YUCOM
Lawyers' Committee
for Human Rights

Address:
Kneza Milosa 4
11103 Belgrade
PAK 106915
Serbia

Telephone:
+381-11-3344235
Fax:
+381-11-3344425

e-mail:
office@yucom.org.rs

web:
www.yucom.org.rs

Belgrade, April 25, 2019

OPEN LETTER TO THE MINISTRY OF JUSTICE REGARDING THE DRAFT LAW ON AMENDMENTS AND SUPPLEMENTS OF THE CRIMINAL CODE

Lawyers' Committee for Human Rights expresses concern over the Draft Law on Amendments and Supplements of the Criminal Code of the Republic of Serbia, published on the website of the Ministry of Justice, which, as it was announced in the media, will be presented at the spring sitting of the National Assembly. The representatives of the legal profession in all areas – judges, prosecutors, lawyers, NGOs have come out in a clear and public opposition to The Draft Law on Amendments and Supplements to the Criminal Code, as it was created in a contrary to the Serbian Constitution and international treaties ratified by Serbia, while the foreseen solutions do not have capacity to, by themselves, influence the number of crimes to be reduced which more severe penalties have been imposed for. This Draft provokes a very dangerous possibility of increasing the number of prison offenses, since it foresees a life sentence for a severe murder, for which the conditional release has been excluded.

In spite of the active opposition of professional associations and individuals with years of experience in the judiciary, it was drafted at the initiative of one association with no clear criteria for membership in the working group that created the Draft. **The lack of proposals for professional comments on the Draft** is exceptionally worrying, therefore such a dramatic change in criminal legislation indicates that the state has assessed that the opinion of the profession will not be taken into account.

Amendments to the Criminal Code **are contrary to the Constitution of the Republic of Serbia, which explicitly prohibits the reduction of the reached level of human rights** and the prohibition of torture, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms. These violations of the Constitution and the European Convention reflect in introducing a life imprisonment, instead of a sentence of 30 to 40 years in prison, as well as in the prohibition of conditional release in the case of a criminal offense, severe murder, for which a life imprisonment is foreseen.

The European Court of Human Rights has clearly stated that **the practice of banning conditional release in cases of life imprisonment is not in accordance with the European Convention**, since a prisoner convicted of a life imprisonment must be given the legal possibility to be determined, after a certain period of time, whether or not the conditions for his release on conditional freedom are acquired. Contrarily, the state is deemed to be in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. it exposes the convicted person to inhuman and degrading

treatment, which cannot find its justification in modern penology[1].

Simple isolation of the convicted person for the rest of life, without the possibility of conditional release, in addition to representing an act of torture of a state against an individual, it is also a danger that an outraged individual, who knows that it will not be possible for him to be released, will be free to repeat any crime while serving the sentence, without a fear of being more severely sanctioned.
The sentence of life imprisonment, by its very nature, does not have the capacity to influence the rate of crimes in Serbia nor to reduce conducted criminal offenses which it is prescribed for, since other policies do not foresee the strengthening of the elements that influence the certainty of the criminal prosecution, which primarily relate to the capacities of the Public Prosecutor's Offices and the Ministry of the Interior who are responsible for prosecuting offenders and conducting investigations. Introducing stricter sanctions, which is not followed by a comprehensive approach in order to strengthen the certainty of punishing criminal offenders, cannot achieve the proclaimed purpose of amending the Criminal Code.

Even the Ministry of Justice in its Draft explanation stated that this initiative was also present in 2015, but after the expert discussion it was not possible to bring the final decision on the expediency of introducing this sentence. The public remained deprived of explanation how Ministry decided today that it is necessary to introduce such a severe sentence, since the expert public has mostly taken the view that the sentence of life imprisonment is not a solution for reducing the number of committing the most severe crimes in Serbia.

It is still unclear how it is possible that the tightening of the penal policy towards the increase of prison sentences does not require funds from the budget of the Republic of Serbia necessary for the implementation of this law, given the fact that prisons in Serbia have been overcrowded, as it has been even stated in numerous domestic reports of the National Preventive Mechanism as well as international bodies such as the Council of European Committee for the Prevention of Torture. The results of this reform are in direct contradiction with the Action Plan for Chapter 23, which foresees a number of measures to reduce the prison population. Increasing the number of prisoners will directly affect the need to increase the number of employees in The Administration for the Execution of Criminal Sanctions, which is contrary to the general policy of reducing the number of employees in public administration.

Additionally worrying is that the Draft Law on Amendments and Supplements to the Law on the Execution of Criminal Sanctions, which the Government of the Republic of Serbia has sent to the National Assembly, does not regulate the execution of the sentence of life imprisonment and that this proposal and the Draft are not aligned with the crucial changes.

It is also worrying that the change related to the purpose of criminal punishment, which emphasizes **the impartiality and proportionality between the committed act and the severity of criminal sanctions,** reinforcing retributive element of criminal sanctions against an individual, while neglecting general prevention. The purpose of the criminal punishment set in this way represents the reduction of the reached level of human rights, since in the current system of criminal sanctions the purpose of punishment has been equally divided between individual and general prevention.

Amendments to the Criminal Code relating to multiple refunds as new obligatory aggravating circumstances in the proceedings largely restrict a free judicial conviction in the course of individualization of the criminal sanction, especially having in mind that a multiple return of a general nature is prescribed, that is, it does not pay attention to whether it relates on the same or similar criminal offense, but the very fact of the previous conviction is sufficient for determining a more severe sentence. This type of decision has long been abandoned in domestic criminal legislation since the perpetrator is severely punished for the offense which he has already been punished

[1] The case of Vinter and Others v. the United Kingdom (application numbers 66069/09, 130/10 and 3896/10)

or convicted for. This compulsory aggravating circumstance is contrary to the same optional aggravating circumstance contained in Article 55 of the Criminal Code and, in addition to reducing the judge's role in individualizing the criminal sanction, it can produce a series of dilemmas in its application, which is an experience that we had the opportunity to see with the application of the Article 54a of the Criminal Code which prescribes a compulsory aggravating circumstance for acts committed by hatred.

We think that this type of drastic changes in criminal legislation must not be rendered hastily and partially, but they need to be the result of a comprehensive approach. We invite the Ministry to withdraw the abovementioned Draft and to establish a new working group for the reform of criminal legislation where these changes will be meticulously studied, respecting the Constitution of the Republic of Serbia, ratified international treaties, unique methodological rules for drafting regulations, as well as opinions of professional associations and individuals presented in an adequate public discussion.

Lawyers' Committee for Human Rights