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ATTACK ON THE CONSTITUTIONAL ORDER (HIGH TREASON) IN THE CRIMINAL LAW OF BOSNIA AND HERZEGOVINA AND COUNTRIES IN THE REGION

Abstract:

In recent months, the public in Bosnia and Herzegovina, above all, but also all others who have been following developments in the country, have been preoccupied with its difficult political and constitutional situation. This is certainly reflected in the daily discourse over the existence of the criminal offense of attacking the constitutional order or colloquially referred to as high treason committed by even the highest political representatives of all three constituent peoples. Due to the broad definition of this criminal offense in our legislation, which has been further complicated by its imposition by K. Šmit has enabled a large number, primarily political representatives, to engage in classifying certain actions of some other politicians in Bosnia and Herzegovina as an attack on the constitutional order. For example, the Vice President of the Republic of Srpska, Ć. Duraković filed a criminal complaint with the Prosecutor's Office of Bosnia and Herzegovina against the Minister of Internal Affairs of the Republic of Srpska, S. Karan, for making threats to attack the constitutional order. According to him, the complaint was based on the provision of Article 156 of the Criminal Code of Bosnia and Herzegovina, which prescribes a minimum prison sentence of at least five years for attempting to alter the constitutional order through the use or threat of force. On the other hand, daily newspaper headlines² testify to an overwhelming eruption of actions by individuals which are, quite unnecessarily, often qualified as the most serious criminal offenses. Otherwise, scientific and expert treatment of this incrimination has been largely neglected today, in both theory and practice, with only a small number of excerpts and scientific works addressing offenses of this nature, particularly those concerning attacks on the constitutional order.³ In addition to the above, it should be emphasized that in legal theory, there is a fairly common view that the acts of committing an attack on the constitutional order and the incitement to its violent overthrow are imprecisely legally defined in most criminal legislations, which may

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2 The RS NA has attacked the constitutional order of BiH (Klix news from 27.2.2025); The proposed draft of the RS constitution is an attack on the constitutional order of BiH and a serious danger (BIRN TV live); The Minister of Scientific and Technological Development and Higher Education of the Republika Srpska, Željko Budimir, stated that the political persecution of the President of the Republika Srpska is the greatest attack on the constitutional order of BiH and the Republika Srpska so far, and that all institutions that are part of that order must defend it (RTRS from 26.2.2025)...

3 According to G. Matić, the reasons for this are the political motivation of the perpetrators of these acts, discontinuity with previous legal systems, i.e. freedoms and human rights (more in: Matić, D.G, High Treason in the Criminal Legislation of the Republic of Serbia, National Security Policy, Year XV, Vol. 26, No. 1/2024, pp. 145-164

create certain difficulties in the practical application of the aforementioned criminal laws. This paper will discuss the provisions of Article 156 of the Criminal Code of Bosnia and Herzegovina, as well as other provisions of this law referring to criminal offenses against the constitutional order, as well as other similar provisions contained in the remaining three criminal codes in Bosnia and Herzegovina.

Keywords: *political crimes, attack on the constitutional order, high treason, Bosnia and Herzegovina.*

1. INTRODUCTORY REMARKS

The criminal legislation of Bosnia and Herzegovina today, in accordance with its constitutional structure and distribution of jurisdiction, consists of four separate criminal law systems, namely: Bosnia and Herzegovina, Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina. This certainly entails the unobstructed coexistence of four criminal codes (similarly, there are also four criminal procedure laws or four misdemeanor), namely: the Criminal Code of Republika Srpska, which entered into force in July 2017; the Criminal Code of the Federation of Bosnia and Herzegovina, which entered into force on August 1, 2003; the Criminal Code of the Brčko District of Bosnia and Herzegovina, which entered into force on July 1, 2003; and the Criminal Code of Bosnia and Herzegovina, which entered into force on March 1, 2003.

All four criminal codes of Bosnia and Herzegovina prescribe criminal offenses against the constitutional order or constitutional structure, i.e. the so-called political crimes, systematized in a separate chapter as extremely serious crimes directed at endangering, undermining or violating the most important values upon which the social and state order, and the political and economic system of Bosnia and Herzegovina, Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina are based. Otherwise, these criminal offences fall into the category of political crimes, whose emergence is linked to the formation of the state as an important collectivity, as well as to the need for its protection and the protection of its most significant goods and values. Historically, political crimes appeared very early and they are among the oldest crimes in general. Interestingly, as the forms of government and political systems have changed, along with the content of these offenses and their forms and modes of manifestation, their character as an attack on the specific social and state order has remained unchanged. Given that these criminal offenses are directed at the violation, undermining, or subversion of the most fundamental social values, whose protection and security is of particular concern to the political authorities, they are regarded in all criminal codes as some of the gravest criminal offenses, for which the most severe penalties⁴ are prescribed.

Until the French bourgeois revolution, such criminal offences have been considered as a special category of crimes for which special rules on criminal liability and punishment of their perpetrators applied. The punishments for the perpetrators of these crimes were often very cruel and inhuman. Even in contemporary criminal law, there are also such legislations that distinguish this group of crimes from all others, either by prescribing them

4 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), Commentary on the Criminal Code of the Republic of Srpska, second amended and supplemented edition, Official Gazette of the Republic of Srpska, Banja Luka, pp. 578-607.

in special laws⁵ or by creating special rules on criminal liability and punishment for their perpetrators or by creating special courts to try the perpetrators of these crimes⁶.

2. A BRIEF OVERVIEW OF CRIMINAL OFFENSES AGAINST THE CONSTITUTIONAL ORDER AND SECURITY

The criminal law protection of the state and government has occupied a significant place in the criminal legislation of every country from its very inception. Until the mid-19th century and in the totalitarian regimes of the 20th century, attacks on the state and its government were considered the most serious and morally reprehensible offenses⁷. Accordingly, from the very beginning and at almost every stage of its development, the state has sought to use harsh repression to protect the established constitutional order, the existing system of government and its holders from all attacks that could threaten it⁸. Therefore, it could be said that torts of this type have existed ever since there has been government, the state, and the struggle for power⁹. The content, scope of incriminations and objects of criminal law protection differed in certain historical phases and in certain countries, but they always expressed the efforts of the ruling class to protect its positions as efficiently as possible¹⁰. Relatively severe punishments are prescribed, even at the earliest stage of the emergence of criminal activity, for the commission of criminal offenses directed against the state itself and its very existence¹¹. Although it is quite clear, as is most clearly confirmed by the former socialist states, that the protection of the state ultimately does not depend exclusively on the application of criminal law repression, or that criminal law only plays a secondary role in this, there is still no criminal legislation without criminal offenses of this type¹².

The importance of the goods protected by these incriminations is enormous. However, regardless of the importance of the goods to be protected and the political nature of these acts, it seems absolutely necessary that criminal law protection be carried out here as well while respecting the basic principles of democratic criminal law¹³. In any case, it must be ensured that incriminations that include activities from the preparation stage have the form of clear and precisely defined legal descriptions that must meet the requirements of the principle of legality in terms of determining the legal entities of criminal acts¹⁴. Accordingly, incriminations must be linked to a specific and clearly described human behavior, a specific action, or a specific procedure¹⁵. In addition to the above, no such criminal offense should deviate from the basic principle of *cogitationis poenam nemo patitur* - that no one can be

5 Thus, in the Kingdom of Yugoslavia, a special Law on the Protection of Public Security and Order in the State from 1921, better known as „Obznana“.

6 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

7 Group of authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

8 Ibidem.

9 Ibidem.

10 Ibidem.

11 Group of authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

12 Ibidem.

13 Ibidem.

14 Ibidem.

15 Ibidem.

punished for his opinion, i.e. for his statements and political commitment because it is against the ruling policy and order¹⁶. It is especially important that a person's thoughts, intentions, plans, ways of political action, permitted by the constitution and international law, must remain outside the reach of criminal law, regardless of how often they are unacceptable from the point of view of the ruling policy¹⁷. Otherwise, the principle that the criminal offense is a real, that is, an objective phenomenon of the outside world would not be respected. And finally, as well as from the point of view of today's criminal laws in Bosnia and Herzegovina, especially important is the understanding according to which broad and vague formulations should be avoided in the descriptions of these crimes, especially when it comes to the act of committing the crime, because that important element of every crime must be clearly and precisely defined in every specific case¹⁸.

In Chapter XVI of the Criminal Code of Bosnia and Herzegovina¹⁹ criminal offenses against the integrity of Bosnia and Herzegovina are prescribed. From the very title of this chapter of criminal offences, it is quite clear which fundamental values are protected by this group of criminal offences. Accordingly, the collective object of protection for all these criminal offenses is broadly set and it refers to the constitutional order and security of Bosnia and Herzegovina²⁰. These are acts that mean an attack on the important assets of Bosnia and Herzegovina, that is, on the fundamental institutions of the constitutional order, on its state and social organization. Thus, with these criminal acts, Bosnia and Herzegovina as a whole is directly attacked, essential and highest attributes of its statehood are endangered, such as the form of government and state organization, territorial integrity and security, that is, the independence of Bosnia and Herzegovina. It is, therefore, about objects of protection that include those values which determine the essence of the constitutional and state order of Bosnia and Herzegovina. All this indicates, as already said, the political character of these criminal acts, which stems both from their protective object and from the motive for their execution²¹.

The common consequence of all criminal acts from this group is endangering the aforementioned protection facilities, i.e. endangering the integrity of Bosnia and Herzegovina, i.e. the constitutional order and security of Bosnia and Herzegovina.

16 Ibidem.

17 Ibidem.

18 Ibidem.

19 *Krivični zakon Bosne i Hercegovine*, Službeni glasnik Bosne i Hercegovine, br. 3/2003; 32/2003 - ispr.; 37/2003; 54/2004; 61/2004; 30/2005; 53/2006; 55/2006; 8/2010; 47/2014; 22/2015; 40/2015; 35/2018; 46/2021; 31/2023 i 47/2023.

20 Criminal acts from this group, as the name itself shows, have a double object of criminal protection: 1) constitutional regulation and 2) state security. Most generally, these crimes can be defined as crimes that mean an attack on the internal and external security of the state. Likewise, their division into two groups is most represented: - high treason, as an attack on the state territory, the constitution and the bearers of power (attack on the internal security of the state); and - treason, as an attack on the external security of the state. The classic and best-known examples of treason and high treason are: participating in a war against one's country, attempting to violently overthrow one's government (rebellion), spying and divulging state secrets, handing over secret documents or divulging the secrets of one's army, state officials or diplomats, divulging information from one's intelligence service to an enemy country and foreign forces, and attempting to assassinate or kill the head of state (more in: Matić, G., (2013), *Krivično delo napad na ustavno uređenje u zakonodavstvu Republike Srbije*, *Zbornik radova sa I međunarodnog naučnog skupa*, Evropski univerzitet, Brčko, pp. 149-155).

21 A group of authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

The perpetrator of the largest number of these criminal acts can be any person, both a domestic and a foreign citizen, or a stateless person²². On the other hand, only in the case of a small number of these crimes, the perpetrator is a citizen of Bosnia and Herzegovina (*delicta propria*).

Except for the criminal offense called “*divulging state secrets*”, which is punishable even when committed negligently, all other criminal offenses from this group can only be committed with intent, and some of them exclusively with direct intent (e.g. murder of representatives of the highest authorities)²³.

According to the prescribed punishments, these crimes are among the most serious ones in general, because for some of these crimes, i.e. their most serious forms, the most severe, i.e. long-term prison sentence of 20 to 45 years, is prescribed (that is, long-term prison or even life imprisonment in the Republic of Srpska). When it comes to the ranges of punishments, they are often set too wide and in this respect allow for the individualization of the punishment to a large extent, but they can also lead to arbitrariness and inconsistency of penal policy. Penalties are usually prescribed with only a special minimum, and sometimes both a minimum and a maximum, usually from one to ten years, but also from six months to five years.²⁴

Criminal acts against the constitutional order and security of the Republic of Srpska (Chapter XXII of the Criminal Code of the Republic of Srpska²⁵) are aimed at jeopardizing, undermining or violating the most important values on which the social and state organization and the political and economic system of the Republic of Srpska are based. These are the basic values established by the Constitution of the Republika Srpska, namely: state and social order, economic and political system, organization of state power and state security, which includes its sovereignty and territorial integrity²⁶. Precisely because of this object of protection defined in this way, these criminal acts are called “political crimes”, the origin of which is closely related to the origin of the state and law in general and the need to protect its most important goods and values.²⁷. Classic or general criminal offenses differ from them. The division of criminal offenses into political (evolutionary) and classical (atavistic) was made according to their nature, and it has its basis in the natural law theory

22 Ibidem.

23 A group of authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, str. 523-554.

24 Ibidem.

25 *Krivični zakonik Republike Srpske*, Službeni glasnik Republike Srpske, br. 64/2017; 104/2018 - odluka Ustavnog suda Republike Srpske; 15/2021; 89/2021; 73/2023 i Službeni glasnik BiH, broj 9/2024 – odluka Ustavnog suda Bosne i Hercegovine.

26 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

27 Politeo, I. (1921), *Politički delikt*, Zagreb; Popovci, S. (1985), *Fenomenologija i struktura političke delinkvencije i njeno suzbijanje na Kosovu*, Jugoslovenska revija za kriminologiju i krivično pravo, Beograd, broj 2-3/1985. godine, pp. 3-24; Lazarević, Lj. (1987), *Krivično zakonodavstvo i kontrarevolucionarno delovanje na Kosovu*, Jugoslovenska revija za kriminologiju i krivično pravo, Beograd, broj 1/1987. godine, pp. 3-20; Bavcon, Lj. (1989), *Kaznenopravna zaštita države i njenog društvenog uređenja*, Zagreb; Pihler, S. (1989), *Kaznenopravna zaštita države i njenog društvenog uređenja – politički delikti*, Glasnik AK Vojvodine, Novi Sad, broj 3/1989. godine, pp. 24-29.

of Hugo Grotius.^{28,29} This division also has a practical significance, because the perpetrators of political crimes cannot be extradited to foreign judicial authorities for the purpose of conducting criminal proceedings, that is, for the execution of sentences.

Domestic criminal legislation takes the view that crimes against the constitutional order and security of the Republika Srpska constitute a unique group of acts that are protected: the socio-political order, the political and economic system, the form of political power and the organization and position of the highest state bodies, as well as the external and internal security of the state, sovereignty and territorial integrity³⁰. All these values are so interconnected in such a way that they represent an indivisible whole as an object of protection.

These crimes are, therefore, political crimes. Their political character is determined by two elements: a) object of protection and b) the motives for which they are committed.

The object of protection in the case of these criminal acts is the social and state organization of the Republika Srpska and its security. The motive behind the attack on these values is the intention to endanger the constitutional order or the security of the state. For the existence of the largest number of these criminal offenses, it is important that the act of commission is undertaken by a person who, at the moment of undertaking the act, acts with such intent, regardless of whether this intent was realized in the specific case. The existence of this intention on the part of the perpetrator at the time of undertaking the act of execution also indicates the form of culpability with which the perpetrator acts, which is direct intent³¹.

The sphere of punishable activities in these criminal offenses is set significantly wider than in other, i.e. classical criminal offences. Thus, in addition to the activity defined by law in the sense of the act of execution, a completed deed also exists in the case of the very initiation of this act. This again means that an attempt in the largest number of these criminal offenses is equated with a completed offense. These are acts in which the action consists of an "attempt" to "change the constitutional order" (Article 278 of the CC of the RS), to "separate a part of the territory" (Article 279 of the CC of the RS) or to "bring the state into a position of subordination or dependence" (Article 280 of the CC of the RS)³². On the other hand, for the existence of some of these acts, it is necessary that the act of execution was undertaken in a certain way, namely: a) by the use of force (absolute or compulsive), b) by the threat of the use of force, or c) in another, unconstitutional way³³. This means that the manner of execution of the act is an element of the essence of these criminal acts, which must be included in the intention of the perpetrator.

28 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, str. 193-215.

29 This division also has a practical significance, because the perpetrators of political crimes cannot be extradited to foreign judicial authorities for the purpose of conducting criminal proceedings, i.e. for the execution of sentences.

30 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

31 Marjanović, Đ. (1988), *O statusu političkih zatvorenika*, Godišnjak Pravnog fakulteta u Sarajevu, str. 161-174.

32 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

33 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

Although the Criminal Code of the Republika Srpska from 2017 prescribes the preparation of a criminal offense as a punishable stage, i.e. a phase in the commission of a criminal offense (Article 21 of the Criminal Code of the RS), preparatory actions that are otherwise aimed at creating the conditions and convenience to commit political crimes are provided as independent criminal offenses³⁴. Thus, punishment for preparatory acts is conditioned by the importance of the object of protection. Namely, the protection of the socio-economic, political and state order, and the preservation of the security of the state as a whole or a particular part of it requires that all those activities which can realistically and directly, closely and actually threaten these protected values be incriminated³⁵. A large number of such activities have the character of preparatory actions, which are distant from the immediate act of execution, but which enable its execution in general or execution in an easier, faster, simpler and more efficient way³⁶.

Analogously to the previous one, in the provision of Article 297 of the CC of RS, a special criminal offense is provided under the name: "*Preparation of criminal offenses against the constitutional order of the Republic of Srpska*", which consists of undertaking preparatory actions for the execution of the political offenses specified by law³⁷. In doing so, the legislator himself has determined that the following shall be considered preparatory acts: a) organizing, planning and agreeing with others the commission of a criminal offense, b) procuring or equipping the means for the commission of a criminal offense and c) other acts which create immediate conditions for the commission of criminal offenses³⁸.

In the majority of these criminal acts, the consequence consists in endangering the constitutional order or the security of the Republic of Srpska. This danger most often occurs in the form of an abstract danger, and much less often as a concrete danger³⁹. The consequence of an injury occurs extremely rarely only in some criminal offenses, namely: the murder of a representative of the highest authorities of the Republic of Srpska (Article 281 of the CC RS)⁴⁰.

In the event that, as a result of the act of committing a basic political criminal offense, a more serious consequence has occurred in the form of an injury of greater scope and intensity, or the act of committing the basic offense has been undertaken under particularly aggravating circumstances indicating a greater degree of severity and danger, then stricter punishment is foreseen in the provisions of Article 298 of the CC RS⁴¹.

Regarding the form of culpability, these criminal acts can only be committed

34 Ibidem.

35 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

36 Ibidem.

37 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

38 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

39 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

40 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

41 Ibidem.

with intent. It is most often a matter of direct intention characterized by the intention to endanger the constitutional order or the security of the Republic of Srpska. An exception exists only for the criminal offense of revealing the secrets of the Republic of Srpska (Article 292 of the CC RS), which can also be committed out of negligence⁴².

The perpetrator of these criminal acts can be any person. On the other hand, only a citizen of Republika Srpska (that is, a domestic citizen) can be a perpetrator of criminal acts, namely: a) preventing the fight against the enemy (Article 284 CC RS), b) serving in the enemy's army (Article 285 CC RS) and c) aiding the enemy (Article 286 CC RS). And finally, in the case of the criminal offense called divulging a secret of the Republic of Srpska (Article 292 of the CC of the RS), only a person entrusted with a state secret in the service or in general at work can appear as the perpetrator of the crime⁴³.

3. ATTACK ON THE CONSTITUTIONAL ORDER IN THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

3.1. Attack on the constitutional order in the Criminal Code of Bosnia and Herzegovina before the intervention of K. Šmit

Article 156 of the Criminal Code of Bosnia and Herzegovina prescribes a criminal offense under the name: Attack on the constitutional order, as follows: Whoever, by the use of physical force or the threat of the use of physical force, tries to change the constitutional order of Bosnia and Herzegovina or to overthrow its highest institutions, shall be punished by imprisonment for at least five years.

The criminal offense of attack on the constitutional order or high treason is a basic criminal offense in this group or head of criminal offenses and one of the basic forms of criminal law protection of the constitutional order and security of Bosnia and Herzegovina (similar to the protection of the state in any other legal system)⁴⁴. Such a finding derives from the protective object of this criminal act, given that it includes the most significant, i.e. basic values of Bosnia and Herzegovina as a state union, its constitutional order and its highest bodies, but also from the act of committing this crime, which includes all those activities that attack the constitutionally established order of Bosnia and Herzegovina, and which do not constitute another, i.e. separate criminal offense. It is therefore a general criminal offense against the constitutional order of Bosnia and Herzegovina, and accordingly, all other criminal offenses under this chapter are only special forms of this criminal offense. As such, this criminal offense is of a subsidiary nature and is applied only if the conditions for the application of those other criminal offenses are not met⁴⁵.

42 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

43 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

44 Matić, G., (2013), *Krivično delo napad na ustavno uređenje u zakonodavstvu Republike Srbije, Zbornik radova sa I međunarodnog naučnog skupa*, Evropski univerzitet, Brčko, pp. 149-155.

45 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

This criminal offense consists of an attempt to change the constitutional order of Bosnia and Herzegovina by the use of physical force or the threat of using physical force, that is, to overthrow its highest bodies, i.e. institutions. From a substantive point of view, in this case we are dealing with two protective objects that are functionally connected, and the attack on the constitutional order simultaneously threatens the highest authorities of Bosnia and Herzegovina⁴⁶.

The act of committing a crime is limited to the use of physical force, that is, physical violence. The protective object of this criminal offense is the constitutional order of Bosnia and Herzegovina and the highest authorities of Bosnia and Herzegovina⁴⁷.

As we have already pointed out, according to the object of protection, this political criminal offense appears in two basic forms, with the fact that the first form of the offense consists of an attack on the order established by the constitution, and the second in an attack on the highest authorities of Bosnia and Herzegovina⁴⁸.

a) The first form of the offense includes an attempt to change the constitutional order of Bosnia and Herzegovina through the use of or the threat of using physical force⁴⁹. The enforcement action should be directed at violently changing the constitution of Bosnia and Herzegovina⁵⁰. This is also the main goal of the perpetrator of the criminal act⁵¹.

The consequence of the act is not explicitly specified by law, with the fact that the nature of this criminal offense implies that this criminal offense belongs to the offense of endangerment. Namely, this criminal offense consists in endangering the protected legal interest, i.e. the constitutional order, i.e. in creating a danger to the constitutional order,

46 Ibidem.

47 The terms constitutional order should be interpreted in the sense of the corresponding constitutional provisions governing the constitutional order of Bosnia and Herzegovina. The concept of the highest authorities of Bosnia and Herzegovina should be interpreted in a similar way, and based on the provisions of Article 167 of the CC of BiH, it can be indirectly concluded that the following authorities are involved: both houses of the Parliamentary Assembly of BiH, the Presidency of BiH, the Council of Ministers of BiH and the Constitutional Court of BiH.

48 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

49 The question of completion of the act in the material sense in the case of political crimes is not without importance. Thus, the criminal offense of attacking the constitutional order (Article 308) defined as an attempt, by force or the threat of the use of force, to change the constitutional order of Serbia or to overthrow the highest state authorities, is considered formally completed as already an attempt to achieve such a goal, because the successful overthrow of the highest authorities and coming to power will, as a rule, preclude responsibility under this provision. After all, this was also the case with the October 5 coup (more in: Vuković, I. (2020), *Krivično delo ugrožavanja teritorijalne celine i moguća odgovornost najviših državnih organa*, Pravni fakultet Univerziteta u Beogradu, pp. 149).

50 Change means replacing the existing state system with another one, which would not be based on the current constitutional solutions (for example, changing the monarchy into a republic). At the same time, it is not important what kind of solution one wants to impose. Also, it is not necessary that the activity of the perpetrator is aimed at changing the constitutional system as a whole, it is enough that any of its components are threatened (for example, the parliamentary system, the system of separation of powers, human rights and the like) (more in: Matić, G., (2013), *Krivično delo napad na ustavno uređenje u zakonodavstvu Republike Srbije*, *Zbornik radova sa I međunarodnog naučnog skupa*, Evropski univerzitet, Brčko, pp. 149-155).

51 Matić, G., (2013), *Krivično delo napad na ustavno uređenje u zakonodavstvu Republike Srbije*, *Zbornik radova sa I međunarodnog naučnog skupa*, Evropski univerzitet, Brčko, pp. 149-155.

and it is completed by the mere undertaking of a violent attempt directed at changing that constitutional order⁵². As with other delicts with such a legal entity, this consequence is contained in the very act of commission and it is presumed. Attempting this criminal offense is not possible, because it represents an act of execution, i.e. it is equated with an act of execution⁵³.

b) The second form of this criminal offense is characterized by the fact that it represents an attempt to overthrow the highest authorities of Bosnia and Herzegovina through the use of or the threat of using physical force. The act of execution consists in a violent attempt to overthrow the said authorities. The term “overthrow of the highest state authorities” means preventing these authorities from performing their legal functions for which they were elected.⁵⁴

With regard to the consequence of this criminal offense, everything stated with respect to the consequence of the previous form of this criminal offense shall also apply to this form.

It is necessary to especially emphasize, in relation to both forms of this act that only the violent endangerment of the constitutional order, which includes only physical violence, is incriminated here⁵⁵. It is an important element of this delict that has a limiting effect and practically determines the width and depth of its punishable zone.

The perpetrator of this criminal offense can be any person, while the subjective element of this criminal offense consists of intent. For the existence of this criminal offense, it is necessary that the action of the perpetrator of the offense was aimed at the violent change of the constitutional order of Bosnia and Herzegovina, that is, the overthrow of its highest authorities. It is not of importance what kind of new constitutional order is intended to be established, what matters is that the existing one is intended to be changed⁵⁶.

The punishment prescribed for this criminal offense is imprisonment for at least five years.

The most serious, or qualified, forms of this criminal offense (as well as some other offenses prescribed in this chapter) are provided for in the provisions of Article 169 of the CC of BiH. According to the aforementioned legal norm, these forms exist when more serious consequences arise from the commission of this criminal act or it is committed under special circumstances. More serious consequences may consist of the death of one or more persons, of endangering human life, of serious violence, or of extensive destruction. Negligence is sufficient for the responsibility of the perpetrator in relation to these consequences. The prescribed punishment for the qualified form of this criminal offense is a prison sentence of at least ten years or a long-term prison sentence⁵⁷.

52 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

53 Matić, D.G, Veleizdaja u krivičnom zakonodavstvu Republike Srbije, *Politika nacionalne bezbednosti*, God. XV vol. 26, broj 1/2024, str. 145-164.

54 Grupa autora, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, str. 523-554.

55 Grupa autora, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, str. 523-554.

56 Ibidem.

57 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II,

3.2. Attack on the constitutional order in the Criminal Code of Bosnia and Herzegovina after the intervention of K. Šmit

The aforementioned norm from Article 156 of the Criminal Code of BiH in the legal order, i.e. the Criminal Code of BiH, existed from the adoption of this law until July 1, 2023, that is, until the adoption of the Decision of K. Šmit enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina. Namely, the aforementioned Decision enacted the Law on Amendments to the Criminal Code of Bosnia and Herzegovina⁵⁸.

Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

58 In addition to changing the provision from Article 156 of the CC of BiH, this Law made several other changes. Thus, in Article 2 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina, a new criminal offense is prescribed as follows: After Article 203 of the Criminal Code, a new Article 203a is added, which reads: Failure to execute the decisions of the High Representative. Article 203a reads: (1) An official in the institution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina, or in a canton, city or municipality or local community or any body of local administration and self-government, or a responsible person who does not apply, does not implement, does not execute or otherwise does not comply with the decision of the High Representative for Bosnia and Herzegovina, or who prevents or otherwise obstructs the application, implementation or execution of such a decision, shall be punished by imprisonment from six months to five year. (2) A person from paragraph (1), who was directly or indirectly ordered to behave in the manner provided for in paragraph (1) of this article, and felt compelled to carry out such an order in order not to lose his livelihood or not be exposed to abuse at the workplace, but informed his superior that such actions could commit a criminal offense, may be punished more lightly. (3) A person referred to in paragraph (1) who was directly or indirectly ordered to behave in the manner provided for in paragraph (1) of this article, but who informed the competent prosecutor about such a situation, shall be exempted from punishment. (4) For the criminal offense referred to in paragraph (1) of this article, a security measure of prohibition from performing duties will be imposed. (5) In accordance with Articles 113 and 114 of this law, a conviction for the criminal offenses referred to in paragraph (1) of this article has the following legal consequences: a) termination of official duties and termination of employment; b) confiscation of decorations, c) prohibition of official duties in legislative, executive, judicial, administrative or any body that is fully or partially financed from public funds; and d) the prohibition of obtaining an official position in a legislative, executive, judicial, administrative or any body that is fully or partially financed from public funds."

Article 3 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina stipulates: Article 239 of the Criminal Code is amended to read: (1) An official in an institution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina, or in a canton, city or municipality or local community or any body of local administration and self-government, or a responsible person who does not apply, does not implement, does not execute or otherwise does not respect the final and binding decision of the Constitutional Court of Bosnia and Herzegovina, including a decision on a temporary measure, a final and enforceable decision or a temporary measure of the Court of Bosnia and Herzegovina, the House for Human Rights of Bosnia and Herzegovina or the European Court of Human Rights, or which prevents or otherwise hinders the application, implementation or execution of such a decision, shall be punished by a prison sentence of six months to five years." (2) A person from paragraph (1), who was directly or indirectly ordered to behave in the manner provided for in paragraph (1) of this article, and felt compelled to carry out such an order in order not to lose his means of livelihood or not be exposed to abuse at the workplace, but informed his superior that such actions could commit a criminal offense, may be punished more lightly. (3) A person referred to in paragraph (1) who was directly or indirectly ordered to behave in the manner provided for in paragraph (1) of this article, but who informed the competent prosecutor about such a situation, shall be exempted from punishment. (4) For the criminal offense referred to in paragraph (1) of this article, a security measure of prohibition from performing duties will be imposed. (5) In accordance with Articles 113 and 114 of this law, a conviction for the criminal offenses referred to in paragraph (1) of this article has the following legal consequences: a) termination of official duties and termination of employment; b)

The aforementioned decision of K. Šmit reads: 1. *The Law that follows and constitutes an integral part of this Decision shall enter into force as provided in Article 4 of that Law, on a temporary basis until the Parliamentary Assembly of Bosnia and Herzegovina adopts it in the same form, without amendments and without additional conditions.* 2. *This Decision enters into force immediately and is immediately published on the official website of the Office of the High Representative and in the “Official Gazette of Bosnia and Herzegovina”.*

According to the aforementioned law, in Article 1, Article 156 of the Criminal Code of Bosnia and Herzegovina is amended as follows: In Article 156, the words: “Whoever uses physical force or the threat of using physical force” are replaced by the words: “(1) Who uses force or the threat of using force, or in some other illegal way”. What is even more interesting, new paragraphs (2) and (3) are added after paragraph (1), which read: “(2) For the criminal offense referred to in paragraph (1) of this article, a security measure of prohibition from performing duties will be imposed. (3) In accordance with Articles 113 and 114 of this law, a conviction for criminal offenses from paragraph (1) of this article has the following legal consequences: a) termination of official duties and termination of employment; b) confiscation c) prohibition of official duties in legislative, executive, administrative or any body that is fully or partially financed from public funds; and d) prohibition of obtaining official duties in legislative, executive, judicial, administrative or any body that is fully or partially financed from public funds.

The norm according to which this (so-called Šmit’s) law enters into force on July 2, 2023, is published on the official website of the Office of the High Representative, and is immediately published in the “Official Gazette of Bosnia and Herzegovina”.

By prescribing a security measure called Prohibition of performance of duty in the provision of paragraph 2 of Article 156 of the Criminal Code of Bosnia and Herzegovina, K. Šmit introduced a completely new security measure into the system of security measures through the back door, which is not prescribed by the provisions of Chapter Nine of the Criminal Code of BiH, that is, the provisions of Art. 68 to 74 CC BiH⁵⁹. Namely, in the system of criminal sanctions established by the CC of BiH, security measures represent a special type of criminal sanctions whose purpose is to remove conditions or conditions that may influence the perpetrator to commit criminal offenses in the future. The system of security measures established by this law consists of four types of security measures, namely: 1) mandatory psychiatric treatment, 2) mandatory drug addiction treatment, 3) prohibition of calling, activities or duties and 4) confiscation of objects. Otherwise, according to this legal text, the mentioned security measures can (but do not have to) be imposed on the perpetrator of the criminal act, provided that the conditions stipulated by

withdrawal of decorations; c) prohibition of official duties in legislative, executive, judicial, administrative or any body that is fully or partially financed from public funds; and d) the prohibition of obtaining an official position in a legislative, executive, judicial, administrative or any body that is fully or partially financed from public funds.”

59 That this is a completely new security measure is quite clear if you take into account the conditions that must be met for the implementation of the security measure of banning the performance of calls, activities or duties prescribed by the provisions of Article 73, which still exists in the Criminal Code of BiH. Namely, according to paragraph 1 of this article, a security measure prohibiting the exercise of a certain calling, activity or duty may be imposed on the perpetrator who has committed a criminal offense related to property that was entrusted to him or to which he had access thanks to his calling, activity or duty, if there is a danger that such performance could act as an incentive to commit a new criminal offense by abusing his calling, activity or duty related to property entrusted to him or to which he has access. None of the mentioned conditions are required in the creation of the incrimination of K. Šmit.

the law are met in the specific case (the optionality of their application is noticeable, which is common in all modern criminal legislation).

Similar to the previous one, the imposition, that is, the application of security measures, is optional in all Bosnia and Herzegovina's criminal laws, that is, the court may or may not apply them. Namely, even in situations where the legal conditions are met, the court is not obliged to impose these measures (the exception is the so-called medical security measures). Completely contrary to the aforementioned rule, the Law on Amendments to the Criminal Code of Bosnia and Herzegovina from 2023 introduces the obligation to apply a new security measure called Prohibition of Duty⁶⁰.

4. ATTACK ON THE CONSTITUTIONAL ORDER IN THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA, THE FEDERATION OF BOSNIA AND HERZEGOVINA AND THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA

Chapter thirty-two of the Criminal Code of the Republic of Srpska from 2017 prescribes criminal offenses against the constitutional order and security of the Republic of Srpska.

An attack on the constitutional order as a special criminal offense is prescribed in the provision of Article 278 as follows: Anyone who tries to change the constitutional order of the Republic of Srpska by force or threat of use of force or in another illegal way, will be punished with a prison sentence of two to twelve years (we had an identical norm in the previous Criminal Code of the Republic of Srpska from 2003, in the provision of Article 293)⁶¹.

This criminal offense consists in an attempt to change the constitutional order of the Republika Srpska by force, threat of force or in another illegal way. Therefore, it is a basic, that is, a general political crime⁶².

The protected legal interest in this criminal offense is the constitutional arrangement of the Republic of Srpska. On the other hand, the constitutional arrangement of the Republic of Srpska defines the Constitution of the Republic of Srpska, which determines the social and economic arrangement and the political system, as well as the organization, jurisdiction and mutual relationship of the legislative, judicial and executive authorities⁶³.

The commission of this criminal offense implies the initiation (in the sense of an attempt) of any activity that is directed, suitable for, or ultimately capable of leading to a change in the constitutional order of the Republic of Srpska. For the existence of this criminal

60 The provision of Article 73 paragraph 2 of the CC BiH reads: A security measure prohibiting the exercise of a certain calling, activity or duty may be imposed for a duration that cannot be shorter than one nor longer than ten years, counting from the day the decision becomes final, with the provision that the time spent serving a prison sentence is not included in the duration of this security measure.

61 Krivični zakon Republike Srpske, Službeni glasnik Republike Srpske, br. 49/2003; 108/2004; 37/2006; 70/2006; 73/2010; 1/2012 i 67/2013.

62 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

63 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2017), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka, pp. 193-215.

offense, it is important that the above-mentioned activities are initiated with the aim of changing the constitutional arrangement of the Republic of Srpska, in the manner specified by law: a) using force - force can be absolute (physical) or compulsive (psychological)⁶⁴. Force, in addition to the use of physical, mechanical and other force, also includes the use of hypnosis and stunning means, b) the threat of the use of force - i.e. the announcement of the immediate use of force or c) in another illegal way⁶⁵. The consequence of this criminal act is endangering the constitutional order in the form of an abstract danger.

The perpetrator of this criminal act can be any person, and in terms of guilt, intent is required.

For this, certainly a political crime, a relatively high prison sentence of two to twelve years is prescribed.

Interestingly, this criminal offense, unlike the criminal offense of attacking the constitutional order provided for in the Criminal Code of Bosnia and Herzegovina, includes only an attempt to change the constitutional order of the Republic of Srpska, but not the overthrow of the highest institutions, i.e. organs of the Republic of Srpska⁶⁶. On the other hand, a significantly lighter punishment is prescribed for this offense than for the criminal offense prescribed by Article 156 of the Criminal Code of Bosnia and Herzegovina.

In Chapter Fifteen of the Criminal Code of the Brčko District of Bosnia and Herzegovina⁶⁷ criminal offenses against the state are prescribed (???). Criminal offenses from this legal chapter of the Criminal Code of Brčko District of Bosnia and Herzegovina in terms of type, legal characteristics, forms and threatened punishments mostly correspond to the criminal offenses provided for in the Criminal Code of the Federation of Bosnia and Herzegovina. The only question is the name of this legal head, considering that the Brčko District of Bosnia and Herzegovina does not have the status of a state, so it should be compared to the status position that the Brčko District of Bosnia and Herzegovina has according to the Statute of the Brčko District of Bosnia and Herzegovina (a special territorial unit, i.e. a single administrative unit of local self-government that is under the sovereignty of Bosnia and Herzegovina).⁶⁸

Attack on the constitutional arrangement and the Statute⁶⁹ the established order of the Brčko District of Bosnia and Herzegovina is provided for in the provision of Article 149 of the Criminal Code of Brčko District of Bosnia and Herzegovina, with the following content: Whoever, by using or threatening to use physical force, tries to change the order established by the Constitution of Bosnia and Herzegovina and the Statute of the Brčko District or to overthrow its highest institutions, shall be punished by imprisonment for at least five years.

64 Jovašević, D. – Mitrović, Lj. – Ikanović, V. (2021), *Komentar Krivičnog zakonika Republike Srpske*, drugo izmijenjeno i dopunjeno izdanje, JU Službeni glasnik Republike Srpske, Banja Luka, pp. 578-607.

65 Jovašević, D. - Ikanović, V. (2012), *Krivično pravo – posebni deo*, Panevropski Univerzitet APEIRON, Banja Luka.

66 Grupa autora, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

67 *Krivični zakon Brčko distrikta Bosne i Hercegovine*, Službeni glasnik Brčko distrikta Bosne i Hercegovine, broj 19/2020 – prečišćeni tekst, 3/2024 i 14/2024.

68 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

69 Brčko distrikt BiH, umjesto ustava ima Statut BD BiH kao najviši pravni akt BD BiH.

The criminal offense is the same as the criminal offense from the provisions of Article 156 of the Criminal Code of Bosnia and Herzegovina, which is quite problematic if we bear in mind that it is not a constitutional but only a statutory order, given that the highest legal act regulating the order in the Brčko District of Bosnia and Herzegovina is the Statute of the Brčko District of Bosnia and Herzegovina⁷⁰. The above statement equally applies to the very name of this group of acts, that is, criminal acts from Chapter XV of the Criminal Code of Brčko District of Bosnia and Herzegovina, because Brčko District, in any case, does not have the status of a state.

And finally, in Chapter XV of the Criminal Code of the Federation of Bosnia and Herzegovina⁷¹ criminal offenses against the constitutional organization (that is, organization) of the Federation of Bosnia and Herzegovina are prescribed. On the other hand, the provision of Article 149 of this Law provides for a criminal offense called: Attack on the constitutional structure of the Federation. The content of this incrimination is: Whoever, by the use of or the threat of using physical force, tries to change the constitutional structure of the Federation or overthrow its highest institutions, will be punished by a prison sentence of at least five years. There is no particular difference between this and the incrimination from Article 156 of the Criminal Code of Bosnia and Herzegovina, except that this act only protects the constitutional order of the Federation of Bosnia and Herzegovina, i.e. its highest institution⁷².

5. ATTACK ON THE CONSTITUTIONAL ORDER IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA, MONTENEGRO, NORTH MACEDONIA, CROATIA AND SLOVENIA

By provision of Article 308 of the Criminal Code of the Republic of Serbia ⁷³ a criminal offense entitled: Attack on the constitutional order is prescribed, with the following content: *Whoever tries to change the constitutional order of Serbia or to overthrow the highest state bodies by force or threat of use of force, will be punished with imprisonment from three to fifteen years.* The aforementioned criminal offense represents a general criminal offense against the constitutional order and security of the Republic of Serbia. Interesting, in addition to this, in the provisions of Article 309 of the Criminal Code of the Republic of Serbia⁷⁴ another, quite similar criminal offense called *Calling for a violent change of the constitutional order* with the following content is prescribed: (1) *Whoever, with the intention of endangering the constitutional order or the security of Serbia, calls or incites to forcefully change its constitutional order, overthrow the highest state authorities or representatives of those authorities, shall be punished with imprisonment from six months to five years.* (2) *Whoever commits the offense referred to in paragraph 1 of this article with help from abroad shall be punished by imprisonment of one to eight years.* (3) *Whoever, with the intention of dispersing, creates or reproduces material whose content which by its content invites or*

70 Group of Authors (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

71 *Krivični zakon Federacije Bosne i Hercegovine*, Službene novine Bosne i Hercegovine, br. 36/2003; 21/2004 – ispr.; 69/2004; 18/2005; 42/2010; 42/2011; 59/2014; 76/2014; 46/2016; 75/2017 i 31/2023.

72 Group of Authors, (2005), *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini*, Knjiga II, Zajednički projekat Savjeta Evrope i Evropske komisije, Sarajevo, pp. 523-554.

73 *Krivični zakonik Srbije*, Službeni glasnik Republike Srbije, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024.

74 Stojanović, Z. – Delić, N., (2013), *Krivično pravo, posebni deo*, Beograd, str. 259-272.

incites the commission of the acts referred to in paragraph 1 of this article, or who sends or transfers such material to the territory of Serbia or keeps a large amount of such material with the intention of dispersing it or someone else, shall be punished by imprisonment from three months to three years.

The criminal legislation of Montenegro in Chapter twenty-nine, which is entitled Criminal offenses against the constitutional order and security of Montenegro, foresees three criminal offenses of interest to the topic of this paper, namely Attack on the constitutional order in the provision of Article 360, Overthrow of the highest state authorities in the provision of Article 361 and Calling for a violent change of the constitutional order in the provision of Article 362 of the Criminal Code of Montenegro⁷⁵. An attack on the constitutional order of Montenegro is prescribed in the provision of Article 360 of the CC of Montenegro, with the following content: *Whoever tries to change the constitutional order of Montenegro by force or threat of use of force, shall be punished with imprisonment of three to fifteen years.* On the other hand, the criminal offense entitled Overthrow of the highest state authorities from Article 361 reads: *Whoever, by force or threat of force, tries to overthrow one of the highest state authorities of Montenegro or representatives of those authorities, will be punished with imprisonment from one to eight years.* And finally, the Montenegrin criminal legislation also contains the criminal offense called Calling for a violent change of the constitutional system, and this is in the provision of Article 362, which reads: (1) *Whoever, with the intention of endangering the constitutional system or the security of Montenegro, calls or incites to change its constitutional system by force, overthrow the highest state authorities or representatives of those authorities, shall be punished with imprisonment from three months to five years.* (2) *Whoever commits the offense referred to in paragraph 1 of this article with help from abroad shall be punished with imprisonment of one to eight years.* (3) *Whoever, with the intention of dispersing, creates or reproduces material whose content is such that it invites or incites the commission of the offense referred to in paragraph 1 of this article, or who sends or transfers such material to the territory of Montenegro or keeps a large amount of such material with the intention of dispersing it or someone else, shall be punished by imprisonment from three months to three years.*

In Chapter thirty-two of the Criminal Code of the Republic of Croatia⁷⁶ Criminal offenses against the Republic of Croatia are prescribed. On the other hand, the provision of Article 340 of the Criminal Code of the Republic of Croatia provides for a criminal offense called Treason, and it reads: *Whoever threatens the territorial integrity or the constitutional structure of the Republic of Croatia by the use of force or the threat of use of force, or in any other illegal way, shall be punished by a prison sentence of at least five years.*

75 *Krivični zakonik Crne Gore*, Službeni list RCG, br. 70/2003, 13/2004 - ispr. i 47/2006 i Službeni list CG, br. 40/2008, 25/2010, 32/2011, 64/2011 - dr. zakon, 40/2013, 56/2013 - ispr., 14/2015, 42/2015, 58/2015 - dr. zakon, 44/2017, 49/2018 i 3/2020.

76 *Kazneni zakon*, Narodne novine Hrvatske, br. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023 i 36/2024.



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NAPAD NA USTAVNI POREDAK (VELEIZDAJA) U KRIVIČNOM ZAKONODAVSTVU U BOSNI I HERCEGOVINI I ZEMLJAMA REGIONA

Apstrakt:

Prethodnih mjeseci bosanskohercegovačka javnost najviše, ali i svi drugi koji prate dešavanja u ovoj zemlji zaokupljeni su teškom političkom i ustavnom situacijom u Bosni i Hercegovini. To se svakako ogleda i u svakodnevnom licitiranju postojanja krivičnog djela napada na ustavni poredak ili kolokvijalno nazvanim veleizdaja izvršenog od strane čak i najviših političkih predstavnika sva tri konstitutivna naroda. Zbog širine definicije ovog krivičnog djela u našem zakonodavstvu koje je dodatno svojim nametanjem iskomplikovao K. Šmit, ogroman broj, prije svega političkih predstavnika upušta se u kvalifikovanje pojedinih radnji nekih drugih političara u Bosni i Hercegovini čak i napadom na ustavni poredak. Primjera radi, potpredsjednik Republike Srpske Č. Duraković podnio je Tužilaštvu Bosne i Hercegovine krivičnu prijavu protiv ministra unutrašnjih poslova Republike Srpske S. Karana, zbog prijetnji napadom na ustavni poredak. Po njemu, prijava se temelji na odredbi člana 156 Krivičnog zakona Bosne i Hercegovine koja predviđa zatvorsku kaznu od najmanje pet godina za pokušaj promjene ustavnog poretka upotrebom sile ili prijetnjom sile. S druge strane, svakodnevni novinski naslovi svjedoče o ogromnoj erupciji radnji pojedinaca koje se često puta, sasvim nemušto kvalifikuju ovim najtežim krivičnim djelima. Inače, naučna i stručna obrada ove inkriminacije danas je uglavnom zanemarena, kako u teoriji tako i u praksi, a o rijetko kojem krivičnom djelu manje je napisano stručnih i naučnih radova kao što je to slučaj sa napadom na ustavni poredak. Uz navedeno, treba istaći da je u pravnoj teoriji dosta često izraženo mišljenje po kome su radnje izvršenja napada na ustavno uređenje i pozivanja na nasilno rušenje ustavnog poretka u većini krivičnih zakonodavstava neprecizno zakonski određene, što može stvarati određene teškoće u praktičnoj primjeni navedenih krivičnih zakona.

O tome šta se sve nalazi u odredbama člana 156 Krivičnog zakona BiH, ali i ostalim odredbama ovog zakona koje se odnose na krivična djela protiv ustavnog uređenja, kao i sličnim odredbama u preostala tri krivična zakon(ik)a u Bosni i Hercegovini, biće riječi u ovom referatu.

Ključne riječi: *politička krivična djela, napad na ustavni poredak, veleizdaja, Bosna i Hercegovina.*

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