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CRIMINAL LAW PROTECTION OF THE RIGHT TO LIFE IN THE LEGISLATION OF THE REPUBLIC OF SRPSKA

Constitutional provisions of all modern states ensure a dominant place for the right to life within the system of fundamental human rights and freedoms. As such, it enjoys the status of an absolutely protected right, which states cannot abolish or limit under any conditions.

The criminal law protection of the right to life, which is independent, comprehensive, and primary, is realized through incriminations that can be divided into two groups. The first group consists of those criminal acts where the right to life is the primary object of protection, while the second group consists of criminal acts where the primary protection is of other goods or values, with the violation or endangerment of the right to life being a qualifying circumstance of the act. In Bosnia and Herzegovina, due to the system of parallel and divided jurisdiction in criminal legislation, the criminal law protection of the right to life belongs to the entities and the Brčko District of Bosnia and Herzegovina. The authors analyze the criminal law protection of this right in the legislation of the Republic of Srpska, pointing out the differences that exist in this area within the criminal laws of Bosnia and Herzegovina.

Keywords: *right to life, criminal law protection of the right to life, murder, privileged murder, qualified murder.*

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1. Introductory remarks

The right to life is an absolute, natural human right that belongs equally to all people and represents the fundamental basis of human civilization. As such, this right has the status of a universal civilizational value in modern society, and its criminal law protection is not only a matter of domestic law but also has legitimacy within the frameworks of international law. Respect and acknowledgment of this right are the basic postulates of our civilization, and its criminal law protection becomes an imperative of every modern and democratic criminal law. The universal character of the right to life in the system of fundamental human rights is ensured in the most significant international documents¹, which emphasize that every human being has the right to life, which must be protected by law, and that no one can be arbitrarily deprived of life, thus imposing an obligation on signatory states to protect this right by law. The extent and content of this protection are not determined by the mentioned acts, but states are left to do so according to their assessments and possibilities, so a violation of this duty exists only when a state's law provides no or insufficient protection of the right to life in situations where there is a serious threat. The right to life is above every other human right; the basis and meaning of all other human values are in the closest connection with the human right to life. Because of its significance, this right is established as a special constitutional value, and its inviolability and sanctity are provided as a constitutional principle ("Human life is inviolable" - Article 11 of the Constitution of RS; in Article II/3a of the Constitution of BiH, the right to life is first in the catalogue of human rights). All other human rights and values would remain meaningless if the right to life were not adequately protected. Therefore, all countries strive to ensure effective protection of this right by the legal order, with criminal law protection being the most significant and efficient form of legal protection in general.

It can be said that the criminal law of each country is the best proof of how effectively the declaratively established human right to life in the constitu-

¹ Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; European Convention on Human Rights, 1950; American Convention on Human Rights, 1969; African Charter on Human and Peoples' Rights, 1981.

tion of a country (almost always as an inviolable and/or inalienable right) is actually and effectively protected (Babić, Marković, 1998:1). The criminal law protection of this right is the basis for the protection of all other human rights, making any discussion about any other human right and freedom irrelevant if the legal order does not ensure effective protection of this right. Due to the importance and position of this right in national and international law, the protection of this right has been prioritized in the Republic of Srpska since the Criminal Code of 2000, which was not the case in earlier criminal legislation. The question of the subjectivity of the right to life, the relationship between the right to life and the right to death, and the establishment of adequate boundaries for criminal law protection of human life and bodily integrity in different stages of existence have not yet received their final and generally accepted solutions. However, regardless of these dilemmas concerning the criminal law protection of human life, it is generally accepted that criminal law protects human life from its beginning to its end, i.e., from the moment of conception to the moment of death. However, the extent and intensity of criminal law protection of this right are not the same in all developmental stages of human life. The literature raises the question of whether an unborn child can independently enjoy legal protection, i.e., the right to life (Pavlović, 2022:259)? This issue is discussed from various aspects, not just legal ones, but from the perspective of criminal law protection of fundamental human rights, including the constitutionally guaranteed right to parenthood, it is considered that full protection of the right to life is provided to a human being as a living entity, starting from the moment of birth, i.e., when that life is autonomous and self-sustaining or self-regulating. Therefore, absolute protection of the right to life begins from the moment of birth. Criminal law protection of the right to life from conception to birth, for understandable and legitimate reasons, is set more restrictively, so future life or life in the making is not absolutely protected, as there are legal interruptions of pregnancy, nor is it protected in cases of negligent injuries or endangerments (Babić, Marković, 2018:37).

In addition to dilemmas regarding the moment from which the criminal law protection of the right to life begins, the question arises of until what moment it lasts. Since human death does not occur in a single moment and the cessation of functions of individual organs does not occur simultaneously (each tissue and organ dies its own particular death, except in the case of destructive means where

death occurs instantly for the whole organism), determining the moment of death or, more precisely, the moment in which the criminal law protection of human life ceases is extremely complicated. If we add the issue of transplantation of certain human organs, especially the heart, lungs, liver, etc., which is allowed only from a deceased person because otherwise such a procedure constitutes murder, it is clear what problem the legislator faces in determining the boundaries of criminal law protection of this good. However, respecting the achievements of medical sciences, modern criminal law accepts brain death, i.e., irreversible brain damage and the cessation of all brain functions, as the moment of death. Determining this moment is done by applying the so-called Harvard criteria, according to which the electroencephalogram (EEG) must show a cessation of brain electrical activity for at least ten minutes, provided there are no other reactions during that time (Babić, Marković, 2018:38). Vitality, or the ability to live, is not a condition for criminal law protection of human life, so criminal law protects the right to life of every being born of a woman that has a human-like form, regardless of whether it possesses the ability for independent life or not, whether it suffers from an incurable disease or is perhaps in a coma, etc. Thus, a person's ability or inability for independent life does not affect the scope and quality of criminal law protection of the right to life. Medical achievements have enabled the extension of life expectancy, and consequently, an increasing number of people require assistance for daily activities. In this regard, the concept of long-term care, defined by the World Health Organization (WHO) as "activities undertaken by others to ensure that people with significant loss of intrinsic capacity can maintain a level of functional ability in accordance with their basic rights, basic freedoms, and human dignity" (WHO, 2015, according to Chen, 2023:645), should be mentioned. These activities enable the enjoyment of basic human rights, primarily the right to life, which raises the question of what the right to life encompasses. In other words, does a person, as the holder of the right to life, have the right to unlimited disposal of their life as they have the right to unlimited disposal of their property? An analysis of the legal norms regulating the criminal law protection of the right to life in the criminal legislation of the Republic of Srpska reveals that the concept still prevails in our legal system that the right to life is a personal right belonging exclusively to its holder and cannot be transferred to others. This

follows from the fact that suicide is not criminalized, but aiding suicide is criminalized, and euthanasia is not accepted as a basis for excluding the unlawfulness of the act of murder in our legal system. Therefore, the consent or request of the passive subject for taking life, according to our legislation, does not exclude the unlawfulness of the criminal act, meaning that a person cannot freely dispose of this right as they can with some other rights, such as property rights. This leads to the conclusion that human life is protected even when a person renounces such protection, as well as when the right to its violation is transferred to another (here, the old Roman rule: *volenti non fit iniuria* - no injury is done to a willing

The right to life also encompasses the right to the inviolability of physical integrity, and the criminal law protection of this right is achieved through incriminations classified into the group of crimes against life and body, which can be divided into two main groups. The first and most important group consists of those incriminations where the life and body of a person are the primary and exclusive object of protection, while the second group includes those incriminations found in various chapters of criminal codes where the primary object of protection is other individual or social values, and the violation or endangerment of the right to life constitutes an aggravating circumstance establishing a more serious form of the offense.

In this sense, this protection is also established by the Criminal Code of the Republic of Srpska, which in Chapter XII, titled Crimes Against Life and Body, prescribes only those crimes directed exclusively against life and bodily integrity. These are classical and standard criminal acts that, according to criminological typology, belong to the so-called natural crimes (*delicta mala in se*), meaning those acts that have always been inherently criminal and will continue to provoke the most severe societal reaction (Babić, Marković, 2018:36,37). Simultaneously, the protection of these values is also achieved through incriminations in other groups of crimes where the primary object of protection is other values, and the violation or endangerment of the right to life constitutes an aggravating circumstance establishing a more serious form of the offense. Such cases can be found, for example, in the group of crimes against sexual integrity, against public health, against the constitutional order and security, against public traffic safety, etc.

2. Murder

The fundamental function of criminal legislation is to protect the basic rights and freedoms of individuals and other fundamental individual and general values established by the constitution and international law (Article 1, Criminal Code of the Republic of Srpska). The realization of the protective function is achieved by prescribing certain criminal offenses and providing sanctions for the perpetrators of these offenses. Given that the right to life is the supreme, fundamental right of an individual, it is clear that the legislator must establish such a system of penal policy that will enable effective protection of this right from all forms of infringement and endangerment. Establishing such a protection system is possible not only through the definitions of the elements of individual criminal offenses, i.e., by introducing new incriminations, but also through the system of criminal sanctions and rules on sentencing.

In this sense, the Criminal Code of the Republic of Srpska has made certain changes compared to the previously existing system, as well as compared to the Criminal Code of the Federation of Bosnia and Herzegovina (hereinafter: CC FBiH) and the Criminal Code of the Brčko District of Bosnia and Herzegovina (hereinafter: CC BD BiH). These changes are reflected in the introduction of new privileged and qualified forms of murder, as well as the provision of life imprisonment for the most serious forms of aggravated murder.

The basic criminal offense that protects the right to life, i.e., the life of an individual in all criminal law systems, including the criminal legislation of the Republic of Srpska, is murder. By its nature, it represents an absolute negation of an individual's right to life as a natural right of every person, i.e., an absolute negation of a person as a living human being. From a legal perspective, it is the unlawful deprivation of another person's life, which is commonly referred to in criminal law as: "whoever deprives another of life." The CC RS does not deviate from the usual formulation of the crime of murder and prescribes in Article 124, paragraph 1: "Whoever deprives another of life shall be punished by imprisonment for 5 to 20 years." This formulation defines the so-called ordinary murder, i.e., murder that is not accompanied by additional circumstances, whether privileged or qualifying, that establish a lesser or greater form of this offense. The basic form of the offense is the murder defined in Article 124, paragraph 1, and

it can be said that this criminal offense has the character of a general criminal offense and is subsidiary to its privileged and qualifying forms. Therefore, the characteristics of this basic form of murder are contained in all special forms of murder.

Given the fact that the act of execution is not defined through the precise setting of activities leading to death but is defined through the consequence - deprivation of life, it can be said that murder falls into the category of so-called "open offenses" where the act of execution represents any act that can cause the death of another person (so-called consequential acts). This legislative solution is conditioned by the possibility of finding new forms and methods of causing the death of another person, and defining the act of execution by law, according to the principle of *nullum crimen sine lege*, would prevent the application of this incrimination to cases not provided for by law (Babić, Marković, 2018:40). These are mainly active actions (commission), but murder can also be committed by omission (non-commission) by a guarantor, i.e., a person who is obliged to take actions to prevent the occurrence of the fatal consequence - so-called improper omission or guarantee criminal offenses of omission (e.g., not feeding a child by the parents or failing to take actions to protect the life of another person in all cases where such an obligation exists). The act of execution can consist of physical actions on the victim's body (strangling, administering poison, using cold or firearms, etc.), but the death of another person can also be caused by psychological actions on them (e.g., causing a state of shock by sending a telegram with false content, etc.) or by causing a situation that will lead to the death of a person (e.g., causing a brake system failure on a car, infecting with a severe infectious disease that can lead to death, such as the HIV virus, etc.). The consequence of the act is the death of another person. For the existence of the offense, it is irrelevant whether the death occurred immediately after the act of execution or later, and sometimes the time distance between the act and the consequence can be relatively long, when murder appears as a distanced criminal offense. In such cases, it is important to establish a causal link between the undertaken act and the fatal consequence. In a ruling by the Supreme Court of Serbia, it was held that there is a causal link, i.e., a criminal offense of murder, even when the death occurred ten months after the act of execution (SCS, Kž. 834/91, see Lazarević, 341.).

The object of protection in all forms of murder is the life of a person, but not one's own life, rather the life of another person (thus, suicide is not foreseen as a criminal offense). According to the prevailing understanding, the object of murder is a person from the moment of the initiation of childbirth, regardless of whether it is a natural childbirth or performed surgically (so-called "cesarean section") until the moment of death. As an argument in favor of this stance, the definition of the criminal offense of infanticide during childbirth (Article 127, CC RS) is cited, according to which this offense is committed by a mother who deprives her child of life during or immediately after childbirth, under the influence of a state caused by childbirth. Unlawful actions that cause harm to human life up to this moment cannot be considered as acts of committing the crime of murder but rather the crime of unlawful abortion. In criminal law terms, a person's life ends with the onset of brain death, i.e., the cessation of brain function as the center of all physical and psychological functions of an individual, and after that moment, taking certain actions on the body of a person, e.g., taking vital organs for transplantation purposes, cannot be considered as acts of committing this criminal offense (Babić, Marković, 2018:40).

The subjective aspect of the offense consists of intent, whether direct or eventual, which is a factual question assessed by the court in each specific case. It is very important to consider all the circumstances of the specific case, primarily those of an objective nature, but also the personal characteristics, as all these in their entirety will provide the possibility to properly determine the perpetrator's mental attitude towards the act.

As mentioned earlier, the legislative competence for protecting basic human rights and freedoms in Bosnia and Herzegovina belongs to the entities and the Brčko District of BiH, so entity legislators independently regulate this issue. Therefore, in terms of criminal law protection of the right to life, there are certain differences reflected not only in different forms of aggravated murder but also in the provision of certain lighter forms of murder. Namely, the legislator of the Republic of Srpska, unlike other legislators in BiH, has foreseen a special, lighter form of the criminal offense of murder, i.e., murder under particularly mitigating circumstances, which exists when the criminal offense of murder from paragraph 1 of Article 124 is committed under particularly mitigating circumstances.

The criminal policy reason for introducing this incrimination is to find a compromise solution between the public interest in preserving human life, on the one hand, and the right to death as an integral part of the right to life that belongs to every individual, on the other hand (Babić, Marković, 1997: 88-106). Namely, advances in medical technology and science have made it possible to maintain human life even when life itself has lost its real meaning and has become an unbearable burden for both the dying person and their family. Therefore, the question arises as to whether the state's interest in protecting human life as a public good outweighs an individual's right to freely dispose of their right to life as a personal right, or what objective and moral interest the state has in protecting life against the will of the individual, especially when that life represents mere existence without any prospects. It is clear that the task of the state is to protect the natural rights of its citizens, and the right to life is the fundamental natural right of every person. However, if this protection contradicts the will of the individual, it turns into a specific form of violence that opposes the concept of human rights protection. In this context, the so-called right to death is propagated as the right of every person to request the cessation of life-saving, life-maintaining, and life-prolonging measures when it is clear that there is no possibility of recovery. In this regard, many modern legal systems have legally evaluated the request or plea of a passive subject addressed to another person to end their life as a mitigating circumstance in the criminal act of murder, leading to the incrimination of murder upon request or plea, or with consent, as a privileged form of murder in the legislation of a significant number of European countries. Considering the fact that there are other circumstances, apart from those mentioned, which are not covered by the existing incriminations of privileged murder, but which, for reasons of humanity and justice, must also be treated as mitigating circumstances, the Criminal Code of the Republika Srpska has provided for a broader incrimination, which can be designated as murder under particularly mitigating circumstances (Babić, Marković, 2005:23). It could be said that the legislator attempted to resolve the old dilemma related to euthanasia, assisted suicide, murder upon request, at the plea of the passive subject, and similar situations, by allowing real-life situations, similar to the aforementioned, even though they essentially represent intentional deprivation of another person's life, to be treated as a privileged,

lesser form of this criminal act. The penalty for this form of the act is imprisonment ranging from 1 to 8 years.

The particularly mitigating circumstances, which are at the core of this form of murder, represent a legal standard that is realized through interpretation and application by judicial practice. We can say that this element of the criminal act is impossible to define in advance because its content depends on numerous factors that the court must take into account. This primarily refers to the state of the passive subject, their psychological and physical characteristics, state of mind, social environment, age, etc., as well as the objective circumstances surrounding the case, the psychological and physical traits of the perpetrator, and especially the motives or reasons behind the intentional deprivation of the passive subject's life. All of this leads to the conclusion that this is a very complex criminal act, which in some way determines both the act of committing the crime and its subjective element.

One of the reasons for establishing this privileged form of murder is the fact that the perpetrator acts out of compassion for the passive subject, who often suffers great pain without any real prospect of recovery or finds themselves in an exceptionally difficult life situation with no hope of improvement. Such behavior by the perpetrator, motivated by altruism and the desire to shorten the suffering of the passive subject, generally does not meet with public condemnation; on the contrary, it often elicits sympathy and approval, which was the legislator's motivation for providing for this form of murder.

Based on the above, we believe that this incrimination can be applied to cases of intentional murder carried out at the request, plea, or consent of the passive subject, to murder committed out of compassion or mercy towards the passive subject, and to assisting in dying by intentionally shortening life. However, in analyzing judicial practice in cases of taking another person's life, we did not come across any example of the application of this incrimination. This does not mean that there were no situations to which this incrimination could and should have been applied, but, in our opinion, it indicates a certain caution on the part of the judiciary when it comes to interpreting and applying it. This is understandable to some extent, as it involves the intentional deprivation of another person's life, a conscious and deliberate act to take another person's life, often initiated by the victim, who requests the shortening of their suffering or pain, and accompanied

by feelings of pity or compassion from the perpetrator. Thus, the subjective elements that underlie particularly mitigating circumstances dominate, and these are often very difficult to determine with certainty.

Additionally, we believe that this form of murder could be applied to some cases of intentional deprivation of life where the victim's long-term life and behavior significantly influenced the perpetrator's decision and the execution of the act. These are life situations in which a victim of violence becomes the perpetrator of violence, where a person who has endured violence for an extended period, especially a victim of domestic violence, takes the life of the abuser.

It is interesting to note that the Criminal Code of North Macedonia (<https://jorm-.gov.mk/wp-content/uploads/2016/03/законик-пречистен-текст.pdf> accessed on 23.07.2024) provides for a specific criminal offense of Murder out of Noble Motives (Убиство од благородни побуди, Art. 124), which essentially corresponds to the criminal offense of murder committed under particularly mitigating circumstances. Additionally, the definition of the criminal offense of sudden murder includes cases of life deprivation carried out suddenly by a person who, without their fault, was brought into a state of severe agitation by attack or severe insult, or as a result of domestic violence, gender-based violence against a woman by the killed person (Убиство на миг, Art. 125). We believe that this part of the incrimination of sudden murder, which relates to cases of gender-based violence and domestic violence, can be subsumed under the incrimination of murder committed under particularly mitigating circumstances as provided by the Criminal Code of the Republic of Srpska.

3. Aggravated Murder

The fact is that every murder results in the death of a person, and in this sense, we cannot differentiate between individual cases. However, it is also true that not every murder is committed in the same manner, under the same circumstances, or for the same motives. This is why legal systems distinguish between the basic criminal offense of murder and its aggravated (qualified) and mitigated (privileged) forms.

From a criminal law perspective, aggravated (qualified) murder is an intentional taking of life accompanied by qualifying circumstances, i.e., an intentional taking of life of another person committed under particularly aggravating circumstances which increase the danger posed by the act and the perpetrator. Consequently, the legislature prescribes the harshest punishment or the maximum prison sentence for this form of murder. Therefore, aside from the basic characteristics of the criminal offense of murder such as the form of guilt, the object of protection, and the act of execution aggravated murder also has other specific features that qualify it as a more serious form of murder. These are the so-called qualifying circumstances, which pertain to the manner of execution, the motives behind the act, the status of the victim, the circumstances under which the act was committed, etc.

Since aggravated murder is an intentional taking of life accompanied by special circumstances, it is necessary to establish that the perpetrator was aware of all elements of the crime, i.e., that the qualifying circumstances were encompassed by their intent. If multiple qualifying circumstances are present in a specific case, such as a murder for gain committed in an exceptionally cunning manner, there will be a concurrence of qualifying circumstances but not a concurrence of criminal offenses. This is because it concerns only special forms of the same criminal offense for which the same penalty is prescribed, thus creating an apparent concurrence of criminal offenses based on alternativeness (Babić, Marković, 2005:24).

The legislative technique for regulating aggravated murder in the criminal law of Bosnia and Herzegovina varies. In the Criminal Code of Republika Srpska (CC RS), it is regulated as a separate offense in Article 125, which encompasses cases of intentional taking of life that were previously part of other criminal offenses, such as robbery. Article 125 states:

“(1) A minimum of ten years imprisonment or life imprisonment shall be imposed on:

- 1) Whoever takes another person’s life in a cruel or treacherous manner,
- 2) Whoever takes another person’s life for gain, to commit or conceal another criminal offense, out of ruthless revenge, hatred, or other particularly base motives,

- 3) Whoever takes the life of a family member previously abused by the perpetrator,
- 4) Whoever takes another person's life during reckless violent behavior,
- 5) Whoever takes another person's life and intentionally endangers the life of another person,
- 6) Whoever intentionally takes the lives of two or more people, excluding manslaughter, infanticide during childbirth, or murder committed under particularly mitigating circumstances (Article 124, paragraph 2),
- 7) Whoever takes the life of a child or a woman known to be pregnant,
- 8) Whoever takes the life of a judge or prosecutor in connection with their judicial or prosecutorial duties, or an official or military person performing security duties or duties of maintaining public order, capturing a criminal offender, or guarding a person deprived of liberty,
- 9) Whoever takes another person's life during the commission of a robbery or a violent theft.

(2) The penalty from paragraph 1 of this Article shall also apply when the taking of life is committed in an organized manner or on order. Since the general maximum prison sentence is 30 years, the special maximum sentence for aggravated murder is 30 years.”

In contrast, the Criminal Code of the Federation of Bosnia and Herzegovina (CC FBiH) and the Criminal Code of the Brčko District of Bosnia and Herzegovina (CC BD BiH) do not prescribe aggravated murder as a separate offense. Instead, they include it within the article on murder, where a second paragraph essentially covers cases of aggravated murder. There are differences in the qualifying circumstances prescribed, reflecting differences in the scope and intensity of criminal protection of the right to life in Bosnia and Herzegovina, which are assessed according to the essence of the criminal offenses that protect the object of protection and the type and severity of the prescribed criminal sanctions.

The Criminal Code of the Federation of Bosnia and Herzegovina, in Article 166, Paragraph 2, provides for the existence of a more severe form of the

criminal offense of murder in cases where the murder is committed in a cruel or treacherous manner; in the course of reckless violent behavior; out of hatred; for profit, for the purpose of committing or concealing another criminal offense; out of reckless revenge or other base motives; as well as in the case of the murder of a judge or prosecutor in connection with the performance of their judicial or prosecutorial duties, or of an official or military person while performing security tasks, duties of maintaining public order, apprehending a criminal offender, or guarding a person deprived of liberty.

Similarly, Article 163, paragraph 2, of the CC BD BiH, which regulates the crime of murder, stipulates the existence of a more serious form of this offense if committed in a cruel or treacherous manner; during reckless violent behavior; out of hatred; for gain, to commit or conceal another criminal offense, out of ruthless revenge, or other base motives; and if the life of an official or military person performing security duties or duties of maintaining public order, capturing a criminal offender, or guarding a person deprived of liberty, or the life of a child or a woman known to be pregnant, is taken. For this form of murder, both laws prescribe a minimum of ten years imprisonment or a long-term imprisonment.

Given that the general maximum prison sentence in these laws is 20 years and that long-term imprisonment can range from 21 to 45 years, there are significant differences in the penalties prescribed for this offense in the CC RS. Differences also exist in the qualifying circumstances of the crime, i.e., in the prescribed forms of aggravated murder, with some forms of aggravated murder specified in Article 125, paragraphs 4 and 9 of the CC RS, also found in the CC FBiH and CC BD BiH as more serious forms of other offenses, such as robbery and violent theft, or domestic violence. However, these two laws do not provide for the existence of aggravated murder if committed in an organized manner or on order, or if the life of one person is taken while intentionally endangering the life of another person, or if the lives of two or more persons are intentionally taken, excluding privileged forms of murder.

Although every murder represents the destruction of human life and is therefore a very serious criminal offense, the legislature has nonetheless distinguished between them based on various circumstances that serve as characteristics of the crime, differentiating them by their degree of danger or severity.

3.1. Murder in a Cruel or Treacherous Manner

The qualifying circumstance for this form of the offense is the specific manner of execution, which the legislature has designated as cruel or treacherous, without providing criteria for their interpretation. This leaves it to judicial practice and doctrine to find appropriate interpretations of these circumstances and thus the true meaning of this form of aggravated murder. Changes in the legal definition of the criminal offense have also influenced the interpretation and application of this incrimination over time. In the previous legal solution, this form of the offense was more restrictive; murder in an especially cruel or extremely treacherous manner. Accordingly, this form of aggravated murder could be applied to specific cases where the court found the presence of cruelty or treachery of such intensity.

Every murder, regardless of the manner of execution or the weapon used, involves a certain degree of cruelty or treachery. Therefore, the essence of this form of murder is a cruel manner of execution that manifests greater cruelty than usual in any deprivation of life. The assessment of cruelty in the crime of murder cannot be based solely on objective facts but also on the subjective stance of the perpetrator. Thus, the qualification of a specific manner of murder as cruel cannot be based solely on an objective assessment of the method used, i.e., the pain and suffering endured by the victim, but it is necessary for the perpetrator to be aware that they are causing severe or prolonged pain to the victim (Babić, 1995: 77; Commentary on the Criminal Code of Serbia, the SAP of Kosovo and the SAP of Vojvodina p. 111.). The objective component of cruelty represents the severity of the pain and suffering caused to the victim, while the subjective component encompasses the perpetrator's attitude towards the victim's suffering, i.e., the insensitivity of the perpetrator towards the victim's agony or their enjoyment in the victim's suffering. Under this interpretation of the qualifying element, the basis for applying this incrimination is not exclusively the manner of execution but also the psychological attitude of the perpetrator manifested by such a manner of execution. Nevertheless, it should be emphasized that the pain or suffering inflicted by the perpetrator must, by their intensity or duration, exceed the measure of pain and suffering that occurs in any murder. It is sufficient for the suffering to be either prolonged or intense (Babić, Marković, 2005:25). Physical pain and suf-

fering that are not particularly intense by themselves can constitute cruelty if prolonged through repeated acts. This view is also reflected in older case law, as evidenced by the Supreme Court of Serbia case Kž I 914/72, where the first-instance court's verdict convicting the defendant of murder in a cruel manner was upheld because he had beaten his wife with his hands and a short stick for an extended period, causing multiple serious and minor external and internal injuries that led to severe bleeding and, after a short time, her death (Jakovljević, 1975:371). Murder committed in a cruel manner exists even in cases where the suffering or pain is of short duration but of particular intensity, as was the case with a murder where the victim was doused with a large quantity of boiling water mixed with a strong solution of caustic soda. Despite the fact that the victim's pain lasted only a short time, it is certain that such a method of execution causes intense pain (Čejović, 1986: 290).

The qualifying circumstance that makes this form of murder specific is the treachery that characterizes the manner in which the crime is committed. The answer to what this qualifying circumstance encompasses, or what is considered a treacherous method of committing murder, should be sought in existing judicial practice and doctrine. In this regard, two concepts can be distinguished: the objective and the objective-subjective. According to the objective concept, treachery as a method of committing murder involves actions by the perpetrator that the victim could not notice or detect, or methods that make it difficult or impossible to uncover the crime, such as murder from an ambush, while the victim is asleep, or using means that obstruct the detection of the crime (Tahović, 1955:74). The objective-subjective concept of treachery assumes that the objective component of this term is reflected in the covert and secretive actions of the perpetrator, while the subjective component is characterized by deceitful, insincere, and malicious exploitation of the trust the victim had in the perpetrator, or of the victim's helplessness or hopelessness² (Babić, Marković, 1997: 29).

In literature, typical examples of this type of murder are often cited as sudden murder, murder while the victim is asleep, and murder by poisoning. However, although these cases involve a victim who is innocent or helpless, un-

² See: Commentary on the Criminal Code of the Republic of Serbia, p. 112.

able to anticipate the attack and thus unable to defend themselves (objective component of treachery), it cannot be accepted a priori that the murder was committed in an extremely treacherous manner without also establishing the subjective elements of treachery. For example, in the case of an ambush, to apply this incrimination, it is necessary to establish that the victim was lured into that situation through deceit or by abusing a relationship of trust that existed between the perpetrator and the victim (e.g., inviting the victim to a certain location under the pretext of delivering an important message, repaying a debt, or having an important conversation). Similarly, murder committed while the victim is asleep would be considered extremely treacherous only if the perpetrator specifically exploited that situation to commit the crime, or if the victim was deceitfully put into that state, for example, by being given a sedative. When it comes to murder by poisoning, this form of murder would only exist if the perpetrator acted cunningly and slyly, using an existing or newly established relationship of trust, such as inviting the victim to dinner and then putting poison in their food (Babić, Marković, 2005:27).

3.2. Murder for Profit, to Commit or Conceal Another Crime, Out of Reckless Revenge, Hatred, or Other Particularly Base Motives

Murder for profit, to commit or conceal another crime, out of reckless revenge, hatred, or other particularly base motives represents a special form of aggravated murder where the underlying factor is the perpetrator's motive an internal, psychological element that is often very difficult to prove. Therefore, the essence of this form of aggravated murder lies in the subjective element of the crime, for which there are no exact methods of determination, but its existence is usually inferred from objective indicators. For instance, in a murder for profit, it is essential to establish that the perpetrator was motivated by a reckless, egotistical drive to gain benefit, even at the cost of another's life. In this context, it is irrelevant whether the benefit is material or non-material and whether it is of an illegal nature or not.

In cases where the murder is committed to execute or conceal another crime, the primary motive of the perpetrator is to eliminate the passive subject in order to facilitate the commission of the other crime or to cover it up. The nature and severity of the other crime are irrelevant for the application of this form of

aggravated murder. Reckless revenge as an aggravating circumstance in murder is a factual issue determined by the court in each specific case, considering all the objective and subjective circumstances involved. Thus, for revenge, which is generally defined as the infliction of harm in retaliation for a perceived wrong, to qualify as an aggravating circumstance in murder, it must be reckless. As with most other aggravating circumstances, there are no precise criteria for determining such a character of revenge. The evaluation usually begins with the moral norms of the given society and legal norms, while customary norms that conflict with current legal solutions and ethical principles are irrelevant. This approach was also accepted in earlier case law.

In one verdict, it was emphasized that the defense's appeal to customary law in the case of a defendant who killed a member of his extramarital partner's family out of revenge after she had left him four years earlier to live with another man, with whom she had a child, was unfounded, given that such outdated, invalid norms, contrary to positive law and morality, cannot be used to assess the actions of either the defendant or the victims in relation to the question of the reckless nature of the revenge³ (Čejović, 1986: 307).

Hatred, as an aggravating circumstance in murder, is interpreted in accordance with the definition of hate crimes as prescribed by Article 123, Paragraph 1, Item 21 of the Criminal Code of the Republic of Srpska (RS), which states: "A hate crime is a crime committed entirely or partly due to the racial, national, or ethnic affiliation, language, religious belief, color of skin, gender or sexual orientation, health status, or gender identity of the victim." From this, it is evident that establishing hatred as an aggravating circumstance, which is of an explicitly subjective nature, requires additional objective criteria that will clearly indicate that the murder was committed, for example, due to religious belief or because of gender or sexual orientation.

In addition to the aforementioned motives that qualify as aggravating circumstances, the legislator also mentions "other particularly base motives." Base motives are those that are in stark opposition to prevailing and generally accepted moral norms and attitudes, and which are condemned by the majority of society. They are characterized by a particularly high degree of moral reprehensibility,

³ Supreme Court of Yugoslavia, Case No. Kž 32/72

social and ethical blameworthiness, and contempt. These are extremely negative motives that make the perpetrator's behavior inhumane, dishonorable, and unworthy of a human being, rendering them a person of no character or scruples (Babić, Marković, 1997: 32). In line with the previous statements, we could say that murder driven by other particularly base motives represents a form of murder where the perpetrator is motivated by such motives that cannot, by the strictest standards, be considered worthy of a human being motives that indicate the perpetrator's moral baseness and provoke severe moral condemnation from society (Babić, Marković, 2005: 33). In our opinion, examples of such murders include the killing of a former or current spouse, extramarital, or romantic partner who has left or decided to leave the perpetrator, a woman killed out of misogyny, and similar cases.

3.3. Killing a previously abused family member

The murder of a family member who was previously abused is a form of serious murder that is specific not only because of the special relationship between the perpetrator and the victim, but also because of the fact that the deliberate deprivation of life was preceded by abuse of the victim. Therefore, the perpetrator of the murder and the victim are members of the same family, and the passive subject of the murder is the victim of domestic violence perpetrated against him by the perpetrator of the murder. In our opinion, for the application of this criminal case, it is sufficient to establish the existence of a special relationship between the perpetrator and the victim and the fact that the perpetrator committed violence against the victim, and it is irrelevant whether the victim reported it to the competent authorities and how long it lasted. Therefore, it is enough to establish that, for example, the passive subject reported or reported the perpetrator to the competent authorities for any form of violence, i.e. it is sufficient for there to be witnesses or other evidence confirming the fact that the passive subject was abused by the perpetrator before the murder. This does not mean the period immediately before the act of murder, because the abuse could have lasted for years, months, and the act of murder itself was carried out without any action that preceded it, which could be classified as abuse. E.g. the perpetrator took the life of his wife with a gunshot, against whom he committed domestic violence, when she was leaving the shared apartment, after she told him that she was leaving him.

This form of aggravated murder is also known in many other legislations, and the special reason for its introduction into the criminal legislation stems from the fact that the number of murders of family members or family members, who were victims of domestic violence, is constantly increasing (Babić, Marković, 2018:53).

3.4. Murder During Reckless Violent Behavior

As a specific form of severe murder, the legislator has foreseen murder during reckless violent behavior. The main characteristic of this form of murder is the violent behavior of the perpetrator during its commission, i.e., the specific attitude towards the act and the victim in terms of objective elements hooligan behavior and, from the perspective of motive and the perpetrator's subjective relation to the victim and the act premeditated murder without a cause or for a trivial reason. Some authors consider that murder during reckless violent behavior is the taking of someone's life done out of spite, not motivated by any special motive, but rather as a way for the perpetrator to express their arrogance, recklessness, and disregard for the value of human life (Lazarević, 1991: 84).

3.5. Murder by Intentionally Endangering the Life of Another Person

Murder by intentionally endangering the life of another person is a specific form of severe murder, where the core issue is the degree of injury or endangerment of the protected good. The perpetrator, in addition to intentionally taking one person's life, also intentionally endangers the life of another person, thus increasing the degree of threat to the protected good, i.e., the right to life. The danger to another person's life must be concrete, meaning there was an objective possibility that, as a result of the taking of one person's life, another person's life could also be taken. It can involve one or more people, and the source of danger can be the method of committing the act, the means used for the murder, or some other circumstance (Lazarević, 2006:351). Such a situation exists if, for example, automatic weapons, bombs, plastic mines, or timing mechanisms are used in a place where there is an objective possibility of harming other people, such as at a workplace, in a restaurant, in official vehicles, in a train, or in a room where a gathering is to be held, etc. (Babić, Marković, 2018:36).

3.6. Murder of Two or More Persons

The essence of the qualifying circumstance of this form of severe murder, like the previous one, is the degree of injury to the protected good, as it involves a greater extent of violating the right to life compared to other forms of murder; it involves the intentional taking of the lives of at least two people. The legislator has limited the application of this criminal offense by excluding its application in cases of murder in the heat of passion, the murder of a child during childbirth, or murder committed under particularly mitigating circumstances, as these are also considered intentional murders but treated by the legislator as privileged. Therefore, it would not be criminologically justified to treat multiple privileged murders as severe murders. In legal terms, this involves the concurrence of the crime of murder, whether ideal or real, which the legislator has classified as severe due to the gravity of the resulting consequence. Furthermore, this fact indicates the exceptional danger posed by the perpetrator, manifested as a tendency to commit murders. This is the essence of this form of severe murder.

3.7. Murder of a Child or a Pregnant Woman

The tendency for enhanced legal protection of children from all forms of violent crime, which is present in all modern European legislations, has influenced the creation of legal protection for the right to life. Although the right to life enjoys absolute protection from the moment of birth until death, this has led the legislator to ensure enhanced protection of this right for children through the criminalization of severe murder. It should be noted that the legislator has defined a child, when a victim of a crime, as a person under 18 years of age. Therefore, for the application of this form of severe murder, it is sufficient to prove that the victim was a child and that the perpetrator was aware of this fact. The other alternative qualifying circumstance also refers to the specific nature of the victim, i.e., a pregnant woman. As in the previous case, for the application of this incrimination, it is necessary to establish that the perpetrator was aware that they were taking the life of a pregnant woman. This qualifying circumstance of murder, in our view, indirectly provides legal protection to the so-called future life. Before the existence of this form of severe murder, cases of killing a pregnant woman were categorized as ordinary murder (of course, if there were no other qualifying circumstances), thus neglecting the fact that taking the life of a pregnant woman

essentially meant destroying two lives: the current life of the pregnant woman and the future life of the fetus.

3.8. Murder of a Judge or Public Prosecutor, Official, or Military Person

According to the legal formulation of the act, this form of severe murder exists when the life of a judge or public prosecutor is taken in connection with the performance of their judicial or prosecutorial duties, or when the life of an official or military person is taken while performing security duties or duties related to maintaining public order, apprehending a criminal, or guarding a person deprived of liberty. Unlike the previous form of severe murder, for the application of this incrimination, it is necessary to establish that the taking of life was related to the performance of their duties or functions. Otherwise, this form of the act will not exist. The rationale for this solution is found in the need for enhanced legal protection of the right to life for those categories of people who, while performing their duties and responsibilities, are exposed to increased risks to their lives.

3.9. Murder Committed Organically or on Commission

This form of severe murder represents a specific reaction by legislative bodies to the problem of organized crime, which has recently been expanding in our region. Murder committed in an organized manner, or better said, organized murder, is a type of severe murder that differs from other forms by the manner of its execution. The very concept of organized murder is difficult to define precisely, but a logical interpretation would suggest that it involves a murder committed after certain preparations, agreements, and plans for its execution. It is, therefore, a form of murder for which the involvement of multiple individuals is necessary, or which, by its definition, presupposes the participation and contribution of multiple people for the crime to be carried out. Along with this qualifying circumstance, the legislator has also alternatively provided for another possibility, namely that the murder was committed on commission, or based on an agreement between the person commissioning the murder and the perpetrator. Cold-blooded taking of another person's life on commission, by someone who has no personal relation to the victim, with full awareness and determination to take that person's life, indicates that the perpetrator is devoid of all moral and human feelings and is extremely dangerous to the community (Babić, Marković, 2018:59).

4. Privileged Murders

Murder, as the intentional taking of another person's life, is considered a severe criminal offense in all criminal law systems, for which there is no justification, as it involves the conscious and deliberate taking of another human life. However, there are certain life situations and circumstances that reduce the degree of danger posed by the act and the perpetrator and provide a basis for treating such murders as privileged, i.e., for prescribing a lesser penalty for the perpetrators. In the Criminal Code of the Republic of Srpska, privileged (less severe) forms of murder are Murder in the Heat of Passion and Murder of a Child During Childbirth. Some literature occasionally includes Negligent Killing in this category of murders. We believe that it is not a privileged murder because it differs from the criminal offense of Murder and all other privileged forms by the nature of culpability rather than by other circumstances that mitigate the degree of danger of intentional taking of another person's life.

One might question whether the legislator, by prescribing privileged forms of murder with a lesser prison sentence compared to other criminal offenses, such as property crimes, has diminished the significance of the right to life as an object of protection. This is because the offense involves the intentional taking of life by a perpetrator who consciously and willingly performs an act that deprives another person of life. However, analyzing the elements of these criminal offenses, it can be concluded that the legislator has taken into account the real-life situations that have determined the behavior of the perpetrator, or that are fundamental to their actions. In the case of Murder in the Heat of Passion, it is the provocation of the victim, and in the case of Murder of a Child During Childbirth, it is certain circumstances related to pregnancy and childbirth that significantly influenced the decision to take the newborn's life. In both cases, there are circumstances that, from a socio-ethical and moral standpoint, cannot lead to the exclusion of the unlawfulness of the act, but according to the legislator's view, they significantly affect the act by altering its severity and nature.

4.1. Murder in the Heat of Passion

According to the legal definition in Article 126 of the Criminal Code of the Republic of Srpska, this form of murder is committed by someone who takes another's life in the heat of passion provoked by severe abuse, harassment, or insults from the victim. The prescribed punishment is imprisonment from two to twelve years.

The criminal nature of this type of murder is determined by the relationship between the perpetrator and the victim. This relationship is actually the central element of this criminal offense because it leads to the state of intense agitation in the perpetrator, which forms the basis for the privilege of this form of murder. The victim, through their behavior namely, through attack, severe abuse, or severe insults provokes the crime and significantly contributes to their own victimization. We can say that the victim, in a certain way, participates in the creation of the crime by taking actions that are such in their nature that they bring the perpetrator into a special psychological state of agitation in which they react violently and make a sudden decision to kill the provoker. Thus, it involves an intense emotional state characterized by the suddenness of onset and lack of self-control. Besides the state of intense agitation brought about by the victim's provocation, which, as previously mentioned, forms the basis for this form of murder, a significant feature of this type of murder is that it is committed in the heat of passion. There are differences in the doctrine and jurisprudence regarding this element that might not seem significant at first glance but can lead to substantial differences in how perpetrators are treated. Generally, a temporal continuity between the provocation by the victim and the commission of the murder is required, with the possibility of a shorter or longer time gap between these two moments. Two interpretations are differentiated: one, which imposes a highly restrictive temporal gap and limits this qualification to reactions of the perpetrator that are virtually instantaneous and follow immediately after the victim's provocation (regardless of whether the state of intense agitation lasted longer than what is covered by the term "in the heat of passion"), and the other, more expansive interpretation, which considers that the temporal continuity between these two moments exists as long as the state of intense agitation caused by the victim's provocation persists (Babić, Marković, 2018:62). Thus, the regular discussion in-

volves the correlational relationship between the victim's behavior and the murder, and in this sense, interprets the concept of acting "in the heat of passion." However, it seems that the problems in interpreting and applying this element stem from this correlational approach. The state of intense agitation is a fundamental characteristic of this incrimination, and in our view, it is the *ratio legis* and represents the basis for the privilege in this case of taking a life. Therefore, the question of temporal continuity should be considered in relation to the state of intense agitation and the perpetrator's reaction, rather than the relationship between the provocation and the perpetrator's reaction (Babić, Marković, 1997:54).

4.2. Murder of a Child During Childbirth

According to the legal definition in Article 127 of the Criminal Code of the Republic of Srpska, the crime of Murder of a Child During Childbirth involves the intentional taking of the life of a newborn by the mother, during childbirth or immediately after childbirth, under the influence of a state induced by childbirth. At first glance, it is evident that this involves the intentional killing of a child during or immediately after childbirth. From a victimological perspective, this is a completely innocent victim who has contributed nothing to their own victimization. Therefore, it would be a logical conclusion that such intentional murder of a powerless victim should not be criminally justified as privileged. However, the basis for the privilege found by the legislator lies in the fact that the mother takes the life of her child during or immediately after childbirth under the influence of a state caused by childbirth. Thus, the essential element of the crime is the state induced by childbirth, which replaced the earlier formulation of "disorder caused by childbirth," which was inadequate as it did not reflect the essence of the psychological state of the mother during the commission of the crime, provided that the mother is a psychologically healthy person⁴. This does not mean that pathological psychological states underlying the mother's behavior should be disregarded, but they should not be classified under the term "state caused by childbirth" but should be interpreted within the framework of criminal responsibility.

⁴ For more details, see Babić, Marković, 1997: 67-70.

The new formulation of the crime, i.e., the phrase “state caused by childbirth,” clearly indicates that the privilege of this incrimination is not based solely on a psychological disorder caused by childbirth, but rather on a special psychological state of the mother under the dominant influence of exogenous factors related to pregnancy and childbirth, rather than childbirth itself, although their correlational connection with the mother’s individual personality traits cannot be excluded. This legislative stance has certain implications for the application of this incrimination because the “state caused by childbirth” must be established in each specific case, regardless of whether the killing of the child occurred during or immediately after childbirth (Babić, Marković, 2018:66).

A crucial element of this crime is the timing of its commission, as the crime can only be committed during childbirth or immediately after childbirth. The destruction of the fetus before the onset of labor, that is, before the first labor pains, if there are no legal conditions for it, would have to be legally qualified as an unlawful abortion. Considering that the passive subject is, in victimological terms, a completely innocent victim, one who has contributed nothing to their own victimization, and that the penalty for this crime is imprisonment from 1 to 5 years, we believe that, in order to achieve adequate criminal protection of the right to life of the newborn, the phrase “immediately after childbirth” should be interpreted restrictively and limited to a very short period.

5. Negligent Homicide

With the reform of criminal legislation in the Republic of Srpska in 2000, the term “Negligent Homicide” replaced the previous term “Involuntary Manslaughter.” We believe that this terminological change is more appropriate. The previous legal term was a contradictory and inconsistent combination of two concepts: “homicide,” which implies intentional deprivation of another person’s life, and “negligence,” which is associated with involuntary offenses.

Article 128 of the Criminal Code of the Republic of Srpska prescribes a prison sentence of two to eight years for anyone who negligently causes the death of another person. Therefore, the offense exists when the perpetrator was aware that their actions or inactions could cause another person’s death but recklessly believed that the consequence would not occur or that they could prevent it. It

also applies when the perpetrator was unaware of the potential for a fatal outcome, but given the circumstances of the act and their personal attributes, they were obliged and able to foresee such an outcome. The death of another person is the result of the perpetrator's carelessness or reckless behavior. This is a commission-omission offense, meaning that the classification of the act applies both to situations where the death of another person occurred as an unintended consequence of an action taken and when the death occurred due to a failure to take action to prevent it. In this sense, the Military Court in Banja Luka found a person guilty for failing to engage the safety mechanism while removing a pistol from its holster, knowing that a bullet was in the chamber, and that its discharge could injure those present. This occurred when the person slipped on a wet floor.⁵ The justification for this criminal offense lies in the nature and importance of the protected interest, namely the right to life, which, as a natural human right, must enjoy absolute protection from all forms of harm and endangerment.

6. Incitement to Suicide and Assistance in Suicide

The criminal protection of the right to life is not directed toward the holder of this right; every individual has the complete freedom and unrestricted authority over their life, up to the point of its complete destruction. This reflects the modern legislative stance that the right to life is a personal and inalienable right of every individual that cannot be restricted, even when exercising that right means its total negation. Accordingly, suicide is not considered a criminal offense, which is logical since the same person would be both the perpetrator and the victim. However, aiding or encouraging suicide constitutes, in the legislature's view, actions that endanger the right to life, and as such, they are criminalized as independent offenses under the theory of limited accessory liability (Article 129 of the Criminal Code of the Republic of Srpska). This allows criminal law to protect the right to life from any actions by others, even when such actions merely assist the holder of the right to life in realizing their decision to self-destruct. When drafting this offense, the legislature considered the characteristics

⁵ Unpublished verdict, no. IK 121/93, according to Babić, Marković, 2005:49.

of the passive subject, the manner in which the act was carried out, the circumstances under which it was committed, and based on these factors, provided for several forms of the offense. If aiding or inciting suicide is directed toward an adult, it constitutes the basic form of the offense, punishable by six months to five years in prison. However, if the actions of aiding or inciting are directed toward a person whose ability to understand the significance of their actions or control their behavior was significantly diminished or non-existent, or toward a child, more severe forms of the offense exist. This approach by the legislature is justified because children, as well as persons whose mental capacity is excluded or significantly reduced, often do not fully grasp the meaning of such a decision at the moment of deciding to commit suicide, as the decision is made impulsively under the influence of overwhelming life experiences. Incitement of a child or an incapable person to commit suicide, or assisting such a person in doing so, is equated with murder from the perspective of criminal sanctions. The criminal protection of the right to life against endangerment is also manifested through a special form of this offense, which provides for punishment of those who cruelly or inhumanely treat a person who is dependent on them, leading to that person's suicide, which can be attributed to the perpetrator's negligence. It is interesting to note that aiding in suicide under particularly mitigating circumstances is prescribed as a lesser form of the offense. In our opinion, the rationale for this provision is the same as for prescribing a lesser form of murder, that is, murder committed under particularly mitigating circumstances.

7. Unlawful Termination of Pregnancy

The right to life as an object of criminal law protection enjoys absolute protection from the moment of a person's birth, which is realized through specific criminal offenses that protect this right from unlawful harm or endangerment. However, this does not mean that human life is not protected before birth, as the legislature provides for the criminal offense of Unlawful Termination of Pregnancy, which enforces the criminal law protection of the human fetus, or future life, or life in the making. This criminal offense only criminalizes cases of illegal termination of pregnancy, meaning only those cases that contradict the legal conditions for performing an abortion. Therefore, the legislature does not criminalize

every termination of pregnancy or the destruction of a human fetus as a bearer of future life, which is a direct consequence of affirming a person's right to free parenthood and elevating this right to the level of a constitutional principle (Article 36 of the Constitution of the Republic of Srpska). The essence of this right, that is, the right to free parenthood as a fundamental human right, consists on one side of the freedom to have children and on the other side, the freedom not to have children, or the right of a woman to freely and independently decide on the termination of pregnancy. The realization of this negative aspect of the right to free parenthood, specifically the right of a woman to independently and freely decide on the termination of pregnancy, was enacted by the Law on Conditions and Procedure for Termination of Pregnancy, which prescribes the conditions for a legal abortion (Babić, Marković, 2005:55).

Unlawful termination of pregnancy is criminalized under Article 130 in several forms. The basic form of the offense is the unlawful termination of pregnancy with the consent of the pregnant woman, which includes not only performing the abortion but also aiding the pregnant woman in having an abortion. More serious forms of the offense exist if the perpetrator regularly performs unlawful abortions with the consent of the pregnant woman, if the abortion is performed without the pregnant woman's consent, or if she is under 16 years old and it is done without the consent of her parent, guardian, or adoptive parent. The most serious form of the offense occurs if death, serious bodily injury, or severe health impairment of the woman upon whom the abortion was performed results from the mentioned forms.

Self-induced abortion is not punishable. Therefore, the human fetus enjoys limited criminal law protection against third parties, but not against the pregnant woman, as she is not criminally liable for the destruction of her own fetus.

Conclusion

The right to life, as a fundamental human right, enjoys absolute criminal law protection in the legislation of the Republic of Srpska from the moment of birth until death from all actions that could harm or endanger it, except when such actions are taken by the right holder themselves.

Although criminal legislation has undergone reform over the past two decades, the concept of this protection has not significantly changed. In addition to amendments that corrected certain criminal offenses, the most significant change is reflected in the tightening of penal policies through the introduction of harsher sentences or life imprisonment for the most serious criminal offenses. This legislative activity followed increasing public pressure demanding stricter penalties for perpetrators of murders or other crimes resulting in the death of the victim, such as rape. However, it is important to note that even before the introduction of life imprisonment, there was an option to impose long-term imprisonment ranging from 25 to 45 years, which was rarely used in judicial practice. Therefore, it remains an open question as to how and to what extent these changes will impact the criminal law protection of the right to life.

Finally, it should not be forgotten that the right to life, besides the right to the inviolability of life or bodily integrity, also includes the right to a dignified life. This requires adequate criminal law protection of all other human rights and freedoms, as well as certain general values such as health, the environment, and the like. We believe that the latest reform of criminal legislation in the Republic of Srpska has set this protection at a satisfactory level.

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