialization of criminal law, ensuring a coherent and effective response to infringements affecting areas of major public interest, such as the forestry sector.

The analysis demonstrates that intellectual forgery, computer forgery, and the introduction of unreal data into SUMAL share a common foundation in the protection of public trust in the authenticity and reliability of official records, while differing in their scope of application and technical modalities. The adoption of Article 149 of the Forestry Code reflects the legislator's intention to provide a specialized and coherent criminal law response to falsification practices specific to the forestry sector, thereby ensuring legal certainty and preventing overlapping classifications contrary to the principle of *non bis in idem*.

REFERENCES

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