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# Security of business transactions in the light of inaccurate documentation

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**Abstract**— Today's businessman is undoubtedly exposed to the risk of loss. This occurs, among other things, in connection with keeping incorrect documentation. Unfortunately, these are deliberate actions of other entrepreneurs aimed at causing material damage and thus enriching themselves in an illegal manner. This group of participants in economic turnover assumes in advance that they will not observe the binding legal regulations and tries to conceal it effectively. Their actions are most often revealed after the time, when the contracting party realises that he has suffered a loss, that he has suffered a loss. Only a complex criminal analysis conducted by specialised bodies of pre-trial proceedings or tax authorities reveals the real course of events and the real motives of the perpetrators and the true motives of the perpetrators. Therefore, it is important to present issues related to the aspect of incorrect documentation. Indication of risks which an entrepreneur is burdened with as a participant of economic turnover. The article develops the definition of irregularity and refers to the elements of Article 303 of the Penal Code. It also indicates the motives of the perpetrators and the risks of committing this crime, not only for convicted persons, but also for the wronged participants of economic turnover.

**Keywords**— improper documentation, criminal damage to property, security of business dealings, criminal analysis, document

## I. INTRODUCTION

The publication aims to bring closer the dangers of keeping "incorrect records" within the meaning of Article 303 of the Criminal Code. Both for the perpetrators of this crime and for the injured parties. The actions described are committed only by persons who can make decisions regarding economic turnover, as this crime can only exist in this area. Until 30 April 2018, the legal definition of economic turnover was in Article 2 of the Act on Freedom of Economic Activity. This act was repealed and in its place the Business Law came into force. The provision of Article 3 of this Act defines the concept of business activity. Economic activity is an organised profit-making

activity, performed on its own behalf and in a continuous manner. This provision largely duplicates the previous legal provision regulating the discussed definition. The discussed provision of the law partly duplicates the regulations previously in force in article 2 of the act on freedom of economic activity regarding the general prerequisites preventing the recognition of a given activity as economic activity. The legislator decided to replicate these general premises in the provision in question, hence both the jurisprudence and all official interpretations issued pursuant to the cited provision of the Act on freedom of economic activity, as well as the very rich literature, remain valid to art. 3 of the entrepreneurs' law to the extent in which they refer to these premises. However, the considerations concerning the enumeration of specific activities indicated in Article 2 of the Act on Freedom of Economic Activity become incomplete, as the legislator, when constructing Article 3 of the Entrepreneurs' Law, did not take over this enumeration (Kruszewski, 2019) Thus, the content of the article will only concern persons who may commit the above-mentioned offence and the consequences of their behaviour. Only they themselves will be exposed to the consequences of the perpetrators' actions in criminal legal terms. However, the consequences of their actions will be borne by their contractors together with the State Treasury.

In accordance with Article 115 § 14 of the Penal Code, a document is any object or other recorded carrier of information to which a specific right is attached, or which due to its content constitutes evidence of a right, legal relationship or circumstance of legal significance. Therefore, it can be concluded that in deciding whether a given object should be considered a document, it is not so much its physical form or material substrate that is taken into consideration as the content and legal aspect stating given circumstances and facts. An indispensable prerequisite for such a conception is, on the one hand, recognition of the fact that not every document that originates from a public body and is generally recognised as a document will be a document in terms of the applicable law. On



the other hand, there are many objects which are not prima facie associated with a document, but which nevertheless confirm a right, a legal relationship or circumstances of legal significance. It is also worth noting that the legislator does not make distinctions between official and private documents, as well as domestic or foreign documents, paying attention only to the criminal law aspects of the crime of intellectual forgery *Journal of Modern Science* tom 1/28/2016 237 to their content. The object of protection is therefore both domestic and foreign legal transactions (Jankowska-Prochot et al., 2016).

## II. THE CONCEPT OF INCORRECT DOCUMENTATION

By the term irregular documentation is meant, a set of documents. The very definition of the word "incorrect" within the meaning of Article 303 of the Criminal Code. will refer to the word "unreliable" is as much as "untrue" (inconsistent with reality), then listing unreliability in the alternative with "untruthfulness" (inconsistency with the truth) would contradict the thesis of the legislator's rationality, leading to such a result of the process of interpretation of the criminal provision that it would turn out that a certain part of it is an unnecessary repetition of another (Wilk, 2013). (SN of 2.2.2009, V KK 330/08, Prok. i Pr. 2009, No 6, item 17). The scope of the obligation to keep and the requirements as to the content of documentation should be determined on the basis of the provisions which concern a specific form of business activity, e.g. the obligation to keep accounting books imposed by the Accounting Act of 29 September 1994 or the Personal Income Tax Act of 26 July 1991, i.e. *Journal of Laws* of 2010. No. 51, item 307 as amended. (Grzeškowiak and others, 2012). As can be seen from the above comment, the obligatory documentation will not only include accounting documentation, but also all other documentation maintained by entrepreneurs, if there is such a legal obligation - resulting from the rank of the act. Another example of compulsory documentation will be the provisions of the Public Procurement Law, e.g. in the case where a contract was concluded through an organized tender. In such a case, the contracting party will be obliged to diligently keep and possess a set of documents resulting from the aforementioned act. The definition of irregularity of documents in penal and legal terms can be found mainly in two sources. The first will be the Fiscal Penal Code, whose article 53 § 22 defines the concept of an unreliable ledger. Unreliable book defined in § 22 is a book, in which entries are made in a way that does not reflect the real state. An unreliable ledger is criminalised in article 61 § 1 and 2 of the Fiscal Penal Code (Skowronek, 2020). Therefore, any mistakes and errors made by the entity obliged to keep the books cannot constitute the elements of this offence. The second criminal-legal source of the definition of unreliability will be Article 297 of the Criminal Code. The commentary to this footnote states that it should be assumed that it occurs in the case of declaring an untruth, which does not have the features of certification within the meaning of Article 271 § 1 of the Penal Code, in the case of omitting true information which should be included in a document (statement) or suggesting to the addressee a state of affairs

contrary to reality (Grzeškowiak et al., 2012) The elements of the quoted provision of the general offence and the fiscal offence include causative actions which do not fall within the scope of the provision of Article 271 § 1 of the Penal Code which has a narrower scope and does not refer to specific sets of documents. The provision that also defines the concept of unreliability (not in the direct criminal legal sense) shall be art. 24 of the Accounting Act. The accounting books should reflect the current and actual financial condition of an entity in order to provide specific and true information to the entrepreneur or tax authorities. The commentary to this provision specifies that a breach of reliability is, for example, the omission in the books of an entry documenting an event that actually occurred, the entry in the books of events that did not occur, as well as the inclusion in the books of economic operations in false values (Walińska et al., 2018)

## III. CONSEQUENCES AND RISKS ARISING FROM INCORRECT RECORD KEEPING

Keeping incorrect records, i.e. not keeping them or keeping them in an unreliable or untrue manner, as provided by the law, in particular destroying, removing, concealing, altering or falsifying documents relating to this activity can be committed only intentionally, as noted in the first part of the article. So, any person who conducts business activity is capable of committing such a crime. Therefore, in the case of such a decision, he will be exposed to the legal consequences expressed in article 303 § 1, 2 and 3 of the Criminal Code. Of course, in the case of causing property damage, which is part of the elements of the described crime. Which is also gradable (in relation to the amount of damage caused) and the amount of the criminal sanction depends on this. Failure to keep records should be understood as failure to keep records. Keeping records in an unreliable or untrue manner shall mean making untrue entries documenting events that did not take place in economic transactions. Destruction and disposal of records seems clear, it is a deliberate action aimed at permanent and often irreversible elimination of the original documentation. With reference to the cited provision, with the sole purpose of causing material damage. Also the concealment of genuine documentation from third parties will refer to this provision. Forgery and counterfeiting of documents or collections of documents is nothing else than changing the content of already existing documents and production of new documents - inconsistent with the real state. The motives of perpetrators vary. The most common one is to gain financial benefit. Therefore, very often the quoted provision appears in cumulative concurrence with Article 286 of the Penal Code. However, this statement requires further development. Because obtaining financial gain is a very broad concept. The perpetrator may want to carry out an ordinary economic transaction, however the contractor requires certain conditions to be met. The production of such documentation in order to achieve the intended purpose will exhaust the elements of the crime under Article 286 of the Criminal Code. The simplest example would be the documentation of unreal economic events or the listing

by an entity of non-existing assets and their introduction to the assets of the enterprise. The motive for acting while destroying or concealing documentation will most often be the fear of revealing irregularities in the documentation. Such persons assume that the criminal sanction for concealing or destroying documentation is much lower than for crimes that can be proven by criminal analysis of the documentation. This is often the case when faced with audits or criminal proceedings. However, this will not be the motive for the crime in question, because concealing or destroying records is not related to making a financial gain but to avoiding a criminal sanction.

Business people who engage in the aforementioned conduct expose not only themselves to criminal liability, but also other business entities to the risk of loss and damage. There is a multitude of regulations in business trading. Practically they are not quantifiable. They are subject to frequent changes. Only specialised advisory offices are able to monitor the changing legal status on an ongoing basis. In connection with this fact, a participant of economic turnover faces the necessity of putting trust in its contractual partner within the limits of the concluded agreement. The subject of the contract may be very different. In principle, from advisory services to extensive and complex construction contracts. The participant in the economic entity is also forced to assess the counterparty. There is no other way than to verify him, in a feasible manner. Unfortunately, this verification, at least its formal part, takes place on the basis of documentation which the entrepreneur is obliged to keep. Accounting, human resources and technical documentation is necessary for its assessment. It is this documentation that contains the data needed to assess the financial situation (the broadly understood condition of the company). The assessment of the financial situation in an enterprise is essential. It can be obtained by generating certain data from the accounting system. This should be fully reliable information - in accordance with the principle of reliability, which can be found in the Accounting Act. Similar data can be obtained from the tax authorities, but it will usually be less up-to-date, due to specific deadlines for filing returns. Data concerning a particular business entity may also be obtained from the KRS registration files. Where the articles of association, the list of shareholders, information on share capital, etc. should be found. Also in the company's files there should be financial and activity reports - if there was such a legal obligation. Currently, financial and activity reports are posted on the website of the Ministry of Finance. Each of the documents provides the counterparty with specific information. Here it should be noted that each of the mentioned bodies collects data concerning the enterprise. We can divide the authorities' collections of information by their subject matter. However, the producers of all data will be entrepreneurs. So they themselves, being obliged to keep certain collections of documents, are the providers of information both for state bodies and their own contractors. Therefore, their intentional actions may be in advance aimed at achieving a specific goal. The best example would be the conclusion of a contract. The production of inaccurate documentation is undoubtedly a crime against the security of business transactions. Keeping incorrect documentation

exposes other entrepreneurs who enter into a relationship with the entity keeping the incorrect documentation to a risk of loss and loss of credibility on the market. Every entrepreneur has the right to assume that a legally operating entity pursues a specific economic goal, in compliance with the rules of economic trading. The specific and most dangerous risk for the entrepreneur will be bankruptcy. This may occur in the case of investing capital in a fraudulent business entity or making strategic investments together with it.

One can certainly state that an entrepreneur conducting business activity and admitting to keeping incorrect documentation is exposed to legal consequences resulting from Article 303 of the Penal Code, which provides for an upper limit of a criminal sanction of 5 years of imprisonment - in a qualified type.

The consequence for contractors entering into relations with an entity maintaining incorrect documentation will be a financial loss.

#### IV. METHODS FOR DOCUMENT VERIFICATION

In view of the described problem in today's economic system when concluding economic contracts it seems especially with a high risk factor to verify the economic entity as a future counterparty. This should take place if the economic entity is not known to the contracting party or was established quite recently. A participant of economic turnover undoubtedly has the possibility to check the counterparty. However, it is important to do it reliably, using all possible tools. The first that comes to mind is the possibility to verify the contracting party through the available databases, e.g. if he is an active VAT payer or if he has an entry in the National Court Register and other required entries in registers as well as checking if he possesses valid permits, concessions. Both possibilities are very simple and available via the Internet. However, this form of checking a contractor does not seem to be very effective. In order to reliably check a contractor, many tools have to be used. First, it is necessary to verify documents submitted by him in an accessible way. Often it is an offer. It is necessary to compare data included in the offer with the actual state. Such as e.g. the state of the company's assets. Whether the counterparty actually has the means and capabilities to carry out a specific investment. In the case of construction work, this will be specialist machinery and equipment. One should be able to assess whether the company actually possesses such equipment in the necessary amount and whether it has qualified employees. This also seems simple on the surface. The more difficult aspect will be to reveal whether these items are not covered by the transfer agreement and the company may lose them if it defaults on the agreement. Establishing the actual assets of a business entity is not an easy task. It is an extremely difficult undertaking. Especially for a participant of economic turnover, who does not have control powers, such as e.g. tax authorities. It seems almost impossible to reliably assess a future business partner. Even if an audit is commissioned to a company specialising in this field and the contracting party agrees to view the company's documentation. The conducted

audit will be based mainly on documentation provided by the company and, obviously, created by persons acting on its behalf.

In my opinion, when verifying the contracting party, it is worth requesting additional documents that the contracting party is not able to produce. These will certainly include certificates issued by tax authorities and the Social Insurance Institution. An interesting solution may be to request information on the criminal record of persons acting on behalf of the company. This will not guarantee certainty, but will minimise the risk of loss.

## V. CONCLUSION

The legislator decided to place the provision of Article 303 of the Criminal Code, Failure to keep or untruthfully keep records of business activity, in Section XXXVI Crimes against Business Transactions and Property Interests in Civil Law Transactions of the Criminal Code with the aim of ensuring the security of business transactions. Criminal sanctions of this offence are to provide guarantees of keeping correct documentation. In the era of today's economic turnover, proper record keeping is a necessity. The huge number of regulations governing the principles of economic turnover seems insufficient; therefore, it was reasonable to draw attention to the criminal provision that concerns a wide group of entrepreneurs. Every participant in civil law transactions has the right to assume that a legally operating enterprise does not engage in fraudulent practices and seeks to enrich itself in compliance with the law. The cited provision is intended to limit such practices for fear of the threat of punishment. It is precisely aimed at protecting records. Increasing the criminal sanction of this provision may improve business security and reduce crimes against documents. Another aspect that may reduce the risk will be to make participants in economic transactions aware of how they can verify documentation and thus another participant in economic transactions

## VI. REFERENCES

Grześkowiak et. All (2012), Kodek Karny Komentarz, Warszawa: Wydawnictwo C.H. Beck,

Jankowska-Prochot, Faletna, P. (2016), Warszawa, Karnoprawne aspekty fałszerstwa intelektualnego, *Journal of Modern Science*, 1/28/2016.  
Kruszewski, 2019 Komentarz do art. 3 ustawy - Prawo przedsiębiorców, Lex, *Prawo Przedsiębiorców Komentarz*, C.H Beck

Ustawa z dnia 6 marca 2018 roku Prawo przedsiębiorców, (Dz. U. 2018 poz. 646),

Walińska i inni, 2018, Ustawa o rachunkowości komentarz, lex, C.H. Beck

Wilk L. (2013), „Pojęcie „nierzetelność” w odniesieniu do dokumentów w prawie karnym Teza 1, lex., C.H Beck ]

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