

INDIVIDUAL ADMISSION OF UTTERING CRIME

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ABSTRACT: *The individual acknowledgment is one of the delicate issues in the forgery crime, and is about everything a person utters unilaterally about his/her personal status. These crimes have become a major concern for the criminal legislator to track the criminals and not to allow them to go unpunished through the laws that incriminate and penalize them. The alteration of the truth in the individual acknowledgment which has no legal proof against third parties is not considered forgery since it does not affect their legal status. It appeared that it cannot involve the crime of forgery no matter what the untruthful content is since it only concerns the declarant and is subject to the control and foresight of the competent person. But if such alteration of the truth is to directly affect the status of third parties, then a crime of forgery is committed. However, if the statements established by the accused in the document are not directly related to the status of the third party, and do not constitute a legal proof against the latter, yet only affect one's personal status, the alteration of such statements is not deemed as a forgery. Nevertheless, the Saudi legislators must deal with the individual acknowledgment, include it within the anti-forgery law, underline it separately, shed the light on the exclusions and the punished cases within the regulation and limit it in clear, explicit texts to eliminate the confusion about the laws on the individual acknowledgment in the forgery crime.*

Keywords: Forgery, individual acknowledgment, crime/offense, penalty, document

INTRODUCTION

The forgery of documents crime is one of the most important issues in criminal code due to its serious consequences as it disrupts the trustworthiness of such documents. On the other hand, forgery is a modern crime comparing with the traditional ones such as theft and manslaughter, for it developed along with the development of writing, documentation system and emergence of public and formal documents, which required rules and legal texts to be put in place as deterrents to protect such documents from being manipulated, to keep them reliable and safe to circulate and to make their content trustworthy. According to the jurists, the crimes of forgery are known as smart people's crimes and are preferred by criminals for such acts produce quick benefits when compared to the other traditional offenses. What constituted a concern for the criminal legislator is the spread of these crimes such as forging university diplomas to get job promotions or for the incomers to get driving licenses. In fact, forgery concerns today every aspect and is now one of the major crimes the general prosecutor's office and the courts of justice deal with. And this is very dangerous under the jurisprudence of the crime in the community and sounds loud alarms for it indicates how much the criminal mentality has evolved.

The individual acknowledgment in forgery has become a safe haven for criminals: Sometimes the person pleads guilty, verbally or in writing, to what and however he/she wants, is such act legally incriminated? This is what individual acknowledgments, the object of this study, is about. They are issued unilaterally by the person concerning his/her personal status. So the risk lies in not considering the false statement in an individual acknowledgment as forgery, though the falsehood is a lifebuoy for the committers of forgery, since the individual acknowledgment is still under examination and review, while the falsehood in individual acknowledgments is considered forgery in specific cases: if the declarant is a witness and in case of impersonation in individual acknowledgment.

Legal Structure of the Individual Acknowledgment in the Forgery Crime.

According to the jurists [1], the falsehood contained in the individual acknowledgment is not considered an alteration of the facts in the context of the forgery crime, since the mendacity is about the acknowledger's legal status and concerning the mendacity contained in the acknowledgment of a minor in his/her personal status, the latter may act on his own. He/she may make any declaration or hide any information he wants. In most of the cases, such acknowledgments result in no harm, since they have no power of proof and no one can create evidence for themselves [2].

The researcher will discuss this part according to three topics:

Topic 1: Definition of Individual Acknowledgment.

Topic 2: Alteration of the Truth in the Forgery Crime.

Topic 3: Form of Alteration of the Truth Considered as Forgery

Definition of Individual Acknowledgment

According to the jurists [3], the individual acknowledgment is defined as "one or more statements established by an individual in a document about his/her own legal status, not including what affects the status of others". In the document, the declarant indicates that he/she has rights and has commitments without mentioning anything related to the legal status of others. It is also defined as "the document individual attributes to himself/herself and admits that it is issued by him/her since the moment of its delivery, using it against third parties." [4]

The individual acknowledgment only concerns the acknowledger, only affecting his/her personal status. Thus, it differs from the formalism which is a contract between two or more persons [5], while the individual acknowledgments are issued by one person [6]. Moreover, the authenticity of the content of such acknowledgments may be inquired about with the person concerned who shall be solely held liable for failing to cooperate in such inquiries [7].

One example of the individual acknowledgment is the traders who submit a tax acknowledgment in which they indicate an

amount lesser than the profits they made, or those who submit a statement with the customs service indicating a lower value of their imported goods. There is also the acknowledgment of the travelers about the amounts of money they transfer, and that of the contractors about the value of their contracts with the real-estate registry.

The falsehood in the individual acknowledgments is not considered forgery except what the exclusions the law lists in a separate legal text [8]. The individual acknowledgment essentially lies in the person mentioning false and incorrect statements and events. Therefore, with respect to the documents containing the acknowledgment, one must distinguish between a public and a private one. If the document is issued by a public authority, the declarant is thus involved in an act of forgery. However, this does not apply to all public documents. But if the document is under a private signature, the declarant faces no penalty unless the document affects the legal status of third parties.

Alteration of the Truth in the Forgery Crime

The alteration of the truth is the basis of the material element [9] of the forgery crime. Therefore, no forgery crime is committed as long as there is no alteration of the truth [10].

To alter the facts means "to replace what is truthful and correct with what is incorrect. The legal signification of the alteration of the truth in the forgery crime is different from its linguistic signification. The alteration of the truth only has to be partial or relative, but such alteration must affect the legal status of a third party without his/her consent" [11]. In other words, to alter the facts means to distort or convert them in a way that makes the document fully or partially inconsistent. For a forgery crime to be fulfilled, the document only has to contain one statement contrary to the facts, or an incorrect date, in order to bring it under a law other than the applicable one, or in order for the offender to place his/her fingerprint thereon while attributing it to another person [12].

The alteration of the truth may be partial: Only one statement in the document is changed, but all other statements are correct. This is a case of forgery even if the change is minimal [13].

The alteration of the truth may be also relative: This is not about the full conformity with the reality, i.e. the absolute reality, but about what must be established in the document according to law, in what is called the probative document which is intended to prove a specific fact [14].

Form of Alteration of the Truth Considered as Forgery

Not any alteration of relative legal facts as stated above is a sanctioned forgery. Such an act is incriminated when it affects the legal status of third parties [15], or to put it differently, if such alteration of the truth directly affects a third party's status. Accordingly, a forgery crime is committed when the alteration of the truth directly affects a third party's status, such as forged cards [16]. But if the statements established by the offender in the document are not directly related to the status of a third party, and do not represent a legal proof against the latter, but only affects his/her personal status, the modification of such statements is not considered forgery. In the application of the foregoing, and according to some jurists, the forgery takes place when incorrect information or statements are attributed to third parties, not to oneself [17.]

Alteration of Truth in Individual Acknowledgments

In principle, the alteration of the truth in the individual acknowledgment does not constitute a forgery. However, there are two exceptions which will be discussed under two topics:

Topic 1: Non-classification of the individual acknowledgment as a forgery

Topic 2: Cases where individual acknowledgments are considered forgery

Non-classification of the individual acknowledgment as a forgery

As an accepted rule among jurists [18] and courts, the individual acknowledgment does not constitute a forgery crime. According to them, "The alteration of the truth in the individual acknowledgment which has no legal proof against third parties is not considered forgery since it does not affect their legal status. The individual acknowledgment cannot involve the crime of forgery no matter what the untruthful content is since it only concerns the declarant and is subject to the control and foresight of third parties [19]. And if, as a result of such acknowledgment, no damage is caused to the third party, then this case does not require the intervention of the criminal code for the damage would have been only caused to the declarant." They argue that there is a double reason for not classifying the individual acknowledgment as a forgery. The person concerned must verify and examine the statements contained in such acknowledgments; and failing to do so makes him/her liable for such negligence. On the other hand, the false statements contained in the individual acknowledgment often does not cause any damage for they lack the power of proof [20].

Cases where individual acknowledgments are considered forgery

There are cases where the individual acknowledgment is considered forgery contrary to the aforementioned rule. The reason is that in such cases, the person who issued the document is committed to say the truth in such a way that it is practically impossible to review his/her words or to examine the statements contained in the document [21]. Thus, the individual acknowledgment is considered forgery and is punished for being a forgery crime in two cases:

- 1- Commitment by the declarant to say the truth under law.
- 2- The intervention of the competent official in the document to approve the authenticity of the statement contained in the individual acknowledgment.

I- Commitment by the declarant to say the truth under law

In this case, the declarant acts like a witness, and the facts included in his/her acknowledgment are socially important and related to third parties [22], and any alteration of the facts in the document by the declarant is to be taken into consideration. For example, the documents written by a civil servant in charge of drawing them up and which the latter takes as proof against the third party even if they were not signed by that third party. In this case, the law gave the civil servant the final say in investigating, documenting and verifying the facts. So that document takes effect vis-à-vis third parties though it is originally an individual acknowledgment. Anyone who assumes the character of another in an individual acknowledgment, or attributes an

individual acknowledgment to third parties with false statements on a blank paper signed in abuse of trust is considered as having committed forgery.

The same applies to the acknowledgments concerning births[23], deaths, marriages or divorces [24]: Shall be considered as having committed forgery anyone who falsely acknowledges in the birth certificate that a baby is born from his wife, when the latter is not his/her biological mother or that someone else is the baby's father,[25] or anyone who claims before the marriage celebrant to be the representative or the parent of the wife contrary to the reality [26].

2- Intervention of the competent official in the document to approve the authenticity of the statement contained in the individual acknowledgment

When the competent official intervenes in the document by approving the authenticity of the statement contained in the individual acknowledgment, supposing its truthfulness as it is issued by someone who knows how true it is, and as a result of such intervention, the statement contained in the individual acknowledgment is deemed to be issued by the official for he/she has verified it [27], while affecting the status of the person the statement is about. One example is the statement on the place of residence of the defendant in the statement of claim. This is basically an individual acknowledgment and the falsehood in it is far from being a forgery, but if such false statement is approved by a mala fide person, then this is a case of forged documents which involves the defendant being a co-offender. [28]

3- Commitment by the declarant to say the truth under a specific contract

This means that he/she shall be committed to say the truth with respect to the statements he/she makes in the contract [29] and shall assume the consequences of any false statements introduced in such contract. The employment contract and the agency contract are examples of the contracts in which the declarant is committed to saying the truth [30].

What do the courts and comparative justice say about that?

Certainly, the texts, laws and regulations are drafted by the legislators to do justice to all the members of the community. Absent a text, one must look into the judgments rendered by the courts to show their position on the individual acknowledgment. This requires highlighting the position of comparative justice on the individual acknowledgment in the forgery crime.

Individual acknowledgment in the crime of forgery according to comparative justice

the legislators who did not tackle the individual acknowledgment in the forgery crime within a clear and explicit text, the legislators also failed to make mention of the issue. In fact, the legislators must give special attention to the individual acknowledgment matter and incriminate any probable manipulation of the documents because of such acknowledgments.

The absence of a legal text on the individual acknowledgment causes confusion to the judges while doing their job and leads to a contradiction between the judgments. As we know, the jurisprudence in criminal matters is subject to restraints. And the Board of Grievances has issued in this regard many

judgments concerning the individual acknowledgment, and here are some:

It was judged that "the falsehood in the individual acknowledgment is not a change of the truth since it is a reviewable acknowledgment." This decision was rendered in a case where a person was accused of forgery and of uttering a forged document by submitting a letter issued by the establishment where he works to the Jeddah Deportation Center requesting the release of his two arrested wives. After examination and verification of the papers, the court's board decided not to convict the accused, opining that the letter, subject of the accusation, is a reviewable individual acknowledgment, and is not considered as forged document, not to mention that the case lacks the elements of the forgery crime. The decision was based on the following reasons: "Upon examination and review of the written statements, subject of the accusation, by the officials at the Jeddah Deportation Center, it appeared that the women mentioned in this letter are not arrested and that the names of the women requested to be released are different from those of the women mentioned in the letter, and this is a mere individual acknowledgment and may not be considered as alteration of the truth under the concept of crime, because it has no power of proof and caused no damage." [31]

In another case, a father is charged with forgery because he imbedded his daughter into his passport after acknowledging that she was single on the related form in the passports. As a result, the court's body decided not to convict him[32]and judged that "the form in whole is issued by one party, i.e. the applicant. Moreover, it is similar to individual acknowledgments" [33].

The Egyptian courts have a similar position to that of the Saudi courts regarding the individual acknowledgment. They ruled that "it is established that not any alteration of the truth in a document is an act of forgery for the statement issued by one party is an individual acknowledgment. Therefore, no punishment is inflicted if the statement is truthful or false or is used as means of defense by the adversaries, and thus may be examined and is contingent on the result of such examination. Whereas this applies to the statement of the property's owner in the application submitted by the petitioner to Damietta Electricity and whereas the appellant made no other mention except that it is the property's owner and such application was not taken into consideration to prove the property's ownership, all the petitioner did was issuing an individual acknowledgment, which may not be described as forgery, and the challenged judgment has been in conflict with such point of view and has misinterpreted and misapplied the law, and the petitioner's act is not governed by any penal text. Therefore, the challenged judgment must be overturned, the appealed verdict must be revoked, and the petitioner must be declared not guilty of the charge imputed to it" [34].

They also ruled that "if the challenged judgment proved the event, i.e. the petitioner married On .. and had sexual intercourse with her and slept with her as husband and wife, then divorced her in her absence, and acknowledged in the divorce certificate that he neither had sexual intercourse nor slept with her, and the marriage celebrant introduced it in the certificate contrary to the facts. Therefore, what the marriage

celebrant introduced in the divorce certificate according to what the husband said is one of the individual acknowledgments issued by one party and which do not constitute a basis to claim a right[35].

According to Egyptian justice, such alteration must affect the legal status of a third party without his/her consent. If the statements introduced by the accused are not directly related to the status of third parties; rather, they affect his/her own status and imply modification contrary to the facts, no forgery crime is committed. If in a document, a person claims to have rights which are not his/hers, or denies commitments he/she has undertaken, or attributes to himself/herself qualities that do not exist in him/her, or disclaims attributes which are characteristic of him/her, all these cases do not feature the legal concept of the alteration of the truth, and thus the elements of the forgery crime are incomplete. Moreover, any alteration that makes its perpetrator go beyond the limits of his/her rights to transgress the rights of others, even if it entails indirect damage to third parties, yet even if it causes deliberate damage to third parties, but affects the declarant himself/herself. This is confirmed by the Court of Cassation ruling that:

“Not any alteration of the truth in a document is an act of forgery for if the statement is issued by one party, and not by the competent official, it may be considered as an individual acknowledgment, and thus no criminal punishment may be imposed” [36].

They also ruled that “even if it is decided that the police report can be used as a proof against the holder of the assumed name in it, but the mere change by the accused of his/her name in this report does not constitute an act of forgery whether it is signed by the assumed name or not, unless he/she has impersonated a person known to him/her or who may incur a damage as a result of such impersonation. So if the offender did not mean to assume the name of a specific person known to him/her, but only wanted to have the name of a non-existent person, it cannot be said that he/she was aware that his/her act would cause damage to a third party as long as such third party has no existence in his/her opinion. For a criminal intent to occur in the forgery crime, all the crime elements must be there, including the immediate or probable damage” [37]

In this sense, the prosecuting authority in Mount Lebanon decides that “the jurists agree that not any alteration of the truth in a document is an act of forgery for if the statement is issued by one party, and not by the competent official, it may be considered as individual acknowledgment, and thus may not be sanctioned if such statement is an information that may be true or false”. [38]

Concerning the French legislation, and particularly in the new French Criminal Code [39] which came into force on March 1st, 1994, the forgery is defined under article 441 as “Forgery consists of any fraudulent alteration of the truth liable to cause harm and made by any means in a document or other medium of expression of which the object is, or effect may be, to provide evidence of a right or of a situation carrying legal consequences.” [40]

So the Saudi legislators took a different approach from that of the French legislation in the forgery committed in documents only, unlike the French legislators who incriminated the

forgery of documents or other medium of expression of which the object is, or effect may be to provide evidence of a right or of a situation carrying legal consequences.” [41]

The jurists and courts in France [42] created many ways to check the authenticity of such acknowledgments and to discover the fraud in them, if any, and if they fail to do so, they will be deemed as negligent and will be punished for that [43], Concerning the England legislation: The offense of forgery. A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.² The offense of copying a false instrument. It is an offense for a person to make a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention that he or another shall use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. ³ The offense of using a false instrument. It is an offense for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice .

At the end of this paper, we discovered what the individual acknowledgment is and what if the anti-forgery law inflicts any penalty in this regard. We also noticed the failure and negligence of legislation with respect to the individual acknowledgment, for this issue creates confusion for the courts, lawyers and investigators while doing their jobs in the absence of a text, and the alteration of the truth in the individual acknowledgment makes the documents untrustworthy.

CONCLUSION

- 1- The falsehood contained in the individual acknowledgment is not deemed as alteration of the truth in the concept of the forgery crime, for the falsehood is related to the declarant's legal status and such falsehood is limited to his/her personal status, and is only sanctioned when it exceeds one's status to that of another.
- 2- The individual acknowledgment in the private documents is not considered sanctioned forgery since it is subject to the examination of the competent official.
- 3- The individual acknowledgment is considered sanctioned forgery as far as the public statements are concerned.
- 4- The Saudi legislators neither came up with laws on the individual acknowledgment in the forgery crime under the anti-forgery law nor indicated the cases where the individual acknowledgment is considered forgery, which made things more complicated.
- 5- The Saudi legislators must tackle the issue of individual acknowledgment, include it within the anti-forgery law, underline it separately, shed the light on the exclusions and the punished cases within the regulation and limit it within clear and unequivocal texts.
- 6- The Saudi public authorities in charge of drafting the acknowledgment documents must add the following expression, “any statement contrary to the truth will

subject its declarant to legal proceedings under the Saudi anti-forgery law issued by the royal decree No..... dated", to incriminate whoever opposes the non-punishment for the individual acknowledgment.

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