

## THE CRIMINAL OFFENSE OF MURDER: HISTORICAL, CRIMINAL AND CRIMINOLOGY ASPECTS<sup>1</sup>

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### Abstract

Human life and body represent social values that have always been and remain the subject of criminal law protection. Precisely, the authors in the first part of the work point to the incrimination of the crime of murder throughout the historical era of Serbia and the neighboring countries, and also that the life and body of members of certain social classes were not subject to criminal law protection, and in certain eras the criminal law protection of life and body was not provided equally to every person.

The continuous development of society and changes in all spheres led to the need for more and more contact between people, and their relationships led to various conflicts and the desire to be resolved at their own discretion. The second part of the work deals with conflict situations that led to mutual attacks in order to resolve the situations that ended with an attack and endangering the physical integrity of people. Thus, when studying the criminal offense of murder, which is one of the classics, perhaps even the oldest criminal offense which has already been discussed so much from a theoretical point of view and, at first glance, it seems that everything has already been said, there are still a lot of disputed questions that need to be discussed, in a theoretical, criminological sense, as well as to clarify the problems that arise in judicial practice. Some research indicates that a high percentage (even over 80 percent) of perpetrators of criminal acts would not have started committing criminal acts if they had known for sure that they would be discovered as perpetrators of the same. Research data indicate that violence in Serbia has increased by 74%. The third part of the work deals with the incrimination of the most serious criminal offense from the aspect of modern and international criminal law, as well as their recommendations for the purpose of prevention and repression.

**Keywords:** the crime of murder, criminal policy, criminological aspect, murder, crimes of violence, criminal

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## 1. INTRODUCTION

Murder represents the most extreme form of human destruction and multifaceted ethical, sociological, psychological, medical and legal phenomenon since Bible to contemporary criminal laws and scientific research studies. By incriminating a murder, the right to human life is protected and that is supreme human right, which stands before any other right. Life and body are defined as the most significant human, but also social values (Stojanovic, 1998: 3-15). Evil is rooted in human nature, and man is inherently aggressive and reaches for violence and terror, personal and social, when the opportunity arises or when he feels endangered. We can state with certainty that murder, as a destructive human act aimed at depriving a person of human life, has been a faithful companion of man, since the oldest days to nowadays, with different phenomenological forms of manifestation. Murder, as an act of depriving a person of life, represents a multidisciplinary problem that is the focus of interest of numerous sciences and scientific disciplines, where each of them evaluates its object of study from each and any scientific approach and strives to give adequate answers to certain etiological, phenomenological and preventive questions.

According to From (Erich From), man is a unique being able to torture and kill members of his own species and feels satisfaction thereby. Freud (Sigmund Freud) understands aggression as instinctive energy, considering it a part of the death instinct, with selective function towards other persons. Rather, it could be accepted that murders, due to their presence in every society on a scale that is variable but is nowhere negligible, with its dynamism and variability in terms of performing ways; increasingly common organized execution; difficulties and obstacles that occur in its discovery and prosecution of the perpetrators; mentions of motives for acting, they represent “rejuvenated and perfected” delict of contemporary society (Lazarevic, 2000:5). Life and physical integrity have been the object of the criminal law protection since ancient times, but that protection was not absolute or equal for all members of the society. Criminal acts of injury or violations to life or body are called natural or general (atavistic) criminal acts, in contrast to social (evolutionary) or political criminal acts, which differ in terms of punishment and characteristics among individual countries and in individual historical periods (Jovasevic, 2017: 13).

Murder, in a broader sense, means the destruction of human life, and as a criminal act, it represents the illegal deprivation (taking) of a person's life. In the psychological sense, murder represents a conscious and voluntary or unconscious, and most often affective-impulsive act of taking the life of a person, which is motivated by different motives. As a form of violence, murder is one of the most widespread phenomena associated with human nature and human society. That murder is a problem as old as human history is taught by the Bible, which begins with the legend of creation, continues with the story of temptation and procreation, and then when the family is established, there is a rivalry between brothers and frustration that ends in anger and fratricide (Chron, 1993: 27).

The European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 2 enumerates cases of permissible deprivation of life. These are: defense against illegal violence (self-defense and defense of another person), arrest, prevention of escape, suppression of rebellion or uprising (this last ground is particularly controversial). Cases of permitted deprivation of life are directly caused by restrictive legal conditions that must be met in each specific case. Basic human rights and freedoms that have been proclaimed in numerous international documents are directly implemented and

operationalized through the catalog of rights and universal guarantees of suspects or accused persons in criminal proceedings.

All this confirms that even international documents relativize the right to life. Criminal codes also indicate that the right to life is subject to limitations. Thus, the grounds that exclude the existence of a criminal offense set limits to the protection of life under criminal law. These are: necessary defense, extreme necessity, consent of the person, permissible risk. In some countries, there is also the death penalty (some American states, some Middle Eastern states, some African states (Kolaric, 2007:79–81). If the conditions for the application of incrimination from Article 117 are not met, it may happen that the existence of the conditions is a circumstance that is taken into account when determining the punishment for the crime of murder. The question arises: Who is the holder of the right to life, is it every individual, and why can't he dispose of his right? Certainly, obviously, the general, social interests are put above individual values, which indicates that the legislator interferes with the subjective rights of the individual in order to protect him, all in the sphere of life protection.

Of exceptional importance are the questions related to the social and criminal-political significance of the murder. From a social point of view, murder always implies a situation that is not limited only to the perpetrator and the victim, but also encompasses a wider social context. The bottom line is that murder is also a social act that includes not only taking the life of another person but also condemnation and perception of the environment in which it happens. In the context of criminal law, it is necessary to emphasize the importance of individual (special) and general (general) prevention, appreciating that modern criminal law incorporates a preventive component in addition to the repressive component. Also, murder as a legal and social phenomenon must be viewed through the prism of very complex social relations and contemporary challenges faced by the civilized world. It is evident that criminality, by its nature, phenomenological forms of manifestation, the way criminal activities are operationalized and other specifics, very quickly and easily adapts to new social, political, economic, cultural and other conditions and specifics. In that manner, both, the prison sentence and the institutional resocialization of the perpetrator do not affect, to the expected extent, to the change in the offender's behavior pattern, and they return to the criminal behavior pattern, most often with significantly more brutal crimes (Igracki, 2019: 395-397). Also, it is necessary to observe the criminal act of murder through the prism of its conditioning and connection with specific forms of organized crime as a scourge of modern times. The next thing we want to point out are the changes that occur in the way of responding to crime because they are inconsistent, diverse, contradictory and without a clear theoretical conception, which undoubtedly leads to recidivism (Igracki and Ilic, 2022: 74-75).

## **2. THE CRIME OF MURDER THROUGHOUT HISTORY**

Criminal law has its first roots in a blood feud, which was known to almost all nations and represented legitimate behavior at a certain level of social development. From ancient times to the present day, crimes against life represent particularly dangerous and violent activities of individuals and groups with whom the society-state dealt cruelly by applying the most severe types and measures of punishment, such as the death penalty or imprisonment for a longer period (or life sentence) (Jovašević, 2018:85). For this crime, the punishment depended on several circumstances: the social status of the perpetrator and the victim, their relationship, as well as many other circumstances. What is interesting is that

criminal law repression intensified if the victim belonged to the ruling class, while it decreased, or was even absent, if a slave was killed.

Man was protected in the ancient and medieval ages, but there was a difference in terms of guilt. Guilt depended on the position of the perpetrator and the victim in society. Slave owners and feudal lords enjoyed full protection, while the lives of slaves and serfs were not protected. All codes reflected the class character of the society that enacted them and applied them.

The Code of Hammurabi<sup>2</sup> is the first known written code in human history. Around two thousand years BC, it was brought by the Babylonian ruler Hammurabi. The Code, in addition to other areas of social life, also regulated the area of criminal law. Although murder was prohibited, there was no specific provision regarding its incrimination.

The Law of the XII Tables was enacted to limit the arbitrariness of the patricians. It is the oldest known Roman written code. Table IX forbids any man to be killed without judgment, and Table VIII provides an exception for theft by night: "If any man steals by night and is slain, he is rightfully slain." Table IV provides: A malformed child should be killed immediately (Jasic, 1968: 5-60).

The Koran was published in Mecca from 611 to 633 AD as a holy book of divine precepts that Muhammad left to the people. The Koran contains religious, moral and legal regulations. In the sayings that regulate social and legal relations, a moral rather than a legal character can be seen. The question of murder is regulated in chapter (sure) IV, in verses 94 and 95. In verse 95, intentional murder is regulated, and verse 105 predicts: "Do not give up in chasing the enemy. If it is difficult for you, it will be difficult for them as well as for you, but you should hope from God for what they cannot hope for. God is wise and knowing" (Jasic, 1968: 68-85). Sharia law emerged from the Koran, which, according to the method of determining punishment, recognizes certain criminal acts, among which murder.

Russian justice incriminated murder in the collection of laws, published by Prince of Kievan Rus Yaroslav Vladimirich the Wise (1019 - 1054), which represented a combination of Byzantine and common law. The intended regulations had the basic purpose of protecting the upper layers of society, who had the privilege of being punished, and for the committed murder, they were given lighter sentences. After Yaroslav's death, his sons abolished blood revenge for murder, and introduced a ransom in money, and the amount of ransom depended on class affiliation.

In medieval Serbia, before Dusan's Code was adopted, murder was referred to under the names "blood" and "witchcraft". In the contract with Dubrovnik (1308, Article H), murder is mentioned under the name "blood" and the word "witchcraft" signifies a mulct, but also murder itself (Skopska 1300, XLVIII; Decanska 1330, XLVI). The perpetrator of "witchcraft" was called a murderer. Rarely, murder was also called "soul murder" (Treskavica after 1337, H). Only in Dusan's Code, the term murder is used for taking the life of a person. Dusan's Code was adopted during the time of the greatest economic power of feudal Serbia, and during the reign of Stefan Dusan, and represents the most important legal source of medieval Serbia, which was adopted at the council in Skopje on May 21, 1349, in the presence of the emperor, patriarch Ioannikije and the highest secular and spiritual dignitaries, and had 135 members (Dusan's Code 2014). It was amended with 66 articles in 1354 at the Council in Srez. In the Middle Ages, the church had a privileged position in the state of Serbia, and for that reason, the first 38 articles were dedicated to the church. The

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<sup>2</sup> The Code of Hammurabi is written in the old Babylon dialect Akkadian on basalt stele, it is found 1901 in Susa, Iran. Professor Cedomir Markovic translated it in Serbian in 1925.

following articles of Dusan's Code included the rights and obligations of the ruler, up to Article 63, then the dependent population up to Article 83 of the Code, while the provisions governing the rights and obligations of merchants, towns and the city population were contained up to Article 127. Dusan's Code criminalized intentional murder, murder between members of different social classes - as a crime for which a stricter punishment is prescribed, next, the murder of a bishop, monk or priest which was punished by murder or hanging, and the most severe death penalty the Code provided was punishment by burning at the stake fire, which was used to punish the killer of a father, mother, brother, or one's own child. It should certainly be pointed out that minors as perpetrators of the criminal act of murder were equated with adults, and the aforementioned incrimination also points to the fact that it was not relevant whether this qualified form of crime was done negligently or with intent (Stojanovic, 1998: 8-12).

The Criminal Code of Prota Mateja Nenadovic prescribes the death penalty not only for murder, which was sanctioned in the first article of the Code from 1804 but also for the crime of escaping from the guard. As above said, we can see that equal importance was given to the protective object even though they were different criminal acts. In both cases, the outcome was the same, but the difference is in the way of execution (by shooting, putting on a wheel) (Ignjatovic, 1994: 10-18). In addition, besides the death penalty, the Code provided corporal and assets penalties. Negligent homicide was not sanctioned.

Karadjordje's Criminal Code from 1807 sanctioned the crimes that were the most numerous and dangerous during the war, but apart from them, the Code also dealt with the crime of murder, but the prescribed punishments were determined according to the degree of guilt of the perpetrator. A distinction was made between premeditated murder, for which the death penalty was pronounced (to be shot and then hanged) which was determined by Article 18, and negligent homicide defined by Article 19, for which jail was prescribed, i.e. half a year in iron. As more serious murders, the following were foreseen: infanticide sanctioned by the death penalty, as well as the murder of a "witch". This Code distinguished grave murder from ordinary murder and distinguished privileged murders. In judicial practice, self-interested murders and murders of members of the government were treated as more serious murders (Papazoglu, 1954: 114-116). For this Code, it can be said that it was revolutionary because it was adapted to the social and political circumstances of Serbia at the time, which corresponded to the spirit of the uprising period (Jovasevis, 2016: 66).

The Criminal Code for the Principality of Serbia from 1860 was one of the most modern European criminal codes. It was based on the Prussian Criminal Code from 1851. This code provided for and systematized murders as grave murders, ordinary murders and light-privileged murders, giving a special nature to each murder individually. Thus, Article 157 provides for the murder of a relative: Whoever kills a parent or an ancestor in the direct line intentionally, even without premeditation, shall be punished by death. Article 159 provides for qualified murder: Whoever intentionally kills in order to remove his hurdle, that he will undertake any punishable act that bothers him, or that he would not be caught in the act itself, to be punished by death (Papazoglu, 1954: 215-225). As privileged murders, this code foresees murder on the spur of the moment (Article 156, paragraph 2), and manslaughter (Article 156). What catches the eye of this Code is chapter 16, which is entitled "On the murder of children, especially bastards". Article 164 shows the difference between marital infanticide and illegitimate infanticide. The difference is based on whether the child was born in marriage (imprisonment for up to ten years) or out of wedlock (imprisonment for up to six years).

The Criminal Code of the SFRY was adopted in 1951. With it, and revises and amendments, the codification of criminal substantive law was carried out, until the adoption of the Criminal Code of the SFRY and the Criminal Codes of the Republics and Provinces. In 1974, the SFRY Constitution was adopted, which divided the jurisdiction in the field of criminal legislation between the federation and the federal units. On the basis of Article 281 of the Constitution, the Assembly of the SFRY adopted the Criminal Code of the SFRY, which (published in the Official Gazette No. 44/76) entered into force on July 1, 1977. The criminal act of murder is criminalized by the republican and provincial criminal laws, with the provision on murder taken from Article 135 of the Criminal Code of SFRY, with minor changes and additions. While the Constitution of the SFRY (Article 281) determined the division of jurisdiction in the field of criminal law, the Constitution of the SRY did not have a special provision regulating that issue. The following categories are mentioned: criminal offense, criminal liability and criminal sanction. The constitutions of the republics do not contain special provisions regarding jurisdiction in the field of criminal law.

The Republic of Serbia in 1977 (Criminal Code of the Republic of Serbia, "Official Gazette of the SRS", no. 26/77-1341, 28/77-1566, 43/77-2213, 20/79-1059, 24/84-1233, 39/86-2739, 51/87-225, 6/89-406, 42/89-1401, 21/90-888 and Official Gazette of the SRS, No. 16/90-468, 49/92-1664, 23/ 93-817, 67/93-3110, 47/94-1465 and 17/95-529, 44/98 of 08.12, 10/02 of 01.03), mostly retained the solutions of the Criminal Code, especially in the section on criminal protection of life and body, from the Criminal Code from 1951. With its criminal legal acts, it categorized murder as a criminal offense in a special chapter of the Criminal Code with a special and qualified form. According to its basic form, the act represented the deprivation of the life of another person, while the qualified form of murder contained one of the alternative methods provided for in Article 47 of the Criminal Code. We cannot miss commenting that in this Code the legislator of that time predicts the same punishment for a person who intentionally helps a minor to commit the criminal offense of qualified murder (Perovic, 1985: 302), which clearly indicates that he identified the act of assisting and the act of execution. Then, for multiple murders, with the exception of manslaughter in the hit of passion, manslaughter and infanticide, a prison sentence of at least ten years or the death penalty was imposed, regardless of whether the person was tried for all the murders in the concurrence or perpetrator was already convicted for any of the murders (Article 47.6). The last amendment to the Criminal Code from 1977 was added in 2003 when the death penalty was abolished. This change came to life with the accession of the Republic of Serbia to the Council of Europe, whereby the state undertook not to impose the death penalty for any criminal offense. For the crime of murder, the maximum prescribed prison sentence was forty years.

### **3. CRIMES AGAINST LIFE AND BODY: CRIMINAL LAW AND CRIMINOLOGICAL ASPECTS**

In the Criminal Code of the Republic of Serbia (CC), (Official Gazette of the Republic of Serbia No. 85/2005, 88/2005 and 107/2005), crimes against life and body are systematized in a special part, where life and body are defined as the most important human and social values (Stojanovic, 1/1998: 3-15). The title of this chapter shows that the object of protection in those criminal acts is defined as a dual set of values. These are: a) life (or the right to life) and b) bodily integrity, the physical constitution of a person (or the right to inviolability of physical integrity) (Jovašević, 2017: 11). Bearing in mind that the act of committing the crime of murder can be very diverse depending on the method of execution or the means

used, the legislator determined this criminal offense according to the caused consequence, and not according to the modality of execution (Igracki, 2015: 79). If the killing occurred as a last resort, necessary defense, performance of duty in public or state security affairs, and when the regulations of the service allow or require it, then there is no criminal offense because, for the existence of a criminal offense, there is an obligation of illegality. The Criminal Code of Serbia protects the right to life, first of all, with incriminations related to ordinary murder, aggravated (qualified) murder and privileged murder.

The incrimination of illegal termination of pregnancy, which refers to the destruction of the fetus, is also of great importance. The right to life is also protected through some other criminal acts directed against some general values, such as criminal acts against constitutional order and security, against humanity and other goods protected by international law, and against people's health. Regardless of the various forms of murder and other incriminations aimed at protecting the right to life, there are three basic questions that arise in relation to all these forms of criminal acts: whose life is being protected, i.e. who can be the object of these criminal acts, from which moment this protection arises and how long it lasts (Djordjevic, 1995: 47).

Ordinary murder is taking the life of another person with intent, and where there are no circumstances that make him privileged, for the execution of that crime a sentence of five to fifteen years of imprisonment is foreseen. An important element is that there is a connection between the act of execution and the consequences of the act. When committing the crime of murder, a number of factors can influence the execution. Guided by the theory of equivalence, the accepted position is that every immediate or indirect condition that precedes the consequence is the cause of death (Stojanovic, 2007: 321). When we talk about aggravated murder, it is necessary that it is premeditated and that it is carried out in such a way and under such circumstances that it gives a greater degree of social danger, which inevitably leads to a more severe punishment (Konstantinovic Vilic et al., 2009: 115). Amendments to the CC from 2019, in Art. 114, para. 2 introduced the preparation of aggravated murder (*delicta preparata*). The provision in question stipulates that anyone who acquires or equips the means to commit aggravated murder or removes obstacles to its commission, or who agrees with others, plans or organizes its commission, or undertakes another action that creates the conditions for its immediate execution. Although the aforementioned provision refers to all forms of aggravated murder from Art. 114, para. 1 of the CC, the question is to what extent it can be applied in each case. According to the method of execution, they are divided into murders carried out in a ferocious manner and murders in an insidious manner, then there is division according to the manner of execution, the motives of the perpetrator, according to the circumstances of the execution and the consequences and peculiarities of the passive subject. Subjective circumstances are the circumstances under which the attitude of the perpetrator towards the victim who suffers excessive pain is manifested, thus portraying himself as a cruel, reckless person, while the objective circumstances represent the severity of the committed criminal act, which is reflected in the infliction of physical and psychological pain to the victim. Another form is aggravated murder in an insidious manner and involves undertaking the act of execution in a covert, cunning, stealthy manner when the victim expects it the least. The subjective component of murder in an insidious manner is a characteristic of the perpetrator who has evil intent and who is perfidious and takes advantage of the victim's trust.

When we look at it from the subjective side, the intention in murder for self-interest is aimed at the execution of murder, while in the case of robbery with the loss of a person's life, the intention is aimed at preventing, that is, overcoming resistance in order to commit

theft (Pavlovic, 1996: 79-80). The next qualification of aggravated murder is the murder of several persons and belongs to the division of qualified murders according to the circumstances of the execution and the consequences of the act. The characteristic of this murder is the deliberate deprivation of the life of two or more persons, regardless of whether the act of execution was carried out by one activity (ideal concurrence) or by several activities (actual concurrence). The division of serious murders is characterized by a passive subject, where it refers to: the murder of an official or military member in the performance of official duties, the murder of a judge, public prosecutor, or police officer, the murder of a person which is performing tasks of public importance, the murder of a child or a pregnant woman, murder of a family member he had previously abused. The killer must possess intent and awareness of the passive subject's features as well as the intention to take the person's life. Prevention, both general and special, should have great importance in this criminal act, but it is almost difficult to imagine a murder that was not motivated by some external or internal factor. In order to be able to say that there is a reduced social danger when committing murder, objective and subjective circumstances must exist that influence the reduction of the danger of these criminal acts. Due to the existence of these circumstances, such as affect-strong irritation, disorder during childbirth, compassion and carelessness, the social danger is reduced, and therefore the criminal law classification is different, so privileged murderers include murder on the spur of the moment, murder of a child during childbirth, compassionate killing and negligent killing. The characteristic of these criminal acts is a state of strong irritation, i.e. an affective state of greater intensity, which significantly affects the reasoning ability and ability to make decisions, while the person is in a state of strong anger, excitement and rage. Modern criminal law faces many challenges. Let's just look at the case of euthanasia, i.e. murder on demand or taking a life out of compassion, depending on how different countries titles it. Therefore, we are talking about criminal acts that are the same at first glance, but in fact, they differ from each other. It is, first of all, murder on request or appeal, on the one hand, and murder out of compassion or, more correctly, taking the life out of compassion or assisting in dying in order to avoid further suffering and pain, on the other hand. While in other forms of murder, murder is executing against the will of the victim, here we have no such resistance. Not only there is no resistance, yet the victim demands deprivation of their own life. That is why the legislator wants to emphasize its privileging by the very name of the act, marking it as deprivation of life, not murder (Kolaric, 2007: 315-317).

The privileged act of murder under Article 116 of the CC is committed by a mother who takes the life of her child during childbirth or immediately after childbirth while she is suffering from a disorder caused by childbirth (Jovasevic, 1991: 530-539; Caric, 1998:10-12). Condition for the existence of this criminal offense, it is necessary for the mother to take the life of her child during childbirth or immediately after childbirth while the disorder caused by childbirth lasts. The disorder as an element of this criminal offense must be contained in the description of the act of the criminal offense because it is an integral part of the act of execution and a causal connection must be established between the disorder and childbirth (judgment of the Supreme Court of Serbia Kž. 70/83). The act of taking the child's life should be undertaken at a certain time - during childbirth or immediately after childbirth while the disorder caused by childbirth lasts.

A potentially violent criminal can be recognized by certain personality characteristics, and by recognizing them, we are given the opportunity to provide them with adequate help, while in a psychological sense, if detected in a timely manner, they can be deterred from the possible commission of a criminal act. Factors that influence the



occurrence of violent crimes, such as crimes against life and body, can be internal, which include psychological and biological factors, and external, in the form of natural and social factors. Although these factors are intertwined and connected, internal factors contribute to creating a tendency toward violence, and external factors often trigger and influence the way violent behavior manifests itself (Ignjatovic, 2011: 205).

Kron observes the psychological characteristics of murderers through five types of psychological profiles of murderers: normal, paranoid, neurotic, simulative and depressive. The majority of murderers belong to the normal profile (28.87%), which is characterized by a high level of education. This type of murderer comes from degraded families, while the victims are relatives and friends. The paranoid type is represented by 28.17%, who also come from degraded families, in which there is a high level of alcohol consumption, and unlike the normal profile of killers, this profile is characterized by the lowest education of all profiles, but they are characterized by emotional hypersensitivity with pronounced aggression. They have the feeling that they are being persecuted by certain persons and they misperceive the happenings in the environment. The largest percentage of alcoholics is the neurotic type of murderers, but they are the least represented as perpetrators of murder (6.37%), also, this profile is the most educated. Although their childhood is filled with negative experiences, they show the least aggression in relationships. With this profile, the largest number of victims belong to the circle of family and friends. Jealousy is the motive in a third of committed murders. The simulative type of murderer (12.68%) is significantly different from other types because they do not come from degraded families or who have certain mental problems and have the lowest level of education. They are extremely aggressive towards the environment, especially towards close people. The last type of murderer is the depressed type, characterized by social isolation, withdrawal and low emotional energy. This type of murder commits most of the murders in an intoxicated state, where the sexual motive is to a large extent represented during the execution of the criminal act of murder (Kron, 1993).

Steigleder's triple division into affective murderers, instinctive murderers and rational murderers indicates the psychological and psychopathological characteristics of the perpetrator of the crime of murder. The prerequisite of affective behavior is reflected in the reduced ability to create altruistic relationships, feelings of low value and vindictiveness, which puts the potential murderer in a situation to react quickly and aggressively to certain stimuli from the environment. An affective killer is also characterized by insecurity, abnormality and intellectual retardation. On the other hand, instinctive murderers have below-average intelligence, make few contacts, have a high degree of egoism and poorly developed altruism, and have a tendency to react impulsively. This type of murderer has a sexual drive disorder, which leads him to commit the crime of murder. The third type of killer according to Steigleder's classification is the rational type of murderer. What characterizes this type is extreme egoism, lack of feelings and mood swings as well as all levels of intelligence. The rational and instinctive type of murderers are people with a certain level of mental disorders, so situational circumstances are not of great importance for their reaction, while for an affective murderer, situational circumstances are of essential importance. It can be concluded that relapse cannot be expected in an affective killer, while relapse is certain to occur in the other two types of killers. If we take a broader look at Steigleder's position, we conclude that he connects the personality of the perpetrator and the situational circumstances, from which it follows that even a normal person, under certain extraordinary situational circumstances, can commit murder (Kapamadzija, 1981: 125-126).

Bearing in mind the complexity of the problem related to affective action<sup>3</sup>, it should be considered that the construction of aggravated murder in a brutal manner is also possible in those cases. In such situations, it is necessary to determine the intensity of the affects, the duration of the affective state, the existence of the described subjective component of ferocity, but also a number of other relevant circumstances (constellation factors), and based on that, draw a conclusion as to what prevailed in the perpetrator (this may also have an impact on the assessment of his sanity), which will be important for the proper qualification of his criminal offense (Delic, 2021: 95–96, Kostic, 2011: 104).

#### **4. CRIMINAL ACT OF MURDER IN THE LIGHT OF MODERN AND INTERNATIONAL LAW**

Criminal law protection of life represents the strongest form of legal protection and therefore must be adequately set up. The protection of life begins from the moment a person is born and lasts until the moment of his death (Jovasevic, 2017: 13). European Convention for the Protection of Human Rights and Fundamental Freedoms with Protocols No. 4, 6, 7, 11, 12 and 13 (Official Gazette of SCG - International Agreements No. 9/2003 and 5/2005). The right to life is guaranteed by Article 24 of the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 98/2006 of November 10, 2006), that is, the inviolability of physical and psychological integrity is established by Article 25 of this Constitution. This means that the protection and respect of the right to life, proclaimed by the most important international documents and the Constitution of Serbia, is ensured only by criminal legislation. When it comes to criminal law protection of life, three features of criminal law do not come to the fore, i.e. its accessories, fragmentation and subsidiarity, but it is independent, complete and primary (Djordjevic, 1995:45).

The discovery, investigation and proof of the criminal offense of murder is a complex procedure that incorporates different and diverse criminal-procedural activities undertaken by criminal-procedural subjects in the light of solving a specific criminal-procedural task related to the clarification and solution of a specific criminal case and making a correct and legal decision of the court. Murder as a criminal offense is seen through several forms of international law and these criminal acts, in fact, represent activities that violate international treaties, agreements and conventions (Jankovic, 1957: 47-64; Tomic, 1999: 337-360).

**Genocide** is a crime aimed at the systematic and complete destruction of a nation, religious or ethnic group or community. From the foregoing, it is evident that the object of attack in the crime of genocide is only certain (protected) human groups, and that Criminal law protection is lacking for some other human groups that can also be the object of attacks, such as cultural, political, economic, etc. (Karovic, 2014: 121). Actions of execution are prescribed alternatively, which means that for the existence of this crime under criminal law, it is sufficient for the perpetrator to undertake one of the five categorically prescribed actions,

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<sup>3</sup> Kapamadzija made a question “is there murder without affect, at all?”, and in a same time giving the answer based on knowledge from psychology and psychopathology, there is not. In order to “evaluate is the exact act affective, in psychological and psychopathological manner, or to say “mostly affective” it is necessary by analysis evaluate effects qualitatively and quantitatively, then determine chronology and parallels of the events’ and affect’s (or affects’) motion as the acts and (maybe the most important) causal role of affect in specific happening or action or sequence of the actions” B. Kapamadzija (1989), *Forensic Psychiatry*, Novi Sad, p. 162–163.

along with the existence of a subjective element in the perpetrator, which manifests itself through the specific intention of the complete or partial destruction of a protected human group (Karovic, 2013: 96). Resolution of the UN General Assembly No. 96/I of December 11, 1946, declared genocide to be "an international crime that is contrary to the spirit and goals of the UN and condemned by the civilized world". Although it appeared as a "subtype of crime against humanity" (Kasseze, 2005: 115), genocide soon gained an autonomous status and content as one of the most serious criminal acts of today (Sakic et al., 1993: 407-454). In the criminal legislation of the FNRJ, the crime of genocide was criminalized in the Criminal Code of 1951 (Official Gazette of the Presidium of the National Assembly of the FNRJ No. 2/50, the Convention on the Prevention and Punishment of Genocide from 1948 entered into force on January 12, 1951).

**Crime against humanity** was not known in the previous Yugoslavian legislation. The action of this crime consists of the commission of a crime or the issuing of an order to commit such crimes, and the victim is not an individual, but humanity as a whole. In the theory of law, the following elements of crimes against humanity are emphasized (Kasseze, 2005: 73-85): they are particularly heinous violations of prohibitions that represent a serious insult to human dignity and the humiliation of one or more persons, that they are not isolated or sporadic events, but occur as part of the policies of the government of a state or the widespread or systematic practice of committing crimes tolerated, condoned or acquiesced in by a government or de facto authority, that these are acts which are prohibited and must be punished regardless of whether they are committed in time of war or peace and, that the victims of this crime can be civilians or if they were committed during an armed conflict, persons who do not participate (or no longer participate) in armed hostilities, as well as enemy combatants, under customary international law.

**War crimes against the civil population** are committed during the war when actions are taken contrary to the rules of international law in relation to the basic rights of citizens, by ordering or executing criminal acts. Considering the actions performed, as a rule, this crime can only be committed with direct intent, while in the case of murder, possible intention is also sufficient. The basis for this incrimination is found in the Geneva Convention on the Protection of Civilians in Time of War from 1949 with supplementary protocols from 1977 (Official Gazette of the FNRJ No. 24/1950 and Official Gazette of the SFRJ - International Treaties No. 16/1978).

**War crimes against the wounded and sick** appear in two forms: as inhumane treatment of the wounded and sick, and as destruction or appropriation of medical material and other medical resources. A war crime against a prisoner consists of committing a crime or ordering it to be committed. The basis for this incrimination is found in the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces at War and the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea from 1949, with supplementary protocols from 1977 (Jovasevic, 2017: 91-93).

**Terrorism** represents organized acts of violence, inspired by political motives, directed against a certain state, its socioeconomic and political organization and its security. Terrorism consists of the use of illegal violence and threats with the aim of coercing and intimidating a certain society, all in the sense of achieving its goals.

The OUN has adopted several conventions on terrorism issues. We will mention the following: the 1963 Convention, the 1970 Hague Convention for the Suppression of Unlawful Hijacking of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the 1971 Montreal Convention.

Between 1972-1979 seven resolutions of the General Assembly of the United Nations regarding terrorism were adopted by which all the member states of the United Nations condemned terrorism that poses a threat to the territorial integrity and security of each state. However, despite numerous international legal documents, there is still no comprehensive, versatile and universal definition of terrorism that incorporates all aspects of this complex destructive phenomenon.

## **5. CONCLUSION**

In the history of law, murder as the most serious illegal act against a person has been present from ancient times until today. Regardless of the historical periods through which human society passed, all states protected human life and bodily integrity with their largest legal acts and protected people's lives with numerous legal norms and sanctions.

The medieval period is characterized by the appearance of written texts, which are adaptations taken from the culturally and civilizationally advanced Byzantium. The culmination of this is the complete independence of Serbia and the adoption of Dusan's Code, which exhaustively regulates the most illegal behaviors for the period of medieval Serbia. In different periods, Serbia has been bringing various acts for the regulation of illegal acts against life, and it followed European achievements regarding the right to life, paying special attention to that segment of its legal order. Serbia adopts modern criminal codes, follows civilizational achievements and international acts in this regard with amendments and additions, and daily follows social trends and the emergence of new forms of crime against life, as well as other forms of crime.

Our criminal legislation protects human life as the most important human and social value from the moment a person is born until the end of his life. Regardless, even today the number of murders in the world is constantly increasing, which is influenced by biological, psychological, psychopathological and sociological factors.

When it comes to the protection of life, criminal law should not have a subsidiary character. Modern society today has at its disposal, beyond repressive means, which includes criminal law, preventive means also, that should prevent socially negative behavior from occurring in the first place. Today, prevention should occupy an important place in the successful fight against severe forms of violence. Although criminal law, despite its pronounced repressive component, has as its ultimate goal prevention, which seeks to influence both, the perpetrator of the crime and the potential perpetrators through sanctions. Consequently, prevention includes successful detection, prosecution and effective application of criminal sanctions as well. Some research in criminal policy shows that a high percentage (even over 80 percent) of intentional perpetrators of criminal offenses would not have started committing criminal offenses if they had known for sure that they would be discovered as perpetrators of the same or, to put it simply, the results of those researches show that criminals commit acts with the belief that the perpetrators will not be discovered. Research data show that the main causes of violence in Serbia are: poor economic situation and lack of perspective in 53%; collapsed social value system in 26%; the state does not do its job in 12%; educational system below the level in 6%. When it comes to minors, the opinion of the professional public, criminologists, psychologists, and pedagogues is that there is an expansion of criminal acts against life and body, especially thanks to the great influence of the mass media, so the standpoint is that we should work on a strategy that promotes responsible behavior. Of course, there are many factors that influence the increase in the crime rate, especially violent crime, such as social differences, poverty, corruption,

inadequate organization of institutions in crime prevention, ineffective penal policy, family anomalies and many other factors.

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