

ATTACK ON THE CONSTITUTION OF THE REPUBLIC OF SERBIA

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***Abstract:** This paper describes the crime of attack on the constitutional order as a form of legal protection of the constitutional order and security, and the existence of the state itself; this issue was equally critical in the 20th century as it is today, in the 21st century. Let us mention that this issue has been ignored, both in theory and in practice.*

***Keywords:** criminal law, constitutional order, national security, treason,*

1. INTRODUCTION

Politically motivated crime is a project that is most often motivated ethnically, religiously or ideologically and it always connects a number of people from related social structures, organized on a hierarchical basis with a view to illegal and legal activities achieve certain political power and influence, and to change the social system as a whole in accordance with their political agendas.

The offense of assault on constitutional arrangements in the theory of criminal law is commonly referred to as high treason, which is, unlike treason, directed at the threat to the internal security of the country. Consequently, the criminalization of attacks on the constitutional order is one of the main forms of criminal protection of the constitutional order and security of the state in any legal system.

High treason in a general way includes all other crimes against the constitutional order and security, as part of this special mean only a concrete action and protective structures of both general criminal offense of treason. Accordingly, if in a case there are elements of more criminal acts against the constitutional order and security (calling for violent change of the constitutional order, etc.), they will be focused on the apparent ideal concurrence, i.e. there will be only the second offense.

2. INCRIMINATION OF THE ATTACKS ON THE CONSTITUTION

The offense of the attack on the constitutional order, or treason, is in the Serbian criminal law in the past almost 100 years; so far according to the concept of state ideologically it had been repeatedly revised. It was drastically changed only in 1990; prior to that, besides the fact that it was formulated in broad and vague manner, it contained ideological terms related to the previous political system. In 1990 it was definitely abandoned, both criminal-political and legal dogma, including very controversial and broad wording ('Whoever commits the offense directed at ...') which contained the description of the crime until 1990, according to which any action could constitute an act of perpetration of the crime if it is attributed to the subjective orientation of the threat to one of the objects of protection listed in the description of the crime. [1]

In the current criminal legislation of the Republic of Serbia, this offence consists in an attempt to force or threat of force to change the constitution established landscaping in Serbia, or to overthrow its highest state authorities. Therefore, this offence has a common criminal object of legal protection, and it refers to the constitutionally established landscape in Serbia, and in the framework of this work incrimination has two more specific object of protection and at the same time two types of enforcement actions, including: 1) attempt to change the constitutional order, and 2) attempt to overthrow the highest state authority. Therefore, the crime of attack on the constitutional order under Article 308 Criminal Code, by its nature and its name, is a tort of harassment, which means that the completed criminal offense enough causing the abstract threat of criminal protection of listed buildings. In addition, the conclusion is that we should act and conduct of such objective and subjective meaning and purpose, on what is meant in this case, but to prevent their preparatory phase, but only when such acts are objectified and when by itself imply a certain threat to society although it is still abstract (absent), but realistically possible.

Similar criminality and treason we encounter in comparative law. Thus, the Criminal Code of the Russian Federation of the crime of forcible seizure of power or forcible retention of power (in Article 278) includes actions aimed at a violent seizure of power or forcible retention of power in violation of the Constitution of the Russian Federation, as well as actions aimed at violent change of the constitutional order of the Russian Federation. This crime is punishable by imprisonment of twelve to twenty years in prison.

On the other hand, the French Penal Code criminalizes the first two subsections of crimes against state security (articles 75–80), crimes of treason and espionage and crimes against National Defense. In the third subsection, which includes crimes against state authorities and territorial inviolability (Articles 86–92) used the word 'attack' aims to: 1) break or change the social system, 2) incite the population to arm itself against the state government; 3) to arm themselves against each other, and 4) to undermine the integrity of the national territory. Preparations for these offenses are criminalized in a very concrete form, as a conspiracy. [2]

3. OBJECTS AND CONSEQUENCES OF THE ATTACK ON CONSTITUTION

According to the legal description, this crime consists of an attempt to force or threaten use of force change the constitutional order of Serbia or to oust the highest authorities of

the state. From this we can see, first of all, that this done when there is nothing but intent. It is also evident that the consequences of this crime is not the change of constitutional order or the overthrow of the highest state authorities, but only threat to these social values, which means that every attempt is a threat to the protected object to which the attempt is directed.

This is generally determined and consequences of all forms of work, and they are reflected in the threats to the constitutional order of the Republic of Serbia. The implications of this work are not specifically mentioned in the law, but derive from compromising the protective facility. As in other such cases, the consequence is there if there is a so-called abstract causing danger for protecting objects. In a sense any opposition authorities who exercise power means endangering the government, but every opposition is not directed at restricting or overthrow the government. In this sense, understand and endangering the constitutional order of the Republic of Serbia as common consequences of all forms of crime.

All mentioned protection objects are part of a general protective building – the constitutional order of the Republic of Serbia, and its socio-economic development and socio-political system. From this it would at first glance followed that was enough, as the protective structures of the crime indicate only the constitutional order of the Republic of Serbia, as everyone else in the law, these facilities included in this. This, however, would not be justified for two reasons. First, the attacks on the constitutional arrangements in practice occur just by objects that are provided by law. Second, although this is a crime that is essentially directed at the threat to the constitutional order, the shapes of the threats are not the same for all security objects that the law states. It is rightly perceived that separation, or closer specification of certain protective structures, this offence becomes more specific and tightly linked to the principle of *'nullum crimen sine lege.'* [3]

Legal protection, regarding political crimes in general, does not usually include direct and what we might call the ideological dimension of the political and constitutional system. Certain ideology, a certain party or partisanship program criminal protection of the criminal legislation in this area, it is important to emphasize that the general object why certain constitutional arrangements, and his defense of violence or other unconstitutional changes his ways, destruction and overthrow. In the past, the criminal protection was extended to the ideological foundations of the social and state order (for example power of the working class and socialist self-management), which represented a particular danger of possible state repression against ideological opponents through the use of verbal political offense.

4. ATTEMPTS TO CHANGE THE CONSTITUTION

In the first manifestations of the offense attacks the constitutional arrangements – an attempt to change the constitutional order, the object of criminal protection is the constitutional order of Serbia. By this we mean a system of organizing the country's authorities (legislative, executive and judicial), their organization, competence, functioning, constitutionally guaranteed human rights, etc.). Institutional forms of constitutional order are: policy of the country, the parliamentary system of government, the judiciary, the defense and the like. According to Article 1 of 2006 Constitution, the Republic of Serbia is a state of the Serbian people and all citizens who live in it, based on the rule of law and social

justice, the principles of civil democracy, human and minority rights and freedom, and commitment to European principles and values.

The story of the manifestations of the offense is defined as an attempt to violent change of the constitutional order of Serbia. To determine the acts of execution used a legal term, so we cannot speak about its precise prescription, because I attempt in criminal law defines as starting acts of commission or its complete absence of the consequences. Therefore, the concept of operations in this section should be interpreted in the context of other features of the offence, especially the protective nature of the object and intent of the perpetrator. This means that you should be taking some activities that go beyond the preparatory work in terms of content and objective means endangering the constitutional order. This must be assessed in each individual case, but it is certain that this is the hallmark of the Criminal Code of imprecise and that may create difficulties in its practical application. [4] This relative generality in determining enforcement actions alleviated by prescribing that the existence of this part needs to be an attack on the Constitution established landscaping done by force (absolute or compulsive) or threat of force. Criminalized is only violence to state regulation. For the existence of this type of crime, is not a necessary attempt to change the constitutional order as a whole, but not enough to do so in relation to some of the less important elements of the constitutional order. Force and threats can arise in this case as a way of performing some other activity, but should be taken that only the use of force and threats can represent the action execution. The concept of force and threats should be taken in its general sense. Force may be absolute or compulsion, or consist in the use of mechanical, physical, or other power, hypnosis or intoxicants. The very threat of force itself must be serious and feasible.

The offence must be directed at the violent change of the constitutional order. This is the main objective of the offender. The change means replacing the current system of government other, which would not be based on the current constitutional provisions (such as changing a monarchy into a republic). At the same time, it is not important what the solution wants to impose. Also, it is not necessary that the offender activity directed at changing the constitutional order as a whole, it is enough to endanger and any of its components (for example, the parliamentary system, the system of separation of powers, human rights, etc.).

Consequences of the act are abstract threats to the constitutional order, so that the work is finished the very acts of perpetration, or attempted his violent change. This result does not have to be determined; it is assumed and is contained in the act of execution risk. Attempt of this offence is simply not possible because it is the very act of committing, i.e. it is equal to the execution as such.

Offender can be anyone. The very nature of the offence, however, suggests that its execution means more an organized activity of a number of persons, i.e. it has elements of organized crime in the social order and security of the country. For guilt it is necessary that the offender is aware that he engages in activities aimed at endangering the constitutional order.

5. ATTEMPTS TO OVERTHROW THE HIGHEST STATE BODIES

For another form of crime it is characteristic that it represents an attempt to overthrow the highest state authority. The specificity of this form of the offense is reflected in the criminal

protection of the facility, and that the highest authorities of the Republic of Serbia, noting that the Constitution provides for separation of powers between the legislative, executive and judicial forms of authority.

The very concept of the circle of the highest state authority is determined by the Constitution of the Republic of Serbia in 2006, i.e. branches of government, namely: 1) The National Assembly 2) President 3) the Government 4) the Constitutional Court, and 5) The Supreme Court of Cassation. The proof that these are the very highest state authorities may be inferred from the provisions of Article 310 of The Criminal Code which explicitly states authorities identified as the highest state authority. These are the activities that are immediately directed at the overthrowing the government. As the ways of committing these offenses the following was envisioned: the use of force or the threat of use of force (an attempt to overthrow otherwise does not constitute this crime, but may be any other criminal offense). [5]

Overthrow also exists when the State agency or a member is forced to resign. The term 'resign' implies that by the overthrow the government body is permanently disabled to perform its duty (usually accompanied by lack of recognition) and replace it with an illegal authority, which does not necessarily have to be an unconstitutional category, and this organ can be specified in the Constitution. Overthrow is any unconstitutional deprivation of the functions of a public body or its representatives, i.e. in its very concept there is already included unconstitutionality, but the law further emphasizes this element in order to more strongly emphasize the difference compared to lawful dismissal of the representatives of the state authorities. Therefore, temporary disablement of state authority in the exercise of its functions (e.g. prevention of a session of the National Assembly), without negating its legality shall not represent criminal offense.

Consequence of the act is an abstract threat to most organs of state power, so that the work is finished by the very acts of perpetration, i.e. through the attempt to overthrow the highest state authority. This consequence does not need to be determined; it is assumed and is contained in the act of execution risk. The attempt of this act is simply not possible, because by the very nature of things the attempt is equal with the completed action of execution.

The perpetrator of the attempt to overthrow the highest state authorities may also be any person. The very nature of the offense – conspiracy – without any doubt indicates that its execution has elements of organized crime within the social order and security of the country. To be proclaimed guilty the perpetrator must be aware that he undertakes an activity that is directed to attempt the overthrow the highest state authority.

6. CONCLUSION

The offense of assault on the constitutional organization has been present in the Serbian criminal law for almost 100 years and so far according to the concept of state ideologically revised several times, but has always been a general criminal offense against the internal security of the country, that is treason.

The legal nature of the crime stems both from its protective structure that appears as a general protective object of the group of offenses, and the acts of commission, which includes the activities that the attack on the Constitution established landscaping Serbia,

and not the Criminal Code defines as independent offenses. This is determined by the relationship of this work to other offenses in this group.

Therefore, all other crimes against the internal security of the Republic of Serbia are but special forms of this offense. This means that the attack on the constitutional order is liable only if its performance has not achieved another criminal offense in this group. Otherwise, in principle, this crime may be in the ideal and real concurrence with other offenses (minor and serious bodily injury, murder, illegal detention, kidnapping, violation of state, official and military secrets, etc.) set forth in other chapters of the Criminal Code.

Finally, the question of its importance in the 21st century is opened, i.e. its existence in actual legal system of the Republic of Serbia, bearing in mind that it is a political offense and the number of persons convicted for this crime in the total number of prisoners represented by 0.0 to 0.1 %, according to available statistics.

REFERENCES

- [1] Stojanović, Z.: *Komentar Krivičnog zakonika*, Službeni glasnik, Beograd, 2007.
- [2] Bavcon, LJ. i dr.: *Kaznenopravna zaštita države i njenog društvenog uređenja – politički delikti*, Globus, Zagreb, 1988
- [3] Bačić, F. i dr.: *Komentar Krivičnog zakona SFRJ*, Savremena administracija, Beograd, 1978.
- [4] Lazarević, LJ.: *Komentar Krivičnog zakonika*, Pravni fakultet Univerziteta Union u Beogradu, Beograd, 2011.
- [5] Đorđević, Đ.: *Krivično pravo – posebni deo*, Kriminalističko policijska akademija, Beograd, 2011.