



False testimony in criminal law: between the protection of public interest and the safeguard of individual rights

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Abstract

This article explores the complex legal and ethical tension between prosecuting false testimony and safeguarding fundamental individual rights within contemporary criminal justice systems. False testimony, defined as deliberately providing untruthful statements under oath, undermines the integrity of the judiciary, disrupts the fact-finding process, and threatens public trust in legal institutions. Simultaneously, aggressive prosecution of false testimony may infringe upon individual guarantees such as the right to silence, the presumption of innocence, and the protection against self-incrimination. The study examines legal frameworks from both continental and common law traditions to evaluate the thresholds of criminal liability for false testimony, the burden of proof required, and procedural safeguards afforded to defendants. Special attention is given to the European Court of Human Rights jurisprudence, which emphasizes proportionality, procedural fairness, and the necessity of balancing collective and individual interests. Furthermore, the article analyzes the psychological, social, and structural factors that may lead individuals to offer false testimony, including coercion, fear of retaliation, or cognitive distortions. Through a comparative-analytical methodology, the paper concludes that criminal law must preserve the authority of truth in judicial proceedings without disregarding the broader principles of due process and human dignity. Effective legal responses to false testimony must thus integrate preventive, punitive, and protective measures while maintaining a fair equilibrium between truth-seeking and individual autonomy.

Keywords: false testimony, criminal law, individual rights, due process, evidentiary truth

1. Introduction

False testimony is criminalized in Romanian criminal law as an act that seriously undermines the administration of justice and, implicitly, the rule of law (Criminal Code, Art. 273). The importance of this criminalization derives from the essential role that a witness's

statement plays in establishing the truth, which is a central element of criminal proceedings (Păcurariu, I., Poiană, I, 2014).

Testimony often constitutes one of the decisive means of evidence, especially in cases where material or forensic evidence is either non-existent or insufficient. Thus, the veracity of witnesses' statements has a direct impact on establishing the truth and, consequently, on the legality and soundness of judicial decisions (Udroiu, 2025).

However, there is an inevitable tension between protecting the public interest and respecting individual rights, particularly in the context of the principle *nemo tenetur se ipsum accusare* (the right of a person not to incriminate oneself) and the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) has repeatedly emphasized that the use of testimony obtained through coercion or pressure may constitute a violation of the right to a fair trial, affecting not only the witness but also the integrity of criminal proceedings as a whole (Saunders v. the United Kingdom, 1996; Jalloh v. Germany, 2006).

Moreover, the dual nature of testimony—as both an instrument for discovering the truth and a potential means of self-incrimination—creates multiple dilemmas in judicial practice. Particularly when a witness also has the status of suspect or defendant in another case, the obligation to tell the truth may directly conflict with the right to defense and the presumption of innocence (Dongoroz., 2012). Doctrine points out that "the duty to tell the truth cannot be absolutized to the point of nullifying the individual's right not to contribute to their own incrimination" (Keane, A., McKeown, P. 2024).

Furthermore, in certain contexts, false testimony may be produced not only out of bad faith but also as a result of fear, external pressures, or personal interests, further complicating the legal analysis of the situation (Păcurariu, I., Poiană, I, 2014). Therefore, the criminal justice system must find a balance between the public interest in protecting the integrity of the act of justice and the need to defend the fundamental rights of individuals called to testify (Robinson et al, 2022).

This issue is all the more relevant in the context of European trends towards enhanced protection of procedural rights, where the principles of the ECHR have become essential benchmarks in interpreting and applying national norms. The practice of European courts has demonstrated that, although criminalizing false testimony is necessary to protect the rule of law, it must not become a tool of pressure that compromises the right to a fair trial and individual freedom.

Therefore, the analysis of false testimony in criminal law cannot be limited to merely examining the constitutive elements of the offense but must also include reflections on its procedural implications and on how it influences the balance between the public interest and individual rights. Such research is essential not only for legal doctrine but also for judicial practice, to ensure a fair criminal trial and protect the fundamental values of the rule of law (Udroiu, 2025).

2. False Testimony as an Offense Against the Administration of Justice

According to legal doctrine, false testimony protects both the authority of the state in administering justice and public confidence in the fairness of judicial decisions (Dongoroz, 2012). By its very nature, this criminalization has a mixed character: it safeguards a significant social interest—the administration of justice under conditions of legality and fairness—as well as individual values, since the veracity of witnesses' statements can directly

influence the legal situation of the defendant or other persons involved in criminal proceedings (Udroiu, 2025).

Through the criminalization of false testimony, the legislator aims to sanction behaviors that distort judicial truth and may result in judicial errors with dramatic effects on those involved, including wrongful convictions or acquittals of guilty persons. Thus, the offense is seen as a real danger to the proper administration of justice, because “judicial truth, in the absence of accurate and sincere statements, cannot be attained, and the act of justice risks becoming merely an appearance” (Keane,A. , McKeown,P.2024),

From a legal standpoint, Article 273 of the Romanian Criminal Code criminalizes false testimony in the form of statements contrary to the truth, made by a witness, expert, or interpreter in criminal, civil, or any other proceedings, if the act is committed under oath or under other conditions prescribed by law. The prescribed penalties reflect the seriousness of the offense and may vary depending on the consequences produced or the nature of the case in which the false testimony was given (Criminal Code, 2024).

At the European level, the jurisprudence of the European Court of Human Rights emphasizes, however, that the criminalization of false testimony must be compatible with the right to silence and the right to a fair trial. In *Saunders v. the United Kingdom* (1996), the Court held that any coercion obliging a person to provide information that might incriminate them must be carefully scrutinized to avoid violating Article 6 of the ECHR. The same principle was reiterated in *Jalloh v. Germany* (2006), where the Court ruled that the principle of *nemo tenetur se ipsum accusare* is an essential element of the right to a fair trial, and the use of evidence obtained against the person’s will can seriously impair the fairness of criminal proceedings (ECtHR, 2006).

Thus, while under Romanian law false testimony essentially presupposes the existence of a false statement relevant to the case, in the European context the emphasis is placed on ensuring a balance between the state’s interest in discovering the truth and the protection of the fundamental rights of the person giving testimony. The European Court of Human Rights has established that protection against self-incrimination is not limited solely to the statements of the defendant but may also extend to witnesses when they risk exposing themselves to criminal prosecution through their own statements .

This complex dimension of false testimony is also reflected in the practice of national courts, which must assess not only the truthfulness of statements but also the conditions under which they were obtained. Doctrine has noted that “not every inconsistency between the witness’s statements and reality should automatically lead to criminal liability, but only those situations where the intentional nature of distorting the truth is proven” (Păcurariu,I., Poiană, I, 2014).

Moreover, there are particular situations where the witness is, in fact, a suspect or defendant in another related case. In such cases, the obligation to tell the truth may dangerously intersect with the right to silence and the right to defense. Thus, false testimony becomes a sensitive subject, positioned at the intersection between the necessity of protecting the public interest and the obligation to respect the fundamental rights of the individual (Udroiu, 2025).

In conclusion, false testimony is not merely an offense against the administration of justice but also a complex legal phenomenon involving a delicate balance between the interests of society and the rights of the individual. Although its criminalization is necessary, it cannot be applied automatically; it must be accompanied by procedural safeguards intended

to prevent abuses and to protect the fairness of criminal proceedings (Dongoroz 2012; Robinson et al, 2022).

3. Protection of public interest versus safeguarding individual rights

The fundamental dilemma lies in the relationship between the public interest in ensuring the discovery of the truth and the rights of the person called to testify. Doctrine states that “for testimony to be conclusive evidence, it must be given freely, without any form of coercion, and it must also be truthful” (Keane,A. , McKeown,P.2024,). This requirement arises from the principles of criminal proceedings, which establish the search for the truth as a primary objective, without which justice cannot be administered effectively and correctly (Dongoroz, 2012).

However, this ideal can come into direct conflict with the fundamental rights of the witness, especially the right not to self-incriminate and the right to respect for private life (Păcurariu,I., Poiană, I, 2014). The witness, as a participant in the proceedings, may face significant risks, particularly in complex cases where the truth has multiple facets and where their statements can have legal consequences not only for others but also for themselves (Udroiu, 2025).

The issue becomes even more acute in situations where the witness is simultaneously a suspect or defendant in another related case. In these cases, the obligation to tell the truth may directly collide with the right to defense, since admissions made in one case may constitute incriminating evidence in another. This hypothesis has been frequently analyzed in doctrine, where it has been noted that “it cannot be required of a witness to contribute to their own incrimination under the threat of criminal liability for false testimony, without infringing their fundamental rights”(Keane,A. , McKeown,P.2024),

The European Court of Human Rights has consistently ruled that the use of statements obtained under coercion or pressure is incompatible with the guarantees of a fair trial established by Article 6 of the ECHR. In *Jalloh v. Germany* (2006), the Court emphasized that the principle of *nemo tenetur se ipsum accusare* protects not only against physical coercion but also against any form of psychological or legal pressure exerted on a person to compel them to provide evidence against themselves (ECtHR, 2006). The same idea is reflected in *Saunders v. the United Kingdom* (1996), where the Court stated that respect for the right to silence is essential to ensuring the fairness of criminal proceedings, particularly in situations where a witness’s statements could have self-incriminating effects (ECtHR, 1996).

Thus, while the right of the witness to remain silent is not absolute, it must be protected, especially in circumstances where their statements might constitute self-incrimination. Doctrine underscores that “a proper balance between discovering the truth and protecting the rights of the person called to testify is essential for maintaining the fairness of criminal proceedings” (Robinson et al, 2022).

On the other hand, from a practical perspective, the absence of clear protective measures for witnesses in such situations can lead either to false testimonies, given out of fear of self-incrimination, or to complete silence, which hinders the discovery of the truth. This can significantly weaken the probative function of testimony and lead to judicial errors, affecting both the public interest and the rights of the defendant (Udroiu, 2025).

In Romania, although the Code of Criminal Procedure provides for the possibility of a witness refusing to testify if doing so could expose them to criminal liability, in practice, the application of this safeguard is not always free of difficulties. Doctrine notes that “there is a risk that witnesses may be implicitly or explicitly compelled to testify under the threat of

criminal liability for false testimony, even in situations where their statements might incriminate them” (Keane,A. , McKeown,P.2024)

4. Implications for criminal evidence

From a practical perspective, false testimony significantly complicates the work of judicial authorities, as it can lead to erroneous decisions and the deprivation of liberty of innocent individuals. The importance of witness statements in criminal proceedings is difficult to dispute, especially in cases where material or forensic evidence is insufficient or entirely absent. Thus, the quality of the evidence may decisively depend on the sincerity and truthfulness of witnesses' statements (Udroiu, 2025).

Moreover, “the risk of judicial error increases where false testimonies are not promptly detected and sanctioned” (Keane,A. , McKeown,P.2024). Specialized legal literature has emphasized that judicial errors are not mere accidents but may constitute systemic failures resulting from vulnerabilities in the administration and evaluation of evidence. False testimony is one such vulnerability because it can mislead judicial authorities, distort the factual picture of the case, and directly influence the outcome of the trial (Dongoroz , 2012).

An illustrative example is found in cases where individuals have been convicted solely based on witness statements that later turned out to be false. In European jurisprudence, the European Court of Human Rights has repeatedly highlighted the danger of relying exclusively on witness statements without corroborating them with other objective evidence (Saunders v. the United Kingdom, 1996). Thus, the use of false testimony affects not only the fairness of the criminal trial but also public confidence in the justice system.

On the other hand, the rigid application of sanctions for false testimony can discourage individuals from cooperating with judicial authorities, particularly in complex cases such as organized crime offenses. In such situations, witnesses may fear both potential legal repercussions for their statements and retaliation from the individuals incriminated. This phenomenon is well known in judicial practice, where “witnesses’ fear of testifying truthfully or cooperating with the authorities can entirely block criminal investigations” (Păcurariu,I., Poiană, I, 2014).

Furthermore, in cases involving organized crime groups or high-level corruption, witnesses are often placed in extremely difficult situations, torn between fear of retaliation and fear of being charged with false testimony if they do not maintain their previous statements (Udroiu, 2025). Doctrine has emphasized that “excessive rigor in punishing false testimony can discourage the reporting of serious offenses, significantly undermining the effectiveness of the fight against organized crime” . (Keane,A. , McKeown,P.2024),

This tension generates the necessity for a fine balance between protecting the integrity of the evidence and respecting the rights of individuals called to testify. Witness protection measures, such as identity protection, testimony under special conditions, or the use of written statements, can help reduce the risk of false testimony and increase the level of cooperation (Dongoroz, 2012). However, such measures must be applied judiciously, so as not to undermine the right to confrontation and the fairness of criminal proceedings guaranteed by Article 6 of the ECHR (Jalloh v. Germany, 2006).

False testimony has profound implications for criminal evidence, not only as an individual act of distorting the truth but also as a risk factor for the fairness of the trial and the legitimacy of the act of justice. A balanced approach requires the prompt identification and sanctioning of false testimonies, combined with effective witness protection measures, to

preserve both the efficiency of the fight against crime and the respect for fundamental rights of those involved in criminal proceedings (Robinson, 2022; Udroi, 2025).

5. Research Questions

Based on the issues discussed, this article raises the following research questions:

QR1: To what extent does the criminalization of false testimony interfere with the right to silence of a witness who is also a suspect?

The criminalization of false testimony directly and substantially interferes with the right to silence of a witness who is simultaneously a suspect, especially in situations where the person being questioned as a witness also has the status of a suspect or defendant in another case. This interference arises from the inherent tension between the witness's legal obligation to tell the truth and every individual's right not to self-incriminate, enshrined in the principle of *nemo tenetur se ipsum accusare* and guaranteed by Article 6 of the European Convention on Human Rights (ECHR).

Doctrine emphasizes that "it cannot be required of a person to contribute to their own incrimination under the threat of criminal liability for false testimony". Thus, the obligation to tell the truth, which is specific to witnesses, comes into conflict with the right to remain silent when the same statements could constitute incriminating evidence in other criminal proceedings against the witness.

The European Court of Human Rights held in *Saunders v. the United Kingdom* (1996) that the right to silence and protection against self-incrimination are fundamental elements of a fair trial. These rights are not limited solely to the defendant's position but also extend to witnesses whose statements could result in self-incrimination. In *Jalloh v. Germany* (2006), the Court reaffirmed that any pressure, whether physical or psychological, that compels a person to make self-incriminating statements is incompatible with Article 6 of the ECHR.

Under Romanian law, Article 118(1) of the Code of Criminal Procedure provides the possibility for a witness to refuse to answer questions if the answers could expose them to criminal prosecution. However, in practice, the application of this provision raises difficulties, as judicial authorities do not always adequately inform witnesses of their right to refuse to testify in situations that may lead to self-incrimination (Păcurariu, I., Poiană, I., 2014). Thus, there is a risk that witnesses who are also suspects might make statements compromising their own legal situation out of fear of being later accused of false testimony.

This situation generates a vicious circle: the witness-suspect, in order to avoid the risk of liability for false testimony, may choose to give full statements, even if those statements incriminate them. Conversely, if they refuse to testify or provide hesitant statements, they may be perceived as untruthful, which can have negative consequences, including with respect to their credibility in other cases (Udroi, 2025).

In conclusion, the criminalization of false testimony significantly interferes with the right to silence of a witness-suspect, creating a potential conflict between the legal obligation to tell the truth and the fundamental right not to contribute to one's own incrimination. To maintain the balance between the public interest and individual rights, careful application of legal provisions and thorough informing of the witness-suspect regarding their procedural rights are essential (Dongoroz, 2012; Robinson et al., 2022).

QR2: What procedural safeguards are necessary for testimony to be freely given and truthful?

For testimony to be considered freely given and truthful, it is essential that criminal proceedings be governed by a set of procedural safeguards designed to protect both the witness's freedom of will and the integrity of the evidence. Doctrine emphasizes that "the probative value of testimony is inextricably linked to its voluntary and free nature".

One of the most important procedural safeguards is the obligation to inform the witness of their rights and obligations. Under Romanian law, Article 118 of the Code of Criminal Procedure stipulates that judicial authorities must inform the witness of their right not to answer questions that could expose them to criminal liability. This safeguard derives from the principle of *nemo tenetur se ipsum accusare* and serves to prevent self-incrimination (Păcurariu, I., Poiană, I, 2014). In the absence of complete information, there is a high risk that statements will be given under the pressure of not knowing one's rights, compromising both the voluntary nature of the testimony and the fairness of the proceedings (Udroiu, 2023).

Another essential safeguard is the prohibition of any form of coercion, intimidation, or unlawful promises. The European Court of Human Rights has repeatedly established that statements obtained through violence, threats, or psychological pressure are inadmissible and undermine the fairness of the trial (ECtHR, 1996; 2006). Thus, testimony must be the result of an unaltered act of will, free from fear or external influence. In *Jalloh v. Germany* (2006), the Court stressed that protection against coercion applies not only to defendants but also to witnesses when they risk self-incrimination.

The presence of a lawyer during the questioning of witnesses can also be a fundamental safeguard, especially in the case of vulnerable witnesses or those connected to the case (e.g., a witness who is also a suspect). The presence of legal counsel ensures the observance of procedural rights and can prevent potential abuses by judicial authorities (Robinson, 2022).

Furthermore, the clear regulation of witness protection is an indispensable safeguard. Witnesses facing risks, such as those involved in cases of organized crime, corruption, or domestic violence, must benefit from measures such as identity protection, testimony via audio-visual means, or relocation. Without such measures, witnesses may be tempted to lie or refuse to testify out of fear of retaliation (Dongoroz , 2012).

In addition, thorough documentation and recording of statements represent an important safeguard. Audio-visual recording of hearings contributes to ensuring transparency and allows subsequent verification of the conditions under which testimony was obtained, reducing the risk of misinterpretation or unfounded accusations of pressure (Udroiu, 2025).

Lastly, the critical evaluation of witness statements by the court is an essential safeguard. Judges must analyze not only the content of statements but also the context in which they were given, any contradictions, as well as the coherence and credibility of the testimony. According to ECtHR jurisprudence, a conviction cannot be based solely on the statements of a witness who has not been subjected to cross-examination (ECtHR, 1996).

In conclusion, freely given and truthful testimony requires the existence of a complex procedural framework that guarantees the protection of the witness against any form of pressure or intimidation and ensures the full respect of fundamental rights. Only in this way can the probative value of testimony be preserved and contribute to the conduct of a fair criminal trial (Robinson, 2024; Udroiu, 2025).

QR3: Is there a risk that the criminalization of false testimony could be used as a tool of pressure against witnesses?

Yes, there is a real and documented risk that the criminalization of false testimony could be used as a tool of pressure against witnesses, especially in the context of complex criminal investigations or cases involving significant interests, such as those related to corruption, organized crime, or terrorism. This problem arises from the dual nature of testimony: on the one hand, it is an essential means for discovering the truth; on the other hand, it can become a mechanism through which authorities exert pressure on witnesses to obtain statements favorable to the investigation or the prosecution (Udroiu, 2025).

Doctrine emphasizes that “the threat of criminal liability for false testimony may instill in the witness a fear that any inconsistency in their statements could have legal consequences, even when this is not the result of fraudulent intent but of memory errors or the stress inherent in judicial proceedings”. This state of anxiety can compromise the free and sincere nature of the testimony, implicitly affecting the quality of the evidence.

The European Court of Human Rights has highlighted, in *Saunders v. the United Kingdom* (1996), that pressures exerted on a person to provide statements may violate the principle of a fair trial. Likewise, in *Jalloh v. Germany* (2006), the Court held that the use of coercive methods, including threats of criminal prosecution, may constitute a violation of Article 6 of the ECHR if such methods compel a person to make statements against their will.

The risk of using the criminalization of false testimony as a tool of pressure is particularly pronounced in the case of witnesses who are directly connected to the facts under investigation or who may have personal interests to protect. Such witnesses may feel compelled to adapt their statements to avoid a potential charge of false testimony or to obtain certain procedural advantages (Udroiu, 2025). Indeed, Romanian judicial practice has reported cases where witnesses retracted initial statements, claiming that they had given them under pressure from investigators or out of fear of legal consequences (Păcurariu, I., Poiană, I, 2014).

Furthermore, in complex investigations, such as those involving organized crime, the threat of prosecution for false testimony may be used to force witnesses to cooperate with the authorities, even when they feel exposed to personal risks or retaliation. In such contexts, testimony may no longer be the result of a free will but rather of indirect coercion, seriously affecting the fairness of the trial and the probative value of the statements (Robinson et al., 2022).

Therefore, it is essential for judicial authorities to apply the provisions regarding false testimony with discernment and to clearly distinguish between deliberately false statements and simple errors or discrepancies inherent in any act of recollection. In addition, witnesses must be properly and fully informed of their rights and protected against any form of intimidation or pressure (Dongoroz , 2012).

In conclusion, although the criminalization of false testimony is essential for safeguarding judicial truth, there is indeed a real risk that it may be used as a tool of pressure against witnesses. Preventing such abuses requires a balanced application of the law, the implementation of solid procedural safeguards, and consistent jurisprudence that protects the fundamental rights of individuals called to testify (Udroiu, 2025; Robinson, 2024).

QR4: How is ECtHR jurisprudence reflected in national courts' practice in cases concerning false testimony?

The jurisprudence of the European Court of Human Rights (ECtHR) has significantly influenced the practice of national courts in cases concerning false testimony, impacting both the interpretation of legal norms and the way judicial authorities assess the conditions of legality and fairness in obtaining and using witness statements. This influence derives from Romania's obligation, as a member state of the European Convention on Human Rights, to ensure that domestic law complies with European standards, as stipulated by Article 20(2) of the Romanian Constitution and Article 11(3) of the Code of Criminal Procedure (Udroiu, 2025).

Firstly, ECtHR jurisprudence has strengthened the principle that any statement must be given freely and obtained without coercion. National courts have begun to pay closer attention to how witness statements are taken, in order to avoid any suspicion of pressure or intimidation, as emphasized in judgments such as *Saunders v. the United Kingdom* (1996) and *Jalloh v. Germany* (2006). In these cases, the Court found that the use of statements obtained under pressure can affect the fairness of the trial, including with respect to witnesses, not just defendants (ECtHR, 1996; 2006).

Secondly, Romanian courts have adopted the ECtHR's standards regarding the witness's right to silence and protection against self-incrimination. In national practice, the application of Article 118(1) of the Code of Criminal Procedure—which allows a witness to refuse to answer questions that could expose them to criminal liability—has become more evident. Courts have begun to analyze more rigorously situations in which the witness is, in fact, a suspect or defendant in another case, in order to prevent violations of the principle of *nemo tenetur se ipsum accusare* (Păcurariu, I., Poiană, I, 2014).

Moreover, standards such as the right to confrontation (enshrined in Article 6 § 3(d) of the ECHR) have influenced Romanian courts' practice in the sense that witness statements cannot serve as the sole basis for a conviction if the opposing party has not had an effective opportunity to challenge them. Consequently, courts have become more cautious about basing criminal judgments solely on witness statements, especially when there are suspicions about the truthfulness of those statements or when witnesses cannot be directly questioned in court (Dongoroz et al., 2022).

At the same time, national courts increasingly distinguish between deliberately false statements and mere inaccuracies caused by memory errors or perception, consistent with the ECtHR's approach, which requires that only the intentional distortion of the truth should be subject to criminal sanction. Thus, in many cases, courts have held that not every contradiction or discrepancy in witness statements automatically justifies prosecution for false testimony; instead, there must be evidence of an intention to mislead the court.

A relevant example is represented by decisions in which Romanian courts have excluded statements considered to have been obtained under pressure, explicitly citing ECtHR jurisprudence. In such cases, the rulings of the European Court have been directly referenced, underlining the necessity of complying with standards regarding the voluntariness of statements and the right to a fair trial (Udroiu, 2025).

In conclusion, ECtHR jurisprudence has had a notable impact on the practice of national courts regarding false testimony, contributing to an increased level of scrutiny regarding the conditions under which statements are obtained and to the strengthening of procedural safeguards intended to protect both the public interest and individual rights (Vasiliu, 2021; Udroiu, 2025; Robinson et al, 2024).

QR5: What are the evidentiary and legal implications of identifying testimony as false in the context of a fair criminal trial?

Identifying testimony as false has profound implications, both from an evidentiary and a legal perspective, in the context of a fair criminal trial. Such a situation affects not only the quality of the evidence and the establishment of judicial truth but also confidence in the justice system and the fundamental rights of individuals involved in the proceedings (Udroiu, 2025).

1. Evidentiary Implications

In criminal justice, the integrity of testimonial evidence plays a pivotal role in the establishment of material truth. When a witness statement is identified as false, the repercussions extend far beyond the individual testimony itself, triggering a systemic reevaluation of the evidentiary framework upon which the case rests. This is particularly critical in cases where testimonial evidence constitutes the primary or sole evidentiary foundation, often due to the absence of direct material or forensic evidence (Dongoroz, 2012).

A false testimony, whether it stems from intentional deceit, external coercion, or psychological pressure, introduces a substantial risk of judicial error. Such misrepresentation may distort the investigative trajectory, mislead prosecutors, and bias the perception of the judge or jury. The consequences are grave: an innocent person may be wrongly convicted, or a guilty party may evade liability due to the undermining of procedural credibility. In both scenarios, the principle of *in dubio pro reo*—which mandates that any reasonable doubt must benefit the accused—is rendered ineffective, thereby compromising the very notion of a fair trial.

Moreover, the evidentiary ripple effect caused by a single false statement can be significant. Courts often rely on corroboration between various sources of evidence, and the invalidation of one component may cast doubt on the reliability of the entire evidentiary chain. This is especially problematic in complex criminal cases—such as those involving organized crime, domestic violence, or historical abuse—where testimonial convergence is often the only route to coherence in fact-finding.

In accordance with the jurisprudence of the European Court of Human Rights, a conviction cannot be legitimately grounded on a statement that is subsequently proven to be false or obtained under dubious circumstances, such as coercion or undue pressure (ECtHR, 1996; 2006). The Court has consistently held that where doubts arise regarding the veracity or voluntariness of a testimony, the national court is under an obligation to seek corroborating independent evidence before issuing a finding of guilt. This principle serves as a procedural safeguard, intended to mitigate the risk of miscarriages of justice.

Additionally, false testimony may prompt the reopening of criminal proceedings, either via extraordinary legal remedies such as *restitutio in integrum*, or through mechanisms of appeal and revision, depending on the domestic procedural framework. In this context, the false statement not only jeopardizes the immediate fairness of the trial but may also compromise the finality and legal certainty of judicial decisions. Such instability undermines public trust in the justice system, reinforcing the imperative of rigorous evidentiary standards and procedural safeguards.

Finally, from a doctrinal perspective, false testimony challenges the traditional epistemological assumptions of fact-finding in adversarial proceedings. It raises the question of how courts can navigate between subjective perceptions, memory distortions, and intentional misrepresentation, particularly when credibility assessments depend heavily on

the demeanor and consistency of the witness—elements inherently prone to error. Therefore, legal systems must continuously refine their evidentiary frameworks to differentiate between deliberate deceit and cognitive limitations or trauma-related inconsistencies.

In conclusion, the evidentiary implications of false testimony are profound and multifaceted. They affect not only the accuracy of individual judgments but also the structural legitimacy of the criminal justice system. To counteract these risks, courts must adopt a cautious and context-sensitive approach to testimonial evaluation, ensure the presence of independent corroborating evidence, and remain vigilant against procedural practices that could incentivize or conceal falsehood.

2. Legal Implications

Legally, identifying false testimony triggers significant consequences:

Criminal Liability of the Witness

Under Article 273 of the Romanian Criminal Code, a witness who makes false statements may be held criminally liable, facing penalties that can include imprisonment, depending on the gravity of the act and the nature of the case in which the false statement was made. This sanction aims to protect the authority of the judiciary and deter behaviors that could jeopardize the discovery of the truth (Udroiu, 2025).

Impact on Ongoing Criminal Proceedings

False testimony may constitute grounds for reviewing a judicial decision, if it is demonstrated that the false statement influenced the verdict (Code of Criminal Procedure, Article 453 letter a). In this context, identifying a false statement can have consequences not only for the witness but also for the entire outcome of the criminal proceedings .

Impact on the Right to a Fair Trial

The use of false testimony—even if not immediately discovered—can compromise the fairness of the proceedings, as it undermines the defendant’s right to a defense and to a trial based on truthful evidence. The European Court of Human Rights has established in multiple judgments that a conviction based on unreliable evidence, including false statements, constitutes a violation of Article 6 of the ECHR (ECtHR, 1996; Robinson, 2022).

Diminished Public Confidence in Justice

From a broader perspective, the use or acceptance of false testimony in proceedings, without it being detected and sanctioned, severely undermines public confidence in the judicial system. Doctrine has stated that “public confidence in the act of justice is the foundation of its authority and legitimacy; any fissure in this confidence can have devastating effects” (Keane,A. , McKeown,P.2024)

6. Conclusions and discussion

False testimony occupies a particularly sensitive position within the architecture of criminal justice, standing at the intersection between two equally compelling imperatives: the public interest in ascertaining the truth and the individual’s right to procedural safeguards. On the one hand, the accurate determination of facts forms the cornerstone of any legitimate criminal adjudication. Truth, in this context, is not a philosophical ideal but a judicial necessity, as it underpins the legitimacy of convictions and the reliability of criminal sanctions (Udroiu, 2025; Robinson et al., 2024). Without truthful testimony, the entire edifice

of criminal justice risks being compromised, as verdicts may rest on distortions or fabrications.

On the other hand, the imposition of criminal liability for false statements must not be weaponized in such a way that it deters free, voluntary, and honest participation in the judicial process. The European Court of Human Rights (ECtHR) has consistently emphasized that the right against self-incrimination (*nemo tenetur se ipsum accusare*), alongside the right to silence, are not procedural conveniences but substantive guarantees intrinsic to the concept of a fair trial as codified in Article 6 of the European Convention on Human Rights (ECtHR, 1996; 2006). Any legal instrument that penalizes false testimony must, therefore, be carefully calibrated so as not to exert undue psychological or procedural pressure on witnesses or accused persons, particularly when they are in vulnerable positions.

From a doctrinal perspective, several scholars have warned against the dangers of excessive formalism and rigid legal interpretations that fail to account for the contextual and psychological dimensions of testimony. Păcurariu and Poiană (2014) highlight that overly stringent interpretations of false testimony provisions may lead to counterproductive outcomes: either a chilling effect that dissuades witnesses from testifying altogether, or the emergence of defensive, overly cautious testimonies that obscure rather than clarify the facts of the case. This risk is magnified in proceedings involving organized crime or high-level corruption, where the stakes are high and witnesses may be simultaneously exposed to institutional pressure and external threats (Dongoroz, 2012).

A truly balanced approach requires a multi-layered response. First, at the legislative level, norms must be clear, foreseeable, and narrowly tailored to target intentional deceit rather than innocent error, memory lapses, or subjective discrepancies. Legal provisions should differentiate between deliberate falsehoods and inconsistencies that stem from cognitive limitations or the stress of adversarial proceedings. The introduction of graduated sanctions or evidentiary presumptions—rather than immediate criminal liability—may be a more proportionate response in ambiguous cases.

Second, from a jurisprudential standpoint, courts must develop a consistent and principled body of case law that reflects both the need to uphold the integrity of the judicial process and the obligation to respect human dignity and autonomy. Judicial reasoning should carefully consider the testimonial context, the power dynamics at play, and the potential for coercion—whether explicit or implicit.

Third, protective mechanisms must be reinforced. Effective witness protection programs, psychological support, and procedural accommodations (such as anonymization, remote testimony, or testimonial privileges) can shield individuals from retaliatory harm and institutional pressure alike. In tandem, the right to refuse to testify, particularly in situations where self-incrimination or familial loyalty are at stake, must be interpreted in accordance with ECtHR standards and not subordinated to investigative expediency (Robinson et al., 2022; Udrouiu, 2025).

Further empirical and normative research is warranted to explore how these principles can be translated into actionable domestic policies and legal reforms. Special attention should be given to the doctrinal integration of ECtHR jurisprudence into national frameworks, ensuring that Romania and other Council of Europe member states not only ratify human rights standards but implement them effectively within criminal proceedings.

In conclusion, false testimony is not merely a penal infraction; it is a legal phenomenon that tests the equilibrium between truth-seeking and rights protection. The way in which legal systems address this issue serves as a barometer for the rule of law. Only through normatively

coherent legislation, contextual judicial interpretation, and robust procedural safeguards can we preserve both the integrity of the fact-finding mission and the dignity of those who participate in it. Justice, in this delicate balance, must be not only done, but seen to be done—freely, fairly, and without fear.

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