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## Research Article

# CRIMINAL LIABILITY FOR ATTEMPTING (ENCROACHMENT) UPON THE REPRESENTATIVES OF STATE AUTHORITY

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## ABSTRACT

The article highlights the issues of criminal liability for assaulting the representatives of state authorities and the analysis of the such crimes on the basis of foreign experience. Also, the article presents information on that state, political and public figures are also protected by the criminal law in addition to the representatives of the state authority. In this context, the author developed recommendations and proposals.

## KEYWORDS

Representatives of state authority, attempt, state, political and public figures, insult and slander, sign of objective side.

## INTRODUCTION

The majority of countries provide special criminal-legal protection of the life, health, honor and dignity of the representatives of state authority. In particular, the

Model Criminal Code of the CIS countries proposes to establish criminal liability for killing a state or public figure as an act of terrorism in a separate article. In this



regard, in most of the CIS countries criminal liability for the mentioned act is provided for with consideration of some national peculiarities. In Uzbekistan, Article 158 of the Criminal Code stipulates criminal liability for attempting on the President of the Republic of Uzbekistan.

The CIS countries such as Azerbaijan, Belarus, Georgia and Kazakhstan have criminal liability for attempting on the country's president in their criminal laws. In particular, Article 323 of the Criminal Code of the Republic of Azerbaijan stipulates criminal liability for disgracing or humiliating the honor and dignity of the Head of Azerbaijan State - the President of the Republic of Azerbaijan.

In the Criminal Code of Armenia, such a crime is called assassination of a state, political or public figure (Article 305). Article 277 of the Criminal Code of Azerbaijan and Article 294 of the Criminal Code of the Kyrgyz Republic stipulate liability for attempting on life of the state or public authority. In addition, Article 277 of the Criminal Code of Azerbaijan provides for the criminal protection of the representative of the foreign state.

Article 277 of the Criminal Code of the Russian Federation, Article 112 of the Criminal Code of Ukraine, and Article 342 of the Criminal Code of Moldova provide for the criminal liability for Encroachment on the Life of a Statesman or a Public Figure, committed for the purpose of terminating his government or any other political activity, or out of revenge for such activity. Article 277 of the Criminal Code of Azerbaijan includes "representative of the foreign state" among the persons protected under this norm.

Article 63 of the Criminal Code of the Republic of Belarus states that an encroachment on the life of a state or public figure committed in connection with his

state or public activities with the view of destabilizing the public order or influencing the decision taken by the state bodies or preventing political or other public activities. That is, the facultative sign (aspect) of subjective side - the purpose of the crime is considered as a necessary sign.

In the Republic of Belarus, all the articles that the President of the country is a victim of are included in the chapter on encroachment on the administrative order. Based on the Criminal Code of the Republic of Belarus, the President of the country may be a victim of violence, threat of violence, destruction or damage to property. However, the article which provides for criminal liability for such acts of violence, does not specify the purpose and motive of such an act. In this sense, it can be concluded from the reference to the first part that the act must be committed with the purpose of obstructing the legal activity of the President or forcing him to change the nature of such activity or taking revenge for his activity.

Liability for defamation and insult in relation to the President of the Republic of Belarus is outlined in Articles 366 and 368 of the Criminal Code of the Republic of Belarus. It should be highlighted that these articles represent a special type of liability for defamation and insult, since articles 188 and 189 of the Criminal Code of Belarus provide universal liability for defamation and insult.

The requirement of liability for defamation and insulting the President of the Republic of Belarus is that the defamation and insult must be made publicly, that is, "in a public performance, in a publicly displayed work or publication, or through mass media."

The Criminal Code of the Republic of Kazakhstan also provides for two articles related to attempt upon the President of the country. In particular, Article 166-1 of



the Criminal Code refers to the First President of the Republic of Kazakhstan - the leader of the nation, and Article 167 refers to the President of the Republic of Kazakhstan.

There are two more norms related to the legal protection of the First President in the Criminal Code of the Republic of Kazakhstan. In particular, insulting the First President of the Republic of Kazakhstan or otherwise infringing on his honor and dignity, as well as attempt to influence him or his family members living with him in any form in order to obstruct his legal activities is punishable under Article 317-318 of the Criminal Code.

The First President of the Republic of Kazakhstan and any family members who dwell with him are protected by Article 317-2 of the Criminal Code, including the warranties of the integrity of the property, accommodation and office facilities, privately owned or official transport facilities, correspondence, used by them means of communication, warranties of bank secrecy and integrity of bank accounts, as well as the integrity of belonging to them documents. These acts are also included in the list of crimes against the administrative order.

The Criminal Code of the Republic of Kazakhstan protects the honor and dignity of the President of the country and prevents unauthorized interference with his activities (Article 318 of the Criminal Code). At the same time, the comment section of Article 318 of the Criminal Code specifies that public performances, which contain critical statements about the policy which is conducted by the President of the Republic of Kazakhstan shall not cause criminal liability under this article. The same offence, which is committed with the use of mass media shall be assessed as aggravating circumstance of this crime.

The composition of the second type of crime provided for in this article is the influence of any form on the President of the Republic of Kazakhstan or his close relatives with a view to impede the fulfillment of his duties.

The experience Georgia has in providing for the safety of the nation's president is likewise exceptional. Article 325 of the Criminal Code of Georgia establishes criminal liability for the Encroachment upon the life, health or property of the President or any other political official of Georgia or a family member thereof, related to the diplomatic activity of such official.

The crime of "Assault upon political official of Georgia" is covered in Chapter XXXVIII, which is referred to as "Terrorism". In this case, the victims are other state political officials in addition to the President of the country, as well as their close relatives. The lives, health and property of these persons were taken under criminal protection. In order to qualify the crime under this article, there must be a special purpose and motive - a connection with the victim's work in public service.

In the Republic of Moldova, attempt on the life of the President of the Republic of Moldova, the Chairperson of Parliament or the Prime Minister shall be punishable under article Article 342 of the Criminal Code.

In the Criminal Code of Ukraine there are a number of norms that provide liability for trespassing (encroachment) against life of the President of Ukraine, the Chairman of the Verkhovna Rada (Parliament) of Ukraine, a National Deputy (Member of Parliament) of Ukraine, the Prime Minister of Ukraine, a member of the Cabinet of Ministers of Ukraine, the Chairman or a judge of the Constitutional Court of Ukraine or the Supreme Court of Ukraine or High Specialized Courts of Ukraine, the Procurator General of Ukraine, the Human Rights Commissioner of the



Verkhovna Rada of Ukraine, the Head of the Accounting Chamber, the Chairman of the National Bank of Ukraine, or a leader of a political party, committed in relation to their government or public duties.

In particular, Article 112 of the Criminal Code of Ukraine stipulates the liability for trespassing (encroachment) against life of a statesman or a public figure.

According to Article 344 of the Ukrainian Criminal Code, it is criminal to make any kind of influence on them for the purpose of preventing them from performance of their official duty or obtaining any unlawful decisions. The same actions committed by an official through abuse of office is considered an aggravating circumstance of the crime.

Article 86 of the Criminal Code of the Republic of Latvia stipulates the liability for attack on the President of the Republic of Latvia, member of the Saeima, member of the Cabinet, or another public official elected, nominated or appointed by the Saeima of the Republic of Latvia, in relation to their governmental activities in the interests of the Republic of Latvia, if endangerment of the life or health of such person is related to the attack.

According to the Criminal Code of the Republic of Lithuania stipulates that Attempt on the Life of the President of the Republic of Lithuania, member of the Seimas, Prime Minister, ministers and officials appointed by the Seimas in connection with their state or public activities is one of the most serious crimes against the state.

The Criminal Code (§ 90) of the Federal Republic of Germany establishes liability for disparages the Federal President in public, in a meeting or by disseminating material. The objective side of this crime covers insult

and slander. If the offender, by committing the act, intentionally supports activities directed against the continued existence of the Federal Republic of Germany or against its constitutional principles shall be an aggravating circumstance.

The Criminal Code of the Federal Republic of Germany also includes criminal liability for non-fulfilment of one's powers or for using force or threatening to use it in order to fulfill them in a certain way of the federal or regional legislative body or one of its committees, the Federal Council or one of its committees, the federal or regional Government, the Constitutional Court, the Federal President, the federal or regional legislative body, the Federal Council, the federal or regional The government appoints a member of the Constitutional Court.

The Criminal Code of the Federal Republic of Germany (§ 106) stipulates liability for "Blackmailing the President of the Federation and members of constitutional organs". According to it, whosoever, by force or threat of serious harm, unlawfully coerces 1. the President of the Federation; or 2. a member (a) of a legislative body of the Federation or a member state; (b) of the Federal Assembly; or (c) of the government or the constitutional court of the Federation or a member state not to exercise their functions or to exercise them in a particular manner, shall be liable to imprisonment from three months to five years. In especially serious cases the penalty shall be imprisonment from one to ten years.

At the same time, § 102 of the Criminal Code of the Federal Republic of Germany establishes criminal liability for "Attacks against organs and representatives of foreign states". According to it, whosoever commits an attack against the life or limb of a foreign head of state, a member of a foreign government or the head of a foreign diplomatic



mission who is accredited in the Federal territory while the victim is in Germany in his official capacity, shall be liable to imprisonment not exceeding five years or a fine, in especially serious cases to imprisonment of not less than one year<sup>1</sup>.

According to the French Criminal Code, an attack on the life of a public official of government body in connection with carrying out their official duties, provided that the victim's condition was known to the perpetrator, is classified as aggravated murder and is punishable by life imprisonment.

In a number of US states, the assassination of the President and other public figures is considered first-degree aggravated murder (a class A-I felony) (New York State JC § 125.27 et seq.).

In the USA, after the assassination of President Kennedy in 1963, according to the law passed by the Congress, the Criminal Code was supplemented with § 1751, which established criminal responsibility for "assassination, kidnapping and assault of the President". According to it, the President, the Vice President, the person who should occupy the vacant office of the President of the United States in the absence of the Vice President, and any person who performs the duties of the President in accordance with the Constitution of the United States, are liable for assault. Such persons include newly elected President and Vice-President, but have not yet begun to fulfill their duties.

Killing the President and other persons specified in § 1751 is punishable by the sanctions provided for first (death penalty or life imprisonment), second (life or

any term of imprisonment) or ordinary (up to 10 years imprisonment) murder. In this case, the motive, purpose and other aspects of the crime describing the political side of the committed crime do not affect the criminal responsibility for killing the President and other specified persons.

It also provides liability for the kidnapping of the President and specified persons. These acts are punishable by imprisonment (for life or any term) and, in case of death, the death penalty.

Since 1917, the US Federal Criminal Code has established liability for sending threats of bodily harm or death to the President by mail or other means (§ 871). Now, after a series of amendments, this norm covers not only the President and the persons provided for in § 1751, but also the former President and the above-mentioned officials and their family members with criminal legal protection<sup>2</sup>.

In the Dutch Criminal Code, the security of the king and queen is equal to the security of the state. An attack carried out with the intention of taking the life or liberty of the King, the reigning Queen or the Regent, or of rendering any of them incapable of reigning, shall be punishable under Section 92.

Also in the Dutch Criminal Code criminal liability is provided for assaulting the life and liberty of the king's spouse and direct heir (Section 108), intentional defamation of the king (Section 111), his spouse, direct heir and his spouse or regent (Section 112).

Any person who distributes, publicly displays or posts, or has in store to be distributed, publicly displayed or

<sup>1</sup> Criminal Code of the Federal Republic of Germany [scient. ed. and intro. article dr. legal sciences, prof. D.A. Shestakova; foreword by Doctor of Law G. G. Yeseq; translation

from German by N.S. Rachkova]. - St. Petersburg: Legal Center Press, 2003. - p. 374.

<sup>2</sup> Nikiforov B.S., Reshetnikov F.M. Contemporary American Criminal Law. - M.: Nauka, 1990. p. 226.



posted, written matter or an image defaming the King, the King's consort, the King's heir apparent or his spouse, or the Regent, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category, if he knows or has serious reason to suspect such defamatory content of the written matter or image (Section 113 of the Dutch Criminal Code).

Any person who by an act of violence or any other act or by threat of violence or threat of any other act compels a civil servant to perform an official act or to refrain from performing a lawful official act shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category. Section 179 (Part VIII of the Dutch Criminal Code entitled "Serious Offences against Public Authority")

In the Spanish Criminal Code, special attention is paid to the protection of the head of state from various criminal attacks. In particular, set liability for encroachment upon the life (Article 485), health (Article 486), liberty (Article 487), honor and dignity of the king, his direct or collateral relatives, the queen, regent, member of the regency, crown prince of the throne (Articles 490 and 491).

In particular, the use of force or intimidation in order to force the specified persons to commit an action against their will is recognized as a crime (Article 489). Trespassing of residential privacy of members of the royal family is also prohibited by criminal law (Article 490).

San Marino Criminal Code also sets out a number of norms to ensure the immunity of the captain-regent. In particular, his life, health, personal freedom, honor and prestige are protected by criminal law norms (Articles 341 and 342). As victims of criminal assaults and insults, members of the Supreme General Council, the State

Congress and the Council of Twelve, secretaries of state, judges and prosecutors of the republic are also protected (Articles 343 and 344).

Article 346 of the San Marino Criminal Code provides for the liability for the acts of obstructing the activities of the above-mentioned persons aimed at fulfilling their functions in accordance with the Constitution or forcing them to dissolve or resign by illegal means.

Liability for the actions aimed at the use of coercion, threats, and lies in order to provide personal or other benefits, privileges, offers or promises that are within the scope of the obligations of the above-mentioned persons is stipulated in Article 347 of the Criminal Code.

Section 15 of the Swiss Criminal Code covers crimes against public authority. In particular, in its Articles 285 and 286, specifies liability for obstructing the elected body, its member or official from to perform actions that are within his service powers, the use of force or threats to compel them to perform certain actions is provided.

According to the Criminal Code of Bulgaria, violence or threat against a representative of the authorities is recognized as a crime against the administrative procedure. It should be noted that along with the person named as the victim, a public representative can also be part of this process (Article 269).

In the Polish Criminal Code, three types of actions related to assault on the President are prohibited: assault on the life of the President of Poland (Article 134); Active attack on the President of Poland (Article 135 § 1); Public insult of the President of Poland (Article 135 § 2). Personal privacy, honor and dignity of public civil servants are also protected under criminal law.

In the Criminal Code of the Republic of Serbia, criminal offences against honour and reputation (Chapter 17)



include disparaging the reputation of Serbia, which refer to publicly ridiculing Serbia, its flag, coat of arms or anthem (article 173). Pursuant to Article 138, whoever commits the offence of endangering the safety of another by threat of attack against the life or body of the president of the Republic, member of parliament, prime minister, members of the government, judge of the Constitutional Court, judge, public prosecutor and deputy public prosecutor, attorney-at-law, police officer and person engaged in a profession of public importance in the field of information regarding the task he/she is performing, shall be punished under this Code.

Also, Chapter 29 of the Criminal Code of the Republic of Serbia entitled as "Criminal offenses against government authorities" provides for the following criminal offences:

- 1) preventing by force or threat of force an official in discharge of duty undertaken within his competencies or forcing such person to undertake an official action (Article 322, part 1). This act is considered an aggravating circumstance if it is committed by insulting or maltreating the official or inflicting light bodily injury or threatening to use a weapon (Article 322, part 2);
- 2) According to Article 324, whoever as part of a group preventing by joint action an official in performing an official act or likewise forces an official to undertake an official act, shall be punished under this Code.

Chapter 13 of the Danish Criminal Code is devoted to the protection of the Constitution and supreme authorities. This chapter establishes criminal liability for "actions against the life of the monarch or the constitutional regent" (§ 112), assault and violence against specified persons, as well as ministers, the Constitutional Court or the Supreme Court (§ 113, second part).

According to the Danish Criminal Code (Chapter 14, crimes against public authority) using or threatening to use force against persons who are carrying out official tasks or functions is punishable by law. Obstructing the performance of legal official functions as well as forcing them to perform them is prohibited (§ 113).

The Norwegian Penal Code entitled (Chapter 9) "Crimes against Norwegian Constitutional System and the Head of State" provides rules for protecting the security of the king and the regent. In this case, the following actions are considered criminal: firstly, using force, threats, or other illegal means to obstruct the activities of the indicated persons; secondly, participating in or assisting in the deprivation of life of the king or regent; thirdly, participating in the use of weapons or bodily harm against the specified persons; fourthly, insulting the honor of the monarch and the regent.

Chapter 18 of the Swedish Criminal Code is entitled "On treasonable offences". The term "insulting" is used in this chapter to refer to a wide range of offenses, including not only violating the honor and dignity of the king, but also attempt against him, his family members, the country's highest power representative, as well as to the institutions of the monarchy, political groups and others.

In particular, Section 2 of Chapter 18 of the Swedish Criminal Code provides for liability for attempting against the king, or another member of the Royal House, or of a person discharging the duties of the Head of State as regent. In this norm, "attempt" has a broad meaning, that is, it covers all actions against life and health, freedom and public safety.

Committing an act of assault or intimidation against a public officer in the performance of public duty is considered a crime under Penal Code of Japan (Article



95). If these actions are committed by a person who assembles in a crowd or during public disturbances, the perpetrator will be held liable in accordance with Article 106 of the Penal Code.

Crimes against government employees are included under Section 1, Part V of the Islamic Penal Code of the Islamic Republic of Iran. Liability for "insulting the founder of the Islamic Republic, the Great Imam Khomeini, or the religious leader of the country in any form" is outlined in Article 514. In this case, the victim is personalized, that is, clearly indicated, and such a practice is not found in the legislation of other countries.

Article 609 of the Penal Code stipulates liability for insulting insults any of the leaders of the three branches of the government, or presidential deputies, or ministers, or any of the members of the parliament, or any of the staff of the ministries (members of the Council of Advisors, members of the Council for the Protection of the Constitution, judges, members of the Chamber of Accounts, employees of the Ministry), employees of state or municipal authorities, while they are at duty.

Additionally, under the indication of armed aggression against public order, Article 515 of the Penal Code establishes liability for attempting at lives of the Spiritual Leader or any of the leaders of the three branches of the government.

The Penal Code of Turkey aims to ensure the immunity of high-ranking officials of the state and provides for liability for crimes against the authorities. The President is listed as a victim in three crimes in Penal Code of Turkey: assassination (Article 310), physical

attack (Article 157) and insult (Article 299). Based on different circumstances, the crime of insulting the President is categorized according to its level of social danger: a) insulting or cursing the President in the presence of the President; b) insulting or cursing the President in his absence; c) insulting or cursing the President without mentioning his name, but with various gestures that leave no doubt that he is the President; g) insulting or cursing the President through the use of means of publication\media.

It should be emphasized that the killing of members or former members of the Turkish Grand National Assembly, officials or former officials in connection with the performance of their duties is regarded as a crime against the person. At the same time, Section 3, Chapter 9 of the Criminal Code stipulates liability for crimes related to insulting persons with "official status" by words or actions.

According to the Penal Code of Turkey, high-ranking governmental officials and their relatives are protected by the criminal justice system. The victim's parents, relatives and spouse may also be the subject of such protection<sup>3</sup>.

Based on the foregoing, it is appropriate to envisage the criminal legal protection of representatives of other state authorities in addition to the President of the Republic of Uzbekistan in the Article 158 of the Criminal Code of the Republic of Uzbekistan. Additionally, as a necessary sign of the subjective side it is appropriate to provide for 'committing (a crime) with purpose of stopping or obstructing the legal activities of these persons'.

<sup>3</sup> Aguzarov T.K., Gracheva Yu.V., Chuchaev A.I. Criminal and legal problems of the protection of the state

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