

Jacek Juskiewicz, PhD

Expert witness from the list of the District Court in Suwałki

Judyta Malewska, M.Sc.

Notarial trainee at the Notary Public Chamber in Białystok

Doctoral Law Seminar at Koźmiński University in Warsaw

Examination of notarized photocopy of a document on the example of *свидетельства о рождении* (birth certificate)

Summary

This article attempts to address certain aspects of forensic-legal examination of the authenticity of a document on the basis of a notarized photocopy (certified copy). The article outlines the essence of the notarial act – regulated in Article 98 of the Polish Notary Public Law – of certifying the conformity of a copy, extract or photocopy with a presented document and the dangers that may arise from regarding a notarized photocopy of a presented document as a photocopy of an authentic document. The role of the notary in terms of document authenticity verification has been signaled. From a forensic point of view, the lack of evidentiary equivalence between an original document and a certified photocopy in the process of testing the authenticity of a document was emphasized. Based on examples from the practice of an expert witness, the possibility of identifying a forgery on the basis of a notarized photocopy of a document *свидетельство о рождении* is presented. The authors attempt to formulate several postulates concerning the making of photocopies of documents and their subsequent notarization.

Key words: notarial certification, notary, certified photocopy, document authenticity testing, photocopy, technical examination of documents

This article is an attempt to outline certain aspects of forensic-legal examination of the authenticity of a document on the basis of a notarized photocopy (certified copy). Furthermore, the authors, on the basis of their own experience and professional practice, aspire to formulate several postulates concerning the making of photocopies of documents and their subsequent notarization.

Notarial certification

Among the most common notarial acts – whose importance is often depreciated due to their commonness – are certification activities, as listed in Art. 79 of the Act of 14 February 1991 – Notary Public Law. Article 96 of the same Act specifies that a notary is entitled to issue the following certifications: 1) authenticity of the signature, 2) conformity of the copy, extract or photocopy with the presented document, 3) date of presentation of the document, 4) attesting to the life and residence of a person. Throughout the literature, the emphasis is placed on the actions for which the form of a notarial deed is required, as those with the highest significance

and legal consequences. Certifying activities, e.g. certifying the conformity of a copy, extract or photocopy with the presented document, are classified by the notaries themselves as “minor” or “simple” activities¹. However, they are of considerable importance for the certainty of legal transactions.

At this point, it should be noted that the Polish legislation provides for numerous, not always synonymous, definitions of the document. Namely, within the meaning of the criminal law, a document is any object or other recorded carrier of information to which a specific right is attached or which, due to its content, constitutes evidence of a right, legal relationship or a circumstance of legal significance². In turn, according

¹ These designations, however, should only address the issue of a small amount of time and work and a correspondingly smaller notary's fee, not their legal significance (Tkaczyński, 2013, p. 453).

² Respectively: Article 115 § 14 of the Penal Code; Article 47 § 8 of the Code of Petty Offences; Article 53 § 20 of the Fiscal Penal Code.

to Article 77³ of the Civil Code, a document is a carrier of information that makes it possible to learn its contents. This is a very broad definition due to the lack of specific rationale to characterize the document. However, it should be noted that the regulation of Article 77³ of the Civil Code is relatively new, as until 2017 the Civil Code did not contain a definition of a document, and the Code of Civil Procedure only distinguished between official and private documents³. A similar solution can be encountered on the grounds of administrative proceedings – in accordance with Article 76 of the Code of Administrative Procedure, official documents drawn up in the prescribed form by state authorities appointed for that purpose within their scope of action constitute evidence of what has been officially stated therein.

Regardless of the definitions cited above, the Notary Public Law does not specify the features of a document, which allows to adopt a very broad definition⁴. Therefore, it should be stated that the document can constitute different types of entries, prepared by different techniques, having the character of official documents and private documents. Drawings, plans, drafts, blueprints, designs, templates can also be considered as a document (Biernat, 2002, p. 29). A broad understanding of the concept of a document is justified by considerations of expediency, since a person who turns to a notary should be able to pursue his/her interests by obtaining the certification of conformity of a copy, extract or photocopy of any tangible object that is an emanation of certain circumstances also in a form other than writing. The document presented for certification does not therefore have to have legal significance, and the notary is not obliged to examine its content.

In notarial practice, a certified photocopy is most often referred to as a copy, even though the Notary Public Law makes a distinction between them. A certified copy of a document is an exact reproduction of its contents; however, it may differ from the original in the way it was recorded (when the original was handwritten and the copy typewritten), the medium (when the original was made on a material other than paper and the copy on paper) or the external layout of the text. The copy of the document (xerographic copy, photocopy) is identical to the presented document in terms of content and layout

of the text, but may differ in the medium on which it is recorded (Goc, Moszczyński, 2007, p. 31).

As mentioned above, certification by a notary public of the conformity of a copy, extract or photocopy of a document has significant legal consequences. First of all, a duly certified copy, extract or photocopy of an official document has the value of an original document. Thus, in an administrative proceeding, it is permissible for a party to provide, instead of the original document, a copy certified by: 1) an authority that has originally issued the document, 2) a notary public, 3) a party's attorney who is an advocate, legal adviser, patent agent or tax adviser appearing in the case⁵. Similarly, in civil proceedings, a party may present a copy certified by a notary instead of a document⁶. Thus, a certified copy of a document, bearing the appropriate clause, both in administrative and civil proceedings, may constitute evidence equivalent to the original document.

Forensic aspect

The original document and the certified photocopy are not equivalent when it comes to forensic examinations involving such materials. A photocopy of a document, even if certified, does not present the same value as the original. Xerographic reproduction greatly deforms the original and may falsify the graphic information contained therein due to the photocopy's failure to reflect all of the essential features of the document, especially those analyzed under microscopic magnification. Such features include, but are not limited to: the shading of the graphic line, traces of stops and slowdowns of the writing tool, pressure, the sequence of the graphic lines of the writing, the trace of the writing tool's tip and its characteristics resulting from the design of the tool, the optically evaluated physical characteristics of the covering agent. The inability to effectively test many parameters of handwriting in a photocopy results in comparative tests being subject to a margin of interpretive error. Importantly, copying devices may also have technical deficiencies due to wear and tear, which may be manifested in such unfavorable phenomena as the blackening of parts of the surface or the disappearance of the writing line. From a methodological point of view, a photocopy will always represent flawed and incomplete material, which makes it impossible to make categorical inferences based only on xerographic material. However, it is not valid to argue that a xerographic copy can in no way be the subject of forensic examination (Feluś, 2005, p. 103). Undoubtedly, the tests can be successfully conducted on a photocopy of a document to reveal traces of alteration or forgery of the original document and to determine the extent of alterations (Goc, 2015, p. 39). In the expert witness community, there are often postulates that a notarized

³ Article 244 § 1 and Article 245 of the Code of Civil Procedure.

⁴ It should only be noted that forensic science has also developed a broad definition of a document. While P. Horoszowski (1958, p. 482) treated a document as any means of evidence containing written content, M. Owoc (1955, p. 3) and W. Wójcik (1985, p. 6) indicate that the concept of a document can be extended to a carrier representing a drawing, an image or other marks. Currently, it is assumed that documents can also be recorded on such media as: audio tapes, video tapes, computer floppy disk drives, CDs and DVDs, hard drives (Goc, Moszczyński, 2007, p. 52).

⁵ Article 76a § 2 of the Code of Administrative Procedure.

⁶ Article 129 § 2 of the Code of Civil Procedure.

photocopy should be accepted as having a higher evidentiary value than a photocopy of an uncertified document. One of the arguments made is that such a photocopy is a true representation of the authentic document and eliminates any doubt as to its physical existence. However, a fundamental question arises as to whether the document being certified, despite its presence and presentation to the notary, is actually an authentic document.

Obviously, the thesis that a notarized copy of a document is more valuable from the testing point of view than a regular copy is supported by the fact that a notary acts as a person of public trust and ensures the security of trade. Being a public officer, a notary is obliged to exercise particular care in performing his/her tasks, inter alia by a **thorough analysis of documents**, as the clauses he or she signs the documents with give them the value of an official document. Although the notary is considered an auxiliary organ of the judiciary and some of his/her actions are identical with those of the court, both organs differ in terms of the tools that they have at their disposal. Namely, in case of doubt that the submitted documents may be forged, the court may, pursuant to Art. 254 of the Code of Civil Procedure, appoint an expert to examine them. The notary does not have such a power; however, he/she is obliged to refuse to draw up an unlawful notarial deed.

A statement of conformity with the document presented is, in essence, the act of confirming that a copy, extract or photocopy conforms to the document presented in appearance and substance. This action is not equivalent to establishing the authenticity of the document presented. According to Art. 98 of the Notary Public Law, if a presented document contains special features (additions, corrections, damages), this fact should be stated by a notary in a certification clause. In view of the above, the wording of the clause on the extract/copy reads: "I certify that this copy is consistent with the document presented to me", not: "with the original" In case the presented document turned out not to be authentic, the notary's statement of conformity with the original document would expose him/her to criminal liability, as this act meets the prerequisites of the crime under Art. 231 of the Penal Code. It should be unequivocally stated that a notary has neither the tools nor the competence to decide on the fact of forging or alteration of a document, except in obvious cases of inept forgery, visible even to a layman. After all, this is special knowledge, falling within the competence of an expert witness. According to the opinion of the Court of Appeal in Poznań, a notary is not obliged to "(...) determine the authenticity of a document beyond any doubt in each case. A notary cannot be required to have expertise in document examination⁷."

⁷ See Judgment of the Court of Appeal in Poznań of 5 April 2002, ref. I Aca 1317/01.

There is also no provision that requires the notary to examine the authenticity of the document presented, such as a contract, if it is not questionable⁸. Hence, the postulates to train notary trainees in forensic examination of documents or to equip notary offices with optical devices such as specialized microscopes or UV lamps (Rybak-Karkosz, 2017, p. 181) do not seem to be feasible.

From the point of view of forensic examination of documents, the notarization of a document photocopy should only be an information that the copy was made directly on the basis of a physically existing object and reflected its graphic image, which is confirmed by a notary with the power and authority of his office. This does not resolve the important issue of whether the particular physically existing document was authentic or whether it has been forged in whole or in part. What is certain is that this document existed as a cohesive whole at the time it was notarized. Of course, the above pertains to a situation where the authentication actually occurred in a notary's office. In practice, one can deal with forged notarial authentications, which also implies the need for actions verifying the reliability of the authentication or confirmation that it has been completed in the appropriate notary's office by verifying the repertory number (the latter not being the task of an expert witness). Also, a photocopy of a document without authentication does not provide assurance as to whether it is in fact a copy of an authentic document. It may be a graphic image obtained by digitally and/or manually compiling portions of documents, forms, entries, and graphic objects. It is also not clear whether a particular photocopy is original or was made from another photocopy.

Possibility of identifying a forgery on the basis of a notarized photocopy (on the example of the *свидетельство о рождении* document)

In practice, the problem of submitting notarized forgeries of documents can be encountered in the context of proceedings for the acquisition of Polish citizenship or legalization of residence in Poland by persons coming from the former USSR. In order to acquire citizenship or legalize a stay it is necessary to prove Polish origin⁹. The document confirming this fact is, among others, the applicant's birth certificate (*свидетельство о рождении*) issued by the administrative body of the USSR, in which the nationality of the parents (*национальность*) is shown. The forgers, taking

⁸ See Judgment of the Supreme Court of 20 January 2014, ref. II CK 357/02.

⁹ Within the meaning of Article 5 of the Repatriation Act, a person of Polish origin is a person who declares Polish nationality and meets all of the following conditions: 1) at least one of his/her parents or grandparents or two great-grandparents were of Polish nationality, 2) he/she demonstrates his/her connection with Polishness.

advantage of the demand for such documents mainly among Ukrainians, made their practice a quite prosperous business¹⁰. Many applications for Polish citizenship were accompanied by photocopies of documents notarized as true copies of the originals, which, as it was established, were photocopies of inauthentic documents made or tampered with by forgers.

In many cases, the only way to verify the credibility of a document is to examine it solely on the basis of a certified copy. Although authentication is legally unobjectionable and actually confirms the existence of a document, it does not certify its authenticity. As already mentioned, the notary does not decide on the authenticity of the document, but only officially confirms its existence regardless of whether it is an authentic document or a document forged in such a way that it cannot be verified in the office conditions. For this reason, certified photocopies of forged documents can (and do) occur in administrative proceedings¹¹. Due to the xerographic form of this specific material and the typical testing limitations of photocopies, their verification is much more difficult than that of the original document. This, of course, works to the advantage of the person using the inauthentic document, as it eliminates to a great extent the risk of revealing the forgery on the basis of a photocopy of the forgery. In many cases, when there is reasonable doubt about the reliability of a document presented in the form of a certified photocopy, it is necessary to verify the photocopy against the original document. This involves a risk that a participant in the administrative proceedings, when called upon to produce the original document, will find out that the document has unexpectedly been lost or destroyed. Such a circumstance additionally raises suspicion as to the authenticity of the document and results in the necessity to verify whether a person has committed a crime by submitting a forged document as authentic. The trial authority ordering an expert report in such a case may present for examination only a certified photocopy of such challenged document without the opportunity to inspect the original. It should be emphasized, however, that unequivocal authentication of a document on the basis of its certified photocopy is practically impossible. It is only possible to consider that a given photocopy does not reflect features that would indicate the inauthenticity of the document it depicts. The absence of such features is not tantamount to the authenticity of the document. This is especially difficult

in the case of forged documents, which are imitations of the originals. The tampered documents already provide much more testing opportunities. A certified photocopy allows, in many cases, the authenticity of the document it depicts to be questioned.

In the practice of the expert witness (Jacek Juszkiewicz) the above mentioned *свидетельство о рождении* documents were occasionally the subject of forensic examination. The purpose of several expert opinions was to verify the authenticity of the original on the basis of a notarized photocopy of such a certificate. In many cases, after testing, features were identified that provided a basis to negate the authenticity of the underlying document. In the following part of the article, selected examples of such expert opinions will be presented, as well as the features indicating the forgery of a given document, which were reflected in the analyzed xerographic images.

The quality of the questioned photocopy is crucial in this kind of testing, and the positive result can only be obtained when the copy was made with satisfactory tonal resolution (and even better if it is a color photocopy). High optical resolution and a wide range of gray shades guarantee the reflection of the graphic and physical structure of the document (e.g. guilloche ornamentation and disturbances of its structure, tonal changes of the surface, images of seal reproductions and their coherence with the document blank, applied boxes and signatures, imprinting of the series and number of the blank, damage to the structure of the surface, etc.). With regard to handwritten records, a good-quality photocopy also allows to analyze the structure of graphism and to extract evaluative parameters of handwriting (extractable from a photocopy with the caveat that many parameters are not reflected even in a good-quality photocopy). This provides an opportunity to conduct tests within the graphism that constitutes the fill-in-the-blanks and establish the performance homogeneity of the questioned area with the entries in the other boxes. Unfortunately, it must be emphasized that in photocopies made in *black & white* mode, which do not reflect shades of gray, testing is virtually impossible, or at least devoid of extremely valuable and important testing parameters. In the testimonials presented, the quality of the photocopies was sufficient and allowed for analysis of the image structure of the document.

The *свидетельство о рождении* documentation, certified copies of which were presented for study, represented three graphic versions of blanks, in accordance with the patterns used in the particular period. In one case, a printed blank produced in 1988 (during the USSR period) was used to issue (in 1993) a duplicate birth certificate by an administrative body of the new Ukrainian state. The remaining documents were issued between 1947 and 1997.

¹⁰ More on this topic: K. Wójtowicz-Garcarz, *Falszowanie dokumentów trwa w najlepsze* (Falsification of documents continues at its best), <https://www.rp.pl/W-sadzie-i-urzedzie/307219980-Falszowanie-dokumentow-trwa-w-najlepsze.html>.

¹¹ As previously mentioned, a separate problem are false notarized documents that have been prepared for the purpose of a particular administrative proceeding.

Fig. 1. Form of a blank certificate issued in 1974 (overprint of the names of the headings made in Russian and Ukrainian language).

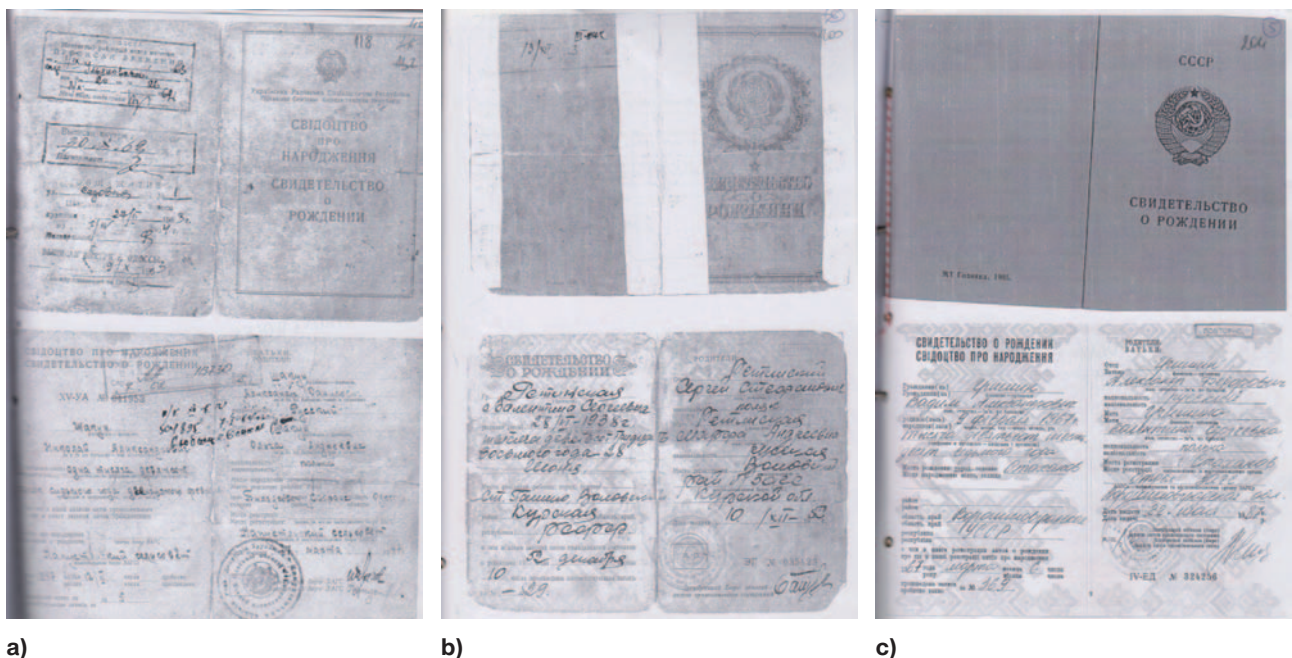


Fig. 2. Sample blank forms: a) certificate issued in 1947; b) certificate issued in 1952; c) certificate issued in 1993 (duplicate).

The examination of the seven photocopies revealed the presence of features that indicate the lack of authenticity of the documents they depicted. In a dozen or so certificates, no such features were found, which, however, as it should be emphasized, does not confirm their authenticity but only indicates the lack of visible features that would unquestionably prove their forgery.

features. Despite these analytical shortcomings, expert reports on certified photocopies of birth certificates have shown essential indications that the originals presented to the notary for certification have been tampered with. Therefore, the photocopies certified as true copies by the notary were in fact forged documents. Photocopies of these forgeries were submitted as attachments to applications for Polish citizenship.

палька

63

СВИДЕТЕЛЬСТВО О РОЖДЕНИИ
СВІДОЦТВО ПРО НАРОДЖЕННЯ

Гражданин (ка) Соланенко
Громадянин (ка) Александр Александрович
имя, отчество — ім'я, по батькові

Родился (лась) 2.05.1983 г. Второго
народился (лась) мая тысяча девятсот
число, месяц, год — число, місяць, рік
восемьдесят третьего года
(цифрами и прописью — цифрами і прописом)

Место рождения: город, селение
Місце народження: місто, селище
г. Кировоград

район
район
область, край Кировоградская
область, край
республика УССР
республика

в чем в книге регистрации актов о рождении
про что в книзі реєстрації актів про народження
1983 года июня 15 числа
року місяця числа
произведена запись за № 809 Кировоградская область
сделано запис

серия 64 108400
22 444444 1989 г.

РОДИТЕЛИ
БАТЬКИ

Отец Соланенко
Батько Александр Александрович
фамилия — прізвище
имя, отчество — ім'я, по батькові

национальность наист
національність

Мать Соланенко
Мати Екатерина Васильевна
фамилия — прізвище
имя, отчество — ім'я, по батькові

национальность украинка
національність

Место регистрации УССР
Місце реєстрації г. Кировоград
наименование и местонахождение органа
ЗАГС — найменування та місцезнаходження органу ЗАГСу
Ленинский отдел ЗАГС

Дата выдачи 15 июня 1983 г.
Дата видачі

М. П. Жуков
Зависимый отделом (биро)
зависимый отделом (биро)
Зависимый отделом (биро)
Зависимый отделом (биро)

II-OL № 311618

Fig. 5. A photocopy of a disputed document after it has been tampered with.

images constituting the fill-in sections of the document, a different size of the writing and a lack of editorial consistency, and varied contrast of the graphic line in the fill-in field. This type of tampering was reflected in the six photocopies of the disputed documents. Of course, it is not possible to conclude unequivocally how the original entries were removed (mechanically or chemically) from the original.

In one case, the document was found to be forged by deleting the entire content of the fill-in fields and inserting a new content with personal data of the same person and a corresponding entry of nationality. Only reproductions of seals and stamps were left from the original, along with official annotations. Even the signature of the person authorized to issue the document on behalf of the relevant office has been removed and changed. Presumably, this procedure was intended to eliminate performance homogeneity differences that would occur if only the entries in the nationality annotation area were removed and the desired content entered in that field (as in the previously described certificates). Identification of the forgery was possible on the basis of confronting the questioned photocopy with a photocopy of the

original document that the authority commissioning the examination obtained from archival resources.

The determination that the certified photocopy represented a tampered document was possible after confronting it with the photocopy depicting the document before the tampering. However, if such a comparative photocopy had not been provided, the verification would have been quite difficult, since the only symptoms of forgery in this certificate (photocopy) were the few remnants of the graphic line of the original entries and disturbances in the structure of the guilloche ornamentation caused by the removal of the original entries from the fill-in fields of the (original) blank. Differences did not occur in areas of xerographic images of handwritten records, which showed features of performance homogeneity.

When analyzing the above mentioned forged documents, it is important to note that only forged certificates were involved. The interference with the structure of the handwritten notes, which constitute the content of the fill-in-the-blanks (deletion of the original content and insertion of the desired content), changed the structure of the document to such extent that these

СВИДЕТЕЛЬСТВО О РОЖДЕНИИ
СВИДОЦТВО ПРО НАРОДЖЕННЯ

Гражданин(ка) Соломонко
Громадянин(ка) Николай Александрович
Фамилия — прізвище
Имя, отчество — ім'я, по батькові

родился(лась) 2.05.1983 второго
народився(лася) має місяць дев'ятого
(цифрами и прописью — цифрами і прописом)

Место рождения: город, селение
Місце народження: місто, селище
гор. Кировоград

район
район
область, край Кировоградская
область, край УССР
республика
республіка

о чем в книге регистрации актов о рождении
про що в книзі реєстрації актів про народження
19 83 года
року
произведена запись
зроблено запис

Родители
Батьки
Отец Соломонко
Ватко Александр Александрович
Имя, отчество — ім'я, по батькові
Национальность украинцу
національність
Мать Соломонко
Мати Екатерина Васильевна
Имя, отчество — ім'я, по батькові
Национальность украинца
національність
Место регистрации гор. Кировоград
Місце реєстрації Ленинский одет ЗАГС
наименование и местонахождение органа
ЗАГС — найменування та місцезнаходження органу ЗАГСу

Дата выдачи 15 июня 19 83 г.
Дата запису 15 червня 19 83 г.
М. Кировоград
М. Ленинский одет ЗАГС

№ 311618

Fig. 6. A photocopy of an authentic document (made before it was tampered with) that the trial authority obtained from the archival resources of the relevant office.

alterations were also visualized in the xerographic image of its copy. These modifications were sufficiently distinctive to be considered features indicative of forgery.

Summary

The analysis of the above cases clearly indicates the need for caution when considering notarized copies of documents on an equal footing with original documents. Of course, the evidentiary equivalence of the original document with its certified photocopy is guaranteed by the rules of administrative procedure. In addition, neither the notary nor the clerk handling the case has the power to easily determine whether the document submitted bears the hallmarks of a skillful forgery. Nevertheless, the postulates addressed primarily to the authorities should be – to keep in mind the cases involving this type of falsification and their negative legal consequences, and to experts in the field of forensic examination of documents – to treat a photocopy of a document, even the one certified by a notary, as a special kind of examination material, sometimes more demanding and imposing numerous testing limitations.

Regarding notarial practice, it should be noted that in most cases, it is in notarial offices that photocopies are made of documents brought by clients, which are then certified. It would therefore be worth advocating that notarial offices only make grayscale copies or color photocopies of good quality, which would allow for better visibility of the features of the documents being certified.

Source of Figures: Author (Jacek Juskiewicz)

Bibliography

1. Biernat, J. (2002). Poświadczenie przez notariusza zgodności z oryginałem odpisu, wyciągu lub kopii dokumentu sporządzonego w języku obcym. *Rejent*, 10(138).
2. Feluś, A. (2005). O możliwości opiniowania w ekspertyzynie pisma ręcznego w oparciu o kopię kserograficzną. In: T. Widła (ed.), *Wokół problematyki dokumentu. Księga pamiątkowa dedykowana Profesorowi Antoniemu Felusiowi*. Katowice: Publishing House of the University of Slask.

3. Goc, M. (2015). *Współczesny model ekspertyzy pismoznawczej – wykorzystanie nowych metod i technik badawczych*. Warsaw–Szczecin: Volumina.pl Daniel Krzanowski.
4. Goc, M., Moszczyński, J. (2007). *Ślady kryminalistyczne. Ujawnianie, zabezpieczanie, wykorzystywanie*. Warsaw: Difin.
5. Horoszowski, P. (1958). *Kryminalistyka*. Warsaw: National Publishing House.
6. Owoc, M. (1955). *Falszerstwo dokumentów w świetle kryminalistyki*. Warsaw: Law Publishing House.
7. Rybak-Karkosz, O. (2017). Weryfikacja autentyczności dokumentów przez notariusza. *Problemy Współczesnej Kryminalistyki, XXI*.
8. Tkaczyński, A. (2013). Notarialne poświadczenie podpisu – wybrane problemy. In: T. Bakalarz, J. Mazurkiewicz (ed.), *Księga dla naszych kolegów. Prace prawnicze poświęcone pamięci doktora Andrzeja Ciska, doktora Zygmunta Masternaka, doktora Marka Zagrosika*. Wrocław: Legal and Economic Digital Library.
9. Wójcik, W. (1985). *Kryminalistyczne badania dokumentów*. Warsaw: Ministry of the Interior.
10. Wójtowicz-Garcarz, K., *Falszowanie dokumentów trwa w najlepsze*. Online access: <https://www.rp.pl/W-sadzie-i-urzedzie/307219980-Falszowanie-dokumentow-trwa-w-najlepsze.html>, accessed on 1/3/2021.
11. Judgment of the Court of Appeal in Poznań of 5 April 2002, ref. I Aca 1317/01.
12. Judgment of the Supreme Court of 20 January 2014, ref. II CK 357/02.

Translation Hanna Wierchośławska