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OFFENCE OF REBELLION IN THE SPANISH CRIMINAL LAW

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1. INTRODUCTION

The offence of rebellion is an original legal construction in the Spanish criminal law because, as it is rightly stated in literature, when rebels achieve their aims, the legal system in which this type of crime occurs undergoes a total change.[1] Rebels aim to adopt a new constitution and introduce a new political and legal system in which they will rule. No other offence classified in the Spanish Criminal Code causes so devastating consequences for the legal basis of coexistence and thus this results in the extraordinariness of this crime. There is an opinion presented in literature that, although the offence is subject to regulation in the Criminal Code, from the historic point of view, in practice it concerned army command.[2]

2. DEVELOPMENT OF THE OFFENCE OF REBELLION IN THE SPANISH CRIMINAL LAW

The first common criminal code in Spain that classified the offence of rebellion was the Criminal Code of 1848.[3] In accordance with its Article 167, it consisted in public and hostile uprising against the government in order to: (1) dethrone the King or deprive him of liberty; (2) change the line of succession to the throne or prevent entitled persons from governing; (3) remove the Regent or the members of

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1 N. García Rivas, [in:] F. Javier Álvarez García (dir.), A. Manjón-Cabeza Olmeda, A. Ventura Püschel, *Tratado de derecho penal español, parte especial*, Vol. IV, *Delitos contra la Constitución*, Valencia 2016, p. 39.

2 *Ibid.*, p. 39.

3 Código penal de 19 de marzo de 1848, Gaceta de 28 de marzo de 1848, núm. 4944.

the Regency from the Kingdom or deprive them of liberty; (4) use on one's own or strip the King, the Regent or the members of the Regency of the prerogatives they were granted by the Constitution, or prevent them from using those prerogatives freely; (5) declare independence of the Kingdom or any part of it or army or navy forces' disobedience to the Government; (6) exercise on one's own or deprive ministers of their constitutional powers or prevent them from exercising their powers freely; (7) prevent holding parliamentary elections freely in the whole Kingdom or organise illegal parliamentary elections; (8) dissolve the parliament or prevent meetings of any community representative assemblies from proceeding or force them to adopt resolutions.

The Criminal Code of 1870[4] slightly changed the objectives perpetrators wanted to achieve. Namely, they aimed to: (1) dethrone the King, remove the Regent or the members of Regency from the Kingdom or deprive them of liberty, or force them to perform acts contrary to their will; (2) prevent parliamentary election in the whole Kingdom or conduct illegal elections; (3) dissolve the parliament or prevent collective bodies from proceeding and force them to adopt resolutions; (4) commit whatever offence envisaged in Article 165 (prevent governing in the interregnum; or prevent the election of a minor King's guardian: the Regent); (5) separate the kingdom or its part, or army or navy corps from the supreme power; (6) use and exercise on their own or deprive ministers of their constitutional powers, or prevent their independent exercising.

The Criminal Code of 1932[5] required that the offence classified in Article 238, i.e. a coup, should be against a constitutional government. The aims were similar to the former regulations; however, some terms were changed because the state was declared to be a republic. Thus, it used the following phrases to: (1) remove the head of state or force him to act against his will; (2) prevent parliamentary election in the whole Spanish Republic or its announcement; (3) dissolve the parliament or prevent it from proceeding, or deprive it of the right to adopt resolutions; (4) separate the country or its part, or army or navy or whatever other corps from subjection and refuse obedience to the government; (5) independently perform or deprive ministers of their constitutional powers or prevent them from exercising them freely.

In accordance with the Decree 3096/1973 of 14 September 1973 on publishing a consolidated text of the Criminal Code pursuant to the Act 44/1971 of 15 November 1971, Article 238 was changed into Article 214 and the terms used therein were changed due to the collapse of the republic, i.e. the constitutional government was changed into the government, elections to public posts were used instead of elections to the *Cortes*, and the ministers of the republic were changed into ministers.

As a result of an attempted coup d'état on 23 February 1981,[6] the Act 2/1981 of 4 May 1981 amending and adding some articles to the Criminal Code and

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[4] Código penal de 17 de junio de 1870, Gaceta de 31 de agosto de 1870, suplemento al núm. 243.

[5] Código penal de 27 de octubre de 1932, Gaceta de 5 de noviembre de 1932, núm. 310.

[6] On 23 February 1981, a group of soldiers entered the Parliament and attempted a coup, which eventually failed. It aimed to disrupt democratic changes that started after General Franco's death.

the Military Criminal Code[7] introduced the overruling, suspension or change of the whole or part of the Spanish Constitution as the main aim of perpetrators' activities.

The Act 14/1985 of 9 December 1985 amending the Criminal Code and the Act 8/1984 of 26 December 1984 on the correlation with the Military Criminal Code[8] envisaged the offence of rebellion only in the common Criminal Code even in the case of its military nature and preserved the offence of rebellion at the time of war in the Military Criminal Code.[9] The amendment covered autonomous institutions. Coups against the Autonomous Communities Governing Councils or Assemblies were to be penalised in the same way as coups against the State of the Nation.

The binding Spanish Criminal Code of 1995[10] (SCC) classifies the offence of rebellion in Article 472. In accordance with this provision, the conviction of rebellion should be handed down to those who publicly or violently commit acts of defiance for any of the following purposes:

1) to fully or partially repeal, suspend or amend the Constitution;
2) to fully or partially strip the King or the Queen, the Regent or members of the Regency of all or part of their prerogatives and powers, or to oblige them to execute an act contrary to their will;
3) to prevent holding free elections to public offices;
4) to dissolve the *Cortes*, the Congress of Deputies, the Senate or any other Legislative Assembly of an Autonomous Community, to prevent them from meeting, discussing or resolving, to force them to pass any resolution, or to strip them of any of their prerogatives or powers;
5) to declare independence of any part of the national territory;
6) to replace the Government of the Nation or the Governing Council of an Autonomous Community with another, or to use or exercise oneself, or to strip the Government or Governing Council of an Autonomous Community, or its members, of their powers, or to prevent or limit the free exercise thereof, or to force any of them to carry out acts against their will;
7) to make the armed forces refuse obedience to the Government.

3. OBJECT OF PROTECTION

The offence of rebellion is classified in Book II "Felonies and their penalties", Title XXI "On felonies against the Constitution", Chapter I "Rebellion". The objects of protection are basic rights of an individual and organisation of the state of law

[7] Ley Orgánica 2/1981, de 4 de mayo, que modifica y adiciona determinados artículos del Código Penal y del de Justicia Militar, BOE núm. 107, de 5 de mayo de 1981.

[8] Ley Orgánica 14/1985, de 9 de diciembre, de modificación del Código Penal y de la Ley Orgánica 8/1984, de 26 de diciembre, en correlación con el Código Penal Militar, B.O.E. núm. 296, de 11 de diciembre de 1985.

[9] J. Tamarit Sumalla, [in:] G. Quintero Olivares (dir.), F. Morales Prats (coord.), *Comentarios a la parte especial del derecho penal*, Pampeluna 2016, p. 1918.

[10] Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, BOE núm. 281 de 24 de noviembre de 1995; hereinafter SCC.

defined in the Constitution.[11] The offence is a menace to the Constitution and basic institutions of a democratic state. It is assumed in the doctrine that the object of protection includes public order or the constitutional system; the offence undermines the foundations of the state of law. It is the only offence that directly breaches the Constitution as a legal norm.[12] The provision classifying rebellion is the first in the Chapter, which means that it is the most dangerous assault on the constitutional system.[13] This legislative decision means that rebellion is excluded from the group of offences against public order because it protects more than just public order, namely the constitutional order, i.e. the constitutional principles and institutions.[14] The offence that undermines the foundations of the constitutional system constitutes an attack on public peace and public order.[15]

4. OBJECTIVE ASPECT

The offence of rebellion is a crime of special structure. It is committed before rebels achieve their aim. It is indicated that the experience of the civil war shows that the rebels' victory can mean the transformation of the legal order.[16] Former determination of the liability limit is understandable because if the rebels' aim to change the constitutional order, their victory makes it impossible to prosecute them pursuant to the abolished constitutional order.[17]

It is an offence of the so-called former perpetration type, an offence with an interrupted effect; to commit the offence, it is not required that the perpetrators' aim should materialise.[18] It is enough that the perpetrators revolt in order to fulfil any of the above-mentioned aims.[19] The lawmaker moves the limit of protection for obvious reasons of criminal policy, taking into account difficulties in suppressing a successful rebellion.[20]

It is a formal offence since its commission does not require that the planned aim should be achieved. It is essential for the sedition to be capable of achieving it.[21] The offence of rebellion can be committed at the time of peace and it is not important whether it is civil or military in nature.[22]

The causative conduct consists in public and violent sedition that aims to achieve whichever of the aims laid down in Article 472 SCC.

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[11] A. Calderón, J.A. Choclán, *Código penal comentado*, Barcelona 2005, p. 997.
[12] N. García Rivas, *supra* n. 1, p. 53; F. Muñoz Conde, *Derecho penal, parte especial*, Valencia 2015, p. 687.
[13] J. Tamarit Sumalla, *supra* n. 9, p. 1918.
[14] *Ibid*.
[15] F. Muñoz Conde, *supra* n. 12, p. 686.
[16] N. García Rivas, *supra* n. 1, p. 56.
[17] J. Tamarit Sumalla, *supra* n. 9, p. 1919.
[18] *Ibid*., p. 1918.
[19] F. Muñoz Conde, *supra* n. 12, p. 689.
[20] A. Calderón, J.A. Choclán, *supra* n. 11, p. 998.
[21] N. García Rivas, *supra* n. 1, p. 56.
[22] A. Calderón, J.A. Choclán, *supra* n. 11, p. 997.

4.1. SEDITION

It is assumed in literature that sedition is a revolt, insurrection or uprising against the established state power.[23] Sedition is recognised as equal to an uprising against, lack of obedience or collective resistance to the authorities.[24] However, the classification of resistance or collective disobedience as sedition has been rightly criticised because the verbal feature requires action that is not contained in the concept of resistance as it can be passive.[25] The concept of sedition within the offence should be assessed from the point of view of its potential to achieve the planned aims.[26]

The intensity of sedition depends on the planned aim that the rebels want to achieve. A different intensity is required, e.g. in order to prevent the Legislative Assembly of an Autonomous Community from proceeding, and a different intensity in order to overthrow the Government of the Nation.[27]

4.2. PUBLIC NATURE OF SEDITION

Sedition is public in nature. In the doctrine, the public nature is interpreted as overt or obvious.[28] It is recognised that sedition is public in case rebels publicly express their *animus hostilis* (hostile intent) with the use of convincing acts, which can be active deeds or words.[29]

4.3. SEDITION AND VIOLENCE

Sedition is to be violent. In the doctrine, the term raises doubts, in particular concerning whether its scope can cover the possibility of committing the act under mental pressure (*vis compulsiva*).[30] Sedition is violent in case it is accompanied by direct physical violence against persons or when specific acts threaten constitutional authorities.[31] Violence means application of violent acts openly, in the way disturbing the order and peace of the citizens.[32]

It is assumed that physical violence is not required in case uprising forces are so powerful that their propaganda threatens the state armed forces to such an extent that they do not take any steps.[33]

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[23] N. García Rivas, *supra* n. 1, p. 57.
[24] F. Muñoz Conde, *supra* n. 12, p. 687.
[25] N. García Rivas, *supra* n. 1, p. 57.
[26] *Ibid.*, p. 56.
[27] *Ibid.*, p. 62.
[28] *Ibid.*, p. 59.
[29] J. Tamarit Sumalla, *supra* n. 9, p. 1920.
[30] N. García Rivas, *supra* n. 1, p. 60.
[31] J. Tamarit Sumalla, *supra* n. 9, p. 1920.
[32] F. Muñoz Conde, *supra* n. 12, p. 687.
[33] N. García Rivas, *supra* n. 1, p. 60.

5. SUBJECT OF THE OFFENCE

The subject of the offence cannot be a single person, but a group. It is a multi-person offence. For its existence, it is essential that perpetrators enter an agreement before a rebellion.[34] Article 471 *in principio* SCC stipulates that "a conviction for the offence of rebellion shall be handed down to those who". The use of the plural form to refer to the subject does not raise doubts that there must be a number of perpetrators. It is not possible to determine this number. It depends on the aim. There should be as many as necessary to achieve the aim.[35] The number does not matter, unless it is sufficient to achieve the aim.[36]

There is no offence of individual rebellion committed by a single person.

6. SUBJECTIVE ASPECT

It is an intentional offence committed with specific direct intent (*cum dolo directo colorato*). Perpetrators have one of the aims determined in the statute. All of them are equally dangerous to the object of protection, however to a different extent, e.g. repealing the Constitution has a different dimension than preventing a representative to the Legislative Assembly of an Autonomous Community from freely exercising their rights. The lawmaker determines alternative aims and it is not important which of them perpetrators want to achieve. In literature, it is called a multi-purpose offence because it requires the wilful agreement to achieve a common aim.[37]

6.1. FULL OR PARTIAL REPEAL OR SUSPENSION OF OR AMENDMENT TO THE CONSTITUTION

The aim, as it has been mentioned above, was determined after an attempted coup on 23 December 1981. It is emphasised in literature that even the Criminal Code bill of 1980 developed after the 1978 Constitution was passed envisaged such an aim of a rebellion and there was a plan to introduce a legal response to an attempted coup.[38] The purpose of it is to protect the Constitution as *Carta Magna* and fundamental rights and liberties that are guaranteed in it. Its interpretation in literature is narrow and reference is made to the principle of legalism. It is also stated that it concerns the protection of two basic aspects of the Constitution, i.e. its legal and fundamental nature. It is indicated that it concerns its direct and absolute binding force and changelessness; amendments are possible only in the mode that is laid down therein.[39]

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[34] F. Muñoz Conde, *supra* n. 12, p. 687.
[35] *Ibid.*, p. 687.
[36] J. Tamarit Sumalla, *supra* n. 9, p. 1918.
[37] N. García Rivas, *supra* n. 1, p. 61.
[38] *Ibid.*, p. 62.
[39] *Ibid.*

There is a minority opinion that the aim covers also the statutes of the Autonomous Communities. It is argued that the Constitution itself recognises the right to autonomy of nationalities and regions of which the state is composed (Article 2 Constitution). Moreover, the statutes grant legislative power to bodies they appointed and they are legal acts that constitute the highest norm in each Autonomous Community. It is said that a sudden change that goes beyond the procedure established in a given autonomous statute means at least a partial amendment to the Constitution. The arguments are based on systemic interpretation; it would be inadmissible to protect autonomous bodies established in statutes, ignoring a legal act that establishes them.[40] And one of the aims of a rebellion is to dissolve a Legislative Assembly of an Autonomous Community.

The suspension of the Constitution should be interpreted as the suspension of its essential elements and not a given provision because the object of protection is to maintain the principle of constitutionality and proportionality. It is recognised in the doctrine that public and violent sedition in order to suspend fundamental rights and other essential normative elements such as the autonomy of nationalities and regions, or the provisions determining the mode of amending the Constitution would undoubtedly be such a situation. Such sedition would result in deformation of the democratic system in force.[41]

6.2. DETHRONING OR FULLY OR PARTIALLY DEPRIVING THE KING OR QUEEN, OR THE REGENT OR A MEMBER OF THE REGENCY OF THEIR PREROGATIVES AND POWERS, OR OBLIGING THEM TO EXECUTE AN ACT CONTRARY TO THEIR WILL

This aim is connected with special protection of the King.[42] The system of parliamentary monarchy laid down in the Constitution recognises the King as the head of state and "a symbol of its unity and permanence" (Article 56 para. 1 Constitution). The inheritable nature of the throne prevents a ruler's election. The successor to the throne is the monarch's close or remote relative (Article 57 para. 1 Constitution).

The King's of Spain function is to formally approve decisions and these include, inter alia, to promulgate the laws, to summon and dissolve the *Cortes Generales*, to call elections and referendums, to appoint members of the government, to award honours and distinctions, to grant pardons, and to declare war. Performing his functions, the King acts as a mediator, an arbitrator or a moderator, and is not accountable.[43] According to the representatives of the doctrine, the lawmaker introduced this aim in order to protect the implementation of political decisions taken by the constitutional bodies, i.e. the Government or the *Cortes*.[44] The same occurs in the case of the judiciary because, in accordance with Article 117 para. 1

[40] *Ibid.*, p. 63.
[41] *Ibid.*
[42] A. Calderón, J.A. Choclán, *supra* n. 11, p. 998.
[43] N. García Rivas, *supra* n. 1, p. 65.
[44] *Ibid.*, p. 64.

Constitution, judges and magistrates of the judiciary administer justice on behalf of the King.

As far as obliging the King to execute an act contrary to his will is concerned, taking into account his function and the fact that a rebellion is aimed at acting to the detriment of the binding constitutional and democratic order, for example, forcing the King to give up visiting an Autonomous Community cannot be classified as the offence of rebellion because such an activity is not connected with the King's exercise of an important constitutional function.[45]

The Act 1/2015 of 30 March 2015 amending the Act 10/1995 of 23 November 1995: Criminal Code[46] made the Queen equal to the King. The change is binding only in the case a woman is the successor to the throne and does not concern the King's wife because she does not have any significant constitutional functions.[47]

6.3. PREVENTING ELECTIONS TO PUBLIC POSTS

Elections are a reflection of the nation's sovereignty and constitute the only method known to the Spanish Constitution of taking up posts in state institutions as well as autonomous and local posts. In literature, a possibility of committing rebellion in the case of elections in a commune is excluded because the act is classified as public disorder (Articles 557–561 SCC) or coercion (Article 172 SCC), or election-related offences (Articles 146 and 147 Act 5/1985 of 19 June 1985 on the general electoral system[48]). The argument for this stance is that, taking into account the purposefulness of the provision, the lawmaker wanted to protect the State and Autonomous Communities' institutions provided that sedition is committed to the detriment of the object of protection in the form of the constitutional and democratic system, and is not a common street disorder that is occasional in nature.[49]

A doubt is raised whether the aim covers indirect elections to public posts, e.g. the President of the Constitutional Court and the President of the General Judicial Council, performed by the already elected representatives to collective bodies. In literature, authors opt for the narrow interpretation because based on it the basic assault on the binding force and maintenance of the constitutional order does not occur.[50]

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[45] *Ibid.*, p. 65.

[46] Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la L.O. 10/1995, de 23 de noviembre, del Código Penal, B.O.E núm. 77 de 31 de Marzo de 2015.

[47] N. García Rivas, *supra* n. 1, p. 65.

[48] Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General, B.O.E. núm. 147, de 20 de junio de 1985.

[49] N. García Rivas, *supra* n. 1, p. 66.

[50] J. Tamarit Sumalla, *supra* n. 9, p. 1921.

6.4. DISSOLUTION OF THE *CORTES*, THE SENATE OR ANY LEGISLATIVE ASSEMBLY OF AN AUTONOMOUS COMMUNITY, PREVENTING THEM FROM MEETING, DISCUSSING OR RESOLVING, DEPRIVING THEM OF THE RIGHT TO PASS RESOLUTIONS OR EXERCISE THEIR PREROGATIVES OR POWERS

This aim is to act to the detriment of the bicameral system of the *Cortes* and Legislative Assemblies of Autonomous Communities.[51]

The Constitution regulates the dissolution of the *Cortes*, the Congress and the Senate. This is the competence of the President of the Government, however, he cannot do this in the course of the vote of no-confidence proceedings or before a year has passed from the time of the former vote of no-confidence. If the vote on the appointment of the President of the Government is ineffective within two months, the King must take a decision to dissolve both chambers of the parliament, following the endorsement by the Speaker of the Congress (Article 115 and Article 99 para. 5 Constitution).

In accordance with Article 115 para. 1 Constitution, the decree dissolving the parliament must establish the date of elections. If this requirement is not met because the President of the Government is taking part in violent and public sedition, according to some authors, the aim analysed herein is achieved. In fact, it is connected with preventing elections.[52]

Autonomous Communities have a different system, i.e. only the Presidents of the Government can dissolve a given legislative assembly; unlawful dissolution is to the detriment of the statutory principle of self-organisation.

It is rightly indicated in literature that preventing legislative bodies from meeting, discussing and adopting resolutions should not be confused with organising protests in front of the Congress, the Senate and the Autonomous Community Legislative Assembly, even if it leads to disorder or the use of violence.[53] The offence of rebellion requires that an operation be organised to block a legislative body in order to threaten a democratic constitutional system. The attempted coup of 23 February 1981 consisted in entering the Congress by the Civil Guard unit and detaining the representatives kidnapped for 20 hours. In this case, there was no attempt but the aim was achieved in the form of preventing the meeting and blocking the election of the President of the Government.[54] The offence of rebellion must be an operation organised in order to block a legislative body, and to threaten a democratic constitutional system. In the attempted coup of 23 February 1981, the Civil Guard officers entered the Congress and held the parliamentarians hostage for 20 hours. In this case, it was not only the rebels' attempt but they achieved the aim of preventing them from meeting and of blocking the vote for the President of the Government.

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[51] F. Muñoz Conde, *supra* n. 12, p. 687.

[52] N. García Rivas, *supra* n. 1, p. 67.

[53] *Ibid*.

[54] *Ibid*.

The provision also refers to "depriving them of the right to adopt any resolutions" or "stripping them of any of their prerogatives or powers". The former phrase concerns resolutions that particular bodies are competent to pass because if an incompetent body is forced to adopt a resolution, in some authors' opinion, it is an ineffective attempt.[55]

Stripping of any prerogatives or powers should be narrowly interpreted and it should be analysed whether a given case changes the constitutional system. Article 92 para. 2 Constitution, which stipulates that a referendum should be proposed by the President of the Government and authorised by the Congress, is an example. Holding a referendum without authorisation of the Congress is illegal; however, it is necessary to assess whether depriving the Congress of this power results in a threat to the democratic system, e.g. a referendum on the separation of a part of the national territory poses such a threat but that on legalising the purchase of hashish does not.[56]

6.5. DECLARATION OF INDEPENDENCE OF PART OF NATIONAL TERRITORY

The perpetrators have a separatist aim.[57] Statements made by some members of the public who would like to separate from the state do not match the feature. Citizens expressing the will to form their own state exercise their fundamental right of the freedom of speech. Their political pluralism is protected and the only limit to it is an offence against the form of the state laid down in the Constitution.[58] Analysing the case of the "Ibarretxe Plan",[59] the High Court of Justice of the Basque Country did not recognise it as inciting to rebellion and stated that the "statements made by the *Lehendari*[60] cannot be interpreted differently from an expression of wishes and an announcement of a political intention, uncertain in the future. As the prosecutor indicates, and we agree, at the present stage, the State has mechanisms that go beyond the scope of criminal law to block any political proposals that are not adjusted to the procedure as well as statutory and constitutionally established paths".[61]

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55 *Ibid.*, p. 68.

56 *Ibid.*

57 F. Muñoz Conde, *supra* n. 12, p. 688.

58 N. García Rivas, *supra* n. 1, p. 68.

59 After the victory of socialists in the national elections in 2004, the President of the Governing Council of the Basque Country proposed a new statute of the Autonomous Community. He proposed far-reaching decentralisation of the Spanish State and the introduction of the right to self-determination to the statute of the Basque Country. Obtaining the approval by the *Cortes* would require the amendment to the Constitution. Thus, the Parliament of the Nation refused to proceed with the Basque project. The civil servants' trade unions "Clean Hands" reported that the President had committed, inter alia, an offence of rebellion.

60 It is the Basque name of the President of the Governing Council of the Basque Country.

61 Auto del Tribunal Superior de Justicia del País Vasco núm. 25/2007 de 27 de noviembre, http://www.poderjudicial.es/search/indexAN.jsp (accessed 5.2.2020).

6.6. REPLACING THE GOVERNMENT OF THE NATION OR THE GOVERNING COUNCIL OF AN AUTONOMOUS COMMUNITY WITH ANOTHER, OR STRIPPING THE GOVERNMENT OR THE GOVERNING COUNCIL OF AN AUTONOMOUS COMMUNITY OR ANY OF THEIR MEMBERS OF THEIR POWERS, OR PREVENTING OR LIMITING THE FREE EXERCISE THEREOF, OR FORCING ANY OF THEM TO CARRY OUT ACTS AGAINST THEIR WILL

This aim of a rebellion focuses on the protection of the executive power in the same way as the former aim related to the protection of the legislative power. Article 98 para. 1 Constitution stipulates that the Government consists of the President, Vice-Presidents, Ministers and other members as prescribed in the statute. The composition was not extended in the Act 50/1997 of 27 November 1997 on the Government,[62] in accordance with which undersecretaries were given the status of auxiliary and cooperative bodies and are not members of the Government (Article 7 Act 50/1997). Governing Councils of Autonomous Communities consist of their President and counsellors.

Both in the national system and autonomous communities, there are norms regulating a change of the government. After the government resigns in the cases laid down in the Constitution (Article 101 para. 1) and the election process starts, the President of the Government of the Nation and the Presidents of the Autonomous Communities are elected.

Public and violent sedition aimed at changing the Government of the Nation or a Governing Council of an Autonomous Community means a change of the existing procedure of government replacement that is unconstitutional or in conflict with the provisions of an autonomous statute.

In literature, "the exercise on one's own, or stripping the Government or the Governing Council of an Autonomous Community or any of their members of their powers" is called usurpation,[63] which involves a collective body as well as its individual members.

6.7. BREAKING AN OATH OF OBEDIENCE TO THE GOVERNMENT BY ANY TYPE OF ARMED FORCES

The Preamble to the Act 5/2005 of 18 November 2005 on national defence[64] stipulates that: "the organisation of the armed forces integrated into the Ministry of Defence shall correspond to the principles of hierarchy, discipline, unity and effectiveness". The Constitution assigns to them the task "to guarantee the sovereignty

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[62] Ley 50/1997, de 27 de noviembre, del Gobierno, B.O.E. núm. 285, de 28 de noviembre de 1997.

[63] N. García Rivas, *supra* n. 1, p. 71.

[64] Ley Orgánica 5/2005, de 17 de noviembre, de la Defensa Nacional, BOE núm. 276 de 18 de noviembre de 2005.

and independence of Spain and to defend its territorial integrity and the constitutional order" (Article 8).

The phrase "any type of armed forces" means the type of armed forces of a sufficient structural and operational size that can pose a threat to the authorities. It is emphasised in literature that broad interpretation of this phrase might lead to recognition of simple disobedience as a rebellion, which has nothing to do with the object of protection and the significance of this offence.[65] It concerns sedition aimed at making a part of armed forces stop being obedient to the Government.

It is rightly indicated in the doctrine that this does not only concern the Government of the Nation but also Governing Councils of Autonomous Communities, and it may happen that a section of armed forces stops being obedient to the Governing Council of an Autonomous Community that was authorised to wield authority over the given armed force section.[66]

7. AGGRAVATED TYPES OF THE OFFENCE OF REBELLION

Article 473 para. 2 SCC, according to the legal doctrine, contains a series of circumstances aggravating the offence of rebellion, which have very different forms.[67] These are as follows:

1) withdrawing weapons or combat between rebels and "the sectors loyal to the lawful authority". The concept of weapons does not differ from the concept of weapons used in the provisions determining aggravated offences causing bodily harm (Article 148 para. 3 SCC) and robbery (Article 242 para. 3 SCC). Weapons means firearms, cold weapons such as knives, flick knives, daggers, machetes and axes.[68] Firearms, in accordance with Article 2 para. 1 of the King's Decree 137/1993 of 29 January 1993 laying down regulation of firearms,[69] includes all portable weapons having a barrel that throws, is constructed to throw or may be easily converted to throw pellets, bullets or rounds of ammunition with the use of a deflagration mechanism. An object that can be converted to throw pellets, bullets or rounds of ammunition with the use of a deflagration mechanism is an object that looks like firearms because of its construction or material from which it is made, and can be converted in such a way.

   Withdrawing weapons includes their use, not just carrying them, provided no combat with lawful forces occurs. Grounding arms before their use constitutes an extenuating circumstance laid down in Article 480 para. 2 SCC, and this is why, aggravating penalties for carrying weapons would not be logical.[70]

[65] N. García Rivas, *supra* n. 1, p. 72.

[66] J. Tamarit Sumalla, *supra* n. 9, p. 1921.

[67] N. García Rivas, *supra* n. 1, p. 73.

[68] J. Tamarit Sumalla, *supra* n. 9, pp. 101 and 1923.

[69] Real Decreto 137/1993, de 29 de enero, por el que se aprueba el Reglamento de Armas, B.O.E. núm. 55, de 5 de marzo de 1993.

[70] N. García Rivas, *supra* n. 1, p. 73.

It is rightly stated in the legal doctrine that the circumstance of combat between rebels and the authorities concerns only cases when rebels start combat.[71] There are opinions presented in literature that the terms used are appropriate in relation to former centuries because at present technological war is prevalent.[72]

2) causing havoc as a result of rebellion. The offence of havoc is classified in Article 346 SCC and it is necessary to refer to this term. Havoc means causing explosions or using any other means with a similar destructive power, which results in the destruction of airports, ports, stations, buildings, public premises, deposits containing flammable or explosive materials, means of communication, mass transport resources, or sinking or running a ship around, flooding or explosion of a mine or industrial facility, tearing up a rail of a railway, maliciously changing the signals used in such service for the safety of transportation resources, blowing up a bridge or damaging a pipeline, destroying public highways, serious disturbance of any kind or means of communication, disturbance or interruption of the water or electricity supply, or any other fundamental natural resource. It endangers the life or integrity of persons. This endangerment is essential because otherwise the provisions concerning causing damage are applicable (Articles 263–266 SCC).
3) cutting off telegraphic and telephone lines, the airwaves, railways or any other kind of communications. It is an open list and the means of communication listed are examples, which the phrase "or any other kind" used in the provision confirms. However, the regulation is questioned in the legal doctrine and there are opinions that it originates from another epoch and demands adding new means of communication, e.g. the Internet, provided they can facilitate the commission of the offence of rebellion.[73]
4) using serious violence against persons. The standard type consists in violent sedition, thus in the case of this circumstance, violence is graded; it concerns higher-level violence. However, this is an element based on evaluation. In literature, this violence is described as one that causes at least such grave body damage as is foreseen in the case of the offence of causing severe body harm, i.e. one causing the loss of or inability to use a major organ or limb, or a sense, or sexual impotence, sterility, serious deformity or serious physical or mental illness, a genital mutilation in any form (Article 149 SCC), loss of or inability to use a non-major organ or limb (Article 150 SCC).
5) demanding contributions or diverting the public funds from their lawful investment. It is indicated in the doctrine that this concerns the offence of embezzlement and appropriation of funds.[74] This conduct means that the rebellion reached an advanced stage, which makes it possible to perform functions typical of the overthrown authorities.[75]

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[71] J. Tamarit Sumalla, *supra* n. 9, p. 1923.
[72] N. García Rivas, *supra* n. 1, p. 73.
[73] *Ibid.*, pp. 73–74.
[74] *Ibid.*, p. 74.
[75] J. Tamarit Sumalla, *supra* n. 9, p. 1923.

Article 478 SCC[76] contains another aggravating circumstance, depending on what type of authority the perpetrator is in the overthrown legal order. The aggravation consists in the substitution of the penalty of barring by the penalty of the absolute barring from exercising their rights. It concerns "mere participants" of the rebellion because Article 473 para. 1 SCC stipulates that those who act as commanders and induce rebels, and subaltern commanders are subject to the penalty of absolute barring; they are a different type of perpetrators of the offence of rebellion.

There is a dispute in literature concerning the conformity of the provision with the principle of proportionality. Imposition of the same penalty for all acts committed, regardless of the size of damage caused, is against this principle. Other authors assume that just the fact of holding the position of authority means that the person has a special duty to protect the Constitution, and that is why, a more severe penalty is justified if a person cooperates in the violation of the Constitution. There are demands for the application of aggravation to all participants in the offence commission because the application of the provision only to "mere performers" discriminates against them as they contribute the least to the violation of the Constitution.[77]

8. OTHER REBELLION-RELATED OFFENCES

The Spanish lawmaker classifies conduct that can be conducive to the success of rebellion or is related to it, although the perpetrators do not take part in the rebellion.

Article 476 SCC classifies the conduct of a serviceperson who does not use the means available to him to contain a rebellion by the forces under his command, or having knowledge of an attempt to commit the offence of rebellion does not immediately report this to his superiors, or authorities or officers who, due to their office, are obliged to pursue offences. It is an offence of omission in servicepersons' duties. It is assumed in literature that "means available to him" are all human and material resources available that can really help to contain a rebellion.[78] There is also a concern expressed that a common court can be unable to assess what resources are available to a serviceperson.[79]

It is an offence resulting from omission. As far as the subject is considered, it is typically an individual offence; it is inadmissible to recognise a foreigner as a perpetrator of the offence.[80] Omitting to use the means concerns a serviceperson

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[76] Article 478 SCC stipulates that in the case a perpetrator of any offence classified in this Chapter holds office, the penalty of barring from exercising rights prescribed in a given case should be changed into absolute barring from exercising rights for a period from fifteen to twenty years, unless this penalty is prescribed for a given offence.

[77] N. García Rivas, *supra* n. 1, p. 75.

[78] *Ibid.*, p. 83.

[79] J. Tamarit Sumalla, *supra* n. 9, p. 1925.

[80] N. García Rivas, *supra* n. 1, p. 84.

who has forces under his command.[81] These are soldiers of the armed forces of any unit, centre, body or base of the army, the navy or air force.[82]

The punishment for omission consisting in failure to report a rebellion is justified by the transcendent nature of the offence and the possibility of preventing a rebellion by reporting it.[83] It concerns cases when a perpetrator has the knowledge of a conspiracy before the offence of rebellion is committed, because the political-criminal aim of the provision related to this offence is not to delay a rebellion, but only to prevent it.[84] Thus, any soldier can be a perpetrator of the offence in this form.

Article 482 SCC classifies an offence consisting in the infringement of the authorities' general obligation to counteract the rebellion. The obligation results not only from the provisions of Criminal Code but also from the oath of office to respect the Constitution.[85] Thus, it is an offence resulting from omission. The omission is deliberate and has an advantageous impact on the success of the rebellion by failing to fulfil duties that should help to contain it.[86]

Continuing to carry out civil servants' duties of office under the command of the rebels or their resignation from office without acceptance when there is a danger of rebellion also constitutes an offence (Article 483 SCC). Such a civil servant fails to fulfil a duty of loyalty to the legal and political system in which he has been appointed. It concerns a situation when a civil servant abandons the post because of the danger of rebellion or continues to hold the post, regardless of the rebellion success.[87]

Recognition of abandoning a post because of the danger of rebellion results in complex evidence-related problems, which makes the application of this provision difficult in practice.[88] There is criticism that the provision is imprecisely formulated.[89]

Article 484 SCC stipulates an offence of accepting employment from the rebels. What justifies the criminalisation of such conduct in the doctrine is the fact that a perpetrator abuses his function because he is obliged to be loyal to a democratic constitutional system that is not accepted by the rebels.[90] In literature, it is emphasised that punishment *in abstracto* of any type of cooperation with rebels with the use of barring from the exercise of rights is understandable, however, it is noted there is a problem that courts may encounter cases where sentencing a person cooperating with rebels leads to conflicts with other interests that are subject to protection, e.g. employment law.[91] The offence is formal, thus it does not generate any consequences.[92]

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81 A. Calderón, J.A. Choclán, *supra* n. 11, p. 1000.
82 J. Tamarit Sumalla, *supra* n. 9, p. 1926.
83 *Ibid.*
84 *Ibid.*
85 *Ibid.*, p. 1931.
86 A. Calderón, J.A. Choclán, *supra* n. 11, p. 1002.
87 N. García Rivas, *supra* n. 1, pp. 84–85.
88 J. Tamarit Sumalla, *supra* n. 9, p. 1930.
89 A. Calderón, J.A. Choclán, *supra* n. 11, p. 1003.
90 N. García Rivas, *supra* n. 1, p. 86.
91 J. Tamarit Sumalla, *supra* n. 9, p. 1932.
92 A. Calderón, J.A. Choclán, *supra* n. 11, p. 1003.

9. PENALTIES

The legislative technique in the case of the offence of rebellion differs from the standard one because the provision classifying it does not lay down a penalty it carries. Penalties are laid down in the following Article.

The Spanish lawmaker distinguishes three types of penal liability for the standard and aggravated types of rebellion depending on the role of the perpetrator, i.e. commanders or ringleaders promoting rebellion, subaltern commanders and mere participants. The regulation lays down a special norm and abolishes general rules concerning perpetration, and aiding and abetting. The sense of the regulation is justified by the fact that military courts treated the offence of rebellion in a traditional way because the offence was committed within the structure of authority organised hierarchically.[93] The form of "cascade" punishment is typical of the offence of rebellion.[94] The severity of penalty depends on the level of commitment to the rebellion.[95]

The penalties for the standard type are as follows:

1) for commanders or ringleaders inciting rebellion: the penalty of imprisonment from ten to twenty five years and absolute barring from exercising rights for the same period;
2) for subaltern commanders: the penalty of imprisonment from ten to fifteen years and absolute barring from exercising rights from ten to fifteen years;
3) for mere participants: the penalty of imprisonment from five to ten years and barring from exercising the right to public employment and office for a term from six to ten years (Article 473 para. 1 SCC).

It is assumed in literature that the lawmaker recognises the offence of rebellion as an organised movement in which the persons mainly responsible are sometimes people who have not taken part in it but have been the brains of the operation.[96] There is a distinction between main commanders and subaltern commanders; the latter are persons having lower authority.[97]

In the aggravated types, penalties are more severe in the field of imprisonment and barring from exercising rights is for the same period. For commanders or ringleaders inciting rebellion it is: the penalty of imprisonment from twenty five to thirty years; for subaltern commanders: the penalty of imprisonment from fifteen to twenty five years; and for mere participants: the penalty of imprisonment from ten to fifteen years (Article 473 para. 2 SCC).

The offence classified in Article 476 SCC carries the penalty of imprisonment from two to five years and absolute barring from exercising rights from six to ten years.

The offence classified in Article 482 SCC carries the penalty of absolute barring from exercising rights from twelve to twenty years.

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[93] J. Tamarit Sumalla, *supra* n. 9, p. 1922.
[94] F. Muñoz Conde, *supra* n. 12, p. 689.
[95] A. Calderón, J.A. Choclán, *supra* n. 11, p. 998.
[96] N. García Rivas, *supra* n. 1, p. 82.
[97] J. Tamarit Sumalla, *supra* n. 9, p. 1922.

The penalty of special barring from public employment and office for a civil servant is a sanction for the offence stipulated in Article 483 SCC.

The offence under Article 484 SCC carries the penalty of absolute barring from exercising rights from six to twelve years.

10. CONCLUSIONS

1) In Spain, the offence of rebellion has a long history because it was classified in all Spanish Criminal Codes (of 1848, 1870, 1932 and 1995).
2) The offence of rebellion is one with a special structure. It consists in public sedition in a violent way, which aims to achieve any of seven goals specified in Article 472 SCC, which include fully or partially repealing, suspending or amending the Constitution; and fully or partially stripping the King, the Regent or members of the Regency of all or part of their prerogatives and powers, or obliging them to execute an act contrary to their will (paras 1 and 2). It also occurs in an aggravated form due to various circumstances, e.g. using weapons, causing havoc or using serious violence against persons (Article 473 para. 2 SCC).
3) The offence breaches the Constitution and fundamental institutions of a democratic state; it undermines the foundations of the state of law. Article 472 SCC protects the constitutional order, thus the rules and constitutional institutions that must be recognised.
4) It is a collective offence. The subject cannot be a single person, but a group. The statute does not determine the number of people involved, but there must be the number sufficient to achieve their aim.
5) The offence is intentional in nature; it can be committed with specific direct intent (*cum dolo directo colorato*). Perpetrators should aim to achieve one of the aims classified in the statute.
6) The standard as well as aggravated type of the offence carries penalties that are "cascade-like" in nature because the penalty severity depends on the level of involvement in the rebellion. For the standard offence: (a) the penalty for commanders and ringleaders inciting to rebellion is imprisonment for a period from fifteen to twenty five years and absolute barring from exercising rights for the same period; (b) the penalty for subaltern commanders is imprisonment for a period from ten to fifteen years and absolute barring from exercising rights from ten to fifteen years; (c) the penalty for mere participants is imprisonment for a period from five to ten years and barring from exercising the right to public employment and office for a term from six to ten years (Article 473 para. 1 SCC). In the aggravated cases, the offence carries imprisonment and barring from exercising rights for the same period. The penalty for commanders and ringleaders inciting to rebellion is imprisonment for a period from twenty five to thirty years, for subaltern commanders: imprisonment for a period from eleven to twenty five years, and for mere participants: imprisonment for a period from ten to fifteen years (Article 473 para. 2 SCC).

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OFFENCE OF REBELLION IN THE SPANISH CRIMINAL LAW

Summary

The article presents the offence of rebellion classified in the Spanish Criminal Code (Article 472 SCC of 1995), which has a long history because it was referred to in all former Spanish Criminal Codes (of 1848, 1870 and 1932). The offence consists in public and violent sedition aimed at achieving any of the seven objectives listed in Article 472 SCC, which include fully or partially repealing, suspending or amending the Constitution, and fully or partially stripping the King, the Regent, or members of the Regency of all or part of their prerogatives and powers, or obliging them to execute an act contrary to their will (Article 472 paras 1 and 2 SCC). It also occurs in an aggravated form due to various circumstances, e.g. using weapons, causing havoc or serious violence against persons (Article 473 para. 2 SCC). It breaches the Constitution and harms the fundamental institutions of a democratic state, and undermines the foundations of a state of law. Article 472 SCC protects the constitutional order, thus the rules and constitutional institutions that must be recognised. It is a collective offence. Its subject cannot be a single person but a group of people. The statute does not determine the number of people involved but there must be a number sufficient to achieve their aim. The offence can be committed with specific direct intent, and perpetrators should aim to achieve one of the objectives listed in the statute. Standard as well as aggravated types of the offence are "cascade-like" in nature because and the penalty severity depends on the level of involvement in the rebellion (Article 473 para. 1 SCC).

Keywords: member of the Regency, Constitution, *Cortes*, King, Queen, independence, stripping of prerogatives and powers, rebellion, Regent, Senate, armed forces, office, Government of the Nation, Governing Council of the Autonomous Community, election, Legislative Assembly of the Autonomous Community

PRZESTĘPSTWO REBELII W HISZPAŃSKIM PRAWIE KARNYM

Streszczenie

Przedmiotem artykułu jest stypizowane w hiszpańskim kodeksie karnym przestępstwo rebelii (art. 472 h.k.k. z 1995 r.), które ma długą tradycję, bowiem występowało w prawie wszystkich hiszpańskich kodeksach karnych (z 1848 r., 1870 r., 1932 r.). Przestępstwo to polega na publicznym buncie w sposób gwałtowny, którego celem jest realizacja któregokolwiek z siedmiu celów określonych w art. 472 h.k.k., obejmujących uchylenie, zawieszenie lub zmiana

w całości lub w części konstytucji oraz pozbawienie urzędu albo odebranie w całości lub w części prerogatyw i uprawnień królowi lub królowej lub regentowi, lub członkom regencji, lub zmuszenie ich do wykonania czynności wbrew ich woli (art. 472 pkt 1 i 2 h.k.k.). Występuje także w typie kwalifikowanym ze względu na różne okoliczności, np. wyciągnięcie broni, spowodowanie spustoszenia, stosowanie ciężkiego gwałtu wobec osób (art. 473 ust. 2 h.k.k.). Godzi ono w konstytucję i podstawowe instytucje demokratycznego państwa oraz w fundamenty państwa prawa. Artykuł 472 h.k.k. chroni porządek konstytucyjny, a więc obowiązywanie zasad i instytucji konstytucyjnych. Jest przestępstwem wieloosobowym. Jego podmiotem nie może być pojedyncza osoba, ale grupa osób. Ustawa nie określa ich liczby, ale ma być ich tyle, ile jest wystarczające do osiągnięcia zamierzonego celu. Może być popełnione z zamiarem bezpośrednim zabarwionym, a sprawcy powinni dążyć do realizacji któregoś ze stypizowanych w ustawie celów. Zagrożenie zarówno przestępstwa w typie podstawowym, jak i kwalifikowanym ma charakter „kaskadowy", bowiem surowość kary zależy od stopnia uczestnictwa w rebelii (art. 473 ust. 1 h.k.k.).

Słowa kluczowe: członek regencji, konstytucja, kortezy, król, królowa, niepodległość, odebranie prerogatyw i uprawnień, rebelia, regent, senat, siły zbrojne, urząd, rząd państwowy, rząd wspólnoty autonomicznej, wybory, zgromadzenie ustawodawcze wspólnoty autonomicznej

DELITO DE REBELIÓN EN EL DERECHO PENAL ESPAÑOL

Resumen

El articulo versa sobre el delito de rebelión previsto en el código penal español (art. 472 CP de 1995 r.), que tiene una larga tradición, ya que fue previsto en casi todos los códigos penales españoles (de 1848, de 1870, de 1932). El delito consiste en alzamiento violento y público para cualesquiera de los 7 fines previstos en art. 472 CP, dentro de los cuales está la derogación, suspensión o modificación total o parcial de la Constitución; destitución o despoje en todo o en parte de sus prerrogativas y facultades del Rey o Reina o del Regente o miembros de la Regencia, causación que ejecute un acto contrario a su voluntad (art. 472 punto 1 y 2 CP). El tipo tiene sus circunstancias agravantes debido a, p. ej. esgrime de armas, estragos, ejercicio de violencias graves contra las personas (art. 473 ap. 2 CP). Este delito ataca la Constitución e instituciones básicas del Estado democrático de derecho; afecta los fundamentos del Estado de derecho. Art. 472 CP protege el orden constitucional, o sea, la vigencia de principios e instituciones constitucionales. Es un delito pluripersonal. No puede cometerlo una persona, sino un grupo de personas. La ley no fija el número de personas, ha de ser suficiente para conseguir el objetivo. Se comete *cum dolo directo colorato*; los autores deben de intentar conseguir alguno de los objetivos establecidos por la ley. Las penas previstas tanto por el delito básico o agravado se configuran en cascada, ya que la severidad de la sanción depende del grado de participación en la rebelión (art. 473 ap. 1 CP).

Palabras claves: miembro de la Regencia, las Cortes, el Rey, la Reina, independencia, privación de prerrogativas y facultades, rebelión, el Regente, el Senado, Fuerzas Armadas, Gobierno de la Nación, Gobierno de la Comunidad Autónoma, elecciones, Asamblea Legislativa de una Comunidad Autónoma

ПРЕСТУПЛЕНИЕ ВОССТАНИЯ В УГОЛОВНОМ ПРАВЕ ИСПАНИИ

Резюме

Статья посвящена преступлению восстания, предусмотренному испанским уголовным кодексом (ст. 472 УК Испании от 1995 г.). Криминализация восстания в испанском законодательстве имеет давние традиции, поскольку соответствующий состав преступления предусматривался почти всеми уголовными кодексами Испании (кодексы от 1848, 1870 и 1932 гг.). Данное преступление состоит в публичном мятеже с применением насилия, направленном на достижение любой из семи целей, перечисленных в ст. 472 УК Испании, которые включают в себя отмену, приостановление или изменение, полностью или частично, конституции и смещение с должности либо лишение, полностью или частично, прерогатив и полномочий короля или королевы, регента или членов регентства, а также принуждение их к совершению действий против их воли (ст. 472 пп. 1 и 2 УК Испании). Преступление может быть квалифицировано различными отягчающими обстоятельствами, такими как: демонстрирование оружия, причинение серьезного материального ущерба, применение тяжкого насилия (ст. 473 § 2 УК Испании). Данное деяние покушается на конституцию, главные институты демократического государства и основы правового государства. Статья 472 УК Испании защищает конституционный порядок, то есть функционирование конституционных принципов и институтов. Субъектом преступления не может быть одно единственное лицо, так как преступление по определению совершается группой лиц. Закон не уточняет их количество, но оно должно быть достаточным для достижения намеченной цели. Преступление может быть совершено с направленным непосредственным умыслом (*dolus directus coloratus*), преступники должны стремиться к достижению одной из целей, перечисленных в законе. Мера наказания за основной состав преступления и за преступление, квалифицированное отягчающими обстоятельствами, носит «каскадный» характер, так как строгость наказания зависит от степени участия в восстании (ст. 473 § 1 УК Испании).

Ключевые слова: член регентства, конституция, кортесы, король, королева, независимость, лишение прерогатив и полномочий, восстание, регент, сенат, командование вооруженных сил, центральное правительство, правительство автономной области, выборы, законодательное собрание автономной области

DAS AUFSTANDSVERBRECHEN IN DEM SPANISCHEN STRAFRECHT

Zusammenfassung

Gegenstand des Artikels ist das im spanischen Strafgesetzbuch (Artikel 472 der Strafprozessordnung von 1995) festgelegte Aufstandsverbrechen, das eine lange Tradition hat, da es in fast allen spanischen Strafgesetzbüchern (ab 1848, 1870, 1932) vorkommt. Dieses Verbrechen ist eine gewaltsame öffentliche Rebellion, deren Ziel ist es die Realisation eines der sieben im Artikel 472 des Strafgesetzbuches genanten Ziele, die die Aufhebung, Aussetzung oder Änderung der Verfassung ganz oder teilweise und den Entzug des Amtes oder die Abberufung ganz oder teilweise der Vorrechte und Befugnisse des Königs oder der Königin oder des Regenten oder der Regentschaftsmitglieder umfassen oder sie zwingen, Handlungen gegen ihren Willen durchzuführen (Artikel 472 Punkte 1 und 2 des Strafgesetzbuches). Es tritt auch bei dem qualifizierten Typ aufgrund verschiedener Umstände auf, z. B. beim Ziehen einer Waffe, Chaos verursachen, bei schwerer Vergewaltigung von Personen (Artikel 473 Absatz 2 des Strafgesetzbuches). Es verstößt gegen die Verfassung und die grundlegenden Institutionen

eines demokratischen Staates; es verstößt gegen die Grundlagen der Rechtsstaatlichkeit. Artikel 472 des Strafgesetzbuches schützt die verfassungsmäßige Ordnung, d. h. die verfassungsrechtlichen Grundsätze und Institutionen. Es ist ein Mehrpersonenverbrechen. Sein Thema kann nicht eine einzelne Person sein, sondern eine Gruppe von Menschen. Das Gesetz legt die Anzahl der Menschen nicht fest, es mussen jedoch so viele wie möglich sein, um den beabsichtigten Zweck zu erreichen. Es kann mit einer direkten Absicht begangen werden; Die Täter sollten sich bemühen, eines der im Gesetz festgelegten Ziele zu erreichen. Die Androhung sowohl grundlegender als auch qualifizierter Straftaten ist von Natur aus „kaskadierend", da die Schwere des Urteils vom Grad der Beteiligung an der Rebellion abhängt (Artikel 473 Absatz 1 des Strafgesetzbuches).

Schlüsselwörter: Regentschaftsmitglied, Verfassung, Cortesia, König, Königin, Unabhängigkeit, Entzug von Vorrechten und Befugnissen, Rebellion, Regent, Senat, Büro der Streitkräfte, Landesregierung, autonome Gemeinschaftsregierung, Wahlen, autonome gesetzgebende Versammlung der Gemeinschaft

CRIME DE RÉBELLION EN DROIT PÉNAL ESPAGNOL

Résumé

Le sujet de l'article est le crime de rébellion inclus dans le Code pénal espagnol (article 472 du Code pénale espagnol de 1995), qui a une longue tradition, comme il est apparu dans presque tous les codes pénaux espagnols (de 1848, 1870, 1932). Ce crime est une rébellion publique violente, dont le but est d'atteindre l'un des 7 objectifs énoncés à l'art. 472 du c.p.e., qui incluent l'abrogation, la suspension ou l'amendement en tout ou en partie de la constitution et la privation de fonction ou la destitution en tout ou en partie des prérogatives et pouvoirs du roi ou de la reine ou du régent, ou des membres de la régence, ou les forcer à accomplir des actes contre leur volonté (Article 472 points 1 et 2 du c.p.e.). Ce crime se produit également dans le type qualifié en raison de diverses circonstances, telles que le fait de tirer une arme, de causer des ravages et des viols graves contre des personnes (article 473, paragraphe 2 du c.p.e.). Ce crime porte atteinte à la constitution et les institutions fondamentales d'un État démocratique; il porte atteinte aux fondements de l'État de droit. Art. 472 du c.p.e. protège l'ordre constitutionnel, c'est-à-dire les principes et institutions constitutionnels. Est un crime impliquant plusieurs personnes. Son sujet ne peut pas être une seule personne, mais un groupe de personnes. La loi ne précise pas leur nombre, mais il doit être suffisant pour atteindre le but recherché. Il peut être commis avec une intention colorée directe; les auteurs devraient s'efforcer d'atteindre l'un des objectifs stipulés dans la loi. L'importance de la peine pour les infractions fondamentales et qualifiées est de nature «de cascade», car la sévérité de la peine dépend du degré de participation à la rébellion (article 473, paragraphe 1, du c.p.e.).

Mots-clés: membre de la régence, constitution, les Cortes, roi, reine, indépendance, retrait des prérogatives et des pouvoirs, rébellion, régent, sénat, bureau des forces armées, gouvernement de l'État, gouvernement de la communauté autonome, élections, assemblée législative de la communauté autonome

REATO DI RIBELLIONE NEL CODICE PENALE SPAGNOLO

Sintesi

L'oggetto dell'articolo è la definizione del reato di ribellione nel codice penale spagnolo (art. 472 del codice penale spagnolo del 1995), che ha una lunga tradizione ed è infatti presente in quasi tutti i codici penali spagnoli (del 1848, del 1870, del 1932). Tale reato consiste nella rivolta pubblica in modo violento, avente per scopo la realizzazione di uno dei 7 obiettivi stabiliti nell'art. 472 nel codice penale spagnolo, tra cui vi è l'abrogazione, la sospensione o la modifica integrale o parziale della costituzione nonché la privazione del re del suo ufficio o la revoca integrale o parziale delle prerogative e dei diritti del re o della regina o del reggente, o dei membri della reggenza, o la loro costrizione a compiere atti contro la loro volontà (art. 472 punti 1 e 2 del codice penale spagnolo). È presente anche nella forma qualificata, a motivo di diverse circostanze, ad esempio uso delle armi, devastazione delle proprietà, uso della violenza contro le persone (art. 473 comma 2 del codice penale spagnolo). Lede la costituzione e le istituzioni fondamentali dello stato democratico, lede i fondamenti dello stato di diritto. L'art. 472 del codice penale spagnolo tutela l'ordine costituzionale, e quindi l'applicazione dei principi e delle istituzioni costituzionali. È un reato collettivo. Il suo soggetto non può essere una singola persona, ma un gruppo di persone. La legge non stabilisce il loro numero, ma devono essere in numero sufficiente a raggiungere lo scopo mirato. Deve essere compiuto con intento diretto, gli autori del reato devono puntare alla realizzazione di uno degli obiettivi definiti nella legge. La minaccia sia del reato nella forma di base che in quella qualificata ha un carattere "a cascata", infatti la severità della pena dipende dal grado di partecipazione alla ribellione (art. 473 comma 1 del codice penale spagnolo).

Parole chiave: membro della reggenza, costituzione, *Cortes*, re, regina, indipendenza, revoca delle prerogative e dei diritti, ribellione, reggente, senato, forze armate, ufficio, governo statale, governo della comunità autonoma, elezioni, assemblea legislativa della comunità autonoma

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