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PREFACE

Dear readers,

In front of you is the Thematic Proceedings of the International Scientific Conference "Archibald Reiss Days 2013", which was organized by the Academy of Criminalistic and Police Studies, with the support of the Ministry of Interior and the Ministry of Education, Science and Technological Development of the Republic of Serbia, and held at the Academy of Criminalistic and Police Studies.

The International Scientific Conference "Archibald Reiss Days", is held for the third time in a row, in memory of one of the founders and directors of the first modern police high school in Serbia, Dr. Rodolphe Archibald Reiss, after whom the Conference was named.

The Thematic Conference Proceedings contains 138 papers written by eminent scholars in the field of law, security, criminalistics, police studies, forensics, medicine, as well as members of national security system participating in education of the police, army and other security services from Russia, Ukraine, Belarus, China, Poland, Slovakia, Czech Republic, Hungary, Slovenia, Bosnia and Herzegovina, Montenegro, Republic of Srpska and Serbia. Each paper has been reviewed by two competent international reviewers, and the Thematic Conference Proceedings in whole has been reviewed by five international reviewers.

The papers published in the Thematic Conference Proceedings contain the overview of contemporary trends in the development of police educational system, development of the police and contemporary security, criminalistics and forensics, as well as with the analysis of the rule of law activities in crime suppression, situation and trends in the above-mentioned fields, and suggestions on how to systematically deal with these issues. The Thematic Conference Proceedings represents a significant contribution to the existing fund of scientific and expert knowledge in the field of criminalistic, security, penal and legal theory and practice. Publication of this Conference Proceedings contributes to improving of mutual cooperation between educational, scientific and expert institutions at national, regional and international level.

Finally, we wish to extend our gratitude to all authors and participants at the Conference, as well as to reviewers of the Proceedings, Mr Vladimir Tretyakov, PhD, Mr Mykhail Cymbalyuk, PhD, Mr Wang Shiquan, PhD, Mrs Snežana Nikodinovska-Stefanovska, PhD and Mr Vid Jakulin, LL.D. We also wish to thank the Ministry of Interior of the Republic of Serbia on its support in organization and realization of the Conference, as well as the Ministry of Education, Science and Technological Development of the Republic of Serbia, for its financial support in publishing of the Thematic Conference Proceedings

We sincerely hope that the "Archibald Reiss Days 2013" will become a traditional, internationally renowned scientific conference.

Belgrade, March 2013

Programme and Organizing Committees

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TOPIC IV
CRIME AND PENAL AND LEGAL RESPONSE

UDC: 343.85(497.11)
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CRIME PREVENTION AND SOME ISSUES OF SUBSTANTIVE CRIMINAL LAW OF THE REPUBLIC OF SERBIA

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Abstract: The paper analyzes certain solutions given in the criminal legislation of the Republic of Serbia resulting from the amendments and modifications of the Penal Code of Criminal Law enacted in December 2012.[1] The first part of the paper which includes introductory remarks focuses on the contemporary issues dealing with the harmonization of the substantive criminal law with European standards. It is of great importance for Serbia as the country which is trying to become a full member of the European Union, to follow the activities of the EU and its members in the field of crime prevention. The most useful thing for all countries, including Serbia, is to revise certain incriminations in criminal legislations covering the issues which international agreements consider important as to be included in national criminal laws. The second part of the paper analyzes the institute and other legal solutions of the substantive criminal law regarding the criminalization of terrorism. Daily we witness terrorist incidents escalating all over the world. In the past few decades the international community has been intensively trying to create efficient mechanisms for the prosecution and punishment of offenders committing serious crimes such as terrorist acts. Countries are more and more focused on the harmonization of national criminal legislations with international documents with the aim of unifying the incriminations of terrorism and relevant criminal acts. In spite of increasing readiness and consensus among countries with regard to the reform and further development of legal solutions, this process has been facing a number of challenges. The third part of the paper deals with the issues concerning the harmonization of the Penal Code of the Republic of Serbia with the Council of Europe Criminal Law Convention on Corruption and the United Nations Convention against Corruption. The fourth part offers a more thorough analysis of the legal regulation of binding aggravating circumstances for hate crimes. Taking into account the relevant international documents, the aim of the new provision of Article 54a of the Penal Code is to provide more severe penalties and thus strengthen criminal law protection of extremely vulnerable social groups whose members are victims of various hate crimes. The conclusion of the paper includes the author's suggestions for viable legal solutions *de lege ferenda.*

Keywords: criminal legislation, criminal law, Penal Code, corruption, terrorism, hate crimes, organized crime, international standards.

INTRODUCTION

Globalization, as a dynamic economic, cultural political and legal process has strong influence on national legislations for numerous reasons. The comprehension of international intention to punish certain criminal offences such as offences provided by the Rome Statute as well as terrorism, corruption, hate crimes, human trafficking, organized crime, etc. is grounded on mutual interests closely connected with the process of globalization. A surge in criminal offences is the result of the growing mobility of both people and goods as well as the gradual erasure of state borders, especially in Europe. Profit is considered to be the paramount goal of capitalism in front of which all moral

1 This paper is the result of the research on the following projects: "Violence in Serbia – Causes, Forms, Consequences and Social Response", which is financed by the Academy of Criminalistic and Police Studies; "The Development of Institutional Capacities, Standards and Procedures to Fight against Organized Crime and Terrorism under the Conditions of International Integrations", which is financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia (No. 179045) and "The Effects of Applied Physical Activities on Locomotive, Metabolic, Psycho-Social and Educational Status of the Population of the Republic of Serbia", which is financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia (No. III 47015).

norms and criteria for acceptable and unacceptable behaviour retreat. Therefore, it is extremely difficult to prevent and combat such crimes.[2] Apparently, the late 20th century has both advantages and disadvantages. Alongside economic, political, and cultural globalization, environmental protection, crime and justice have also been influenced by the globalization.[3] The commission of criminal offences has become a worldwide epidemic. However, such a situation has influence on the forwarding of information, ideas, tendencies and activities within regional and international organizations resulting in the unification of incriminations and penalties for the above mentioned crimes. If globalization is considered from the aspect of the commission of crimes, it requires a global cooperation and proportionate reaction of all organizations responsible for the maintenance of public peace and order. A hundred years ago, Franz von List wrote that "the criminal law science" as "clearing up of general features of a crime… is imperatively international". There must be criminal law science whose purview will not be limited by national legislations and which will be grounded on the general knowledge.[4] Hence, the author reviews certain categories of behaviour qualified as criminal offences by the Penal Code of the Republic of Serbia the definitions of which have been extended by the latest amendments and modifications of the Penal Code[5] or which have been modified by new incriminations introduced in the Special Part, i.e. new provisions introduced in the General Part of the Code. Namely, such behaviours are qualified by criminal law science which is not limited by national legislation but is grounded on the consensus defined by certain international agreements.

Therefore, the process of globalization which has partly been influenced by the rapid flow of information, faster movement of people and partially by multinational bodies and corporations[6] has an impact on a uniform definition of certain criminal offences, penalties for such offences, as well as on new provisions introduced in the national criminal legislation. While implementing new provisions, special attention should be paid to the national legal system, our legal terminology, general principles and institutes of criminal law. Undoubtedly, it is a more difficult but definitely more adequate way of implementing legal international norms.[7]

The text below focuses on terrorist criminal acts, corruption and hate crimes.[8]

INTERNATIONAL STANDARDS IN THE FIELD OF THE COMBAT AGAINST TERRORISM AND THE PENAL CODE OF THE REPUBLIC OF SERBIA

Modern, i.e. the 21st century terrorism, presents one of the most serious global security threats leading to new, complex risks while the consequences caused by terrorist acts are more and more devastating. Terrorists use legal infrastructure of their enemies to commit terrorist acts. Beside conventional means, terrorists more and more frequently exploit petrol, fertilizers, chemical materials, computer networks and other objects used in everyday life as efficient means in terrorist acts. It indicates that nowadays the logistics of terrorism has become simpler and hard to detect.[9] The latest terrorist methods are the result of the utilization of new technologies, the crossings of terrorist groups across international borders and the change of the source of support. The employment of information technologies, such as the Internet and mobile phones has widened the scope of actions committed by terrorist groups. Precisely, the means of global information era has

2 V.Đ. Degan, B. Pavišić, V. Beširević: *Međunarodno i transnacionalno pravo*, Beograd, 2011, p. 21
3 M. Simović, Aktuelna pitanja materijalnog i procesnog krivičnog zakonodavstva: normativni i praktični aspekt, objavljeno u *Aktuelna pitanja krivičnog zakonodavstva*, Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2012, p. 15
4 H.J. Hirsch, Internacionalizacija kaznenog prava i kaznenopravne znanosti, Hrvatski ljetopis za kazneno pravo i praksu, god.12, no. 1/2005, Zagreb, p. 161
5 Zakon o izmenama i dopunama Krivičnog zakonika Srbije, *Službeni glasnik RS* br. 121/2012
6 M. Cavadino, J. Dignan, *Penal Systems-a Comparative Approach*, Sage Publications Ins: London, 2006, p.3
7 More about the issue in: Z. Stojanović, Pravno-filozofske koncepcije u Predlogu KZ Srbije i Krivičnom zakoniku Crne Gore, Zbornik radova sa Savetovanja "Kazneno zakonodavstvo – progresivna ili regresivna rešenja", Institut za kriminološka I sociološka istraživanja, 2005, p. 10
8 Hate crime is a term which in criminal law refers to a crime motivated by hatred.
9 U. Sieber, Legitimation und Grenzen von Gefährdungsdelikten im Vorfeld von terroristischer Gewalt, Neue Zetischrift für Strafrecht, 7/2009, p. 353

led to new activities closely connected with terrorism, primarily including the recruitment of potential new members and attracting sympathizers. Numerous terrorist groups launch powerful political messages *online* to the general public. They have easily browsed official and unofficial web-pages and almost all of them are presented in the English language.[10] The globalization enabled terrorist organizations to cross international borders easily, in the same way in which business and trade interests are connected. The erasure of barriers along the entire North American free trade zones and within the European Union has facilitated the flow of both bad and good things. Terrorism gets a special new dimension after the incidents of 11 September 2001. The whole world witnessed the emergence and maturing of a new era of terrorism – the era of global terrorism/global scope terrorism primarily motivated by ethnonationalism and religion.[11] Attacks on public means of transport in London, Madrid, and Moscow in the past years showed the public throughout the world that even European countries are endangered by terrorist attacks, leading to a number of reactions and activities of the European Union (meetings, conclusions, initiatives, and decisions). The forms of terrorism and means of its control and prevention have been considered by the UN and some regional organizations for a long time. On the international level, several important documents have been adopted with the aim of précising the concept of terrorism, as well as the measures and procedures taken in order to prevent it. Here we shall analyze two international documents important for the reform of our criminal legislation. They are: the European Union Council Framework Decision on Combating Terrorism dated 13 June 2002[12] with amendments and modifications from 2008[13] and the Council of Europe Convention on the Prevention of Terrorism CETS No. 196.[14] Although international sources bind countries to prevent and combat terrorism, they have failed as authorities in giving an adequate definition of a terrorist act. Additionally, the countries are bound to prevent and combat terrorism by fifteen international conventions and protocols, seven regional studies and numerous United Nations Security Council resolutions.[15]

The Council of Europe Framework Decision on Combating Terrorism has thirteen articles. The most important articles for national criminal legislations are: Article 1, which gives a single definition of terrorism for the whole territory of Europe, Article 2, which defines a terrorist group and Article 3, which lists criminal offences related to terrorism. EU Council Framework Decisions are aimed at harmonizing national legislations of the member states. They bind the member states to reach the defined goals leaving each country to choose its own methods for attaining them. Evidently, these decisions will come into force only after their implementation in national legislations. Framework Decision states robbery, document counterfeit and extortion (Article 3 of Framework Decision) as criminal offences related to terrorism. This article was amended in 2008[16], so that beside the above mentioned criminal offences the following are also considered to be related to terrorism: incitement to terrorism, terrorist recruitment and training. Incitement to terrorism includes any kind of message distribution inciting to terrorism no matter whether the criminal offence will be committed or not. Terrorist recruitment involves headhunt for individuals who will commit an offence stated in Article 1 of Framework Decisions. Terrorist training includes instructions for making and use of explosives, firearms or other weapons or injurious and dangerous materials, as well as instructions on other specific methods or techniques aimed at committing an offence stated in Article 1 of Framework Decisions.

The Council of Europe as the custodian of human rights, democracy and the rule of law in Europe, has been devoting its attention to terrorism issues for quite a long time. It has always been the

10 A. Kurth Cronin, Behind the Curve, Globalization and International Terrorism, in *Terrorism and Counter Terrorism, Readings and Interpretations – third edition*, prepared by Russell D. Howard, Reid L. Sawyer, Natasha E. Bajema, Higher education, 2009, p. 67

11 Ibidem, p. 63

12 *Council Framework Decision on Combating Terrorism*, 2002/475/JHA

13 *Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework decision 2002/475/JHA on combating terrorism*

14 The Convention was adopted in Warsaw on 16 May 2005 and came into force on 1 June 2007. Our country ratified the convention "Sl. Glasnik RS – međunarodni ugovori" no. 19/2009

15 E. Stubbins Bates, Terrorism and International Law, Oxford, Oxford University Press, 2011, p.1

16 *Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism*

forum of European countries committed to the development of joint strategies aimed at combating crime. Additionally, in broad terms, the Council of Europe is a regional organization because it comprises member states situated off European territory. After 11 September 2001, the Council of Europe decided to deal with terrorism issues once more. Namely, in 1977 European Convention on the Suppression of Terrorism (ETS No. 90)[17] was adopted in Strasbourg. Wishing to strengthen the combat against terrorism, the Council of Europe adopts Protocol Amending the European Convention on the Suppression of Terrorism ETS No. 190.[18] A Multidisciplinary Group on International Action against Terrorism, GMT which consisted of experts from 45 member states and a number of observer states and organizations worked on the Protocol. The Protocol amending Strasbourg Convention was adopted in 2003. Another group of experts (CODEXTER)[19] conceived a new instrument for the combat against terrorism – Council of Europe Convention on the Prevention of Terrorism CETS No. 196. It was adopted in Warsaw on 16 May 2005 and came into force on 1 June 2007. The new convention was adopted in order to intensify the efficacy of existing international instruments. It is aimed at strengthening the efforts of member states in preventing terrorism and sets out two ways for achieving this goal. The first one is the incrimination of certain types of behaviour: public provocations, terrorist recruitment and training. The other way is the strengthening of preventive measures both on the national and international level (modification of existing regulations on extradition and mutual aid). Provisions from articles 5 and 7 of the Convention (incitement to terrorism, terrorist recruitment and training) are of the utmost importance for the implementation in national criminal legislation.

The Amendment and Modification Act of the Penal Code of the Republic Serbia[20] has a number of amendments and modifications (Article 40 through 44), the most important of which are those arising from the new concept of terrorism offences, regarding crimes against humanity and other property protected by international law. In the past few years the international community has intensified the efforts to create mechanisms for the prosecution and punishment of offenders committing serious crimes[21], terrorism being certainly one of them. Article 391 of the Penal Code defines a terrorist act (no matter whether it is against the Republic of Serbia, a foreign country or an international organization), as well as numerous types of terrorist acts. This criminal offence and new terrorist offences, such as incitement to terrorism (Article 391a of the PC), terrorist recruitment and training (Article 391b of the PC), the use of lethal devices (Article 391v of the PC), destruction and damaging of a nuclear power plant (Article 391g of the PC) and terrorist alliances (Article 391a of the PC) were adopted and harmonized with a set of conventions aimed at preventing terrorism, particularly with the 2005 Council of Europe Convention ratified by the Republic of Serbia in 2009 and the Council of Europe Framework Decision on Combating Terrorism adopted on 13 June 2002 and amended by the Council of Europe Framework Decision on 28 November 2008. The enactment of these criminal offences guarantees extensive criminal law protection against all offences having the character of a terrorist act or preparatory terrorist acts. From a theoretical standpoint international institutions should play a leading role in preventing and combating terrorism.[22] That means that the definition of terrorism and related offences should be unified. The reasons are simple: easier international cooperation, information sharing among intelligence agencies, the monitoring of the evaluation of antiterrorist legislation and adopted strategies. Their proactive role may show good results because it gives detailed instructions on the means and methods countries may use within national criminal law.

It is interesting that terrorism does not fall within the competence of international criminal justice. The question remains whether some terrorist acts may be qualified as international criminal offences if they have been committed in the context of a wider and systematic attack against civilians (crimes against humanity). One opinion opposite to common belief is that terrorism, as an international criminal offence, exists and under certain circumstances may

17 Our country ratified this Convention, "Sl.list SRJ – Međunarodni ugovori", No. 10/2001
18 Additional protocol was ratified by our country, "Sl.glasnik RS – Međunarodni ugovori", No. 19/2009
19 In 2003 CODEXTER replaced the Multidisciplinary Group on International Action against Terrorism (GMT). CODEXTER is a group of intergovernmental experts on terrorism.
20 In further text the PC
21 D. Kolarić, *Amnestija u nacionalnom i međunarodnom krivičnom pravu*, Bezbednost, no. 1/2011, p. 116
22 K. Nuito, Terrorism as a Catalyst for the Emergence, Harmonization and reform of Criminal Law, *Journal of International Criminal Justice*, 4 (2006), Oxford University Press, p. 999

be qualified as a crime against humanity.[23] In the other opinion this interpretation of a crime against humanity is too extensive because, among other things, a terrorist organization cannot be identified with a country or state agencies involved in crimes against humanity (here a state's support to a terrorist organization would not be sufficient).[24] Two elements are indisputable for the existence of terrorism: an objective element which relates to the commission of either a violent or dangerous act and a subjective element relating to the intent to intimidate. We can conclude that there are defined, general characteristics of all terrorist acts no matter whether they are against one state and its constitution or international, i.e. jeopardize the interests of the international community and the relations within it. Terrorism has become a global issue and all nations are susceptible to this kind of attacks.[25]

INTERNATIONAL STANDARDS IN THE FIELD OF COMBAT AGAINST CORRUPTION AND THE PENAL CODE OF SERBIA

In the past few years, and we may freely say decades, corruption has become an issue of increased interest. Big corruption affairs have started to surface causing worries and increased interest both on the national and international levels. When we say "in the past few years" that does not mean that corruption is a new phenomenon that we are faced with for the first time. On the contrary, it existed in the past, it exists nowadays and undoubtedly it will exist in the future. Even in the past, rulers were familiar with the saying that the water may hold the ship, but it can also overturn it, and the danger of the boat being overturned originates from the officials' greed which causes people's discontent.[26] Over the years historical circumstances have changed. Corruption has evolved causing the general public's increased susceptibility to this phenomenon and requiring a wide range of measures against it.

Etymologically, the word corruption originates from the Latin word *corupcio* which, depending on the concrete situation, may mean immorality, dishonesty, perverseness, bribery, venality, subornation, vitiation…[27]

Although the international community has not found a general definition of corruption, everybody agrees that certain political, social or economic practices are corrupted. Depending on the point of view (psychological, sociological, criminal…) this word may have different meanings. Hence, corruption is generally defined descriptively indicating possible ambiguity of the concept.[28] The Penal Code of the Republic of Serbia to a great extent fulfils the standards defined by international documents in the field of combat against corruption.[29] International sources in the field of combat against corruption important for the criminal law reaction are the Council of Europe Criminal Law Convention on Corruption[30], Additional Protocol to the Criminal Law Convention on Corruption[31] and the United Nations Convention against Corruption.[32] The requirements defined by international documents that are to be implemented in the national penal code are as follows:

1) To incriminate bribery both in public and private sector;

23 Cassese, A: The Multifaceted Criminal Notion of Terrorism in International Law, *Journal of International Criminal Justice*, 4 (2006), Oxford University Press, p. 938

24 Stojanović, Z; Kolarić D; Krivičnopravno reagovanje na teške oblike kriminaliteta, Beograd, 2010, p. 72

25 Gardner, T; Andersen, T; *Criminal Law*, Thomson Wadsworth, 2006, p. 430

26 Z. Baisen, Combat against Corruption and the Participation of the Masses in China, *Seventh International Anticorruption Conference*, Beijing, China, October 6-10, 1995

27 M. Vujaklija, *Leksikon stranih reči i izraza*, Beograd, 1975, p. 479

28 N. Mrvić-Petrović, Korupcija i strategija njenog suzbijanja, *Temida*, 4/2001, p. 21

29 Group of States against Corruption, *Third Evaluation Round, Evaluation Report on the Republic of Serbia-Incriminations (ETS 173 and 191, GPC 2)*, Adopted by Greco at its 48th Plenary Meeting (Strasbourg, 27 September-1 October 2010)

30 The Convention was opened for signature on 27 January 1999 and came into force on 1 July 2002. This Convention was ratified by our country which thus assumed the obligation to harmonize provisions of the national law with this source of law. More about the issue in: Službeni list SCG, *Međunarodni ugovori, No. 2/2002*

31 The agreement was opened for signature on 15 May 2003 and came into force on 1 February 2005. Additional Protocol to the Criminal Law Convention on Corruption was ratified by our country on 6 November 2007. More about the issue in: Službeni glasnik RS, *Međunarodni ugovori, No. 102/2007*

32 The Republic of Serbia ratified the United Nations Convention against Corruption. The Convention came into force in Serbia on 30 October 2005. More about the issue in: Službeni list SCG, *Međunarodni ugovori, No. 12/2005*

2) To incriminate bribery both of foreign and domestic public officials;
3) To introduce accountability of legal entities for criminal offences of corruption (although the same accountability is required by some other international documents such as: *the Convention on the Laundering, Search Seizure and Confiscation of the Proceeds of Crime (No. 141), the United Nations Convention against Transnational Organized Crime, the Convention on the Laundering, Search Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism);*
4) In accordance with the Additional Protocol to the Criminal Law Convention (ETS 191) it is necessary to incriminate the bribery of foreign and domestic arbitrators, as well as foreign and domestic lay justices;
5) To incriminate trading in influence.

The Criminal Law Convention, although aimed at developing general standards concerning the criminal offences of corruption, does not give a unique definition of corruption. The Council of Europe Multidisciplinary Group on Corruption[33] began their work based on the following temporary definition: "Corruption is bribery and any other behaviour in relation to persons entrusted with responsibilities in the public or private sector, which violates the duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others".[34] The aim of this definition was to ensure that nothing from its range of activities was left out. Although such a definition did not necessarily match the legal definition of corruption in most member states, particularly the definition provided for by the Criminal Law, its advantage was that such a definition did not reduce the discussion to the frame that would be too narrow. As the work on the Draft Convention on the Criminal Law progressed, so the mentioned general definition was changed into several other definitions (of active and passive bribery, bribery in private sector, abuse of influence, all closely related to corruption and generally comprehended as specific types of corruption), enabling their transposition into national laws. The United Nations Convention against Corruption, similarly as the previous one, does not define the concept of corruption, but in Chapter III titled Criminalization and Law Enforcement defines certain types of corrupt behaviour. Its goal, as stated in Article 1 is to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; to promote integrity, accountability and proper management of public affairs and public property. Taking into account that even the most important international documents in the field of combat against corrupt behaviour incriminate only certain types of such behaviour avoiding to give a single integral definition of corruption, proves the above mentioned statement that it is difficult to give a single general definition of corruption. On the other hand, criminal law should, as much as possible, avoid general clauses, i.e. behaviours defined as criminal offences and their respective penalties must be incriminated by the criminal law to a great extent (*lex certa*). Otherwise, there is the risk of interpreting inadequately defined provisions that may affect legal security of citizens. There is no need to introduce the concept of corruption either in the title of the chapter of criminal offences or in particular incriminations in order to make an impression that adequate measures have been taken in that field.[35]

33 On the 19th Conference held in Valetta in 1994, European Ministers of Justice reached the conclusion that corruption is a serious threat to democracy, legal state and human rights. The Council of Europe, as the leading European institution for the protection of these fundamental values, is responsible to deal with that threat. The Ministers of Justice suggested the Committee of Ministers to create a Multidisciplinary Group on Corruption. In the context of these recommendations, the Committee of Ministers created the Multidisciplinary Group on Corruption (GMC) in September 1994 which prepared *the Programme on Action against Corruption*, the document which involved all aspects of international combat against this phenomenon. The referent goal of this group was to prepare, under the jurisdiction of the European Committee on Crime Problems and the European Committee on Legal Cooperation, one or more international conventions on the combat against corruption. In accordance with the goals defined by the *Programme on Action against Corruption*, the Criminal Law Working Group by the Multidisciplinary Group on Corruption (GMCP) began to work on the Draft Convention on the Criminal Law.

34 Criminal Law Convention on Corruption, ETS 173, 1999, Explanatory Report

35 The former situation in the Criminal Law of Serbia (2002-1 January 2006) when corruption offences are concerned was atypical for many reasons. Firstly, because of the chapter title unconnected with the protected object. Secondly, the description

Additional Protocol to the Criminal Law Convention on Corruption includes arbitrators in trade, civil and other cases, as well as lay justices. The signatory states of the Additional Protocol must adopt measures necessary to criminalize active and passive corruption of domestic and foreign arbitrators and lay justices. Consequently, the Protocol should make the combat against corruption more effective, as well as improve the interstate cooperation with regard to the combat against it. The term "arbitrator" is interpreted in accordance with the national laws of the parties to the Protocol agreement and it invariably relates to the person who, according to the arbitration agreement, is chosen to render a legally binding decision in the case filed by the parties to the agreement. The term "lay justice" is interpreted in accordance with the national laws of the parties to the Protocol agreement, but it invariably denotes a person who is an unprofessional member of the mutual body whose duty is to decide upon the guilt of the defendant in a criminal procedure.

It is here important to mention GRECO (The Group of States against Corruption) which represents a mechanism of the Council of Europe designed primarily to develop anticorruption regulations and their implementation in the member states, and, in particular, the anticorruption conventions of the Council of Europe. Our country has been a member of GRECO since 2003. The main body of activities in the process involving GRECO takes place in the form of evaluations made by qualified representatives of some member states in other member states. The evaluations take place in rounds during which certain questions related to combating corruption are investigated. The former Serbia and Montenegro was subject of consideration in the first and the second rounds of evaluation. The visits of the evaluators took place in 2005 and their report was adopted and published in July 2006. The report resulted in 25 binding recommendations (for Serbia). The current, third round of GRECO evaluation (initiated on 1 January, 2007) focuses on two subject matters: 1) incriminations (that have to be harmonized with the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and Articles 1–6 of its Additional Protocol (ETS No. 191); and 2) transparency of political funding.[36] The focus of our attention is on the former. Serbia has restrained itself from the implementation of any of the provisions of the Criminal Law Convention on Corruption and its Additional Protocol. The Penal Code of the Republic of Serbia has been modified and amended several times in order to achieve better harmonization with the international requirements. The GRECO Evaluation Team (henceforth: GET) has found that the legislation in Serbia has met the requirements of the Criminal Law Convention on Corruption (ETS No. 173) and the United Nation Convention against Corruption to a great extent.

Criminal offences defined so as to suppress corruption within the Penal Code of Serbia have been classified as criminal offences in violation of the official capacity. These involve: abuse of official position (Article 359, PC), trading in influence (Article 366, PC), accepting bribe (Article 367, PC), and offering bribe (Article 368, PC). The Code also contains relevant incriminations for other criminal acts referred to in the Council of Europe Criminal Law Convention and the United Nations Convention against Corruption. Such incriminations are aimed at suppressing some forms of corruptive practices, i.e. they are aimed against perpetrating, concealing or disguising criminal acts of corruption or other offences related to corruption. Those criminal acts may not be expressed in the same terms as in the conventions, but they have the same objectives. These include: money laundering (Article 231, PC)[37], concealing (Article 221, PC), embezzlement (Article 364, PC),[38] etc. It should be pointed out that all the international documents in the field of combating corruption insist on introducing the liability of legal persons for criminal offences. Our country has fulfilled this obligation by passing a special Law on Liability of Legal Persons for Criminal Offences in 2008.[39]

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of these criminal offences matched the existing ones to a great extent leading to unnecessary double incriminations and serious problems in practice when the difference between newly prescribed and existing criminal offences had to be made. If the motive of the lawmaker was to tighten penalties it could have been achieved by amending the existing solutions. Thirdly, such casuistry approach was unacceptable when criminal law norms were concerned. Fourthly, the term corruption was used in the chapter title and when defining certain criminal offences although it was neither used for legal description of particular criminal offences nor was it precisely defined.

36 Group of States against corruption, *Third Evaluation Round, Evaluation Report on the Republic of Serbia-Incriminations* (ETS 173 and 191, GPC 2), Adopted by Greco at its 48 the Plenary Meeting (Strasbourg, 27 September – 1 October 2010)

37 The Council of Europe Criminal Law Convention refers to *Money laundering of proceeds from corruption offences* whereas the United Nations Convention against Corruption mentions *Laundering of proceeds from crime*.

38 The United Nation Convention uses the title *Embezzlement, misappropriation or other diversion of property by a public official* and explicitly demands incrimination of Embezzlement *of property in the private sector*.

39 *Сл. Гласник РС*, бр. 97/08. (The Official Gazette of the Republic of Serbia, No. 97/08)

In the above mentioned Third Round of evaluation, GET had identified a number of specific shortcomings which the Act on Amendments to PC subsequently removed. Namely, regarding the provisions on the territorial scope of the Republic of Serbia's criminal legislation - in addition to the principle of territoriality (Article 6) and the primary real principle (Article 7) - also provide for the relevance of Serbian criminal legislation for the Serbian nationals who commit any other criminal act apart from the criminal offences listed under Article 7 of this Code (Article 305 to 316, Article 318 to 321, and Article 223) which are under the primary jurisdiction of the Republic of Serbia, if the perpetrator is found in the territory of Serbia or is extradited to Serbia (Article 8, paragraph 10). In that case, the prosecution will take place only if the criminal offence is also punishable by the laws of the country in which the offence has been perpetrated (Article 10, paragraph 2). Similarly, Article 9, paragraph 1 of the PC points out that the criminal legislation shall apply to any foreigner who commits a criminal offence against Serbia or its citizen either in Serbia or abroad, even when the offence is not listed in the Article 7 of this Code, if he is in the territory of Serbia or if he is extradited to Serbia. In this case also the prosecution will be instituted only if the offence is punishable by the law of the country in which the offence has been perpetrated (Article 10, paragraph 2). However, the legislator allows that in the said cases, provided for in Articles 8 and 9, paragraph 1 of the PC - when the offence is not punishable according to the law of the country in which it has been committed, criminal prosecution can be instituted with the authority of the State Public Prosecutor. Therefore, the offences perpetrated abroad, as per Article 8, 9 (1) PC, Article 10 PC, requires that the conduct is incriminated both in our country and abroad. If the offence is not punishable by the laws of the country in which it has been perpetrated, criminal prosecution can be instituted only with the authority of the state public prosecutor. Practice has shown that the need for such approval in relation to criminal offences of bribery has never occurred so far. Otherwise, in cases of the international conventions that Serbia is a signatory to, this approval will most certainly be granted. However, in addition to this, GET finds that the condition of double incrimination as per Article 10 PC represents unnecessary restriction which departs from the Convention and that it should be abolished with respect to the offences of bribery and trading in influence perpetrated abroad. Serbia has not placed a reserve with respect to this and therefore it is considered not be harmonized with Article 17, paragraph 1, item b of the Convention.

Further, bribery as a criminal offence (including the private sector) is incriminated in two provisions: Article 367 of the Penal Code (accepting bribe) and Article 368 of the Penal Code (offering bribe). These provisions encompass all types of criminal offences of passive (demanding or accepting gratuities or other favours or accepting promises of gifts or other favours) and active bribery (giving, offering or promising gratuities or other favours) that are listed in the Convention. It also covers benefits in property or non-material property, as well as the benefits for third persons. GRECO Evaluation Team commended Serbia for the fact that it also incriminates passive bribery in retrospect, for instance, in cases when an official demands or accepts gratuities or some other benefit following certain action, refraining from an action, and related to such action.[40] GET points out to the need to cover all types of gifts or other benefits by the Penal Code to such an extent as to have an effect on the activities of public officials or civil servants. They emphasize that although some small gifts may be socially acceptable, the Penal Code must apply the criterion of unacceptability for all such gifts.[41]

Speaking of bribery in the public sector, according to the currently valid Penal Code, the actions have to be "within the scope of official powers". In practice, this means that the acts or refraining from acts that do not fall within the scope of official duties or legally defined powers of an official, and which he may perform because of the function he has been assigned to, would not be directly encompassed by the provisions on bribery (for instance, giving access to confidential information to which public officials have access during their term of office in the situation when collecting or disclosing such information is not strictly within the scope of the officials' powers). According to the view of the GRECO Evaluation Team, this concept is narrower than the conditions from Articles 2 and 3 of the Convention. GET recommends that the wording 'official or other action' be used with

40 Ibidem, p. 15.

41 Group of States against corruption, *Third Evaluation Round, Evaluation Report on the Republic of Serbia-Incriminations* (ETS 173 and 191, GPC 2), Adopted by Greco at its 48 the Plenary Meeting (Strasbourg, 27 September – 1 October 2010), p. 16.

respect to bribery in the private sector, i.e. taking legislative measures which ensure that the criminal offences of active and passive bribery in the public sector cover all forms of perpetration during the term of office of a public official, whether they are within the scope of duties of such an official or related to them.[42]

As regards the Additional Protocol to the Criminal Law Convention on Corruption that requires the domestic and foreign arbitrators and jurors to be explicitly included in the provisions on bribery, GET points out that using the terms 'a public official' (Article 112, paragraph 3) and 'a foreign official' (Article 112, paragraph 2) enables domestic jurors and arbitrators to be covered by the relevant provisions focusing on giving / taking bribe, whereas the situation is somewhat different in respect to foreign jurors and arbitrators. The formulation regarding foreign officials from Article 112, paragraph 4 defines them as "the members of legal institutions of a foreign state", whereas Article 112, paragraph 3, item 4 deems an official to be "the person to whom the actual discharge of certain official duties or jobs has been assigned", and item 3 relates such a person to an institution, company or another body entrusted with public use of power, that makes decisions concerning the rights, obligations or interests of natural or legal persons or concerning the public interest. GET points out that the provision of Article 112, paragraph 4 does not include foreign arbitrators who would not necessarily be deemed to be members of legal institution in a foreign state, because the same article gives an autonomous definition of a foreign official, without referring to the definition of a public official given in Article 112, paragraph 3 for additional explanation. State institutions of the Republic of Serbia have stated that the foreign arbitrators would also be covered by the Law on Arbitrage, because its Article 19 provides that arbitrators may be foreign citizens. Still, the GRECO Evaluation Team finds that this provision basically refers to the possibility of a foreign citizen to act as an arbitrator in keeping with the Law on Arbitration, until the parties, for example, reach an agreement, and resolve the conflict within the framework of regulations on arbitration in Serbia. This state of affairs does not meet the requirements of Article 4 of the Additional Protocol, because the concept of a foreign arbitrator within the Protocol is related to performing the functions "within the national law on arbitration of any other state," and therefore what prevails is not the nationality of the arbitrator but the law within which he acts. Speaking about foreign jurors, they are covered only to the extent in which they are regarded as "members of the legal institutions in a foreign state" (Article 112 (4) of the Penal Code). This is not in keeping with the Additional Protocol which incriminates the acts of giving/taking bribe by the foreign jurors regardless of their status in a foreign jurisdiction. The GRECO Evaluation Team recommends that necessary legislative measures be taken in order to ensure that the foreign arbitrators and jurors be covered by the provisions on bribery in the Penal Code in accordance with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).[43]

When discussing the issue of bribery in the private sector, Article 367, paragraph 6 and 368 paragraph 5 of the Penal Code incriminate even the cases in which an official demands or accepts a gift or another benefit or accepts a promise of a gift or some other favour, just as if the official has been given, promised or offered the bribe. GRECO Evaluation Team finds that the Penal Code must unequivocally include all persons who manage or work in any capacity in any company. GRECO reminds of Articles 7 and 8 of the Convention that clearly include the whole range of persons who manage or work, in any capacity, for the entities in the private sector (employees in charge of maintenance, drivers, etc; lower rank employees). The representatives of the Republic of Serbia pointed out that judicial practice has known the cases that pertain to the lower-ranking employees and presented a court decision that referred to a storage house worker who had been convicted of the criminal offence of accepting bribery. Bearing in mind the statements of experts from the crime scene and the fact that it was related to only one case of giving/accepting bribe when concerning the lower-ranking officials, the GRECO Evaluation Team finds that there is a general miscomprehension regarding the term 'official person'. Therefore, the GRECO Evaluation team has recommended the term to be adequately explained, so that the legislation that refers to giving/taking bribe in the private sector should cover the entire range of persons who direct or work, in any capacity, in private sector entities.

42 Ibidem, p. 16.
43 Ibidem, p. 17.

GET has further remarked that, as regards the criminal offence of giving bribe in paragraph 4, there are special grounds for acquitting perpetrators of the charges if they report the offence before they realize that it has been uncovered. In such a case, the gift or other benefit can also be returned to the person who has given the bribe (paragraph 6, Article 368). This solution is aimed at encouraging reports on the cases of giving the bribe. The GRECO Evaluation Team has pointed out that such situations are very rare in the judicial practice and that the prosecutors in such situations more often resort to applying Article 18 of the Penal Code which provides for an offence of minor significance as grounds for dismissing unlawfulness. GRECO accepts the fact that it is an optional ground for an acquittal, but questions the possibility of returning the gift or other favour and therefore recommends abolition of the possibility to return the bribe to the persons who have given it if they report the offence before disclosure.

At the end of the report, GRECO concludes that following the latest modifications and amendments to the Penal Code, the harmonization with the Criminal Law Convention on Corruption has been achieved to a large extent. However, solutions for a number of rather specific shortcomings are yet to be found.

Towards this goal, the GRECO Evaluation Team has given the following recommendations to the Republic of Serbia:

1) The condition of double incrimination from Article 10 PC represents an unnecessary restriction which departs from the Convention and should therefore be abolished with respect to the criminal offences of bribery and trading in influence perpetrated abroad (paragraph 73);
2) Undertaking all the necessary legislative measures to ensure that the criminal offences of active and passive bribery in the public sector cover all acts or refraining from acting during the term of office of an official, whether an official duty has been performed or another action related with official duty (paragraph 65);
3) Undertaking all the necessary legislative measures in order to ensure that foreign arbitrators or jurors are covered by the provision on bribery of the Penal Code in accordance with the Additional Protocol of the Criminal Laws Convention on Corruption (ETS No. 191) (paragraph 67);
4) Ensure, in an appropriate way, that the legislation dealing with giving/taking bribe in the private sector covers the whole range of persons in managerial and basic positions, in whatever capacity, for the entities of the private sector (paragraph 68);
5) bolishing the possibility from Article 368 (6) of the Penal Code of returning the bribe to the giver if he/she reports the case before it is disclosed (paragraph 74).

The Act on Amendments to the PC has made the below listed modifications and amendments by way of fulfilling the recommendations from the report of the Group of States for Combating Corruption of the Council of Europe (GRECO). Firstly, Article 2 of the Code extends the possibility of the implementation of the criminal legislation of the Republic of Serbia even when the criminal offence is not punishable by the law of the country in which it has been perpetrated (Article 10, paragraph 2 of the Penal Code). An exception to the proposition of double incrimination as a prerequisite for criminal prosecution and the implementation of the domestic criminal legislation has been envisaged only in the case when a dispensation of the public prosecutor exists for this. The suggested amendment stretches also to the cases envisaged in the ratified international treaties, such as is the case with the criminal offences of corruption. This modality of extending the scope will call for modifications and amendments the Penal Code in future unless an international agreement envisages the obligation of the Republic of Serbia to implement its criminal legislation for certain criminal offences, although the act does not constitute a criminal offence in the country where it has been committed.

Article 12 of the Code has modified and amended Article 112 of the Penal Code which defines the terms used in the statute. In keeping with the recommendation of the Group of States against Corruption of the Council of Europe (GRECO), it more accurately defines and broadens the notions of an official, foreign official, and a responsible person.

In keeping with the recommendations of the Group of States against Corruption of the Council of Europe (GRECO), Articles 36 and 37 of the Code have broadened the provisions of Articles 367 and 368 of the Penal Code which prescribe the criminal offences of giving and taking bribe by expanding the legal description specifying that those criminal offences can be perpetrated not only within the scope of one's powers, but also in connection with them. Besides, paragraph 6 in Article 368 of the Penal Code, which envisaged the possibility of returning the bribe to the person who has given it, has been deleted, also in accordance with the said recommendations.

HATE-MOTIVATED CRIMINAL OFFENCES IN THE SERBIAN PENAL CODE

An important aspect related to the development of criminal law includes permanent efforts to create an international legal framework for defining the rules and norms that are aimed at combating crime. The manifestations of criminal offences, means for their prevention and control, along with the motives that inspire perpetrators, have long been the subject matter under consideration of the United Nations, as well as separate regional organizations. There is thus a comprehensive set of international and regional instruments that clearly define the obligations of states to respond to criminal offences motivated by hate.[44] The Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law directs the combat against racism and xenophobia in a unique way, striving to harmonize the legal solutions of the European Union member-states.

Article 6 of the PC introduces special circumstances for determining sentences for criminal acts motivated by hate. Namely, if a criminal offence is perpetrated because of hate towards a race or religion, national or ethnic origin, sex, sexual orientation or gender identity of another person, such an act will be deemed as an aggravating circumstance, except when the law defined it as a characteristic of a criminal offence (Article 54a PC). Starting from the relevant international documents, the purpose of the new provision of Article 54a of the Penal Code is to ensure stricter punishment and thereby enhanced criminal law protection with respect to certain particularly vulnerable social groups whose members are the victims of criminal offences motivated by hate. Criminal law defines hate crimes as such criminal offences in which the perpetrators assault the victims because of their actual or presumed affiliation to a certain social group. The victims of hate crimes are usually subject to attacks because of their race, religion, sexual orientation, disability, class, ethnic origin, nationality, (old) age, sex, gender identity, social status, political affiliation, etc. The offences may vary to a large extent and include, for instance the following: bodily injuries, property destruction, abuse and torture, insults murders, etc.

Personal characteristics that inspire hatred, which in turn motivates the perpetration of a criminal offence and therefore present mandatory aggravating circumstances have been listed in Article 54a and include: racial origin, religious confession, national or ethnic origin, sex, sexual orientation or gender identity. The characteristics such as race, religion, national or ethnic origin and sex do not call for additional definition. However, there are some personal characteristics that need to be defined, such as, for example, sexual orientation and gender identity. Sexual orientation is a term that refers to emotional, sexual and other attraction towards persons of the opposite or the same sex and gender. Three forms of sexual orientation are most commonly mentioned: heterosexual, bisexual, and homosexual. Gender identity is a personal experience of gender which can but does not have to match the sex of the given person.[45] It involves a subjective feeling of belonging or non belonging to a gender, which is not necessarily based on the sex and sexual orientation.

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44 See: The United Nation *International Convention on the Elimination of All Forms of Racial Discrimination*, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19; the *Council Framework Decision 2008/913/JHA OF 28. November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law* is also relevant. The Framework Decision, adopted in 2008, provides for the approximation of criminal legislations on offences motivated by hate, including an aggravating circumstance if the motive is based on prejudice.

45 С.Гајин, *Појам, облици и случајеви дискриминације*, у: Антидискриминациони закон, Београд, 2010, p.15.

Although Article 54 of the Penal Code provides that within general rules for passing sentences envisaged that the court will upon passing a sentence take into account the motives which led to the perpetration of crime, thus including hate, the provision is general and does not explicitly mention hate as an aggravating circumstance nor does it define it as a mandatory aggravating circumstance, as provided for in the provision of Article 54a of the Penal Code.

As an example of base motivation, hate used to be taken into account even before as a circumstance by courts when passing sentences. The ruling of the High Court of Serbia (Kž. 2105/57) mentions that base motives are deemed to be all such motives as are not worthy of a man and that do not comply with the adopted moral principles of the society. They include: hatred, envy, malice, greed, ill-will, intolerance, etc.[46] The justification for the new provision of Article 54a is that now it is a mandatory and optional aggravating circumstance. However, it would be wrong to ascertain that practice has shown that the cases of serious crimes, such as the murder of a Roma boy in downtown Belgrade by the members of Skinheads, were not sanctioned in an adequate way by the state authorities.[47] Thus the decision of the High Court of Serbia (No. 38/98) shows that a murder perpetrated because of the affiliation to a certain ethnic group should be treated as an aggravated murder with base motives. Namely, the perpetrators deprived a person of his life only because he was a Roma and because they belonged to the Skinheads, whose ideas proclaim that their nation and race should be pure.

Another possible way of suppressing hate crimes involves the introduction of special qualified forms of some criminal offences that are, as a rule, perpetrated out of hate towards certain persons. The third way exists in the countries that offer protection by the existing incriminations as part of the overall criminal legislation in the given country. Until the adoption of AA PC, the legislation of the Republic of Serbia was in this group.

CLOSING REMARKS

Finally, we can conclude that the process of globalization inevitably leads to "internationalization" [48] of criminal law. But this increasing internationalization does not occur, as some authors claim,[49] to the detriment of the state sovereignty. The state's right to punish, *ius puniendi*, is not limited even by the beginning of work of the International Criminal Court which starts from the principle of complementarity, which means that its jurisdiction is subsidiary. As the main reason for such a solution, Cassese quotes practical reasons, i.e. preventing the court from being overcrowded with cases from all over the world, but he also points out that the states have opted for respecting the sovereignty as much as possible.[50] The internationalization of criminal law should be regarded as a unification of criminal law or at least its part that provides for combating criminal offences in which most countries of the international community are interested in. As the Guiding decision of the Council of Europe for combating terrorism points out, the unification of the definition of terrorism and related criminal offences is aimed at facilitating international cooperation, exchange of information among intelligence agencies, evaluation of counter-terrorist legislation and adopted strategies. Proactive role of the international institutions can show, observed in the long run, good results because it more closely specifies the means and ways in which the states may respond within the national criminal law.

Analyzing the selected topic from the AA of PC, we can conclude that our country has fulfilled its international obligation, harmonized its national criminal legislation with certain international sources, but also retained its identity and general settings of its crime-related policy, having found the balance between the required and necessary repression, on the one hand, and the rights of the individual, on the other.[51]

46 Д. Коларић, *Кривично дело убиства*, Београд, 2008. година, p. 238.
47 Т. Дробњак, *Кривичноправна заштита од дискриминације*, у: Антидискриминациони закон, Београд, 2010, p. 90.
48 H. J. Hirsch, Интернационализација казненоног права и казненоправне знаности, *op. cit,* p. 161.
49 М. Симовић, Актуелна питања материјалног и процесног кривичног законодавства: нормативни и практични аспект, *op. cit,* p. 15.
50 А. Касезе, Међународно кривично право, Београд, 2005. година, p. 414.
51 For more detail, see: Б. Ристивојевић, *Актуелна питања садашњег стања материјалног кривичног законодавства Србије*, објављено у: *Актуелна питања кривичног законодавства*, Српско удружење за кривичноправну теорију и праксу, Београд, 2012. година, p. 43.

REFERENCES

6. Baisen, Z; Борба против корупције и учешће маса у Кини, *Seventh International Anticorruption Conference*, Beijing, China, October 6-10, 1995.
7. Вујаклија, М; *Лексикон страних речи и израза*, Београд, 1975.
8. Гајин, С; *Појам, облици и случајеви дискриминације*, у: Антидискриминациони закон, Београд, 2010.
9. Gardner, T; Andersen, T; *Criminal Law*, Belmont: Thomson Wadsworth, 2006.
10. Деган, В.Ђ; Павишић, Б; Бешировић, В; *Међународно и транснационално кривично право*, Београд, 2011.
11. Дробњак, Т; *Кривичноправна заштита од дискриминације*, у: Антидискриминациони закон, Београд, 2010.
12. Коларић, Д; *Амнестија у националном и међународном кривичном праву*, Безбедност, бр. 1/2011, Београд.
13. Касезе, А; Међународно кривично право, Београд, 2005. година
14. Коларић, Д; *Кривично дело убиства*, Београд, 2008. година.
15. Мрвић-Петровић, Н; Корупција и стратегија њеног сузбијања, *Темида,* 4/2001.
16. Nuotio, K; Terrorism as a Catalyst for the Emergence, Harmonization and Reform of Criminal Law, *Journal of International Criminal Justice*, 4 (2006), Oxford University Press.
17. Ристивојевић, Б; *Актуелна питања садашњег стања материјалног кривичног законодавства Србије*, објављено у: *Актуелна питања кривичног законодавства*, Српско удружење за кривичноправну теорију и праксу, Београд, 2012. година
18. Stubbins Bates, E; Terrorism and International Law, Oxford, Oxford University Press, 2011.
19. Sieber, S; Legitimation und Grenzen von Gefährdungsdelikten im Vorfeld von terroristischer Gewalt, *Neue Zetischrift für Strafrecht*, 7/2009.
20. Симовић, М; Актуелна питања материјалног и процесног кривичног законодавства: нормативни и практични аспект, објављено у: *Актуелна питања кривичног законодавства*, Српско удружење за кривичноправну теорију и праксу, Београд, 2012. година.
21. Стојановић, З; Коларић, Д; *Кривичноправно реаговање на тешке облике криминалитета*, Београд, 2010. година
22. Стојановић, З; Правно-филозофске концепције у Предлогу КЗ Србије и Кривичном законику Црне Горе, Зборник радова са Саветовања "Казнено законодавство-прогресивна или регресивна решења", Институт за криминолошка и социолошка истраживања, 2005. година.
23. Hirsch, H. J; Интернационализација казненоног права и казненоправне знаности, *Хрватски љетопис за казнено право и праксу,* Год. 12, Загреб, бр. 1/2005.
24. Cassese, A; The Multifaceted Criminal Notion of Terrorism in International Law, *Journal of International Criminal Justice*, 4 (2006), *Oxford University Press*.
25. Cavadino, M; Dignan, J; *Penal Systems-a comparative approach*, Sage Publications Ins: London, 2006.
26. Cronin, A. Kurth, Behind the Curve, Globalization and International Terrorism, in *Terrorism and Counter Terrorism, Readings and Interpretations – third edition,* Prepare by Russell D. Howard, Reid L. Sawyer, Natasha E. Bajema, Higher education, 2009.

DOCUMENTS AND REPORTS

27. Council Framework Decision on Combating Terrorism, 2002/475/JHA
28. Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism
29. Council of Europe Convention on the Prevention of Terrorism CETS No. 196, 2005, Explanatory report
30. Criminal Law Convention on Corruption, ETS 173, 1999, Explanatory report
31. Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191), Explanatory Report.

32. Group of States against Corruption, Third Evaluation Round, Evaluation Report on the Republic of Serbia-Incriminations (ETS 173 and 191, GPC 2), Adopted by Greco at its 48 the Plenary Meeting (Strasbourg, 27 September – 1 October 2010)

33. United Nations Convention against Corruption, The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 at United Nations Headquarters in New York.

34. Council Framework Decision 2008/913/JHA OF 28. November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.