
Criminal Law Response to Stalking – The Law of Serbia and the Countries in the Region

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Article Information

Review Article • UDC: 343.434/436(497.11)

Volume: 22, Issue: 3, pages: 39–54

Received: October 29, 2025 • Accepted: December 10, 2025

<https://doi.org/10.51738/kpolisa.2025.3r.004>

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We have no known conflict of interest to disclose.

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* Cite (APA): Dragojlović, J., & Đorđević, D. (2025). Criminal Law Response to Stalking – The Law of Serbia and the Countries in the Region. *Kultura polisa*, 22(3), 39–54, <https://doi.org/10.51738/kpolisa.2025.3r.004>



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Abstract

On the basis of regional international standards enshrined in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), a considerable number of European criminal codes in recent years have introduced a distinct criminal offence: “stalking” or “harassment.” This offence constitutes a specific manifestation of the general offence of endangering security, whereby the mental peace and tranquility of another person are unlawfully, and frequently through violent means, disturbed. Such conduct generates a sense of unease, discomfort, fear, or distress in the targeted individual, as well as in persons closely associated with them, most often family members or close relatives. Given that this incrimination derives its foundation from international standards, national legislations tend to regulate this offence in a similar, closely related, or even identical manner, while nevertheless taking into account the particularities of individual jurisdictions and the requirements of their respective criminal policies. The present paper, grounded in international standards, undertakes an analysis of the concept, characteristics, constitutive elements, manifestations, and substantive content of the offence of stalking in Serbian law, as well as within the broader framework of regional criminal legislation.

Keywords: Criminal Code, international standards, stalking, intimidation, personal security, criminal liability, penalty.

Introduction

The introduction of the new criminal offense of stalking in the contemporary criminal law systems of European countries has emerged in recent years as a consequence of the rapid, diverse, and wide-ranging development of modern communication technologies — and their misuse to the detriment of numerous individual freedoms and rights. This phenomenon has led to a growing awareness of the need for enhanced criminal law protection of personal freedoms and rights, particularly the individual’s sense of personal security, without which the very concept of human existence is inconceivable.

Efforts to establish new forms of criminalization have been strongly influenced by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted in 2011 (commonly known as the *Istanbul Convention*). This international instrument imposed an obligation on signatory states to introduce, in accordance with international standards, several new criminal offenses into their national legislation. Among the specific gender-based offenses prescribed by the Convention are: (a) psychological violence (Article 33), (b) stalking (Article 34), (c) physical violence (Article 35), (d) sexual violence, including rape (Article 36), (e) forced marriage (Article 37), (f) female genital mutilation (Article 38), (g) forced abortion and forced sterilization (Article 39), and (h) sexual harassment (Article 40).

In the Republic of Serbia, the *Criminal Code* (2005) did not initially recognize stalking as a criminal offense. This form of criminal liability was introduced only in 2016 through amendments to the Criminal Code. The new provision, contained in Chapter Fourteen under the title “Criminal Offenses against Freedoms and Rights of Man and Citizen,” established a distinct offense titled *Stalking* (Article 138a). The protected legal interest of this offense is the individual’s personal security — that is, their private life. Personal security, understood in a subjective sense, refers to the individual’s *feeling of safety*, which constitutes an essential component of personal liberty as one of the fundamental human rights.

In legal theory, stalking is defined as repeated, persistent, and continuous surveillance or pursuit — an intrusive effort by the perpetrator to establish direct or indirect contact with the victim or their relatives through means of communication, thereby causing fear, discomfort, anxiety, or distress. Stalking also constitutes a specific manifestation of endangering another person's safety or, in certain circumstances, a form of domestic violence when directed toward a person with whom the perpetrator lives or has lived in a family or intimate relationship, where the victim is in a subordinate position (Paunović, 2019; Bjelajac, 2022). In recent years, however, stalking has assumed new forms, reflecting contemporary trends and the widespread use of modern information and communication technologies. As a result of various physical or psychological acts, a specific relationship gradually develops or strengthens between the victim and the perpetrator through repeated, continuous behavior (Đurišić, 2019). Over time, contact is established and maintained, often leading the victim to feelings of helplessness or to the dangerous belief that the perpetrator's actions are harmless, or even to misinterpret them as signs of affection, sympathy, or attention — rather than as violence that may escalate (Bjelajac & Filipović, 2021). Through stalking, the perpetrator — directly or indirectly, personally or through others, or by means of both traditional and modern technological tools — persistently reminds the victim of their presence, communicates with them, and asserts dominance, thereby causing psychological and physical suffering, depriving the victim of freedom, and undermining their control over their own life (Solomun, 2023).

Thus, stalking represents unwanted intrusion and interference in the victim's life by the perpetrator. The very essence of this offense lies in the violation of the victim's private sphere. The offender displays a sense of "superiority" by repeating a series of persistent, interconnected acts directed toward the same person — the victim — thereby provoking fear, anxiety, unease, and distress. It is a behavioral pattern characterized by intrusive, continuous, and repetitive contact with the victim and various forms of harassment, both direct (in person) and indirect (via telephone calls, SMS or email messages, letters, gifts, or valuable items), as well as waiting outside the victim's home or workplace, or damaging or destroying their property. Such behavior may directly or indirectly endanger the victim or their close relatives, leading over time to feelings of fear, helplessness, guilt, danger, or depression. This, in turn, highlights the highly personal and sensitive nature of this type of criminal offense.

International Standards on the Criminalization of Stalking

Based on the standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, a new criminal offense titled *Stalking* (Article 34) has been introduced into modern European criminal legislation. This term refers to any intentional conduct involving repeated threats directed at another person, causing that person to fear for their safety (Marković, 2024). In addition to direct, intentional acts of commission, the Convention (Article 41) explicitly provides for the punishability in two further instances: (a) the attempt to commit the offense, and (b) instigation or aiding and abetting in its commission.

For perpetrators of this criminal offense, in addition to imprisonment, the Convention (Article 45) allows for the imposition of the following measures: (a) monitoring or supervision of convicted offenders, and (b) deprivation of parental rights, where the principle of the best interests of the child cannot be ensured by any other means - which may also encompass the protection of the victim's safety.

Finally, in determining the appropriate sentence, the court is obliged, in each individual case, to give special consideration to the following aggravating circumstances (Article 46), provided that they do not already constitute elements of the basic or aggravated form of the criminal offense. These include: (a) the offense committed against a former or current spouse or partner, or by a person who has abused their position of authority; (b) the repetition of the offense (*special recidivism*) or the commission of a similar offense; (c) the offense committed against a person who has become vulnerable due to specific circumstances; (d) the offense committed against or in the presence of a child; (e) the offense committed by two or more persons acting in concert; (f) the offense that was preceded or accompanied by extreme violence; (g) the offense committed in a dangerous manner — involving the use of, or threat with, a weapon; (h) the offense resulting in serious physical or psychological consequences for the victim; and (i) when the offender has previously been convicted of offenses of a similar nature (*special recidivist*).

Stalking in the Criminal Law of Serbia

Stalking (Article 138a) was introduced as an independent criminal offense into the Serbian criminal law system by the Law on Amendments to the Criminal Code adopted in 2016. In this way, Serbia fulfilled its international obligations undertaken following the ratification of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Article 34). The introduction of this offense emerged as a consequence of the growing, increasingly diverse, and rapidly advancing modern means of communication, as well as their misuse to the detriment of the rights and freedoms of others (Miladinović Stefanović, 2017). In terms of its legally defined content, this offense bears similarity to the crime of Endangering Safety (Article 138).

In legal theory, there is no unified view regarding the determination of the good or value protected as the *object of legal protection* under this incrimination. According to one view, the object of protection is the individual's personal sense of security as one of the fundamental human rights — that of the person, their family member, or a person close to them (Jovašević & Miladinović Stefanović, 2023, p. 83). According to another view, it is the right to private life as one of the basic and fundamental human rights (Dragojlović, 2025, p. 67). The *actus reus* of the offense of stalking consists of several *alternatively prescribed activities* under the law, such as:

(a) Unauthorized following of another person or undertaking another act with the purpose of physically approaching that person against their will (Vuković, 2018). This conduct manifests itself in two forms.

First, it involves following, that is, maintaining a certain spatial distance from the passive subject that enables the perpetrator to monitor their movements. This act may be carried out in various ways — openly, publicly, or covertly. For the existence of this offense, it is necessary that the act of following (stalking) be performed without authorization, i.e., against the victim's will and unlawfully, without a legal basis (Miladinović Stefanović, 2016).

The second form of manifestation encompasses all other activities undertaken with the purpose of physical approach, which reduce the spatial distance between the perpetrator and the passive subject to such an extent that direct contact becomes possible — whether through eye contact or verbal address (Kovačević & Maljković, 2016).

(b) The attempt to establish contact with another person against their will, directly or indirectly — either through a third person or by means of communication. This involves initiating or attempting actions aimed at enabling contact between the perpetrator and another person, regardless of whether such contact has actually occurred in the given case (Randelović, 2016). The manner of attempting contact is irrelevant — whether it occurs directly, through physical proximity, or indirectly through intermediaries or technological mediation, such as phone calls, text messages, or emails (Kovačević Lepojević & Lepojević, 2009). For this conduct to exist, there must be no consent (explicit or implicit) from the victim (Vilić, 2012).

(c) The misuse of personal data of another person or a person close to them for the purpose of ordering goods or services. To determine the existence of the *actus reus* in this case, it is necessary to define the concept of “personal data” of another person, which here appears as the object of the attack.

In this regard, the Law on Personal Data Protection (Article 4, Item 1) defines *personal data* as any information relating to an identified or identifiable natural person, whose identity can be determined, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an identifier in electronic communication networks, or to one or more factors specific to that person’s physical, physiological, genetic, mental, economic, cultural, or social identity.

In practice, the most common objects of misuse include a person’s name and surname, home address, email address, and telephone number. Regarding the personal data of another person or of someone close to them, the perpetrator must engage in acts of misuse in the sense of *malicious use* (*abusus*) with a specific purpose — namely, ordering certain goods or services, regardless of whether such an order has actually been carried out in the given case (Nikolić Ristanović & Kovačević Lepojević, 2007).

(d) Threatening an attack on the life, body, or liberty of another person or someone close to them — such a threat is expressed through an oral or written statement announcing the infliction of harm upon another person and represents a milder form of coercion (Dimovski, 2016). The law explicitly emphasizes that this provision refers to threats of attacks on the life, body, or liberty of another or a person close to them. Threats of causing other forms of harm, regardless of their gravity, are not relevant for the legal classification of this offense. The threat must be serious, real, direct, and unavoidable.

(e) Undertaking another similar act in a manner that may significantly endanger the personal life of the person against whom such acts are directed (Đorđević, 2021). In addition to the explicitly enumerated activities constituting the *actus reus* of the offense of stalking, the law, through the application of statutory analogy, stipulates that the offense may also be committed by any other act capable of producing the result of *significantly endangering the personal life of the passive subject*.

This legislative formulation indicates that the offense in question involves a result-based act, encompassing any conduct capable of producing the prescribed and legally relevant consequence — namely, the perceptible endangerment of the victim’s personal life.

For the existence of the criminal offense prescribed under Article 138a of the Criminal Code, the cumulative fulfillment of two additional conditions related to the act of commission is required (Đorđević & Bodrožić, 2024, p. 63):

(a) In a particular manner – persistently. Persistence denotes determination, readiness, or the perpetrator’s resolve to repeat or continuously perform the act, meaning that a single act does not constitute this offense. This mode of commission implies the repeated performance of one or more

prescribed activities aimed at achieving a specific goal. Persistence is understood objectively, as it is manifested through the repetition of activities that carry the character of the *actus reus*.

However, alongside this objective element, the condition also includes a subjective aspect — the perpetrator’s awareness that the passive subject does not wish to engage in communication that the perpetrator is attempting to establish. This lack of consent may be manifested either actively or passively (Delić, 2021, p. 82). Future judicial practice should determine how many repetitions of such conduct are necessary for this condition to be satisfied, although legal theory generally holds that it must occur at least twice (Stojanović, 2017).

This statutory formulation indicates that the criminal offense of stalking constitutes an “offense with an indifferent number of acts.” In other words, repetition in the form of multiple, continuous acts — whether identical or different — does not give rise to concurrence (*real concurrence*) or to an apparent extended offense. Rather, such conduct is encompassed within a single, unified criminal act (Stojanović, 2020, p. 521).

(b) Within a specific period of time. The notion of a “specific period of time” is not defined in the Criminal Code; it represents a factual issue assessed by the court based on established objective and subjective circumstances in each individual case, following the presentation of evidence. To satisfy this condition, the repetition of conduct constituting the *actus reus* must be established. Thus, a single act of any of the prescribed activities does not constitute this offense (Dečković, 2017).

The result of the offense consists of a perceptible (more significant, intense, or lasting) endangerment of the personal life of the passive subject. In legal theory, there is an ongoing debate as to whether this consequence must occur in every instance — that is, whenever any of the statutorily prescribed acts is undertaken — or only when the last among them, the “other similar act,” is performed. Linguistic interpretation suggests that only the latter type of act must lead to perceptible endangerment of personal life for the offense to be considered complete. In other cases, the mere commission of an act of intimidation suffices (Vuković, 2018).

The “more significant” (that is, greater in degree, scope, or duration) endangerment of personal life manifests itself in practice through the induction (emergence, causation) of anxiety, unease, or distress — creating a feeling of inner turmoil, tension, fear, or apprehension that is vague and without any apparent external cause. Thus, the consequence of the offense consists of a perceptible (more significant, intense, or lasting) endangerment of the personal life of the passive subject (Paunović, 2019). Unlike classical fear, anxiety is not linked to a specific object or situation; rather, it appears as an anticipation of some indefinite misfortune. It often manifests as a symptom of anxiety disorder, thereby disrupting the victim’s everyday life (or that of persons close to them), or as a fear for the personal safety of another person, a family member, or someone close to the victim.

This criminal offense belongs to the category of *delicta communia*, meaning that it can be committed by any person, while intent (*dolus*) on the part of the perpetrator is required for culpability. The passive subject (victim) may also be any person — both the one directly targeted by the act and any person close to them. For this basic form of the offense, the law prescribes alternatively either a fine or imprisonment of up to three years.

In addition to the basic form, this criminal offense also appears in two more serious, qualified forms, characterized by aggravated consequences. The more serious consequence must be causally

linked to the act of commission of the basic form, while, in a subjective sense, it must be covered by the perpetrator's negligence.

The first aggravated form, punishable by imprisonment from three months to five years, arises when the offense creates a danger to the life, health, or body of the victim or a person close to them. This refers to a concrete (imminent, real, actual) danger, whereby the perpetrator's conduct must create a genuine, objectively existing risk of harm to the aforementioned protected interests.

The second aggravated form, punishable by imprisonment from one to ten years, exists where the act results in the death (caused negligently and unlawfully) of the victim or of a person close to them (Dragojlović, 2025, p. 69).

The Law of Bosnia and Herzegovina

Apart from the Criminal Code of Bosnia and Herzegovina, the other three legislative texts in the field of substantive criminal law applicable within Bosnia and Herzegovina also prescribe the criminal offense of "Stalking or Harassment" — specifically: Article 179a of the Criminal Code of the Federation of Bosnia and Herzegovina, Article 173a of the Criminal Code of the Brčko District of Bosnia and Herzegovina, and Article 144 of the Criminal Code of the Republic of Srpska. These offenses are placed in different chapters of the respective codes, depending on the protected legal interest:

(a) in Chapter XVII, titled "*Criminal Offenses against the Freedoms and Rights of Man and Citizen*" of the Criminal Code of the Federation of BiH;

(b) in Chapter XIII, titled "*Criminal Offenses against Freedoms and Rights*" of the Criminal Code of the Republic of Srpska; and

(c) in Chapter XVI, titled "*Criminal Offenses against Life and Body*" of the Criminal Code of the Brčko District of BiH.

The basic form of the offense — *Stalking* (Article 179a of the Criminal Code of the Federation of BiH) — consists of repeatedly following or harassing another person, attempting to establish, or actually establishing, unwanted contact with another person, either directly, through a third party, or via information and communication technologies, or by intimidating another person in any other manner, thereby causing that person anxiety or fear for their own safety or the safety of a family member or someone close to them.

The Criminal Code of the Brčko District of Bosnia and Herzegovina defines the content of the criminal offense of *Stalking* (Article 173a) in a somewhat different manner. According to this legal provision, the offense is committed by a perpetrator who persistently and over a longer period of time (the duration of which is not specified by criminal law but is a factual matter to be determined by judicial practice in each specific case) follows or stalks another person, or seeks to establish or establishes unwanted contact with that person directly or through a third party, or otherwise intimidates them, thereby causing anxiety or fear for their own safety or the safety of a family member.

Finally, the Criminal Code of the Republic of Srpska defines the criminal offense of stalking (Article 144) as persistent and prolonged following or harassment of another person, or as an attempt to establish or the establishment of unwanted contact with another person, either directly or through a third party, or as causing changes in the victim's daily habits, anxiety, or fear for their personal safety or the safety of persons close to them (Jovašević et al., 2021, pp. 363–365).

For the basic form of the offense of *Stalking/Harassment*, different penalties are prescribed depending on the respective law: (a) imprisonment of up to one year (Criminal Code of the Federation of BiH); (b) a fine or imprisonment of up to one year (Criminal Code of the Brčko District of BiH); or (c) a fine or imprisonment of up to two years (Criminal Code of the Republic of Srpska).

In addition to the basic form, all criminal codes in Bosnia and Herzegovina also provide for a more serious, qualified form of the offense (paragraph 2), for which different penalties are prescribed: (a) imprisonment of up to three years (Criminal Code of the Federation of BiH and Criminal Code of the Brčko District of BiH); and (b) imprisonment from six months to three years (Criminal Code of the Republic of Srpska).

The qualifying circumstances vary among the entities: 1) Under the law of the Federation of BiH, these include: (a) the status of the victim - if the offense is committed against a family member or a close person, against a child, or against a person particularly vulnerable due to severe physical or mental impairment; or (b) the motive of the perpetrator - if the offense is committed out of hatred. 2) Under the law of the Brčko District of BiH, the status of the victim also serves as a qualifying circumstance — if the offense is committed against a family member or a child and 3) Under the law of the Republic of Srpska, the status of the victim is again decisive - if the offense is committed against a current or former spouse or extramarital partner, a person with whom the perpetrator had an intimate relationship, or a child.

The Law of Montenegro

In Montenegro, under Chapter Fifteen – “Criminal Offenses against the Freedoms and Rights of Man and Citizen”, the Criminal Code prescribes the criminal offense of *Stalking* (Article 168a), which, in addition to the basic form, also includes three more serious, qualified forms. The basic form of the offense, for which the law prescribes alternatively either a fine or imprisonment of up to three years, consists of the persistent stalking of another person in a manner that may significantly endanger their life, health, body, or way of life.

The Code explicitly defines what constitutes “persistent stalking”. According to paragraph 6 of this provision, a person is considered to persistently stalk another when, over a certain period of time: (a) they unlawfully follow or otherwise act with the intention of physically approaching that person; (b) they attempt to establish contact with that person against their will, directly, through a third person, or through means of communication; (c) they misuse that person’s personal data to order goods or services; (d) they threaten to attack the life, body, or liberty of that person or someone close to them; or (e) they undertake other similar actions directed toward that person (Đurišić, 2019). From the foregoing, it is evident that this incrimination substantially coincides with the legal definition of the same criminal offense under Serbian criminal law. In Montenegrin law, the criminal offense of stalking also appears in three more serious, qualified forms, depending on the type, nature, or character of the qualifying circumstance.

The first aggravated form of the offense is determined by the status of the victim (which must be encompassed by the perpetrator’s awareness at the time of committing the act). This offense, punishable by imprisonment from three months to five years, exists where the act of commission — that is, any of the statutorily prescribed alternative activities — is directed toward: (a) a former spouse or extramarital partner, or a partner in a same-sex union (paragraph 2); or (b) a child, a pregnant woman, or a person with a disability.

The second aggravated form (paragraph 4) is characterized by a negligently caused consequence in the form of endangerment — when the act of commission creates a danger to the life, health, or body of another person or of someone close to them. This offense is also punishable by imprisonment from three months to five years.

The most serious form of the offense of stalking (paragraph 5), punishable by imprisonment from one to ten years, exists in cases where the death of another person or of someone close to them occurs as a result of any of the legally prescribed alternative acts comprising the act of commission.

The Law of Croatia

In Croatia, under Chapter Thirteen – “Criminal Offenses against Personal Liberty”, the Criminal Code defines the criminal offense of *Stalking* under the title “Persistent Harassment” (Article 140), which appears in two distinct forms. The basic form of the offense (paragraph 1) is committed by a perpetrator who follows or stalks another person, or seeks to establish or establishes unwanted contact with that person, or intimidates them in another manner, thereby causing the person anxiety or fear for their own safety or for the safety of persons close to them. The object of protection in this offense is defined as the personal safety of the individual and the safety of persons close to them. The victim of a criminal offense (Article 87, item 25 of the Criminal Code) is a natural person who has suffered physical or mental (psychological) harm, property damage, or a significant violation of fundamental rights and freedoms as a direct consequence of a criminal act.

The actus reus of the offense consists of several alternatively prescribed activities, namely: (a) following or stalking another person; (b) attempting to establish unwanted contact with another person — undertaking actions directed toward establishing such contact, even if no contact actually occurred in the given case for any reason; (c) establishing unwanted contact with another person; or (d) intimidating another person in another manner — performing any act or using any method or means capable of and sufficient to cause fear (a feeling of personal insecurity) in another person (Turković et al., 2013). The result of the offense is defined as causing anxiety or fear for one’s own personal safety or for the safety of persons close to the victim. The prescribed penalty for this offense is imprisonment of up to one year. Criminal prosecution of the perpetrator is initiated upon the victim’s proposal (paragraph 3).

In addition to the prescribed penalty, the Criminal Code of Croatia provides for the possibility of imposing a special security measure titled “*Prohibition of Approaching, Harassing, or Stalking*” (Article 73). The purpose of this measure, as with other security measures (Article 66), is defined as “*the elimination of circumstances that enable or encourage the commission of a new criminal offense.*” Furthermore, the Code explicitly stipulates that any security measure (Article 67) must be proportionate to the gravity of the committed offense, to the offenses that may reasonably be expected, and to the degree of danger posed by the perpetrator (principle of proportionality). According to the statutory provision, the security measure of prohibiting approach, harassment, or stalking of the victim, another person, or a group of persons — or of prohibiting approach to a specific place - for a duration of one to five years, may be imposed by the court when there is a risk that the perpetrator might reoffend against those persons or in those places. In the judgment imposing this security measure, the court determines the minimum distance that the offender must maintain from the victim, another person, a group of persons, or a specific location — which cannot be less than 100 meters. After one-half of the duration of the imposed security measure

has elapsed, the court may, upon the offender's request, terminate its enforcement if it determines that the risk no longer exists. The court notifies the police of any imposed measure.

The aggravated form of the offense (paragraph 2), punishable by imprisonment of up to three years, exists where the act of commission is directed: (a) against a close person, or (b) against a child (a person under the age of eighteen, as defined in Article 87, item 7 of the Criminal Code).

Under Article 87, item 9 of the Croatian Criminal Code, the term "close persons" encompasses the following categories: (a) Family members – defined in Article 87, item 8 of the Code as a spouse or extramarital partner, life partner or informal life partner, their joint children, and the children of each of them, as well as relatives by blood in the direct line, collateral relatives up to the third degree, relatives by marriage up to the second degree, adoptive parents, and adopted children. An extramarital partner (Article 87, item 10) is a person living in an extramarital union of a more permanent character, or one of shorter duration if a common child was born in that union. (b) A former spouse or extramarital partner; (c) A former life partner or informal life partner (an informal life partner, under Article 87, item 11, is a person living in a same-sex union of a lasting character); (d) A current or former partner in an intimate relationship; (e) Persons who share a common child; and (f) Persons who live in a shared household. This statutory provision clearly indicates that the status of the victim (injured party) constitutes a qualifying circumstance, which must be encompassed by the intent (*dolus*) of the perpetrator at the time of committing the act of stalking.

The Law of North Macedonia

The Criminal Code of North Macedonia, under Chapter Twenty – "Criminal Offenses against the Freedoms and Rights of Man," prescribes the criminal offense of "Stalking" (Article 144a). This offense appears in two forms: (a) the basic form, which is prosecuted upon the proposal of the injured party, and (b) the aggravated form. The basic form of stalking consists of repeated, unauthorized following, persecution, or interference in another person's private life in another manner, or the establishment or attempt to establish unwanted contact with that person by moving within the area where they are present, by misusing accessible data, through the use of public information or other means of communication, or by psychological abuse, harassment, or intimidation in any other way. Such conduct causes a sense of insecurity, anxiety, unease, or fear for one's own safety or the safety of a close person.

The *actus reus* of the offense comprises several alternative activities prescribed by law, such as: (a) following or pursuing another person; (b) interfering in another person's private life in another manner; (c) establishing or attempting to establish unwanted contact with another person by moving within the area where that person is located; (d) misuse of the personal data of another person; (e) use of public information or other means of communication concerning another person; or (f) psychological abuse, harassment, or intimidation of another person in any other way. All of these activities are undertaken (a) repeatedly (persistently, by performing multiple acts) and (b) without authorization (unlawfully). The consequence of the offense consists of causing or creating in another person a subjective feeling of insecurity, anxiety, unease, restlessness, or fear for their own safety or the safety of a close person. For this offense, the law prescribes, alternatively, a fine or imprisonment of up to three years.

The aggravated form of the offense, punishable by imprisonment ranging from six months to five years, is characterized by the status of the injured party. This qualification applies when any of the acts

constituting the offense are committed against a specific person: (a) a person with whom the perpetrator is in an intimate relationship (which is a factual matter to be determined in each individual case), or (b) a child (a person under the age of eighteen).

The Law of Slovenia

The Criminal Code of Slovenia, under Chapter Sixteen – “Criminal Offenses against Human Rights and Freedoms,” among other offenses directed against personal liberty, includes the criminal offense titled “Stalking” (Article 134a), which is prosecuted upon the proposal of the injured party. Stalking was introduced as a new criminal offense in the Slovenian legal system through the 2016 amendment to the Criminal Code. Prior to that, such unlawful conduct by individuals or groups had been legally classified as the criminal offense of domestic violence (Article 191 of the Criminal Code) or as a misdemeanor under the Law on the Protection of Public Order and Peace (Article 6).

The basic form of the offense consists of stalking another person or their close relative through repeated surveillance, pursuit, or intrusive attempts to establish direct contact or contact via electronic communication means, thereby causing fear or a sense of danger in that person or their close relative (Žuran, 2021). The law prescribes, alternatively, a fine or imprisonment of up to two years for this offense.

The aggravated form of the offense (paragraph 2) exists when the act is committed against a specific person whose status must be known to the perpetrator at the time of the commission of the act: (a) a minor, or (b) a helpless person (Filipčić & Korošec, 2023). For this aggravated form, the law prescribes, alternatively, a fine or imprisonment of up to three years.

In this regard, judicial practice provides interesting examples of the manifestation of the act of committing the criminal offense of stalking. Thus, in its judgment No. I Ips 65747/2019 of 25 August 2022, the Supreme Court of Slovenia adopted the following legal position: “The individual actions of the convicted person are temporally defined by specific days or placed within a certain time frame corresponding to how they occurred in reality, which allows the conclusion that the conduct constituted prolonged and repeated stalking. From the description of the individual actions of the convicted person, it is also possible to understand how these actions were manifested in practice. Namely, the actions of the convicted person were continuous and repetitive, involving different forms of conduct, and are described in a manner that clearly indicates how many individual actions occurred and during which period they took place. The fear and threats experienced by the victim are also defined. The description of the criminal offense, both in its temporal and spatial definition, must be read as a whole, without isolating individual actions from the overall description.”

The Supreme Court of Slovenia, in its judgment No. I Ips 39925/2021 of 19 October 2023, also concluded: “When assessing whether the specific description of a criminal offense corresponds to the statutory elements, it is necessary to begin directly from the interpretation of the abstract factual circumstances. It is sufficient to specify the statutory description of the offense by stating that the convicted person, within a clearly defined period of time, sent more than 1,500 individual messages to the injured party and also visited her workplace on several occasions. For the punishability of such conduct, what is decisive is that the communication is intrusive, while the specific content of that communication is not of decisive importance.”

Conclusion

Within the system of international standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Article 34), national criminal legislations are obliged to prescribe criminal liability, among other offenses, for the crime referred to as “Stalking.” This offense consists of intentional conduct involving the repeated issuing of threats directed toward another person, causing that person to fear for their safety.

Based on these obligations, several regional criminal law systems prescribe a specific criminal offense of stalking (or harassment) under different titles, such as: (a) stalking (Article 138a of the Criminal Code of Serbia, Article 168a of the Criminal Code of Montenegro, Article 173a of the Criminal Code of the Brčko District of Bosnia and Herzegovina, and Article 144 of the Criminal Code of the Republic of Srpska); (b) harassment (Article 179a of the Criminal Code of the Federation of Bosnia and Herzegovina and Article 134a of the Criminal Code of Slovenia); and (c) persistent harassment (Article 140 of the Criminal Code of Croatia).

With minor or greater variations in the content of this incrimination across regional legislations, under Serbian law, the criminal offense of stalking (Article 138a) is committed by a person who, over a certain period of time (without specifying its duration, which is left to judicial practice or legal doctrine to determine), persistently engages in one or more of the following alternatively listed activities: (a) unauthorized following of another person or undertaking another action with the purpose of physically approaching that person against their will; (b) attempting to establish contact with another person against their will, either directly, through a third person, or by means of communication; (c) misuse of another person’s or a close person’s personal data for the purpose of ordering goods or services; (d) threatening to attack the life, body, or liberty of another person or someone close to them; or (e) undertaking another similar action in a manner that may significantly endanger the personal life of the person against whom such acts are directed.

Unlike other regional laws that criminalize stalking, Serbian law recognizes this offense in two more serious, qualified forms, which depend on the extent and intensity of the resulting harm, rather than on the status of the victim or the motive of the perpetrator. These aggravated forms exist when the act of commission: (a) creates a danger to the life, health, or body of the victim or a close person, or (b) results in the death of another person or someone close to them.

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Krivičnopravna reakcija na proganjanje – pravo Srbije i država u regionu

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Sažetak

Na bazi regionalnih međunarodnih standarda koji su sadržani u Konvenciji Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (2011.) brojna evropska krivična zakonodavstva poslednjih godina propisuju specifično krivično delo: “proganjanje” ili “uhođenje”. Radi se, zapravo, o posebnom obliku ispoljavanja krivičnog dela ugrožavanja sigurnosti, gde se na protivpravan, često nasilan način ugrožava duševni mir i spokojstvo drugog lica izazivajući kod njega nemir, nelagodnost, strah ili uznemirenost, kako kod njega lično, tako i kod njemu bliskih lica (najčešće članova porodice ili bliskih srodnika). S obzirom da ova inkriminacija ima svoj temelj u međunarodnim standardima, najčešće je ovo krivično delo u nacionalnim zakonodavstvima uređeno na sličan, blizak ili istovetan način, naravno uz uvažavanje svih specifičnosti pojedinih država, odnosno potreba njihove kriminalne politike. U ovom se radu na temelju međunarodnih standarda analiziraju pojam, karakteristike, elementi bića, oblici ispoljavanja i sadržina krivičnog dela proganjanja u pravu Srbije, odnosno u regionalnom krivičnom zakonodavstvu.

Ključne reči: Krivični zakonik, međunarodni standardi, proganjanje, zastrašivanje, lična sigurnost, odgovornost, kazna.