

Women as Victims of Reproductive Coercion Committed by Male Partners and Possibilities for Their Criminal Protection in the Republic of Serbia

PhD Aleksandar R. Ivanović*

PhD Jelena Rakić**

Abstract

Reproductive coercion on women by male partners implies a range of behaviors by which male partners influence the reproductive autonomy of women, ie the onset of pregnancy or the continuation of a pregnancy that has occurred or its termination. The variety of undesirable behaviors of male partners excludes the possibility that reproductive coercion will remain completely outside the reach of criminal law norms in the Republic of Serbia. If we take into account that reproductive coercion is realized through psychological, physical, sexual and material violence that a male partner exhibits towards his female partner, then reproductive coercion can be linked to criminal acts such as domestic violence, rape, as well as light or serious bodily injuries. Nevertheless, the sophistication of certain methods by which men derogate women's reproductive autonomy affects the fact that they cannot be identified as relevant from a criminal law point of view, which gives this negative phenomenon the possibility to exist in the context of social conformity. We see the solution to this problem in the redefinition of the criminal offense of rape, that is, in the criminalization of rape without consent, since the aforementioned criminalization would remove the key shortcomings that we observed during the analysis of the criminal offenses in question.

Keywords: reproductive coercion, women victims of violence, partner violence, family violence, criminal protection, rape

I. Introduction

Birth control is not a new phenomenon since human society has always tended to influence its numbers in some way, regardless of whether for the sake of such control they resorted to some kind of contraception or through abortion and infanticide as more frequent forms of birth control, and it is considered that birth control was not unknown even to the Stone Age population¹. Although birth control has been a

* Associate Professor of Criminal law, Faculty of law in Lukavica, University of Business Engineering and Management Banja Luka, Bosnia and Herzegovina. Contact: aleksandar.ivanovic@pravnofakultet.edu.ba.

** Assistant Professor of Civil Law, Faculty of law, security and management „Constatine the Grati“ – Niš, University „Union – Nikola Tesla“ Belgrade, Serbia. Contact: jelenarakic808@yahoo.com.

¹ N.E. Himes, *Birth control in Historical and Clinical Perspective*, The ANNALS of the American Academy of Political and Social Science, vol. 160, no. 1, 1932, p. 49.

companion of human society since its earliest period, it does not mean that women freely decided on the use of birth control methods and made decisions about (not) giving birth, nor that they do so in the modern world. Regardless of the fact that human society has come a long way from its early periods to modern society, the patriarchal patterns that are still present are a reminder that gender equality in the world we live in is still questionable, and that control over a woman's body and her sexuality and still one of the strongest levers of patriarchy and one of the most powerful means of its maintenance². The ideology of motherhood has been constituted for centuries with the help of the system of patriarchal culture, religion and dominant systems of values, morals and norms, which in this way create and maintain a desirable cultural pattern that does not give women the opportunity to make a free choice about (not) giving birth³. The authority of men over women was, and still is, strong and influential⁴. Even in the modern world, women are exposed to the behaviors of their partners that are manifested in such a way or are of such intensity that the onset of pregnancy, its continuation or termination, as well as the use of contraception, is determined by the reproductive decision of the partner, and not by themselves. Therefore, the lack of autonomy of will in women when making reproductive decisions is internationally recognized as reproductive coercion.

Reproductive coercion is directly aimed at the gross violation of women's reproductive rights and is achieved through the violation of women's psychological and physical integrity as well as their sexual freedom. Starting from the fact that violence against women is very widespread, as well as from the fact that reproductive coercion against women by male partners is unknown in the Republic of Serbia, but also a generally insufficiently researched phenomenon, the goal of this paper is to determine what the criminal law response to reproductive coercion, that is, what are the possibilities of women victims of reproductive coercion to protect their rights through criminal law. In order to achieve the goal of this paper, we will analyze the provisions related to the following criminal acts: domestic violence, rape, light bodily injuries and serious bodily harm.

II. Reproductive coercion on women by a male partner – concept and forms

Reproductive coercion⁵ against women by a male partner is defined as any attempt

² K. Kričković Pele, *Vantelesna oplodnja: rodne i društvene kontroverze* [In vitro fertilization: gender and social controversies], Novi Sad, Pokrajinski zavod za rodnu ravnopravnost polova i ACIMSI – Centar za rodne studije, 2014, p. 19.

³ *Idem*, p. 9.

⁴ *Idem*, p. 14.

⁵ Reproductive coercion against women by a male partner could be understood as the narrowest conception of reproductive coercion. Namely, in the literature we find definitions according to which reproductive coercion can be performed not only by male partners, but also by parents, peers, and doctors (M.A. Moore, L. Frohwirth, E. Miller, *Male reproductive control of women who have experienced intimate partner violence in the United States*, Social Science and Medicine, vol. 70, no. 11, 2010, p.1738). Also, it can be done by women towards men, but also by women towards women in homosexual partnerships (L. Chamberlain, R. Levenson, *Addressing intimate partner violence, reproductive and sexual coercion: a guide for obstetric, gynecologic, and reproductive health care settings*, San Francisco, The American College of Obstetricians and Gynecologists, 2010, p. 6; Park, J., et al., *Reproductive*

by a man to influence the onset of pregnancy or the continuation of pregnancy or its termination, i.e. to control the outcome of pregnancy through various behaviors that can manifest as psychological pressure, interference in decisions about contraception, as well as the application of force or threats with the same intent⁶. Based on the above definition, two forms of reproductive coercion are distinguished: coercion related to pregnancy (translated literally as pregnancy coercion) and birth control sabotage (also literally birth control sabotage). Pregnancy-related coercion refers to various tactics by which a man pressures a woman to remain pregnant, continue or terminate a pregnancy, or uses force and/or threats with the same intent⁷. Thus, a man can tell a woman that he will leave her if she does not become pregnant or that he will find someone else with whom he will have a child, he can accuse her of infidelity if she refuses sexual intercourse, since only through sexual intercourse can a man realize his intention to make a woman pregnant even though she does not want pregnancy, can manipulate her to agree to sexual intercourse without condoms and the like. Also, a man can threaten a woman that he will physically hurt her if she does not want to remain pregnant or that he will physically hurt her if she does not terminate a pregnancy that he does not want, a man's refusal to pay for an abortion in those cases when the woman has no personal income or does not have it at her disposal, canceling abortion appointments and the like⁸. Preventing birth control involves a range of behaviors that influence a man's contraceptive decisions without the use of force or threats. Within this form, we can talk about manipulation during the use of condoms, such as imperceptibly removing the condom during sexual intercourse or damaging it, taking away contraceptive pills, refusing to use condoms, refusing interrupted intercourse even though it was an agreed method of protection against pregnancy, throwing away contraceptive pills or forbidding a woman to use them and the like⁹.

It follows from the above that reproductive coercion can be achieved through emotional manipulation, humiliation, psychological, physical, sexual and/or material violence and is a manifestation of the power of a man over a woman, which is recognized as one of the forms of violence against women¹⁰.

coercion: uncloaking and imbalance of social power, American Journal of Obstetrics and Gynecology, vol. 214, no. 1, 2016, pp. 74-78). In addition to the above, there is also a definition according to which reproductive coercion on women can be carried out by others, whereby the term "others" means family members of both the woman and her partner, persons involved in prostitution (e.g. pimps) as well as persons involved in human trafficking in the context of sexual exploitation. See S. Rowlands, S. Walker, *Reproductive control by others: Means, perpetrators and effects*, BMJ Sexual & Reproductive Health, vol. 45, no. 1, 2019, p. 65).

⁶ E. Miller, G.J. Silverman, *Reproductive coercion and partner violence: implications for clinical assessment of unintended pregnancy*, Expert Review of Obstetrics & Gynecology, vol. 5, no. 5, 2010, p. 511

⁷ L. Chamberlain, R. Levenson, R. *Addressing intimate partner violence, reproductive and sexual coercion: a guide for obstetric, gynecologic, and reproductive health care settings*, San Francisco, The American College of Obstetricians and Gynecologists, 2010, p. 6.

⁸ M.A. Moore, L. Frohwirth, E. Miller, *Male reproductive control of women who have experienced intimate partner violence in the United States*, Social Science and Medicine, vol. 70, no. 11, 2010, pp. 1739.

⁹ *Ibidem*.

¹⁰ See M.A. Moore, L. Frohwirth, E. Miller, *cited.*, 1739; R.A. Camp, *Coercing Pregnancy*, William and Mary Journal of Women and the Law, vol. 21, no. 2, 2015, p. 317; J. Park, et al., *Reproductive coercion: uncloaking and imbalance of social power*, American Journal of Obstetrics and Gynecology, vol. 214, no. 1, 2016, pp. 74-78; L.A. Plunkett, *Contraceptive sabotage*, Columbia Journal of Gender and Law, no. 28, 2014, p. 108.

II.1. Reproductive coercion and the relationship with the criminal offense of family violence

Family members enjoy criminal protection against domestic violence. This criminal offense is prescribed by Article 194¹¹ and belongs to the group of criminal offenses against marriage and family.

For the existence of a criminal offense, in addition to the act of execution and its consequences, the special property of the active and passive subject, which is reflected in the naming of the criminal offense itself, is of key importance, i.e. that the action was taken by a family member and towards a family member. Considering that this crime will not exist if the perpetrator and the victim cannot be considered family members, we start the analysis of this crime from the concept of family as defined by the legislator. The criminal definition of family includes: spouses, their children, spouses' ancestors in the third line of blood relationship, extramarital partners and their children, adoptive parents and adoptees, foster parents and foster parents, as well as: brothers and sisters, their spouses and children, former spouses and their children and parents of ex-spouses on the condition that they live in the same household, but also persons who have a child together or a child about to be born, even though they never lived in the same family household [CC, article 112(28)].

We notice that the legislature also provides protection to persons who have never lived in the same household, if they have a child or is about to be born, but that protection is missing¹² former spouses who do not live in the same household, as well as former extramarital partners, regardless of whether they live in the same household or not. It is completely justified for the legislator to provide protection against domestic violence to former spouses living in the same household, because their cohabitation is most often the scene of new acts of violence (Jovanović, 2014, p. 248), since violence does not necessarily end with the termination of the community of life, but often and intensifies, that is, it is about its continuation in new circumstances. We believe that the legislator should have remained consistent and included former extramarital partners, who live in the same household, as family members, because making a distinction between these two forms of partnership implies the conclusion that the legislator favors a married union, which has an undertone of a patriarchal, traditional approach to family¹³. Some authors call into question the living in the same space by former extramarital partners, that is, the question arises whether former extramarital partners living in the same household can be considered exes¹⁴. The support for this opinion

¹¹ Criminal Code published in Gazette of the Republic of Serbia, no. 85/2005, 88/2005 – corrected, 107/2005 – corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

¹² Here, we mean exclusively the protection that is achieved through the criminal act of domestic violence. Persons who, according to the criminal definition of family, cannot be considered a family member will certainly be protected, given that almost all actions that can be used to commit this crime are covered by other incriminations. In that case, it could be about light bodily injuries, serious bodily harm, coercion etc.

¹³ S. Jovanović, *Problemi krivičnopravne reakcije na nasilje u porodici* [Problems of criminal law response to domestic violence], in: D. Kolarić (ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija* [Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem [Scientific and professional meeting with international participation], Beograd, Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, p. 248.

¹⁴ Đ. Đorđević, *Krivičnopravna zaštita od nasilja u porodici* [Criminal law protection against domestic violence]. In: D. Kolarić (ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija*

comes from one of the constitutive elements of extramarital union, that is, the existence of a community of life which, among other things, includes living at the same address¹⁵. However, we must take into account that the absence of a formal condition, i.e. the conclusion of marriage, also requires proof that an extramarital union exists, and it cannot automatically be concluded that cohabiting partners living at the same address are not former cohabiting partners¹⁶. Ex-spouses who do not live in the same household are not considered family members, which also applies to ex-common-law partners. By excluding the mentioned categories of persons from family members, the legislator becomes "blind" to the fact that victims of domestic violence sometimes break the community of life in order to protect themselves from violence, but they do not succeed¹⁷. Violence often culminates in the period of separation, because the perpetrator wants to return his "object" of domination, at any cost, and to that end uses psychological and/or physical violence¹⁸. Accordingly, the fact that the former marital or extramarital partners do not live in the same household should not be of crucial importance for determining family affiliation¹⁹. Disadvantages related to the criminal law concept of family are almost minimized when it comes to reproductive coercion, but they certainly exist. Although it is not inconceivable that, for example, an extramarital partner, with whom a woman lives in the same space, destroys, for example, contraceptive pills by throwing them away, thereby alluding to her promiscuity and endangering her tranquility, it is still more realistic in life, and appropriate to the purpose of reproductive coercion, a situation in which a man, through the use of violence, threats or insolent or reckless behavior, tries to influence the outcome of pregnancy, in which case the legislator considers the partners to be members of the family, regardless of whether they live in the same household or not, since one of the key factors is for belonging to the family of a child who is about to be born. On the other hand, if violence, threats, insolent or reckless behavior were aimed at the onset of pregnancy of a woman with whom a man is in a sexual-emotional relationship, the woman would not receive protection through this criminal act, but, taking into account the consequences that occurred, could have reported another crime.

As the basic form of the criminal act of domestic violence, the legislator prescribes: use of violence, threat to attack life or body, brazen or reckless behavior that endangers

[Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem, Beograd: Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, p. 68.

¹⁵ Draškić, M., *Porodično pravo i prava deteta* [Family law and children's rights], Beograd, Pravni fakultet Univerziteta u Beogradu, 2011, p. 172.

¹⁶ It is not difficult to imagine that the common-law partners bought an apartment or a house with joint financial means during the cohabitation and that after the termination of the cohabitation, by force of circumstances, they remain living in the same household, which does not differ in any way from the life of former spouses in the same household.

¹⁷ S. Jovanović, *Problemi krivičnopravne reakcije na nasilje u porodici* [Problems of criminal law response to domestic violence], in: D. Kolarić (ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija* [Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem [Scientific and professional meeting with international participation], Beograd, Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, p. 90.

¹⁸ D. Dimovski, *Zaštita žena u krivičnom pravu* [Protection of women in criminal law], in: Konstantinović Vilić (Ed.) *Pravna klinika za zaštitu prava žena-norme i praksa* [Legal clinic for the protection of women's rights – norms and practice], Zbornik radova, Beograd: Autonomni ženski centar, Niš: Ženski istraživački centar za edukaciju i komunikaciju, 2013, p. 138.

¹⁹ *Ibidem*.

peace, physical integrity or mental state of a family member [CC, Article 194(1)]. The legislator envisages three acts of execution: the use of violence, a threat to attack the life or body of a family member, and brazen or reckless behavior, which has the effect of endangering the tranquility, physical integrity or mental state of another family member. The first act of execution, i.e. the application of violence, involves the use of physical force that injures the bodily integrity of another person, the deprivation of freedom of movement or the freedom for a person to freely decide on his actions²⁰, i.e. it refers to any activity that directly, really and closely endangers the physical and mental integrity of a passive subject²¹.

Violation of bodily integrity, i.e. bodily injury, as part of the basic form of the act, includes actions resulting in ordinary light bodily injury²². Seen from the point of view of reproductive coercion, we could talk about slapping a woman, strangling her, hitting her with a belt, inflicting burns etc., with the aim of getting her to "agree" to pregnancy, termination of pregnancy or its continuation. A male partner who intends to terminate a woman's pregnancy may kick her in the stomach or push her down the stairs to induce a miscarriage. He can also use physical force to prevent her from going to a health facility to terminate the pregnancy. However, if physical violence was directed at an emotional-sexual partner in order to make her pregnant with a man with whom she does not want a child, we would not be able to talk about domestic violence. The second enforcement action, which is prescribed by the legislator, is a threat. The threat consists in putting in the appearance of some evil that will befall a person or a member of his family, which is aimed at life or body. It must be serious, real and achievable, from the point of view of the one who is threatened²³. If the threat was not aimed at life and limb, then one could talk about insolent and reckless behavior, and not about a threat in the sense of this act of execution²⁴. The threat affects the voluntary component of human behavior, i.e., its goal is to create, direct, and strengthen the decision of the person to whom it is directed to undertake or not undertake a certain behavior²⁵. The threat causes a threat to psychological integrity, which is reflected in the infliction of mental pain, suffering, causing fear, restlessness, vulnerability, and a sense of personal insecurity²⁶. Thus, this act of execution could include various manifestations of reproductive coercion, such as: sending a threat to a woman that she will be beaten if she does not become pregnant, terminate or continue a pregnancy that has occurred; sending a threat to a woman that one of her family members will be

²⁰ N. Delić, *Krivičnopravni aspekt nasilje u porodici* [Criminal law aspect of violence in gossip], in: S. Panov, M. Janjić Komar, M. Škilić (eds.), *Nasilje u porodici* [Domestic violence], Međunarodni naučni skup, Beograd, Pravni fakultet Univerziteta u Beogradu, 2012, p. 108.

²¹ Đ. Đorđević, *cited*, p. 101.

²² The injury should not put the injured person's life in question, that it is a bodily injury and not damage or destruction of its parts or organs, that the injury does not cause a danger to work or that it is short-lived, temporary, that it is an easy and short-term impairment of health. See M. Lukić, S. Jovanović, *Nasilje u porodici-nova inkriminacija* [Violence in the family – a new incrimination], Beograd, Autonomni ženski centar, 2003, p. 18.

²³ Z. Stojanović, *O pojmu pretnje u krivičnom pravu* [On the concept of threat in criminal law], NBP- Nauka, bezbednost, policija, vol. 18, no. 2, 2013, p. 6.

²⁴ V. Turanjanin, E. Čorović, D. Čvorović, *Domestic violence in Serbia*, Zbornik radova Pravnog fakulteta u Nišu, no. 77, 2017, p. 86.

²⁵ Z. Stojanović, *cited*, p. 5.

²⁶ M. Lukić, S. Jovanović, *Nasilje u porodici-nova inkriminacija* [Violence in the family – a new incrimination], Beograd, Autonomni ženski centar, 2003, p. 18.

physically harmed if she does not become pregnant, terminate or continue a pregnancy that has occurred; the partner's threat to commit suicide if the woman, for example, does not continue the pregnancy or terminate it etc. The existence of not only this form of criminal offense, but also domestic violence in general, would be excluded in the event that the threats are addressed to a sexual-emotional partner with whom the man does not have a child or a child is not on the way to being born, i.e. in all cases where between a man and a woman there is a marital or extramarital union and the act of execution is aimed at the occurrence of pregnancy. Impudence and reckless behavior are prescribed as the third act of execution. Insolent behavior is that which violates the elementary rules of cultural and customary behavior, which shows insult, ignoring, readiness for physical confrontation with another²⁷.

Reckless behavior implies extreme disrespect for a person, physical and psychological abuse²⁸. Insolent and reckless behavior in the context of reproductive coercion involves emotional blackmail, tactics and manipulation, for example manipulation of contraceptives or emotional blackmail addressed to a woman in order to get pregnant even though she does not want to. However, it is factual that they would be irrelevant from the point of view of the criminal offense in question. After all, judicial practice has taken the position according to which an attack on mental integrity cannot be considered "...the defendant's statement that she will move out and take the joint child with her relatives and that the father will no longer see him"²⁹. In this regard, domestic violence could not be considered a criminal offense if the husband told the wife that he would leave her if she did not get pregnant, continue the pregnancy or terminate it. On the other hand, we believe that a case where a partner tells a pregnant woman that he will kick her out of the house if she does not have an abortion, while shouting, hysterical, and breaking things around the house would be relevant from a criminal point of view. Then this kind of behavior of a man could be characterized as impudent and reckless, which endangers the mental integrity of a woman. It is almost impossible to imagine criminal legal intervention in the event that a partner destroys a woman's birth control pills. But we believe that, for example, destroying contraceptive pills, followed by squeezing a woman's jaw while shouting that nothing can prevent him from giving birth to his child someday, could be qualified as domestic violence, especially if there is a continuation of similar behavior by a married or extramarital partner, because in this way the consequence of the act is realized, which is reflected in endangering the tranquility of the woman, while the behavior of the marital or extramarital partner could be subsumed under impudent and reckless behavior, as one of the alternative acts of execution. And when it comes to this form of crime, we must emphasize that it would only exist if a man and a woman are in a married or cohabiting union, while a sexual-emotional relationship would be considered criminally relevant if the woman is pregnant.

In addition to the basic one, the legislator foresees three more difficult forms. To achieve the first more difficult form, it is necessary that the person, i.e. a family member used a weapon, i.e. a dangerous tool or other means suitable for seriously injuring the

²⁷ See Lj. Lazarević, *Komentar Krivičnog zakonika Republike Srbije* [Commentary on the Criminal Code of the Republic of Serbia], Beograd, Službeni glasnik, 2006, p. 550; D. Simić, *Krivičnopravna zaštita od nasilja u porodici* [Criminal law protection against domestic violence], *Kultura polisa*, vol. 12, no. 27, 2015, p. 526.

²⁸ See Lj. Lazarević, *cited*, p. 550; D. Simić, *cited*, p. 526.

²⁹ Decision of the District Court in Belgrade, no. 3370 /2005 of December 29, 2005.

body or severely impairing health during the use of violence, threats to attack the life or body of a family member or with brazen or reckless behavior with a weapon, i.e. a dangerous tool or other suitable means endangered the tranquility, physical integrity or mental state of a family member [CC, Article 194(2)]. In the context of reproductive coercion, the first severe form could exist if, for example, a male partner, with whom a woman is married, cohabiting or in a sexual-emotional relationship, threatens his partner with a kitchen knife that he will kill her and the unborn child if she does not continue the pregnancy she does not want. However, if a man threatened his partner with a knife that he would kill her if she did not become pregnant, undertaking this act of execution would only be relevant if the two were in a marital or cohabiting union, but not in a sexual-emotional relationship.

The second more severe form will be realized if there was a serious bodily injury or severe damage to health or the act was committed against a minor, where it is necessary that the alleged incident occurred through the use of violence, a threat to attack life or body, insolent or reckless behavior of a family member which may be accompanied by the use of weapons, dangerous tools or other means suitable for seriously injuring the body or seriously impairing health [CC, Article 194(3)]. As it is a criminal offense qualified by a more serious consequence, it is necessary that there is negligence on the part of the perpetrator in relation to serious bodily injury, that is, a more serious consequence. Given that this more serious form of crime will be committed even if it is committed against a minor, this means that the perpetrator should be aware of the victim's age. Seen from the point of view of reproductive coercion, this form of domestic violence could be realized when, for example, a husband/extramarital partner/emotional-sexual partner beats a woman and inflicts severe physical injuries on her because, contrary to his intentions, she wants to have an abortion. Or for example, if the husband/extramarital partner inflicts serious bodily harm on the woman by physically abusing her because she does not want to become pregnant with him.

The third most severe form will exist if, as a result of the application of violence, threats to attack life or body, brazen or reckless behavior, the death of a family member occurred, or the death was caused by the use of weapons, dangerous tools or other means [CC, Article 194(4)]. Even with this form of domestic violence, the death of a family member must be covered by the perpetrator's negligence, because otherwise it will be a criminal offense of aggravated murder, since the legislator has prescribed the deliberate deprivation of life of a family member who was previously abused by the perpetrator [CC, Article 114(10)]. In the context of reproductive coercion, it is possible that, for example, as a result of an argument caused by the woman not wanting to have an abortion, the partner pushes the woman down the stairs with the aim of causing an abortion, but as a result of the fall, the woman dies. We could also talk about this form when the husband/extramarital partner threatens the woman that he will physically hurt her if she does not agree to a pregnancy with him, or to an abortion (in this case sexual-emotional partners are also included), so the woman is afraid of such threats she ran out into the street where she was hit by a car and lost her life.

The criminal act of domestic violence can only be committed with intent. When it comes to the repetitiveness of violence, i.e. the dilemma that exists in relation to whether only one action is required for the existence of a crime or whether violence occurs continuously, the legislator prescribed the following: "when the action of a criminal offense is determined by a permanent verb, it is considered that deed committed, if the action was performed one or more times" [CC, Article 112(30)]. We observe that

the criminal law reaction will depend on each specific case, and that an act of violence would be relevant if, according to its characteristics, content and subjective relationship, it points to the risk of re-victimization³⁰. Regardless of whether the execution action was undertaken once or more than once, it will be a single criminal offense³¹.

II.2. Reproductive coercion and relationship with the criminal offense of rape

The crime of rape is the central crime in the group of crimes against sexual freedom. This criminal offense is prescribed in such a way that, in addition to the basic form, there is one special form, which can be considered lighter, and two qualified forms.

The basic form represents the essence of this criminal offense and consists in the coercion of sexual intercourse or an act equivalent to it, the use of force or the threat of immediate attack on the life or body of that person or a person close to him [CC, Article 178(1)]. Sexual intercourse implies a sexual relationship between a man and a woman, as a result of which there is penetration of the male genital organ into the female genital organ (*emmissio in vaginam*)³². When we talk about an act which is an equal act with sexual intercourse, we can consider it in a narrower and broader sense. Thus, a narrower interpretation would include any penetration of the male sexual organ into the anal opening (*immissio in anus*) or oral opening (*immissio in os*) of the victim, regardless of gender, in order to satisfy the sexual urge³³. With a broader interpretation, the insertion of objects or other parts of the body into the vaginal or anal opening of the victim can be equated with rape³⁴. By using the term "who", the legislator defines both the active and the passive subject of rape in a gender-neutral manner. In this regard, we can conclude that rape is not perceived as a criminal offense for the existence of which it is necessary that a woman is the victim and a man is the perpetrator, and that criminal law protection is provided to all persons regardless of sexual orientation or marital status. Based on the legal definition of rape, it is clear that it is a two-act unlawful complex criminal offense³⁵. Duplicity is reflected in the act of execution, which consists of coercion and coercion or an act equated with it. An improper complex criminal offense arises from the fact that coercion or an act equated to it are not illegal activities, unlike coercion, contrary to a real complex criminal offense that includes several illegal activities that make up a single criminal offense. These are two types of activities that are tightly connected and that give each other a new quality³⁶. The act of execution is defined by the legislator as an alternative, that is, as a crime or an act equivalent to it, with the inevitable existence of coercion as a means of

³⁰ M. Škulić, *Krivično delo nasilje u porodici* [Criminal act of domestic violence. In: S. Panov, M. Janjić-Komar, M. Škulić (eds.), *Nasilje u porodici* [Domestic violence], zbornik sa naučnog skupa Proceedings from a scientific meeting, Beograd, Pravni fakultet Univerziteta u Beogradu, 2009, p. 16.

³¹ Đ. Đorđević, cited, p. 70; Judgment of the District Court in Subotica, no. 453/2008 of 22.7. 2008

³² R.A. Ivanović, B.A. Ivanović, *Krivično djelo silovanja u krivičnom zakonodavstvu Crne Gore* [The criminal offense of rape in the criminal legislation of Montenegro], *Pravne teme*, vol. 2, no. 3, 2014, p. 94.

³³ See R.A. Ivanović, B.A. Ivanović, cited, p. 94; D. Marinković, O. Lajić, *Kriminalistička metodika* [Criminal methodology], Beograd, Kriminalističko-policijska akademija, 2012, p. 70.

³⁴ See R.A. Ivanović, B.A. Ivanović, cited, p. 94; D. Marinković, O. Lajić, cited, p. 70.

³⁵ M. Jović, *Krivično pravo – posebni deo (skripta I)* [Criminal law – special part (volume I)], Novi Pazar: Univerzitet u Novom Pazaru, 2011, p. 107.

³⁶ Z. Stojanović, *Silovanje bez prinude: Usaglašavanje KZ Srbije sa članom 36 Istanbulske konvencije* [Rape without coercion: Alignment of the Criminal Code of Serbia with Article 36 of the Istanbul Convention], *NBP-Žurnal za krinimalistiku i pravo*, no. 1, 2016, p. 4.

realizing the crime or an act equated to it. Coercion involves the use of force³⁷ or threats³⁸ and it should be of such intensity that it breaks the victim's resistance. In the case of rape, coercion cannot be viewed in isolation. It has a constitutive character because its aim is to perform a crime or an act equivalent to it. It is a question of functional coercion aimed at breaking the victim's resistance or making resistance completely impossible. The attribute "functional" in relation to this coercion means that it is goal-directed – on the one hand, its basic goal is to commit a crime, and on the other hand, the goal of this coercion is to break resistance, that is, to demotivate the victim to offer resistance at all, which also enables forced marriage³⁹. That force which in a specific case was sufficient to overcome the expressed resistance or eliminate the possibility of resistance, represents a force of sufficient intensity in the specific case⁴⁰. However, the absence of defensive injuries on the injured person's body does not necessarily mean that there was no force and threat, that is, that not all the elements required for the act to be qualified as rape were fulfilled. The force or threat must immediately precede the rape. If this is not the case, i.e. if there is a threat of some future attack on life or body⁴¹, it will not be an incriminated sexual relationship⁴². As for resistance, it is clear that it is not a special characteristic of the criminal offense in question, since the legislator does not insist on the fact that the victim resists the perpetrator, because the existence of resistance indicates that force was used, but not vice versa, that is, the absence of resistance does not mean that force was not used⁴³. In the literature and judicial practice, it is accepted that the expected resistance is also sufficient, i.e., it is not necessary that the resistance was provided if it could be expected⁴⁴.

In terms of culpability, rape can only be committed with premeditation. The consciousness of the perpetrator must include the non-compliance of the passive subject, that is, opposition to the crime or an act that is equated with it. When a threat is taken as an action of execution, then resistance does not exist since it breaks the will

³⁷ Force can be absolute or compulsive. In the case of absolute force, the victim is completely unable to undertake any voluntary act, and therefore the question of consent/non-consent cannot be raised. In cases of compulsive force or persecution, a person is not prevented from making a decision, but that decision is forced and therefore cannot be voluntary (M. Vešović, *Nasilje u partnerskim odnosima i porodici (krivičnopravni aspekt)* [Violence in partner relationships and family (criminal law aspect)], *Revija za kriminologiju i krivično pravo*, no. 2-3, 2015, p. 176). According to Article 112 CC, paragraph 12, the use of hypnosis or stunning means, with the aim of rendering someone against their will in an unconscious state or incapacitating them for resistance, is also considered force. When it comes to hypnosis, the victim is brought into an unconscious state, which makes him unable to resist. Hypnosis paralyzes or visibly reduces a person's conscious and volitional abilities. With stunning means (drugs, alcohol etc.) a person can be brought into a state of unconsciousness, as a result of which he is unable to resist (N. Memedović, *Krivično delo silovanja u jugoslovenskom pravu* [The crime of rape in Yugoslav law], Beograd, Naučna knjiga, 1988, pp. 125-127).

³⁸ It is a qualified threat that implies an immediate attack on the life or body of the victim or a person close to him.

³⁹ M: Škulić, *Krivično delo silovanja u Krivičnom pravu Srbije* [The criminal act of rape in the Criminal Law of Serbia], *Crimen*, 3, *Revija za kriminologiju i krivično pravo*, no. 2-3, 2017, p. 403.

⁴⁰ M. Škulić, *cited.*, p. 403.

⁴¹ J. Lazarević, *cited.*, p. 2013.

⁴² In this connection, judicial practice has also taken a stand. "The fact is that the accused did not undertake, even though he directly threatened and used force against the injured party, any action aimed at committing a crime, which occurred much later and in another place, without the use of force or threat." (Judgment of the Court of Appeal in Niš. No. I 1228/10 of March 15, 2010).

⁴³ Z. Stojanović, *cited.*, p. 7.

⁴⁴ Z. Stojanović, *cited.*, p. 7.

of the passive subject and he does not engage in active resistance⁴⁵. The perpetrator of the criminal act of rape must be aware of his crime and want to commit it, which means that in the specific situation he must be aware that the passive subject does not voluntarily consent to rape or an act equated with rape, but that it occurs as a result of applied coercion, and what the doer will. In the subjective sense, the existence of a specific intention of the perpetrator of the criminal act of rape is not necessary, but it is sufficient that he has a direct intention⁴⁶.

A special form of rape consists of rape or an act equivalent to it with the application of a threat, where the threat, unlike the basic form, is aimed at revealing something that would harm the honor and reputation of the passive subject or a person close to him, or the passive subject is threatened with other serious evil [CC, Article 178(2)].

For the first more severe form, it is necessary that the basic or special form of the act is committed with the existence of one of the qualifying circumstances. Thus, the legislator prescribes: the occurrence of serious physical injury to the person against whom the act was committed; that the act was committed by several persons; that the act was committed in a particularly cruel or particularly humiliating manner; that it was committed against a minor or that the act resulted in pregnancy [CC, Article 178(3)].

The second more severe form, that is, the most severe form, will exist if the death of the person against whom the act was committed or if the act was committed against a child occurred [CC, Article 178(4)].

When it comes to qualifying circumstances, it is necessary for the perpetrator to demonstrate negligence as a form of guilt in relation to a more serious consequence, because as a result of acting with intent there would be a combination of rape and serious bodily injury, that is, rape and murder or serious murder⁴⁷. When pregnancy occurred as a result of rape, it is not important whether the perpetrator was negligent or intentional, since pregnancy does not constitute a criminal offense, but if the perpetrator intentionally led to the pregnancy of the raped woman, it would have the significance of an aggravating circumstance⁴⁸.

By looking at the criminal offense of rape from the aspect of reproductive coercion against women by a male partner, we see that any application of coercion with the aim of obtaining sexual intercourse is rape, it only depends on the consequences or the form of the threat, whether it is a basic, privileged or one of the qualified forms. Therefore, the ultimate goal of the male partner, i.e. the occurrence of pregnancy, would be relevant only if the pregnancy did occur, and it is not important whether the man acted with intention in relation to the occurrence of pregnancy. Also, the crime will exist regardless of the interpersonal relationship between the victim and the perpetrator, which means that it is not important whether a man and a woman are in a sexual-emotional relationship, cohabiting or married. However, depending on the moment when force and threat were used, as well as the woman's resistance, there are situations that will exclude this criminal act. As an illustration, we can take into account sexual intercourse, that is, sexual intercourse that began voluntarily. Two partners voluntarily engage in sexual intercourse, where there is an agreement to use

⁴⁵ M. Škulić, *cited*, p. 415.

⁴⁶ M. Škulić, *cited*, p. 415.

⁴⁷ M. Škulić, *cited*, pp. 421-423.

⁴⁸ J. Lazarević, M. Škulić, *Nove inkriminacije protiv polne slobode u Krivičnom zakoniku Srbije* [New incriminations against sexual freedom in the Criminal Code of Serbia], *Bilten Vrhovnog kasacionog suda*, no. 2/2017, p. 133.

a condom to protect against pregnancy. During sexual intercourse, the woman notices that the man does not respect the agreement and that he has removed the condom. She wants the sexual act to be stopped immediately, but the man uses physical force and continues the sexual intercourse. In our literature, there is an opinion that we cannot talk about rape, because such rape is not the result of the force used⁴⁹. The use of force or the threat that occurred in the course of sexual intercourse is not causally related to sexual intercourse that occurred with the consent of the woman, coercion was used only to voluntarily initiate sexual intercourse and to complete it in a physiological sense⁵⁰. This interpretation is not only degrading for women, but also questionable. Can we really talk about the absence of a causal connection between the marriage and the coercion that occurs after the woman has agreed to the marriage? Could the repatriation be understood as a completed slander, and the coercion that occurred in the meantime a new slander? If we start from the fact that intercourse is considered complete when it is physiologically completed, or more precisely when the man ejaculates, we are faced with the fact that the legal provision was created to suit the man since he has a legitimate right, because there is no sanction, to complete intercourse which the woman opposes due to circumstances that arose after penetration.

Reproductive coercion is not based exclusively on the use of force or threats, but actions, which do not imply coercion, are aimed at the occurrence of pregnancy and arise from sexual intercourse, that is, the delusion into which a man leads a woman, and concerns the conditions of sexual intercourse. One of the examples is similar to the one previously mentioned, i.e. removing the condom during sexual intercourse, but if the man did not apply physical force, how could the intercourse continue, since the woman only found out after the intercourse was over that she was under the delusion that she was protected all the time from possible unwanted pregnancies. For rape, or any other crime, this is an irrelevant event. The same would be true if a man, in some way, damaged the condom during sexual intercourse, for example damaged the part of it that allowed him to ejaculate into the woman's vagina. A woman who was seduced by a man in connection with interrupted intercourse as a protection against pregnancy, i.e. when semen was introduced (*immisio seminis*), would also be left without the possibility of seeking justice before the court. Even in the event that she became pregnant during that sexual intercourse, the woman would at best have two options: to give birth or to have an abortion. In fact, a woman would be punished by pregnancy or abortion for participating in a sexual relationship that resulted in a pregnancy that the woman did not want, that is, she did not want the introduction of semen, and therefore the pregnancy. We really cannot imagine that, within the ossified framework of patriarchal society and the legal definition of rape, condom manipulation or unwanted ejaculation can be seen as behaviors that can threaten a woman's physical and/or psychological integrity, as well as her sexual freedom and ultimately the right to, through the conscientious use of contraception, does not face an unwanted pregnancy.

It seems that by criminalizing rape without consent (promise without coercion), manipulation of an agreed method of contraception could be included as rape. Given that in our positive criminal legislation, consent is the next, not the key element of rape, we must look for the answer in foreign literature and judicial practice.

⁴⁹ Z. Stojanović, *cited*, p. 10.

⁵⁰ *Ibidem*.

Almost two decades ago, the case of *M.C v Bulgaria* came before the European Court of Human Rights⁵¹ in which it was decided whether the crime of rape must be determined by coercion. The court took the position that rape cannot be viewed only in the context of force and threat, but that it implies any involuntary act, including the absence of physical resistance on the part of the victim. It unequivocally follows from the court's position that the concept of rape with the necessary existence of force or threat is a rigid approach that prevents the effective protection of sexual freedom and physical integrity⁵².

Consent means consciously and willingly entering into a sexual relationship⁵³. Could the consent defined in this way include the following circumstances: 1) when the condom is intentionally damaged by the man without the woman knowing about the damage, 2) when the man ejaculated into the woman's vagina even though intercourse was interrupted and the agreed method of contraception was used, and 3) when the condom was removed during sexual intercourse without the woman's consent.

Puncturing or otherwise damaging the condom by a man without the woman's knowledge is just one manifestation of preventing birth control that should render contraception ineffective and lead to a pregnancy the woman does not want. Condom piercing has been debated in court in Canada. In the case of *R. v. A Hutchinson* woman reported her male partner without her knowledge used a punctured condom during intercourse, resulting in an unwanted pregnancy that she wanted to protect against by using a condom as a form of contraception. The court qualified the act as sexual assault and found the accused guilty. When deciding the case, the court had to answer two questions that are inextricably linked, namely what voluntary consent to sexual intercourse entails and whether deception regarding contraception can be considered as the absence of consent⁵⁴. It was established that consent to sexual intercourse cannot be generalized, that is, that a person does not consent only to sexual intercourse, but also needs to give consent in connection with other circumstances concerning sexual intercourse. A person has the right to freely decide on the sexual activities he wants to engage in, and that the partner cannot make that decision for him, since it is about his body, not his. In this regard, the injured party should have consented to sexual intercourse with the damaged condom for the consent to be valid (*R. v. Hutchinson*, paragraph 88-90). In the presented case, the court does not value consent as a simple consent to sexual intercourse, but takes into account the dynamics of the act itself, which includes certain circumstances in connection with which there must be freedom of choice for both, not just one partner.

Ejaculation into a woman's vagina in case in which interrupted intercourse was an agreed method of protection against pregnancy. In the reality of life, there are not rare cases where a woman agrees to have unprotected sex, but agrees with her partner that interrupted intercourse is a method of protection against unwanted pregnancy.

⁵¹ Application no. 39272/98. Judgment of 4.12.2003. year, paragraph 164-166. Downloaded from [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22M.C.%20v%20Bulgaria%22\],%22 document collectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22M.C.%20v%20Bulgaria%22],%22 document collectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}), available on 11.12.2021.

⁵² J.S. Schulhofer, *Rape in the twilight zone: When sex is unwanted but not illegal*, Suffolk University Law Review, vol. 2, no. 38, 2005, p. 420.

⁵³ See B. Chesser, A. Zahra, *Stealth: a criminal offence?*, Current Issues in Criminal Justice, vol. 31, no. 2, 2019, p. 219; M.C. Cusack, *Nonconsensual Insemination: Battery, Reproductive System & Sexual Disorders*, vol. 5, no. 2, 2012, p. 90.

⁵⁴ *R. v. Hutchinson* [2014] 1 SCR 346, paragraph 20. Downloaded from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13511/index.do>, available on 10.3.2022.

When a man does not comply with the agreement but, against her will, ejaculates in the vagina, such behavior is one of the forms of reproductive coercion, and therefore also violence against women, partner violence and domestic violence. In addition, it can be linked to the crime of rape⁵⁵ which was confirmed by two judgments in the United Kingdom. During his stay in Sweden, the accused Julian Assange met a woman with whom he had sexual relations. Although the sexual relations were voluntary, i.e. with the consent of both parties, the injured party insisted on the use of condoms, to which the accused Assange agreed. However, the injured party did not trust her and during the sexual act she repeatedly touched the root of his genital organ to make sure he was wearing a condom, especially after the moment when she noticed that the accused was taking some actions with the condom during repenetration. However, after the sexual act was over, the victim was confronted with the fact that the accused had ejaculated in her vagina. Due to the aforementioned circumstances, the injured party decided to report the rape, since she agreed to a protected sexual relationship and all the time believed that the accused was honoring the agreement, which turned out to be a deception since the accused at some point damaged the condom, which later enabled him to ejaculate in the vagina damaged. The court concluded that sexual intercourse with a condom is different from sexual intercourse without a condom, which carries with it the possibility of contracting a sexually transmitted disease, as well as the occurrence of an unwanted pregnancy. Furthermore, the court concludes that the victim's consent to sexual intercourse with a condom cannot mislead the accused regarding the nature of that relationship, so there is no justifiable reason for him to believe that the injured party consents to sexual intercourse without a condom⁵⁶. Therefore, although the accused and the injured party entered into voluntary sexual relations, the non-compliance with the agreement, that is, the changed circumstances of the sexual act required consent in connection with those circumstances, which did not occur, and the court decided that it was rape. It follows from the explanation of the judgment that consent given before sexual intercourse does not mean consent to all other circumstances of the sexual act itself, that is, consent can be withdrawn even after the sexual act has ended due to circumstances in relation to which the injured party did not give her consent. In another case, the court was more specific when it came to ejaculation for which the woman did not give her consent. In this case, the accused and the victim are spouses who participated in a voluntary sexual relationship. However, the injured party asked the accused not to ejaculate, that is, to have interrupted intercourse as a method of protection against pregnancy, to which the husband agreed, but did not honor the agreement. When evaluating the evidence, the court was based on the Assange case, where it was apostrophized that the choice regarding the circumstances of sexual intercourse is of key importance in determining (non)consent. The Court points out that evidence relating to "choice" and "freedom of choice" must be interpreted extensively. In this regard, the court concludes that there can be no talk of consent, considering that the injured party, as a condition to which the accused agreed, set interrupted intercourse, that is, ejaculation outside her vagina. Taking into account that the accused decided of his own free will not to honor that agreement and knowing that there would have been no sexual intercourse if the victim had known

⁵⁵ M.C. Cusack, *cited*, p. 129.

⁵⁶ *Assange v Swedish Prosecution Authority* [2011] EWHC (Admin) 2849. Downloaded from <http://www.gdr-elsj.eu/wp-content/uploads/2012/06/High-Court-2-Novembre-2011-assange-approved-judgment-1.pdf>.

about his intention to ejaculate inside the vagina, the court concluded that it was a criminal act of rape⁵⁷.

Removing the condom during sexual intercourse without the woman's consent began to attract the attention of the scientific public only in 2017⁵⁸ called this behavior of men stealthing and indicated that it violates not only the trust a woman has in her partner, but also bodily integrity. The modern approach to rape that takes consent, not coercion, as the demarcation line between voluntary sexual intercourse and rape could be seen both as a segment of gender-based violence and as rape⁵⁹. When relating the removal of a condom during sexual intercourse without the partner's knowledge and consent, it should be taken into account that sexual intercourse with a condom transforms into a different sexual intercourse the moment a man removes the condom, and consent to sexual intercourse with a condom does not imply consent to sexual intercourse without a condom⁶⁰. This is precisely the reason why certain authors advocate the criminalization of preventing birth control⁶¹ and therefore removing condoms without the partner's consent, while others propose that this type of reproductive coercion be specifically criminalized⁶². Although removing a condom during sexual intercourse is not specifically criminalized, this does not mean that the courts have not decided on this issue. Thus, the court in Germany (Berlin) handed down a verdict by which the man was sentenced to 8 months of probation. In this case, the court qualified the act as sexual assault, not rape, and explained the qualification of the act by the fact that the sexual relationship was voluntary. Nevertheless, the court took into account that removing the condom was illegal since it was a condition of sexual intercourse, and that the injured party had the possibility of an unwanted pregnancy or infection with a sexually transmitted disease. A court in Canada is debating the same issue. Although a judgment has already been passed in Canada regarding a similar case, i.e. condom piercing (*R. v. Hutchinson*) which the court could take into account, the judgment has not yet been passed even though the act is qualified as sexual assault⁶³.

III. Reproductive coercion and its relationship with criminal offenses of minor and serious bodily harm

Proceeding from the fact that reproductive coercion affects women's reproductive decisions, which is achieved by endangering both psychological and physical integrity,

⁵⁷ *R(F) v DPP & A* [2013] EWHC (Admin) 945, paragraph 26. Downloaded from <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/f-v-dpp-judgment.pdf>.

⁵⁸ A. Brodsky, *'Rape-Adjacent': Imagining Legal Responses to Nonconsensual Condom Removal*, *Columbia Journal of Gender and Law*, vol. 32, no. 2, 2017, p. 186.

⁵⁹ A. Brodsky, *cited*, p. 187.

⁶⁰ A. Brodsky, *cited*, pp. 191-192.

⁶¹ See N. Leung, *Education not handcuffs: A response to proposals for the criminalization of birth control sabotage*, *University of Maryland Law Journal of Race, Religion, Gender & Class*, vol. 15, no.1, 2015, pp. 146-169; J. Rubinfeld, *The riddle of rape by deception and the myth of sexual autonomy*, *The Yale Law Journal*, vol. 122, no. 6, 2013, pp.1375-1443.

⁶² See L.A. Plunkett, *Contraceptive sabotage*, *Columbia Journal of Gender and Law*, no. 28, 2014, pp. 97-143; M.S.Trawick, *Birth Control Sabotage as Domestic Violence: A Legal Response*, *California Law Review*, vol. 100, no. 3, 2012, pp. 721-760.

⁶³ *Kirkpatrick v. Her Majesty the Queen*, File No. 39287. Downloaded from <http://www.westcoastleaf.org/wp-content/uploads/2021/07/Without-supporting-lit-392887-Kirkpatrick-v-Her-Majesty-the-Queen-Motion-Intervention-WC-LEAF-SUITABLE-FOR-POSTING.pdf>.

then "help" should be requested among the characteristics of crimes against life and body. Taking into account that male partners, in order to induce pregnancy, often apply physical force, then depending on the consequences that occurred, it could be about light or serious physical injuries.

The aforementioned criminal acts would be relevant when a man and a woman are in an emotional-sexual relationship, where they do not have a child and the woman is not pregnant at the given moment, because in that case it would be a criminal act of domestic violence. Therefore, if a man slapped his partner or otherwise inflicted minor physical injuries on her, the severity of which is determined by a doctor, he could be fined or imprisoned for up to one year [CC, Article 122(1)]. For this basic form of the offense, prosecution is undertaken by private action. Also, we can talk about this criminal offense if the slight physical injury was caused as a result of the use of a weapon, dangerous tool or other means suitable for seriously injuring the body or seriously damaging health [CC, Article 122(2)]. Furthermore, if as a result of the physical injury of a woman by a male partner, and with the aim of getting pregnant, a serious physical injury occurred, i.e. if her body was seriously injured or her health was seriously impaired, we can talk about the criminal offense of serious bodily injury [CC, Article 121(1)]. When it comes to reproductive coercion against women by a male partner, the occurrence of serious physical injuries is not excluded, especially due to the fact that reproductive violence goes "hand in hand" with other forms of violence. Therefore, it is not excluded that a male partner can seriously injure a woman or damage her health so severely that her life is endangered as a result or an important part of her body or an important organ is destroyed or weakened or caused permanent incapacity for work or permanent and severely impaired health or disfigurement has occurred, the snitch could be punished with imprisonment from one to eight years [CC, Article 121(2)]. If the infliction of serious physical injuries or serious damage to health would lead to the death of a woman, it would be a more serious form of this criminal offense [CC, Article 121(3)]. In the event that serious bodily injury or serious health impairment occurred due to the negligence of the male partner, it would be a privileged form [CC, Article 121(4)]. Also, it is possible for a man to commit an ordinary serious bodily injury, a particularly serious bodily injury or one of the aforementioned serious bodily injuries that results in the death of a woman on the spur of the moment, i.e. when he is brought into a strong state of irritation through no fault of his own by an attack, abuse or severe beating by his partner, which implies a milder punishment [CC, Article 121(5)].

IV. Conclusion

Considering all the above, we can conclude that women victims of reproductive coercion in Republic of Serbia have the possibility of criminal protection of violated rights. However, we cannot talk about protection at the highest level, but only about partial protection, which can certainly be improved.

Although the legislator in the Republic of Serbia generally prescribes the acts of committing the criminal act of domestic violence, which gives the possibility that all, so far recognized, acts of reproductive coercion are included in the act of committing this criminal act, the problem lies in the definition of the concept of family. As with the act of enforcement, the legislator foresees a wide range of persons who are to be

considered family members, but the same range is not wide enough to include the varieties of partner relationships within which reproductive coercion can occur. In this regard, we believe that the legislator should not exclude from the concept of family sexual-emotional partners who do not have a child together or a child is not on the way to be born and who have never lived in the same household. This is because different types of manipulation of the sexual-emotional partner's emotions or contraceptives, with the aim of pregnancy, can be the first step towards more severe violence against women for which there is no criminal law reaction and therefore must not remain beyond the scope of recognition and the possibility of intervention. Potential unwanted pregnancy as well as unwanted pregnancy cannot be seen as normal, but as negative phenomena that affect only women, where in most cases it is not a woman's carelessness about her reproduction, but the inability to make decisions about it independently. Family members should also include former extramarital partners who live in the same household, since this is not an impossible situation in real life, and it is not excluded that the former extramarital male partner exhibits some of the behaviors that belong to reproductive coercion. In this way, complete criminal protection against domestic violence would be achieved.

Partial protection against reproductive coercion is also provided through the criminal offense of rape. Any form of reproductive coercion that implies coercion is rape, while the occurrence of pregnancy will be considered an aggravating circumstance. Nevertheless, there are forms of reproductive coercion that certainly represent a violation of sexual freedom, but cannot be qualified as rape, and therefore remain far below the radar of criminal law protection. For this reason, we believe that the criminal offense in question should be redefined so that rape or an act equivalent to it is linked to the absence of the victim's consent, and not to the application of coercion, or to prescribe rape or an act equivalent to it without the victim's consent as a separate criminal offense. Thus, men's manipulations with condoms, disobeying interrupted intercourse as an agreed method of protection against unwanted pregnancy would be covered by this criminal offense and therefore subject to criminal law reaction.

Looking at reproductive coercion through the criminal acts of domestic violence and rape, we notice that various forms of the researched phenomenon are "covered" by the mentioned criminal acts, but not completely. In this regard, some of the shortcomings can be reduced by other criminal acts, more precisely by light or serious physical injuries. The above-mentioned criminal acts can only be applied in the case of emotional-sexual partners who do not have children and with the condition that the partner is not pregnant, and when a man physically injures a woman, causing minor or serious physical injuries or harm to her health. However, here we are only talking about physical injury, while there are no actions that are not covered by other criminal acts and refer to the manipulation of means of contraception, emotional tactics and manipulation, as well as non-compliance with the agreement regarding interrupted intercourse as a method of protection against unwanted pregnancy.

In the end, we would like to point out once again that it is not a very bad criminal law protection framework, on the contrary, it can be evaluated with a positive rating, but it is certainly not necessary to make efforts to raise it to a high level in a way that implies adaptation not only to the threats that they carry with them the remains of a patriarchal society, but also with the level of gender equality that modern law strives for.

References

1. "Stealththing": Berliner Polizist bekommt Bewährungsstrafe – weil er das Kondom abzog ["Stealththing": Berlin police officer gets suspended sentence – because he took off the condom]. Retrieved from [https://www.stern.de/neon/wilde-welt/ gesellschaft/ -stealththing---berliner-polizist-bekommt-bewaehrungsstrafe---weil-er-das-kondom-abzog-8498608.html](https://www.stern.de/neon/wilde-welt/gesellschaft/-stealththing---berliner-polizist-bekommt-bewaehrungsstrafe---weil-er-das-kondom-abzog-8498608.html).
2. *Assange v Swedish Prosecution Authority* [2011] EWHC (Admin) 2849. Preuzeto sa <http://www.gdr-elsj.eu/wp-content/uploads/2012/06/High-Court-2-Novembre-2011-assange-approved-judgment-1.pdf>.
3. Brodsky, A, 'Rape-Adjacent': *Imagining Legal Responses to Nonconsensual Condom Removal*, Columbia Journal of Gender and Law, vol. 32, no. 2, 2017, pp. 183-210.
4. Camp, R.A., *Coercing Pregnancy*, William and Mary Journal of Women and the Law, vol. 21, no. 2, 2015, pp. 275-318.
5. Chamberlain, L, Levenson, R. *Addressing intimate partner violence, reproductive and sexual coercion: a guide for obstetric, gynecologic, and reproductive health care settings*, San Francisco, The American College of Obstetricians and Gynecologists, 2010.
6. Chesser, B., Zahra, A., *Stealththing: a criminal offence?*, Current Issues in Criminal Justice, vol. 31, no. 2, 2019, pp. 217-235.
7. Criminal Code of Germany (*Strafgesetzbuch – StGB*). https://www.gesetze-im-internet.de/englisch_stgb/index.html.
8. Criminal Code, law no. 85/2005, 88/2005 – corrected, 107/2005 – corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
9. Cusack, M. C., *Nonconsensual Insemination: Battery*, Reproductive System & Sexual Disorders, vol. 5, no. 2, 2012, pp. 78-141.
10. Decision of the District Court in Belgrade, case 3370/2005 of 29. 12.2005.
11. Delić, N., *Krivičnopravni aspekt nasilje u porodici* [Criminal law aspect of violence in gossip], in: Panov, S., Janjić Komar, M., Škilić, M. (eds.) *Nasilje u porodici* [Domestic violence], Međunarodni naučni skup, Beograd, Pravni fakultet Univerziteta u Beogradu, 2012, pp. 108-110.
12. Dimovski, D., *Zaštita žena u krivičnom pravu* [Protection of women in criminal law], in: Konstantinović Vilić (Ed.) *Pravna klinika za zaštitu prava žena-norme i praksa* [Legal clinic for the protection of women's rights – norms and practice], Zbornik radova, Beograd: Autonomni ženski centar, Niš: Ženski istraživački centar za edukaciju i komunikaciju, 2013, pp. 131-148.
13. Đorđević, Đ., *Krivičnopravna zaštita od nasilja u porodici* [Criminal law protection against domestic violence]. In: Kolarić D. (Ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija* [Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem, Beograd: Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, pp. 64-75.
14. Draškić, M., *Porodično pravo i prava deteta* [Family law and children's rights], Beograd, Pravni fakultet Univerziteta u Beogradu, 2011.
15. Himes, N.E., *Birth control in Historical and Clinical Perspective*, The ANNALS of the American Academy of Political and Social Science, vol. 160, no. 1, 1932, pp. 49-65.
16. Ivanović, R. A., Ivanović, B. A., *Krivično djelo silovanja u krivičnom zakonodavstvu Crne Gore* [The criminal offense of rape in the criminal legislation of Montenegro], *Pravne teme*, vol. 2, no. 3, 2014, pp. 92-110.

17. Jovanović, S., *Problemi krivičnopravne reakcije na nasilje u porodici* [Problems of criminal law response to domestic violence], in: Kolarić D. (ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija* [Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem [Scientific and professional meeting with international participation], Beograd, Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, pp. 246-255.
18. Jovašević, D., Đurđić, V., *Krivično pravo-posebni deo* [Criminal law – special part], Beograd: Nomos, 2006.
19. Jović, M: *Krivično pravo – posebni deo (skripta I)* [Criminal law – special part (volume I)], Novi Pazar: Univerzitet u Novom Pazaru, 2011.
20. Judgment of the Appell Court in Nis, case I 1228/10 of 15. 3. 2010.
21. Judgment of the District Court in Subotica, case 453/2008 of 22.7.2008.
22. *Kirkpatrick v. Her Majesty the Queen*, File No. 39287. <http://www.westcoastleaf.org/wp-content/uploads/2021/07/Without-supporting-lit-392887-Kirkpatrick-v-Her-Majesty-the-Queen-Motion-Intervention-WC-LEAF-SUITABLE-FOR-POSTING.pdf>.
23. Kričković Pele, K., *Vantelesna oplodnja: rodne i društvene kontroverze* [In vitro fertilization: gender and social controversies], Novi Sad, Pokrajinski zavod za rodnu ravnopravnost polova i ACIMSI – Centar za rodne studije, 2014.
24. Lazarević, J., Škulić, M., *Nove inkriminacije protiv polne slobode u Krivičnom zakoniku Srbije* [New incriminations against sexual freedom in the Criminal Code of Serbia], Bilten Vrhovnog kasacionog suda, no. 2/2017, pp. 122-153.
25. Lazarević, Lj., *Komentar Krivičnog zakonika Republike Srbije* [Commentary on the Criminal Code of the Republic of Serbia], Beograd, Službeni glasnik, 2006.
26. Lazarević, Lj., *Krivično pravo – posebni deo* [Criminal law – special part], Beograd, Savremena administracija, 2000.
27. Leung, N., *Education not handcuffs: A response to proposals for the criminalization of birth control sabotage*, University of Maryland Law Journal of Race, Religion, Gender & Class, vol. 15, no.1, 2015, pp. 146-169.
28. Lukić, M., Jovanović, S., *Nasilje u porodici-nova inkriminacija* [Violence in the family – a new incrimination], Beograd, Autonomni ženski centar, 2003.
29. *M.C v Bulgaria Application no. 39272/98*. Judgment of 4.12.2003. [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22M.C.%20v%20Bulgaria%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22M.C.%20v%20Bulgaria%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}).
30. Marinković, D., Lajić, O., *Kriminalistička metodika* [Criminal methodology], Beograd, Kriminalističko-policijska akademija, 2012.
31. Memedović, N., *Krivično delo silovanja u jugoslovenskom pravu* [The crime of rape in Yugoslav law], Beograd, Naučna knjiga, 1988.
32. Miller, E., Silverman, G.J. *Reproductive coercion and partner violence: implications for clinical assessment of unintended pregnancy*, Expert Review of Obstetrics & Gynecology, vol. 5, no. 5, 2010, pp. 511-515.
33. Moore, M. A., Frohwirth, L., Miller, E., *Male reproductive control of women who have experienced intimate partner violence in the United States*, Social Science and Medicine, vol. 70, no. 11, 2010, pp. 1737-1744.
34. Park, J., et al., *Reproductive coercion: uncloaking and imbalance of social power*, American Journal of Obstetrics and Gynecology, vol. 214, no. 1, 2016, pp. 74-78.
35. Plunkett, L.A., *Contraceptive sabotage*, Columbia Journal of Gender and Law, no. 28, 2014, pp. 97-143.

36. *R. v. Hutchinson* [2014] 1 SCR 346. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13511/index.do>.
37. *R(F) v DPP & A* [2013] EWHC (Admin) 945. <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/f-v-dpp-judgment.pdf>.
38. Rowlands, S., Walker, S., *Reproductive control by others: Means, perpetrators and effects*, BMJ Sexual & Reproductive Health, vol. 45, no. 1, 2019, pp. 61-67.
39. Rubinfeld, J., *The riddle of rape by deception and the myth of sexual autonomy*, The Yale Law Journal, vol. 122, no. 6, 2013, pp. 1375-1443.
40. Schulhofer, J.S., *Rape in the twilight zone: When sex is unwanted but not illegal*, Suffolk University Law Review, vol. 2, no. 38, 2005, pp. 415-425.
41. Simić, D., *Krivičnopravna zaštita od nasilja u porodici* [Criminal law protection against domestic violence], *Kultura polisa*, vol. 12, no. 27, 2015, pp. 523-534.
42. Škulić, M., *Krivično delo nasilje u porodici* [Criminal act of domestic violence]. In: Panov, S., Janjić-Komar, M., Škulić, M. (Eds.) *Nasilje u porodici* [Domestic violence], zbornik sa naučnog skupa Proceedings from a scientific meeting, Beograd, Pravni fakultet Univerziteta u Beogradu, 2009, pp. 10-22.
43. Škulić, M., *Krivično delo silovanja u Krivičnom pravu Srbije* [The criminal act of rape in the Criminal Law of Serbia], *Crimen*, 3, Revija za kriminologiju i krivično pravo, no. 2-3, 2017, pp. 392-441.
44. Škulić, M., *Maloletnici kao učinioci i kao žrtve krivičnih dela* [Minors as perpetrators and victims of criminal acts], Beograd, Dosije, 2003.
45. Škulić, M., *Nasilje u porodici: neki problemi zakonske inkriminacije i sudske prakse* [Domestic violence: some problems of legal incrimination and judicial practice]. In: Kolarić D. (Ed.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvena reakcija* [Violence in Serbia – causes, forms, consequences and social reaction], Naučno-stručni skup sa međunarodnim učešćem, Beograd: Kriminalističko-policijska akademija, Fondacija „Hans Zajdel“, 2014, pp. 34-51.
46. Stojanović, Z., *O pojmu pretnje u krivičnom pravu* [On the concept of threat in criminal law], *NBP- Nauka, bezbednost, policija*, vol. 18, no. 2, 2013, pp. 1-16.
47. Stojanović, Z., *Silovanje bez prinude: Usaglašavanje KZ Srbije sa članom 36 Istanbulske konvencije* [Rape without coercion: Alignment of the Criminal Code of Serbia with Article 36 of the Istanbul Convention], *NBP-Žurnal za krinimalistiku i pravo*, no. 1, 2016, pp. 1-23.
48. Trawick, M.S., *Birth Control Sabotage as Domestic Violence: A Legal Response*, *California Law Review*, vol. 100, no. 3, 2012, pp. 721-760.
49. Turanjanin, V., Ćorović, E., Čvorović, D., *Domestic violence in Serbia*, *Zbornik radova Pravnog fakulteta u Nišu*, no. 77, 2017, pp. 75-101.
50. Vešović, M., *Nasilje u partnerskim odnosima i porodici (krivičnopravni aspekt)* [Violence in partner relationships and family (criminal law aspect)], *Revija za kriminologiju i krivično pravo*, no. 2-3, 2015, pp. 159-184.
51. Vujičić, N., *Krivičnopravni i kriminološki aspekti seksualnog nasilja u Republici Srbiji* [Criminal law and criminological aspects of sexual violence in the Republic of Serbia], *Zbornik Instituta za kriminološka i sociološka istraživanja*, no. 1, 2016, pp. 119-136.