

## **THE INITIATIVE TO AMENDMENT THE DRAFT LAW ON AMENDMENTS TO THE CRIMINAL CODE**

### **Article 1**

The Criminal Code ("Official gazette of the RS", no. 85/05, 88/05 - correction, 107/05 - correction, 72/09 and 111/09), in Article 54 following paragraph 3, paragraph 4 is added, which reads:

"(4) In cases where the offense committed is considered a hate crime as defined in Article 112 paragraph 37, this court of law will consider this offense as an aggravating circumstance and will issue a heavier sentence, if the law does not prescribe a heavier punishment for the qualified form of the offense".

### **Article 2**

In Article 112, following paragraph 36, paragraph 37 is added, which reads:

"(37) A hate crime is an offense under this Code, and is a crime committed against any person or group of persons of hatred based on race, color, ethnic or national origin, religion, political or other belief, language, gender, sexual orientation, gender identity, age, health, disability, education, social status, social origin, property or other personal property. "

### **Article 3**

In Article 114, paragraph 5 following the words "other offense", the phrase is "in hate" is added.

### **Article 4**

In Article 121, following paragraph 3, paragraphs 4, 5, and 6 are added, which reads:

(4) If the offense referred to in paragraph 1 of this Article has been committed as a hate crime, the offender shall be punished with imprisonment from one to eight years.

(5) If the offense specified in paragraph 2 of this Article has been committed as a hate crime, the offender shall be punished by imprisonment of one to ten years in prison.

(6) If the case refers to both paragraphs 4 and 5 of this Article a consequence referred to in paragraph 3 of this Article, shall be punished with imprisonment of at least three years.

Articles 4 and 5 are transferred to Article 7 and 8

#### **Article 5**

In Article 122, paragraph 2 following the phrase "seriously impairs health", the phrase "or if the offense specified in paragraph 1 of this Article has been committed as a hate crime" is added.

#### **Article 6**

In Article 178, paragraph 3 following the word "pregnancy", the phrase "or if the offense was committed as a hate crime" is added.

#### **Article 7**

In Article 204, paragraph 1 following point 6, a 7<sup>th</sup> point is added, which reads: "as a hate crime."

#### **Article 8**

In Article 205, paragraph 3 following the word "injury", the phrase "or if the offense was committed as a hate crime," is added.

#### **Article 9**

In Article 206, in paragraph 2 after the word "injury", the phrase "or if the offense was committed as a hate crime," is added.

#### **Article 10**

In Article 212, paragraph 3 following the word "protect" the phrase "or the offense was committed as a hate crime," is added.

#### **Article 11**

In Article 278, paragraph 4 following the word "weapon", the phrase "or if the offense was committed as a hate crime," is added.

#### **Article 12**

In Article 346, paragraph 5 following the words "forty years" the phrase "or refers to a group or an organized criminal group that aims to conduct a hate crime" is added.

## **RATIONALE**

### **I. INTRODUCTION**

The offenses motivated by hatred toward certain groups in society are known as hate crimes in international law. Hate, as a motive, may be essentially a series of crimes. What distinguished these offences from other crimes is that they are mainly focused on vulnerable groups and will result in a detrimental effect not only on the person who is the victim of crime, but also to all members of the group to which that person belongs. Also, these crimes threaten the fundamental values of international law and the protection which the Republic of Serbia undertook by signing and ratifying a series of international treaties on equality, non-discrimination and tolerance, as well as on the suppression and punishment of violence, caused by hatred based on race, color, national or ethnic origin, religious belief etc...

### **II. CONSTITUTIONAL BASIS FOR THE AMENDMENT THE DRAFT LAW ON AMENDMENTS TO CRIMINAL CODE**

Constitutional basis for the introduction of hate crime in the Criminal Code of the Republic of Serbia is contained in Article 43 Paragraph 4 and Article 49 of the Serbian Constitution, which provides for freedom of thought, conscience and religion and the prohibition of racial, ethnic and religious hatred.

Any criminal acts of hatred committed threaten the fundamental values of society and basic human rights and freedoms guaranteed by the Constitution of the Republic Serbia.

### **III. REASONS FOR THE AMENDMENT THE DRAFT LAW ON AMENDMENTS TO CRIMINAL CODE**

The reason for adopting the Law on Amendments to the Criminal Code is contained primarily in the fact that the Criminal Code is the most important legal document, which regulates this branch of law, and that the solution of this Code remains inconsistent with international standards.

Introducing new provisions in the criminal legislation on hate crimes creates a significant assumption, that the police and judicial bodies can effectively use to combat hatred and intolerance.

Past practices clearly indicate the difficulties in dealing with the perpetrators of these types of crimes as hate crimes are only partially criminalized, and the responsible authorities have not dealt with them appropriately. Thus, in all stages of police investigation to the final adjudication and measuring penalties by the competent court which do not fully reflect the real motives of the perpetrators - especially the motives of hatred.

The increase in violence based on hatred and intolerance in Serbia is also one of the reasons for the amendment of the Criminal Code.

There are numerous international instruments advocating this approach including (among others): the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, UN Declaration on the

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Framework Decision on Combating Racism and Xenophobia. Also, decisions on European Court on Human Rights in various cases put obligations on the side of the state to investigate motives of crimes especially in the area of hatred. ECHR also urged courts in respected countries to adequately punish hate crimes in proportionality to the harm made to victims.

Therefore, this solution further regulates the treatment of crimes committed out of hatred and fully implements international instruments and standards in this field.

#### **IV. EXPLANATION OF BASIC LEGAL INSTITUTIONS AND INDIVIDUAL SOLUTIONS**

**Article 1** amended the Criminal Code, Article 54 paragraph 4, allowing the courts to issue a greater punishment to the offender who has committed a hate crime (ie. that these circumstances are taken into account as an aggravating circumstance, unless the law itself prescribes a heavier punishment suitable for a criminal offense committed out of hatred).

**Article 2** supplementing the Criminal Code Article 112 paragraph 37 and the general part of the Criminal Code clearly defines the term "hate crime" as a qualified form of certain crimes or hatred as an aggravating circumstance for a crime whose execution was motivated by hate. In this way, the Criminal Code introduces a single definition of hate crimes, which is in line with international standards and OSCE - ODIHR definitions of hate and hate crimes.

**Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, and for amendments to Article 114 Paragraph 5, 121 paragraph 4, 5 and 6, 122 Paragraph 2, 178 Paragraph 3, 204 Paragraph 1 point 7, 205 Paragraph 3, 206 Paragraph 2, 212 Paragraph 3, 278 Paragraph 4 and 346th, paragraph 5 of the Criminal Code** extends the scope of criminal law protection, and introduce a qualified form of certain offenses and in detail address the question of treatment of crimes committed out of hatred and fully implement international instruments and standards in this field.

**Article 3** supplements Article 114 Paragraph 5, extends the scope of criminal law protection, and introduces a special qualified form of aggravated murder.

**Article 4** supplements Article 121 paragraphs 4, 5 and 6 and introduces qualified, special forms for aggravated assault when the offense is committed out of hate.

**Article 5** supplements Article 122 Paragraph 2 and introduces another qualified form of crime - light bodily injury, and unless the light bodily injury is inflicted with weapons, dangerous tools or other means suitable to inflict serious injury to body and seriously impair health, causing light bodily injury out of hatred a is qualified form.

**Article 6** supplements Article 178 paragraph 3 by qualifying rape as a hate crime, if found to be committed out of hatred.

**Article 7** supplements Article 204 Paragraph 1 Section 7 and introduces a special form of aggravated theft offense as a hate crime if committed out of hatred.

**Article 8** supplements Article 205, Paragraph 3 and introduces a special form of aggravated theft offense as a hate crime if committed out of hatred.

**Article 9** supplements Article 206 Paragraph 2 and qualifies robbery as a hate crime, if the robbery was committed out of hatred.

**Article 10** supplements Article 212 Paragraph 3 by provides a qualified form of the crime and the destruction of others' property damage if this offense was committed as a hate crime.

**Article 11** supplements Article 278 Paragraph 4, by providing a qualified form of an offense causing public danger, if this offense was committed out of hatred.

**Article 12** supplements Article 346, paragraph 5 by providing a qualified form of offence of criminal conspiracy as a hate crime, if done out of hatred, and expands the scope of criminal law protection, and introduces other qualified forms of offenses.

## **V. FINANCIAL MEANS FOR IMPLEMENTATION**

For enforcement of this law is not necessary to provide additional funding in the budget of the Republic of Serbia.

## **ANALYSIS OF THE EFFECTS OF THE LAW**

Analysis of the effects of the amendments to the Criminal Code is not required, given that its use would not result in additional costs to citizens and businesses, that are not related to the creation of new companies in the market, and that there's no need for additional measures for its implementation.