

# STATUTORY ELEMENTS OF THE CRIME OF MOTOR VEHICLE REGISTRATION PLATES FORGERY

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## ABSTRACT

This article is of a scientific and research nature and covers the subject of offences defined in Article 306c of the Criminal Code, which has been in force since 1 October 2023. It addresses, *inter alia*, the counterfeiting or altering of a motor vehicle registration plate to use it as an authentic one (§ 1) and using it as an authentic one (§ 2). The primary research goal is to assess the reasonableness of introducing this provision into the Criminal Code and the correctness of determining the conditions for its application and its objective scope. The assumption is that the criminalisation of such behaviour could be an effective weapon in combating the phenomenon of fuel theft from petrol stations, as the perpetrators of these thefts usually attach counterfeit plates to their vehicles. The analysis covers the object of protection of this provision, the types of this crime, their elements such as counterfeiting and alteration, the concept of a registration plate, the legalisation of the plate, the purpose of the causative behaviour, and the concept of a motor vehicle. It is sufficient to use the normative and dogmatic method to analyse the issues.

Keywords: alteration, counterfeiting, legalisation, motor vehicle, object of protection, registration plate, types of crime

## INTRODUCTION

Article 306c of the Act of 7 July 2022 amending the Act: Criminal Code and Some Other Acts<sup>1</sup> defines the following offences: (1) stealing a motor vehicle registration plate allowing the use of this motor vehicle on roads in the territory of the Republic of Poland (§ 1); (2) using a motor vehicle registration plate on a vehicle different from

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<sup>1</sup> Journal of Laws of 2022, item 2600, as amended.



the one to which it has been assigned (§ 2); (3) counterfeiting and altering a motor vehicle registration plate to use it as an authentic one (§ 1); (4) using a counterfeit or altered motor vehicle registration plate as an authentic one (§ 2).

The analysis covers the offences of counterfeiting or altering a motor vehicle registration plate to use it as an authentic one and of using it as such. The amendment results in the specification of another distinct type of crime of counterfeiting objects. Traditionally, the basic crime of forgery consists of counterfeiting or altering a document (Article 270 § 1 CC). In addition, the Criminal Code lists the following offences: (1) altering or forging records or other electoral or referendum documents (Article 248 § 3 CC); (2) counterfeiting or altering invoices for the purpose of confirming factual circumstances that may be important for determining the amount of public law receivables or their refund or a refund of other receivables that are tax-related (Article 270a § 1 CC); (3) counterfeiting or altering identification marks, a production or expiry date of a product or facility (Article 306 CC); (4) counterfeiting or altering Polish or foreign money, and Polish or foreign monetary signs, established as legal tender but not yet put into circulation, other means of payment or documents entitling to receive a sum of money or containing an obligation to pay capital, interest, share in profits or confirmation of participation in a company (Article 310 § 1 CC); (5) counterfeiting or altering an official mark intended to confirm authorisation of the result of an examination (Article 314 CC); and (6) counterfeiting or altering legalised measuring or testing tools (Article 315 § 1 CC). The basic forms of these offences differ concerning the target of particular forbidden acts.

## JUSTIFICATION FOR CRIMINALISATION

It was argued in the justification for the Bill<sup>2</sup> that the criminalisation of counterfeiting or altering a motor vehicle registration plate to use it as an authentic one and of using one was necessary to employ criminal law instruments to combat the phenomenon of counterfeiting registration plates committed mainly for the purpose of stealing fuel from petrol stations, because there was a legal loophole: if a motor vehicle registration plate is not a document but only a mark, then counterfeiting or altering it is not penalised at all. Reference was made to two judgements of the Supreme Court in which the body recognised that a registration plate is not a document, because on its own it does not prove any right to the vehicle<sup>3</sup> and therefore cannot be an object of crime under Article 270 CC, but may be an object of crime under Article 306 CC.<sup>4</sup>

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<sup>2</sup> Justification for the Bill amending Act: Criminal Code and Some Other Acts. The Sejm print No. 2024, pp. 96 and 97, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/2851BC6F8739C593C12587F10042EF6E/%24File/2024.pdf> [accessed on 2 January 2024].

<sup>3</sup> The Supreme Court judgment of 23 May 2002, V KKN 404/99, OSNKW 2002, No. 9–10, item 72.

<sup>4</sup> The Supreme Court ruling of 19 March 2003, III KKN 207/01 LEX No. 78408.

In assessing the justification for the criminalisation of these activities in a separate Article 306c CC, it is not possible to refrain from referring to the legal nature of registration plates as specified in case law and jurisprudence. Undoubtedly, it is a controversial issue, and there are four views on it stating that a registration plate:

- (1) is not a document within the meaning of Article 115 § 14 CC,<sup>5</sup> and therefore cannot be an object of crime under Article 270 § 1 CC or Article 276 CC; counterfeiting or altering it is irrelevant from the point of view of criminal law;
- (2) is a document, because a registration plate constitutes a significant element of the permission to use a vehicle on roads; a vehicle cannot take part in road traffic without it;<sup>6</sup>
- (3) may constitute an object of crime under Article 306 CC, because it is an identification mark within the meaning of this provision;<sup>7</sup>

<sup>5</sup> The Supreme Court judgment of 30 August 2000, V KKN 263/2000, unpublished judgment of the Supreme Court of 23 May 2002, V KKN 404/99, OSNKW 2002, No. 9–10, item 72 with critical glosses by Błaszczyk, J., 'Glosa do wyroku SN z dnia 23 maja 2002 r., V KKN 404/99', *Prokuratura i Prawo*, 2003, No. 6, pp. 116–125, and Siwek, M., 'Glosa do wyroku SN z dnia 23 maja 2002 r., V KKN 404/99', *Prokuratura i Prawo*, 2003, No. 6, pp. 109–115; the Supreme Court judgment of 10 April 2003, III KKN 203/01, LEX No. 77461; the Supreme Court ruling of 12 December 2003, II KK 211/03, OSNwSK 2003, No. 1, item 2687; the Supreme Court ruling of 4 May 2005, III KK 130/04, OSNwSK 2005, No. 1, item 895; the Supreme Court ruling of 14 November 2006, II KK 129/06, OSNwSK 2006, No. 1, item 2145; the Supreme Court ruling of 16 November 2005, III KK 51/05, OSNwSK 2005, No. 1, item 2088; the Supreme Court resolution (7) of 27 October 2005, I KZP 33/04, OSNKW 2005, No. 11, item 1.6 with critical comments by Stefański, R.A., 'Przegląd uchwał Izby Karnej Sądu Najwyższego z zakresu prawa karnego materialnego, prawa karnego skarbowego i prawa wykroczeń za 2005 r.', *Wojskowy Przegląd Prawniczy*, 2006, No. 1, pp. 134–135; the Supreme Court ruling of 25 February 2005, I KZP 33/04, KZS 2005, No. 7–8, item 39; the Supreme Court judgment of 23 November 2010, IV KK 293/10, LEX No. 667517 with a partly critical gloss by Skowron, A., 'Glosa do wyroku SN z dnia 23 listopada 2010 r., IV KK 293/10', LEX/el. 2012; the Supreme Court judgment of 19 September 2016, V KK 189/16, LEX No. 2122065: Barczak, A., in: Gadecki, B. (ed.), *Kodeks karny. Art. 1–316. Komentarz*, Warszawa, 2023, p. 361; Daniluk, P., in: Stefański, R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 826; Oczkowski, T., in: Konarska-Wrzosek, V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 706; Piórkowska-Flieger, J., *Falsz dokumentu w polskim prawie karnym*, Kraków, 2004, p. 197; Piórkowska-Flieger J., 'Ewolucja pojęcia dokumentu w polskich kodeksach karnych', in: Leszczyński, L., Skretowicz, E., Hołda, Z. (eds), *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci prof. A. Wąska*, Lublin, 2005, p. 518; Wróbel, W., Sroka, T., in: Wróbel, W., Zoll, A. (eds), *Kodeks karny. Część szczególna. Komentarz do art. 212–277d*, Vol. II, Part II, Warszawa, 2017, p. 762; Gałązka, M., in: Grzeškowiak, A., Wiak, K. (eds), *Kodeks karny. Komentarz*, Warszawa, 2019, p. 787; Kulik, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2019, p. 404.

<sup>6</sup> Błaszczyk, J., 'Glosa do wyroku SN...', op. cit., pp. 116–125; Siwek, M., 'Glosa do wyroku SN...', op. cit., pp. 109–115; Stefański, R.A., 'Przegląd uchwał (...) za 2005 r.', op. cit., pp. 102–104; Stefański, R.A., *Prawo karne materialne. Część szczególna*, Warszawa, 2009, pp. 499–500; Herzog, A., 'Tablice rejestracyjne pojazdu jako dokument w rozumieniu prawa karnego', *Prokuratura i Prawo*, 2002, No. 10, p. 154; Herzog, A., 'Problemy wokół prawnej ochrony tablic rejestracyjnych', *Paragraf na Drodze*, 2006, No. 3, pp. 16–28; Herzog, A., 'Charakter prawny tablic rejestracyjnych w rozumieniu prawa karnego', *Prokuratura i Prawo*, 2006, No. 4, pp. 30–44; Zawłocki, R., in: Wąsek, A., Zawłocki, R. (eds), *Kodeks karny. Komentarz do artykułów 222–316*, Vol. II, Warszawa, 2010, p. 756; Błachut, J., *Dokument jako przedmiot ochrony prawnokarnej*, Warszawa, 2011, pp. 214–224; Majewski, J., in: Zoll, A. (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 1–116 k.k.*, Vol. I, Warszawa, 2016, p. 1025.

<sup>7</sup> The Supreme Court ruling of 19 March 2003, III KKN 207/01, LEX No. 78408.

(4) cannot be an object of crime under Article 306 CC, because it should not be equated with an identification mark within the meaning of this provision, as only the engine and chassis numbers are.<sup>8</sup>

The Supreme Court is right to adopt the stance that the change of genuine registration plates with unaltered content and their use as authentic ones when driving does not exhaust the constituent elements of crime under Article 270 § 1 CC<sup>9</sup> and those laid down in Article 306 CC.<sup>10</sup>

The above-presented different stances on liability for counterfeiting and altering registration plates, supported by more or less convincing arguments, leave no doubts that the legislator's intervention was necessary to standardise the legal basis and the scope of criminal liability for such conduct. The criminalisation of this conduct will make it possible to combat the increasingly common phenomenon of stealing fuel from petrol stations by drivers using false registration plates.

## TYPES OF CRIME

The content of Article 306c CC makes it possible to assume that it defines two types of crime regarding the falsification of registration plates, as indicated in the Introduction, namely: (1) counterfeiting or altering a motor vehicle registration plate to use it as an authentic one (§ 1); and (2) using a counterfeit or altered motor vehicle registration plate as an authentic one (§ 2).

Doubts concerning this interpretation of the provision may be raised due to the fact that their constituent elements are laid down in one editorial unit, i.e., in one article of the Act. This may suggest that it concerns a single offence that occurs in many types. However, considering that it consists of stealing a plate and counterfeiting or altering it, i.e., entirely different criminal conduct, it is reasonable to assume that Article 306c § 1 CC defines two different, separate types of crime.<sup>11</sup> The identity of the object of the prohibited act is an unconvincing argument for treating this provision as one defining a single offence. An error was made during the construction of Article 306c § 1 CC, because it contains two independent thoughts, and in accordance with the principles of legislation, two different types of conduct should be laid down in two separate articles. In accordance with § 55 (1) of the Appendix 'Principles of Legislative Technique' to the Regulation of the President of the Council of Ministers of 20 June 2002 concerning 'Principles of Legislative Technique',<sup>12</sup> each independent thought shall be edited in a separate article.

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<sup>8</sup> The Supreme Court judgment of 17 May 2000, V KKN 143/00, *Prokuratura i Prawo*, supplement, 2001, No. 1, item 5; the Supreme Court judgment of 18 May 2000, V KKN 80/00, LEX No. 5099; the Supreme Court judgment of 13 July 2000, V KKN 491/98, LEX No. 50962; the Supreme Court judgment of 6 May 2003, III KK 118/03, OSNwSK 2003, No. 1, item 907; Błachut, J., *Dokument...*, op. cit., p. 226.

<sup>9</sup> The Supreme Court judgment of 30 August 2000, V KKN 263/2000, LEX No. 50949.

<sup>10</sup> The Supreme Court judgment of 6 May 2003, III KK 118/03, *Prokuratura i Prawo*, supplement, 2003, No. 11, item 15.

<sup>11</sup> Oczkowski, T., in: Konarska-Wrzošek, V. (ed.), *Kodeks...*, op. cit., 2023, p. 1506.

<sup>12</sup> Journal of Laws of 2016, item 283.

The definition laid down in Article 306c § 2 CC is unclear regarding the characterisation of conduct involving the use of a motor vehicle registration plate that is not assigned to the vehicle on which it is placed, as well as the use of a counterfeit or altered motor vehicle registration plate as an authentic one. The question is whether they constitute the elements of separate types of crime or the form of, respectively, stealing a motor vehicle registration plate to permit this vehicle's participation in traffic within the territory of the Republic of Poland, or falsifying a registration plate. The doubt arises from the regulation of the conduct in a separate paragraph. Nevertheless, the first solution should be approved of, and the argument for this opinion is the fact that, in accordance with the principles of legislative technique, an article is divided into smaller editorial units, i.e., paragraphs in this case, when there are content-related links between sentences expressing independent thoughts, and the content of none of them is sufficiently important to express them in a separate article. Additionally, a thought expressed in a set of sentences shall be placed in paragraphs (Article 55 §§ 3 and 4 of the above-mentioned legislative technique).<sup>13</sup> There is no doubt that the conduct specified in Article 306c § 2 CC is not strictly related to that described in § 1. Taking the above into consideration, it is necessary to assume that there are two types of crime of falsifying a registration plate: (1) counterfeiting or altering a motor vehicle registration plate to use it as an authentic one (Article 306c § 1 CC); and (2) using a counterfeit or altered motor vehicle registration plate as an authentic one (Article 306c § 2 CC). The dual nature of the crime is determined by fact that the conduct involving use of a counterfeit or altered motor vehicle registration plate as an authentic one is placed in a separate paragraph. In this context, the opinion that the conduct specified in § 1 and § 2 of Article 306c CC constitutes separate offences cannot be approved of.<sup>14</sup>

## OBJECT OF PROTECTION

Article 306c is placed in Chapter XXXVI, entitled 'Offences against Economic Transactions and Property Interests in Civil Law Transactions', which indicates that the object of protection consists of the security of economic transactions and property interests in civil law transactions. This is the main individual object of protection under Article 306c CC. Additionally, it includes the reliability of registration plates, as well as the safety and order in public road traffic, in residential areas, and in traffic zones. It concerns trusting registration plates as a formal expression of a vehicle's admission to traffic. The argument for the safety of road traffic is the fact that only vehicles meeting specific technical requirements are registered and assigned legalised registration plates (Article 72(2) of the Act of 20 June 1997: Law on Road Traffic).<sup>15</sup> The registration of a vehicle confirms that it meets technical requirements. Providing

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<sup>13</sup> Przetok, M., *Struktura tekstu prawnego na przykładzie kodeksu karnego*, Gdańsk, 2015, p. 185.

<sup>14</sup> Oczkowski, T., in: Konarska-Wrzosek, V. (ed.), *Kodeks...*, op. cit., 2023, p. 1506; Kulik, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz aktualizowany*, LEX/el. 2023, theses 2 and 6 to Article 306c.

<sup>15</sup> Journal of Laws of 2023, item 1047, as amended, hereinafter 'LRT'.

a vehicle with falsified registration plates does not allow the assumption that the vehicle is constructed, equipped, and maintained in a manner that guarantees its use does not pose a threat to traffic safety. The protection of traffic order arises from the fact that a registration plate allows for the identification of vehicles participating in traffic. The limitation of this traffic to public roads, residential areas, and traffic zones is related to the scope of the road traffic law, which is in force on such roads; and in a wider scope, only when it is necessary to avoid threats to the safety of persons resulting from road signs and signals (argued based on Article 1 para. 1 (1) and Article 1 para. 32 LRT). The importance of registration plates is demonstrated by the introduction of their production control. Under Article 72a para. 1 LRT, the production of registration plates, including professional ones, and their duplicates, is a regulated activity and requires that each involved business be entered into the register of manufacturers of registration plates.

There is no justification for the views expressed in the literature indicating that the individual object of protection consists of 'the obligation to mark motor vehicles officially admitted to road traffic with the use of legal registration plates, i.e., the plates issued by a competent authority and assigned to a particular motor vehicle'<sup>16</sup> or 'the property interests of a potential purchaser of a vehicle and the security of economic transactions involving motor vehicles.'<sup>17</sup> It is also inaccurate to assume that the object of protection includes the authenticity and truthfulness of the registration plate content, and that the security of property interests in civil transactions is an indirect object of protection.<sup>18</sup> On the contrary, the title of the Chapter, which is unambiguous, indicates the object of protection. It is not understandable why economic transactions, in which entities using counterfeit or altered registration plates may participate, are omitted as an object of protection.

## CAUSATIVE ACTIVITY

The causative activity consists of counterfeiting or altering a motor vehicle registration plate to use it as an authentic one. The essence of this conduct is to create a pretence that a plate comes from a particular manufacturer.

## COUNTERFEITING

From a linguistic point of view, 'counterfeit' means 'to make a copy of something to use it illegally instead of the original'.<sup>19</sup> It involves making this copy in the form and content of a registration plate corresponding to one produced by an authorised

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<sup>16</sup> Oczkowski, T., in: Konarska-Wrzošek, V. (ed.), *Kodeks...*, op. cit., 2023, p. 1506.

<sup>17</sup> Kulik, M., in: Mozgawa, M. (ed.), *Kodeks...*, op. cit., LEX/el. 2023, thesis 1 to Article 306c.

<sup>18</sup> Bogucki, P., Oleżałek, M., *Kodeks karny. Komentarz do nowelizacji z 7.7.2022 r.*, Warszawa, 2023, p. 646.

<sup>19</sup> Zgólkowa, H. (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 29, Poznań, 2000, p. 409.

manufacturer. The essence of counterfeiting is embossing the registration number on the same or similar carrier, creating the pretence of authenticity. However, a counterfeit registration plate does not originate from the manufacturer who was supposed to produce it. The idea is to make a plate that appears to come from an authorised manufacturer, i.e., a fake or imitation of an authentic plate.

The method of its production does not matter. The method of counterfeiting, including the use of very simple or even primitive means that produce a very poor effect, is irrelevant to liability under Article 306c § 1 CC. It is not necessary for the perpetrator to achieve a striking resemblance that could mislead even an experienced person. It is not necessary for the counterfeit plate to be illusively similar to the original, and its identification to require specialised knowledge and tools. It is enough to show such similarity that an inexperienced person, seeing it under common circumstances, cannot immediately recognise it as a fake. What is important in the perpetrator's activity is that his intention is to make a registration plate that is to fulfil its functions.

The use of a copier does not eliminate the elements of counterfeiting a plate. A plate may be made using a 3D printer as a copy of an authentic registration plate. A copy of any motor vehicle registration plate may be made this way, for example, by taking photographs of registration plates of selected models of vehicles parked in front of shops or in any other public place. There are companies that produce 'collector's' registration plates. They are manufactured using original materials; as a rule, they do not have legalisation signs. Some people buy a custom-designed plate as a third one for the trunk, even though such plates are available officially.<sup>20</sup>

It may be helpful to identify a counterfeit registration plate if plate producers place a laser-made marking of the certificate number confirming that the registration plates or materials used for their production comply with the technical requirements laid down in the certificate held by the producer of plates without embossed numbers, if applicable, or a marking of the manufacturer's name and the number of the certificate held by the manufacturer of registration plates with embossed registration numbers or one embossing registration numbers (§ 28 subsection 4 (3) and (4) of the Regulation of the Minister of Infrastructure of 31 August 2022 concerning the registration and marking of vehicles, requirements for registration plates and templates of other documents related to vehicle registration).<sup>21</sup>

It is not possible to treat the placement of a plate with the inscription 'Wedding Couple' or 'Just Married' in the place of a registration plate on a vehicle driving a bride and groom as an offence of counterfeiting a registration plate, because such a plate is not counterfeit: its content differs significantly from that of authentic registration plates. As suggested in the literature, there is no need to refer to the custom-related counterotype.<sup>22</sup>

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<sup>20</sup> Brzeziński, M., 'Do więzienia za "lewe" tablice rejestracyjne – jest projekt ustawy', *Auto Świat*, 2022, <https://www.auto-swiat.pl/wiadomosci/aktualnosci/kara-wiezienia-za-niewlasciwe-tablice-rejestracyjne-jest-projekt-ustawy/8plvg00> [accessed on 3 January 2024].

<sup>21</sup> Journal of Laws of 2022, item 1847, hereinafter 'RRMV'.

<sup>22</sup> Behan, A., 'Prawnokarna ochrona tablic rejestracyjnych pojazdów mechanicznych na gruncie nowego art. 306c Kodeksu karnego', *Palestra*, 2023, No. 10.

## ALTERING

An altered registration plate is an authentic plate manufactured by an authorised producer, the content of which has been changed by an unauthorised person. These changes create the pretence that it comes from an authorised producer. Any element of the registration plate may be changed, e.g., the voivodeship distinguishing mark, the county distinguishing mark, the vehicle distinguishing mark, the historic vehicle symbol, the 'PL' sign, or a number. Altering may consist in the introduction of changes to the original plate by an unauthorised person, giving it content different from the original, e.g., by changing the digit 3 into 8. It is rightly indicated in the literature that altering may involve changing the legalised registration plate background colour from white to green, which is used for electric or hydrogen-fuelled vehicles<sup>23</sup> admitted to traffic in the so-called clean transport zones (low emission zones). These zones may be established to limit the negative effects of exhaust emissions on human health and the environment of a county, including roads administered by the authorities of a county, to which the entry of vehicles other than electric or hydrogen-fuelled ones is banned (Article 39(1)(1) and (2) of the Act of 11 January 2018 on Electromobility and Alternative Fuels).<sup>24</sup> The aim of the above-mentioned plate counterfeiting is to allow driving in the zone, as only vehicles with such plates are allowed to enter such zones, and they are exempt from parking fees in the paid parking zones or in the city centre paid parking zones (Article 13(3)(e) of the Act of 21 March 1985 on Public Roads).<sup>25</sup>

The alteration does not have to be permanent or irremovable. The durability or indelibility of changes depends solely on the method or technique used to alter a plate. The Supreme Court, *mutatis mutandis*, rightly noted that if altering registration plates in a non-permanent and easily removable way had been sufficient to mislead another person or to prevent the identification of a vehicle, the perpetrators understandably would have used just that method, and there was no reason why their activity should not be classified as alteration and therefore not subject to penalisation.<sup>26</sup>

## THE OBJECTIVE OF CAUSATIVE CONDUCT

To determine the occurrence of this crime, it is not sufficient to establish that a perpetrator has counterfeited or altered registration plates; it is also necessary to establish that it was done with the intention of using it as an authentic one (Article 306c § 1 CC) and, as far as its use is concerned, that a perpetrator has used it as an authentic one (Article 306c § 2 CC).

The element 'for the purpose of using it as an authentic one' is met only when the perpetrator's objective is to counterfeit or alter a registration plate to provide it for

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<sup>23</sup> *Ibidem*, p. 72.

<sup>24</sup> Journal of Laws of 2023, item 875, as amended.

<sup>25</sup> Journal of Laws of 2023, item 645, as amended.

<sup>26</sup> The Supreme Court ruling of 19 March 2003, III KKN 207/01, LEX No. 78408.



a vehicle that should have it. This can be done for oneself or another person. From the point of view of meeting the element 'for the purpose of using it as an authentic one', it is not important whether the perpetrator counterfeited it on his own and then used it. The perpetrator also achieves the aim when he uses a registration plate counterfeited by another person.<sup>27</sup> The perpetrator's conduct does not meet the elements of the crime if he counterfeits or alters a registration plate for a purpose different from the one indicated in Article 306c § 1 CC.

It is not the objective of a perpetrator who uses a set consisting of a 'leaf', an electromagnet, and a remote control, and installs the electromagnet behind the plate to hold the 'leaf' equipped with a magnet. The 'leaf' is used to hide the sign or signs of the vehicle registration number to prevent its identification if a speed camera takes a photograph of it. At the same time, if the police stop the vehicle, the remote control is used to turn off the electromagnet, which makes the 'leaf' fall off.<sup>28</sup>

The 'use', within the meaning of Article 306c § 2 CC, means supplying a vehicle with such a plate. The statute does not require the perpetrator to be also a counterfeiter. A perpetrator who uses a counterfeit plate after having counterfeited it commits an offence under Article 306c § 1 CC, because the offence of using it is a co-punished act as a consecutive one taking place after the former act. Another person using such a plate shall be liable for the offence under Article 306c § 2 CC.

## REGISTRATION PLATE

The object of the prohibited act is a motor vehicle registration plate that admits the vehicle to road traffic in the territory of the Republic of Poland. There is no legal act providing a definition of a registration plate. The requirements for registration plates are regulated in the Law on Road Traffic and in the provisions issued based on it, mainly in the Regulation concerning Registration and the Marking of Vehicles, Requirements for Registration Plates and Templates of Other Documents Related to Vehicle Registration (RRMV).

A registration plate, besides the registration certificate, is an element confirming the admission of a vehicle to road traffic, indicating that the vehicle has been built, equipped, and maintained to meet safety requirements.

Each vehicle shall be assigned one registration number (§ 27(1) RRMV).

This concerns every registration plate required to register a motor vehicle, regardless of its template and type. The legalised registration plates, depending on the template, include:

- (1) standard ones used to mark all vehicles except the ones that follow;
- (2) individual ones used to mark passenger cars;
- (3) historic ones used to mark historic vehicles;
- (4) temporary ones used to mark vehicles registered temporarily;

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<sup>27</sup> The Supreme Court judgment of 20 April 2005, III KK 190/04, *Prokuratura i Prawo*, supplement, 2005, No. 11, item 5.

<sup>28</sup> Behan, A., 'Prawnokarna ochrona tablic...', *op. cit.*, pp. 72–73.

- (5) diplomatic ones used to mark vehicles possessed by diplomatic missions, consular corps, special missions of foreign countries, international organisations, and their personnel (§ 24 RRMV).

As far as their size is concerned, there are:

- (1) car plates:
- (a) single-row and double-row ones to mark all types of vehicles except motorcycles, agricultural tractors, motor bicycles, and vehicles classified as 'other car-like' ones (categories: L6e and L7e);
  - (b) reduced size single-row ones to mark motor vehicles with a smaller construction element designed to fit a registration plate, except motorcycles, agricultural tractors, low-speed vehicles being part of tourist trains, and vehicles classified as 'other car-like' ones;
- (2) motorcycle plates: to mark motorcycles, tractors, agricultural tractors, and vehicles classified as 'other car-like' ones (categories: L6e and L7e);
- (3) motor bicycle (double-row) plates - to mark motor bicycles (§ 26(1) RRMV).

There are also:

- (1) additional registration plates for the purpose of marking a trunk covering the rear plate of a vehicle (Article 73 para. 1c (2) LRT and § 8 RRMV);
- (2) professional registration plates (trade licence plates) for vehicles used for test driving within the activities conducted by an entrepreneur based in the territory of the Republic of Poland. In the case of an entrepreneur based abroad, a branch involved in the production, distribution (selling within the trade of vehicles), or testing vehicles that have not been registered in the territory of the Republic of Poland or abroad before, or used by technical services involved in type-approval of vehicles and their equipment, or a research unit of the producer of a vehicle, a piece of equipment, or parts (Article 80s para. 1 and 2 LRT). Depending on their size, these plates are divided into the same categories as indicated above (§ 11 of the Regulation of the Minister of Infrastructure of 12 March 2019 concerning Professional Registration of Vehicles and the Markings Used, and Fees for Professional Registration of Vehicles);<sup>29</sup>
- (3) registration plates for vehicles of the Armed Forces of the Republic of Poland;
- (4) registration plates for vehicles of foreign armed forces staying in the territory of the Republic of Poland (§ 1 of the Regulation of the Minister of National Defence of 30 August 2023 concerning Registration of Vehicles of the Armed Forces of the Republic of Poland and Vehicles of Foreign Armed Forces Staying in the Territory of the Republic of Poland Based on International Agreements);<sup>30</sup>
- (5) registration plates for vehicles of the Military Counterintelligence Service and the Military Intelligence Service (§ 1 of the Regulation of the Minister of National Defence of 31 August 2023 concerning Registration of Vehicles of the Military Counterintelligence Service and the Military Intelligence Service);<sup>31</sup>

<sup>29</sup> Journal of Laws of 2023, item 2616, hereinafter 'RPRV'.

<sup>30</sup> Journal of Laws of 2023, item 1776, hereinafter 'RRAFV'.

<sup>31</sup> Journal of Laws of 2023, item 1777, hereinafter 'RRMCSV'.

- (6) registration plates for vehicles of the State Protection Service, the Police, the Internal Security Agency, the Intelligence Agency, the Central Anti-Corruption Bureau, the Border Guard, and the National Fiscal Administration used by the Customs-Fiscal Service (§ 1 of the Regulation of the Minister of the Interior and Administration of 1 September 2023 concerning Registration of Vehicles of the State Protection Service, the Police, the Internal Security Agency, the Intelligence Agency, the Central Anti-Corruption Bureau, the Border Guard, and the National Fiscal Administration Used by the Customs-Fiscal Service).<sup>32</sup>

Detailed technical requirements for registration plates, the scope and method of testing them, as well as registration plates templates, signs, symbols placed on them, and their descriptions are specified in Annex 12 to RRMV. For example, the plate should be made of 1-mm-thick aluminium tape resistant to weather conditions and those occurring during standard vehicle use. The front surface of the plate should be covered in white, yellow, green, or blue reflective material permanently bound with the base surface, resistant to impacts and bending, and having flexible, as well as the required reflective and colour properties (para. 2 (1) of the above-quoted Annex). Car plates are made in sets, while motorcycle, motor bicycle, and trailer plates are made as singles. An additional registration plate with the same registration number as the registration of a motor vehicle is made to mark a trunk covering the rear plate of that vehicle. Registration plates for agricultural tractors can be made as singles. Motorcycle and motor bicycle plates may be made in sets to mark: (1) three-wheel motorcycles of the L5e category and three-wheel motor bicycles of the L2e category; (2) four-wheel vehicles of the L7e category and four-wheel light vehicles of the L6e category (para. 2 (4) of the above-quoted Annex). Electric and hydrogen-fuelled vehicles shall have registration plates indicating the fuel used (Article 71 para. 2a LRT).

A registration plate has an embossed registration number, which is black on a white background, or black on a green background in the case of an electric or hydrogen-fuelled vehicle, consisting of the voivodeship distinguishing mark, the county distinguishing mark, and the vehicle distinguishing mark. The number on the registration plate consists of letters and digits: the voivodeship, the county, and the vehicle distinguishing marks (a vehicle registration plate or a motorcycle registration plate); the voivodeship and vehicle distinguishing marks (standard registration plate that is a single-row vehicle registration one); the voivodeship and the individual vehicle distinguishing marks (an individual registration plate); the voivodeship, the county, and the vehicle distinguishing marks and the symbol of a historic vehicle (a historic registration plate); the voivodeship and the vehicle distinguishing marks (a temporary plate); the voivodeship and the vehicle distinguishing marks (a diplomatic registration plate) (§ 27(1)–(4), (9), and (10) RRMV). In addition, the symbol of the European Union composed of twelve yellow five-pointed stars arranged in a circle on a blue background and white PL letters are placed on the left. This requirement is not applicable to diplomatic registration plates. There is a legalisation sign in the place designated for this purpose (§ 28(1)

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<sup>32</sup> Journal of Laws of 2023, item 1778, hereinafter 'RRPSV'.

and (2) RRMV). With the exception of motor bicycle and temporary plates, registration plates also have the following laser-applied components: (1) a graphic of the eagle contour, which is Poland's emblem; (2) the number of the certificate held by the producer of registration plates without the embossed registration number, if applicable; (3) the designation of the producer's name and the number of the certificate held by the producer of registration plates with an embossed registration number or the one embossing registration numbers; (4) a graphic of a car symbol on a historic registration plate in the case of reduced-size historic single-row registration plates; (5) a graphic of the symbol of a motorcycle on the historic motorcycle and motor bicycle registration plates (§ 28(4) and (6) RRMV). Registration numbers are composed of the following 25 letters: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y and Z, and digits 0–9. For example, individual letters and digits of the registration number on standard car registration plates mean: the first letter – a voivodeship distinguishing mark; the second letter or the second and third letters – a county distinguishing mark; the following digits or digits and a letter or letters – a vehicle distinguishing mark created successively in a specific arrangement (§ 30(1) and (2) RRMV).

A professional registration plate has a registration number composed of letters and digits or a digit. The green professional registration number is embossed on a white background and contains a voivodeship distinguishing mark, a county distinguishing mark, and a distinguishing mark assigned for vehicles in a decision on the professional registration of vehicles. This includes a letter P as the third successive permanent sign, constituting a distinguishing mark of a plate to be used for the professional registration of vehicles. Additionally, the symbol of the European Union, composed of twelve yellow five-pointed stars arranged in a circle on a blue background, and white PL letters are placed on the left side of a professional registration plate. A *starosta* (mayor) places a legalisation sign (legalisation sticker) in the designated place. Professional registration numbers are composed of letters selected from the following 25: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, and Z, and digits 0–9. Particular letters and digits of a professional registration number have the following functions: the first letter is a voivodeship distinguishing mark, two digits from 0 to 9 constitute a county distinguishing mark, and the next five signs constitute a distinguishing mark assigned to a vehicle in a decision on professional registration of vehicles. The templates of these registration plates are specified in Annex 9 to the Regulation (§ 12, § 13(1) and (2), § 14(1) and (2), and § 15 RRMV).

Registration plates for vehicles of the Armed Forces contain a letter U as a distinguishing mark of the Armed Forces and is placed first; one of the letters: A, B, C, D, E, F, G, H, I, J, K, L, M, N, P, R, S, T, V, W, X, Y, Z and a sequence of digits from 00001 to 99999 (§ 6(1) and (3) RRMV). The template of these registration plates, and the way of placing symbols and a legalisation sign on them, are the same as in the case of civilian vehicles (§ 1(1) and (6) RRMV).

Registration plates for vehicles of the Military Counterintelligence Service and the Military Intelligence Service are composed of the letters HM, constituting a distinguishing mark of the services, and one letter from the following 25-letter

set: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, Z, and a distinguishing mark of a vehicle or a distinguishing mark of a voivodeship, a county, and a vehicle (§ 6(1) and (2) RRMV).

Registration plates for vehicles of the State Security Service, Police, Internal Security Agency, Intelligence Agency, Central Anti-Corruption Bureau, Border Guard, and National Fiscal Administration used by the Customs-Fiscal Service contain a number composed of a distinguishing mark of the service and one letter from the 25-letter set: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, Z, and a distinguishing mark of a vehicle or distinguishing marks of a voivodeship, a county, and a vehicle. The service distinguishing marks are: (1) HB for the State Security Service; (2) HP for the Police; (3) HK for the Internal Security Agency and the Intelligence Agency; and (4) HC for the Customs-Fiscal Service. Registration plates with voivodeship and county distinguishing marks are not used to mark vehicles of the state services (§ 5(1)–(3) and § 6 RRMV).

## VEHICLES ASSIGNED REGISTRATION PLATES

Both § 1 and § 2 of Article 306c CC concern registration plates of a motor vehicle. In accordance with Article 71 para. 1 and 2 LRT, a motor vehicle, an agricultural tractor, a low-speed vehicle in a tourist train, a motor bicycle, and a trailer shall be subject to registration, and therefore should be supplied with legalised registration plate(s).

## LEGALISED REGISTRATION PLATE

In accordance with Article 71 para. 1 LRT, the admission of a vehicle to road traffic requires that it should have legalised registration plate(s). According to § 18(3) RRMV, a legalisation sign placed in the designated spot confirms the plate legalisation (§ 2 Regulation of the Minister of Transport, Construction and Maritime Economy of 13 April 2012 concerning the mode of Legalising Registration Plates, Technical Requirements, and Templates of Legalisation Signs).<sup>33</sup> The designated place for the legalisation sign on the registration plate, except for a temporary plate, is indicated using laser technique (§ 28(3) and (5) RRMV). Legalisation signs differ depending on the type of plate. These are stickers used to legalise: (1) standard, individual, historic, and diplomatic registration plates; (2) registration plates of electric vehicles, motor bicycles with an electric engine, or hydrogen-fuelled vehicles; (3) temporary registration plates (§ 3(1) RLRP). Templates of legalisation signs and their specifications are provided in the Annex ‘Templates of Verification Signs’ to RLRP. A sticker is made of special self-adhesive multi-layer foil, which deforms and the background is destroyed when someone tries to remove it. The same happens if there is an attempt to remove it at an increased or decreased temperature. The dashed line in the drawing indicates the area of the top protective layer of the sticker, which

<sup>33</sup> Journal of Laws of 2021, item 100, as amended, hereinafter ‘RLRP’.

is made of transparent acrylic foil (para. 1.1 of the Annex). The specifications of legalisation templates differ, and the types are as follows: a template of a legalisation sticker used to legalise registration plates of electric vehicles and motor bicycles with an electric engine (Fig. 1a), a template of a legalisation sticker used to legalise registration plates of hydrogen-fuelled vehicles (Fig. 1b), and a template of a sticker used on temporary plates (Fig. 1c). Legalisation of registration plates is accomplished when an authorised body places a legalisation sticker on them (Article 75b LRT).

The conditions of production and the detailed method of distribution of registration plates and legalisation signs, as well as the method of keeping records and materials of particular importance for the production of registration plates, are determined in the Regulation of the Minister of Transport, Construction and Maritime Economy of 2 May 2012 concerning the Conditions of Production and Methods of Distribution of Registration Plates and Legalisation Signs.<sup>34</sup> In the case of professional registration plates, these are regulated by the Regulation of the Minister of Infrastructure of 12 March 2019 concerning the Conditions of Production and the Method of Distribution of Professional Registration Plates and Legalisation Signs, and the Mode of Legalising Professional Registration Plates.<sup>35</sup>

Since Article 306c §§ 1 and 2 CC applies to legalised plates, counterfeiting and altering registration plates without legalisation signs and historic ones that do not identify a vehicle and do not admit it to road traffic (i.e., are collector's items or mementos) do not match the constituent elements of this crime. Moreover, such plates are not ones that 'allow for admission to traffic'.<sup>36</sup>

Registration plates shall be placed at the front and rear of a vehicle in the designated spots, except for trailers, agricultural tractors, motorcycles, and motor bicycles, on which a plate is placed only at the rear (§ 33(1) RRMV).

## MOTOR VEHICLE

Article 306c §§ 1 and 2 CC applies to a registration plate of a motor vehicle. Since the provision concerns registration plates, which are required for road traffic vehicles, it also applies to motor vehicles in this traffic zone.

The Supreme Court rightly stated: 'Motor vehicles should mean vehicles with an engine that moves them (cars, agricultural machines, motorcycles, railway engines, airplanes, helicopters, water vessels, and others), as well as electric traction powered rail vehicles (trams and trolleybuses).'<sup>37</sup> A motor vehicle is a vehicle set in motion by

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<sup>34</sup> Journal of Laws of 2022, item 1885, as amended.

<sup>35</sup> Journal of Laws of 2019, item 547.

<sup>36</sup> Behan, A., 'Prawnokarna ochrona tablic...', op. cit., p. 69.

<sup>37</sup> The Supreme Court judgment of 25 October 2007, III KK 270/07, *Państwo i Prawo*, 2008, No. 5, item 2, with glosses of approval by W. Kotowski, see: Kotowski, W., 'Glosa do wyroku SN z dnia 25 października 2007 r., III KK 270/07', *Paragraf na Drodze*, 2008, No. 3, pp. 5–10, and R.A. Stefański, see Stefański, R.A., 'Glosa do wyroku SN z dnia 25 października 2007 r., III KK 270/07', *Prokuratura i Prawo*, 2008, No. 5, pp. 165–172; Łuczarski, K., Muszyńska, A., 'Glosa do wyroku SN z dnia 25 października 2007 r., III KK 270/07', *Przegląd Sądowy*, 2009, No. 6, pp. 147–157; the Supreme Court judgment of 4 February 1993, III KRn 254/92, *OSP* 1993, No. 10, item 198,

an engine mounted on it. The Court also rightly stated: 'A motor bicycle intended to move in road traffic solely powered by an engine is a motor vehicle within the meaning of the provisions of the Criminal Code and Misdemeanour Code, regardless of its technical parameters.'<sup>38</sup>

As a result of the definition of a motor vehicle, Article 306c CC does not apply to trailers, which are not vehicles that should have registration plates (Article 71 para. 1 and 2 LRT). A trailer is a vehicle without an engine and is to be connected to another vehicle (Article 2 para. 50 LRT).

An electric scooter is also a motor vehicle, i.e., it is an electrically powered, two-axle vehicle with a steering wheel, without a seat or pedals, designed to be driven solely by a user who stands on it (Article 2 para. 47b LRT); and so is a personal mobility device (except an electric scooter) – an electrically powered vehicle without a seat and pedals designed solely for a user standing on it (Article 2 para. 47c LRT). The Supreme Court was wrong to state that: 'An electric scooter with an engine having the power similar to an engine of an electrically assisted bicycle, which retains all the standard characteristic features of the construction making its use as an ordinary scooter possible, i.e., enabling a user to move by pushing his foot against the ground, is not a motor vehicle within the meaning of the provisions of the Criminal Code.'<sup>39</sup> It is not appropriate for the Court to refer by analogy to a bicycle with an auxiliary engine with a cylinder capacity not exceeding 50 cm<sup>3</sup>, which retains all the standard constructional characteristic features that make it possible to use it as an ordinary bicycle and which is not regarded as a motor vehicle.<sup>40</sup>

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with a gloss of approval by R.A. Stefański, see: Stefański, R.A., 'Glosa do wyroku SN z dnia 4 lutego 1993 r., III KRN 254/92', *Orzecznictwo Sądów Polskich*, 1993, No. 10, pp. 462–465.

<sup>38</sup> The Supreme Court resolution (7) of 12 May 1993, I KZP 9/93, OSNKW 1993, No. 5–6, item 27 with approving comments by R. A. Stefański, see: Stefański, R.A., 'Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego materialnego za lata 1991–1993', *Wojskowy Przegląd Prawniczy*, 1994, No. 3–4, pp. 91–92; the Supreme Court resolution of 20 July 1976, VII KZP 10/76, OSNKW 1976, No. 9, item 109; the Supreme Court resolution of 29 December 1976, VII KZP 27/76, OSNKW 1977, No. 1, item 4; the Supreme Court resolution of 14 November 1981, VI KZP 16/81, OSNKW 1981, No. 12, item 72; the Supreme Court judgment of 22 July 1993, II KRN 18/93, LEX No. 1671633; the Supreme Court judgment of 4 February 1993, III KRN 254/92, OSP 1993, No. 10, item 198 with an approving gloss by R.A. Stefański, see: Stefański, R.A., 'Glosa do wyroku SN z dnia 4 lutego 1993 r....', *op. cit.*, pp. 462–465; the Supreme Court judgment of 26 June 2007, II KK 97/07, OSNwSK 2007, No. 1, item 1423; the Supreme Court judgment of 26 June 2007, II KK 98/07, LEX No. 280737; the Supreme Court judgment of 25 October 2007, III KK 270/07, OSNwSK 2007, No. 1, item 2320; the Supreme Court judgment of 12 January 2011, IV KK 341/10, LEX No. 688704; the Supreme Court ruling of 18 June 2014, III KK 28/14, LEX No. 1483958; the Supreme Court judgment of 4 November 2016, VKK 259/16, LEX No. 2147289; the Supreme Court ruling of 26 May 2020, V KK 54/20, LEX No. 3275603.

<sup>39</sup> The Supreme Court judgment of 22 February 2023, III KK 13/22, OSNK 2023, No. 11–12, item 49.

<sup>40</sup> The Supreme Court judgment of 4 February 1993, III KRN 254/92, OSP 1993, No. 10, item 198; the Supreme Court judgment of 26 June 2007, II KK 97/07, LEX No. 450351; the Supreme Court judgment of 26 June 2007, II KK 98/07, OSNwSK 2007, No. 1, item 1423; the Supreme Court judgment of 25 October 2007, III KK 270/07, OSNwSK 2007, No. 1, item 2320.

## OTHER ISSUES

Anyone who counterfeits or alters registration plates in order to use them as authentic motor vehicle registration plates (§ 1) or uses such plates as authentic ones (§ 2) is committing the crime of counterfeiting registration plates under Article 306c CC.

Counterfeiting or altering a motor vehicle registration plate must be committed with the purpose of using it as an authentic one, which means that the offence under Article 306c § 1 CC may only be committed with direct intent (*cum dolo directo colorato*). There is no such requirement in the case of using a counterfeit or altered motor vehicle registration plate as an authentic one (Article 306c § 2 CC). It is an intentional crime that can be committed with direct or oblique intent. In the latter case, the person using such a plate must be aware that the plate is not authentic and must accept this fact.

## CONCLUSIONS

1. The conduct specified in Article 306c CC, consisting of counterfeiting a registration plate, is classified as two offences: first, counterfeiting or altering a motor vehicle registration plate in order to use it as an authentic one (§ 1); and second, using a counterfeit or altered motor vehicle registration plate as an authentic one (§ 2). The argument for distinguishing the two types is the fact that they are subject to regulation in separate paragraphs.
2. The criminalisation of the conduct fills a legal gap because there was no agreement in the existing legislation regarding the recognition of a plate as a document within the meaning of Article 270 § 1 CC or as an identification sign; therefore, there was no constituent element of crime under Article 306 CC, which resulted in impunity. This will allow for more effective combating of the increasingly common phenomenon of stealing fuel from petrol stations by drivers of vehicles with fake registration plates.
3. The security of economic transactions and property interests in civil law transactions constitutes the main object of protection under Article 306c CC; the reliability of registration plates and the safety and order on public roads, in residential areas, and in traffic zones are additional ones.
4. The causative conduct consists of counterfeiting or altering a motor vehicle registration plate in order to use it as an authentic one. Making a pretence that a plate is authentic and comes from a particular producer is the essence of the conduct.
5. Every plate of a motor vehicle may be an object of the offence. A registration plate, besides a registration certificate, is an element confirming the admission of a vehicle to traffic and that a vehicle is constructed, equipped, and maintained in a way that meets safety requirements.



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