LIFELONG SEGREGATION BY PRISON SENTENCE – PROS AND CONS

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Abstract
Occasional occurrence of severe criminal offences of sexual abuse of children and the disabled where the victims suffered lethal consequences has spurred a campaign for Criminal law amendment which requires that the extreme forms of such crimes may demand life sentence without possibility of parole. National Assembly of the Republic of Serbia has approved the amendments and accepted persistence on retribution despite the efforts made by the expert community and practitioners to express their disapproval and emphasize arguments against such drastic legal regulation. The dispute also refers to such way of punishment being in contrast to our obligation to accept international conventions, such as The Convention for the Protection of Human Rights and Fundamental Freedoms, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other certified international agreements, due to the fact that torture, inhuman or degrading treatment or punishment are forbidden under all circumstances. Additional argumentation is provided by the practice of European Court of Human Rights regarding life imprisonment, according to which countries which have signed the Convections are obligated to ensure a legal procedure in their national legislation which makes life sentences, after maximum twenty five years from its beginning, subject to revision and inspection on whether any significant changes in the convict's life have occurred and whether any improvement towards rehabilitation has been achieved which would render the continuation of the imprisonment unjustifiable by any penal explanation. The aim of the paper is to refer to arguments both for and against legal regulation which favor retribution and discard the convicts' rehabilitation despite empirical discoveries which indicate the counter-productiveness of such efforts.

Keywords: *life sentence, penal policies, retribution, rehabilitation.*

Introduction

The Law on amendments and supplements to the Criminal Law, passed on National Assembly of the Republic of Serbia's session on 21 May 2019 (Official Gazette of the Republic of Serbia, number 35/19) and taking effect on 1 December 2019, introduced a possibility of life sentences being passed as punishment for the most serious crimes and the most aggravated forms of severe criminal offences. Simultaneously, the prospect of passing sentences of 30 to 40 years of imprisonment, which so far has been the harshest punishment, is eliminated.

It is indisputable that all societies react to committing crimes by punishing them, and this goes especially for those most severe and socially endangering ones. Disputes arise on the questions of whom, what for, how, for how long, in what way and bearing which desired outcome in mind to punish.[1] Criticism of a part of Serbia's public has been triggered by legislators' choice of retributive concept marked by elimination of possibility to be granted parole for individually specified crimes, in times when the court is unable to grant parole when a convict is punished by life sentence. This is true for crimes of slaughter of children or pregnant women (article 114, paragraph 1, item 9); rape either with lethal consequences to the victim or committed over a child (article 178, paragraph 4); sexual assault over a disabled person either if resulting with death of the disabled person or it was committed over a child (article 179, paragraph 3); sexual assault over a child resulting with death of the child (article 180, paragraph 3); and with crimes of sexual assault by malfeasance when the offender is a teacher, educator, caretaker, adoptive parent, parent, stepfather, stepmother or other person which, by abuse of power and authoroty, commits a sexual assault or a related act over a child which results in lethal consequences for the victim (article 181, paragraph 5).

For the remaining 15 specified crimes punishable by life imprisonment, there is a possibility for parole after 27 years from the beginning of the sentence have passed. These are murder (article 114, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 11); murder of representatives of highest government officials (paragraph 310); severe offence against Serbia's constitution and security (article 321, paragraph 2); genocide (article 370); crime against humanity (article 371); war crime against civilian population (article 372, paragraph 3); war crime against the sick and wounded (article 373, paragraph 2); war crime against prisoners of war (article 374, paragraph 2); use of prohibited means of warfare (article 376, paragraph 2); unlawful killing or wounding of the enemy (article 378, paragraph 3); aggressive warfare (article 386, paragraph 2); terrorism (article 391, paragraph 4); deadly device use (article 391v, paragraph 3); destruction and damage of nuclear facilities (article 391g, paragraph 3) and endangering persons under international protection (article 392, paragraph 3).

Drastic consequences which occur as a result of severe criminal offences were the foundation for legal amendments and supplements to be passed, in order to have a general preventive impact on potential offenders, multi-recidivists, members of organized criminal groups and individuals who endanger life, work, dignity and freedoms of the most sensitive categories of population, commit war crimes or severely endanger the safety of citizens.

Making penal norms more stringent to the level of lifelong segregation, which, in certain cases, implies limitless segregation from the society and keeping one imprisoned until their death is a central element of criticism against such solutions. In this paper we will strive to

[1] Jovanić, G., *Kazni, zatvori, zaposli*, Univerzitet u Beogradu, Fakultet za specijalnu edukaciju i rehabilitaciju, Beograd, 2017, p. 7.

describe the arguments which, beside their general preventive efforts and the protection of the society from severe forms of crime, also consider the theoretical and conceptual basis of punishment, penal implications, criminal-political and empirical arguments which may confirm the introduction, application and execution of life sentence as being (un)justifiable.

1. Retribution versus rehabilitation

The idea and practice of punishing offenders have been developing throughout various approaches, principles and desired outcomes. The initial ideas and practices were based on retribution, deterrence, isolation and rendering one incapacitated, with a tendency for the convicts to be arrested, punished as seen fit with punishments equivalent to their crimes and sending the message that criminal activities do not pay. Simultaneously, incarceration, intensive surveillance and restrictive treatments are meant to prevent and avert the convicts from recidivism, with the aim of deterring the society and the individual alike from committing further crimes, which is supposed to result in reduction of crime. In many countries where the retributive approach to punishment is predominant crime levels are rising. This is illustrated by the facts[2] that in the USA solely more than three and a half million people have been convicted for committing crimes in the past five years. The country in question is place of death penalty and super-max security prison system, life sentences with or without parole, parallel to probation system which monitors double the number of convicts than those being in prison, with over two and a half million convicts being under incarceration. Almost all of them (97%) are eventually released from prison. Every year around 700 000 people are being set free in the USA. However, the label of "a criminal" or "an ex con" does not aid their reintegration. It has been estimated that within three years from being released from prison two thirds of them are incarcerated once again. This number is even higher when a longer period is being observed, thus, within a period of five years after the release around three quarters of them get arrested again.[3]

Despite the failure to achieve the desired goals, the retributive approaches persist in modern times, offering the same ideas despite of the proven inefficiency in reduction of crime levels, debatable justification of severe punishments for the sake of general prevention, often with impossible equivalence between the punishment and the consequences of a crime. Maloić also names long critical objections to retributivism, such as the lack of reason to refrain from committing crimes, primary motivation in an individual to avoid incarceration instead of avoiding crimes, limited effects of deterrence to a portion of citizens or discarding motivations and impulses in criminogenesis.[4] The public's interest in penal politics usually rises along with the crime levels or by sensational media coverage of certain severe crimes. This may lead to increased interest of politicians, and finally, to penal popularity.[5]

The choice of introducing life sentences into the punishment register of the Republic of Serbia is argumented by the public outcry against the harshest sentence of the time, the

[2] Crowell, H., *A Home of One's Own: The Fight Against Illegal Housing Discrimination Based on Criminal Convictions, and Those Who Are Still Left Behind*, Texas Law Review, Vol. 95, No. 5, 2016, p. 1104.

[3] Crowell, *op. cit*, note 2, p. 1142.

[4] Maloić, S., *Suvremeni pristupi kažnjavanju kao determinante kvalitete života u obitelji, susjedstvu i zajednici– nove perspektive suzbijanja kriminala*, Kriminologija i socijalna integracija: časopis za kriminologiju, penologiju i poremećaje u ponašanju, Vol. 21, No. 2, 2014, pp. 31-44.

[5] Walmsley, R., *Global Incarceration and Prison Trends*, Forum on Crime and Society, Vol. 1, No. 2, 2003, pp. 65-78.

prison sentence of up to 40 years, enforced on offenders of severe crimes of rape with lethal consequences committed over juveniles and children. Increasingly frequent killings among members of rival organized crime groups have additionally escalated the citizens' fear for personal safety. Media coverage on child victimization and mutual liquidations of opposing criminal group clans has intensified feelings of being unsafe and unprotected in a portion of people furthermore. In such an atmosphere in 2017 the initiative for amendments of the Criminal Law by collecting signatures by an organized foundation of parents of a juvenile girl, a rape and murder victim was started. After submitting the initiative to the National Assembly of the Republic of Serbia demanding more stringent punishments for rapists and paedophiles, at the end of 2018, the Ministry of Justice formed a working group for creating propositions on amendments and supplements to the Criminal Law. The demands from the initiative were accepted by the working group's suggestions. Beside this, prison sentence of 30 to 40 years is to be withdrawn from the Criminal Law, and lifelong imprisonment was suggested as its replacement. The justification for such a modality of amendment is elaborated as being in line with the rational choice theory according to which people should commit crimes in reduced degree provided that potential damage of the act outweighs the benefits gained.[6]

Criticism of such a suggestion came from certain number of university professors, judges, prosecutors and international organizations' representatives, cumulating in a form of petition for discharging the article on life sentence without the possibility for parole. The petition emphasized that otherwise the standards of international law application are being diminished. It asserts that the rehabilitation purposes of this punishment is being dismissed as well as that the convict's right that justification of their further imprisonment should be revised after a certain period of time. The power to decide whether those sentenced for life imprisonment should be released from prison is transferred from the courts to an individual – the president of the state by the means of pardon, which is also criticized in the petition.

Death penalty existed in the criminal registry in Serbia until 2002, however, it was sentenced relatively rarely (in 19 cases in the period between 1991 and 2002, even though it was never executed). In the European Council integration process, Serbia adopted the European Convention on Human Rights and the obligation to harmonize the legislation resulted in amendments in 2002 which removed the death penalty from the criminal registry, and the prison sentence of up to a maximum of 40 years as the highest sentence was introduced instead. With the on-going amendments to the Criminal Law, the harshest punishment is to be the life sentence. It is a fact that many countries European Council members have prison sentences, namely out of 49 of them, 8 do not have it, whilst 41 countries have introduced it into their criminal registry.

More stringent punishments predicted by legislators do not always reflect in court practice where, within the legally set ranges, sentences are passed for individual crimes. Current emphasis of retributive versus rehabilitative elements of the punishment in the accepted Criminal Law is contrary to the achieved standards of legislative and penal practice in Europe, which may cause reaction of the European Court of Human Rights, in accordance to suggestions of Committee of Ministers of the Council of Europe and the Committee for Prevention of Torture.

6 Cullen, F. T.; Jonson, C. L.; Nagin, D. S., *Prisons do not reduce recidivism: The high cost of ignoring science*, The Prison Journal, Vol. 91, No. 3, 2011, pp. 48-65.

Inhumanity of life sentence without the possibility for parole is further criticized by Sverdović regarding the intent of the Croatian legislature to introduce lifelong imprisonment at the beginning of the century.[7] The author states that one of the main arguments against the claims of inhumanity of life sentence is the possibility for the convict to receive the parole predicted by legal preconditions since all modern penal codes which are familiar with life sentence also allow the possibility of parole, and the requirements for it are individually prescribed.[8]

The proclaimed primary aim of protecting the society from the most serious crimes and dangerous offenders by sentencing them to life imprisonment absolutely opposes the rehabilitative purpose of the punishment which has to be predicted on a normative level for all convicts regardless of their crime and consequences, and this is what we are obligated to oblige to as a member of the European Council. The European Court of Human Rights has clearly taken the view that prohibition of parole in the case of life sentence is not in accordance to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as a convict sentenced to life imprisonment must be provided with a legal possibility for reconsideration of whether conditions for their parole have been achieved after a certain period of time. Otherwise, it is considered that the country is breaching the article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, namely, that it exposes the convict to an inhumane and degrading treatment.[9]

Moreover, this neglects the possibility that the convict sentenced to life is able to repeat the crime by escaping the prison or within the prison by kidnaping, injuring or murdering another convict, employee or a visitor, without need to be afraid of more severe sentence than the one they have already been sentenced to.

The experiences of Auburn and Philadelphia system from two centuries ago proved the damage of long-term imprisonment both for the convicts by the means of development of psychological issues, self-harm and suicide because of hopelessness and the strict prison regime of execution, which is not a purpose of punishment either.[10]

In case we accept the attitude that swift and reliable punishment is more important than the harsh one as it is the only way for its efficiency to be achieved[11], it is necessary to acknowledge the existence of disproportion between the legal and court penal politics as for a long time in Serbia the most frequent sentence passed is probation, in over half of the cases, whilst, simultaneously, the institute of mitigation of sentences is frequently applied for serious criminal offences such as manslaughter (56%), murder (26.5%), rape (48%), sexual abuse of children (73.3%), illegal production and distribution of drugs (57.8%) or human trafficking (28.6%).[12]

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[7] Svedrović, M, *Kriminalnopolitička opravdanost promjena kaznenih sankcija s osvrom na uvođenje doživotnog zatvora i na sustav izricanja kazne*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 10, No. 2, pp. 341-428.

[8] Svedrović, *op.cit*, note 7, p. 344.

[9] Slučaj Vinter i drugi protiv UK (predstavka br. 66069/09, 130/10 i 3896/10)

[10] Jovanić, *op.cit*, note 1, p.36.

[11] Ignjatović, Đ., *Kriminološko nasleđe*, Policijska akademija, Beograd, 1997, pp. 8-9.

[12] Petrović, V., Izricanje kazne zatvora u Srbiji kao reakcija na zločin. U O. Jović-Prlainović (Ur.), Tematski zbornik radova *„Nacionalno i međunarodno pravo – aktuelna pitanja i teme", Tom 2* (pp. 111-129). 26. maj 2017. god., Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici, 2017, p. 115.

The data lead to the conclusion of penal politics in Serbia being lenient.[13] After consideration of the described state of affairs, the following question poses itself – do the potential offenders create their own view of the expected punishment according to the legally set one or the ones passed by the court. Should the ones being passed by the court be considered, with the observed penal policies of the court which is largely based on using the institute of sentence mitigation, it is concluded that the potential offenders may perceive such penal policy as bringing more benefits than harm.[14] On the other hand, should the legally set punishments be taken as the anticipated value, there is a disagreement about their effects on the field of general prevention.

There are viewpoints which indicate that the legislator prescribes excessive punishments which are considered to be effective on the field of general prevention according to the theory of deterrence, namely, that the possibility of harsh punishment will deter the potential offenders from crime.[15] Another viewpoint maintains that more stringent predicted punishments decrease the possibility of them being sentenced, which reduces the general prevention levels.[16]

Furthermore, Ćirić [17] claims that lenient penal politics of courts reduces the effects on the level of general prevention, however, it is not justifiable to advocate the excessively strict penal politics, namely to set an example by punishing someone either. Exemplary punishment, being too repressive, is unjust towards the offender and is ineffective on the field of reduction of crime. In the case of exemplary punishment, the emphasis is placed on the way the sentence shall influence potential offenders, and the sentenced offender is neglected as the deserved and justifiable punishment is being exceeded from the point of view of purpose of the punishment.[18]

Public security is generally in the focus of activities of criminal-political measures; however, a completely different form of rehabilitation seems to be emerging where the primary goal is to avoid any damage to the community, instead of improvement of the offender's treatment and life quality.[19] In case that the articles on life sentence apply, there remains the question of quality execution of the penal system, taken that, in the on-going practice of execution of prison sentences, no systematically specialized treatment organized by specific convict categories has existed, not even for sex offenders. The potential overpopulation of prisons due to an increase of number of those convicted to life sentences and long custody shall be an additional burden for prison capacities and the employees and it will further

[13] Petrović, *op.cit*, note 12, p. 117.
[14] Petrović, *op.cit*, note 12, p. 117.
[15] Ramakers, A.; van Wilsem, J.; Apel, R., *The effect of labour market absence on finding employment: A comparison between ex-prisoners and unemployed future prisoners*, European Journal of Criminology, Vol. 9, No. 4, 2012, pp. 442-461.
[16] Begović, B., Ekonomska teorija generalne prevencije: osovna pitanja. U: Đ. Ignjatović (Ur.), *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, tematska moografija, 4 deo* (pp. 127-140), Beograd: Pravni fukultet Univerziteta u Beogradu, 2010, p. 135.
[17] Ćirić, J., *Egzemplarno kažnjavanje*, Crimen, Vol. 3, No. 1, 2012, pp. 21-38.
[18] Ćirić, *op. cit*, note 17, p.24.
[19] Jovanić, G.; Žunić-Pavlović, V, Primena principa rizika, potreba i responzivnosti u penalnom tretmanu seksualnih prestupnika. U O. Vujović (ur.), *Zbornik radova Naučnog skupa sa međunarodnim učešćem „*Univerzalno i osobeno u pravu*"*(pp. 115-138),*18.5.2018.* Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici, 2018, p.132.

increase the budget expenses for the need of prison system organization and function under altered condition.

The idea and practices of punishment based on rehabilitation and reintegration of convicts find their foundation on behavioural changes in offenders and elimination of etiological factors of dynamic character in the curse of the penal treatment for the purpose of post-penal reintegration into a community. By overcoming personal issues, change in attitudes, adoption of socially acceptable skills, habits and interests, the convicts are supposed to find it easier to establish pro-social relationships during their reintegration into the society, which should, in turn, eliminate any motifs for recidivism. It was somewhat utopian to expect that the change in personal factors would be enough for elimination of recidivism without a parallel change in social circumstances which remained unaltered and with an equally crime-generic effect. Thus, it is not surprising that Martinson concludes that the treatment programs which are applied towards convicts in prisons do not bring the desired effects, whilst the high-risk offenders do not improve but remain high-risk, recidivism does not get reduced, making a prison a mere reflection of its name – an institution where one is imprisoned, and nothing more.[20] Maloić additionally emphasizes the etiological direction of research towards an individual and an erosion of individual responsibility by classifying the rehabilitation approaches into the "soft heart approaches". Simultaneously, the community is exposed to a certain degree of risk. A relative influence on an individual is achieved, but not the reduction of the overall crime rates.[21] Martinson's criticism triggered efforts towards advocating more stringent punishments and mass incarceration of offenders, however, they also influenced a number of scientists, practitioners and researches into improvement of assessment instruments, more quality treatment programs, specification, specialization and individualization of different programs for special categories of convicts.

Within strategies and programs based on rehabilitative-reintegration approaches a variety of penal treatments have been developed around the world with the aim of more effective reduction of recidivism, especially for those offenders who inspire fear among the population with their criminal acts. Sex offenders are in focus of such programs, as well as the offenders who expressed violent behaviour towards others.

Since the newly adopted Criminal Law of Serbia places the emphasis on these categories of convicts in particular, with an explanation that they are "beyond improvement" and that they will always recede regardless of penal law measurements undertaken, we consider empirical indicators of risk reduction possibilities as being neglected in the aforementioned category of offenders. We shall shortly turn to some of the penal treatment programs towards the named categories of convicts which have proved to be effective in practice.

2. Programs Based on Principles of Effective Interventions

Serious quality improvements in search for treatment programs which may achieve the desired changes in offenders' characteristics, and thus influence the reduction of recidivism, were made by a group of authors from Canada (Andrews, Bonta, Gendreau and Ross) at the end of the twentieth century. By studying various applicable programs and practical

[20] Martinson, R., *What works?-Questions and answers about prison reform*, The public interest, Vol. 35, 1974, pp. 22-54.

[21] Maloić, *op. cit*, note 4, p. 32.

experiences, they formulated the principles of effective interventions.[22] The formulated principles cover central questions of treatment of offenders: the risk principle, the need principle and the responsivity principle (Risk, Need, Responsivity – RNR).[23]

The essence of the *Risk Principle* is that an intensive treatment should be applied towards the persons with high risk levels for criminal behaviour, while for those of low risks, it is better to predict a minimal intensity treatment. In contrast to common attitudes, Andrews et.al expressed their conviction that even high risk convicts may achieve changes, which also accomplishes the highest level of recidivism reduction. The *Need Principle* focuses on factors which are possible causes of crime and recidivism. The recidivism factors or predictors may be *static*, the unchangeable ones, and *dynamic*, which potentially may be changed. The interventions should aim the dynamic features of character and life situation of high-risk offenders, dynamically connected to criminal behaviour. Some of them are: alteration of antisocial attitudes, antisocial feelings and peer interaction; improvement of family cohesion in combination with anti-criminal modelling and improvement of self-control skills. *Responsivity Principle* refers to styles and models of services which are to have the influence on the defined specific aims, and that they are in accordance with the learning styles of the offenders. The expert in the treatment should behave as a role model and a source of social ground with the aim enhancement of pro-social and anti-criminal attitudes, cognitive and behavioural patterns, with prominent enthusiasm and clear reinforcement of anti-criminal attitudes and behaviour patterns.[24] In the past thirty years or so, additional findings have been accumulated on the efficiency of the applied intervention, new principles have been added to the list, but the three aforementioned basic principles have not been abandoned.

The risk concept is associated with the notion of danger and probability with a task of identification and study of the dangers with the aim of reduction of this phenomenon. Thus, it is important to assess the quality and intensity of recidivism risk in each specific case.[25] The basis of an effective work with the convicts is made up by the risk assessment itself. It is necessary to establish the risk levels in convicts and risk factors for committing a new crime. With this, interventions which may be conducted in the aim of management, while reduction of risk of recidivism should be considered in all convict categories, including the sex offenders.[26] Certainly, the crime of sex offenders leaves serious consequences for the victims, the victim's family and the social community, it intensifies the public attention and for these reasons it frequently holds a special place in legislation.[27]

The biggest concern of the public and the experts is triggered by the matter of truthfulness in prediction of future behaviour and sex offender recidivism. Multi-causality is

[22] Žunić-Pavlović, V., *Evaluacija u resocijalizaciji*, Partenon, Beograd, 2004, p. 163.

[23] Andrews, D.; Zinger I.;, Hoge D.; Bonta, J.; Gendreau, P.; Cullen, F., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, Criminology, Vol. 28, No. 3, 1990, pp. 369–404.

[24] Žunić-Pavlović, op. cit, note 22, p. 164.

[25] Mužinić, L.; Lj. Vukota, Lj., *Tretman seksualnih delinkvenata i zaštita zajednice*, Medicinska naklada i psihijatrijska bolnica Vrapče, Zagreb, 2010, p. 36.

[26] Hanson, R. K.; Sheahan, C. L.; VanZuylen, H., *Static-99 and RRASOR predict recidivism among developmentally delayed sexual offenders: A cumulative meta-analysis*. Sexual Offender Treatment, Vol. 8, No. 1, 2013, pp. 1-14.

[27] Baldwin. K., *Sex Offender Risk Assessment*, U.S. Department of Justice Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, 2015, https://www.smart.gov/pdfs/SexOffenderRiskAssessment.pdf. Accessed 10 May 2019.

a factor which impairs an absolute prediction of such a character; however, researches in this century have shown a quality improvement towards this. Hanson names two principles of quality assessment of sex offender's recidivism, the first one referring the permanent tendencies or potentials for recidivism, and the second referring to factors which indicate the occurrence of criminal behaviour.[28] Recidivism is able to be predicted by determination of risk factors in personal characteristics or life situation of an individual offender. The risk identification is possible with the means of systematic research of risk factor numbers and varieties, or present needs in an individual case.[29] High level of agreement among the scientist on factors which contribute to manifestation and maintenance of criminal behaviour indicates that it is necessary to be aware of those factors in order to plan and conduct penal treatment. Certainly, a treatment should be executed in the course of prison sentence serving and work on change of characteristics and behaviour, instead of simplified isolation and segregation of convicts. Only after the treatment should the possibility of parole be considered. Realistic examination of potential improvements and changes in a convict after a penal treatment is conducted, with regard to empirical and theoretical findings on etiological recidivism factors may provide a more realistic insight on the convict posing potential danger for society should parole be granted for them.[30] According to the new Criminal Law, such a possibility is eliminated in advance by sentencing one to life imprisonment without possibility for parole for certain sex offenders, which is explained by the concern that, after being imprisoned for many decades, such a convict is most likely to turn to recidivism.

Mistrust is expressed in the overall improvement in the field of sex offender recidivism risk assessment instruments such as Static-99R i Static-2002R, Risk Matrix – 2000 Sexual/Violence, Rapid Risk Assessment for Sexual Offense, Minnesota Sex Offender Screening Tool-Revised-MnSOST, Structured Anchored Clinical Judgement Scale, Violence Risk Appraisal Guide-VRAG, Sex Offender Risk Appraisal Guide-SORAG, Sexual Violence Risk SVR-20 and many other, even though the modified version of Offender Assessment System-OASys instrument is in official use in prisons of Serbia.

Also neglected are the results of a research which confirm the effectiveness of specialized penal treatment for sex offenders. Luković and Petrović [31] emphasized misconceptions and empirically proven sex offender treatment programs while stressing the advantage of cognitive-behavioural treatment models (CBT). The authors describe positive results of many programs such as Community Sex Offenders Group work programme, Clearwater Treatment Programme, Thames Valley Sex Offenders Group work Programme, Northumbria Sex Offender Programme. They further recall[32] researches on effectiveness of the applied programmes with sex offenders based on CBT, stating the results of the Hanson and Yates study from 2013, which suggests a decrease of recidivism rates after the application of the program for 85 to 95%. Furthermore, there is the Gordon and Nicholaichuk study from 1996 with the findings that sex offenders who were included in a specialised treatment seldom

[28] Hanson, K. *Sex Offender Risk Assessment*, Department of the Solicitor General of Canada, Ottawa, Canada, 2009, 34.

[29] Žunić-Pavlović, op. cit, note 22, p. 164.

[30] Petrović, V.; Jovanić, G., *Dodela uslovnog otpusta i faktori rizika recidivizma*, Zbornik Instituta za kriminološka i sociološka istraživanja, Vol. 36, No. 2, 2017, p. 50.

[31] Luković, M.; Petrović, V, *Modeli tretmana seksualnih prestupnika*, Specijalna edukacija i rehabilitacija, Vol. 16, No. 3, 2017, pp. 337-370.

[32] Luković; Petrović, *op. cit*, note 31, pp. 348-351.

committed new sex (4.7%) and other offences (7.8%) than the untreated sex offenders who committed sex offences (6.2%) and other offences (13.6%). On the other hand, the treated high risk sex offenders showed fewer sex (6%) and other recidivisms (8.6%) than the untreated high risk sex offenders (14.6% sex and 16.6% other recidivisms). The authors Luković and Petrović displayed the results of meta-analysis Hanson and Yates from 2013, and Lösel and Schmucker from 2005 which indicate that sex offenders' treatments achieved a total reduction of recidivism of 22%. Additionally, a number of researches presented by Luković and Petrović,[33] prove that the application of specialized penal treatments is necessary and effective in reduction of sex and violent recidivism. Other authors name effective program models with sex offenders which include Cognitive Behavioural Therapy - CBT, Relapse Prevention-RP, SelfRegulation Model, Risk, Need, Responsivity and Good Lives Model - GLM.[34]

By searching through available bases of scientific papers on effectiveness of sex offenders' treatment, it is noticeable that a number of authors and research results which carry affirmative attitudes towards treatments of sex offenders, which largely exceed the scope of this paper. This is the reason why the assumption of the proposer of the law is unclear, as well as the adopted norms which prejudice recidivism in advance, thus rendering parole of certain sex offender categories unavailable. Additional ambiguity comes from the fact that the institute of parole is facultative in character and generally rarely applied in practice of Serbian courts, so we shall briefly turn to those facts as well.

3. Parole in Practice in Serbia

Since the introduction of the institution of parole in 1869 in Serbia's legislation, formal assumptions of its granting have been altered numerous times; however, the material assumptions have always been focused on a positive change of a convict's behaviour. In modern times, material assumptions refer to recidivism risk assessment results.[35]

The attitudes of danger posed to society as a result of dangerous sex offenders being released on parole are not realistically sustainable as the institute of parole is applied rarely. The analysis of data differs depending on a researcher, sample and time of observation, but it may be determined that in relation to the number of submitted appeals by the convicts (regardless of the crime they were imprisoned for at the time of the analysis), the courts grant parole to up to a third of the total number of submitted appeals at best.

In the period of before 2009 in Serbia a formal condition for submitting an appeal for parole was that half of the sentence had passed. In that period (1 January 2008 – 30 Jun 2009), it is noted that the court responded affirmatively and granted parole in 30.6% of cases (from the total of 6326 submitted appeals, 1939 was affirmatively responded to).[36] After 2009, a stricter formal criterion was adopted. Since then, the formal condition for submitting an appeal for parole has been that two thirds of the sentence has passed. Relatively higher per cent of granted paroles in a sample of those sentenced to up to three years in prison is noted by Jovanić and Petrović, who observe that the court responded affirmatively in 33.8% cases.[37]

[33] Luković; Petrović, *op. cit*, note 31, p. 348-351.
[34] Jovanić; Žunić-Pavlović, *op. cit*, note 19, p. 129.
[35] Jovanić, G.; Petrović, V., *Uslovno otpuštanje u praksi okružnog zatvora i nadležnih sudova*. Specijalna edukacija i rehabilitacija, Vol. 16, No. 1, 2017, pp. 95-122.
[36] Jovanić, G, *Standardizacija postupka uslovnog otpusta kao mera zaštite od recidiva* (doktorska disertacija), Univerzitet u Beogradu – Fakultet za specijalnu edukaciju i rehabilitaciju, Beograd, 2012, p. 112.
[37] Jovanić.; Petrović, *op.cit*, note 35, p. 104.

The research in the form of expert analysis [38] considered parole granting in three largest prisons in Serbia (in Niš, Sremska Mitrovica and Požarevac) in the period between 2011 and 2015. From the total of 11,349 submitted appeals for parole, the court affirmatively responded in 1,583 cases (13.9%). This is significantly lower percentage of granting in relation to the mentioned data by Jovanić and Petrović from 2017, however, it should be born in mind that the population from the three largest prisons was sentenced to longer imprisonment with higher risk levels. By analysis of those released on parole according to their crime, it is observable that 14 of them were sentenced for rape, which makes 0.88% of all parole. Simultaneously, those convicted for murder made up 7% of those on parole, those convicted for burglary 15%, and the most frequent parolees were hose convicted for drug-related offences (37.2%).[39]

Conclusion

By amendments and supplements to the Criminal Law of the Republic of Serbia, life sentence as a punishment for the most severe crimes and the most aggravated forms of criminal offences has been introduced. This eliminated the possibility of prison sentence of between 30 to 40 years, which has been the harshest punishment so far. Disputes in a part of Serbian public have been triggered by the choice of the retributive concept made by elimination of possibility to be granted parole for certain crimes sentenced to life long imprisonment and where the subject of the assault with lethal consequences was a child, a pregnant woman, a disabled person or where the child abuse was executed by abuse of power and authority. For the perpetrators of these crimes, incarceration and segregation until their death is predicted, with the only possibility of parole being by the act of pardon by the president of the state. The possibility for parole being granted by the courts in case of life sentence after 27 years since the beginning of the execution of the punishment have passed remained for 15 types of crime.

In our paper we described criticism directed towards the concept of general prevention based on normative prediction and courts not applying the most stringent punishment. Special criticism aimed towards exemplary punishments and the transfer of authority for granting parole from the court to the executive power, as well as the issues in penal organization of life sentence execution. The space, the staff and the budget are additionally burdened by the convicts deprived of motivation for personal changes, who experience further psychological consequences of long-term incarceration with no hope for freedom, sentenced to die in prison. This deviates from basic aims of punishment which demand changes in the offenders for the reason of post-penal reintegration which is nonexistent in the case of life imprisonment with no parole. Furthermore, this is a deviation from civilization heritage of European penal theory and practice, and there is a possibility of reaction of the European Court for Human Rights because of the divergence from accepted international Convections on Human Rights on Fundamental Freedoms. We specially emphasized the unjustifiable disregard of the achieved development of the risk assessment instruments and the effectiveness of penal treatment of the dangerous and especially sex offenders. Moreover, we endorsed the unfounded concerns for

[38] Vujičić, N.; Stevanović, Z.; Ilijić, Lj., *Primena instituta uslovnog otpusta od strane sudova u Republici Srbiji- ekspertska analiza,* Organizacija za evropsku bezbednost i saradnju - Misija u Srbiji i Institut za kriminološka i sociološka istraživanja Beograd, Beograd, 2017, pp. 12-14.

[39] Vujičić,; Stevanović,; Ilijić, Lj., *op.cit,* note 38, p. 14.

mass parole of perpetrators of general crimes, as well as of sex offenders who are released on parole in extremely rare cases. We would like to specially emphasize the situation where the perpetrator of rape with lethal consequences for a child or a pregnant woman may be defended from the point of view that the deed was done with genocidal intent instead of a sexual motive. With the act defined as genocide, the court may sentence one to a lifelong imprisonment but with a possibility for parole, which would not be the case if the crime was qualified as a rape of a child with lethal consequences. The aforementioned criticism of the adopted legal solutions are considered to be an argument enough for change of hearts, which will, beside the insistence for general prevention, appreciate the findings and experiences of the science and practice in the domain of criminal law, criminology and penology.

REFERENCES

Andrews, D., Zinger I., Hoge D., Bonta, J., Gendreau, P. & Cullen, F., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, Criminology, Vol. 28, No. 3, 1990.

Baldwin. K., *Sex Offender Risk Assessment*, U.S. Department of Justice Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, 2015, https://www.smart.gov/pdfs/SexOffenderRiskAssessment.pdf. Accessed 10 May 2019.

Begović, B., Ekonomska teorija generalne prevencije: osovna pitanja. U: Đ. Ignjatović (Ur.), *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, tematska moografija, 4 deo* (pp. 127-140), Beograd: Pravni fukultet Univerziteta u Beogradu, 2010.

Ćirić, J., *Egzemplarno kažnjavanje*, Crimen, Vol. 3, No. 1, 2012.

Crowell, H., *A Home of One's Own: The Fight Against Illegal Housing Discrimination Based on Criminal Convictions, and Those Who Are Still Left Behind*, Texas Law Review, Vol. 95, No. 5, 2016.

Cullen, F. T., Jonson, C. L. & Nagin, D. S., *Prisons do not reduce recidivism: The high cost of ignoring science*, The Prison Journal, Vol. 91, No. 3, 2011.

Hanson, K. *Sex Offender Risk Assessment*, Department of the Solicitor General of Canada, Ottawa, Canada, 2009.

Hanson, R. K., Sheahan, C. L. & VanZuylen, H., *Static-99 and RRASOR predict recidivism among developmentally delayed sexual offenders: A cumulative meta-analysis*. Sexual Offender Treatment, Vol. 8, No. 1, 2013.

Ignjatović, Đ., *Kriminološko nasleđe*, Policijska akademija, Beograd, 1997.

Jovanić, G, *Standardizacija postupka uslovnog otpusta kao mera zaštite od recidiva.* Doktorska disertacija, Univerzitet u Beogradu – Fakultet za specijalnu edukaciju i rehabilitaciju, Beograd, 2012.

Jovanić, G. & Petrović, V., *Uslovno otpuštanje u praksi okružnog zatvora i nadležnih sudova*. Specijalna edukacija i rehabilitacija, Vol. 16, No. 1, 2017.

Jovanić, G. & Žunić-Pavlović, V, Primena principa rizika, potreba i responzivnosti u penalnom tretmanu seksualnih prestupnika. U O. Vujović (ur.), *Zbornik radova Naučnog skupa sa međunarodnim učešćem „*Univerzalno i osobeno u pravu*"*(pp. 115-138),*18.5.2018.* Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici, 2018.

Jovanić, G., *Kazni, zatvori, zaposli*, Univerzitet u Beogradu, Fakultet za specijalnu edukaciju i rehabilitaciju, Beograd, 2017.

Luković, M. & Petrović, V, *Modeli tretmana seksualnih prestupnika*, Specijalna edukacija i rehabilitacija, Vol. 16, No. 3, 2017.

Maloić, S., *Suvremeni pristupi kažnjavanju kao determinante kvalitete života u obitelji, susjedstvu i zajednici–nove perspektive suzbijanja kriminala*, Kriminologija i socijalna integracija: časopis za kriminologiju, penologiju i poremećaje u ponašanju, Vol. 21, No. 2, 2014.

Martinson, R., *What works?-Questions and answers about prison reform*, The public interest, Vol. 35, 1974.

Mužinić, L. & Lj. Vukota, Lj., *Tretman seksualnih delinkvenata i zaštita zajednice*, Medicinska naklada i psihijatrijska bolnica Vrapče, Zagreb, 2010.

Petrović, V. & Jovanić, G., *Dodela uslovnog otpusta i faktori rizika recidivizma*, Zbornik Instituta za kriminološka i sociološka istraživanja, Vol. 36, No. 2, 2017.

Petrović, V., Izricanje kazne zatvora u Srbiji kao reakcija na zločin. U O. Jović-Prlainović (Ur.), Tematski zbornik radova *„Nacionalno i međunarodno pravo – aktuelna pitanja i teme", Tom 2* (pp. 111-129). 26. maj 2017. god., Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici, 2017.

Ramakers, A., van Wilsem, J. & Apel, R., *The effect of labour market absence on finding employment: A comparison between ex-prisoners and unemployed future prisoners*, European Journal of Criminology, Vol. 9, No. 4, 2012.

Svedrović, M., *Kriminalnopolitička opravdanost promjena kaznenih sankcija s osvrom na uvođenje doživotnog zatvora i na sustav izricanja kazne*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 10, No. 2.

Vujičić, N., Stevanović, Z. & Ilijić, Lj., *Primena instituta uslovnog otpusta od strane sudova u Republici Srbiji-ekspertska analiza*, Organizacija za evropsku bezbednost i saradnju - Misija u Srbiji i Institut za kriminološka i sociološka istraživanja Beograd, Beograd, 2017.

Walmsley, R., *Global Incarceration and Prison Trends*, Forum on Crime and Society, Vol. 1, No. 2, 2003.

Žunić-Pavlović, V., *Evaluacija u resocijalizaciji*, Partenon, Beograd, 2004.