

TREATMENT OF ESPIONAGE IN LEGISLATION IN SOME EUROPEAN UNION COUNTRIES

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INTRODUCTION

The independence of the Member States of the European Union, must not under any circumstance be relativized in the view of the membership in the European Union, although the EU, no doubt, did take a part of their national sovereignty. The reason for this lies in the fact that the countries voluntarily renounced part of their sovereignty in favor of the European Union and that this process is legally defined and regulated by legal acts of the Member States.

All criminal laws of the Member States of the European Union recognize the institution of a criminal offense of espionage, whose modern forms of administration actually incurred in Europe as a continent [3,8] By espionage incrimination they protect the known and unknown information about the facts, resources and procedures in the sphere of intimacy of society or the state to ensure its independence and the security of the state system, established by the Constitution and laws.

ESPIONAGE IN THE LEGISLATION OF THE FEDERAL REPUBLIC OF GERMANY

The legislator of the Federal Republic of Germany in the first chapter of the Criminal Code of 1994, which is entitled: "Betrayal of peace, high treason, endangering of the democratic rule of law", groups the offenses endangering the internal and external security of the state. In the second chapter, entitled "Treason, betrayal of the country and jeopardizing its external security", the legislator treats the problem of espionage.

The crime of espionage against the state the legislator of the Federal Republic of Germany envisaged for those persons who perform activities that are focused on the discovery and disclosure of state secrets. This is the basic form of the offense and does not necessarily have to include a description of the offenses that consists of collecting state secrets, but such per-

sons may engage in collecting other data not covered by these criminal acts, such as inquiring about the characters that are in contact with state secrets, and such similar actions. [7]

Another form of the alleged criminal offense is that offender expresses willingness to discover and disclose state secrets to a foreign power or its representative, if the offense is not covered by the description of the criminal acts issued by the country and handing state secrets. Thus, this is about criminality status of a conscious attempt to commit espionage. For both forms of the offense there are identical sanctions provided, namely imprisonment for a term not exceeding five years or a fine. In particularly serious cases the punishment is imprisonment of one to ten years.

German legislator has left it to the court, in its discretion, to either reduce the sentence or refrain from punishment, but only if the conditions are met that the perpetrator voluntarily waived his behavior and that the relevant state authority said everything he knows. If the perpetrator of the basic form of the offense was forced to such actions by a foreign power or its representative, he should not be penalized if he voluntarily desists from this and openly says everything he knows to the competent state authority.

The legislator also envisioned the existence of the crime of espionage, *ex officio*. The basic form of this criminal act is an act by a German citizen against the Federal Republic of Germany for the secret service of another foreign power or if he performs espionage activity which is aimed at communicating or sending data items or information. There is also a special form of the crime that involves the expression to do the action of the basic form for the secret service of a foreign power or its representatives. Both forms of the offense are sanctioned by imprisonment not exceeding five years or a fine. There are also more severe forms of the said criminal offense, which basically means that the perpetrator announced or sent data items or information that is safeguarded by a competent authority, in cases where the offender abused his official position and failed to keep such a secret, or caused serious harmful consequences to the Federal Republic of Germany. The sanction for more severe forms of the said criminal offense is imprisonment of one to ten years.

The Criminal Code of the Federal Republic of Germany provides for the possibility of imposing special safeguard measures by the Court of espionage for offenders who have been convicted of a criminal offense which involves forethought, with imprisonment of not less than six months. In such cases, the court has the option to declare the offender incapable of performing the public service and deny the right to participate in public elections as an electoral candidate and the voter.

Similarly, the German Criminal Code provides for the possibility of forfeiture of items used to commit a crime of espionage. These are the items arising from the crime, which were used or intended for the commission or preparation of the crime, as well as the objects that constitute a state secret. The court may seize other items too related to the offense not covered by legal description, provided that this is necessary in order to eliminate the risk of serious consequences for the external security of the Federal Republic of Germany. Confiscation of above items is executed even when the perpetrator is not guilty of their crime.

In the fifth chapter of the German Criminal Code entitled Offences against the defense of the country, there are listed criminal offenses of military espionage and neighboring offenses. [4]

The offense of work for the intelligence service, which endangers the safety involves the execution of works outside of the scope of this law for an institution, party or other associa-

tion and their members who collect the notice of matters relating to odbrnu country, carry out intelligence that the subject has things related to national defense or procures another to such activity or supports it, this time standing in the service of aspirations directed against the security of the Federal Republic of Germany or the combat readiness of its troops. The legislator has stipulated that from the description of the criminal work activities aimed at informing the public through the usual reporting in the press or other electronic media should be exempted. The sanctions for this crime are imprisonment up to five years or a fine. A necessary condition for this type of punishment is that for the same offense a more severe punishment is not provided in accordance with other legal regulations. Thus, the legislator has predicted heavier punishment for the perpetrator, if prescribed. Punishment is prescribed also in the cases of attempts to commit the said criminal offense.

The criminal offense of endangering security of includes recording or listing of military resources, military facilities or equipment, or military activities, and giving those videos or descriptions to another, thus knowingly endangering the security of the Federal Republic of Germany or the combat readiness of its troops. The criminality of this offense is excluded if the perpetrator had permission to film issued by the competent authority. The sanctions for this basic form of the offense are the prison sentence of up to five years or a fine.

A special form of this offense includes taking pictures or recording from an airplane or other aircraft, or a territory subject to the scope of this law and giving these photos before to another, and thus knowingly endangering the security of the Federal Republic of Germany or the combat readiness of its troops. [4] The penalty for this type of criminal offense is imprisonment for up to two years or a fine if the offense does not receive punishment in accordance with the basic form of this criminal act. It is notable that in both forms of the offense the law provides the existence of premeditation, as a condition of criminality. The legislator foresees attempts as criminality of the offense.

Finally, the German Criminal Code provides for the possibility of forfeiture of items used to commit offense under this chapter. These are the items arising from the crime, primarily recordings and photos, as well as devices that are used in committing the offense. The court may seize other items too related to the offense not covered by legal description, provided that this is necessary in order to eliminate the risk of serious consequences for the external security of the Federal Republic of Germany. Confiscation of above items is executed even when the perpetrator is not guilty of their crime. [7]

ESPIONAGE IN THE REPUBLIC OF FRANCE

The French penal legislation recognizes the crime of espionage and it is criminalized in the Criminal Code and the Military Penal Code. Those offenses are covered by the concept of espionage secret information relating to the national defense, then the data on the French military units, facilities, warehouses, ammunition, material on aviation and maritime units and ships and any other information by which a foreign power and its agents may obtain data of interest for the Republic of France. [5]

The said offenses include all information whose disclosure could harm France, and benefit other countries. Despite efforts to identify all confidential and other data that are secret and whose disclosure is actually the crime of espionage, these efforts were eventually

abandoned - their enumeration was abandoned - and a broad wording that such data include all data that are of interest for France was adopted. [1]

The Fourth Book of the Criminal Code of the Republic of France defines crimes and offenses against the nation, the state, public order and peace. The first chapter defines the object of criminal protection of the basic interests of the nation, which include: independence, territorial integrity, security, republican form of its institutions, its defense and diplomatic means, protection of the population in France and abroad, the balance of its natural environment, and the essential elements of its scientific and economic potential.

The first chapter of the Fourth book of the Criminal Code of the Republic of France, entitled "On betrayal and espionage," determines who can be perpetrator of a crime of espionage and that as a citizen of France and a military officer in the military service of France (this means the members of the Foreign Legion), all this primarily for the actions of compromising defensive power of the state.

The second part defines crimes of connections with a foreign power, foreign company or organization controlled by foreign agents to cause hostility or aggression against France. We see that the focus of the legislation is on the foreign factor, regardless of whether it is a state body or a private company. The above shall be considered as justified taking into account the centuries-old practice of intelligence agencies to make their breakthroughs in foreign territory implemented under the cover of economic activities. For the perpetrators of these actions there is a fine and imprisonment without strict time limit, which is not so common in the French legislation. A milder form of identical acts of the offense only with the consequences of damage to the basic national interests of France, is punishable by imprisonment of ten years and a fine.

The third part incriminates the submission of data to a foreign power. The term data includes: information, processes, articles, documents, digital data and files whose use, dissemination or collecting harm the fundamental interests of the nation providing the possession of the foreign factor. Here too as the foreign factor the legislator considers state authorities, enterprises and organizations in the possession of foreigners. These actions are punishable by 15 years of rigorous imprisonment and a fine.

Collecting and sorting these data in order to sell to foreign factor is punishable by 10 years imprisonment and a fine. It is clear that the preparation to sell itself is punishable, but it is necessary that a turnover to the foreign factor is not realized because then it would become the above criminal offense. To carry out activities aimed at obtaining possession of data planned for foreign factors would be punishable by 10 years of imprisonment and a fine.

The last part of this chapter of the Criminal Code deals with the instigation of the enumerated offenses. The methods of direct incitement are listed: promises, gifts, pressure, threats or violence against a stirred up. Incitement is punishable even if the work is not executed due to circumstances independent of the will of the perpetrator. Such actions are punishable by imprisonment of seven years and a fine. [5]

In the third section of the Criminal Code of the Republic of France there are other forms of threats to national defense cited. For example, for unauthorized entry into military facilities a prison sentence of one year and a fine is stipulated. Illegal entry into relevant authorities in the public or private premises in areas of restricted access, material or secret in the field of research, study or production for the purposes of national defense is punishable by imprisonment of six months and a fine. Decree of the State Council of France defines con-

ditions for fencing off and marking of protected objects, as well as conditions for approval for entry into the premises.

The fifth chapter of the Criminal Code of the Republic of France provides for more stringent penalties for most offenses in this area in case of declaration of a state of imminent threat of war or a state of war.

ESPIONAGE IN THE REPUBLIC OF CROATIA

The Criminal Code of the Republic of Croatia entered into force in 2013. [6] In a special chapter the Criminal Code defines crimes against the Republic of Croatia, in accordance with settled practices inherited from the former Yugoslavia, citing high treason, the occupation and the recognition of capitulation, preventing the struggle against the enemy, or key provisions relating to the disclosure of classified information and espionage.

A separate article of the law provides for the offense of making available classified information to an unauthorized person. Unlike the criminal act of espionage, when this work is not necessarily that there is a foreign factor present, the formulation “unauthorized person” is sufficient. [2] This is punishable by six months to five years in prison on the basis of the form of the crime. This Act defines the existence of severe forms of offenses, in paragraph three, in the form of greed, which is sanctioned by imprisonment of one to ten years if the work is done during a state of war or imminent threat of war will be punished with imprisonment of three to twelve years. The law also stipulates careless forms of offenses, which is punishable by imprisonment up to three years. As in the case of trade secrets, the legislator in Croatia avoided to define the notion of secrecy in the Criminal law, although it is clear that it is a state secret, and there is also the practice of all former Yugoslav republics which in their criminal codes define the mentioned term.

The crime of espionage is also sanctioned by the Criminal Code of the Republic of Croatia. The basic form of the offense is described almost identically by other countries of the former Yugoslavia, except for the fact that the perpetrator explicitly that the confidential data entrusted to him or come to them unlawfully. Basically, we do not consider this emphasis which way the perpetrator came into the possession of classified information to be crucial, except for the part concerning the determination of sanctions, which are otherwise determined by imprisonment from one to ten years, as well as in other jurisdictions. Paragraph two prescribes punishment for the preparation of a criminal offense, that excels in fact of collecting secret information. In this case it is necessary to determine the intent that they be filed foreign intelligence service. This offense is punishable by imprisonment of six months to five years. Paragraph three criminalizes work for a foreign intelligence service and provides for a fine of one to ten years in prison, as well as in other jurisdictions of the former Yugoslavia.

Further, a qualified form of the crime is defined too in paragraph four, relating to the commission of the criminal act of war or armed conflict, which involves the Republic of Croatia. Here the legislator stresses that Croatia does not have to be at war for its armed forces to be involved in the armed conflict, since this country is a member of NATO and the European Union, where they can engage in combat missions in multinational operations led by international organizations listed. Thus, the legislator wanted to incriminate these cases

too through the engagement part of the Croatian armed forces and their protection. Possible sentence for the alleged offense is at least five years in prison. [6]

The Criminal Code of the Republic of Croatia in the section dealing with offenses against the armed forces considers the criminal offense of unauthorized entry into military facilities and making sketches or drawings of military installations and weapons. Unlike other countries in the region, Croatia has opted for the criminalization of these offenses only in cases of war and immediate threat to the independence and integrity of the country. In other cases it is not considered a criminal offense. Thus, it can be said that Croatia has taken a very liberal attitude on this issue in relation to other countries which consider these actions to be offenses even in peacetime. Croatia has sanctioned the execution of these crimes only in case of war or immediate danger, with imprisonment of up to three years.

CONCLUSION

The criminal legislation of Germany, France and all other European Union member states recognize the institution of a criminal offense of espionage, whose modern forms actually incurred on European soil. Essentially, all of these incriminations protect secret (proprietary) information from the sphere of intimacy of society or the state, to ensure its independence and security of the constitutional order.

Analysis of the Croatian criminal legislation is especially meaningful for practical as well as theoretical reasons. Namely, Croatia was the last country to join the European Union, and are important to us her experiences in the field of harmonization of national legislation with the EU legislation are of extreme importance for us.

On the other hand, Croatian legislation has the same roots, similar to the historical development and social circumstances in which it was under construction so it can be used for an adequate empirical basis for the harmonization of our legislation with the European Union. It is particularly interesting to note how they treated the basic human rights and freedoms and the protection of the security of society and state secrets, as well as methods of countering industrial espionage, which may or may not necessarily be linked to the foreign factor.

It is undisputed that according to certain issues in the field of espionage and related offenses the Republic of Croatia has a somewhat different approach compared to other countries of the former Yugoslavia. These differences are caused by its membership in international organizations such as NATO and the European Union, but also by different status and needs that this country has in protecting its national values.

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