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SPECIAL CIRCUMSTANCE FOR DETERMINING A PUNISHMENT FOR CRIMINAL OFFENCES COMMITTED OUT OF HATRED IN CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

Abstract:

The topic of the paper is to analyse the content, reasons and needs for the introduction of a new provision of Article 54a of the Criminal Code of the Republic of Serbia, which stipulates the obligation to take into account as an aggravating circumstance when determining the sentence, the fact that a criminal offence was committed out of hatred due to the victim's actual or presumed affiliation with a group characterised by one of the common personal characteristics prescribed in this article, as well as to analyse its repressive and preventive effects. The paper also emphasises the application of the aforementioned provision since 2012, when the article was introduced into the criminal legislation of the Republic of Serbia. At that time, hate crime was codified in domestic criminal legislation for the first time. The essence of the aforementioned provision is to provide additional criminal protection to certain groups (or individuals belonging to them, e.g. national minorities) from hatred-motivated attacks. An explicit obligation to investigate the motive of hatred and its evaluation when determining the sentence is established. In this manner, the legislator has taken a significant step in the incrimination of hate crimes and hate speech in general. The paper analyses whether, during the period of its existence, this provision has been applied in theory and in court practice, particularly in which way, whether the introduction of this provision has proven justified, what difficulties in its application have been identified and how this institute could be applied even better in the future.

Keywords: *special circumstance in sentencing, punishment, motives, criminal code, standard sentencing, hate crimes.*

1. INTRODUCTION

Every criminal offense entails the existence of a certain threat and is therefore sanctioned by the most severe penalties recognised by the society. However, when a criminal offense is committed out of hatred toward a person based on their personal characteristic, such as race, religion, national affiliation or other attributes, the offense thereby becomes more dangerous and requires a stricter response by the state, as it undermines the most fundamental values of the society, in fact, the principle of equality, the right to human dignity and the fostering of diversity. This is particularly applicable in situations where the protected value and object of protection is a minority ethnic group.

When it comes to domestic legislation, the Criminal Code of the Republic of Serbia does not prescribe hate crimes as a separate criminal offense, but defines them in a certain manner. Although the concept of hate crime has existed for a long time in comparative criminal law, Serbia adopted this concept only in 2012 by prescribing in Article 54a of the Criminal Code, that the court shall consider as an aggravating circumstance the fact that a criminal offense was committed out of hatred based on the race, religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another person, unless such aggravating circumstance is already prescribed as an element of the criminal offense. In other words, this concerns a mandatory aggravating circumstance that the court must take into account when determining the type and severity of the punishment. In this context, prejudice is taken into account as an aggravating circumstance, and given the general social threat posed by such criminal offenses, their stricter sanctioning is justified.

Sanctions in the domain of criminal law protection in cases of discrimination, as well as convictions for crimes motivated by one of its grounds (racial or religious hatred, affiliation with a certain minority group, etc.), represent an exceptionally effective means of making discrimination visible in the society and ensuring adequate protection in cases of violations of the guaranteed rights. Therefore, it is of crucial importance that cases of discrimination are initiated as frequently as possible, even if the suspects have not been identified at the time of initiating the proceedings. Recent amendments to criminal legislation have brought the existing legal provisions closer to international standards; however, the implementation of criminal law protection against discrimination requires the effective enforcement of legal provisions and engagement of all competent authorities as participants in the criminal proceedings.¹

Therefore, in order to understand this institute, it is important to compare the situation before and after the introduction of Article 54a, what has been achieved by its adoption, the underlying motives, reasons and effects for its implementation, as well as its potential impact on the prevention and suppression of hate crimes against persons belonging to national minorities.

2. THE SITUATION BEFORE THE CRIMINAL CODE AMENDMENT

Prior to the amendments to the Criminal Code and introduction of hate crimes, a similar circumstance already existed in our legislation, namely, *base motives*. Base motives represent the legal concept most closely resembling hatred among the existing statutory institutes; however, they cannot fully serve the function of hate crimes. In this regard, Article 54, which relates to the general rules on sentencing, stipulates that “the court shall impose a sentence within the legally prescribed limits for the offense, having regard to the purpose of punishment and taking into account all circumstances that may mitigate or aggravate the sentence (extenuating and aggravating circumstances), in particular: the degree of culpability and the motives for which the offense was committed...” Furthermore, in the special part of the Criminal Code, Article 114, Paragraph 5 stipulates that anyone who deprives another person of life out of greed... or other base motives shall be punished for aggravated murder by imprisonment of at least 10 years or imprisonment ranging from 30 to 40 years. The criminal offense of abuse and torture, specifically Article 137, Paragraph 2, prescribes: “Whoever causes great pain or severe suffering to another by use of force,

1 T. Drobnjak, (2010) *Krivičnopravna zaštita od diskriminacije (Criminal legal protection against discrimination)*, in: *Antidiskriminacioni zakon (Law on the Prohibition of Discrimination)*, Belgrade, p. 90

threat or other unlawful means... or does so out of other motives based on any form of discrimination, shall be punished by imprisonment from six months to five years.”² It is clear that the Criminal Code, even prior to the amendments, stipulated that the court must consider the motives for which the offense was committed when determining the sentence, which, through systemic interpretation, encompasses hatred, among other factors.

It could be observed that while several criminal offenses already specifically penalised discriminatory intent, there remained a need for a more systematic approach to sanctioning hate crimes. Moreover, the competent security and judicial institutions have not always dealt with these issues adequately or effectively, which has caused victims to experience fear throughout all stages of the proceedings.

3. INTRODUCTION AND ANALYSIS OF ARTICLE 54A OF THE CRIMINAL CODE

Owing to the initiative of non-governmental organisations, the concept of hate crime was incorporated into the amended Criminal Code of the Republic of Serbia. In December 2012, the Government of the Republic of Serbia, acting as the proposer, submitted to the National Assembly a Draft Law on Amendments to the Criminal Code, which included Article 54a. On 24 December 2012, the National Assembly adopted the Law, which entered into force on 1 January 2013. This marked the first time that hate crime was codified in Serbian criminal legislation. In this regard, Article 54a reads as follows – Special Circumstance for Determining a Punishment for a Criminal Offence Committed out of Hatred: *“If a criminal offense is committed out of hatred based on the race, religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another person, the court shall consider this circumstance as an aggravating circumstance, unless it is already prescribed as an element of the criminal offense.”*³

A linguistic interpretation of the given norm leads to the conclusion that its application requires that the commission of a criminal offense is motivated by hatred arising from a discriminatory attitude toward certain social groups. In other words, a discriminatory attitude toward specific social groups resulted to hatred, which then served as the motive for the committed criminal offense. Two key concepts are central here: **hatred** - as a form of emotion and **discriminatory attitude** - as a form of prejudice.⁴

This legal structure (the separation of the provision into a distinct article) and the expressly mandatory aggravating effect, highlight the specificity of the new criterion. It marks a departure from the traditional model of standard sentencing, which is based on an open list of value-neutral relevant circumstances. The described intervention has posed two significant questions for criminal law theory: first, whether there is justification for such an amendment; and second, what kinds of challenges may arise in the application, determination and assessment of this special circumstance.⁵ Although the provision

2 I. Stjelja and D. Todorović, (2015) *Zločini iz mržnje - Postupanje državnih organa u slučajevima napada na LGBT osobe u Srbiji (Hate Crimes – Institutional Responses to Attacks Against LGBT People in Serbia)*, Belgrade 2015, p. 8

3 Criminal Code of the Republic of Serbia (“Official Gazette of the RS”, no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012 and 104/2013)

4 N. Delić, (2012) „*Sudska psihologija kao nastavna i naučna disciplina*“, Crimen, Belgrade 1/2012, p. 42.

5 D. Miladinović-Stefanović, *Odmeravanje kazne za krivično delo učinjeno iz mržnje (Sentencing in Cases*

establishing that hatred based on discrimination constitutes a mandatory aggravating circumstance represents, in essence, a “significant” departure from the general rules on sentencing and raises a number of contentious issues, legal theory supports the view that such a solution is justified, primarily due to the need to harmonise domestic legislation with international standards.⁶

Based on relevant international instruments, the purpose of this provision, or Article 54a of the Criminal Code, is to ensure stricter punishment, thereby enhancing criminal law protection for certain vulnerable social groups whose affiliates are victims of various hate-motivated offenses due to their affiliation. Thus, in the context of criminal law, hate crimes are criminal offenses in which the perpetrator targets the victim because of their actual or presumed affiliation with particular social group.⁷

There are opinions suggesting that the enactment of Article 54a of the Criminal Code was unnecessary, and that there was no need to introduce such a provision, given the fact that hatred could already be taken into account as an aggravating circumstance, under Article 54 of the Criminal Code, within the scope of the motives for which the offense was committed. It is therefore rightly pointed out that the provision on hatred as an aggravating circumstance aligns with the punitive function of criminal law.⁸ However, regarding the implementation of Article 54 of the Criminal Code in so-called hate crime cases, the problem lay in the generality of this provision, the absence of explicit reference to prejudice or hatred, as well as to protected categories. Moreover, the law did not prescribe this circumstance as a mandatory aggravating factor but rather as a discretionary aggravating one, which resulted, so to speak, in hate crimes being less visible, that is, the adequacy of the state authorities’ response in cases motivated by hatred was often questioned, along with whether perpetrators in such cases received appropriate sanctions. It was precisely these shortcomings that Article 54a of the Criminal Code was intended to address. Specifically, the purpose of the special (harsher) punishment of criminal offenses committed out of hatred is to prevent crimes motivated by prejudice against others and thereby ensure equality and social tolerance.⁹

A provision in Article 54a of the Criminal Code makes it clear that, among other protected characteristics, national or ethnic affiliation is recognised by law.¹⁰ An ethnic group may be defined as a group distinguished from the wider population by certain characteristics such as religion, culture, geographic origin or language.¹¹ The concept of

of Hate-Motivated Offenses) Collection of papers - Faculty of Law in Niš LXIV, Niš 2013, p.258

6 D. Kolarić, (2013) „Mržnja kao otežavajuća okolnost“ (*Hate as an Aggravating Circumstance*), in: Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena (New Solutions in Serbia's Penal Legislation and Their Practical Enforcement), Zlatibor, p. 418

7 Z. Stojanović, D. Kolarić, (2012) „Nova rešenja u Krivičnom zakoniku Republike Srbije“ (*New solutions in the Criminal Code of the Republic of Serbia*), Bezbednost (Security) 3/2012, p. 13

8 E. Ćorović, (2015) *Sistem krivičnih sankcija Republike Srbije (Criminal Sanctions System in the Republic of Serbia)*, Sven, Niš, p.149

9 A. Ivanović, (2020) *Krivično zakonodavstvo i prevencija kriminaliteta (norma i praksa) (Criminal Legislation and Crime Prevention (Standards and Practice))*, Collection of papers- 11th International Scientific and Expert Conference on Criminal Legislation and Crime Prevention (Standards and Practice) Trebinje, p.245

10 A. R. Ivanović, D., Randelović, M., Totić, (2019) *Govor mržnje u elektronskim medijima i na društvenim mrežama (Hate Speech in Digital Media and on Social Media Platforms)*, Monitor, Novi Pazar, p. 35

11 M.Kolaković-Bojović i A. Đukanović, (2023) *Zločini iz mržnje u Republici Srbiji (Hate Crimes in the Republic of Serbia)*, Belgrade, p. 72

national affiliation could, in a strict sense, be linked to the legal notion of citizenship, while in a broader sense it could refer to national origin, indicating a sense of cultural belonging to a national group that may or may not correspond to the individual's citizenship.¹²

It is important to clarify that the court is required to treat hatred as an aggravating circumstance, except when it is already established as an element of the criminal offense. This means the legislator has prohibited double consideration of this factor under the law (for example, hatred is explicitly defined as a feature, or an element of the criminal offense in the Criminal Code, in cases such as criminal offense of violent conduct at a sports event or public gathering (Article 344a, Paragraph 1 of the Criminal Code). The same applies to offenses under Article 317 (incitement of national, racial and religious hatred and intolerance) and the criminal offence under Article 387 (racial and other discrimination) of the Criminal Code.

With regard to the prosecution and punishment of hate crimes committed against persons belonging to national minorities, it is essential to consider what is to be protected in case of these offences. A protected characteristic refers to a specific fact shared by affiliates of a group, such as ethnic affiliation or another common factor. Given the nature of hate crimes as defined in this way, attention must be directed toward their recognition, accurate identification and the appropriate response by the competent authorities. Proving hate crimes could be particularly complex and challenging, which underscores the crucial role of the police, courts and prosecutors' offices in this process. The commission of a hate crime disrupts the balance of social relations and creates a specific relation between the offender, the victim and the society. Restorative justice offers a mechanism capable of repairing these damaged relationships. Certain examples of good practice in applying various forms of restorative justice in case of hate crime commission serve as clear evidence of that.

When it comes to the existence of one or more motives for the commission of a criminal offense, in the application of Article 54a of the Criminal Code, it may be useful, during the assessment, to ask whether the offense would have been committed in the absence of the motive of hatred; in other words, to determine whether this motive was decisive (and what degree of intensity of hatred is required). The motive, thus, represents the central element of the special circumstance for sentencing, which must be directed toward specific social groups and/or based on particular grounds. Establishing a motive of hatred is therefore a complex task. It involves recognising hatred among other present negative emotions and identifying it as the dominant motive behind the commission of the criminal offense. It should also be taken into account that hatred may be an unconscious motive, that prejudice does not necessarily result in hatred and that a hate crime may still be committed out of hatred, even in the absence of a discriminatory attitude.¹³ What qualitatively distinguishes hatred from other specified negative emotions is the fact that hatred results in destruction, unlike anger or contempt, which may involve potential aggressiveness. This may well be the fundamental reason why the legislator, in Article 54a of the Criminal Code, recognised only hatred based on discrimination as a mandatory aggravating circumstance, and not any other negative emotion.¹⁴

12 See more in: OSCE /ODIHR (2014) *Prosecuting Hate Crimes: A Practical Guide*. Poland, p. 31.

13 N. Delić, *Krivičnopravni značaj mržnje u svetlu identitetskog preobražaja Srbije* (*Hate and Its Criminal Law Implications amid Serbia's Identity Transformation*), in: Vasić, R., Polojac M. (ur) *Identitetski preobražaj Srbije prilozi projektu 2015 - kolektivna monografija*, 2016, Belgrade, p. 148-149.

14 Delić, N. (2016), *op.cit.*, p.139

Hatred is recognised in a specific and distinct manner in the domestic criminal legislation of the Republic of Serbia. It manifests and operates in two primary forms. In the first instance, hatred, specifically its creation, incitement, fuelling, intensification or endorsement, constitutes an essential element of the previously analysed criminal offence categorised as “political” in nature, as defined in Article 317 of the Criminal Code of Serbia: “*Incitement of national, racial and religious hatred and intolerance.*” On the other hand, the Criminal Code of Serbia explicitly identifies “hatred” as a particular type of motive¹⁵ that constitutes an “aggravating” circumstance (Article 54s of the Criminal Code) that courts are required to take into consideration when sentencing the perpetrator of the criminal offense. It should be emphasised that, in accordance with the legal provision, the relevance of a mandatory aggravating circumstance is not attributed to hatred in general, or to any form of hatred *per se*, but exclusively to a specific type, i.e. hatred based on discrimination.¹⁶

Hatred and intolerance towards the victim (whether an individual or a group affiliate) based on a personal characteristic as the motive for committing a criminal offence, is now a particular area of concern in criminal law. The aim should be to impose stricter sanctions on offenders when their motive for committing a criminal offense is hatred or intolerance towards the victim based on a personal characteristic, as this represents a significant social threat. The affiliation of a person to a specific group constitutes a *personal characteristic of that individual*. This personal characteristic may be either actual or *presumed*, where the perpetrator believes it to be present in the victim, even if it is not. According to the case law of the European Court of Human Rights (ECHR), hatred may also be directed towards an individual based on a real or presumed *connection* with someone who belongs to a protected group that either actually possesses or is presumed to possess a particular status or protected characteristic.¹⁷

It should be noted that, for the time being, the presumed affiliation is not included in the scope of Article 54a of the Criminal Code of the Republic of Serbia, although it is part of the definition of discrimination under the Law on the Prohibition of Discrimination. It is similar in case of actual or presumed association with a person who possesses, or is presumed to possess, protected personal characteristics. Such affiliation with a particular group may arise not only from a typical close relationship (such as kinship, friendship, or marriage), but may also extend to individuals who advocate for or promote the rights and interests of the protected group.¹⁸

One of the key issues in the enforcement of Article 54a of the Criminal Code is the question of its recognition within the indictment and the potential risk of exceeding the charges. It is crucial here that hatred, as the motive for the commission of a criminal offense, be identified already at the indictment stage. This is particularly important in light of Article 68, Paragraph 1, Item 10 of the Criminal Procedure Code (CPC), stipulating that the defendant shall have the right to respond to all facts and evidence brought against them. In this context, the question arises whether *hatred as a motive* should be reflected only in the factual description of the offense within the indictment or it also needs to be incorporated into the legal framework. Given that the court is not bound by the legal qualification of the offense (Article 420, Paragraph 2 of the CPC), it is sufficient that hatred,

15 D.Jovašević, (2024) *Mediji, kazneno pravo i pravosuđe (Media, Penal Law and Judiciary)* Belgrade, p. 260

16 Z. Stojanović, (2014) „Racist and xenophobic motivation as an aggravating circumstance in sentencing“, *Strani pravni život*, Belgrade 2/2014, p. 16–17.

17 See more in: *Škorjanec v. Croatia*, petition no. 25536/14, judgment as of 28 May 2017, par. 56.

18 D. Miladinović-Stefanović, (2013) *op.cit.*, p. 263

as a motive for the commission of an offense, be included in the factual description of the offense attributed to the defendant. At the same time, there is no obstacle preventing public prosecutors from referring to Article 54a of the Criminal Code in the indictment; on the contrary, such an approach is, in fact, encouraged. In any case, the court would still be obliged to establish facts relevant to the presence or absence of hatred as a motive for committing the criminal offense.¹⁹ It is especially important that the public prosecutor “request” the court to apply Article 54a in the sentencing process, provided that the factual description of the offense states it was committed out of hatred and the statement of reasons outlines all the relevant supporting circumstances. Such practice is both appropriate and preferable, as it directs the evidentiary proceedings before the court, especially regarding the presentation of evidence relevant to sentencing. The court is required, when assessing the evidence, to take into account the motive of hatred as outlined in the indictment and to provide a reasoned explanation as to whether the application of Article 54a of the Criminal Code is appropriate. If the court establishes that the offense was unquestionably committed out of hatred, it will be obliged to apply the provision of Article 54a when determining the sentence and to state this explicitly in the judgment.

In addition to the above, an important issue concerns *the relationship between the indictment and the judgment* in situations where the public prosecutor does not include hatred as the motive for committing the criminal offense, but the court finds in its judgment that the offense was committed out of hatred and invokes Article 54a of the Criminal Code in sentencing. This, however, raises the question of whether, in such a case, the court would be exceeding the scope of the indictment. When addressing this question, one should primarily be guided by the previously described existence of two parallel tracks in our criminal legislation concerning hate crimes, i.e. the prohibition on double consideration of hatred as the motive for commission of a criminal offense. In fact, the specificity of Article 54a lies precisely in the fact that it applies to those criminal offenses in which hatred does not constitute an element of the offense itself. Therefore, the fact that the public prosecutor includes in the indictment, and the court establishes beyond doubt, all the factual elements comprising the offense for which the accused is found guilty, ensures the factual consistency between the indictment and the judgment. By contrast, the determination of facts relevant to the use of Article 54a of the Criminal Code pertains to the assessment of circumstances significant for sentencing. This is governed by Article 83 of the Criminal Procedure Code, which stipulates that the subject of evidence includes facts that constitute elements of a criminal offense or facts on which the use of another provision of criminal law depends. This encompasses the provisions of not only Article 54a, but also Article 54 of the Criminal Code. As for the court’s resulting obligations, if it establishes beyond doubt that the criminal offense was committed out of hatred, it is required to explicitly consider this circumstance during the sentencing process. Specifically, given that the aggravating circumstance is mandatory, if the court relies on it and it was not included in the indictment, the court risks violating the right of the accused to defense, as he or she would not have been given the opportunity to respond to all the facts and evidence against them. Although this is a mandatory aggravating circumstance, which formally does not take precedence over the circumstances assessed by the court under Article 54 of the Criminal Code, it remains possible for the court to establish the existence of extenuating circumstances at the same time, in accordance with the general sentencing rules provided in Article 54 of the Criminal Code.²⁰

19 M.Kolaković-Bojović i A. Đukanović, *op.cit.*, p. 74

20 E. Čorović, (2020a) Krivičnopravni aspekti (Aspects of Criminal Law). U: Ivanović, A. (ur) *Priručnik za simulaciju suđenja iz oblasti zločina iz mržnje*. Novi Pazar. p. 17

4. CONCLUSION

The short period since this institute was incorporated into the domestic criminal law system has contributed to the fact that it has not yet been sufficiently addressed in legal theory, nor has it seen a broader application in judicial practice that would help crystallise clearer positions on this legal institute. As a result, two key questions arise. First, is the introduction of such a circumstance justified, considering the capacities of domestic legislation prior to its enactment, the trends in hate crime in our country, obligations arising from international instruments and comparative legal experiences? Second, what problems and/or potential abuses may be expected in its application and how could they be overcome? Even despite conflicting expert opinions regarding the justification for introducing Article 54a into the Criminal Code, the prevailing view is that such a provision is both desirable and necessary.

Effective implementation presupposes certain substantive amendments, which would involve eliminating hatred as a substantive legal concept and shifting the focus toward the discriminatory attitude. Accordingly, two normative-technical approaches are possible. The first approach treats the discriminatory attitude as a motive, while the second considers it to have an element of intent. Another possible solution would be, following the model of pecuniary gain as a motive in certain criminal offenses, to introduce qualified forms of particular offenses that would exist when the basic form of the offense is committed “because of” (or “on the basis of”) affiliation with certain groups, or “with the intent” to discriminate.²¹

A developed awareness of the consequences resulting from discrimination and hatred must exist within the society. One way to combat such behaviour is by introducing the provision of hatred as a mandatory aggravating circumstance, in the Criminal Code. Naturally, it should be kept in mind that societal change cannot be achieved automatically simply by enacting this provision. It is a long-term process, which makes the successful implementation of the law by the courts critically important, as it also influences the prevention of future criminal offences. Thus, the amendment to the Criminal Code arose from the need for more comprehensive and systematic legal regulation in this area, the necessity for a more effective institutional response, as well as the broader societal need to combat criminal offenses motivated by discrimination.

The possibility of determination and imposition of criminal sanctions based on Article 54a may also lead to certain abuses, which is why a thorough training of all justice system actors is essential to ensure the proper application of this institute. Only a correct and legislator-intended application of this provision may result in both special and general prevention of hate crimes and protection of significant social values.

21 DeliĆ, N. (2016). , *op.cit.*, p. 150



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ПОСЕБНА ОКОЛНОСТ ЗА ОДМЕРАВАЊЕ КАЗНЕ ЗА КРИВИЧНА ДЕЛА УЧИЊЕНА ИЗ МРЖЊЕ У КРИВИЧНОМ ЗАКОНОДАВСТВУ РЕПУБЛИКЕ СРБИЈЕ

Апстракт:

Тема рада се односи на анализу садржине, разлога и потребе увођења нове одредбе у виду члана 54а Кривичног законика Републике Србије, којим је прописана обавеза узимања као отежавајуће околности приликом одмеравања казне, чињеницу када је кривично дело учињено из мржње због стварне или претпостављене припадности жртве групи коју одликује неко од заједничких личних својстава прописаних у овом члану, као и анализе репресивних и превентивних ефеката исте. Рад се осврће и на примену наведене одредбе од 2012. године када је поменути члан уведен у кривично законодавство Републике Србије. Тада је први пут у домаћем кривичном законодавству кодификован злочин из мржње. Суштина споменуте одредбе јесте у пружању додатне кривичноправне заштите одређеним групама (односно појединцима који им припадају, нпр. националне мањине) од напада који су засновани на мржњи. Успоставља се експлицитна обавеза истраге мотива мржње и његовог вредновања приликом одмеравања казне. На овај начин, законодавац је учинио значајан корак у инкриминацији злочина из мржње и говора мржње уопште. Рад анализира да ли је у овом период постојања ове одредбе иста заживела у теорији и судској пракси, а посебно на какав начин, да ли се показало оправданим увођење ове одредбе, које су потешкоће приликом примене ове одредбе и на који начин би се овај иститут могао још боље у будућности применити.

Кључне речи: *посебна околност за одмеравање казне, кажњавање, побуде, кривични законик, редовно одмеравање казне, злочини мржње.*

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