

*Jelena Mijalčić**
Faculty of Law, University of Novi Sad
ORCID: 0009-0003-5050-8187

CERTAIN ASPECTS OF RECIDIVISM IN CRIMINAL LAW AND CRIMINOLOGY**

ABSTRACT: This paper delves into the analysis of certain criminal law and criminological aspects of recidivism. The author examines the factors that most frequently lead to the occurrence of recidivism, as well as the different personality types of repeat offenders. The paper highlights the most significant forms of recidivism as well as the criminal law implications of each type. Based on this analysis, the author proposes ideas on how recidivism could be minimized within a social system.

Keywords: recidivism, offender personality, criminal act, aggravating circumstances, sentencing

* e-mail: jelena.ranitovic995@gmail.com, PhD student at the Faculty of Law.

** The paper was received on September 6, 2023, and it was accepted for publication on October 9, 2023.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

INTRODUCTION

It is widely acknowledged that the fundamental responsibility of any state is to protect the core values of its society. Criminal law plays a crucial role in this by enforcing laws that vigorously defend these values. Any unlawful behavior – whether it involves a minor offense, an economic violation, or a criminal act – poses some level of threat to society. However, the danger is the greatest when it comes to committing criminal acts, which are considered the gravest of these offenses. Every criminal act demands a legal response from the state authorities, but what calls for special attention as well as specific legal measures is repeated unlawful behavior, e.g., when someone who had already offended in the past commits another crime. It is not uncommon to come across chilling headlines, such as “Serial killer takes another life” or “Convicted rapist strikes again” in the media. When confronted with such news, it’s impossible not to wonder: what drives these individuals to return to criminal activity? What compels them to cross the line into criminal behavior once again?

Given that recidivism, like crime itself, cannot be completely eradicated from society, the question of how and through what legal measures this phenomenon can be minimized as much as possible arises. Examining where the “flaws” lie within the state system and to what extent the system itself might be responsible for repeat offenses by the same individuals is equally important. Recidivism is far from a recent issue. In fact, as early as Plato’s time, in his analysis of the causes of criminal behavior and the nature of offenders, he distinguished between those who could be reformed or rehabilitated and those who could not. The latter group can certainly be linked to recidivism – offenders who persist in committing crimes, regardless of the legal measures and sanctions that have been imposed on them in the past.¹

The first section of this paper will explore the concept and various types of recidivism, recognizing that it can be understood from various perspectives and that numerous theoretical classifications of this term exist. Next, the paper will examine the underlying factors driving offenders to commit crimes repeatedly, whether once or multiple times. Different typologies of repeat offenders will also be outlined, along with the key characteristics of each group. Lastly, emphasis will be placed on the legal significance of recidivism, given its substantial impact and the wide range of consequences it creates within the criminal justice system.

¹ Kostić, M. (2010). Prevenција kriminaliteta – pojam i istorijski razvoj. *Annals of the Faculty of Law in Niš*, 55, 92.

THE CONCEPT AND DIFFERENT TYPES OF RECIDIVISM

The term “recidivism” originates from the Latin phrase *iterum cadere*, meaning “to fall again.”² In its broadest sense, recidivism can be defined as repeated offending by an individual who had already been convicted of a crime in the past.³ This concept can be examined from several angles, including criminal law, criminology, and penology.

Criminal law, criminological and penological perspectives on recidivism

From a legal standpoint, recidivism can be described as repeated offending by an individual who had already been convicted of a crime in the past. This concept relies on the existence of one or more prior final court judgments made before the new offense took place.⁴ The legal implications of recidivism are complex and multifaceted, and they will be addressed in more detail in a dedicated section later in the paper. From a criminological perspective, recidivism refers to the repeated offending by the same individual, regardless of whether they have been previously convicted of a crime or not.⁵ The criminological significance of recidivism lies in the indication of the offender’s dangerous nature and their tendency to repeatedly commit crimes. Essentially, it highlights the individual’s predisposition toward a pattern of criminal behavior. From a penological perspective, recidivism refers to an individual’s return to a penitentiary institution to serve a new sentence of imprisonment.⁶ This underscores a key penological issue: the failure of the rehabilitation process. Essentially, it suggests that the previous efforts did not successfully prevent the offender from returning to criminal activity after serving their initial prison sentence. It would be unrealistic to believe that imprisonment will have the same effect on every convicted individual or that society will be completely

² Miladinović, V. (1984). Pojam i priroda povrata. *Annals of the Faculty of Law in Niš*, 24, 107.

³ Ćorović, E. (2015). *Sistem krivičnih sankcija Republike Srbije*. Novi Pazar: Emir Ćorović and Sven, Niš, 149.

⁴ Nikolić-Ristanović, V., Konstantinović-Vilić, S. (2018). *Kriminologija*. Belgrade: “Prometej” Publishing Company, 227.

⁵ Ćorović, E. (2015). *Op. cit.*, 149.

⁶ Jovašević, D. (1998). Krivičnopravni značaj povrata. *Glasnik of the Bar Association of Vojvodina*, 70, (7–8), 292.

protected from repeat offenses once a convicted individual is released. However, focusing on efforts to minimize recidivism remains crucial.⁷

Types of recidivism

When it comes to different types of recidivism, various classifications are recognized in theory. One of the most important distinctions is between simple and multiple recidivism. As the terms suggest, simple recidivism refers to situations where “only” one prior conviction existed before the individual committed another crime for which they have yet to be tried. On the other hand, multiple recidivism involves two or more prior convictions before the new offense took place. Multiple recidivism clearly suggests a greater level of threat to society, indicating a more dangerous offender compared to an individual with a simple recidivism history. The law specifically outlines the number of prior convictions necessary for someone to be considered or classified as a multiple recidivist.⁸

Recidivism can also be classified into general and special recidivism. General recidivism refers to an offender committing another crime but one belonging to a different type compared to the original offense. In other words, the new crime is not of the same nature as the prior one.⁹ Special recidivism refers to situations where the offender commits a new crime that is the same, similar, or closely related to the previous offense(s) for which they were convicted in the past.¹⁰ Based on the previous discussion, it can be concluded that special recidivism represents a more “dangerous” form of recidivism.

⁷ Jakovljević, D. (1991). Rehabilitacija osuđenika. *Annals of the Faculty of Law in Belgrade*, 1–3, 154.

⁸ Ćorović, E. (2015). *Sistem krivičnih sankcija Republike Srbije*. Novi Pazar: Emir Ćorović and Sven, Niš, 149.

⁹ An example of this would be an offender who was previously convicted of a property crime, such as theft (Art. 203 of the Criminal Code), but the new offense they committed falls into a different category, for example, a crime against life and physical integrity, such as grievous bodily harm (Ar. 121 of the Criminal Code).

¹⁰ Ćorović, E. (2015). *Op. cit.*, 150. The same crime is involved if the offender had been convicted of theft and then commits theft again. An example of a similar crime would be if the offender was previously convicted of minor bodily harm (Art. 122 of the Criminal Code) and is now being prosecuted for grievous bodily harm. From this, it can be concluded that similar crimes involve different degrees of the same type of offense. Finally, related crimes occur when the prior and new offenses belong to the same category, such as property crimes. For instance, if the offender was previously convicted of theft and fraud (Art. 208 of the Criminal Code) and then committed extortion (Art. 214 of the Criminal Code), these would be considered related offenses, as they both fall under the category of property crime.

Committing the same, similar, or related crimes suggests that the offender has become “specialized” in a particular type of criminal activity, indicating a so-called career criminal. This concept will be explored further in the upcoming sections, which will focus on analyzing the personality profile of repeat offenders. In some cases, special recidivism is considered an aggravating factor for certain crimes, and some legal systems explicitly consider it during sentencing, leading to harsher penalties for the offender.¹¹ When it comes to general recidivism, particularly when a previously convicted individual commits another crime long after the previous offense took place, this situation can be associated with situational delinquency. Situational delinquency tends to carry a lower degree of social risk (danger) compared to that of career criminals.

In this context, it is essential to distinguish between cases of recidivism, where a shorter time interval has passed between two or more crimes committed by the same offender, and cases of recidivism, where a longer period separates the offenses. Based on this distinction, it can be concluded that the shorter the time interval between crimes committed, the greater the social danger posed by the offender, indicating a stronger inclination toward repeated criminal behavior. Conversely, a longer gap between offenses may suggest that there is no significant or deep connection between the two criminal acts.¹²

Causes of recidivism and the personality of repeat offenders

A central question when examining recidivism is what pushes offenders back into criminal activity. What drives them to re-offend, and how can we address these root causes in order to reduce recidivism as much as possible? To better understand why individuals return to crime, considering criminogenic factors is essential. These factors reveal how various circumstances, both subjective and objective, such as personal traits and environmental conditions, influence behavior and contribute to the likelihood of re-offending.¹³

Criminogenic factors in causes of recidivism

Among the exogenous or external factors that lead to repeat offenses, one of the most common is economic hardship. This includes not only the

¹¹ Lazarević, Lj. (2011). *Komentar Krivičnog zakonika*. Belgrade: Union University School of Law, 267.

¹² Miladinović-Stefanović, D. (2012). *Redovno odmeravanje kazne u krivičnom pravu*. Doctoral dissertation, Niš, 433.

¹³ Milić, I. (2017). *Individualizacija kazne zatvora - kriminološki, krivičnopravni i penološki aspekt*. Doctoral dissertation, Novi Sad, 50.

poor overall economic conditions within a society but also the offender's personal financial struggles. The economic situation of a society can significantly influence individual behavior.¹⁴ Family dynamics also play a crucial role in recidivism. Unfortunately, we increasingly witness cases of repeat offenses involving domestic violence (Article 194 of the Criminal Code). It is not uncommon to hear or read about victims who have suffered from domestic violence multiple times, i.e., that an individual had committed such a crime repeatedly. In this context, it's also important to consider the impact of growing up in a dysfunctional family environment, which can have serious and lasting effects, often leading individuals to engage in repeated criminal behavior later in life.¹⁵ There is no doubt that repeat offenders, whether involved in crimes against life and limb, sexual freedom, or other protected legal interests, often spend their childhood and adolescence in completely dysfunctional families where violent behavior is a daily occurrence. They internalize this behavior pattern from a young age and return to it repeatedly in the future. Moreover, alcohol is undeniably one of the most common "triggers" of criminal activity, both for first-time and repeat offenders.¹⁶ Alongside alcohol, drug use is another widespread criminogenic factor, particularly contributing to cases of recidivism.¹⁷

¹⁴ Milić, I. (2017). *Individualizacija kazne zatvora - kriminološki, krivičnopravni i penološki aspekt*. Doctoral dissertation, Novi Sad, 54. The economy of a country, whether it is wealthy or poor, impacts overall crime rates, including the likelihood of recidivism. Poverty leads to various consequences, such as high unemployment rates, rising costs of goods and services, limited access to education, and more. It is not unusual for individuals who commit property crimes, such as theft, to repeatedly engage in the same offenses as a means of securing financial resources due to their dire living conditions.

¹⁵ Myers, W., Gooch E., Reid Meloy J. (2005). The Role of Psychopathy and Sexuality in a Female Serial Killer. *Journal of Forensic Sciences*, 50, 2. Experiencing violence early in life, whether within the family or from peers (a phenomenon that is becoming increasingly common nowadays), often acts as a "trigger" for ongoing involvement in criminal activity later in life. It is widely known that many of the most notorious serial killers, who are repeat offenders, had extremely difficult childhoods filled with significant violence and abuse, particularly crimes against sexual freedom, to which they were repeatedly subjected.

¹⁶ Krstić, B. (1979). *Neke sudsko-psihijatrijske dimenzije osuđenih alkoholičara*. Available at: <http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z19/08z19.pdf>.

Chronic, long-term alcohol consumption not only leads to addiction and health problems, but also dulls a person's sense of morality and ethics. Thus, it's not surprising that many addicts, driven by alcoholism, repeatedly resort to committing crimes throughout their lives.

¹⁷ The need for drugs often drives individuals to commit various property crimes, sometimes even dozens of times, in order to secure the money to buy narcotics.

Endogenous or internal factors that contribute to recidivism can be defined as factors “tied to an individual’s subjective traits or characteristics.”¹⁸ It’s important to emphasize that subjective and objective criminogenic factors must be considered in correlation, as it is very rare for a single factor to be solely responsible for criminal behavior, whether it’s a case of a first-time or repeat offense. Certain psychological traits of the offender (the subjective criminogenic factors) are often “triggered” or exacerbated by external influences.¹⁹ Intelligence is another significant internal factor frequently linked to criminal behavior.²⁰ Numerous studies have examined this factor, leading to varied results.²¹ In this context, certain mental disorders, particularly psychopathy, must also be mentioned as key contributors to recidivism.²² Certain traits, more or less present in psychopathic personalities, help explain why these individuals repeatedly engage in criminal activity.²³ Another important aspect to consider when discussing psychopathic personalities is their lack of fear

¹⁸ Đukić, S. (2017). Imovinski delikti kao pojavni oblici kriminaliteta i ekonomsko-socijalni kriminalogeni faktori. *Scientific journal Vojno delo*, 5, 110.

¹⁹ For example, aggressiveness, as a character trait, is certainly a subjective criminogenic factor. However, it might not have been “unleashed” if not for the influence of alcohol, which is considered an external factor contributing to the commission of a crime.

²⁰ Mirić, F. (2014). *Savremena shvatanja fenomenologije i etimologije maloletničke delikvencije*. Doctoral dissertation, Niš, 264.

Certain studies show that individuals with lower intelligence quotients (IQ) are more likely to commit property crimes, such as theft, as well as crimes against sexual freedom, with rape (Article 178 of the Criminal Code) being particularly prominent. In contrast, individuals with higher IQs tend to commit more complex crimes, commonly referred to as “white-collar crimes,” which are much more difficult to detect.

²¹ Johnson, B., Becker, J. (1997). Natural Born Killers?: The Development of the Sexually Sadistic Serial Killer. *Journal of the American Academy of Psychiatry and the Law*, 3, 343. Given that a significant number of repeat offenders have committed property crimes and crimes against sexual freedom, and studies suggest that these offenses are typically carried out by individuals with lower IQs, one might assume that the majority of recidivists have low IQs. However, it is important not to generalize, as other research shows that many serial killer, who are certainly among the most socially dangerous repeat offenders, often have IQs well above average.

²² Drakić, D. (2007). *Neuračunljivost*. Novi Sad: Školska Ltd., 126. Psychopathy can be defined as “inborn abnormalities that either cause suffering for the individual or result in harm to society.”

²³ Veković, V. (2018). *Telesno i mentalno zdravlje izvršilaca krivičnih dela protiv života i tela*. Available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/9.-Ekstradicija-organiz.kriminalitet.pdf>. Individuals with psychopathic personalities exhibit extremely low tolerance for frustration, a high degree of selfishness and egocentrism, an inability to form healthy interpersonal relationships, and a lack of guilt or remorse, among other traits. If a person feels no guilt or remorse, what else is left to prevent them from repeatedly engaging in criminal behavior?

regarding the possibility of facing criminal punishment, which does not deter them from repeatedly engaging in criminal behavior.²⁴

Classification of criminal recidivists

When it comes to classifying recidivists, it is important to note that there is no single consensus on the matter, leading to multiple classification systems. One of the most frequently referenced classifications in literature divides recidivists into three categories: habitual offenders, offenders by tendency, and occupational or career criminals.²⁵ Although this classification is often cited in theory, it is now considered somewhat outdated. Nonetheless, its significance still warrants analysis. The first group of recidivists, habitual offenders, are characterized by an early involvement in criminal activities, typically in their youth, and the tendency to continue these behaviors throughout their lives.²⁶ Criminal activity gradually becomes a habit for these individuals, integrating into the fabric of their lives. When discussing habitual offenders, it is particularly important to highlight white-collar crime. This type of crime has become a widespread phenomenon across all societies.²⁷ One of its defining features is that it is often difficult to detect; the perpetrators of these crimes often hold positions or occupations that enable them to commit these crimes repeatedly without being caught. Over time, these offenders can develop an “addiction” to the financial gains derived from such activities. The distinction between the second category of recidivists – those classified as offenders by tendency – and the previously analyzed habitual recidivists is quite subtle. Offenders by tendency also exhibit a propensity for criminal activity, often developing a habitual pattern. When distinguishing between these two groups of recidivists, Professor Lazarević’s perspective is noteworthy. He argues that the criminal behavior of habitual offenders is more influenced by exogenous, e.g., external factors, while that of offenders by tendency is primarily conditioned by endogenous, e.g., internal factors.²⁸ What sets the third group of recidivists

²⁴ Hemphill, J., Hare, R. (1998). Psychopathy and recidivism: A review. *Legal and Criminological Psychology* 3, 140.

²⁵ Nikolić-Ristanović, V., Konstantinović-Vilić, S. (2018). *Kriminologija*. Belgrade: Prometej Publishing Company, 230.

²⁶ *Ibid.*, 230.

²⁷ This type of criminal activity includes offenses such as giving bribe in conducting business activity (Article 231 of the Criminal Code), accepting bribes in conducting business activity (Article 230 of the Criminal Code), abuse of trust in conducting business activity (Article 224 of the Criminal Code), and similar crimes.

²⁸ Aćimović, M. (1987). *Psihologija zločina i suđenja (sudska psihologija)*. Belgrade: Savremena administracija, 369.

in this typology – career criminals – apart is primarily their motivation for repeatedly committing crimes, which is driven by self-interest. The structure of this category of repeat offenders is quite complex. It encompasses a diverse range of individuals, including gamblers, beggars, pickpockets, fraudsters, and others who engage in “low-risk” criminal activities, extending to individuals involved in organized crime, who often resort to violence.²⁹

The evolution of crime, along with the emergence of new forms of criminality, gives rise to new theories seeking to explain the root causes of criminal behavior, whether regarding first-time or repeated offenses, the latter being addressed within the framework of recidivism. This paper will not explore all the modern-day theories related to the causes of criminal and recidivist behavior but will focus on a select few. Among these “modern” criminological theories, we can highlight the following: the life-course theory of crime and deviance, the theory of criminal career characteristics, and the theory known as the “general paradigm of criminality.”³⁰

²⁹ Bošković, M. (2015). *Kriminologija*. Novi Sad: Faculty of Law – Publishing Center, 339.

³⁰ Ignjatović, Đ. (2015). *Kriminologija*. Belgrade: Faculty of Law – Dosije studio, 92. One of the more recent criminological theories is the life-course theory of crime and deviance. According to this theory, different life phases are marked by key events or turning points, such as gaining employment, entering marriage, becoming a parent, or crossing into a criminal lifestyle. Some authors believe that two key factors have the greatest impact on recidivism: employment and marriage, particularly an individual’s attachment to their spouse. Regarding employment, if an individual holds a job or position that enables them to continue committing crimes and illegally gain financial benefits without much interference, they are more likely to keep doing so. This is especially common in white-collar crimes, where offenders find it “easier” to acquire material sources through illegal activities. On the other hand, if an individual loses their job, they may repeatedly turn to criminal activity as a way of securing the means necessary for their own and their family’s survival, which can certainly be linked to marriage. The theory of criminal career characteristics shares many similarities with the concept of career criminals. This theory is based on the idea that only offenders who commit severe crimes enter the circle of so-called “career criminals.” Additionally, for someone to be considered a “career criminal,” they must commit a certain number of offenses within a single year. Another relevant theory in this context is the “general paradigm of criminality.” Bryan Vila, a prominent criminologist, believes that a person’s traits are shaped by the interplay of various factors, including social, cognitive, and emotional influences. Together, these factors shape an individual’s personality and lead to a consistent behavioral pattern throughout life. In some cases, this combination of influences fosters criminal behavior, which a person repeatedly returns to. As a result, such offenders often develop increasing levels of selfishness, egocentrism, and a lack of empathy for others.

THE SIGNIFICANCE OF RECIDIVISM IN CRIMINAL LAW

At the outset of this paper, we highlighted the multifaceted significance of recidivism and how it can be examined from criminal law, criminological, and penological perspectives. The latter two aspects have already been addressed, so in this section, we will focus solely on the significance of recidivism from the criminal law standpoint.

Every branch of law is based on specific principles, and criminal law is no exception. One of its fundamental principles is the individualization of criminal sanctions. Even when individuals commit the same offense, they cannot be subjected to identical penalties. The individualization of punishment can be understood in both a broad and a narrow sense.³¹ When determining the severity of the punishment to be imposed on an offender, the court takes into account various factors that influence the severity of the penalty. These factors include mitigating circumstances, which may result in a reduced sentence for the offender, and aggravating circumstances, which can lead to a harsher penalty. Article 54 of Serbia's Criminal Code outlines the specific circumstances that the court considers when deciding on the appropriate sentencing.³²

Criminal law significance of recidivism in general.

Prior Life of the Offender; Articles 55 and 55a of the Criminal Code

A crucial factor relevant to this discussion is the offender's life prior to committing crime, e.g., the offender's history. While there are various debates about what this term precisely entails, judicial practice typically interprets it

³¹ Jovašević, D. (2003). Značaj olakšavajućih i otežavajućih okolnosti pri odmeravanju kazne u krivičnom pravu. *Annals of the Faculty of Law in Niš.*, 43, 189. In a broader sense, this legal principle encompasses the entire process, from selecting the appropriate punishment to delivering the sentence, and according to some interpretations, even its execution. This means the principle also includes the sentencing process itself. In a narrower sense, it refers to just one of the principles guiding the sentencing of a criminal offender, primarily focused on understanding the offender's personality and character in relation to the crime committed.

³² Criminal Code. *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005 — corrected, 107/2005 — corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), Art. 54. "Degree of culpability, the motives for committing the offense, the degree of endangering or damaging protected goods, the circumstances under which the offense was committed, the past life of the offender, their personal situation, behaviour after the commission of the criminal offense and particularly their attitude towards the victim of the criminal offense, and other circumstances related to the personality of the offender."

as whether the offender had ever been previously convicted in the past, that is, before committing the offense in question. If the offender has a history of convictions, the court views this as an aggravating circumstance that warrants a harsher penalty. Conversely, if this is the offender's "first encounter" with criminal activity, it is considered an extenuating circumstance. Given that punitive measures include not only criminal offenses but also misdemeanors and economic crimes, an individual's previous penalties for a misdemeanor or economic offense can be important when evaluating the history of the offender as a factor influencing the severity of the punishment. While our judicial practice generally links recidivism to the circumstances surrounding the offender's prior life, as outlined in Article 54 of the Criminal Code, the legislator has also addressed this concept through specific provisions in criminal law.³³ When discussing recidivism as a circumstance that can influence the severity of a punishment, it is important to note that prior convictions are the only circumstance that can never be considered an extenuating circumstance. In contrast, all other circumstances outlined in Article 54 may serve as either aggravating or extenuating circumstances, depending on the specifics of the case.³⁴

Serbian legislation has dedicated two articles in the Criminal Code to this institution: Article 55 and Article 55a, distinguishing between so-called "ordinary" recidivism and multiple recidivism. This distinction is justified, as noted earlier, because multiple recidivism poses a significantly greater social danger than ordinary recidivism. Regarding Article 55, which pertains to ordinary recidivism, the legislator stipulates that if an offender has been previously convicted of a criminal offense with premeditation, the court will treat this prior conviction as an aggravating circumstance, unless five or more years have passed since the previous conviction or the served sentence.³⁵ It is worth noting that the current provision on recidivism is nearly identical to the one found in the Federal Republic of Yugoslavia's Criminal Code, which regulated this concept and mandated that the court shall always consider an offender's status as a recidivist as an aggravating circumstance.³⁶ With the amendments to the Criminal Code introduced by the 2019 Law on Amendments and Additions to the Criminal Code, the legal text concerning recidivism also changed.

³³ Vuković, I. (2022). *Krivično pravo (opšti deo)*. Belgrade: University of Belgrade – Faculty of Law (Publishing Center), 485.

³⁴ Bačić, F., Bavcon, Lj., Đorđević, M., Kraus, B., Lazarević, Lj., Lutovac, M., Srzentić, N., Stajić, A. (1982). *Komentar Krivičnog zakonika Socijalističke Federativne Republike Jugoslavije*. Belgrade: Savremena administracija, 205.

³⁵ Criminal Code of the Republic of Serbia, Art. 55a.

³⁶ Criminal Code of the Socialist Federal Republic of Yugoslavia (1951). Available at: https://www.restitucija.gov.rs/doc/oduzeta%20imovina/KRIVIC_NI%20ZAKONIK.pdf.

Notably, the term “may” was removed from the context of describing how the court shall evaluate this circumstantial factor during sentencing. This change indicates that recidivism is no longer a discretionary aggravating circumstance but rather a mandatory one. Consequently, the court must regard a prior conviction as an aggravating factor when determining the punishment for a newly committed offense, assuming the previously mentioned conditions are met. This raises the question of which approach is more justified: the previous one or the current legal framework.

Certainly, a recidivist cannot be viewed in the same light as a first-time offender. However, evaluating recidivism as an influential factor in sentencing requires careful consideration and a cautious approach. In the section of this paper examining the concept and types of recidivism, we analyzed the distinction between general and special recidivism. It was emphasized that special recidivism poses a significantly higher degree of social danger, as it indicates a tendency of the offender to commit specific crimes. Therefore, this circumstance should be assessed more rigorously than general recidivism. The amount of time that has passed since the previous offense took place is also significant. The shorter the interval between the previous and the newly committed offense, the greater the social danger posed by the offender, suggesting a tendency toward increasingly frequent criminal behavior. In the revised Article 55 regulating recidivism, the legislator clearly emphasizes the necessity of intent, that is, premeditation, as a crucial element of guilt for both the prior offense and the newly committed crime. Given that recidivism now qualifies as a mandatory aggravating circumstance under the conditions above rather than a discretionary one, as prior to the latest amendment to the Criminal Code, it seems reasonable for the legislator to require the presence of premeditation for both the previous and newly committed crimes. Automatically treating a prior conviction for a crime committed out of negligence (especially if negligence is also present in the newly committed offense) as a mandatory aggravating circumstance during sentencing would be unfair. This raises the question of whether, in cases where negligence is involved, the previous and the new offense committed by the same individual can be considered an aggravating factor in the context of the offender’s history during sentencing. In other words, it prompts us to consider whether recidivism in negligent offenses can be treated as a discretionary aggravating circumstance. It appears reasonable for the court to regard recidivism, even in cases of negligent offenses, as an aggravating circumstance when evaluating the offender’s history. This consideration should particularly take into account the severity of the previous offense, the degree of similarity between the crimes committed, how much time has passed since the prior conviction, and any other relevant circumstances that may influence the sentencing decision in each specific case.

The 2019 amendments to the Criminal Code introduced another change concerning recidivism to our criminal law. Specifically, Article 55a now distinguishes between ordinary and multiple recidivism, drawing on earlier solutions recognized in our legal system. In cases of multiple recidivism, for crimes committed with premeditation punishable by imprisonment, the court is required to impose a sentence above the midpoint of the prescribed range if two cumulative conditions are met. First, the offender must have been convicted twice before for crimes committed with premeditation to imprisonment of at least one year. The second condition requires that no more than five years have passed between the offender's release from previous imprisonment and the commission of the new offense.³⁷ This provision clearly indicates that the legislator sets the same requirement for guilt in cases of multiple recidivism as it does for ordinary recidivism, requiring that all criminal acts must be committed with premeditation. This makes sense, as the court is obliged to treat this circumstance as an aggravating factor, e.g., it is no longer merely an optional consideration. Furthermore, for a case to qualify as multiple recidivism, the offender must have at least two final previous convictions. Additionally, all prior offenses must have been punishable by imprisonment of at least one year. In Serbian legislation, all criminal offenses meet this requirement except for the offense of insult (Article 170 of the Criminal Code). This raises questions about the legislator's intention behind this requirement. It is unclear whether the legislator aimed to limit the application of multiple recidivism to offenses for which a monetary fine is not an option, even as an alternative punishment.³⁸

If all the previously mentioned conditions are met, the court is required to impose a sentence that falls above the midpoint of the prescribed sentence range. This means the court must set the sentence within the established range and that multiple recidivism does not have the status of a discretionary circumstance for increasing the penalty³⁹, as was stipulated in some earlier

³⁷ Criminal Code of the Republic of Serbia, Art. 55a.

³⁸ Vuković, I. (2022). *Krivično pravo (opšti deo)*. Belgrade: University of Belgrade – Faculty of Law (Publishing Center), 485.

³⁹ Criminal Code of the Republic of Belarus from July, 199, No. 275–3 (with corrections and additions from 9. 3. 2023). Available at: https://continent-online.com/Document/?doc_id=30414984#pos=632;-48. As mentioned earlier, our criminal legislation no longer recognizes imposing harsher penalties solely due to an offender's recidivism, unlike some other legal systems. In this context, the Criminal Code of Belarus is particularly noteworthy due to being an exception to European criminal law, as it still allows for the death penalty. Article 59 outlines the specific crimes that can result in the death penalty and adds that it may be applied to other particularly serious crimes involving the intentional killing of another person under especially aggravated circumstances. Article 64 identifies recidivism, or the offender's prior convictions, as one of these aggravating circumstances. From this, it becomes clear that in Belarus, recidivism is given such criminal significance that it can serve as grounds for imposing the most severe punishment possible: the death penalty.

regulations. Instead, the court must adhere to the upper half of the prescribed punishment range when determining the sentence. Regarding this manner of evaluating multiple recidivism, some argue that such an approach is unjustified, as it results in harsher penalties for crimes individuals have already been punished for in the past.⁴⁰ However, we must disagree with this perspective because a person intentionally committing multiple offenses clearly indicates a significant degree of social danger, which shouldn't be overlooked.

Recidivism and mitigation of penalty / suspended sentence / release on parole

When it comes to the criminal implications of recidivism, it is important to discuss the correlation between special recidivism and the mitigation of penalties. In Article 57 of the Criminal Code, the legislator states that a sentence cannot be reduced for an offender who has previously been convicted of the same or a similar crime.⁴¹ In the previous sections of this paper, we discussed how special recidivism involves a greater degree of social danger compared to general recidivism. This is because repeating the same or similar crimes indicates a tendency of the offender to engage in certain types of criminal behavior, especially in the case of repeat offenders. From this perspective, the legislator's approach seems justified. However, it is also important to keep in mind that this article only refers to the same or similar crimes without specifying that they must be committed with premeditation. This implies that, in situations where an offender commits the same or a similar crime, even when both the previous and new offenses involve negligence, the prohibition on mitigating their penalty still applies.⁴²

The concept of recidivism also plays an important role in the imposition of suspended sentences. According to Article 66 of the Criminal Code, “a suspended sentence may not be pronounced when more than five years have elapsed from the time the prison sentence or parole pronounced to a perpetrator for the premeditated criminal offense became final.”⁴³ Here, the legislator does not differentiate between special and general recidivism. Therefore, under such conditions, granting a suspended sentence is not possible, regardless of the type of recidivism involved.

⁴⁰ Stojanović, Z. (2013). *Krivično pravo (opšti deo)*. Belgrade: University of Belgrade, Faculty of Law – Pravna knjiga, 330.

⁴¹ Criminal Code of the Republic of Serbia, Art. 55a.

⁴² Ćorović, E. (2020). Povrat u krivičnom zakoniku Srbije: Kritički osvrt. *Journal of Criminology and Criminal Law*, 1–2, 22.

⁴³ Criminal Code of the Republic of Serbia, Art. 66.

Recidivism, particularly multiple recidivism, also affects how release on parole is applied. For discretionary release on parole, the law states that the court may release on parole a convicted individual who has been convicted to a prison sentence more than three times, provided that their criminal record has not been cleared or there are no grounds for clearing any of their convictions.⁴⁴ One might question whether this approach is perhaps too lenient, considering that in such cases, we are dealing with a multiple recidivist, e.g., a repeat offender who has faced punishment at least three times in the past for their criminal behavior.

Recidivism and criminal records

When it comes to determining whether an individual can be classified as a recidivist, e.g., whether they have been previously convicted of a crime, one might think it's straightforward for the court to obtain this information. From a logical standpoint, this fact should be easy to verify by simply looking up one's criminal record. However, there are several inconsistencies associated with this process. Namely, the Criminal Code dedicates only one article to criminal records, stating that they should contain personal data of the offender, data on penalty, suspended sentence, judicial caution, remittance from punishment and pardon, and data on legal consequences of a conviction.⁴⁵ The contentious issue here is that this section does not specify *who* is responsible for maintaining this record. This lack of clarity means we have to look into other relevant regulations for this information and more detailed guidelines on specific matters, which introduces yet another problem. Interestingly, the Regulation on Criminal Records has not been revised since 1979. According to Article 2 of this legal act, the responsibility for maintaining criminal records falls under the police's jurisdiction,⁴⁶ which raises further concerns because the Law on Police does not explicitly mention this responsibility in any of its provisions. Article 30 of the Law on Police specifies what constitutes police work. Paragraph 3, item 12, states that police work includes carrying out other duties and tasks established by law and regulations⁴⁷ issued by the Ministry. This can be interpreted in terms that the responsibility for maintaining

⁴⁴ Criminal Code of the Republic of Serbia, Art. 46.

⁴⁵ *Ibid.*, Art. 102.

⁴⁶ Regulation on Criminal Records (1979). *Official Gazette of the SFRY*, No. 5/79, Art. 2.

⁴⁷ Law on Police, *Official Gazette of the Republic of Serbia*, No. 6/2016, 24/2018, and 87/2018, Article 30.

criminal records falls under this provision, classifying it as one of the “other police duties and tasks.” The bottom line is, when weighing recidivism as an aggravating circumstance, the court should not solely rely on the “letter of the law,” i.e., the mere fact that an individual has a criminal record. It is essential to take a look at the bigger picture and consider other relevant circumstances surrounding the individual’s past criminal activities that may be significant to the case at hand.

CONCLUDING REMARKS

Recidivism, much like criminality itself, can simply never be entirely eradicated. Creating an ideal society where no individual ever violates any legal or moral norms is impossible and nothing but a distant utopian vision. However, like any other negative phenomenon, recidivism can be significantly reduced with the right strategies in place. Every country should focus on selecting and implementing the most effective measures to minimize repeat offenses.

First and foremost, the process of resocialization should not be taken lightly or treated as a mere afterthought. With the right approach and measures in place, it’s possible to greatly reduce the urge of offenders to return to criminal behavior. As noted earlier in the discussion on the causes of recidivism, many property crime offenders are driven back to criminal activity due to severe financial difficulties, perceiving it as their only means of survival. To prevent this, these individuals should, for example, be given access to various vocational training during their imprisonment, helping them acquire skills that will enable them to secure employment after release and thus support themselves and their families, reducing the likelihood of returning to criminal activity in order to do so. Among repeat offenders, many struggle with addiction to alcohol or drugs and commit crimes either under the influence or to fund their habit of substance abuse. These individuals require special attention, particularly through intensive psychological and medical treatment aimed at helping them overcome their addictions and get back on the “right track,” which involves steering clear of crime tied to substance abuse. Beyond these cases, more “severe” criminal personalities exist among recidivists, such as those who have committed crimes against life and limb or sexual offenses. These individuals require the most complex and rigorous interventions to help reintegrate them into society and prevent further criminal behavior. But let’s circle back to the introduction, where we discussed Plato’s division of offenders into reformable and irreformable ones. This naturally raises a crucial question: Are there individuals for whom no measure or treatment is effective

enough to deter them from re-offending, e.g., returning to criminal behavior? If the answer is yes, what options remain to address their repeated criminal behavior? Is it imposing stricter penalties, mostly characterized by long-term imprisonment? Unfortunately, there are individuals whose crimes are so inhumane that allowing them to ever reenter society would be incredibly dangerous. For some offenders, the only effective way to prevent them from committing more crimes is through long-term or even life imprisonment. Therefore, it is entirely justified that our legislator has established life imprisonment as the harshest penalty within our criminal justice system for those convicted of the most severe crimes through the latest amendments to the Criminal Code, we can consider this a “last resort” in the battle against recidivism.

BIBLIOGRAPHY

- Aćimović, M. (1987). *Psihologija zločina i suđenja (sudska psihologija)*. Belgrade: Savremena administracija, 369.
- Banjović, B., Braković, Ž. (2019). Uticaj psihoaktivnih supstanci na izvršenje krivičnog dela razbojništva. *Kultura polisa*, 40, 247.
- Bačić, F., Bavcon, Lj., Đorđević, M., Kraus, B., Lazarević, Lj., Lutovac, M., Srzentić, N., Stajić, A. (1982). *Komentar Krivičnog zakonika Socijalističke Federativne Republike Jugoslavije*. Belgrade: Savremena administracija, 205.
- Bošković, M. (2015). *Kriminologija*. Novi Sad: Faculty of Law – Publishing Center, 339.
- Braithwaite, J. (1985). White collar crime. *Annual Review of Sociology*, 11, 3.
- Vuković, I. (2022). *Krivično pravo (opšti deo)*. Belgrade: University of Belgrade – Faculty of Law (Publishing Center), 485.
- Daly, K. (1989). Gender and varieties of white-collar crime. *Criminology*, 4, 770.
- Drakić, D. (2007). *Neuračunljivost*. Novi Sad: Školska Ltd., 126.
- Đukić, S. (2017). Imovinski delikti kao pojavni oblici kriminaliteta i ekonomsko-socijalni kriminalogeni faktori. *Scientific journal Vojno delo*, 5, 110.
- Ignjatović, Đ. (2015). *Kriminologija*. Belgrade: Belgrade Faculty of Law – Dosije studio, 92.
- Jakovljević, D. (1991). Rehabilitacija osuđenika. *Annals of the Faculty of Law in Belgrade*, 1–3, 154.
- Jovašević, D. (1998). Krivičnopravni značaj povrata. *Glasnik of the Bar Association of Vojvodina*, 70, (7–8), 292.
- Jovašević, D. (2003). Značaj olakšavajućih i otežavajućih okolnosti pri odmeravanju kazne u krivičnom pravu. *Annals of the Faculty of Law in Niš*, 43, 189.
- Johnson, B., Becker, J. (1997). Natural Born Killers?: The Development of the Sexually Sadistic Serial Killer. *Journal of the American Academy of Psychiatry and the Law*, 3, 343.

- Konstantinović-Vilić, S., Miladinović, V., Đurđić, V. (1992). Kriminološke klasifikacije i tipologije recidivista. *Annals of the Faculty of Law in Niš*, 32–33, 43.
- Kostić, M. (2010). Prevencija kriminaliteta – pojam i istorijski razvoj. *Annals of the Faculty of Law in Niš*, 55, 92.
- Lazarević, Lj. (2011). *Komentar Krivičnog zakonika*. Belgrade: Union University School of Law, 267.
- Mededović, J. (2015). *Nomološka mreža psihopatije*. Belgrade: Institute for Criminological and Sociological Research, 84.
- Miladinović, V. (1984). *Pojam i priroda povrata*. *Annals of the Faculty of Law in Niš*, 24, 107.
- Myers, W., Gooch E., Reid Meloy J. (2005). The Role of Psychopathy and Sexuality in a Female Serial Killer. *Journal of Forensic Sciences*, 50, 2.
- Nikolić-Ristanović, V., Konstantinović-Vilić, S. (2018). *Kriminologija*. Belgrade: Prometej Publishing Company, 227.
- Stojanović, Z. (2006). *Komentar Krivičnog zakonika*. Belgrade: Official Gazette of RS, 208.
- Stojanović, Z. (2013). *Krivično pravo (opšti deo)*. Belgrade: University of Belgrade, Faculty of Law – Pravna knjiga, 330.
- Ćirić, Z. (2012). Sudsko-psihijatrijski aspekt afektivnih stanja. *Annals of the Faculty of Law in Niš*, 62, 46.
- Ćorović, E. (2015). *Sistem krivičnih sankcija Republike Srbije*. Novi Pazar: Emir Ćorović and Sven, Niš, 149.
- Ćorović, E. (2020). Povrat u krivičnom zakoniku Srbije: Kritički osvrt. *Journal of Criminology and Criminal Law*, 1–2, 22.
- Hemphill, J., Hare, R. (1998). Psychopathy and recidivism: A review. *Legal and Criminological Psychology*, 3, 140.

Doctoral dissertations

- Miladinović-Stefanović, D. (2012). *Redovno odmeravanje kazne u krivičnom pravu*. Doctoral dissertation, Niš, 433.
- Milić, I. (2017). *Individualizacija kazne zatvora - kriminološki, krivičnopravni i penološki aspekt*. Doctoral dissertation, Novi Sad, 50.
- Mirić, F. (2014). *Savremena shvatanja fenomenologije i etimologije maloletničke delikvencije*. Doctoral dissertation, Niš, 264.

Online sources

- Krstić, B. (1979). *Neke sudsko-psihijatrijske dimenzije osuđenih alkoholičara*. Available at: http://www.prafak.ni.ac.rs/files/zbornik/sadržaj/zbornici/z19/08_z19.pdf.
- Veković, V. (2018). *Telesno i mentalno zdravlje izvršilaca krivičnih dela protiv života i tela*. Available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/9.-Ekstradicija-organiz.kriminalitet.pdf>.

Criminal Code of the Socialist Federal Republic of Yugoslavia (1951). Available at: <https://www.restitucija.gov.rs/doc/oduzeta%20imovina/KRIVICNI%20ZAKONIK.pdf>.

Criminal Code of the Republic of Belarus from July, 199, No. 275–3 (with corrections and additions from 9. 3. 2023). Available at: https://continent-online.com/Document/?doc_id=30414984#pos=632;-48.

Laws and other regulations

Criminal Code, *Official Gazette of the Republic of Serbia*, No. 85/2005, 88/2005 — corrected, 107/2005 — corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), Art. 54.

Regulation on Criminal Records (1979), *Official Gazette of the SFRY*, No. 5/79, Art. 2.

Law on Police, *Official Gazette of the Republic of Serbia*, No. 6/2016, 24/2018, and 87/2018, Article 30.