

**THE NOTION OF THE DOCUMENT IN THE POLISH
PENAL CODE OF 1997**

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S u m m a r y

The article shows definitions of the notion of document in different Polish Penal Codes (kodeks karny 1932 r.; 1969 r.; 1997 r.) and notion of document between the Polish Penal Law of Criminal Process and the Polish Code of Civil Process. The author describes some problems connected with the way of defining the document in the Polish Penal Code. The next issue which is discussed concerns the electronic signature. The notion of electronic signature creates old problems in practice as well as in theory, in author's opinion. Finally it discusses impression about the section 287 in the new crime of computer documents.

Due to the development of new technologies, computers entered nearly every aspect of social and economic life, which also resulted in an increase of number of offences committed by means of computers and modern communication technologies. Polish Penal Code of 1969 in force till 30th August 1998 did not regulate legally the issues of offences involving computers and prosecuted only those showing the features of another type of crime. It is hardly surprising as the Code was created at the time when not much was known about computers, which only a few specialists were familiar with, and whose potential was much less powerful than it is now. The issue of computer-aided offences was treated more broadly by the act of 4th February 1994 on copyright and related laws (Dziennik Ustaw [Journal of Law], No. 24, item 83), which penalises mainly the offences against the copyright law on computer programmes and names the types of computer-aided offences.

Transferring the traditional notion of the document into the computer recording media is of considerable practical importance as the notion of the "document" is one of the numerous features of various crimes. The old Penal Code defined the document in section 129§ 13 as any object which is connected with a particular law, or which due to its contents is the evidence of a law, a legal relation or a circumstance that may have legal significance. This definition is narrower and more precise than the definition from the Penal Code of 1932. Polish pre-war Penal Code defined the document in section 91§ 3 as any object which is the evidence of a law, a legal relation or a circumstance that may have legal significance. Such a definition of the document caused numerous interpretation difficulties and often lead to

contradictory interpretation in the judicial practice. The Penal Code in force as of 31st August 1998 in Poland defines the document as an object of legal protection in offences against documents. The comparison of the definitions shows that the Penal Code of 1969 considerably narrowed the notion of the document in relation to the definition from 1932. The new Penal Code of 1997 admits the issue of offences committed by means of the computer, which obviously influenced the change of the notion of the document – an object involved in numerous crimes. The general part of the new Penal Code defines the document in section 115§ 14 as any object or a computer recording which is connected with a particular law or which due to its contents is the evidence of a law, a legal relation or a circumstance that may have legal significance. As follows from the definition presented above, the legislator modified the notion of the document in such a way that a new notion was introduced: "a computer recording". It should be inferred that the computer recording media are: floppy disks, hard disks, CD-ROMs. The legislator introduced one more, quite important modification in the notion of the document, i.e. when defining the document in section 115§ 14 the hitherto existing statement that "the document is as any object (...), or "a circumstance that may have legal significance" was changed into "or a circumstance that has legal significance". In this way the definition of the document was on the one hand widened as including computer recording media, but on the other – narrowed down to the circumstances that have legal significance in a given situation. The Penal Code of 1969 recognised as the document even such an object which due to its contents constituted evidence of a circumstance that as yet has no significance, but in the future it might have as a result of certain factual and legal circumstances. The new Penal Code, however, recognises as the document only the circumstances which have legal significance at a particular time. Thus, according to this definition the document is not only the written evidence but also the objects stating certain legal relations. It should be noticed that according to section 120§ 13, Penal Code of 1969, "electromagnetic recording" is not a document, yet, following the onset of acoustic signal recording, a notion of "an audiodocument" was introduced in criminalistics, comprising a magnetic tape, electromagnetic wire or a film. The document defined from the point of view of criminalistics is any object with the contents in the form of writing, picture or image, made by hand or by means of a particular appliance (e.g. typewriter or print). The notion of the "document" is of practical significance in all branches of law, but each understands it in a different way. The greatest differences in the notion of the document may be seen between the Polish Penal Law of Criminal Proceedings and the Polish Code of Civil Procedure.

The Penal Code does not differentiate between official and private documents and grants both the same degree of protection. The doctrine is not consistent as to the range of the notion of the document. The consistency lies only in determining the document as the object, where the emphasis is put on the contents, i.e. human thought expressed graphically. On the whole the discrepancy consists in the fact that the range of objects defined as documents is not expressed in an uniform way. Additionally, some authors emphasise a loose relationship between the thought comprised in the document and its author. The definition of the document is of considerable importance first of all in the aspect of legal protection of a document in crimes committed against documents (sections 265-269, old Penal Code). Additionally, the legislator formulated the definition in such a way that it may be helpful in defining the document in its lawsuit meaning. The Polish penal law of criminal proceedings defines the document mainly as evidence. Because the old Code of Penal Procedure accepted the document as evidence (section 339§ 2), it did not define it in any of its regulations. In the view of the above it should be assumed that the definition expressed in section 120§ 13 of the old Penal Code was the auxiliary source in the interpretation of this notion in the penal law of criminal proceedings, thus it should be assumed that the definition of the document from section 115§ 14 of the Penal Code will play the same role.

The final issue to be discussed concerns the electronic signature. The development of computer technology resumed in the appearance of the so-called "electronic signature" closely related with electronic documents, which confirms their credibility and has the same

legal consequences as its written equivalent. The fundamental difference consists in the fact that the hand-written signature identifies only one, particular person, while the electronic signature may be attributed to a group of persons who are authorised to use it. Some authors distinguish also a kind of "bank documents" including all the papers or magnetic recording media used in financial and credit operations. Usually these are bonds of money, goods and credit bills, savings and cheque books, postage and revenue stamps, including those recorded in the computer system, on the magnetic tape, hard and floppy disks, etc.

And finally, an impression. The new Penal Code does not explain who is the person authorised and entitled to draw up a document. In one of its decisions, the Supreme Court stated that the authorisation to draw up a document may result from a law or an inferior normative act, the position or the profession of the person, their particular activities as well as the order of the superior authorised to give it.

As follows from the above, the Penal Code does not distinguish a separate type of offence of "a computer-aided forgery", despite the fact that the development of computer technology increasingly more frequently results in absence of paper documents in financial operations, accountancy, data transactions and financial transfers. According to some authors, two aspects of the offence of the computer-aided forgery should be considered:

1. as a computer-aided forgery of documents where the computer and the peripheral equipment are the tools of forging traditional documents,
2. as a forgery of electronic documents consisting in altering created and accepted electronic documents (commercial and tax books, supply registers, vehicle registrations, etc.) or other electronic recording media (e.g. altering the recording in the magnetic strip of a credit or identity card).

In the new Polish Penal Code of 1997 the crime of the forgery of computer documents falls within the range of computer-aided fraud as stated in section 287.

According to this regulation, anyone who in order to obtain material profit or cause damage to another person influences automatic processing, collecting or transferring of information or alters, removes or introduces new information into the computer recording medium without authorisation to do so, is liable to deprivation of liberty from 3 months to 5 years. The practice will show whether such a regulation of the problem concerning offences of a high degree of social noxiousness is correct at the time when the number of computer documents stored in the form of electronic recording is continuously increasing.

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Dokumento sąvoka 1997 m. Lenkijos baudžiamajame kodekse

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SANTRAUKA

*Šiame straipsnyje autoriai nagrinėja dokumento sampratos problemą, kuri atsirado 1998 m. rugsėjo 1 d. įsigaliojus naujam Lenkijos baudžiamajam kodeksui. Problemos atsiradimas susijęs su naujų kompiuterinių technologijų diegimu į įvairias gyvenimo sritis. Kodekse kalbama ne apskritai apie dokumentų teisinę apsaugą, bet apie nusikaltimus, susijusius su dokumentų klastojimu. Straipsnyje nagrinėjamos Lenkijos 1932, 1969 ir 1997 m. baudžiamųjų kodeksų **dokumento** sąvokos.*

Pagal galiojantį įstatymą dokumentas yra suvokiamas dvejopai – kaip daiktas arba kaip informacijos įrašas kompiuterinėse laikmenose. Pati informacijos laikmena (diskelis, CD-ROM ir kt.) nėra dokumentas.

Straipsnyje užsimenama apie elektroninio parašo problemą.

