

CRIMINAL REMEDIES OF COUNTERACTION TO FALSIFICATION OF COVID-19 TEST RESULTS

Oleksiy Pasyeka*, **Oleksii Avramenko***, **Vasyl Franchuk****,
Andrii Kuntii***, **Oleksandr Marin******

Abstract: Comparative legal research of the criminal legislation of Georgia, the Republic of Poland and Ukraine in liability regulation for forgery of COVID-19 certification documents was undertaken. Research materials were taken from analyses of court verdicts of Georgia, the Republic of Poland and Ukraine in 2020 for criminal offences related to forgery of COVID-19 certificates and, the results of a survey of 98 practitioners of the National Police of Ukraine. Analysis showed the existence of gaps in the criminal legislation of all analyzed states for the responsibility for forgery of COVID-19 certificates. Appropriate changes and additions to the provisions of the Criminal Codes of Georgia, the Republic of Poland and Ukraine are proposed, to improve the regulation of forgery of these documents.

Keywords: Criminal Liability; Pandemic; Forgery; Criminal Codes; PCR Test.

* Department of Criminal Law and Criminology, Lviv State University of Internal Affairs, 79007, 26 Horodotska Str., Lviv, Ukraine.

** International Educational Activity Unit, Lviv State University of Internal Affairs, 79007, 26 Horodotska Str., Lviv, Ukraine.

*** Department of Criminal Procedure and Forensic Science, Lviv State University of Internal Affairs, 79007, 26 Horodotska Str., Lviv, Ukraine.

****Department of Criminal Law and Criminology, Ivan Franko National University of Lviv, 79000, 1 Unversytetska Str., Lviv, Ukraine.

Introduction

The spread of infectious diseases is a dangerous process that threatens the lives and health of many people. States must have a whole arsenal of countermeasures to counter this phenomenon, such as readiness of health workers for emergencies with the sharp increase of epidemic indicators, availability of modern and sufficient quantities, of medical equipment and appropriate rules of conduct, including the regulation of liability for violation of established regulations. It is difficult not to notice that, despite confidence in their readiness, the spread of COVID-19 has shown that this is far from the case¹.

The rate of spread, high mortality of the disease and lack of adequate response to it, at least at the beginning of the epidemic, clearly showed the presence of many problems in the medical area, as well as in law enforcement and practice. A significant contribution to the spread of the pandemic was made by those who did not realize the full danger of this disease including attempts made by individuals, including health professionals, to improve their financial situation by falsifying negative COVID-19 certificates. Such certificates are usually needed by those who are planning a trip abroad or by those who have returned from the “red zone” and wish to avoid quarantine. Analysis of both law enforcement and judicial practice shows at least two possible scenarios for certificate falsification: falsification of documents is carried out by third parties who have nothing to do with the medical field; or falsification is carried out directly by medical workers.

A striking example of the third party forgery was the subject of a journalistic investigation by representatives of the editorial board of “zaxid.net”² which uncovered namely “fake” negative PCR (polymerase chain reaction) test results. The certificate contained all the necessary attributes (name of the laboratory, number of the result of the research, date, time of selection of biological material, signatures of the director and employee of the laboratory, who conducted this selection, wet seal of the Institute of Epidemiology and Hygiene of Lviv National Medical University). During the inspection, it was established that the named laboratory had nothing to do with the issuance of this document – it was a forgery.

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- 1 Coronavirus. The gang was selling forged, negative coronavirus test results. (2021). Retrieved from: <https://www.money.pl/gospodarka/koronawirus-gang-sprzedawal-falszywe-negatywne-wyniki-testu-na-koronawirusa-6572775981829024a.html> (in Polish).
 - 2 Fake PCR test, inexpensive. (2021). Retrieved from: https://zaxid.net/falshiviy_plr_test_nedorogo_n1509352.

Such cases are not uncommon, at least in Ukraine. During the pandemic, in Ukraine, the National Police of Ukraine³ uncovered that there were several dozen internet resources through which false PCR test results were commonly distributed. After the detection of the first cases and the intervention of law enforcement agencies, the number decreased significantly. The situation has improved significantly but the same “services” are still provided when “buy a certificate” is searched via the internet. Prices vary from 300 to 1000 hryvnias (approximately 9 to 30 Euros)⁴.

There have been cases of these actions by medical workers. One such case, such as the sale of negative PCR test results, by laboratory “Euromedical”⁵. These acts also take place in the member states in the European Union (EU). According to Europol, the sale of negative COVID-19 certificates has been detected and stopped in the EU today. According to United Kingdom (UK) law enforcement, cases took place in the UK offering false negative certificates for 100 pounds sterling. The same service was estimated at 40 Euros in Spain and 50 to 60 Euros in the Netherlands. In Katowice, the Republic of Poland, a person sold fake certificates of negative COVID-19 PCR test results for 100 zlotys.⁷ A similar situation took place at the Charles de Gaulle International Airport, in Paris, where criminals sold about 200 fake COVID-19 certificates at prices ranging from 150 to 300 Euros⁸.

Official statistics do not record clear data on the number of detected cases of PCR test forgery as they are part of the total number of criminal offences related to the forgery of documents. There is no significant increase in registered criminal proceedings for forgery in 2020, compared to previous years, according to official statistics on registered criminal proceedings⁹ in relation to Art. 362

3 Police say they have identified 3 people suspected of falsifying COVID-19 test results. (2021). Retrieved from: <https://www.radiosvoboda.org/a/31000010.html>.

4 “Will check for coronavirus remotely”: Radio Liberty’s investigation into fake PCR tests. (2021). Retrieved from: <https://www.radiosvoboda.org/a/31000010.html>.

5 “Payment upon receipt at Nova poshta”. Up to 5% of negative tests for COVID-19 in Ukraine are forged. (2021). Retrieved from: <https://texty.org.ua/fragments/102532/oplata-na-np-pry-otrymanni-do-5-nehatyvnyh-testiv-na-covid-19-v-ukrayini-pidrobni>.

6 Europol warning on the illicit sale of false negative covid-19 test certificates. (2021). Retrieved from: <https://www.europol.europa.eu/newsroom/news/europol-warning-illicit-sale-of-false-negative-covid-19-test-certificates>.

7 A 26-year-old detained from Katowice who offered alleged COVID-19 vaccines. 2021. Retrieved from: <https://www.pap.pl/aktualnosci/news%2C803464%2Czatrzymany-26-latek-z-katowic-ktory-oferowal-rzekome-szczepionki-przeciwiw>.

8 Coronavirus. The gang was selling forged, negative coronavirus test results. (2021). Retrieved from: <https://www.money.pl/gospodarka/koronawirus-gang-sprzedawal-falszywe-negatywne-wyniki-testu-na-koronawirusa-6572775981829024a.html> (in Polish).

9 Statistics of Registered Crime in Georgia 2017. (2020). Retrieved from: <https://info.police.ge>.

of the Criminal Code (CC) of Georgia (Manufacture, sale or use of forged documents, seals, stamps, or forms): 2019 – 1769; January – November 2020 – 1150; for Art. 341 of the CC of Georgia (forgery by an official): 2019 – 32; January – November 2020 – 19; O under Art. 358 of the CC of Ukraine (forgery of documents, seals, stamps and forms, sale or use of forged documents, seals, stamps): 2019 – misdemeanor (parts 1, 2, 4) – 7326; crimes (part 2) – 8033; 2020 – misdemeanor (parts 1, 2, 4) – 7221; crimes (part 2) – 6124; for Art. 366 of the CC of Ukraine (forgery by an official): 2019 – 5534¹⁰; 2020 – 6257¹¹ for Ukraine. There is no such information for 2019-2020 on the web resources of state bodies in the Republic of Poland. This lack of increase may be due to the high level of latency of information on forgery cases. Those who buy false results do not intend to report it to law enforcement agencies.

Analysis of forgery cases of PCR test results shows many problems both in the field of the provision of medical services and in the quality of legislation governing liability for these actions. There are no special rules that would regulate the responsibility for forgery of medical records in the criminal law of any of the analyzed states. All such cases fall under the provisions of general rules on liability for forgery. Such rules do not cover the increased level of public danger, because a perpetrator of illegal actions contributes to the spread of the epidemic.

The CC of the Republic of Poland in 1939 had a special rule on this topic. Paragraph 1 of Art. 192 provided for liability for certification of false information that has legal significance by a doctor, a veterinarian, or an obstetrician¹², the penalty for such an act being imprisonment or arrest for up to 2 years. A person who used such a certificate was subject to punishment (Paragraph 2 of Art. 192), and the legislator's refusal of it was not justified. The purpose of this article is to: perform comprehensive comparative legal research of the legislation of Georgia, the Republic of Poland and Ukraine for regulation of liability for forgery of COVID-19 certificates analysis of law enforcement and judicial practice in this category of cases; identify typical mistakes related to bringing individuals to criminal responsibility for specified socially dangerous acts; nominate ways to improve criminal law, as well as legislation for regulating liability for the spread of various types of infectious diseases.

10 General report on criminal offenses in the country for 2019. General Prosecutor of Ukraine. (2021). Retrieved from: https://www.gp.gov.ua/ua/stat_n_st?dir_id=113897&libid=100820.

11 General report on criminal offenses in the country for 2020. *General Prosecutor of Ukraine*. (2021). Retrieved from: https://www.gp.gov.ua/ua/stat_n_st?dir_id=113897&libid=100820#.

12 Code of July 11. (1932). Retrieved from: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19320600571/O/D19320571.pdf>.

The purpose of the article is to compare legal studies of the criminal legislation of Georgia, the Republic of Poland, and Ukraine for regulation of responsibility for the forgery of COVID-19 result certificates.

Materials and Methods

Materials used in the study were: the results of the analysis of court decisions from Georgia, the Republic of Poland and Ukraine in 2020 for criminal offences related to forgery of COVID-19 certificates; clarification of higher courts of certain concepts and practices of the application of criminal law; results of the of a survey of 98 practitioners of the National Police of Ukraine (pre-trial investigation bodies and operational units), as well as prosecutors on the quality of legal regulation of liability for forgery ; statistics of law enforcement agencies of Georgia, the Republic of Poland and Ukraine in 2020 on registered criminal proceedings for acts related to forgery of Criminal Codes, including medical.

The methodology of the research includes dialectical, hermeneutic, system-structural, formal-logical, sociological and statistical methods. The theoretical basis for this research is based on the works of scientists in the field of criminal law, criminology, criminalistics, criminal procedure law, virology and other fields of scientific knowledge that have both theoretical and practical significance for the subject.

The danger of infectious diseases is primarily related to the ease and speed of spread and the danger of the consequences, including high mortality. Such features are defined in the legislation. Legislation of Georgia, the Republic of Poland and Ukraine defines, in general terms, the meaning of “infectious disease” in the same way. Art. 1 of the Law of Ukraine “*On Protection of the Population from Infectious Diseases*” of April 6, 2000, No. 1645-III defines infectious diseases as disorders of human health caused by live pathogens (viruses, bacteria, rickettsia, protozoa, fungi, helminths, mites, other pathogenic parasites), their products of life (toxins), or pathogenic proteins (prions) transmitted from the infected to healthy people and prone to spread. The provisions of this article define two other related concepts, namely: “*dangerous infectious disease*” and “*especially dangerous infectious disease*”. The first of them is characterized by severe and (or) persistent health disorders in some patients and pose a danger to their lives and health, while the second is characterized by severe and (or) persistent health disorders in a significant number of patients, high levels mortality and the rapid spread of these diseases among the population. A similar provision is contained in the Law of the Republic of Poland of December 5, 2008, “*On Prevention and Control of Infections and Infectious Diseases in Humans*”. Infectious disease is quite succinctly defined as a disease caused by biological pathogens. The

especially dangerous and highly contagious disease is an easily spreadable infectious disease with a high mortality rate that poses a particular threat to public health and requires special control methods, including cholera, plague, smallpox and viral hemorrhagic fever¹³.

It is logical that the legislation of the states imposed an obligation for people, suffering from infectious diseases, to undergo appropriate examinations. Art. 20 of the Law of Ukraine “*On Protection of Population from Infectious Diseases*” obliges people suffering from infectious diseases or carriers of bacteria to undergo necessary timely medical examinations and tests.

Results

Ukrainian legislation stipulates that data, on the results of employee mandatory preventive medical examinations, referred to in part one of this article, is entered into their medical records and other medical documents and is subject to registration in the relevant bodies of the State Sanitary and Epidemiological Service. The same provisions are provided in the legislation of Georgia and the Republic of Poland. Provisions of Article 351 of the mentioned law (Epidemiological search for cases of coronavirus disease (COVID-19) by testing) are of particular interest in this study. Provisions of this article stipulate that an executive branch which carries out a formation of state policy in the field of health care should conduct an epidemiological search for cases of coronavirus disease (COVID-19), and effective identification of people who have had contact with individuals with coronavirus disease (COVID-19) and the application of restrictive anti-epidemic measures, to ensure organisation of intensive testing at outpatient and inpatient levels, depending on the medical indications following industry standards of medical care.

Ukrainian legislation establishes a list of individuals for whom COVID-19 testing is mandatory, such as people seeking medical care with signs of coronavirus disease (COVID-19) and people who had established contact with a person suffering from coronavirus disease (COVID-19). Regular testing is also mandatory for medical and other workers from health care facilities that provide medical care to patients with coronavirus disease (COVID-19) and those who carry out measures related to the prevention of the spread of coronavirus disease (COVID-19), – including the National Police and the National Guard personnel, whether or not they have been in the contact with a person with coronavirus disease (COVID-19).

13 The Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans. (2008). Retrieved from: <http://isap.sejm.gov.pl/isap.nsf/download>.

Ukrainian legal provisions stipulate that medical workers are obliged to provide patients with infectious diseases and carriers of bacteria, or their legal representatives, with information about the danger of infecting others, and inform them of rules and regulations to be followed which are designed to prevent the spread of the disease, including sanitary rules. Patients with dangerous infectious diseases and bacterial carriers of these pathogens should be warned about the responsibility for non-compliance with sanitary and anti-epidemic rules and regulations and the risk of infecting others within their medical records – which are then signed, by the attending physician, patient or bacterial carrier, and (or) his/her legal representative. Legislation stipulates that a medical document has legal significance for determining that a person has an infectious disease, so the information contained in it is extremely important¹⁴. As Damian Wąsik points out, the importance of medical records, for legal operations, is undeniable. This author especially emphasizes the importance of medical documentation when studying medical events, and the abuse of medical or forensic conclusions on various issues¹⁵.

Medical documents are regulated by the law. According to Paragraph 2 of the Order of the Minister of Health of the Republic of Poland of November 9, 2015, on the types, scope and samples of medical records and methods of their processing, medical records are divided into individual records, relating to individual patients using health services, and collective documentation for all patients. Individual documentation is divided into external and internal. Information about the results of PCR testing is external¹⁶. Structural elements of such a document (props), in Poland, are defined in Art. 25 of the Law “*On the rights of the patient and the Commissioner for Patients’ Rights*” of November 6, 2008¹⁷. Information that must be contained in a medical document is defined in this rule.

xsp/WDU20082341570/U/D20081570Lj.pdf

- 14 Y. Baulin, B. Rohozhyn and I. Vyshnevskaya. Legal regulation of professional obligations of physicians in Ukraine. *Wiadomości Lekarskie* (2019), 9: 1839-1843.
- 15 D. Wąsik. Confirmation of untruths in medical documentation by a doctor. *Przedsiębiorstwo i Prawo* (2018), 1: 78-93.
- 16 Regulation of the Minister of Health of November 9, on the types, scope and templates of medical documentation and the method of its processing. *Dziennik Ustaw Rzeczypospolitej Polskiej* (2019), 2069.
- 17 Act of November 6, 2008 on patient’s rights and the Patient’s Rights Ombudsman. *Dziennik Ustaw Rzeczypospolitej Polskiej* (2016), 186.

The list of medical documentation in Ukraine is regulated by the Order of the Ministry of Health of Ukraine No. 369 of December 29, 2000 “*On approval of forms of medical records used in hospitals and clinics (outpatient clinic)*”¹⁸. Requirements of regulations on the types and forms of medical documents should be considered during investigation of PCR test result forgery. As noted by L. Kubitsky, a medical certificate, like any medical document, is defined as a document that may be the subject of a criminal offence under Art. 115 Paragraph 14 of the CC of Poland, if it serves as evidence to establish circumstances of legal significance. A doctor, in such circumstances, will be liable under Art. 271 of the CC¹⁹.

The law requires healthcare professionals to draw up a medical document only after the patient has been admitted and examined by a doctor. According to the provisions of Art. 42 of the Law of the Republic of Poland of December 5, 1996, “*On the profession of a doctor and a dentist*”, a doctor decides on the state of health of a person, after personal preliminary study, or study using tele information systems or communication system – without personal examination of the patient, a doctor cannot perform such actions²⁰. There are several methods of examining a person for COVID-19, but PCR test results are forged because such a negative test entitles the person to cross borders or not to self-isolate. This is shown by cases of medical document forgery, detected by law enforcement agencies during the pandemic. Forgery of medical records, the result of PCR testing for COVID-19, may be: performed by a medical professional: after testing, but with an indication of the result, other than in the research; without the research at all. If such forgery is carried out by a person who isn’t related to the medical field, no testing has been carried out.

Discussion

Criminal legislation in Georgia, the Republic of Poland and Ukraine provides for several types of criminal offences that may be applicable. The analysis of their content, and limits of punishment, may show inconsistency between the act and its legal consequences. In a study of doctrinal provisions, the generalization of case law indicates the presence of many problems that

18 Order of the Ministry of Health of Ukraine No. v0369282-00 “On approval of forms of medical records used in hospitals and clinics”. (2000). Retrieved from: <https://zakon.rada.gov.ua/rada/show/v0369282-00#Text>.

19 L. Kubicki. Principles of legal liability of a physician in the light of a new act on the medical profession. *PiM* (1999), 1: 23.

20 The Act of December 5, 1996 on the professions of a doctor and a dentist. (2017). Retrieved from: <https://eige.europa.eu/gender-based-violence/resources/poland/ustawa-z-dnia-5-grudnia-1996-r-o-zawodach-lekarza-i-lekarza-dentysty-dzu-2011-nr-277-poz-1634-act-5-december-1996>

complicate and sometimes make it impossible to apply these rules – including for the prosecution of those who falsify PCR test results. These problems are due to many factors, including lack of a legal definition of “forgery”, presence of other related forms such as “*entering false information*” or “*drawing up a knowingly forged document*”; the uncertainty of a boundary, between a criminally punishable act and one for which a person will not be liable; and inadequacy of sanctions for the level of danger of such acts.

The legislation of Georgia, the Republic of Poland and Ukraine are similar in terms of regulations for forgery. The Criminal Codes of these states provide for two rules which are distinguished by the subject of the offence. One concerns forgery by an official, the other by a general subject. The Criminal Code of Georgia provides for two components of criminal offences for liability for forgery of documents – Art. 341 (forgery by the official) and Art. 362 (manufacture, sale or use of forged documents, stamps or forms)²¹. In the Republic of Poland, a separate section XXXIV of the Criminal Code provides for offenses against the veracity of documents. Art. 270 provides for liability for forgery, misrepresentation or use of such a document and Art. 271 provides for liability for forgery²². The same regulation of these acts is indicated in the legislation of Ukraine, namely Art. 358, which provides for liability for forgery of documents, seals, stamps and forms, sale or use of forged documents, seals and stamps, and Art. 366 respectively – forgery by an official.

The content of the act of forging a document is common to all these rules. The first problem is connected with this concept. As indicated by N.M. Parasyuk, the lack of a legal definition of “forgery” and ambiguous legislative approaches to the specification of forms of criminal illegal acts significantly complicate the law enforcement process – as evidenced by the analysis of judicial practice. Doctrinal provisions of science play a role allowing a balance of the inaccuracy of legislative formulation, with a proposal to fill existing gaps²³. Given that the normative concept of “forgery” is not defined, its interpretation has become a product of the doctrine of criminal law and recommendations of higher courts.

The Supreme Court is the highest administration of justice, overseeing the activities of all courts in the field of justice. Its tasks include ensuring consistency in the interpretation of the law and case law in areas under its jurisdiction. The Supreme Court performs its functions through appeal,

21 [view/16426?publication=209](#).

22 Penal Code. (1932). Retrieved from: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19320600571/O/D19320571.pdf>.

23 N.M. Parasiuk. *Forgery as a form of criminal act (problems of criminal law regulation)*. (2015). Retrieved from: http://lsej.org.ua/6_2015/53.pdf.

adopting decisions aimed at clarifying provisions that cause differences in the application of the law or cause serious doubts in interpretation²⁴. One of the verdicts of the Court of Appeal in Katowice states that confirmation of a lie may consist of confirmation of circumstances that did not take place, or their distortion or concealment. Given the content of the offence, under Art. 271 of the CC, it is important that they be such circumstances that cause, or may cause, legal consequences²⁵. The Supreme Court of Ukraine points out in one of its rulings that forgery of official documents may consist of complete falsification or partial alteration of the content of the real document- showing that methods of forgery can be of different natures²⁶. Forgery consists of complete or partial entry in a document, in this case, the result of PCR testing, of false information, such as information that is not true, both on the fact of passing such testing and information on its results.

There is a problem related to the legislative definition of forms of such crimes, as there are some differences in the legislation of analyzed states. The legislation of Georgia includes the following forms: entering false information or record in an official document or book; preparation of such documents; their issuance; and forgery of official and private documents in the affairs of enterprises, institutions or organizations in Art. 341 of the CC. The objective side of the offence, under Art. 362, is characterized by the following forms: manufacture; acquisition; storage; sales; and use of documents. The Criminal Code of the Republic of Poland, in Art. 270, provides for liability for forgery of a document, entering false information into a document or using such a document. Art. 271 of the CC of this state provides for one form – indication of false data in documents. The legislation of Ukraine includes the acts that constitute a criminal offence under Art. 358 namely: forgery; sales; storage; issuance; and use of a knowingly forged document. In Art. 366 of the CC of Ukraine, forms of committing this offence are: storage; issuance; entering in official documents knowingly false information; and forgery of official documents (it's about the relevant details of the document, not data). Given the provisions of the legislation of the Republic of Poland and Ukraine, cases of PCR test forgery, including their acquisition and storage, are not criminally punishable. The sale of such documents is not criminally punishable under

24 V. Kopcha. Appeal with a constitutional complaint as a tool for protection of human rights in Ukraine. *Scientific Journal of the National Academy of Internal Affairs* (2021), 26(3). <https://doi.org/10.33270/01211203.66>

25 Judgment of SA in Katowice of April 18, 2013, file ref. II AKa 31/13, LEX No. 1316198. Retrieved from: [http://orzeczenia.katowice.sa.gov.pl/content/\\$N/15150000002503_V_ACa_000009_2013_Uz_2013-04-18_001](http://orzeczenia.katowice.sa.gov.pl/content/$N/15150000002503_V_ACa_000009_2013_Uz_2013-04-18_001)

26 Resolution of the Judicial Chamber for Criminal Cases of the Supreme Court of Ukraine of April 25, 2013. Retrieved from: <http://reyestr.court.gov.ua>

Polish law. Other forms of these acts have also become part of criminal law theory and judicial practice. Issuing a knowingly forged document is assessed as one of the forms of forgery, the content of which, according to researchers, is to transfer the document to an interested person that is committed by both the person who forged the document and the person who didn't commit such actions²⁷. Sales include any way of alienation of such test results (both paid and free).

The forms of crime that provide for liability, for forgery in the legislation of analyzed states, are similar. Some of them are specific and inherent only to that state. One such act is provided for in Art. 271 of the CC of the Republic of Poland about the certification of false data in documents. As stated in one of the decisions of the Supreme Court of the Republic of Poland, certification of false information in a document should be distinguished from forgery. Forgery is to make changes to an existing, real document and certification of falsehood is to issue a document that, in its form, corresponds to the real document but its content does not correspond to reality²⁸.

The Ruling of the Supreme Court of Poland, on April 14 2014, states that confirmation of a lie retains its character only if it is an act committed within the authority of a public official or other person authorized to issue a document²⁹. Another problematic aspect of responsibility for falsifying the results of PCR testing is in determining the subject of these offences, because fake results do not always contain all the necessary details. the result of PCR testing is not a separate type of the subject but is a kind of official document and, must also contain many mandatory features. One of the judgments of the Supreme Court of the Republic of Poland states that the status of a document often depends on individual assessment and whether a particular object is a document is determined by its actual and subjective assessment in a particular case³⁰.

Consideration of crimes whose subject is provided by Art. 366 of the CC of Ukraine (forgery by an official) is prepared by a judge of the Supreme Court

27 O.I. Zinsu. Victimological aspects of the behavior of victims of domestic violence.

Scientific Journal of the National Academy of Internal Affairs (2022), 27(1). <https://doi.org/10.33270/0122271.79>

28 Decision of the Supreme Court of February 25, 1988, V KRN 15/88, OSNPG (1988), No. 8, item 84. Retrieved from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6897/index.do>

29 Resolution of the Supreme Court of April 14, 2015, file ref. SNO 14/15, LEX No. 1681523. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602582109481&uri=CELEX%3A52020SC0301>

30 The judgment of the Supreme Court of April 20, 2005, file ref. III KK 206/04, LEX No. 151674. Retrieved from: https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_poland_en.pdf

of Ukraine, V.G. Zhuk, and main consultants of the Department of Study and Generalization of Judicial Practice of the Supreme Court of Ukraine O.C. Ishchenko and A.I. Smolkina, states that in order to be recognized as an official document certain criteria must be met:

- the document must contain certain information (records, data, etc.);
- such information must be recorded in one form or another (written, digital, symbolic) and have certain details (form, seal, stamp, hologram) which are provided by the law or other regulations;
- information must be recorded on an appropriate material carrier (paper, diskette, disk, magnetic, cinema, video, photographic film, etc.) for the purpose of its storage, use or distribution;
- the document must be drawn up, certified, issued or otherwise distributed by an official on behalf of the state bodies, local governments, public organizations and associations, as well as enterprises, institutions or organizations, regardless of ownership;
- the document can be official only if it contains information recorded on any material media which confirms or certifies certain events, phenomena or facts that have given rise or are likely to give rise to legal consequences or can be used as documents – as evidence in law enforcement drawn up, issued or certified by authorized (competent) individuals within state authorities, local governments, associations of citizens or legal entities, regardless of ownership and legal form, as well as individual citizens, including self-employed people which, in connection with their professional or official activities, have a statutory right to draw up, issue or certify certain types of documents, drawn up in compliance with the forms prescribed by law and containing the details provided by law³¹.

31 Criminal Code of Ukraine No. n_002700-09 “Generalization of the practice of consideration of criminal cases on crimes, the composition of which is provided.” (2009). Retrieved from: https://zakon.rada.gov.ua/laws/show/n_002700-09#Text.

Both articles of the CC of Georgia define a Criminal Code as the subject of a crime. Official and private documents in the affairs of enterprises, institutions or organizations may be the subject of Art. 341, as are seals, stamps or forms of Art. 362 of the CC of Georgia. Legislation of the Republic of Poland defines any document that has legal significance as a subject. For qualification as forgery of PCR test results, it is necessary to acknowledge the availability of appropriate details for each type of document. The status of the person who commits such forgery must be considered because the qualifications may be different. If the result of PCR testing is forged, by a medical worker within his powers, the action will fall under the relevant criminal offence which provides for liability for forgery of documents by the common subject (Art. 341 of the CC of Georgia, Art. 270 of the CC of the Republic of Poland; 358 of the CC of Ukraine). The same situation will occur when another person commits such an act. If such actions are committed by a medical worker who belongs to a category of officials (Head of the Laboratory, Head of the Department, etc.), they must be qualified as a forgery by an official (Art. 362 of the CC of Georgia, Art. 271 of the CC of the Republic of Poland; 366 of the CC of Ukraine).

In cases where a material reward for the issuance of such a document is received, a medical worker, depending on his status, will be additionally liable for improper benefit. In Ukraine, such actions will fall under the criminal offences under Art. 354 or Art. 368 of the CC. According to the provisions of Polish case law, the right to draw up a document, by a person who is not an official, must be provided by the law or other by-laws³². Falsification of PCR test results for COVID-19, as well as for any other infectious diseases, contributes to the spread of the epidemic, so if there are all signs of a criminal offence, forgery of such a document should be further qualified for violation of sanitary or epidemiological rules or deliberately putting others at risk of contracting an infectious disease. Such acts are provided in Art. 132 and 248 of the CC of Georgia, Paragraph 1 of Art. 165 of the CC of the Republic of Poland, Part 1 of Art. 130 and Art. 325 of the CC of Ukraine.

Differences in types and limits of punishment, for such acts in the legislation of Georgia, the Republic of Poland and Ukraine should also be noted. Forgery by an official, following the provisions of Art. 341 of the CC of Georgia, is punishable by a fine or house arrest for a term of six months to two years, or imprisonment for a term of 2 to 4 years, and the act provided for in Art. 362 of the CC of Georgia is punishable by a fine or imprisonment for up to three years. In case causing significant damage – imprisonment for a term of 3 to 6 years. According to provisions of Part 2 Art. 42 of the CC of Georgia, the

32 Judgment of SA in Wrocław of April 18, 2012, file ref. II AKa 82/12, LEX No. 1165162.
Retrieved from: <http://bsp.uwb.edu.pl/wp-content/uploads/2020/07/Book-1.-BSP-252.pdf>

minimum fine is 2000 lari (502.46 Euros), or 500 lari (125.62 Euros), if a sanction of the article provides for imprisonment for up to three years. The maximum amount of the fine is not determined by the provisions of the CC. An act provided by Art. 270 of the CC of the Republic of Poland is punishable by a fine, restriction on freedom or imprisonment from 3 months to 5 years, and Art. 271 – exclusively imprisonment for the term of 3 months to 5 years. In Ukraine, such an act is punishable by a fine of up to 17,000 hryvnias (approximately 500 Euros) or arrest for up to six months or restriction on freedom for up to two years if committed by a medical worker or other non-official. Forgery is punishable by a fine of 34,000 hryvnias (1,000 Euros) to 68,000 hryvnias (2,000 Euros) or restriction on freedom for up to three years, deprivation of the right to hold certain positions or be engaged in certain activities for up to three years. Only the second part of this article provides for imprisonment for a term of 2 to 5 years with deprivation of the right to hold certain positions or be engaged in certain activities for up to three years.

A review of the sanctions of the articles shows inconsistency for PCR test forgery and the possible consequences of their level of public danger. That is why, as some scientists point out during the COVID-19 pandemic, there was a need to develop a large number of regulations that affect all areas of government, including health care³³. One of the remedies of counteracting the COVID-19 pandemic should be an improvement in the quality of legislation, including responsibility for falsifying PCR test results. At least in Ukraine, this problem was also noted and Verkhovna Rada plans to increase the criminal liability for forgery of vaccines and provide it for forgery of medical tests, as stated by Mykhailo Radutskyi, Chairman of the Verkhovna Rada Committee on Nation Health, Medical Care and Health Insurance³⁴. Survey of law enforcement and judicial practitioners also confirmed the expediency of such legislative changes. According to the results of the survey, 97.2% of respondents expressed an opinion that criminal legislation should be supplemented by a special rule which will provide for liability for forgery of test results for infectious diseases. 64% were in favour of providing restrictions for such criminal offence only in the form of imprisonment. As scientists rightly point out, adopting appropriate

33 Z.Z. Baratashvily, N.A. Kazakhashvily and O.H. Herzmava. Problems of monitoring the quality of work of hospitals in Georgia in the context of the COVID-19 pandemic. *Georgian Medical News* (2020), 7-8(304-305): 163-169.

34 The Verkhovna Rada plans to increase criminal liability for the forgery of vaccines and provide it for the forgery of medical tests. (2021). Retrieved from: <https://www.ukrinform.ua/rubric-society/3153287-rada-planue-vvesti-kriminalnu-vidpovidalnist-za-pidrobku-medicnih-testiv.html>.