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CRIMINAL LAW PROTECTION OF LIFE IN SERBIA: NECESSITY OR PENAL POPULISM?

The paper deals with actual criminal law protection of the right to life in Serbia, focusing the legal provisions related to criminal offenses against life and body, and the latest legislative changes. The most important question is whether the current situation is based on the necessity and the real need for better protection of the right to life or is it just populist manoeuvring of the creator of legislative penal policy? The author presents available statistical data and research results relevant to the subject, throwing a glance to comparative law, in order to indicate some directions for future legislative intervention.

Keywords: *right to life, crimes against life and body, murder, tightening penalties, life imprisonment*

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1. Introduction

The right to life is undoubtedly the most important human right, the basis for the exercise of all the others, and as such is especially emphasized in the most important international documents, and its protection is provided in various ways by national criminal legislation[1]. The Article 2 of the European Convention on Human Rights ranks it as one of the most fundamental provisions, which in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies, and its provisions must be strictly construed. Article 2 contains two substantive obligations: the general obligation to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions (European Court of Human Rights, 2021: 6).

The inviolability of the right to life is also guaranteed by the Constitution of the Republic of Serbia[2] under Article 24, related with the non-existence of the death penalty, pointed out in paragraph 2 of the same Article. The Criminal Code of Serbia[3] (the CC), on the other hand, envisages numerous criminal offenses protecting the right to life, but in this paper the focus will be on the offenses from the group of criminal offenses against life and body (Chapter XIII of the CC). Namely, in description of different criminal offenses, the primary object of protection is some other right or value, but if an offense results in death of the person against whom it is committed, the offense becomes aggravated one (e.g. rape - Article 178, paragraph 4 of the CC).

As the right to life is the most valuable human right, in the context of current expansive and explosive populism as a suitable technique of governing, penal populism related to demands for harsher punishment of those who endanger or violate another's right to life has flourished. It is not only harsher punishment that is associated with increasing penal populism and moral panic over fear of crime (especially as serious as murder or another offense resulted in death of another human being), but phenomena that should also be viewed in the same light are new incriminations that cannot always be justified by social or criminal justice needs and requirements.

[1] These offenses known as *mala in se* exist as criminal ones from the earliest times in written legal history, being envisaged as the most serious felonies, in the first place in the special part of national criminal laws (Jovašević, 2017: 11).

[2] Official Gazette RS, No. 98/2006

[3] Criminal Code, Official Gazette RS, No. 85/05, 88/2005 , 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019

Let's have a look at state of play in Serbian criminal legislation, having in mind that at the global level that homicide rate in Europe is decreasing (in 2017 by 63% compared to 2002 (UNODC, 2019 : 1)) and that Serbia is not mentioned in the UNODC latest report regarding some specific problem related to the homicides.

2. Criminal homicide - from Dušan's Code to the Criminal Code 2005

Before the middle of the 14th century and Dušan's Code[4], murderers were punished with enmity ("vražda")[5], but Dušan's Code introduced a cruel Byzantine system of corporal and capital punishments, e.g. murder of a father, mother or brother, son or daughter was punished by burning (Article 94 of Dušan's Code). The same Article stipulates that the one who killed the clergyman will be "killed and hanged". Different punishments were envisaged for the murder of a peasant by a landowner and vice versa. In the first case, the penalty was a fine, and in the second one - cutting off both hands and a fine three times lower (Article 91). A distinction is also made as to whether the murder was committed "by force" or not, so the penalties were different (cutting off both hands or paying a fine of 300 perpers - Article 84).

Mateja Nenadović's Code (1804) introduced mutilation on the wheel for a murderer, and in Krađorđe's Criminal Code (1807) "half a year in iron" was a punishment for involuntary manslaughter, perpetrator being obliged to pay a compensation to the family of the murdered, while premeditated murder was punishable by death (execution by shooting and hanging). Infanticide was also sanctioned with the death penalty, and the mother who committed this act could not be pardoned. In the case of murder or torture of witch-woman, the perpetrator was treated the same way (Jovašević, 2016: 68-69)

The Criminal Code for the Principality of Serbia (1860) envisaged three forms of aggravated murder (murder with malice aforethought, murder of a relative in the direct blood line, murder for the purpose of committing or concealing another criminal offense), as well as voluntary manslaughter, involuntary manslaughter, and infanticide. Although envisaged in the Draft Code of 1857, mercy killing wasn't enacted. Murder was considered a felony punishable by capital punishment, long term imprisonment or imprisonment with hard labor.

[4] Dušan's Code, Bistrica transcript, Belgrade: Edition, 2020.

[5] "Vražda" (enmity) was a form of compensation for murder – one half of the sum was paid to the state, the other one to the family of the murdered (Živanović, 1935: 65)

The Criminal Code of the Kingdom of Serbs, Croats and Slovenes (1929) envisaged offences of murder, aggravated murders, and "privileged" criminal homicides. Murder was aggravated one if it is committed with premeditation ("after mature thinking"), if it is committed with poison or in a cruel way, endangering the lives of several people, out of selfishness or to commit or conceal another crime, and as a repeated offense (sentence was a death penalty or life imprisonment). Mercy killing appeared as a new form of criminal homicide.

The Code of the Federal People's Republic of Yugoslavia (1951) recognizes provisions similar to actual ones when it comes to criminal homicide from the group of crimes against life and body: murder - punishable by at least five years of prison; aggravated murders are murders committed in a cruel or insidious manner, or in a way that endangers the lives of other persons, or out of greed, or for the purpose of committing or concealing another crime or from other base motives, or if several persons are murdered (punishable by imprisonment for at least ten years or by death penalty). The same punishment was envisaged for a perpetrator who was previously convicted for murder, but has repeated the offense. The amendments in 1959 introduced new forms of aggravated murder: the murder of an official or a member of the military during discharge of their dutise related to keeping up public order, the apprehension of a perpetrator of a criminal offense or the custody of a person deprived of liberty; callous revenge was added to the base motives, and it was specified that the same punishment is prescribed for a person who commits several murders, regardless of whether he has been previously convicted of a murder or is being tried by applying the provisions on joinder of offenses.

The tightening of penal policy in the field of criminal law protiection of life was introduced by the amendments in 1973, when Article 135 got a new paragraph envisaging the possibility of punishing a perpetrator with 20 years of rigorous imprisonment for murder if it is accompanied by particularly aggravating circumstances (other than those that constitute envisaged aggravated murders). However, the Criminal Law of the Socialist Republic of Serbia (1977) omitted the previously mentioned provision, introducing two new forms of aggravated murder - murder with callous violent behavior and murder out of blood revenge. Protection was also given to a "person engaged in maintenace of public security in order to achieve goals of social self-protection".

Assisting a juvenile in aggravated murder and intentionally preparing the crime of murder were also incriminated[6].

Amendments to the Criminal Law (2002) enacted the abolition of the death penalty and its replacement by a sentence of 40 years for aggravated murder. The above-mentioned forms of aggravated murder remained, except for the modification of the form related to the murder of an official: "who causes death of an official or serviceman during discharge of their duty related to state or public safety, keeping up public order, aprehension of the perpetrator of a crime, or custody of the person deprived of liberty or who causes death of another person who perform these duties on the basis of law or other regulations". Callous revenge became one of the base motives (alongside blood revenge). Possibility of sentence mitigating was envisaged (in paragraph 3 of Article 47 of the CL 2002) for an accomplice (in murder or aggravated murder) who discovers the crime, the perpetrator or the organizer.

New Criminal Code (2005) "strengthens" the criminal protection of life by adding new forms of aggravated murder: the murder of a child or a pregnant woman, and the murder of a family member who was previously abused (Article 114, paragraph 1, items 7 and 8). Explanations were based on the need for enhanced criminal law protection of children (Stojanović, 2006: 329), while increased pressure, primarily from women's non-governmental organizations and the emphasis on the prevalence and danger of domestic violence brought new form of murder under item 8.

The Code, however, omitted blood revenge as a motive for aggravated murder under item 5 (which was explained by the reduction in the number of such cases, as well as by the possibility that blood revenge could be classified as callous revenge or other base motive (Stojanović, 2006: 327)).

Murder during robbery or grand larceny has been transferred from the group of property crimes to the group of offenses against life and body, thus emphasizing life as the primary object of protection. Also, murder out of mercy has been placed on the list of "privileged" homicides, but now as mercy killing (Art. 117 of the CC), while murder out of negligence has become involuntary manslauther (Art. 118). Although the characteristics of both offenses remained the same, their names were changed in order to make a distinction in relation to the murder, as an act done with intent, i.e. with motivation that is for (severe)

[6] On the development of criminal homicide incriminations in Serbia and other former republics of the SFRY: Kolarić, 2008: 36-44.

condemnation. The most severe prison sentence for aggravated murder is now prescribed in the range of 30 to 40 years.

3. The Criminal Code (2005) Amendments

Since the entry into force of the Criminal Code, there have been a number of amendments relevant to the topic of this paper, which generally point out to an upward trajectory in terms of repression, i.e. introduction of new incriminations or changes of existing ones, and tightening penal policy in general. The year 2009 could be highlighted as a year of criminal law expansionism, repression and solutions that might be approved and praised by the lay public (intimidated by sensationalist media reports that fuel the fear of crime and horrific offenses) while in the professional literature such solutions and tendencies were criticized in detail (Stojanović, 2010; Soković, 2011, etc.). The RS Government explained drafted amendments and tightening of the penal policy by emphasizing the passage of time since the CC entered into force and the state of crime in Serbia (without giving details), and by describing the penal policy of courts in Serbia as too mild). Harsher punishments have been prescribed for a third of criminal offenses, in order to "strengthen general prevention and deter potential perpetrators of criminal offenses, as the main goal of the substantive criminal law" (Government of the RS, 2009: 38).

In 2009, two new forms of aggravated murder appeared: the murder of a judge, public prosecutor, deputy public prosecutor or policeman related to discharge of their duty and person who perform work in public interest related to discharge of his duty (Art. 26 of the Act on Amendments to the CC). Although a judge, public prosecutor, etc. are considered officials that have protection under item 6, now the scope of their protection is expanding (but only for them, not for other officials). Now, they are protected not just "during performance of the duties" but "related to the performance of duties". Also, another new form of aggravated murder protects those who do not have the status of an official, but perform work of public importance. Work of public importance is considered to be performing duties or profession that has an increased risk for the safety of a person who performs it, and refers to occupations that are of importance to public information, health, education, public transport, legal and professional assistance before the court and other state authorities (Article 112, paragraph 32 of the CC). It could be expected this list to be expanded eventually by declaring some other job a work of public importance, especially if a horrible murder of a certain professional happen. Namely, these novelties in the already wide register of aggravated murders are a consequence of the events that

preceded the amendment of the CC[7], as well as the demands of various professionals who do not feel safe, asking for better protection, or status of an official.

It should be pointed out that there is no explanation of the Government regarding new forms of aggravated murder. It is simply stated that Article 114 of the CC has been amended by new forms of aggravated murder (Government of the RS, 2009: 40). It is also worth mentioning that the protection of life and body of vulnerable categories is not consistently envisaged in other provisions (serious bodily harm, Article 121 of the CC, endangerment, Article 125 of the CC) - protection is provided for pregnant women and juveniles (not just for children, as it is the case with the new form of aggravated murder), and a person performing work of public importance is more protected by the incrimination of serious bodily harm (Article 121, paragraph 6 of the CC), as the relation between the bodily harm and the work performed by the victim is not an element of the offense (as it is in the aggravated murder under Article 114, paragraph 1, item 8 of the CC).

In the same year, the CC was amended once again (after only three months from previous amendments), and it was quite clear that the reason was the "Brice Taton case"[8]. Namely, on August 31, 2009, the first set of amendments was adopted, and on December 29, new ones were introduced, in order to strenghten repression towards sport fans and fan groups. Tragic death of Brice Taton seemed to be a trigger for another intervention in the criminal legislation (but deficient, as expected, given that it was a hasty move that should have shown the state's determination to deal with the sport fans), although even prior to that event there were legislative interventions that obviously did not contribute to solving the problems with sport fans). Undoubtedly, decision makers dare to intervene in the legislation without devising good, functional, comprehensive solutions, but hastily, in relation with individual case, in need to satisfy populist demands driven by fear or appalling crime[9].

[7] The murder of the president of the Municipal Court in Knjaževac, Dragiša Cvejić, in 2008, was a famous one (he died in explosion of a bomb attached to the gate of his yard). Prior to that tragedy, the same perpetrator tried to murder another judge in the same way, but his wife was killed instead (Vuković, Božinović, 2015).

[8] Brice Taton, 28, a Toulouse supporter, sustained brain damage after Partizan Belgrade fans attacked French supporters in a bar on September 17. He died on September 29, 2009. France 24, News Wires (2009, September 29th) French Fan dies of Injuries after Belgrade hooligan attack, available at: https://www.france24.com/en/20090929-french-fan-dies-injuries-after-belgrade-hooligan-attack-, accessed on 31. 7. 2021.

[9] The Law on the Prevention of Violence and Misconduct at Sports Events was adopted in 2003 (Official Gazette of the RS, No. 67/2003, 101/2005, 90/2007, 72/2009, 111/2009, 104/2013, 87/2018), but, obviously, having in mind current events in Serbia, it did not have much effect, although it was amended several times). Interesting inconsistency related to the measure of banning attendance at certain sport events is that a similar measure has

In 2012, the circle of persons enjoying protection as officials was expanded, because the interpretation of this term was amended, due to the recommendation of the Council of Europe (GRECO) (Government of the RS, 2012: 9) regarding combating corruption offenses (but the amendments are to be applied to aggravated murder referred to in Article 114, paragraph 1, item 6 of the CC). Thus, officials are: a notary public, a public enforcement officer or arbitrator, as well as a person in an institution, enterprise or other entity who is assigned discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest (Article 112, paragraph 3, item 3 of the CC)[10].

The new amendments (relevant for the topic) were adopted following the above mentioned model - hastily, insufficiently well thought out, unexplained - in 2019[11]. They were also on the line of intensifying repression. The legislator has introduced new purpose of punishment – "achieving justice and proportionality between the gravity of the crime and the imposed criminal sanction", thus emphasizing retribution, but it is unclear why the criminal sanction is mentioned (because the punishment is just one type of criminal sanction). So, we can conclude (again) that has been a bad, hastily done intervention.

The explanation of the Draft Law on Amendments to the Criminal Code stipulates that previously mentioned amendment provides "guidelines for judges to take this reason into account when determining the sentence in order to achieve the purpose of sentencing in each individual case" (Government of the RS, 2019: 2). Obviously, it is an important message to the courts and judges, suggesting that the legislator does not trust them too much, therefore striving for harsher penalties. That is why, since 2009, there has been so many restrictions and directions for judiciary, so many confusing solutions (let's just mention restrictions related to mitigation of penalty[12], conditional release[13], inconsistencies in two systems of imposing fines[14] in the field of substantive criminal law, and on the other hand "trade in justice and truth" in the field of criminal procedure law – by giving great importance to the defendant's confession (resulting in speeding up the procedure and benefits for the defendant, but the confession itself doesn't has to be true

a maximum duration of 8 years for a committed misdemeanour, and less for a committed criminal offense - 5 years, while the minimum is the same in both cases - one year (Jovanović, Marinović, 2016: 186).

[10] Official Gazette RS, No. 121/2012.

[11] Official Gazette RS, No. 35/2019.

[12] See: Delić: 2010.

[13] See: Chapter II (Conditional Release) in: Stevanović, Batrićević (eds.) 2016: 363-475.

[14] See: Kolarić, Đorđević, 2016.

necessarily), prosecutorial opportunity, plea agreements and "prosecutorial sentencing"[15]; the most meaningless are the provisions of the Criminal Procedure Code[16] envisaging possibility of imposing a suspended fine sentence (Article 512, paragraph 3, items 1-2 of the CPC), which is an impossible, long-abandoned solution in criminal substantive law, showing clearly the miraculous inconsistency of substantive and procedural law, i.e. ignorance and/or negligence of the creators of the law, which, despite numerous changes in legislation, has not been corrected).

The most important amendment, and the most contested one by legal professionals (but welcomed by the majority of the lay public) was the introduction of life imprisonment (without a possibility for parole) instead of 30 to 40 years of imprisonment, which has been assessed by the Government as an inadequate punishment (but how that conclusion has been reached – has remained unknown) (Government of the RS, 2019: 3). The amendment could be considered a peak of repression, having in mind the existing problems with parole in Serbia[17]. It also shows disregard for recommendations and international law requirements (in the sense that life imprisonment without the right to parole may be viewed in the light of a violation of the Article 3 of the European Convention of Human Rights, as a form of inhumane or degrading punishment)[18]. Thus, for certain serious crimes, such as aggravated murder, it is possible to impose a sentence of life imprisonment (alternatively, a prison sentence ranging from ten to 20 years is prescribed, as before), but for aggravated murder under item 9 - murder of a child or pregnant women - there is no possibility of parole. The same applies to aggravated form of rape (Article 178, paragraph 4 of the CC), sexual intercourse with a helpless person (Article 179, paragraph 3 of the CC) - if the offense results in death of the person against whom it was committed or if committed against a child, and in cases of sexual intercourse with a child (Article 180, paragraph 3 of the CC) and sexual intercourse through abuse of position (Article 181, paragraph 5 of the CC) - if the offense results in death of the child. The legislator, obviously, succumbed to populist demands and arguments that only the harshest sentences provide adequate protection of the most vulnerable victims (children)[19], while the argumentation related to international law and the historically

[15] See: Bajović, 2015.

[16] Official Gazette RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021-Decision of the Constitutional Court, 62/2021-Decision of the Counstitutional Court.

[17] See: Chapter II (Conditional Release) in: Stevanović, Batrićević (eds.) 2016: 363-475.

[18] More about ECtHR jurisprudence: Grujić, 2019: 1115-1116.

[19] Explanation of the RS Government was that the initiative of the Tijana Jurić Foundation, supported by 158,460 RS citizens, has been crucial (p. 2).

proven ineffectiveness of such a concept of (declarative) social defence from crime, was rejected.

Some serious questions have remained unanswered: 1) why such a solution (life imprisonment without a possibility of parole) has not been adopted in relation to other serious crimes (genocide, crimes against humanity, war crimes); 2) why this type of protection has not been provided for children in terms of the Convention on the Rights of the Child[20] - children are all persons under the age of 18, while the term child, in our Criminal Code refers only to persons under the age of 14 (a minor is a person over fourteen years of age but who has not attained eighteen years of age; a juvenile is a person who has not attained eighteen years of age (Article 112, paragraphs 8-10 of the CC). As those amendments were initiated by the Tijana Jurić Foundation, due to one tragic death - the murder of a fifteen-year-old girl Tijana[21], the question is: have the initiators taken into account that enhanced protection embodied in frighteningly severe punishment that should deter would-be perpetrators or punish adequately has been provided for children - persons under the age of 14, while other juveniles would not have this kind of protection.

Support for life imprisonment (without a possibility of parole) can indeed be linked to the regret and support for the death penalty that has been steadily increasing among Serbian citizens over a four-year period (until 2020). According to a survey conducted by the Serbian Association Against the Death Penalty there was over 60% of respondents favoured the death penalty (since 2014); in 2016, 2018, 2019 – 70%[22].

There are more novelties related to aggravated murder: (disputed) ban on mitigation of penalty has been extended to aggravated murder (Article 57, paragraph 2 of the CC); its preparation has been incriminated explicitly (Article 114, paragraph 2 of the CC), and no statute of limitation for criminal prosecution and enforcement of penalty for offenses for which a life sentence has been prescribed (i.e., for aggravated murder) has also been envisaged (Article 108 of the CC). Therefore, more interventions were done in order to (declaratively) provide better protection from the most severe offenses against the most important right - the right to life.

[20] Act on Ratification of the UN Convention on the Rights of the Child, Official Gazette of SFRY, No. 15/1990 and Official Gazette of FRY, No.4/96, 2/97 (Art. 1.)

[21] https://tijana.rs/kazna-dozivotnog-zatvora/, accessed on 10. 8. 2021.

[22] http://www.smrtnakazna.rs/sr-latn-rs/javnomnjenje/ankete.aspx, accessed on 13. 8. 2021.

The amendments caused an extraordinary public response, so it could be said that they left no one indifferent. Those who remained in the minority (most of them were legal professionals) have been named a false, hypocritical elite, which do not care about children, defending the rights of murderers and „monsters (that was, in short, the rhetoric during the process of adoption of the so-called Tijana's Law[23]). It seems that a state in which there is no common moral paradigm is unstable, unpredictable and insecure, or establishes its security with a pronounced tendency towards coercion and intimidation (Stevanović, 2017: 99).

4. Available Statistical Data and Research Results

Finally, let's take a look at the statistical indicators related to the topic. Are they on the rise, are they a cause for concern, how new incriminations are being applied and whether new repressive interventions and/or changes in legislation or in court practice should be considered.

Official statistical data on reported adult perpetrators of criminal homicide in the last ten years (2010-2019) indicate stability, and even a certain decline in the number of reported offenses compared to 2010. In the last observed year that number was almost halved. The annual average number of reports in that period is 246, while it was 455 in the (well-known as turbulent) period from 1994 to 2001 (Vuković, 2002: 369). Serba had no special problems with criminal homicide in 2003-2007 period; in comparison with other European countries in 2006 Serbia had a lower homicide rate compared to all countries in the region, and it was 2 and a half times lower than the average rate in Europe (Ignjatović, 2013: 17).

The share of "privileged" criminal homicides is small (since 2013 the number of the reports is below 10 per year), while the lack of criminal offense reports for mercy killing throughout the observed period is conspicuous. The data that speak more about the topic refer to the participation of the homicides in the total of reported crime and it is also stable - according to the data of the Statistical Office of the Republic of Serbia (SORS) it is 0.3% (over the 2004 – 2017 period) [24]. Only in 2010 the share was slightly higher - 0.5%, and since 2013 it has been declining - 0.2%. The numbers of imposed 40-year sentences are single-digit (except in 2010 when 10 were imposed), and the situation is slightly

[23] See: Milenković, 2019.

[24] https://data.stat.gov.rs/Home/Result/140203?languageCode=sr-Cyrl, accessed on 15. 8. 2021.

different when it comes to imprisonment lasting over 30 years (minimum: 4 - imposed in 2019, and the highest - 16 imposed in 2010)[25].

Table 1. Criminal homicide reports 2010-2019 (adult perpetrators) [26]

Criminal Offense	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
Art. 113.	208	173	181	141	122	144	101	107	121	116
Art. 114.	117	96	111	79	67	100	90	80	93	60
Art. 115.	3	1	2	0	4	2	1	1	2	3
Art. 116.	4	2	5	0	4	3	4	1	2	2
Art. 117.	0	0	0	0	0	0	0	0	1	0
Art. 118.	3	9	3	0	1	3	0	3	1	3
Total	335	281	302	299	198	252	196	192	220	184

Data on certain forms of aggravated murder are conspicuously missing (because the SORS does not offer them), though some conclusions about them could be reached indirectly, based on available (fragmentary) court practice research (Simeunović-Patić, 2003; Kolarić: 2008; Simeunović-Patić, Jovanović: 2013 Jovašević: 2017; Turanjanin, Voštinić, Đorđević: 2017). Thus, e.g. the murder of a family member who was previously abused is very rare, although domestic violence is widespread in Serbia. There are no official data on such form of femicide, despite the fact they should exist due to international law requirements. According to data of the Network Women Against Violence[27], as well as research results on murders of women in intimate partner relationships (1999-2011) - there was no one case qualified as the murder of a previously abused family member, although it seemed that have been grounds for that (Simeunović-Patić, Jovanović, 2013: 166-169). All cases were qualified most often as murders (or attempted murders), and few of them as murder in a cruel manner or murder of several persons. Just two cases of murder of a previously abused family member in Serbia were mentioned by Turanjanin et al. (2017) in the period 2006-2016. The noted problem is related to the incrimination itself is the interpretation of the notion of a family member, and the interpretation of the notion of previous abuse (Simeunović-Patić, Jovanović, 2013: 167; Đorđević, 2005). Thus, one who left his/her abusive partner after many years

[25] https://www.stat.gov.rs/oblasti/pravosudje/, accessed on 14. 8. 2021

[26] https://www.stat.gov.rs/oblasti/pravosudje/, accessed on 14. 8. 2021.

[27] Annual reports of the Network Women against Violence 2010-2020 (according to which about 30 women are killed annually in the context of partner violence, and the most common violence was committed over a period of several years and was reported to the authorities); available at: https://zeneprotivnasilja.net/femicid-u-srbiji, accessed on 15. 8. 2021.

of severe abuse cannot be (according to the provisions of Article 112, paragraph 28 of the CC) considered a family member (e.g. she/he was not married to abuser and they haven't a common child), and could not be a victim of that crime, even if the perpetrator abused her/him immediately before the murder. However, this form of aggravated murder is supposed to enhance the protection of women and other family members from (lethal) domestic violence. Let's conclude: that incrimination "does not work" properly; it has no application in practice, and judging by the data on domestic violence and stability of the rate of femicide - something else is crucial. So, incriminations as declarations promising severe punishment obviously have no effect. The same outcome is related to special circumstance that should be considered as an aggravated circumstance by courts in determining a punishment for a criminal offense committed in hatred[28] (it would be base motive included in the context of aggravated murder under Article 114, paragraph 1, item 5 of the CC) – there are no cases in court practice, although threats, street violence, intimidation, attacks and inappropriate comments regarding LGBTI individuals are still a big part of everyday life in Serbia (Mršević, 2017: 202).

When it comes to mercy killing - the entire time of its existence in the Criminal Code was marked by only one criminal report (in 2018) (RZS, 2019: 14-15). Introduction of this incrimination could be considered a hypocritical attempt to make a compensation for the absence of the euthanasia (as legal procedure). Thus, the legislator shows understanding and mercy for those who kill somebody out of mercy (under certain conditions), but also the respect for human life as the greatest value (although it lost its value for a dying person) (Jovanović, 2020: 542-543).

On a similar line (of the hypocrisy) is the incrimination of infanticide, which privileges a mother who in a specific condition caused by childbirth, during or after childbirth, deprives her newborn of life, due to such condition. The medical professionals don't consider such state a cause of infanticide. They point out that this element of the incrimination is just a legal construction without medical explanation (Marić, Lukić, 2002: 274-276). The motivation of a mother is usually clearly identifiable, and the issues of real, medical disorders should be solved by applying other criminal law provisions. So, either the incrimination should be regulated in a different, more honest manner (Kolarić, 2008: 304) or it should be omitted, because judging by some court cases in which the duration of childbirth disorder is widely interpreted, up to a month (Mrvić-Petrović, 2011:

[28] Article 54a of the CC: "If a criminal offense is committed by hatred due to race or religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, this circumstance will be judged by the court as an aggravating circumstance, unless it is prescribed as a feature of a criminal offense."

46) it is obvious that the incrimination is a poor legal solution. It would be worth considering amendments to the Act on the Procedure of Abortion in Health Care Institution[29] and allowing abortion after 10 weeks for the non-medical reasons (as they are predominant in cases of infanticide), which might have preventive effects (Jovanović, Simeunović-Patić, 2007: 156-157).

When it comes to other forms of (aggravated) murder that occur less frequently in court practice - the question is whether their existence on the list of aggravated murders is justified or their number could be reduced (having in mind that the list of aggravated murders has been expanding since 2005, and only the "blood revenge" as a base motive was omitted). Research from the period 1985-1993 (conducted in Belgrade) showed that the dominant form of criminal homicide is so-called ordinary murder (Article 113 of the CC), while on the top of the list of aggravated murders are murder committed in a cruel or insidious manner and murder out of base motives (just one murder was committed to commit or conceal another crime) (Simeunović-Patić, 2003: 70). The legislator should avoid tendencies of prescribing new criminal offenses (in general) in order to stop moving towards a casuistic normative approach in the field of criminal law (not only when it comes to the criminal offenses of homicide, it is a general trend) and confusion in practice, without beneficial effects (except for those related to collecting political points and the illusion of performing serious action against crime). Serbia, along with Russia and Ukraine, has the highest number of aggravated murders (Jovašević, 2017).

Prescribing punishment for preparing aggravated murder should not be left without criticism. This intervention also emphasizes the importance of life and its protection in the phase of preparation of the criminal offense (as in the case of the protection of the constitutional order and security of the RS), but it unnecessarily burdens the already complicated Article 114 of the CC. The same effects can be achieved by existing incriminations of different preparatory actions. If there had been a need to envisage more severe punishments, it also could be done within existing legal solutions.

5. Concluding Remarks

Frequent changes of criminal legislation, tightening of repression triggered by individual cases, without good thinking and respect of the lessons learned through history (that severe punishment is not an effective remedy and that criminal law should be *ultima ratio*), without respect of the criminal law principles and the reasonable needs of judicial

[29] Official Gazettte RS, No. 16/95, 101/2005.

practice, are clear indicators of weaknesses of the legal system and the creators of legal solutions (that are drafted and adopted hastily, often without public debate, and with the primary goal - meeting populist demands). The same happens to adoption of EU recommendations and requirements – adoption is superficial, without reflection, harmonization, even translations of the adopted solutions are problematic, and numerous technical omissions are present (such is the case, for example, with descriptions of criminal offenses envisaged in the Istanbul Convention) (Jovanović, 2017: 230-236).

The number of murders cannot be reduced by insisting on repressive responses, and as already has been mentioned – regarding available statistical and research data, Serbia does not have many problems with this form of crime (except those resulting from poor legal solutions and their interpretations) and the proponents of the amendments have never offered convincing explanations for them. The latest UNODC study clearly points to the importance of a governance model centred on the rule of law, control of corruption and organized crime, and investment in socioeconomic development, including in education, as critical in bringing down the rate of violent crime. Firearms and drugs and alcohol are further facilitators of homicide that need to be addressed, as well as dispute-resolution mechanisms that discourage recourse to violence, and reassure citizens that individual rights will be protected (UNODC, 2019: 31).

Undoubtedly, manipulation with the fear of crime and bloodthirstiness of people who believe that severe punishment is the ultimate solution proved to be an effective technique of governing. Thus, criminal legislation has been (mis)used to send populist/political messages and empty proclamations instead of representing a solid system of clear and applicable norms that is used as the last resort in protection against crime and does not change on a monthly or annual basis. Current "hammurabization" of criminal law is just an indicator of weakness, inability and/or unwillingness to invest more efforts in preventive activities, as well as in harmonious, sustainable and effective legislative reform.

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