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CRIMINAL LEGAL CHALLENGES IN REPUBLIC OF SERBIA DURING COVID-19 PANDEMIC

Abstract: The pandemic caused by the spread of the infectious disease COVID-19, which affected the entire planet, caused not only the global health crisis, changing the usual way of life of the majority of the world's population, but also affected almost all areas of the state and social system. The health systems were most affected; however, in addition to them, the effects of measures adopted by national legislators or other competent authorities to eliminate or reduce the risk of spreading the disease have affected, *inter alia*, economic stability, but also challenged the judicial authorities given that in the new circumstances it was not easy to ensure their normal functioning. This primarily refers to the criminal justice, given the importance of cases and the need for urgent action, since it is necessary to ensure the conduct of trials and the work of all procedural entities in conditions that, at least in one period, implied drastic restrictions on some basic civil and human rights and freedoms. In that context, it is especially important to review the justification and legality of the measures introduced in the Republic of Serbia during the state of emergency with the aim of more or less normal operation of the judicial system in conditions when social life was almost completely paralyzed. In addition, there is the question of what challenges and controversial issues are generally posed before criminal law in a pandemic, as well as the analysis of data on the crime rate and the overall crime situation in the Republic of Serbia in the period since the introduction of the state of emergency and during the pandemic.

Keywords: COVID-19, pandemic, state of emergency, overall crime situation, criminal justice.

1. COVID-19 AND CRIMINAL LEGAL CHALLENGES IN REPUBLIC OF SERBIA

The global crisis which struck the entire world due to the pandemic of the COVID-19 virus has posed certain questions in the field of criminal law. In order to pre-

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vent and suppress the infection caused by the coronavirus, numerous by-laws are being adopted in the Republic of Serbia on a daily basis, which are also important for criminal law. These regulations generally introduce certain prohibitions or restrictions that seek to reduce the spread of infectious diseases in the population, but the problem is that these acts are being amended frequently, are non-transparent, sometimes passed by non-competent authorities, so it is not at all easy to determine what is applicable law, i.e., what is allowed and what is forbidden. Despite the fact that during the epidemic (which is still current) there were no amendments to the Criminal Code,[1] and the fact that in the Republic of Serbia no new criminal offense was introduced, almost all adopted regulations can have criminal legal significance as well, primarily because our criminal legislation has long known the criminal offense titled as failure to act pursuant to health regulations during epidemic (Article 248 of the CC), which means that failure to act pursuant to health regulations, which include many measures already adopted since the pandemic, represents criminal offense.[2]

Regardless of the fact that the only basic and immediate source of criminal law is the law, sometimes certain by-laws can be the source of criminal law, and only if it is about the so-called blanket criminal law norms, i.e., norms that indicate the application of another legal act as well, which may have a lower legal force than the law. Sometimes in the description of a certain criminal offense, the legislator uses expressions such as „unauthorized", „illegal", etc. which means that the content of the wrongdoing of a certain criminal offense cannot be directly learned from its legal definition, but another, appropriate regulation must be considered. The same applies to the criminal offense referred to in Article 248 of the CC, the description of which reads: *Whoever, during an epidemic of a dangerous infectious disease, fails to act in accordance with regulations, decisions or orders setting forth measures for its suppression or prevention, shall be punished by a fine or imprisonment for a term not exceeding three years.* The act of committing this criminal offense, which can be committed only during an epidemic of a dangerous infectious disease, is undertaken by a person who does not act in accordance with regulations, decisions or orders setting forth measures to suppress or prevent the epidemic. It is clear, therefore, that this is a provision of a blanket nature, because in order for the court to conclude that the existence of this criminal offense has been realized, it must establish that the perpetrator violated appropriate regulations, decisions or orders, which are not directly contained in the criminal legal provision itself which provides for this criminal offense. However, as already indicated, from the moment when the epidemic was declared in the Republic of Serbia (by the Order of the Minister of Health[3] from March 19, 2020, since when it is possible to be responsible for committing this crime) acts that introduced certain measures in order to combat the epidemic are

1 Criminal Code, *Official Gazette of the RS*, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019 – hereinafter referred to as: CC.

2 I. Milić /2021/: Criminal law during epidemic of infectious disease – in: *Adequacy of the state reaction to crime and use of technical devices in criminal proceedings*, Serbian Association for Criminal Law and Practice and Center for Education of Judges and Prosecutors of the Republic of Srpska, Bijeljina, pp. 97–98.

3 Order declaring an epidemic of an infectious disease COVID-19, *Official Gazette of the RS*, No. 37/2020.

numerous, they often change, but they are not always published in an appropriate way, so it is difficult not only for citizens, but also for legal experts to manage and know what is expected of them. An additional problem in this regard is that the Law on Protection of the Population from Infectious Diseases[4] provides for non-compliance with certain measures to protect the population from infectious diseases as a misdemeanour, thus, non-compliance with certain health measures can be qualified not only as a criminal offense, but also as a misdemeanour, which complicates the work of judicial bodies. In that sense, the Decree of the Government which enables derogation from the principle of *ne bis in idem,* when it comes to certain misdemeanours and the criminal offence of failure to act in accordance with health regulations during the epidemic, whose important features are essentially identical, was declared unconstitutional by the decision of the Constitutional Court of Serbia (Decision of the Constitutional Court No. IUo-45/2020 17 September 2020).[5]

After all, the question arises whether every, even a slight non-compliance with certain measures, must be considered punishable? Especially in the case of mass violations of appropriate measures, it is not easy to ensure the full application of criminal and misdemeanour law. This is evidenced by the massive protests that lasted for days last year, organized in July, which were a reaction to the announcement of the reintroduction of curfew. It has long been known in the science of criminal law that criminal justice can function only if the application of criminal sanctions in one society is an exception, i.e., if they are applied only in relation to a small number of members of that society, because even the best organized state is not able to ensure the application of criminal law to all perpetrators of crimes.[6] Besides, given the increased concern of citizens for their own health and the health of their loved ones, as well as the need to make available to the public accurate information about the dangers of the COVID-19, the criminal offense of causing panic and disorder became important (Article 343 of the CC), given that some citizens were arrested on suspicion that by spreading false news they caused panic among the population and severely disrupted public order and peace.[7] Apart from the fact that the description of this crime is largely imprecise, because it abounds in terms which meaning is not easy to determine precisely („false news", the way in which the consequence is described, „similar means" through which a more serious form is achieved), the justification of this incrimination is disputable in legal and political terms because it significantly endangers the right to free expression of opinion, and in addition, similar incrimination is not known in many European legislations.[8]

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4 Law on Protection of the Population from Infectious Diseases, *Official Gazette of the RS*, No. 15/2016, 68/2020 and 136/2020.

5 M. Škulić, I. Miljuš /2021/: Participation of procedural subjects in criminal proceedings through technical devices for image and sound transmission – in: *Adequacy of state reaction to crime and the use of technical devices in criminal proceedings* (M. Simović, ed.), Bjeljina, p. 143.

6 Z. Stojanović /2020/: *Criminal law. General part*, Belgrade, p. 4.

7 Thus, in March of the previous year, a young man was arrested who spread false information through the Viber group that the gas stations will not sell fuel to individuals, and that from tomorrow one will be allowed only to go out to the store. See: https://www.danas.rs/vesti/drustvo/mup-uhapsen-beogradjanin-zbog-izazivanja-panike-preko-vajber-grupe.

8 Z. Stojanović /2021/: *Commentary of the Criminal Code*, Belgrade, pp. 1042–1045. For disseminating false information in the context of the case law of the European Court of Human Rights. A. Đukano-

In addition, some other problems arise in the field of substantive criminal law. Namely, in the conditions of limited capacity of the health system and the impossibility to provide adequate assistance to everyone in the conditions of increased number of infected citizens, the question of criteria on the basis of which to decide who will have an advantage and thus facilitate doctors in dealing with the issues of deciding on life and death.[9] Because, it is not easy to avoid the issue of possible criminal liability of doctors (health workers in general) for negligent provision of medical care (Article 251 of the CC) in conditions when it is necessary to make an appropriate choice (for example, connect one patient to an available respirator and not another), due to insufficient resources for intensive care, it is not possible to provide adequate care to all patients. In that sense, appropriate rules are necessary that would regulate the medical procedure of triage in the conditions of a pandemic, i.e., patient classification. However, such rules, if they exist at all in the case of serious infectious diseases like this one, cannot completely cover all situations. However, there is a justified position that in extraordinary circumstances caused by a pandemic, the treatment of doctors who are faced with a difficult choice whom to provide help of the equally endangered patients, in conditions of insufficient capacity to provide the necessary care, can be justified with the institute of extreme necessity. The so-called conflict of duty, which in the comparative doctrine certain authors consider a separate basis for the exclusion of illegality also comes into consideration.[10] However, many issues related to the mandatory standards of behaviour of health workers during the pandemic are still open, so in Serbian medicine, appropriate guidelines have not yet been formulated.[11]

2. FUNCTIONING OF CRIMINAL JUSTICE SYSTEM DURING THE STATE OF EMERGENCY IN THE REPUBLIC OF SERBIA

The pandemic of the infectious disease COVID-19 in general, and especially during the state of emergency, left significant consequences in the Republic of Serbia on the functioning of the criminal justice system. This is primarily due to the fact that during the state of emergency introduced due to the COVID-19 epidemic, which lasted from March 15 to May 6, 2020,[12] numerous restrictive measures were introduced, such as the ban on gatherings in public places and indoors, restrictions and bans on movement for a certain period of time, special restrictions and bans on the movement of elderly citizens, etc. as a result of which the functioning of the crim-

vić /2021/: Limitations on Freedom of Expression in Practice of the European Court of Human Rights and the Notion of Disinformation, *NBP – Journal of Criminalistics and Law*, n° 2, pp. 31–42.

9 I. Vuković /2020/: Collision of duties as a basis for justification in the circumstances of a pandemic, *Crimen – Journal of Criminal Sciences*, n° 1, p. 132.

10 I. Vuković: *ibid.*, p. 133.

11 I. Vuković: *ibid.*, p. 142.

12 The state of emergency was declared by the Decision on declaring a state of emergency, *Official Gazette of RS*, No. 29/2020. The decision was signed by the President of the Republic, the President of the National Assembly and the Prime Minister. The state of emergency was lifted by the Decision of the National Assembly, *Official Gazette of RS*, No. 65 of May 6, 2020.

inal justice system was hindered in the manner provided by the Criminal Procedure Code.[13] Given this, the question was inevitable: How to organize the functioning of criminal justice system during a state of emergency? The answer to this question is sought in creating a basis for the use of technical devices for the transmission of images and sound in criminal proceedings and independently of the cases provided for in the CPC, in order to enable judicial authorities to perform their basic function in significantly changed and hitherto unknown circumstances. Finding a way for some kind of work of judicial bodies in the new situation burdened with numerous restrictions was necessary, given that none of the five possible cases of using technical devices for image and sound transmission in criminal proceedings provided in the CPC did not provide the possibility to undertake criminal proceedings that would enable the functioning of criminal justice system during a state of emergency.[14] To that end, in order to ensure the legal functioning of the judiciary during the state of emergency as much as possible, and at the same time to eliminate the possibility of the epidemic spreading to citizens, appropriate normative measures have been taken. Two of them were of special importance. These are: Decree on the manner of participation of the accused in the main trial in criminal proceedings held during the state of emergency (2020)[15] adopted by the Government of the Republic of Serbia with the co-signature of the President of the Republic with the aim of providing conditions for the functioning of the judiciary during a state of emergency and the Recommendation of the Ministry of Justice of 19 March 2020 to judicial authorities in Serbia for acting when the subject of criminal proceedings are criminal offenses of failure to act in accordance with health regulations during an epidemic and the criminal offense of transmission of a contagious disease.[16]

According to the Decree, during the state of emergency in criminal proceedings before the first instance court, when the presiding judge, i.e. a single judge, finds that securing the presence of the accused who is in custody at the main trial is hindered due to the danger of spreading a contagious disease, he or she could decide to ensure the participation of the defendant in the main trial through technical devices for the transmission of image and sound – *Skype*, if this was possible given the technical conditions. In other words, the Decree allowed a „distance" trial, i.e., the accused did not have to appear in court. Although he is being tried, he did not have to be in the courtroom. His participation in the main trial is secured by Skype, so that the accused remains in the detention unit in which he is being held. It also follows from the Decree that all other participants in the criminal proceedings, in-

13 Criminal Procedure Code, *Official Gazette of the RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 55/2014 and 35/2019, 27/2021 – decision of the Constitutional Court and 62/2021 – decision of the Constitutional Court – hereinafter referred to as CPC.

14 S. Bejatović /2021/: Use of technical devices in criminal proceedings and adequacy of the state reaction to crime – in: *Adequacy of the state reaction to crime and use of technical devices in criminal proceedings* (M. Simović, ed.), Bijeljina, p. 127.

15 The Decree was confirmed by the Law on Confirmation of Decrees Adopted by the Government with the co-signature of the President of the Republic during the state of emergency, submitted by the Government (*Official Gazette of RS*, No. 62/2020), which entered into force on the day of its publication in the Official Gazette of the Republic of Serbia, i.e., on April 29, 2020, and ceased to be valid on the day of the abolition of the state of emergency, May 6, 2020.

16 https://www.mpravde.gov.rs/sr/obavestenje/29543/poostravanje-sankcija-za-lica-koja-prekrse-mere-samoizolacije-.php.

cluding the defence counsel, the accused's lawyer, had to be in the courtroom. Conditions covered by the Decree whose application was restricted in certain detention cases were minimal.[17] The consent of the accused was not required, but the „existence of technical possibilities", the specific goal of this method of participation of the accused („ensuring the presence of the accused in custody") and the reason for application („aggravated presence of the accused at the main trial due to the danger of spreading infectious disease").[18] The research conducted so far has shown, above all, that during the state of emergency, a large number of plea agreements were concluded in this way, which was made possible by the fact that the defendant was in a „specially equipped room" in custody. Confidential conversation between the defendant and the defense counsel was allowed via a separate communication channel via the Skype application, which was exclusively monitored visually, but this way of using technical devices in criminal proceedings also brought with it certain shortcomings in certain cases, such as positioning the camera in court so that the defendant could only see the judge. Or there is the question of how to ensure the confidentiality of conversations between the accused and the defense counsel in such situations. That is, there is the question of who and in what way manages the technical devices by which this procedural action is undertaken, etc.[19] This, as well as a large number of other, now open issues, undertaking criminal procedural activities through technical devices for image and sound transmission should be regulated by a special act (eg. the Rulebook on the use of technical devices for image and sound transmission in criminal proceedings).

In addition to the Decree, i.e., even before its adoption, on March 19, 2020, the Ministry of Justice sent to the judicial authorities in Serbia recommendations for action when the subject of criminal proceedings are failures to act in accordance with health regulations during an epidemic (Article 248 of the CC) and the criminal offense of transmitting contagious disease (Article 249 of the CC). Public prosecutor's offices were „recommended" that the competent public prosecutors propose to the court to order detention for all persons who violate the measure of self-isolation imposed on them by the competent institutions (Ministry of Health/ Ministry of Interior), whereas the Directorate for Execution of Criminal Sanctions provided three special facilities in which detention will be carried out in such situations. The Ministry of Justice also recommended to the Republic Public Prosecutor to file a disciplinary report against the competent public prosecutor/deputy public prosecutor in case of non-compliance with the stated instructions (which refer to the mandatory request for detention). The recommendations of the Ministry of Justice also stipulated that „the competent authorities, when ordering detention, will not only take into account the deadlines under the Criminal Procedure Code, but also health quarantine regulations." Immediately after receiving the recommendations in the Basic Court in Dimitrovgrad (March 31, 2020), the defendant was sentenced to the first instance conviction for the criminal offense of failing to comply

17 Conclusion of the High Judicial Council of March 18, 2020, Conclusion of the High Judicial Council of April 9, 2020.

18 M. Škulić, I. Miljuš: *op. cit.*, p. 145.

19 K. Golubović, M. Vasić, J. Spremo, M. Maljan /2020/: *Restriction of movement and trial during a state of emergency*, Belgrade, pp. 22–23.

with health regulations during the epidemic of a maximum of three years in prison, in a procedure conducted using Skype.[20] The verdict was pronounced on March 31, even before the Decree was passed, based on a letter from the Ministry. If we add to this the fact that on the basis of the mentioned acts, during the state of emergency, a large number of detentions were determined, then the entire issue gained even more relevance.[21]

The solutions of the two above-mentioned acts, especially the Recommendation of the Ministry of Justice and the Government Decree which enables deviation from the principle of *ne bis in idem*, when it comes to certain misdemeanours and criminal offense of failure to comply with health regulations during the epidemic (Article 248 of the CC), whose important features are essentially identical, are subject to criticism of one part of professional public, seemingly not without reason. Thus, for example it is pointed out that conducting trials on the basis of the Decree violates the provisions of Article 32 of the RS Constitution[22] on the right to a fair trial.[23] This is because the right to a fair trial means that everyone has the right for an independent, impartial and already established court, fairly and within a reasonable time, to publicly discuss and decide on his rights and obligations, the grounds for suspicion, and charges against him, as well as the right to a public hearing, as part of the complex right to a fair trial,[24] which implies in the first place the presence of the accused at the main trial, and then effective participation in it, which is not provided by the Decree. Also, such an organized trial significantly encroaches on the core of the fairness of the trial, because in that way the equality of the parties in the procedure is endangered. Furthermore, the question could rightly be asked: What are the possibilities for making a statement regarding charges and effective defense of the accused by the Decree when the accused is not even before a judge, but before a custodian, and far from the eyes of his defense counsel?

Or, when it comes to the Ministry's Recommendations, there is the view that the „recommendation" of the Ministry of Justice could not derogate from legal, but also constitutional regulations, which are of the utmost importance for the protection of human rights. This primarily refers to Article 30, paragraph 1 of the Constitution, according to which detention may be ordered for a person for whom there is a reasonable doubt that he has committed a criminal offense, only on the basis of

20 It was the first trial conducted in that way in the Republic of Serbia during the state of emergency. In the specific case, it was a thirty-eight-year-old perpetrator who did not respect the measure of self-isolation after returning from abroad. A sentence corresponding to a special maximum is certainly an unusual case in our case law, as it is known that our courts generally impose a sentence in the first third of the prescribed sentence (Z. Stojanović /2012/: Sentencing policy in Serbia: the conflict between the legislator and case law – in: *Criminal reaction in Serbia*, Part II (Đ. Ignjatović, ed.), Belgrade, p. 3), but this probably happened due to increased general preventive influence on citizens to comply with the prescribed measures to protect against the spread of coronavirus were crucial.

21 M. Škulić, I. Miljuš: *op. cit.*, p. 145.

22 Constitution of the Republic of Serbia, *Official Gazette of RS*, No. 98/2006.

23 D. Čvorović /2016/: Implicit of Rights to a Fair Trial and Casuistry of the European Court of Human Rights, *Proceedings of the Institute for Criminological and Sociological Research*, n° 3, p. 52.

24 S. Mijalković, D. Čvorović, V. Turanjanin /2019/: Efficiency as an International Standard in Criminal Procedural Legislation of the Republic of Serbia – Toward European Union – in: *Towards a better future: Democracy, EU Integration and Criminal Justice* (G. Ilik, ed.), Bitola, p. 143.

a court decision and if detention is necessary for criminal proceedings. The court reduces the duration of detention to the shortest necessary period, having in mind the reason for detention (Constitution of the Republic of Serbia, 2006, Article 31, paragraph 1). By the way, there is no strict legal basis for such „recommendations", because in the judicial system of Serbia it is not formally prescribed that the Ministry of Justice has such prerogatives in relation to the public prosecutor's office, which according to Article 156 paragraph 1 of the Constitution is defined as an independent state body.

According to Article 5 of the Law on the Public Prosecutor's Office,[25] the public prosecutor and deputy public prosecutor are independent in exercising their powers, and any influence on the work of the public prosecutor's office and the handling of cases by the executive and legislature is prohibited, by using public position, the media or in any other way that may jeopardize the independence of the public prosecutor's office, and the public prosecutor and deputy public prosecutor are obliged to refuse any action that affects the independence of the public prosecutor's office. Accordingly, it follows that the recommendations of the Ministry of Justice aimed at the actions of the public prosecutor's office during the state of emergency, and specifically in relation to the mandatory request for detention of defendants for certain „epidemic criminal offenses", were completely non-binding in the formal legal sense.

Furthermore, the acts of the Ministry, according to certain understandings, could not be considered in any way, regardless of the state of emergency, a source of law in the Republic of Serbia, especially not in criminal law. In this context, the constitutional character of these acts is rightly called into question.[26] Finally, since the trial under the Ministry's Recommendation was not based on law, there was a significant violation of the criminal procedure.[27]

Without going into a further presentation of the arguments for and against this way of functioning of the criminal justice system during the state of emergency caused by the COVID-19 epidemic, two conclusions seem quite justified. First, both the Decree and the Recommendation of the Ministry of Justice should be understood as part of the efforts of the governing structures to enable the functioning of criminal justice system even during a state of emergency, at least in detention cases and cases of criminal offenses of failure to act pursuant to health regulations during epidemics. This is all the more so because undertaking certain criminal proceedings through technical devices for the transmission of images and sound is not in conflict with the European Convention for the Protection of Human Rights and the practice of the European Court of Human Rights.[28] Of course, provided that it is standardized and conducted in accordance with the principles of the right to a fair trial. Second, the use of technical devices in criminal proceedings during the state of emergency caused by the COVID-19 epidemic indicated the need to review the current provisions of the CPC on the scope, possibilities and conditions of use of

25 Law on Public Prosecutor's Office, *Official Gazette of the RS*, No. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 – decision of the CC, 121/2012, 101/2013, 111/2014 – decision of the Constitutional Court, 117/2014, 106/2015 and 63/2016 – decision of the Constitutional Court.

26 https://www.danas.rs/drustvo/vladavina-prava/neustavna-uredba-o-sudjenju-preko-skajpa/.

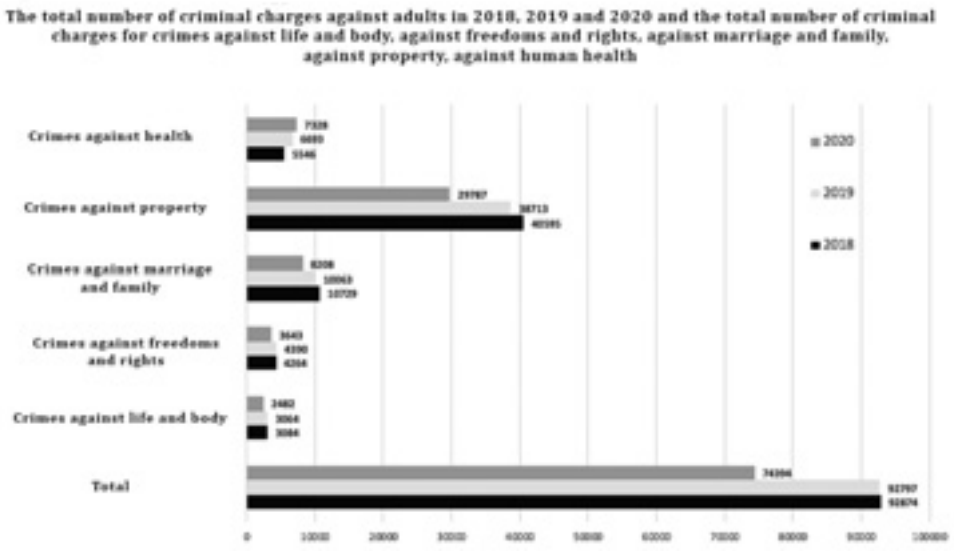
27 M. Škulić, I. Miljuš: *op. cit.*, pp. 140–148.

28 M. Škulić, I. Miljuš: *ibid.*, pp. 146–148.

technical devices for image and sound transmission – video link in criminal proceedings, with the aim of expanding such possibilities with clearly specifying the conditions for application.

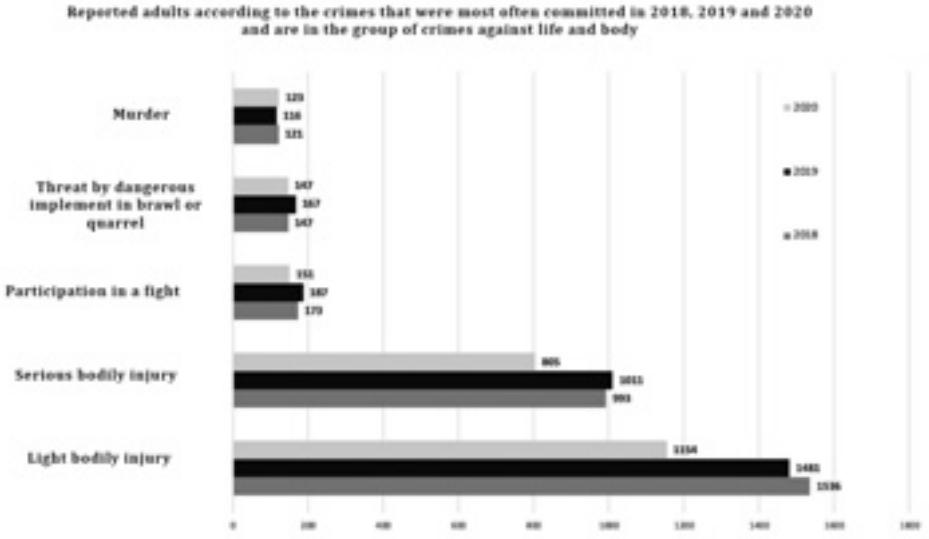
3. COVID-19 EPIDEMIC AND THE OVERALL CRIME SITUATION IN SERBIA

As already stated, the COVID-19 epidemic caused numerous changes in society in general (psychological, sociological, economic) which inevitably left consequences on the effectiveness of crime prevention, on the efforts of society to oppose it in the most adequate way, which also resulted in an increase in certain forms of criminal activity. Given all this, it is not surprising that in the period after the outbreak of the epidemic until today, there have been many questions related to the adequacy of the state reaction to crime in general. One of them is the question of the impact of the epidemic on crime situation in general, as well as on its individual forms. The answer to this question should be sought in the official statistical indicators of the movement of both criminality in general and its individual forms in the time that preceded the epidemic and in the time of the epidemic, i.e., in the period 2018–2020, and this is observed from the aspect of the most frequently committed criminal offenses (criminal offenses against life and body, against freedoms and rights of man and citizen, against property, against marriage and family, against sexual freedom and against human health).[29]

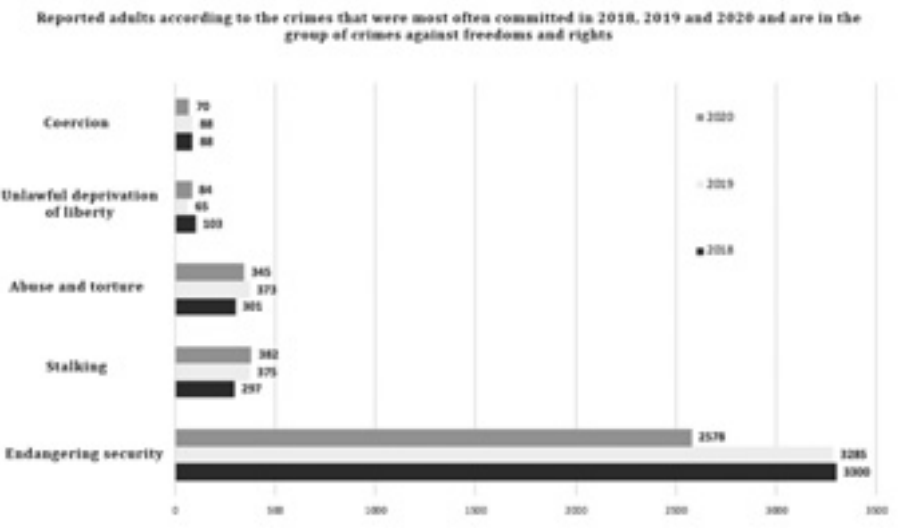


Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020

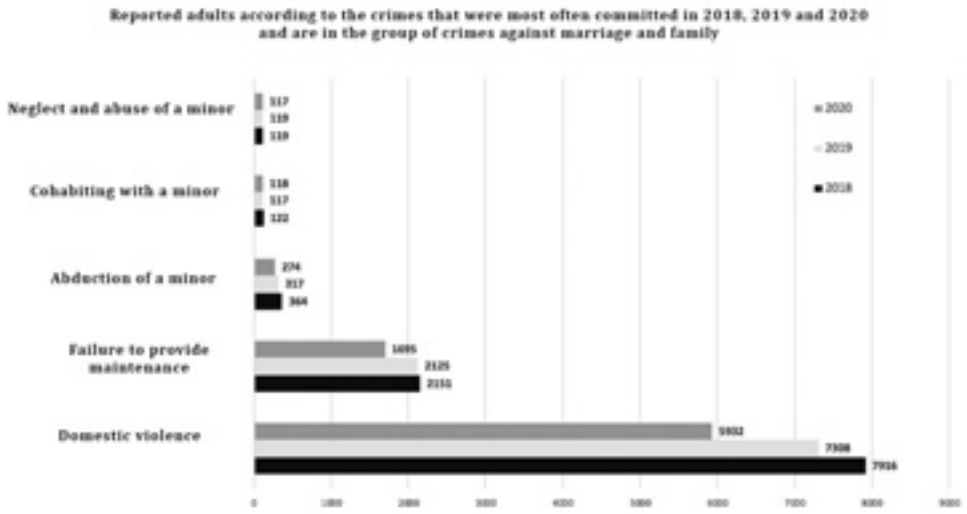
29 See: Statistical Office of the Republic of Serbia, Adult perpetrators of criminal offences in the Republic of Serbia 2018–2020.



Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020

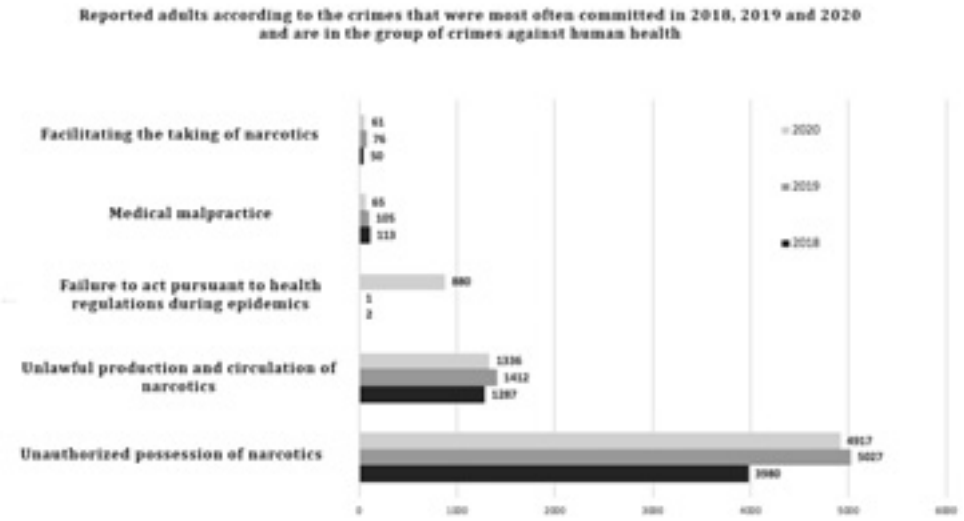


Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020



Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020

Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020



Source: Statistical Office of the Republic of Serbia, 2018, 2019, 2020

The presented statistical data show a decreasing trend when it comes to the total number of reported criminal offenses for 2018, 2019, 2020 (in 2018, there were 92,874 reported criminal offenses, and in 2020, 74,394). In relation to the total number of reported criminal offenses, in the past three years, the most frequently reported criminal offenses are against property, namely in 2018 – 40,595, in 2019 there were 38,713, while in 2020 there were 29,787 of these criminal offenses. Immediately after this group of criminal offenses, according to the number of reports, there are criminal offenses against marriage and family, 10,719 in 2018, in 2019 10,063, and in 2020 8208. The greatest public attention, which is logical given the current epidemic, was caused by the criminal offense of failure to act pursuant to health regulations during the epidemic, which belongs to the group of criminal offenses against human health, and which ranks third in the number of reported offenses in 2018 – 5546 criminal offenses against health, in 2019 there were 6693 reports, and in 2020 – 7328. Then follow the criminal offenses against sexual freedom and the criminal offenses against life and body. Furthermore, it is extremely interesting to note that, unlike the total number of reported criminal offenses in 2020 in relation to 2018 which is on the decline, criminal offenses against health in 2020 show an increasing trend.

Observed from the aspect of other criminal offenses, the situation is as follows: when it comes to the group of criminal offenses against life and body, the most commonly reported criminal offenses in 2018, 2019 and 2020 are the following: light bodily injury, serious bodily injury, participation in a fight, threat by dangerous implement in brawl or quarrel and murder, with the most frequently reported criminal offense of light bodily injury, 1536 of reported persons in 2018, in 2019 there were 1481, and in 2020 there were 1154 reported persons, while the least reported criminal offense was murder with 121 reported persons in 2018, 116 in 2019

and 123 reported persons in 2020. It is interesting that only when it comes to the criminal offense of murder, there is an increase in reports in 2020, which could, among other things, be a consequence of the epidemic. When it comes to the group of criminal offenses against the freedoms and rights of man and citizen in 2018, 2019, 2020, the most frequently reported persons are for criminal offenses of endangering security, stalking, abuse and torture, unlawful deprivation of liberty, coercion, of which the most common criminal offense is endangering security, there are 2578 reported persons in 2020, 3285 in 2019 and in 2018 3300 reported persons. The lowest number of reports was for the criminal offense of coercion, 70 in 2020, 88 reported persons in 2019 and 88 in 2018. The issue of violent crime, especially the criminal offense of domestic violence, has been one of the current issues for many years when it comes to the functioning of the legal system of a country in general. Namely, domestic violence as a global phenomenon has become the subject of even more intense discussion not only in the professional public, but also much wider, due to the outbreak of the COVID-19 epidemic and concerns about the possible increase in the number of criminal offense due to negative effects on the psychophysical condition of individuals, caused by measures introduced to prevent the spread of the virus. In accordance with the above statistical indicators, we can conclude that in the past three years, from the group of criminal offenses against marriage and family, persons reported the following offenses: domestic violence, failure to provide maintenance, abduction of a minor, cohabitation with a minor, neglect and abuse of a minor. As it was to be expected, the criminal offense of domestic violence was mostly reported, 5932 reported persons in 2020, 7308 in 2019 and 7916 reported persons in 2018, while the criminal offense of cohabiting with a minor was the least reported, with the exception of 2020 where there is one less reported person for the criminal offense of neglect and abuse of a minor.

As it was pointed out, in the total number of reported criminal offenses, the most reported offenses belong to the group of criminal offenses against property. Namely, when it comes to criminal offenses against property, the most reported persons are for criminal offenses of theft, aggravated larceny, fraud, embezzlement, destruction and damage to another's property, with the most reports filed for the criminal offense of theft: 14,173 in 2020, 7626 of reported persons in 2019 and 17,624 in 2018. The fewest reports were for the criminal offense of robbery.

The current situation caused by the COVID-19 epidemic highlighted in expert and critical analyses the group of criminal offenses against human health, i.e., the criminal offense of failure to act pursuant to health regulations during the epidemic.[30] Concerns about violations of prescribed measures, the transmission of contagious diseases and the increase in the commission of criminal offenses against health were particularly emphasized. If the stated concern was justified, i.e., was there really an increase in the commission of the said criminal offense in 2020 can be best seen through the presented statistical indicators and comparative analysis with the reports for the mentioned offense in 2019 and 2018. Namely, in the mentioned group of criminal offenses, most reports were for the offenses of unauthorized possession of narcotics, unauthorized production and distribution of nar-

30 I. Milić /2021/: *op. cit*, p. 99.

cotics, failure to act pursuant to health regulations during the epidemic, medical malpractice, facilitating the taking of narcotics, with the criminal offense of failure to act pursuant to health regulations during the epidemic in terms of the number of reports in 2020 being among the five most frequently reported criminal offenses, while in 2018, 2019 there are only one or two persons who have been reported for the said offense, but due to comparative analysis and consideration of the current situation, it was shown in 2018 and 2019 as well.

Based on the presented indicators, it can be concluded that the COVID-19 epidemic did not affect the increase in criminal offenses, i.e. there is a clear decline in the number of most crimes, except for these crimes against human health, which, as expected, include the crime of failure to act according to health regulations. Even according to certain data from the Ministry of Internal Affairs, during the state of emergency, a significant drop in the crime rate was recorded compared to the same period last year. More precisely, for the period of a month and a half, from March 15 to May 1, about 60% fewer criminal offenses were recorded than in the same period of the previous (2019) year. First of all, due to the ban on movement and the introduction of curfew in the observed period, the number of committed property criminal offenses was significantly reduced. Only the number of murders and rapes remained almost the same for the identical period in the previous year.[31]

4. CONCLUSION

The spread of coronavirus around the world has led to an urgent response by national systems, which have largely closed their borders or tightened entry controls, with a series of measures to mitigate the harmful effects of the pandemic. Despite the fact that the danger of the virus has been present for almost two years, life is returning to normal slowly, but many restrictions still apply. Thus, in the Republic of Serbia, the ban on gathering in public places in closed and open space of a certain number of persons is still in force, with the provison that other introduced anti-epidemic measures must be respected.[32] However, these measures cannot be compared with drastic restrictions, primarily freedom of movement, which were valid for almost two months last year, when the state of emergency was in force. In that context, the effort of the governing structures to ensure the efficient functioning of the criminal justice system in the changed conditions is especially important. However, the manner in which this was done in the Republic of Serbia, as explained

31 https://www.politika.rs/sr/clanak/454357/Tokom-vanrednog-stanja-zabelezen-pad-kriminala-od-60-odsto.

32 Currently, the ban on gatherings applies to more than 500 people, with the distance between the people present having to be at least 2 m, i.e. one person can be present every 4 m². Exceptionally, more than 500 people can gather if the permission of the Crisis Response Team for the Suppression of Infectious Diseases COVID-19 is obtained beforehand, as well as during the gathering at a sporting event organized within the registered official competitions, provided that the number of people present at a sporting event held in an open space may not exceed 50% of the capacity of the facility in which the sporting event is held, or 30% of the capacity when the sporting event is held indoors. Order prohibiting gatherings in the Republic of Serbia in public places indoors and outdoors, *Official Gazette of RS*, No. 60 of June 16, 2021.

in the central part of the paper, also opened questions about the justification and harmonization of new measures with acts of higher legal force, because in order to intensify repression that should keep citizens obedient and prevent mass violations of health regulations, some fundamental values of each, basically democratic, criminal justice system were jeopardized. In addition, the lack of transparency of legal acts which introduce certain prohibitions and restrictions in order to reduce the spread of the infection, and whose non-compliance entails criminal liability, has caused legal uncertainty, because often these acts are not mutually harmonized or are adopted by non-competent bodies and beyond the usual procedure to be promulgated in an appropriate manner.[33]

The analysis of official statistical data showed that the number of certain criminal offenses (primarily those that are regularly the most represented in the structure of crime, namely property criminal offenses) during the state of emergency in the Republic of Serbia is significantly lower than in previous years. On the other hand, precisely because of the large number of newly introduced health regulations, non-compliance with which is a criminal offense during an epidemic of a dangerous infectious disease, an increase in the number of committed criminal offenses against human health was recorded, primarily criminal offenses under Article 248 of the CC.

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33 I. Milić: *op. cit.*, p. 110.

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KRIVIČNOPRAVNI IZAZOVI U REPUBLICI SRBIJI ZA VREME PANDEMIJE COVID-19

REZIME

Pandemija uslovljena širenjem zarazne bolesti COVID-19 koja je zahvatila čitavu planetu prouzrokovala je ne samo globalnu zdravstvenu krizu, promenivši uobičajeni način života većine svetske populacije, već je ostavila uticaj na gotovo sva područja državnog i društvenog sistema. Pored onog koji je najviše pogođen, a to je zdravstveni sistem, efekti mera koje su nacionalni zakonodavci, ili druga nadležna tela usvajali s ciljem otklanjanja ili umanjenja opasnosti od širenja bolesti, pogodili su između ostalog i ekonomsku stabilnost, ali i stavili pred izazove pravosudne organe, s obzirom da u novonastalim okolnostima nije bilo lako obezbediti njihovo normalno funkcionisanje. To se pre svega, s obzirom na značaj slučajeva i potrebu hitnog postupanja, odnosi na krivično pravosuđe, gde je potrebno obezbediti obavljanje suđenja i uopšte rad svih procesnih subjekata u uslovima koji su, barem u jednom periodu, podrazumevali drastična ograničenja nekih od osnovnih građanskih i ljudskih prava i sloboda. U tom kontekstu u radu je preispitana opravdanost i zakonitost mera koje su u Republici Srbiji uvedene u vreme trajanja vanrednog stanja s ciljem koliko-toliko normalnog odvijanja rada pravosudnog sistema u uslovima kada je društveni život bio gotovo u potpunosti paralisan. Osim toga, ukazano je i na osnovna sporna pitanja koja se uopšte postavljaju pred krivično pravo u uslovima pandemije, uz analizu podataka o stopi i stanju kriminaliteta u Republici Srbiji u periodu od uvođenja vanrednog stanja i uopšte za vreme trajanja pandemije.

Uprkos tome što je opasnost od virusa prisutna bezmalo dve godine život se laganim koracima vraća u normalu, ali mnoga ograničenja i dalje važe. Tako je i u Republici Srbiji i dalje na snazi zabrana okupljanja na javnim mestima u zatvorenom i otvorenom prostoru određenog broja lica, s tim što se moraju poštovati i druge uvedene protivepidemiološke mere. No, te se mere ipak ne mogu porediti sa drastičnim ograničenjima, pre svega slobode kretanja, koja su važila u periodu od gotovo dva meseca prošle godine, kada je na snazi bilo vanredno stanje. U tom kontekstu, naročito je od značaja učinjen napor vladajućih struktura da se u promenjenim uslovima obezbedi efikasno funkcionisanje krivičnog pravosuđa. Međutim, način na koji je to urađeno u Republici Srbiji, kao što je objašnjeno u ovom radu, otvorio je i niz pitanja o opravdanosti i usklađenosti novih mera sa aktima više pravne snage, jer se njima u cilju pojačane represije koja bi trebalo građane da drži u pokornosti i spreči masovno kršenje zdravstvenih propisa, bitno odstupa od nekih temeljnih vrednosti svakog, u osnovi demokratskog, krivičnopravnog sistema. Pored toga, nepreglednost pravnih akata kojima se u cilju smanjenja širenja zaraze uvode određene zabrane i ograničenja, a čije nepoštovanje povlači i krivičnopravnu odgovornost, uslovila je pravnu nesigurnost, jer često ti akti nisu međusobno usklađeni, ili su doneseni od strane nenadležnih organa i mimo uobičajene pro-

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cedure da budu obnarodovani na odgovarajući način. Analiza zvaničnih statističkih podataka pokazala je da je broj određenih krivičnih dela (pre svega onih koja su redovno najviše zastupljena u strukturi kriminaliteta, a to su imovinski delikti) u periodu trajanja vanrednog stanja u Republici Srbiji znatno manji u odnosu na nekoliko ranijih godina. S druge strane, upravo zbog velikog broja novouvedenih zdravstvenih propisa, čije nepoštovanje za vreme epidemije opasne zarazne bolesti predstavlja kažnjivo delo, zabeležen je porast broja izvršenih krivičnih dela protiv zdravlja ljudi, a pre svega inkriminacije iz člana 248. KZ.

Ključne reči: COVID-19, pandemija, vanredno stanje, stanje kriminaliteta, krivično pravosuđe.