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The Scope of Legal Protection of Documents and the Security System of Public Documents in the Polish Legal Regulations

Zakres prawnej ochrony dokumentów oraz system bezpieczeństwa dokumentów publicznych w polskich regulacjach prawnych

ABSTRACT

The procedure of falsifying and using forged documents poses a significant threat to many areas of the state's functioning. The effects of such acts are most noticeable in legal, financial and social spheres. Credible documents guarantee the certainty of legal transactions, determine the course of economic transactions and constitute an important factor stabilizing the financial security of the state. The increasing risk of forgery of public documents in recent years has made it necessary to develop effective methods of counteracting this phenomenon. The main goal of the article is to analyse the legal regulations aimed at strengthening the protection of documents under criminal law, as well as system solutions in the field of security of public documents, adopted over the last few years. Particular attention has been paid to the provisions of the Act of 10 February 2017 amending the Act – Penal Code and certain other acts, and the Public Documents Act of 22 November 2018. Attempts have been made to analyse the adopted legal regulations against the background of threats generated by the types of crimes against the state and its citizens indicated in the article.

Keywords: public documents; Public Documents Act; credible documents; legal protection; Penal Code; financial security of the state

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INTRODUCTION

The development of socio-economic and legal relations makes it necessary to use an exceptionally large number of various documents necessary for the functioning of a natural person, company, institution or enterprise. Documents also regulate public relations between the citizen and the state, as well as private relations between individuals.[1] Importantly, in a period of dynamic economic and political transformations that took place in the Republic of Poland after 1989, there has been a significant increase in the number of documents remaining in the public circulation. The process of exchanging old specimens of documents for new ones has created a specific situation where several specimens of the same document have circulated (e.g. of the identity card) whose consequence are difficulties in the assessment of their authenticity. Conditions and circumstances specific to the transition period and showing the lack of an adequate stabilization level have created a favourable situation for the development of criminal activities, including the counterfeiting of documents.[2]

Practice, statistics and reference literature show that preventing criminal activity related to the forgery of documents is an extremely difficult and complex procedure and poses a significant challenge for state authorities. This conclusion stems from, i.a., the opinion of H. Kołecki that document forgery is a common "satellite" crime and is an indispensable element of contemporary organized crime, where a document is the most important tool for committing crimes.[3] The forgery risk of public documents, in particular, of those certifying the identity of a given state's citizens, of financial documents, invoices, media of exchange, and securities, affects not only individual persons, but also entire state systems,[4] including the reliability of economic transactions and the sense of its participants' security, which is one of the basic conditions for the proper functioning of the free market economy. Organized economic crime should also be mentioned here, and above all, financial fraud as a special category of crime, which, due to the variety of forms, variability and complexity of the *modus operandi* of the perpetrators, as well as the size of losses, are particularly severe for the economy, the state and the citizens.[5] In this case, the forgery of documents may

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[1] J.W. Wójcik, *Fałszerstwa dokumentów publicznych*, Kraków 2005, p. 206.

[2] S. Pikulski, *Wybrane zagadnienia z problematyki badań dokumentów w świetle praktyki laboratoriów kryminalistycznych Policji*, [in:] *Nauka wobec przestępczości. Księga ku czci Profesora Tadeusza Hanauska*, eds. J. Błachut, M. Szewczyk, J. Wójcikiewicz, Kraków 2001, pp. 120–121. See also K. Bajda, *Criminological and Forensic Aspects of Selected Areas of Organized Crime in Poland*, "Studia Iuridica Lublinensia" 2021, vol. 30(4), pp. 33–47.

[3] H. Kołecki, *Technicznokryminalistyczne badania autentyczności dokumentów publicznych nieniszczącymi wielospektralnymi technikami optycznymi za pomocą wideospektrokomparatora VSC-1*, Poznań 2002, p. 33.

[4] S. Pikulski, *Podstawowe zagadnienia taktyki kryminalistycznej*, Białystok 1997, p. 7.

[5] J.W. Wójcik, *Kryminalistyczne i dowodowe znaczenie śladu transakcyjnego*, [in:] *Dokumenty we współczesnym prawie*, ed. E. Gruza, Warszawa 2009, p. 175.

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become a practice that allows for the performance of further prohibited acts, including establishing a fraudulent company, which, for example, may carry out activities in the field of loan extortion, dealing with smuggling, legalization of fraudulent, smuggled or counterfeit goods placed on the market, make the so-called empty transactions related to VAT fraud; extortion of loans and goods as part of instalment sales; hiding of domestic or foreign criminals; creating the appearance of legality when employing foreigners; legalizing the stay of illegal immigrants.[6] T. Tomaszewski, while describing the issues of the *modus operandi* of document counterfeiting committers, stresses that the perpetrators of such crimes try to develop new ways of committing prohibited acts or make modifications to the old ones, above all, so that it should be harder to detect not only them themselves, but also the fact of committing a crime.[7] There is also no doubt that document forgery poses a serious threat to the proper functioning of legal transactions. The security of legal transactions means the need to ensure its certainty and credibility by caring for trust in the document as a formal way of ascertaining the existence of a right, legal relationship or circumstances that may be of legal significance. For this reason, the document enjoys protection of many areas of law, including protection of criminal law.[8]

Taking the above into account, it should be stated that the effects of criminal acts detrimental to the credibility of documents generate serious losses for the state and are noticeable in many areas of its functioning. Accordingly, it is difficult not to agree with the thesis, widely quoted in the reference literature, according to which the security of public documents is a condition *sine qua non* of the efficiency of public institutions, businesses and the entire financial sector, as well as of personnel security.[9]

THE CONCEPT OF A DOCUMENT UNDER CRIMINAL LAW, CIVIL LAW AND ADMINISTRATIVE LAW

An analysis of the regulations in force in Poland in the field of legal protection of a document must be preceded by a few comments on the definition of the term "document" in the context of domestic law. It should be pointed out after Z. Kegel that the concept of a document had been standardized neither in individual legis-

[6] M. Goc, *Przestępczość przeciwko dokumentom wciąż groźna*, "Człowiek i Dokumenty" 2016, no. 43, p. 33.

[7] T. Tomaszewski, *Oczywiste fałszerstwo, nieoczywista metoda jego dokonania*, "Człowiek i Dokumenty" 2020, no. 57, p. 37.

[8] Judgement of the Supreme Court of 3 June 1996, no. II KKN 24/96, LEX no. 26352.

[9] M. Fałdowski, *Wstęp*, [in:] *Bezpieczeństwo dokumentów publicznych*, ed. M. Fałdowski, Szczytno 2018, p. 5.

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lative acts, nor in the relevant disciplines.[10] This was the main problem, but not the only one, in defining the concept. Very important in this subject was the absence of a definition of public documents in the legal regulations in force until 2018. Polish Criminal and Civil Codes, both of substantive law and procedural law, as well as other legal acts, including the Code of Administrative Procedure, did not define the notion of "a public document" and did not use it. All documents were divided into official and private ones.[11] The so-called legal definition of a document, i.e. included by the legislator in the legal act issued by it, was only specified by the provisions of penal law. In the currently valid version of this Act,[12] in Article 115 § 14, a document has been broadly defined as "any object or other recorded information carrier with which a specific right is related, or which, due to its content, constitutes evidence of a right, legal relationship or circumstances having legal significance". This construction of the provision allows to state that the essence of a document is a specific "right" in a broad sense, and therefore and above all, a private and public right, a substantive and procedural right, a subjective and objective right, a tangible and intangible right.[13] In the light of the analysed provision, it is worth emphasizing that a document may therefore be any object which, due to its content, even indirectly indicates or confirms a right or obligation of a person. Objects, which have been given the status of the document need not be prepared for the purpose of establishing a right or legal relationship, it is only important that their content must have legal importance.[14] The legislator also pointed to the document as a particularly important means of guaranteeing certainty of legal transactions in all areas, including both in the domestic sphere, as well as at the level of international relations.[15]

In this way, the Penal Code is the only legal act including the legal definition of a document, thus the definition lacking in other numerous regulations, often showing a much closer relationship with the subject of documents. In the correspondence to the above, attention should be paid to the fact that although in civil law, both substantive and procedural, the concept of a document appears repeatedly,

[10] More broadly, see Z. Kegel, J. Satko, *Przestępstwa przeciwko wiarygodności dokumentów, obrotowi pieniędzmi i papierami wartościowymi. Orzecznictwo Sądu Najwyższego i Sądów Apelacyjnych 1918–2000*, Kraków 2002, p. 13.

[11] See more H. Kołecki, *Technicznokryminalistyczne badania autentyczności dokumentów publicznych. Materiały z 8. Konferencji Poznań, 29–30 września 2011*, Poznań 2012, pp. 15–19, 79.

[12] Act of 6 June 1997 – Penal Code (consolidated text, Journal of Laws 2020, item 1444, as amended), hereinfter: PC.

[13] D. Mocarska, *Dokument jako pojęcie prawnokarne. Stanowisko judykatury*, [in:] *Bezpieczeństwo dokumentów*..., p. 8.

[14] *Ibidem*; judgement of the Supreme Court of 3 June 1996, no. II KKN 24/96, LEX no. 26352.

[15] D. Mocarska, *op. cit.*, p. 7.

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the provisions of the Civil Code[16] and the Code of Civil Procedure[17] do not define it. The Code of Civil Procedure in force distinguishes between official and private documents. Pursuant to Article 245 CCP a private document evidences that the person, who has signed such a document, has made a statement contained in it.[18] Article 244 § 1, however, states that an official document may only be the one that has been drawn up in the prescribed form by public authorities appointed for that purpose and other state bodies within the scope of their operation. Official documents are evidence of what has been officially certified in them. In administrative law, this type of documents plays a special role, although likewise civil proceedings are operative in the administrative procedure, private documents are also in use (although the Code of Administrative Procedure does not mention them).[19] However, it should be emphasized that the importance of a document under administrative law is related to official documents and their evidential function. The Code of Administrative Procedure[20] does not define the concept of an official document either, but it results from the content of Article 76 § 1 that it should be understood similarly to civil procedure. Additionally, definitions that appear in other acts of the broadly understood administrative law may be used in this respect in an auxiliary way, e.g. in Article 6(2) of the Act of 6 September 2001 on access to public information,[21] according to which an official document is the content of a declaration of will or knowledge, recorded and signed in any form by a public official in the meaning of the provisions of the Penal Code, within his/her competence, addressed to another entity or submitted to files.

Summarizing the discussed issue, it can be stated that in the Polish legal regulations the concept of a document has been defined only on the basis of the provisions of substantive criminal law. But we must remember that criminal law – having the subsidiary character in relation to other areas of law – takes effect only when a given good requires a particularly enhanced protection.[22] The credibility of a document is a good that no doubt requires criminal law protection, however, it should only be part of comprehensive legal regulations serving for security of documents in a broad meaning.

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[16] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, item 1740).

[17] Act of 17 November 1964 – Code of Civil Procedure (consolidated text, Journal of Laws 2020, item 1575, as amended), hereinafter: CCP.

[18] J. Błachut, *Dokument jako przedmiot ochrony prawnokarnej*, Warszawa 2011, pp. 17–18.

[19] P. Przybysz, *Kodeks postępowania administracyjnego*. *Komentarz*, Warszawa 2005, p. 180, as cited in J. Błachut, *op. cit.*, p. 19.

[20] Act of 14 June 1960 – Code of Administrative Procedure (consolidated text, Journal of Laws 2020, item 256).

[21] Consolidated text, Journal of Laws 2019, item 1429. See also J. Błachut, *op. cit.*, pp. 19–20.

[22] J. Śliwowski, *Prawo karne*, Warszawa 1979, p. 120, as cited in G. Pieszko, *Społeczno-prawne aspekty penalizacji fałszowania dokumentów*, "Studia Prawnoustrojowe" 2015, no. 29, p. 174.

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PROTECTING THE CREDIBILITY OF THE DOCUMENT IN THE POLISH PENAL CODE OF 1997 (ARTICLES 270–271 AND 273–274)

As a result of the increasing number of crimes against documents, protection of their credibility is becoming increasingly important.[23] The penal provisions contained in Chapters XXXIV and XXXVII of the Penal Code, titled respectively: "Offences against the credibility of documents" and "Offences against the turnover of money and securities", are generally treated as a complex criminal law regulation adopted for the protection of a socially important institution of a document, and more broadly – for the security of document circulation and their credibility.[24] The issue of protecting the credibility of documents was regulated by the legislator in Chapter XXXIV PC in force, titled "Offences against the credibility of documents", in Articles 270–277d. The subject matter of this article makes it impossible to discuss in detail all the offences listed in this chapter, as well as the offences included in Chapter XXXVII PC in force. In the light of the foregoing, in the context of the issues discussed in the text, it has been decided to refer primarily to these crimes typified in Chapter XXXIV PC that can undermine to the greatest extent the credibility of documents. They are among the most important factors in breach of the security of public documents, thus generating a significant threat to the stability and integrity of the legal and financial system of the Polish State,[25] as well as carrying a high risk of disturbances in the social sphere. More specifically, the author's attention has been focused on the legal regulations contained in Articles 270–273 and 277a PC.

Considerations in this matter should begin with a statement that the Polish criminal legislator, when defining the crime of document forgery, adopts a division into material and intellectual falsification. Therefore, the above indicates the need to define and present the difference between the crimes of both types of forgery. The crime known as material falsification was typified in Article 270 PC. Making a legal analysis, it must be considered that in the field of the issues of material falsification, falsification or rework of a document to be used as authentic are included. For committing an act listed in said § 1 of Article 270 PC the legislator provided the penalty of a fine, restriction of liberty or imprisonment from 3 months to 5 years. Pursuant to the provisions of § 2 Article 270 PC, the person who fills out a blank, which has been signed by someone else, contrary to the will

[23] A. Płońska, *Wiarygodność dokumentów w polskim prawie karnym*, "Nowa Kodyfikacja Prawa Karnego" 2014, no. 32, p. 43.

[24] A. Choromańska. M. Porwisz, *Z zagadnień roli opinii biegłego w sprawach przeciwko wiarygodności dokumentów*, [in:] *Bezpieczeństwo dokumentów…*, p. 21; Z. Kukuła, *Wpływ przestępstwa na akty administracyjne*, "Samorząd Terytorialny" 2013, no. 1–2, pp. 137–148.

[25] E. Feret, *Legal Security and Financial Security of Local Communities. Selected Issues*, "Studia Iuridica Lublinensia" 2020, vol. 29(1), pp. 85–98.

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of the signed person and to his/her detriment, or uses such a document, is subject to the same penalty.[26] The second concept that needs to be explained is the crime of intellectual falsification. In this respect, Article 271 PC should be indicated, and according to it, the conditions for material falsification are met when a public official or another person authorized to issue a document certifies the untruth in it as to the circumstances of legal significance. Pursuant to the provisions of law, for the act mentioned in Article 271 PC, the legislator provided for a penalty of imprisonment from 3 months to 5 years.

Considering the degree of danger, which is posed for the state and its citizens and institutions by forgery of documents, it is difficult not to agree with the opinion of M. Goc on maladjustment of the criminal sanctions for these crimes to the gravity of such acts. The author of the view rightly draws attention to the significant difference in criminal responsibility between forgery of media of exchange and forgery of other documents, often with much more serious consequences for the security of the state, its economy and citizens.[27] If the offence under Article 310 § 1, i.e. forgery of money and other means of payment, or equivalent documents, is treated as a crime threatened with a criminal sanction of liberty deprivation for not less than 5 years or the penalty of 25 years' imprisonment,[28] the offence under Article 270 § 1, i.e. falsification of other documents, is threatened with a penalty in the form of a fine, restriction of liberty or imprisonment from 3 months to 5 years, and only in a situation where a counterfeit or forged document has been used as

[26] More about material falsification, see D. Semków, *Fałsz materialny dokumentu. Aspekty prawne i kryminalistyczne*, "Przegląd Prawno-Ekonomiczny" 2019, no. 466, pp. 40–54.

[27] M. Goc, *Ustawa o dokumentach publicznych potrzebna od zaraz*, "Człowiek i Dokumenty" 2016, no. 41, p. 9.

[28] The necessity of penalization of forging money and other means of payment in Polish criminal law results, i.a., from the norms of international law, included in the International Convention for Combating Counterfeiting of Money, signed in Geneva on 20 April 1929 with the Protocol and the Optional Protocol, signed on the same day in Geneva (Journal of Laws 1934, no. 102, item 919). The Convention in Article 3 requires the states, which adopt it, criminalizing a few basic types of behaviour in this group as: any fraudulent production or alteration of money; circulating fraudulently counterfeit money; importing to the country or receiving counterfeit money in order to circulate it or to procure it, knowing that it is counterfeit; attempting to commit or participating in such crimes, and the manufacture, acceptance or procurement of tools or other objects which are essentially intended to produce counterfeit money. Such a scope of penalisation of acts related to counterfeiting money was adopted in the Penal Code of 1932 (Articles 175–179). And in fact, the sphere of criminalization established in such a way has been maintained in each of the next Polish Penal Codes, but with the difference that the scope of criminalization has had to be extended to means of payment other than money, which of course stems from the emergence of electronic instruments to make payments, displacing the classic cash transactions. See T. Oczkowski, [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzosek, LEX/el. 2018, commentary on Article 310. See also S. Zaborska, *Legal Regulation of the Protection of Biometric Data under the GDPR*, "Studia Iuridica Lublinensia" 2019, vol. 28(2), pp. 97–98.

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authentic. At this point, it should be indicated that objections arise on the basis of criminal responsibility for the acts described in the above-mentioned articles of the Penal Code due to a conviction of a too low criminal sanction, which the legislator provided for the offence classified in Article 270. The conviction of the article author about the punishment for forgery and use of counterfeit documents that is too mild stems from the rank and scale of the consequences, which the crime generates for the state, its institutions and citizens. Due to the variety of forged documents, one can speak of serious multifaceted legal, economic and social consequences. The matter of state security also seems to be very important in the discussed issues, which is manifested in a special way in the forgery of travel documents.

When analysing the issues of criminal law protection of documents, one should also point to the crime of extortion by deception of false certification – typified in Article 272 PC, and the offence under Article 273 PC. The prohibited act provided by Article 272 PC consists in extorting confirmation of untruth by deceptive misleading of a public official or another person authorized to issue a document. J. Piórkowska-Flieger emphasizes that the document issued in this way is authentic, but it is untrue.[29] The offence, referred to, can be committed both when the perpetrator himself/herself directly misleads the person issuing the document, as well as when the perpetrator acts through or in cooperation with others, e.g. uses testimony of a witness giving falsehood in order to determine any circumstances. It may also be insidious to substitute another person or his/her documentation, e.g. in order to obtain a certificate of disability.[30] An important condition for committing an offence under Article 272 PC is the fact that the issuer of the document does not realize that he/she certifies untruth.[31] The object of protection is the credibility of documents. According to R. Zawłocki, the side object of protection is also the protection of the proper functioning of justice, of state and local government institutions, of economic transactions and property.[32] An act, referred to in Article 272 PC, is punishable by imprisonment up to 3 years. In Article 273 PC, which provides penalty for the use of a document that certifies untruthfulness of a document containing intellectual forgery, the object of protection is primarily the certainty of legal transactions, threatened by the use of such a document.[33] On the basis of

[29] J. Piórkowska-Flieger, *Fałsz dokumentu w polskim prawie karnym*, Kraków 2004, p. 337.

[30] R. Zakrzewski, *Ochrona wiarygodności dokumentów w nowym kodeksie karnym*, "Przegląd Ustawodawstwa Gospodarczego" 1999, no. 7–8, p. 6.

[31] See more G. Kopczyński, *Kryminalistyczne aspekty przestępstw przeciwko wiarygodności dokumentów w kodeksie karnym z 1997 roku*, "Nowa Kodyfikacja Prawa Karnego" 2000, no. 4, pp. 245–263.

[32] R. Zawłocki, [in:] *Kodeks karny. Część szczególna*, vol. 2: *Komentarz do artykułów 222–316*, eds. A. Wąsek, R. Zawłocki, Warszawa 2010, p. 670; M. Mozgawa, [in:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks karny. Komentarz*, LEX/el. 2015.

[33] G. Pieszko, *op. cit.*, p. 181.

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an analysis of the aforementioned provision, it should be stated that the penalty of a fine, restriction of liberty or imprisonment for up to 2 years is applicable to those who use the document, knowing that it contains objectively false information of legal significance in its content.[34] It should be emphasized that the crimes under Articles 272 and 274 are frequently the basis for the creation of a false identity, thus making it easier for criminals to enter the country and hide, as well as to create the appearance of legality.

MATERIAL AND INTELLECTUAL FALSIFICATION OF INVOICES IN THE LIGHT OF THE ACT OF 10 FEBRUARY 2017 AMENDING THE ACT – PENAL CODE AND CERTAIN OTHER ACTS

Similarly, to the offence of material falsification of a document specified in Article 270 PC and the offence of intellectual falsification under Article 271 PC, the crime of material and intellectual falsification of an invoice was constructed.[35] The rules typifying crimes concerning invoices as documents of a particular importance in the field of taxation from the viewpoint of stating the actual grounds to determine the amount of public law receivables or their refund, entered into force in March 2017 under the Act of 10 February 2017 amending the Act – Penal Code and certain other acts[36] (Article 270a § 1). In the explanatory memorandum to the Bill for that Act it was emphasized that the phenomenon of extortion of the value--added tax (VAT) had become a serious problem of economic and social nature, and as the result of the activities of organized groups of criminals in this area the state budget suffered losses amounting even to tens of billions of zlotys annually.[37] In the criminal law perspective concerning protection of document credibility, it is worth quoting a passage from the memorandum, which emphasized "that the assumption of the proposed regulations is to focus on preventing and combating crime involving creation of false, unreliable documents, which relate to facts that may be relevant for the determination of public law receivables. Such a situation directly leads to VAT extortion on a very large scale to the detriment of state finances. Such an approach to the object of criminal responsibility is more appropriate for common criminal law, as repression directed against perpetrators of depletions in public law receivables is the domain of fiscal penal law. In turn, concentrating

[34] J. Marciniak, M. Marciniak, *Plagiat prac naukowych – wybrane zagadnienia*, "Radca Prawny" 2012, no. 1, pp. 12–16.

[35] M. Mozgawa, [in:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks karny. Komentarz aktualizowany*, LEX/el. 2020.

[36] Consolidated text, Journal of Laws 2017, item 244.

[37] Rządowy projekt ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, Druk nr 888, 21.09.2016, www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=888 [access: 20.10.2021], p. 1.

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on the criminalization of offences against documents (the credibility of invoices), one can achieve the effect of the destruction of the most important instrument for VAT extortion".[38]

As a result of some changes introduced into the Penal Code, there are binding provisions including, i.a., common crimes issuing forged and reworked invoices or using such invoices for tax settlements.[39] Under Article 270a PC, introduced by virtue of the amendment to the Act, material falsification of an invoice is made by someone who, in order to use it as an authentic one, forges or reworks the invoice in terms of factual circumstances that may be relevant for determining the amount of public law receivables or their refund, or refund of another tax receivables, or the one who uses such an invoice as authentic. For an act defined by these provisions, the legislator provided a criminal sanction in the form of imprisonment from 6 months to 8 years. In the context of the issues discussed in this text, it is worth at this point to indicate a view cited in the reference literature, according to which the main interest protected by the provisions of the Article 270a PC is the authenticity of the invoice, and a side one – the interest of the Treasury in the field of taxes (and above all of VAT).[40] In the opinion of T. Sroka, the legal regulations contained in Article 270a PC, in particular with regard to activities involving forging or reworking of invoices, protect legal interests in the form of fiscal interests of the state or the European Union "in the deep foreground of their violations".[41] The amount indicated on the invoice does not matter for the commission of the basic type of this act. On the other hand, Article 270a § 2 PC specified the qualified type, which under the law occurs when the object of the perpetrated act is an invoice or invoices containing the amount of receivables of total or aggregate value exceeding five times the amount defining property of great value, or if the offender has made for himself/herself a permanent source of income from forging invoices. It is, therefore, an amount of over five million zlotys.[42] The act specified in Article 270a § 2 is punishable by imprisonment for not less than 3 years. In relation to a less serious case, it may be applied to an act in both the basic and qualified types. The most important factors determining the type assessment of an act include the amount indicated on the invoice, the amount of receivables or their return resulting from the issued invoice, by which the budget would be depleted,

[38] *Ibidem*, p. 4.

[39] K. Dokukin, *Faktura w świetle odpowiedzialności karnej i karno-skarbowej*, LEX/el. 2019.

[40] M. Gałązka, [in:] *Kodeks karny. Komentarz*, eds. A. Grześkowiak, K. Wiak, Warszawa 2017, p. 1229. Cf. M. Utracka, *Przestępstwa fakturowe: czy są przestępstwami przeciwko wiarygodności dokumentów*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2018, no. 3, pp. 98–99.

[41] T. Sroka, [in:] *Kodeks karny. Część szczególna*, vol. 2, part 2: *Komentarz do art. 212–277d*, eds. W. Wróbel, A. Zoll, LEX/el. 2017.

[42] A. Lach, [in:] *Kodeks karny*...

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the kind of circumstances that was the object of the material falsification, and its influence on determining the amount due or its refund.[43]

Intellectual falsification of invoices has been typified in § 1 of Article 271 PC,[44] according to which the person "who issues an invoice or invoices containing the total amount due, the value or the aggregate value of which is significant, confirming untruth as to the factual circumstances that may be relevant for determining the amount of public law receivables or their refund or refund of other tax receivables" is punishable with the penalty of deprivation of liberty for a term of between 6 months and 8 years. An act of using such invoices is also to be penalized. As in the case of a material crime related to invoices, the provision of § 2 of Article 271 PC introduces a type of a qualified offence, which means that a person who commits an act specified in § 1 against an invoice or invoices "containing the amount of receivables of total or aggregate value exceeding five times the amount defining property of great value, or if the offender has made for himself/herself a permanent source of income from committing the offence" is punishable by imprisonment for the time not shorter than 3 years. In a minor case, a perpetrator of an act specified in § 1 or § 2 is punishable by imprisonment for up to 3 years Assessing the criminal law analysed in this article, A. Błachnio emphasizes that the object of protection against the prohibited act described in connection with Article 271a PC is not only the credibility of issued documents – understood as the confidence of citizens and other persons as to their truthfulness, but also the proper functioning of business transactions and protection of the interests of the Treasury against the dangers arising from the issue of unreliable invoices, which can be a tool to commit offences, involving exposure to or actual depletion of public law receivables.[45]

When discussing the issues of material and intellectual falsification of invoices one cannot ignore Article 277a PC introduced by amendments to the law, which indicated a common type of qualified offences, defined both in Article 270a § 1, as well as in Article 271a § 1 PC, i.e. material and intellectual falsification of invoices, in relation to the invoice or invoices containing the amount of receivables of total or aggregate value exceeding ten times the amount defining a property of great value.

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[43] *Ibidem*.

[44] Norms under Article 271a PC constitute a *lex specialis* in relation to Article 271 PC. In the case of intellectual falsification of an invoice, more specific factors will be, on the one hand, the object of the perpetrated act, and on the other – the value that must be expressed on it. In the science of criminal law and judicial decisions there are no doubts about the fact that an invoice is a document within the meaning of criminal law. Thus, if a perpetrator has certified untruth in an invoice with a value lower than the required amount under Article 271a PC, there are no obstacles to qualify his/her behaviour under Artcle 271 PC – of course, with the fulfilment of the other features resulting from this provision. See A. Błachnio, *Przestępstwo poświadczenia nieprawdy w fakturze na gruncie art. 271a k.k.*, "Przegląd Sądowy" 2018, no. 5, p. 94.

[45] *Ibidem*, p. 88.

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This means the amount of over ten million zlotys. Due to the amount of penalty, the qualified type indicated in § 1 of Article 277 PC is a crime punishable by imprisonment for a period of not less than 5 years or the penalty of deprivation of liberty for 25 years. The explanatory memorandum to the Act indicates that the above-mentioned qualified type of crime, defined in Article 270a § 2 and Article 271a § 2, refers in its assumptions to members of the largest organized crime groups whose activities bring the most serious negative consequences for the financial interests of the State Treasury.[46] The application of said sanctions is deliberate because of the damage amount that can be inflicted by massive extortion of VAT. In the opinion of the Bill promoters, the protected good ceases to be the state budget alone but it even becomes the internal security and the functioning foundations of the state. Thus, the acts described in the drafted provisions pose a threat to legal goods, such as it was the case in the past with regard to counterfeiting money, and which has now been mitigated by the use of various technologically advanced methods of securing banknotes.[47] Based on the analysis of the writing, one can say that in the reference literature there is a divergence of views on the scale of effects, which are carried for the state by committing an offence under § 1 of Article 277. An example may be the opinion of M. Gałązka, according to which the value referred to in the provision in question indicates that the protection of an ancillary legal good goes beyond the strictly understood interest of the State Treasury and reaches as far as the stability of the economic system. In opposition to this position is the view of M. Mozgawa that the above statement by M. Gałązka goes too far, stressing, however, that extreme cases cannot be excluded when such a threat can be dealt with.[48]

Summing up the above considerations, it should be noted that according to the solution adopted by the parliament, Chapter XXXIV, tilted "Offences against the credibility of documents", was supplemented by two new types of offences: material crime of invoice forgery – typified in Article 270a PC, and intellectual falsification of an invoice – specified in Article 271a PC, as well as the qualified types of these prohibited acts, and clauses mitigating or exempting from criminal responsibility. And as stressed by I. Jankowska-Prochot, criminalization of VAT invoice forgery was one of the elements of the whole package of government solutions whose goal was to seal the tax system in Poland. The author of the draft amendment to the Penal Code and certain other acts was the Ministry of Justice. The real reasons for

[46] *Ibidem*. An analysis of the provisions of the Penal Act, its Bill and explanatory memorandum allows to conclude that in the enacted provision of Article 277a § 1 PC the threshold, originally indicated in the Bill, was raised from the proposed five-fold amount determining a property of significant value to the ten-fold amount.

[47] Rządowy projekt ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, Druk nr 888, p. 7.

[48] M. Gałązka, *op. cit*., p. 1314. Cf. M. Mozgawa, [in:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *op. cit*.

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introducing the discussed legal regulations undoubtedly include the need, consistent with the policy of European governments, to combat extortion and non-payment of VAT by members of the largest organized crime groups, while protecting those entrepreneurs who pay this tax. High punishment, even amounting up to 25 years imprisonment, and a fine of up to three thousand daily rates are to deter perpetrators of such crimes. Some mitigation of sanctions in return for cooperation is to break the solidarity of criminal groups, working on extortions. In the case of extortions of less social harmfulness or persons unknowingly participating in such dealings, i.e. not acting with the intention of committing a prohibited act, it is possible to apply the Fiscal Penal Code, in particular the provisions of Article 62 §§ 1 and 2.[49]

Forgeries of documents and economic documentation contribute to the development of the grey economy, the security lowering of economic transactions, and increasing of crime, in particular of economic crime.[50] In view of the above, the decision to introduce new types of crimes, i.e. the crime of material and intellectual falsification of invoices, should be considered highly justified and necessary in the process of counteracting the harmful practices of VAT extortion that have been going on for many years. In relation to the issues discussed in this article, the question of the criminal sanction amount for committing this type of crime is also important. In view of the scale and risk of the threats, which are posed by this type of criminal offences, the types and amounts of penalties carried out under the amendment to the Act of 10 February 2017 amending the Act – Penal Code and certain other acts, seem appropriate. At this point, it is necessary to point out both the high harmfulness of fraud, manifested in a significant reduction in tax revenues to the state budget, as well as the scale of this phenomenon spread. The sanctions provided for by the new law are intended to deter potential perpetrators of the crimes and to make the illegal behaviour unprofitable for them. It is also important to emphasize that in addition to the regulations of criminal law, both tax and penal fiscal legal regulations should be subject to verification process and adaptation to the existing conditions.

[49] I. Jankowska-Prochot, *Analiza prawna przepisów dotyczących przestępstw przeciwko wiarygodności faktur oraz skutki znowelizowanych regulacji karnoprawnych w tym zakresie*, "Przegląd Prawa Publicznego" 2018, no. 4, pp. 42–43.

[50] M. Goc, *Dlaczego jest potrzebna ustawa o dokumentach publicznych*, [in:] *Doprawdy, litość to zbrodnia. Księga Jubileuszowa z okazji 70. urodzin Profesora Bogusława Sygita*, eds. B. Hołyst, J. Duzy, P. Grzegorczyk, Z. Wardak, D. Wąsik, Łódź 2018, p. 267.

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THE MAIN ASSUMPTIONS OF THE PUBLIC DOCUMENTS ACT AND ITS ROLE IN ENSURING THE SECURITY OF PUBLIC DOCUMENTS[51]

As I mentioned in the introduction to this study, in Poland until 2018, there had been no comprehensive regulations regarding the security of public documents. In the ongoing debate on this subject, M. Goc emphasized that the basic problem in this regard was the inconsistency of the legal system. The Polish legal regulations in the discussed subject were characterized by a significant diversity and multiplicity of legal acts concerning the most important domestic public documents. Doubts were also raised by the criminal law protection against document forgery, which was not adapted to the contemporary realities.[52] The consequence of the lack of a statute on public documents in Poland was disturbances, the effects of which generated further pathologies, especially in the political and economic sphere as well as in the broadly understood social sphere. The legal mechanism, meant to eliminate the above-mentioned phenomena, became the Public Documents Act of 22 November 2018,[53] which entered into force on 12 July 2019. The Government Bill of this legislation was prepared in the Ministry of Internal Affairs and Administration and was a long-awaited and necessary legal regulation concerning safety of documents. It is worth noting that representatives of the scientific community, lawyers and experts in the field of document examination, represented, i.a., by the Polish Forensic Society, had for years emphasized the need for a legal act to regulate the issues of public documents in a legislative manner, thus pointing to fundamental matters that should be subject of legal regulations.[54] The postulated

[51] A detailed analysis of the provisions of the Act has been presented in the article: M. Goc, D. Semków, *Public Documents Act and Its Role in Preventing Document Forgery*, "Studia Iuridica Lublinensia" 2020, vol. 29(4), pp. 85–99.

[52] M. Goc, *Ustawa o dokumentach publicznych…*, p. 9.

[53] Consolidated text, Journal of Laws 2020, item 725.

[54] See more M. Goc, *O projekcie ustawy o dokumentach publicznych uwag kilka*, "Człowiek i Dokumenty" 2017, no. 44, p. 17. It should be emphasized that the first attempts to develop an act regulating the issues of public documents were made as early as in the 1990s. These measures include: the establishment at the National Security Bureau of the Interministerial Team for Development of the System Securing Documents Important for the State Security (1996); development of the Bill on Public Documents by Prof. J. Widacki (1998); preparation by the Polish Forensic Association (PFA) of the Bill on Public Documents – handed over through Mr M. Kraczkowski, MP, for further proceedings to the Parliamentary Club of Law and Justice (2006); a letter from the PFA to the Undersecretary of State in the Ministry of Internal Affairs and Administration, Gen. A. Rapacki, which indicated, i.a., the need to regulate the issue of public documents (2008); a letter from the President of the PFA, Prof. B. Młodziejowski to the head of the Team of Strategic Advisors to Prime Minister, M. Boni, containing an analysis of potential threats in the circulation of documents, and a report by Prof. T. Widła, tilted "O zaufaniu do dokumentów" ("On trust in documents") (2009); a letter of the PFA to the Minister of Internal Affairs and Administration, M. Blaszczak, dated on 26 January 2016 which appealed to take urgently appropriate organizational and legislative measures aimed at the

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need to organize this area of the state public activity and the need to take systemic preventive actions was highlighted in the explanatory memorandum to the Bill.[55] According to the data contained in the memorandum, in the years 2010–2015, a total of 361,310 crimes against documents were detected, which constituted an average of 60,216 crimes per year. Attention was also turned to an important issue, namely that they concerned almost all types of documents.[56] What is important, in the legal regulations in force until the entry into life of the Act characteristic had also been a lack of a definition of public documents, and the law regarding the documents had been scattered in nearly four hundred legal acts.[57] Given the above, an inevitable conclusion arises that both the lack of a comprehensive legal instrument in this area, as well as a significant number of that type crimes testified about many shortcomings of the existing legal regulations and rules on the safety of documents, which undoubtedly included the lack of unified specimens of many official documents and their distributed production. In addition, as basic factors encouraging the dynamic development of such crimes one should indicate a low level of security for some of the documents that was to serve preventing their forgery, as well as the co-existing advanced development of technology allowing counterfeiting and processing of documents.

It would be impossible not to start considerations on this subject by saying that the analysed Act is the first piece of legislation, which provided the definition of a public document, which means that the use of the legal definition of the term has

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statutory regulations of the issue of public documents. It also indicated the need to implement a comprehensive research and development project in the field of public document security, commissioned by the Ministry of the Internal Affairs and Administration for the benefit of national defence and security (2016). Following successive initiatives undertaken by the PFA to normalize statutorily the issues of public documents, during a meeting of representatives of the PFA with an Undersecretary in the Ministry of Internal Affairs and Administration on 1 March 2016, a declaration was obtained that the Ministry would prepare a Bill on Public Documents. The Bill, dated on 24 November 2016, was sent for public and interministerial consultations. The Bill was accompanied by the Regulation of the Minister of Internal Affairs and Administration on the list of minimum security measures and the method of storing and handling of invalidated public documents. In this way, a complete set of normative acts regulating the issues discussed as a whole was presented for evaluation, which subject experts consider to be a plus for the authors of these documents. The Bill was submitted to the Sejm on 20 December 2017. See M. Goc, *Ustawa o dokumentach publicznych…*, pp. 9, 11–12; idem, *O projekcie ustawy…*, p. 18; T. Widła, *O zaufaniu do dokumentów. Part I*, "Człowiek i Dokumenty" 2009, no. 12, pp. 25–28; idem, *O zaufaniu do dokumentów. Part II*, "Człowiek i Dokumenty" 2009, no. 13, pp. 13–20.

[55] Rządowy projekt ustawy o dokumentach publicznych, Druk nr 2153, 20.12.2017, www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=2153 [access: 20.10.2021], p. 2.

[56] *Ibidem*, p. 1.

[57] *Wszystko, co trzeba wiedzieć o ustawie o dokumentach publicznych*, 11.07.2019, www.gov.pl/web/mswia/wszystko-co-trzeba-wiedziec-o-ustawie-o-dokumentach-publicznych [access: 20.10.2021].

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been enabled since the moment of its entry into force. Pursuant to the provisions of Article 2 (2) of the Act, a public document is a document which serves to identify persons or things or confirms the legal status or rights of the persons who use it. Moreover, it is protected against forgery and is manufactured according to a specimen specified in the provisions of generally applicable law or "whose graphic design and form have been approved by an entity performing public tasks authorized under separate provisions and which complies with the requirements for the blank of this document specified in provisions of generally applicable law". Against the background of threats arising from counterfeiting of documents, it was considered that the basic purpose of the Act would be to create an effective security system of public documents, while the responsibility for its operation and policy shaping in this field was entrusted by the legislator to the Minister responsible for internal affairs. The duties imposed under Article 3 of the Act are performed by the Minister with the assistance of the Commission for Public Documents. Specific attention is drawn by the division into three categories of public documents introduced under the provisions of the statute. The criterion to qualify for a given category is importance of a document for state security. On the grounds of the law in the first category are, i.a., an identity card, a passport, a driving licence, documents issued by the offices of civil status, documents issued to foreigners, company and institution identity cards. The second category consists of documents important for the security of the state, and the security of economic and legal transactions. They also include documents regarding weapons, international transport of dangerous goods, certifying higher and specialist education, and secondary-school leaving certificates. The third category covers documents affecting the security of economic and legal transactions, including concessions, permits, licenses, all kinds of certificates, including those related to transport safety, documents confirming professional qualifications, school leaving certificates, school and student identity cards, and documents entitling to various financial reliefs. This classification reflects the situation which documents are subject to counterfeiting most often, and points to the significant risks resulting from counterfeiting of their particular category. There is no doubt that the most frequently forged documents are those confirming identity. Unfortunately, the practice shows that they are only a kind of introduction to further crimes, often based on theft or creation of fictitious identities. The situation is similar in the case of documents issued to foreigners. Often, on the basis of the presentation of false documents, subsequent frauds are tricked. As a result of introducing false documents into the legal transactions, the persons using them acquire various types of rights, an example of which may be granting of a permanent residence permit on the basis of a forged or reworked identity document.

With regard to the issues discussed in this article, it is worth emphasizing that minimum security measures against forgery have been established for public documents of individual categories. The list of security, referred to, has been placed

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in the Annex to the Regulation of the Minister of Internal Affairs. The Regulation defines the list of minimum security against forgery, required for public documents from the first, second and third category.[58] In accordance with the provisions of the Act, the Register of Public Documents was created and launched by the Ministry of Internal Affairs and Administration on 12 July 2020. It provides citizens with an online access to the specimens of binding documents, and it also points to ways to verify their authenticity and the basic types of securities for them. The Register is kept by the Minister of the Internal Affairs and Administration, at whose office the Commission for Public Documents has been appointed, and it participates in, i.a., developing new document specimens. Importantly, the provisions of the Act additionally defined some requirements for manufacturers of public documents for ensuring safe production and formulated the rules for storage of public documents. It should be emphasized here, however, that under the provisions of the Act, all blanks of public documents, most important for the security of the state, will be produced by a company with the sole proprietorship of the State Treasury, the business objects of which is the production of blank documents and secured prints.

Under the provisions of the new law, the definition of a replica of a public document was also introduced, which is a reproduction or copy of the size of from 75% to 120% of the original, with the features of the authenticity of a public document or its blank. The manufacture, offering, sale or storage for sale of such replicas was penalized. For the acts, referred to, the legislator provided a fine, restriction of liberty or its deprivation for up to 2 years. This penal provision was created, i.a., in response to the phenomenon of offering the so-called collector's documents. This state of affairs leads to a conclusion that the Act will increase protection against forgery using documents that are confusingly similar to the originals.

From the perspective of preventing crimes resulting in a breach of the credibility of documents, Article 42 of the discussed Act should be indicated. According to its wording, the legislator obliged public officials to control and verify the authenticity of public documents.

Without a doubt, it should be said that the law on documents fills a significant gap in the Polish legal regulations in the field of security of public documents. Thus, it is worth emphasizing its importance in the difficult process of counteracting document forgery. Too short time, which has elapsed since the implementation of new regulations, eliminates the possibility of assessing them in a reliable way. However, even despite the lack of specific data on the effects of the implementation of the provisions of the law, it can be argued that it has a priority role in the process of building an effective security system for public documents, including, in particular, appropriate methods of securing them, effective methods of recog-

[58] See more Regulation of the Minister of the Internal Affairs and Administration of 2 July 2019 on the minimum security of public documents against forgery (Journal of Laws 2019, item 1281).

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nizing and detecting all kinds of forgery, and implementation of an efficient information and training system, both for employees of state institutions and citizens of the state.

CONCLUSIONS

The issue presented in this article is to turn attention to the relationship that occurs between the phenomenon of crime against credibility of documents and the system of document safety, and their impact on the protection of interests of the state, its citizens, legal order and financial system. The main conclusion of the analysis of the indicated subject is a conviction that the most important role in the prevention of document counterfeiting, and thus in the protection of their credibility, play systemic actions, under which the most important are the appropriate mechanisms of law. Against the background of the risks, posed to the state and its citizens by forgery of documents, it should be noted that the legal regulations adopted over the last few years, i.e. the Public Documents Act of 22 November 2018, and the Act of 10 February 2017 amending the Act – Penal Code and certain other acts, certainly fit in the process of counteracting the practice and contribute to its elimination as the basic tool for committing numerous types of crimes. Thus, the Acts, referred to above, constitute a factor for ensuring the security of the state and its citizens, and an essential element in the proper functioning of the financial system, ensuring the legal order, as well as they govern the area of social relations. Such a conclusion stems from the fact that bringing into circulation of counterfeit documents is undoubtedly a significant threat in the area of stability and integrity of the legal system of the Polish State and the broadly understood security of the country. It is also worth noting that in many cases document forgery is a preparatory activity for all kinds of financial frauds and economic crimes. These acts are therefore a factor contributing to the destabilization of the national economy and state finances. Consequently, this situation can lead to a lack of public confidence in state authorities, which in turn may be a circumstance affecting the socio-political situation. The above considerations allow therefore to conclude that the documents as a basic tool for committing many kinds of crime determine the degree of threat occurring in the above-mentioned areas of the state activity. The importance of the problem, which is falsification of documents, should be also viewed from the perspective of dynamically developing information technologies. In the era of expansive technological development, it is legitimate to put forward a thesis on the need for a continuous verification and improvement of safeguards protecting the credibility of a document, as well as raising the awareness in the field of their recognition.

In conclusion, it should be stated that each state is experiencing the negative legal, social and economic effects as the consequences of counterfeiting documents.

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Poland is not an isolated case in it. However, the decisive factor is the necessity to enforce the adopted legal mechanisms as well as the determination and effectiveness of state institutions in counteracting this type of forgery.

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ABSTRAKT

Proceder fałszowania i posługiwania się sfałszowanymi dokumentami stanowi istotne zagrożenie dla wielu obszarów funkcjonowania państwa. Skutki tego typu czynów najbardziej zauważalne są w sferze prawnej, finansowej i społecznej. Wiarygodne dokumenty dają gwarancję pewności obrotu prawnego, determinują przebieg obrotu gospodarczego oraz stanowią istotny czynnik stabilizujący bezpieczeństwo finansowe państwa. Narastające w ostatnich latach zagrożenie fałszerstwami dokumentów publicznych spowodowało konieczność wypracowania skutecznych metod przeciwdziałania temu zjawisku. Głównym celem artykułu jest analiza regulacji prawnych służących wzmacnianiu ochrony prawnokarnej dokumentów, a także rozwiązań systemowych w zakresie bezpieczeństwa dokumentów publicznych, przyjętych na przestrzeni ostatnich kilku lat. Szczególną uwagę zwrócono na przepisy ustawy z dnia 10 lutego 2017 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw oraz na ustawę z dnia 22 listopada 2018 r. o dokumentach publicznych. Analizę przyjętych regulacji prawnych starano się przedstawić na tle zagrożeń, jakie generują wskazane w artykule typy przestępstw w stosunku do państwa i jego obywateli.

Słowa kluczowe: dokumenty publiczne; ustawa o dokumentach publicznych; wiarygodne dokumenty; ochrona prawna; Kodeks karny; bezpieczeństwo finansowe państwa