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**ARTICLE 54a OF CRIMINAL CODE OF REPUBLIC OF SERBIA
AND DISABILITY- DE LEGE FERENDA**

Abstract

People with disabilities can be victims of numerous crimes, including hate crimes. These crimes in court practice rarely get their epilogue before the court. There are many reasons for this. Fear of bullies, ignorance of court procedure, etc. The paper will pay special attention to the elimination of one normative shortcoming 54a of the Criminal Code of the Republic of Serbia. Namely, disability is not envisaged as special when sentencing for a criminal offense, we do it out of hatred, which, in our opinion, is in direct contradiction with the constitutional provisions on the prohibition of discrimination. In essence, people with disabilities are put at a disadvantage compared to other victims of hate crimes. So, this is not just about harmonizing the norms of constitutional and criminal law, but about the essential protection of this category of people. The process of amending the law requires a certain amount of time. We believe that amending Article 54a of the Criminal Code in such a way as to provide for disability as a special circumstance when sentencing for hate crimes would lead to more complete and effective criminal protection of persons with disabilities.

Keywords: *persons with disabilities, hate crime, criminal legislation.*

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INTRODUCTION REMARKS

The criminalization of equality violations from Article 128 Criminal Code of Republic of Serbia (hereinafter: CC) can be considered a positive development. Namely, the amendments to the CC (adopted in 2016) also mention disability as one of the grounds for the violation of equality, which is in compliance with Article 21 of the Constitution of the Republic of Serbia concerning the prohibition of discrimination (Mirić, 2019:1097). More precisely, provision of Art, 128 CC stipulates: “Who because of national or ethnic affiliation, race or religion or because of the absence of that affiliation or because of differences in political or other beliefs, gender, disability, sexual orientation, gender identity, language, education, social status, social origin, property status or any other deny or restrict the rights of man and citizen established by the Constitution, laws or other regulations or general acts or ratified international treaties to another, or on the basis of this difference give him privileges or benefits, shall be punished by imprisonment for a term not exceeding three years. If the crime is committed by an official in the performance of his / her duties, shall be punished by imprisonment for a term between three months and five years.

Another problem that is noticed when protecting persons with disabilities against discrimination is a very small number of initiated and legally terminated criminal proceedings related to the criminal acts involving violation of equality in which people with disabilities appear as injured parties. Bearing in mind the overall social status of people with disabilities in Serbia today, it seems that the assumption is that the dark figures are extremely high in case of discrimination of persons with disabilities. In order to provide empirical verification for this statement, further research on an appropriate sample of respondents is needed, which is likely to be pursued in the future (Mirić, 2019:1106).

It is very important to notice that people with disabilities can be victims of numerous crimes, including hate crimes. These crimes in court practice rarely get their legal epilogue. There are many reasons for this. Fear of bullies, ignorance of court procedure, etc. The paper will pay special attention to the elimination of one normative shortcoming 54a of the Criminal Code of the Republic of

Serbia. Namely, disability is not envisaged as special when sentencing for a criminal offense, we do it out of hatred, which, in our opinion, is in direct contradiction with the constitutional provisions on the prohibition of discrimination. In essence, people with disabilities are put at a disadvantage compared to other victims of hate crimes. So, this is not just about harmonizing the norms of constitutional and criminal law, but about the essential protection of this category of people. The process of amending the law requires a certain amount of time. We believe that amending Article 54a of the Criminal Code in such a way as to provide for disability as a special circumstance when sentencing for hate crimes would lead to more complete and effective criminal protection of persons with disabilities. In this paper, hate crime will be briefly define hate crime in order to point out the need to change the provision of Article 54a of the Criminal Code of the Republic of Serbia. The aim of this paper is to improve the normative framework for the protection of persons with disabilities from hate crimes, bearing in mind that disability, *eo ipso* can be a significant victimogenic factor,

CRIMINAL LAW PROTECTION AGAINST HATE CRIME IN SERBIA AND DISABILITY

Hate crime is a special criminal and criminological phenomenon. This negative social phenomenon, although it has existed throughout the history of mankind, has only recently acquired its legal form in the criminal legislation of the Republic of Serbia, which will be discussed later (Uklonimo barijere -Remove barriers, 2019)

There are many definitions of the of hate crime. The United States Federal Bureau of Investigation (FBI) defines hate crime as a crime against a person, property, or society motivated in whole or in part by the perpetrator's prejudices against race, religion, disability, sexual orientation, ethnicity, gender, or gender. (Dimovski, 2020: 9). Since this crime is committed primarily on the basis of prejudice, it would be more linguistically correct to call it a crime of prejudice.

In the Serbian criminological literature, there are authors who advocate this view (Dimovski, 2020: 11).

In CC hate crime is not conceptually defined, which greatly complicates the work of courts in cases where a crime has been committed from hatred. It is left to the case law to solve this problem. When sentencing the perpetrator for a committed crime, the court must take into account both aggravating and mitigating circumstances that exist on the part of the perpetrator. When it comes to determining the punishment for a crime committed out of hatred, the provision of Art. 54a CC. Namely, this provision stipulates that if the criminal offense is committed out of hatred due to race and religion, national or ethnic affiliation, gender, sexual orientation or gender identity of another person, the court will assess this circumstance as an aggravating circumstance, unless it is prescribed as a feature of the crime. By a simple linguistic analysis of the cited provision, it can be concluded that disability is not prescribed as a special circumstance for hate crimes. Such a solution is, in our opinion, contrary to Art. 21 of the Constitution of the Republic of Serbia whose provision prohibits discrimination on the grounds of disability. In addition to being in conflict between Criminal Code' and constitutional provisions, this legal solution further contributes to the victimization of persons with disabilities by hate crimes. According to the information we currently have, no empirical research has been conducted in Serbia on the prevalence of hate crimes against people with disabilities.

It can be only assumed that the "dark number" (number of committed and unreported crimes) in this form of crime is not small. Elimination of the mentioned collision between the Constitution and the Criminal Code of the Republic of Serbia would certainly contribute to more efficient protection of persons with disabilities on the normative, but also on the factual level. It would be a positive proposal for amendment of criminal legislation.

CONCLUSION

Although the incrimination of the criminal offense of equality violations under Article 128 of the CC RS provides protection to persons with disabilities from discrimination, this protection cannot be complete without adequate protection against hate crimes. Bearing into mind that persons with disabilities can also be victims of hate crimes, it is quite clear that the existing legal provisions leave these persons without criminal protection. In this way, people with disabilities would be empowered to report cases of hate crimes to state authorities. By their active participation in criminal proceedings, they would contribute to the prosecution and punishment of the perpetrators of these crimes. This would reduce the fear of citizens' crime and increase trust in judicial institutions in the Republic of Serbia

An inclusive society is a society of equal opportunities for all its members. In addition, an inclusive society provides equal protection to all its members from all forms of endangerment and violation of human rights and freedoms. That is the basic goal and task of criminal law and the legal order of each modern society.

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**ČLAN 54a KRIVIČNOG ZAKONIKA I
INVALIDNOST- DE LEGE FERENDA**

Apstrakt

Osobe sa invaliditetom mogu biti žrtve brojnih krivičnih dela, pa i zločina mržnje. Ovi zločini u sudskoj praksi retko dobiju svoj epilog pred sudom. Mnogo je razloga za to. Strah od nasilnika, nepoznavanje sudske procedure itd. U radu će se posebna pažnja posvetiti otklanjanju jednog normativnog nedostatka 54a Krivičnog zakonika Republike Srbije. Naime, invalidnost nije predviđena kao poseban prilikom odmeravanja kazne za krivično delo učinjeno iz mržnje, što je, prema našem mišljenju u direktnoj suprotnosti sa ustavnim odredbama o zabrani diskriminacije. Suštinski se osobe sa invaliditetom dovode u neravnopravan položaj u odnosu na ostale žrtve zločina mržnje. Dakle, ovde nije reč samo o usaglašavanju normi ustavnog i krivičnog prava, već o suštinskoj zaštiti ove kategorije ljudi. Proces izmene zakona zahteva Iodređeno vreme. Smatramo da bi izmena člana 54a, KZ na taj način što bi se predvideo invaliditet kao posebna okolnost prilikom odmeravanja kazne za zločine mržnje dovela do potpunije i efikasnije krivičnopravne zaštite osoba sa invaliditetom.

Ključne reči: *osobe sa invaliditetom, zločin mržnje, krivično zakonodavstvo.*

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