INCRIMINATION AND DETECTION OF FORGERY OF DOCUMENTS

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Abstract

The aim of this paper is to analyze incriminating conducts related to forgery of documents. In this context, the methodology of detection of this criminal offense will be treated. In addition, the criminological aspect of this criminological phenomenon will be treated, by analysing the main risk factors that influence the occurrence of the most common forms and manners of counterfeiting.

From a criminal perspective, this paper will interpret the positive provisions of the Criminal Code of Republic of North Macedonia which incriminate Forgery of documents and also the current legal loopholes in this area.

The research paper includes some practical examples concerning forgery of documents and would simultaneously serve to all civil servants, particularly those who fight against crime. Additionally, such would get acquainted with the aspects and manners of its modus operandi, improving the forensic methodology in detecting, exposing and documenting this criminal offense.

It is important to consider that the methodology used in this paper is based on the method of analysis, the statistical method, the method of studying individual cases, the survey method, etc.

Contemporary and inclusive issues related to some criminal offenses, such as abuse of power and official position as well as fraud will be reviewed. Our objective, by scrutinizing this phenomenon, is due to its insufficient treatment, as we believe that this research paper will manifest a modest impact from a scientific viewpoint.

Keywords: forgery of documents, incrimination, detection, criminal offense

1. FORGERY AS A NOTION

In everyday life we encounter the notion of forgery in various fields, such as forgery of documents, forgery of coins and securities, forgery of food products, forgery of textile clothing, forgery of vehicles, etc. But what would be the definition of forgery? There are different definitions but here the definition given by professor Vesel Latifi will be mentioned, who, by forgery implies the creation of subjects, of false objects to which
opportunities are given, which they do not have or changes of subjects, real objects in their content, form and their value.¹

The items, the subjects that surround us in everyday life are numerous which means that the possibility that a considerable number of them are counterfeit is great. Incriminations characterized by the phenomenon of counterfeiting are sanctioned in the criminal codes of different countries. For a large number of counterfeit cases or items, special sanctions are provided in the criminal codes, e.g., a special article² is provided for counterfeiting money, for counterfeiting textile goods, etc. Since relevant articles are provided for these phenomena, in the following we will mainly address the issue of forgery of documents, which is often associated with other criminal offenses such as abuse of office known as a special criminal offense, fraud, fraud of buyers, copyrights, etc.

2. FORGERY OF DOCUMENTS

According to Article 122, paragraph 11 of the Criminal Code of Republic of North Macedonia, a document shall refer to any object that is suitable or designated to serve as proof of a fact that is of value for the legal relations³. In everyday life, we are surrounded by different documents, issued by different institutions which serve certain purposes. Not rarely, practice has shown that such documents can even be falsified. But what do we mean by forged documents?

By falsifying documents, we imply the appearance in it, of the new circumstances or the compilation of a completely forged document, as well as the use of forged documents.⁴

Some conclusions can be drawn from this definition:

- First, the document is considered forged if there are some fake circumstances in it. This means that not everything in the document is false, but only some circumstance that goes in favour of the one who had an interest in doing something like that;
- Second, the document as such (copy) may be original, which means issued, stamped and signed by competent officials, but its full content does not correspond to the reality that means it is characterized by fake content;
- Third, which is in fact the second part of the definition, deals with such cases of forgery when both the document and the writing on it, stamps, signatures and other data are forged.

Based on this as well as the practice of forensic expertise, the falsification of documents can be divided into full and partial forgery.

2.1. Full forgery

Complete forgery is done by imitating the original document and using new materials, such as paper, paint, stamp, seal, etc. To achieve the criminal purpose, the perpetrator first obtains an original document and then prepares a new document based on it, using entirely false materials.

Objects of full forgery are diplomas for completing education of different levels, certificates for completing various courses that serve in the application for employment,

¹ Vesel Latifi, Kriminalistika, zbulimi dhe të provuarit e krimit, Prishtinë, 2014, pg.419
² In the Criminal Code of the Republic of North Macedonia, counterfeiting of money is provided in Article 268 (see Afrim Osmani, Penal Code of NRM, Skopje 2010, pg. 221)
³ Ibidem, page 122
⁴ Elezi I., E drejta penale (pjesa e posaçme), Tirana, 1995, pg. 219
permits provided for the exercise of any concrete activity\(^5\), driving licenses, etc. It is worth mentioning that the identification documents are also objects of forgery, e.g., ID cards, passports, etc., but with the advancement of technology the number of these forgeries has significantly decreased. This type of counterfeiting, due to difficulties, is done only when counterfeiters are equipped with appropriate equipment and tools and the same have special skills and inclinations for something like this. Such persons, in detail, try to falsify the official document, by issuing the signature of the person authorized to issue such document, the stamp and other characteristics contained in the concrete document. This type of forgery is also called material forgery.

An example from practical experience where complete forgery is expressed:

The person D.K has presented the case as follows:

The person M.M employed in the capacity of inspector at the Police Station in Gostivar, has deceived the person D.K, in the way that he promised the denouncer (case reporter), to deposit the saved money in the amount of 35,000.00 euros in the bank, and for the same will receive from 300 euros per month in the form of a pension. At the same time, he suggested that all the procedures related to it will be done by the denouncer (inspector), since he knows the director of Bank XX, and the conditions regarding the drafting of the contract will be in favour of the depositor, i.e., the person who denounced the case. Due to the fact that the denouncer did not have proper education, and did not know the procedures well, and the fact that the denounced had previously accompanied the denouncer with some persons who allegedly were in power, the latter trusted the denounced. After agreeing the next meeting, they go to bank XX together, where the denounced tells the denouncer to wait outside, because the meeting he has to have with the director is internal. The denouncer trusts him, and gives him the amount of 35,000.00 euros, the denounced enters the bank, and after half an hour after leaving the bank premises, he tells the denouncer that he has made the deal, at the same time gives him the contract, and tells him that now he has to wait for each month the monthly payment which will be issued to his bank account.

For the next three months, the denouncer received the amount of 300 euros on his bank account, after that receiving money was interrupted. For such a termination, he notifies the denounced and he tells him that he is aware, and that the bank has some technical problems, and it will be fixed soon. As several months have passed and the situation has not changed, the denouncer addresses the bank, asking why they do not continue with the monthly payment and presents the contract he had originally received from the denounced. The bank official told him that this contract was not drafted by the bank and that someone had manipulated him. After he understands the case in question, the denouncer presents the case to the police station in Gostivar.

During the graphiological examination of the contract, it was confirmed that it was forged. During the verifications that were made in the bank, it was noticed that the money issued for 3 months from 300 euros in the account of the denounced were not issued by the bank, but by the private account of the denounced. It was also verified that the denounced in the critical period, i.e., the day he received the money from the denouncer, had continuously covered his loans in several banks.

After completing and documenting the case against the denounced (police officer) with prior consultation with the relevant prosecutor, a criminal charge was issued for the criminal offense of fraud and forgery of documents. Given the case in question, one can

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\(^5\) Mainly thought about certificates of foreign language proficiency required when applying for employment
rightly ask the question why he was not charged with the criminal offense of abuse of official position, since he is an officer? The answer is as follows: It is a fact that the perpetrator is an official person, but the incriminating activities undertaken have no connection and are not undertaken in the framework of the daily work he does in the capacity of police inspector but are undertaken outside (this is what the Criminal Code of RNM provides).

What is the conclusion regarding the specific case, including the manner and means used to commit this criminal offence?

- First, the denouncer of the case is not anonymous, and such cases usually come to light when the denouncer is a victim;
- Second, the denounced person is an official person, but even though he is, he is not charged with the criminal offence of abusing the official position and authority, because the incriminating activities are not related to his scope as an official person;
- Third, the manner of fraud is such that the denounced has used his authority to gain the trust of the denouncer;
- Fourth, the means for committing incriminating acts are the fictitious contract, forged signatures and stamps, technical means, i.e., computer and pen with which it is possible to make a contract and a stamp;
- Fifth, we are dealing with a complete forgery, as the contract as such is completely forged which means the notes on it, but also the stamp, signatures and other characteristics that characterized the concerned contract.

2.2. Partial forgery

Partial forgery means changing any circumstances or data in the official document. In order to determine this type of forgery, forensic and chemical methods are used. The most common methods in the practice of partial forgery are: deletions (mechanical and chemical), additions and corrections and compilation of the document from different parts.

Deleting is the disarranging of graphic elements or other parts of a text or document in order to change its contents. The perpetrator uses mechanical means, such as a rubber, a knife, a lighter\(^6\), etc., to erase any letter, word, number, date, etc., from the text of the document.

Using these tools will damage the paper and remove the ink. Impact of mechanical erasure loses gloss, the appearance of the paper becomes uncommon, the paper on the erased part is translucent, writing marks remain, old text can be read, previous on back page, ink

\(^6\) We have such cases when the notes in a book or a concrete document are marked with a pen which is not resistant to heat, e.g., when travel agencies, which do not have a regular line for any international travel, but use other variant known as free international transport, and according to the concrete regulations in this area they transport passengers according to certain agreements such as going to a place to take a specific traveller, or sending travellers from one place to another, organizing excursions, etc. What should be emphasized in this case is the fact that the number of passengers and their identity should be the same both at the border exit and at the border entrance. The entry of passenger data is done in a special book known as interbus (Book of passenger waybills), and the same is done with a pen which does not resist heat, i.e., when using a lighter the data is immediately deleted. Why do they do such a thing? In fact, if the number of passengers who exit at the border is 35, the same number and the same passengers must be at the border crossing, when they return. But since then the persons are not the same neither as number nor as identity, the representative of the agency or the driver, with the help of a lighter deletes the data of the previous passengers in the interbus, and writes other names, or does not write at all, depending on the concrete situation they face, with the purpose that the notes in the interbus book correspond to the factual state in the vehicle, and thus avoid the penalties provided for such manipulations.
spreads on added text hyphens, etc. The perpetrator also uses chemicals to delete from the
text of the document, any letter, word, figure, etc.

In practice there are cases when from the original document the perpetrator extracts
the parts he keeps, such as signatures, seal and other data and this part is attached to another
letter, in which the perpetrator has written the desired text. We have a lot of such cases
recently. They are usually encountered during the notarization of relevant documents where
the stamp and signature of the notary are taken from the document with real content -
original, and are marked in another document with completely different content.

When it comes to partial forgery, it should be noted that this type of forgery can also
be done by officials authorized to provide the concrete document and the same time, for
corruption reasons or any other favour, intentionally add or remove something from the text,
which goes in favor or to the detriment of someone else. In fact, if these officials during the
drafting of the document indicate non-existent circumstances, or do not enter any data that
should be noted, in this case we have partial forgery, perhaps, the stamp, signature, the
document as such (form) are original, but the content does not correspond to the reality and
is contrary to the concrete regulations that regulate the concrete scope. For example, issuance
of a certificate from the court for person XX, where it is stated that the same is not under
investigation, while according to the evidence in the possession of the court, the same is
under investigation. So, in this case, the certificate is original, with the original stamp and
signature of the relevant officials, with accurate data on the identity of the specific person,
but in the main part that has to do with the issue of investigation, we have false data. This
type of forgery and all other types related to official documents, in the literature can also be
encountered as intellectual forgery.

The detection of this type of forgery is mainly done by comparing the content of the
document with the data that are in the adequate records of official institutions. In the latter
case, in fact, the court evidence for the specific case must be verified, it is possible to copy
the sheet where the data for the specific person are, or by order of the prosecution to obtain
the entire book where the evidence for the case in question stands. If the whole book is taken,
but also the photocopy of the respective sheet, for the same activity a certificate for the
receipt of temporary items must be compiled, in which the items received are described (in
this case the book for such evidence or the photocopy of the relevant sheet) and the same
must be signed by the police officer, and the person from whom the items are taken.

It is also practiced during the review of the documentation in the respective
institution to take a photo of the concrete data which will serve as evidence, to clarify the
case, but this usually happens when we do not receive the book of evidence, due to the
obstruction of the evidentiary processes and other, of the concrete institution. Also, after all
this, an official note is compiled by the police officer, which describes the entire control
activity in this case. This is actually the discovery of counterfeiting! Now we have to see
who is behind this falsification, i.e., who is the author of this work. In such cases it is not
very difficult to find the perpetrator of this act, maybe each document contains the date of
issue, the institution that issued it, the compiler of the document, the signatory of the
document in the capacity of the head of the specific institution, etc. While analysing these
data, the police officer should direct further activities from the point of view of the
authorizations he possesses to the compilers and signatories of this document on the date of
issuance of the specific document and other circumstances related to the procedure of issuing
the document. However, in practice this is not always the case! We elaborate this, precisely
from the police practice that has to do with administrative officials in issuing citizenships,
certificates, identification documents, etc. These officials have their own special numbers or
codes with which they have access to the computer system from where they extract data, or compile concrete documents. In situations when the queues of citizens for obtaining these documents are large, to serve the citizens as soon as possible, it happens that with the number of an official who is authorized, another employee who does not have a number comes in place, but to whom, consciously and in faith, the former told the latter without any malicious intent. It happens that exactly the second clerk misuses the figure and issued or compiled a document with falsified content. In such cases, even though the second person has committed such a violation, the first person is also responsible, especially if the official who de facto committed the crime does not accept such a responsibility. So, no matter how much he tries to justify himself, the facts included in the document are his, such as his name, competencies and authorizations in terms of issuing these documents, which is seen from the decision of employment, the number with which he worked on the computer, etc.

In practice, it happens that certain officials do not admit that they had committed concrete forgery, or even admit it. Despite these situations, police officers, in addition to other activities, must also examine or expertise the documents. In what direction the expertise will be done depends on the manner and type of forgery. For example, if we have complete forgery then we are dealing with some exports that are related to the concrete document, starting from the examination of the paper, stamp, colour, signature, etc., whereas if we are dealing with partial forgery then the expertise will not be comprehensive, but the critical parts of the document will be examined. Ultimately, what expertise will be done by the professionals who deal with them depends on the applicant for the expertise that may be, the police after obtaining a preliminary order from the prosecutor, the prosecution, or the court.

Other measures for the detection of falsified cases, which police officers undertake during the detection and clarification of criminal situations related to the falsification of documents are the controls and raids carried out in public or private institutions. It often happens that official stamps and other items with which various forgeries are made are also found in the houses or apartments of the perpetrators. Raids are also made on other persons, who are not in the capacity of official persons, and who in fact with various tools, such as computers, certain letters, special tools falsify various documents.

An example from practical experience where partial forgery is expressed:

A post director presents the case as follows:

Some pensioners in the premises of the Post Office in Gostivar, submitted a complaint that they have not received their pensions for two consecutive months. With the review of the case, an internal commission was formed at the post office, where they ascertain that the receipts for the payment of pensions appear in the postal records that the same have been realized. By reviewing the documentation, they identify the clerk who made the payment of pensions, and the same is asked about the case in question. The clerk rejects the pensioners' complaint, saying that the pensions were given to them and what is said is not true. For all these measures taken by the internal post commission, a report is compiled, and the same together with the complaint of the pensioners is submitted to the Gostivar Police Station for clarification and documentation of the case. After the verifications were

[^7]: The manner of expertise, the documents to be provided for the expertise, the number of documents, the number of signatures and other characteristics are provided in special regulations, based on which the experts in this field work.
done, i.e., the graphiological expertise performed by the relevant bodies of the Ministry of Interior, it was concluded that the receipts contain forged signatures, which in fact proves that the pension money was appropriated by the clerk who distributed the pensions. After the completion and documentation of the case, a criminal report was issued against the clerk, for criminal offense of abuse of his official position, provided in Article 354 and falsification of official documents provided in Article 361 of the Criminal Code of the Republic of North Macedonia.

What is the conclusion regarding the specific case, including the manner and means used to commit this criminal offense?

- First, the presenter of the case is in the capacity of the director of the post office, i.e., a responsible person in a legal entity;
- Second, in the capacity of the victims are some retired citizens;
- Third, the way of manipulation is through forged receipts (signatures);
- Fourth, in this case, unlike the above example, the incriminating action of the official person has been undertaken within the framework of his official work, therefore he is charged with the criminal offense of abuse of duty, in addition to the criminal offense of forgery of official documents;
- The budget of the Republic of Macedonia is damaged in the last instance, as the pensioners were compensated after documenting and clarifying the case.

It is implied that the cases of forgery are numerous, and that the same in most cases, as mentioned above, are related to acts of different character and especially to those of economic-financial crime.

For all these falsifications mentioned above, as mentioned above, criminal sanctions are imposed. Sanctions in this regard, in addition to the compilers of forged documents, are also imposed on persons who have enabled these documents to be issued in circulation, such as concrete superiors, with whose signature something like this has been enabled, as well as on persons who have these forged documents. have used them in certain places for certain purposes, such as employment, fraud to obtain financial resources from insurance companies, obtaining loans, etc.

3. FORGERY OF DOCUMENTS ACCORDING TO THE CRIMINAL CODE OF THE REPUBLIC OF NORTH MACEDONIA

In the Criminal Code of the Republic of North Macedonia, the issue of forgery of documents is included in several articles. Namely, forgery of official documents is provided in Article 361 of the Criminal Code of the Republic of North Macedonia, in Article 378 of the Criminal Code of the Republic of North Macedonia, special cases of forgery of documents are provided in Article 379 of the Criminal Code of the Republic of North Macedonia. More or less these articles contain the above-mentioned actions for which criminal sanctions were envisaged. But, regardless of the number of attempts made to

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8 This expertise was done after the signatures of the pensioners were provided in advance according to the regulations provided for something similar, and the same were compared with the suspicious signatures placed on the payment slips.

9 Clarification, the post in question, has enabled the distribution of pensions directly in the hands, bringing them to the pensioners home, so the pensioner did not need to receive the money directly from the account.

include all actions that are harmful to the society, and which in fact should be sanctioned, whether they are of minor or criminal nature, new situations that require new solutions have been created. In this regard, we will highlight the recent cases with the epidemiological situation known as COVID-19, where various unvaccinated citizens, during the checks made by the relevant authorities in different places where a certificate was required, presented certificates of other persons. Their detection is not a big problem as their identification is done through identification documents, but the problem lies in their sanctioning. For example, at the moment, when we talk about the issue of forgery, the most appropriate article in the Criminal Code of the Republic of North Macedonia, for such situations, is the use of a document with false content, which provides criminal sanctions for persons who use a document in legal circulation, book or writing that we know to be untrue. However, this article cannot include persons who present a vaccination certificate with data to someone else, to justify himself that he is vaccinated. This is because in this case it is not about a forged document, i.e., the certificate that is presented is original as a document. Thus, the emphasized article includes such situations when the presented document has untrue content, which means that in advance this criminal offense is preceded by the making of a forged document that is considered as a special offense. This situation or this new presentation cannot be included, not even in Article 391 of the Criminal Code of the Republic of North Macedonia\textsuperscript{11} which has to do with false presentation, since according to this article are included the persons who are presented as official or military persons and who in fact are not such.\textsuperscript{12} They cannot be included in Article 149 of the Criminal Code of the Republic of North Macedonia\textsuperscript{13} which provides for the misuse of personal data, because to complete the elements of this article, among other things, we must have the consent of the citizen, that his or her data is used by someone else, and that in this case we do not have something like that because the citizen consciously and with his or her consent gave to another person the concrete certificate. Based on this, the relevant authorities should review this situation by suggesting, proposing and establishing a special article that would sanction such occurrences.

4. CONCLUSIONS AND RECOMMENDATIONS

Forgery of documents as a criminal offense is part of the group of criminal offenses of economic-financial character. This criminal phenomenon is encountered in many areas, while the perpetrators may be persons with different status, who for different interests undertake actions of an incriminating character. The manner of committing this criminal offense is different, using various tools and methods. In principle, we distinguish between complete forgery of documents and partial forgery.

Detection of these cases is done in several ways, such as anonymous presentations, direct presentations by natural persons, responsible persons in legal entities, controls performed during various inspections, etc. To solve these cases, some tactical and technical forensic activities are undertaken, such as controls, graphiological examinations, raids, review of documentation, evidence, operational information activities, etc.

\textsuperscript{11} Ibidem, pg. 310
\textsuperscript{12} This statement is valid for the time of writing this paper, i.e., for 2022, which means there may be changes in the future.
\textsuperscript{13} Afrim Osmani, Kodi Penal i RMV-ut, Shkup, 2010 pg. 143
Police officers working in such cases should have the necessary experience as in most cases forgery of documents is related to other criminal offenses, especially those that have elements of economic and financial crime from which we would distinguish various forms of abuse of official duty.

Therefore, it would be recommended that police officers dealing with such cases are vigilant, and do not rush to clarify these criminal situations in the sense that as soon as the person who committed the forgery has been discovered, criminal charges should be filed immediately, but carefully analyse the case and make all possible verifications because it often happens that in such situations more persons who should also be criminally sanctioned depending on the incriminating activity are involved.

Another recommendation is that the relevant authorities include a concrete article in the Criminal Code of the Republic of North Macedonia, which will provide adequate sanctions for persons who during their identification present a document of someone else that is not actually forged but does not correspond to the reality, that recently with the epidemiological situation created by COVID-19, we have such cases in considerable numbers, during the presentation of vaccination certificates, while in the absence of adequate article as explained above, such persons remain unsanctioned.

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