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Forced Sterilization According to the Criminal Code of the Republic of Kosovo: Origin and Figure of the Criminal Offense

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Abstract

Forced sterilization is a phenomenon that in many countries of the world has been applied as a method of reducing the number of sexual crimes, although in its beginnings, it was applied to people with mental illness, immigrants, those who belonged to another race, especially non-white people, and mostly to women and girls. Despite its pronounced expansion, forced sterilization is a completely unknown phenomenon in Kosovo. Even in the criminal legislation that was applied in Kosovo, there was no incriminated action. But, being under constant pressure of the need to adapt to international documents, the criminal code should have included this criminal offense, although the Constitution of the country provides that "the Republic of Kosovo respects international law" (Article 16, al.3) and that "legally binding norms of international law take precedence over the laws of the Republic of Kosovo" (Article 19, al.2). Therefore, this article will address the meaning, short story and crime - forced sterilization, including a comparative aspect with different countries of the world. Given the approach from several perspectives, the functional, teleological and comparative analysis of the legal

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norm, including the historical, evolutionary and statistical dimension, has been used in the treatment of the topic.

Keywords: *Criminal Code, Kosovo, forced sterilization, medical sterilization.*

Understanding and types of medical sterilization

Sterilization (lat. *Sterilis*: barren) is a surgical or non-surgical procedure by which humans or animals become incapable of reproduction. This is done by cutting the reproductive canals, removing the sex glands through surgery or destroying them through radiation. (Shiel, 2018). The method of sterilization of women is to connect the tubes, tighten or block them, to prevent the ovaries from penetrating the uterus - *Tubectomy* or removal of the uterus - *Hysterectomy*, while men are sterilized by connecting or cutting the canal to prevent sperm from fertilizing. - *Vasectomy*, removal of testicles - *Castration*, (Smith, 2010, p. 79-84) or Testicular Pulpectomy (*Testicular Pulpectomy*), which can be chemical or physical, in which case parts of the testicular nuclei are destroyed and, as a result, the levels of testosterone are significantly reduced. However, the body still produces some. (McMillan, 2014, p. 584)

Genesis and causes of sterilization

Eugenics is the selection of desired hereditary characteristics in order to improve future generations and usually has to do with humans (Wilson, 2019). Eugenics is the science of improving the human population, increasing the emergence of desirable hereditary characteristics, to improve the human race.

The word *eugenics* in the literal sense means *good creation, good in the east*. This expression was first used by the British scholar Sir Francis Galton, a cousin of Charles Darwin, in 1883,

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in his book *Inquiries into Human Faculty and Its Development*, although there are arguments that Plato may have been the first since antiquity, and as early as 378 BCE, his work *Republic* exhibited a society in which efforts were made to improve human beings through selection (Wilson, 2019).

In the beginning, the science of eugenics gained tremendous support, especially in the United States. Even Eugenics sympathizers were Theodor Roosevelt and US Supreme Court President Oliver Wendell Holmes, who thought that society's *desired* should be multiplied and its *unwanted* should be removed (Ball, 2014). Even this judge, in the case of *Buck v. Bell* (1927) had justified the court ruling, among other things, as follows: that society can prevent those who are unfit to continue their kind ... Three generations of imbeciles are enough" (Cook, 2016 & Raup, 2012). Defects are inherited directly from parents; from mentally handicapped parents, children with mental disabilities are also born, so necessary control is needed (Hamer, Quinlan & Grano, 2014, p. 176).

Though conceived as a science that would serve to advance man and his life, this was compromised as a science, due to abuses, especially after World War II. Since then, the term "eugenics" has meant inhumanity, filth and shame.

With the advancement of medical technology, modern eugenics comes to the fore, namely, genetic engineering, the context of which is completely different from the eugenics of the past. Modern eugenics is promising for the fact that the use of certain therapies or genetic interventions can prevent or cure diseases. But modern genetic engineering also comes with dilemmas: on the one hand, with the advancement of technology, people can routinely remove or avoid what they consider an undesirable trait in their offspring, because genetic testing already allows parents to identify some diseases of their child in the intrauterine phase and thus the possibility of

terminating the pregnancy, although it is debatable what is meant by the expression "undesirable or negative traits" (OHCHR & etc., 2014). This brings us back to the vicious circle, recalling eugenics according to chronology: at first thought useful to man, then misused, while today well transformed, but still debatable. This has been the case with biological innovations that were initially considered disgusting but later become commonplace, taking artificial insemination as an example (Kevles, 2015, p. 9-12). The same goes for sterilization. At first this intervention was considered useful. This is evidenced by the statement of the famous Viennese doctor, Dr. Adolf Lorenz, who found that "it is the duty of medicine to prevent disease, and when I say this, I mean mental illness and other diseases", including alcoholics, criminals and people with moral deficits (Gosney, 1934, p. 18). There were sterilization promoters all over the world and they belonged to scientific circles. This is why, according to Oxford references, eugenics is defined as positive and negative (Oxford Reference), so it is treated in good context and in bad context.

Brief history of forced sterilization in the US

The "father of sterilization" in the United States was Dr. Harry Sharp, who in 1899 carried out the first sterilization, although there was no law in place, and performed these operations with the consent of patients (Gosney, p. 19). However, forced sterilization dates back to the beginning of the twentieth century and applied to certain categories of people, namely selection.

Forced sterilization is one of the issues related to human rights that people, mainly women, have been facing for decades. Forced sterilization is imposed on poor ethnic and racial minorities living in rural areas or marginalized, silent and

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often invisible people in society (Balasundaram, 2011, p. 58). According to a World Health Organization (WHO, 2014) publication, victims of this way of population planning and racial hygiene have historically been women, especially women who were carriers of HIV, indigenous women and girls, ethnic minorities, mentally disabled people, even under 18 years of age, transgender persons (gender born contrary to physical gender), inter-sexual persons (born with undefined genitals), atypical sexual children, coloured population and other stigmatized categories.

At the beginning of the twentieth century, the so-called "eugenics laws" were issued. They were published in Oregon in 1907 (Largent, 2002, p. 195), Indiana in 1907, North Carolina in 1919 ("Law on the Moral and Mental Benefits or Physical Conditions of Prisoners in Criminal and Charitable Institutions"), in Canada in 1928, Sweden and Britain in 1930, some Central American states in 1941, Japan in 1948, and so on (Reilly, 2015, p. 358).

Sterilization is not always performed directly - with the use of pressure or violence. In many countries, national strategies have been devised to use sterilization as a way to convince the population that sterilization reduces poverty. In poor countries and with uneducated populations, persons who agreed to be sterilized were given certain money, things, or favours. Thus, in Latin America and India, women and men were promised stimulation if they agreed to be sterilized, in Porto Rico, which is considered one of the countries with the largest number of sterilized women in the world, home-to-home campaigns. In Sri Lanka midwives and other health workers have been involved in campaigns to persuade women to be sterilized (Balasundaram, p. 62 and 63).

In 32 U.S. states, in the twentieth century it was practiced against the "unwanted population," such as immigrants, non-

white people, poor people, unmarried women, people with disabilities, and the mentally handicapped. Sterilization was even envisaged as a method of combating crime, especially against prisoners. According to the data, in Oregon, in 1935, the sterilization of prisoners was implemented, because by sterilizing "morally degenerated or sexually perverted" prisoners and patients, the state would turn them into harmless citizens for the population, eliminating threats coming from these persons (Largent, p. 206). In San Diego, California, in 1955-1957, some 400 people sentenced to long prison terms chose to be castrated in exchange for their release (Jonuzi-Shala, 2011, p. 31). In California, forced sterilization was so rampant that 1/3 of the forced sterilization in the United States took place in that country, so this eugenics program later inspired the Nazis. The data show that Hitler at *Main Kampf* had expressed admiration for the "value of inventions" of the United States, praising Franklin Roosevelt and his government for embarking on "bold experiments", and stressing that it was inspired by the American model of "pure blood," thus denying that this method was a German discovery (Whitman, 2017, p. 7 and 15).

In the United States, from the enactment of the "Sterilization Law" in 1907 until the time the United States entered World War II, mental health authorities and prison authorities reported over 38,000 sterilizations (Largent, p. 192).

The data also testify to the racist aspect of sterilization. A 2002 study published in the medical journal *Obstetrics and Gynecology*, according to the National Survey on Family Growth, found that the number of sterilizations through the tubular method of African and Indo-American women and girls was higher than that of Euro-women (Volscho, 2010, p. 18 and 21)

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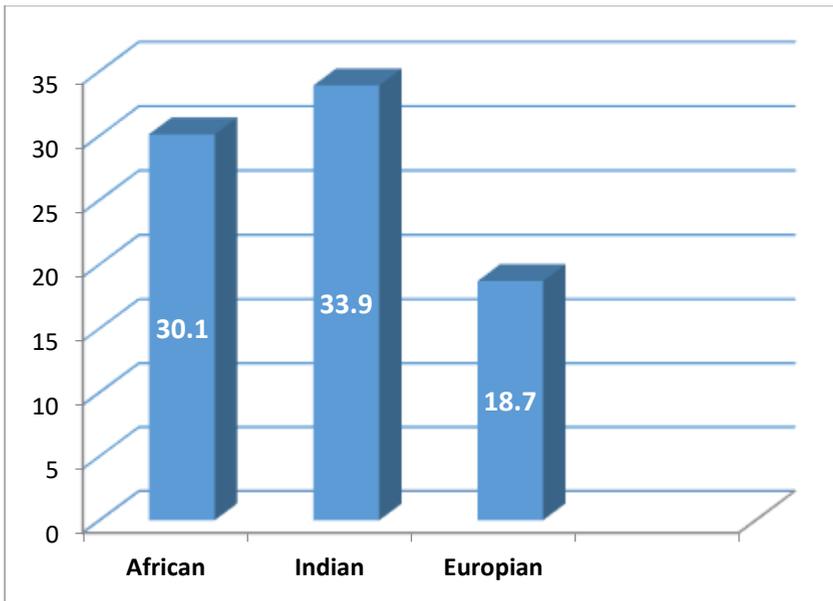


Figure 1. Tubal sterilization according to the ethnic group in the USA, 2004 (Volscho, 2010)

According to researcher Alexandra Stern, more than 20,000 people were forcibly sterilized in California between 1909–1979, out of a total of over 60,000 in the United States (Stern; 2016). While in California the size of forced sterilization was frightening, in other states the number was much smaller. Thus, in Virginia, in the period 1924–1979, there were 7,325 persons, in North Carolina about 8,000 (1921– 1983), in Michigan 3,786 (1921–1983), in Kansas 3,032 (1921–1963), in Minnesota 2,350 (1928–1963), in Oregon 2,341 (1921–1983), in Connecticut 557 (1921–1963), etc (Kaelber, 2014). It should be noted that in Minnesota alone from 1925 to 1945, 2,204 people were sterilized (Taylor, 2005, p. 237).

Forced sterilization as a method of combating sexual crime and as an expression of racist mentality has also reflected attitudes towards girls. Thus, a new expression is created in

English, the expression "moron", which is attributed mainly to young girls and women who were considered morally "imbecile", who were not able to control their congenital sexual deviation, to continue with the intelligence scale (Hamer, Quinlan & Grano, p. 169) and other unscrupulous comparisons. This is evidenced by the case of Elaine Riddick Jessie, a 13-year-old poor girl with alcoholic parents living in a ghetto in North Carolina, who was born as a result of sexual assault by her neighbour in 1968 and was sterilized a few hours after birth. This served as a reason for eugenics supporters to articulate their gender prejudices through a pamphlet sent to the homes of Winston-Salem town in North Carolina, which read: "Girls especially need to be protected by sterilization "because they cannot be expected to take the moral or social responsibility for their actions," reinforcing sexual stereotypes and later placing them as "scientific" discoveries (Hamer, Quinlan & Grano, p. 169). Therefore, in North Carolina, 77% of sterilized persons were women and more than half of them were under the age of 20 (Kaelber, 2014). For the same reasons, even in Minnesota the number of sterilized women and girls was 77%, considering them mentally retarded (Taylor, p. 237).

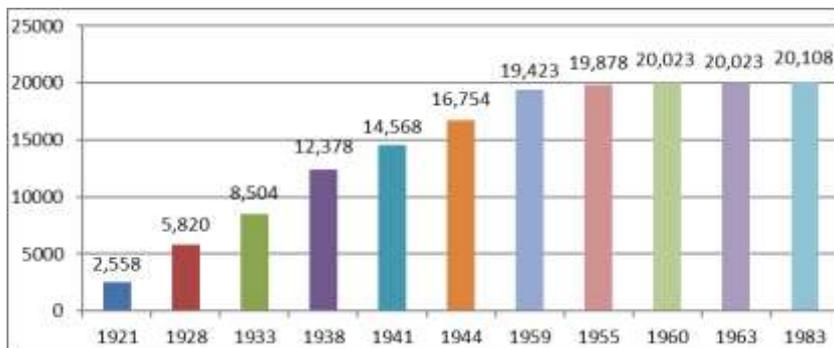


Figure 2: Forced sterilization in California over the years (Kaelber, 2014)

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In the annals of the US Supreme Court there are many court decisions, among which the most popular are the case of *Jacobson v. Massachusetts* (1905), *Mallory v. Priddy* (1918) and especially the case of *Buck v. Bell* (1927).

Latin America has done the same. In Brazil, forced sterilization was applied mainly to African-Brazilian women; in Porto Rico, 1/3 of women today are sterilized, while in Peru, according to the Institute for Population Studies (2010), about 100,000 indigenous women were forcibly sterilized. In which case the Institute discovered that the UN Population Fund (UNPF) had been used for the forced sterilization campaign, for which in 1998 the Peruvian government apologized publicly (Balasundaram, p. 63).

Forced sterilization in Asia

In addition to the US, forced sterilization has been practiced in other countries as well. In Japan, in 1948, the "Law on Eugenics Protection" was adopted, which allowed the state to forcibly sterilize not only mentally disabled people, but also all persons "whose health is at risk". In order to save their lives (Waseda Chronicle, 2018 & Koya, 2010, p. 135). The purpose of that law was to prevent the birth of offspring with hereditary diseases, such as psychosis and leprosy, but in 1996 the law was changed to "Mother's Health Law", which prohibited sterilization against the will, although the number of sterilized persons multiplied; it was under 6,000 in 1949 and in 1956 it reached over 44,000 people (Koya, p. 135).

India (Singh, Ogollah, Ram & Pallikadavath, 2012, p. 187) was the first country in the world to launch an official family planning program in 1952 in order to reduce population growth; during the first phase it included the rhythm method, but due to failure, in the period 1956 - 1960 the government

began to offer free diaphragm pairs and spermicidal vaseline. To speed up this pace, methods such as intrauterine devices (IUD) and vaginal plates were also used, combined with the educational component of family planning. In 1966, the sterilization of men began to be undertaken, and the government introduced a program to stimulate money. During the Indian Emergency of 1975-1977, in response to the enormous population growth of the 1960s, aggressive sterilization camps were held across the country and about 8.3 million sterilizations were performed, of which 75% were women who had their uteruses removed, and the others were men.

Compulsory sterilization in Sri Lanka has been practiced from the 1980s to the present day (Balasundaram, p. 58). Between 1963 and 2000, the fertility rate dropped from 5.0 to 1.9, using sterilization as a contraceptive (Balasundaram, p. 59). Forced sterilization of women ranges from 41% to 45%, while in communities in tea plantation areas it is over 45%, also promoted by the management itself (Balasundaram, p. 59 cit) “according to Sri Lankan Civil Rights Organization Report” of 2008.

According to the BBC correspondent from Delhi (Biswas, 2014), forced sterilization in India has frightening proportions. This method of population control has been sponsored by the state since 1970 when India drafted a program on population growth ban and eugenics causes. This is also described in the novel Salman Rushdie *Midnight's Children* (Rushdie, p. 437-439), which proves that this was undertaken in 1975 by Indira Gandhi's son, Sanjay, who began what was described by many as a terrible campaign "to sterilize poor people. There were police reports surrounding the villages and practically pulling men into surgery. According to the BBC (2014), in the period 2013-2014 alone, about 4 million people were forcibly sterilized,

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of which about 100,000 were men. In India, financial favours were provided for people who sterilized voluntarily. The same was true in Singapore, where under the 1980 program, each sterilized woman was rewarded with \$ 5,000 (Singh, Ogollah, Ram & Pallikadavath, p. 187).

Compulsory sterilization in Europe

Even in Europe (Puppink, 2012) "eugenics laws" were issued in the early twentieth century, but sterilizations were taken against the will and were selective. In Switzerland, in 1928, an eugenic law was issued to continue with Denmark (1929), Norway and Germany (1934), Finland and Sweden (1935) and Estonia (1937). In Sweden, in the period 1935 - 1945, 15,486 people were forcibly sterilized, mostly Roma, while in Denmark between 1929 and 1945, 3,608 people were forcibly sterilized. In Norway, although such a law was enacted in 1934, the practice of sterilization has existed since the 1920s and has been applied to patients with mental health problems (Haave, 2007, p. 46). In Switzerland, between 1935 and 1975, 63,000 Swiss, including a 14-year-old girl who was considered ill because her mother and grandmother were mentally ill, were sterilized under Eugenic law (Wecker, 2012, p. 520 dhe 523). In Czechoslovakia this happened to the Roma population from the 1960s until the end of communism, when they were subjected to sterilization in exchange for monetary compensation, and the use of threats to hand over their children under state care (Cahn, 2017, p. 10). These efforts were widely supported until the late 1990s, when Czechoslovakia's first post-communist government put an end to these policies, although doctors and social workers in its successor states (the Czech Republic and Slovakia) continued these practices secretly, massively and systematically until the early 2000s. In 2009, former Czech Ombudsman, Otakar Motejl,

publicly stated that he believed there were over 90,000 victims in the former Czechoslovak countries (Cahn, p. 10). Meanwhile, in Slovakia this happened even after the fall of the communist regime; Roma women and girls were massively subjected to this program, even in state hospitals. Thus, in 2000, the first trial known as the "VC case against Slovakia" took place (Puppinck, 2011 & ECLJ, 2009), when a Roma citizen filed a case alleging that she had given birth to her second child and sterilization has been undertaken against it. The hospital denied the allegations, arguing that her sterilization was carried out on medical grounds (her uterine rupture was endangered) and that she had given her authorization after being warned by doctors about the danger posed to her in another possible pregnancy. The following are other cases of Roma women: *N.B vs Slovakia, I.G., M.K. and R.H. against Slovakia* (Puppinck; 2011, ECLJ; 2009, 2010, 2004), etc.

An interesting fact has to do with Norway. During the years of German occupation, there were about 3 million inhabitants, of whom the corpus of "inappropriate" persons was estimated at 12%, which included 15,000 people with mental health problems, 30,000 mentally ill, and about 7,500 hospitalized mental patients (Haave, p. 55).

Requirements, decisions and surgical interventions carried out in accordance with the Law of 1942			
	Women	Man	Total
Requests	459	111	570
Positive decisions	440	100	540
Surgical interventions performed	419	83	502
Surgical interventions performed (%)	91.3%	74.8%	88.1%

Figure 3: Number of persons against whom applications for sterilization and further progress have been submitted in Norway (Haave, p. 49)

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Sterilization in Europe has also been undertaken against sex offenders, using castration. In Denmark, in the period 1929 - 1959, due to long prison sentences handed down against perpetrators of rape, about 300 convicts had chosen the possibility of castration, in exchange for serving shorter prison sentences (Jonuzi-Shala, p. 31). The same was true in Germany and the Czech Republic; the demands had to be made by the prisoners or offered by the institution itself, thus rightly provoking debates of an ethical nature (McMillan, p. 584, Ryberg & Petersen, 2014, p. 593). The same thing happened in San Diego, California, when between 1955 and 1957, nearly 400 people agreed to be castrated in exchange for their freedom (Jonuzi-Shala, p. 31 and 48).

Sterilization as a method of maintaining health in Kosovo, Albania and Croatia

Sterilization is one of the family planning methods. Therefore, in the relevant laws of most of the world it is permissible, if it is carried out in accordance with the law. According to the "Health Law" of Kosovo (2013), Article 86 stipulates that artificial sterilization can be performed at an individual request of both sexes after medical consultation, but also in cases where a patient's health is threatened, based on the recommendation of a specialist physician and patient's written consent.

According to the "Law on Reproductive Health" of Albania (2009), sterilization is considered one of the contraceptive methods, which must be performed voluntarily (Article 26). According to Article 15, al.2, sterilization is a legal method for family planning and is performed only in the following cases: when a patient gives his or her written consent and meets the age criterion. According to Article 16, each

individual has the right, in accordance with his or her own desires, to undergo surgical methods for sterilization. Also, each individual has the right to defend his or her reproductive abilities, complaining against any actions, decisions or injuries caused by third parties when the rights related to reproductive health are violated (Article 17).

In Croatia, on 8/02/2020, the draft law on "Health measures for the realization of the right to freely decide on the birth of children" was processed in the Assembly, but has been delayed since 2016 due to numerous objections. Among other things, it is predicted that sterilization can be performed only on people who give consent and who are over 35 years old (Hrvatski Sabor, 2019), but this can happen even if these conditions are not met, if this is done for health reasons (Article 10, al.2). If the person is under this age and is incapacitated, the parents or guardian decide on this intervention (Articles 11 and 12).

International documents

International human rights documents related to family planning, respectively, planning issues have been updated in the last decade. In almost all international documents this issue is defined in a general context, without concretizing it as such.

However, in 2011 the Council of Europe issued the "Convention on the Prevention and Combating of Violence against Women and Domestic Violence" (Istanbul Convention), which, in addition to domestic violence, also defines forced sterilization as a part of non-domestic violence. The Convention obliges States to enact laws or take measures to prevent compulsory sterilization. According to Article 39, the Convention obliges the parties to guarantee that they will punish persons who, intentionally and without prior consent,

or contrary to medical procedures, perform surgical interventions aimed at disrupting a woman's ability to reproduce naturally.

The figure of the criminal offense - forced sterilization

Compulsory sterilization is a new criminal offense in the Criminal Code of the Republic of Kosovo of 2019, defined in Article 179, in Chapter XVI, "Criminal offenses against life and body." The purpose is to preserve human reproductive health. The object of protection against this criminal offense is human life and bodily integrity, while the object of action is the human reproductive organ.

The country's penal code prohibits sterilization when it is undertaken for reasons that: a) are not medical and b) without the consent of the person to whom it is applied. Therefore, sterilization as an intervention is allowed, only if the conditions are met according to Article 86 of the Law on Health (2013).

The criminal offense has a basic form and a serious form. The basic form of the criminal offense (al.1) exists when sterilization is undertaken for non-medical reasons and without the consent of that person. The expression "without consent" means the lack of will, that is, of consent, which can be expressed in gestures, words or actions, which clearly prove that man opposes enterprises of this nature. So, in order for this criminal offense to exist, the use of force or intimidation is not required. Their use can be taken as an aggravating circumstance in the case of sentencing. The consent of the other person (husband, wife, parents, etc.) does not preclude the existence of a criminal offense.

The actions performed are alternately defined: the removal of human reproductive organs or their disability in any other way. This means that, in addition to the physical removal

of reproductive organs, the offense under Article 179 will exist even if the reproductive organs are tied up, blocked, destroyed or cut off. Bonding, blocking, destruction or cutting are performed through surgical intervention, in addition to the destruction of the reproductive organ, which can also be performed through radiation.

In order for a criminal offense to exist under Article 179, two conditions must be cumulatively met: that sterilization be carried out without medical reasons and that sterilization be carried out without the consent of the person. This means that the offense will not exist if it was undertaken for medical reasons, although there was no consent.

The criminal offense under Article 179 is considered committed when the reproductive organs have been removed or in any other way the reproductive organs have been disabled. In other words, this criminal offense is considered committed when the sterilization of a person has been caused, respectively, a person's reproductive organs have been incapacitated, in which case these organs can in no way perform their reproductive function. Otherwise, this criminal offense will not exist if the actions that cause sterilization are taken, but the object of the action is missing (the person is barren, not fertile, the reproductive organs cannot perform their function, regardless of the causes which have caused this condition, such as: accidents, illnesses, problems from birth, voluntary sterilization or sterilization against desire, which has occurred earlier). So, in order for this criminal offense to exist, the passive subject must have been reproduced by the reproductive organs, but as a result of the intervention, these organs have lost their function, i.e. the reproductive ability.

The attempted criminal offense exists if the removal of reproductive organs or disability in any other way has been undertaken, but such intervention has proved unsuccessful and

the person has not lost the reproductive capacity. This can happen due to inadequate means or radiation, lack of knowledge, etc.

The perpetrator of a criminal offense under Article 179 may be any person. When it comes to legal sterilization, this is done only by a gynaecologist in the relevant hospitals or clinics. Whereas, when it comes to this criminal offense, there may be two situations: it can be performed by a gynaecologist in the respective clinics and hospitals, but without the consent of the patient or it can be performed by other incompetent persons and without the consent of the patient. es. Therefore, in addition to the gynaecologist, each perpetrator may be a doctor of another profile, a medical student, nurse, midwife, a person in the radiation clinic or another person.

The passive subject of the criminal offense can be any person who has not given consent for sterilization. This includes men and women, as well as girls and boys who have reached sexual maturity. The age of the passive subject is an aggravating circumstance in the case of sentencing, given that in the KPC it is not foreseen as a serious form of criminal offense. Also, the fact that sterilization is performed on a person who is of reproductive age but who does not have children can be taken as an aggravating circumstance.

The question that arises is: can there be a merging of the criminal offense - forced sterilization with criminal offenses - minor bodily injury (Article 185) or serious bodily injury (Article 186). This is because in the legal description of the criminal offense under Article 186, al. 2, point 2 it is defined as "permanent disability or weakening of a vital part of another person's body", while in al. 2, point 5 of the same article it is defined as "permanent damage to the health of another person". Actions under Article 179 and Article 186, al. 2, points 2 and 5, fully correspond to each other, if the vital human organ is also

considered its reproductive organs (2.2.), or if the expression "health" includes the reproductive organs (2.5.). Given that the jurisprudence of the criminal offense - forced sterilization does not exist, these dilemmas may be exacerbated by the sentence provided; for the basic form of the criminal offense of forced sterilization, the sentence is from 1 to 8 years of imprisonment, while for the criminal offense of serious bodily injury (al. 2, points 2 and 5), a sentence of imprisonment from 1 to 10 years is foreseen. The criminal offense of forced sterilization is a special criminal offense in relation to the criminal offense of grievous bodily harm. Therefore, in this case there is an ideal fictitious union based on the specialty report (*lex specialis derogat legi generali*). In this case, forced sterilization is a special form of serious bodily injury, because by performing forced sterilization, the elements of severe bodily injury are realized according to al. 2, points 2 and 5.

The offense can only be committed intentionally. Intention involves the perpetrator's awareness of the fact that he is disabling the person for reproduction.

Giving consent to the person for sterilization precludes the existence of a criminal offense. Also, there will be no criminal offense when consent for sterilization has not been granted, but its realization is imposed by a patient's condition and that is when he or she is in danger of death. Only in such a case is lack of consent for sterilization irrelevant.

The serious form of the criminal offense (al.2) exists when as a result of forced sterilization according to al. 1, serious bodily injury or serious damage to health has been caused or when the person died. In relation to the consequences, the perpetrator must have acted negligently. Commission of the serious form of criminal offense is punishable by imprisonment of 5 to 15 years.

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In terms of characteristics, the criminal offense of forced sterilization is carried out only by action. Regarding the number of actions committed, they are part of a simple criminal offense, in terms of consequences: it is a material criminal offense, while in terms of the duration of the consequences, it is a criminal offense of the state.

An issue concerns the legal description of the criminal offense under Article 179, al.1, raising the dilemma of how to act if a person (not a doctor) performs sterilization with the consent of the person? In this case, he / she may be responsible for committing the criminal offense of illegal exercise of medical or pharmaceutical activity, according to Article 256, but for this offense the sentence is much lower, imprisonment up to 1 year.

And finally, the reasons for the exclusion of illegality, such as: the consent of the injured party in the case of surgical interventions and the exercise of a doctor's duty, and the eventual occurrence of this phenomenon could obviously be relativized.

Compulsory sterilization as a criminal offense in comparative terms

Compulsory sterilization is not provided for in the Criminal Code of Albania. In the criminal codes of Slovenia, Croatia and Serbia, it is not envisaged as a special criminal offense, but as one of the actions within the framework of crimes against humanity or war crimes. Even in the Criminal Code of Belgium, Finland, France and Switzerland, forcible sterilization is provided for only in the framework of crimes of international law.

But, in addition to Kosovo, forced sterilization is envisaged in the criminal codes of the countries of the region, such as Montenegro, Macedonia and the Republic of Serbia.

According to the Criminal Code of Montenegro, this criminal offense has a form and the legal description stipulates that “anyone who using violence or intimidation sterilizes another person in order to prevent his reproduction, is sentenced to imprisonment by 3 months to 5 years”.

The Criminal Code of Macedonia does not envisage it as a special criminal offense, but as a form of the criminal offense “Illegal termination of pregnancy”. Article 129, al. 4 provides that “a person who unlawfully or through fraud or by exploiting a woman's lawsuit, illegally, through surgical intervention or in any other way interrupts her reproductive capacity, shall be punished by imprisonment. from 3 to 10 years”, while in al.5 the most serious form of criminal offense is foreseen, and this is the situation if this action is taken against a minor woman or when a woman has been seriously injured or when she has died. Its perpetrator is sentenced to imprisonment of not less than 5 years.

Meanwhile, regarding Bosnia and Herzegovina, this offense is not provided for in the Criminal Code of the Federation, but only in the Code of the Serbian Republic. Article 134, “Compulsory Sterilization”, stipulates that “anyone who operates on another person in order to prevent his or her natural reproduction, without the consent of that person, shall be punished by imprisonment of 1 to 8 years”, while the severe form will exist if this action is committed against a child and the prescribed punishment is imprisonment of 2 to 10 years.

Even in the Turkish Penal Code, forced sterilization is an incriminated act. According to Article 101, “when a person sterilizes a man or woman without his or her consent, he or she is sentenced to 3 to 6 years in prison. If the offense is committed

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by an unauthorized person, the penalty is increased by 1/3. When sterilization is performed by an unauthorized person, but with the consent of the sterilized person, he or she is punished with imprisonment of 1 to 3 years”.

Also, in the Criminal Code of Azerbaijan, according to Article 136.2, “the undertaking of an operation for the purpose of medical sterilization without the consent of a person is considered a deprivation of the ability to continue that type of person, even if undertaken to protect a woman from pregnancy. with a fine of 500 to 1000 manats (545 Euros, my notice) or with imprisonment of up to 3 years, in addition to the deprivation of the right to stay in the workplace or engage in certain activities for a period of up to 3 years or without setting a deadline”.

Conclusion

The incrimination of forced sterilization in the Criminal Code of the Republic of Kosovo, of 2019 reflects a situation of approximating our laws with international documents. These are purely formal actions, because fighting crime requires real and much deeper action and commitment. Thus, the fight against crime has many dimensions, in addition to the formal one.

Both incrimination and decriminalization should not occur without empirical research of the particular phenomenon. This also has to do with the research of the presence of forced sterilization not only in the present, but also in the past in Kosovo. Only after the issuance of the relevant results could concrete steps be taken, including incrimination.

Otherwise, reform cannot happen by merely providing for various criminal offenses in the code. The legislator must first identify the interest: which interest must be protected by certain norms. Reform occurs if norms are set out that have a

purpose, make sense, have meaning and reason, and that society needs. *Ratio legis est anima legis*.

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