

## Criminal Law Protection of Documents Circulation: A Comparative Analysis

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**Abstract:** Proper circulation of documents is very important for any state and society. Documents are ubiquitous and their value is so great, that almost all countries of the world use criminal law to protect them. However, techniques and methods of such protection and the place of crimes against the documented information in the structure of criminal legislation vary greatly. We analyze the approaches to the systematization of crimes against the established order of document circulation, which are adopted in different states. We studied the legislation of thirty countries belonging to different legal systems. Authors note the good decisions some lawmakers made when constructing norms of criminal law regarding such crimes as willful misrepresentation in attempting to obtain a certain document and crimes related to electronic documents. We conclude that countries which do not have such legal norms should implement them in their national legislation.

**Key words:** Information • Security • Fraud • Forgery • Codification

### INTRODUCTION

Legal norms attempting to protect the proper circulation of documents from harmful interference are common in criminal legislation of many countries. However, in many cases they are not grouped together. For example, in Russian criminal law such crimes are spread between different chapters and articles of Criminal Code of Russian Federation, in particular, Ch. 19 «Crimes against constitutional rights and freedoms», Ch. 22 «Crimes in the sphere of economic activity», Ch. 30 «Crimes against state power and the interests of the civil service and the service in local self-government bodies», Ch. 32 «Crimes against administration procedure» and some others. Legal terminology is not unified in this field: in some cases the lawmaker used the term "document", in other cases more specific terms are used: official document, official document granting rights or alleviating obligations, passport, important personal document, securities etc.

L.A. Bukalerova states that such diversity is due to the sequence of appearance of legal norms in the Criminal Code and historical evolution of terminology related to the different spheres of the circulation of documents [1].

The lawmaker has placed definitions of such crimes in different chapters of Criminal Code because they infringe on different objects protected by criminal law.

Some scientists propose to systematize the criminal legislation by placing norms, which establish the responsibility for crimes involving documents either as their subject or as a tool, in the separate chapter of a Criminal Code. They base such proposals on the legal practice of some countries of the world, such as Poland and Bulgaria.

For instance, M.M. Alieva suggests to move the definitions of crimes specified by articles 142, 142<sup>1</sup>, 170, 170<sup>1</sup>, 185, 185<sup>1</sup>, 185<sup>2</sup>, 185<sup>3</sup>, 185<sup>5</sup>, 185<sup>6</sup>, 186, 187, 195, 233, 238, 285<sup>3</sup>, 292, 292<sup>1</sup>, 303, 305, 307, 324, 325, 327, 327<sup>1</sup> of Criminal Code of Russian Federation, to the separate chapter 32<sup>1</sup> «Crimes in the sphere of document circulation» of the section X of the Criminal Code of Russian Federation [2]. Yu. V. Schigolev proposes to consolidate all criminal forgeries of documents in a single chapter of the Criminal Code named «Documentary crimes» [3].

O.I. Kaleshina, taking into account pre-Soviet criminal law traditions and modern construction of legal norms in different countries and relying on the conceptual understanding of a counterfeit document as

a materialization of a fraud, proposes to consider the public morality as an object of such crimes, because, in her opinion, it has the greatest degree of similarity with the public trust [4].

We think, however, that turning to the foreign experience to solve the problem of systematization of such crimes, is not justified. The main reason for this is absence of established approach to such systematization in the legislation of the different countries of the world. By examining such legislation, we attempt not only to prove this conclusion, but also to look for good decisions some lawmakers made, which can be implemented in national law.

## **MATERIALS AND METHODS**

We use common scientific methods, such as formal logic, systematic and structural decomposition and analysis. However, the main method used was the comparative analysis of legal norms from different systems of law.

## **RESULTS**

With certain reservations we can distinguish two common approaches to the systematization of the crimes in question in the legislation of different countries.

First, in some countries, just like in Russian Federation, crimes concerning different kinds of documents as their subject or tool are spread between different chapters and articles of criminal legislation. These countries use the object of infringement as a main criterion of systematization and codification of criminal law. This approach is used by the countries that are heavily influenced by Russian legal tradition: Kazakhstan [5], Kyrgyzstan [6], Turkmenistan [7], Armenia [8], Tajikistan [9], Uzbekistan [10], Azerbaijan [11], Belarus [12], Lithuania [13], Latvia [14], Estonia [15], Georgia [16], Ukraine [17] and Moldova [18].

In other countries the concept of the object of the infringement is relatively unknown both in legislation and in legal doctrine. In such countries, other criteria of classification and systematization of crimes are used, such as the subject of the crime.

Therefore, second approach implies the placement of the legal norms concerning the crimes related to the document circulation, in the separate division (section or chapter) of criminal legislation. Thus, there are separate chapters containing definitions of crimes involving

forgery (falsification, fabrication) of documents and some other items in criminal codes of Netherlands [19], Norway [20], Switzerland [21], Sweden [22], Bulgaria [23], Germany [24], Japan [25] and South Korea [26]. Criminal codes of Argentina [27], Turkey [28] and France [29] classify such acts as the crimes against public trust. Criminal Code of Denmark [30] calls these infringements crimes against evidence. Criminal codes of Austria [31] and Poland [32] define them as crimes against the authenticity of the documents and the instruments of evidence. Criminal Code of San Marino classifies them as the infringements on the state guarantees of authenticity [33].

These sections of chapters include not only crimes related to documents, but also other kinds of infringements, which involve the forgery of other media, such as state seals, stamps, forms etc. The responsibility, as a rule, varies depending on the type of the object being counterfeited.

We should also note that in most of the above-mentioned countries the legal norms involving documents as a subject or a tool of infringement are not fully consolidated.

For instance, Criminal Code of Poland [32] places some of such crimes in the chapter «Crimes against the protection of information», Criminal Code of Germany [24] classifies many of them «Punishable acts against public order», Criminal code of Sweden [22] includes them in the chapter «On perjury, false accusation and other false statements». There are other examples that show that full consolidation of the legal norms in question is rare and unnecessary.

Therefore, it can be concluded that the claims that all legal norms concerning circulation of documents should be consolidated in the single chapter of criminal legislation, because this is the globally accepted practice, are unfounded. However, there are many good legal norms in different countries of the world that can be adopted in Russia or in any other country which criminal legislation does not include definitions of similar crimes.

As the example of such good norms, we can name the criminalization of willful misrepresentation in attempting to obtain a certain document, which grants rights or alleviates obligations. Variations of such crime are formalized in the criminal codes of Denmark (§175) [30], Turkey (Art. 343, 344, 351, 353) [28], Austria (§228) [31], Bulgaria (Art. 313-a, 314) [23], Japan (Art. 157) [25] and Sweden (Art. 11 of Ch. 15) [22]. The responsibility for this type of crime, as a rule, varies depending on the type of the document which a person intends to receive.

Similar norm appears in Art. 228 of Criminal Code of South Korea [26], which defines the responsibility for the false public statement of a person which can result in getting false license, permit, registration certificate or passport. Some paragraphs of Criminal Code of Germany [24] have similar intention, namely § 269 (falsification of data relevant to the taking of evidence), §270 (deception in law enforcement by using the results of data processing) and §271 (mediated forgery).

Another notable crime is unlawful use or transfer of passport, certificate or other similar document, which are labeled as the document abuse in the Criminal Code of Sweden (Art. 12, Ch. 15) [22]. Similar crimes are defined in §281 of Criminal Code of Germany [24], Art. 275 of Criminal Code of Poland [32], §231 of Criminal Code of Austria [31]. Art. 302 of Criminal Code of San Marino describes another related crime: the identity theft [33].

In the last decade, electronic documents became ubiquitous. Some legislators took special measures to protect them, creating new crimes which are concerned primarily with electronic documents.

For example, in Poland the responsibility for unlawful acts (such as destruction, endamage and others) concerning records on the computer-readable media is established by Art. 268 and 269 of Criminal Code [32].

Japanese and South Korean legislation equate electromagnetic records to other kinds of documents. Criminal Code of South Korea criminalizes the transfer of forged public document, including electromagnetic records among the other types of such document [26]. Criminal Code of Japan forbids the unlawful creation of electromagnetic record and transfer of its usage rights [25]. Similar crime is defined by §268 of Criminal Code of Germany, which establishes responsibility for a forgery of technical records [24].

We can expect that with proliferation of electronic communication, more and more countries will criminalize unlawful actions concerning electronic documents. To maintain the rule of law, criminal legislation should include specific regulations on that matter.

## **DISCUSSION**

We have shown that although in some countries of the world criminal legislation contains a specific chapter or section, which provides regulations regarding crimes related to documents, the criteria of systematization of criminal law in these countries are not based on the object of the crime. Therefore, such criteria cannot be adopted in the criminal law of almost all post-Soviet countries,

because the inclusion of a separate division in the criminal codes of such countries requires that crimes placed in that division must have common object of infringement. It can be speculated that we can formulate the definition of such object with regard to crimes related to circulation of documents, but existing proposals lack that definition. Maybe we could define these crimes as infringing on the public trust, but without further studies this conclusion would be unfounded.

We should also consider that many crimes involving documents either as their subject or as a tool are very peculiar in their nature. In many cases, documents constitute only one of alternative elements of a crime (e.g., Art. 170, 185<sup>3</sup>, 185<sup>5</sup>, 195, 238 of Criminal Code of Russian Federation). To move such norms into the separate division of criminal legislation, we must fully rewrite the corresponding articles of Criminal Code, often duplicating the formulations of the law. This makes the proposed systematization undesirable and unrealistic.

Therefore, in most cases, we should adopt only the specific legal norms, but not the general way of their systematization. We mentioned some examples of good regulations, which can be adopted by the national law of Russia and other countries.

## **CONCLUSION**

So far, the analysis of the criminal law of 30 countries suggests that the full consolidation of criminal prohibitions aimed at protecting documented information in a separate chapter (section) cannot be considered a common practice. «Documentary crimes» are scattered among different sections and chapters of criminal codes. Also, post-Soviet countries and most of the other countries of the world use very different approaches to the criminalization and systematization of unlawful acts against the circulation of documents.

This fact determined not only the differences in the scope of legal norms, but also the great variance among the possible techniques and methods of defining the crimes in question, as well as in the types of objects receiving protection through criminalization.

We believe that the differences in approaches to criminalization are due not only to the peculiarities of historical development of the law of a certain country, not only to national traditions, but also to the self-sufficiency of protection by criminal law of the organizational system of government, as a whole and objects of management, in particular.

However, international experience in this field, despite some local specifics, can be taken into account by national lawmaker. We have identified the most successful techniques of formulating the definitions of the offenses concerning documents, which deserve the attention of the national legislator.

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