

Comparative Analysis of Mercenary Activities in International Documents and Criminal Acts Criminalizing Warfare Abroad in the Criminal Code of the Republic of Serbia

Ana Mutavdžić¹

Ministry of the Interior of the Republic of Serbia, Belgrade, Serbia

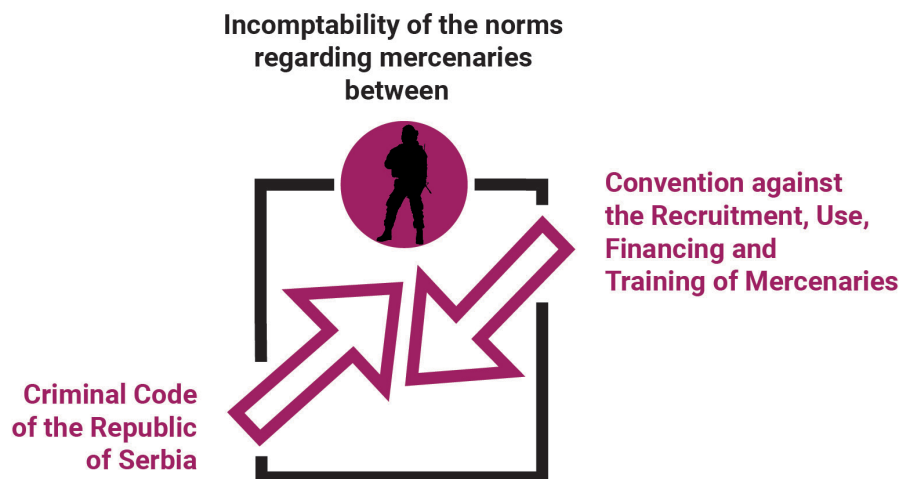
Submitted: 2023-02-01 • Accepted: 2023-06-18 • Published: 2023-06-30

Abstract: Mercenary activities in wars and other armed conflicts, as a social phenomenon, do not stop intriguing both in moral, legal and financial terms, from the first armed conflicts until today. Although present practically throughout the entire human history, the regulation of mercenary activities from the aspect of international law as well as national legislation was completely neglected until recently. It was only after the World War II that the first international documents were created that tried to define and identify mercenaries as a serious threat to international security. Much later, the norms of national (criminal) legislation began to treat the activities of mercenaries as criminal acts, that is, mercenaries as criminals.

Accordingly, in this research work the author will try to answer several, today more than ever, current problematic issues, which are based on the harmonization, that is, the non-harmonization of the norms regulating the field of mercenary in the acts of international law and our national criminal legislation, which tried to regulate the field of mercenary work within the national framework – with amendments to the Criminal Code from 2014.

Keywords: mercenary activities, mercenaries, Convention against the Recruitment, Use, Financing and Training of Mercenaries, Criminal Code of the Republic of Serbia, participation in war or armed conflict in a foreign country.

Graphical abstract



¹ Corresponding author: anadjo1@gamil.com

INTRODUCTION

The debate regarding the definition of the concept of mercenary activities, as well as the status of mercenaries in international law, is not new, but its existence is much shorter than mercenary itself, which is said to have existed since the beginning of armed conflicts, thus since the beginning of mankind.

Mercenaries are people who fight for one of the parties in a war, that is, an armed conflict for the sake of money or other, usually financial interests.

As stated by Mijalković and Đorđević (2020, p. 74), “mercenaries (‘contractors’, ‘commercials’) are members of paramilitary formations who are paid for their participation in an armed conflict by the party in the conflict that hired them”. As a rule, they are not citizens of states in conflict, nor are they members of regular armed parties in conflict. That is, mercenaries are foreigners without residence in the country for which they fight and whose only motive for warfare is personal gain and profit (Radivojević, 2009).

The massive participation of foreign mercenaries in many armed conflicts of an international and internal character whose only motive for war is profit, as well as the harsh consequences of their engagement manifested in serious violations of the principles of humanity, contributed to making this issue up-to-date from the point of view of international legal regulation (Vučinić, 2006). In this regard, the norms of international law begin to characterize the activity of mercenaries as undesirable and later prohibited, first in the regulations on which international humanitarian law is based – the Hague and Geneva Conventions, and then in two international conventions entirely devoted to mercenaries – the Convention on the Elimination of Mercenaries in Africa of the Organization of African Unity and the United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries.

The definitions of mercenaries contained in a small number of international documents are based on similar premises – mercenaries: – are recruited in the country or abroad, – are direct participants in hostilities, – are motivated by the desire for private and material gain, – are not citizens of a party to the conflict nor residents of the territory under the control of a party to the conflict, – are not sent by the state on official duty, – are not members of the armed forces of the party to the conflict (Baran, 2020, p. 11). On the other hand, a mercenary as a phenomenon and a modern social problem has not been defined so far by any act of international law. However, in the simplest terms it could be presented as the engagement of mercenaries in armed conflicts.

For the purposes of this research work, an analysis of certain norms from the Convention against the Recruitment, Use, Financing and Training of Mercenaries will be carried out as the most relevant and comprehensive international document regulating mercenaries, which the Republic of Serbia has ratified several times. Also, their comparison with national norms of criminal legislation prohibiting our citizens to participate in wars or armed conflicts abroad will be performed. The author’s idea is to point out the incompatibility of the norms from the ratified act of international law with the norms of the national criminal legislation.



INCRIMINATION OF MERCENARY ACTIVITIES IN THE NATIONAL FRAMEWORK AND LEGISLATION OF THE REPUBLIC OF SERBIA

It is noticeable that for the last ten years our citizens tend to go from Republic of Serbia to active battlefields around the world, mostly to Ukraine and Syria. As stated in the publication of the Extremism Research Forum – forty-nine Serbian citizens joined the Islamic State and its fractions in Syria and Iraq, and after the outbreak of the conflict in Ukraine, about seventy Serbs took part in that armed conflict, fighting on the Russian side (Petrović & Stakić, 2018). The number of Serbian citizens engaged in Ukraine is being calculated almost on a daily basis. So, for example, the Prime Minister of the self-proclaimed Donetsk People's Republic, Alexander Zakharchenko, stated at a press conference in Donetsk that 14 volunteers from Serbia reinforced the lines of pro-Russian forces fighting against the Ukrainian army (Zaharčenko : S nama, 2014). Also, according to the statement of the former ambassador of Ukraine in Serbia, Aleksander Aleksandrovich, and based on the data available to the Ukrainian security services, at the end of 2018 there were about 300 Serbian mercenaries on the territory of Ukraine who were fighting on pro-Russian side (Bogdanović, 2022). Apart from that, the most wanted mercenaries in the world are considered to be former members of regular military and police forces, that is, fighters with war experience from the wars in Iraq, Afghanistan, as well as from the area of the former SFRY (Mijalković, 2010).

The increased number of Serbian citizens in territories at war abroad was possibly one of the basic reasons for passing the Law on Amendments to the Criminal Code, which was adopted in 2014 (Zakon o dopunama Krivičnog zakonika, 2014). The Law on Amendments to the Criminal Code was practically the Fifth Amendment in the Criminal Code of the Republic of Serbia since 2006, when it entered into force. However, the main character of this amendment is the fact that at that time the Criminal Code was changed only once by Law on Added Amendments and not by Law on Amendments to Exchanges (which is the most common case), as well as that the amendment consists of only two criminal acts forbidding the activities of our citizens regarding warfare abroad. As an explanation of this law, in the part that states the reasons for its adoption, a negative social phenomenon in our environment is highlighted, namely the organized or independent joining the paramilitary formations outside the Republic of Serbia, for lucrative motives or without compensation, which is the basis for incrimination, due to the risk of potential radicalization of the mentioned persons, that is, the socially harmful potential influence on other persons (Bodrožić, 2020).

During the creation of the work, it still remains questionable whether the aforementioned social danger, which can be caused by prominent activities, motivated the legislator to pass the Law on Amendments to the Criminal Code urgently or whether, after all, it was a matter of daily political issues.

DILEMMA – ARE THE MERCENARY ACTIVITIES CRIMINALIZED BY THE INCRIMINATION OF WARFARE ABROAD IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA ACCORDING TO THE CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES?

Numerous media reports, such as “Adopted Law on Mercenaries” (Usvojen zakon o plaćenicima, 2014), “Serbia will punish war mercenaries” (Srbija će kažnjavati , 2014) or “Ser-



bian mercenaries are a ticking time bomb” (Mijatović, 2013), as a precursor to the adoption of the aforementioned Law on Amendments to the Criminal Code from 2014, had exclusive headlines that a priori represented the two criminal acts criminalizing warfare abroad in the context of forbidding mercenary activities. However, although the aforementioned criminal acts which prohibit warfare abroad at first seem to be incriminating mercenary activities, the relevant international legal source that regulates the suppression of mercenary activities, that is the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, defines the concept of mercenary activities through a series of cumulatively stipulated conditions, out of which the most dominant is the lucrative motive for participation in war or armed conflict abroad, while the incriminations from Articles 386a and 386b do not mention any material remuneration or compensation of a similar kind (Bodrožić, 2018a).

Thus, as implied by Article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in order for a person to be considered a mercenary, it is necessary to meet several of the following conditions: “1. A mercenary is any person who: a) is specially recruited in country and abroad for fight in an armed conflict; b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party; c) is not a citizen of a party to the conflict nor has a residence in the territory controlled by a party to the conflict; d) is not a member of the armed forces of a party to the conflict; and e) is not sent by a state that is not a party to the conflict, ex officio, as members of its armed forces (Zakon o potvrđivanju Međunarodne konvencije, 2015). Personal, usually material benefit is one of the most common reasons. Also, the emphasis on finances as a motive for engaging a person in mercenary status was also present among the provisions of the famous Article 47 of Additional Protocol I of the Geneva Conventions, which represents the foundation of the international legal regulation of a mercenary and which is: 1. A mercenary shall not have the right to be a combatant or a prisoner of war; 2. A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
- (d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (e) is not a member of the armed forces of a party to the conflict; and
- (f) has not been sent by a state which is not a party to the conflict on official duty as a member of its armed forces (Zakon o ratifikaciji Dopunskog protokola, 1978).

Contrary to these statements, Article 386a of the Criminal Code states: “A Serbian citizen who participates in war or armed conflict in a foreign state, as a member of the military or paramilitary forces parties to the conflict, and is not a citizen of the foreign state, nor a member of the official mission of an international organisation of which Serbia is a mem-



ber, shall be punished by imprisonment of six months to five years” (Zakon o izmenama i dopunama Krivičnog zakonika, 2019). It is evident that our legislator, for some reason, did not consider the motive as relevant and did not envisage it while making standards of incrimination for the participation of Serbian citizens in foreign armed conflicts. If we take into account that in its original meaning, the word mercenary means a hired soldier, “the one who fights for money, fights on someone’s side” (Rečnik srpskoga jezika, 2007, p. 769), it can additionally justify the dilemma whether the lack of a lucrative, as well as of any other motive in two incriminations of the national criminal legislation indirectly indicates that in fact mercenary activities are not prohibited.

It should be mentioned that the citizens of Serbia who have been prosecuted so far often state ideological reasons as a motive for going to foreign battlefields and that they strongly deny being mercenaries, that is, they present themselves as volunteers (Serbia sentences mercenary, 2022). Also, it was noticed that a number of them, after being prosecuted, i. e. sentenced for the criminal act of participating in a war or armed conflict abroad, again go to one of the foreign battlefields and thus repeat the criminal act. In that case, in accordance with the amendments to the Criminal Code of the Republic of Serbia from 2019, if new criminal proceedings were to be initiated against a person already prosecuted, he/she would then be punished more severely. Namely, as stated by Đorđević and Bodrožić (2020, p. 79), “the legislator considered that the punishments should be more severe for previous and persistent commission of criminal acts in order to reduce the freedom of the court’s decision while determining the sentence, so these legal provisions are changed and prescribed as mandatory aggravating circumstances”.

Besides this, the timing of the adoption of the Law on Amendments to the Criminal Code of the Republic of Serbia represents a certain controversy. Having in mind that this law was adopted on October 10th 2014, and the Law on the Ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries on December 15th 2014, it is questionable whether the creation of provisions of the national legislation represented a certain harmonization with international law, and of course - if we take into consideration the above, that the aforementioned Convention was ratified by our country (FRY) back in 2001, that is (SFRY) in 1990, or that by reconfirming the Convention, an effort was made to strengthen the effect of the newly adopted incriminations in the Criminal Code, and all for the sake of influencing the intensified departure of our citizens to foreign battlefields.

On the basis of the intertwining of two laws - on amendments to the Criminal Code and Law on the Ratification of the International Convention, we can say that the tendency of the legislator was to try to include mercenary activities in the norms of the national legislation, which, among other things was implied while stating the reasons for the proposed adoption of the Law on the Ratification of the Convention in December 2014. In that aspect, it is stated that by confirming the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Republic of Serbia would be included in the group of countries that treat the recruitment, use, financing and training of mercenaries as a criminal act and as a morally unacceptable form of warfare. The Law on Amendments to the Criminal Code from October 2014 prescribed two new criminal acts related to the participation of citizens of the Republic of Serbia in a war or armed conflict in a foreign country and organizing the participation of citizens of the Republic of Serbia



in a war or armed conflict in a foreign country, and therefore harmonization of domestic criminal legislation is not required - Law on Ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, International Treaties (Zakon o potvrđivanju Međunarodne konvencije, 2015).

PARTICIPATION AND ORGANIZING PARTICIPATION IN WAR OR ARMED CONFLICT IN A FOREIGN COUNTRY (ARTICLES 386A AND 386B OF THE CRIMINAL CODE)

Criminal acts of Participation in War or Armed Conflict in a Foreign Country from Article 386a and Organizing Participation in War or Armed Conflict in a Foreign Country from Article 386b are systematized in Chapter 34 of the Criminal Code of the Republic of Serbia. The reason for classifying these criminal acts under the chapter of crimes against humanity and international law is quite clear, considering that making war, as well as organizing wars abroad, would constitute a serious violation of the standards of international law.

ARTICLE 386a – PARTICIPATION IN WAR OR ARMED CONFLICT IN A FOREIGN COUNTRY

Criminal act of Participation in War or Armed Conflict in a Foreign Country can be committed by a Serbian citizen who participates in war or armed conflict in a foreign state, as a member of the military or paramilitary forces parties to the conflict, and is not a citizen of the foreign state, nor a member of the official mission of an international organization of which Serbia is a member. Imprisonment of six months to five years is provided for this criminal act. If committed within a group, this criminal act will be considered a more serious form of criminal act. In that case imprisonment of one to eight years is provided.

Therefore, criminal act of Participation in War or Armed Conflict in a Foreign Country can be committed only by a Serbian citizen. In addition to this provision, a personal basis for the exclusion of criminality is provided, which implies that the citizen of Serbia who commits this criminal act is not at the same time a citizen of a foreign country on the territory of which war or armed conflict is being made. Besides this, the affiliation of a citizen of Serbia to the official mission of an international organization of which Serbia is a member is considered a personal basis for the exclusion of criminal responsibility. In that case, such a person can also not be considered the perpetrator of this criminal act.

The act of committing this criminal act is defined as participation in war or armed conflict in a foreign country. The term ‘war’ itself can be interpreted in a narrower and broader sense. War is usually understood in its narrower sense, which means an armed conflict of two or more countries, for the purposes of violent establishing political or other interest (the destruction of the opponent, the imposition of a certain social order or form of government, the occupation of territory, the abduction of an important asset, etc.). However, “in a broader sense, in addition to armed conflicts between countries, war also includes serious armed conflicts within the borders of one country (national liberation or anti-colonial war, civil war and likewise). Also, war in a broader sense can also be called serious armed conflicts that go beyond country borders, but in which at least one side is a subject



that cannot be labelled as a country (some quasi-country, a large terrorist organization and likewise)” (Krivokapić, 2017, p. 460).

The place of committing a crime can be one of the specific characteristics of the criminal act of Participation in War or Armed Conflict in a Foreign Country. Namely, this criminal act can be committed only in a foreign country.

The important characteristic of the entity of the criminal act is the participation of the perpetrator in a war or armed conflict as a member of military or paramilitary unit of the parties to the conflict, and it is not important in which way a person participates in war or armed conflict (Bodrožić, 2018a).

In this criminal act, special intention or motive is not a part of the entity of the criminal act. On the subjective level criminal intent is required, which must contain both the element of consciousness and will.

Paragraph 2 of Article 386a of the Criminal Code stipulates the qualified form of the criminal act of Participation in War or Armed Conflict in a Foreign Country. If the criminal act has been committed within a group, it will be considered a more serious form of criminal act, i. e. by three or more persons who joined together permanently or temporarily for the purpose of committing a criminal act.

As stated by Stojanović (2021), it is not clear what the protective object of this criminal act is and which goods are protected by international law. Also, his assessment is that such incriminations are, above all, politically qualified.

In order for the criminal act of Participation in War or Armed Conflict in a Foreign Country to be committed, all conditions must be fulfilled cumulatively.

If we compare the conditional provisions from the Convention against the Recruitment, Use, Financing and Training of Mercenaries with the conditions from Article 386a, we can see that none of them match. Thus, for example, national legislation provides that a person independently decides to travel abroad and take part in a war or armed conflict there, while the Convention stipulates that such a person should be specially recruited, in the country or abroad, to fight in an armed conflict.

Also, as we have already emphasized, Article 386a does not presume the existence of a motive for the criminal responsibility of a person for this criminal act. On the other hand, the Convention requires that the engagement of mercenaries be conditioned by the existence of self-interested motives. This could be the clearest characteristic of the difference between a mercenary and a participant in a foreign conflict. By prescribing insufficiently specific provisions, our legislator enabled the enforcement of this criminal act to a wider range of persons. In that way, persons who took part in a war or an armed conflict in a foreign country for exclusively non-material reasons (e.g. confessing the same religion as the people of one of the conflicting parties) will be punished.

The next condition of the Convention implies that the person “is not a citizen of a party to the conflict nor has a residence in the territory controlled by a party to the conflict”. According to the provision of national criminal legislation, the participant can be a citizen of a party to the conflict, because in addition to the condition of being a citizen of Serbia, the participant must not be a citizen of a “foreign country where the conflict is taking place”, and the country does not have to be a party to the conflict (Vuković, 2014, p. 394).

Perhaps the biggest distinction between the national incrimination of mercenary activities and the requirements of the Convention against the Recruitment, Use, Financing



and Training of Mercenaries, as the insufficiently expert public believes, relates to the provisions regarding the requirement from the Convention that a mercenary can only be a person who is not a member of the armed forces of the parties to the conflict, which differs from Article 386a of the Criminal Code, which states that the person who participates in a war or armed conflict in a foreign country as a member of the military or paramilitary formations of the parties to the conflict is criminally responsible.

It is important to point out that the provisions of Article 386a do not at all relate to the second part of the definition of mercenaries from the Convention against the Recruitment, Use, Financing and Training of Mercenaries, that is the categories of persons who participate in an organized act of violence aimed at: (1) Overthrowing the government or undermining the constitutional order of the state, or (2) Undermining the territorial integrity of the country. Vuković (2014, pp. 394–395) points out that “these actions from the Convention are intertwined with the wide area of criminal acts of terrorism, which seriously threaten or violate the basic constitutional, political, economic or social structures of Serbia, foreign countries or international organizations”, and for that reason it is necessary to harmonize our criminal legislation with the Mercenary Convention, in terms of including this second category of persons.

This is supported by the dilemma that initially arose upon the return of Serbian citizens coming from foreign battlefields – whether they should be prosecuted for committing crimes from the group of criminal acts sanctioned by terrorism or for acts related to participation in wars or armed conflicts in a foreign country. Thus in 2018, shortly after the extremely media-covered and disproportionately long trial of seven Serbian citizens (of the Islamic religion) for numerous criminal acts of terrorism and cooperation with the terrorist organization Islamic State and the Al Nusra Front in Syria ended, in which they were sentenced to almost 70 years of imprisonment, the first trials against Serbian citizens who fought in Ukraine on the side of pro-Russian separatists were also completed. The difference in the penalties imposed is more than obvious. That is why a certain number of Serbian citizens, especially those of the Islamic religion, expressed their dissatisfaction with the “double standards” by which Serbian soldiers are treated differently upon their return to Serbia, depending on the battlefield they come from (Anastasijević, 2018). However, as stated by Mijalković and Đorđević (2019), there is no doubt that returnees from the Iraqi and Syrian battlefields, that is, returnees from the so-called Islamic States should be prosecuted for the criminal act of terrorism, that is, for other crimes related to terrorism, and not for participation in a war or armed conflict in a foreign country. To support such a conclusion, they state that the United Nations Security Council adopted Resolution 2253 in 2015, which identified ISIS, Al-Qaeda and other extreme groups as a terrorist threat to international peace and stability. In that respect, joining its armed terrorist formations is considered joining a terrorist organization and not the army of a country.

According to the data from the High Court of Belgrade, publicly available upon the request for free access to information of public importance, 33 persons were convicted in the period from 2015 to 2018 for the criminal acts of criminalizing the participation and organizing of Serbian citizens in a war or armed conflict in a foreign country (Đurđević, 2021). Precisely 32 verdicts were passed for the criminal act of Participation in War or Armed Conflict in a Foreign Country and one for Organizing Participation in War or Armed Conflict in a Foreign Country.



According to the analysis of 31 delivered verdicts of the High Court from Belgrade, primarily the agreement on the confession of the criminal act was confirmed to them. Out of 31 verdicts, 8 referred to Article 386a Paragraph 2 relating to Paragraph 1, while 23 verdicts referred to Article 386a Paragraph 1. It can obviously be concluded from the verdicts that punishments are extremely mild, since a probation sentence was imposed in 29 out of 31 cases, while two persons were sentenced to 6-month house arrest (Kovačević, 2022).

It seems that the discrepancy in the imposed penalties further stimulated the discussions of numerous analysts and lawyers, which were mostly conducted upon special emphasis to discrimination on religious and political grounds. This is not surprising, having in mind that the undefined and broad area of incrimination, primarily in Article 386a, opens up the possibility of political motives when it comes to conducting criminal prosecution.

ARTICLE 386B – ORGANIZING PARTICIPATION IN WAR OR ARMED CONFLICT IN A FOREIGN COUNTRY

Article 386b prescribes the criminal act of Organizing Participation in War or Armed Conflict in a Foreign Country. This criminal act can be committed by a person who in the territory of Serbia recruits or encourages another person to commit the criminal act from Article 386a, organizes a group or trains another person or group for commission of the criminal act, equips or puts at disposal the equipment for commission of the criminal act from Article 386a, gives or collects funds for commission of the criminal act. Imprisonment of two to ten years is provided for this criminal act. Paragraph 2 of the Article 386b provides punishment even when the persons organizing this are not citizens of the Republic of Serbia.

Therefore, the actions of committing this criminal act can be: recruiting, inciting, organizing a group, organizing the training of another person or group, equipping or making available equipment, providing or collecting funds for the commission of the criminal act referred to in Article 386a. The aforementioned actions that can be used for committing criminal acts from Article 386b are initially acts of incitement and aiding and abetting. The connection between the individual resolution of incrimination from Article 386b and complicity, as a basic criminal concept, is reflected in the fact that the potential acts of execution in this criminal act are actually acts of incitement and aiding and abetting. The reason why the legislator decided not to treat them as a general criminal concept, but to foresee them as a separate criminal act, is the need for stricter punishment, which otherwise is one of the reasons that motivate the legislator to criminalize acts of complicity as a separate act of committing a specific criminal act. The provided punishment is more severe than the one that could be imposed according to the provisions on complicity to the instigator, that is, the aider and abettor in the act referred to in Article 386a (Bodrožić, 2018a).

Subjective features are intent and special intent aimed at committing the criminal act from Article 386a (Stojanović, 2021).

Also, contrary to the criminal act of Participation in War or Armed Conflict in a Foreign Country, the only place of execution is the territory of the Republic of Serbia for the criminal act of Organizing Participation in War or Armed Conflict in a Foreign Country. Article 2 of the Convention against the Recruitment, Use, Financing and Training of Mercenaries states that any person who recruits, uses, finances or trains mercenaries, as



defined in Article 1 of the Convention, commits a criminal act according to this Convention. Also, in Article 6, it is stated that the member states cooperate in preventing the criminal acts from this Convention, especially by taking all practically achievable measures to prevent the preparation of these criminal acts on their territory, for the purpose of execution on or outside their territory, including the prohibition of illegal activities of individuals, groups and organizations that incite, encourage, organize or participate in the preparation of these criminal acts. In that sense, we can say that there is no match between the norms of the national criminal legislation, specifically Article 386b, and the norms of the International Convention in this case either, but that it is possible that there was a tendency of our legislator to prescribe acts of incitement and aiding and abetting as a separate criminal act, apart from satisfying the need for stricter punishment, in a way that it also takes over the obligations arising from the ratification of this international document.

It is important to point out that the first, and so far, the only verdict for organizing participation in war or armed conflict in a foreign country (Article 386b) was passed at the end of 2021, when the High Court in Belgrade found the accused guilty and sentenced him to house arrest of 6-month imprisonment, without electronic surveillance. In this case also, an extremely mild punishment was passed, since the person convicted of the criminal act of organizing participation in war or armed conflict in a foreign country was sentenced to a house arrest sentence of only six months, for which, as already highlighted, a prison sentence of two to ten years is provided (Đurđević, 2021).

CONCLUSION

After the comparative analysis, we can say that associating the prohibition of warfare in a foreign country by the Criminal Code of the Republic of Serbia with the prohibition of mercenaries by the UN Convention is in best case pretentious, and is certainly wrong. The differences in the provisions of the two compared legal acts are clearly emphasized, which should be more consistent, having in mind the general goal of ratifying the international document.

First of all, it is evident that the concept of a mercenary in the Convention is set too broadly. In this respect Geoffrey Best noted that “a mercenary who cannot be excluded from this definition deserves to be shot together with his lawyer” (Percy, 2007, p. 369). On the other hand, the concept of a participant in a foreign armed conflict in the Criminal Code of the Republic of Serbia is rather indefinite and, as previously concluded by Bodrožić (2018b), when it comes to two criminal acts which incriminate the participation of our citizens in armed conflicts abroad, there are more arguments favourably against their introduction into the national criminal legislation. Therefore, according to the comparison of the mentioned legal provisions, we can see that a greater number of arguments are against the existing incrimination of participating and organizing participation in war or armed conflict abroad. Many criminal law theorists agree that in this case, an objectively political problem in fact is to be solved by criminal law, and not to provide legal protection for something



good. This thesis is further strengthened by the indisputable ambiguities regarding the object of protection, as well as regarding the motive for criminalizing warfare abroad. Also, the variable dilemma from the previous presentation whether or not it is following the norms of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, becomes somewhat redundant, if we take into account that the legislator only partially envisaged certain behaviour as punishable according to the ratified international convention, and as for incrimination it was significantly more defined. Also, based on the comparative analysis, we can recommend that in the future changes be made to the two criminal acts which criminalize warfare abroad and that an effort be made to harmonize them, to the greatest extent possible, with the provisions of the Convention against the Recruitment, Use, Financing and Training of Mercenaries, which, despite the fact that more than thirty years have passed since its adoption, and more than twenty years since its entry into force, is still an act of international law, which most comprehensively regulates the field of mercenary work, and it is certainly an area that will continue to be significant in the future from the aspect of national security of the Republic of Serbia.

REFERENCES

- Anastasijević, D. (2018, April 6). *Grupa građana Srbije osuđena na 70 godina zatvora zbog terorizma*. BBC News. <https://www.bbc.com/serbian/lat/43658838>
- Baran, D. (2020). IHL's remedies for the legal status problem of the "Corporate Warriors". *Annales de la Faculté de Droit d'Istanbul*, 69, 61–86.
- Bodrožić, I. (2018a). Inkriminisanje ratovanja u inostranstvu – argumenti pro et contra. *Bezbednost, Beograd*, 60(3), 43–57. <https://doi.org/10.5937/bezbednost1803043B>
- Bodrožić, I. (2018b). Ratovanje u inostranstvu u Krivičnom zakoniku Srbije. In P. Čeranić (Ed.), *Zbornik radova sa regionalne konferencije "Regionalna saradnja u suzbijanju prekograničnog kriminala: savremeni izazovi terorizma i migrantske krize"* (pp. 147–159). Fakultet bezbjednosnih nauka Univerziteta u Banjoj Luci.
- Bodrožić, I. (2020). Kontinuirani krivičnopravni intervencionizam – na raskršću politike i prava. *Srpska politička misao*, 27(2), 381–396. <https://doi.org/10.22182/spm.6822020.17>
- Bogdanović, N. (2022, February 22). *Proveravamo: Iz kojih država Zapadnog Balkana su borci išli u Ukrajinu*. Slobodna Evropa. <https://www.slobodnaevropa.org/a/zapadni-balkan-ukrajina-ratiste/31716950.html>
- Đorđević, Đ., & Bodrožić, I. (2020). A new legal solution on recidivism in Serbian criminal legislation. *NBP. Nauka, bezbednost, policija*, 25(3), 71–85. <https://doi.org/10.5937/nabepo25-30459>
- Đurđević, M. (2021, November 30). *Prva presuda u Srbiji za organizovanje učešća u ratu u Ukrajini*. Radio Slobodna Evropa. <https://www.slobodnaevropa.org/a/ukrajina-srbija-strana-rati%C5%A1ta/31585510.html>
- Kovačević, N. (2022). Otkrivanje, krivično gonjenje i kažnjavanje stranih boraca. In *Uspodnesnice: Slučaj Srbija – ekstremizam, terorizam, strani borci* (pp. 123–209). Helsinški odbor za ljudska prava.



- Krivokapić, B. (2017). *Mir i rat u međunarodnim odnosima i pravu*. Institut za uporedno pravo; Poslovni i pravni fakultet Univerziteta "Union - Nikola Tesla".
- Mijalković, S. (2010). O nedržavnom sektoru nacionalnog sistema bezbednosti – inostrana i domaća iskustva. *Strani pravni život*, 54(2), 251–270. <https://www.stranipravnizivot.rs/index.php/SPZ/article/view/574>
- Mijalković, S., & Đorđević, M. (2019). Odgovornost plaćenika za učestvovanje u oružanim sukobima u inostranstvu. *Pravni život*, 68(9), 155–165.
- Mijalković, S., & Đorđević, M. (2020). Phenomenology of paramilitarism – contribution to overcoming the terminological dilemmas of the language of security sciences. *Bezbednost, Beograd*, 62(1), 65–83. <http://dx.doi.org/10.5937/bezbednost2001065M>
- Mijatović, V. (2013, October 29). *Srpski plaćenici tempirana bomba*. Novosti. <https://www.novosti.rs/вести/насловна/друштво/395html:461295-Српски-плаћеници-темпирана-бомба>
- Percy, S. (2007). Mercenaries: Strong norm, weak law. *International Organization*, 61(2), 367–397. <http://dx.doi.org/10.1017/S0020818307070130>
- Petrović, P., & Stakić, I. (2018). *Extremism Research Forum: Serbia report*. British Council.
- Radivojević, Z. (2009). Razlikovanje između boraca i neboraca u međunarodnom humanitarnom pravu. *Zbornik radova Pravnog fakulteta u Nišu*, 53, 25–54.
- Rečnik srpskoga jezika*. (2007). Matica srpska.
- Serbia sentences mercenary who fought on Russia's side in Ukraine*. (2022, September 9). *Ukrainska Pravda*. <https://www.pravda.com.ua/eng/news/2022/09/9/7366845/>
- Srbija će kažnjavati ratne plaćenike*. (2014, October 8). Al Jazeera. <https://balkans.aljazeera.net/news/balkan/2014/10/8/srbija-ce-kaznjavati-ratne-placenike>
- Stojanović, Z. (2021). *Komentar Krivičnog zakonika: prema stanju Krivičnog zakonika od 01. decembra 2019. godine i prema stanju zakonodavstva od 27. novembra 2020. godine*. Službeni glasnik.
- Usvojen zakon o plaćenicima*. (2014, October 10). B92. https://www.b92.net/info/vesti/index.php?yyyy=2014&mm=10&dd=10&nav_category=11&nav_id=909861
- Vučinić, Z. (2006). *Međunarodno ratno i humanitarno pravo*. Službeni glasnik.
- Vuković, I. (2014). *Prilagođavanje srpskog krivičnog zakonodavstva međunarodnim standardima u pogledu plaćenika u oružanim sukobima*. Harmonius.
- Zaharčenko: S nama se bori 14 dobrovoljaca iz Srbije*. (2014, August 19). Al Jazeera. <https://balkans.aljazeera.net/news/balkan/2014/8/19/zaharcenko-s-nama-se-bori-14-dobrovoljaca-iz-srbije>
- Zakon o dopunama Krivičnog zakonika Republike Srbije, *Službeni glasnik Republike Srbije*, 108/2014.
- Zakon o izmenama i dopunama Krivičnog zakonika, *Službeni glasnik Republike Srbije*, 35/2019. https://www.paragraf.rs/izmene_i_dopune/210519-zakon-o-izmenama-i-dopunama-krivicnog-zakonika.html



Zakon o potvrđivanju Međunarodne konvencije protiv regrutovanja, korišćenja, finansiranja i obuke plaćenika, *Službeni glasnik Republike Srbije – Međunarodni ugovori*, 23/2015. http://demo.paragraf.rs/demo/combined/Old/t/t2015_12/t12_0172.htm

Zakon o ratifikaciji Dopunskog protokola uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I) i Dopunskog protokola uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II), *Službeni list SFRJ – Međunarodni ugovori*, 16/1978. http://demo.paragraf.rs/demo/combined/Old/t/t2003_09/t09_0105.htm

