



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 16, NUMBER 3 (2023)
ISSN 2029-0454



Cite: Baltic Journal of Law & Politics 16:3 (2023): 1331-1340
DOI: 10.2478/bjlp-2023-00000107

Analysis of the forgery of legal documents in civil and criminal proceedings

Genesis Robles Zambrano

Lawyer graduated from the University of Zulia, Maracaibo Venezuela, Master Scientiarum in Labor Law from the Rafael Beloso Chacin University, Diploma in epistemology and philosophy of Science, research member of the Koinonia Research Group, attached to the research node of Social Sciences in Latin America and PhD student at the National University of Rosario, Argentina. Professor at the Regional Autonomous University of the Andes, Quevedo extension.

Email: uq.genesisrobles@uniandes.edu.ec UNIANDES Extension Quevedo

Aldid identifier: <https://orcid.org/0000-0002-2965-2091>

Cintha Mariela Cajas Párraga

Lawyer of the Courts and Tribunals of the Republic of Ecuador, Master in Constitutional Law, PhD candidate in Law, First Level Judge, Professor of Uniandes Quevedo.

Email: uq.cinthiacajas@uniandes.edu.ec UNIANDES Extension Quevedo

Code Orcid: <https://orcid.org/0000-0003-2644-0074>

Jose Fabian Molina Mora

Email: docentetp43@uniandes.edu.ec UNIANDES Extension Quevedo

Code orcid: <https://orcid.org/0000-0002-2653-2721>

Received: December 11, 2022; reviews: 2; accepted: January 16, 2023

Abstract

The present investigation intends to carry out an analysis on the falsification of documents that are often used as evidence in judicial processes, which are not only recognized as crimes, but also call into question certain elements that involve even the faith of officials or legal professionals. The research was developed under the qualitative-quantitative modality since, in addition to being theoretically fundamental, the research variables were also developed through the use of the survey addressed to notaries and lawyers of the Quevedo canton. It is important to highlight that this sample is of a non-probabilistic type since is selected based on the researcher's needs. Regarding the type of research, it is of the Bibliographic type since it is investigated by collecting doctrinal,

bibliographic information or another way of searching to make an assessment of the subject. The methods used were Inductive - Deductive, since the inductive method is fundamental for all sciences that from a limited number of particular observations deduce a general law about the nature or behavior of things, Analytical - Synthetic method, being the same This is a way to reach a result by destroying a phenomenon in its constituent elements, and the legal scientist. One of the results obtained is that when analyzing the crime of counterfeiting, the protected legal right must be specified, for this reason it is pertinent to mention Von Liszt, who indicates that this crime is characterized by the means of attack and that in turn protects different legal assets and therefore the regulations foresee penalizing all the Interests immersed in them that have been harmed.

Keywords

analysis, forgery, legal documents

Introduction

In Ecuador there is a great risk in the legal effects of the falsification of documents in civil and criminal proceedings due to their alteration of essential elements in the document, a simulation in part or in the whole of a document, Lack of truth in the narration of the facts expressed in the document, Assumption of intervention of people who have not intervened in the preparation of the document. This conduct is intended to make a document appear true, it is introduced into legal traffic to cause effects within it, to influence the essential elements that provide its characteristic of evidentiary guarantee. It intervenes in a physical way attacking the authenticity of the document. This falsification consists of an alteration of what is expressed or an attribution of creation to a third party who has not participated in its creation. The types of forged documents or the subject who performs this behavior determine different types of document falsification.

In recent years, legal research has become a key tool for addressing social problems that have arisen in the aftermath of the pandemic. As Ricardo et al. (2022) suggest, legal research can provide valuable insights into the impact of the pandemic on various social issues and help identify potential solutions to these issues. Additionally, the application of new theoretical frameworks, such as neutrosophy, can provide a fresh perspective on traditional legal problems and help address current challenges in the judicial system (Gómez et al., 2022). For instance, Solano et al. (2022) argue that alimony for students of legal age should be considered a fundamental right to education, and they propose a legal framework to address this issue. Similarly, Moran et al. (2022) analyze the legal treatment of perfidy and propose recommendations for improving the legal framework governing this area. These studies demonstrate the potential of legal research to address a wide range of social problems and contribute to the development of a more just and equitable society.

However, the public documents that are manipulated are those that are notarized or authorized by competent public officials. The main characteristic is its

notarial character and its consideration of being subject to proof in the process, such manipulation is carried out on documents issued by public officials or subjects of law in the exercise of their functions, this lack is also recognized in commercial documents that include, among others, checks, promissory notes, bills of exchange, accounting balances, minutes of meetings, etc.

There is, on the other hand, the falsification in what are private documents, which is the alteration, simulation or assumption of intervention of a third party in a document that has no public, official or commercial character. This conduct must be committed with intent, that is, with the will to falsify. In the case of companies, the alteration in contracts and payroll, falsification of signatures are examples of falsification of private documents.

It should be noted that the problem of the falsification of documents has been addressed from the point of view of the legal right that is protected with the typification of this crime, the crimes of forgery and use of forged documents frequently concur in fraud behaviors that can be punished according to the laws. Such typical conduct also falls on the falsification of educational or legal certificates. Which is the act of issuing and granting false certificates as presenting them knowing their falsity.

This research sought to develop an effective academic environment that allows both legal professionals in free exercise and administrators of justice, determine the applicability of the crime of Falsification of Documents, since there are contradictory criteria regarding the nature of the same as an impediment to the initiation of public criminal action for the crime of Falsification of Public Documents.

To this end, it has been allowed to resort to rulings issued by the highest court of ordinary justice, and a documentary investigation was carried out in this regard to analyze the trial of the crime in question, so it was questioned in the same way whether the principle of adjective legality had been subrogated by the guiding principles of the administration of justice of procedural speed and economy, evidencing the need to amplify the measure of criminal jurisdictional activity, within our criminal legal system.

From 2018 to 2020, 3,230 cases have been detected. To point out an example, licenses have been one of the documents susceptible to this situation, according to an investigation report issued by the National Transit Agency (ANT), this occurs because the entity's computer system is "vulnerable, obsolete and has been hacked on other occasions" (ANT, 2021)

The investigations reveal that unknown persons obtained the access codes to the ANT's computer system and infiltrated its database. They fraudulently registered users' names as if they had obtained a driver's license for the first time. However, none of those people had passed driving schools.

Another of the known cases is the indiscriminate issuance of disability cards, since since the beginning of 2022 a series of investigations were initiated by the prosecutor's office and a thousand disability cards have been identified that have been fraudulently delivered to people who did not have any type of disability.

Consequently, the document or instrument can be any material support that contains information, such as documents with electronic signature, compact discs, among others, and the falsification of a document or instrument, can be called in a transcendental way which allows to determine the validity that said document will have and particularly the legal effects, which will occur as a result of the legal traffic that this document will have.

Therefore, the doctrine states that there are some modalities on the basis of which the veracity or authenticity of said document can be determined. So in this act of falsification of documents there is civil prejudiciality regarding the exercise of criminal action, because it is a prerequisite to criminal prosecution, so it corresponds at this point of the investigation to try to focus on professional practice since although there is a sanction for said crime, it is essential that Essentially regulate the legal effects of document forgery in civil and criminal proceedings in order to address the legal gaps that exist in the legal norm.

The falsification of documents is a crime that generates serious consequences for the legal security of Ecuadorians, it is evident that the falsification of physical and digital documents is typified as a crime against public faith, highlighting the importance of the sanction of the falsity of digital documents.

It is worth mentioning that the falsification of documents in civil and criminal proceedings is set forth in the Organic Integral Criminal Code (C.O.I.P.), in Article 328, with all this a series of problems have been generated that are difficult to solve due to the existing legal vacuum in the assigned laws, referring to the application of the appropriate procedure to solve the falsification of documents. , in which the sanction should also be applied in the malpractice of the highest authority that does not comply with the provisions of a law.

The falsification of documents is a crime that generates serious consequences for legal certainty since it is not only about falsifying documents by a legal professional, there are also in both public and private institutions, this immorality also often falls into the hands of those who govern or are in charge of a public or political power. This is the case as an example certain politicians to acquire a public office, bribe high officials giving large bribes to falsify university degrees, credentials, disability card. They use many factors to be able to fulfill their goal for the benefit of themselves.

The "ideological falsehood" in a public document is because a public servant on the occasion of the fulfillment of his functions manipulates a document that can serve as evidence by bringing falsehoods, hiding part of the truth or all of the truth (García & Sánchez, 2020)

It can be stated that computer crimes have gained strength over time, being this a reason for financial institutions to report to the State Attorney General's Office complaints about fraudulent attacks on their financial and computer systems as a result of the misuse of technology, thus violating confidential information of users that must be strictly protected by these institutions , all with the desire to alter documents with private information.

That is to say, that there is a lack of knowledge on the part of the citizenry, which is often the victim of fraud, and they do not know how to act legally before a hack, an extortion, a forged document with altered private information.

In this sense, the research aims to realize an analysis of the legal effects of the falsification of documents in civil and criminal proceedings from a theoretical approach in the courts of the Canton Quevedo. As specific objectives, it is proposed to theoretically substantiate the falsification of documents in civil and criminal proceedings, diagnose the current state of the economic impact of the falsification of documents in civil and criminal proceedings

Methods

The research is based on a Quali-Quantitative modality since this method is established to scientifically study a limited sample of research objectives. It is a quantitative analysis since it is based on a significant number, that is, through it specific data is specified on the legal effects of the falsification of documents in civil and criminal proceedings in the Quevedo canton and its economic affectation. With regard to the qualitative method, it is prior to a social investigation that has been carried out on a group of people whose main quality is the legal effects of the falsification of documents in civil and criminal proceedings in the canton of Quevedo and its economic affectation.

Type of Research

It is a documentary theoretical research, since it is based on doctrinal and legal references, national standards, international instruments and practical theoretical knowledge on the investigated problem were analyzed, the agrarian development law and its instrumentation in agricultural activities; in this chapter I detail the research process.

Also, it is of a Bibliographic type since it is investigated through the collection of doctrinal, bibliographic or other search information to make an assessment on the subject.

The methods used is the Inductive – Deductive Method, since the inductive method is fundamental for all sciences that from a limited number of particular observations deduce a general law about the nature or behavior of things. It is, therefore, important in the first place for the natural sciences, for empirical psychology and for pedagogy; but it is also so for philosophy, inasmuch as it makes use of the results of these sciences. Like any complex method, the inductive method is only possible under the presupposition of certain fundamental ideas, that is, under certain gnoseological conditions. .(Beck 2007)

It refers to the specific form of thinking or reasoning, which draws logical and valid conclusions from a given set of premises or propositions. The validity of the premises will determine the validity of the conclusions. A mode of thought that goes from the general (such as laws and principles) to the particular (concrete,

specific facts). According to the deductive method, the conclusions of a reasoning are given in advance in its own premises, so only an analysis or breakdown of these is required to know the result. (Suarez 2019)

The deductive inductive method is a scientific procedure that considers that the conclusion is implicit within the premises; This means that conclusions are a necessary consequence of the premises: when they are true, the deductive reasoning has validity, there is no way that the conclusion is not true; This method was used in the elaboration of the theoretical framework since it will start by collecting information both in legal bodies and in the doctrine related to the subject.

The Analytical-Synthetic Method was also used, which is a way to reach a result by decomposing a phenomenon into its constituent elements. When referring to various knowledges in which the application of the analytical method is possible, we see a gradation that goes from the most empirical and concrete applications to the most abstract and symbolic. The different sciences and knowledge usually apply both ways of the method, although they privilege one of the two. (Diego and Ramírez Gómez 2010)

This method used involves analysis, this refers to the separation in its parts or in its constituent elements, was used to make possible the understanding of all phenomenon, idea, fact and case, the analytical method helped to verify the specific aspects of this research, which allowed to understand, know and apply on the basis of the decomposition of the whole in its parts and the synthetic method was used to perform the synthesis of Descriptive concepts.

The Scientific-Legal Method, because it constitutes the fundamental method of science, because it allows in its unlimited instrumentation the concurrence of all existing methods and techniques. (Ponce de Leon 2017)

This method is the technique with which it is projected delineas the properties of the object of study, it is a succession of reasoning that tries not only to specify the properties of the object of study but also to express them, this method was applied to carry out the systematic observation, measurement and experimentation, formulation, analysis and modification of the hypothesis in the subject the legal effects of the falsification of documents in civil and criminal proceedings in the Quevedo canton and its economic impact.

Research techniques and tools

The survey is a technique that is carried out by applying a questionnaire to a sample of people. Surveys provide information on citizens' opinions, attitudes and behaviours. (Manriquez, 2019)

The survey is applied to the need to test a hypothesis or discover a solution to a problem, and identify and interpret, in the most methodical way possible, a set of testimonies that can fulfill the established purpose.

This technique served to collect information, consisted of the formulation of ten questions to people who answered on the basis of a questionnaire, this technique was applied mainly to the bar association of the canton Quevedo.

Instruments

Questionnaire, is a document consisting of a set of questions written in an organized, sequenced, structured and coherent way, according to a specific planning, so that their answers can offer all the information required for this research.

Population and Sample

Population refers to the universe, set or totality of elements on which research or studies are made. Sample is a part or subset of elements that are previously selected from a population to conduct a study. Normally the sample of a population is selected for study, because studying all the elements of a population would be very large and impractical. (Logan 2018)

Taking into consideration the feasibility of the research, the survey was conducted among 100 members of the bar association of the Canton of Quevedo.

Results

According to Dr. Villacampa, "document falsification" can be posed in two ways, the first that which transforms or modifies the meaning of the content of the legal document and the second that is directly related to the alteration in the form of the document or the function it plays within the process. In both cases, an assessment must be made of the document, in terms of the classification of the crime, since cases of falsification would pose different legal consequences, since the first raises alteration of the content and in the second case alters the evidentiary instrument.

In another sense, it is necessary to make a specification regarding the protected legal right in relation to the falsification of legal documents, so it is pertinent to mention Von Liszt, who has denied the existence of an autonomous legal right protected in the field of counterfeiting. Instead, it indicates that this crime is characterized by the means of attack and that it in turn protects different legal assets. With the same position, Aragona has pronounced who understands that the crimes of falsification of documents are instrumental and that the regulations provide for penalizing all Interests immersed in them that have been harmed.

Another element to highlight has to do with the role played by public faith in the falsification of legal documents. They have tried to give protection to the truth, and in this sense it is understood that in the falsification of a document of this magnitude, the law must have as a protected legal good the public faith in itself.

On the other hand, it should be noted that authors such as (Antolesei, 1951), have reached the position that the falsification of documents is a multi-offensive crime. The author states that the public faith of the documents is understood as the trust placed by citizens in objects, statements or testimonies,

therefore it should not be understood as the falsification of a means or evidentiary instrument, since this type of crime produces two types of offenses: one to public faith of the official and the other to the interest that is safeguarded by the integrity of an evidentiary means.

It should be noted that once the survey was applied, part of the results obtained, it was identified that regarding the participation of notaries and lawyers for the presentation of testimonial evidence, only 40% of the respondents indicated that yes, while 60% have not had the opportunity to take part in a judicial process. There was also some ignorance regarding the principle of evidentiary listing as the way to introduce evidence for the evaluation of the judge in trial, since 15% of the lawyers and notaries surveyed said they did not know about it, and 85% indicated whether to understand the principle.

Discussion

For some legislations, such as Peru's, the crime of falsification of public documents is not considered a crime that violates public faith, which in some way opposes the position of certain authors mentioned in the article, such as Antolesei, who states that the falsification of documents is a multi-offensive crime.

Article 328 of the Organic Comprehensive Criminal Code refers to the commission of the falsification of documents in a general sense, and in turn expresses the penalty to be applied in cases of falsification of public documents and in cases of falsification of private documents. It should be noted that in Ecuador, the falsification of public documents is a crime that violates public faith, since the legal right protected in this the fraudulent use of documents is public faith itself.

Conclusions

In conclusion, there is a large percentage of falsification of documents in the different judicial processes, this in order to obtain the benefit in their favor and harm the other, among the most common forged documents are the driver's license, disability card and other public instruments.

The legal effects of the falsification of documents in civil and criminal proceedings due to the alteration of the document and some parts that are changed, lack the truth in the narrative something that expresses in the documents. It is worth mentioning that there are constitutional principles of efficiency, speed, agility and procedural economy, within the trial that is the procedure provided for in the law, for the exercise when the demand for falsification of public instrument is established, the provisions of article 214 of the General Organic Code of Processes must be done in the first place. a comparison between the falsity of the public instrument that is demanded and that contained in the protocols in the office of the Notary when this judicial act must be requested and enforced within the term of proof, with the above is compliance with the constitutional principles already indicated.

The legal effects of the falsification of documents in civil and criminal proceedings is set forth in our Organic Integral Criminal Code (C.O.I.P.), in Article 328, with all this has generated a series of problems that are difficult to solve due to the existing legal vacuum in the assigned laws, referring to the application of the inadequate procedure to solve the falsification of documents in civil and criminal proceedings. , in which the sanction should also be applied in the malpractice of the highest authority that does not comply with the provisions of a law.

It is also concluded that counterfeiting implies a deception, which can have different objectives, such as evasion of a control, taking over a third party's patrimony, generating damage to a third party, among others. In all these cases, it is recognized as an unacceptable act, and should be broadly understood as a multi-offensive crime.

Bibliograficas References

- National Assembly of Ecuador. (2008). Organic Law on Disability. Official Register No. 796. https://oig.cepal.org/sites/default/files/2012_leyorg.dediscapacidades_ecu.pdf
- National Assembly of Ecuador. (2014). Organic Integral Penal Code. Official Register Supplement N. 180. https://oig.cepal.org/sites/default/files/2014_codigopenal_ecu.pdf
- Del Valle Tavares, F., Chirinos, L. M., & Soto, M. E. (2012). National legal reserve in the broad sense in the Constitution of the Bolivarian Republic of Venezuela of 1999. *Omnia*, 18(2), 123-139.
- Garcia, J., & Sanchez, P. (2020). Theoretical research design: methodological instructions for the development of scientific research proposals and projects. *Technology Information* 31(6): 159-170.
- Gómez, G. A. Á., Vázquez, M. Y. L., & Ricardo, J. E. (2022). Application of Neutrosophy to the Analysis of Open Government, its Implementation and Contribution to the Ecuadorian Judicial System. *Neutrosophic Sets and Systems*, 52, 215-224.
- Beautiful, H. (2018). "The Principle of Progressivity of Rights in the Constitution of the Republic of Ecuador."
- Mayer Lux, L., & Oliver Calderón, G. (2020). The crime of computer fraud: concept and delimitation. *Chilean Journal of Law and Technology*, 9(1), 151-184
- Moran Giler, M. C., Molina Manzo, A. D., Freire Sánchez, N. F., & Portilla Paguay, R. E. (2022). Analysis of the Legal Treatment of Perfidy. *Neutrosophic Sets and Systems*, 52, 09-20. DOI: 10.5281/zenodo.7373312
- Ribas, E. (2014). Extensive interpretation and analogy in criminal law. *Journal of Criminal Law and Criminology*, 111-164.
- Rojas A, L. (2017). Models of regulation of crimes of falsehood and patrimonial crimes. *Criminal Policy*, 380 - 408.
- Ricardo, J. E., Vázquez, M. Y. L., & Hernández, N. B. (2022). Impacto de la investigación jurídica a los problemas sociales postpandemia en Ecuador. *Universidad y Sociedad*, 14(S5), 542-551.

- Sánchez-Flores, F. (2019). Epistemic foundations of qualitative and quantitative research: Consensus and dissent. *Revista Digital de Investigación en Docencia Universitaria* 13(1): 102-122.
- Sierra, M., & Cantaro, A. (2005). *Criminal law lessons: general part*. Argentina: Ediuns.
- Solano Moreno, A. F., Limaico Mina, J. R., Garcés Mayorga, D. V., & Piray Rodríguez, P. O. (2022). Alimony in Students of Legal Age as a Fundamental Right to Education (revisited). *Neutrosophic Sets and Systems*, 52, 01-08. DOI: 10.5281/zenodo.7373283
- Sousa, S. B. (2001). *The social and the political in postmodernity*. Bogotá: Ediciones Uniandes.
- Tratadi, N. (1995). *Facts and legal acts, Commentary on the civil code, doctrine and jurisprudence*. Buenos Aires-Argentina: Astrea.