

## **Assassination attempt on the life of the President of the Republic of Poland pursuant to Article 134 of the Criminal Code**

### **Abstract**

The aim of this article is to present the issue of special criminal law protection of the President of the Republic of Poland. With reference to pre-war legislation, Article 134 of the Criminal Code was analysed, which criminalises behaviour constituting an attempt on the life of the President of the Republic of Poland, who, perceived not as a specific person but as an entity embodying the majesty of the Republic of Poland, is one of the main guarantors of the efficient and undisturbed functioning of the state organism. An assassination attempt on the holder of this office may be the beginning of both internal and external destabilisation of the state, and the threat to its security appears already at the moment of preparation to commit this crime. While the author of the article does not deny that this provision also strengthens the protection of this person's life and health, he recognises that this is an incidental object of protection. The article presents arguments in favour of the criminalisation of any behaviour bearing the features of preparation for the crime of an attempt on the life of the President of the Republic of Poland, following the example of the authors of the Criminal Code of 1932.

### **Keywords**

president, assassination, crime, preparation, destabilisation of the state.

The poet Kazimierz Wierzyński commented on the assassination of Gabriel Narutowicz in this way: (...) on 16 December 1922, we lost the right to Norwid's words: "No Polish king has ever stood at the scaffold". Everyone knew that something had happened that passed the capacity of human understanding. I went through, with others, all the degrees of horror, from murder to funeral. The murderer's shot hit not only Narutowicz. From that crime, the wounded love in Piłsudski was shaken. From then on, a process began in him in which anger and hatred took over<sup>1</sup>. In the process of historical development, criminal law regulations commonly provided the ruler (ruler, head of state) with the highest level of protection. This was based on the conviction that not only the personal legal goods belonging to such a subject, such as his life, health or honour, but above all the collective values that he embodied, such as the state, the political system, internal and external security, were protected in this way<sup>2</sup>. The aftermath of successful assassinations of rulers included the disruption of state organisation and both bloody civil wars and foreign intervention to take control of a state in chaos. In the 20th century, the international community was shaken by the assassinations of Archduke Franz Ferdinand in 1914 in Sarajevo, King Alexander I Karadziordziewic of Yugoslavia in 1934 in Marseille and John F. Kennedy in 1963 in Dallas. Cases known from Polish history include the assassinations of Bolesław Chrobry's eldest son Bezprym, Mieszko Bolesławowic, Leszek I the White and Przemysł II. During the First Republic, one of the most famous assassination attempts was on the life of King Sigismund III, carried out in 1620 by Michal Piekarski.

At the dawn of the Second Republic, President Gabriel Narutowicz was killed at the hands of the assassin Eligiusz Niewiadomski. At a cabinet meeting on 19 December 1922, Prime Minister Władysław Sikorski suggested referring the case to a summary court, given the nature of the crime and the need for firm and immediate punishment. Ultimately, the case was dealt with by the District Court in Warsaw. Niewiadomski was charged under Article 99 of the Tagancev Code<sup>3</sup>.

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<sup>1</sup> K. Wierzyński, *Pamiętnik poety* (Eng. Diary of a poet), Warszawa 1991, quoted by: *Zabójstwo Narutowicza. Kres demokracji w II RP* (Eng. The Assassination of Narutowicz. The End of Democracy in the Second Republic), ed. collectively, Warszawa 2022, p. 144.

<sup>2</sup> K. Wiak, *Ochrona Prezydenta Rzeczypospolitej Polskiej w Kodeksie Karnym* (Eng. Protection of the President of the Republic of Poland in the Criminal Code), "Teka Komisji Prawniczej PAN Oddział w Lublinie" 2019, vol. 12, no. 1, p. 323.

<sup>3</sup> At that time, the Russian Criminal Code of 1903 was in force, retained in the territories of the former Russian partition (thus also in Warsaw). In 1917, moreover, transitional provisions to the Criminal Code were enacted in connection with the introduction of a Polish judiciary in the Kingdom of Poland. Article 99 of the Code dealt with "an attempt on the life, health or liberty of a person holding the highest State authority in Poland". Under Article 15 of the transitional provisions, this crime was punishable by heavy imprisonment and, in exceptional circumstances, by the death penalty.

## Development of criminal regulations for the protection of the highest representative of the state

In ancient criminal law, an attack on a ruler was treated as a crime of offence against majesty (Latin: *crimen laesae maiestatis*) and was among the most serious crimes, punishable by death<sup>4</sup>. Pursuant to an inventory of Bavarian law from the eighth century, the murder of a prince was punishable by death and confiscation of all property<sup>5</sup>. In the second half of the nineteenth century, attempts on the lives of the rulers were a manifestation of the developing terrorism. The international community, seeking to counter this very dangerous phenomenon, adopted the Convention on the Prevention and Combating of Terrorism on 16 November 1937 in Geneva at the League of Nations<sup>6</sup>. It included a commitment to criminalise “acts of terrorism”, Article 2(1) of which included intentional conduct causing death, grievous bodily harm or deprivation of liberty of: a) heads of state, persons exercising the prerogatives of the head of state and their successors; b) the spouses of such persons; c) persons holding public office or a public position when the act was directed against them in connection with their public position<sup>7</sup>.

The international protection of the head of state is ensured by the UN *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, done in New York on 14 December 1973 (hereinafter: the New York Convention). Its provisions apply to acts against a specific category of “internationally protected persons”, which includes, inter alia, the head of state, including any member of a collegiate body acting, under the constitution of the state concerned, as head of government or minister of foreign affairs, whenever any such person is in a foreign state, as well as members of his family who accompany him (Article 1(1)(a)). A key norm of the New York Convention is the obligation of states in Article 2(1) to criminalise acts defined as the intentional commission of: murder, kidnapping or other attack upon the person or liberty of an internationally protected person.

After Poland regained independence in 1918, work began on the creation of an optimal model of criminal law protection of the President of the Republic of Poland, who was at the head of the reborn state. According to Wacław Makowski, the protection of the President of the Republic of Poland should realise the postulate

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<sup>4</sup> K. Sójka-Zielińska, *Historia prawa* (Eng. History of law), Warszawa 2006, pp. 30–31.

<sup>5</sup> A. Dziadzio, *Powszechna historia prawa* (Eng. General legal history), Warszawa 2022, p. 413.

<sup>6</sup> The Convention was signed by 24 countries, but never entered into force. Only India ratified it.

<sup>7</sup> *Convention for the Prevention and Punishment of Terrorism*, Library of Congress, <https://www.loc.gov/item/2021667893/> [accessed: 8 X 2023].

of (...) treating the person of the President as a visible expression of the state organisation and securing for him the broadest protection in this respect. The object of the offence, therefore, must also in this case be the Republic of Poland, affected in the person of the man called upon to symbolise it<sup>8</sup>. The creators of the Criminal Code of 1932<sup>9</sup>, took the indicated assumption as the basis for the constructed model of presidential protection. Offences against the President of the Republic were included in Chapter XVII entitled *Crimes against the State*. Leon Peiper was of the opinion that the object of protection of the provisions constituting this category of offences is first and foremost the state, (...) not as the authority of a certain person, nor as an objectively existing, independent structure, but as an institution being an expression of accidental aspirations revealed in civic coexistence. The features of the state thus understood are, first and foremost, its existence, its system and its totality, and the feature of the criminal action, consisting in opposing the will of the citizens, is the failure to gain approval in the form of the attack made<sup>10</sup>.

Pursuant to Article 94 § 1 of the Criminal Code of 1932, an act of attempt on the life or health of the President of the Republic of Poland was punishable by imprisonment for a term of not less than 10 years or life imprisonment or by death. In the event of loss of life of the President of the Republic of Poland, the act was treated as a special type of homicide under Article 225 § 1 of the Criminal Code of 1932. Invoking the principle of *lex specialis derogat legi generali*, the application of the homicide provision was excluded<sup>11</sup>. Whoever attempted to remove the President of the Republic or seize his power or influence his actions by violence or unlawful threat, was punishable under § 2 by imprisonment for not less than 10 years or for life. Peiper pointed out that:

(...) by “removal” is meant such an action which, against the true and real will of the President, results in his non-exercise of power and functions; thus, removal includes both the forced relinquishment of his dignity by the President of the Republic and his deposition from this dignity, or making it impossible for him to exercise his functions by keeping him in confinement, kidnapping him or delivering him into the hands of the enemy. (...) The removal of the President of the Republic of Poland from power creates a formal and material vacuum

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<sup>8</sup> W. Makowski, *Zbrodnie stanu* (Eng. Crimes of the state), Warszawa 1924, p. 9.

<sup>9</sup> *Ordinance of the President of the Republic of 11 July 1932 - Criminal Code*.

<sup>10</sup> L. Peiper, *Komentarz do Kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających wraz z niektórymi ustawami dodatkowymi i wzorami orzeczeń do prawa o wykroczeniach* (Eng. Commentary on the Penal Code, the Misdemeanours Law and the Introductory Provisions, together with some supplementary laws and model judgments to the Misdemeanours Law), Kraków 1933, p. 291.

<sup>11</sup> *Ibid*, p. 294.

in the exercise of the supreme executive power (art. 43 of the Constitution of the Republic of Poland)<sup>12</sup>.

According to this commentator, influence on the president's actions can be exerted in a positive or negative direction, i.e. in the direction of undertaking and refraining from a certain action. This influence can also be exerted by preventing a certain official or representative action, e.g. by restricting the freedom or liberty of movement of the president<sup>13</sup>. According to Article 94 of the 1932 Criminal Code, it was not the President as the highest state official who was protected, but the Republic. Peiper believed that (...) *the legislator in protecting the person and power of the President of the R.P. wanted to protect the State itself*<sup>14</sup>.

After the Second World War, the 1932 provision of Article 94 of the Criminal Code was applied until the removal of the office of the President under the Constitution of the People's Republic of Poland of 22 July 1952. The collegiate office of the Council of State was then introduced, modelled on the solutions adopted in the Soviet Union. The pre-war regulations were replaced by provisions expressing the Soviet concept of "counter-revolutionary crimes", which were intended to provide protection for functionaries of the so-called people's power<sup>15</sup>. The 1969 Criminal Code<sup>16</sup> introduced Article 126 § 1 into the legal space, which criminalised a violent attempt on the life of a public official or political activist, committed "with the aim of being hostile to the Polish People's Republic". In the legal literature of that period, the criminal act encoded in the wording of the 1969 provision of Article 126 of the Criminal Code was referred to as a terrorist act<sup>17</sup>. Article 126 of the Criminal Code was intended to combat acts of terror as crimes against the internal security of the People's Republic of Poland. Due to the assumptions of the regime of that time, in which power was to belong to the working people of towns and villages, the provision provided protection not only to public officials, but also to all activists whose activity was connected with maintaining, exercising and strengthening people's power, and was therefore political in nature. Acting for a purpose hostile to the People's Republic of Poland took place when the perpetrator

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<sup>12</sup> Ibid, p. 298.

<sup>13</sup> Ibid, p. 299.

<sup>14</sup> L. Peiper, *Komentarz do Kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających obiete ustawy* (Eng. Commentary on the Criminal Code, the Misdemeanours Law, the introductory provisions of both these laws), Kraków 1936, p. 222.

<sup>15</sup> K. Wiak, *Ochrona Prezydenta Rzeczypospolitej Polskiej...*, p. 328.

<sup>16</sup> *Act of 19 April 1969 Criminal Code.*

<sup>17</sup> J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz* (Eng. The Criminal Code. Commentary), Warszawa 1977, p. 319.

aimed at undermining the people's power, with the intention of eliminating a public functionary or political activist from active social life, or with the intention of creating a mood of insecurity or intimidating certain circles or circles of the population, or even individuals, and negatively (inhibiting) influencing their civic attitude and activity<sup>18</sup>. For the application of the provision of Article 126 of the 1969 Criminal Code, it was not necessary for the act to have been committed out of hatred or dislike of the People's Republic of Poland. The perpetrator had to be motivated by the aim of causing harm to the people's state by directly harming the life, health or physical freedom of persons who were public officials or political activists. Protection extended to them not only on a nationwide scale. They benefited from protection under the legal norm under analysis, even if the scope of their activities did not exceed the boundaries of a village, workplace or settlement.

The Criminal Code enacted in 1997<sup>19</sup> returned to the model of protection of the office of the President developed in the inter-war period, as pointed out, among others, by Piotr Kardas. He emphasised that the introduced Article 134 of the Criminal Code refers to the construction of the offence of attempting to harm the life or health of the President of the Republic of Poland set out in Article 94 § 1 of the Criminal Code of 1932, and is therefore a continuation of the tradition of Polish criminal legislation granting special protection to the person holding that office<sup>20</sup>. Located in Chapter XVII entitled Offences against the Republic of Poland, Article 134 of the Criminal Code provides: "*Whoever commits an attempt on the life of the President of the Republic of Poland shall be liable to imprisonment for a term not shorter than 12 years, to 25 years' imprisonment or to life imprisonment*". Janina Wojciechowska pointed out that Article 94 § 1 of the Criminal Code of 1932 was classified as a state crime, and was ranked second, while the currently in force Article 134 of the Criminal Code is ranked eighth. In view of this, she proposed that Article 134 of the Criminal Code be placed, following the model of the 1932 Criminal Code, before other provisions providing for the criminal law protection of other constitutional state organs<sup>21</sup>. It is difficult not to agree with Radosław Krajewski, who believes that such a change could be interpreted as unjustified, especially by political opponents of the President in office during the legislative

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<sup>18</sup> Ibid, p. 320.

<sup>19</sup> Act of 6 June 1997 - Criminal Code.

<sup>20</sup> P. Kardas, *Przestępstwa przeciwko Prezydentowi Rzeczypospolitej Polskiej* (Eng. Crimes against the President of the Republic of Poland), in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–277 k.k.*, A. Zoll (ed.), Warszawa 2013, pp. 164–165.

<sup>21</sup> J. Wojciechowska, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Komentarz do artykułów 117–221*, A. Wąsek, R. Zawłocki (eds.), Warszawa 2010, pp. 89–90.

works, which would not be beneficial for the majesty of the office. Moreover, this author rightly recalls that the constitutional and de facto position of the President during the Second Republic was stronger than it is today<sup>22</sup>.

Although the literature on the subject often points to slightly different goods protected by the norm encoded in the content of Article 134 of the Criminal Code, what comes to the fore is the special criminal law protection of the President as the representative of the majesty of the Republic of Poland. Thus, under the provision in question, it is not so much the person holding the office of the President who is protected, but the office of the President himself as the highest representative of the Republic of Poland. Peiper rightly emphasised that (...) *the functions of the President of the Republic of Poland are so momentous, and at the same time so extensive (externally and internally), that an attack on his person and authority harms the entire state life and the dignity of the State externally*<sup>23</sup>. According to Juliusz Makarewicz, the “most vital” interests of the state were protected, which could be endangered in the event of a sudden interruption of the office of the “superior factor”<sup>24</sup>.

With regard to the current Criminal Code, one can note a divergence of opinion among Polish lawyers as to the main good protected by Article 134. According to Natalia Kłaczyńska, this is the life of the President<sup>25</sup>. Kardas, on the other hand, argues that the main object of protection of the provision in question is the security of the Republic of Poland, both internal and external, of which the President of the Republic is one of the primary guarantors<sup>26</sup>. The same approach is represented by Aneta Michalska-Warias, since, as she points out, an assassination attempt on the head of state would pose a serious threat to the functioning of the state organism<sup>27</sup>. In Jan Kulesza’s view, the internal and external security of the state is not a separate

<sup>22</sup> R. Krajewski, *Przestępstwo zamachu na życie Prezydenta Rzeczypospolitej Polskiej* (The crime of attempt on the life of the President of the Republic of Poland), in: *Prawne i gospodarcze podstawy bezpieczeństwa*, S. Kamosiński, T. Kuczur, J. Laskowska (eds.), Bydgoszcz 2015, p. 16.

<sup>23</sup> L. Peiper, *Komentarz do Kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających...*, p. 227.

<sup>24</sup> J. Makarewicz, *Kodeks karny z komentarzem* (Eng. The Criminal Code with commentary), Lwów 1938, p. 307.

<sup>25</sup> N. Kłaczyńska, *Komentarz do art. 134 Kodeksu karnego* (Eng. Commentary on Article 134 of the Criminal Code), in: *Kodeks karny. Część szczególna. Komentarz*, J. Giezek (ed.), Lex 2014.

<sup>26</sup> P. Kardas, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a*, part 1, W. Wróbel, A. Zoll (eds.), Warszawa 2017, p. 177.

<sup>27</sup> A. Michalska-Warias, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Komentarz*, T. Bojarski (eds.), Warszawa 2012, p. 309.

object of protection, because if it is considered a good protected by Article 134 of the Criminal Code, the other goods listed in Article 126(2) of the Constitution would also have to be considered as such. Moreover, in Article 131, it precisely defines the circumstances in which the Marshal of the Sejm takes over the duties of the Head of State, which has the effect of filling the gap that has arisen and, consequently, does not give rise to a threat to the security of the country<sup>28</sup>. Ryszard Andrzej Stefański, on the other hand, is of the opinion that the subject of protection is the life of the President of the Republic of Poland as the highest representative of the state, but not as a person, but primarily as holding the most important office in the state, and that an attempt on his life poses a threat to state security<sup>29</sup>. According to Magdalena Budyn-Kulik, on the other hand, the main object of protection is the undisturbed functioning and constitutional system of the Republic of Poland, while a side object is the life and health of the person performing the function of head of state<sup>30</sup>. According to Krzysztof Wiak, the good protected by Article 134 of the Criminal Code is the office of the President of the Republic of Poland as the highest representative of the Republic of Poland and guarantor of state power. In addition, the provision provides protection for the life of the person currently holding this office. This protection is clearly strengthened in relation to that resulting from the content of Article 148 of the Criminal Code<sup>31</sup>. Each of the legal goods indicated above makes up the object of protection of the norm encoded in Article 134 of the Criminal Code. The thrust of this provision appears to be primarily to provide special criminal law protection to the office of the President, which plays a key role in ensuring order and security in the country.

Seen not as a specific person, but as an entity embodying the majesty of the Republic of Poland, the President is one of the main guarantors of the smooth and undisturbed functioning of the state organism. An assassination attempt on the person holding the office of the President may be the beginning of destabilisation of the country, also in the international arena. Although the provision also strengthens the protection of this person's life and health, according to the author of the article, this is a collateral object of protection. The basic provisions

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<sup>28</sup> J. Kulesza, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Część szczególna. Komentarz do art. 117–221*, M. Królikowski, R. Zawłocki (eds.), Warszawa 2013, p. 106.

<sup>29</sup> R.A. Stefański, *Prawo karne materialne. Część szczególna* (Eng. Substantive criminal law. Special part), Warszawa 2009, p. 72.

<sup>30</sup> M. Budyn-Kulik, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Komentarz*, M. Mozgawa (ed.), Warszawa 2012, p. 322.

<sup>31</sup> K. Wiak, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Kodeks karny. Komentarz*, A. Grześkowiak, K. Wiak (eds.), Warszawa 2019, p. 847.



of the current Constitution of the Republic of Poland regulating the constitutional position of the President of the Republic of Poland are Articles 10(2) and 126. In the light of Article 10(2), the President is one of the organs of the bicameral executive, which besides him also includes the Council of Ministers. Article 126, on the other hand, recognises him as the supreme representative of Poland and guarantor of the continuity of state power. It also entrusts him with the duty to ensure the observance of the Constitution of the Republic of Poland, to guard the sovereignty and security of the state, as well as the inviolability and indivisibility of its territory. The President of the Republic is the supreme representative of the Polish state in both external and internal relations. Representation of the country takes place even when the President of the Republic does not undertake any public acts. The recognition of the President of the Republic as a guarantor of the continuity of state power is an expression of his active role in the system of government.

Taking into account the examples from history cited earlier, one can see what a good solution it turned out to be for the legislator to introduce into the legal order a criminal provision with a high sanction, which constituted special protection for the presidential office and thus significantly strengthened state security. It is worth mentioning, however, that the provision of Article 134 of the Criminal Code does not protect the person performing the duties of the President of the Republic of Poland, despite the fact that he or she performs the constitutional tasks of the head of state as defined in Article 126(1) and (2) of the Constitution. Therefore, an attempt on the life of the person who deputises for the President of the Republic of Poland is not subject to the criminal law valuation of Article 134 of the Criminal Code. Also outside the scope of this norm are the legal goods of the former President, President-elect, to take office after taking the oath of office before the National Assembly (Article 130 of the Constitution of the Republic of Poland). The perpetrating act described in Article 134 of the Criminal Code is precisely defined and consists in committing an attempt on the life of the President of the Republic of Poland, which means behaviour leading to depriving the person holding this office of life, even if it would be ineffective. Thus, attempted murder of the Head of State is treated as an accomplished crime<sup>32</sup>. As in the case of the general stage form of an attempt under Article 13 § 1 of the Criminal Code, it is required that the perpetrator caused a real threat to the protected good, i.e. in this case he undertook actions aimed directly at assassinating the President. In accordance with the principle of uniform

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<sup>32</sup> M. Bojarski, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Prawo karne materialne. Część ogólna i szczególna*, M. Bojarski (ed.), Warszawa 2012, p. 483.

interpretation of concepts appearing in various provisions of the same legal act, the term “attempt” should be interpreted in the same way as it is understood on the grounds of Article 25 of the Criminal Code, which statutes the institution of necessary defence.

In the article indicated, the mention of assault appears five times. This concept, interpreted within the framework of necessary defence, means any human behaviour that poses an objective danger to the protected good. The attack must be real, direct and unlawful, but it does not have to be criminal, which means that it may be initiated by a person who is not capable of culpability. Pursuant to the provision in question, an assassination attempt will be any conduct of the perpetrator which constitutes a threat to the life of the President of the Republic of Poland, and may take the form of either an act or an omission. It should be borne in mind that in the case of the latter, there must be a legal basis obliging to act. An example of an attempt on the life of the President of the Republic of Poland made in the form of an omission would be the refusal of a doctor to provide proper medical assistance.

The prevailing view in doctrine is that the essence of assault is the use of violence<sup>33</sup>. However, it does not have to be a violent attack, which was dealt with in Article 126 § 1 of the 1969 Criminal Code and is now provided for in Article 140 § 1 of the Criminal Code. It is therefore not merely an immediate action, combined with the use of a fast-acting means, such as a firearm, explosive, knife or other dangerous tool. The use of, for example, a radioactive agent or poison also qualifies as a prohibited act under Article 134 of the Criminal Code. It also follows from the wording of the provision that it is not necessary to cause the death of the President of the Republic of Poland in order to commit the offence. The offence is therefore of a formal nature and is deemed to have been committed at the moment when the perpetrator undertakes actions qualifying as an attempt on the life of the President of the Republic of Poland, regardless of whether the attempt turns out to be successful. In the light of Article 134 of the Penal Code, only an attack directed against the life of the President of the Republic of Poland is relevant. In this way, the legislator made a distinction between the assassination attempt under the analysed provision and the active assault included in Article 135 § 1 of the Criminal Code. It is difficult not to agree with Kardas, according to whom an attack is a behaviour aimed at infringing the good, which is the life of the President of the Republic of Poland, while an active assault - such actions which aim at causing grievous bodily harm or infringement of bodily organ functions, i.e. directed against another legal good.

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<sup>33</sup> A. Krukowski, *Zdrada dyplomatyczna* (Eng. Diplomatic treason), in: *System prawa karnego. O przestępstwach w szczególności*, vol. 4, part 1, Wrocław 1985, p. 71.

The difference in these behaviours manifests itself in the difference in the degree of their intensity<sup>34</sup>.

### **Criminalisation of the preparation of an assassination attempt on the President**

It is difficult not to agree with the critical remarks of Stanisław Hoc, who postulates supplementing the regulation of Article 134 of the Criminal Code with a provision introducing the criminalisation of preparation for an attempt on the life of the President of the Republic of Poland<sup>35</sup>. Preparation as a stage form of the offence, according to the disposition of Article 16 § 2 of the Criminal Code, is punishable only when so stipulated by statute. According to Grzegorz Górka, the criminalisation of preparation for an attempt on the life of the President is supported by the degree of social harmfulness of this crime and the legal tradition of the Second Republic of Poland<sup>36</sup>. It is worth adding that the situation is different in the case of conspiracy (Article 127 of the Criminal Code) and coup d'état (Article 128 of the Criminal Code). With regard to these crimes, the legislator decided to criminalise acts preparatory to their commission. The author of the article fails to see a rational reason why the legislator abandoned such a move with regard to the crime of assassination of the President of the Republic of Poland. If the current model of protection of the head of state refers directly to the *acquis*, then it would be all the more *de lege ferenda* to introduce a provision criminalising acts preparatory to the crime under Article 134 of the Criminal Code.

The Criminal Code of 1932 criminalised behaviour undertaken in the run-up to attacks on the person of the President, i.e. making preparations to bargain for his life or health (Article 96) and entering into an agreement with other persons to commit this crime (Article 97). These offences were punished more severely when the perpetrator conferred with a person acting in the interest of a foreign state or international organisation, or gathered means of armed struggle (Article 98).

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<sup>34</sup> P. Kardas, *Przestępstwa przeciwko Rzeczypospolitej Polskiej...*, p. 179.

<sup>35</sup> S. Hoc, *Przestępstwa przeciwko Rzeczypospolitej Polskiej – ocena regulacji prawnej i propozycja zmian* (Eng. Crimes against the Republic of Poland - evaluation of the legal regulation and proposal for changes), in: *Zmiany w polskim prawie po wejściu w życie Kodeksu karnego z 1997 roku*, T. Bojarski et al. (eds), Lublin 2006, p. 127.

<sup>36</sup> G. Górka, *Prawnokarna ochrona Prezydenta Rzeczypospolitej* (Eng. Criminal law protection of the President of the Republic of Poland), "Wojskowy Przegląd Prawniczy" 2014, no. 3, p. 52.

Peiper commented on Article 96 in this way:

Preparation presupposes that the attack and the object of the attack have already been determined in the mind of the perpetrator, although the details of the execution may not yet have been determined; the preparation of an attack against an object that has not been determined does not, therefore, fall under Article 96. The preparatory act must have the characteristic of positive action; inaction alone cannot be regarded as preparation. The preparation of a crime of state, even if it is as remote as possible from its execution and even if it is undertaken by only one person, is sufficient (contrary to Art. 97); the importance of the good to be protected and the evil that may arise justify punishment even at the earliest stage of preparation<sup>37</sup>.

With regard to article 97 of the 1932 Criminal Code, the same author argued that:

There is no requirement for an agreement to come into existence; since the existence of a conspiracy does not require acting according to a specific plan, the initiation of an agreement, the establishment of contact with other persons, is sufficient, as long as it is for the purpose of committing one of the crimes defined in Articles 93, 94 or 95 (...). There must therefore be at least two such persons, thus a total of three. The law does not require the three persons to agree on a plan of action, still less to allocate roles between them; each of them is responsible within the limits of his intention (article 28). Their agreement may go in the direction that the act will be carried out by a person not yet standing in any relationship, e.g. A, B and C agree that the offence will be carried out by person D, whom B (instigator: art. 26) will persuade to do so and whom C will assist (helper: art. 27). The joiner of the conspiracy does not need to know all the conspirators; it is sufficient that he enters into an agreement with two of them, and that with one of them directly and with the other even indirectly<sup>38</sup>.

The author of the article also considers it very apt that the then legislature criminalised behaviour on the eve of an assassination attempt on the President taking the form of an agreement with a person acting in the interests of a foreign state or international organisation or the gathering of means of armed struggle. In the highly tense international situation of the first two decades of the 21st century,

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<sup>37</sup> L. Peiper, *Komentarz do Kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających wraz z niektórymi ustawami dodatkowymi...*, p. 301.

<sup>38</sup> *Ibid*, p. 302.

as well as in the face of the constant threat of terrorism, it is not difficult to imagine attempts to remove the head of state with the help of an agent of a foreign enemy country or a terrorist network. Peiper thus justified the criminalisation by the 1932 Criminal Code of such actions:

The person concerned does not have to be a representative, official or mandatary (acting on the basis of a mandate) of the foreign state or international organisation; it is sufficient that he acts in the interest of that state or organisation, even if self-appointed and without a mandate (*negotiorum gestio*). The need for such an interpretation derives from the wording of the law and, moreover, from the fact that in this type of case it would not normally be possible to prove the relationship of the person concerned to the foreign state or international organisation, all the more so since they always keep to themselves and deny any connection with the person acting in their interest<sup>39</sup>.

In summary, the criminalisation of the preparation of an attempt on the life of the President of the Republic would introduce broader protection for the head of state, including in relation to the crime of murder, the preparation of which remains unpunished. At the moment of preparation for depriving the President of the Republic of Poland of life, the potential assassin creates a state of danger to the head of state, even if this danger may still be remote. In the case of preparation for such a serious crime as an attempt on the life of the highest representative of the majesty of the Republic of Poland, the perpetrator most often enters into an agreement with other persons. The range of imaginable preparatory activities is very wide, from the drawing up of plans, the reconnaissance of the area through the purchase of the instruments of the crime to the preparation of the evacuation from the scene. In this context, it is worth adding that the crime under analysis is of a universal nature, which means that its perpetrator may be any person capable of criminal responsibility - a Polish citizen, a foreigner, as well as a stateless person. A minor over the age of 15 may also be subject to criminal liability for an attack on the President of the Republic of Poland. This follows from Article 10 § 2 of the Criminal Code, where the offences for which minors may be held liable under the principles set out in the Criminal Code are enumerated. The crime of attempt on the life of the President of the Republic of Poland is indicated first.

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<sup>39</sup> Ibid, pp. 305–306.

## Motives of the perpetrator

An attempt on the life of the President of the Republic of Poland may be carried out both in Poland and abroad. In the latter situation, the absolute protective principle resulting from Article 112 of the Criminal Code may be applied. Pursuant to it, irrespective of the provisions in force in the place where the prohibited act was committed, the Polish Criminal Code shall be applied to a Polish citizen and a foreigner in the event of committing, inter alia, an offence against the internal or external security of the Republic of Poland, as well as against Polish offices or public officials.

Criminal liability under Article 134 of the Criminal Code is independent of the motives and motives of the perpetrator. These may include hatred of the President, a desire to take revenge on him, as well as an intention to destabilise the state with an indifferent attitude to the person holding the presidential office. Stanisław Kijeński, Niewiadomski's defence counsel, described his client's motives in his final speech during the trial for the murder of President Narutowicz as follows:

It is said that one should be in control of oneself - but this is only an ideal to which one strives. Mr Niewiadomski was unable to soothe this pain that was tearing him apart. In dealing with this pain, perhaps even unconsciously, he succumbed to the pressure of an inner imperative, and his free will ceased to function. What a measureless tragedy in the soul of a man who decides to commit an act, considered by himself to be a terrible act! (...) Niewiadomski carried within himself a tragedy of pain, because he saw at every step the weakness, as he expressed it, the criminality of the government's actions. (...) He said to himself: enough is enough. Even the toughest organism can no longer endure such an ordeal and may collapse. (...) Niewiadomski saw that we were being blown out of the saddle in every field - that was the tragedy of the deed and the tragedy of his deeply loving, aching heart. This is how his deed should be viewed. It is not the deed of a criminal, but the deed of a man maddened by pain<sup>40</sup>.

Niewiadomski's behaviour was also referred to by the painter Jan Skotnicki, who recalled: (...) *it must be admitted that Niewiadomski's behaviour was full of determination and calm. He did not run away. He could have easily escaped, as no*

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<sup>40</sup> S. Kijeński, *Proces Eligiusza Niewiadomskiego* (Eng. The trial of Eligiusz Niewiadomski), Warszawa 1923, quoted by: *Zabójstwo Narutowicza. Kres demokracji w II RP*, Warszawa 2022, pp. 130–131.

*one knew where the shot came from at the time of the assassination. On the contrary, he himself approached the aides to give them the gun*<sup>41</sup>.

At this point, it is worth recalling that in the past, proponents of Enlightenment ideology not only questioned the divine origin of power, but also drew attention to the nobility of motivation and lack of selfishness in politically inspired perpetrators committing the murders of “tyrants”. This led to the justification of such acts and the granting of privileged legal status to their perpetrators. In the first half of the 19th century, the practice of sheltering and not expelling perpetrators accused in their own countries of committing a political crime took shape in Western Europe. The first country to adopt a law prohibiting the extradition of political offenders was Belgium (1833), followed by such solutions gradually introduced by other countries.

A completely different motivation to Niewiadomski was displayed by John Warnock Hinckley Jr. who, on 30 March 1981, in front of the Hilton Hotel in Washington, D.C., fired six shots at then-U.S. President Ronald Reagan. In addition to him, James Brady, a police officer and a Secret Service agent were injured. The assassin explained that the attempted assassination of Reagan was intended to attract the attention of the actress Jodie Foster, whom he adored. In doing so, he wanted to publicly express his love for her.

Referring to the features of the subjective side of the offence under Article 134 of the Criminal Code, it is difficult not to share the view that it can only be committed intentionally, both in the form of direct and possible intent. Such a solution is supported by, inter alia, Janina Wojciechowska, Krzysztof Wiak and Roman Góral<sup>42</sup>. Andrzej Marek and Stanisław Hoc, on the other hand, consider that the offence in question can only be committed with direct intent<sup>43</sup>. To accept this would be an unjustified narrowing of the protection of the head of state. Indeed, it is possible to imagine an exemplary situation in which a doctor fails to administer the right medicine to the President, accepting that his death may occur.

The provision of Article 134 of the Criminal Code may be in cumulative concurrence with Article 148 of the Criminal Code and the provisions typifying offences against health, i.e. Articles 156 § 1 and 157 § 1 and 2 of the Criminal Code.

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<sup>41</sup> J. Skotnicki, *Przy sztalugach i przy biurku. Wspomnienia* (Eng. At the easel and at the desk. Memories), Warszawa 1957, quoted by: *Zabójstwo Narutowicza. Kres demokracji w II RP*, Warszawa 2022, p. 109.

<sup>42</sup> J. Wojciechowska, *Przestępstwa przeciwko Rzeczypospolitej...*, p. 107; K. Wiak, *Przestępstwa przeciwko Rzeczypospolitej...*, p. 848; R. Góral, *Kodeks karny. Praktyczny komentarz* (Eng. The Criminal Code. Practical commentary), Warszawa 2007, p. 256.

<sup>43</sup> A. Marek, *Kodeks karny. Komentarz* (Eng. The Criminal Code. Commentary), Warszawa 2010, p. 351; S. Hoc, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Crimes against the Republic of Poland), in: *Prawo karne. Część ogólna, szczególna i wojskowa*, T. Dukiet-Nagórska (ed.), Warszawa 2012, p. 297.

Krajewski argued against the possibility of a cumulative concurrence between the provisions of Article 134 and 148 of the Criminal Code. In his view, this is supported first of all by the fact that if the construction of such a concurrence were to be adopted, then Article 134 of the Criminal Code would have an independent existence only in cases of ineffective attempts on the life of the President of the Republic of Poland. In other words, the attempt referred to in this provision would have to be understood exclusively as an attempt to deprive the life of the President of the Republic of Poland, which would be unjustified, as it would contradict both its *ratio legis* and the broadly conceived object of its protection<sup>44</sup>. It is still worth noting the position that there may be a cumulative concurrence of Article 134 with Article 155 of the Criminal Code in the event that the perpetrator of an attempt on the life of the President of the Republic of Poland unintentionally caused the death of another person<sup>45</sup>.

## Summary

Throughout history, criminal law has always afforded special protection to those exercising supreme power in the state (king, emperor, tsar or president). This trend in the development of criminal law institutions must be considered fully justified, given that the highest representative of a community has always been the guardian of collective values such as the state, territorial integrity, sovereignty or internal and external security. One may venture to say that, especially in times that are characterised by a tense international situation (war in Ukraine, the ongoing threat of international terrorism, geopolitical reshuffling of the balance of power in the world), providing the broadest possible protection to the head of state acquires a special dimension.

The *crimen laesae maiestatis*, which has been known for centuries, can be particularly painful for citizens and entail consequences that are difficult to foresee. Bearing this in mind, as well as the achievements of the Polish legislator in providing criminal protection to the President of the Republic of Poland, the author is of the opinion that, in its current form, Article 134 of the Criminal Code is incomplete. It is necessary to return in this respect to the achievements of the pre-war legislation and to take legislative steps aimed at criminalising dangerous behaviour in the foreground of the prohibited act stipulated in Article 134 of the Criminal Code. This would certainly strengthen the position of the office of the President

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<sup>44</sup> R. Krajewski, *Przestępstwo zamachu...*, p. 21.

<sup>45</sup> A. Michalska-Warias, *Przestępstwa przeciwko...*, p. 310.



of the Republic and, consequently, the internal and external stability of the country. Numerous mass media reports about the increasing activity of agents of countries hostile to Poland<sup>46</sup> should prompt the legislator to reflect more deeply on the legal level of securing the most important institutions in the country, including, in the first place, the President of the Republic of Poland, whom the Constitution in Article 126 recognises as the highest representative of Poland and the guarantor of the continuity of state power. It also entrusts him with the duty to ensure that the Constitution of the Republic of Poland is observed, to guard the sovereignty and security of the state, as well as the inviolability and indivisibility of its territory. The President of the Republic of Poland is the highest representative of the Polish State in both external and internal relations. The widest possible criminal law protection of the President of the Republic should therefore be advocated, as this is in the interest of all citizens. It is the legal-criminal area of the current Polish legal system that can play the most important role in ensuring the security of the President of the Republic of Poland and, consequently, of the entire state.

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<sup>46</sup> See eg.: G. Zawadka, I. Kacprzak, *Wyroki dla szpiegów* (Eng. Sentences for spies), "Rzeczpospolita", 2 II 2023.

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Piotr Kosmaty, PhD

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Prosecutor of the Regional Prosecutor's Office in Kraków, press officer, head of the Publishing House and co-ordinator for cooperation with the Polish Army at the National School of Judiciary and Public Prosecution.