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## **Comparative law analysis of the regulation of stamp forgery**

### **Introduction**

The aim of our study is to analyse the criminal law regulation of stamp counterfeiting in a comparative legal approach. The essay is structured in five parts, in the first part we review the stages of the legal history of stamp forgery, in the following part we analyse the effective regulation of stamp forgery in the Criminal Code of Hungary. In the third part, among foreign regulatory models, we focus on the German-language areas of law, as they had the greatest impact on the development of Hungarian criminal law. The fourth part analyses the extent of the crime of stamp forgery. The results of the comparative analysis are summarized in the final section. The focus of our research method is the processing of the legal literature and the analysis of legal regulations.

### **Legal historical aspects of stamp forgery**

Most people when they hear the word stamp, think of a postage stamp, which is an instrument that contains a picture or a pattern and sticks to a letter or a package and verifies the fees of the postage. In addition to its primary function, the stamp also informs about the cultural and ideological situation, history, and everyday life of the issuing state with its pictorial or textual content. Furthermore, it often represents a high aesthetic and professional value. Stamps, as works of art, are distributed in several forms, their diversity and expressive value are incalculable.

The first postage stamp appeared in England. In 1837, at the suggestion of Rowland Hill, the English post office accepted and in 1840 issued the

world's first postage stamp, the so-called Penny Black. The appearance of postage stamps brought a positive change, simplified postal management, and made it more cost-effective.<sup>1</sup>

In Hungary, stamps first appeared in the middle of the 19th century. During the civil revolution and War of Independence of 1848, painter Mór Than designed the first Hungarian postage stamp. However, its publication was prevented by the fall of the war of independence, so it was no longer possible to print it.<sup>2</sup> After the defeat of the freedom war, the Hungarian post office lost its independence. In 1850, Ludwig von Bruck, minister responsible for postal affairs, ordered the use of postage stamps in all countries of the Austrian Empire.<sup>3</sup>

In 1871, the first stamps were put into circulation, which was made by lithography at the State Printing Office. Later, they began the production of copper-printed stamps and eventually with intaglio and offset technology.<sup>4</sup>

Criminals recognized the possibilities hidden in stamps relatively early, so the history of stamp forgery is almost as old as the appearance of the stamp. Stamps were forged in Spain as early as 1856 to defraud the post office.<sup>5</sup>

The crime of stamp forgery was first regulated in Hungary by the first adopted Criminal Code, Article V of 1878 (also known as the Csemegi Code). The Csemegi Code regulated the offence of stamp forgery in Part Two, Chapter XXXIV, § 412. The legal literature of the time and the legislator considered forgery of stamps to be a crime related offence to forgery

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<sup>1</sup>Prokai, Piroska: A bélyeg rövid története. [The short history of the stamp]. Papíripár. Budapest, 2011. 14.

<sup>2</sup>Nikodém, Gabriella –Szabó, Jenő: A magyar bélyeg története. [The history of the Hungarian stamp]. Kossuth Kiadó Budapest. 2010. 21.

<sup>3</sup>Horváth, Károly: A magyar bélyeg története, a kezdetektől a 19. század végéig. [The history of Hungarian stamp from the beginning til the 19<sup>th</sup> century]. Pallas Stúdió. Budapest, 2011.

<sup>4</sup>Prokai, P. (2011): Ibid.

<sup>5</sup>Lőránt, Mihály: A bélyeg. [The stamp]. Az Athenaeum irodalmi és nyomdai részvénytársulat kiadása. Budapest. 1925. 77.

of documents, which is why the Code included the crimes next to each other.<sup>6</sup>

According to the law, the protected legal interest of stamp forgery is the undisturbed legal and commercial circulation of stamps, postage stamps or other stamps issued by the state to ensure tax, and trust in stamps.<sup>7</sup>

The following were classified as stamps according to law:

- stamps and postage stamps issued by the state;
- state or official markers are used for verifying the properties and components of metals.

The Code Csemegi punished imitation, forgery, and the distribution of counterfeit or forged stamps as criminal conducts. The crime was subsidiary in nature, i.e., it was only possible to commit it insofar as the act did not result in a more serious criminal offense. It was only a misdemeanor at the time, and it was punishable by imprisonment not exceeding one year.

Later, the provisions of Code Csemegi regarding stamp forgery were completely repealed by Act XXXVII of 1897. Section 1 of this new act regulated the crime of stamp forgery in much more detail.

It was a novelty compared to the regulations of Code Csemegi that it already granted protection to foreign stamps, on the condition that there must be reciprocity between Hungary and the other state. According to Angyal<sup>8</sup> the perpetration objects of the crime of stamp forgery were the followings:

- stamps (so-called revenue stamps);

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<sup>6</sup>Irk, Albert: A magyar anyagi büntetőjog 2. kiadás. [The Hungarian substantive criminal law. 2<sup>nd</sup> edition]. Dunántúl Pécsi Egyetemi Könyvkiadó és Nyomda Rt. Pécs, 1933. 486.

<sup>7</sup>Irk, A. (1933) Ibid.

<sup>8</sup>Angyal, Pál: A magyar büntetőjog kézikönyve. 5. kötet. Okirathamisítás, bélyeghamisítás, védjegybitorlás, csalárd és vétkes bukás. [The handbook of Hungarian Criminal Law. Volume 5. Document forgery, stamp forgery, trademark infringement, fraudulent and sinful fall]. Athenaeum irodalmi és nyomdai Rt, Budapest, 1929. 126.

- postage stamps that were issued by the Hungarian Royal Post Office
- official stamps used for excise purposes.
- official seals used to verify the volume capacity of barrels;
- state seals used for verifying the properties and components of metals These were separately supplemented by two other acts;
- the test stamps applied to weapons (on the basis of Section 4 of Act XXXIV of 1891 on the mandatory examination of small arms);
- the tax stamps (on the basis of Section 20 of the Act XIX of 1921 on the cigarillo wrapper and cigarillo paper tax).
- The Act included the following criminal conducts:
  - imitation or forgery of stamps;
  - use and distribution of counterfeit or forged stamps.

Anyone who distributed counterfeit stamps for stamp collectors could only be held liable for infringement.<sup>9</sup> According to the judicial practice of the time, if someone sold a copper ring with an imitation gold metal mark as a gold ring, the person was not responsible for stamp forgery, but for fraud.<sup>10</sup>

The act contained another basic case, according to which the reuse of a used stamp was also punishable.

Both basic cases were regulated as misdemeanors, in the first case they were punishable by imprisonment of up to two years, in the second case by up to one year and a fine.

Anyone could be the subject of a crime. According to the Curia, even in the case of committing the crime by a public official did not influence the classification of the statutory provision.<sup>11</sup>

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<sup>9</sup>1897. évi XXXVII. tc. 2. §

<sup>10</sup>Angyal, Pál: *Ibidem* cites: Curia. Büntetőjogi döntvénytár 17. szám. [Kúria, Criminal law decision archive no. 17.]. 1929. 77.

<sup>11</sup>Angyal, P. (1929): *Ibid.*

In the 1920s, postage and revenue stamps were forged in large quantities, which was often committed by printers, and a single criminal organization was able to cause damage to the state of millions of crowns.<sup>12</sup>

The law created before the turn of the century was in effect for more than thirty years, which was replaced by Act XXI of 1932 on the Protection of Stamps and the Punishment of Illegal Postal Delivery. It was probably due to the long existence of the act that even in 1934, law enforcement authorities filed a report based on the 1897 act.<sup>13</sup>

The Act XXI of 1932 regulated the offense of stamp forgery in detail. According to this Act, the stamp of the Hungarian state, legal authority, city or municipality, or any other Hungarian public institution authorized by law to issue stamps, as well as the international postal reply to coupon and confirmation stamp, received criminal law protection. Foreign stamps were still only protected under criminal law in case of reciprocity.

The crime had two basic cases in the act:

- the offense of stamp forgery; and
- the misdemeanor of fraudulent use of the stamp.
- The first basic case was punishable by up to two years in jail, loss of office, and suspension of political rights and was committed by those who:
  - imitated or forged a stamp with the aim of utilization or distribution;
  - illegally produced or used a stamp, either as an imitation or not as an imitation;
  - or knowingly used or distributed imitated, forged, produced, or used stamps in a manner contrary to the points above.<sup>14</sup>

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<sup>12</sup> 8 Órai Újság (1922): No. 06. 7.

<sup>13</sup> See more in: Jogtudományi Közlöny. 1934/28. 167.

<sup>14</sup> Act XXI of 1932. 3. §

Fraudulent use of the stamp was deemed to be the case, and a person who carried out any of the following was punishable by imprisonment not exceeding one year, loss of office, and suspension of political rights:

- in order to use or distribute genuine stamp (Section 3, para. 2), removes the sign of devaluing, hides the traces of previous devaluing with a new devaluing sign, or covers the stamp with a material suitable for removing the devaluing;
- in the interests of stamp collecting, applies an illegal imprint on a stamp, or otherwise changes its original design (printing, punching, etc.);
- or a stamp changed in a manner inconsistent with the points above is used for any other purpose, or a stamp that has already been used for fee collection, but which has not been marked with the devalued mark by mistake, is knowingly used or put into circulation again for payment of a fee;
- uses a franking machine impression without paying the fee, changes or causes to be changed on a postal franking machine, its official setting or its marking (stamping) to the detriment of the state, or violates the regulations relating to the production, keeping in stock, distribution, making available to others or acquiring the postal franking machine, which are intended to ensure the protection of the state against damage.”<sup>15</sup>

The law specifically emphasized in both basic cases that the attempt is also punishable, which indicates legislative overzealousness. According to the Act, anyone who imitated a stamp not for use or distribution committed an offence.

Overall, it can be said about the text of the law that it was too casuistic, and this probably contributed to the fact that the law practitioners preferred the previous Act.

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<sup>15</sup>1932. évi XXI. tc. 4. §

The specific part of Code Csemegi was replaced by Act V of 1961, the Criminal Code of the Hungarian People's Republic. This Act abolished the separate legal regulation of stamp forgery. The new socialist criminal code classified the delict as a crime against the national economy. The legislator recognized the related nature of the crimes of stamp forgery and counterfeiting currency, so for the first time they were regulated in one chapter.<sup>16</sup>

The text of the Criminal Code of 1961 was no longer as extensive as its predecessor, yet it was differently regulated.

The Act contained two basic cases in the form of a felony:

- any person who has imitated or falsified a stamp with the purpose of distributing or using it, or who acquires a stamp imitated or forged by someone else for the same purpose;
- any person who distributed or used a counterfeit, forged or already used stamp -as genuine or unused.<sup>17</sup>

As a result of the tightening, both basic cases were already punishable by imprisonment not exceeding three years. In the first basic case, the legislator also evaluated the intent, so it could only be realized with a direct intent (*dolus directus*), the second also with a conditional intent (*dolus eventualis*).<sup>18</sup>

It was a novelty in the crime of stamp forgery that two aggravated cases appeared. This was considered a criminal offence when the stamp forgery was committed in in criminal association with accomplices, or when it was committed on a large quantity or value of stamps. Furthermore, the Act also provided a privileged case of the statutory provision which was considered

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<sup>16</sup> Bodgál, Zoltán: Pénz- és bélyeghamisítás. [Counterfeiting money and stamp forgery]. In: Horváth, T. (szerk.): Magyar Büntetőjog II. Különös rész. [Hungarian Criminal law II. Special Part]. BM Tanulmányi és Propaganda Csoportfőnökség. 1973/3. 439.

<sup>17</sup> Act V of 1961. 245 §. (1)-(2).

<sup>18</sup> Földvári, József: Büntetőjog Különös rész. kézirat. [Criminal Law Special part]. Tankönyvkiadó. Budapest, 1972. 298.

a crime when the quantity or value of the stamps used or distributed was not significant.<sup>19</sup>

The Act stated that foreign stamps receive the same protection as domestic ones and no longer included reciprocity as a condition.<sup>20</sup>

Act V of 1961 was replaced by Act IV of 1978 (former Criminal Code), which was enacted on July 1, 1979, by Legislative Decree No. 5 of 1979. The text of the law on stamp forgery was further simplified in its gazette state. The definition of the stamp was defined by the previously mentioned Legislative Decree. According to this, it is considered a stamp in the sense of criminal law:

- a stamp suitable for a postal prepayment, a postal franking machine impression, as well as a postal overprint, inscription or indication related to fees,
- a stamp issued by the authority to fulfil payment obligation.
- any official seal used for excise purposes, official markers used for verifying the properties and components of metals, as well as any official seal used to verify the quality, quantity, and other key characteristics of products,
- stamps and seals used by the metrological authority to verify the certification and testing of measuring equipment and the volume capacity of barrels.<sup>21</sup>

The first two objects of the crime were protected under criminal law even if they had not yet been distributed or had already been withdrawn from the market.

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<sup>19</sup>Molnár, L.: A népgazdaság elleni bűntettek II. cím. [The crimes against the national economy title II.]. In: Halász, S. (Eds.): A büntető törvénykönyv kommentárja. 2. kötet. [The commentary of the criminal code volume 2.] Közgazdasági és Jogi Könyvkiadó. Budapest, 1968. 1132.

<sup>20</sup>Földvári, J. (1972), *Ibid.* 298

<sup>21</sup>Legislative Decree No. 5 of 1979 § 25

## **The current regulation (Act C of 2012)**

Our fourth written Criminal Code entered into force on July 1, 2013. The new Criminal Code regulates the statutory provision about stamp forgery in Chapter XXXVIII, under the heading of Criminal Offenses Relating to Counterfeiting Currencies and Philatelic Forgeries.

The protected legal interest of the crime is the security of currency and stamp circulation, the protection of trust in the public authenticity of the stamp as an article of value.<sup>22</sup>

The object of the crime is the stamp. The criminal law definition of the stamp is defined in the Criminal Code. These are the following:

- The definition of a postage stamp is defined in Act CLIX of 2012 on Postal Services. It is defined by Section 2 point 27. „*Postage stamp: a stamp issued by the universal postal service provider, which can be used for the prepayment for postal items, with a marking referring to its face value, and which contains the inscription "Hungary" or its "equivalent" in a foreign language*”. In the case of a postage stamp, it is irrelevant whether it was put into circulation or withdrawn from circulation.<sup>23</sup>
- The payment of the fee can be confirmed not only by a stamp, but also by a mark suitable for prepayment for the postal service, an impression of the franking machine, a postal overprint or mark related to the fee, and the international reply coupon. These can only be considered as an object of the crime if the prepayment is evident from them.
- The stamp issued by the authority to fulfil the payment obligation is also considered an object or product of a crime, regardless of

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<sup>22</sup>Molnár, G. M.: Pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Belovics, E. (Eds.) (2016): Büntetőjog II. Különös rész. ötödik hatályosított kiadás. [Criminal law II. Special part. 5<sup>th</sup> actualized edition]. Hvg-orac Lap- és Könyvkiadó. Budapest, 2016. 739.

<sup>23</sup>Molnár, G. M. (2016): Ibid. 739

whether it has not yet been put into circulation or has already been withdrawn from circulation. Such a stamp is protected under criminal law if the state is required by law to redeem or replace it. This includes, for example, stamp duties, the summary rules of which are provided in NGM Decree No. 32/2014 (X. 21.) on the production, circulation, and distribution of stamp duties. For the payment of administrative and court service fees to be paid with stamp duties, as well as other obligations, stamp duties with denominations of HUF 100, 200, 500, 1,000, 2,000, 5,000 and 10,000 HUF can be issued.

- Official markers used for verifying the properties and components of metals: The related provisions are provided by Governmental Decree No. 187/2011 (IX. 14.) on the examination, authentication of precious metal objects and certification of their precious metal content, as well as the equivalence of authentication and certification.
- Official seal used for excise purposes. It is nothing but the excise seal. Previously, in the case of tobacco products, this also included the technical means of tax collection, the tax stamp, but according to the new regulation, an excise seal is also used for tobacco products. The background legislation related to this is the Act on Excise Tax (Act LXVIII of 2016). According to this, the stamp placed on the smallest consumer packaging unit of the excise product subject to a stamp is considered an excise seal (3. § 53). The background legislation entered into force on July 1, 2017, and it abolished the obligation to place a stamp on tax stamps and tobacco products. Forgery of the tax stamp is punishable regardless.<sup>24</sup> Procedural rules are included in NGM Decree No. 45/2016 (XI. 29.) on the

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<sup>24</sup> Karsai, K.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Karsai, K. (Ed) Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez [Big Commentary of the Criminal Code]. Wolters Kluwer. Budapest, 2019. 906-918.

implementation of certain provisions of Act LXVIII of 2016 on Excise Tax.

- Stamps and seals used by the metrological authority to verify the certification and testing of measuring equipment and the volume capacity of barrels are also considered a stamp in the sense of criminal law. Act XLV of 1991 on Measurement and the Government Decree No. 127/1991. (X. 9.) related to its implementation are considered the background legislation of these provisions. A legally certified measuring equipment can only be distributed, used, or kept ready for use with a valid certification.

It should also be mentioned regarding the objects of the crime that the foreign stamp also receives the same level of protection as the domestic one.<sup>25</sup>

Today, the crime is mostly committed by the forge of excise seals and use of counterfeit excise seals.<sup>26</sup>

The criminal conducts did not change in the new Criminal Code compared to the previous one, but their number has increased by one. According to the new Criminal Code, criminal conducts are the following:

- imitation of a stamp,
- forgery of a stamp,
- obtaining counterfeit or forged stamps, and
- exporting or importing counterfeit or forged stamps or transporting them in transit through the territory of Hungary. The last criminal conduct was not included in the previous regulation.

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<sup>25</sup>Polt, P.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Blaskó et al: Büntetőjogi Különös rész II. [Criminal law Special part II.] Rejtjel Kiadó. Budapest, 2013. 283.

<sup>26</sup>Molnár, G. M. (2016): Ibid. 740.

All criminal conduct has in common that it can only be committed with purpose, namely for the purpose of distribution or use.

Imitation of a stamp is the creation of a replica of a stamp in circulation. Deception is facilitated by the fact that the fiscal stamp is reprinted, with a different denomination, a different year, serrations, watermarks, and other more effective security elements. A more typical forgery is the forgery of a lower denomination (HUF value) into a higher denomination.

Stamp forgery includes any alteration to a genuine stamp that results in the stamp appearing to have a different value, whether smaller or larger, than its original value. Counterfeiting is typical in the case of fiscal stamps, as previously issued stamps are forged into reprinted denominations. The method and quality of imitation and forgery is indifferent.<sup>27</sup>

The common essence of the acquisition of a counterfeit or forged stamp, its importation into the country, its exportation, its transit, as criminal conducts, is possession and taking possession. Acquisition means taking possession with a final purpose, and the way of acquisition is irrelevant. Acquisition can take place either free of charge or with a chargeable transaction, or even without a legal transaction (e.g.: unauthorized access), only the purpose of the acquisition is relevant, and that is the distribution or use of the counterfeit or forged stamp. According to the Criminal Code, forgery of stamps issued for the purpose of stamp collecting is also punishable.<sup>28</sup>

The use can be manifested in the intended use of stamps and other certificates. This usually involves the use of a stamp, as stamps and certificates document a one-time fulfilment. The stamp wears out by sticking it on. If a counterfeit, forced or once-used stamp created by imitation is reused, the fulfilment documented in it is missing. Stamps can not only be used for

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<sup>27</sup>Nagy, Z.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Tóth, M. – Nagy, Z. (Eds.): Magyar Büntetőjog Különös rész. [Hungarian Criminal law Special part]. Osiris Kiadó. Budapest, 2014. 499.

<sup>28</sup>Gál I. L.: Pénz és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Polt, P. (Ed): Új Btk. Kommentár. 7. kötet, Különös rész. [New Penal Code Commentary, volume 7. Special part]. Nemzeti Közszerkesztési és Tankönyvkiadó. Budapest, 2013. 202.

their original purpose but can also be used for collecting. In the collector circulation, the exchange rate of the stamps may be significantly different from their face value. The development of a stamp's exchange rate different from its face value can be influenced by, for example, a production error or special purpose use (such as occasional stamping). With this in mind, the legislator expanded the definition of distribution and forgery.<sup>29</sup>

The second basic case of the statutory provision provides that the distribution of a counterfeit, forged or already used stamp as genuine or unused and the use thereof shall be punished. Distribution and use outside of this scope are not punishable on their own.

The crime can also be committed by soaking and reusing a stamp that has already been used. The first use of the stamp means that it has been "used up", as it documents the one-time fulfilment or payment.<sup>30</sup>

The offense of stamp forgery is carried out if the offender uses stamp images cut out of magazines for postal prepayment (BH1989. 432.).

The subject of the crime can be anyone. In terms of guilt, the form of stamp forgery specified in Paragraph 1 is a deliberate crime, so it can only be carried out with a direct intent. If a person does not recognize that he or she is acquiring or using a counterfeit or forged stamp, the person cannot be punished, as the crime does not have a negligent form.<sup>31</sup> The form specified in Paragraph 2 can also be carried out with a conditional intent.

There are two aggravated cases of stamp forgery: if the crime is committed on a stamp with a particularly large or higher value, and if it is committed in criminal association with accomplices. In such cases, it is punishable by imprisonment between one to five years. According to Section 459

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<sup>29</sup>Molnár (2016): 740-741.

<sup>30</sup>Gula, J.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Horváth, T. – Lévy, M. (Eds): Magyar Büntetőjog Különös Rész. [Hungarian Criminal law Special part]. Complex Kiadó. Budapest, 2013. 590.

<sup>31</sup>Karsai, K.: Pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Karsai, K. (Ed): Kommentár a Büntető Törvénykönyvhöz. [Commentary for the Criminal Code]. Complex Kiadó. Budapest, 2013. 822.

Paragraph 1 Point 2 of the Criminal Code ‘criminal association’ shall mean when two or more persons are engaged in criminal activities in an organized fashion, or they conspire to do so and attempt to commit a criminal act at least once, without, however, creating a criminal organization. Committing the crime to a particularly considerable value, even though according to Section 459 Paragraph 5 Point d) it means HUF 50 million and HUF 500 million, but in this case the upper limit is no longer relevant. In the spirit of tightening, the new Criminal Code increased the minimum sentence for aggravated cases to one year of imprisonment.

In the case of postage stamps, the rating linked to the value is adjusted to the face value. In the case of stamps indicating the fulfilment of the payment obligation, it is not adjusted to the face value, but to the amount that, e.g., the excise seal contains. It is important to note that the unique value of stamps suitable for stamp collecting - unlike the face value - can be worth several million forints (HUF). It is considered very valuable among stamp collectors, for example the Crowned Madonna on the head or the blue Mauritius.<sup>32</sup>

There is also a privileged case of the crime of stamp forgery, if stamp forgery is committed on a stamp of a lesser value or of a value below that, i.e., the upper limit of the value is five hundred thousand forints. The privileged case of the delict is regulated in the form of a misdemeanor.<sup>33</sup>

Looking at stages, the attempt to forge stamps can only be carried out in a narrow circle. It can be assessed as an attempt in the case of acts committed to start imitation or forgery, as well as directly for the purpose of obtaining a counterfeit or forged stamp. The crime is completed with the forgery or handover. In the case of acquiring a counterfeit stamp for the purpose of distribution or use, stamp forgery is considered a completed crime, even if the stamp itself is a forgery incapable of deception. If, after making the counterfeits produced for the purpose of distribution, the perpetrator abandons the purpose of distribution, it cannot be classified as a voluntary

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<sup>32</sup>Karsai, K. (2013): Ibid. 823

<sup>33</sup>Karsai, K. (2013): Ibid. 823-824

withdrawal. At most, it can be evaluated within the scope of the imposition of the penalty.

The statutory provision of stamp forgery does not evaluate results, so it is classified as a formal immaterial delict.<sup>34</sup>

Multiple counts of offenses: A crime committed for several forgeries on the same occasion must be evaluated as a natural unit. A continuous unit is realized if the offender uses the series of counterfeit stamps obtained on one occasion in several parts. The use of a counterfeit trademark is not a stamp forgery, but a violation of industrial property rights (Section 388 of the Criminal Code), as it is not a stamp used by the authorities.<sup>35</sup>

Delineation: distribution of a counterfeit stamp is fraudulent, deceptive behaviour. If the factual elements of the statutory provision of fraud (Section 373) and stamp forgery are both fully realized, only special stamp forgery can be established. If the object of the crime (or its product) does not meet the conditions laid down in the interpretive provision of the Criminal Code [see Section 391, Paragraph 5 Point a)] against the concept of the stamp, if used, the act may still be suitable for establishing the offense of using a counterfeit private document according to Section 345.<sup>36</sup>

## **Regulation of stamp forgery abroad**

### ***The statutory provision of stamp forgery in Germany***

The crime was first regulated in Germany in the Prussian Criminal Code published in 1851 under the name of forgery of stamp paper (Section 253).<sup>37</sup> The delict under the name stamp counterfeiting

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<sup>34</sup>Molnár, G. M. (2016): Ibid. 741

<sup>35</sup>Karsai, K. (2013): Ibid. 823

<sup>36</sup>Molnár, G. M. (2016): Ibid. 741

<sup>37</sup>Beseler, G. (1851): *Kommentar über das Strafgesetzbuch für die Preußischen Staaten*. [Commentary on the Penal Code for the Prussian States]. Weidmann Buchhandlung, Leipzig. 480-481

(*Wertzeichenfälschung*) first appeared later, in the German imperial Criminal Code adopted in 1871.<sup>38</sup> German law dogmatically considers stamp counterfeiting to be a crime similar to currency counterfeiting, and therefore regulates these crimes in one chapter. The stamp is seen as a quasi-currency. Stamp forgery is a special crime compared to forgery of administrative documents.

The German legislator intends to protect the circulation of official stamps as a community interest with the statutory provision. The brands and marks on the stamp prove that the fee or other costs have been paid, and their forgery causes damage to the state and society.<sup>39</sup>

Official stamps are the objects of the crime. The Act does not contain the definition of an official stamp or an exhaustive list of them. The legislator entrusted this to the law practitioners. According to current German jurisprudence, an official stamp is a stamp issued by the state, local governments, legal entities, or public bodies, i.e., it is considered official if it comes directly or indirectly from a state body. Similar to the Hungarian regulations, official stamps include excise seals, stamp duties, seal marks, and stamps certifying court costs.<sup>40</sup> Postage stamps are not official stamps under German law, as the postal sector has been privatized.<sup>41</sup> Invalid or unofficial stamps are not protected under criminal law, so neither are collectable stamps. Section 152 states that forgery of foreign stamps is also punishable. Foreign stamps are also required to be official, and this must always be determined based upon the law of the given state.<sup>42</sup>

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<sup>38</sup>Landes Johannes (2006): *Die Wertzeichenfälschung*. [The stamp forgery] Peter Lang, Europäischer Verlag der Wissenschaften. Frankfurt am Main. 11

<sup>39</sup>Schmidt, R. – Priebe, K. (2012): *Strafrecht besonderer teil. II. Straftaten gegen das Vermögen*. 11. Auflage. [Criminal law special part. II. Offenses against property. 11th edition]. Verlag Rolf Schmidt, Hamburg-Berlin. 339

<sup>40</sup>Wessels, J. – Hettinger, Michael (2014): *Strafrecht besonderer teil 1*. [Criminal law Special part 1]. C. F. Müller, Heidelberg, München, Landsberg, Frechen, Hamburg. 281

<sup>41</sup>Fischer, T. (2013): *Strafgesetzbuch und Nebengesetze (Kommentare)* 60. Auflage, [ ] Verlag H.C. Beck. München. 1059-1060

<sup>42</sup>Fischer, T. (2013): *Ibid.* 1059-1060

According to Section 148 Paragraph 1 Point 1, it is punishable to forge or falsify official stamps. In the case of the latter, an additional condition is that it is done in such a way that the forged stamp appears to be of greater value (this differs from the Hungarian regulations, since any modification to the stamp results in commission of the crime).

Even according to German law, stamp forgery can only be committed on purpose, namely for the purpose of distribution or use. The act is also punishable if the counterfeit or forged official stamp would be sold as a collector's stamp by the perpetrators, as there is a risk that it will later be put into circulation.

It is not a condition that the offender wants to distribute the counterfeit stamp or use it him or herself, it is also sufficient if the offender does it for the purpose of facilitating its distribution. In practice, an example of this is if the perpetrator makes counterfeit stamps in order to pass them on to an accomplice who wants to distribute them.

Changing or removing the validity (value) indication will be punished not according to point 1 of the first paragraph but will be punished according to the preparation of the crime regulated in Section 148 Paragraph 2.

Acquiring counterfeit or forged official stamps means their actual possession. In order to establish criminal conduct, it is necessary, on the one hand, that the counterfeit official stamp be in the possession of the perpetrator, and on the other hand, that he or she also has the right to dispose of it. Thus, it is not considered obtaining a counterfeit official stamp, for example, if it is deposited with the person concerned (at most, it can be punished as an accomplice).<sup>43</sup>

Point 3 of Paragraph 1 orders the following criminal conducts to be punished: using, offering for sale, or distribution of counterfeit or forged official stamps. Offering for sale is nothing more than an attempt for distribution, which is regulated by the German legislature as a completed act.

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<sup>43</sup> Fischer, T. (2013): Ibid. 1060-1061

When using an invalid stamp (Section 148, Paragraph 2), the legislator prohibits the reuse of stamps that have already been validly used. To establish the crime, it is necessary that the validity mark on the used stamp has already been removed from the stamp. Changing the date on the stamp is also considered a removal. From the point of view of establishing the crime, it is irrelevant who removed the validity indication from the stamp. Looking at the subjective side of the crime, the offender must know that the stamp is invalid and that he or she wants to use or distribute it as valid.<sup>44</sup>

Attempts and preparations for stamp forgery are also punishable under German law. The preparation of the crime is carried out by the person who produces, acquires, offers for sale, stores, or passes on to others the necessary tools (e.g., printing equipment, computer programs, security elements) for the purpose of counterfeiting stamps. In the case of preparation, the penalty is naturally lower, punishable by imprisonment for up to two years.

### *The statutory provision of stamp forgery in Austria*

The delict of stamp forgery is regulated in Section 238 Chapter 13 of the Austrian Criminal Code. Similar to the German and Hungarian regulatory solutions, it is included in the same chapter as counterfeiting of currency and counterfeiting of cash-substitute payment instruments.<sup>45</sup>

The Austrian Criminal Code by the statutory provision aims to protect the circulation of official stamps, similar to the German regulations. The Austrian regulation follows the German model to a large extent. The definition of the official stamp is not included in the Austrian Criminal Code either. According to jurisprudence, a stamp is considered official if it was

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<sup>44</sup> Fischer, T. (2013): Ibid. 1061

<sup>45</sup> Schloenhardt, A. – Höpfel, F. (2016): Strafgesetzbuch – Austrian Criminal Code. NWV Verlag, Vienna – Graz. 302

issued by the public authority. Forgery of postage stamps is not a crime due to the privatization of the Austrian post office.<sup>46</sup>

The peculiarity of the Austrian regulation is that it also includes a range of cases excluding criminal liability. If a previously used official stamp is reused or the revoked mark is removed from a previously used official stamp. Like the German regulations, the preparation of the crime is punishable by imprisonment for up to 2 years.<sup>47</sup>

### *The statutory provision of stamp forgery in Switzerland*

Chapter 10 of the Swiss Criminal Code regulates stamp forgery (Section 245), together with counterfeiting currency. In addition, a lesser crime is regulated in Chapter 20, Violation of Federal Law, the reproduction of stamps without the intention of forgery, with the name of their creator indicated.

According to the Swiss Federal Court, stamps should be protected under criminal law because, like currency, they function as means of payment or as proof of payment of fees in circulation. The object of the crime is the official stamp. The Criminal Code does not define the concept of an official stamp, but by way of example, it includes postage stamps, revenue stamps, and a stamp duty. Section 250 extends protection to foreign official stamps. Meal vouchers are not considered stamps, but public documents, so they cannot be the objects of this crime. Most often, criminals make counterfeit postage stamps for stamp collectors in Switzerland.<sup>48</sup>

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<sup>46</sup> Hinterhofer, H. (2002): Strafrecht Besonderer Teil II. §§ 169 bis 321 StGB. Dritte, überarbeitete Auflage. [Criminal Law Special Part II. §§ 169 to 321 StGB. Third revised edition]. WUV | Universitätsverlag, Wien. 152

<sup>47</sup> Bertel, Ch. –Schwaighofer, K. (2008): Österreichisches Strafrecht Besonderer Teil II. §§ 169 bis 321 StGB Achte, vollständig überarbeitete Auflage. [Austrian Criminal Law Special Part II. §§ 169 to 321 StGB Eighth, completely revised edition]. SpringerWienNewYork. 143

<sup>48</sup> Donatsch - S. Flachsmann - M. HUG - H. Maurer - U. Weder (2006): Schweizerisches Strafgesetzbuch. [Swiss Criminal Code]. Orell füssli Verlag AG. 305

## **International conventions for the security of stamp circulation**

Hungary has joined several conventions related to stamps and postal traffic. The promulgating act is Act CXIII of 2012 which is:

- of the Seventh and Eighth Supplementary Protocols to the Statutes of the Universal Postal Union;
- consolidated with the amendments signed at the 2004 Bucharest Congress and the 2008 Geneva Congress of the Universal Postal Convention of the Universal Postal Union;
- of the Final Protocol of the Universal Postal Union signed at the 2004 Bucharest and 2008 Geneva congresses, and
- it is about the publication of the Postal Payment Services Agreement consolidated with the amendments signed at the Bucharest Congress in 2004.

With this legislation, the former General Regulations adopted at the 12th Congress of the Universal Postal Union in Beijing and Government Decree No. 121/2001. (VII. 10.) on the promulgation of the Universal Postal Convention and its Closing Protocol have been repealed.

According to the Universal Postal Convention:

- Member countries undertake to adopt the necessary measures to prevent the following acts and to prosecute and punish their perpetrators.<sup>49</sup>
- Member countries undertake to implement the necessary measures to prevent, prosecute and punish violations regarding the following postal prepayment means under this Convention:
  - postage stamps, in circulation or withdrawn from circulation;
  - prepayment impressions;

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<sup>49</sup> Universal Postal Convention Article 11. 1

- impressions of franking machines or printing presses;
- international reply coupons.
- „*In this Convention, violations concerning means of postal prepayment refer to any of the acts outlined below committed by any persons with the intention of obtaining illegitimate gain for oneself or for a third party*”.
- The following conducts are punishable:
  - any act of falsifying, imitating or counterfeiting any means of postal prepayment, or any illegal or unlawful act linked to the unauthorized manufacturing of such items;
  - manufacture, use, release for circulation, commercialization, distribution, dissemination, transportation, exhibition or display (also in the form of catalogues and for advertising purposes) of any means of postal prepayment which has been falsified, imitated or counterfeited;
  - any act of using or circulating, for postal purposes, any means of postal prepayment which has already been used;
  - any attempt to commit any of these violations.<sup>50</sup>
- The Convention states that, with regard to sanctions, no distinction can be made between the above-listed acts irrespective of whether national or foreign means of postal prepayment are involved, and this provision shall not be subject to any legal or conventional condition of reciprocity.<sup>51</sup>
- The regulation of the Hungarian Criminal Code meets the requirements of the Universal Postal Convention.

## **Criminal statistics**

The table below summarizes the annual number of registered stamp forgeries in Hungary in the past period

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<sup>50</sup> Universal Postal Convention Article 11. 2.

<sup>51</sup> Universal Postal Convention Article 11. 3.

2014	2015	2016	2017	2018	2019	2020	2021	2022.08.
335	75	207	238	91	200	17	13	19

Table No. 1

The number of registered stamp forgeries in Hungary between 2014-2022 on an annual basis.<sup>52</sup>

No clear trend can be observed, but it can be stated that the number of stamp forgeries in Hungary is very low compared to total crime.

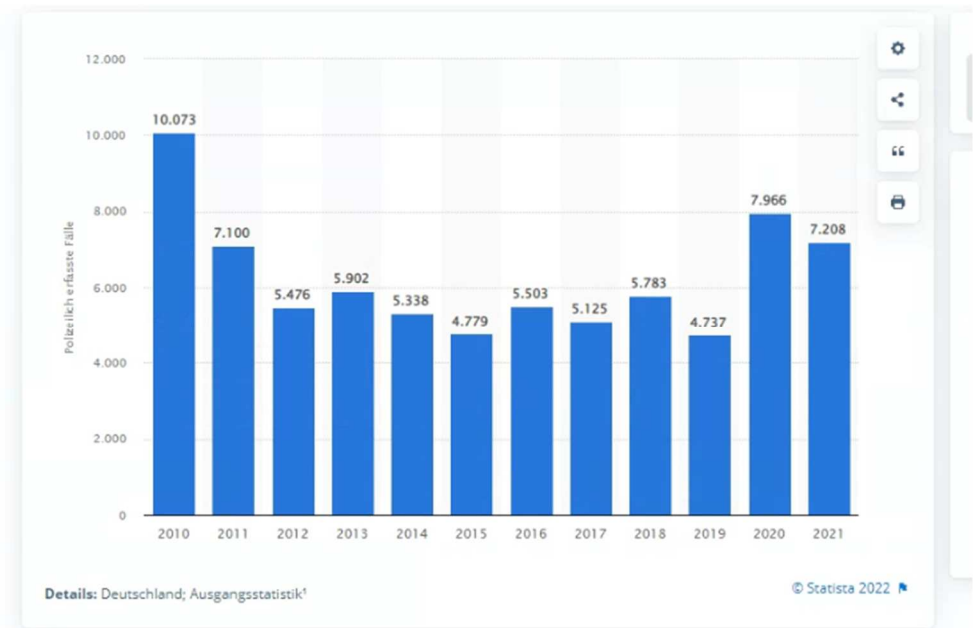


Table No. 2 shows the number of registered currency and stamp forgeries in Germany between 2010 and 2021 on an annual basis.<sup>53</sup>

<sup>52</sup> Source: <https://bsr.bm.hu/Document>

Accessed: 11.08.2022

<sup>53</sup> Source: <https://de.statista.com/statistik/daten/studie/157431/umfrage/polizeilich-erfasste-faelle-von-geldfaelschung-seit-1995/>

Accessed: 12.08.2022

In Germany, the number of stamp forgeries is counted together with the crime of currency counterfeiting in the statistics published annually. A significant percentage of the numbers shown in the chart most likely cover the crime of counterfeiting. If we compare this statistic with the number of money and stamp forgeries committed in Austria between 2019-2020, where stamp forgeries are also counted separately, we can see that out of the 832 total data, only 6 crimes were classified as stamp forgeries.<sup>54</sup>

## Summary

Overall, the regulatory solutions are very similar. German law pursues stamp counterfeiters with the utmost rigour, and the courts have a great deal of freedom in defining the objects of the crime. The advantage of German-language legal areas is that they allow for flexible legal interpretation, but it is also a disadvantage, as arbitrary legal interpretation can occur.

Hungarian regulations comply with international conventions and the formal requirements of criminal legislation<sup>55</sup>: the criminal law disposition is clear; the possibility of arbitrary legal interpretation is excluded due to the exhaustive list of the objects of the crime.

Fortunately, the statistical relevance of stamp forgeries is low these days, which is also thanks to digitization, for example. Considering the above, we do not currently see any justification for amending the legislation.

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<sup>54</sup> Source: [https://www.statistik.gv.at/fileadmin/publications/gerichtliche\\_kriminalstatistik\\_201920.pdf](https://www.statistik.gv.at/fileadmin/publications/gerichtliche_kriminalstatistik_201920.pdf)

Accessed: 10.08.2022

<sup>55</sup> Kőhalmi, L. (2012): A büntetőjog alapproblémái. [The basic problems of criminal law]. Pécsi Tudományegyetem Állam- és Jogtudományi Kar Gazdasági Büntetőjogi Kutatóintézet. Pécs. 37