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## LĚSE-MAJĚSTE – AN EXCEPTION OR PART OF EVERYDAY LIFE IN THE PERIOD OF AUSTRO- -HUNGURIAN RULE IN BOSNIA AND HERZEGOVINA<sup>1</sup>

**Abstract:** At the turn of the 19th to 20th century, inhabitants of Bosnia and Herzegovina were between two empires, Ottoman and Habsburg. Emperor, as a synonym for the new system and new government, became a target of vulgar assaults and curses with which people tried to express their dissatisfaction by the new rule. Strict prison sentence served as a warning that such behavior is a crime. The article discovers whether the crime of insulting majesty and his family was part of everyday life of inhabitants in Bosnia and Herzegovina or it just happened occasionally. Analysing available court records that included the number of offenders, a comparison of certain years was made. Special attention is drawn to 1914 and the period after the assassination of heir to the throne. This event was of great importance, considering that after it, the royal family “entered” to every house in Bosnia and Herzegovina and (un)deliberately became a part of their daily life. As a consequence, number of offenders has increased, as well as the number of fake accusations. Also, detailed information about offenders were being reported, such as their age, gender and social status. Through concrete examples it is shown how the court process took place and which punishment was chosen. Each punishment had certain aggravating and extenuating circumstances, which court had accepted regardless of how illogical they were. Furthermore, the practice of false accusations had been indicated, which

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presented the violation of law, as well as pardons and occasional postponing of execution of the verdict.

**Keywords:** *Lèse-majesté, Bosnia and Herzegovina, Austro-Hungarian Empire, everyday life, the crime of insulting majesty and his family, Penal Code, Supreme Court*

## Introduction

With the Austro-Hungarian occupation in 1878, Bosnia became part of a new system that has aligned gradually established legal norms to the new rule. One of the newly proclaimed laws was the Penal Code on Criminal Offenses and Delicts, published in 1897.<sup>2</sup> Until then, the Imperial Penal Code for Bosnia Vilayet, which was introduced by the Ottoman Empire under the Tanzimat reforms in 1858<sup>3</sup>, was in force on the territory of Bosnia and Herzegovina.

The shift of empires that happened in Bosnia and Herzegovina in 1878 had brought change in all spheres of public and private life, in some gradually, and some were imposed automatically with the shift of the power. The Ottoman Sultan, who was governing the Empire that also included Bosnia for more than four centuries, was factually not leading Bosnia and Herzegovina anymore, but the rule was taken over by an Emperor from the Habsburg dynasty, the Emperor of the Austro-Hungarian Empire. The attitude of *ordinary people* towards him actually reflected the attitude towards the new rule. The phrase “our Emperor” is increasingly used in the everyday life, and the special importance is demonstrated by accentuating the word “*our*”, but however, who is mentioned after that word depended exclusively on the persons saying the it.<sup>4</sup> In a case of false accusation that ended at a lower instance court, the accused was reported of cursing the “new Emperor” (underlined by H.Y.). It only confirms that these phrases have become

<sup>2</sup> The Penal Code on Criminal Offenses and Delicts for Bosnia and Herzegovina, National printing house, 1897.

<sup>3</sup> About the Penal Code in 19<sup>th</sup> century consult: Fikret Karčić: Osmanski krivični zakonik iz 1858. i njegova primjena u BiH, *Almanac of the Faculty of Law in Sarajevo*, LV III – 2015, 295-304; Mr. Mehmed Bečić: Recepcija krivičnog prava u Bosni i Hercegovini u drugoj polovini XIX stoljeća, *Almanac of the Faculty of Law in Sarajevo*, LIX - 2016, 219-244.

<sup>4</sup> The phrase had mostly three endings “our Emperor Franz” or “our Emperor is a Sultan” or “our king is Peter”. See: Archives of Bosnia and Herzegovina (hereinafter ABiH), Fund of the Supreme Court for Bosnia and Herzegovina, criminal division (hereinafter SCBiH, CD), box number 80, 909/23, box number 84, 909/481, box number 95, 910/5, box number 165, 914/743...

integral part of everyday conversations<sup>5</sup>. Being aware of the actual situation in the field, the new rule was trying to impose acceptable scopes of public behavior through the legal norms.

It has to be explained that when it comes to the insults, the Ottoman Imperial Penal Code from 1852 did not even mention the Sultan as the unparalleled authority.<sup>6</sup> Unlike that Code, the issue of *Lèse-majesté* was precisely defined in the Penal Code of the Austro-Hungarian Monarchy.<sup>7</sup> That criminal offense was explained in the Second part, Second Chapter of the Code that regulates *the crime of high treason, crimes against the military forces, Lèse-majesté, insults on members of the Imperial House of His Imperial and Royal Apostolic Majesty and the crimes against public order*.<sup>8</sup> It is the analysis of certain crimes listed in the second part of the Second Chapter of the Penal Code that is the subject of this research paper. We will analyze the question of how common were the insults on the Majesty and his family in the everyday life through the documents of the Supreme Court in Sarajevo in the period 1892-1915. This time period established itself for several reasons, the key one being the fact that the records of the Supreme Court in Sarajevo in the period of Austro-Hungarian rule were only partly preserved, so that we can follow the work of this court only from 1892, while the year 1915 was taken as the final year since the crimes of *Lèse-majesté* committed anent assassination of heir apparent, Archduke Franz Ferdinand and his wife Sophie on June 28, 1914 were still being prosecuted in that year.<sup>9</sup>

<sup>5</sup> ABiH, Fund of the District Court Sarajevo (hereinafter DCS), box 1881, C, 271-278, 1881/271

<sup>6</sup> The law contains several Articles in three sections that can be associated with the Insult to the state authority i.e. with the anti-state activity. That also includes Part One, second section in which Article 66, in particular, can be associated with the verbal delict. It reads: "Anyone speaking clearly in the markets, in the streets and in the places where many people gather or placing proclamations or distributing leaflets and directly inciting the citizens and residents to commit crimes described in this section (crimes and delicts that disturb internal peace of the Imperial government, author's comment), shall be punished as the ones who committed the crime. Anyhow, if no aforesaid incitement is materialized, these shall be punished with life imprisonment." Then, the insult of highly positioned servants in the special section seven laying down "punishment for the ones who are against the civil servants and disobey them, and for the ones detesting them", which also contains verbal delict, and in the Second Chapter, third section that defines "punishment for the ones who undermine the honor, and which relates to lecherous behavior." the Imperial Penal Code for Bosnia Vilayet., Sarajevo, Vilayet's Printing House, 1870.

<sup>7</sup> Statutory regulation of the *Lèse-majesté* was also present in the *Penal Code on crimes, delicts and minor offenses from May 27, 1852* for Croatia. Penal Code on crimes, delicts and minor offenses from May 27, 1852.

<sup>8</sup> *Penal Code on crimes and delicts for Bosnia and Herzegovina*, 45.

<sup>9</sup> The files of the Supreme Court for BiH for 1897 contain several documents, while only four

This topic was neither elaborated nor given any attention in the literature so far.<sup>10</sup> Therefore, the objective of this paper is to point out changes in everyday life plagued by the attitude towards the Majesty i.e. the Emperor as the synonym of the rule using concrete cases that were tried for the crimes of *Lèse-majesté* against the Majesty and members of the Imperial family. It is particularly important to show how much the change of power affected the change in the everyday life and a small aspect of deviant behavior can be observed as a reflection of attitude towards the new power embodied in the personality of the Emperor and members of his family.

### Who, when and where committed crimes of *Lèse-majesté*

Robert Mišambled states that: "Significance of the courts is not only in their repressive actions and restoration of inner peace, but also in the fact that they shape new male generations after the ruling criteria."<sup>11</sup> Although we do agree with this statement we have to underline that its feasibility within the B&H society at the beginning of 20<sup>th</sup> century is dubitable, which is clearly shown by the analysis of the total number of commissions of this crime, but also by the frequency in some of the years.<sup>12</sup> The analysis of the trials shows that the insults were more frequent in the years when the Emperor or a member of his family *disturbed* the steady everyday life of the citizens and (un)intentionally, as an actor of certain event, changed the course of the life either for a couple of hours or permanently. Those are the days or the years that stand out by the number of trials for these "crimes" in the courts.

With regard to *lèse-majesté* i.e. a verbal delict against the Emperor or a member of his Imperial house there had been more than 205 trials in the period

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documents for 1880 were preserved, and no documents are available for the years 1881-1891. See: ABiH, SCBiH, CD.

<sup>10</sup> Two exceptionally valuable scientific papers elaborating this phenomenon on the territory of Republic of Croatia after the World War I have been published in Croatia. See: Bosiljka Janjatović, "Uvreda Veličanstva": teži zločin u karađorđevićevoj kraljevini, in: Papers – Institute for Croatian History, vol.30, Zagreb, 1997, 245-256; Stipica Grgić, *Neki aspekti uvrede vladara u vrijeme diktature kralja Aleksandra I. Karađorđevića*, in: Papers – Institute for Croatian History, vol.41, Zagreb, 2009, 347-365.

<sup>11</sup> Robert Mišambled, *Istorija nasilja*, Novi Sad, 2015, 275.

<sup>12</sup> It is necessary to note that the court records also mention the insults on the public servants, recognized religion and honor of the individuals. All of these crimes had their specificities, but the insult of the public servants was, we can safely say, the most frequent.

1892–1915, whereof 18 lawsuits were filed before the Supreme Court, and were basically filed on false reports.<sup>13</sup> These false reports tell us several facts, primarily confirming that the *lèse-majesté* had become a part of the everyday life, and that some people had tried to use it for personal interest, but also the fact that the punishment was fast and that a mandatory dungeon could have represented an instrument of blackmail.<sup>14</sup>

The files most adequately show how much were the legal framework and the court measures effective, therefore the information provided by the files of the Criminal Department of the Supreme Court represent the most important source for analyzing this question. The analyzed files contain appeals from all county courts in Bosnia and Herzegovina, thus representing the only source to get a full picture since the files of the county courts were neither preserved nor arranged and are therefore not available to the researchers. It is, however, important to point out that the number of cases prosecuted for this crime by the county and district courts had certainly been higher than the number indicated by the Supreme Court for B&H. It is proved by comparison of the cases that are mentioned at the District Court in Sarajevo and that cannot be found in the files of the Supreme Court for B&H, as well as petitions of the convicts requesting deferral of the punishment or a pardon without their cases being found in the files of the Supreme Court for B&H.<sup>15</sup>

The analyzed files of the Supreme Court contain complete proceedings that were transferred by the lower instance courts, starting with the minutes of the questioning and all the way to the first instance ruling, so the appeals at the second

<sup>13</sup> This is the number obtained through a detailed analysis of the available files of the Criminal Department of the Supreme Court for BiH, for the period 1892-1915, which is found in 177 boxes. However, the files for some years have not been entirely preserved due to what we believe that the number of trials for *lèse-majesté* was actually much higher.

<sup>14</sup> The case of Ivo Ital will serve as an example. Their daughter-in-law, who was in a constant feud with them, accused him and his wife Marija. She constantly accused them of different crimes, so the “gendarmery station had grown tired”. She *inter alia* accused them both, but separately, of insulting the Emperor, but she could not prove the allegations because the witness statements did not add up, and her father-in-law Ivo had been completely drunk on the day when, according to her words, he committed the crime. ABiH, SCBiH, CD, box no. 175, 915/420.

<sup>15</sup> So we have the situation where the files of the District Court Sarajevo contain the records on the proceedings for *lèse-majesté* where the accused were Pašo Imamović, Stjepan Bojan and Ibro Bajić, without them being mentioned in the files of the Supreme Court for BiH. Furthermore, there are cases of Vedriš Matija or Velić Sema, who pleaded for pardon i.e. deferral of the punishment, and their case cannot be found in the files of the Supreme Court for BiH. See: ABiH, DCS, box 1880, C, 1-36, 880/30, box 1880, C, 183-216, 1880/192, box 1880, C, 217-243, 1880/217; SCBiH, CD, box no. 78, 909/88 and box no.165, 914/799.

instance level could be viewed in detail and the judges could get access to the entire course of the proceeding and the delivery of the ruling.

The entire process started with a report that a person has verbally or with certain physical actions insulted His Majesty the Emperor or a member of his imperial house. It was understood that the event happened in public, in front of several persons. It is necessary to mention that certain cases were reported even several months after the insult was uttered. The proceeding would have been initiated after the report, but it was first preceded by a preparatory investigation, during which the court officers would verify correctness of the statement, and the moral dignity of not just the person being accused, but also of the person bringing the accusations. If infringement of a certain legal provisions would be proved, the proceeding would start by inviting the accused and the respondent to give statements and to list the witnesses whom they believe can confirm their statements. In most of the cases the accused remained in the custody by the end of proceeding, and if found guilty of the crime, the time spent in custody would in most of the cases be included in the term of the sentence. If there were multiple witnesses, the hearings were suspended and continued the next day. The accused had the right to file an appeal to the Supreme Court, which they did exercise, but the sentences set by the district and county courts were rarely modified. There are only several cases in which the Supreme Court's judges had found the mitigating circumstances inadequately considered and had reduced the sentence, while the number of people acquitted by the Supreme Court is negligible although such cases did exist.<sup>16</sup>

The analysis of age and gender structure is very important for completing the picture about perpetrators of this crime. In terms of age, it can be safely said that the accused were people of all ages i.e. people who were between 13 and 86 years old. However, most of them, around 65%, were the people in third or fourth decade of life. The gender difference is also quite interesting. In 26 out of 205 analyzed cases<sup>17</sup>, women were in the docks. However, it has to be mentioned that 21 women out the aforementioned number were convicted, while three women were falsely accused, and two were imprisoned for falsely accusing women of having insulted His Majesty.

The precondition for initiation of the proceeding was that *the crime* had happened in a public place, which meant that at least one more person had heard the

<sup>16</sup> Mihajlo Živković is one of those people whose prison sentence was reduced by the Supreme Court. See: ABiH, SCBiH, CD, box no. 35, 903/209.

<sup>17</sup> One process hasn't been included in these data. The case is about 14 girls in a convent insulting the Emperor with their stories, but they were acquitted by the first instance court, which the second instance court confirmed. See: ABiH, SCBiH, CD, box no. 176, 915/507.

allegations, and in practice a public place could have been a private room in the house. Most verbal insults were uttered in a café or a bar. Besides the café or the bar, reported crimes were committed in the inns, on the street, but very often at the private evening gatherings where the ones with whom they were socializing would make the report. When it comes to the *public space*, the case of Samardžić Jovan is very interesting. He was accused of lèse-majesté for writing offensive words on three open postcards that he had sent to his brother Todor in Vienna. Jovan admitted in court he wrote the “incriminating words”, but he claimed that he wrote postcards only to his brother, and that he had taken the words “from the papers that were freely distributed in Bosnia.” He also stressed that he didn’t intend to “cause anything illegal”. The court concluded that the postcards were not public and that Jovan cannot be accused of any crime.<sup>18</sup> The case of Jefto Ignjatić shows that the *public space* had to have more than one listener. Namely, during a tête-à-tête in his house he said to Niko Vasić that the King Peter will come to Bosnia and “find Franz Joseph and then shave his head”. Although the witness confirmed the accusation, stating that the children of age 4 and 6 were also in the room, the district court determined that there were no elements for a conviction, which the Supreme Court confirmed.<sup>19</sup>

Apart from the age, gender, religious affiliation and marital status, the documents contain very important information about the literacy and material status of the accused. So we learn that around 70% of the accused was literate, while the number of those in possession of any material assets was negligible. Actually, 21 of them had certain possessions. We believe that the economic conditions, in which the accused lived, have had important, but not crucial role for violation of the law. We are more inclined to the interpretation that the way of life and the social status had more influence on the perpetrators of this crime. It is confirmed by the fact that around 10% of the convicts were justifying the crime committed with inebriation.

Financial possibilities affected the method of execution of the punishment. So the prison term could have been substituted for a pecuniary fine in the amount of 6 K (krone) per day.<sup>20</sup>

<sup>18</sup> ABiH, SCBiH, CD, box no. 170, 915/16.

<sup>19</sup> The judgment holds: “It has to be acknowledged in this case that the accused and the witness had tête-à-tête, which doesn’t imply objective commission of a crime referred to in § 42 of the PC. Since this case lacks public and more people...” ABiH, SCBiH, CD, box no. 170, 915/5.

<sup>20</sup> Dreca Todor was of the few who owned a property. The court had sentenced him to 7 days in prison for cursing Emperor at a public place and he substituted it with 42 KM. ABiH, SCBiH, CD, box no. 102, 910/474.

When it comes to mitigating and aggravating circumstances for a judgment, it has to be noted that they were taken into consideration literally by the regulation, and they were applied to every defendant equally. Here, we particularly think of the circumstance *neglected upbringing*, which was a mitigating circumstance in the judgment to eighteen years old Risto Perić.<sup>21</sup> Inebriation, light intoxication, irritation if a conflict preceded the statement, as well as, *integrity* and confession were mentioned most often as mitigating circumstance, and in some cases the family situation was also taken into account i.e. if the “innocent family” is suffering due to length of imprisonment and if it is significant for welfare. Aggravating circumstances were: previous convictions, i.e. *impropriety*, two crimes committed at the same time, i.e. if the person would insult the Majesty personally, but also a member of his family or if, besides the verbal insult, the person would bring charges against them.<sup>22</sup> Aggravating circumstances would exacerbate the verdict with *fasting*, *hard bed* or *solitary confinement*, but didn't make it longer.

If viewed chronologically, the highest number of prosecuted *lèse-majesté* cases happened in 1914 after the assassination of heir apparent and his wife, 91 in total.<sup>23</sup> Specificity of the processes after the assassination of heir apparent is noted through the manner of perpetration, which was not manifested through vulgar words or curses anymore but through the expression of happiness or approval of the crime.<sup>24</sup>

<sup>21</sup> ABiH, SCBiH, CD, box no. 166, 914/854.

<sup>22</sup> Such is the case of Lovrić Gospava who was convicted for publicly uttering a statement: “it is a damned family and our Emperor Franz Joseph ordered his brother's murder.” Therefore her verdict lists the following aggravating circumstances: “...aggravating commission of two crimes” whereof one was the insult and the second one was transferring of the crime “murder”. There were cases where a person was simultaneously prosecuted for more than these two crimes. Pajolić Ivko committed five crimes at the same time whereof two related to *lèse-majesté* and insults on members of his family. Therefore, the punishment was aggravating. In 1907 Ivko was sentenced to 7 years in prison, and in November of 1913 he petitioned to have the remaining time in prison pardoned. ABiH, SCBiH, CD, box no. 165, 914/743; box no. 61, 907/373.

<sup>23</sup> In years before, there were on average 2-3 cases a year prosecuted by the Supreme Court of BiH.

<sup>24</sup> Jovo Simić had several days after the assassination said: “I don't feel sorry for him (late heir apparent) (explained in the original, author's comment), he is nothing to us, were he any good he would not have died, he wasn't good for the people, all monarchs should be killed, and have the Republic be the judge.” For this insult Jovo was sentenced to one year of maximum security imprisonment aggravated by two fast days a month and one solitary confinement in a dark room. The same sentence was pronounced to Uroš Šekrlija who, after the assassination, had said in front of Pero Lečić's café: “it was all right, thank God, it was not done at first, but at the second try”. ABiH, SCBiH, CD, box no. 165, 914/746, box no.177, 915/586.



## Crime *Lèse-majesté* in practice

Article 140 of the Penal Code under which *lèse-majesté* was prosecuted read: “Whomever violates awe of His Imperial and Royal Apostolic Majesty, either by personal insult or by reproaches, blasphemy or mocking uttered publicly or in front of several people, by printed works, communication or dissemination of pictures or documents, shall be found guilty of *lèse-majesté* and shall be punished by a term of imprisonment of between one and five years.”<sup>25</sup> Whilst Article 141 under which the judgment was passed for insult of the member of Imperial family reads: “If such actions or felonious insults are committed against the members of the Supreme House of His Imperial and Royal Apostolic Majesty, they shall be punishable as a crime by a term of imprisonment of between one and five years, unless they present criminal offenses that are to be more severely punished.”<sup>26</sup>

In practice, uttering any vulgar word and curse that related to any member of the Habsburg dynasty was considered an insult that ultimately resulted in an imprisonment sentence. *Lèse-majesté* was not just a mere violation of the honor, but it included assaults on the State, order and overall authority, and therefore the punishment had to be fast and heavy. The perpetrators, but also the society in general, had to know that the punishment was obligatory, and that their actions are legally unjustified. The sentences and their almost regular exacerbation with *fasting, hard bed* or *solitary confinement* vividly described that mentioning of the Majesty and members of his family in a vulgar context is a crime, and the person punished had to serve as an example in order not to have such a crime domesticated in the everyday discourse.

The defendants’ stories in the court files depict not only the crimes committed, but also the realistic picture of the everyday life of a certain group of people, the rhythm of their life, mindset and the environment.

As already said, the analysis of the files indicates that insults to the members of the Apostolic House were more frequent in the years when something was happening in the imperial house, like for example in the year when Empress Elisabeth was murdered, she was several times offended. The death of Empress Elisabeth on September 10, 1898 implied mourning in the entire Monarchy, which directly affected the settled everyday life that included visits to the café and listening to the music. Alberto Giraldo di Emilio is one of the people who did not want to respect the Order on prohibition of singing during the day of mourning

<sup>25</sup> Penal Code on Criminal Offenses and Delicts for Bosnia and Herzegovina, 45.

<sup>26</sup> Ibid.

for the Empress. In the café of Vidak Popović, he replied to the comment of a teacher, Kresić, who said that “singing was prohibited because Her Majesty the Empress and Queen is dead” saying the following: “Why should I care, we will sing regardless of who bites the dust.”<sup>27</sup> The proceeding lasted more than a month, and although never convicted before Alberto was sentenced to three months in maximum security prison.<sup>28</sup> Although he admitted uttering the statement, during the proceedings Alberto used his lack of knowledge of Bosnian language as the defense, more accurately not knowing the meaning of the phrase “to bite the dust”.<sup>29</sup> Although the conviction was appealed before the Supreme Court, it was confirmed at that instance as well.<sup>30</sup> Alberto was pronounced a quite lighter punishment than Salih Jamaković who had said in front of Bećir Hadrović and Vejsil Hadrović: “listen to the bells toll, the Empress has bitten the dust, him dying would be even better, whoever killed her is reborn”, thus “violating the awe towards His Imperial and Royal Apostolic Majesty and awe towards the house of Her Imperial and Royal Apostolic Majesty the late Empress Yelisaveta.”<sup>31</sup> Although never convicted before and although married and father of two children, which was often taken as a mitigating circumstance, for the words he had spoken Salih was sentenced to eight months in maximum security prison exacerbated with a fast day every 14 days.<sup>32</sup>

In general, the Empress was insulted quite rarely and more *along with* the Emperor who was a frequent target of vulgar insults.<sup>33</sup> Insulting the Emperor implies a much deeper meaning of insult against the state and the system. Actually, cursing the Emperor or a member of Apostolic House denoted the attitude towards the rule. It is confirmed by the fact that there were more prosecutions for *lèse-majesté* during the first years after the occupation than in the subsequent

<sup>27</sup> ABiH, SCBiH, CD, box no.24, 1898/854.

<sup>28</sup> Ibid.

<sup>29</sup> The accused confessed to “having said the mentioned words, but denied that he had the intention of insulting Her Majesty the Empress and the Queen, and in his defense he stated that he has just recently moved to this country, and that he is not skilled in this country’s language and in fact that he had heard people of the country saying after someone had died that he/she has bitten the dust.” The court believed that his defense was founded on lies because, as they said: “there is no doubt that he couldn’t understand the meaning of words “to bite the dust” particularly as he had literally said the incriminating words in Italian language....” Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> ABiH, SCBiH, CD, box no.24, 1898/390.

<sup>32</sup> Ibid.

<sup>33</sup> So did Vitović Semio cursed the Emperor in a public place adding “and his wife and children as well”. See: ABiH, SCBiH, CD, box no. 53, 906/570, box no. 13, 1897/217.

years. Offending *the new* Emperor was the way of expressing the attitude towards the newly-established authority.<sup>34</sup>

Every bad word that was related to or alluded to a member of the Imperial House was considered *lèse-majesté*. The authorities made it clear that such behavior will not be tolerated, not only due to violation of legal norms, but also in the light of the dangers that such behavior constitutes to the entire society. It is also interesting that the uttered vulgar words were recorded in the minutes only with first letter and dots, so the vulgarities would not be repeated. It also has to be noted that the various court rulings were published in *Sarajevski list*, in order to publicly humiliate the convict. However, that was not the case with the crime of violating the Majesty; persons convicted of this crime were never mentioned in *Sarajevski list*, which leads us to several conclusions. Firstly, publishing the reason for the conviction meant citing the words that the person said, so the vulgar expressions would be passed into the society and reading them could be hardly prevented, and no one could be accused for those words because they are found in the official papers. It also indicates the need of the authority to hide from the public, actually *to cover up*, these crimes that were to remain within the walls of the courtroom.

Having in mind the period of available files, the first cases of *lèse-majesté* can be followed from 1892, considerable volume of files has been preserved for that year.<sup>35</sup> In general, most of the insults were uttered by persons who were drunk at that moment or during the lively political discussions. We will give a few examples, such as Danilo Budimir, who moved from Zrmanja in Croatia and who was convicted of violation of imperial honor and sentenced to one year in maximum

<sup>34</sup> We will take the case of Mujo Bajraktarević as an example. After a minor quarrel with Marko Perić, who was showing off his medal with the image of the Emperor, he, in his café, said: “that he doesn’t want to see him nor his medal, and that he f... (dots in the original, author’s comment) the medal.” Whereafter “he jumped up and took a Turkish medal from a bowl on the shelf, yelling: “I have my medal and my Emperor, I don’t recognize yours, f... him.” ABiH, SCBiH, CD, box no. 26 901/288.

<sup>35</sup> The files of District Court Sarajevo are available from the year 1880 and first cases of *lèse-majesté* were recorded that same year. One of the first persons accused of this crime was Pašo Imamović, who cursed Franz Joseph in February of 1880 during a quarrel with Pero Sušnjić. Although immediately after Puliša Andrijašević accused Pašo for *lèse-majesté* Lutfağa Avdagić, Marko Vidić, Anto Sakić and Niko Alaupović had said that the report was false, the court decided to examine verity of the allegations. Each party proposed their witnesses and a total of 8 sessions and as many minutes were taken to have all witnesses questioned. While some of the witnesses had claimed to have heard Pašo insulting the Emperor, some didn’t hear anything and others described the situation in a completely different way. The trial was held after two months of hearings, the court confirmed the indictment and convicted Pašo for *lèse-majesté*, sentencing him to one month in prison, chained, exacerbated with one fast day. ABiH, DCS, box 1880, C, 1-36, 1880/30.

security prison since “he wasn’t member of these countries” and to “exile from the territory of the countries where this law is valid after serving the sentence” because he had “publicly and in front of several persons” in the bar of Mihajlo Šučur shouted “f... (dots in original) your Franz Joseph 1.”<sup>36</sup> Danilo didn’t stop at cursing the Emperor, and after the discussion with Mihajlo “he took out a book from his pocket, showing it to Mihajlo Šučur and saying that he is an Austrian fugitive and a Serbian volunteer, and if he just knew who he was, he would give him 10 K. Whereat he yelled “Long live King Peter.” The defendant asserted that he was drunk and that Mihajlo was accusing him out of hatred. Nevertheless, his appeal to the Supreme Court was fruitful, his sentence was reduced to 6 months in maximum security prison for: “agitation due to drinking, neglected upbringing and longer pre-trial detention.”<sup>37</sup> However, being in a drunken state wasn’t taken as a mitigating circumstance to Đumišić Omeraga, although Omeraga was known “as a drunkard, who has already lost entire father’s fortune to drinking”, and the witnesses spirits, beer and wine.”<sup>38</sup> One of the witnesses, Vuković, owner of a bar, claimed that Omeraga had come to him, before the fatal event, completely drunk, asking for spirits “but that he didn’t give it to him, because it is forbidden by the county regulation to serve drinks to the accused.” The witnesses also told that “the accused hasn’t been supporting his wife at all and that she has already filed for the divorce with the Sharia Court.” Omeraga’s crime was that he had, completely drunk and in front of several persons, said “f... (dots in original) all Emperors except the sultan.”<sup>39</sup> Although all witnesses confirmed that Omeraga was completely drunk, and he did not remember anything, he was sentenced to three months in maximum security prison, exacerbated with a fast day per month.

When it comes to crimes of violating Majesty committed in intoxicated state, it has to be noted that these crimes exclusively relate to men.

## False reports

Considering the way in which the crime of violating Majesty was committed, it was easily abused. Thus, in some cases a person uttered certain vulgar words or curses in anger, which could be interpreted as *lèse-majesté*, and sometimes additional words were made up in order to make the accusation more authentic. Being

<sup>36</sup> ABiH, SCBiH, CD, box no. 95, 910/5.

<sup>37</sup> Ibid.

<sup>38</sup> ABiH, SCBiH, CD, box no.80, 909/232.

<sup>39</sup> Ibid.

aware of that possibility, the county, district and supreme courts would consider the way in which lèse-majesté was committed as a mitigating circumstance. Regardless of that, any proved intent of the insult had to be punished with prison. The defendant was free only in case of dismissal of the accusation, but in most cases the defendant would be in pre-trial detention.

Husein Keranović was also accused based on malicious interpretation of spoken words. He was accused of lèse-majesté in December of 1891 by an owner of a bar in which Husein broke a glass worth 20 coins. However, when the glazier Franjo (Franz) had fixed it, he charged 40 coins. Upset with the amount charged Husein said “here you go, let Franjo buy himself peasant shoes.”<sup>40</sup> The owner of the bar used it and reported him for insulting Emperor Franz Joseph. The judges unanimously concluded that Husein’s statement has nothing to do with His Majesty, but that it referred to the glazier and had dismissed all charges against him. Something similar happened with Avdo Begeta, tithing clerk, who was accused by Periša Džopa for publicly stating “that is the order I have received, and if not so I will say to both chief and Emperor that they are lying and lying” thus, he claimed, violating *the awe of His Imperial and Royal Apostolic Majesty*.<sup>41</sup> The witnesses confirmed that Avdo didn’t even mention the Emperor, and the court concluded that it is unlikely that “the accused, as tithing clerk, had without any reason uttered the words, which he knew well were not to be spoken.”<sup>42</sup>

Personal gain that the notifier would get if the accused is imprisoned was usually clear after the first questioning. Such was the accusation made by Martin and Anto Mihaljević against Salih Bulić for lèse-majesté, and they actually wanted to misappropriate a “hole filled with snow” that was used as watering hole for animals, but were quickly discovered. Two of them reported Salih of insulting Emperor Franz with curses during the argument they had with him over the aforementioned hole. Subsequently, the court concluded that Mihaljević’s statements cannot be trusted, and that they have been contradictory, giving opposite statements at every hearing, and that the accusations were fabricated. It is interesting that they claimed that Salih had threatened them and that they are scared of him, whereupon the court concluded that: “the very sight of the witnesses and the opponents is enough to convince the court otherwise, because the witnesses seem to be towering, stout and massive people, whilst the accused seems small, puny and weak, barely reaching their shoulders.”<sup>43</sup>

<sup>40</sup> ABiH, SCBiH, CD, box no. 6, 1892/330.

<sup>41</sup> Ibid.

<sup>42</sup> ABiH, SCBiH, CD, box no. 33, 903/99.

<sup>43</sup> ABiH, SCBiH, CD, box no. 5, 1892/304.

Sulejman Sejdić was also falsely accused of violating the Majesty. He was accused by Todo Trkulja who claimed that whilst taking out his personal pocket watch in front of him, Sejdić had said: “that he hates the watch because that dog, son of . . . ., is on it” whereafter Trkulja “broke the watch saying that His Majesty is painted on it.”<sup>44</sup> The background of this accusation, as read in the ruling, was the fact that Sulejman Sejdić was manager of the bathing resort and that Todo Trkulja “has already had a cottage in the bathing resort for 4-5 years where he makes coffee and sells meat and he, i.e. the defendant, did forbid that so he feels animosity towards him and has falsified the report of crime of violation of Majesty to take his revenge on him and remove him from the position of bathing resort manager.”<sup>45</sup> The Court concluded that “Todo Trkulja had made everything up thinking he would easily remove him from the position of bathing resort manager.”<sup>46</sup>

Since the political situation was often the reason for involvement of the ruling family in the everyday conversation, ignorance about the events at that level could be useful upon accusations for *lèse-majesté*. So did the ignorance about assassination of the heir apparent save Zlatan Gojko from maximum security prison. On June 28, 1914 Gojko was angry in Doberlin because of the prohibition to play gramophone, and he had said in front of an armed patrol: “why it is prohibited to play when it is allowed throughout entire Bosnia and Herzegovina”, adding: “we don’t care if someone has died or was killed, I guess one can play music anyway.”<sup>47</sup> The statement got him accused of *lèse-majesté*. Gojko asserted that he was unaware of the assassination on the heir apparent, which the court confirmed, and concluded that he couldn’t insult a member of the Imperial House if he was unaware of the events.<sup>48</sup> Something similar happened to Đurđa Sumonja, who had during a conversation with the neighbors said that her husband went to Kalinovik, and that a person for whom she had vulgar words is coming there as well. After she was reported to the court, she claimed of not knowing that Archduke Franz is coming to Kiseljak. The witnesses couldn’t agree on what Đurđa had said, the only thing they did agree on is that she mentioned her husband, which is not against the law.<sup>49</sup>

Although the analysis of documents indicates that the highest number of false accusations had ended with the acquittal at the county or district court, there were

<sup>44</sup> ABiH, SCBiH, CD, box no. 24, 1898/374.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> ABiH, SCBiH, CD, box no. 165, 914/745.

<sup>48</sup> Ibid.

<sup>49</sup> ABiH, SCBiH, CD, box no. 179, 916/84.

the cases in which accused were acquitted only by the Supreme Court. Aforementioned Samardžić Jovan is one of the accused who was acquitted by the Supreme Court. He was charged by the district court in Mostar for *lèse-majesté* for the contents of postcards he had been writing to his brother in Vienna. However, the Supreme Court concluded that the postcards were not public, and that the element of public is missing, and had acquitted Samardžić of all charges.<sup>50</sup> Seventy-five years old Šaćir Kandžić Čosić was also accused of insulting Emperor with vulgar words, and was sentenced by the first instance court to 6 months in prison, exacerbated with a fast day every 14 days, but the second instance court concluded that the witnesses' statements do not concur, and had advised annulment of the sentence and reopening of the proceeding.<sup>51</sup>

Having in mind the frequency of the accusations for *lèse-majesté* and numerous abuses in some proceedings, we discovered that persons who made false accusations were also instantly prosecuted for the crime of "concoction".

Two women accused of concoction during 1915 were Emina Kotorčić and Vida Zadro.<sup>52</sup> Both women, in their fifties, reported two other women for committing *lèse-majesté* and disturbing public peace. During the trial it turned out that they could not hear with their own ears the words for which they had accused Marija and Ana, and they had also changed their statement many times. Hence, Emina was sentenced to two months in prison, exacerbated with two fast days, and Vida was sentenced to a month in prison, exacerbated with a fast day.<sup>53</sup> Although both women filed an appeal to a higher instance courts, first to the district and then to the Supreme Court, their rulings were upheld. Rulings were confirmed. Rulings like this were to clearly demonstrate that the false accusations will not be tolerated, and that one should take a very careful thought before making any reports to the court.

The documents also contain the cases of concoction, but from another perspective. One of those cases is the case of Stojić Marjanović, who was accused of *lèse-majesté*, and the defense witness was sixty years old Ahmed Hamid Kikalić. Ahmed had falsely testified that Stojanić didn't say the words that insulted the Emperor and was punished for concoction with four weeks in prison, exacerbated with a fast day.<sup>54</sup>

<sup>50</sup> ABiH, SCBiH, CD, box no. 170, 915/16.

<sup>51</sup> ABiH, SCBiH, CD, box no. 24, 1898/350.

<sup>52</sup> See: ABiH, SCBiH, CD, box no. 177, 915/548, 915/614.

<sup>53</sup> Ibid.

<sup>54</sup> Tasija Stanić was also accused of falsely testifying in favor of Osman Brčkalija. In his statement Tasija said that: "he cannot recall Brčkalija saying "that the Austrian Emperor is

The analysis of the files in the period of World War I reveals a phenomenon of requests for the suspension of the sentence for *lèse-majesté* convicts. The requests were usually approved if someone from the place of residence would confirm that the suspension is reasonable to the request made.<sup>55</sup> There were also requests that were rejected at the first instance court, and granted by the Supreme Court.<sup>56</sup>

Execution of the sentence validates the power of a ruler, but frequent requests for suspension of the sentence and pardon indicate not only decline of the power and reputation of the authority, but also the attitude of citizens towards them. However, pardons by the Emperor were also a kind of message that was to show *his mercy* to all people. The texts about His Majesty were always written with many epithets and glorifying his deeds, especially if he visited Bosnia and Herzegovina. The visit of 1910 was also an occasion for pardoning the persons convicted for *lèse-majesté*. The newspaper *Bošnjak* published a text on the occasion of the new 1911 in which it described the visit of Franz Joseph to Bosnia and Herzegovina stating: "In particular we very much like the fact that the Emperor and the king has pardoned those who had committed crime of *lèse-majesté*. With this, he had won the hearts of all."<sup>57</sup> This collective pardon happened only on special occasions as was the visit of Emperor Franz to Bosnia and Herzegovina, whilst it was possible to ask the Emperor for a pardon in the everyday life.<sup>58</sup>

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a coward for keeping such officers in Bosnia", because it was after lunch and after the lunch or dinner or when angry he doesn't notice what is happening around him..." ABiH, SCBiH, CD, box no. 32, 1903/37, box no.170, 915/2.

<sup>55</sup> The example we will use is the case of Anka Gradina. On September 17, 1914 she was sentenced to two months in heavy security prison, exacerbated with a fast day. Immediately after hearing the verdict Anka requested suspension until March 1915, which the district court approved, but on March 2, 1915 she again filed a petition for suspension with the same court, not specifying the duration of suspension and listing the following reasons: "because her husband died, leaving her with 7 children and penniless, and she has to provide for them, and she had lost another child and is feeling weak." Their claims were true and the district court proposed the sentence to be suspended until October 1, 1917, which the Supreme Court approved. ABiH, SCBiH, CD, box no. 171, 915/83.

<sup>56</sup> See: ABiH, SCBiH, CD, box no. 179, 916/138.

<sup>57</sup> Historian year 910, *Calendar Bošnjak* – calendar for 1911. 01.01.1911, 45.

<sup>58</sup> In 1913 Adolf Ceder was granted pardon for the remaining prison sentence that he should have served for the crime of *lèse-majesté*. ABiH, SCBiH, CD, box no. 146, 913/628.



## Conclusion

Eight decades of 19<sup>th</sup> century brought multiple changes to Bosnia and Herzegovina. After centuries-long Ottoman rule a new Empire came to power. Although the western traditions were slowly becoming established in the cities of Bosnian Vilayet decades before the Austro-Hungarian occupation, the occupation had however represented a certain breakup with the centuries-old system. It particularly relates to the legal norms. The new administration was aware of the fact that attitude of ordinary people towards the Emperor reflected the attitude towards the new rule. Therefore, was protecting of the honor of the Emperor and his family of utmost importance. This is clearly indicated by the fact that any vulgar mention of the majesty or members of His Imperial and Royal house was categorized as a criminal offense and considered a crime. Analysis of court files indicates that even besides quick judgments that entailed prison sentence, this crime can be continuously followed throughout the entire period of Austro-Hungarian rule in Bosnia. Continuity in commissioning of this crime, as well as the number of cases that appeared before the Supreme Court, indicate that it was part of the everyday life. Furthermore, we can safely claim that all cases of uttered vulgar words or curses against the Emperor or a member of his family were not prosecuted. The increase in number of perpetrators in the years when the Emperor or a member of his family had (un)intentionally affected the steady habits confirms the latter. Only in a few days after the assassination there were reports that this crime was committed 64 times!

In order to initiate a court proceeding and prosecute a person for *lèse-majesté*, the insult had to be uttered in front of more than one person, and the law had also defined public space, but according to the analyzed proceedings every place was considered public – street, café, a room in a private house. Preparations would be done before the proceedings were initiated, i.e. the particulars of the charges would be verified, while the proceedings had to include questioning of all persons who could have heard the particulars of the charges. They were invited according to the defendant's statement and the statement of the person who reported the crime. If we look at perpetrators we will conclude that they were mainly men in their fourth or fifth decade of life. In the first years, the perpetrators attempted to justify their behavior with alcohol intoxication. It was also one of the mitigating circumstances when the sentence was passed. Apart from the perpetrator's state, marital status and integrity, neglected upbringing was also taken as a mitigating circumstance. It is very interesting that the neglected upbringing was considered as a mitigating circumstance for persons in their nineties! When it comes to literacy, we can say that around 50% of the

accused were literate, while the number of those in possession of any material assets was negligible. The objective of the quick prison sentence was to show to the public that anyone who dared to mention Emperor or a member of their family in an ugly context will be punished, but it was also a good occasion for personal reckoning. False accusation show that personal gain and hatred were the main reason for false reports. Only from the beginning of the WWI the court files show that the false report was published as concoction, wherefrom we can conclude that number of such reports increased and that a message had to be sent that such action will be punished. The number of those requesting suspension of the sentence, but also pardon, increased in that period.

Honor of the Emperor and his family was protected by law and under supervision of the judicial bodies. The importance of the message disseminated by the authorities through the Article of the law on lèse-majesté is clear and concrete. It warned the citizens of the punishment in case that the allowed code of behavior is violated. Their punishment is not only important in terms of legal norms, the message sent to the society is more important. There are several indicators that the authorities had tried to *cover up* this type of crimes, to create an illusion of non-existence of this crime, most concrete being the fact that rulings for this crime were not published in the official paper like others. The insults directed towards the Emperor or a member of his family were not put down in the minutes literally, but only first or first and last letter were written; aware of the fact that publishing the name of a person convicted for other crimes and minor offenses harms not only his, but also the honor of his family, while the announcements about crimes of lèse-majesté would bring the crime closer to the public, and the Emperor could be offended again by new reading of the announcement.

With its proclamation the crime of violating the Majesty and a member of his family was becoming part of the everyday life of the citizens of Bosnia and Herzegovina and while it was firstly punished by shorter prison sentences, over time it became a frequent crime that in 1914 and 1915 could be considered as part of the everyday life.