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CRIMINAL LAW PROTECTION OF CHILD SUPPORT IN THE REPUBLIC OF SERBIA

Abstract:

As a measure of last resort to ensure the effective enforcement of the legal obligation of child support by parents and other persons designated by law, the legislator prescribes criminal liability for a specific offence: “*Failure to Provide Support*” (Article 195 of the Criminal Code). This offence consists of a failure to provide support for a person whom the offender is legally obliged to maintain, where such an obligation has been determined by a final court judgment or by an enforceable settlement before a court or another competent authority, in the amount and manner established therein. This incrimination represents one of the most frequent forms of violating the child’s right to an adequate standard of living. In practice, it primarily serves to protect the “*best interests of the child*.” The paper discusses the concept, scope, constituent elements, and characteristics of this offence, which can seriously and adversely affect the proper development and progress of children under the criminal law of the Republic of Serbia.

Keywords: *child, support, decision of a competent authority, failure to provide, criminal offence*

INTRODUCTION

A recently enacted law in the Republic of Serbia introduced the *Act on the Exercise of Rights from the Maintenance Fund*.¹ The law regulates the establishment, management, and financing of the Maintenance Fund, the child’s right to temporary support from this fund, the procedure for exercising the right to such support, as well as other matters relevant to the realisation of this right. In practice, this has created a foundation for the effective enforcement of child maintenance rights arising from family law relations.

¹ Službeni glasnik RS, br. 51/2025.

The Maintenance Fund (Article 3) is a budgetary fund established for an indefinite period, intended to allocate resources secured for the purpose of temporary child support. Funding for the Maintenance Fund is provided from various sources, such as: (a) the budget of the Republic of Serbia, (b) donations, and (c) other revenues in accordance with the law.

The right to temporary maintenance from the Maintenance Fund may be exercised by a child who is a citizen of the Republic of Serbia and holds the status of an enforceable creditor in enforcement proceedings initiated to secure the right to statutory maintenance (Article 5). The *Act on the Exercise of Rights from the Maintenance Fund* represents the latest attempt to establish a framework ensuring the protection of children's right to maintenance by persons legally authorised to provide such support. In the Republic of Serbia, the right of children to maintenance is founded in the Constitution.²

The Constitution of the Republic of Serbia, in Part Two entitled "*Human and Minority Rights and Freedoms*", Chapter Two: "*Human Rights and Freedoms*", stipulates "*The Rights and Duties of Parents*" (Article 65). It proclaims that parents have both the right and the duty to support, raise, and educate their children, and that they are fully equal in these responsibilities. Any or all of these rights may be revoked or restricted for one or both parents solely by a decision of a competent court, following due proceedings, if such a measure is deemed to be in the best interests of the child and in accordance with the law.

The notion of the "*best interests of the child*" constitutes a legal standard, to be determined as a matter of fact in each individual case on the basis of the evidence presented.

Family Law Act³ Article 6 proclaims that everyone is obliged to act in accordance with the best interests of the child in all activities concerning the child. In this regard, the state bears the following obligations: (a) to take all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse, and from any form of exploitation; (b) to respect, protect, and promote the rights of the child; and (c) to provide protection within a family environment for a child without parental care whenever possible.

A particularly important role in safeguarding the best interests of the child is played by family law provisions relating to maintenance (Article 8). The *Family Law Act* explicitly emphasises that maintenance constitutes both a right and a duty of family members specified by law, and that any waiver of the right to maintenance has no legal effect. Parents have both the right and the duty to provide support to their child (Article 73).

When the realisation of a child's right to maintenance is impossible, substantially hindered, threatened, or diminished, criminal law comes into effect.⁴ The criminal law protection of the duty of maintenance among family members (particularly children) is ensured in the Republic of Serbia through the *Criminal Code*⁵. In Chapter Nineteen, entitled "*Criminal Offences against Marriage and Family*", the Code prescribes a specific criminal offence: "*Failure to Provide Support*" (Article 195).

2 Službeni glasnik RS, br. 98/2006 i 115/2021.

3 Službeni glasnik RS, br. 18/2005, 72/2011 i 6/2015.

4 Krstinić, D., Dragojlović, J., (2024). Krivičnopravne i naslednopravne posledice zakonskog izdržavanja, u: XXI međunarodni naučni skup „Pravnički dani - Prof. dr Slavko Carić“, Odgovori pravne nauke na izazove savremenog društva, Novi Sad, Pravni fakultet za privredu i pravosuđe u Novom Sadu, str. 485.

5 Službeni glasnik RS, br. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024.

HISTORICAL DEVELOPMENT OF THE INCRIMINATION OF FAILURE TO PROVIDE MAINTENANCE

The criminal offence of *Failure to Provide Support* (Article 195) has undergone a long historical evolution before acquiring its current designation, forms of manifestation, content, and characteristics. This incrimination was previously prescribed by: (a) the Criminal Code of the Federal People's Republic of Yugoslavia (1951), and (b) the Criminal Code of the Socialist Republic of Serbia (1977).

The Criminal Code of the FPR Yugoslavia⁶ in Chapter Seventeen entitled "*Criminal Offences against Marriage and Family*", stipulated the criminal offence of "*Non-Payment of Alimony*" (Article 197). This offence, punishable alternatively by a fine or by imprisonment of up to one year, consisted of evading the provision of maintenance for a person whom the offender was obliged to support on the basis of a final court decision. The object of legal protection was the right of a family member to secure the material means of subsistence. The right to maintenance most commonly belongs to a child (as a rule, a minor), but it may also extend to a spouse or a parent in cases where they lack sufficient means of subsistence and are either incapable of work or unemployed, as well as to other relatives under conditions prescribed by law.

The criminal offence of non-payment of alimony consisted of two basic elements⁷. These elements were as follows: (a) **The act of commission** – defined as the evasion of providing maintenance. This refers to any positive, active conduct which clearly and unequivocally expresses the intent and will to withhold, either wholly or partially, the payment of maintenance for a particular person. The act of evasion does not merely constitute a "simple" failure to provide maintenance, but rather an intentional avoidance of fulfilling this obligation, provided that the offender was objectively capable of doing so but deliberately refrained, actively obstructing the enforcement of maintenance (e.g., by concealing income, frequently changing residence or place of employment, terminating employment, and similar actions). If the offender was genuinely unable (for justified reasons) to provide maintenance—for instance, due to illness or unemployment not attributable to their own fault—then this criminal offence is not constituted. (b) **The requirement that the act of commission results in the avoidance of paying or providing maintenance for a specific person** – namely, a person whom the offender is legally obliged to support. This duty of maintenance must have been previously established by a final and binding decision of a competent authority, without the need for further specification as to which authority rendered such a decision.

By the 1959 amendment to the Criminal Code of the FPR Yugoslavia⁸, a more severe form of this offence was introduced in "*particularly serious cases*", punishable by imprisonment of not less than three months. A "*particularly serious case*" (Article 41) was recognised at that time when the offence assumed a particularly dangerous form, provided that the following elements were cumulatively met: (a) a subjective element – that the offender, in committing the act, demonstrated particular determination, persistence, or ruthlessness; and (b) an objective element – that the offence either caused exceptionally serious consequences or was committed under particularly aggravating circumstances.

6 Službeni list FNRJ, br. 13/51.

7 Radovanović, M., Đorđević, M. (1977). *Krivično pravo. Posebni deo*. Beograd: Savremena administracija, str. 179-180.

8 Službeni list FNRJ, br. 30/59.

The Criminal Code of the Socialist Republic of Serbia⁹ (which remained in force until 1 January 2006), in Chapter Thirteen entitled “*Criminal Offences against Marriage and Family*”, prescribed the criminal offence of “*Failure to Provide Support*” (Article 119). The terminological change in the designation of this incrimination brought qualitative modifications to its content. This offence was also punishable alternatively by a fine or by imprisonment of up to one year. A distinctive feature of this incrimination (paragraph 3) was the statutory provision allowing the court, when imposing a suspended sentence, to order the offender of the basic offence to settle overdue obligations and to continue to pay maintenance regularly in the future. Thus, if the court opted for a suspended sentence in cases of failure to provide support, it could impose upon the offender the obligation to pay outstanding arrears as well as to make regular maintenance payments thereafter. Failure to comply with this obligation represented an optional ground for the revocation of the suspended sentence.

The criminal offence of “*Failure to Provide Support*” was committed by a person who failed to provide maintenance for an individual whom they were legally obliged to support, in the amount and manner determined by a final court decision or enforceable settlement before a court or another competent authority. The object of legal protection was the right to maintenance of a person whom the offender was legally bound to support. This right derived from matrimonial or family law, rather than from another legal basis (e.g., compensation for damages). It was essential that the obligation be established by a final and enforceable court decision or settlement. A final court decision was understood not only to include judgments, but also rulings (such as interim orders).¹⁰ The act of commission consisted in the omission to provide maintenance. Such a statutory solution indicates that the conduct element of the offence was a negative, passive activity — an omission or failure to provide maintenance.¹¹

For the existence of the offence at that time, it was necessary that the act of commission related to maintenance: (a) for a person whom the offender was legally obliged to support; (b) in the amount and manner as determined; and (c) established by a final court decision or enforceable settlement before a court or another competent authority.

The criminal offence of *Failure to Provide Support* (Article 119) recognised, in addition to its basic form, a more serious, qualified form (paragraph 2). This aggravated offence, punishable by imprisonment of up to three years, was constituted where the commission of the basic offence resulted in serious consequences for the person entitled to maintenance (i.e., an offence qualified by a graver consequence). Whether such “*serious consequences*” existed for the dependent person, and what those consequences entailed, was a factual matter to be determined by the court in each individual case on the basis of the established facts.¹² What constitutes *serious consequences* is assessed by the court on a case-by-case basis (e.g., impairment of the dependent person’s health, or their resorting to vagrancy, begging, prostitution, or the commission of criminal offences).

9 Službeni glasnik SRS, br. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 i 21/90 i Službeni glasnik Republike Srbije broj 16/90, 26/91, 58/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/2002, 11/2002 i 80/2002.

10 Stojanović, Z., Perić, O. (2000). *Krivično pravo. Posebni deo*. Beograd: Službeni glasnik, str. 193.

11 Simić, I., Petrović, M. (2002). *Krivični zakon Republike Srbije. Praktična primena*. Beograd: Službeni glasnik, str. 118.

12 Stojanović, Z., Perić, O. (1996). *Komentar Krivičnog zakona Republike Srbije i Krivični zakon Republike Crne Gore sa objašnjenjima*. Beograd: Službeni list, str. 182-184.

In the *Criminal Code of the Republic of Serbia*, the offence of “*Failure to Provide Support*” (Article 195) today consists of the omission to provide maintenance for a person whom the offender is legally obliged to support, where such a duty has been determined by a final court decision or by an enforceable settlement before a court or another competent authority, in the amount and manner established therein.¹³ This incrimination represents one of the most common forms of violating a child’s right to an adequate standard of living (“*the best interests of the child*”) and may seriously and gravely endanger the child’s proper development and progress. In this way, the statutory solution has been tailored to the needs of the injured party, primarily the child, thereby sending a clear message to parents regarding their responsibility towards their children, as well as to other citizens, that this constitutes one of the most serious violations of children’s rights, which neither should nor can be tolerated by society.¹⁴

THE OBJECT OF PROTECTION OF THE CRIMINAL OFFENCE OF FAILURE TO PROVIDE SUPPORT

In legal theory, the object of protection of this criminal offence is defined in several different ways. According to one view, it is the “*interest of the person*” for whose benefit the duty of maintenance (alimony) has been established.¹⁵ Another perspective holds that the object of protection lies in securing the existential material conditions of life for a family member¹⁶ or in guaranteeing the material security of family members, which derives from the principle of family solidarity as a prerequisite for the existence of the family and the development of family relations.¹⁷ A third view considers the right of a family member to the provision of material means of subsistence as the object of protection in this case.¹⁸ The rights and duties of child support (and support for other family relatives) are set out in the *Family Law Act* (Articles 151–167). In substance, this right is a property right that establishes an obligational relationship between the beneficiary of support and the person obliged to provide it. This relationship is adjudicated under the rules of the law of obligations, through litigation or enforcement proceedings.

According to another interpretation, the object of protection of the criminal offence of failure to provide support consists of the minimum conditions for the existence of family members, and above all, women and children from divorced marriages.¹⁹ The family is not only a blood-related but also an economic community, founded upon feelings of attachment and solidarity. This solidarity is reflected in the existence of the right of each member who is unable to work and earn a living to be supported by those who are able and in a position to do so. Although this obligation is established under family law provisions, it becomes the subject of criminal law protection from the moment it is confirmed by a court or another competent authority. A further view holds that the very person in whose favour the obligation of maintenance has been established constitutes the object of protection in such cases.²⁰

13 Simić, I., Trešnjev, A. (2010). *Krivični zakonik s kraćim komentarom*. Beograd: Ing-pro, str.143.

14 Turković, K., et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Narodne novine, str. 229-230.

15 Dragojlović, J. (2025). *Krivično pravo. Posebni deo*. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu, str. 121.

16 Jovašević, D. (2017). *Krivično pravo. Posebni deo*. Beograd: Dosije, str. 109.

17 Babić, M., Marković, I. (2007). *Krivično pravo. Posebni dio*. Banja Luka: Pravni fakultet, str. 152.

18 Jovašević, D., Miladinović Stefanović, D. (2023). *Krivično pravo. Posebni deo*. Niš: Pravni fakultet, str. 171.

19 Petrović, B., Ferhatović, A., Jovašević, D. (2024). *Krivično pravo. Posebni dio*. Sarajevo: Pravni fakultet, str. 107.

20 Stojanović, Z., Delić, N. (2013). *Krivično pravo. Posebni deo*. Beograd:Pravni fakultet, str. 113.

Nevertheless, all these court proceedings prescribed by law are not, in themselves, a guarantee for the realisation of these legally proclaimed rights. Maintenance is most often provided in the form of a monetary amount, but it may also consist of other assets or values that can serve to meet the needs of the dependent person in respect of food, clothing, housing, medical treatment, education, and so forth. Therefore, criminal law protection complements civil enforcement, demonstrating that the importance of the right to maintenance is not confined merely to a pecuniary interest. Rather, it reflects a broader social interest in ensuring the protection of certain individuals, primarily children or other family members who are unable to provide for themselves.²¹ For this criminal offence to exist, the obligation of maintenance must arise from one of the legal bases provided by law. Accordingly, this incrimination does not apply where a person (the maintenance debtor) fails to pay maintenance awarded as compensation for damages or on any other legal basis.²²

THE ACT OF COMMISSION IN THE CRIMINAL OFFENCE OF FAILURE TO PROVIDE SUPPORT

The act of commission of the criminal offence of *Failure to Provide Support* is defined as the “*failure to provide maintenance*”.²³ This constitutes the conscious omission to pay (non-payment) within the prescribed period a specific monetary amount for the maintenance of a family member. Instead of the previously used term “*evasion of providing maintenance*,” the legislator now defines the act of commission more simply as the activity of “*failure to provide*” maintenance.²⁴ In this way, the provision encompasses every instance of non-payment of maintenance, including the outright refusal to fulfil the maintenance obligation, making it entirely irrelevant whether the offender acts with a specific intention (purpose) or not.²⁵

The act of commission consists in the failure (or omission, or avoidance) of providing maintenance, but not in respect of just any person — only towards a person for whom there exists a statutory family law obligation of support. From this definition, it follows that this is an offence of omission (*omissive offence*), in which the incriminated conduct lies in the breach of a duty to act. Such non-provision may take three forms: (a) complete — where the full amount of maintenance is not paid at all; (b) partial — where only part of the prescribed maintenance is paid; or (c) untimely or irregular — where payments are made irregularly or with shorter or longer delays. The provision of maintenance in the manner and amount determined by a court decision or settlement ensures the stability and security of the recipient of support, as it protects them within family law relations from the arbitrariness and subjectivism of the maintenance debtor.

The act of commission is defined by a verb of continuous action, which means that failure to provide maintenance, whether occurring once or on several occasions, always constitutes a single criminal offence, provided that it concerns the same dependent person.

21 Lazarević, Lj., Vučković, B., Vučković, V. (2004). *Komentar Krivičnog zakonika Crne Gore*. Cetinje: Obod, str. 563.

22 Bačić, F., Pavlović, Š. (2001). *Kazneno pravo. Posebni dio. I izdanje*. Zagreb: Pravni fakultet, str. 191-193.

23 Delić, N. (2021). *Krivično pravo. Posebni deo*. Beograd: Pravni fakultet, str. 130.

24 Đorđević, Đ., Bodrožić, I. (2024). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijski univerzitet, str. 132.

25 Stojanović, Z., Delić, N., op. cit., str. 114.

However, failure to provide maintenance in respect of several dependants gives rise to a concurrence of offences. Although the legislator has precisely defined this omission (failure to act), part of the legal doctrine nonetheless holds that the offence is not fulfilled merely by the *withholding* of the support owed, but that there must also be an element of avoidance in the failure to provide maintenance.²⁶

Such avoidance is manifested either through active conduct or through a conscious omission, whereby the offender permanently or temporarily prevents the provision of maintenance for a specific person. However, this criminal offence does not arise where the offender finds themselves in objective circumstances (such as unemployment or prolonged illness) which have not occurred with the intention of evading this obligation.²⁷ Maintenance consists in the payment of a certain monetary amount necessary to cover the basic existential needs of the dependent person, including food, housing, clothing, healthcare, upbringing, and education. The amount and manner of providing maintenance are determined by the competent state authority – either the court or the guardianship authority.²⁸ Providing maintenance presupposes that the perpetrator is capable of regularly fulfilling the obligation in the amount and in the manner determined by the decision of the competent authority.²⁹

A necessary condition for this criminal offence is the existence of an enforceable court decision (in the form of a judgment, ruling, or order, particularly an interim order establishing a temporary maintenance obligation until the conclusion of proceedings) or an enforceable settlement before a court or another competent authority (such as a social welfare centre), by which the maintenance obligation and the amount to be paid monthly for certain persons have been determined once the decision becomes enforceable. Enforceability generally arises with finality, but in urgent cases prescribed by law, it may occur even before the decision becomes final.³⁰ In urgent cases, an interim measure is issued which is immediately enforceable, but which does not affect the substantive resolution of the disputed matter and whose effect ceases upon the conclusion of the proceedings. Avoidance of maintenance, in the sense of the act of commission of this offence, is possible only from the moment the decision or settlement becomes enforceable.

The offence is completed upon the expiration of the deadline for providing maintenance, that is, when the perpetrator has failed to fulfill their obligation for a certain period of time, without presenting proof of the existence of justified reasons for such omission.³¹ Whether the reasons for non-payment of maintenance, either in full or in part, are “justified” or not, represents a factual question that the court resolves in each specific case. Namely, the Criminal Code (paragraph 2) stipulates that a person who has not provided maintenance for justified reasons shall not be punished. It should be emphasized

26 Pavišić, B., Grozdanić, V., Veić, P. (2007). *Komentar Kaznenog zakona*. Zagreb: Narodne novine, str. 529.

27 Đorđević, Đ., Kolarić, D. (2020). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijski univerzitet, str. 95.

28 Simović, M., Simović, V. (2021). *Krivično pravo Brčko distrikta BIH. Posebni deo*. Banja Luka: Grafomark, str. 59.

29 Lazarević, Lj. (2006). *Komentar Krivičnog zakonika Republike Srbije*. Beograd: Savremena administracija, str. 546.

30 Lazarević, Lj. (1995). *Krivično pravo Jugoslavije. Posebni deo*. Beograd: Savremena administracija, str. 534.

31 For the existence of the criminal offense of failure to provide support, it is not necessary that the interests of the supported person are endangered; it is sufficient that the accused does not provide the support he is obliged to give on the basis of an enforceable court decision..

that the perpetrator's intent to withhold maintenance (fully, partially, or untimely) does not constitute an essential element of the criminal offence of non-payment of maintenance, and therefore is not established. The offence is most often committed, as a rule, through several successive acts prescribed by law, carried out over a shorter or longer period of time.³²

THE LEGAL NATURE OF THE CRIMINAL OFFENCE OF FAILURE TO PROVIDE MAINTENANCE

Failure to Provide Maintenance in Relation to One Person—regardless of the period of non-fulfilment—constitutes a *single (continued)* criminal offence. However, failure to fulfil obligations towards several “maintained” persons constitutes *multiple offences in real concurrence*, depending on the number of individuals entitled to maintenance. In this respect, it is irrelevant whether the obligation to provide maintenance for several persons arises from one or several decisions or settlements. Furthermore, in legal theory there are views that this offence represents a *criminal offence with an indefinite (indifferent) number of acts of commission*. According to this interpretation, committing several acts of omission in relation to one person still constitutes *one single offence*, rather than a continued one.³³

Regarding the legal nature of the criminal offence of failure to provide maintenance, several views appear in legal theory. According to one interpretation, this offence constitutes a so-called “personal criminal offence.”³⁴ This means that there are as many separate criminal offences as there are injured parties (i.e., persons to whom the maintenance obligation has not been fulfilled).

In addition, legal theory emphasizes the view that this is a “continuing criminal offence.” The basis of this interpretation lies in the type, nature, character, and duration of the resulting consequence.³⁵ By failing to provide maintenance over a continuous period of time, an unlawful situation is created that lasts for a certain, shorter or longer, duration, since the obligation of the provider of maintenance, established by a final and enforceable court decision, continues until the moment the legal obligation of maintenance ceases. In this context, every repeated omission toward the same person does not constitute a new criminal offence, nor do separate limitation periods begin to run.

However, in legal theory, there is also a different view according to which the failure to provide maintenance does not constitute a continuing criminal offence. Instead, the offence is considered completed with each omission to provide maintenance as determined by a settlement or court decision. Any subsequent repetition of the omission toward the same injured party constitutes a new criminal offence, so in such cases, it is treated as an extended (continued) criminal offence.³⁶

32 Atanacković, D. (1985). *Krivično pravo. Posebni deo*. Beograd: Službeni list, str. 304.

33 Judgment of the Appellate Court in Novi Sad Kž. 4197/2010.

34 Judgment of the District Court in Subotica Kž. 30/2008.

35 Đorđević, Đ. (2011). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijska akademija, str. 85.

36 The legal opinion of the Criminal Department of the Supreme Court of Cassation adopted at the session held on November 24, 2014.

OTHER ELEMENTS OF THE CRIMINAL OFFENSE OF FAILURE TO PROVIDE SUPPORT

The perpetrator of the offense can only be a specific person – a person with a special personal relationship. This is the person who has been designated as the debtor of support by an enforceable court decision or on the basis of an enforceable settlement before a court or another competent state authority, but who fails to fulfill that obligation. The passive subject is the person whom the perpetrator is legally obliged to support.³⁷

The subjective element of this offense, in terms of criminal liability, is the perpetrator's intent, which encompasses his awareness of the existence of an established obligation to pay maintenance in a specified monetary amount. A mistake regarding the existence of an enforceable court decision or enforceable settlement constitutes a factual mistake in the narrow sense. This is a mistake concerning one of the essential elements of this criminal offense.³⁸

For this offense, the law alternatively prescribes either a fine or a prison sentence of up to two years. When imposing a suspended sentence, the court may order the offender to settle outstanding obligations and to pay maintenance regularly (paragraph 4). Failure to comply with this obligation constitutes an optional ground for revoking the suspended sentence.

A more severe form of the offense exists if the act of commission results in serious consequences for the dependent person (Paragraph 3). Which serious consequences exist, when they occur, and when they are in a causal connection with the act of commission, is a factual question that the court resolves in each specific case. These consequences may include: deterioration of the supported person's health, abandonment of schooling, or their resorting to vagrancy, begging, prostitution, or the commission of criminal offenses. Here we are dealing with the existence of a criminal offense that is qualified by a more serious consequence, which is the result of the perpetrator's negligence. The notion of "serious consequences" should be understood as a significant exceeding of the difficulties that normally arise in cases of avoiding the payment of maintenance.³⁹ For this more serious offense, a prison sentence ranging from three months to three years is prescribed.

CONCLUSION

For the purpose of effective protection of the constitutionally guaranteed right to maintenance of children/minors (Article 65) by persons designated by law (family members or parents), the Family Law of the Republic of Serbia (Article 6) proclaims that everyone is obliged to act in accordance with the best interests of the child in all activities concerning the child. A special role in ensuring the best interests of the child is played by family law provisions relating to maintenance (Article 8), which emphasize that maintenance is both a right and a duty of family members as determined by law, and that waiving the right to maintenance has no legal effect. Parents have the right and the duty to maintain their child

37 Ilčić, D. (2006). Krivično delo nedavanje izdržavanja. *Bilten Okružnog suda u Beogradu*, (72), str. 81-83.

38 Jovašević, D., Miladinović Stefanović, D., op. cit., str. 172.

39 Korošec, D. et al. (2023). *Veliki znanstveni komentar posebnega dela Kazenskoga zakonika. Knjiga 2*. Ljubljana: Uradni list, Pravna fakulteta, str. 357-370.

(Article 73). The recently adopted Law on the Realization of Rights from the Alimony Fund is also intended to contribute to the effective protection of this right of the child.

Nevertheless, despite all constitutional and legal guarantees, the right of a child to maintenance is often completely or partially denied, obstructed, or diminished. Therefore, in modern criminal legislation, criminal law protection of the right to maintenance of a child (as well as other dependents within the family or household) has been established. In the Republic of Serbia, this is achieved through the Criminal Code by incriminating the criminal offense of “Failure to Provide Maintenance” (Article 195) in its basic and qualified forms.

This criminal offense exists only in cases of failure (conscious omission) to provide maintenance under the following conditions:

- a) the maintenance is owed to a person whom the perpetrator is legally obliged to maintain,
- b) the obligation is determined by an enforceable court decision or enforceable settlement before a court or another competent authority, and
- c) the obligation is determined with respect to the amount and method (schedule) of payment.

However, for the existence of this offense—punishable by either a fine or imprisonment—it is necessary that there are no “justified” reasons on the part of the perpetrator (the maintenance debtor) for the omission. Otherwise, the punishable offense does not exist.

If the failure to provide maintenance, whether in whole, in part, or untimely, leads to the occurrence of serious consequences of any type, nature, character, or scope for the dependent person, then a more serious, qualified form of this offense exists, carrying harsher punishment for the perpetrator. Nonetheless, it must be emphasized that the establishment of criminal liability, and punishment of the perpetrator, does not exclude his obligation to settle all outstanding maintenance obligations, nor does it relieve him of the duty to continue meeting his obligations regularly in the future.



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KRIVIČNOPRAVNA ZAŠTITA IZDRŽAVANJA DECE U REPUBLICI SRBIJI

Apstrakt:

Kao krajnje sredstvo za obezbeđenje efikasnog ostvarivanja zakonske obaveze izdržavanja dece od strane roditelja i drugih zakonom određenih lica javlja se propisivanje krivične odgovornosti za specifično krivično delo: "Nedavanje izdržavanja" (član 195. Krivičnog zakonika). Ovo se delo sastoji u nedavanju izdržavanja za lica koje je učinilac dela po zakonu dužan da izdržava, ako je takva obaveza utvrđena izvršnom sudsom odlukom ili izvršnim poravnanjem pred sudom ili drugim nadležnim organom u iznosu i na način kako je odlukom ili poravnanjem utvrđeno. Radi se o inkriminaciji koja predstavlja jedno od najčešćih oblika kršenja prava deteta na primeran životni standard. Praktično se na ovaj način štiti "dobrobit deteta". U radu se govori o pojmu, sadržini, elementima bića i karakteristikama ove inkriminacije kojom se može znatno i teško ugroziti pravilan razvoj i napredak dece u krivičnom pravu Republike Srbije.

Ključne reči: dete, izdržavanje, odluka nadležnog organa, nedavanje, krivično delo.

REFERENCES

1. Atanacković, D. (1985). *Krivično pravo. Posebni deo*. Beograd: Službeni list.
2. Babić, M., Marković, I. (2007). *Krivično pravo. Posebni dio*. Banja Luka: Pravni fakultet.
3. Bačić, F., Pavlović, Š. (2001). *Kazneno pravo. Posebni dio. I izdanje*. Zagreb: Pravni fakultet.
4. Delić, N. (2021). *Krivično pravo. Posebni deo*. Beograd: Pravni fakultet.
5. Đorđević, Đ. (2011). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijska akademija.
6. Đorđević, Đ., Bodrožić, I. (2024). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijski univerzitet.
7. Đorđević, Đ., Kolarić, D. (2020). *Krivično pravo. Posebni deo*. Beograd: Kriminalističko-policijski univerzitet.
8. Dragojlović, J. (2025). *Krivično pravo. Posebni deo*. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu..

9. Ilčić, D. (2006). Krivično delo nedavanje izdržavanja. *Bilten Okružnog suda u Beogradu*, (72), str. 81-83.
10. Jovašević, D. (2017). *Krivično pravo. Posebni deo*. Beograd: Dosije.
11. Jovašević, D., Miladinović Stefanović, D. (2023). *Krivično pravo. Posebni deo*. Niš: Pravni fakultet.
12. Judgment of the Appellate Court in Novi Sad Kž. 4197/2010.
13. Judgment of the District Court in Subotica Kž. 30/2008.
14. Korošec, D. et al. (2023). *Veliki znanstveni komentar posebnog dela Kazenskoga zakonika. Knjiga 2*. Ljubljana: Uradni list, Pravna fakulteta.
15. Krivični zakonik [Criminal Code], Službeni glasnik RS, br. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024.
16. Krstinić, D., Dragojlović, J., (2024). Krivičnopravne i naslednopravne posledice zakonskog izdržavanja, u: XXI međunarodni naučni skup „Pravnički dani - Prof. dr Slavko Carić“, Odgovori pravne nauke na izazove savremenog društva, Novi Sad, Pravni fakultet za privredu i pravosuđe u Novom Sadu, str. 483-496.
17. Lazarević, Lj. (1995). *Krivično pravo Jugoslavije. Posebni deo*. Beograd: Savremena administracija.
18. Lazarević, Lj. (2006). *Komentar Krivičnog zakonika Republike Srbije*. Beograd: Savremena administracija.
19. Lazarević, Lj., Vučković, B., Vučković, V. (2004). *Komentar Krivičnog zakonika Crne Gore*. Cetinje: Obod.
20. Pavišić, B., Grozdanić, V., Veić, P. (2007). *Komentar Kaznenog zakona*. Zagreb: Narodne novine.
21. Petrović, B., Ferhatović, A., Jovašević, D. (2024). *Krivično pravo. Posebni dio*. Sarajevo: Pravni fakultet.
22. Porodični zakon, Službeni glasnik RS, br.18/2005, 72/2011 i 6/2015.
23. Radovanović, M., Đorđević, M. (1977). *Krivično pravo. Posebni deo*. Beograd: Savremena administracija.
24. Simić, I., Petrović, M. (2002). *Krivični zakon Republike Srbije. Praktična primena*. Beograd: Službeni glasnik.
25. Simić, I., Trešnjević, A. (2010). *Krivični zakonik s kraćim komentarom*. Beograd: Ing-pro.
26. Simović, M., Simović, V. (2021). *Krivično pravo Brčko distrikta BiH. Posebni deo*. Banja Luka: Grafomark.
27. Službeni glasnik RS, br.98/2006 i 115/2021.
28. Stojanović, Z., Delić, N. (2013). *Krivično pravo. Posebni deo*. Beograd: Pravni fakultet.
29. Stojanović, Z., Perić, O. (1996). *Komentar Krivičnog zakona Republike Srbije i Krivični zakon Republike Crne Gore sa objašnjenjima*. Beograd: Službeni list.
30. Stojanović, Z., Perić, O. (2000). *Krivično pravo. Posebni deo*. Beograd: Službeni glasnik.
31. Turković, K., et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Narodne novine.
32. Zakon o ostvarivanju prava iz alimentacionog fonda [Act on the Exercise of Rights from the Maintenance Fund], Službeni glasnik RS, br. 51/2025.