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PENAL LAW PROTECTION OF MONEY AND SECURITIES CIRCULATION IN POLAND AFTER WORLD WAR I: SELECTED ISSUES

Abstract. In 20th-century economic relations, money became the basic means involved in all kinds of trade, hence the need for its increased protection. First, money came to be seen as an expression of individual wealth. Second, protection of money required the organisational and economic interests of the state itself, so that the penal codifications of capitalist countries treated protection of money as a vital economic and social factor. The article presents the development of the legal status in the field of punishment of acts violating the money circulation and securities transactions in Poland from 1918 to the present.

Keywords: money; securities; counterfeiting; penal code

INTRODUCTION

In the course of the historical development of penal law, acts that violate the security of money and securities circulation have undergone a notable evolution. This has been linked to the economic, social, and political changes that have occurred over the last century. In the economic relations of the twentieth century, money assumed a pivotal role as the primary means of trade and as an indicator of individual wealth. Consequently, there arose a necessity for the protection of money from criminal activities. Furthermore, the protection of money as an economic and social factor of great importance was required, given the organisational and economic interests of the state itself. Modern

penal codes have introduced universal solutions for punishing those who engage in activities that harm the security of financial trading.¹

This article sets out in clear terms how criminalisation of acts violating the security of money and securities trading in Poland has evolved from 1918 to the present day. In particular, this study examines the legislation of the partitioned states and assesses its impact on the regulations adopted in this matter by Polish penal legislation in the interwar period. Furthermore, this study will discuss the following issues: It would be very interesting to ascertain whether the solutions adopted in the 1932 Penal Code retained their validity in subsequent codifications, namely the Penal Codes of 1969 and 1997. It should be answered whether the penal sanction for these offences has changed over the years, in other words, whether it has become harsher or milder, and what factors have influenced that. Has the substance of the conduct undertaken changed in relation to the subject matter of the criminal act and has the subject matter of the executive act itself changed?

The primary research method used in the writing of this article is the legal-historical method, which consists in examining the non-binding law in the period in question using the legal-theoretical method.²

1. PENAL LAW PROTECTION OF THE CIRCULATION OF MONEY AND SECURITIES BETWEEN 1918 AND 1932

Upon regaining independence in 1918, the partitioners left behind a variety of legal systems to govern the Polish lands. In the field of substantive penal law, there were three legal areas, as follows: (i) the Russian Penal Code of 1903, known as the Tagantsev Code, was in force in the central and eastern territories; (ii) the western territories were definitively governed by the 1871 German Reich Penal Code; (iii) the 1852 Austrian Penal Code remained in force in the southern lands.

The 1852 Austrian Penal Code³ drew a distinction between offences against the circulation of money and offences involving the counterfeiting of public credit papers. Chapter XII, entitled “On the counterfeiting of coins”, explicit-

¹ W. MAKOWSKI, *Kodeks karny obowiązujący tymczasowo w Rzeczypospolitej Polskiej na ziemiach b. zaboru rosyjskiego*, vol. 3, parts 20-37, Warszawa 1922, p. 4.

² J. BARDACH, *Themis a Klio, czyli o potrzebie podejścia historycznego w prawoznawstwie*, [in:] *Zagadnienia metodologiczne prawoznawstwa. Materiały z sesji naukowej. Łódź 27-28 marca 1980 roku*, ed. Jerzy Wróblewski, Warszawa 1982, p. 25.

³ The Austrian Penal Code of 27 May 1852.

ly addressed acts detrimental to the security of money circulation. The essence of the offence was one of the four actual states of affairs provided for in art. 118 APC. The initial violation was the illicit minting of a coin that was in circulation in one or more locations, as indicated by the use of a stamp that represented the full value of genuine coins or a higher sum. The second case involved the minting of a counterfeit coin of lesser intrinsic value than that of real bullion or from bullion of lesser value, or making a counterfeit coin appear to be genuine money. The third penalised state of affairs was to either reduce the intrinsic value of real coins or give them the shape of coins representing a higher value. The offence also included providing equipment for minting counterfeit coins and contributing to money counterfeiting in any way.⁴

Those who commit the aforementioned acts are subject to harsh imprisonment of five to ten years, which can be reduced or increased in special cases. In cases of minor importance, a penalty of between one and five years could be imposed for forgery or when the unlawfully minted coins corresponded in weight and quality to the real ones. In more serious cases, where the offence involved particular danger or significant damage that could have been caused, the sentence ranged from ten to twenty years (§ 119).⁵ In accordance with the applicable provisions on penal liability, the participant in the criminal act was also subject to penal liability. A person who participates in the crime of coin counterfeiting is someone who, in complicity with the counterfeiter or their assistant, puts counterfeit money into circulation or acquires pieces of bullion obtained from the reduction of genuine coins (§ 121). The offender was to be punished by harsh imprisonment for a period of between one and five years, with a potential extension to ten years in cases where substantial harm was inflicted.⁶

The falsification of public credit securities is regulated in Chapter XI “On the counterfeiting of credit securities”. Austrian penal legislation included in this group of offences the counterfeiting of papers considered to be coinage, as well as the banknotes themselves. Section 106 is clear: anyone who makes counterfeit paper money, public credit papers, or debt notes (bonds) issued by the state treasury commits a crime. It was irrelevant whether the forgery

⁴ This includes any amendments to Austrian and Polish legislation (Lwów 1929, p. 46, 47). The amended law is cited here as APC.

⁵ APC, 47.

⁶ APC, 48; Lesław PAULI, *Austriacki kodeks karny z 1803 r. w Wolnym Mieście Krakowie (1815 – 1833)*, part 2, Kraków 1970, p. 35.

concerned domestic or foreign banknotes and credit papers in determining who was subject to the penalties. Likewise, it was irrelevant whether or not the counterfeit note and security paper were forged incompetently and whether or not any damage occurred as a result of issuing it.⁷

The Austrian Penal Code regarded as an accomplice anyone who prepared the instruments and materials for the counterfeiting of these papers and supplied them to the counterfeiter or in any other way assisted him in his procedure (§ 107).⁸ In the case of forgery, the main offender, as well as accomplices and those who circulated the forgeries in conspiracy with them, will be punished by harsh life imprisonment (§ 108-109).⁹ Those who attempted to counterfeit public credit papers were subject to imprisonment for a period from five to ten years if the offender used tools to make the counterfeiting easier. In cases of particularly aggravating circumstances, the offender was subject to twenty years' imprisonment (§ 110).¹⁰

Any individual who engaged in the forgery of public credit securities with the intention of obtaining a higher amount, or who altered the numbers or other components of such securities, or who provided assistance in these activities, was also deemed to be a forger (§ 114).¹¹ For committing this act, the perpetrator was liable to a prison sentence of between five and ten years (§ 115). The same penalty was imposed on the offender who, in complicity with the forger, allowed the counterfeit security to be circulated (§ 116).¹²

The eighth chapter of the German Reich Code distinguished so-called mint crimes and misdemeanours from the crime of documents forgery and including them among the provisions governing offences against public order and perjury. The German Code explicitly stipulated that any individual found to be involved in the counterfeiting of currency, regardless of whether the currency in question was domestic or foreign, would be held accountable under penal law. The intention to use the counterfeit money as genuine or to release it into circulation was irrelevant (§ 146). The same penalty was imposed on

⁷ APC, 42, 43.

⁸ APC, 43; Pauli, *Austriacki kodeks karny*, 32.

⁹ Those who allowed the circulation of such forgeries without consulting the forger were considered to be complicit in a fraud; see APC, 43, 44; Waław MAKOWSKI, *Prawo karne. O przestępstwach w szczególności*, Warszawa 1924, p. 230.

¹⁰ APC, 44.

¹¹ See *Orzeczenie Sądu Najwyższego z dnia 21 XI 1928, Kr 319/28*, "Ruch Prawniczy i Ekonomiczny" (1929), no. 3, p. 796.

¹² In the case of attempting this crime, the sentence was reduced from one to five years; APC, 45, 46.

any individual who created an impression that money that had been withdrawn from circulation was still in circulation. Furthermore, the same penalty was imposed on any individual who introduced counterfeit currency into circulation or who acquired or imported such currency from abroad with the intention of introducing it into circulation.¹³

The GPC stated that bearer securities (i.e., bonds, notes, shares, temporary proofs, interest coupons, dividend coupons or vouchers) issued by the state or another entity authorised to issue them, e.g., a municipality, a corporation, or a private individual, were to be considered equivalent to paper money (§ 149).¹⁴ Given the widespread circulation of coins when the GPC was in force, the legislator regulated liability for the act of putting into circulation a coin in which the offender had previously reduced the content of the metal bullion (e.g., by edging or filing). In this instance, the perpetrator was awarded a prison sentence in addition to a fine of up to 3,000 marks and loss of civil honour.¹⁵

The specific crime was the circulation of counterfeit money. The offender assumed it was genuine and, having become convinced it was not, proceeded to circulate it as genuine. In this instance, the offender was subject to imprisonment for three months or a fine of up to 300 marks.¹⁶ The mere preparation for the commission of a monetary crime by acquiring or making instruments for counterfeiting money or securities (e.g., stamps, seals, engravings, plates) was subject to a penalty of two years' imprisonment (§ 151). Any objects used to commit an offence or derived from such activities were confiscated, regardless of whether the offender was convicted or prosecuted (§ 152).¹⁷

The Tagantsev Code, like the Austrian German Codes, provided for the criminalisation of counterfeiting and forgery of money and securities, as well as the release of counterfeits into circulation. However, he made the extent of responsibility and the penalty dependent on the origin of the money and the types of securities. The forging and counterfeiting of Russian coins, state bank tickets and state securities was a criminal offence, punishable by a penalty of hard labour for a period of up to twelve years. With regard to foreign currency

¹³ The 1871 German Reich Penal Code with amendments and supplements made after 1918, together with the introduction of the North German Penal Code on 30 May 1870 (published in Polish), Poznań 1920, p. 66 (cited here as GPC). See *Orzeczenie Sądu Najwyższego z dnia 28 IX 1925, 336/25*, "Ruch Prawniczy i Ekonomiczny" (1926), no. 1, p. 162.

¹⁴ GPC, 67.

¹⁵ MAKOWSKI, *Prawo karne*, 227.

¹⁶ GPC, 67.

¹⁷ GPC, 68.

and securities, the maximum penalty for criminal activities was ten years' imprisonment. In both cases, the penalty could be mitigated by a sentence of confinement to a house of correction if the forgery was carried out in a way that did not present a danger of substantial propagation of the forgery (art. 427).¹⁸ The culprit was held to the same standard of liability as for forgery and counterfeiting. They intentionally procured and circulated counterfeits. Those who receive counterfeits under the pretext of authenticity and subsequently disseminate them with the intention of avoiding losses are liable to a penalty of up to six months' imprisonment (art. 430).¹⁹

The Tagantsev Code punished any action that was a preparation for the counterfeiting of coins, paper money, or securities with imprisonment for up to six months. Furthermore, the same penalty was envisaged for counterfeiterers of money and government securities in an amount equal to the face value of the counterfeits put into circulation (art. 431).²⁰ With regard to the subjective side of a criminal action, an intention to commit a crime was necessary, therefore attempting to commit a crime was also punishable.²¹

Like the German Penal Code, the Tagantsev Code introduced mandatory confiscation of forgeries and instruments and means intended for the commission of a crime, even if no one would be sentenced to punishment. In addition, it provided – as a kind of additional penalty for counterfeiterers of money and state securities – as surcharge equal to the nominal value of the counterfeits released into circulation.²²

2. OFFENCES AGAINST THE CIRCULATION OF MONEY AND SECURITIES UNDER THE 1932 PENAL CODE

The intensive work of the Codification Commission (established in 1919) led to the introduction of the 1932 Penal Code, commonly known as the Makarewicz Code.²³ It was agreed by all participants in the discussions that

¹⁸ The counterfeiting of private securities, that is to say those issued by institutions authorised to do so, was punishable by a somewhat lighter penalty of up to eight years of hard labour. MAKOWSKI, *Kodeks karny*, 2-6.

¹⁹ MAKOWSKI, 12-14.

²⁰ MAKOWSKI, *Prawo karne*, 229.

²¹ MAKOWSKI, 228.

²² MAKOWSKI, 231, 232.

²³ Ordinance of the President of the Republic of Poland of 11 July 1932 – The Penal Code, Dz. U. [Journal of Laws] no. 60, item 571 (cited here as Makarewicz Code).

the acts violating the security of money circulation should be included in a separate group and treated as attacks on economic life. It is clear that the state's interest in the issuance of banknotes is indirect. The state has entrusted the issuance of money to private institutions, namely the banks that issue the banknotes. It was clear to the Commission members that there was no reason to punish the counterfeiting of domestic currency more severely than the forgery of foreign currency, as the Tagantsev Code did.²⁴

However, the legitimacy of including the offence of securities falsification in the category of offences against monetary circulation was challenged by the discussants. The Austrian and French Penal Codes categorise the above offences in two distinct chapters. In contrast, the German and Russian Penal Codes regulate the above together. The decision to include securities fraud in the same group was based on the fact that modern economic life involves other forms of economic value besides money. Paper money appeared alongside the bullion coin (the original form of money and expression of value). It was followed by notes issued by banks and then bonds and shares. Securities had to be bearer securities because they had to share the characteristic with money of being easily passed from hand to hand. It is not possible to protect a registered share from a monetary point of view because a formal transaction is required for its sale.²⁵ Finally, according to art. 175 § 2, the provisions on the falsification of money apply to bearer documents containing an obligation to pay capital, interest or participation in profits, or a statement of participation in a company.²⁶

In determining the forms of criminal action, the members of the Codification Commission followed the model of the legislation applied in the partitioned states. Similarly, in terms of penal repression, it has been noted that there has been a softening of penalties for this category of crime in European countries and capitalist states have moved away from the use of capital punishment to long-term prison sentences. Following an in-depth analysis of the

²⁴ *Protokół posiedzenia Sekcji Prawa Karnego Materialnego Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej, z dnia 24 marca 1924 r.*, [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja Prawa Karnego*, vol. 2, p. 335-337; the International Convention for the Suppression of Counterfeiting Currency, signed in Geneva on 20 April 1929, was an important step forward in ensuring identical protection for domestic and foreign money. This was accompanied by a Protocol and Optional Protocol, signed on the same day in Geneva. *Dz. U. [Journal of Laws] 1934, no. 10, item 919*. The Convention was ratified by Poland on 5 March 1934.

²⁵ J. MAKAREWICZ, *Uzasadnienie Projektu Kodeksu Karnego w redakcji przyjętej w drugim czytaniu przez Sekcję Prawa Karnego Komisji Kodyfikacyjnej R. P.*, [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja Prawa Karnego*, Warszawa 1930, vol. 5, no. 4, p. 104, 105.

²⁶ J. MAKAREWICZ, *Kodeks karny z komentarzem*, Lwów 1932, p. 273-274.

legal status of legislation in European countries, it was unequivocally determined that the primary offence is the production of a paper or piece of bullion that is perceived to have value, which is to say, the act of counterfeiting. Following the Russian and German Penal Codes, it was considered that, in addition to counterfeiting money and securities, counterfeiting involving giving money the appearance of higher value (alteration) is also a criminal activity. In addition to the activities indicated, a peculiar form of counterfeiting money and securities, as defined in the German and Russian Penal Codes, was the removal or withdrawal marks from them, i.e., signs of redemption. In accordance with art. 175 § 1 of the Makarewicz Code, the perpetration of the aforementioned acts were subject to a minimum sentence of two years' imprisonment.²⁷

Furthermore, it was established that the bullion content of bullion money can be reduced through mechanical or chemical treatment, including trimming and sawing. The act in question is classified as a misdemeanour, which was subject to a penalty of up to five years' imprisonment (cf. art. 176). It could only be committed intentionally.²⁸ The Code's drafters did not follow in the footsteps of Russian legislation and refrained from including in the chapter on money and securities counterfeiting the derivative acts of trading in bullion money offcuts. This situation was clearly an offence against public order. It involved the acquisition or receipt of property obtained in a criminal manner. Another derivative type was the production and circulation of objects imitating money, but in a deliberately inept manner. These imitations were deliberately designed to be regarded as anything but normal money.²⁹ The act constituted an attempt to commit the crime of forgery.³⁰

It was also criminal to allow counterfeit money or securities to be used, as well as to receive, transport or hold with the intention of using them without being involved in the counterfeiting or falsification process (art. 177).³¹ The members of the Codification Commission were of the opinion that allowing counterfeits to circulate posed a greater threat to the circulation of money than

²⁷ MAKAREWICZ, 272-274.

²⁸ MAKAREWICZ, 274.

²⁹ MAKAREWICZ, *Uzasadnienie Projektu Kodeksu Karnego*, 111; see *Wyrok Sądu Najwyższego z dnia 5 V 1938, 2 K 197/38*, "Głos Sądownictwa" (1938), no. 9, p. 741; *Wyrok Sądu Najwyższego z dnia 19 IX 1934, 2 K 1009/34*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1935), no. 1, item 134.

³⁰ See *Wyrok Sądu Najwyższego z dnia 4 VI 1934, 2 K 608/34*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1935), no. 1, item 10.

³¹ MAKAREWICZ, *Kodeks karny z komentarzem*, p. 274, 275; see *Wyrok Sądu Najwyższego z 20 V 1935, 1K 198/35*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1936), no. 1, item 11.

counterfeiting itself. Consequently, the perpetrator was liable to a penalty of up to ten years' imprisonment. If, on the other hand, the crimes of counterfeiting were committed by the person who counterfeited or forged them, a joint penalty was imposed as a result of the concurrence of offences.³²

The Makarewicz Code provided for a more lenient punishment for those who disposed of a forgery received as genuine or of full value without realising its falsity. The act was subject to imprisonment for a period of up to six months or a fine (art. 178). The motive for the lesser penalty in this case was that the person receiving the counterfeit money was disposing of it in order not to suffer harm.³³

The Makarewicz Code clearly stated that preparatory acts undertaken for the purpose of committing an offence were not punishable. However, this was not the case with preparation to commit forgery. In accordance with art. 179 of the Makarewicz Code, the production, acquisition or storage of technical devices designed to counterfeit or forge currency and financial instruments, or to remove the redemption marks from them, was considered a criminal offence, subject to a penalty of imprisonment for up to five years. This offence can only be committed intentionally.³⁴ Similarly, entering into an agreement with others to commit a forgery or to circulate counterfeits was subject to a penalty of imprisonment for up to five years.³⁵ A participant in the aforementioned agreement was not subject to a penalty if he or she denounced the agreement, i.e., reported it to the authorities appointed to prosecute the offence, before the authorities became aware of the agreement (art. 180 § 2).³⁶

³² L. PEIPER, *Komentarz do kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających wraz z niektórymi ustawami dodatkowymi i wzorami orzeczeń do prawa o wykroczeniach*, Kraków 1933, p. 498-502; see *Wyrok Sądu Najwyższego z 28 V 1934, 3K 510/34*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1935), no. 1, item 5; *Wyrok Sądu Najwyższego z 2 V 1935, 1K 222/35*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1935), no. 12, item 513.

³³ MAKAREWICZ, *Uzasadnienie Projektu Kodeksu Karnego*, 107, 108.

³⁴ J. NARODOWSKA, N. DĄBKOWSKA, *Przestępstwo fałszowania pieniędzy. Ewolucja zasad odpowiedzialności karnej*, [in:] *Przeciwdziałania patologiom na rynkach finansowych. Od edukacji ekonomicznej po prawnokarne środki oddziaływania*, ed. W. Pływaczewski, Warszawa 2015, p. 312-313.

³⁵ Art. 180 § 1 of the Makarewicz Code. See *Wyrok Sądu Najwyższego z 8 I 1934, 1K 883/33*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1934), no. 5, item 90; *Wyrok Sądu Najwyższego z 1 III 1934, 1K 75/34*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1934), no. 9, item 177; *Wyrok Sądu Najwyższego z 21 XII 1934, 2K 1529/34*, "Zbiór Orzeczeń Sądu Najwyższego. Orzeczenia Izby Karnej" (1935), no. 7, item 297.

³⁶ However, the Code explicitly excluded those participants in the agreement who were complicit in the organisation of the conspiracy from the indicated rule of impunity. PEIPER, *Komentarz do kodeksu karnego*, 505.

In order to prevent counterfeits from being in circulation, the Code provided for the mandatory forfeiture of money, securities and tokens, measuring instruments and technical means for counterfeiting. This was an exceptional solution. The Makarewicz Code allows the court to decide whether to impose a criminal measure of forfeiture of objects or tools used or intended to be used in the commission of an offence.³⁷

3. OFFENCES AGAINST MONEY AND SECURITIES TRADING IN THE SO-CALLED SMALL PENAL CODE

The legal situation regarding the penalisation of acts against the security of money circulation changed with the entry into force of the Decree of 13 June 1946 on particularly dangerous offences during the period of national reconstruction, commonly known as the Small Penal Code.³⁸ The most important normative solution of the Small Penal Code was the suspension of the provisions of the 1932 Penal Code to the extent regulated by this decree. The legislator's intention was to punish all major political and economic offences in a much more repressive manner than the Makarewicz Code did.³⁹

The Small Penal Code addressed the issue of counterfeiting in art. 12, which basically repeated the dispositions of the provisions on counterfeiting of money contained in Chapter XVII of the 1932 Penal Code, while significantly strengthening the penal repression for these acts. The aforementioned legal provision stated explicitly that counterfeiting or altering Polish or foreign currency, or removing the signs of its redemption, was punishable by prison, life imprisonment, or death penalty.⁴⁰ Any preparatory activities involving the acquisition or storage of technical means, as well as the receipt,

³⁷ NARODOWSKA, DĄBKOWSKA, *Przestępstwo fałszowania pieniędzy*, 314.

³⁸ Decree of 13 June 1946 on particularly dangerous offences during the period of national reconstruction, Dz. U. [Journal of Laws] no. 30, item 192. This act comprised 72 articles, grouped into seven chapters. It was regarded as a casuistic act and, due to the use of vague wording, the public security organs were able to freely interpret it as they saw fit in order to guard and defend the communist system. M. KALLAS, A. LITYŃSKI, *Historia ustroju i prawa Polski Ludowej*, Warszawa 2000, p. 299-300.

³⁹ The Small Penal Code provided for the death penalty for 13 types of offences, including assassination of a unit of the armed or allied forces, sabotage, diversion, espionage, participation in an illegal association, and counterfeiting of money. K. SIDORKIEWICZ, *Represje organów wymiaru sprawiedliwości w sprawach politycznych w województwie pomorskim (bydgoskim) w latach 1945-1956*, Toruń 2005, p. 68.

⁴⁰ M. SIEWIERSKI, *Mały kodeks karny. Komentarz i orzecznictwo*, Łódź 1949, p. 52.

storage, carrying or transporting of counterfeit money, were subject to a penalty of imprisonment. On the basis of art. 51 of the Small Penal Code, military courts were competent to rule on these cases, also in relation to persons, subject to the jurisdiction of the common courts.⁴¹

It is important to note that the other forms of counterfeiting from Chapter XXVII of the Makarewicz Code were not covered by the Small Penal Code. These include: a) counterfeiting and alteration of securities that were bearer documents; b) storage and circulation of counterfeit money received by the offender as genuine; c) entering into an agreement for the purpose of counterfeiting money or securities. The existing jurisdiction of the common courts was retained for these cases.⁴²

The decree made it clear that the offence of counterfeiting money could be punished even if it was not committed for political motives. The main reason the legislature included this provision in the decree was to combat illegal political organisations obtaining funds for illegal activities by this means.⁴³ This solution was an integral part of the broader effort to establish a totalitarian communist system in Poland.

4. OFFENCES AGAINST THE CIRCULATION OF MONEY AND SECURITIES UNDER THE 1969 PENAL CODE

The Small Penal Code remained the basis of penal legislation until the end of 1969. On 1 January 1970, another Polish Code, the 1969 Penal Code, came into force.⁴⁴ The provisions concerning the falsification of money and securities were included in Chapter XXXI, directly after the provisions regulating economic crimes. In terms of penalising these acts, the 1969 Penal Code unambiguously referred to the Makarewicz Code and solutions adopted by the Small Penal Code.⁴⁵ The Code introduced changes that included the object of

⁴¹ K. SIEMASZKO, *W trudnym okresie odbudowy państwa. Tak zwany mały kodeks karny w świetle orzecznictwa Sądu Okręgowego w Krakowie w latach 1946-1950*, Warszawa 2015, p. 37.

⁴² SIEWIERSKI, *Mały kodeks karny*, 52.

⁴³ SIEWIERSKI, 52-53; see *Wyrok Sądu Najwyższego z dnia 6 IV 1967, I K 249/66*, "Ruch Prawniczy, Ekonomiczny i Społeczny" (1968), no. 3, p. 441; *Wyrok Sądu Najwyższego z 5 III 1969, IV KR 251/68*, "Orzecznictwo Sądu Najwyższego. Wyd. Prokuratury Generalnej" (1970), no. 1, item 2.

⁴⁴ Act of 19 April 1969 – The Penal Code, Dz. U. [Journal of Laws] no.13, item 94.

⁴⁵ Z. KEGEL, J. SATKO, *Przestępstwa przeciwko wiarygodności dokumentów, obrotowi pieniędzmi i papierami wartościowymi. Orzecznictwo Sądu Najwyższego i Sądów Apelacyjnych 1918-2000. Piśmiennictwo*, Kraków 2002, p. 131.

the forgery activity. Both Polish and alien money was protected. In the People's Republic of Poland, banknotes and coins denominated in "złoty" and "grosze" issued by the National Bank of Poland were in legal circulation. The legal protection was also enjoyed by bearer documents entitling the holder to receive a sum of money (state loan bonds, PKO savings vouchers) or tradable goods for foreign exchange values (e.g., PKO vouchers). On the other hand, the falsification of registered securities constitutes forgery and is dealt with in Chapter XXXV, which deals with offences against documents.⁴⁶

The 1969 Code, like its predecessors, accepted the penalty of an offence relating to money or securities involving counterfeiting, altering, or removing a redemption mark (art. 227 § 1).⁴⁷ The Makarewicz Code was a significant improvement. It augmented the penalties for deprivation of liberty, raising the maximum permitted sentence from three years to twenty-five years.⁴⁸ Likewise, the circulation of money or securities as a means of reaping the profits from counterfeiting is a crime that not only undermines the state's economic interests but also jeopardises the interests of individuals engaged in financial transactions. This offence is punishable by imprisonment for a period from one to ten years (art. 227 § 2).⁴⁹ In accordance with art. 227 § 3 of the 1969 Penal Code, any preparatory acts pertaining to the crime of forgery, as well as the circulation of counterfeits, which involve an agreement with another individual or the preparation, acquisition or storage of technical means, were considered an offence punishable by a minimum of six months and a maximum of five years of imprisonment.⁵⁰

The 1969 Penal Code, like the Makarevich Code, explicitly defined a specific type of offence involving a perpetrator who unknowingly received a forgery and disposed of it in order to avoid loss (art. 228). This act was punishable by deprivation of liberty of up to one year, a period of restriction of liberty, or a fine.⁵¹ For obvious reasons, the provisions on counterfeiting, altering

⁴⁶ J. BAFIA, K. MIODULSKI, M. SIEWIERSKI, *Kodeks karny. Komentarz*, Warszawa 1971, p. 536, 537.

⁴⁷ The Code did not require that these actions be taken in order to circulate counterfeit items. Therefore, the purpose of the forgery for the existence of the offence was irrelevant. This had the effect of changing the penalty. O. CHYBIŃSKI, W. GUTEKUNST, W. ŚWIDA, *Prawo karne. Część szczególna*, Warszawa 1975, p. 334-336.

⁴⁸ W. ŚWIDA, *Prawo karne*, Warszawa 1986, p. 592.

⁴⁹ I. ANDREJEW, *Kodeks karny. Krótki komentarz*, Warszawa 1981, p. 203.

⁵⁰ ŚWIDA, *Prawo karne*, 594; see the Judgement of the Appellate Court in Katowice of 5 June 1997, II AKa 50/97, LEX no. 34249.

⁵¹ ANDREJEW, *Kodeks karny*, 205; see the Judgement of the Appellate Court in Rzeszów of 14 April 1994 r., II AKr 32/94, LEX no. 21254.

the bullion coin, and reducing the bullion content of bullion money under the 1969 Penal Code have become outdated.

The political and economic changes that took place in Poland in 1989, along with the emergence of new financial instruments on the market, have rendered some of the provisions on counterfeiting obsolete, particularly with regard to the subject of protection. In accordance with art. 13 of the Law of 12 October 1994 on the protection of economic turnover, editorial amendments have been made to art. 227.⁵² The new wording of the provision in question states that the following are covered by legal protection: "This includes Polish or foreign money, other means of payment, documents entitling the holder to receive a sum of money, documents containing an obligation to pay capital, interest, participation in profits, or documents evidencing participation in a company."⁵³ A further crucial amendment was the introduction of a regulation pertaining to a minor case. According to art. 227 § 4 of the 1969 Penal Code, in the cases of lesser gravity, the offender was subject to a penalty of imprisonment for up to three years. This institution was introduced to mitigate the penal sanction when the offender's act was characterised by a lower level of unlawfulness. For example, forgery or the circulation of only one counterfeit would not warrant the same penalty as, say, theft.⁵⁴

5. OFFENCES AGAINST THE CIRCULATION OF MONEY AND SECURITIES IN THE 1997 PENAL CODE

In the 1997 Penal Code⁵⁵ currently in force, the regulation of offences against money and securities is set forth in chapter XXXVII, which immediately follows the regulation of offences against economic traffic. The legislator considered the typification of offences contained in the 1969 Penal Code, which followed the Makarevich Code, to be complete. This was on the grounds that the forms of attacks on legally protected goods had not changed

⁵² Act of 12 October 1994 on the protection of business transactions, Dz. U. [Journal of Laws] no. 126, item 615.

⁵³ K. BUCHAŁA ET AL., *Komentarz do ustawy o ochronie obrotu gospodarczego*, Warszawa 1995, p. 217-219; see the Resolution of the Supreme Court of 15 May 1997, I KZP 9/97, LEX no. 29162; Judgement of the Appellate Court in Łódź of 13 March 1997 r., II AKa 40/97, LEX no. 254809.

⁵⁴ BUCHAŁA ET AL., 239-240.

⁵⁵ Act of 6 June 1997 – The Penal Code, Dz.U. [Journal of Laws] no. 88 item 553.

in principle.⁵⁶ The amendments to the Penal Code introduced by the Act of 9 October 2015 resulted in a modification of the definition of the objects of executive actions. This was achieved by supplementing the previous disposition of the provision with the addition of items to the catalogue. This refers to a Polish or foreign monetary unit that has been designated as legal tender but has not yet been put into circulation. The aforementioned amendment was a consequence of the necessity to implement Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting.⁵⁷ The Directive provided additional stipulations to those set forth in the 1929 Geneva Convention. It required Member States to implement penal sanctions for not only the counterfeiting and distribution of counterfeit currency but also for the use of monetary signs that have not yet been officially released for circulation, such as new series of banknotes.⁵⁸

In consequence, the criminal acts encompass the forgery of currency, the alteration of financial instruments, and the removal of redemption indicators. In the current legislative framework, the perpetrator of this offence is subject to imprisonment for a period from five to twenty-five years.⁵⁹ The counterfeiting of money constitutes an intentional criminal act, regardless of the offender's underlying motivation.⁶⁰

The provision penalising the act of putting into circulation a counterfeit or receiving, storing, transporting, transferring, sending for such purpose or assisting in its disposal or concealment remains in force. In accordance with the 1969 Penal Code, the penalty for perpetrating this criminal act is now a period of imprisonment, extending from one to ten years.⁶¹ In cases where special circumstances of a subjective or objective nature (e.g., the offender's motives

⁵⁶ KEGEL, SATKO, *Przestępstwa przeciwko wiarygodności dokumentów*, 132.

⁵⁷ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting, and replacing Council Framework Decision, 2000/383/JHA, OJ L 151/1, 21.5.2014.

⁵⁸ J. SKORUPKA, *Komentarz do art. 310*, [in:] *Kodeks karny. Komentarz*, ed. R. A. Stefański, Legalis, thesis 1.

⁵⁹ The definition of the sanction was changed by the Act of 7 July 2022 amending the Penal Code. The previous wording "for a term of not less than 5 years or 25 years' imprisonment" was replaced with the new wording "from 5 to 25 years' imprisonment". The above change was necessary because the sanction of 25 years' imprisonment was removed from the system. This meant that new limits had to be set for the statutory threat of imprisonment for the offence under art. 310 § 1 of the Penal Code. M. OLEŻAŁEK, P. BOGACKI, *Kodeks karny. Komentarz do nowelizacji z 7.7.2022 r.*, Warszawa 2022, p. 650-651.

⁶⁰ NARODOWSKA, DĄBKOWSKA, *Przestępstwo fałszowania pieniędzy*, 320

⁶¹ I. JANKOWSKA-PROCHOT, *Karnoprawna ochrona bezpieczeństwa obrotu pieniędzy w Polsce i w Irlandii*, "Prokuratura i Prawo" (2018), no. 6, p. 128.

or the type of legal good, the amount of damage) demonstrate the ‘lesser gravity’ of the offences indicated above, the court has the authority to apply extraordinary leniency.⁶² As in the previous Codes, the legislator provides for the criminalisation of preparation for the commission of the indicated offences (from three months to five years’ imprisonment). However, there is a distinction to be made in terms of construction, in that preparation is defined as a stage form of the offence in the general part of the current Penal Code (art. 310 § 4).⁶³

According to art. 312 of the Penal Code, if the offender circulates a counterfeit that he himself received as genuine, he commits an offence punishable by a fine, restriction of liberty, or imprisonment for up to one year.⁶⁴ As mentioned above, the privileged type of offence of putting counterfeits into circulation also existed in the 1969 Penal Code.

A new development was the introduction of the offence of capital fraud or misrepresentation in the trading of securities (both public and private) into the Penal Code now in force. The offence in question, as defined in art. 311 of the Penal Code, pertains to the dissemination of false information or the concealment of material information concerning the assets of the offeror in securities documents, which pertains to the acquisition, sale, or increase or decrease of securities. The scope of this provision encompasses the safeguarding of the truthfulness of documentation pertinent to securities trading, thereby ensuring the rectitude of this trading. The perpetrator of the aforementioned act is subject to a penalty of imprisonment for up to three years.⁶⁵

CONCLUSIONS

The codifications of the partitioning states indisputably influenced the codification work on Polish penal law after regaining independence. This was particularly evident in the inclusion and penalisation of acts violating the security of money circulation and securities. The members of the Codification

⁶² M. GAŁĄZKA, *Komentarz do art. 310*, [in:] *Kodeks karny. Komentarz*, ed. A. Grześkowiak, K. Wiak, Legalis, thesis 20.

⁶³ M. BŁASZCZYK, *Komentarz do art. 310*, [in:] *Kodeks karny. Tom III. Część szczególna. Komentarz do art. 222-316*, ed. M. Królikowski, R. Zawłocki, Legalis, thesis 197.

⁶⁴ NARODOWSKA, DĄBKOWSKA, *Przestępstwo fałszowania pieniędzy*, 321.

⁶⁵ W. JAROCH, *Zagrożenie przestępczością rynku finansowego w Polsce*, “Przegląd Prawno-Ekonomiczny” (2022), no. 4, p. 41-42.

Commission were unequivocal in their references to the solutions of the European capitalist countries, offering a critical evaluation of them.

The Makarewicz Code set the standard for the 1969 and 1997 Penal Codes. This clearly demonstrates that the essence of criminal behaviour in relation to the object of a prohibited act (counterfeiting, alteration, removal of signs of redemption, release into circulation) has remained unchanged since the modern 19th-century penal codifications. However, it is undeniable that significant technological advances have resulted in a change in the methods and means used to commit forgery.

Furthermore, the catalogue of objects used to perpetrate the criminal acts in question has also undergone a notable evolution. Previously, the bullion coins and coins assigned a contractual value constituted the primary means of payment. The function of legal tender has been progressively assumed by a succession of financial instruments, beginning with paper money, followed by non-cash money, and subsequently by money credited to an account, including tokens that have been established as legal tender but have not yet been put into circulation. A similar approach is applicable to documents that satisfy the criteria for categorisation as securities, which are safeguarded by penal law. In the context of rapid technological advancement, the potential for cryptocurrencies to be included in the category of objects covered by executive acts pertaining to the aforementioned offences remains a topic of debate. It appears that cryptocurrencies (e.g., Bitcoin) do not meet all the criteria for a means of payment, and thus remain outside the scope of the penalties outlined in the aforementioned art. 310 of the Penal Code. Moreover, the objective of establishing a cryptocurrency is to provide an alternative means of payment, rather than to counterfeit and alter legal tender issued by the National Bank of Poland.

It should be noted that the sentences for these offences have also changed. They are now subject to a harsher penalty of up to twenty-five years' imprisonment. In light of the aforementioned considerations, it may be prudent to reconsider the proposition of equating the punishability of these offences with those that contravene the peace, humanity or war crimes conventions. However, it is also evident that Poland is a signatory to international agreements and conventions that stipulate the application of explicit legal rigour to those who commit offences against the security of financial transactions. Furthermore, the perpetration of behaviour that harms the organisational and economic interests of the state itself must be met with a firm response from the legislator.

The evolution of the penal law protection of the circulation of money and securities provides evidence that the counterfeiting of money and securities constitutes a significant social harm. Despite the fact that the crime statistics for money and securities circulation in Poland over the past twenty-five years show no increase and, in fact, a slight downward trend, the development of modern technology is creating new opportunities for criminals. It is practically impossible for the average trader to distinguish a counterfeit banknote, coin or other means of payment. Given the already severe level of punishment for these acts, the search for measures aimed at preventing and combating counterfeiting of means of payment in Poland must focus on measures of a social, economic and technological nature. Training in the skills of verifying the authenticity of means of payment and the introduction of additional security features on means of payment are two examples of such measures.

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PRAWNOKARNA OCHRONA OBROTU PIENIĘDZMI I PAPIERAMI WARTOŚCIOWYMI
W POLSCE PO I WOJNIE ŚWIATOWEJ.
WYBRANE ZAGADNIENIA

Streszczenie

W stosunkach gospodarczych XX wieku pieniąż uzyskał pierwszorzędne znaczenie jako podstawowy środek obrotu handlowego, będąc jednocześnie wyrazem indywidualnego bogactwa jednostki, stąd też wynikła potrzeba jego prawnokarnej ochrony. Ponadto, ochrony pieniąża jako czynnika gospodarczo – społecznego wielkiej doniosłości wymagały interesy organizacyjne i ekonomiczne samego państwa. Celem artykułu jest przedstawienie ewolucji stanu prawnego w zakresie penalizacji czynów naruszających bezpieczeństwo obrotu pieniążmi i papierami wartościowymi w Polsce od 1918 r. do współczesności.

Słowa kluczowe: pieniąż; papiery wartościowe; fałszowanie; kodeks karny