

THE CRIMINAL ACT OF ESPIONAGE AS A TYPE OF HUMINT METHOD IN DATA COLLECTION

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The intelligence service is a specialized organization that provides the protection of national security and the accomplishment of national interests. It is also an instrument of state foreign policy. As such, it is always at the centre of international events. On the other hand, modern threats, such as terrorism, organized crime and corruption are difficult to overcome without the involvement of intelligence services. They use different measures, methods and procedures in their work. However, revealing individual intentions and plans of other states requires special knowledge and skills. The Human Intelligence (HUMINT) method enables the achievement of such a goal, but it is, from the aspect of the state that it is used for, illegal, thus state protects itself from it by defining it as the criminal act of espionage in its criminal law.

This paper presents a comparative legal overview of the criminal act of espionage in Serbia, Montenegro, Bosnia and Herzegovina, Croatia and Hungary. We have tried to point out the situation and solutions related to the mentioned criminal act in the legislation of the neighbouring countries. In addition, the HUMINT method is very often conducted under the guise of diplomatic activities. However, diplomacy and espionage cannot be equated, so in this paper we will try to explain the difference between these activities.

Key words: intelligence services, HUMINT method, diplomacy, foreign policy, criminal act of espionage

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The HUMINT method in the work of intelligence services

The intelligence service has always played an important role in social events, both within national policy and in the field of foreign policy and international relations. In order for a state to provide its stable development, it has to be aware at all times of its geopolitical, geostrategic significance, plans, intentions and interests of other states, i.e. it has to be aware of its international surroundings and position. Accordingly, one should always know the answers to the questions: what a potential enemy is doing, what it is capable of doing and what it can do in the future. The executor of these particularly complex, uncertain, and very important tasks can only be a specific organization of the human collective established by state, and that is exactly the intelligence service.

Analysing the literature that has had intelligence as its subject of study, it can be noticed that there are different attitudes in defining the concept of “the intelligence service”. The reasons for this are very different. Some of them are work secrecy, as well as the impossibility of using the method of direct observation, which is why the entire research is focused on the use of indirect sources: professional literature, electronic media, official documents, etc. Furthermore, one of the reasons is the phenomenon of modern intelligence service, which, in comparison to traditional intelligence service, implies that it performs both counterintelligence and subversive activities. Moreover, the world bipolarization based on ideological grounds, the establishment of a great number of international organizations, the emergence of terrorism as a new global security phenomenon, deepening antagonisms between developed and developing countries, are also some of the reasons that make it difficult to define the concept of the intelligence service.

For Andrej Savić: “The intelligence service is a socio-historical and class conditioned specialized organization, which, within its scope of work, conducts secret intelligence, counterintelligence and subversive activities against vital interests of opponents, using specific methods and means, in order to accomplish certain political interests and protection of internal and external security”.¹ A similar view is shared by Mladen Bajagić, who believes: “The intelligence service is a specialized institution of the state apparatus, which in accordance with the defined scope of work conducts intelligence-informative, intelligence-security, non-intelligence activities and subversive actions against vital interests and values of opponents, using scientific methods and methods of acquiring scientific knowledge, as well as specific collection methods, procedures and means, in order to accomplish national interests and preserve and improve national security of one’s own state”.²

On the other hand, Ljubomir Stajić defines the intelligence service as “a specialized, relatively independent institution of the state apparatus, responsible for collecting important intelligence data and information about other states or its institutions and possible internal opponents of its state by legal public, and also secret

¹ Andreja Savić, *Nacionalna bezbednost*, Kriminalističko-policijska akademija, Beograd, 2007, p. 86.

² Mladen Bajagić, *Metodika obaveštajnog rada*, Kriminalističko-policijska akademija, Beograd, 2015, p. 223.

means and methods necessary for pursuing the country's policy and taking over other actions in peace and at war, and to implement a part of the country's state and political goals through its activities, independently or in cooperation with other state bodies".³

However, having in mind that the intelligence services are one of the main holders of foreign policy of all states, the unilateral definition of this service is not adequate. If the intelligence service were defined in such a way, it would mean that all states have a similar foreign policy, and that is certainly not true. Given that the foreign policy of great powers differs from the foreign policy of, conditionally speaking, small states, the definition of the concept of the intelligence service will focus in such a direction.

From the aspect of great powers, the intelligence service is a specialized professional organization of some state, which is competent to use, above all, secret methods and means to conduct intelligence, and also spy and subversive actions and operations, which are aimed at strategically important countries for the maximal contribution to the hegemonic pretensions of the home state.⁴

On the other hand, from the aspect of small states, the intelligence service is a specialized organization of the state apparatus, which, in accordance with the scope defined by law, using legal, and also secret methods and means, is authorized to conduct intelligence-informative, intelligence-security activities, aimed at the surrounding entities, which could endanger or are threatening the security of the home state, in order to successfully pursue state policy and preserve and improve the national security of such a state.⁵

Therefore, for the intelligence service of small states, data collection (revealing secrets), i.e. conducting intelligence-informative actions towards entities in the surroundings is the key task. On the other hand, in the intelligence services of great powers, conducting intelligence activities is only one of the tasks, which usually precedes spy and subversive action and operation.⁶

The methodology of the work of the intelligence services also includes the intelligence and subversive activities. Therefore, the methods of the work of the intelligence services can be divided into: 1) the methods of intelligence data collection and 2) the methods of subversive actions.

The methods of intelligence data collection include: the HUMINT method (man as a source of data), technical method, partnership cooperation with other services and intelligence data collection from publicly available sources.⁷

³ Ljubomir Stajić, *Osnovi sistema bezbednosti – sa osnovama istraživanja bezbednosnih pojava*, Pravni fakultet u Novom Sadu, Novi Sad, 2021, p. 231.

⁴ Milan Mijalkovski, *Obaveštajne i bezbednosne službe*, Fakultet bezbednosti, "Službeni glasnik", Beograd, 2009, p. 77.

⁵ *Ibid.*, p. 78.

⁶ Marko Parezanović, *Politički prevrati – savremeni pristup*, Nova srpska politička misao, Beograd, 2013, p. 241. During the Cold War the intelligence services of the US and the USSR were the main organisers and participants in numerous political coups, state coups, revolutions, assassinations, wars, political, military and security crises, many spy scandals that have shaken interstate relations around the world.

⁷ Ljubomir Stajić, Radojica Lazić, *Uvod u nacionalnu bezbednost*. Akademija za nacionalnu bezbednost JP "Službeni glasnik", Beograd, 2015, p. 191.

Having in mind that the data that are collected in such a way require additional processing, the intelligence services, i.e. their analytical segments, use special analytical methods and techniques. Using analytical methods and techniques, the collected data is given a new dimension, which enables better consideration and understanding. It also creates a basis for their presentation to political decision-makers.⁸

The intelligence service carries out subversive activities through certain forms, such as creating and using crises, subversive propaganda, terrorism, sabotage, diversion, the use of special forces and violent coup.⁹

The HUMINT method is, of course, the oldest, most risky, and also the best method of finding out the secrets of the subject of intelligence research. The famous Chinese military leader and theorist Sun Tzu pointed out this method several centuries before Christ.¹⁰ This is an activity that mostly takes place in the territory of the state that is the subject of intelligence research, regardless of whether the intelligence officers reside in that territory legally or illegally. In any case, they illegally, through its citizens, without the consent and without its knowledge, collect data that are strictly classified. Moreover, an agent can be hired for subversive actions, as well. At least two facts are crucial in the intelligence service commitment to use this method. Firstly, even the implementation of the highest quality modern technology cannot reveal will, intentions and plans of the subject of intelligence research, and, secondly, it is unthinkable to perform any secret action without support in the structures of an opponent, especially when it is done in its territory.

An agent is a person who, guided by some motives, consciously, secretly, in an organized manner and unprofessionally collects and submits intelligence data and performs other tasks by the order and for the needs of the intelligence service. The main elements of the HUMINT method: awareness, secrecy, organization, continuity and unprofessionalism arise from this.¹¹

In the scientific and professional literature, the concepts of the agent and the collaborator are often mixed up. Therefore, it is necessary to point out the essential differences between persons who have a secret relationship with the security service.

The collaborator is a citizen of the home state and mainly operates in national territory, while the agent is, as a rule, a foreign citizen or a stateless person. He operates in the territory of the state which is the subject of intelligence research.¹²

⁸ Dragan Bolić, *Menadžment obaveštajne delatnosti u funkciji operativnog planiranja (doktorska disertacija)*. Vojna akademija, Beograd, 2016, pp. 139–150; Mladen Bajagić, *Metodika obaveštajnog rada*, gen. quote, pp. 371–394.

⁹ Ljubomir Stajić, *Osnovi sistema bezbednosti – sa osnovama istraživanja bezbednosnih pojava*, gen. quote, p. 243.

¹⁰ Sun Cu, *Umeće ratovanja*, Babun, Beograd, 2014.

¹¹ Mladen Bajagić, *Metodika obaveštajnog rada*, gen. quote, p. 249; Ljubomir Stajić, Radojica Lazić, *Uvod u nacionalnu bezbednost*, gen. quote, pp. 193–194.

¹² *Ibid*, p. 193.

Furthermore, it is necessary to distinguish agents from persons who are not aware that they are a source of information, i.e. who are manipulated in different ways.¹³

Espionage means intelligence data and information collection, i.e. getting the classified data of an opponent. In a narrower sense, it is “a tort of endangering national security by revealing a political, military or official secret to a foreign state, organization or person that serves them”.¹⁴ The intelligence services try, using various methods and techniques, to cover up their espionage activities in every possible way, especially in the country that is the target of the attack. The well-designed legend about covert activities is an integral part of the intelligence activities abroad.

The approach to subversive espionage is completely different. Such an activity is characterized by the increased publicity in the country of the attack. An atmosphere of fear, anxiety, depression, paranoia, distrust in the capability of the current government to resist various external pressures is created among its citizens and in the public. This results in the widest-scale economic, political and social crises.¹⁵

The diplomatic and legal aspect of espionage

The intelligence service and diplomacy are very closely linked and represent very important actors in pursuing foreign policy. As a rule, the intelligence service is always at the centre of foreign policy events. It monitors and analyzes the events of interest to the state, and also prepares and carries out certain activities to disrupt the security system of other states. Good intelligence officers provide the key support to diplomacy, including a variety of operational and tactical methods in obtaining important information and knowledge of a political, military, economic, or some other character.¹⁶ The intelligence activities provide pursuing secret policies and secret actions and thus have an impact on some events on the international scene.¹⁷

¹³ Saša Mijalković, Milan Milošević, *Obavještajno-bezbednosna djelatnost i službe*, Visoka škola unutrašnjih poslova, Banja Luka, 2011, p. 161.

¹⁴ Milo Bošković, *Leksikon bezbednosti*, JP “Službeni glasnik”, Pravni fakultet u Novom Sadu, Beograd – Novi Sad, 2017, p. 833.

¹⁵ Milan Milošević, *(Kontra)špijunaža*, Medija centar “Odbrana”, Beograd, 2011, p. 129; Radoslav Gaćinović, “Uloga obavještajnih službi u izgradnji bezbednosne funkcije države”, *Vojno delo*, br. 2, 2019, pp. 79–80.

¹⁶ For example, during the Cold War the Romanian intelligence service was particularly focused and specialized in the field of economic espionage and theft of technology from the West. More about this see in: Jon Miha i Pačepa, *Crveni horizonti*, Akvarijus, Beograd, 1990. In modern circumstances today industrial espionage takes a special place. About this see in: Nadežda Gudelj, Vojo Laković, “Industrijska špijunaža u savremenim uslovima – karakteristike i predmet interesovanja”, *Vojno delo*, br. 2, 2017, pp. 151–163; Siniša Domazet, Zdravko Skakavac, “Industrijska špijunaža na primeru Kine i SAD”, *Politika nacionalne bezbednosti*, br. 2, 2020, pp. 219–240; Slobodan Simović, *Industrijska špijunaža*, Fakultet za diplomatiju i bezbednost, Beograd, 2021.

¹⁷ Andreja Savić, Mladen Bajagić, “Uloga obavještajnih službi u spoljnoj politici”, *Nauka, bezbednost, policija*, 1/2002, pp. 17–29; Richard Betts, *Enemies of Intelligence: Knowledge and*

The limits of actions are legitimately defined in diplomacy, primarily by international law, which specifies the powers and duties of diplomatic representatives.¹⁸ Their main function is regulated by Article 3 of the Vienna Convention on Diplomatic Relations.¹⁹ It explicitly states that the main functions of a diplomatic mission are to represent the accredited state with the accrediting state, to protect the interests of the accredited state and its citizens within the limits allowed by international law in the accrediting state; negotiating with the government of the accrediting state; informing, by all permitted means, about the conditions and development of events in the accrediting state and submitting reports to the government of the accredited state; promoting friendly relations and developing economic, cultural and scientific relations between the accredited and accrediting state. A diplomatic mission can also be defined as “a process of dialogue and negotiations, in which countries pursue their relations and work to achieve their goals by other means”, including the activities of the intelligence services.²⁰

The intelligence function is particularly interesting. In the broadest sense, intelligence can be understood as the activity that aims to find out information about something and provide information to someone. When it comes to intelligence as a diplomatic function, it implies the activity of diplomatic representatives, which is aimed at obtaining information about the conditions and development of events in the country where diplomatic representative is accredited by legal means.²¹

The provisions of the Vienna Convention on Diplomatic Relations explicitly prohibit the interference of diplomatic representatives in the internal affairs of the host country, as well as the activities of the unauthorized data collection. In that sense, secret activities in favour of the state that accredits diplomatic representatives are inadmissible.²²

Power in American National Security, Columbia University, New York, 2007, pp. 14–17; Roman Ronin, *Obaveštajni rad*, Fakultet bezbednosti u Beogradu, JP “Službeni glasnik”, Beograd, 2009, pp. 29-30; Mladen Bajagić, *Metodika obaveštajnog rada*, gen. quote, p. 24.

¹⁸ The limits of diplomatic actions are defined by the 1961 Vienna Convention on Diplomatic Relations, the 1969 Convention on Special Missions, the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, as well as the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

¹⁹ The Vienna Convention on Diplomatic Relations was adopted on April 18, 1961 in Vienna and entered into force on April 24, 1964.

²⁰ Milenko Kreća, *Međunarodno pravo predstavljanja (diplomatsko i konzularno pravo)*, Pravni fakultet u Beogradu, Beograd, 2015; Dušan Vasić, *Preventivna diplomatija – Teorijski koncept, normativni okvir i političke kontroverze*, Pravni fakultet u Beogradu JP “Službeni glasnik”, Beograd, 2010, pp. 14–15; Jonathan Pinkus, “Intelligence and Public Diplomacy: The Changing Tide”, *Journal of Strategic Security*, Vol. 7, No. 1, 2014, pp. 34–36; Dejan N. Tepavac, “Špijunaža kao oblik ugrožavanja poslovnih informacija”, *Vojno delo*, br. 3, 2019, pp. 166–169.

²¹ Michael Rubin, “The Temptation of Intelligence Politization to Support Diplomacy”, *International Journal of Intelligence and Counterintelligence*, Vol. 29, No. 1, 2016, pp. 3–17; Radojica Lazić, “Obaveštajni rad i diplomatija”, *Srpska politička misao*, vol. 54, br. 4, 2016, pp. 236–237.

²² Ljubomir Stajić, Radojica Lazić, *Uvod u nacionalnu bezbednost*, gen. quote, p. 387.

The sources of information can be divided into several groups. These are: 1) state bodies and institutions, 2) mass media, 3) direct observation, 4) personal contacts, 5) espionage, 6) pseudo-diplomacy.²³

However, from the aspect of international law, espionage could not be considered a legal source of information. It is treated as a serious criminal act in most modern national legislations.²⁴ Diplomatic representatives, on the basis of the Vienna Convention, are obliged to respect the laws and other positive legal regulations of the host country. However, this is not the case in practice, so there is often a gross violation of diplomatic ethics, i.e. exceeding the authority.²⁵

The expulsion of a diplomat for espionage is always considered to be a diplomatic scandal and, to a greater or lesser extent, burdens diplomatic relations between states. In that context, espionage is a very risky act, but regardless of that fact, it is still practiced, so the question arises why diplomats take on the role of professional members of the intelligence service and thus compromise the diplomatic function. The answer to this question is mainly found in the fact that diplomatic mission cannot obtain the necessary information "by all permitted means", but is forced to resort to the use of illegal means. Moreover, the diplomatic function provides professional members of the intelligence services with a good legend for establishing initial contacts with the political leadership of the receiving country. Namely, diplomatic missions abroad establish official contacts with the citizens of the host country in various institutions - political, military, economic, cultural, sports and others. Such contacts imply the establishment of a mutual relationship imbued with trust and friendship. In such a relationship, there are always two sides: the one that collects intelligence data, which acts in a planned and organized manner, and the other, which usually accepts such a position without considering its background.

Many examples indicate the close connection between diplomacy and intelligence services. They are in a kind of partnership, so it is natural for them to cooperate. Each in its way serves the interests of the state and society that they act for. Both sides, based on the competencies defined by law, obtain some data, with diplomats having a clearly defined limit, while the intelligence services, given the manner of action and methods they use, usually do so by secret procedures and methods. It can be said that the activities of the intelligence services continue where the competencies of diplomatic representatives cease. The intelligence services try to abuse the benefits, that is, the privileges and immunities that the Vienna Convention on Diplomatic Relations guarantees to diplomatic representatives.²⁶

²³ Radojica Lazić, "Obaveštajni rad i diplomatija", gen. quote, p. 241.

²⁴ Radoslav Gaćinović, "Uloga obaveštajnih službi u izgradnji bezbednosne funkcije države", gen. quote, p. 77.

²⁵ Dejan N. Tepavac, "Špijunaža kao oblik ugrožavanja poslovnih informacija", gen. quote, p. 165.

²⁶ Ibid, pp. 245–247.

The comparative legal overview of the criminal act of espionage

The criminal legal protection from the criminal act of espionage is left to national criminal legislations. Most countries have defined this criminal act as one of the most serious forms of endangering security and its interests. The criminal act of espionage is committed by persons who disclose or give classified data to a foreign state, organization or person, and not state or its intelligence service. Thus, a state that has incriminated the criminal act of espionage in its national legislation does not have any possibility of punishing the other state for this hostile activity that is directed against its sovereignty and security.²⁷

In the Republic of Serbia, the criminal act of espionage is incriminated in Article 315 of the Criminal Code, in the group of the criminal offences against the constitutional order and security. This criminal act has five types.

The first, basic type of this criminal act, consists of “disclosing, giving or making available classified military, economic or official data or documents to a foreign state, organization or person serving them”.²⁸ The Criminal Code states disclosing, giving or making available classified data and documents as incriminated acts of this type of crime.²⁹ Classified data and documents may be of a military, economic or official character. A criminal offence is considered to be committed when classified data or documents have been disclosed, given or made available to a foreign state, foreign organization or person serving them.³⁰ Three to fifteen years of prison is prescribed for the commission of this criminal act.³¹

The second type of this criminal act refers to the management of the intelligence service or its establishment. The establishment of the intelligence service for a foreign state or organization means organizing an intelligence network in the territory of Serbia in order to collect classified data.³² This type of crime is punished by five to fifteen years of prison.

The third type of the criminal act of espionage is when “someone joins the foreign intelligence service, collects data for it or otherwise helps its work”.³³ The sentence for committing this type of the criminal act of espionage is one to ten years.

²⁷ Bora Čejović, Mirko Kulić, *Krivično pravo*, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, 214, 517.

²⁸ Article 315, Paragraph 1 of the Criminal Code of the Republic of Serbia, “*The Official Gazette of the RS*”, No. 85/05, 88/05 - amended, 107/05 - amended, 72/09, 121/12, 104/13, 108/14, 94/16 and 35/19).

²⁹ Bora Čejović, Mirko Kulić, *Krivično pravo*, gen. quote, p. 517.

³⁰ Zoran Stojanović, Obrad Perić, *Krivično pravo – posebni deo*, Pravna knjiga, Beograd, 2014, p. 266.

³¹ Miroslava Derikonjić, “Čolović se nagodio sa tužilaštvom”, *Politika – elektronsko izdanje*, September 5, 2016.

³² Bora Čejović, Mirko Kulić, *Krivično pravo*, gen. quote, p. 518.

³³ The assisting activities can be material assistance, giving advice, instructions and accommodation, mediation in making acquaintances with some persons, renting or leasing the use of recording devices, etc.

The fourth type of this criminal act happens if the perpetrator “obtains classified data and documents with the intention of handing them over to a foreign state, organization or person who serves them”.³⁴ The sentence for this crime is one to eight years of prison.

The most serious type of espionage is provided for in Article 321, Paragraph 3, of the Criminal Code, and it refers to the criminal act of espionage committed during a state of war, an armed conflict or a state of emergency.³⁵

One of the main conditions for the criminal act of espionage is to define which data can be considered classified. According to the current provision, in order for data or documents to be considered classified, it is not enough that they are, on the basis of law, other regulation or decision of the competent state body, formally declared classified, but it is insisted that their disclosure would cause or could cause, adverse consequences for the security, defence or political, military or economic interests of country.³⁶

In the Criminal Code of Montenegro, the criminal act of espionage is defined in Article 368 in Chapter 29, which is entitled “The criminal offences against the constitutional order and security of Montenegro”. Regarding this criminal act, there are almost no differences in comparison to the criminal legislation of the Republic of Serbia. The only difference is in terms of the minimal sentence of prison, in Paragraph 3, Article 368, the Criminal Code of Montenegro, which states that everyone who “joins the foreign intelligence service, collects data for it or otherwise helps its work, will be sentenced to two to ten years of prison”.³⁷ On the other hand, the Criminal Code of the Republic of Serbia provides for a sentence of one to ten years of prison for the same act.

The Criminal Code of Bosnia and Herzegovina incriminates the criminal act of espionage in Chapter 16, Article 163, in the group of the criminal offences against the integrity of Bosnia and Herzegovina. The minimal sentence for the basic type of the criminal act of espionage, according to such Code, is prison for a year, while in the Serbian legislation, the minimal sentence is three years. The difference in the second type of this crime is in terms of the maximal sentence of prison, which is according to the Criminal Code of the Republic of Serbia 15 years, while Article 163 in Paragraph 3 of the Criminal Code of Bosnia and Herzegovina does not provide for a maximal sentence for this crime. The third type is completely the same as in the criminal legislation of the Republic of Serbia. The fourth type differs in the amount of the maximal prison sentence, whereby according to the Criminal Code of the Republic of Serbia it is eight years, and according to the Criminal Code of Bosnia and Herzegovina it is ten years.³⁸ (Criminal Code of Bosnia and Herzegovina, Article 163, Paragraph 4).³⁹

³⁴ Article 315, Paragraph 4, Criminal Code of the Republic of Serbia.

³⁵ Đorđe Đorđević, *Krivično pravo – posebni deo*, Kriminalističko-policijska akademija, Beograd, 2014, p. 186.

³⁶ Article 315, Paragraph 6, Criminal Code of the Republic of Serbia.

³⁷ Article 368, Paragraph 3, of the Criminal Code of Montenegro, “*The Official Gazette of the Republic of Montenegro*”, No. 70/03, 13/04 - amended, 47/06, 40/08, 25/10, 64/11 - other law , 40/13, 56/13 - amended, 14/15, 42/15, 58/15 - other law, 44/17, 498/18 and 3/20).

³⁸ Article 163, Paragraph 4, of the Criminal Code of Bosnia and Herzegovina, “*The Official Gazette of BiH*”, No. 3/03, 32/03 - amended, 37/03, 54/04, 30/05, 61/04, 53/06, 8/10, 22/15, 40/15, 35/18 and 46/21).

³⁹ Milan Škulčić, “Špijunski među nama”, *Politika-elektronsko izdanje*, September 7, 2016.

The Republic of Croatia has prescribed the criminal act of espionage in Article 348 of the Criminal Code in the group of the criminal offences against the Republic of Croatia. The basic type is defined in Paragraph 1, essentially the same as in other Criminal Codes of the former SFRY countries, except that it is explicitly stated that the perpetrator has been entrusted with classified data or has obtained them in an illegal manner. The difference in comparison to the Criminal Code of the Republic of Serbia is in terms of the minimal sentence, given that the Croatian Criminal Code provides for a minimal sentence of a year of prison. Paragraph 2 incriminates “the unauthorized collection of classified data, with the aim of making them available to a foreign state, foreign organization, foreign legal entity or person working for them”.⁴⁰ The sentence for this type of crime is from six months to five years of prison. Paragraph 3 incriminates “establishing, organising, joining, as well as assisting in the work of a foreign intelligence service in the territory of the Republic of Croatia, which acts against the interests of the country”.⁴¹

Thus, unlike the Criminal Code of the Republic of Serbia, which makes a difference, in terms of sentence, between organising and establishing a foreign intelligence service, on the one hand, and assisting and joining a foreign intelligence service, on the other hand, the Croatian Criminal Code prescribes a single prison sentence for all these actions lasting from a year to ten years. The Criminal Code of the Republic of Croatia stipulates a more serious type of this criminal act, when it has been committed during a war or an armed conflict in which the Republic of Croatia participates, whereby for the acts from Paragraph 1 and 3 a sentence of at least five years of prison is prescribed whereas for the act from Paragraph 2 from three to fifteen years of prison. It is important to note that the legislator has overlooked that Croatia does not have to be at war for its Armed Forces to take part in an armed conflict, given that it is a member of NATO and EU, within which they can be engaged in combat missions conducted by these international organizations. The most serious type is incriminated in Article 351, which provides for the criminal act of espionage “10 years of prison or long-term imprisonment if committed by the President of the Republic of Croatia, the Prime Minister or a member of the Government of the Republic of Croatia or the President of the Croatian Parliament”.⁴²

In Hungary, the criminal act of espionage is prescribed in Article 261 of the Criminal Code in the group of the criminal offences against the state. In Paragraph 1, the act of execution consists of collecting intelligence information for a foreign power or foreign organization. Collecting means obtaining, in various ways, intelligence information that is of interest to a foreign power or foreign organization, and which is not confidential. For this type of criminal act, it is not relevant whether the data have been submitted to a foreign power or organization, but it is necessary to have the intention to submit the collected data to a foreign power or organization. The sentence for this type of crime is two to eight years of prison.⁴³

⁴⁰ Article 368, Paragraph 2, of the Criminal Code of the Republic of Croatia, “*The Official Gazette of the Republic of Croatia*”, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 and 84/21).

⁴¹ Article 368, Paragraph 3, Criminal Code of the Republic of Croatia.

⁴² Article 368, Paragraph 1, Criminal Code of the Republic of Croatia.

⁴³ Article 261, Paragraph 1, of the Criminal Code of the Republic of Hungary (“*Magyar Közlöny*”, 2012). <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv,10/09/2021>.

A more serious type of the criminal act of espionage happens if the execution of the basic type has led to the disclosure of confidential data. The sentence for a more serious type of crime is from five to fifteen years of prison. Preparatory actions for committing the crime of espionage are sentenced to one to five years of prison.⁴⁴ In order to reveal and interrupt the activities of foreign intelligence services in the territory of the Republic of Hungary, there is the possibility of acquittal of persons who agree to cooperate and reveal the identity of foreign persons who they are in contact with.⁴⁵

In addition, “every person who conducts espionage directed at the allied armed forces in Hungary or in the territory of other states in the alliance with Hungary on the basis of an international agreement implying the obligation of mutual military assistance shall be punished in accordance with Article 261 of the Criminal Code of the Republic of Hungary”.⁴⁶

Conclusion

The intelligence work, as an activity, is an integral part of the state activities at international level. This work is performed by specially trained persons, who, by implementing certain knowledge and skills, obtain classified data of various kinds for their clients, i.e. political decision-makers. Such an activity is contrary to all norms of international law. However, despite the fact that in the legislation of many countries it is treated as a serious crime, espionage is very widespread. Interests are a priority of national policies, so such an activity has always been a secret and powerful weapon to learn more about the other side.

The HUMINT method in data collection is a secret activity from the point of view of the state that organizes this type of intelligence activity. However, from the aspect of the state in which this method of data collection is implemented, such actions are illegal and incriminated as the crime of espionage.

By analyzing the mentioned criminal laws, it can undoubtedly be concluded that espionage is a prohibited and strictly punished activity. However, despite the fact that it is very severely sanctioned, the states and their intelligence services still undertake such activities. In this regard, one may ask the question: how the implementation of espionage and the HUMINT method can be justified as an illegal way of collecting data. The answer is contained in the fact that the state, if it would like to exist in modern conditions and preserve national interests, its security, and also the security of its citizens, is forced to implement espionage to reveal the enemy secret. Thus, the

⁴⁴ Article 261, Paragraph 3, Criminal Code of the Republic of Hungary.

⁴⁵ Article 261, Paragraph 4, Criminal Code of the Republic of Hungary.

⁴⁶ Article 262, Criminal Code of the Republic of Hungary. Having in mind the fact that the Republic of Hungary is a member of NATO and EU, it also incriminates every espionage activity directed to these organizations, i.e. their armed forces, whether this act has been committed in the territory of Hungary or some other country that Hungary is in alliance with.

interests of the state and society as a whole dictate the implementation of these methods. Therefore, we can conclude that, still, there is nothing that is allowed, which could be an alternative to this activity, or the results it achieves.

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Summary

The intelligence service is a specialized institution of the state apparatus of the government which, on the basis of legal competencies, using secret methods and procedures, collects some data and knowledge in the territory of other state and submits them to the highest state decision-makers for the accomplishment of national

interests. It is an important instrument of foreign policy of every state. It strives to be at the centre of events at international level with its offensive activities. It is a well-known fact that intelligence services use a variety of operational measures, methods and procedures. This is understandable because in order to find out the most confidential and well-kept data, intentions and plans of the countries that are the subject of observation, special knowledge and skills are needed. The HUMINT method and espionage, as a prohibited activity, provide opportunities to achieve the desired goal. Although espionage is treated as an illegal activity in the legislation of many countries, it is still used and widespread. The reason for that lies in the fact that in the most direct way with the help of “a living source” reliable data and knowledge can be obtained, which will benefit the state that the intelligence service operates for.

It is a frequent phenomenon that, consciously or unconsciously, diplomacy and intelligence work are equated, i.e. the function of intelligence and intelligence activity. Intelligence as a tool of diplomacy is conducted in accordance with the 1961 Vienna Convention on Diplomatic Relations, while the intelligence work in the territory of other state is sanctioned by criminal law and is marked as espionage.

A comparative legal analysis of the criminal legislation of the Republic of Serbia and four neighbouring countries (Croatia, Hungary, Montenegro and Bosnia and Herzegovina) shows that espionage is severely sanctioned in all these countries. However, despite this, it is an unavoidable weapon of the state and its intelligence service, whose basic task is to obtain important data for its client in the territory of the enemy, which will have some significance in a political, economic, military or some other field.

Key words: intelligence services, HUMINT method, diplomacy, foreign policy, criminal act of espionage

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