

Selected aspects of document forgery in the context of Article 5 of the Constitution of the Republic of Poland

Wybrane aspekty fałszerstw dokumentów w kontekście art. 5 Konstytucji Rzeczypospolitej Polskiej

Отдельные аспекты фальсификации документов в контексте статьи 5 Конституции Республики Польша

Окремі аспекти підробки документів у контексті ст. 5 Конституції Республіки Польща

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Summary: One of the tasks of the state specified in Article 5 of the Constitution of the Republic of Poland of 2 April 1997 is to ensure security of its citizens. The aim of the study is to show a relationship between crimes against document credibility listed in Chapter XIX of the Penal Code and the security of citizens. The main conclusion resulting from the analysis of the selected topic was that forgery of travel documents is a significant factor threatening citizen safety. The above results from the fact that documents very often serve as both an object and a tool in many crimes. Therefore, they constitute an activity of a preparatory nature before committing further criminal acts, as well as a way of hiding traces of other crimes. It should be emphasized that the use of false documents, and thus their introduction into legal circulation, means that a person illegally using such documents legally acquires many rights.

Key words: Article 5 of the Polish Constitution, security of citizens, crimes against the document credibility, forgery of travel documents

Streszczenie: Jednym z zadań państwa określonym w art. 5 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. jest zapewnienie bezpieczeństwa obywateli. Celem niniejszego opracowania jest ukazanie związku, jaki zachodzi między przestępstwami przeciwko wiarygodności dokumentów skatalogowanymi w rozdz. XIX Kodeksu karnego a bezpieczeństwem obywateli. Głównym wnioskiem wypływającym z analizy tej tematyki jest stwierdzenie, że fałszerstwa dokumentów podróży stanowią istotny czynnik zagrażający bezpieczeństwu obywateli. Dokumenty bardzo często służą bowiem zarówno jako przedmiot, jak i narzędzie w dokonywaniu wielu przestępstw. Stanowią zatem czynność o charakterze przygotowawczym do popełnienia kolejnych czynów przestępnych, a także narzędzie służące do zatarcia śladów innych przestępstw. Należy podkreślić, że użycie fałszywych dokumentów, tym samym wprowadzenie ich do obrotu prawnego, rodzi skutek prawny w postaci nabycia wielu praw przez osobę nielegalnie posługującą się takim dokumentem.

Słowa kluczowe: art. 5 Konstytucji RP, bezpieczeństwo obywateli, przestępstwa przeciwko wiarygodności dokumentów, fałszerstwo dokumentów podróży

Резюме: Одной из задач государства, изложенных в статье 5 Конституции Республики Польша от 2 апреля 1997 года, является обеспечение безопасности граждан. Цель данного исследования – показать взаимосвязь, существующую между преступлениями против достоверности документов, перечисленных в главе XIX Уголовного кодекса, и безопасностью граждан. Основной вывод, сделанный в результате анализа данной темы, заключается в том, что фальсификация проездных документов является важным фактором, угрожающим безопасности граждан. Это связано с тем, что документы очень часто служат одновременно

и объектом, и инструментом для совершения многих преступлений. Поэтому они представляют собой деятельность подготовительного характера для совершения дальнейших преступных действий, а также инструмент для сокрытия следов других преступлений. Следует подчеркнуть, что использование поддельных документов, введение их в легальный оборот, порождает правовой эффект в виде приобретения многочисленных прав лицом, незаконно использующим такой документ.

Ключевые слова: статья 5 Конституции Республики Польша, безопасность граждан, преступления против достоверности документов, фальсификация проездных документов

Резюме: Одне із завдань держави, зазначених у ст. 5 Конституції Республіки Польща від 2 квітня 1997 року є забезпечення безпеки громадян. Метою даного дослідження є показати взаємозв'язок злочинів проти достовірності документів, зазначених у розділі XIX Кримінального Кодексу, та безпеки громадян. Основним висновком з аналізу даної тематики є твердження, що підробка проїзних документів є істотним фактором, що загрожує безпеці громадян. Документи дуже часто служать і об'єктом, і знаряддям вчинення багатьох злочинів. Тому вони є підготовчою дією до вчинення наступних злочинних поступок, а також інструментом приховування слідів інших злочинів. Слід підкреслити, що використання підроблених документів, а відтак і введення їх у законний обіг, породжує юридичний результат у вигляді набуття особою, яка незаконно використовує такий документ, багатьох прав.

Ключові слова: ст. 5 Конституції Республіки Польща, безпека громадян, злочини проти достовірності документів, підробка проїзних документів

Introduction

In Article 5 of the Constitution of the Republic of Poland of 2 April 1997,¹ functions of the state, i.e. basic directions and goals of its operation, were defined.² The constitution-maker included the independence and inviolability of the territory of the Republic of Poland, freedom and human and civil rights, security of its citizens, as well as national heritage and environmental protection. W. Skrzydło highlights that listing these functions is crucial as they entail specific jurisdiction and responsibilities of state authorities in general, especially those of the authorities established by the Constitution itself.³ It should be emphasized that in recent years one could notice rapid changes when it comes to threats to security of the citizens, society and the state. An analysis of this issue throws light on the close relations between selected categories of crimes and security on a micro and a macro scale. Clear interactions take place in particular in the relationship between the security of citizens and state and specific types of crime, including terrorism as well as organized economic

¹ Journal of Laws [Dziennik Ustaw] 1997 No. 78, item 483 as amended.

² W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. 7, Kraków 2013, <https://sip.lex.pl> [access: 10.01.2021].

³ Ibidem.

and common crime.⁴ It applies especially to offenses against document credibility. Documents very often serve both as an object and a tool in numerous crimes that significantly threaten legal order as well as the security of citizens and state.⁵ It means that document forgery, which is a crime itself, is very often a preparation for subsequent criminal acts, as well as a tool to cover up traces of other crimes.⁶ Document forgery as such, which is a crime catalogued under Article 270 and 271 of the Penal Code in force,⁷ has no effect as long as a document is not put into circulation and a perpetrator does not present or use it.⁸

Examples of crimes involving a high degree of social harm, threatening the safety of citizens, and which are very often accompanied by forgery of various types of documents, are drug and weapons smuggling, human trafficking⁹ or immigrant smuggling.¹⁰ Forging documents is an indispensable part of modern organized crime, whereby a document is the most central means of committing criminal acts.¹¹

⁴ J. Murasicki, *Relacje między wybranymi kategoriami przestępczości a bezpieczeństwem państwa i obywateli*, Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy 2014, no. 12 (3), p. 49; see also: W. Filipkowski, *Nauki o bezpieczeństwie*, in: *Nowe kierunki w kryminologii*, eds. E. Drzazga, M. Grzyb, Warszawa 2018, p. 195.

⁵ M. Goc, *Ustawa o dokumentach wciąż oczekiwana*, Człowiek i Dokumenty 2018, no. 50, pp. 10–11.

⁶ A. Nastuła, *Falszerstwo dokumentów ze szczególnym uwzględnieniem przestępczości internetowej jako wyzwanie dla organów państwa*, Polonia Journal 2018, no. 8, pp. 73, 86; H. Kołecki, *Technicznokryminalistyczne badania autentyczności dokumentów publicznych nieniszczącymi wielospektralnymi technikami optycznymi za pomocą wideospektrokomparatora VSC-1*, Poznań 2002, p. 33; E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka, czyli o współczesnych metodach dowodzenia przestępstw*, Warszawa 2020, p. 444.

⁷ The Act of 6 June 1997 Criminal Code (consolidated text Journal of Laws 2020 item 1444 as amended), more broadly, see: H. Kołecki, *Pojęcie dokumentu sfalszowanego i fałszywego w Polsce i w krajach Unii Europejskiej*, in: *Technicznokryminalistyczne badania autentyczności dokumentów publicznych. Materiały z I Konferencji*, Poznań, 27–28 listopada 1997, ed. H. Kołecki, Poznań 2003, p. 189; W. Wróbel, T. Sroka, in: *Kodeks karny. Część szczególna*, t. 2, part 2. *Komentarz do art. 212–277d*, eds. W. Wróbel, A. Zoll, Warszawa 2017, p. 695; J. Piórkowska, w: *Kodeks karny. Komentarz*, ed. T. Bojarski, Warszawa 2016, p. 812; D. Semków, *Falsz materialny dokumentu. Aspekty prawne i kryminalistyczne*, Przegląd Prawno-Ekonomiczny 2019, no. 1, pp. 40–54.

⁸ M. Goc, *Przestępczość przeciwko dokumentom...*, pp. 32–33; E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka, czyli o współczesnych metodach...*, p. 445. At this point, it is necessary to point out the common nature of this type of crime, because anyone can be a perpetrator. This is proven by the instances mentioned in the paper: E. Gruza, M. Goc, *Genialny falszercz czy bezradny ekspert*, in: *Znaczenie aktualnych metod badań dokumentów w dowodzeniu sądowym. Materiały XIV Wrocławskiego Sympozjum Badań Pisma*, Wrocław 2010, eds. Z. Kegel, R. Cieśla, Wrocław 2012, p. 85.

⁹ Sprawozdanie Komisji dla Parlamentu Europejskiego i Rady. Sprawozdanie z postępów w zwalczaniu handlu ludźmi (2016 r.), Bruksela, 19.05.2016, COM(2016) 267 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52016DC0267&from=DE> [access: 18.12.2020].

¹⁰ *Document Fraud is a Key Challenge in Border Control. Frontex is on the Case*, FRONTEX. European Border and Coast Guard Agency, [https://frontex.europa.eu/media-centre/focus/document-fraud-is-a-key-challenge-in-border-control-frontex-is-on-the-case-ac\]0cG](https://frontex.europa.eu/media-centre/focus/document-fraud-is-a-key-challenge-in-border-control-frontex-is-on-the-case-ac]0cG) [access: 17.01.2021].

¹¹ H. Kołecki, *Technicznokryminalistyczne badania...*, p. 33.

The importance and scale of the problem is underlined by the fact that in September 2017, the first meeting of European Union experts dealing with detection of false documents took place at the Europol headquarters in The Hague. A strategy to combat the production and trade of false documents in 2018-2021 was then developed as one of the 10 priorities in the fight against organized crime and terrorism.¹²

The use of false documents facilitates crimes such as extortion of goods and loans, insurance fraud, allows illegal circulation of material goods obtained through criminal means, setting up fictitious companies to extort deliveries on credit terms, car leasing and loans and also serves to authenticate the material spoils of a crime by concealing how they were acquired. Document forgery is also a necessary element of different types of embezzlement and defraudation, bankruptcy as a criminal affair, concealing property and many other criminal behaviors, including hiding domestic or foreign criminals, giving an appearance of legality when employing foreigners, validating the residency of illegal immigrants.¹³ In the context of the issues discussed in this article, particular attention should also be paid to a problem of identity theft crimes, which has been growing in recent years.¹⁴

Any of the above-mentioned acts is a factor that threatens the safety of citizens. However, they are few examples of crimes involving a forged document as a necessary tool throughout the entire criminal process. Multiple types of documents,¹⁵ and thus a variety of possibilities available for document forgers due to modern technology, may make one realize the scale and importance of the dangers arising from crimes against documents. This has been confirmed by surveys conducted among the citizens of the Republic of Poland and in the European Union. Their analysis shows that both Poles and the citizens of other countries of the European continent indicate crime as a significant factor threatening their security and

¹² K. Izak, *Dokumenty jako narzędzie kontroli imigracji*, *Człowiek i Dokumenty* 2020, no. 58, p. 68.

¹³ M. Goc, *Przestępczość przeciwko dokumentom...*, pp. 32–33; see also: T. Widła, *Badania dokumentów*, in: *Kryminalistyka*, ed. J. Widacki, Warszawa 2018, p. 365.

¹⁴ The subject of identity theft, including the related document forgery, is an extremely important issue in the context of citizen security. The extensive nature of the issue of identity theft as well as the thematic scope of this study do not allow for its sufficient discussion. This issue constitutes a contribution to the considerations undertaken in the next article.

¹⁵ It should be emphasized that the Polish criminal, civil and administrative codes of both substantive and procedural law and other legal acts do not use the concept of a public document. All documents are divided into official and private documents, H. Kolečki, *Techniczno kryminalistyczne badania...*, pp. 15–17, 79; J. Błachut, *Dokument jako przedmiot ochrony prawnokarnej*, Warszawa 2011, pp. 16–21. The legal definition of a public document was introduced under the Act of 22 November 2018 on public documents (Consolidated text Journal of Law 2020, item 725) and in accordance with Article 2 clause 1 point 2, it is a document secured against forgery, which is used to identify people or things or confirm the legal status or rights of its users.

emphasize the need to reduce it.¹⁶ In view of the above, it is justified to refer to the thesis, often cited in the literature, stating that: “protection of citizens’ safety is connected with one of the basic functions of public authority, the aim of which is to reduce human and material losses determined by criminal activity.”¹⁷

1. The concept and essence of citizen security

When discussing the issue of security, it should be noted that this is an area of tremendous importance not only for the state as a public institution but also for society and its individual members. Security should be seen as a common good, which is a basis for public order and a democratic system ruled by law. Thus, security can be regarded as an objective of the public authorities.¹⁸ In addition to Article 5 mentioned earlier, the concept of security appears in many other parts of the Polish Constitution.¹⁹

Referring to the aforementioned provision of Article 5 of the Constitution, it is worth noting that the literature indicates a close relationship between an imperative of the state to guarantee the security of citizens and the protection of human rights and freedoms. The duty of the state to ensure such protection reflects the principle of preserving human dignity mentioned in Article 30 of the Constitution. Article 5 also contains rights resulting from binding international agreements and those granted pursuant to the normative acts referred to in Article 208 § 1 of the Constitution.²⁰ As for security itself, it is worth emphasizing that it is a multi-dimensional category and is therefore difficult to describe. Despite the fact that the concept of security has been defined neither in the current Constitution nor in previous Basic Laws²¹ as a common good, it obtained equivalence to an act of the legislature, thus setting a path for the legislator who is to develop and shape this concept in various areas.²² Obviously,

¹⁶ More broadly, see: M. Lisiecki, *Sprawność zarządzania organizacjami publicznymi funkcjonującymi na rzecz bezpieczeństwa obywateli*, Studia Ekonomiczne 2013, no. 168, p. 167.

¹⁷ A. Wierzbicka, A. Żółtaszek, *Analiza bezpieczeństwa publicznego w krajach europejskich*, Wiadomości Statystyczne 2015, no. 8, p. 66.

¹⁸ M. Czuryk, *Bezpieczeństwo jako dobro wspólne*, Zeszyty Naukowe KUL 2018, vol. 61, no. 3, p. 15.

¹⁹ More broadly, see: Ł. Kamiński, *Pojęcie bezpieczeństwa w prawie administracyjnym*, Państwo i Prawo 2013, vol. 68, no. 10, pp. 49–61.

²⁰ P. Tuleja, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, <https://sip.lex.pl/> [access: 20.01.2021].

²¹ More broadly, see: H. Zięba-Załużka, *Konstytucyjne aspekty bezpieczeństwa*, Studia Iuridica Lublinensia 2014, no. 22, p. 412.

²² M. Czuryk, *Bezpieczeństwo...*, p. 16.

the common good under Article 5 of the Polish Constitution is perceived more broadly and refers not only to security. However, it is specifically security that constitutes a special value and therefore is also subject to special protection.²³

Analysis of the literature reveals many concepts concerning the citizen security. Maciej Serowaniec and Wojciech Włoch emphasize that the scope of the concept of security encompasses survival, a lack of current and perceived threats and an ability to pursue goals deemed desirable.²⁴ The scope of security also changes together with the development of an aspect of it, arising, for example, from the progress of civilization, which entails previously unknown threats and methods of their elimination. In order to counteract these threats, the state has built a national security system, an element of which is an internal security subsystem aimed at ensuring and maintaining the internal security of the state, including protecting constitutional order, ensuring the safety of people against unlawful attacks, maintaining public safety and order in the state, guarding the border of the Republic of Poland, protecting the life and health of the citizens together with their property, national property and the environment against any effects of natural and technical disasters. This subsystem consists of legislative, judicial and executive authorities.²⁵ According to Piotr Tuleja, the security of citizens broadly means a state giving them a sense of certainty, stability and protection.²⁶ On the other hand, in the opinion of Paweł Sarnecki, it means counteracting all threats and attacks, in particular unlawful ones, aimed against the citizens acting within the law and in a spirit of good will and trust in the state authorities. Ensuring citizen safety is a kind of a reaction, also of a preventive nature, to real or potential, yet possible, threats and attacks.²⁷

To conclude the discussed issue, it is worth highlighting that ensuring the security of citizens was explicitly mentioned as one of the tasks of the Republic of Poland in Article 5 of the Constitution. A necessary part of performing this function of the state is establishing legal norms of constitutional rank, statutory and basic norms, as well as an executive activity, which belongs primarily to public administration.²⁸ Nevertheless, the main constitutional responsibility for the security of citizens rests with public institutions. What is of great importance for managing the citizens' safety efficiently is the proper retrospective and prospective identification and prioritization of threats,

²³ Ibidem, p. 18.

²⁴ More broadly, see: M. Serowaniec, W. Włoch, *Kategoria bezpieczeństwa w ujęciu prawnofilozoficznym*, *Studia Iuridica Toruniensia* 2016, vol. 18, pp. 161-182.

²⁵ *Współczesne uwarunkowania zarządzania bezpieczeństwem wewnętrznym państwa*, eds. J. Falecki, R. Kocharczyk, P. Sowizdraniuk, Katowice 2018, p. 11.

²⁶ P. Tuleja, *Konstytucja...*

²⁷ P. Sarnecki, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 1, eds. L. Garlicki, M. Zubik, Warszawa 2016, <https://sip.lex.pl/> [access: 20.01.2021].

²⁸ Ł. Kamiński, *Pojęcie bezpieczeństwa...*, pp. 49-61.

formulating appropriate strategies, producing adequate organizational solutions and effective leadership.²⁹ In this process, one should bear in mind that these threats are characterized by unpredictability, violence, complexity, changeability, ambiguity and interpenetration, and concern almost all areas in which the citizens function.³⁰ Taking into account the above, in the further part of the work, special attention has been paid to the issue of document forgery, which, as crimes against document credibility, undoubtedly and significantly threaten the security of citizens. This is due, inter alia, to the fact that forged documents are a tool used to commit many crimes that negatively affect the functioning of numerous areas of state and citizens. To confirm this thesis, in addition to the examples described in the next part of the article showing the close relationship between document forgery and the security of citizens, it is worth mentioning, among others, the losses incurred by the State Treasury as well as citizens, banks, financial institutions, insurance and other business entities.³¹

2. Forgery of documents as a threat to the security of citizens

The dynamics and changing nature of crimes imply the need to adapt or modify the solutions adopted in individual areas of state security, including solutions for the border protection.³² In the literature, security of the state border is defined as one of the basic elements that ensure the safety of the state.³³ The current picture of the growing threats, which constitute critical points of the state's activity in the area of ensuring safety of the citizens, requires special attention to be paid to the problem of preventing the forgery of travel documents.³⁴ The basic factors contributing to the development of this type of crime include recently increased migration, rapid development of technology easi-

²⁹ M. Lisiecki, *Sprawność zarządzania organizacjami publicznymi...*, p. 166.

³⁰ *Współczesne uwarunkowania...*, p. 11.

³¹ M. Goc, *Przestępczość przeciwko dokumentom...*, p. 29.

³² B. Mróz, *System ochrony granicy państwowej wobec współczesnych zagrożeń bezpieczeństwa państwa*, *Journal of Modern Science* 2016, vol. 29, no. 2, p. 308.

³³ E.W. Pływaczewski, *Bezpieczeństwo obywateli – Prawa człowieka – Zrównoważony rozwój*, Białystok 2017, p. 411.

³⁴ In the Polish legal system, pursuant to the provisions of the Act of 12 December 2013 on foreigners (consolidated text, *Journal of Laws* 2020 item 35), a travel document is a document recognized by the Republic of Poland, authorizing to cross the border, issued to a foreigner by an authority of a foreign state, a Polish authority, an international organization, an entity authorized by an authority of a foreign state or a foreign state authority; See also: Act of 13 July 2006 on passports, consolidated text *Journal of Laws* 2018 item 1919 as amended; Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *Journal of Laws* 1991 No. 119, item 515, Regulation of the Minister of the

ly accessible for regular users, such as computer systems, desktop publishing or color printers and a relatively low level of protection against material forgery in the case of many documents used in legal transactions.³⁵ The offense of material forgery derives its name from the fact that a perpetrator influences the content of a document and aims to give it an appearance of authenticity.³⁶ The provisions of the applicable crimes act, the doctrine of criminal law, the judicature as well as the opinions of commentators and forensic examiners indicate two forms of material document forgery.³⁷ Article 270 § 1 (*in principio*) precisely states that it may be committed either by creating a fake document or by altering an authentic one.³⁸ According to the judgment of the Supreme Court³⁹ falsifying a document takes place only when the document does not come from the person on behalf of whom it was prepared, i.e. when it is produced by a person not authorized to issue it. It therefore concerns the preparation of a document created to appear as if it comes from an authorized entity, i.e. a counterfeit or imitation of an authentic document. On the other hand, altering a document should be understood as giving a document different content than it had originally by an unauthorized person adding or removing some entries from it.⁴⁰ For a document to have attributes of forgery or alteration, it does not matter whether its content reflects an actual state or not.⁴¹ The third feature of a crime under Article 270 § 1 of the Penal Code is using a forged or altered document as if it was an authentic one. Pursuant to the provisions of the discussed article of the Penal Code, “the use” should be understood as presenting a document to another person, authority, institution, organization or using it in connection with the operation of a device (e.g. to verify one’s identity). It does not have to be used by the forger; it can also be used by another person.⁴²

Interior and Administration of 23 June 2009 on the travel document established by the Geneva Convention, Journal of Laws 2009 No. 99, item 835.

³⁵ M. Goc, *Ustawa o dokumentach publicznych potrzebna od zaraz*, Człowiek i Dokumenty 2016, no. 41, p. 8.

³⁶ I. Jankowska-Prochot, P. Falenta, *Karnoprawne aspekty przestępstwa fałszerstwa intelektualnego*, Journal of Modern Science 2016, vol. 28, no. 1, p. 237.

³⁷ H. Kołdecki, *Technicznokryminalistyczne badania...*, p. 29.

³⁸ W. Wróbel, T. Sroka, in: *Kodeks karny. Część szczególna*, vol. 2, part 2.

³⁹ The judgment of the Supreme Court of 24 October 2013, file ref. III KK 373/13, LEX no. 1386041; See also: Resolution of the Supreme Court of 17 March 2005, file ref. I KZP 2/05, published in: OSNKW 2005/3/25.

⁴⁰ Z. Kukuła, *Komentarz do niektórych przepisów Kodeksu karnego*, in: *Przestępstwa przeciwko dokumentom w obrocie gospodarczym. Zbiór orzeczeń Sądu Najwyższego i sądów apelacyjnych*, Warszawa 2013, <https://sip.lex.pl> [access: 18.01.2021]; J. Kasprzak, B. Młodziejowski, W. Kasprzak, *Kryminalistyka. Zarys systemu*, Warszawa 2015, p. 143.

⁴¹ More broadly, see: W. Wróbel, in: *Kodeks karny. Część szczególna*, vol. 2, part 2; Resolution of the Supreme Court of 17 March 2005, file ref. I KZP 2/05, published in: OSNKW 2005/3/25.

⁴² A. Lach, in: *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2018, <https://sip.lex.pl> [access: 20.01.2021]; Resolution of the Supreme Court of 17 March 2005, file ref. I KZP 2/05, published in: OSNKW 2005/3/25.

From the very beginning, the Court jurisprudence expressed the conviction that criminal prosecution covers forging and alteration of documents that may serve as an evidence of gaining, changing or losing a right or an obligation. They include any unilateral or bilateral legal act, any legal relationship and any entitlement connected with acquiring or adjusting rights and obligations.⁴³ This thesis is extremely important in the context of falsification of travel documents discussed in the article. Among others, travel documents fall within the catalogue of documents confirming the fulfillment of conditions for granting a permanent residence permit to foreigners, thus granting them many rights. A lack of documents specified by law or their forgery may result in leaving such an application without consideration or in a refusal to initiate a procedure for granting a permanent residence permit.

In the context of the more and more frequently raised discussion on the problem of illegal migration to Europe, especially in the face of the political situation occurring mainly in the Middle East, it should be emphasized that foreigners who want to enter a territory of an EU Member State have been widely using forged or altered travel documents for many years. Passports constitute the largest number of all false documents.⁴⁴ Third-country nationals use also false visas, residence permits, other identity documents as well as forge or alter stamps, mainly confirming border checks.⁴⁵ As Krzysztof Izak notes, a constant influx of immigrants to Europe is conducive to the development of a false documents market. As a consequence, this leads to a situation in which criminal groups find new routes for smuggling illegal immigrants.⁴⁶ This state of affairs leads to the conclusion that since 2015, illegal immigration has posed an even greater challenge for individual countries of the European continent, and that identity theft and document forgery have become a means of establishing permanent residence on their territory.⁴⁷ The use of false documents may serve to ensure the possibility of relocation within a given territory and performing reconnaissance as well as carrying out terrorist attacks and enabling permanent residence in a country.⁴⁸ The view that criminal acts committed with the use of false documents constitute a significant factor threatening the security of citizens is confirmed not only by the above-mentioned migration flows

⁴³ Z. Kukula, *Komentarz do niektórych przepisów...*

⁴⁴ M. Perkowska, *Nielegalna migracja w Europie – aspekty prawne i kryminologiczne*, Teka Komisji Politologii i Stosunków Międzynarodowych 2017, vol. 12, no. 3, p. 65.

⁴⁵ Ibidem.

⁴⁶ K. Izak, *Nielegalna imigracja: poprawność polityczna, skandale, fałszywe dokumenty*, Człowiek i Dokumenty 2018, no. 51, p. 61–62.

⁴⁷ Idem, *Brak dokumentów, fałszywa tożsamość i dziurawe prawo sposobem na pobyt stały w UE*, Człowiek i Dokumenty 2019, no. 52, pp. 48, 57.

⁴⁸ H. Kolečki, *Technicznokryminalistyczne badania...*, p. 33.

but also by the terrorist attacks carried out in 2016 in Brussels or earlier in Madrid, London, Copenhagen and Paris.⁴⁹ It is no doubt that the problem of crimes against document credibility, in particular travel documents, has become even more important in the context of ensuring the security of state and citizens.

As Mieczysław Goc emphasizes, until recently it seemed that Poland was not directly involved in the immigration wave and that refugees or terrorists were not interested in either legalizing their stay in the Republic of Poland or in obtaining Polish documents. However, inspections have shown that immigrants increasingly use both authentic and forged Polish documents.⁵⁰ This information is also confirmed in the literature, according to which a statistical picture of crimes prosecuted in Poland proves that the criminal acts committed by foreigners are largely crimes related to crossing the state border.⁵¹ Considering the aforementioned political situation caused by a significant influx of immigrants, together with a detailed analysis of forgery of Polish travel documents, it is necessary to point out the disturbing trend of illegal immigrants and terrorists forging Polish identity cards and passports.⁵² Emil Walenty Pływaczewski states that examinations of the court files of criminal cases confirmed the most common methods of document forgery presented in the literature – i.e. falsifying a document – which, in the case of a passport, means replacing a photo or altering border control stamps related to visa validity periods, counted from a day the border was crossed for the first time.⁵³ From the point of view of state security, a visa is an extremely important document because, together with a passport, it entitles one to enter a country, transit or remain on its territory. Visas made up a significant portion of the thousands of forged documents disclosed at the borders of the Republic of Poland by officers of the Border Guard. In connection with many visa forgeries that took place in the last two decades, and thus for the sake of security of the Schengen Area borders and citizens, the European Union has introduced a new type of visa sticker with more advanced security measures.⁵⁴

⁴⁹ More broadly, see: *Współczesne oblicze terroryzmu w Unii Europejskiej*, Website of the Government Center for Security, <https://rcb.gov.pl/> [access: 15.03.2020].

⁵⁰ M. Goc, *Przestępczość przeciwko dokumentom...*, p. 34.

⁵¹ E.W. Pływaczewski, *Bezpieczeństwo obywateli...*, p. 420.

⁵² K. Izak, *Brak dokumentów, fałszywa tożsamość i dziurawe prawo sposobem na pobyt w UE*, *Człowiek i Dokumenty* 2019, no. 52, p. 58.

⁵³ More broadly, see: E.W. Pływaczewski, *Bezpieczeństwo obywateli...*, p. 422.

⁵⁴ Regulation (EU) 2017/1370 of the European Parliament and of the Council of 4 July 2017 amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas (OJ L 198 of 28.07.2017); A. Kubiś-Kuras, *Wiza i jej znaczenie w systemie bezpieczeństwa państwa*, *Człowiek i Dokumenty* 2020, no. 59, pp. 9, 17.

It is hard to disagree with the opinion cited in the literature that the refugee crisis of 2015, the consequences of which are still being felt, was merely an indication of deepening economic, social and political problems in the individual countries concerned⁵⁵ and an extremely absorbing challenge for their governments. The problem seems to be all the more important as the number of immigrants applying for a residence permit in Poland has been growing steadily since 2014. More and more often foreigners submit applications for a “Pole’s Card” to voivodeship offices and consulates and for a permanent residence permit in the Republic of Poland, proving their Polish origin. The holder of the “Pole’s Card” may apply for Polish citizenship, undertake legal work in Poland without any additional permits, run a business under the same conditions as Polish citizens, apply for a permanent residence permit and receive material support for themselves and their family members. In the procedure, the immigrants refer to the provisions of, inter alia, the Constitution of the Republic of Poland and try to demonstrate their Polish roots to the officials. To do so, they submit appropriate documents, including birth certificates of their relatives or their own. As mentioned before, besides fake documents confirming Polish roots, the immigrants also use forged or altered passports and visas.⁵⁶

In the context of citizen security, it is extremely important that in addition to traditional illegal markets, forged documents are also available on the dark services of the TOR network (The Onion Router). In the dark net, one can purchase forged identity documents, including ID cards, passports, driving licenses, notarial deeds, deeds of ownership and medical documentation. The price of a forged or altered passport depends on how the particular document is secured and on the country where the user is heading. The amount paid for false documents is also determined by whether personal data and documents are not restricted at the border or on Polish territory and whether they are not reported to the Schengen system.⁵⁷ Passports of Polish citizens are forged by Syrians living in Greece. The price of such a document is approximately 4–5 thousand Euro, with purchase and sale offers available on social networks.⁵⁸ Stolen personal data in the TOR network do not only involve birth certificates and identity documents but also ones that create an entire family line together with false documents confirming family relationships. There are indications that false genotypes (DNA) are performed to make family relationships

⁵⁵ K. Izak, *Brak dokumentów...*, p. 58.

⁵⁶ A. Nastuła, *Falszerstwo dokumentów...*, pp. 84–85.

⁵⁷ Ibidem.

⁵⁸ J. Marcińska, *Dokumenty w niebezpieczeństwie*, <https://wpolityce.pl>, as cited in: M. Goc, *Ustawa o dokumentach publicznych...*, p. 9.

seem authentic.⁵⁹ It is very likely that terrorist groups use this stolen information to forge documents, thereby allowing their members to infiltrate countries and bypass security checks. Bearing in mind the security of state and citizens, it is alarming that both physical and digital forms of documents are available for sale.⁶⁰

To sum up, a definition of security is related to ensuring constitutional order, therefore the political stability of states, the fight against crimes threatening life, health and the possessions of citizens, and reacting in the face of different sorts of disasters.⁶¹ In connection with the above, it should be emphasized that in the field of threats to citizen safety, it is extremely important to evaluate the legal regulations in effect and address the issue of how adequate they are in counteracting threats to public security in order to eliminate criminal activities in this area. In this context, particular attention should be paid to the issue of security of public documents,⁶² mainly due to the fact that the tools used by document forgers are constantly evolving. Criminal networks dealing with document forgery and alteration are becoming more and more specialized and are constantly developing new forms of counterfeiting – such as manipulating anti-counterfeit devices and inventing techniques to bypass biometric checks, as well as new methods of operation.

Conclusion

Any constitution establishes a certain number of basic principles which formally define ways of exercising power and formulate the material content of its implementation, indicating the actions and obligations that should be performed in the process of exercising public authority. One of the tasks of the state specified in Article 5 of the Constitution of the Republic of Poland of April 2, 1997 is to ensure the security of citizens. What is significant is in this scope is the systemic value of norms named by the provisions of the Basic Law, including in particular the fact that they list the duties of public authorities of the state, and in order to implement these tasks, they need to be appropriately clarified and the obligations arising from

⁵⁹ A. Nastuła, *Fałszerstwo dokumentów...*, pp. 83, 85.

⁶⁰ *Forged Documents Sales on Darknet Aid Terrorist Groups. Report*, News BTC, <https://www.newsbtc.com/news/bitcoin/forged-documents-sales-darknet-aid-terrorist-groups-report-says/> [access: 24.10.2020].

⁶¹ P. Majer, *W poszukiwaniu uniwersalnej definicji bezpieczeństwa wewnętrznego*, *Przegląd Bezpieczeństwa Wewnętrznego* 2012, no. 7, p. 14.

⁶² More broadly, see: M. Goc, D. Semków, *Public Documents Act and Its Role in Preventing Document Forgery*, *Studia Iuridica Lublinensia* 2020, vol. 29, no. 4, pp. 85–99.

them must be defined in laws and other legal acts. In the context of the issues presented in this paper, it is enormously important to correctly define a current and future hierarchy of threats to citizen security as well as to construct effective legal regulations to prevent them. In the discussed subject, it is crucial to draw attention to the variability and dynamics of threats to the security of citizens, society and state, which has been clearly noticeable in recent years.

The analysis of the current and future threats to the security of citizens, performed for the purposes of this article, proves the close relationship between selected categories of crimes and the security of citizens. A special category of criminal acts in this scope are crimes against document credibility, including in particular forgery of travel and identity documents. Typically, these acts are only an initial stage in the undertaking of other criminal activities. The use of false documents, and thus their introduction into legal circulation, means that a person illegally using such documents legally acquires many rights. To support this thesis, the paper gives examples of travel document forgery and the profound effects of this criminal practice for citizen security. These include situations when forged documents enable one to cross the border, engage in terrorist activities, deal with human, weapons and drugs trafficking or smuggling immigrants. The consequences of using forged or altered travel documents also includes foreigners acquiring many rights, including obtaining permanent residence and employment.

In conclusion, it is worth emphasizing that putting fake documents into circulation undoubtedly constitutes a significant threat in the area of stability and inviolability of the legal system of the Polish State as well as the security of the state and its citizens in a wide sense. In this context, enforcing the adopted legal mechanisms as well as determining the effectiveness of state institutions in preventing this type of forgery, including, in particular, the successful implementation of a public documents security system, are indispensable. In this process, one should bear in mind that further to Poland joining the Schengen Area, the main responsibility in the field of border control and protection of the state border lies on the eastern part of the state border, which is at the same time the external border of the Schengen zone.

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