

LEGAL CERTAINTY AND TIGHTENING OF PENAL POLICY IN THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA

Abstract: The Criminal Code of the Republic of Serbia has been amended several times in the last few years. These are significant amendments that change the recognizability of criminal law and raise other issues related to legal certainty and the guarantee function of criminal law. The aforementioned amendments were mainly of a retributive nature. As well, new amendments to the Criminal Code are currently being announced, which are also of a retributive nature. Considering that criminal law is based on the principle of legality and represents the “ultima ratio” instrumentality, short-term, sudden and significant amendments to the Criminal Code raise the question of their legitimacy, as well as the issue of violating legal certainty. The above issues are the subject of research in this paper, and significance of the research is in understanding the law and the concept in which the criminal law of the Republic of Serbia operates. The methods applied in the paper are the normative method and documentary analysis.

Keywords: legal certainty, amendments to the Criminal Code, penal policy, life imprisonment, recidivism.

1. INTRODUCTION

The Criminal Code of the Republic of Serbia¹ has been amended 6 times in the last 12 years. The changes were mostly of a retributive nature, especially during 2019. New criminal offenses were prescribed, as well as different conditions for the application of certain criminal institutes such as conditional release and

* Attorney, mirsen.alibasic@hotmail.com.

1 Criminal Code - CC, *Official Gazette of the Republic of Serbia*, no. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024.

conditional sentence, the penalty ranges for certain criminal offenses were increased, etc. Also, new amendments to the Criminal Code are announced, which are also of a retributive nature. We point out that these are not minor legal changes, but changes that exchange the recognizability of criminal law, which raises questions of legal certainty in criminal law and the question of the legitimacy and functionality of changes to the Criminal Code. The above issues are the subject of research in this paper, and the importance of the research lies in understanding the direction and concept in which the criminal law of the Republic of Serbia is moving. At the same time, we point out that legal certainty is a constitutional category that exists in various branches of law and in criminal law legal certainty is specifically treated in accordance with the principle of legality *nullum crimen nulla poena sine lege*,² considering the principles of application and validity of criminal law, as well as its *ultima ratio* character or function. Therefore, this paper will present the most important changes in criminal law that occurred during 2019 and 2024, as well as proposals for future changes, along with a review of individual social events, considering the role and importance of legal certainty in criminal law.

2. LEGAL CERTAINTY IN CRIMINAL LAW

The rule of law and legal certainty represent universal values that can be achieved in the conditions of a democratic culture and the applied concept of rational natural law. Certainty represents a special social and legal value, so legal certainty is actually the progenitor of law. As an element of justice and an attribute of a rule of law, legal certainty requires that the principle of legitimacy and legality must be established in such a way that deviation from this principle must not endanger the area of social tolerance.³

In the context of the importance of legal certainty in criminal law, the Constitution of the Republic of Serbia in Article 34 stipulates the right to legal certainty.⁴ Namely, legal certainty in criminal law is determined primarily through

2 The principle of legality also includes *Nullum crimen, nulla poena sine lege scripta, praevia, certa et stricta* – Г. Илић, „Судско тумачење и правна сигурност у кривичном праву“, *Култура полица*, 32/2017, 388.

3 K. Balnožan, „Dužnost poznanja prava, pravna svest o pravu i pravna sigurnost“, *Zbornik radova Kopaoničke škole prirodnog prava – Slobodan Perović* (ur. J. Perović–Vujačić), Tom III, Beograd, 2021, 482.

4 No one may be found guilty of an act that, before it was committed, was not provided for as punishable by law or other regulation based on law, nor may he be sentenced to a penalty that was not provided for that act. Penalties are determined according to the regulation that was in force at the time the act was committed, except when a later regulation is more favorable to the perpetrator. Criminal acts and criminal sanctions are determined by law. Everyone is presumed innocent of a criminal act until his guilt is established by a final court decision. No one may be prosecuted or punished for a criminal offense for which he or she has been acquitted or convicted by a final judgment, or for which the charge has been finally dismissed or the proceedings have

the principle of legality - *Nullum crimen nullae poena sine lege*,⁵ which is also prescribed in the first article of the Criminal Code of Republic of Serbia and which refers to the prohibition of retroactive effect of laws in the sphere of criminal law in relation to the punishable offense and in relation to the punishment, which is an essential element of the rule of law.⁶ Next, legal certainty in criminal law is achieved by guaranteeing the presumption of innocence.⁷ The European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone accused of a criminal offence shall be presumed innocent until proven guilty according to law, which is similarly stipulated in other important international documents.⁸ Finally, legal certainty in criminal law refers to the application of the principle of *Ne bis in idem*, which is of a universal nature provided in many national criminal procedure legislation, regardless of which legal system they belong to, and in international legal acts that regulating freedom and rights of man and citizen in general.⁹

been finally suspended, nor may a court decision be changed to the detriment of the defendant in proceedings under an extraordinary legal remedy. The same prohibitions apply to proceedings for another criminal offense. Exceptionally, the repetition of the proceedings is permitted in accordance with criminal regulations, if evidence of new facts is discovered which, if known at the time of the trial, could have significantly influenced its outcome, or if a significant violation occurred in the previous proceedings that could have influenced its outcome.

- 5 The factors that lead to the decline in the importance of the principle of legality in criminal law can be classified into internal and external. The main internal cause that contributes to the decline in the importance of this principle is the quality of the law, i.e. the increasing vagueness and imprecision of the legal norm, the increasing number of sources of criminal law that are characterized by a secondary and supra-legal character, as well as the too frequent incrimination that paves the way for the application of criminal law norms contrary to the requirements of necessity and proportionality. When it comes to the action of the aforementioned external factors within the national legal system, the doctrine points to the frequent adoption of "blanket" criminal laws, which results in a factual and temporal separation of the disposition and sanction contained in the criminal norm, and in addition, frees up space for the influence of the executive branch in the area of prescribing criminal offenses and sanctions: Г. Илић, *op. cit.*, 389.
- 6 The most problematic part of this principle is that the norm can contain indefinite legal concepts and standards, which is unthinkable for criminal law: A. Jakšić, *Komentar Evropske konvencije o ljudskim pravima*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2006, 237.
- 7 Article 3 of the Law on Criminal Procedure: Everyone is presumed innocent until proven guilty of a criminal offense by a final court decision. State and other bodies and organizations, media, associations and public figures are obliged to comply with the rules referred to in paragraph 1 of this Article and not to violate the rights of the defendant with their public statements about the defendant, the criminal offense and the proceedings.
- 8 В. Бајовић, „Претпоставка невиноти и слобода штампе“, *Анали Правној факултету у Београду*, 1/2008, 194–195.
- 9 S. Dokić, „Načelo *Ne bis in idem* i pravna sigurnost građana“, *Pravna riječ*, 69\24, 992. This principle also implies the need to clearly and legally delimit criminal offenses, such

In addition to the principle of legality, we can speak about the *ultima ratio* function of criminal law in the context of legal certainty, given that criminal law represents the last mechanism in regulating social obligations.¹⁰ The application of criminal law comes into consideration only if it is not possible to achieve the necessary results or solve certain problems through other institutions and regulations. In this regard, a certain amount of time is necessary for amending criminal law so that experts, institutions and other interested parties can give their opinions on the scope and method of amendment. Accordingly, criminal law completes its legitimacy. *Vice versa*, if we were to attempt to solve certain problems by primarily applying or amending criminal law, the criminal law postulates of legal certainty would be violated, criminal law would not have the character of *ultima ratio*, and its legitimacy would be questionable.

3. AMENDMENTS TO THE CRIMINAL CODE DURING 2019

On 01.12.2019. Criminal Code of the Republic of Serbia has been amended. On this occasion, several legal changes were made. In this paper, we will list the most important changes:¹¹

- A new sentence of life imprisonment was prescribed for the most serious crimes and the most serious forms of crimes, replacing the previously prescribed range of prison sentences of 30 to 40 years.
- A special provision has been prescribed which stipulates that the court cannot conditionally release a person convicted of certain criminal offenses.¹²
- “Multiple recidivism” has been prescribed which means that for a criminal offense committed with intent, for which a prison sentence is prescribed, the court will impose a sentence above half of the prescribed sentence range, under the following conditions: 1) if the perpetrator has previously been convicted twice for criminal offenses committed with intent to imprisonment for at least one year; 2) if five years have not passed from the date of the perpetrator’s release from serving the sentence until the performing of a new criminal offense.

as the delimitation of criminal offenses with a large number of misdemeanors: M. Škulić, „*Načelo ne bis in idem* u kaznenom zakonodavstvu Republike Srbije“, *Načelo Ne bis in idem i pravna sigurnost građana* (ur. S. Bejatović S., N. Novaković), Beograd, 2022, 83.

- 10 This is about the subsidiarity of criminal law as the last means in protecting certain values, which ensures the legitimacy of criminal law repression: Z. Stojanović, „Kazneni rasponi i represivnost Krivičnog zakona“, *Crimen*, 1/2020, 24.
- 11 Amendments to the Criminal Code of 2019 at <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2019/1627-19.pdf>, 18. February 2025.
- 12 These are the following criminal offenses: Aggravated murder (Article 114, paragraph 1, item 9), Rape (Article 178, paragraph 4), Sexual intercourse with a helpless person (179, paragraph 3), Sexual intercourse with a child (Article 180, paragraph 3) and Sexual intercourse by abuse of position (Article 181, paragraph 5 of the Criminal Code).

- The conditions for imposing a suspended sentence have been changed. Namely, two situations have been prescribed when imposing a suspended sentence is not possible, namely 1) if it is a criminal offense for which a prison sentence of 8 years or a more severe punishment can be imposed; and that a suspended sentence cannot be imposed if more than five years have not passed since the finality of the conviction by which the perpetrator was sentenced to prison or a suspended sentence for an intentional criminal offense.
- New criminal offenses have been prescribed, as well as new forms of existing criminal offenses: Preparation of aggravated murder (114 paragraph 2 of the Criminal Code), Unauthorized production and distribution of narcotic drugs (Article 246 paragraph 4), Enabling the use of narcotic drugs (Article 247 paragraph 2 of the Criminal Code), Endangering the safety of public transport (Art. 291, paragraphs 3 and 4 of the Criminal Code), Assault on a lawyer (Art. 336v of the Criminal Code), as well as certain changes to the criminal offenses of terrorism.
- A higher or stricter range of punishment is prescribed for certain criminal offenses, namely for the following criminal offenses: Aggravated murder (Art. 114 of the Criminal Code), Abuse and torture (Art. 137 of the Criminal Code), Unauthorized production and distribution of narcotic drugs (Art. 246 of the Criminal Code), Killing and abuse of animals (Art. 269 of the Criminal Code), Obstructing an official in the performance of an official act (Art. 322 of the Criminal Code), Assault on an official in the performance of official duty (Art. 323 of the Criminal Code), Violent behavior at a sports event or public gathering (Art. 344a of the Criminal Code).

The legal regulation of life imprisonment is considered the most prominent change in the Criminal Code. Theorists and experts have concluded that life imprisonment in 2019 was on the wave of penal populism and that without any serious discussion it quickly found its way into the Criminal Code. The fact is that life imprisonment exists in the criminal legislation of most European countries, but it should be borne in mind that it was once introduced in those countries as a replacement for the abolished death penalty. It seems that the legislator's motive was not to replace the existing solution with something that would be better, but with something that is stricter.¹³ A significant number of legal theorists are against its prescription, pointing out a number of negative reasons, such as its retribution, immorality, inhumanity, the impossibility of exercising the right to rehabilitation of prisoners, and especially inefficiency, given that those sentenced to life imprisonment are considered expelled from society by the imposition of that sentence, i.e. they lose any interest in rehabilitation.¹⁴

13 3. Стојановић, *Кривично право оштин део*, Досије студио, Београд, 2022, 306–307.

14 Lj. Mitrović *et al.*, „Kazna doživotnog zatvora – stanja i očekivanja u Republici Srpskoj“, *Pravna Riječ*, 67/2023, 664.

Also, the changes to the Criminal Code include the prescription of multiple recidivism, which plays a role in the process of tightening the penal policy. It seems that no other institute that has been introduced into our criminal law system in recent years has created more controversy than the institute of multiple recidivism. With its introduction into our legal system, in some cases, criminal sanctions are determined much more strictly than before the existence of this concept of multiple recidivism.¹⁵ The previous regulation of restitution and its forms in the Criminal Code of Serbia was certainly on the line of tightening criminal law enforcement. Multiple recidivism is viewed with considerable skepticism in domestic literature, because experience has shown that a one-sided approach, which is reduced exclusively to more severe punishment of the perpetrator for a new offense due to the existence of a previous (multiple) conviction, does not have satisfactory results.¹⁶ We believe that, although it is relatively early to talk about how the institute of multiple recidivism will affect the rate of crime and recidivism, the issue of amending criminal law provisions on penalties should have been approached much more studiously.¹⁷

In 2019, not only the changes to the Criminal Code were *ad hoc*, but the proposal of the commission for the drafting amendments of the new criminal code was corrected by amendments in such a way that the right to parole was excluded for those sentenced to life imprisonment for aggravated murder and the most serious crimes of rape, abuse of a vulnerable person, abuse of a child and abuse of position.¹⁸ Namely, parole, as a legal institution, traces its roots back to the middle of the 19th century. Its application is very important for the successful resocialization of the convicted person. Banning conditional release for certain criminal offenses will certainly not reduce the crime rate, because the etiology of crime is complex, and it will also not be reduced by tightening the prescribed penalties, which is based on doctrinal positions and court practice itself.¹⁹ The question arises whether banning conditional release for the specified criminal offenses, from the aspect of human rights, leads to an unequal position of citizens before the law. According to the position of the European Court of Human Rights, it is incompatible with human dignity to deprive someone of their liberty without attempting to rehabilitate them, which would provide a

15 М. Воштинић, „Вишеструки поврат у позитивном кривичном законодавству“, *Гласник љрава*, 2/22, 34.

16 Е. Ћоровић, „Povrat u Krivičnom zakoniku Srbije: kritički osvrt na njegovo normativno uređenje“, *Revija za kriminologiju i krivično pravo*, 1-2/2020, 25.

17 М. Мрвић, Л. Хубић-Нурковић, „Вишеструки поврат у законодавству Републике Србије са упоредним приказом института поврата у земљама Европе“, *Огнос међународној кривичној и националној кривичној љрава*, Том 2 (ур. М. Шкулић, Р. Етински, И. Миљш, А. Шкундрић), Удружење за међународно кривично право и Универзитет у Београду – Правни факултет, Београд, 2024, 257.

18 N. Mrvić-Petrović, „Kako učiniti human(ij)im doživotni zatvor“, *Strani pravni život*, 3/2022, 403–404.

19 S. Đuričić, „Uсловni otpust. Krivičnopravni i krivičnoprocesni aspekti“, *Glasnik advokatske komore Vojvodine*, 1/21, 242–242.

chance for release. In addition, it is emphasized that all persons in prison have the right, upon entering into execution, to be informed of what they need to do to be considered for conditional release (parole), under what conditions and when the sentence will be reviewed. International standards hold the view that no convicted person, including those sentenced to life imprisonment, should be denied the possibility of conditional release.²⁰

Also, according to the amendments to the Criminal Code from 2019, a conditional sentence cannot be imposed if more than five years have passed since the conviction by which the perpetrator was sentenced to imprisonment or a suspended sentence for an intentional criminal offense. Also, a conditional sentence cannot be imposed for criminal offenses for which a prison sentence of eight years or a more severe penalty can be imposed. This amendment will, indeed, affect a large number of perpetrators of criminal offenses. This solution by legislators will lead to an increase in the number of convicts in penal institutions.²¹ Therefore, it is realistic to expect that in the future the number of suspended sentences will decrease, and the number of prison sentences in the overall structure of imposed criminal sanctions will increase.²²

The theory says that the rise of penal populism begins to demonize criminals as dangerous and incorrigible outsiders and as such gives new legitimacy to a series of symbolic and draconian penal practices.²³ “Penal populism” is a multifaceted phenomenon that, true, it is not immanent only to our law, but with which we should be careful considering that the influences of politics, the public, and the non-governmental sector are intertwined in it, and that the effects to which this approach leads do not indicate a very clear connection “greater punishment-less crime”. The legislator remained consistent with his repressive stance, but this time he reached a higher level by introducing a larger number of mandatory conditions into the general provisions on criminal institutes and criminal sanctions.²⁴ By observing the amendments to the Criminal Code of the Republic of Serbia since 2019, it can be concluded that the legislator has not complied with almost any standard insisted on by the European Court of Human Rights. The main impression is that such important amendments were approached with insufficient attention and seriousness, as well as without prior penological analyses.²⁵

20 Г. Јовановић, В. Петровић, „Условни отпуст, традиција и модификације“, *Правна традиција и интегративни процеси* (ур. Д. Челић), Косовска Митровица, 2020, 133.

21 И. Милић, „Новине у општем делу Кривичног законика“, *Зборник радова Правног факултета у Новом Саду* (ур. В. Марјански), 1/2020, 374–375.

22 V. Delibašić, T. Kostić, „Pojedina sporna pitanja u vezi sa uslovnom osudom“, *Crimen*, 3/2020, 322.

23 R. Savić, „Uslovni otpust posmatran kroz prizmu standarda Saveta Evrope“, *Međunarodni pravni odnosi i Pravda – zbornik radova 36. susreta Kopaoničke škole prirodnog prava – Slobodan Perović* (ur. S. J. Perović-Vujačić), Tom 4, Beograd, 2023, 85.

24 J. Banović, „Jedan osvrt na novele KZ (2019) – uslovna osuda i (višestruki) povrat“, *Kaznena reakcija u Srbiji*, X deo (ur. Đ. Ignjatović), Beograd, 2020, 341–343.

25 J. Antov, *Kazna doživotnog zatvora, master rad*, Pravni fakultet Univerziteta u Nišu, Niš, 2021, 66.

4. AMENDMENTS TO THE CRIMINAL CODE DURING 2024

On 27.11.2024. the Parliament of the Republic of Serbia adopted the Law on Amendments to the Criminal Code²⁶. On that occasion, several changes were adopted regarding the prescription of new criminal offenses and the increase of the prescribed penalty range for the criminal offense under Article 297 of the Criminal Code:

- A larger or longer penalty range was prescribed for the criminal offense
 - Serious offenses against the safety of public transport (Art. 297 of the Criminal Code), and for all four paragraphs of the aforementioned article.
- Three new criminal offenses were prescribed: Assault on an official employed in an institution in the field of education and upbringing (Art. 344b of the Criminal Code), Assault on an employee in a healthcare institution (Art. 344v of the Criminal Code), Assault on an employee in a social welfare institution (Art. 344g of the Criminal Code).

The amendments to the Criminal Code during 2024 were preceded by informing the public that the public debate on the amendments would last one month. After that, suggestions, proposals, initiatives and comments on the text of the draft on amendments and additions to the Criminal Code will be submitted to the Ministry of Justice.²⁷ In the explanation of the proposal to amend the Criminal Code, it is stated that it is necessary to amend the law in an urgent manner in order to prevent harmful consequences for people's lives and health.²⁸ In this sense, legal changes have occurred in a short period of time, without a detailed and studious public discussion, which was reported by many media and non-governmental associations. Theorists and experts did not go into detail in the scientific research about the changes to the Criminal Code during 2024, considering that a short time has passed.

The media informed the public that the amendments to the Criminal Code aim to protect the basic rights of citizens, primarily the right to life and safety. For example, the punishment for the criminal offense - Serious offenses against public traffic safety (Art. 297) has been increased due to the increased number of criminal offenses against public traffic safety, which in a large number of cases had fatal consequences.²⁹

26 Law on Amendments to the Criminal Code from available at http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/14_saziv/2718-24.pdf, 21. February 2025.

27 What do the amendments to the criminal law bring? <https://www.euronews.rs/srbija/drustvo/139383/sta-donose-izmene-krivcnog-zakonika-bolja-zastita-prosvetara-i-lekara-za-silovanje-maksimalna-kazna-dozivotna-robija/vest>, 19. mart 2025.

28 Draft law on amendments to the criminal code, http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/14_saziv/011-2718_24.pdf, 19. mart 2025.

29 Serbian parliament adopts amendments to criminal law, tougher penalties for attacks on employees, <https://www.blic.rs/vesti/drustvo/skupstina-srbije-usvojila-izmene-krivcnog-zakona-stroze-kazne-za-napade-na-zaposlene/yq2yc20>, 19. mart 2025.

Different opinions were expressed regarding the new criminal offense - Assault on an official employed in an educational institution (Art. 344b). Namely, before this criminal offense was prescribed, representatives of several educational unions in Serbia protested because of violence in schools. In about 700 schools throughout Serbia, classes were suspended, and in other schools, classes took place abbreviatedly. The reason for this was the protest of educators due to violence in schools. Not only because of the incident that occurred at the „Gimnazijada“ in Belgrade, where a teacher was injured while trying to separate students, but also because of many incidents that have occurred in the last year.³⁰ However, in theory, a more constructive position is taken that creating greater safety in schools requires greater efforts from the collective community in schools, but also from state institutions and government officials responsible for this area.³¹ For example, the opinion was expressed that by promoting prosocial forms of behavior among students (and employees), a positive attitude towards others, cooperation with others, willingness to ask for help when it is needed, selflessness in behavior, and similar important patterns of behavior.³²

Regarding the new criminal offense - Assault on a person employed in a healthcare facility (Art. 344v), the analysis of the non-governmental organization „Pokret Meri“ was noted, which states that by introducing special criminal provisions for assaulting healthcare workers, there is a risk that certain arrogant healthcare workers will gain a sense of untouchability. Instead of encouraging responsible and professional behavior, the law can encourage abuse of position, especially when health professionals are not invited to responsibility for their actions that can cause conflicts.³³ However, in addition to great responsibility, their jobs also carry increased risks for their safety. But it is precisely their great responsibility for people's lives and their health that leads to the fact that individuals sometimes have unrealistic expectations of them, perceiving them as all-powerful, and are therefore inclined to attribute failure in treatment to their negligence, ignorance, inattention, etc., which can sometimes lead to attacks on them and endangering their lives and physical integrity. On the other hand, the vast majority of people have extremely high respect and appreciation for health workers and the work they perform, so any possible attack on a health worker causes very negative reactions and upsets public opinion.³⁴

30 The Belgrade and Šabac bar associations have suspended work due to amendments to the criminal code, <https://vreme.com/vesti/advokatske-komore-beograda-i-sapca-obustavile-rad-zbog-izmene-krivcnog-zakonika/>, 19. mart 2025.

31 P. Crnoglavac, „Vršnjačko nasilje u osnovnoj školi“, *Glasnik prava*, 2/2020, 116.

32 V. Tadić, *Učeničko ponašanje i bezbednost u školi*, Institut za kriminološka i sociološka istraživanja, Beograd, 2024, 72.

33 The dangers of amending the criminal code, <https://pokretmeri.org.rs/home/2024/10/03/opasnosti-izmene-krivcnog-zakonika-i-clana-344v>, 19. mart 2025.

34 Ž. Đorđević, „Ubistvo zdravstvenog radnika kao oblik teškog ubistva“, *Sudski postupak – pravda i pravičnost: međunarodna naučna konferencija: zbornik radova 35. susreta*

It is inevitable that the Criminal Code was amended in 2024 without previous long-term analyses, studies and public discussions, which can be interpreted as undermining legal certainty in criminal law, considering that other possible non-criminal measures that could achieve the purpose and goal of changes to the Criminal Code were not taken into account. On this occasion, lawyers across Serbia went on strike for several days because they were dissatisfied with the way the Criminal Code was amended, where the Serbian Bar Association was not consulted on the aforementioned changes.³⁵

5. FUTURE ANNOUNCED AMENDMENTS TO THE CRIMINAL CODE

Following the previously mentioned amendments to the Criminal Code, new amendments are being announced that are also aimed at toughening penalties and prescribing new criminal offenses. In this paper, we will present the most important proposals for the announced amendments that are available in the Draft of the Ministry of Justice on Amendments and Supplements to the Criminal Code published on 25.09.2024.³⁶

- It is proposed that those convicted of the criminal offenses of rape (Article 178), sexual intercourse with a helpless person (Article 179), sexual intercourse with a child (Article 180) cannot be conditionally released, regardless of which paragraph of the article is in question.
- It is proposed as a condition for pronouncing a conditional sentence that it is not a criminal offense for which a minimum prison sentence of two years is prescribed.
- It is proposed to increase the prescribed penalty range for criminal offenses - murder (Article 113), then for criminal offenses against sexual freedom, Change of family status (Article 192 paragraph 2), Domestic violence (Article 194) and Human trafficking (Article 388).
- A change to the criminal offense of Robbery (Art. 205), Robbery (Art. 206), Abuse in connection with public procurement (Art. 228), Disclosure of state secrets (Art. 316), Unauthorized production, possession, carrying and trafficking in weapons and explosives (Art. 348) has been proposed.
- A new criminal offense has been proposed, “Publication of materials advising the commission of a criminal offense” - Article 343a, “Approval, denial or minimization of a criminal offense” - Article 346a, “Illegal production

Kopaoničke škole prirodnog prava - Slobodan Perović (ur. S. J. Perović-Vujačić), Tom I, Beograd, 2022, 48.

35 The Belgrade and Šabac bar associations have suspended work due to amendments to the criminal code, <https://vreme.com/vesti/advokatske-komore-beograda-i-sapca-obustavile-rad-zbog-izmene-krivcnog-zakonika/>, 19. mart 2025.

36 Draft law on amendments to the criminal code - Text of the regulation, <https://www.paragraf.rs/dnevne-vesti/270924/270924-vest16.html>, 22. February 2025.

- of firearms, ammunition and explosives” - Article 348a, Illegal trafficking and smuggling of firearms, ammunition and explosives - Article 348b, Unauthorized testing, branding and marking of weapons, devices or ammunition - Article 348v, Forgery of trademarks or marks for testing, branding and marking weapons, devices and ammunition - Article 348g,
- It is proposed to delete the minor form of the criminal offense of Female Genital Mutilation (Article 121a, paragraph 2), Extortion of testimony (Article 136), as well as to delete the words “not intended for him” from the description of the criminal offense of Unauthorized wiretapping and recording, Obstructing an official in the performance of an official act (Article 322, paragraph 5), Disclosure of official secrets (Article 369) and Disclosure of military secrets (Article 415).

Considering previous amendments to the Criminal Code, as well as the amendments that are being announced, it follows that in Serbia, criminal law repression has been increasing through frequent tightening of penal policy by the legislator.³⁷ The reason for the announced amendments is the increase in crime and the occurrence of certain tragic events in Serbia during 2023, which is why the Government has adopted a series of measures to systematically resolve the problem and increase citizen safety, as well as a draft proposal on amendments to the Criminal Code, which foresees a series of new criminal offenses, tougher penalties for certain criminal offenses, and stricter conditions for the application of suspended sentences and conditional release.³⁸ After the mass murder at the “Vladislav Ribnikar” elementary school in Belgrade, there was much talk about the effectiveness of measures to prevent and prosecute those responsible for serious crimes, and a year later a public debate began on amendments to the Criminal Code and the Criminal Procedure Code.³⁹ In addition to the frequent changes to the aforementioned laws, which, according to the profession, “introduce legal uncertainty”, lawyers also have numerous other objections. The Working Group of the National Convention on the EU for Chapter 23 (NKEU) objected to the fact that experts and the general public were given the opportunity to consider the draft amendments to the law in a short period of time and called on the Ministry of Justice to extend the public debate.⁴⁰ Partial amendments and supplements create a real danger that the existing and new regulations do not form a harmonized system, which creates problems in practical application. Partial and rapid changes in the regulations in the field of punishment, regardless of the expressed needs, are not an adequate way to adapt them to the newly emerging

37 T. Kostić, „У сусрет најављеном заоштравању казни“, *Бранич*, 4/2023, 57.

38 Draft law on amendments to the criminal code – Text of the regulation, <https://www.paragraf.rs/dnevne-vesti/270924/270924-vest16.html>, 22. februar 2025.

39 Amendments to the criminal code, <https://www.rts.rs/vesti/drustvo/5559485/izmene-krivichnog-zakonika-novih.html>, 22. februar 2025.

40 What are all the drawbacks of the proposed amendments to the criminal code?, <https://n1info.rs/vesti/koje-su-sve-manje-predlozenih-izmena-krivichnog-zakonika/>, 22. februar 2025.

situation expressed by the increase in the number of serious crimes and the increased danger of their perpetrators.⁴¹ The question arises whether it is justified and necessary to prescribe stricter penalties in Serbia than in other European countries. Any attempt to influence judicial practice in the sense that courts impose stricter criminal sanctions should not have led to the prescription of stricter, or higher, penalty ranges.⁴²

The announcement of a new criminal offense – “Publication of material advising the commission of a criminal offense” - Article 343a, caused the most controversy among the public. The Minister of Justice specified that it be referred to cases of pedophilia, murder, drug trafficking, weapons, as well as terrorism and counterfeiting of money as a criminal offenses. However, opposite opinions prevailed that the aforementioned criminal offense represents one of a series of negative changes to the Criminal Code, which some lawyers have spoken about in the media.⁴³

Also, controversy was caused by the announcement of a new criminal offense – “Approval, denial of the existence or reduction of the gravity of a criminal offense” – Article 346a of the Criminal Code. In theory, it is stated that this criminal offense would essentially represent a significant blow to democratic relations in the Republic of Serbia and to freedom of speech. The introduction of this criminal offense would be additional confirmation of the decline of democratic standards in the Republic of Serbia, this time through the prohibition of public commenting on a legally binding court decision. This prohibits the public from commenting on the way the judicial authorities work and, under threat of criminal prosecution, prohibits disagreement with the facts that were the basis for making such a decision.⁴⁴

Finally, the announced change that attracted public attention is the deletion of the words “not intended for him” from the description of the criminal offence of Unauthorised wiretapping and recording, Article 143 of the Criminal Code. Currently, this criminal offence implies that a conversation, statement or announcement must not be “intended” for the perpetrator. Based on the linguistic interpretation of the provision, domestic literature is of the opinion that participants are always authorised to record a conversation in which they participate. A similar solution is also present in the comparative criminal legislation. Even when the conversation of others is only attended, the recording would not be unauthorized if the speaker was aware of the presence of other persons listening to the conversation, since the statement in that case was clearly intended for them as its addressees. This interpretation is the ruling one in domestic judicial practice

41 S. Kosanović, „Aktuelne izmene i dopuna krivičnog zakonika“, *Branič*, 1-2/2019, 58.

42 Z. Stojanović, *op. cit.*, 30.

43 The Belgrade and Šabac bar associations have suspended work due to amendments to the criminal code, <https://vreme.com/vesti/advokatske-komore-beograda-i-sapca-obustavile-rad-zbog-izmene-krivcnog-zakonika/>, 19. mart 2025.

44 M. Miljević, „Odobranje, negiranje postojanja ili umanjeње težine krivičnog dela“, *Branič*, 4/2024, 87.

as well.⁴⁵ In view of this, deleting the words “not intended for him” from the description of the criminal act of Unauthorized wiretapping and recording would mean that anyone is prohibited from recording conversations or words intended for him, which would make the criminal law more repressive and at the same time create opportunities for various abuses of the criminal code.

6. CONCLUSION

Given the frequent changes to the Criminal Code, in order to maintain legal certainty, it is necessary to carry out detailed preparations for the drafting of the amendment to the Criminal Code. In this regard, it is necessary to organize public discussions and seminars between experts and representatives of state bodies, at which proposals and comments on the amendments will be presented, and then the planned amendments should be harmonized with the Constitution, other laws, ratified international documents and generally accepted rules of international law. The role, opinions and recommendations of non-governmental organizations and international bodies, possible deviations in the decisions of administrative and judicial bodies in the same or similar situations, as well as statistical data and measures of the Government in the areas to which the planned legal amendments relate should not be omitted. Given this, a longer period is needed for thorough and high-quality preparations for the amendment of the law, and any deviation in the preparations may lead to unpredictable consequences and legal uncertainty. Reform processes should indicate a process that lasts for a certain time and is full of deliberation, which has its own course, path and method. However, in the recent period, reform processes are frequent in various areas of law, but also within certain branches of government and generally cause resistance and over time acquire a negative connotation.⁴⁶ With regard to amendments to the Criminal Code, it is necessary to determine whether the goal and guarantee function of criminal law are being achieved through the tightening of penal policy, the prescription of new criminal offenses and stricter conditions for the application of criminal law institutes.

BIBLIOGRAPHY

- Antov J., *Kazna doživotnog zatvora*, master rad, Pravni fakultet Univerziteta u Nišu, Niš, 2021.
- Бајовић В., „Претпоставка невиноти и слобода штампе“, *Анали Правној факултету у Београду*, 1/2008.

45 I. Vuković, „Neovlašćeno prisluškivanje i snimanje kao krivično delo“, *Kaznena reakcija u Srbiji* (ur. Đ. Ignjatović), br. 11, Beograd, 2021, 142.

46 D. Kolarić, „Reformski procesi i krivično materijalno zakonodavstvo Srbije“, *Crimen*, 3/2017, 442–443.

- Balnožan K., „Dužnost poznanja prava, pravna svest o pravu i pravna sigurnost“, *Zbornik radova Kopaoničke škole prirodnog prava – Slobodan Perović* (ur. Perović-Vujačić J.), Tom III, Beograd, 2021.
- Banović J., „Jedan osvrt na novele KZ (2019) – uslovna osuda i (višestruki) povrat“, *Kaznena reakcija u Srbiji, X deo* (ur. Ignjatović Đ.), Beograd, 2020.
- Crnoglavac P., „Vršnjačko nasilje u osnovnoj školi“, *Glasnik prava*, 2/20.
- Ćorović E., „Povrat u Krivičnom zakoniku Srbije: kritički osvrt na njegovo normativno uređenje“, *Revija za kriminologiju i krivično pravo*, 1-2/20.
- Delibašić V., Kostić T., „Pojedina sporna pitanja u vezi sa uslovnom osudom“, *Crimen*, 3/2020, 2020.
- Dokić S., „Načelo *Ne bis in idem* i pravna sigurnost građana“, *Pravna riječ*, 69/24.
- Đorđević Ž., „Ubistvo zdravstvenog radnika kao oblik teškog ubistva“, *Sudski postupak – pravda i pravičnost: međunarodna naučna konferencija: zbornik radova 35. susreta Kopaoničke škole prirodnog prava – Slobodan Perović* (ur. Perović-Vujačić S. J.), Tom I, Beograd, 2022.
- Đuričić S., „Uslovni otpust. Krivičnopravni i krivičnoprocesni aspekti“, *Glasnik advokatske komore Vojvodine*, 1/21.
- Илић Г., „Судско тумачење и правна сигурност у кривичном праву“, *Култура љописа*, 32/2017.
- Jakšić A., *Komentar Evropske konvencije o ljudskim pravima*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2006.
- Јовановић Г., Петровић В., „Условни отпуст, традиција и модификације“, *Правна традиција и интелектуални процеси* (ур. Челић Д.), Косовска Митровица, 2020.
- Костић Т., „У сусрет заштравању казни“, *Бранич*, 4/2023.
- Kosanović S., „Aktuelne izmene i dopuna krivičnog zakonika“, *Branič*, 1-2/19.
- Kolarić D., „Reformski procesi i krivično materijalno zakonodavstvo Srbije“, *Crimen*, 3/2017.
- Милић Д. И., „Новине у општем делу Кривичног законика“, *Зборник радова Правној факултету у Новом Сагу*, 1/2020.
- Mitrović Lj. et al., „Kazna doživotnog zatvora – stanja i očekivanja u Republici Srpskoj“, *Pravna Riječ*, 67/2023.
- Miljević M., „Odobranje, negiranje postojanja ili umanjenje težine krivičnog dela“, *Branič*, 4/24.
- Мрвић М., Хубић-Нурковић Л., „Вишеструки поврат у законодавству Републике Србије са упоредним приказом института поврата у земљама Европе“, *Однос међународној кривичној и националној кривичној права*, Том 2 (ур. Милан Шкулић, Родољуб Етински, Ивана Миљуш, Алекса Шкундрић), Удружење за међународно кривично право и Универзитет у Београду – Правни факултет, Београд, 2024,
- Mrvic-Petrović N., „Kako učiniti human(ij)im doživotni zatvor“, *Strani pravni život*, 3/2022.
- Savić R., „Uslovni otpust posmatran kroz prizmu standarda Saveta Evrope“, *Međunarodni pravni odnosi i pravda - zbornik radova 36. susreta Kopaoničke*

- škole prirodnog prava - Slobodan Perović* (ur. Perović-Vujačić S. J.), Tom 4, Beograd, 2023.
- Стојановић З., *Кривично право ошшѣи гео*, Досије студио, Београд, 2022.
- Stojanović Z., „Kazneni rasponi i represivnost Krivičnog zakona“, *Crimen*, 1/20.
- Škulić M., „Načelo *ne bis in idem* u kaznenom zakonodavstvu Republike Srbije“, *Načelo ne bis in idem i pravna sigurnost građana* (ur. Bejatović S., Novaković N.), Beograd, 2022.
- Tadić V., *Učeničko ponašanje i bezbednost u školi*, Institut za kriminološka i sociološka istraživanja, Beograd, 2024.
- Воштинић М., „Вишеструки поврат у позитивном кривичном законодавству“, *Гласник права*, XIII, 2/22.
- Vuković I., „Neovlašćeno prisluškivanje i snimanje kao krivično delo“, *Kaznena reakcija u Srbiji, Deo 11* (ur. Ignjatović Đ.), Beograd, 2021.

OTHER SOURCES

- Amendments to the Criminal Code of 2019 at <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2019/1627-19.pdf>, 18. February 2025.
- Amendments to the criminal code, <https://www.rts.rs/vesti/drustvo/5559485/izmene-krivcnog-zakonika-novih.html>, 22. February 2025.
- Criminal Code - CC, *Official Gazette of the Republic of Serbia*, no. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024.
- Draft law on amendments to the criminal code, http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/14_saziv/011-2718_24.pdf, 19. Mart 2025.
- Draft law on amendments to the criminal code - Text of the regulation, <https://www.paragraf.rs/dnevne-vesti/270924/270924-vest16.html>, 22. February 2025.
- Law on Amendments to the Criminal Code from available at http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/14_saziv/2718-24.pdf, 21. February 2025.
- Serbian parliament adopts amendments to criminal law, tougher penalties for attacks on employees, <https://www.blic.rs/vesti/drustvo/skupstina-srbije-usvojila-izmene-krivcnog-zakona-stroze-kazne-za-napade-na-zaposlene/yq2yc20>, 19. Mart 2025.
- The dangers of amending the criminal code, <https://pokretmeri.org.rs/home/2024/10/03/opasnosti-izmene-krivcnog-zakonika-i-clana-344v/>, last accessed on 19. Mart 2025.
- The Belgrade and Šabac bar associations have suspended work due to amendments to the criminal code, <https://vreme.com/vesti/advokatske-komore-beograda-i-sapca-obustavile-rad-zbog-izmene-krivcnog-zakonika/>, 19. Mart 2025.
- What do the amendments to the criminal law bring? <https://www.euronews.rs/srbija/drustvo/139383/sta-donose-izmene-krivcnog-zakonika-bolja-zastita-prosvetara-i-lekara-za-silovanje-maksimalna-kazna-dozivotna-robija/vest>, 19. Mart 2025.

What are all the drawbacks of the proposed amendments to the criminal code?, <https://n1info.rs/vesti/koje-su-sve-mane-predlozenih-izmena-krivichnog-zakonika/>, 22. February 2025.

Will changes to the criminal law protect teachers from violence?, <https://vreme.com/vesti/da-li-ce-izmene-krivichnog-zakonika-odbraniti-nastavnike-od-nasilja/>, 19. Mart 2025.

Мирсен Алибашић*

ПРАВНА СИГУРНОСТ И ПООШТРАВАЊЕ КАЗНЕНЕ ПОЛИТИКЕ У КРИВИЧНОМ ПРАВУ РЕПУБЛИКЕ СРБИЈЕ

Резиме

Кривични законик Републике Србије је неколико пута промењен у последњих неколико година. Реч је о значајним изменама које мењају препознатљивост кривичној права и ошварају друга питања која се односе на правну сигурност и гарантну функцију кривичној права. Наведене измене су углавном биле реперибутивне природе. Такође, тренутно се најављују нове измене Кривичној законика, које су такође реперибутивне карактера. С обзиром да је кривично право засновано на принципу законитости и да представља средство „ultima ratio“, краткорочне, изненадне и значајне измене Кривичној законика представљају питање њихове легитимности, као и евентуалној нарушавања правне сигурности. Наведена питања су предмет истраживања у овом раду, а значај истраживања је у разумевању концепта и правца према којем се кривично право Републике Србије креће. Методи који су примењени у раду су нормативни метод и документациона анализа.

Кључне речи: правна сигурност, измене и допуне Кривичног законика, казнена политика, доживотни затвор, рецидивизам

* Адвокат, mirsen.alibasic@hotmail.com.