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NEW – OLD TRENDS IN THE FIELD OF CRIMINAL POLICY IN THE REPUBLIC OF SERBIA

Abstract

The Draft Law on Amendments to the Criminal Code of 2025 announces a significant reform of Serbia's substantive criminal legislation. In addition to a series of newly introduced criminal offences – many of them controversial from a criminal policy standpoint – it also proposes a substantial tightening of sentencing ranges for certain offences. Driven by populist rhetoric and accompanied by an almost dismissive attitude toward the achievements of criminal law scholarship, the Draft disregards empirical knowledge of the real capacities of punishment and the actual effect of increased repression on crime prevention. By threatening excessive penalties for violations of criminal norms in the sphere of serious forms of criminal behavior, the proponent of these measures continues to strengthen retributive tendencies. In doing so, Serbian criminal law increasingly diverges from the liberal, rule-of-law model, and is rapidly transforming into a form of "enemy-oriented" criminal law – one in which all means are considered permissible in the state's effort to combat threats to the legal order. Such an orientation is inappropriate for a legal system that seeks to preserve democratic features, as it poses a serious risk of undermining

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fundamental human rights in the realm of punishment. Moreover, it is frequently accompanied by inefficiency and weak results in controlling criminal behavior. It could be said that such an orientation in the field of criminal policy in the Republic of Serbia is nothing new; on the contrary, if we consider the period since the first serious instance of intensified penal repression in 2009 – when the penalty ranges for as many as one third of existing criminal offences were made more severe – the trend toward prescribing increasingly harsher punishments has shown no sign of abating. What is most concerning, however, is the well-founded fear that this tendency has not yet reached its peak and is likely to continue in the future.

Keywords: punishment, repression, life imprisonment, hyper-criminalization, enemy-oriented criminal law

INTRODUCTION

For many decades, criminal law was regarded as a particularly stable branch of the legal system, largely immune to frequent legislative intervention. Its defining feature was the longevity of the Criminal Code as the fundamental source of criminal law norms. This does not mean, of course, that criminal legislation should remain ossified or unresponsive to social developments. Yet there are compelling reasons why frequent changes to its normative framework are undesirable. Especially dangerous are those legislative amendments that are not the product of thorough scientific engagement with the structural problems every criminal justice system faces, but rather hasty responses to specific events – often designed to calm a disturbed public eager for harsher state reactions to crime. Nevertheless, modern criminal law, both in Serbia and abroad, has acquired an unusual dynamism. The process of expanding the sphere of punishment is accelerating. Admittedly, such a process need not necessarily carry a negative connotation, if it represents a rational response to an objectively increased need for criminal law protection in certain areas. In Serbia, however, this trend is typically accompanied by poor drafting of norms, where reforms are frequently guided by lay opinions and, in essence, primitive reactions to wrongdoing – reactions grounded more in emotion than in reason. Equally striking is the absence of any serious long-term strategy for crime control, one that would rely on a thorough analysis of how existing provisions are applied and whether corrections are truly necessary. Instead, legislative priority is given to the

easy acceptance of international obligations arising from conventions, as well as to numerous initiatives promoted by non-governmental organizations.¹

If we examine the period of the past two decades, beginning with the adoption of the Criminal Code, it becomes clear that since the 2009 amendments, the legislature has pursued a consistent course – one that can be summarized in a simple formula: the unbearable ease of intensifying criminal repression at the normative level. In the official justification of the 2009 reforms, it was emphasized that the sentencing range had been increased for nearly one-third of all criminal offences. This tendency has not been abandoned in subsequent amendments; on the contrary, it has become entrenched and is now set to culminate with the announced 2025 revisions of the Criminal Code. The constant tightening of penalties for certain crimes has been accompanied by other measures aimed at constructing a system increasingly oriented toward treating offenders as enemies of the state. Over the past decade, Serbian criminal law has introduced an array of new offences – often of dubious legitimacy from the perspective of criminal policy – while also modifying general provisions in ways that unmistakably reflect the state’s determination to wage its war on crime under the slogan that harsher retribution is the best cure for wrongdoing. In this context, it is enough to mention the introduction of prohibitions on sentence mitigation for certain, arbitrarily selected, criminal offences; the revival of the concept of multiple recidivism;² the restriction of conditions for suspended sentences; the denial of parole for certain crimes; and finally, the introduction of life imprisonment – applied to a broader circle of offences compared to the earlier system, which envisaged prison sentences ranging from thirty to forty years (Kolarić 2019, 16–33).

“NOTHING NEW IN THE WEST” – FURTHER ESCALATION OF PENAL REPRESSION IN THE DRAFT AMENDMENTS

¹ It is noteworthy that the official explanation of the proposed 2024 Draft Amendments to the Criminal Code emphasizes that their preparation was “preceded by an analysis of the effectiveness of the criminal justice system, based on completed cases with the aim of identifying and remedying its weaknesses and shortcomings” (Nacrt 2025, Razlozi za donošenje zakona). Yet no information is provided as to who conducted this analysis, during which period, within what scope, or what conclusions were reached.

² The cruelty, as well as the absurdity, of the institute of multiple recidivism – particularly when its application is linked to the proclaimed aim of punishment as achieving justice and proportionality between the offence committed and the severity of the sanction – is clearly illustrated in the decision of the Higher Court in Novi Pazar (Presuda VSNP, K. 3/23). In that case, the defendant, previously convicted on several occasions, was sentenced to seven years and seven months of imprisonment (the minimum sentence available to the court in cases of multiple recidivism for this offence) for selling a single tablet of buprenorphine (8 mg) for the price of merely 1,100 dinars!

At the end of last year, the Ministry of Justice published the extensive text of the Draft Law on Amendments to the Criminal Code, accompanied by a one-month public consultation process that included four round-table discussions. The outcome, with additional comments from both the academic community and the wider public, led to a postponement of the adoption of the proposed measures. Nevertheless, on 27 November 2024, the National Assembly passed the Law on Amendments to the Criminal Code (Zakon o izmenama i dopunama Krivičnog zakonika 2024). This law introduced harsher penalties for serious forms of traffic offences endangering public safety, as well as three new criminal offences aimed at strengthening the protection of employees in health, education, and social welfare institutions (Vuković 2025, 106–109). When the other proposed measures are taken into account, the orientation chosen by the drafters can be summarized in a single sentence – according to a well-worn formula: further intensification of penal repression, by expanding the boundaries of criminalized behavior through the introduction of new offences and harsher sanctions for existing ones.

After numerous comments were submitted on the 2024 Draft, the Ministry of Justice decided to put the proposed amendments on hold. Consequently, it was only in the first half of September this year that the text of the new Draft Law on Amendments and Supplements to the Criminal Code was published. Compared to last year's draft, it introduces a number of new solutions alongside certain modifications. The provisions of the Draft that will be discussed in the following text have not undergone any changes in relation to the earlier version.

According to the drafters, who appear well acquainted with the supposed “power” of punishment but not with its limitations, tightening the penal policy with respect to certain offences “would undoubtedly also have a preventive effect on potential offenders” (Nacrt 2025, Razlozi za donošenje zakona). Particular attention should be given to Article 15 of the Draft (Nacrt 2025, čl. 15), which proposes changes to the prescribed sentence for the crime of murder (Krivični zakonik 2024, čl. 113). Instead of the current range of five to fifteen years' imprisonment, the Draft introduces a new range of five to twenty years, or life imprisonment. The justification provided is that this measure “ensures consistency within the system of criminal sanctions in the context of harsher penalties for certain offenses” (Nacrt 2025, čl. 15).

The problem with this solution is that, if adopted, it would prescribe the same maximum sentence for both ordinary murder and aggravated murder (Krivični zakonik 2024, čl. 114). The

only distinction would lie in the minimum penalty – five years for ordinary murder, ten for aggravated murder. In practice, this would mean that both the basic and the aggravated form of homicide carry the same maximum sanction, which represents a legal absurdity. Such an arrangement contradicts both legislative technique in qualifying criminal acts and the basic logic that aggravated forms of a crime must carry harsher penalties precisely because of the specific circumstances or consequences that make them more serious.

The argument that the minimum penalties would differ is insufficient to counter this objection: aggravated murder could no longer be considered “more serious” if it did not carry a higher maximum penalty. The only way Article 15 of the Draft (Nacrt 2025, čl. 15) would make sense is if Article 114 of the Criminal Code (Krivični zakonik 2024, čl. 114) – covering aggravated murder – were repealed, or if, following certain comparative models, it prescribed life imprisonment as a mandatory sanction. Otherwise, if the same maximum sentence applied to all forms of intentional homicide, Article 114 would lose any practical or legal significance.

A similar issue arises with Articles 28, 30, 31 of the Draft (Nacrt 2025, čl. 28, čl. 30, čl. 31), which propose the possibility of imposing life imprisonment for all forms – both the basic and the aggravated – of criminal offences against sexual freedom, including rape, sexual intercourse with a helpless person, and sexual intercourse with a child. Under the current law, life imprisonment is reserved only for the most aggravated forms of these offences. In the official explanation of the Draft, the justification for extending life imprisonment even to the basic form of rape (and the other enumerated offences) was said to be that such punishment “should unequivocally represent the expected consequence that will befall every perpetrator of this extremely serious crime” (Nacrt 2025, čl. 28). Furthermore, it was argued that these measures were prompted by “a rising trend in the number of reported sexual offenses, indictments, and convictions over the past five years in the Republic of Serbia” (Nacrt 2025, Razlozi za donošenje zakona).

Yet this rationale suffers from the same shortcomings as those already noted with respect to homicide. First, in Serbian criminal law, life imprisonment is never a mandatory sentence: it can only be imposed as an alternative to a fixed term of up to twenty years, leaving the court discretion to choose between the two. Consequently, life imprisonment cannot serve as the “expected” outcome for all offenders.

Second, the science of criminal law has long demonstrated that the severity of punishment exerts a weaker preventive effect than the certainty of punishment. Offenders, especially those driven by pathological sexual impulses, rarely consider potential penalties before acting. In such cases, the severity of the sanction is unlikely to deter; at most, life imprisonment could achieve incapacitation by isolating the offender for a longer period. But this strategy faces serious obstacles: overcrowded prisons, high financial costs, and, not least, the risk of contravening international human rights standards on punishment.

Third, the assertion of a “rising trend” in sexual offences is misleading. Official statistics from the Republic Statistical Office show no dramatic increase in either reported cases or convictions (Republički zavod za statistiku Srbije 2025); the figures, while fluctuating, remain broadly consistent with long-term averages.³ This raises the question: what data did the drafters rely on, if not the official, readily available ones? The explanation appears to rest on a superficial claim designed to justify harsher penalties in a field where sentences are already exceptionally severe and where recent amendments have significantly restricted the application of general mitigating provisions.⁴

For instance, since 2009, Article 57 Paragraph 2 of the Criminal Code (Krivični zakonik 2024, čl. 57, st. 2) has prohibited sentence mitigation for sexual offences (Krivični zakonik 2024, čl. 178–180). In 2019, further restrictions were introduced, eliminating the possibility of parole for aggravated forms of rape (Krivični zakonik 2024, čl. 178, st. 4), sexual intercourse with a helpless person (Krivični zakonik 2024, čl. 179, st. 3), sexual intercourse with a child (Krivični zakonik 2024, čl. 180, st. 3), and sexual intercourse through abuse of position (Krivični zakonik 2024, čl. 181, st. 5). Now, as if these measures were insufficient, the Draft not only expands sentencing ranges but also extends the ban on parole to *all* forms of the offences listed in Articles 178, 179, and 180.

³ Thus, the number of criminal complaints filed for the offence of rape (Krivični zakonik 2024, čl. 178) has not changed significantly in the past five-year period, averaging around seventy reported cases (in 2022, there were fifty-eight complaints). The same applies to convictions for this offence within a single calendar year, as the number of convictions has not exceeded twenty-five (fourteen in 2022).

⁴ For example, under the Montenegrin Criminal Code, the basic form of the offence of rape carries a penalty of two to ten years of imprisonment, whereas under the Serbian Code – if the Draft Amendments are enacted – the range would be five to twenty years, with the possibility of imposing life imprisonment. Moreover, a recent study has shown that, according to the prescribed sentencing ranges, Serbia’s criminal legislation ranks among the harshest in Europe (Stojanović 2020, 29–31).

Interestingly, the official justification for this move states that, while aligned with stricter penal policy, it is also “entirely consistent with international human rights standards” (Nacrt 2025, čl. 6). Yet the established case law of the European Court of Human Rights proves the opposite (Van Zyl and Appleton 2019; Foster 2015, 148–154; Ilić 2019, 156–173).

Finally, extending life imprisonment to a broader set of offences than at present also conflicts with Article 44a of the Criminal Code (Krivični zakonik 2024, čl. 44a), which explicitly provides that this penalty may be prescribed *only exceptionally*, alongside fixed-term imprisonment, and only for the most serious criminal offenses and the gravest aggravated forms of serious crimes. While it is undisputed that the offences targeted by the Draft are indeed serious, they cannot all be considered the “most serious,” nor do they represent the “gravest forms” of such crimes, as required by the Code. The proposed equalization of penalties – applying the same ultimate sanction to both the basic and aggravated forms of a given offence – represents a serious legal precedent. It undermines the fundamental legislative logic by which different forms of criminal conduct are distinguished and punished according to their relative degree of unlawfulness. In short: the graver the crime, the harsher the punishment. Moreover, such a reform would be manifestly unlawful, given that the conditions for prescribing life imprisonment would not be met under the cited provision of the Criminal Code.

The Draft also substantially increases penalties for all forms of the offence of domestic violence. While the protection of the physical and psychological integrity of family members is undoubtedly a legitimate legislative objective, one must ask whether family peace can truly be secured by means of a strict penal policy. The law, especially coercive norms, is ill-suited to regulating the intimate sphere of private life. Although the drafters may have been motivated by good intentions, there is a real danger that excessive repression in this domain will cause more harm to family relations than any benefit it might bring (Ristivojević i Samardžić 2017, 1449–1450). Interestingly, the justification for these amendments states that they continue the “trend of enhanced protection of victims of domestic violence, especially women and children, given that previous reforms did not achieve their purpose, and therefore further amendments are necessary to influence current and future offenders” (Nacrt 2025, Razlozi za donošenje zakona). This reasoning leads to an absurd conclusion: since strict penal policy in this area has failed, let us try an even stricter one. When this is combined with the already enacted increase of penalties for serious traffic offences endangering public safety, as well as the proposed tightening of sanctions

for certain forms of human trafficking (Nacrt 2025, čl. 82), there can be little doubt: the Serbian legislature has embraced an approach to crime control reminiscent of the infamous ancient Athenian lawmaker Draco, for whom excessively harsh punishment was the ultimate triumph.

CONCLUDING REFLECTIONS

The solutions contained in the Draft represent a continuation of the policy of intensifying repression at the normative level – a policy that, in Serbia’s public discourse and legislative practice, has been gaining momentum for two decades. With the benefit of this two-decade perspective since the adoption of the Criminal Code, it can be concluded without hesitation that punitive escalation has become the legislature’s dominant orientation.

Rather than a rational activity informed by scientific and practical insights into the limits and effects of punishment, contemporary crime control policy is shaped by political imperatives and popular sentiment. Reform initiatives are typically triggered by isolated incidents, accompanied by sweeping and arbitrary claims that “reality” demands a new legal framework, even when official statistics show no dramatic increase in crime rates. Most importantly, these dynamics are driven by populist tones – more emotional than rational – while the influence of expert knowledge about the modest effects of punishment in both general and special prevention has diminished dramatically. The marginalization of criminal law scholarship and the intrusion of everyday politics into crime control reflect the spirit of the “brave new world” we inhabit, in which everyone presumes to be an expert on criminal law.⁵ Yet in untrained hands, criminal law – especially when deployed as an instrument of political goals – can prove more dangerous to citizens than the offenders it purports to restrain.

Each new amendment distances Serbian criminal law further from the model of a rule-of-law system, in which punishment ought to be a *last resort*, applied only when the protection of an essential social good cannot be achieved through other, less coercive means. Instead, criminal law increasingly functions as the *first* or even the *only* tool in combating crime. Scholars increasingly describe the emergence of a new “security law,” applicable even in the pre-zone of endangerment

⁵ This was perceptively noted several decades ago by a renowned American scholar of criminology: “There are many so-called scientists and self-styled experts on crime, for the subject fascinates very different kinds of people. Every grocer on your street, every gas-station attendant, and practically everyone’s Aunt Mary can tell you what should be done right now to reduce the present crime rate. Serious students of criminology cannot take such an optimistic view” (Eliot 1962, 17).

of protected goods (Stojanović 2011b, 5). If we have come to the point of imagining punishment as the solution to complex social problems, then society itself has strayed from the right path. Punishment, as the legal consequence of crime, can rarely serve as a genuine remedy; experience shows that its effect on crime prevention and offender resocialization is minimal (Martinson 1974, 48–50). If harsher punishment was truly effective, the simplest solution would be to impose draconian sentences across the board. This “primitive” approach (Stojanović 2023, 147), however, requires no expertise and has already proven a failure. American experience with the notorious “three strikes and you are out” policy – mandatory long-term or life imprisonment for third-time offenders – resulted in negligible reductions in crime, but at the cost of enormous financial burdens and intolerable increases in prison populations (Walter 1999, 586–588).

The present situation thus reflects a crisis of contemporary crime control policy – not only in Serbia, but globally – as well as a setback for the science of criminal law. Instead of rational and restrained reliance on punishment, we witness a wave of hyper-criminalization, reviving the old idea that the essence of criminal law is the protection of legal goods, which requires not fragmented but systematic action – and ever more punishment (Zaczyk 2011, 691). Too often, criminal law is deployed as a tool of everyday politics, with new offences or harsher penalties serving symbolic rather than substantive purposes.⁶

The conscious recognition of the inability of criminal law to effectively suppress certain forms of behavior is concealed behind the claim that the existing law is of poor quality and must be adapted to new forms of criminality in order to provide more effective protection. In this way, an illusion is created that “something is being done.” In foreign literature, this phenomenon is described as *ad hoc* legislation, which is not based on a comprehensive assessment of the actual capacities of criminal law in combating crime, and is often adopted without serious scholarly or public debate on how the boundaries of punishability should be shaped.

Criminal law is increasingly being tailored to the offender, who is viewed not as a citizen expected to comply with existing norms and deterred by the mere threat of punishment, but rather as an enemy of the legal order. Its foundation thus no longer rests on trust in the law-abiding

⁶ In foreign legal literature, reference is made to criminal law of merely symbolic significance (*Symbolisches Strafrecht*) – that is, when a new legislative measure is not intended from the outset to be practically applied, but is instead designed to achieve some other social effect (Heinrich 2017, 8).

citizen, but instead on pronounced distrust toward individuals who might otherwise remain faithful to legal norms (Neubacher 2006, 855).

In practice, this means building a system of criminal justice rooted in distrust of citizens – treating them as potential enemies of the legal order – rather than on the assumption that most will respect the law voluntarily.⁷ The expectation, unfortunately, is that this policy of ever-expanding penal repression has not yet reached its peak (Neubacher 2006, 856). In contrast to the wave of liberalization of criminal law that emerged in the second half of the twentieth century, when criminal law was partially withdrawn in certain areas, reflected in the decriminalization of specific behaviors, today we are faced with a form of criminal law that is undemocratic and excessively protectionist. This form of law seeks to provide protection at any cost, regardless of the potential consequences for the observance of human rights. A rational criminal policy, on the other hand, should above all be careful not to elevate criminal law to the status of the primary instrument of social protection (Neubacher 2006, 877). As a corrective to the prevailing climate of moral panic, penal populism, and the glorification of mass incarceration (Mrvić Petrović 2022, 419–421), we should recall the wise words of Professor Grgur Milovanović, spoken more than a century ago: “punishment is like a poison, which may serve as a cure if administered in the right dose, at the right time, and in the right place” (Stojanović 2011a, 137).

REFERENCES

- Bock, Michael. 2010. „Pozitivna specijalna prevencija i nove tendencije u kriminalnoj politici - o nedostacima eliminatornog Feindstrafrecht-krivičnog prava i značaju primenjene kriminologije za kriminalnu politiku po meri ljudske zajednice.” *Crimen (Beograd)* 1 (2): 139–167. DOI: 10.5937/crimen1002139B
- Eliot, Mejl A. 1962. *Zločin u savremenom društvu*. Sarajevo: Veselin Maleša.

⁷ In German doctrine, the concept of so-called “eliminary criminal law,” or *Feindstrafrecht* (“criminal law for enemies”), has been developed. At its core lies the idea that the fight against crime must be waged at any cost, and that even the most rigorous measures—such as long-term or life imprisonment of particularly dangerous offenders—are entirely acceptable tools of criminal policy. Citizens are no longer viewed as individuals expected to remain faithful to the law, deterred by the mere threat of punishment from engaging in proscribed conduct. Instead, they are regarded as enemies of the legal order who must be eliminated, even at the stage of incipient criminal behavior. For more on this concept in Serbian literature, see Bock 2010, 139–167.

- Foster, Steve Harold. 2015. "Whole Life Sentences and Article 3 of the European Convention on Human Rights: Time for Certainty and a Common Approach?" *Liverpool Law Review* 36: 147–169. DOI: 10.1007/s10991-015-9166-7
- Heinrich, Bernd. 2017. "Zum heutigen Zustand der Kriminalpolitik in Deutschland." *Kriminalpolitische Zeitschrift* 1: 4–20.
- Ilić, Vladica. 2019. „(Ne)pomirljivost kazne doživotnog zatvora i ljudskih prava.” *Crimen (Beograd)* 10 (2): 156–173. DOI: 10.5937/crimen1902156I
- Kolarić, Dragana. 2019. „Orijentacija zakonodavca u poslednjem zakonu o izmenama i dopunama Krivičnog zakonika – (ne)opravdano jačanje krivičnopravne represije.” *Arhiv za pravne i društvene nauke* 3–4: 13–43. DOI: 10.22182/apdn.342019.1
- Krivični zakonik, „Službeni glasnik Republike Srbije”, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024
- Martinson, Robert. 1974. "What Works? – Questions and Answers About Prison Reform." *The Public Interest* 35: 22–54.
- Mrvić Petrović, Nataša. 2022. „Kako učiniti human(ij)im doživotni zatvor koncepta „zaključaj i baci ključ” na primerima Italije i Holandije.” *Strani pravni život* 3: 403–428. DOI: 10.56461/SPZ_22304KJ
- Nacrt zakona o izmenama i dopunama Krivičnog zakonika [Nacrt], 9. septembar 2025. <https://ekonsultacije.gov.rs/topicOfDiscussionPage/528/4>
- Neubacher, Frank. 2006. "An den Grenzen des Strafrechts – Stalking, Graffiti, Weisungsverstöße." *Zeitschrift für die gesamte Strafrechtswissenschaft* 118 (4): 855–877. DOI: 10.1515/ZSTW.2006.031
- Presuda Višeg suda u Novom Pazaru [VSNP], K. 3/23 od 3. aprila 2003. godine.
- Republički zavod za statistiku Srbije. 2025. „Punoletni učinioци krivičnih dela, 2024.” 16. jul 2025. <https://publikacije.stat.gov.rs/G2025/Pdf/G20251190.pdf>
- Ristivojević, Branislav R., i Stefan S. Samardžić. 2017. „Zakon o sprečavanju nasilja u porodici – kritički osvrt iz ugla krivičnog prava.” *Zbornik radova Pravnog fakulteta, Novi Sad* 51 (4): 1441–1451. DOI: 10.5937/zrpfns51-16133

- Stojanović, Zoran. 2011a. „Grgur Milovanović – profesor krivičnog prava i krivičnog postupka.” *Crimen (Beograd)* 2 (1): 133–137.
- Stojanović, Zoran. 2011b. „Preventivna funkcija krivičnog prava.” *Crimen (Beograd)* 2 (1): 3–25.
- Stojanović, Zoran. 2020. „Kazneni rasponi i represivnost krivičnog zakonodavstva.” *Crimen (Beograd)* 11 (1): 3–33. DOI: 10.5937/crimen2001003S
- Stojanović, Zoran. 2023. *Politika suzbijanja kriminaliteta*. Beograd: Pravni fakultet u Beogradu.
- Van Zyl Smit, Dirk, and Catherine Appleton 2019. *Life Imprisonment – A Global Human Rights Analysis*. Cambridge, Massachusetts; London: Punishment & Society.
- Vuković, Igor. 2025. „Lična svojstva žrtava kao kvalifikatorna obeležja krivičnih dela – aktuelne tendencije.” U *Izazovi međunarodnog krivičnog prava i krivičnog prava*, tom 1., ur: Milan Škulić, Ivana Miljuš i Aleksa Škundrić, 105–124. Palić: Udruženje za međunarodno krivično pravo.
- Walter, Gordon L. III. 1999. California's Three Strikes Law: Tyranny of the Majority. *Whittier Law Review* 3: 577–624.
- Zaczyk, Rainer. 2011. “Die Notwendigkeit systematischen Strafrechts – Zugleich zum Begriff 'fragmentarisches Strafrecht'.” *Zeitschrift für die gesamte Strafrechtswissenschaft* 123 (4): 691–708. DOI: 10.1515/zstw-2011-0691
- Zakon o izmenama i dopunama Zakona Krivičnog zakonika, „Službeni glasnik Republike Srbije”, br. 94/2024

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НОВЕ – СТАРЕ ТЕНДЕНЦИЈЕ У ДОМЕНУ КРИМИНАЛНЕ ПОЛИТИКЕ У РЕПУБЛИЦИ СРБИЈИ

Резиме

Нацртом закона о изменама и допунама Кривичног законика, најпре из 2024, а потом и из 2025. године, најављена је значајна реформа кривичног материјалног законодавства Србије. Поред читавог низа нових, криминалополитички углавном спорних инкриминација, предложено је знатно заостравање казних распона код одређених кривичних дела. То се пре свега односи на предложено проширивање примене казне доживотног затвора у односу на кривично дело убиства и поједина кривична дела против полне слободе. Оно што нарочито доводи у сумњу такав евентуални законодавни потез јесте прописивање казне доживотног затвора за све облике (како основни, тако и за све остале облике квалификоване тежом последицом или нарочитом околношћу) појединих кривичних дела, што представља својеврсни правни апсурд, који противречи законодавној техници квалификовања бића кривичног дела и природној логици да је тежи облик кривичног дела тежи управо због тога што је услед неких нарочитих околности или какве даље последице за њега прописана строжа/тежа казна. Поврх тога, прописивање казне доживотног затвора за шири круг кривичних дела од постојећег коси се и са одредбом члана 44а КЗ, којом је предвиђено да се та казна може изузетно прописати, уз казну затвора, за најтежа кривична дела и најтеже облике тешких кривичних дела. Иако није спорно да кривична дела код којих је предложено увођење казне доживотног затвора представљају тешка кривична дела, она ипак нису најтежа кривична дела, нити представљају најтеже облике тешких кривичних дела. Могло би се рећи да таква оријентација у домену криминалне политике у Републици Србији није никаква новина; напротив, уколико се сагледа период од првог озбиљног експреса на плану заостравања казнене репресије из 2009. године, када је код чак трећине постојећих кривичних дела дошло до поостравања казних распона, тенденција прописивања све

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строжих казни не губи на интензитету. Оно што највише забрињава, јесте постојање основане бојазни да поменута тенденција још увек није достигла зенит и да ће се и у будућности наставити. Популистички диригованом реториком и уз готово презрив став према достигнућима науке кривичног права, занемарујући и научна сазнања о реалним могућностима казне и стварном ефекту појачане репресије на плану превенције криминалитета, предлагач нових решења још одлучније наставља процес јачања ретрибутивних тенденција, претећи прекомерном мером казне за повреду кривичноправних норми у сфери тежих форми криминалног понашања. На тај начин се српско кривично право све више удаљава од либералног, правно-државног модела кривичног права, све брже се претварајући у кривично право по мери непријатеља поретка, против којег су, у настојању друштва да обезбеди ефикасну заштиту, сва средства дозвољена. Не само да такво опредељење услед озбиљног угрожавања елементарних људских права у домену кажњавања није примерено поретку који настоји да очува црте демократичности, већ је оно често праћено неефикасношћу и slabим резултатима на пољу контроле криминалног понашања.

Кључне речи: казна, репресија, доживотни затвор, хиперинкриминализација, непријатељско кривично право