



Dragan M. Jovašević^[1]

University of Niš, Faculty of Law
Belgrade (Serbia)



Radoš Pejović

Government of the Republic
of Serbia, Ministry of Family
Affairs and Demography
Belgrade (Serbia)

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Stalking as a Form of Gender-based Violence – International Standards and National Law

Abstract: Based on the international standards contained in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the so-called Istanbul Convention), a system of criminal liability and punishment for the act of “Stalking” has been established in European criminal law. Depending on the legal regulation that provides for this incrimination against a person’s personal freedom, this criminal offence consists of causing fear, insecurity, anxiety or distress to another person or a person close to them. This unlawful misconduct is undertaken by someone repeatedly and persistently following, harassing or stalking another person or a person close to them. However, the essence of this incrimination is reflected in the attempt to establish unwanted or inappropriate contact between the perpetrator and another person, directly or through a third party, through information and communication technology. Based on international standards, the paper analyzes the content, characteristics, elements of being and forms of manifestation of the criminal offense of persecution in the law of the Republic of Serbia, or in the law of selected European countries (Italy, Germany, Poland, Switzerland).

Keywords: criminal law, international standards, stalking, personal security, punishment

Introduction

In the past years, both the world and the Republic of Serbia have witnessed increasingly frequent and various forms of attacks which violate or threaten fundamental human values (life, body integrity, health, fundamental freedoms and rights, dignity) of others and which are based on gender diversity, i.e., on gender discrimination. In an attempt

to efficiently prevent and/or suppress these various forms of socio-pathological, unlawful, prescribed behaviours of individuals or groups, the international community has reached maturity in the awareness of the need for a uniform, generally accepted approach. To this end, in 2011 the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence^[2] (Istanbul Convention), which

[1] jovas@prafak.ni.ac.rs ; <https://orcid.org/0000-0003-1136-5980>

[2] Law on Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, “Official Gazette of the Republic of Serbia – International Contracts”, No. 12/13 and 4/16.

defines “gender-based violence against women” as violence directed against a woman because she is a woman or that affects women disproportionately, (Article 3, Item d).

According to the Convention (Čović, 2013, pp. 279–292), the forms of manifesting gender-based violence include: a) psychological violence (Article 33), b) stalking (Article 34), c) physical violence (Article 35), d) sexual violence, including rape (Article 36), e) forced marriage (Article 37), f) female genital mutilation (Article 38), g) forced abortion and forced sterilisation (Article 39), and h) sexual harassment (Article 40). In order to combat these various forms of violence, the Convention establishes a system of measures (general and special) of prevention and repression (punishment) which have been accepted by all national legislations of the Council of Europe member states, including the Republic of Serbia.

The law of the Republic of Serbia, based on the accepted international standards established within the Council of Europe, stipulates criminal liability and punishability for multiple criminal offenses which, by their characteristics, content, elements, and forms or modes of manifestation, constitute criminal offenses with elements of gender-based violence. In addition to the system of repression measures (the application of criminal sanctions), the Republic of Serbia gives a special role to the prevention measures with the foundation in the Strategy for the prevention and combating of gender-based violence against women and domestic

violence for the period 2021–2025^[3], which was adopted in April 2021.

Stalking as an international criminal act

Having in mind that the criminal act of stalking finds its foundation in international law (in the Council of Europe Convention), it may be qualified as an international criminal act. In fact, the introduction of incrimination of the criminal act of stalking in the criminal law of several European countries constitutes the fulfilment of the international obligation that was established after the signing and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. By accepting this international document, the states have assumed the obligation to stipulate sanctions and the bases of the liability of the perpetrators of these criminal acts in their respective national, domestic criminal legislations (Miladinović Stefanović, 2017, pp. 231–252).

According to this Convention, the criminal act of stalking (Article 34) is “all intentional (deliberate) behaviour by repeating threats directed at another person, which causes that person to fear for his/her safety”. In addition to the direct, intentional engagement in the act of perpetration, the Convention (Article 41) explicitly stipulates punishability in two more cases: a) for attempting to commit

[3] Strategy for the prevention and combating of gender-based violence against women and domestic violence for the period 2021–2025, “Official Gazette of the Republic of Serbia”, No. 30/18.



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an act (without consequences), and b) for complicity in the form of inciting (persuading) or assisting (enabling, facilitating) another person to commit this act.

For the perpetrators of this criminal act, in addition to the prison sentence, according to the provisions of the Convention (Article 45), the following measures are stipulated: a) monitoring or supervision of convicted persons, and b) withdrawal of parental rights, if the best interests of the

child, which may include the safety of the victim, cannot be guaranteed in any other way. In the determination of the sentence to the perpetrator of the offence of stalking, the court particularly takes into consideration the following aggravating circumstances (Article 46): a) the offence committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority, b) the offence,

or related offences, committed repeatedly, c) the offence committed against a person made vulnerable by particular circumstances, d) the offence committed against or in the presence of a child, e) the offence committed by two or more people acting together, f) the offence that was preceded or accompanied by extreme levels of violence, g) the offence committed with the use or threat of a weapon, h) the offence resulting in severe physical or psychological harm for the victim, and i) when he perpetrator had previously been convicted of offences of a similar nature.

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In addition to the Council of Europe Convention, the set of measures directed towards suppressing and/or preventing the act of stalking, although the specific type of “cyber stalking”, is stipulated by the European Union, whose full membership is aspired by the Republic of Serbia as well. Namely, Directive (EU) 2024/1385 of the European Parliament and Council of 14th May 2024 on combating violence against women and domestic violence (Item 21) emphasizes that “cyber stalking” is a modern form of violence which is often perpetrated against family members or persons living in the same household as the offender but is also perpetrated by ex-partners or acquaintances. Typically, technology is misused by the offender to intensify coercive and controlling behaviour, thereby increasing the victim’s fear, anxiety and gradual isolation from friends, family and work. Therefore, minimum rules on cyber stalking should be established.

The offence of cyber stalking should cover repeated or continuous surveillance, by means of ICT, of the victim without the victim’s consent or a legal authorisation. Such surveillance might also be enabled by processing the victim’s personal data,

such as by means of identity theft, by stealing passwords, by hacking the victim’s devices, by secretly activating keylogging software to access the victim’s private spaces, by installing geo-localisation apps or by stealing the victim’s devices. Furthermore, the offence of cyber stalking should cover the monitoring of victims, without the victim’s consent or authorisation, via technological devices connected through the Internet of Things, such as smart home appliances. However, there can be situations where surveillance is carried out for legitimate reasons, for example in the context of parents monitoring their children’s whereabouts and their online activity, of relatives monitoring the health of ill, elderly or vulnerable persons or persons with disabilities, or of media monitoring and open-source intelligence.

Criminal liability for “cyber stalking” (Item 22) should be limited to situations in which monitoring is likely to cause serious harm to the victim. When assessing whether an act is likely to cause serious harm, the focus should be on whether the act would typically cause harm to a victim. In the definition of the offence of cyber stalking (Item 23), the concept of “tracking” should refer to tracing the location of a person and following that person’s movements and the concept of “monitoring” should refer to watching over a person more generally, including observing that person’s activities. In the context of cyber stalking, both actions ultimately aim at controlling a person.

General characteristics of the criminal offence of stalking

Although this is an extremely dangerous form of manifesting gender-based violence as a form of

manifesting criminality in general, until 2016 and the adoption of the Law on Amendments to the Criminal Code^[4], the Criminal Code^[5] (2005) of the Republic of Serbia had not stipulated the criminal act of “stalking” (Article 138a) as separate incrimination. Chapter XIV, entitled “Criminal offences against freedoms and rights of man and citizen”, prescribed a specific criminal act directed towards endangering man’s personal safety and/or his personal life. Man’s personal security was practically understood in subjective terms as the feeling of his safety (absence of any threat) that constitutes an integral element of man’s personal freedom. In fact, it is incrimination that appears as a separate, special form of the criminal act of threatening security (by its legally determined content).

Legal theory points out that the specific criminal act against personal freedom under the name of “stalking”, “harassment” or “persecution” (English, *stalking*, French *harcèlement obsessionnel*, German *Nachstigungeung*, *Belästll*, Italian *Atti persecutori*) implies an expression that means harassing, tracking and/or persecuting another person – a victim or a close person (“make someone’s life miserable”). Such behaviour consists of two elements (Kovačević, 2018, pp. 57–71): on the one hand, there is stalking and, on the other, there is a victim disturbed in a certain manner, particularly through: a) intimidation of any kind, b) intrusion into private life, surroundings, home or property, c) tracking, spying or harassment of any kind, d) physical, unannounced and repeated visits to the workplace

or home, e) giving presents, f) repeated presence in the same places, causing discomfort or concern or even helplessness or confusion related to the feeling of unsafety or potential threat deriving from it, and g) virtual repetition and intrusive contact by telephone or electronic devices such as electronic mail or social media (Kovačević & Maljković, 2016, pp. 85–98).

In legal theory, stalking is defined as repeated, persistent, continuous observation, persecution, intrusive effort by the perpetrator to establish direct or indirect contact through technical means of communication with the victim or his/her relatives, in which the perpetrator’s actions cause fear, discomfort, restlessness, anxiety or threat (Filipčić & Korošec, 2023, pp. 707–717). Furthermore, stalking is manifestation form of threatening another person’s safety, i.e., a form of manifesting violence in the family or in the family union (in case the perpetrator’s activities are directed against the victim he/she previously lived in a family union, and in case the victim is in a subordinate or dependent position in relation to the perpetrator). Due to different activities, either of physical or psychological character (nature), the perpetrators repeated and continuous acts a specific relationship between the victim and the perpetrator is gradually established, and/or developed or strengthened (Dimovski, 2016, pp. 163–181).

In fact, contact is gradually established and connection, helplessness and dangerous belief are maintained that the perpetrator’s acts are com-

[4] Law on Amendments to the Criminal Code, “Official Gazette of the Republic of Serbia”, No. 94/16.

[5] Criminal Code, “Official Gazette of the Republic of Serbia”, No. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19 and 94/24.



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pletely harmless or even oppositely, they are even understood as a kind of affection, sympathy or attention and not as violence that may potentially escalate (which often happens). By stalking, the perpetrator, on his/her own or through other persons (indirectly) or devices (both traditional and modern information communication ones), constantly reminds the victim, communicates with the victim, indicates that he/she is there, present and central, thus causing mental and physical suffering to the victim, depriving the victim of freedom or even control of own life.

Therefore, stalking denotes unwanted intrusion, penetration and interference in the victim's life by the perpetrator of this offence – the stalker (Đurišić, 2019, pp. 89–101). This type of violence is characterized by intrusion, interference (penetration) in the private sphere of the victim's life. In this manner, the perpetrator shows “superiority” by persistently repeating a series of interconnected activities directed against the same person – the victim, causing simultaneously fear or anxiety, uneasiness, restlessness and discomfort. It is a pattern of behaviour that includes intrusive, per-

sistent and repetitive contact with the victim, as well as harassment that can be direct. – personal and/or indirect – by telephone, via social media, by sending text messages or e-mails, letters, gifts or expensive valuables, by waiting in front of the victim's flat, house or workplace, as well as by violating or destroying the victim's property (Dečković, 2017, pp. 135–144).

Stalking in the criminal law of the Republic of Serbia

In the law of the Republic of Serbia, the criminal act of stalking (Article 138a), starting from international standards, is qualified by a number of legally stipulated alternative activities. Those include:

a) Unauthorized tracking of another person or taking other action with the aim of physically approaching that person against their will. Unauthorized and unlawful “tracking” refers to the establishment or maintenance of a certain spatial or temporal distance towards another person that enables the control of his/her movement (Jovašević & Miladinović Stefanović, 2023, pp. 82–85). However, this act may also emerge as any other activity that leads to physical closeness, i.e., the activity that reduces spatial distance between the perpetrator and another person, thus practically creating direct, close conditions for establishing their contact.

b) An attempt to establish contact with another person contrary to his/her will, directly or indirectly, through a third person or means of

communication. It is an activity aimed at establishing contact with another person no matter whether it actually occurred or not. Such contact may be established directly or indirectly (through another person or modern technical means of communication, including the internet), without the consent of another person (Đorđević & Bodrožić, 2024, pp. 61–63).

c) Misuse of personal data of another person or a person close to them for the purpose of ordering goods or services. This must refer to unlawful, unauthorised use of other people's personal or private data with a specific purpose – for ordering certain goods or services no matter whether the order has been actually made in the given case or not (Dragojlović, 2025, pp. 67–70). According to the Law on Personal Data Protection^[6] (Article 4. Item 1), “personal data” means any information relating to an identified or identifiable natural person, directly or indirectly, in particular by reference to an identifier such as a name and an identification number, location data, an online identifier in electronic communication networks or to one and/or more characteristics of the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

d) Threat of attack on the life, body or freedom of another person or a person close to them - manifests itself as announcing, making it appear, orally, symbolically or in writing, causing some harm to another person in the form of an attack - endangering the life, body integrity or freedom of another person or a person close to them;

[6] Law on Personal Data Protection, “Official Gazette of the Republic of Serbia”, No. 87/18.

e) Taking another similar action in a manner that could significantly endanger the personal life of another person. This is a “consequential” action, which includes any activity that is likely to cause the consequence of an act that the law defines as “significantly endangering the personal life of another person” (Petrović, Ferhatović & Jovašević, 2024, pp. 87–88).

For the existence of the criminal act of stalking, the law demands two additional conditions. In fact, it is necessary that an alternative enforcement action prescribed by law should be taken (Delić, 2021, pp. 80–81):

1) In a certain way – persistently. Persistence is perseverance, that is, the willingness, determination of the perpetrator to repeat, repeatedly undertake an action, which means that an action committed once does not constitute this offence. This way of perpetrating an act implies multiple repetition of the prescribed activities for the sake of achieving a certain aim. Persistence in perpetrating an act is understood in two ways (Đorđević & Kolarić, 2020, pp. 50–51): a) objectively – as a multiple (twice or more) repetition of an activity in terms of perpetrating an act, and b) the perpetrator’s awareness that the passive subject does not want and does not accept the perpetrator’s communication, actively or passively, explicitly or tacitly. Persistence as a way of undertaking the act of perpetration indicates that this is an act “with an indifferent number of perpetrations” (Paunović, 2019, pp. 21–41). In fact, repetition in the form of multiple, continuous reiteration of the same or different activities does not lead to a conjunction or apparently real conjunction in the form of a prolonged criminal act, but it is encompassed by a single act.

2) In a certain period of time – during a certain period. The actual length of stalking is determined by the court as a factual matter in a given situation.

The consequence of the criminal act of stalking is contained in a significant (substantial, lasting) threat to the personal life of another person. Such “significant or substantial” (particularly on a larger scale or for a longer period of time) threat to someone’s personal life is manifested as causing anxiety (discomfort, inconvenience) in terms of feeling fear, anxiety and concern for the everyday life of the victim or close persons (Stanković, 2023, pp. 432–433).

This criminal act belongs to *delicta communia*, which means that it may be perpetrated by anyone while, in terms of guilt, there must exist the perpetrator’s premeditation. A passive subject (victim) can be any person, both the person towards whom the act of perpetration is committed indirectly and his/her close person.

For the basic form of the act of stalking, there is an alternatively stipulated fine or prison sentence of up to three years.

Apart from the basic one, this criminal act also has two more serious forms of manifestation that are qualified as the emergence of a graver consequence, which is in a cause-and-effect relationship with the action taken to execute the basic form, while in subjective terms it needs to be accompanied by the perpetrator’s negligence (Turković et al., 2013, pp. 191–192). Those are: a) the first more serious form of the offence (Paragraph 2), where due to the undertaken act of perpetration a concrete, indirect, close and real danger to the life, health or body of another person or his/her close person, for which the prison sentence between three

months and five years has been stipulated, and b) the second more serious form of the offence (Paragraph 3), where negligence caused the death of the stalked person or his/her close person through undertaking an act of perpetration. For this offence, the prison sentence between one and ten years has been stipulated.

Stalking in European criminal law

Based on the above-listed international standards, many European states have defined stalking as a separate criminal act in the special part of criminal laws or codes. However, this solution is actually not common in all the legislations of the Council of Europe member states although it might be expected. Namely, in some legislations stalking is legally qualified as a separate or special form of some of the offences against fundamental human rights. The legislations that prescribe the criminal act of stalking in the incrimination system include, in addition to Bosnia and Herzegovina, some of the central European countries. Those are as follows:

- a) The Italian Republic,
- b) The Federal Republic of Germany,
- c) The Republic of Poland, and
- d) The Swiss Confederation.

In the Italian Republic, the Criminal Code^[7] (*Codice Penale*), in Book 2: “Special offences” (*Libro secondo: „Dei delitti in particolare”*), Part XII – “Criminal offences against person” (*Dei delitti contro la persona*), Chapter 2 – “Criminal offenc-

es against personal freedom” (*Dei delitti contro la libertà individuale*), stipulates criminal liability for the criminal act of stalking (*Articolo 612 bis*) – *Atti persecutori*. This is a subsidiary incrimination that exists only if in the given case the characteristics of another, graver criminal act have not been fulfilled. The criminal act of stalking (*Articolo 612 bis*) is committed by a person who with his/her repeated behaviour threatens or harasses another person in a way that causes permanent and serious state of anxiety or fear or justified fear for own safety or the safety of a relative or another close person (in an emotional relationship) or forces that person to change his/her way of life (Cicinella, 2025).

This criminal act is characterized by the following elements (Garofoli, 2025, p. 1): the object of the attack is the feeling of personal safety (absence of fear, apprehension or anxiety of any kind), 2) the act of perpetration contains activities such as; a) threat – likelihood of causing harm to another person, b) harassment of another person or c) forcing (coercing) another person (through the use of physical or psychological coercion or force) with the aim of changing his/her present life, and 3) the act of committing the offence is undertaken in a certain way: a) repeatedly, persistently, and b) in a way that is objectively suitable, sufficient to lead to the consequence of the offence in the form of causing permanent and serious state of anxiety or fear or justified fear for own safety or the safety of a relative or close person (in an emotional relationship). This is a common criminal offence characterized by the repetition of threats

[7] Codice Penale (R. D. 19. ottobre 1930, n. 1398... R. D. 16. ottobre 2025, n.151).

or harassment that continues over a certain period of time in a serial manner and includes minimum three different alternative events which must be in direct causal relation to the perpetrator's aggressive behaviour.

For the basic offence, the prison sentence is stipulated of six months up to six years.

A more serious form of the offence (Paragraph 2), for which a stricter prison sentence is stipulated without a closer determination of the length, applies to the following: a) if the act is perpetrated by a person with a certain capacity (*delicta propria*), a spouse (or a former spouse) or a person currently or formerly related to the victim in emotional terms, or b) if the act is perpetrated in a special, specific way – by computer or telematic means. However, if the offence of stalking has been perpetrated against a certain person as a victim, the stipulated sentence is increased to its half (Paragraph 3). This offence exists in case the act has been perpetrated: 1) against a certain person: a) a minor, b) a pregnant woman or c) a person with disabilities, 2) in a dangerous way – by using a weapon (a cold weapons or a firearm), or 3) by a masked (disguised) person (hiding his/her identity).

Criminal prosecution of the perpetrator is initiated upon the motion of the aggrieved person, which must be filed within six months. Exceptionally, criminal prosecution is initiated *ex officio* if the criminal act has been perpetrated: a) against a minor or a person with disabilities (which must be accompanied by the perpetrator's premeditation), or b) in conjunction (connected) with another

criminal offence for which the prosecution of the perpetrator is otherwise initiated *ex officio*.

The Criminal Code of the Federal Republic of Germany^[8] in Chapter XVIII – “Criminal offences against personal freedom” (*Straftaten gegen die persönliche Freiheit*), also stipulates the criminal act of stalking (§ 238) (*Nachstellung*). This act, for which there is an alternative prison sentence of up to three years or a fine, is contained in the unlawful stalking of another person in a way that might significantly (substantially) violate his/her way of life by repeated (Perron, Stenberg & Eisele, 2025): 1) demanding (requesting) that person's physical closeness, 2) attempting to establish contact with that person by using telecommunications or other means of communication or through third persons, 3) by misusing another person's personal data: a) by ordering goods or services in his/her name, or b) by inciting third persons to contact him/her, 4) by threatening another person with the injury to his/her or a close person's life, bodily (physical) integrity, health or freedom, 5) by distributing or publicly displaying the photos of another person or his/her close person (relative), or 6) by distributing or publicly displaying the content that might violate the honour or reputation of another person or his/her close person.

A more serious form of the offence – “Particularly serious cases” (*In besonders schweren Fällen*) (Paragraph 2) – for which the prison sentence is stipulated in the length of three months up to five years, exists in the following cases (Fischer, 2023): 1) if bodily harm has been caused to another person

[8] Strafgesetzbuch vom 13. November 1998. (BGBl.I.S. 3322/1998... BGBl.I.S.351/2024).

(or his/her relative or close person) or if his/her life or body integrity have been exposed to direct (close, specific) danger, 2) if stalking of another person: a) has lasted for a longer period, minimum six months and b) has been perpetrated by the use of a computer program designed for digital tracking of other persons or by the use of pictures or other content obtained (acquired) in that manner, and 3) if the offence has been perpetrated against a minor up to sixteen years old (while the perpetrator is already 21 years old).

The most serious form of the act of stalking (Paragraph 3) refers to the offence qualified by a graver consequence. It exists in case when, due to the perpetrated action, death has been caused of another person (the victim, the victim's relative or close person). For this offence, the prison sentence of one year up to ten years has been stipulated.

The Criminal Code of the Republic of Poland – *Kodeks karny*, у глави XXIII – “Offences against liberty” (*Przestępstwa przeciwko wolności*), stipulates, although without specifically naming it, the criminal act of stalking (§ 190a)^[9]. The offence refers to creating the feeling of fear, humiliation or anguish in another person or his/her close person (relative) or significantly violating the person's privacy through persistent harassment or causing property or personal damage to another person by personating another person, by using his/her image, personal data or other data on the basis of which that person is publicly identifiable.^[10]

Apart from the object of the attack as personal freedom, the feeling of personal or property safety of another person or his/her close person, this offence is characterized by the perpetration act in the form of: a) harassment, stalking, spying or b) personating (fully or partly false) another/any person by using his/her image, personal data or any other data on the basis of which that person is publicly identifiable. The consequence of this offence has the form of the damage to the protected good manifesting as (Stefansky *et al.*, 2025): a) causing the personal feeling of fear, anxiety, resentment, humiliation, b) damage (violation) to the privacy (of a personal secret) or c) causing (property/material or non-property/affectation) damage regardless of whether the consequence refers to the aggrieved person or his/her close person (relative). The perpetrator of this offence may be any person, while premeditation is necessary regarding guilt.

For the basic offence, the prison sentence is stipulated of six months up to eight years. An interesting solution (Paragraph 4) is the one according to which criminal prosecution of the perpetrator is undertaken only upon the aggrieved person's motion.

A more serious form of the offence (Paragraph 3), for which the prison sentence of two years up to fifteen years is stipulated, is the offence qualified by a more serious consequence. In this case, there is a stricter punishment in case the undertaken act of perpetration resulted in the aggrieved person's suicide attempt.

[9] Kodeks karny, Dz. U. 1997 Nr 88 poz. 553; *Opracowano na podstawie*: t.j. Dz. U. z 2025 r. poz. 383.

[10] Praca zbiorowa (2025). Kodeks karny, Warsaw, C. H. Beck, pp. 232–233.

The Criminal Code of the Swiss Confederation^[11] (*Il Codice penale svizzero*), in Part two – “Special Provisions” (*Zweites Buch: Besondere Bestimmungen*), Chapter IV – “Crimes or offences against personal freedom” (*Titolo quarto: Del crimini o dei delitti contro la libertà personale*) defines the criminal act of stalking.

According to the text of this law, the criminal offence of stalking (*Articolo 181b*) – *Atti persecutori* was introduced in the Swiss legal system through the novation (amendment) to the Criminal Code from June 2025 (which came into force on 1st January 2026). This offence, which violates another person’s personal freedom, consists of persistent tracking, harassment or threats to another person in a way that might significantly limit his/her freedom of choice. According to the explicit letter of the law, criminal prosecution is initiated upon the aggrieved person’s motion (Heger, Pohlreich, Dreher & Maassen, 2025).

The act of perpetration consists of three alternatively prescribed actions, conduct that may seriously restrict the freedom or life of another person and cause psychological, social and economic damage to him/her. Those are (Trechsel, Pieth & Geth, 2025): a) persistent (repeated, continuous, for a longer period of time) tracking (stalking), b) harassment – causing fear, discomfort, inconvenience or anxiety, with the loss, full or partial, permanent or temporary, of the feeling of peace, or c) threat – verbal or written and/or symbolic statement that announces causing any harm to another person. For the existence of this offence, it is essential that these

actions are undertaken in a special manner – which might significantly (particularly, on a larger scale or in a longer period of time) restrict the freedom of choice due to another person’s conduct.

For this offence, there is an alternatively stipulated prison sentence of up to three years or a fine.

Conclusion

Stalking (persecution) is a specific form of violating, harming or endangering man’s personal safety as universal or regional international standards of the protected human right and/or of his personal freedom. The foundation of this incrimination encompasses the standards contained in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011). This Convention obligates the signatory states to prescribe specific criminal offences of gender-based violence in their respective national criminal legislations. These offences include the incrimination called stalking (Article 34). This offence refers to any intentional (premeditated) conduct by repeating threats against another person that cause this person’s fear for his/her own safety.

According to this international standard, the positive criminal law of the Republic of Serbia classifies the criminal act of stalking (Article 138a) in the group of criminal offences against the freedoms and rights of man and citizen (Chapter XIV). As the object of protection of this offence, there is the feeling of the personal safety of another person, his/

[11] *Schweizerisches Strafgesetzbuch* vom 21. Dezember 1937. (BGBl.311.0... BGBl.2020/2025).

her family member or close person, which indicates that this is a special, specific form of the offence of threatening safety. An important component of the content of this offence includes the following elements: 1) persistence in undertaking legally stipulated activities during a certain (implied as “longer”) (period of time, 2) unauthorized, unlawful, persistent tracking of another person or undertaking any other activity with the aim of physical closeness against his/her will, 3) establishing contact with another person directly, through a third person or through means of communication against his/her will, 4) misuse of the personal data of another person or his/her close person for the purpose of ordering goods or services, 5) threatening by attacking the life, body or freedom of another person or his/her close person, or 6) undertaking any other act in a manner that might substantially endanger another person’s personal life.

For the basic form of the act of stalking, there is an alternatively stipulated fine or a prison sentence of up to three years.

Apart from the basic form, this offence, depending on the type, nature or importance of incurred consequences, may have two graver forms of manifestation which are qualified by a graver consequence: a) a specific, direct, close danger to life, health or body of another person or his/her close person (with the stipulated prison sentence of three months up to five years), and b) death of the stalked person or his/her close person (with the stipulated prison sentence of one year up to ten years).

Based on international standards, some criminal legislations of the member states of the Council of Europe (apart from the Republic of Serbia), for

example Italy, Switzerland, Germany and Poland, contain a specific incrimination in the form of a separate criminal act – stalking. The analysis of comparative solutions in the above-listed criminal laws points to specific characteristics that are not included in our national criminal law, which may be of help to our legislator in improving the existing regulations in this area. Firstly, we can say that stalking is by its name recognized in all the analyzed laws (except for the Polish law, which does not specifically name any criminal offence in the text of the law). This offence is classified among the criminal offences against: a) personal freedom (Italy, Germany, Switzerland) or b) freedom (Poland), which points to the object of its protection.

The basic form of the criminal act of stalking is, according to the analysed comparative legal solutions, characterized by the following elements: 1) persistent tracking, harassment or threats to the victim in a way that might significantly restrict the victim’s freedom of choice (Switzerland), 2) causing fear, humiliation, anguish or significant damage to the victim’s privacy through persistent harassment or causing harm to the victim by personating, using another person’s image, personal or other data (Poland), 3) unlawful persistent tracking of the victim by demanding his/her physical closeness, attempting to establish contact by using the means of telecommunications or through third persons, by misusing personal data with the aim of ordering goods or services in his/her name or by inciting third persons into contact, by threatening harm to life, body, health or freedom, by distributing or publicly displaying photographs or content that might damage honour or reputation of another person or his/her close person (Germany) or

4) repeated threats or harassment of the victim in a way that causes permanent and grave state of anxiety or fear or forces him/her to change his/her way of life (Italy).

Depending on the type of law, there are different punishments stipulated for the basic act of stalking: a) the prison sentence of one year up to six years, and of six months (Italy), b) the prison sentence of up to three years and a fine (Germany, Switzerland) or c) the prison sentence of victim six months up to eight years (Poland). Although the perpetrator of this offence is, as a rule, prosecuted *ex officio*, some of the laws (Italy, Poland, Switzerland) still stipulate that the criminal prosecution is initiated upon the motion of the aggrieved person. Exceptionally, criminal prosecution is initiated *ex officio* if the criminal act has been perpetrated: a) against a minor or a person with disabilities (which must be accompanied by the perpetrator's premeditation), or b) in conjunction (connected) with another criminal offence for which the prosecution of the perpetrator is otherwise initiated *ex officio* (Poland).

Among the analysed criminal codes, only Switzerland does not stipulate a graver, qualified form of the offence (while two graver forms are stipulated by Italian and German laws respectively). For the qualified forms of the offence, the following punishments have been prescribed: a) increased severe punishment by up to half, without specifying the duration (Italy), b) prison sentence of three months up to five years, i.e., prison sentence of one year

up to ten years in the case of causing the passive subject's death (Germany) and c) prison sentence of two up to fifteen years in the case of the aggrieved person's suicide attempt (Poland).

Apart from the above-listed graver consequences in the form of death (Germany) or suicide (Poland) of the aggrieved person, certain legislations have also stipulated the following as qualifying circumstances in the criminal act of stalking: 1) in Germany: a) causing bodily injury or causing danger to the life or body of another person, relative or close person, b) in case stalking of another person has lasted minimum six months, c) in case the act has been committed by the use of a computer program aimed at digital tracking of other persons or by the use of the pictures or other content acquired in that manner, and d) in case the act has been committed so as to harm a minor up to the age of sixteen, and 2) in Italy: a) in case the act has been committed by a spouse (or an ex-spouse) or a person related to or formerly emotionally related to the victim, or b) in case the act has been committed by computer or telematic means, c) in case the act has been committed to the harm of a minor, a pregnant woman or a person with disabilities, and d) in case the act has been committed by the use of weapons or by a masked person.

The above-mentioned comparative solutions, particularly in terms of the listed qualifying circumstances, may also be relevant to the legislator in the Republic of Serbia when amending the existing legal solutions to the criminal act of stalking.

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