The assessing a penalty in criminal law of Republic of Serbia - notion and characteristics -

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Abstract

For the purpose of providing an efficient and adequate protection of the most important social values and benefits, criminal law provides for several kinds of criminal sanctions. These include legislative measures of social reaction to perpetrators of criminal offences, imposed by courts in conformity with the legally conducted procedure. In terms of their significance, character and nature, as well as content, particularly distinguished among criminal sanctions are the penalties. These are basic criminal sanctions that are provided for in the particular part of the criminal laws, and applied to handle most criminal offences – independently, cumulatively or alternatively with other criminal sanctions.

In order for the penalties to be apt to reach their purpose – and this is to prevent a perpetrator of criminal offence to commit again the offence, and to make possible his/her re-education, as well as to realise other requirements in the sphere of general prevention, it is necessary in every concrete case to pronounce upon a liable perpetrator of a criminal offence that kind and degree of penalty which corresponds to social danger of the committed offence, as well as to the personality of its perpetrator. To reach that goal, criminal law provides for an institute known as the assessment (meting out) of penalty. The basic, i.e. regular way to mete out a penalty, that is obligatorily applied by the court in every concrete case, is to consider the attenuating and the aggravating circumstances. These circumstances are provided for in criminal law in Republic of Serbia in the provision of Article 54. of the Criminal code of 2005 with more novels to 2016.

***Keywords**: criminal offence, perpetrator, criminal liability, penalty, assessment of penalty, court, attenuating circumstances, aggravating circumstances, purpose of penalty.*

Word of introduction

The most dangerous kind of phenomena by which most important social values and protected values are put in danger in a legal system – are the criminal offences[1]. They are specified in criminal law of Republic of Serbia in the basic[2] and subordinate

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[1] D. Jovašević, Leksikon krivičnog prava, Beograd, 2011. p.247.

[2] Official Gazette of Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016. More: D. Jovašević, Krivični zakonik Republike Srbije sa komentarom, Beograd, 2007.

legislation. Since the time immemorial, the history has been recording various forms and ways of committing punishable, prohibited, socially dangerous and unlawful conduct of individuals and groups, in various spheres of social life. All these types of unallowed, banished and punishable conduct may be covered by one cumulative term – criminality (Latin: *crimen* – crime), for which perpetrators are liable to be exposed to legally prescribed kinds and degrees of criminal sanctions. The aim of the system of such social measures attempting to influence the reduction, prevention and suppressing of various ways of punishable conduct was to realise a guaranteeing, i.e. protective function of the criminal legislation in general[3].

For the purpose of providing an efficient and high-grade protection of the most important social values and benefits, criminal law provides for several kinds of criminal sanctions. These are legally specified measures of social reaction applied to perpetrators of criminal offences, that are pronounced by courts in legally conducted procedure. In terms of their significance, character, nature and content, particularly distinguished among the criminal sanctions are the penalties. These refer to basic criminal sanctions specified in the particular part of criminal laws and statutes for most of criminal offences independently, cumulatively or alternatively with other criminal sanctions.

In order for penalties to be apt to put into effect the legally provided purpose[4] (Article 42. of the Criminal code of the Republic of Serbia – CCRS) – and this is to prevent a perpetrator of criminal offence to commit it again, as well as to make possible his/her re-eduation (special prevention) and/or realise other requirements of the general prevention. This has to be done by pronouncing upon a criminally liable perpetrator of criminal offence, in every concrete case, that kind and that degree of penalty which corresponds to the social danger of the committed offence, and to the personality of perpetrator. This is why criminal law provides for the institute of assessment of penalty. In legal theory there are also conceptions according to which assessing (meting out) a penalty means determining such penalty that would be most adequate in attempting the resocialisation of the condemned persons[5].

The basic or regular and usual way of assessing a penalty to a perpetrator of criminal offence, that is obligatorily applied by the court in every concrete case, is to assess (mete out) a penalty by means of attenuating and aggravating circumstances. These circumstances are specified in criminal law of Republic of Serbia in the provision of Article 54. of the Criminal code of the Republic of Serbia by 2005.

Concept and kinds of assessing a penalty

There exist different forms and ways of unlawful, *i.e.* socially dangerous conduct of individuals and groups by which protected social values and benefits are violated or put in danger. The laws in all modern countries provide against the persons committing

[3] D. Jovašević, Komentar Krivičnog zakona SR Jugoslavije, Beograd, 2002. pp. 246-257; Lj. Lazarević, Komentar Krivičnog zakonika Republike Srbije, Beograd, 2006. pp. 184-196.

[4] L. Cvitanović, Svrha kažnjavanja u suvremenom kaznenom pravu, Zagreb, 1999. pp.78-84; M.Simović, D.Jovašević, M.Simović, Politika suzbijanja kriminaliteta, Istočno Sarajevo, 2016.pp.56-68.

[5] B. Čejović, Krivično pravo, Opšti deo, Beograd, 2002. p.446.

such acts specific criminal sanctions that are based on the principle of equity according to which every single perpetrator of a criminal offence should be punished for the offence he/she has committed. However, in order for the court to be able to pronounce upon a criminally liable perpetrator one or several penalties or other criminal sanctions (safety measures or warning measures), as specified by the corresponding legal rules, certain requirements have to be met that are provided by provisions of the Criminal code[6]. These requirements refer to the system of rules for the assessment of a penalty that should be individualised to correspond to a concrete perpetrator of a concrete criminal offence, as well as to be in conformity with the purpose of punishment (Article 42. of the CCRS).

By assessing (meting out) a penalty, the court in fact effects the individualisation of penalty by pronouncing upon a perpetrator of the criminal offence that penalty which, in terms of the kind and degree, would provide best chances for the realisation of the purpose of penalty, i.e. for putting into effect, on the one hand, the protection of society and social values and for re-education and resocialisation of the perpetrator of the criminal offence – the condemned person, on the other. The way is almost identical by which competent state agencies mete out the penalties to those persons who commit other kinds of violation in the sphere of public law, such as commercial infractions[7] and violations[8].

Assessing a penalty is an act of determination of kind and degree of the penalty that is to be pronounced upon a perpetrator because of the criminal offence he/she has committed[9]. When assessing a penalty, one has to consider the relevant circumstances, in order to determine for a perpetrator such penalty that, in terms of kind and degree, corresponds to the gravity of the criminal offence that was committed, as well as to the danger for society caused by the perpetrator, so that the purpose of punishment could be realised in the best way.

Various state bodies and agencies may take part in the process of determining a penalty for a perpetrator relating to the specific criminal offence, and they do this in various ways. In this respect it is possible to distinguish between legislative, judicial and administrative (executive) assessment of penalty[10]. However, it is possible to find in legal theory such conceptions according to which there exists only legislative and judicial assessment of penalty[11]. In this respect some authors emphasise that only the judicial assessment of penalty is the one that is genuine[12], while the lawmaker just makes a general assessment of penalty – *in abstracto*.

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[6] D. Jovašević, Komentar Krivičnog zakona SR Jugoslavije, Beograd, 2002. pp.246-257.

[7] For more details see: D. Jovašević, Komentar Zakona o privrednim prestupima, Beograd, 2001. ; D. Jovašević, Privredni prestupi u praksi – Praktikum, Beograd, 2001.

[8] For more details see: P. Dimitrijević, D. Jovašević, Prekršajno pravo, Beograd, 2005.; D.Jovašević, Prekršajno pravo, Niš, 2012.

[9] D. Jovašević, Krivično pravo, Opšti deo, Beograd, 2015.p.234.

[10] B.Petrović, D. Jovašević, A.Ferhatović, Krivično pravo 1, Sarajevo, 2015. p.351.

[11] T. Živanović, Osnovi krivičnog prava, Opšti deo, Volume 2, Beograd, 1937.pp.325-327.

[12] D.Jovašević, Krivično pravo, Opšti deo, Beograd, 2015. p.305.

The attenuating and aggravating circumstances in criminal law of Republic of Serbia

In the sphere of regular or usual assessment of penalty to a perpetrator of criminal offence, the bench of judges determines, in the criminal proceedings the attenuating and the aggravating circumstances, so that they could be able to determine, within the framework of legally prescribed penalties, that kind and degree of penalty, which would most completely put into effect the purpose of punishment. In order words, the attenuating and the aggravating circumstances are those circumstances that relate to the criminal offence or the perpetrator, and that influence the penalty, by meting it out as milder or stricter, but always within the limits prescribed for the concrete offence. Those circumstances that have an impact on determining a milder penalty, within the particular minimum and the particular maximum, are called – attenuating, while the circumstances that make the ground for pronouncing a stricter penalty are called – aggravating[13].

Attenuating and aggravating circumstances are the instruments of individualisation of penalty, of its concordance and adapting to the gravity of the criminal offence and to the danger of the perpetrator for society. Considering these circumstances makes possible to pronounce upon perpetrators of the same offences different penalties. In such a way, they become so significant that they serve as elements for the creation of criminal policy characteristic for the treating of perpetrators of criminal offences[14].

In course of committing a criminal offence, a series of various circumstances do appear, and they are connected either to the very criminal offence, taken as an objective act, or to the perpetrator of the criminal offence viewed as a human and social being. In terms of their origin and effects in the sphere of danger for society, these circumstances are rather different. The problem of these differences arises in the sphere of their regulation by law with the aim of preventing arbitrariness and misuse of their application, and still meet the aim of enabling the courts to play an active and creative role in meting out the penalties on the ground of assessment of effects of all relevant circumstances of a concrete offence. Consequently, certain criminal legislation provide for three types of solutions.

The first solution concerns the method of enumerating all the circumstances – specifically, that have to be taken in consideration in assessing a penalty. Such enumeration ensures the legality and prevents the arbitrariness, but at the same time restricts the freedom of the court, preventing it to consider any circumstance that is not specified by law, regardless of its real influence in a concrete case[15]. The drawback of

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[13] D. Atanacković, Kriterijumi odmeravanja kazne, Beograd, 1975. p.139.

[14] M. Đorđević, Đ. Đorđević, Krivično pravo, Beograd, 2005. p. 79; N. Mrvić Petrović, Krivično pravo, Beograd, 2006. pp.152-154.

[15] According to article 61. of the Criminal code of the Russian Federation, circumstances are strictly enumerated that may be attenuating, while in terms of article 63. this is done with the aggravating circumstances (И. Федосова, Т. Скуратова, Уголовниј кодекс Россијској федерации, Москва , 2005. pp. 47-49) The same solution is adopted in the Criminal code of Portugal, where article 34. specifies only

such solution is the impossibility to provide by a law circumstances that may take place in rather various concrete life situations.

The second solution provides for absolute freedom of the court through an explicit power, specified by law, in taking in consideration all the circumstances of specific case, without indicating individual circumstances that were taken as relevant. It goes without saying that this approach has developed a full range of freedom of the court, but at the same time that was also a way of creating the possibility of having a wide variety of solutions in the practice of administration of justice as well as the arbitrariness in assessing penalties as far as circumstances to be considered were concerned.

The third solution represents a combination of the preceding ones; *i.e.* the legislative text enumerates the circumstances that have to be considered by court, but at the same time authorises the court to take in consideration other circumstances as well, after finding that they are important in a concrete case for adequate assessment of penalty. The law, however, has no provision regarding the relevance and character of such circumstances (i.e., are they attenuating or aggravating). Most of the modern contemporary criminal codes adopt this third solution because it ensures the legality and extends a wider freedom to the court in adapting the penalty to the gravity of the criminal offence and the personality of its perpetrator[16].

New Criminal code of the Republic of Serbia from 2005 regulates the attenuating and the aggravating circumstances in the framework of basic rules of assessing penalties, where in article 54 the court is under obligation to mete out a penalty upon a perpetrator of criminal offence within the limits that are legally prescribed for the offence committed, while taking in consideration all the circumstances that make the penalty to be less strict or stricter, and particularly: the degree of guilt, motives of commiting the criminal offence, the intensity of putting in danger or violating the protected value, circumstances of committing the criminal offence, previous conduct (life), personal situation and attitude of the perpetrator after the criminal offence has been committed (specially his/her relationship toward the victim of that offence – is a new solution in the criminal legislation in Republic of Serbia), as well as other circumstances relating to personality of perpetrator[17].

These circumstances may be classified, on the basis of their relation to the criminal offence or to its perpetrator, as objective and subjective circumstances. Objective circumstances include the intensity of putting in danger or violating the protected value (consequently, the scope and the mightiness of the consequence of the criminal offence).

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the aggravating circumstances, while article 39. does that with the attenuating circumstances (Code penal portugais, Les codes penaux europens, II Tome, Paris, 1958. p. 469).

[16] This solution is accepted in article 54. of the Criminal code of Bulgaria (И. Ненов, А. Стойнов, Наказателно право на Република Блгариа, Обш чест, Софиа, 1992. п.134), article 70. of the Criminal code of Italy (Compendio di Diritto penale, Parte generale e speciale, Napoli, 2004. p.316). In these criminal codes such circumstances are systematised as objective and subjective, without specifying their character and importance for the assessment of penalty in concrete cases.

[17] This solution is accepted also in article 42. of the Criminal code of Montenegro from 2003. (Official Gazette of the Republic of Montenegro No. 70/2003, 13/2004 and 47/2006) – More : Lj. Lazarević, B. Vučković, V. Vučković, Komentar Krivičnog zakonika Crne Gore, Cetinje, 2004. pp.125-132.

The following are considered as subjective circumstances: degree of the guilt (criminal liability), motives of committing a criminal offence, previous conduct (life), personal situation and attitude of the perpetrator after the criminal offence was committed. Circumstances in which the offence has been committed may be both of an objective or a subjective nature. Such assessment of penalty on the ground of characteristics of the perpetrator of the offence (subjective individualisation) and meting out the penalty on the basis of characteristics of the criminal offence (objective individualisation) develops into a single subjective-objective individualisation of penalty, because only on the ground of such unified bases – while commencing with the penalty prescribed in the criminal law – it is possible to realise entirely to purpose of punishment by means of the pronounced concrete penalty.

In new criminal law in Republic of Serbia all aggravating and attenuating circumstances are not explicitly enumerated; instead, the Criminal code specifies only some of them. In addition to the above, no circumstance is designated either as aggravating or attenuating, and each one of them, depending on its content and nature in a concrete case, may take effect as aggravating or attenuating in assessing the penalty. And finally, all these circumstances are considered in their entirety and only in relation to concrete criminal offence and concrete perpetrator of a given offence[18].

The individual of aggravating and attenuating circumstances

The degree of criminal liability (guilt) depends on the degree of expressing its two elements: mental soundness and guilt (intellectual element and intent). Since both of these subjective elements of liability consist of the mental capacity and the will, that circumstance, practically speaking, depends on the scope and intensity of expression of the intellectual element and that of the will (intent), both in the case of mental soundness and guilt. Consequently, the court is going to determine whether a given person was entirely of sound mind or – as the case may be – his capacity in this respect was reduced. It will also determine the degree of these elements, for instance, was the person involved of entirely sound mind, whether he/she has committed the offence with direct criminal intent (premeditation) or out of negligence – and which form of negligence etc.

In assessing the degree of criminal liability, the court shall also take in the consideration whether, on the part of the perpetrator at the time of undertaking the acts of execution of the offence, there was any kind of intent or purpose as him/her motive. This is particularly important where such circumstances are not encompassed by the description of the subject-matter of the concrete criminal offence.

Motives (incentives) are internal reasons and prime-movers that have guided the perpetrator of a criminal offence. There are opinions in the law theory according to which motives may not be qualified as particular circumstances. Instead, they should be evaluated in terms of the degree of criminal liability, while commencing primarily form the fact that the degree of liability is higher where the perpetrator's motive is more

[18] Group of authors, Komentar Krivičnog zakona SR Jugoslavije, Beograd, 1995.pp. 208-218.

negative, and vice versa[19]. However, the lawmaker has separated the motives as a special circumstance that may be taken in consideration in assessing a penalty only where it does not make the component part, i.e. the element of the subject-matter of criminal offence. According to their nature, motives may be distinguished as positive and humane, so that they will take effect as attenuating circumstances (altruism, patriotism, compassion, love, feeling of duty or honour), or as negative and low-minded, in which case they are considered as aggravating circumstances (hatred, enviousness, malice, greed, jealousy, avarice). Where the incentive and/or the motive appears as a circumstance serving to qualify an offence, it is not possible to consider it simultaneously as an aggravating circumstance[20].

The intensity of putting in danger or violating a protected value depends on the scope and intensity of a consequence caused by the act of the perpetrator of the offence. Seriousness of the consequence determines the weight of a criminal offence and/or real and concretely demonstrated degree of its danger for the society. The fact that a consequence is expressed as a violation is a determinant for its character. Consequently, it may be described as destruction, damage (and its scope), or only making a specific general value unusable (and for how long). Furthermore, it can also be expressed as a real putting in danger of the protected value or only as a possibility of putting it in danger. These are all the elements influencing the degree of penalty, i.e. whether it shall be milder or stricter.

Circumstances of committing a criminal offence may differ in terms of their nature and character of their effect. These may be the circumstances of an objective nature, such as the following: place, time, means (instruments), way and natural conditions of commission of the offence, like: bad visibility, flood, fire, etc. However, they may be of a subjective nature as well, *i.e.* those relating to the personality of the perpetrator of the offence or the victim, such as mental condition, inter-personal relations, effect of a mistake, and the like. Particularly considered in this respect is the conduct of the person suffering damage (victim), *i.e.* whether and to what a degree he/she has contributed to the commission of criminal offence by which some of his/her legally protected values have been violated or put in danger. All these circumstances may be relevant in determining the degree of penalty.

Former conduct (way of life) is an indicator for characterising the perpetrator's personality and his life orientation. In fact, this is a circumstance through which the attitude is expressed of the perpetrator of the offence toward social and moral norms and/or values. The previous life includes all the circumstances and/or events that had taken place in the life of perpetrator before he has committed the criminal offence. Where the perpetrator had an exemplary way of life and an irreproachable past, and, in other words, where he had no criminal records (has never been punished), if he is a good worker on the job, and a good father of the family as well as if he is honest and respected in his surroundings – then such circumstances point to the fact that he is not a morally corrupted and socially deviant person, so that applying even a mild penalty would be apt to achieve the purpose of punishment. And vice versa, where the

[19] F. Bačić, Krivično pravo, Opći dio, Zagreb, 1978. p.436.
[20] D. Jovašević, V.Ikanović, Krivično pravo Republike Srpske, Opšti deo, Banja Luka, 2012.p.227.

perpetrator is a habitual offender, or if his conduct and style of life are socially deviant, these circumstances point at the fact that in order to realise the re-educational purpose of the punishment, it would be necessary to pronounce a stricter penalty. Among these circumstances, the fact of being a habitual offender has the effect of an aggravating circumstance, while all other circumstances may be considered either as aggravating or attenuating depending on the concrete case.

Personal situation of the perpetrator represents the conditions characteristic of his way of life and conduct on the job, and include the following elements: health condition of the perpetrator and the members of his/her immediate family, relations within the family, housing situation, property status, employment status, number of family members, as well as other circumstances in the sphere of personal and family life.

The attitude of a perpetrator after the commission of the offence offers the picture of psychological personality of the perpetrator and of distinctive traits of his/her character. This circumstance is the ground not only for the evaluation of the perpetrator's attitude toward the committed offence, but also of his/her relationship toward the society as a whole and its values. This element may be significant for his/her future behaviour.

Two groups of circumstances are distinguished in this respect[21]. The first group of these circumstances concerns elimination or attenuation of consequences caused by a criminal offence, such as the following: apology (extenuation) to the person suffering damage, extending assistance to the person suffering damage, compensation of the damage caused by the offence, genuine repentance, and the like. The second group of circumstances of that kind includes those circumstances that relate to the accused in course of the criminal proceedings, such as the following: denying the guilt, repentance, changing the deposition, lying, influencing the witnesses, accusing of innocent persons and the like[22].

It should be noted that the very refusal of admission of guilt and of taking the steps for concealing the evidence regarding the commission of offence, and the guilt of the perpetrator of the offence may, not be considered as aggravating circumstances, because all the above is included in the legally permitted group of rights to defense of the accused[23]. A genuine repentance, however, is considered as an attenuating circumstance.

Property status of a perpetrator of the criminal offence is a circumstance to be taken as relevant only when assessing the money penalty (fine). According to article 54. of the new Criminal code, in assessing a fine, the court is obliged to take in consideration the property status of the perpetrator as well, while taking into account the amount of his personal income, his other revenues, his property, and his family commitments.

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[21] B.Petrović, D.Jovašević, A.Ferhatović, Krivično pravo 2, Sarajevo, 2016. p.179.
[22] P. Novoselec, Opći dio kaznenog prava, Zagreb, 2004. pp.403-404.
[23] More :.Jovašević, Praktikum za krivično pravo, Opšti deo, Niš, 2013.

Appliance of the individual of aggravating and attenuating circumstances

In addition to the above precise list of typical circumstances that may have a character of either attenuating or aggravating circumstances in the process of assessment of penalty, the lawmaker has specified in the statutory text that courts are obliged to consider other circumstances as well, which may shed light on the personality of perpetrator. In committing certain offences such subjective circumstances may take place, too, that have a specific character and do not fall in any of the listed categories. In this respect it is possible to mention the circumstances relating to the perpetrator of the offence, such as the following: age, menopause, senility, special expertise, educational degree, delicacy of feeling and/or lack of sensibility, rudeness, and the like. The influence of these circumstances may be significant in the case of commission of a criminal offence and, by that very fact, in assessing the penalty.

All these circumstances have to be taken in consideration by the court, as well as evaluated in terms of their influencing the penalty that should be determined and pronounced. Almost in every concrete case of a committed offence, several circumstances do appear, among which some are attenuating and some aggravating. The procedure applied by the court in evaluating the effect of these circumstances may be either analytical or synthetic. The court may analyse every single circumstance, first of all, by determining its character. In other words, it should find out do they operate as attenuating or aggravating ones, meaning: are they to the benefit or at the detriment of the perpetrator of the offence. Only then the court should determine the intensity of their effect in terms of increasing or decreasing the degree of the prescribed penalty[24].

According to the synthetic method, and after making the classification, the court evaluates the overall influence of the first and the second circumstances on the degree of penalty. Which method will be applied by the court – the one or the other – or, as the case may be, their combination, shall depend on its discretion. But the essential thing in this respect is that the court is obliged to consider all the circumstances of the concrete case that are of key importance in assessing the penalty, as well as to adequately evaluate the effect of one or the other group of circumstances on the degree of penalty. The assessment of the court is free, but it has to be real, *i.e.* must correspond to the entire effect of all circumstances. In the assignment of reasons the court shall state which circumstances are taken as attenuating, and which are treated as aggravating ones – and why. The penalty pronounced by the court, by taking in consideration all attenuating and aggravating circumstances, has to be within the limits indicated between the prescribed minimum and the maximum, but not lower and/or above these.

The circumstances provided for by the law as attenuating or aggravating in assessing a penalty, may appear also as statutory, *i.e.* legal elements of the subject – matter of criminal offence, which is applicable either to the basic or the qualified, and/or privileged form. The rule in such cases is that the circumstances entering in the characteristics of the subject matter of criminal offence may not be taken as attenuating or as aggravating circumstance in assessing the penalty. Consequently, one and the same circumstance may not be accounted for twice to the perpetrator of criminal offence (the

[24] D. Jovašević, Krivično pravo, Opšti deo, Beograd, 2016. pp. 230-231.

principle of prohibition of double evaluation). Where one circumstance is taken in consideration in the legal text referring to prescribing the penalty, then it may not be considered also in the process of judicial assessing of penalty. In some cases, however, there exist exceptions to that rule, *i.e.* one and the same circumstance may have a character of a qualifying circumstance, while being apt at the same time also as an aggravating circumstance in assessing a penalty. This situation relates to cases where the qualifying circumstance is of such a nature that it may appear both in its more serious and the milder form.

The assessing a penalty in international criminal law

By the and of the twentieth century, a new branch of penal law has been constituted, *i.e.* the international criminal law[25], which establishes the system of international criminal offences, sanctions for their perpetrators and grounds and conditions of criminal liability and punishment. Consequently, an international criminal offence is a public law delict of international character by which universal and general civilisational values, such as humaneness and international law, are violated or put in danger. This means that an international criminal offence is a socially dangerous, illegal conduct of a guilt perpetrator, that is specified as a criminal act, and for whose perpetrator a criminal sanction is provided for, regardless of whether the international criminal offence is conceived in a limited or a wider sense[26]. This offence is formulated on the basic of specific international legal acts, first of all such as the Statute of International Criminal Court, that was adopted at the UN Diplomatic Conference in Rome, in July 1998.

For administering justice and rendering judgments relating to international criminal offences, supranational, universal justicial bodies have been established (at the beginning these were military courts, and after that ad hoc tribunals, while at present this is the Permanent International Criminal Court in The Hague, that was formally constituted on 2002).

The Permanent International Criminal Court, in terms of article 77. of the Statute of Rome (which document is a fundamental source of international criminal law branch), is authorised to impose upon the perpetrators of international criminal offences the following criminal sanctions:

1) as principal penalties – a) penalty of imprisonment of specified duration for up to 30 years and b) imprisonment for life and

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[25] More :B.Petrović, D. Jovašević, Međunarodno krivično pravo, Sarajevo, 2010. ; D.Jovašević, Međunarodno krivično pravo, Niš, 2010; V.Đ. Degan, B. Pavišić, Međunarodno kazneno pravo, Rijeka, 2005. ; D.Jovašević, V.Ikanović, Međunarodno krivično pravo, Banja Luka, 2015.

[26] This classification of international criminal offences was addopted at the 14th Congress of International Criminal Law Association in Wienna, in 1989. Following are international criminal offences in the narrow sense: genocide, crime against humanity, war crimes and the crime of aggression. For these criminal offences quite frequently the terms used are ''crimes according to Nuremberg and Tokyo law''. Conceived as international criminal offences in the wider sense are the ones violating the rules of international public law, and which international community intends to incriminate and to subject to sanctions in the national criminal legislations. They include offences relating to narcotics, air transportation safety, prostitution, pornography, trade of people, and the like – D. Jovašević, Krivično pravo, Opšti deo, Beograd, 2016. pp. 271-275.

2) as accessory penalties – a) a fine and b) confiscation of revenues, real property and values acquired directly or indirectly by means of the crime they have committed.

The rules of assessing penalties for the commission of international criminal offences are specified in the provision of article 78. of the Statute of Rome. According to these rules, the court is obliged to assess a penalty in conformity with the gravity of the offence committed, and the individual circumstances relevant in terms of the personality of perpetrator of the offence. Since no single international legal document providing for international criminal offences prescribes the range of penalties for committed offences, the court is authorised to impose the kind and degree of penalty freely, within the general minimum and the general maximum of the penalty.

In doing that, the court is only obliged to take into account two circumstances: 1) circumstances of objective and 2) circumstances of subjective character. An objective character circumstance relevant for assessing a penalty by the international criminal court is the gravity of the committed crime (scope and intensity of the committed offence as well as the circumstances relating to its commission that primarily involve: time, place, manner and the instrument of commission). The circumstance of subjective character that the court is particularly obliged to consider in assessing the penalty upon a perpetrator of an international criminal offence are the circumstances relating to perpetrator's individual situation as far as his/her personality is concerned. It is difficult to specify in advance what these individual circumstances are, because this is a factual question that has to be solved by the bench of judges in every concrete case.

Conclusion

Criminal legislation of all contemporary states tries to suppress various forms and types of socially dangerous and illegal conduct of individuals and groups, and to provide in such a way an efficient and high-quality protection of the most significant social values and benefits against violation or putting in danger of all kinds. This is to quite a degree achieved by applying penalties and other criminal sanctions to the perpetrators of criminal offences. These sanctions have their specific objective within the framework of the general purpose of criminal legislation.

In order to put into effect the specific purpose of penalties – as the most important kind of criminal sanctions provided for by the law – the bench of judges competent in deciding on criminal liability and punishment, must pronounce upon the perpetrator of criminal offence the kind and the degree of penalty by adhering to specific rules. These rules are the instrument for ensuring legality, but also the equity and/or proportionality in pronouncing the penalties, while the imposed penalty should correspond to the degree of social danger of the committed offence and of its perpetrator. However, a penalty pronounced in such a way should also achieve yet another objective, *i.e.* to provide the grounds for re-education, correction and re-socialization of the perpetrator of criminal offence, so that he/she would not continue to commit the criminal offences.

To realise in every concrete case all these objectives and to meet all the requirements expected from the court, all modern criminal legislations, in conformity with the principle of legality, establish a system of criminal sanctions – primarily the

penalties, as well as grounds and conditions for pronouncing them. However, in addition to the legal assessment of penalties that is conducted at two levels, *i.e.*: 1) regarding the general minimum and maximum of the specified kind of penalty and 2) regarding the particular minimum and maximum of penalty for each individual criminal offence, all countries widely apply today the judicial assessment of penalty as a regular way of assessing the penalty (which in some legal systems includes the administrative or executive assessment of penalty as well).

The most important one is judicial assessment of penalty which is the manner the court pronounces upon the concrete perpetrator of the concrete form of criminal offence, the specific kind and degree of penalty. In doing that, the court takes in consideration all the objective and subjective circumstances connected both with the offence committed and the personality of its perpetrator. Regardless of the specific criminal legislation, in all modern legal systems a considerable number of these circumstances are provided for. They serve as a sign-post to a competent bench of judges who are obliged to supply a well-grounded assignment of reasons for their decision, reached freely within the relevant legal framework. The importance of creative and dynamic role of courts in concrete assessment of penalties upon perpetrators of criminal offences is best illustrated by numerous cases in judicial practice, that point at wide variety of different objective and subjective circumstances, otherwise provided for in article 54. of the Criminal code of the Republic of Serbia, as well as at their nature, character and relevance in every concrete case.

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