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GIVING A FALSE STATEMENT AS A CRIMINAL OFFENSE

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Abstract

The majority of contemporary criminal laws provides for criminal-law protection of judiciary and other entities dealing with the administrative, offense, disciplinary or other proceedings prescribed by the law. It is in the best interest of the society to have the decisions of judicial and other entities be based on properly established facts, which is impossible to achieve if the persons involved in the proceeding willfully tell an untruth.

The legal importance and complex nature of this incrimination requires efficient measures of the government bodies in order to prevent the adverse effects of the falsehood for the society and to determine the criminal liability of offenders.

Key words: false statement, adversity of the statement, procedure prescribed by law, persons who willfully tell an untruth, criminal liability

КРИВИЧНО ДЈЕЛО ДАВАЊЕ ЛАЖНОГ ИСКАЗА

Апстракт

У већини савремених кривичних закона предвиђена је кривичноправна заштита правосуђа, као и других органа који рјешавају у управном, прекршајном , дисциплинском или другом законом прописаном поступку. Друштво има интерес да одлуке правосудних тијела и других органа буду засноване на правилно утврђеном чињеничном стању, што је немогуће постићи ако лица која учествују у поступку свјесно исказују неистину.

Правни значај и сложена природа ове инкриминације захтјева ефикасне мјере државних чинилаца у циљу сузбијања друштвене штетности лажног исказа и утврђивање кривичне одговрности његових учинилаца.

Кључне ријечи: лажни исказ, штетност исказа, законом прописан поступак, лица која свјесно исказују неистину, кривична одговорност.

INTRODUCTION

The criminal offense of giving a false statement has an exceptional public importance considering that this incrimination aims at suppression of behavior that interferes with the true and fair determination of the facts in the proceedings of courts and other state bodies. Giving a false statement jeopardizes the process of uncovering the truth, which is the most important aspect of making proper and lawful decisions. Incrimination of giving a false statement in a court proceeding protects the judiciary and its entities from interference in their legitimate, cost-effective, and equitable work (Jocić, 1980, p. 25). Giving a false statement in a civil, non-litigation, enforcement, offense, administrative, or other proceedings prescribed by the law is incriminated almost identically in the Criminal Code of the Republic of Serbia and the criminal laws applicable in the territory of Bosnia and Herzegovina under the special chapter entitled "Crimes against the Judiciary".

However, this offense is not only directed against the judiciary but also against the proper functioning of the administrative, offense, and disciplinary bodies, so the state must ensure legitimate and unobstructed operation of the legal system as a whole. In the process of giving a false statement, the very action is considered a criminal offense, which does not mean that such incrimination does not protect a particular good, except that the protection of a good or interest is shifted to the moment of taking certain actions. The first part of the paper discusses the legal description of giving a false statement, as well as the commission of the act of giving a false statement, explaining the types of giving a false statement and completion of commission. The central part of this paper discusses the procedural capacity of persons who are liable to give a false statement, whereas the criminal responsibility of the offenders in the proceedings is elaborated in the final section of the paper.

LEGAL DESCRIPTION OF GIVING A FALSE STATEMENT

The Criminal Code of the Republic of Srpska (Criminal Code of the Republic of Srpska, 2013, Art. 365) stipulates four types of giving a false statement: a false statement given by a witness, expert, translator, or interpreter before the court in an offense, disciplinary, administrative, or other proceedings prescribed by the law; giving a false statement during the presentation of evidence in a hearing of parties in judicial or administrative proceedings if the decision made is based on the falsehood; giving a false statement in criminal proceedings; and giving a false statement in criminal proceedings with particularly severe consequences for the accused.

The first two types represent the basic types of giving a false statement, while the other two are the severe types. The fifth paragraph of the legal description of giving a false statement allows the repentance of

the offender, which is manifested through timely voluntary revocation of the false statement, thus allowing for a more lenient punishment or exemption from punishment (Delić, 2002, p. 419).

A common feature of all types of giving a false statement is the commission of the act of giving a false statement, while the differences pertain to the properties of the participants in the proceedings, such as the offenders, the types of proceedings in which a false statement is given, and the "effects" caused by giving a false statement. The result of this act is not a constituent element of the essence of a criminal offense, so it should not be determined for the sake of it. Moreover, it is a formal criminal offense in which the completion of commission implies the completion of the crime. Should the legislator in these cases require the occurrence of a consequence as a precondition for a criminal offense, such a consequence is considered an objective condition of incrimination and not an integral part of the essence of the criminal offense (Atanacković, 1995). This is the case with the second basic type of giving a false statement.

By analyzing the act of giving a false statement in criminal laws, applicable in the territory of Bosnia and Herzegovina, and the Code of Criminal Law of the Republic of Serbia (Code of Criminal Law of the Republic of Serbia, 2013, Art. 335), I have determined that this offense, in respect of the person who is liable to commit it and the types in which it can manifest itself in approximately the same way, is fully regulated by the abovementioned laws. There are also certain particularities in the different regulation of the place where the offense was committed, i.e. the type of procedure in which a false statement is given, the legal description of a more severe type of criminal offense, as well as the imposed penalties for the committed offense. Moreover, according to the criminal laws of the Republic of Srpska and the Republic of Serbia, the basic type of this criminal offense, in respect of the place of commission, pertains to the court proceedings, disciplinary, offense, administrative, or other legal proceedings, while other criminal laws do not stipulate that this offense may be committed in other legal proceedings, provided that giving a false statement in the Criminal Code of Bosnia and Herzegovina (Criminal Code of Bosnia and Herzegovina, 2010, Art. 235) is limited to the proceedings in the institutions of Bosnia and Herzegovina.

In the criminal laws of the Republic of Srpska and Republic of Serbia, a false statement given by a party during the presentation of evidence in a hearing is included in judicial or administrative proceedings, whereas in the criminal laws of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (Criminal Code of the Federation of Bosnia and Herzegovina, 2011, Art. 348) and the Brčko District of Bosnia and Herzegovina (Criminal Code of Brčko District of Bosnia and Herzegovina, 2013, Art. 342), giving a false statement is limited to litigation and administrative proceedings. All of the aforementioned criminal laws characterize giving a false statement in

a criminal proceeding as a more severe type of this criminal offense, with the Criminal Code of the Republic of Serbia adding another instance of a more severe offense – giving a false statement under oath.

THE COMMISSION OF THE ACT OF GIVING A FALSE STATEMENT

The legal description of the criminal offense of giving a false statement indicates that the commission is contained within a false statement given (Delić, 2002, p. 420). Procedurally, a statement implies a declaration occurring as a result of hearing, given by a person in the capacity of a process participant in court or other legal proceedings in order to establish the relevant facts (Delić, 2011, p. 52). As a rule, a false statement is given orally, but can also be given in writing if such an option is allowed by the law, e.g. in case of mute witnesses (Kokolj & Jovašević, 2011, p. 406). Witnesses give false statements, experts give false opinions, translators render false translations, and interpreters render false interpretation of another person's declaration. A false statement can also be given by a party during the presentation of evidence in a hearing of parties in judicial or administrative proceedings. Essentially, the act of giving a false statement is a violation of procedural duties of certain entities that are liable to give a false statement (Delić, 2002, p. 431).

The existence of a crime is stipulated by an objectively false statement, i.e. its inconsistency with reality. The evidence that is objectively true and corresponds to reality, regardless of the subjective part of the act, cannot lead to a wrong decision, and therefore does not constitute an offense against the judiciary (Srzentić & Lazarević, 1995, p. 749).

Types of Giving a False Statement

Giving a false statement may consist of claims about a fact that does not exist and about non-existence of a fact that exists, failure to disclose certain facts, or presentation of some existing facts in a way that does not correspond to reality. Therefore, we could classify all types of giving a false statement into four groups: confirmation of untruth, denial of truth, concealment of truth, and presentation of untruth.

The confirmation of untruth entails presentation of untrue facts as true. Mostly, the confirmation of untruth is reduced to claiming a fact, circumstance, or occurrence, even though in reality it does not exist, i.e. claiming that something occurred when it actually did not occur. The offender in this type of giving a false statement is active; falsehood can be presented as truth only by commission of the act.[1]

[1] According to the judgment of the District Court in Belgrade, Ref. No. Kz. 3285/04, of December 30, 2004, it was determined that the accused committed the criminal

The denial of truth consists of denial of true events, circumstances, occurrences, and facts. Denial of something that is pertinent to the evidence of fact is crucial for this type of giving a false statement. Truth may be denied by contesting or claiming different circumstances, facts, and occurrences, which should serve to confirm the correctness of the denial. The denial of truth is possible only by the commission of the act.

The offense of giving a false statement can also be committed by non-disclosure. Non-disclosure is present when a fact is partly stated or partly omitted, but is significant for making a decision. In this case the act involves passive behavior of the offender, i.e. withholding, which is manifested in willful non-disclosure of the pertinent facts to the evidence of fact (Jovančević, 2011, p. 350). The unspoken facts that are irrelevant for the resolution of a specific matter may not be the subject of giving a false statement. Non-disclosure should be distinguished from silence, because silence provides neither an opportunity to draw a reliable conclusion on the position of the one who should be making a statement, nor the presence of intent that someone wanted to commit a crime by remaining silent.

Stating an existing fact in a way that does not correspond to reality is the fourth type of giving a false statement. An untruth is a declaration that is contrary to reality, but the declarant is not aware that there is a discrepancy between his/her saying and the reality. The terms "untruth" and "lie" are not synonyms and are not interchangeable because the declarant of untruth is unaware of the validity of what has been stated. A statement may be partly or entirely untrue. It is almost uniquely accepted in theory and, to a certain extent, in case law (Simović & Tajić, 2007, p. 819) that a false statement about irrelevant facts for the decision making does not pose any danger to society and, consequently, does not constitute giving a false statement. According to J. Tahović, only a false statement that may negatively affect decision making is an actual threat to society (Tahović, 1947, p. 381). The same line of thought is followed by Z. Stojanović, who claims that it would be unacceptable to consider every false presentation of facts as giving a false statement, because a false statement must only pertain to the facts that may influence the decision

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offense of giving a false statement because he, as a party in an administrative proceeding during a presentation of evidence by the parties, stated that he had lost his driver's license and filed for a new license, on the basis of which he was issued a duplicate, which he submitted for the registration of a previously incurred driving disqualification. During a regular traffic police control, he produced the original driver's license and the duplicate which he also had with him. Since it was established that the original driver's license was not lost and that he, heard as a party, had given a false statement based on which a decision was made that a duplicate driver's license be issued, he committed the criminal offense of giving a false statement.

making (Stojanović & Perić, 2011, p. 289). A similar standpoint is offered by M. Babić, who believes that it is irrelevant for the existence of a crime whether the statement is entirely or partially false. What matters is that the statement pertains to the facts significant for court decisions (Babić & Marković, 2009, p. 370).

Completion of Giving a False Statement

Giving a false statement should be viewed as a whole, which means that the person giving the statement might change his/her statement until it has been completed as a procedural action. This means that if a person, in the course of giving a statement, changes the originally false assertion and eventually provides a true statement, there would be no criminal offense (Stojanović & Perić, 2011, p. 289). Most authors in the Republic of Srpska believe that the offense is completed by giving a false statement in a proceeding prescribed by law. According to them, a person can be heard several times in a proceeding and change his/her statement as many times, but only the final statement is accepted as the official one (Babić & Marković, 2009, p. 278). However, when a person gives a false statement that changes during the hearing, it is insufficient only to determine that the person gave two different statements about the same event that exclude each other; in order to establish the existence of the offense, it is necessary to determine which of the statements is false.

The commission of the act of giving a false statement by an expert is completed the moment the expert's statement is completed in the proceeding. If the findings and opinions are submitted in writing, the act is completed once it is delivered in writing to the authorized body in the proceeding. The expert may alter his/her statement until the hearing is finished and the written finding delivered to the body. After that, the expert may revoke his/her statement or written finding and opinion.

The act of giving a false statement committed by an interpreter or translator is completed once the interpretation or translation is completed. Following the final hearing (interpretation) or the submitted translation, the statement cannot be altered, but may be revoked.

PROCEDURAL PROPERTIES OF THE PARTICIPANTS IN A PROCEEDING WHO ARE LIABLE TO GIVE A FALSE STATEMENT

An offender charged with giving a false statement may be a witness, expert, translator, interpreter, or another party providing false statement during the presentation of evidence in a hearing of parties in judicial or administrative proceedings, where the decision is made on the basis of this statement. Therefore, the term offender refers to a person who has undertaken the commission of the act and meets the conditions (*delicta propria*) stipulated in the legal description of this offense.

Witness as the Offender

A witness may be any person capable of observing certain facts and stating them in court or other proceedings. A child may be a witness if (s)he is capable of observing facts and communicating them in a proceeding. Due to the specific nature of the psychophysical development of children, the risk of making untrue statements is somewhat greater than with adults, but the children should not be excluded from the evidence procedure, for they may be an invaluable source of findings, which can expose the offenders (Brkić, 2013, p. 273). A person unable to observe certain facts due to physical or mental disability cannot appear as a witness in a proceeding. A witness is obligated to speak the truth, but also to take an oath upon court summons. However, proceedings are frequently attended by witnesses whose statements mislead the authority conducting the proceeding, leading it to make a decision which is not in accordance with material truth. Therefore, before the hearing, the witnesses are warned about the obligation to give a truthful and complete testimony, and the fact that false testimony is a criminal offense. The purpose of this warning is to eliminate the possibility of invoking the mistake in law (Škulić, 2007, p. 1078). The contradiction in witness statements does not always imply a false statement, because not all contradictory statements are false per se. There are numerous factors that can affect the rendition of a contradictory statement, such as memory problems, wrong perception, different ways of recounting events, etc. (Bugarski, 2013, p. 140).

Expert as the Offender

An expert is a procedurally disinterested party summoned by the court or other procedural authority to determine certain facts or events on the basis of their expertise and/or professional skills and to provide their opinion, when determination of events and facts requires expertise that exceeds boundaries of professional competence of the judge, i.e. the person who runs the proceeding.

The expertise includes two actions: expert findings (*visum repertum*) on established facts relevant to the proceedings and expert opinion (*parere*), which contains the expert conclusion on the facts established. In general, expertise is provided by one person, but in particularly complex cases it may also be entrusted to expert institutions. The existence of a crime requires the expert to deliver findings and opinion, only an opinion, or only findings, which are objectively not true, because they are not delivered in accordance with the rules of the profession, and because the expert is at the same time aware that his/her expertise does not correspond to an objective state of affairs. When expertise is provided by a professional institution, the opinion must be signed by every person who provided it, so that their criminal liability for false findings could be individualized. The law stipulates that

the expertise be conducted in the presence of the authority that ordered the expertise. However, in practice, the expertise is generally conducted without the presence of the authorities because, on the one hand, many expert opinions are very complex and require long-term analysis, while, on the other hand, the presence of the authorized person who does not possess the specific expert knowledge would not be useful (Škulić, 2007, p. 446).

Translator as the Offender

A translator is a person who translates the content of written declarations from a foreign language into the language of the proceeding, or vice versa, at the request of the court or other procedural authority. The translator must be appointed even when the judge is familiar with the source language, because the content of the translation needs to be presented to clients so as to give them the opportunity to verify the correctness of the translation. The procedural position of the translator differs from the position of the expert witness, who provides to the court or other authority his/her findings and opinion on what has been the subject of proof, while the translator translates the words of one language to another, thereby not giving an opinion on the facts that are the subject of translation (Grujić, 1978).

Interpreter as the Offender

An interpreter is a person rendering oral and mimic statements at the request of the court and also, in a broader sense, rendering statements in writing when acting as a translator. An interpreter does not provide his/her own statement, but orally renders the content of statements from persons that are using symbols, i.e. mime (deaf, mute, and deaf-mute persons) (Kokolj & Jovašević, 2011, p. 406). In the case of a deaf or mute participant of the proceedings, the first thing to do is to try to establish direct communication with him/her, and if that is not possible, to hire an interpreter, through whom indirect communication will be established. There are situations when the interpreter him-/herself requires an interpreter, which occurs when the interpreter does not know the language in which the statement of a deaf-mute person should be rendered, so it another interpreter must be added. An interpreter is appointed by the authority where (s)he is to interpret and is obliged to take an oath that (s)he will interpret the questions directed to the participants and the statements they make in a trustworthy way.

Party as the Offender

The act of giving a false statement requires a false statement to be given by a witness, expert, translator, or interpreter. However, the existence of a false statement given by a party requires that they give it in judicial or administrative proceedings, that they give it during the presentation of evidence in a hearing, and that the decisions be made on the basis of the

false statement (Delić, 2002, p. 91). This circumstance, which implies a decision made by the competent authority based on a false statement in the context of giving a false statement, is by nature an objective condition of incrimination (Delić, 2002, p. 92). Therefore, the objective condition for incrimination in this offense is contained in other persons' activities, and not the offender's. The causal connection between this particular objective condition of incrimination and the essence of the offense is too remote, because the realization of the objective condition of incrimination does not depend only on the commission of the criminal offense, but also on whether other persons are willing to undertake certain activities or not. The commission of this crime is only one of the conditions for the occurrence of an objective condition of incrimination, while the immediate causes of its occurrence depend on the behavior of other persons (Delić, 2002, p. 95). A party may be any person who provides evidence under the law in the context of the presentation of evidence in a hearing of the parties. Some other similar actions taken by a party cannot be considered as commission of this type of offense. One such case is when a person provides a written response to legal action by proxy, but without having been heard as a party in a civil action (Stojanović & Perić, 2011, p. 290). A legal representative without the power to sue can also be in the capacity of a party, as well as a person who has been appointed to represent a legal entity, according to laws or regulations (Law on Civil Proceedings of the Republic of Srpska, 2013, Art. 165).

False Statement Given by the Accused

A false statement given by the accused cannot be the basis for their criminal responsibility because it falls within their right of defense, in broad terms, provided that giving a false statement is limited to their defense (Tahović, 1957, p. 548). A false statement of the accused in criminal proceedings is determined by its procedural status and the fact that the statement is evidence. It is an undisputed fact that the accused in criminal proceedings has the best knowledge of the event, but also has an interest to defend him-/herself and not state the truth. One of the basic questions raised in connection with the legal status of the accused in criminal proceedings is the limit to the freedom of defense of the accused. In fact, in this case it is necessary to protect the right of defense of the accused, on the one hand, and the right of others involved or not involved in the proceeding, on the other hand. The accused makes statements about his/her actions and the actions of others, which raises the question of liability for the statements thus made. In the former case, the question of defense of the accused cannot be challenged or questioned, because it is the right of the accused to defend him-/herself in the best possible way. However, in the latter case, the situation is more complex. By committing the act of giving a false statement, the accused may blame himself/herself,

another person in this or other proceeding, or a person outside the proceeding. Due to a specific position of the accused, (s)he is not required to disclose the facts to his/her detriment, but is also not allowed to commit criminal acts to the detriment of others, since the right of defense does not include the right to commit criminal acts (Delić, 2001).

CRIMINAL LIABILITY OF THE OFFENDERS

At the time of giving a statement the offender must be accountable, but also guilty, in relation to the offense. Without sanity there is no guilt, and without guilt there is no criminal responsibility. Sanity is a set of intellectual and volitional elements that make a person capable of thinking, reasoning, and deciding on their actions and managing them (Jocić, 1980, p. 32).

Significantly diminished mental capacity is reduced capacity of the offender to understand the significance of his actions and to control his actions. It does represent a variant of sanity with reduced mental intellectual and volitional abilities of the offender, which lead to a reduction of his criminal responsibility (Babić & Marković, 2009, p. 252). Therefore, the significantly diminished mental capacity is treated as an optional basis for a mitigation of punishment, but not as a basis for exclusion of criminal responsibility.

The state of insanity is rarely encountered in practice, and it is based on the assumption that the offender is mentally competent. In case of doubt, the competent authority is obligated to determine the presence or absence of the offender's sanity (Stojanović, 2011, p. 157). The offender is responsible for giving a false statement even in the state of mental incompetence if he deliberately brings himself into a state of mental incompetence, while knowing that he could commit a criminal offense in such a state (*actiones liberae in causa*). However, in addition to sanity, the existence of criminal liability also requires the establishment of the offender's guilt.

Guilt is defined as a set of psychological relations of the offender against the action, with awareness and willingness being the basic components of guilt. Awareness should include all the essential elements of the criminal offense (action, result, causal link, etc.), while the element of will implies the existence of the offender's decision to take action to commit an offense (Stojanović, 2011, p. 147). The guilt of the offender must be established in each specific case.

The offender of the first basic type of giving a false statement is criminally responsible if (s)he has acted with intent, whether direct or indirect, to give a false statement. Direct intent of the offender is manifested in his/her mind and in the willingness to make statements that are different from what (s)he knows to be true. Fully aware of his/her actions, (s)he wants to provide the untruth in his/her statement, deny something that is true, or withhold something that should be mentioned in the course of his/her

procedural duties. The intent exists even when the offender presents something which (s)he is sure is uncertain (Srzentić & Lazarević, 1995, p. 753).

The offender's liability requires him/her to be aware of and willing to state something that is contrary to his inner conviction and contrary to the situation in the outside world, i.e. something that is objectively false. The offender must be aware that (s)he is in a certain capacity and that continuing with such activity constitutes giving a false statement. Since giving a false statement falls within formal or criminal offenses without consequences in the narrow sense of the word, it ends with the completion of commission itself. Therefore, the intent of the person giving a false statement does not include the result, i.e. their causal link.

A false statement can also be given maliciously if the offender is aware that there is a possibility of his statement being objectively false; therefore, (s)he is not certain about the veracity of the statement, but agrees to present it as if it were true.

The offender of the second basic type of giving a false statement is criminally responsible if, during presentation of evidence in judicial or administrative proceedings, (s)he was aware of and willing to give a false statement as a party in these proceedings. Intent in this type of giving a false statement does not involve awareness of the consequences and the causal relationship between commission and consequences, because the consequence is "wasted" in the commission. This type of criminal offense also includes the objective condition of incrimination contained in a circumstance that the decision of the competent authority is based on false statement of the party. With regard to this, as well as other formal criminal offenses, the legislator treats elements of the criminal offense as a prohibited legal matter even without the occurrence of consequences (Atanacković, 1995). If in such cases the law includes the occurrence of some consequence, in this case a decision based on a false statement, such a consequence is considered an objective condition of incrimination and not an integral part of the essence of a criminal offense (Atanacković, 1995). Therefore, this fact does not have to be considered when establishing the offender's guilt.

Giving a false statement in a criminal proceeding is a severe type of giving a false statement. Aggravating circumstances can involve more serious consequences arising from the basic type, or any special circumstance giving the basic type of giving a false statement a more serious aspect. It is widely accepted in criminal-law theory that this type of giving a false statement is a severe type because the false statement is given in criminal proceedings as a special circumstance, which gives an aggravating character to the basic type of the offense. In fact, the consequences of committing the act of giving a false statement in criminal proceedings are generally much more serious than in other proceedings (conviction, acquittal, etc.).

The offender in this type of criminal offense is responsible if, during the criminal proceeding, (s)he acts with direct or indirect intent and thereby provides a false statement. The intent entails awareness that consists of presentation, i.e. ability to give a false statement as a witness, expert, translator, or interpreter in criminal proceedings, and willingness to present such a statement. Giving a false statement in a criminal proceeding, as a special circumstance, must be included in the intent of the offender according to the general rules on criminal responsibility (Criminal Code of the Republic of Srpska, 2013, Art. 13). If this circumstance is not covered by intent, the offender is responsible for the basic type of giving a false statement.

The second severe type of giving a false statement occurs when a serious consequence results from a basic criminal offense. The legislator marked the onset of severe consequences for the accused[2] as an aggravating circumstance. Passing the final and condemnatory judgment resulting in a prison sentence should be considered a particularly severe consequence. In cases where offenses result in a severe consequence, a stricter punishment may be imposed if the severe consequence is attributable to the negligence of the offender (Criminal Law of the Republic of Srpska, 2013, Art. 17). If a more severe consequence does not follow, the offender is responsible for the basic type of the offense. A more severe consequence may involve intent, given that a more severe consequence in this case does not constitute a second, separate, criminal offense (Stojanović & Perić, 2011, p. 291).

A less serious type of giving a false statement consists of voluntary revocation of the false statement of the offender before the final decision is made. This type of criminal offense can only be achieved by intent. The important thing is that the action of the offender reflects awareness and willingness to revoke a false statement. Intent is manifested in the awareness that there is already a false statement and that it is revoked before the final decision. The crucial aspect of awareness is the motive of voluntariness. The false statement may be revoked by a witness, expert, translator, interpreter, and a party in civil or administrative proceedings, personally or through an agent or a proxy. The element of will is contained in the willingness to voluntarily revoke a false statement.

CONCLUSION

The act of giving a false statement as a criminal offense stipulates that the false statement made should be objectively false, because the statement that corresponds to reality does not jeopardize the proper conduct and completion of proceedings before the court and other state agencies.

[2] The occurrence of "particularly serious consequences" for the accused is regulated in the criminal laws of the Republic of Srpska and Bosnia and Herzegovina, while in other criminal laws the term "extremely serious consequences" for the accused is used.

A subjectively false statement that corresponds to reality is not legally relevant, since it is based on subjective lies, i.e. it is an objectively true statement, and therefore does not constitute a criminal offense. Only a false statement that is provided in an official proceeding and that falls within a specific type of offense is legally relevant.

A false statement is not only made when the offender lies about all the facts and circumstances, but also when (s)he lies about some relevant facts and tells the truth about others, i.e. when his/her statement is partially false.

The commission of the act of giving a false statement prevents judicial decisions and other state authorities' decisions based on true facts, which are essential prerequisites for the adoption of proper and lawful decisions. It is in the best interest of society that individuals participate conscientiously in the statutory proceedings, because any false statements they give threaten the proper functioning of the courts and other state authorities.

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КРИВИЧНО ДЈЕЛО ДАВАЊЕ ЛАЖНОГ ИСКАЗА

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Резиме

Давање лажног исказа је дјелатносно кривично дјело за чију довршеност је довољно предузимање радње извршења, будући да посљедица није обухваћена бићем овог кривичног дјела.

Међутим, пошто ни једно кривично дјело не може постојти без остварења и субјективног елемента кривичног дјела, тако је и за постојање кривичног дјела давање лажног исказа потребно да процесни учесник у неком законом прописаном поступку умишљајно да лажни исказ који је објективно неистинит и супротан стварном стању у спољном свијету. Лаж која је у сагласности са стварношћу представља субјективну лаж која није правно релевантна.

Утврђивање лажног исказивања отежано је чињеницом да се оно односи на оно што припада унутрашњим психичким својствима учиниоца и што под његов појам потпада само оно што је битно за предмет доказивања, а то је увјек фактичко питање које се мора утврђивати за сваки појединии случај.

То значи да је за постојање радње извршења овог кривичног дјела, као објективног елемента неопходно утврдити умишљај учиниоца, као субјективни елемент који радњи даје кривичноправни карактер и одваја је од других поступања која нису кажњива нити забрањена. Због тога оправдање за инкриминисање кривичног дјела давање лажног исказа треба тражити у умишљајном поступању његових учинилаца.

Давање лажног исказа, у смислу овог кривичног дјела, може постојати само ако се исказ да у управном, прекршајном, дисциплинском, кривичном или другом законом прописаном поступку и ако је исти дат од стране лица које у том поступку има процесно својство свједока, вјештака, преводиоца, тумача и странке. Дакле, за постојање овог кривичног дјела потребно је да лице које предузима радњу извршења има неко посебно својство (delicta propria), предвиђено у законском опису овог кривичног дјела.

Мишљења смо да за ово кривично дјело, с обзиром на степен друштвене опасности, није потребно пооштравање прописаних казни, већ је потребно учинити ефикаснијим гоњење учинилаца и њихово процесуирање у што већем броју, како би се подигао ниво правне свијести код грађана, и тиме допринијело доношењу правилних и законитих одлука заснованих на истинитим чињеницама.