policy even before the case comes before a court (if a defendant complies with the instructions of a prosecutor and carries out tasks that he imposed on him, the case will not even be brought to court, because a crime report will be rejected by a prosecutor). These provisions are in my opinion very questionable, because they mean that a public prosecutor is vested with powers to set «sentencing frameworks» in each individual case, what represents a relatively large risk for the violation of the principle of equality before the law. Even worth is the situation with the institute of guilty plea agreement or plea bargaining.

Courts still render their judgements in the name of the people. It is neither desirable nor convenient if people wonder about or even disdain judgements rendered in their name. In such a case people either do not understand a message given by a judicial branch of government or something might be wrong with this message. The time will show how the mentioned novelties concerning prosecutorial sentencing policy will function in practice and how will be the "bargaining with justice" accepted by people.

i Horvatić Ž.: «Kaznena politika», the entry in the book Rječnik kaznenog prava. Zagreb: Masmedia 2002, p.167.

ii Filipčič K.: «Kaznovalna politika v Sloveniji», 3. Konferenca kazenskega prava in kriminologije, Zbornik 2010, Ljubljana, GV Založba in Pravna fakulteta v Ljubljani, p. 15-17.

iii Filipčič, op.cit., pp. 17-21.

Filipčič, op.cit., pp. 17-21.

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CRUELTY AND PERFIDITY REGARDING THE CRIME OF MURDER IN SUBSTANTIVE CRIMINAL LAW OF SLOVENIA

{0>Člen 116<}100{>Slovenian Criminal Code, the so-called CC1, adopted in the parliament in 2008 (entered into force on November 1st 2008, OJ RS Nr.: 50/12 from 29th of June 2012, including amendments, adopted until present), in Art. 116 under the title "Murder" offers the following incrimination:<0}
{0>Kdor koga umori s tem, da mu vzame življenje<}0{>"Whoever takes the life of a human being <0}

1) {0>na grozovit ali zahrbten način;<}0{>in a cruel or perfidious manner;<0}

2) {0>zaradi ukrepanja pri uradnih dejanjih varovanja javne varnosti ali v predkazenskem postopku ali zaradi odločitev državnih tožilcev ali zaradi

postopka in odločitev sodnikov ali zaradi ovadbe ali pričanja v sodnem postopku; <}0{>due to taking action in official acts to protect public security, or in a pre-trial criminal procedure, or due to decisions of state prosecutors, or due to the proceeding and decisions of judges, or due to criminal complaint, or testimony in a court proceeding;<0}

3) {0>zaradi kršitve enakopravnosti; <}0{>because of violation of equality;<0}

4) {0>iz morilske sle, iz koristoljubnosti, zato da bi storil ali prikril kakšno drugo kaznivo dejanje, iz brezobzirnega maščevanja ali iz kakšnih drugih nizkotnih nagibov;<}0{>out of desire to murder, out of greed, in order to commit or to conceal another criminal offence, out of unscrupulous vengeance, or from other base motives;<0}

5) {0>z dejanjem, storjenim v hudodelski združbi za storitev takih dejanj,<}0{>with the act committed within a criminal organisation to commit such offences,<0}

{0>se kaznuje z zaporom najmanj petnajstih let.<}100{>shall be sentenced to imprisonment for not less than fifteen years."

In that way, all alternative forms of the most severe form of intentional killing of another human being, in Slovenian criminal law known as murder, are commissive (derive from forbidding norms). They are widely understood as qualified forms of the crime of manslaughter (as defined in Art. 115 CC1), although at least some of them show signs of mixed criminal legal goods, including public peace, functioning of courts, equality and nondiscrimination, public security. Historically in general the distinction between manslaughter and murder derives from the roman legal figure of intentional killing of another person "with premeditation" as an extra grave form of killing. This premeditative element of guilt was later casuistically broadened into a wide array of special intentions of the perpetrator. Alternative forms of subjective and objective circumstances, which make the act especially severe, a technique, seen in the cited Art. 116 CC1 is a rather new stage in the evolution of the crime of murder.

The Slovenian criminal legislator acted from the standpoint of comparative criminal law very late, when he decided in 2008 to abolish the traditional broad incrimination of intentional killing, called manslaughter and formed two new incriminations out of it: the less severe manslaughter and the most severe murder. In the new system the term murder is bound to (1.) special psychological premeditative impulses, regarded as heavy guilt or (2.) special forms of objective techniques of killing another person on the level of objective elements of the general notion of crime.

In Slovenian special part of substantive criminal law, the legislator is typically not aware of the systematic importance and is not willing or able to systematically incorporate interpersonality of acts into definitions of crimes. The definition of murder is a good example. The legislator could have easily stated: "who takes the life of another person", but sticks to "who takes the life

of a person". In that way, suicide is without the slightest doubt included in the definition of intentional killing of manslaughter (Ar. 115 CC1) as well as Murder (Art. 116 CC1) and theoreticians and even more the public prosecutors and judges in criminal legal cases have to improvise with argumentation regarding the exclusion of unlawfulness of self-inflicted deaths. This takes unnecessary time and energy and is uniformly regarded a result of bad legislation.

A victim of all intentional killings according to Slovenian CC1, including of murder in Art. 116 can be a human being, which birth has at least started. Inflicting death to an unborn child is of course also killing and the victim is biologically without any doubt human, but the Slovenian law is politically not willing to offer him full criminal legal protection. This however seems to be a very common approach in modern criminal laws.

As the majority of all crimes, murder can also be committed by omission. Commissions by omission are in Slovenian criminal legal theory rather neglected and very seldom dealt with in practical criminal jurisprudence. Nevertheless, in the last years in Slovenia there were some theoretically very interesting cases, where physicians were brought to criminal court because of alleged intentional omissions to prolong life of patients in the final stages of their lives, in the process of patients' natural dying because of different illnesses (cancer, heart failures etc.) or injuries of the patients. Those omissions by medical experts seemed to be causal with the death of those patients. Therefore, the courts had to deal with the possibility of murder through commission by omission.

In Point 1 of the only Paragraph (I.) of Article 116 CC1 the first alternative is a cruel form of killing. Of all alternatives in Art. 116 this is the most theoretically and practically researched one and seems to be the most common in jurisprudence of murders in Slovenia too. It is obvious, that we are dealing with a strongly culturally defined phenomenon, in European states typically under this terminological umbrella we can find cases of prolonging the pain and agony in the process of dying, where this prolonging is an important goal of the perpetrator while taking life. We can find forms of killing by hypothermia here, as well as dehydration, successive suffocation or poisoning by exhaled gasses in a very small physical space, where the victim is held to die there, inflicting of a mass of small injuries to the body, where the effect of the sum of them is lethal. Annihilative forms of killing are also found here: the technique of killing itself is capable of destructing any traces of the victim, like dissolving a human in acid, throwing him from a boat into open ocean (to be eaten by fish), but also burning him alive, disintegrating him by explosion or any disintegrative or squeezing machine or other technique. Newest court decisions declare as cruel in the sense of Art. 116/I(1) CC1 (to persons to be killed, waiting in row) successive killings of hostages. In any case, it has to be stressed, that the concept of cruelty is used by the legislator in Slovenian in the special part of the

CC1 extremely arbitrary. Several incriminations, like robbery or kidnaping do not foresee such a possibility, although the courts are frequently confronted with severity of cruelty in individual cases. On the other hand, we experienced some court argumentation recently in Slovenia affirming cruelty as a special aggravating circumstance in the crime of rape (Art. 170/II CC1), where the perpetrator during the sexual intercourse "spoke a language, not understood by the victim", which was criticized by theoreticians as racist use of law.

Contrary to cruelty, the aggravating circumstance of perfidity as the second alternative of Point 1 of the only (I.)Paragraph of Art. 116 CC1 tries to cover cases, where the victim is killed by that special person, whom the victim trusts his or her life most: medical practitioners, professional mountain rescuers, but also parents, teachers, spouses, taxi- or bus- drivers, pilots. In this category one can find by the victim unexpected killings during sexual acts. Newer theory slowly abandons to define all killings of sleeping people or all killings of children as perfidious per se in the sense of Art. 116/I(1) CC1.

One can not stress enough, that according to the new Slovenian CC1 all cases of euthanasia, where the perpetrator is a medical practitioner, physician and his patient didn't give a free consent for euthanasivekilling, are dealt with as perfidious murders under the definition of Art. 116/I(1) CC1. Slovenia decided in 2008 politically not to provide a privileged, less severe form of manslaughter in cases of euthanasia and prefers the definition of murder in such cases with a physician as perpetrator and patient as victim. It is interesting to know that both the Medical Chamber of Slovenia as well as the National Bioethical Committee are fond of this regulation and oppose strongly any liberalization in this regard.

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ПРИМЕНЕНИЯ МЕЖДУНАРОДНО-ПРАВОВЫХ НОРМ О ВОЕННЫХ ПРЕСТУПЛЕНИЯХ

Одной из актуальных проблем международного уголовного права продолжает оставаться проблема применения материально-правовых норм об ответственности за военные преступления. Отметим, что в науке выработано понимание того, что международная норма уголовно-правового характера может применяться как непосредственно, так и опосредованно, через соответствующую норму национального законодательства [1, с. 61-62]. Следуя этому положению, мы также рассмотрим вопросы применения международных норм об