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A Critical Review of the Institute of Multiple Recidivism in the Modern Criminal Law of the Republic of Serbia: The Controversy of the Current Legal Solution and Possible Solutions

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Abstract: After being derogated several times, the institute of multiple recidivism was re-incorporated into the Republic of Serbia's positive criminal legislation with the intention of giving intentional perpetrators of crimes punishable by imprisonment, who were previously convicted at least twice for criminal offenses committed with intent to imprisonment for at least one year, harsher penalties and disabling them from committing criminal offenses in the future. Numerous disputed scenarios required national jurisprudence to find solutions, with the challenges of calculating the criminal range and the level of the lower threshold of the imposed criminal sentence standing out in particular. The observed institute was analyzed primarily through the prism of rationality, justification, and expediency of the current normative solution, within which the author attempted to provide answers to potentially contentious issues. The findings of the conducted research indicated that the new concept of the institute of multiple recidivism is incorrect because the threshold of half the penal range is excessively high and does not leave enough space for the court to objectively weigh the circumstances of each specific case. Furthermore, the findings

suggest that in some cases, an approach based on alternative measures may be a more convenient solution, as well as that the application of the existing legal solution regarding the observed institute is merely legitimate in relation to some categories of perpetrators who are declared "incorrigible." The conducted research concludes that, due to the arguments presented in the paper, there is a high likelihood that the institute of multiple recidivism will again be derogated from the Republic of Serbia's legislation if the provision of Art. 55a of the Criminal Code remains unchanged.

Keywords: recidivism; multiple recidivism; dangerous recidivism; three strikes law; penal policy; sentencing; aggravation of punishment

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Contents

I. Introduction

In the positive law criminal legislation of the Republic of Serbia, there are officially two types of recidivism: "ordinary" recidivism prescribed by Art. 55 of the Criminal Code (hereinafter referred to as "CC")[1] and multiple recidivism prescribed by Art. 55a of the CC.[2]

[1] Krivični zakonik [Criminal Code] ("*Sl. glasnik RS*" [Official Gazette of RS], No. 85/2005, 88/2005 — corrected, 107/2005 — corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), in force from 1 January 2006.

[2] Art. 55a of the CC: "For a criminal offense committed with intent, for which a prison sentence is prescribed, the court will impose a sentence above half of the

In addition to the mentioned official sorts of recidivism, the CC also contains a "special" recidivism (it is a term that crystallized in the legal literature, while we do not find its use in the legal text), which is regulated within the provisions of Art. 57, Para. 3 of the CC, which refers to the limits of mitigation of punishment, more precisely as one of the legal reasons that exclude the possibility of mitigation of punishment.

The work aims to critically and objectively examine the current state of affairs regarding the treatment of (multiple) recidivists on the soil of Republic of Serbia, as well as to apostrophize specific problems and doubts that have not been adequately addressed in the theoretical treatment, despite the fact that they appear as alarming in practice. The most robust section of the paper refers to the proposal of concrete solutions regarding the normative regulation of the institution of recidivism and its possible variations, which would solve practical problems and favor the balancing of criminal policy with the views of renowned legal practitioners and the expectations of public opinion, or at least the direction of thinking, which would represent a guiding idea for the rest of the scientific-academic community that will deal with the issue of recidivism. Furthermore, the scientific contribution of the work consists in pointing out that it would be expedient to apply this institute exclusively restrictively, and only about certain categories of perpetrators who are declared as "incorrigible." In relation to such a narrowed field of application, alternative solutions were offered in the direction, at the discretion of the author, of the necessary modification of the current legal provision, one of which would be optional, while the other would have a mandatory character. In addition, the work's scientific contribution comprises indicating at some legislative omissions during the formulation of the provision of Art. 55a of the

range of the prescribed sentence, under the following conditions: 1) if the perpetrator has previously been convicted twice for criminal offenses committed with intent to imprisonment of at least one year; 2) if five years have not passed from the day the perpetrator was released from serving the sentence to the commission of a new criminal act." ["Za krivično delo učinjeno sa umišljajem, za koje je propisana kazna zatvora, sud će izreći kaznu iznad polovine raspona propisane kazne, pod sledećim uslovima: 1) ako je učinilac ranije dva puta osuđen za krivična dela učinjena sa umišljajem na zatvor od najmanje jednu godinu; 2) ako od dana otpuštanja učinioca sa izdržavanja izrečene kazne do izvršenja novog krivičnog dela nije proteklo pet godina."].

CC, as well as problems that occurred in judicial practice until recently when determining the penalty, that is, calculating the penalty range.

II. *Ratio Legis* of the Institute of Multiple Recidivism and the Expedience of its Reaffirmation in Domestic Criminal Legislation

The Law on Amendments and Supplements to the Criminal Code, enacted on 21 May 2019.[3] introduced changes into domestic criminal legislation that many authors believe lack a valid legal basis (Škulić, 2020a, Kolarić, 2020, p. 212) mainly aimed at significantly tightening the legal penal policy and strengthening criminal law repression, both in the sense of the excessive spread of penal expansionism by prescribing a more significant number of incriminations and the introduction of new criminal offences (Kolarić, 2019, p. 15), as well as with regard to penal populism in the form of raising a special minimum and a special maximum for certain criminal offenses, tightening the conditions for the application of conditional sentences, expansion of the ban on mitigating punishment and finally, the introduction of "capital criminal sanctions" in the sense of life imprisonment. According to all accounts, the presented changes were mostly motivated by "extralegal factors," that is, by the significant influence of populist "marketing campaigns" aimed at collecting political points, as well as by the reactions of public opinion, mostly made up of laymen, which, in general, is particularly sensitive to criminogenic issues included in the mentioned changes, and is therefore subject to "spinning" by the mass media, as a result of which it accepts normative solutions with broad-mindedness, which in practice do not necessarily mean the reduction of crime and the creation of a "utopian atmosphere" in society. In this sense, the latest amendments to the CC have, without adequate argumentation, contributed to the creation of a distinctly "punitive atmosphere" in society, and in the continuation of the text we will focus on a narrower segment of them, which has been significantly modified in comparison with the previous

[3] Zakon o izmenama i dopunama Krivičnog zakonika [Law on Amendments and Supplements to the Criminal Code] ("*Sl. glasnik RS*" [Official Gazette of RS], No. 35/2019), in force from 1 December 2019.

legal solution,[4] while in practice it leads to results that contradict both the basic principles on which criminal law is founded, as well as the general rules of the logic of life.[5]

[4] Article 46 of the Federal Republic of Yugoslavia's Criminal Code, titled "Aggarovation of the punishment in case of multiple recidivism," stipulated:

(1) For a criminal offense committed with intent for which a prison sentence is prescribed, the court may impose a stricter sentence than that prescribed under the following conditions: 1) if the perpetrator was previously convicted two or more times for criminal acts committed with intent to imprisonment for at least one year *and shows a tendency to commit criminal acts* (Italics by J.M.); 2) if five years have not elapsed between the day of the perpetrator's release from serving the previously imposed sentence and the commission of a new criminal offense.

(2) An aggravated punishment may not exceed the double measure of the prescribed sentence or fifteen years of imprisonment, and if a prison sentence of forty years is prescribed, it may not exceed forty years.

(3) When assessing whether to impose a sentence that is more severe than prescribed, the court will consider the relatedness of the committed criminal acts, the motives from which they were committed, the circumstances under which they were committed, as well as the need to impose such a sentence in order to achieve the purpose of punishment.

Krivični zakon Savezne Republike Jugoslavije [Criminal Code of the Federal Republic of Yugoslavia] ("*Sl. list SFRJ*" [Official Gazette of the SFRY], No. 44/76, 36/77 — corrected, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 — corrected and 54/90 and "*Sl. list SRJ*" [Official Gazette of the FRY], No. 35/92, 16/93, 31/93, 37/93, 41/93, 50/93, 24/94 and 61/2001).

[5] The institute of multiple recidivism is conceptualized as a facultative aggravating factor under Montenegro's positive criminal legislation, as it was in previous Yugoslav legislation.

In this regard, Art. 44 of the Montenegro's Criminal Code, titled "Multiple recidivism", stipulates:

(1) For a criminal offense committed with intent for which a prison sentence is prescribed, the court may impose a more severe sentence than prescribed, under the following conditions: 1) if the perpetrator has previously been convicted two or more times for criminal offenses with intent to a prison sentence of at least one year *and shows a tendency to commit criminal offenses* (Italics by J.M.); 2) if five years have not elapsed between the day of the perpetrator's release from serving the previously imposed sentence and the commission of a new criminal offense.

(2) A more severe punishment may not exceed the double measure of the prescribed punishment, nor twenty years of imprisonment.

(3) When assessing whether to impose a sentence more severe than prescribed, the court will particularly consider the number of previous convictions, the relatedness of the committed criminal acts, the motives from which they were committed, the circumstances under which they were committed, as well as the need to impose such a sentence in order to achieve the purpose of punishment.

The primary focus of the work is the institute of multiple recidivism from Art. 55a of the CC. Please note that this is an institute that has been known in the domestic legislation since ancient times. Thus, its beginnings can be found in Art. 52 of the Yugoslav Criminal Code from 1929, which stipulated that "for a person who, in vagrancy, beggary or harlotry, has committed any criminal offense for which they are prosecuted ex officio, the court will issue a verdict that after serving the sentence imposed on them, they must be sent to the labor institute as a danger to public safety, *if they are found to be prone to committing criminal acts* (Italics by J.M.) and fit for work," whereby recidivists, in accordance with Art. 58 of the same code, could be issued with a security measure prohibiting them from performing professions or trades "forever" (Gavrilović, 2021, pp. 40, 42). A certain number of authors have already covered the history of the institute of recidivism and its variations, as well as the differences in normative regulation over the years and decades, so we will not delve into a deeper chronological analysis of the observed institute at this point (Đokić, 2019, pp. 308–326; Miladinović, 1982; Jocić, 2019). Nonetheless, we emphasize that a small number of authors, and under specific circumstances, were favorable to its survival in positive regulations, as evidenced by the fact that the institution of multiple recidivism was never used in practice (Kolarić, 2018, p. 82), and that, prior to the recent reaffirmation, it was repeatedly (for good reason) derogated.

From a statistical standpoint, depending on certain variables and parameters of observation (differences in the definition of recidivism, different methods of data collection, greater or lesser accuracy of statistics, different rates of return depending on the type of criminal offence), it is an almost universally accepted viewpoint in the science of criminal law that over half of the total of crime rate falls on returnees, which justifies the global effort to find, at least to some extent, a compromise solution, in contrast to the existing ones that are sorely diametrical.

Krivični zakonik Crne Gore [Criminal Code of Montenegro] ("*Sl. list RCG"* [Official Gazette of the Republic of Montenegro], No. 70/2003, 13/2004 — corrected and 47/2006 and "*Sl. list CG"* [Official Gazette of Montenegro], No. 40/2008, 25/2010, 32/2011, 64/2011 — other law, 40/2013, 56/2013 — amended, 14/2015, 42/2015, 58/2015 — other law, 44/2017, 49/2018 and 3/2020), in force from 2 January 2004.

However, the wide diversity of existing solutions in different countries' legislation is typified by one common denominator: the necessity for a specific and more powerful social reaction towards returnees, because they are, in theory, more hazardous to society than other delinquents (Zlatarić, 1968). We assume that the aforementioned denominator was the leading motive of the Ministry of Internal Affairs when submitting the initiative for amending the Criminal Code, which resulted in the fact that, a decade and a half earlier abandoned idea of the need for stricter punishment of multiple recidivists, was "resurrected" in a somewhat modified form, whereby these, at first glance, marginal modifications sparked lively debates that are still ongoing.

The *ratio legis* of the recent CC amendments appears to be particularly controversial, primarily with regard to the incorporation of the "new" Art. 55a, which (re)introduced the well-known institution of multiple recidivism into domestic legislation, though dressed in new clothes, like a "new suit of an old man," which is disputed both in terms of the legislator's intention when reaffirming the subject institute, as well as about its normative structure. When it comes to the first aspect, the legislator, most likely guided by the unscientific attitudes of public opinion and the general socio-political climate, found it necessary for the domestic penal policy to acquire a pronounced repressive component, among other things, in the form of stricter punishment for returnees and habitual offenders, and is, according to the American "*three strikes approach*" (Škulić, 2020a), the criminal legislation of the Republic of Serbia was unjustifiably "enriched" with a long-abandoned institute, which was not applied even when, in the opinion of many, it was more justly designed.

This approach of the legislator is disputed on several grounds. Firstly, the question arises as to whether capital punishment, in the first place in terms of long-term deprivation of liberty, necessarily guarantees a reduction in society's crime rate? There are numerous examples from history, starting with ancient legislation, which unequivocally indicate that the emphasized retributive approach and draconian punishments in practice do not produce the expected results, which is the reason

why they have been mostly abandoned in modern times. The same applies to the "three strikes system" which is currently used in a small number of legislations on the soil of the United States of America where it was initially created, with a tendency to be completely excluded in the near future (Škulić, 2020b, p. 38).[6] In this sense, a kind of social retaliation against the defendant who has a greater degree of conflict with the foundations of the legal order, in the sense that the defendant deserves a stricter punishment for each new delict than the previous one, and that the fear of stricter incrimination will "prevent" him and a drastically heavier punishment than the previous one "heal" him, could be portrayed as a comparison according to which giving a much stronger therapy to the patient compared to the originally prescribed or slightly enhanced one would, as a rule, result in his healing from the disease, which is certainly not the case.[7]

It is necessary to look at the problem of recidivism from a different perspective and keep in mind the bigger picture. Recidivism *per se* certainly represents a form of "social cancer," as one of the most complex and dangerous social phenomena, which is contributed by many factors such as an unsatisfactory social and economic situation in society, factors of social pathology, neglect of the early stage of "cancer," etc. (Soković

[6] Quite a number of domestic and foreign authors wrote about the marked controversy and harmfulness of the "three strikes system," which resulted in the fact that this institution of drastically tightened punishment of recidivists and habitual criminals was practically abandoned, even on home soil. The aforementioned claim, among others, was emphasized in several works by the respected leader of Serbian legal thought, Milan Škulić.

[7] According to some studies, criminal justice policies that are based on the belief that "getting tough" on crime will reduce recidivism are without empirical support. They suggest that imprisonment and other criminal justice sanctions should be used for purposes other than reducing re-offending (e.g., incapacitation of dangerous offenders, denunciation of prohibited behaviour). They also conclude that the ineffectiveness of punishment strategies in reducing recidivism strengthens the need to direct resources to evidence-based alternative approaches, and that research-based offender rehabilitation programs offer such a viable alternative for reducing recidivism.

See: The effects of punishment on recidivism. Available at: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/pnshnt-rcdvsm/index-en.aspx [Accessed 02.06.2023].

and Bejatović, 2009, pp. 33–39).[8] We believe that the key to the proper treatment of society towards recidivism is contained in the mentioned factors, as opposed to the current solution, which consists in the simple abstraction of "incorrigible" individuals from the community. Namely, the majority of recidivists are anti-social, or rather socially maladjusted persons, who commonly live in supremely poor financial circumstances, whereby they usually originate from dysfunctional families and fail to get an education and/or find employment. Bearing in mind the above, upon their return to the social environment, they do not have a significant number of options left to provide basic existential resources (Ashworth, 2010),[9] which is significantly affected by circumstances as a distorted state of consciousness caused by long prison sentences and contact with the rest of the prisoners often convicted of significantly more dangerous crimes. In this sense, the primary focus should be on eradicating factors that favor the creation of recidivists, i.e., on paying more attention to children (Cacho et al., 2020).[10] We singled out children as a special category, since when we talk about juvenile delinquency, the results of some researches show that almost 1/3 of reported crimes remains outside the official reports and does not appear before the court due to the fact that the perpetrator did not reach the age of 14 at the time of

[8] On the criminological characteristics of juvenile offenders and the social reaction to juvenile delinquency.

[9] The literature states that the highest percentage of recidivism falls on the lightest crimes, as a rule of property nature, that is, that a higher rate of return is associated with crimes that are at the bottom of the scale of negative evaluation. In this sense, the progressive increase of the punishment for each newly committed criminal act represents an unjustified social and ethical reprimand towards the perpetrators who are not in the upper part of the scale of social danger.

[10] At the international level, a series of extensive studies devoted to the problem of juvenile delinquency in the context of recidivism have been conducted, especially from the aspect of personal characteristics and social factors whose cooperation favors the creation of repeat offenders among minors, and the importance of recognizing specific personality traits that indicate a high probability of creating recidivists among adolescents. Studies have also indicated the need for appropriate mechanisms to effectively combat recidivism, such as the introduction of specific educational intervention programs in juvenile centers, with a dual approach based on the reduction of risk factors and the enhancement of protective factors.

the commission of the crime (Šušak and Bačanović, 2020).[11] Also, the principle of the opportunity of criminal prosecution is often applied to persons who are between 14 and 18 years old at the time of the commission of the crime, in the sense of Art. 283 of the Code of Criminal Procedure in connection with Art. 58 of the Law on Juvenile Offenders and Criminal Protection of minors)[12] and minors who from an early age exhibit characteristics that indicate potential socially-conflict behavior. Furthermore, given the empirically confirmed fact that children who commit criminal acts in groups frequently become recidivists and have a negative criminological prognosis (Šušak and Bačanović, 2020), it follows that, taking into account the factors presented above, much greater emphasis should be placed on the preventive function of criminal law, compared to the existing repressive-retributive solutions, which do not work as intended. We believe that by responding to critical situations in a timely manner and properly guiding them from a young age, later criminogenic escalation would be significantly avoided, and the number of "incorrigible" members of the social community, who should be assigned/provided with special treatment in any case, would be reduced.

However, if society fails to respond appropriately during this early phase, the question of how to repair the consequent "damage," that is, how to return an individual who has gone astray to the path of legality and respect for rights, emerges. Intimidation in the form of introducing new incriminations and draconian criminal sanctions, with the goal of discouraging illegal behavior, did not prove to be particularly effective, as evidenced by numerous historical examples, e.g., "Any thief... who is caught stealing for the third time shall be sentenced to death."[13] The

[11] Art. 47, Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica [Law on juvenile perpetrators of criminal offenses and criminal protection of minors] ("*Sl. glasnik RS"* [Official Gazette of RS], No. 85/2005), in force from 1 January 2006.

[12] Zakonik o krivičnom postupku [Criminal Procedure Code] ("*Sl. glasnik RS"* [Official Gazette of RS], No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 — decision of the US and 62/2021 — US decision), in force from 1 October 2013.

[13] Art. 78, *Zakonik Danila prvog knjaza i gospodara slobodne Crne gore i brdah, ustanovljen 1855. godine na Cetinju* [Code of Danilo, the first prince and lord

answer is certainly not to be found in the exponential increase in fines on the perpetrator's account for each subsequent mistake that, in general, cannot be fully attributed to him due to the circumstances presented, and which punishments would ultimately result in the perpetrator's complete marginalization, in the sense that he is basically "sentenced to spend his entire life in prison." Contrary to the dominant utilitarian theories according to which a rigid penal policy is socially useful because it contributes to the reduction of crime and the elimination of a significant number of perpetrators of criminal acts (Milevski, 2014). We believe that an approach based on resocialization is a fairer, more expedient and, above all, more humane solution, both for the individual and for society, at least when it comes to perpetrators who belong to the "corrigible" category (Grgur, 2017, p. 259).[14] In truth, the treatment of the individual's reintegration into social flows can be extremely complex, long-lasting and financially exhausting, while positive results are not guaranteed. Nonetheless, a larger percentage of working and socially useful individuals is in the wider social interest, compared to the current "overcrowding" of prisons (Škulić, 2017),[15] which, among other things, mostly represents an expense (with possible lost profit) for the state (Hynes, 2009).[16] In this regard, security measures such as protective supervision after serving a prison sentence,[17] as contained

of free Montenegro and the hills, established in 1855 in Cetinje]. Available at: https://www.njegos.org/petrovics/danzak.htm [Accessed 14.03.2023]. (In Monten.).

[14] Of course, in judicial practice the situation is far more complex, and it is necessary to take into account a whole series of circumstances. For additional arguments about the existence of significant deficiencies in the existing system of execution of criminal sanctions, ineffectiveness of (short) prison sentences and the advantages of applying alternative measures when it comes to recidivists.

[15] There is an old anecdote that once "judges emptied prisons," and now, in relatively modern times — "judges fill prisons."

[16] The costs of alternative measures can be twice as low. In support of the above statement, we cite a comparison of the necessary costs for the implementation of the "*Drug Treatment Alternative-to-Prison program (DTAP)"* in relation to the evaluation of the costs necessary for the stay of the same person in prison in the same interval.

[17] Art. 76, Zaštitni nadzor po punom izvršenju kazne zatvora [Protective supervision after the full execution of the prison sentence], Kazneni zakon [Criminal Code] NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, in force since 31 July 2021.

in the Croatian Criminal Code, may be more appropriate than certain security measures that essentially amount to prolonged deprivation of liberty after serving a prison sentence, such as exist in the German, Italian and some other foreign legislations (Stojanović, 2015, p. 317; Đokić, 2020; Zlatarić, 1968).[18]

As a transitional category, we single out "conditionally corrigible" perpetrators of crimes against sexual freedom for whom the legislator has assessed that there is a possibility of social reaffirmation. Namely, in the Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedom against Minors,[19] known to the public as "Marija's Law," Art. 2 states that the purpose of the law is to *prevent* perpetrators of criminal offenses against sexual freedom against minors to continue committing these crimes. Although we are talking about the perpetrators of crimes to which the non-scientific part of the public is particularly sensitive, to the extent that the execution of "capital criminal sanctions" is massively demanded for them, the legislator is of the opinion that these do not represent the most serious crimes, and that the survival of this category of perpetrators in the social community is possible. At the same time, from Art. 5, which is entitled "Prohibition of mitigation of punishment and parole and non-obsolescence of criminal prosecution and execution of punishment," it follows that a special focus is directed at preventing recidivism in the commission of criminal acts against sexual freedom against minors (Milić and Dimovski, 2020, p. 61), which is supported by the fact that Art. 7–15 of the law prescribe special measures, special obligations and keeping special records, which indicates a serious approach, both in terms of control and supervision over the subject group of perpetrators and in terms of their gradual reincorporation into society.[20] Given the much

[18] This claim is bolstered by the fact that the measure of preventive detention (Ger. *Sicherungsverwahrung*) regulated by § 66–67 StGB, ranks among the most contentious and often criticized criminal sanctions in German criminal law.

[19] Zakon o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode prema maloletnim licima [Law on special measures to prevent the commission of criminal acts against sexual freedom against minors] ("*Sl. glasnik RS*" [Official Gazette of RS], No. 32/2013), in force from 8 April 2013.

[20] The application of special measures to prevent the commission of crimes against sexual freedom against minors is regulated by the provisions of Art. 58–61

lower degree of social danger, we believe that a similar, even less rigid, model could be applied to the previously defined category of "corrigible" perpetrators of criminal offenses, and that the imposition of long-term prison sentences for minor criminal offenses, in a situation where the lawmaker has already decided to provide a conditional "second chance" to perpetrators who objectively deserve an incomparably higher degree of social-ethical reprimand, represents an extremely disproportionate and unfair legal solution. The above confirms the shortcomings of the new amendments to the CC in the domain of the purpose of punishment (Ilić, 2019, p. 127; Đokić, 2019, pp. 308–326), in the sense of neglecting guilt as a subjective element of a criminal act.

The third category consists of persons who have become "incorrigible" through original (congenital) or derivative (acquired) means (Nikolić-Ristanović and Konstantinović-Vilić, 2018, pp. 227, 230).[21] By the first, we mean people who have displayed psychopathic, sociopathic, and similar traits since childhood, for which no known medical treatment has yielded results, and who cannot be effectively controlled and prevented from committing criminal acts without some form of social distancing. Since it is not a case of insane and mentally ill people who could be placed in a "classic" health care institution, it is proposed as a solution that: "Rapists, murderers, psychopathically

of the Law on the Execution of Extrajudicial Sanctions and Measures (*"Official Gazette of RS,"* No. 55/2014 and 87/2018), in force from 23 May 2014.

[21] The typology in terms of the classification of criminal perpetrators into "corrigible," "conditionally corrigible" and "incorrigible" delinquents is given graphically and exclusively with the aim of highlighting the illegitimacy of the extensive and mechanical application of the institution of multiple recidivism, i.e., on the necessity of narrowing the field of an application exclusively to the so-called "lost" cases in which the degree and quality of the criminal wrongdoing manifested through a longer time interval justifies, moreover, it conditions a highly repressive criminal law reaction that objectively could not be embodied in a milder form. Furthermore, this typology provides a starting point that should be improved, and the criteria for exact classification into one of the proposed groups should be clarified in future works. Also, it represents a guiding idea in the direction of adapting the criminal law reaction to perpetrators who deserve varying degrees of social-ethical reprimand depending on the specific situation, i.e., defending with mechanical treatment that fundamentally contradicts the principles of justice and proportionality, by putting all delinquents "in the same basket," ignoring the specifics of each specific case and other important factors.

structured, it is best to isolate them from the normal environment for as long as possible, so that they do not get the opportunity to commit such monstrous acts, and that they do not "feel the social reaction through their stay in prison," but in specialized institutions, and in that way, even physically, they will not be able to repeat the crime" (Gracin, 1998). The second subgroup consists of individuals who, due to the influence of a dysfunctional family, trauma (Yoder, Whitaker and Quinn, 2017), social pathology, the struggle for survival and the provision of basic life resources caused by poverty and poor financial circumstances, have developed to such an extent the tendency to commit and professionalism in committing, usually the same or similar, criminal acts, that neither resocialization measures, nor prolonged sentences of deprivation of liberty within penitentiaries are effective. Finally, there is no other option except to completely exclude this subset of individuals from the social community (Hynes, 2009).[22] Equivalent treatment in the form of "lifelong removal from the street" should, in the opinion of certain authors, be applied to persons legally convicted of the most serious crimes against sexual freedom and crimes with elements of violence (murder, rape, etc.), as well as to perpetrators of basic forms of criminal acts with elements of violence if they appear as recidivists (Atanasković, 2019).[23]

III. Nomotechnical Issues and Doubts

When viewed chronologically, the institution of multirecidivism, as a modality or "strengthened version" of the institution of recidivism,

[22] However, we will leave the claim about the "incorrigibility" of the mentioned category of persons open. Namely, studies have shown that the programs "*Drug Treatment Alternative-to-Prison Program (DTAP)*" and "*Community and Law Enforcement Resources Together (ComALERT)*" can have a positive effect on (non-violent) addicts of psychoactive substances who have previously been convicted multiple times for property crimes, where the treatment costs are twice as much as the costs of incarceration. If the stated thesis turns out to be correct, we believe that legal solutions in the context of recidivism would have to be substantially changed.

[23] We believe that long-term social marginalization has empirically proven to be justified, as a kind of *ultima ratio*, only with regard to the presented third subgroup of perpetrators of criminal acts, given that there is currently no other suitable solution in sight.

has always been accompanied by intense discussions on the question of normative conception, in addition to discussions regarding its legal basis. Numerous structural issues have been explained quite concisely and extensively in the domestic literature, and here, aware of the complexity of the challenge we have embarked on, we will try to focus primarily on aspects that we believe have not been addressed at all or insufficiently, as well as to offer solutions that we believe are expedient.

As stated in the earlier part of the text, the amendments to the CC from 2019 reintroduced the "new-old" institute of multiple recidivism into the criminal legislation of the RS, whereby the *de lege lata* wording of Art. 55a of the CC is extremely unfair, incomplete and insufficiently determined. We present several arguments in support of the aforementioned statement:

(i) the legislator made an illogical transition from an optional aggravating circumstance (which can be justified to some extent in the case of "ordinary" recidivism) to an archaic mandatory mechanism that drastically "ties the hands" of judges, in order to create conditions for harsher punishment. In truth, the judges were never completely "freehanded," because excessive discretionary powers would lead to arbitrariness and arbitrary interpretation of the law. The framework limits, both in terms of punishment ranges and in terms of procedural powers of judges, must be known. Otherwise, anarchy is inevitable. Nevertheless, we believe that in this way the principles of judge's free belief and free evaluation of evidence are significantly limited, whereby the judge is objectively prevented from acting *ex aequo et bono* and making a decision that would correspond to the specific state of affairs. Obviously, the legislator indirectly expressed distrust towards judges in the domain of penal policy, by imposing legislative penal policy to a certain extent on judicial penal policy (Cvetković, 2019, p. 47). Such an approach could be justified in the case of perpetrators prone to committing criminal offenses with a highly developed *modus operandi*, as well as perpetrators of the most serious criminal offenses, but not in the case of persons who we classified in the domain of "corrigible" or "conditionally corrigible" offenders, for whom we propose treatment

based on the application of alternative measures and resocialization,[24] so the normative regulation of recidivism in the broadest sense should be restructured in accordance with the given suggestions.

(ii) we believe that special recidivism in the sense of Art. 57, Para. 3 of the CC should be moved from the provisions concerning the limits of the mitigation of punishment to the provisions regulating the institution of recidivism, as well as that it refers exclusively to the category of "incorrigible" offenders.

(iii) as correctly stated in the literature, it is unclear why Art. 55a does not contain a part that refers to the exclusion of the possibility of judicial mitigation (Jocić, 2019).

(iv) the relationship between "conviction for a criminal offense committed with intent for the imprisonment of at least one year" and the institution of concurrence in the sense of Art. 60 of the CC (Jocić, 2019, pp. 29–36), provision that regulates the sentencing of a convicted person in the sense of Art. 62 of the CC, and the procedure for imposing a single penalty in terms of Art. 552–556 CPC, may be disputed.[25]

(v) in practice, the question of which moment is taken as relevant for the start of the five-year term calculation from Point 2 of Art. 55a of the CC, i.e., how to interpret the wording "dismissal of the perpetrator from serving the sentence" (Jocić, 2019, p. 35),[26] and whether its

[24] Although the present science of criminal law does not regard resocialization as a foundation for more carefully determining the content of criminal law, it is nevertheless given importance as one of the ways of achieving the purpose of punishment. We believe that certain elements of that approach, which are accepted in practice, should be examined when it comes to defined categories of perpetrators. In any case, it would be a fairer and more expedient solution compared to the current one, which equally affects all perpetrators who have met the requirements of Art. 55a of the CC, and disregards some of the most important postulates of criminal law, first and foremost the principle of humanity and the principle of fairness and proportionality.

[25] That the institution of recidivism is incompatible with the procedure for the imposition of a single sentence, clearly follows from the sentence from the judgment of the Court of Appeal in Kragujevac Kž1-483/2020 dated on 4 August 2020: "The provisions of Art. 55 and 55a of the Criminal Code are applied when assessing individual prison sentences, but not when combining sentences or in the procedure for imposing a single sentence."

[26] Sentence from the judgment of the High Court in Belgrade Kž1-234/21 dated on 5 November 2021: "The conditions for imposing a prison sentence on the defendant

meaning can be identified with the phrase "sentence served" in the sense of Art. 55 of the CC, is particularly controversial. We are of the opinion that it would be expedient to take as relevant the release of the perpetrator from serving the last sentence (second in order or later) in a series of sentences that meets the requirements of Point 1 of Art. 55a of the CC.[27]

(vi) some authors believe that both treating recidivism as a mandatory aggravating circumstance and prescribing a ban on judicial mitigation of punishment are meaningful, but that it is excessive and unjustified for both effects to coexist within the provisions of Art. 55 of the CC, and that it would be more principled for the legislator to opt

above half of the range of the prescribed sentence are not met when the defendant committed the criminal acts while serving the prison sentence, and not after serving the prison sentence."

[27] With the current normative solution, several disputed situations may arise. *Exempli causa*, if an offender who was released from serving a sentence that meets the conditions from Point 1. was sentenced to a single sentence of one year in prison for two almost trivial criminal acts committed with intent before he began serving his sentence (by applying the rules on accrual or in a special procedure for the imposition of a single sentence), and he commits a minor type of the criminal offense of aggravated theft within a few days after his dismissal by brazenly stealing a wallet from someone's purse, the value of which exceeds the amount of 5,000 dinars (if it is determined that the value of the wallet is less than 5,000 dinars or that the perpetrator went after it to obtain a small financial benefit, it is a criminal offense of petty theft, evasion, and fraud under Art. 210 of the CC, for which a significantly lighter punishment is prescribed, and the perpetrator could, in the last resort, be sentenced to a prison sentence of six months, taking into account the threatened punishment for the criminal act in question), he would be sentenced to a prison sentence of several decades. In the specific case, there was no opportunity to attempt his "repair" and resocialization, because the alternative measures proposed in the previous part of the text were not applied, nor does his level of guilt in the specific case deserve treatment with almost "life imprisonment." Furthermore, the section "dismissal of the offender from serving the imposed sentence" appears vague, as it is not determined which punishment it is. For example, suppose a criminal offender previously served two one-year jail sentences for intentional offenses and does not pay an RSD 5,000 fine after four years. In that case, the fine will be replaced by five days of incarceration. Assume he commits the above-mentioned minor criminal theft after three years. Does the five-year term count from the release from serving a sentence that meets the conditions under Point 1 or from the release from serving any sentence imposed on him after he has previously met the conditions from Point 1? We believe that the first solution would be more in line with the principles of fairness and proportionality.

for one of them, instead of cumulating them within the same provision (Ćorović, 2020).

(vii) some authors, who agree that the current legal solution is far from idyllic, state that the rules for assessing punishment and generally imposing criminal sanctions in the Criminal Code could have been far more radical and much worse modified, i.e., that the domestic criminal legislation could have been additionally impaired by the introduction of concise guidelines for choosing a criminal sanction and sentencing guidelines (Škulić, 2020a, p. 24), in the form of a "point system," within which the legislator determines a list of circumstances that can be taken as mitigating or aggravating, leaving the role of a "mathematician" for the judge to perform the appropriate "addition and subtraction" and formally impose the penalty resulting from such "calculation operations." In this sense, they believe that our country "did well," considering that a similar system was also in place in Macedonia for a time, until the *lex specialis* Law on determining the type and measuring the amount of punishment was repealed as unconstitutional by the decision of the Constitutional Court of Macedonia (Škulić, 2018, pp. 45–54). However, the fact that "it could have been worse" does not justify the current state of affairs in the domestic legislation, in the sense of a hasty reaffirmation of a long-abandoned institute without a particular basis, which was carried out in a rather clumsy manner, which is the reason why many call the provision of Art. 55a of the CC "strange and unusual" (Škulić, 2018). Aware of the fact that the reincorporation of the institute in question caused significant damage, as well as that "it can always be worse," we expect that soon "history will repeat itself," that is, that the institute of multiple recidivism will be derogated again in the near future, or at least substantially changed.

Taking into consideration the shown shortcomings of the current legal formulation, we propose several corrections:

(i) in relation to the perpetrators who we declared as "corrigible," for whom extensive analyzes by the competent authorities determined that there is still "hope," alternative measures should be applied, on the basis of which would be the solutions conceived according to the model

presented above from the Croatian Criminal Code and the domestic "Marija's Law" (Jones, 2014, pp. 29–30).[28]

(ii) the author's position is that the existing legal solution regarding multiple recidivism is sustainable, but only as an option and with a limited field of application, and merely in relation to the category of "incorrigible" perpetrators, i.e., people who are prone to committing the same or similar crimes (for which the other type of treatment did not achieve the desired special preventive effects), and who often have a developed *modus operandi*.

(iii) the provision of Art. 55a of the CC should include the section pertaining to the exclusion of the possibility of judicial mitigation of the penalty.

In this sense, the author believes that the amended provision of Art. 55a of the CC should read:

"For a criminal offense committed with intent, for which a prison sentence is prescribed, the court *may* impose a sentence above half of the range of the prescribed sentence, under the following conditions: 1) if the perpetrator has previously been convicted twice for the same or similar criminal acts committed with intent to imprisonment for at least one year; 2) if five years have not passed from the date of the release of the perpetrator from serving *the second or later sentence that meets the conditions from Point 1*[29] until the commission of a new criminal offense."[30] Or alternatively, "For a criminal offense committed with intent, for which a prison sentence is prescribed, the court *will*

[28] Some studies have confirmed that, though there is no evidence that alternative sentencing reduces recidivism, alternative sentencing performs no worse than traditional incarceration measures. Given that alternative sentencing is substantially cheaper, it would be preferable to traditional incarceration measures, at least in this regard.

[29] This refers to the condition that the perpetrator has been convicted two or more times for the same or similar criminal acts committed with intent to a prison sentence of at least one year.

[30] Serb. ed. 1: "Za krivično delo učinjeno sa umišljajem, za koje je propisana kazna zatvora, sud *može* izreći kaznu iznad polovine raspona propisane kazne, pod sledećim uslovima: 1) ako je učinilac ranije dva puta osuđen za *ista ili istovrsna* krivična dela učinjena sa umišljajem na zatvor od najmanje jednu godinu; 2) ako od dana otpuštanja učinioca sa izdržavanja *druge po redu ili kasnije izrečene kazne koja ispunjava uslove iz tačke 1.* do izvršenja novog krivičnog dela nije proteklo pet godina."

impose a sentence above half of the range of the prescribed sentence, *unless the law provides that the sentence can be reduced or if the law provides that the perpetrator can be released from the punishment and the court does not release him from the punishment*, under the following conditions: 1) if the perpetrator has previously been convicted twice for the same or similar criminal acts committed with intent to imprisonment for at least one year; 2) if five years have not passed from the date of release of the perpetrator from serving *the second or later sentence that meets the conditions from Point 1* until the commission of a new criminal offense,"[31] depending on whether the institute of multiple recidivism conceived in this way would be treated as optional or mandatory circumstance.[32]

IV. Dilemma in Measuring the Penalties and Calculating the Range of Penalties from the Perspective of the Current Normative Framework

After highlighting the disputed aspects of the *ratio legis* of the institution of multiple recidivism and the nomotechnical shortcomings of Art. 55a of the CC, the text will proceed with an analytical account of the current legal solution's controversy in the context of calculating the penalty range and determining the penalty. Namely, for a long period of time it was debatable how to interpret the phrase "above half of the range of the prescribed penalty," since it was unclear how the range is calculated, that is, what constitutes half of the range of the prescribed

[31] Serb. ed. 2: "Za krivično delo učinjeno sa umišljajem, za koje je propisana kazna zatvora, sud će izreći kaznu iznad polovine raspona propisane kazne, *izuzev ako zakon predviđa da se kazna može ublažiti ili ako zakon predviđa da se učinilac može osloboditi od kazne a sud ga ne oslobodi od kazne*, pod sledećim uslovima: 1) ako je učinilac ranije dva puta osuđen za *ista ili istovrsna* krivična dela učinjena sa umišljajem na zatvor od najmanje jednu godinu; 2) ako od dana otpuštanja učinioca sa izdržavanja *druge po redu ili kasnije izrečene kazne koja ispunjava uslove iz tačke 1.* do izvršenja novog krivičnog dela nije proteklo pet godina".

[32] The illegitimacy of the extensive application of this institute is also indicated by the problem of mass incarceration, to which it inevitably leads, and which causes significant consequences for society and the state. *See*: Three strikes, you're out: mass incarceration and the tough on crime rhetoric. Available at: https://kenan.ethics.duke.edu/three-strikes-youre-our-mass-incarceration-and-the-tough-on-crime-rhetoric-february/ [Accessed 15.05.2023].

penalty (Barbir and Stanković, 2020, pp. 105–118).[33] Bearing in mind that the judicial practice on this matter was not uniform, until recently the applied methods of calculating the penalty range led to almost absurd situations. *Exempli causa*, in the case of the criminal offense of murder from Art. 113 of the CC ((Barbir and Stanković, 2020, pp. 105–118), as well as a number of other criminal offenses for which a prison sentence of five to fifteen years is prescribed (e.g., crimes from Art. 250, Para. 4, Art. 292, Para. 3, Art. 293, Para. 3, Art. 294, Para. 3; Art. 313, 314 of the CC, etc.), half of the range, according to one of the recent methods of calculating the range of penalties, represented the legal minimum of the threatened penalty. Doubts were finally resolved by the legal position of the Supreme Court of Cassation established at the session of the Criminal Division held on 11 July 2022 at which the court declared that the range of the prescribed sentence represents the distance from the minimum prison sentence prescribed for a certain criminal offense to the maximum prison sentence prescribed for that crime, and that half of the range from Art. 55a Para. 1, of the CC represents the middle number in that series of numbers, which can be calculated by subtracting the minimum of the prescribed penalty from the maximum, afterward dividing that difference by the number two, and then adding the minimum penalty to that result.[34] According to the stated position, the penalty range represents "the distance from the *minimum prison sentence* prescribed for a certain criminal offense to the *maximum*

[33] The previously adopted solution, based on the linguistic-logical-objective interpretation of the norm, meant that the range was viewed as a mathematical expression — an interval, where half of the range represents the middle of the interval value, which is expressed by the formulation: $Y = X/2 = (Xmax – Xmin)/2 + Xmin$, where Y is the range or value of the interval, Xmax is the maximum threatened penalty, Xmin is the minimum threatened penalty, while $Y = X/2$ is half of the range or half of the interval value. In addition to the above solution, it was also suggested that half of the penalty range be calculated by dividing the special maximum penalty by two, that is, half of the penalty range be obtained by dividing the sum of the special minimum and special maximum by two.

[34] Pravni stav o izračunavanju polovine raspona propisane kazne iz člana 55a KZ [Legal position on the calculation of half of the range of the prescribed penalty from Art. 55a of the CC]. Available at: https://www.vk.sud.rs/sites/default/files/attachments/Pravni%20stav%200%20izracunavanju%20polovine%20raspona%20propisane%20kazne%20iz%20clana%2055a%20KZ.pdf [Accessed 28.04.2023]. (In Serb.).

prison sentence prescribed for that crime" (Italics by J.M.). Therefore, the Supreme Court of Cassation explicitly declared that the minimum and maximum prison sentence are relevant for calculating the penalty range, from which it follows that the penalty according to the instructions given in this way can be measured in a range above half of the range of the prescribed prison sentence and the special maximum penalty for a specific criminal offense, which leads to the conclusion that in the end the possibility of imposing a fine is ruled out. This further necessarily raises the question of whether the institution of multiple recidivism can be applied to criminal offenses for which a fine or prison sentence is threatened? The legislator did not explicitly state whether the possibility of imposing a fine on persons who have cumulatively fulfilled the requirements of Art. 55a of the CC is excluded in situations where a fine or a jail sentence is alternatively prescribed for a criminal offense. *Exempli causa*, let's imagine that a person who was previously sentenced several times to a prison sentence of at least one year for criminal acts committed with intent, commits the criminal offense of theft from Art. 203, Para. 1, of the CC (for which, alternatively, a fine or imprisonment for up to three years is prescribed) by stealing a movable thing of minor value. On the one hand, it is debatable whether it would be fair to impose a prison sentence of more than one and a half years on such a perpetrator, while on the other hand, it is questionable whether the court could impose a fine on him, given how the minimum of the specified criminal offense is prescribed by law. It is evident that the threatened special minimum (prison sentence) in specific and similar cases would be disproportionate to the expressed degree of social danger. However, based on the linguistic-objective-logical interpretation of the norm, it is clear that the legislator's intention was to impose multi-year prison sentences on multiple recidivists, as a form of "getting them off the street" and reducing the crime rate, as well as the possibility of imposing fines does not come in consideration. This is especially due to the fact that, according to Art. 51, Para. 2, of the CC, if the convicted person does not pay the imposed fine within a set length of time, the fine will be replaced by a supplementary prison sentence of no more than six months in most situations. Apropos aforementioned, the possibility of imposing a fine on multiple recidivists would be a

suitable mechanism to deceive the purpose of criminal sanctions and the meaning of Art. 55a of the CC. In this regard, we feel that it should be explicitly and unequivocally prohibited in the current legislative framework.

The presented position of the Supreme Court of Cassation was undoubtedly a significant step forward, because it eliminated numerous controversies and illogicalities that distinguished the previously used method of calculating the penalty range, which led to unfair situations when determining the penalty that fundamentally contradicted the principle of fairness and proportionality. Nonetheless, we believe that the current legal solution still leads to a series of unfair situations from the standpoint of life logic, in which the subjective component of the criminal offense and the degree of social danger of the perpetrators are sometimes completely ignored, e.g., a multi-recidivist who commits a minor type of the criminal offense of aggravated theft from Art. 204, Para. 1, of the CC (prescribed punishment is from one to eight years in prison) by brazenly stealing a wallet whose value exceeds the amount of 5,000 dinars from someone's purse (Ćorović, 2020, p. 22) would probably be punished more severely than if he negligently took someone's life, according to the threatened punishment from Art. 118 of the CC.[35] In this sense, we are of the opinion that, if the legislator does not accept the recommended approach regarding the greater representation of alternative measures and the provision of Art. 55a of the Criminal Code remain in the RS criminal legislation,[36] it should be modified at least in accordance with the author's suggestions, because the threshold of half the criminal range is irrationally high and does not leave enough space for the court to objectively weigh the circumstances of each specific case.[37]

[35] This further leads to the questions of whether and how legitimate it is to punish the perpetrator much more severely due to his criminal past, whether the basis for a tougher criminal law reaction should rather be sometimes a trivial danger due to criminal acts that a person might commit in the future or an injury to someone else's (sometimes the most valuable) property manifested through a specific criminal act etc.

[36] *See also* Art. 46 of the Federal Republic of Yugoslavia's Criminal Code and Art. 44 of the Montenegro's Criminal Code.

[37] In this regard, as well as in the light of other arguments presented in the paper, the solutions found in the Russian Criminal Code may be more appropriate. *Exempli*

V. Conclusion

The reaffirmation of the institution of multiple recidivism in the domestic criminal legislation, through the "strange and unusual" provision of Art. 55a of the CC, opened up many issues that are already the subject of many years of intense debate. The lack of basic empathy and the automated ostracism of antisocial multi-recidivists, who do not represent a particular danger and scourge for the community, without considering the circumstances that led to their condition and the possibility of social reintegration, indicate hasty action, superficial and, above all, incorrect dealing with the issue in question. Until possible modification or cancellation the provisions of Art. 55a of the CC, in accordance to the phrase *dura lex sed lex*, we must apply it as it is, with all the shortcomings, illogicalities and contradictions that sometimes flagrantly contradict the basic postulates on which criminal law rests, as well as the fundamental rights of man in the sense of the well-

causa, Art. 68 of the Russian Criminal Code, titled "Imposition of Punishment in Case of Recidivism of Crimes ", stipulates:

(1) When imposing punishment in a case of recidivism, dangerous recidivism or especially dangerous recidivism, account shall be taken of the nature and degree of the social danger of the crimes committed earlier, the circumstances by virtue of which corrective influence of the previous punishment has proved to be insufficient, and also the nature and degree of the social danger of the newly committed crimes.

(2) The term of punishment in a case of any recidivism may not be less than one third of the maximum term of the most severe penalty prescribed for the crime committed, but within the limits of the sanction of the appropriate article of the Special Part of this Code.

(3) In the event of any recidivism of crimes where a court of law establishes the mitigating circumstances provided for by Art. 61 of this Code, the term of imposed punishment may be less than one third of the maximum term of the most severe penalty provided for committing the crime but within the sanction of the appropriate article of the Special Part of this Code, while in the presence of exceptional circumstances, provided for by Art. 64 of this Code, a more lenient punishment than the one stipulated for a given crime may be imposed.

See also: Art. 18, Para. 1–5 of the Criminal Code of the Russian Federation No. 63-FZ of 13 June 1996, in force from 1 January 1997. The English translation can be found at: https://www.imolin.org/doc/amlid/Russian_Federation_Criminal_Code.pdf [Accessed 25.06.2023].

Cf. Art. 55 and 55a of the Republic of Serbia's Criminal Code with Art. 18 and 68 of the Russian Criminal Code. *See also*: Art. 46 of the Federal Republic of Yugoslavia's Criminal Code and Art. 44 of the Montenegro's Criminal Code.

known acts of the Council of Europe, which should be the foundation of every democratically oriented state. Observed *de lege ferenda*, we anticipate that an approach based on a greater representation of alternative measures and resocialization will take root on the soil of our country in the near future, in contrast to the current extremely repressive approach, which in practice does not produce the desired results, which is why it is increasingly frequently abandoned in the legal systems on which it arose. Furthermore, if the provision of Art. 55a of the CC remains unchanged, with all the deficiencies presented above, there is a high possibility that "history will repeat itself," which means that the provision in question will soon be derogated again, but this time, permanently.

References

Atanasković, M., (2019). Fondacija „Tijana Jurić "i njen doprinos uvođenju doživotnog zatvora u krivično zakonodavstvo Republike Srbije ["Tijana Jurić" Foundation and its contribution to the introduction of life imprisonment in the criminal legislation of the Republic of Serbia]. *"Iustitia" časopis Udruženja sudijskih i tužilačkih pomoćnika Srbije i Udruženja sudija i tužilaca Srbije ["Iustitia" magazine of the Association of Judges and Prosecutors' Assistants of Serbia and the Association of Judges and Prosecutors of Serbia]*, 2/2019, pp. 13–15. (In Serb.).

Ashworth, A., (2010). Sentencing and Criminal Justice. Law in Context. 5th ed. Cambridge: Cambridge University Press.

Barbir, M. and Stanković, B., (2020). Odmeravanje kazne višestrukim povratnicima i primena člana 55a stav 1. KZ u sudskoj praksi [Sentencing multiple recidivists and the application of Art. 55a Para. 1 CC in judicial practice]. *Bilten Prvog osnovnog suda u Beogradu [Bulletin of the First Basic Court in Belgrade],* 5/2020, pp. 105–118. (In Serb.).

Cacho, R., et al., (2020). Psychosocial and Personality Characteristics of Juvenile Offenders in a Detention Centre regarding Recidivism Risk. *The European Journal of Psychology Applied to Legal Context*, 12(2), pp. 69–75.

Cvetković, B., (2019). Izmene i dopune Krivičnog zakonika [Amendments to the Criminal Code]. *Bilten Vrhovnog kasacionog*

suda [Bulletin of the Supreme Court of Cassation], 2/2019, Intermex, Belgrade. (In Serb.).

Ćorović, E., (2020). Povrat u Krivičnom zakoniku Srbije: Kritički osvrt na njegovo normativno uređenje [Recidivism to the Criminal Code of Serbia: A Critical Review of its Normative Regulation]. *Revija za kriminologiju i krivično pravo [Journal of Criminology and Criminal Law]*, 58(1/2), pp. 19, 22. (In Serb.).

Đokić, I., (2019). Istorijski osvrt na institut povrata u srpskom (jugoslovenskom) krivičnom pravu [Historical overview of the institution of recidivism in Serbian (Yugoslav) criminal law]. In: Ignjatović, Đ., (ed.). *Kaznena reakcija u Srbiji: tematska monografija [Punitive reaction in Serbia: thematic monograph].* Part IX. Belgrade: Faculty of Law, Center for Publishing. (In Serb.).

Đokić, I., (2020). Preventivno zatvaranje učinilaca opasnih po društvo — Višestruki povrat i mere bezbednosti [Preventive imprisonment of offenders who are dangerous to society — Multiple recidivism and security measures]. In: Ignjatović, Đ., (ed.). *Kaznena reakcija u Srbiji: tematska monografija [Punitive reaction in Serbia: thematic monograph].* Part X. Belgrade: Faculty of Law, Center for Publishing. (In Serb.).

Gavrilović, B., (2021). Mere bezbednosti prema jugoslovenskom Krivičnom zakoniku od 1929. godine [Security measures according to the Yugoslav Criminal Code of 1929]. In: Soković, S., (ed.). *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije [Alignment of the Serbian legal system with European Union standards].* Vol. 9. Kragujevac: Faculty of Law, Institute for Legal and Social Sciences. (In Serb.).

Gracin, D., (1998). Višestruki povrat i dugotrajna kazna zatvora na primjeru kaznenog zavoda Lepoglava [Multiple Recidivism and Long-Term Prison Punishment on the Example of Penitentiary Lepoglava in the Republic of Croatia]. *Hrvatski ljetopis za kazneno pravo i praksu [Croatian Annual of Criminal Law and Practice],* 5(1), p. 104. (In Cro.).

Grgur, G., (2017). *Efikasnost kratkih kazni zatvora* [Effectiveness of short prison sentences]. Dr. Sci. (Law) Diss. University of Economics and Law Faculty of Economics and Justice Novi Sad. (In Serb.).

Hynes, C.J., (2009). Better than Prison — A Prosecutor's Collaborative Models for Reducing Criminal Recidivism. *Human Rights,* Spring, 36(2), pp. 16–25.

Ilić, G., (2019). Marginalije o kazni doživotnog zatvora, uslovnom otpustu i ljudskim pravima [Marginalia on life imprisonment, parole and human rights]. In: Ignjatović, Đ., (ed.). *Kaznena reakcija u Srbiji: tematska monografija [Punitive reaction in Serbia: thematic monograph]*. Part. IX. Belgrade: Faculty of Law, Center for Publishing. (In Serb.).

Jocić, D., (2019). Povrat kao okolnost kod odmeravanja kazne [Recidivism as a circumstance in sentencing]. *Bilten Apelacionog suda u Nišu [Bulletin of the Appellate Court in Niš]*, Paragraph Lex d.o.o., pp. 23–40. (In Serb.).

Jones, C., (2014). Does Alternative Sentencing Reduce Recidivism? A Preliminary Analysis. *Xavier Journal of Politics*, 5, pp. 29–30.

Kolarić, D., (2020). Višestruki povrat u krivičnom pravu Srbije: osvrt na Zakon o izmenama i dopunama Krivičnog zakonika iz 2019 godine [Multiple recidivism in the criminal law of Serbia: review of the 2019 Law on Amendments to the Criminal Code]. In: Ignjatović, Đ., (ed.). *Kaznena reakcija u Srbiji: tematska monografija [Punitive reaction in Serbia: thematic monograph]*. Part X. Belgrade: Faculty of Law Publ. (In Serb.).

Kolarić, D., (2019). Orijentacija zakonodavca u poslednjem Zakonu o izmenama i dopunama Krivičnog zakonika: (ne)opravdano jačanje krivičnopravne represije [Orientation of the legislator in the latest Law on Amendments to the Criminal Code: (un)justified strengthening of criminal law repression]. *Arhiv za pravne i društvene nauke: organ Pravnog fakulteta Univerziteta beogradskog [Archive for Legal and Social Sciences: organ of the Faculty of Law, University of Belgrade]*, 114(3/4), p. 15. (In Serb.).

Kolarić, D., (2018). Uslovna osuda sa zaštitnim nadzorom i druge alternativne krivične sankcije u Krivičnom zakoniku Srbije [Probation with protective supervision and other alternative criminal sanctions in the Criminal Code of Serbia]. In: Bejatović, S. and Jovanović, I. (eds). *Alternativne krivične sankcije: (regionalna krivična zakonodavstva, iskustva u primeni i mere unapređenja) [Alternative criminal sanctions:*

(regional criminal legislation, experiences in implementation and improvement measures)]. Belgrade: OSCE Mission in Serbia. (In Serb.).

Miladinović, V., (1982). Istorijski osvrt na institut povrata [Historical Review of the Institute of Recidivism]. *Zbornik radova Pravnog fakulteta u Nišu [Proceedings of the Faculty of Law in Niš]*, 22, pp. 291–309. (In Serb.).

Milevski, V., (2014). Etička analiza savremenih teorija kazne: između utilitarističkog i retributivnog opravdanja kazne [Ethical analysis of modern theories of punishment: between utilitarian and retributive justification of punishment]. Dr. Sci. (Law) Diss. University of Belgrade, Faculty of Philosophy. (In Serb.).

Milić, I. and Dimovski, D., (2020). Laws preventing recidivism of convicted of criminal offenses against sexual freedom. *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital Society": Conference Proceedings*. Vol. II. Bitola, May 15–17.

Nikolić-Ristanović, V. and Konstantinović-Vilić, S., (2018). *Kriminologija [Criminology]*. 4th ed. Belgrade: Prometheus Publ. (In Serb.).

Soković, S. and Bejatović, S., (2009). *Maloletničko krivično pravo [Juvenile Criminal Law]*. Faculty of Law, University of Kragujevac, Institute of Legal and Social Sciences. (In Serb.).

Stojanović, Z., (2015). *Krivično pravo: Opšti deo [Criminal law: General part]*. Faculty of Law, University of Belgrade, Law book. 22nd ed. (In Serb.).

Šušak, I. and Bačanović, O., (2020). Co-offending and Re-offending among children. *International Scientific Conference "Towards a Better Future: Human Rights, Organized Crime and Digital Society": Conference Proceedings*. Vol. I. Bitola, May 15–17.

Škulić, M., (2020a). Višestruki povrat u Krivičnom zakoniku Srbije [Multiple recidivism in the Criminal Code of Serbia]. *KoPra: kontinentalno pravo: časopis za održiv i skladan razvoj prava [KoPra: continental law: journal for sustainable and harmonious development of law]*, 4(4), pp. 20–37. (In Serb.).

Škulić, M., (2020b). Imaju li budućnost međunarodno krivično pravo i Međunarodni krivični sud? [Do international criminal law and

the International Criminal Court have a future?]. In: Ignjatović, Đ. (ed.). *Kaznena reakcija u Srbiji: tematska monografija [Punitive reaction in Serbia: thematic monograph]*. Part X. Belgrade: Faculty of Law, Publishing Center. Pp. 36–82. (In Serb.).

Škulić, M., (2017). Osnovni uporednopravni mehanizmi odmeravanja kazni i uslovni otpust [Basic comparative law sentencing mechanisms and parole]. *Makedonska revija za kazneno pravo i kriminologija [Macedonian Review of Criminal Law and Criminology]*, 1, p. 53. (In Serb.).

Škulić, M., (2018). Presuda makedonskog Ustavnog suda 169/2016-0-1 o Zakonu o određivanju vrste i odmeravanju visine kazne — sa komentarom [Judgment of the Macedonian Constitutional Court 169/2016-0-1 on the Law on Determining the Type and Determining the Amount of Punishment — with Commentary]. *Kontinentalno pravo: časopis za održiv i skladan razvoj prava: KoPra [Continental Law: Magazine for Sustainable and Harmonious Development of Law: KoPra],* 2, pp. 45–54. (In Serb.).

Yoder, J., Whitaker, K. and Quinn, C., (2017). Perceptions of Recidivism Among Incarcerated Youth: The Relationship Between Exposure to Childhood Trauma, Mental Health Status, and the Protective Effect of Mental Health Services in Juvenile Justice Settings. *Advances in Social Work, Spring*, 18(1), pp. 258–263.

Zlatarić, B., (1968). Legalni aspekt povrata [Legal aspects of recidivism]. *Yugoslavian Journal of Criminology and Criminal Law*, 6(4), pp. 588–592. (In Serb.).

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