

# Low/Base Motive as a Qualifying Circumstance of the Criminal Act of Murder

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## Abstract

*The most serious form of life injury, in all criminal laws, from ancient times to the present, represents the crime of murder. Depending on the motivation of the perpetrator, the circumstances of the execution, characteristics of the perpetrator and the victim, the manner/method and means of execution, the scope/extent of the consequences, and other circumstances, there are different forms and types of manifestation of this criminal act. There are three forms of this criminal act. These are: a) ordinary murder, b) serious (qualified) murders, for which the most severe types of punishment known in the specific criminal legislation are prescribed, and c) easy (privileged) murders. Among the most serious crimes of this type is definitely a murder, which consists of illegal intentional/deliberate deprivation of another person's life for special reasons of low (defamatory) motives. This crime is punishable by life imprisonment in Serbian criminal law, which represents the subject of analysis in this paper from the theoretical, practical and comparative law/legal aspects.*

**Keywords:** *life, deprivation, low motive, law, crime, responsibility*

## I. Introduction

One of the most important natural, fundamental, general civilizational, universal human rights is certainly the right to life. It is the basis and condition for the existence of all other human rights and freedoms. It belongs to the most important, not only personal, but also general social goods. The right to life is guaranteed by numerous international legal acts: Article 6 of the International Covenant on Civil and Political Rights with optional protocol and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms with Protocols No. 4, 6, 7, 11, 12 and 13.

However, despite this universal importance of the inviolability of human life (or the right to life), society has been faced with various forms or types of attacks, injuries or threats to the life of another person since ancient times. These are the criminal acts

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of murder, which consist in the unlawful/illegal deprivation (violation, deprivation) of the life of another person. Depending on the circumstances under which this crime is committed, the method or means of execution used, the characteristics of the perpetrator or the victim, the motive of the perpetrator, the scope of the consequences etc., there are several forms of the criminal offense/act of murder. These are:

- a) ordinary murder (basic crime),
- b) grave/serious or qualified murder and
- c) light or privileged murder, for which the legislator prescribes different punishments.

Aggravated murders are among the most serious crimes in all modern criminal legislation, for which the most severe punishments are prescribed: long-term/life imprisonment or long-term imprisonment. The situation is similar in the Republic of Serbia. As the subject of our paper, the most significant type of serious crime taken is aggravated murder according to the motives of the perpetrator. Here, another person's life is unlawfully taken with intent for the following motives, such as:

- a) self-interest,
- b) for the purpose of committing or concealing another criminal offense, and
- c) reckless revenge and other base motives (Article 114, point 5 of the Criminal Code of Serbia<sup>1</sup>).

## II. International and Constitutional Protection of the Right to Life

The right to life is included today in the system of human rights and freedoms that have universal, general civilizational protection. At the basis of this international legal protection of human rights, there are standards stipulated in the corresponding international documents. Depending on the bearer, two types of international documents are distinguished. These are:

- a) universal documents, adopted within the framework of the United Nations Organization and
- b) regional documents, adopted within the framework of the Council of Europe<sup>2</sup>.

The universal international documents include:

- a) General Declaration of Human Rights and
- b) International Covenant on Civil and Political Rights<sup>3</sup>. Universal standards represent the content of the most important international acts, which protect the most important human rights (liberties), and that, above all, is the universal human right – the right to life. Without the right to human life, there is no possibility of realizing other human rights and freedoms, that is, they would not even exist.

The right to life as a basic human right has been protected since ancient times and the creation of the first states, but only recently has it received international legal protection. With the development of society and the creation of modern civilization, conditions are created for the equality of all members in one society, and thus the basis for uniform criminal law protection of life for all its members. Man is in the first place, so the protection of human life becomes the most important personal and general social phenomenon.

<sup>1</sup> Official Gazette of the Republic of Serbia no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

<sup>2</sup> Đorđević, Đ., *Criminal Law. Special Part*, Belgrade, Criminal and Police University, 2014, pp. 21-25.

<sup>3</sup> Official Gazette of the SFRY, International Agreements no. 7/1971 and 4/2001.

The Universal Declaration of Human Rights is the first international document of universal importance that establishes a system of protection of human rights and freedoms against all forms of injury or endangerment. Thus, in the provision of Article 1 of the declaration, it is emphasized that all human beings are born free and equal in dignity and rights. They are endowed with reason and consciousness, and therefore they should treat each other in the spirit of brotherhood. Every human being (regardless of origin, age, status or other diversity) in the sense of Article 2 of the Declaration belongs to all the rights and freedoms that are right here and established, therefore, in this Declaration, without any differences in terms of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other circumstances. After the initial principles of equality, freedom and equality among people, follows Article 3 of the declaration, which reads: "Everyone has the right to life, liberty and personal security". In this way, the protection of:

- a) life,
- b) freedom and
- c) personal safety was placed first.

Another universal international document of importance for the protection of the right to life is the International Covenant on Civil and Political Rights<sup>4</sup>. This pact, in the third part, guarantees the inviolability of basic human (political and civil) rights. Article 6 of the Pact guarantees that every human being has the right to life. This right must be protected by law. At the same time, no one can be arbitrarily deprived of life. This means, that in the case of arbitrary, therefore illegal deprivation of life of another person, there is a criminal offense, which must be prescribed by the national criminal law. At the same time, such a person must be sentenced by the competent state authority. In countries where the death penalty has not been abolished (in the system of criminal sanctions), the death sentence can be pronounced only exceptionally and only exceptionally for the most serious crimes, in accordance with the legislation in force at the time the crime was committed and which is not contrary to the provisions of this Covenant, nor to the Convention on the Prevention and Punishment of the Crime of Genocide. This most severe (capital) punishment can be applied to the perpetrator of the most serious criminal act (crime) only on the basis of a final (legally binding) judgment issued by the competent court.

In addition to universal international documents for the protection of human rights and freedoms in Serbia, the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>5</sup> with the amendments provided for in Protocols 11 and 14 and Protocols 1, 4, 6, 7, 12 and 13 is of particular importance. This European Convention in Article 1 establishes the obligation to respect human rights. Namely, the High Contracting Parties guarantee everyone within their jurisdiction the rights and freedoms specified in Part One of this Convention. The first part of the convention is entitled: "Rights and freedoms". In this part, the right to life is guaranteed in the first place (Article 2). According to this decision, the right to life of every person is protected by law. Namely, no one can be intentionally deprived of life, except during the execution of the court's verdict by which he was convicted of a crime for which this punishment is prescribed by law. This means that any unlawful and intentional taking of another person's life, according to national legislation, is a criminal offense for which certain types and measures of punishment are prescribed. At the same time, the Convention

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<sup>4</sup> Official Gazette of the SFRY, International Agreements no. 7/71 and 4/2001.

<sup>5</sup> Official Gazette of Serbia and Montenegro no. 9/2003, 5/2005 and 7/2005.

states, in which cases the illegality of taking the life of another is excluded (in which case there is no crime of murder).

On the basis of universal and regional international standards, all national legislations establish a system of protection of human rights and freedoms in accordance with their interests and needs, but also in accordance with traditions, customs, state of morals etc. In any case, the basic, fundamental guarantee of human rights is provided by the constitution as the highest legal act of the state. And enhanced and ultimate (as the last and absent guarantee means) legal protection of human rights (and freedoms) is provided by the provisions of criminal (and other criminal, primarily misdemeanor) legislation. This means that an attack, violation or endangerment of human rights is illegal and punishable by law (and other legal regulations). On the other hand, such actions appear as unconstitutional activities since they violate, injure or threaten the system of human rights guaranteed and guaranteed in constitutional acts. Within the framework of basic constitutional solutions, the protection of the right to life (which has the nature of a constitutional principle) stands out in the first place.

Article 1 of the Constitution of the Republic of Serbia<sup>6</sup> states that Serbia is a country based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and belonging to European principles and values. The second part of the Constitution is entitled: "Human and minority rights and freedoms". Pursuant to Article 18 of the Constitution, human and minority rights guaranteed by the Constitution are directly applicable. The Constitution guarantees, and as such, directly applies human and minority rights guaranteed by generally accepted rules of international law, confirmed by international treaties and laws. Article 24 of the Constitution of Serbia is entitled: "Right to life". Human life is inviolable. There is no death penalty in the Republic of Serbia. Cloning of human beings is prohibited. The inviolability of physical and psychological integrity is a constitutional principle from Article 25 of the Constitution. According to this solution, physical and psychological integrity is inviolable.

### III. Characteristics of criminal law protection of life in Serbia

In the Criminal Code<sup>7</sup> of the Republic of Serbia, the following are systematized: "Criminal offenses against life and body" in the first item in chapter thirteen<sup>8</sup>. Thus, life and body are determined as the most important human and social values. From the name of this chapter results that the object of protection of these criminal acts is defined as a dual set of values. These are:

- a) life (or the right to life); and
- b) body/physical integrity/ integrity of the body (physical and psychological constitution of a person). One of the most important natural, fundamental, general civilizational, universal human rights is the right to life. It is the basis and condition for the existence of all other human rights and freedoms and belongs to the most important, not only personal, but also general social goods.

<sup>6</sup> Official Gazette of the Republic of Serbia no. 98/2006.

<sup>7</sup> Official Gazette of the Republic of Serbia no: 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

<sup>8</sup> Jovašević, D., *Criminal code. Special part*, Belgrade, Dossier, pp. 12-15.

Life and physical integrity have been the object of criminal protection since ancient times, but this protection was not complete, nor was it equal for all members of society. Criminal acts of injury or violation of life or body are called natural, real, classic or general (atavistic) criminal acts, in contrast/as opposed to social, legal (evolutionary) or political criminal acts, which differ in terms of punishment and characteristics among individual countries and in particular/certain historical periods.

The object of protection in these criminal acts is man as a living human being, i.e. his life. This personal, that is, social good is protected well from the moment a person is born until the moment of his/her death. And at the same time, it should be pointed out that there are several other criminal acts that are directed against life or bodily/physical integrity, but with a simultaneous attack on other goods such as: people's health; living environment; general safety of people and property; public transport safety; humanity and other goods protected by international law etc. Unlike crimes against life and body, these other crimes are not solely, exclusively or primarily directed against life and body. Protection of life and bodily/physical integrity represents a social function, and therefore it does not depend on the will of the individual. This means that the consent of the injured person is irrelevant to the existence of these criminal acts. On the other hand, these criminal acts are always committed against another natural person (and not against oneself).

The ultimate/basic crime against human life is murder. It is provided in Article 113 of the CC. The act consists in the unlawful deprivation of life of another person with intent, where there are no special circumstances that make it difficult one or an easy one. The execution action is determined according to the consequence, since this is a consequential disposition. Thus, any activity of doing or not doing, psychological or physical activity, which directly or indirectly causes a consequence – the death of another person – is considered an action. These can be various activities that are suitable or sufficient to cause the death of another person. Murder can be committed by various acts of action and omission. Failure to act can cause the death of another person in cases where there is a duty to act to prevent death. Acting activities are diverse and can be performed in various ways and by various means, indirectly or directly.

Considering the way activity is carried out, murder can be carried out by direct, indirect, physical and psychological action. It is essential for its existence that a consequence is caused as a result of the action taken. It manifests itself/It occurs as an injury in the form of a death of a person. For the existence of murder, it is necessary that the act of execution was undertaken illegally, so this offense does not exist if the loss of life occurred in necessary defence, last resort, performance of duty in public and state security affairs or when the regulations of the service allow or require it.

The perpetrator of the act can be any person, and in terms of guilt, intent is required<sup>9</sup>. A prison sentence of five to fifteen years is prescribed for this crime.

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<sup>9</sup> The intention of the accused during the execution of the murder was aimed at depriving his life, which can be concluded from his behavior on the disputed occasion (judgment of the Supreme Court of Serbia Kž. 608/2003); The accused acted with possible intent because he was aware that by stabbing a vital part of the victim's body, he could deprive him of his life, so he agreed to it (judgment of the Supreme Court of Serbia Kž. 649/2003); The existence of direct intent on the part of the accused cannot be questioned when he inflicted six stab wounds on the injured party with a knife. in the area of the abdomen and chest, despite the fact that he tried to stop the injured person's bleeding after a critical event (judgment of the Supreme Court of Serbia Kž. 618/2004).

Qualified (aggravated) murder (Article 114 CC) exists when premeditated murder is committed in such a way, under such circumstances, for such motives or against such a person that gives it a greater degree of severity and danger for which the law prescribes a heavier punishment. The Serbian Code distinguishes several forms of aggravated murder. These are murder according to:

- a) the method of execution;
- b) the motives of the perpetrator;
- c) the circumstances of the execution and the consequences; and
- d) the nature of the passive subject. When the actions of the perpetrator acquire several qualifying circumstances of murder, some of which remained in the attempt, the court is obliged to include in the legal qualification, in addition to entering qualified forms of the crime, that some of them remained in the attempt<sup>10</sup>.

After the amendment from 2019<sup>11</sup>, as a special form of this part (paragraph 2), the punishable preparation for the commission of aggravated murder, in any form of manifestation, is foreseen. Thus, according to this legal provision, the act of the perpetrator by which he/she acquires or equips the means for the execution of the criminal offense of capital murder or removes obstacles to its execution, or agrees with others, plans or organizes its execution, or any other action that creates the conditions for its immediate execution, is punishable. For this crime, punishable preparatory actions, a prison sentence of one to five years is prescribed.

In this paper, we will analyze a serious murder that is carried out of a special kind of motive of the perpetrator – from low/basic motive.

#### IV. Instigation/Motive of the Perpetrator as an Element of the Crime of Murder

In legal theory, the understanding is accepted that human behaviour aimed at the execution of a criminal offense provided for in the law is most often motivated, caused by a special type of motivation (intention, motive) of the perpetrator. That is why it is necessary to point out the concept and characteristics of motive in criminal law theory and practice.

Namely, motive represents a special subjective, psychological characteristic of criminal acts. This is a circumstance that is subject, above all, to ethical evaluation<sup>12</sup>. It also occurs/appears in criminal law as a circumstance that is important for sentencing. Although no motivation (or motive) fully justifies the commission of any criminal act, it can, most often, explain the perpetrator's reasons for undertaking the act of committing a specific criminal act<sup>13</sup>.

In legal theory, one can find such understandings according to which the concept of motivation is equated with the concept of motive<sup>14</sup>. According to these understandings, motive explains the reasons for which the perpetrator committed a criminal act, thus

<sup>10</sup> Judgment of the Supreme Court of Serbia Kž. 10/98.

<sup>11</sup> Official Gazette of the Republic of Serbia no. 35/2019.

<sup>12</sup> Grozdanić, V., Škorić, M., *Punishing law*, Opći part, Rijeka, Law Faculty, 2009, p. 117.

<sup>13</sup> Babić, M., Marković, I., Krivično Law. General part, (*Criminal Law. General Part*), Spa Luka, Law Faculty, 2008, p. 406.

<sup>14</sup> Mrvić Petrović, N., *Criminal law*, Belgrade, Službeni glasnik, 2005, p. 153.

indicating the personality of the perpetrator of such a crime<sup>15</sup>. Motive is considered to be the motivation or reason for which a certain criminal offense was committed. P. Novoselec also equates motivation and motive, who points out that the motivations or motives for which the crime was committed affect the degree of guilty<sup>16</sup>. A similar understanding is taken by Z. Stojanović according to which motivations (motives) can be evaluated ethically, which is important for determining the punishment or for the legal qualification of the criminal act. In doing so, he points out that there are opinions according to which motives should be evaluated in relation to the degree of guilt of the perpetrator, starting from the fact that the degree of guilt is greater the more negative the motive of the perpetrator and vice versa<sup>17</sup>.

Those authors who consider incitement/motivation and motive as synonyms want to especially emphasize the motivation of the perpetrator to commit the crime<sup>18</sup>. Motivation represents an internal incentive that is a condition for action, for behavior of a person. It is the result of striving to satisfy certain needs, some of which are primary, fundamental and existential, and some of which only satisfy the existence of social-psychological balance<sup>19</sup>. Motivation thus represents the inner psychic force that drives human behavior. No motive justifies the commission of a criminal act, but it is not devoid of any criminal law significance, especially since the personality of the perpetrator is often manifested through it<sup>20</sup>.

Motive is the internal driver of every decision of a person and his/her action by which decision made earlier is realized. It influences the direction of action towards the achievement or realization of a given/set goal and is at the basis of every targeted and intentional action. In the theory of criminal law, there are also such understandings according to which motive is a psychological phenomenon that develops from stimuli and psychological properties of the perpetrator and as such, causes voluntary activity.

Some authors, on the other hand, insist/believe that the motive or motivation reveals the drivers of a person's decision to commit a criminal act<sup>21</sup>. Thus, the motive<sup>22</sup> represents the driving force for the determination of the perpetrator to commit the murder. Those factors play a significant role not only in assessing the degree of guilt of the perpetrator, but also in the legal qualification of the act, and thus in the decision on punishment. Motive means a representation of something that produces a decision of the will to do something in the subject. From the criminal law point of view, a motive is a representation of a consequence or something else relevant under criminal law that had contributed to the perpetrator's decision to undertake the act of execution. The Motive or excitement reveals the initiators of the decision to commit the criminal act<sup>23</sup>.

<sup>15</sup> Petrović, B., Jovašević, D., *Krivično right BIH (Criminal Law BIH). General part*, Sarajevo, Law Faculty, 2005, p. 156.

<sup>16</sup> Novoselec, P., *General Part Criminal Law*, Zagreb, Pravni Fakultet 2004, p. 401.

<sup>17</sup> Stojanović, Z., *Commentary on the Criminal Code of the Federal Republic of Yugoslavia*, Belgrade, Službeni list, 2002, p. 78.

<sup>18</sup> Stojanović, Z., *Krivično Law. General part (Criminal Law. General part)*, Belgrade, Pravna book, 2005, p. 281.

<sup>19</sup> Horvatić, Ž., *Criminal Law. General Section*, Zagreb, Faculty of Law, 2003, pp. 186-187.

<sup>20</sup> Lazarević, Lj., Vučković, B., Vučković, V., *Commentary Crooked leg of the code Black Gore*, Cetinje, Obod, 2004, pp. 127-128.

<sup>21</sup> Radovanović, M., *Criminal law. General part*, Belgrade, Contemporary administration, 1975, p. 185.

<sup>22</sup> Simić, I., Petrović, M., *The Criminal Code of the Republic of Serbia. Practical Application*, Belgrade, Official Gazette, 2002, p. 30.

<sup>23</sup> Radovanović, M., Đorđević, M., *Criminal law. Special part*, Belgrade, Savremena administracija, 1977, p. 185.

Some authors<sup>24</sup> believe that the motive, that is, motivations reveal the perpetrator's intimate motives that lead to his/her decision to commit a crime. When motive is an element of nature of a criminal offense, as in the case of aggravated murder, then it is taken into account as such when determining whether the perpetrator's behavior contains elements of the said criminal offense or not.

In legal theory<sup>25</sup> there are opinions that motives should be evaluated in relation to the degree of guilt, starting from the fact that the degree is higher if the motive is more negative and vice versa. Although there are certain arguments for such an opinion, based on a normative understanding of guilt, it has no basis in the legal solution.

Intent is the highest degree of conscious and voluntary directing of an action towards the realization of the consequences of a criminal act. That's why it presupposes the existence of the direct intention of the perpetrator. In fact, the intention is to motivate the perpetrator's actions with his/her idea of the consequence or something else that is relevant under criminal law<sup>26</sup>. In certain cases, the intention reflects not only the directing of the action to the realization of the consequence that is the immediate trigger of the execution of the action, but also to the realization of some further consequence that acts as an indirect, further motivated goal. Intention in criminal law can thus appear in two forms:

- a) for some criminal acts, the intention refers to the realization of the immediately following act, so it is a constitutive element of the being of the criminal act; and
- b) the intention represents a special characteristic for "stunted" two-act criminal acts (that are criminal offenses where their first part is criminalized as an independent criminal offense if it was committed for the purpose of achieving a further intention).

In the case of some premeditated crimes, the existence of a special intention of the perpetrator is also required. In that case, the intention is understood as a representation of some incidental, secondary, further goal that the perpetrator wants to achieve by committing a criminal act. This means that the intention exceeds the intent; because the consciousness and will of the perpetrator include some further goals that the perpetrator seeks/strive to achieve by the act of execution<sup>27</sup>. Actually the goal is realized by the occurrence of the consequences of the criminal act, which does not have to be the case with intent.

## V. Low Motive/Basic Motivation of the Perpetrator of Serious/Aggravated Murder

In the scope of motivations as internal psychological characteristics of the perpetrator's personality that motivate him to undertake the act of depriving the life of another person, special importance, nature, characteristics for the legal qualification of the act have "low" motivations. Thus, the criminal offense of aggravated murder (Article 114, item 5 of the CC of Serbia), in addition to the basic, constitutive elements of being that make up the legal concept and content of every (ordinary) murder, is

<sup>24</sup> Čejović, B., *Criminal law. General part*, Belgrade, Službeni List, 2002, p. 249.

<sup>25</sup> Stojanović, Z., *Criminal Law. General Part*, Belgrade, Faculty of Law, 2013, p. 319.

<sup>26</sup> Jovašević, D., *Criminal law. General part*, Belgrade, Dosier, 2018, p. 184.

<sup>27</sup> Tomić, Z., *Criminal law II. Special part*, Sarajevo, 2007, Faculty of Law, p. 81.

characterized by a special type of qualifying circumstance in the form of motivation or motive of the perpetrator. Thus, this criminal offense consists of:

- a) the act of execution – deprivation of the life of another is undertaken with a special type of motive,
- b) the motive has a special significance, nature, character and effect that motivates the perpetrator to undertake the act of execution,
- c) the motive of the perpetrator exists in the time of execution or before the execution of the criminal act and
- d) motive determines the form of guilt of the perpetrator (direct intent).

This motivation of the perpetrator of the murder as a qualifying circumstance gives the committed act a more dangerous character and greater weight<sup>28</sup>. That is, here the murder is accompanied by a special qualifying circumstance that constitutes a supplementary element that makes it more difficult, which increases the guilt of the perpetrator, as well as the degree of wrongdoing<sup>29</sup>.

By determining aggravated murder with a special type of "low" (defamatory, dishonorable) motive, the legislator actually, in one general clause, summarized a large number of different motives on the part of the perpetrator with which he undertakes the act of taking life, which do not represent "reckless revenge" or "self-interest" (item 5, article 114 of the CC of Serbia). At the same time, the Criminal Code does not determine what "low" motivations are and what they consist of. They are defined in legal theory, that is, in judicial practice.

The concept of low motivations should be defined with regard to the moral norms of behavior in a certain society. Thus, it is considered that low motivations are contrary to those norms, because they are condemned by the majority of members of the social community. Such motivations indicate a weak character personality, unscrupulousness, greed. Such motivations are<sup>30</sup>: hatred, envy, malice, greed, malice, intolerance. As a form of aggravated murder with low motives, it is considered, for example, taking the life of a person in order to achieve an immaterial benefit, murder due to hatred, racial, national or religious intolerance, murder to satisfy the sexual urge or to eliminate a rival. In each specific case, it should be assessed in the context of the other circumstances under which the specific criminal offense was committed, whether or not it is a low motive for the commission of the offense.

Low motivations are, therefore, motivations that are morally negatively valued or evaluated. It is necessary that some motivation is high on the scale of negative moral evaluation in order to be able to evaluate it as a low motivation in terms of qualifying circumstances for this criminal act<sup>31</sup>. It is difficult to say where that limit is, so the application of this norm (which is contained in the general clause) largely depends on the position of judicial practice. This is about murder from low motives, which should cover all other cases of murder that are committed from amoral motives, except those expressly stated by law (out of self-interest or wanton revenge). Which motivations are considered low is evaluated in each specific case considering their relation to the prevailing social-ethical norms, because they are condemned by the majority of people

<sup>28</sup> Đorđević, M., Đorđević, Đ., *Criminal Law*, Belgrade, Projuris, 2020, p. 131.

<sup>29</sup> Đorđević, Đ. Kolarić, D., *Criminal Law. Special Part*, Belgrade, Criminal and Police University, 2020, p. 11.

<sup>30</sup> Lazarević, Lj., *Criminal law. Special part*, Belgrade, Savremena administracija, 1993, pp. 83-84.

<sup>31</sup> Stojanović, Z., Perić, O., *Commentary on the Criminal Code of the Republic of Serbia and the Criminal Code of the Republic of Montenegro with explanations*, Belgrade, Službeni List, 1996, p. 75.

in the society. Low motivations express the weak character of the perpetrator of the criminal act, his/her amorality and unscrupulousness<sup>32</sup>. In each specific case, it should be assessed in the context of the other circumstances under which the criminal offense was committed, whether or not it is a low motive for the commission of the offense.

Such low motivations represent different types of "other" motivations, except self-interest or wanton revenge, which are considered low from an ethical point of view (envy, hatred, national or religious intolerance, sexual extravagance)<sup>33</sup>, i.e. motivations that are considered low from a moral and ethical point of view. The scale of low motivations is very diverse and motley, and it is impossible to precisely enumerate all these motivations, which in the context of other circumstances deserve the epithet of low motivations<sup>34</sup>. These are motives that are in direct opposition to the moral principles of a society, and therefore always represent absolutely low motives regardless of the context in which they appear, unlike other low motives that are subject to the court's assessment in any case. The concept of low motives, these authors further consider, is a normative, socially ethically determined concept. This stems from the fact that the legislator did not determine its essence and meaning, so in legal theory, when determining this term, one starts from the ruling social-ethical and moral views and attitudes of the given society. Based on this criterion, low motivations are those motivations that are in sharp contrast to the prevailing generally accepted moral norms and attitudes and that are condemned by the majority of members of the social community. All of them are characterized by a particularly high degree of moral reprehensibility, social and ethical reprehensibility and contempt.

These are extremely negative motivations that make the perpetrator's behavior inhuman, dishonorable and unworthy of a person, and him/her a characterless and unscrupulous personality. A murder with low motives is considered a murder in which the perpetrator is motivated by such motives that, even according to the strictest criteria, cannot be worthy of a man, motives that indicate the moral lowness of the perpetrator and that cause severe moral rebuke from the social environment. Whether it is low motivation is<sup>35</sup> decided by the court in each specific case, taking into account the quality, i.e. the specific form of low motivation and the relevant norms of the prevailing, general social morality. Therefore, the starting point here is the ruling social-ethical and moral views and attitudes. Low motives are a concept that is regulated by criminal legislation, but socially and ethically determined. In this way, the legislator includes all other cases of murders that are committed out of amoral aspiration and low passion and to subject the devalued and egoistic personality of the perpetrator to a proportionate sanction. Those motivations are on the highest scale of the scale of negative social and moral evaluation.

Other low motivations represent motivations as qualifying circumstances of murder that are determined on the basis of the morals of a specific society, such as: hatred, envy, malice, satisfaction of vanity or hatred caused by excessive jealousy etc.<sup>36</sup>, i.e. motivations that require severe moral rebuke of the perpetrator, while for

<sup>32</sup> Lazarević, Lj., Vučković, B., Vučković, V., *Commentary on the Criminal Code of Montenegro*, Cetinje, Obod, 2004, pp. 355-356.

<sup>33</sup> Đorđević, Đ., *Criminal Law. Special Part*, Belgrad, Criminal and Police University, 2014, p. 13.

<sup>34</sup> Babić, M., Marković, I., *Criminal Law. Special Section*, Banja Luka, Faculty of Law, 2008, p. 42.

<sup>35</sup> Đorđević, Đ., Kolarić, D., *Criminal Law. Special Part*, Belgrade, Criminal and Police University, 2020, p. 20.

<sup>36</sup> Mrvić Petrović, N., *Criminal Law*, Belgrade, Official Gazette, 2005, p. 234.

which they do not represent any of the motivations related to revenge, for example, murder in order to eliminate competition at work, competition or for the sake of maintaining a love relationship<sup>37</sup>. These are, therefore, the motives for committing murder, which, even by the strictest criteria, cannot be worthy of a human being and are in contradiction with social understandings of human morality. Such motivations express the moral inferiority of the perpetrator. Therefore, in order for motives to be considered low, it is necessary to manifest such a goal of the perpetrator that can be treated objectively and subjectively in the sense of lowness<sup>38</sup>.

In legal theory and judicial practice, the following forms of expression of low motivations appear: jealousy between spouses or common-law partners, hatred, malice, satisfaction of sexual needs, for the purpose of achieving some benefit, but which is not of a material nature, national hatred, chauvinism, maintaining love relationships with a woman killed, envy, greed, malice, intolerance, marital (extramarital) infidelity (adultery) and the like/similar.

## VI. Low motives as an element of aggravated murder in comparative criminal law

### 6.1. The Law of the States of the Region

Within the framework of the countries that were created after the breakup of the former SFR Yugoslavia, the analysis of criminal legislation shows numerous forms of manifestation of the criminal offense of aggravated murder according to the motives of the perpetrator.

Today, in Bosnia and Herzegovina there is a complex criminal justice system consisting of four criminal laws. These are:

- a) the Criminal Code of Bosnia and Herzegovina (CC BiH)<sup>39</sup>;
- b) the Criminal Code of the Federation of Bosnia and Herzegovina (CC FBiH)<sup>40</sup>;
- c) the Criminal Code of the Brčko District of Bosnia and Herzegovina (CC BD BiH)<sup>41</sup>; and d) the Criminal Code of the Republic of Srpska (CC RS)<sup>42</sup>.

Only the last three laws in the corresponding chapter of the special act, within the criminal offenses against life and body, provide for criminal offenses of murder.

The Criminal Code of the Federation of Bosnia and Herzegovina<sup>43</sup>, Chapter Sixteen, Article 166, provides for the basic and serious crime of murder. Ordinary/basic murder (paragraph 1) consists in the killing of another person, for which the crime is

<sup>37</sup> Pavišić, B., Grozdanić, V., Veić, P., *Commentary on the Penal Code*, Zagreb, Narodne novine, 2007, p. 313.

<sup>38</sup> Simić, I., Petrović, M., *Criminal Law of the Republic of Serbia*, Practical Application, Belgrade, Službeni glasnik, 2002, p. 35.

<sup>39</sup> Official Gazette of Bosnia and Herzegovina no. 3/2003, 32/2003, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 32/2007, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018 and 46/2021.

<sup>40</sup> Official Gazette of the Federation of Bosnia and Herzegovina no. 36/2003, 37/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014 and 75/2017.

<sup>41</sup> Official Gazette of the Brčko District of Bosnia and Herzegovina no. 19/2020.

<sup>42</sup> Official Gazette of the Republic of Srpska no. 64/2017, 104/2018 and 15/2021.

<sup>43</sup> Simović, M., Todorović, Lj., Simović, V., *Criminal law in Bosnia and Herzegovina*, Sarajevo, Fineks, 2010, p. 190.

punishable by imprisonment for at least five years. Aggravated murder (paragraph 2) occurs in several alternative forms of manifestation. Thus, according to the motives, aggravated murder, for which a prison sentence of at least ten years or a long-term prison sentence is prescribed, occurs as<sup>44</sup>:

- a) murder out of hatred (item c). This law, in Article 2, Item 11, provides that a hate crime is any criminal offense committed because of another person's racial affiliation, skin color, religious belief, national or ethnic origin, language, disability, gender, sexual orientation or gender identity. Such action will be taken as an aggravating circumstance if this law does not expressly prescribe a more severe punishment for a qualified form of a criminal offense committed out of hatred and
- b) murder for self-interest, for the purpose of committing or concealing some other criminal offense, out of wanton revenge or from other base motives (point d).

Article 163 of the Criminal Code of the Brčko District of Bosnia and Herzegovina (chapter sixteen) has the same legal description of the crime of murder (aggravated murder). Namely, according to this legal solution, aggravated murder according to the motives of the perpetrator (paragraph 2) occurs in the following two forms of manifestation. These are<sup>45</sup>:

- a) murder out of hatred (item 3). In Article 2, point 42 of the CC of the Brčko District of BiH, hatred is defined as follows. Thus, according to this regulation, hatred is an incitement to commit a criminal offense, prescribed by this law, which is wholly or partially based on differences based on real or assumed ethnic or national origin, language or script, religious beliefs, race, skin color, gender, sexual orientation, political or other belief, social origin, social position, age, health status or other characteristics, or due to being brought into contact with persons who have any of the aforementioned different characteristics; and
- b) murder for self-interest, for the purpose of committing or concealing some other criminal act, out of wanton revenge or other base motives (item 4). This criminal offense is also punishable by imprisonment for at least ten years or long-term imprisonment.

Finally, the Criminal Code of the Republic of Srpska foresees the system of criminal offenses of murder in a different way, unlike the previous two laws. In the first place, ordinary and aggravated murders are two independent criminal acts, provided for in two separate legal provisions, in chapter twelve. Ordinary murder<sup>46</sup> (Article 124 of the CC) consists in taking the life of another person. A prison sentence of five to twenty years is prescribed for this crime. However, if this offense was committed under particularly extenuating circumstances (paragraph 2), then the perpetrator may be sentenced to imprisonment for a period of one to eight years.

Article 125 of the Criminal Code of the Republic of Srpska<sup>47</sup> provides for aggravated murder, for which a prison sentence of at least ten years or life imprisonment is

<sup>44</sup> Petrović, B., Jovašević, D., Ferhatović, A., *Criminal Law 2*, Sarajevo, Law Faculty, 2016, pp. 316-318.

<sup>45</sup> Simović, M., Simović, V., *Criminal law Brcko district Bosnia and Herzegovina. Special Part*, Laktaši; Grafeks, 2021, pp. 7-8.

<sup>46</sup> Babić, M., Marković, *Criminal law. Special Part*, Banja Luka, Law Faculty, 2008, pp. 37-41.

<sup>47</sup> Jovašević, D., Mitrović, Lj., Ikanović, V., *Commentary of the Criminal Code of Republic Srpska*, Banja Luka Official gazette, 2021, pp. 263-268.

prescribed. According to the motivations and motives of the perpetrator, this criminal act occurs as deprivation of life for self-interest, for the purpose of committing or concealing another criminal act, out of wanton revenge, hatred or other particularly low motives. (Item 2.). In addition, in Article 123, point 21, the Code of Criminal Procedure stipulates that a hate crime is a crime committed in whole or in part due to racial, national or ethnic affiliation, language, religious belief, skin color, gender or sexual orientation, health status or gender identity of a person.

The Criminal Code of North Macedonia<sup>48</sup> in Chapter Fourteen: "Criminal acts against life and body" in Article 123 provides for ordinary (paragraph 1) and aggravated murder (paragraph 2). Ordinary murder consists in taking the life of another person. For this crime, a prison sentence of at least five years is prescribed. Aggravated murder, according to the motives of the perpetrator, for which a prison sentence of at least ten years or life imprisonment is prescribed, exists in the following cases:

- a) deprivation of life for selfish reasons, due to the commission or concealment of another criminal act, out of ruthless (reckless) revenge, out of hatred or from other low motivations (item 4); and
- b) taking life for the purpose of extracting organs, tissues or cells for transplantation.

Criminal Code of Slovenia<sup>49</sup> in Chapter fifteen, under the title: "Criminal offenses against life and body" in article 115, foresees the criminal offense of murder – "Murder". The crime consists in the taking of life ("Whoever takes life from someone"), for which a prison sentence of five to fifteen years is prescribed. Serious murder is a criminal offense under Article 116 of the Criminal Code of Slovenia, for which a prison sentence of at least fifteen years is prescribed. This crime, depending on the motives of the perpetrator, exists in the following cases:

- a) due to a violation of equality (item 3); and
- b) out of selfishness ("out of murderous intent"), self-interest, in order to commit or cover up another criminal offense, out of thoughtless revenge ("out of reckless revenge") or from other low motivations ("from some other low inclinations") (item 4).

Criminal Code of Croatia<sup>50</sup> in Chapter ten under the title: "Criminal offenses against life and body" in article 110, provides for the criminal offense: "Murder". It consists in killing another person. This offense is punishable by at least five years in prison. "Aggravated murder" is a criminal offense under Article 111 of the CC, for which a prison sentence of at least ten years or a long-term prison sentence is prescribed. Among other things, this serious murder, according to the motives of the perpetrator, is characterized by the following types of manifestation. These are<sup>51</sup>:

- a) murder for self-interest, wanton revenge, hatred or other base motives (item 4); and
- b) murder for the purpose of committing or concealing another criminal offense (item 5).

<sup>48</sup> Official Gazette of the Republic of Macedonia no 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 87/2007, 7/2008, 139/2008, 114/2009, 51/ 2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 1 96/2015, 226/2015, 169/2016, 97/2017, 170/2017 and 248/2018.

<sup>49</sup> Official Gazette of the Republic of Slovenia no. 55/2008, 66/2008, 39/2009, 91/2011, 50/2012, 54/2015, 6/2016, 38/2016, 27/2017, 23/2020, 91/2020 and 95 /2021.

<sup>50</sup> Official Gazette of the Republic of Croatia no. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019 and 84/2021.

<sup>51</sup> Turković K., et al., *Commentary Punishing of Law*, Zagreb, Narodne novine, 2013, pp. 163-164.

The Criminal Code of Montenegro<sup>52</sup> in Chapter Fourteen: "Criminal Offenses against Life and Body" in the provision of Article 143 provides for the basic form of murder (deprivation of the life of another person) for which a prison sentence of five to fifteen years is prescribed.

Serious/felony murder (Article 144), for which a prison sentence of at least ten years or a long-term prison sentence is prescribed, according to the motive of the perpetrator, occurs as deprivation of life:

- a) out of self-interest/for selfish reasons;
- b) for the purpose of committing or concealing another criminal act;
- c) out of recklessness revenge; or
- d) from other low motives, without further specifying what these "low" offers are, i.e. what they consist of.

## 6.2. The law of Representative European States

In the continuation of the paper, we will present the characteristics of criminal acts of murder according to the motive of the perpetrator, according to the solutions of the most important European criminal legislation.

Criminal Code of France<sup>53</sup> in a separate part, in Section two entitled: "Attack on a person's personality", in the first chapter: "Attack on a person's life" in two chapters, it foresees criminal acts against life, depending on the form of guilt (guiltiness) of the perpetrator. These are:

- a) the first chapter – "Intentional attack on life" and
- b) the second chapter – "Negligent attack on life". Therefore, in these two chapters, the criminal acts of murder are systematized.

Within the criminal acts of premeditated attack on life (chapter one), three parts are distinguished:

- a) ordinary (premeditated) murder – Article 221-1 of the Criminal Code,
- b) aggravated murder – Art. 221-2 to 221-4. CC and) poisoning (*empoisonnement*) – Article 221-5. CC. Premeditated murder – Article 221-1 of the Criminal Code (*meurtre*) is the intentional causing of the death of another person. This offense is punishable by up to thirty years in prison.

Felony murder or "murder" is prescribed by the Code in three legal articles (Art. 221-2 to 221-4 of the CC) for which the penalty of life imprisonment is prescribed. The Code defines this crime as premeditated murder that was committed under certain circumstances, in a certain way, for certain motives (goals) or against a certain person. Aggravated murder (*meurtre*) with regard to the motive, motive of the perpetrator (Article 221-2 of the Criminal Code) exists when premeditated murder is undertaken with the following goal<sup>54</sup>:

- a) preparation or easier execution of another criminal offense; and
- b) helping the perpetrator of another criminal offense or his accomplices to escape or not to be punished. Here, murder is a necessary condition to remove an obstacle and thus prepare, enable or facilitate the execution of a criminal act, regardless of whether it is another, subsequent, criminal act that is actually committed or

<sup>52</sup> Official Gazette of the Republic of Montenegro no. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 42/2015, 58/2015, 44/2017, 49/2018 and 3/2020.

<sup>53</sup> Penal Code of France, Juillet 2012, Paris, Dalloz, 2013, pp. 61-63.

<sup>54</sup> Golovko, L.V., Krylova, N.E., *Ugolovn yj kodeks Francii (French Criminal Code)*, Sankt Petersburg, Zercalo, 2002, pp. 170-175.

attempted. But its execution must be a motive, the reason for which the perpetrator approaches the execution of the murder. In the second case, the murder is committed in order to enable the perpetrator or accomplices in the commission of another, previously committed, criminal act to escape or otherwise avoid criminal prosecution and punishment, that is, the execution of the imposed sentence.

The Criminal Code of Italy<sup>55</sup> in chapter twelve, in the group of criminal offenses against the person: "Delitti contro la persona", in the chapter: "Criminal offenses against life and body integrity" prescribes several criminal offenses of murder<sup>56</sup>. Article 575 of the CC provides for murder (*L'omicidio*). The offense consists in causing the death of another person. A prison sentence of up to twenty-one years is prescribed for this crime. Article 576 of the Criminal Code prescribes aggravated murder, which is called: "Murder under aggravating circumstances" (*Circostanze aggravanti. Pena dell'ergastolo*). Life imprisonment is prescribed for this crime.

Serious murder in the presence of motive as aggravating circumstances occurs in several forms of manifestation. The first form of aggravated murder (Article 576, paragraph 1 of the CC) exists if the act of committing a criminal offense was undertaken in the presence of one of the aggravating circumstances from Article 61, paragraph 2 of the CC, where the following motives appear:

- a) if the offense was committed for the purpose of concealment of another previously committed criminal act, where it is irrelevant in what capacity the perpetrator of the murder participated in the earlier criminal act, as well as whether that act was discovered and known to the criminal prosecution authorities or not;
- b) if the act was committed in order for the perpetrator to do it for himself or obtained or secured any benefit or other profit from another; and
- c) if the act was committed in order for the perpetrator to avoid responsibility for another previously committed criminal act, regardless of whether his responsibility was determined by the competent judicial authorities or not.

Another form of aggravated murder (Article 576, paragraph 2 of the CC) exists if the act of taking life was undertaken for the following motives:

- a) from low, amoral, dishonorable motives;
- b) in order to commit or cover up another criminal act;
- c) in order to has obtained for himself or another person a benefit that in the specific case does not have to be obtained at all;
- d) in order to avoid responsibility and punishment for another previously committed criminal offense in this way.

The third form of aggravated murder (Article 576, paragraph 3 of the CC) exists if the act of causing the death of another was undertaken in order for the perpetrator of the murder to hide (remains or becomes unavailable to the criminal justice authorities) in order to avoid the imposed prison sentence or arrest due to any previously committed criminal acts, regardless of what kind of criminal act it is and in what capacity the perpetrator of the murder participated in such a criminal act.

In the Criminal Code of the Federal Republic of Germany<sup>57</sup>, in the sixteenth chapter entitled: "Criminal offenses against life", criminal offenses against life and body are

<sup>55</sup> Legge 10, Ottobre 1930, no. 1398, Testo coordinate ed aggiornate del Regio Decreto Legge 20 March 2016, No. 20 and 8 March 2017, no. 24.

<sup>56</sup> *Compendio di Diritto penale, Parte generale e speciale*, Napoli, Simone, 2008, pp. 401-403.

<sup>57</sup> *Strafgesetzbuch – StGB, Deutscher Taschenbuch Verlag (Criminal Code – StGB, German Paperback Publisher)*, Munich, 2012, pp. 113-116.

provided for. Article 211 of the CC provides for aggravated murder (murder or *Mord*). This offense consists in the unlawful deprivation of life of another person with intent, for which the penalty of life imprisonment is prescribed. According to the motives used by the perpetrator during the execution of the act, aggravated murder exists in the following cases:

- a) if the taking of a person's life is a pleasure for the perpetrator (a special type of low, immoral, reckless motivation (*Mordlust*);
- b) if a person is taken to satisfy sexual desires the need, therefore, of low passions, eccentricities (*Geschlechtstrieb*);
- c) if the deprivation of a person's life comes from self-interest (*aus Habgier*) or from other low motives (*aus niedrigen Beweggründen*) and) if the deprivation of another's life is undertaken in order to enable (facilitated) the commission of another criminal offense or to hide its commission.

Ordinary murder (*Totschlag*) is provided for in the provision of Article 212 of the CC in a negative way. This criminal offense exists in all cases that do not constitute serious murder (*ohne Morder zu sein*) or as the Code says: "*Whoever kills a person and is not a murderer within the meaning of Article 211, for this offense, a prison sentence of at least five years is prescribed*".

The Criminal Code of Switzerland<sup>58</sup> in the first chapter of the second part entitled: "Criminal offenses against life and health" in Article 111 provides for ordinary murder – *Totung*<sup>59</sup>. It consists in intentionally taking the life of a man/person (another person). However, this crime exists only if the conditions for the existence of aggravated murder from Article 112 of the CC are not met. Ordinary murder is punishable by imprisonment for at least five years. Serious murder is provided for in Article 112 of the Criminal Code. This offense is punishable by life imprisonment or a prison sentence of at least ten years. This act, among other things, exists if the act of taking the life of another person is undertaken for such motives "which are particularly depraved". Thus, this criminal offense determines a number of qualifying circumstances, among which the particular perversion of the motive or the goal of the commission of the crime, which causes a special condemnation of the society, so that it gives the committed crime a more serious appearance. When there is "special depravity" it is a factual question that the court resolves in each specific case, taking into account the objective circumstances of the committed act and the subjective circumstances of the perpetrator's personality.

The Criminal Code of Russia<sup>60</sup> in the seventh part entitled: "Criminal offenses against the personality", in the sixteenth chapter: "Criminal offenses against life and health" (Offences against life and health) provides for criminal offenses of murder. Ordinary murder (Murder) is provided for in Article 105, paragraph 1 of the CC. It is intentional causing of the death of another person<sup>61</sup>. A prison sentence of six to fifteen years is prescribed for this crime. Article 119 of the CC prescribes a specific criminal act consisting of threatening (announcing, making it appear) to commit murder. This act is called: "Threat of killing or causing severe damage to health". For this crime is

<sup>58</sup> StGB, *Schweizerisches Strafgesetzbuch, Aktuell geltende Fassung* (StGB, Swiss Criminal Code, currently valid version) 2013, 7th Auflage, Zurich, 2013, pp. 77-78.

<sup>59</sup> A.V. Serebrennikova, N. F. Kuznetsova, *Ugolovniy codex Schwejcarii* (Swiss Criminal Code), Moscow, Norma, 2000, pp. 48-49.

<sup>60</sup> *Rossijskaja gazeta* (Russian newspaper) no. 63/1996.

<sup>61</sup> A.I. Rarog, G.A. Esakov, A.I. Chuchaev, V.P. Stepalin, *Criminal Law of Russia. General and Specific Parts*, Lesson Course, Moscow, Prospekt, 2007, pp. 207-214.

alternatively prescribed punishment of restriction of freedom for up to two years, isolation for four to six months or imprisonment for up to two years.

Felony murder or "serious murder" is provided together with ordinary murder in Article 105, paragraph 2 of the CC. For this crime is alternatively prescribed prison sentence in for a period of eight to twenty years, life imprisonment or the death penalty. With regard to the motive of the perpetrator, serious murder exists in the following cases:

- 1) when the murder was committed out of self-interest, for hire or was committed together with robbery, extortion or<sup>62</sup> banditry (item h.). Here, in fact, we are talking about three types of manifestation of this form of serious murder. These are:
  - a) if the deprivation of another person's life occurred out of self-interest;
  - b) if the perpetrator of the murder was hired to commit this criminal act for a specific financial gain; and
  - c) if the intentional deprivation of the life of another person occurred in conjunction with other serious violent property crimes such as: robbery, extortion (racketeering) or banditry, where the force applied to another person with the intention of obtaining illegal property benefit leads to intentional deprivation of the life of another person,
- 2) when the murder was committed for hooligan motives (item z.)<sup>63</sup>. Here, violent, thuggish behavior that attacks (endangers the life or bodily/physical integrity of another person) in a public place appears as a stimulus, an internal driver of the perpetrator to take the action of taking the life of another person – either a person towards whom the perpetrator previously behaved in a hooligan way or another person who accidentally found there (observer, passer-by) or persons who tried to prevent the perpetrator from hooligan behavior;
- 3) when the murder was committed with the intention of concealing another criminal offense or to facilitate its commission or was committed together with rape or violent acts of sexual character (item i.);
- 4) when the murder was committed for the motive of national, racial or religious intolerance or hatred or blood feud (item j.); and
- 5) when the murder was committed with the intention of using the victim's organs or tissues (item k.). Here too, the motivation of the perpetrator is a qualifying circumstance. This motive is manifested in the form of the intention to deprive another person of his/her life in order to use his/her organs or tissues for transplantation (transplantation) contrary to legal regulations, whether these organs and tissues are used for him/her or for another, with or without property or other uses.

## VII. Conclusion

From the most ancient times, until today, all criminal legislations, among the criminal acts that injure or destroy human life as the most important human and social value, recognize different criminal acts of murder. The importance of these

<sup>62</sup> A.I. Rarog, *Ugolovnoe pravo Rossii. Chast osobennaya (Criminal Law of Russia. Special Part)*, Moscow, Garant, 2008, pp. 40-41.

<sup>63</sup> I. Fedosova, T. Skuratova, *Criminal Code of the Russian Federation*, Moscow, Norma, 2005, pp. 76-78.

criminal acts came to the fore considering that a series of universal or regional international documents adopted in the second half of the 20th century guarantee the "inviolability of the protection of life" or the right to life as one of the most important human rights. This importance is also indicated by the provisions of the constitutions of numerous countries, which include human life among the specially protected social values of the highest level.

Regardless of such international or national regulations on human rights, i.e. their comprehensive protection, even today there are cases of unlawful (illegal) deprivation of life (causing death) of another person as a criminal offense in the system of general, classic, conventional criminality. There are different forms of manifestation of the crime of murder. These are:

- a) ordinary murder,
- b) serious or qualified murders and
- c) easy or privileged murders for which a mild punishment is prescribed – a prison sentence of up to five years.

Modern/Contemporary criminal legislation distinguishes several forms/types of serious/qualified murders according to various criteria, among which are the motivations (intentions) of the perpetrator. Among the motives of the perpetrator as internal instigators of activity, there are low, defamatory, dishonorable motives according to the understanding of morality, legal tradition, social understandings etc. In those cases, the act of taking the life of another person is preceded by the motive (decision, goal, intention) of the perpetrator, which guides or directs him/her to perform such an act. Various forms/species of manifestation of the perpetrator's "low" motivations are known not only in the legislation of Serbia and the countries of the region, but also in the legislation of other European countries.

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