

LEGAL QUALIFICATION OF HOMICIDE IN THE REPUBLIC OF SERBIA: NORMATIVE FRAMEWORK AND ISSUES OF DISTINCTION IN CASE LAW

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Abstract

Although homicide offences are regulated by the Criminal Code of the Republic of Serbia, distinguishing between their individual forms in case law continues to raise issues concerning their proper legal qualification. Different interpretations of statutory elements may result in different legal qualifications of factually similar cases, thereby raising the question of the consistent application of statutory criteria when distinguishing between individual forms of homicide offences. The subject of this paper is the analysis of the normative framework and the issues arising in the distinction between individual forms of homicide offences in the case law of the Republic of Serbia. The aim of the research is to examine the extent to which the interpretation and application of statutory elements affect the proper legal qualification of individual forms of homicide offences. The paper employs normative, doctrinal and statistical methods, together with an analysis of relevant case law and statistical data on persons reported, accused and convicted of homicide offences in the Republic of Serbia during the period from 2020 to 2024. The findings indicate that the key issues concerning legal qualification primarily arise from differences in the interpretation and application of statutory elements in case law. The findings confirm the need for a more consistent application of statutory criteria and greater consistency in case law in order to ensure proper legal qualification and the uniform application of substantive criminal law.

Keywords: *homicide offences, normative framework, legal qualification, distinction, case law.*

1. INTRODUCTORY REMARKS

The right to life is a fundamental human right afforded special protection under criminal law. Criminal law protection of life is ensured through the criminalisation of various forms of unlawful deprivation of life, among which homicide offences occupy a central position (Božić & Đukić, 2022, pp. 87–108). The distinctions between individual forms of homicide are based on the manner of commission, the offender's motives, the circumstances surrounding the commission of the offence, the status of the victim, and other statutory elements, the proper determination and interpretation of which directly affect the legal qualification of the offence. The Criminal Code of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005-corr., 107/2005-corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, 94/2024 and 63/2026) regulates homicide offences within Chapter XIII, "Criminal Offences against Life and Body", distinguishing between the basic form of homicide, aggravated forms, i.e. aggravated homicide, and privileged forms of homicide. Although the statutory elements of individual forms of homicide are normatively defined, their application to the specific facts of a case may give rise to complex issues of legal qualification. The problem arises particularly in cases where the distinction between individual forms depends on the assessment of the specific circumstances and the interpretation of statutory elements whose content requires further clarification through case law. Proper legal qualification therefore requires the identification of all objective and subjective elements of the criminal offence and their assessment in relation to one another. Of particular significance are the distinction between homicide and aggravated homicide, the determination of individual qualifying elements of aggravated homicide, the distinction between homicide committed in the heat of passion and the basic and aggravated forms of homicide, as well as the distinction between attempted homicide and grievous bodily harm. In such cases, the legal qualification ultimately depends on how the established circumstances are assessed in relation to the statutory elements of the respective criminal offence.

The subject of this paper is the analysis of the normative framework governing homicide offences in the Republic of Serbia and the issues arising in their legal qualification and distinction in case law, with particular emphasis on the distinction between homicide and aggravated homicide, the determination of individual qualifying elements of aggravated homicide, the distinction between homicide committed in the heat of passion and the basic and aggravated forms of homicide, as well as the distinction between attempted homicide and grievous bodily harm. The aim of the research is to identify the statutory elements that are decisive for the proper legal qualification of homicide offences and to determine the extent to which their interpretation and application affect the distinction between these offences in case law. Particular attention is devoted to the analysis of case law in order to identify the criteria applied by courts when legally qualifying and distinguishing between the homicide offences examined. The paper employs normative, doctrinal

and statistical methods, together with an analysis of relevant case law and statistical data on persons reported, accused and convicted of homicide offences in the Republic of Serbia over the five-year period from 2020 to 2024.

2. NORMATIVE FRAMEWORK OF HOMICIDE OFFENCES IN THE REPUBLIC OF SERBIA

The criminal law protection of life and body in the Republic of Serbia is the result of a long-standing development of criminal legislation, during which both the scope and manner of their protection, as well as the classification of individual criminal offences, have evolved (Božić & Đukić, 2021, pp. 213-242). Homicide offences are classified under Chapter XIII of the Criminal Code of the Republic of Serbia, within the group of criminal offences against life and body (Jovašević, 2013, pp. 269-287). The legislator distinguishes between the basic form of homicide (Art. 113 CC), aggravated homicide comprising several aggravated forms (Art. 114 CC), and privileged forms of homicide (Art. 115-118 CC), in which certain circumstances surrounding the commission of the offence, characteristics of the offender, or the offender's subjective relationship to the offence justify more lenient punishment. The common element of these criminal offences is the unlawful deprivation of another person's life, while differences in their statutory elements provide the basis for their different legal qualifications.

The basic form of the criminal offence of homicide is prescribed by Article 113 of the Criminal Code, which criminalises the deprivation of another person's life. The act of commission is defined in terms of its consequence and may consist of any conduct capable of causing the death of another person, whether by an act or by omission where the offender is under a legal duty to prevent the consequence from occurring. For the completed offence to exist, the death of the victim must occur and there must be a causal link between the act of commission and the resulting consequence. As regards the subjective element, intent on the part of the offender is required, which may take the form of direct intent (*dolus directus*) or eventual intent (*dolus eventualis*). The legislator has prescribed a term of imprisonment of five to fifteen years for the commission of the criminal offence of homicide. The normative definition of the basic form of homicide assumes particular significance in relation to its aggravated and privileged forms. The statutory elements of the basic form are also present in the aggravated forms of homicide; however, their legal qualification depends on the existence of additional qualifying elements that render the offence more serious. By contrast, privileged forms involve specific circumstances on the basis of which the legislator treats the unlawful deprivation of life more leniently. Determining whether these additional elements are present therefore constitutes one of the key issues in properly distinguishing between the individual forms of homicide.

Aggravated homicide is prescribed by Article 114 of the Criminal Code through several aggravated forms, which differ according to the manner of

commission, the offender's motives, the circumstances and consequences of the offence, as well as the status of the victim (Božić & Simović, 2024, p. 181). With regard to the manner of commission, the deprivation of life in a cruel or treacherous manner constitutes a qualifying element, while forms related to the offender's motives include homicide committed for financial gain, for the purpose of committing or concealing another criminal offence, out of ruthless revenge, or for other base motives. Aggravated forms are also prescribed with regard to the circumstances of the offence and the danger created, the connection between the homicide and another criminal offence, the status of the victim, prior abuse of a family member, as well as the intentional deprivation of the lives of multiple persons. Aggravated homicide is punishable by imprisonment for a minimum of ten years or by life imprisonment.

Privileged forms of homicide are prescribed by Articles 115-118 of the Criminal Code and include homicide committed in the heat of passion, killing a child during childbirth, deprivation of life out of compassion, and negligent deprivation of life. The more lenient punishment prescribed for these offences is based on specific circumstances relating to the offender's state at the time of the commission of the offence, the status of the offender, the offender's motives, the circumstances under which the offence was committed, or the form of culpability. For the purposes of this paper, particular significance attaches to homicide committed in the heat of passion under Article 115 of the Criminal Code, where the state of intense emotional disturbance into which the offender has been brought, through no fault of his or her own, by an assault, abuse, or serious insult on the part of the victim constitutes the basis for privileged treatment, while at the same time raising the issue of its distinction from the basic and aggravated forms of homicide. More lenient penalties are prescribed for the privileged forms of homicide: homicide committed in the heat of passion is punishable by imprisonment for one to eight years, while killing a child during childbirth and deprivation of life out of compassion are punishable by imprisonment for six months to five years.

The normative structure outlined above demonstrates that the legal qualification of homicide offences does not depend solely on the resulting deprivation of life, but also on the existence of additional objective and subjective elements on the basis of which the legislator characterises particular forms as aggravated or privileged. Determining the content and existence of these elements in a specific case constitutes the key issue in distinguishing between the individual forms of homicide. Particular significance therefore attaches to the manner in which the relevant statutory criteria are interpreted and applied in case law.

3. ISSUES OF LEGAL QUALIFICATION IN CASE LAW

3.1. Distinction between Homicide and Aggravated Homicide

The distinction between the basic form of homicide under Article 113 of the Criminal Code and aggravated homicide under Article 114 is based on the presence of at least one statutorily prescribed qualifying element that renders the basic form of deprivation of life more serious. Aggravated homicide is the unlawful killing of a

human being accompanied by a specific subjective relationship of the offender to the offence, committed for specific motives, under specific circumstances, or against a person specifically designated by law, which, on account of those circumstances, render the offence more serious and dangerous and justify the more severe penalties prescribed by the legislator for aggravated homicide (Simović et al., 2017, pp. 20-66). In this regard, depending on the particular form of aggravated homicide, decisive significance attaches to the manner of commission, the offender's motives, the circumstances and consequences of the offence, or the status of the victim. Serbian criminal legislation prescribes imprisonment for homicide offences and, since 2019, also life imprisonment, which may be imposed for the most serious criminal offences. Following an initiative by the Tijana Jurić Foundation, named after a fifteen-year-old girl who was raped and murdered, aggravated homicide was included among the criminal offences punishable by the most severe penalties (Božić & Simović, 2020, p. 134).

The problem of distinction is particularly pronounced in relation to qualifying elements whose content cannot be determined solely on the basis of the objective facts of a particular case, but requires those facts to be assessed in relation to the relevant statutory concept. Thus, for example, the number and severity of the injuries inflicted may not, in themselves, be sufficient to conclude that the homicide was committed in a cruel manner, just as the mere fact that an attack was carried out unexpectedly does not necessarily mean that the homicide was committed in a treacherous manner. Proper legal qualification requires an assessment of the totality of objective and subjective circumstances that give a particular manner of commission the character of an aggravated form of homicide.

3.2. Issues Concerning the Qualifying Elements of Aggravated Homicide

Among the qualifying elements of aggravated homicide, particular difficulties in legal qualification may arise in relation to those whose statutory content requires a value-based assessment of the circumstances of the particular case. This applies especially to deprivation of life committed in a cruel or treacherous manner, homicide committed in the course of ruthless violent conduct, homicide of a family member whom the offender had previously abused, as well as homicide committed out of ruthless revenge or other base motives. It is precisely in relation to these forms of aggravated homicide that difficulties of distinction may arise, since the legal qualification depends on whether the established circumstances of the particular case satisfy the requirements of the relevant qualifying element within the meaning of Article 114 of the Criminal Code.

Deprivation of life in a cruel manner requires both an objective and a subjective component of cruelty (Jakovljević, 1975). The objective component consists in inflicting pain, torment, or suffering on the victim of such intensity and duration as to exceed that ordinarily associated with deprivation of life, while the subjective component requires the offender's awareness of such a manner of commission and the offender's attitude towards the victim's suffering (Božić, 2024,

pp. 69-70). Accordingly, the number and severity of the injuries inflicted are not, in themselves, sufficient to legally qualify a homicide as having been committed in a cruel manner; rather, the manner of commission and the intensity and duration of the victim's physical and psychological suffering must be assessed. In this regard, in judgment Kž. 351/2012, the Belgrade Court of Appeal, when assessing the objective component of cruelty, took into account the number of injuries and the manner in which they were inflicted, the intensity of the victim's pain and fear, which reached the level of terror, as well as the duration of the victim's suffering (Judgment of the Belgrade Court of Appeal, Kž. 351/2012 of 19 April 2012, Bulletin of the Higher Court in Belgrade, No. 83/2013, pp. 14–15). These criteria demonstrate that the number and severity of injuries do not, in themselves, provide a sufficient basis for qualifying a homicide as having been committed in a cruel manner, but must instead be assessed in the context of the overall manner of commission and the suffering to which the victim was subjected.

In the case of homicide committed in a treacherous manner, a particular issue arises in determining the circumstances on the basis of which a specific manner of commission may be characterised as treacherous within the meaning of Article 114 of the Criminal Code. The existence of this qualifying element requires consideration of both the objective circumstances of the commission, relating to its concealed and covert nature, and the subjective component manifested in the offender's cunning or deceptive conduct. Particular significance may attach to the abuse of the victim's trust, especially where the offender exploits an existing relationship in order to commit the offence under circumstances in which the victim does not anticipate an attack. This distinction is also clearly reflected in case law. In case Kzz 1097/2014, the Supreme Court of Cassation held that the existence of treachery cannot be established solely on the basis of objective circumstances indicating that the victim did not expect the attack; rather, it is also necessary to establish the subjective element, manifested in the offender's cunning, deceptive, or malicious conduct. "Treachery is undoubtedly a category comprising both objective and subjective elements. The objective component consists in the manner of commission of the offence as concealed and covert (from an ambush, from behind, while the victim is asleep, by poisoning, etc.), while the subjective component of homicide committed in a treacherous manner is characterised by the cunning, deceitful, fraudulent, insincere and malicious exploitation of the victim's established trust, helplessness or unsuspecting nature" (Judgment of the Supreme Court of Cassation, Kzz 1097/2014 of 25 November 2014). In the case at hand, the fact that the offender approached the victim from behind while she was in the bathroom and did not expect an attack was not considered sufficient to qualify the offence as aggravated homicide committed in a treacherous manner, since the factual description did not encompass elements indicating cunning on the part of the offender or an abuse of the victim's trust. It follows that the unexpected nature of the attack and the victim's reduced ability to defend herself constitute relevant circumstances, but are not, in themselves, sufficient to establish treachery as a qualifying element.

The relationship between cruel and treacherous manners of commission has also been considered in case law. The Supreme Court of Cassation held that the fact that they are prescribed alternatively under Article 114 of the Criminal Code does not preclude the simultaneous existence of both qualifying elements, provided that the specific manner of commission satisfies the statutory elements of both cruelty and treachery (Judgment of the Supreme Court of Cassation, Kzz 499/2015 of 18 June 2015).

Issues of distinction may also arise in relation to homicide committed in the course of ruthless violent conduct, particularly with regard to determining the degree of violence required to justify qualification under Article 114(1)(2) of the Criminal Code. Case law has established that violence preceding the deprivation of life is not, in itself, sufficient for this aggravated form to exist; rather, the degree and intensity of its ruthlessness must distinguish it from the violence that may accompany the commission of the basic form of homicide. Thus, the Kragujevac Court of Appeal held that slapping the victim, drawing a firearm, making threats, and lunging at the victim with the firearm, all of which preceded the deprivation of life, did not exceed the degree of violence that may occur in the commission of the criminal offence of homicide and therefore did not satisfy the elements of aggravated homicide committed in the course of ruthless violent conduct (Judgment of the Kragujevac Court of Appeal, KŽ1-852/17 of 7 September 2017). It follows that the degree and nature of the violent conduct in the particular case are decisive for the legal qualification. In this regard, it is not necessary for the offender's conduct simultaneously to satisfy the statutory elements of the criminal offence of violent conduct under Article 344 of the Criminal Code. The Supreme Court of Cassation has indicated that the violent nature of the conduct must be assessed in light of the circumstances of the particular case, subject to the additional requirement that, for Article 114(1)(2) of the Criminal Code to apply, such conduct must be characterised by ruthlessness. More recent case law also identifies circumstances that may justify qualifying a deprivation of life as aggravated homicide committed in the course of ruthless violent conduct. In judgment Kzz 1151/2025, the Supreme Court established the existence of this qualifying element on the basis of continuous violence against the victim, which persisted from the beginning of the conflict until the victim was deprived of life and took place at several locations. Particular weight was given to the fact that the offender continued the violence after the victim had regained consciousness, kicking him in the chest and subsequently continuing to apply strong pressure to his neck (Judgment of the Supreme Court of the Republic of Serbia, Kzz 1151/2025 of 30 October 2025). The Court considered such continuous and intense conduct to constitute ruthless violent conduct and upheld the legal qualification of the offence as aggravated homicide under Article 114(1)(2) of the Criminal Code. This approach demonstrates that the existence of this qualifying element is not inferred from an individual act of violence, but from the offender's conduct as a whole, with the continuity, intensity, and manner

in which the violence was manifested constituting significant criteria for distinguishing this offence from the basic form of homicide.

Particular significance attaches to prior violence in the case of aggravated homicide of a family member whom the offender had previously abused, as provided for in Article 114(1)(10) of the Criminal Code. For this aggravated form to exist, the victim's status as a family member is not sufficient in itself; it is also necessary to establish prior abuse by the offender. In this context, prior violent conduct does not merely constitute a circumstance preceding the deprivation of life, but rather a statutory element of the aggravated form of homicide. Accordingly, proper legal qualification requires an assessment of the nature of such conduct and its connection with the relationship between the offender and the victim (Božić, 2025a, pp. 85-95). In judgment Kzz 1204/2023, the Supreme Court rejected the defence argument that the elements of this aggravated form had not been established due to the absence of continuity between the prior abuse and the deprivation of life. The Court established the existence of the qualifying element on the basis of continuous and systematic physical and psychological abuse of the victim, also taking into account previously imposed protective measures against domestic violence. Particular emphasis was placed on the connection between the abuse, which had continued over an extended period of time, and the subsequent deprivation of life (Judgment of the Supreme Court, Kzz 1204/2023 of 14 December 2023). This approach demonstrates that the immediate temporal connection between prior abuse and the homicide is not the sole determining factor for legal qualification; rather, the nature and continuity of the abuse within the offender's relationship with the family member who was subsequently deprived of life must also be taken into account.

Issues of legal qualification also arise in relation to aggravated homicide committed out of ruthless revenge or other base motives. In these forms of aggravated homicide, the qualifying element is linked to the motive for which the offender deprives another person of life. Accordingly, proper legal qualification requires establishing not only the existence of a particular motive, but also its nature in the circumstances of the particular case. Of particular significance is the distinction between ruthless revenge and other forms of revenge, as well as the determination of the scope of the concept of other base motives. The case law of the Supreme Court of Cassation likewise demonstrates the need to assess the nature of the motive itself. In judgment Kzz 23/2015, the Court rejected the defence argument that the case involved, at most, "ordinary" rather than ruthless revenge, and upheld the legal qualification of attempted aggravated homicide where the offender attempted to deprive the victim of life because he believed that the victim had reported to the police the location where narcotic drugs belonging to the offender had been stored. The above judgment confirms that, for the purposes of legal qualification, it is not sufficient merely to establish that the offender acted out of revenge; it is also necessary to assess the reason underlying the revenge and the circumstances that give such a motive its ruthless character (Judgment of the Supreme Court of Cassation, Kzz 23/2015 of 3 February 2015). More recent case law of the Supreme Court concerning

jealousy as a possible base motive is also noteworthy. In judgment Kzz 154/2026, the Court considered the defence argument that jealousy cannot, in itself, constitute a base motive and concluded that, in the particular case, it had exceeded the ordinary degree of jealousy between spouses and had acquired the character of a base motive, taking into account the offender's preoccupation with ideas of infidelity and jealousy to the point of paranoid thinking, as well as the fact that the victim had initiated divorce proceedings (Judgment of the Supreme Court of the Republic of Serbia, Kzz 154/2026 of 18 February 2026). This approach indicates that a particular motive cannot be characterised in advance and in the abstract as base; rather, its nature must be assessed in light of the specific circumstances of the case and the intensity of the motive that led the offender to deprive the victim of life.

3.3. Distinction between Homicide Committed in the Heat of Passion and Homicide and Aggravated Homicide

The distinction between homicide committed in the heat of passion and the basic and aggravated forms of homicide requires the establishment of all statutory elements that confer a privileged character on this offence. Of particular significance are the existence of a state of intense emotional disturbance on the part of the offender, the manner in which that state was induced, the absence of fault on the offender's part in bringing about such a state, and the temporal connection between the victim's provocative conduct and the deprivation of life. The Supreme Court emphasised the criteria characterising homicide committed in the heat of passion: intense emotional disturbance induced by an assault or serious insult through no fault of the offender, the immediacy of the reaction, and a causal link between the conduct of the deceased and the resulting state of intense emotional disturbance (Judgment of the Supreme Court of the Republic of Serbia, Kž I 438/05 of 17 May 2005). The existence of distress, anger, or another state of emotional tension is not, in itself, sufficient for the application of Article 115 of the Criminal Code unless it amounts to intense emotional disturbance and has been induced in the manner prescribed by law. These criteria are clearly reflected in the judgment of the Supreme Court of the Republic of Serbia in case Kž I 2390/05. In that case, the Court rejected the defence argument that the accused had acted in the heat of passion, finding that immediately prior to the commission of the offence the victim had neither attacked nor insulted him, and that a significant period of time had elapsed between the earlier incident that had caused the accused distress and the commission of the homicide. The heightened emotional agitation established by psychiatric expert examination was likewise not considered to amount to intense emotional disturbance within the meaning of the statutory elements of homicide committed in the heat of passion (Judgment of the Supreme Court of the Republic of Serbia, Kž I 2390/05 of 7 February 2006). It follows from this judgment that the existence of distress or another affective state on the part of the offender is not sufficient for the privileged qualification; rather, it must be established that the offender was brought, through no fault of his or her own, into a state of intense

emotional disturbance by assault, abuse, or serious insult on the part of the deceased. Furthermore, there must be an immediate temporal and causal connection between such conduct of the deceased, the resulting state of intense emotional disturbance, and the act of deprivation of life, since acting “in the heat of passion” presupposes that the offender reacts while the state of intense emotional disturbance is still ongoing.

The position adopted by the Supreme Court of the Republic of Serbia in judgment Kž I 2449/05 is also significant for distinguishing homicide committed in the heat of passion from other legal concepts. The Court found that, at the time of the commission of the offence, the accused was in a state of affective arousal amounting to intense emotional disturbance. At the same time, it was established that the victim’s attack had ceased after the accused had taken the knife away from him. Consequently, the subsequent stab wound to the neck inflicted on the then unarmed victim could not be justified on the grounds of self-defence (Božić, 2025b, pp. 435-464). The Supreme Court legally qualified the accused’s conduct as homicide committed in the heat of passion under Article 115 of the Criminal Code, specifically emphasising that a state of intense emotional disturbance does not preclude the existence of intent, including direct intent to deprive another person of life (Judgment of the Supreme Court of the Republic of Serbia, Kž I 2449/05 of 7 February 2006). This was because the accused’s capacity to understand the significance of his actions and to control his conduct was substantially diminished, but not completely excluded; consequently, his capacity to form a volitional attitude towards the consequence of death was not excluded either. A comparison of the above judgments demonstrates that the mere existence of emotional distress on the part of the offender is not sufficient for a privileged qualification. What is decisive is that the offender was brought, through no fault of his or her own, into a state of intense emotional disturbance by conduct of the deceased specified in Article 115 of the Criminal Code and committed the offence while that state persisted. At the same time, the cessation of the attack does not necessarily preclude the qualification of the offence as homicide committed in the heat of passion if, immediately after the attack had ceased, the offender continued to act in a state of intense emotional disturbance, although the cessation of the attack may preclude reliance on self-defence.

3.4. Distinction between Attempted Homicide and Grievous Bodily Harm

A particularly complex issue of legal qualification concerns the distinction between attempted homicide and the criminal offence of grievous bodily harm. Since the fatal consequence does not occur in cases of attempted homicide, the offender’s intent is of decisive importance in distinguishing between these offences, namely, whether the offender’s conduct was directed towards depriving the victim of life or causing bodily injury. The fact that the victim sustained grievous bodily harm, including a life-threatening injury, is not in itself sufficient to determine the legal qualification of the offence, since the same resulting consequence may arise from differently directed intent on the part of the offender. The content of the offender’s intent is determined on the basis of all the circumstances of the particular case, among

which particular significance attaches to the type and nature of the instrument used, the manner in which it was used, the number and intensity of the acts undertaken, the part of the body at which the acts were directed, the nature and severity of the resulting injuries, as well as the offender's conduct before, during, and after the commission of the offence. These circumstances cannot be assessed in isolation, but must be considered in their interrelationship, since only their overall assessment makes it possible to determine which consequence was encompassed by the offender's intent.

This approach is also reflected in the more recent case law of the Supreme Court. In judgment Kzz 423/2026, the Court rejected the defence argument that the accused's conduct should be legally qualified as grievous bodily harm rather than attempted aggravated homicide. In assessing the content of the accused's intent, the Court placed particular emphasis on the fact that he had stabbed two victims several times in vital parts of the body, as well as on the characteristics of the weapon used, namely a knife with a 13 cm blade. The victims sustained life-threatening grievous bodily injuries, while the fatal consequence was prevented by their resistance, the intervention of persons present at the scene, and the timely provision of medical assistance. On the basis of the totality of these circumstances, the Court concluded that the accused's intent encompassed the deprivation of the victims' lives, irrespective of the fact that the immediate consequence of his conduct was grievous bodily harm (Judgment of the Supreme Court of the Republic of Serbia, Kzz 423/2026 of 15 April 2026). This judgment confirms that the distinction between attempted homicide and grievous bodily harm cannot be based solely on the type and severity of the injury actually sustained. What is decisive is determining the consequence towards which the offender's intent was directed, while the objective circumstances surrounding the commission of the offence provide the basis for determining the content of that intent. In this regard, the use of an instrument capable of causing death, the direction of the act towards vital parts of the body, the number and intensity of the acts undertaken, as well as the circumstances that prevented the fatal consequence from occurring, may be of particular significance for proper legal qualification. This approach is not limited to cases in which a life-threatening injury has been sustained. In its earlier case law, the Supreme Court also upheld the legal qualification of attempted homicide in a case where the victim sustained grievous bodily harm that was not life-threatening, with particular weight being given to the fact that a firearm had been discharged at close range towards a part of the body containing vital organs. It was precisely from the manner of commission and the direction of the act that the Court inferred an intent to deprive the victim of life, irrespective of the severity of the consequence that actually occurred (Judgment of the Supreme Court of the Republic of Serbia, Kž I 279/05 of 18 October 2005).

A comparison of the above judgments demonstrates that the severity of the bodily injury sustained may constitute a significant indicator, but not an independent criterion for distinguishing between the offences. What is decisive is whether the offender's intent was directed towards the deprivation of life, which must be assessed

on the basis of the totality of the circumstances of the particular case and the manner in which the offence was committed. Such an approach enables proper legal qualification irrespective of the circumstances that prevented the fatal consequence from occurring, such as the victim's resistance, the intervention of third parties, or the timely provision of medical assistance.

3. SCOPE AND STRUCTURE OF HOMICIDE OFFENCES IN THE PERIOD FROM 2020 TO 2024

In addition to the normative analysis and the examination of issues concerning legal qualification, the scope and structure of homicide offences may also be assessed on the basis of official statistical data. Data on reported, accused, and convicted persons provide insight into the prevalence of individual forms of these criminal offences and their trends over the period under review. The analysis covers data published by the Statistical Office of the Republic of Serbia on reported, accused, and convicted adult persons for the criminal offences of homicide, aggravated homicide, and homicide committed in the heat of passion during the period from 2020 to 2024.

The data analysed reveal different trends among the forms of homicide examined. With regard to the basic form of homicide, the number of reported persons, despite certain annual fluctuations, shows a downward trend, from 123 reported persons in 2020 to 98 in 2024. The number of accused and convicted persons also varied over the period under review, with the highest figures recorded in 2021, when 87 persons were accused and 75 were convicted.

Table 1. Reported, Accused and Convicted Adult Persons for the Criminal Offence of Homicide, 2020-2024

Year	Reported	Accused	Convicted
2020	123	68	58
2021	110	87	75
2022	107	69	53
2023	119	79	66
2024	98	71	56

Source: Adult Perpetrators of Criminal Offences in the Republic of Serbia, Statistical Office of the Republic of Serbia, annual bulletins for 2020, 2021, 2022, 2023 and 2024 (data processed by the authors).

A different trend can be observed in relation to aggravated homicide. The number of reported persons increased from 78 in 2020 to 106 in 2023, followed by a slight decrease to 103 in 2024. At the same time, the trends in the number of accused and convicted persons did not correspond to the trend in the number of reported persons, with the highest numbers of both accused and convicted persons recorded in 2023.

Table 2. Reported, Accused and Convicted Adult Persons for the Criminal Offence
of Aggravated Homicide,
2020-2024

Year	Reported	Accused	Convicted
2020	78	35	28
2021	89	34	31
2022	94	35	20
2023	106	55	37
2024	103	38	26

Source: Adult Perpetrators of Criminal Offences in the Republic of Serbia,
Statistical Office of the Republic of Serbia, annual bulletins for 2020, 2021, 2022,
2023 and 2024 (data processed by the authors).

Compared with the basic and aggravated forms of homicide, homicide committed in the heat of passion is extremely rare, with the number of reported persons during the period under review ranging from zero to two per year. However, the low statistical prevalence of this privileged form does not diminish the significance of issues concerning its legal qualification, particularly given the complexity of establishing the statutory elements on which its distinction from the basic and aggravated forms of homicide is based.

Table 3. Reported, Accused and Convicted Adult Persons for the Criminal Offence

Year	Reported	Accused	Convicted
2020	2	5	3
2021	1	6	6
2022	0	1	1
2023	2	3	3
2024	1	1	1

of Homicide Committed in the Heat of Passion, 2020-2024

Source: Adult Perpetrators of Criminal Offences in the Republic of Serbia, Statistical Office of the Republic of Serbia, annual bulletins for 2020, 2021, 2022, 2023 and 2024 (data processed by the authors).

When interpreting the data presented, it should be borne in mind that data on reported, accused, and convicted persons in a given year do not represent the tracking of the same criminal cases through different stages of criminal proceedings. Due to the time lag between the filing of a criminal complaint, the bringing of charges, and the rendering of a court decision, charges and convictions recorded in a particular year may relate to criminal complaints filed in previous years.

The prevalence of aggravated homicide during the period under review is particularly noteworthy. A total of 142 persons convicted of aggravated homicide represents almost half the number of persons convicted of the basic form of homicide (308) over the five-year period, indicating a significant prevalence of aggravated forms among the homicide offences analysed. By contrast, homicide committed in the heat of passion remained extremely rare throughout the entire period under review.

4. CONCLUDING REMARKS

The analysis conducted demonstrates that the key issues concerning the legal qualification of homicide offences do not arise from their normative definition, but primarily from the interpretation and application of statutory elements in individual cases. Distinguishing between the basic, aggravated, and privileged forms requires the identification of all circumstances relevant to the existence of particular statutory elements and their assessment as a whole. Particular difficulties arise where legal qualification depends on the assessment of the manner of commission, the offender's motives, the circumstances surrounding the commission of the offence, or the offender's subjective relationship to the offence.

The analysis of case law confirms that, in relation to certain forms of aggravated homicide, the existence of a statutory element cannot be established on the basis of an isolated assessment of a single circumstance. In cases of homicide committed in a cruel or treacherous manner, what is decisive is the totality of

circumstances that render the particular manner of commission cruel or treacherous within the meaning of Article 114 of the Criminal Code. Similarly, in cases of homicide committed in the course of ruthless violent conduct, the legal qualification depends on the nature, intensity, and continuity of the violence, while in cases of aggravated homicide of a family member whom the offender had previously abused, particular significance attaches to the existence, nature, and continuity of the prior abuse. In cases involving ruthless revenge or other base motives, particular attention must be paid to determining the nature and intensity of the motive that led the offender to deprive the victim of life.

Particularly complex issues of distinction arise in relation to homicide committed in the heat of passion. The judgments analysed demonstrate that, for Article 115 of the Criminal Code to apply, it is not sufficient merely to establish that the offender was distressed or in an affective state; rather, it is necessary to establish the existence of intense emotional disturbance caused by an assault, abuse, or serious insult on the part of the deceased, as well as an immediate connection between that state and the act of deprivation of life. In this regard, the cessation of the attack and the absence of the conditions required for self-defence do not, in themselves, preclude the possibility of qualifying the offence as homicide committed in the heat of passion, provided that, immediately after the attack had ceased, the offender acted while still in a state of intense emotional disturbance caused by that attack.

The distinction between attempted homicide and grievous bodily harm highlights the particular importance of properly determining the offender's intent. The case law analysed confirms that the type and severity of the injury sustained cannot, in themselves, be decisive for the legal qualification of the offence. The existence of intent directed towards the deprivation of life is inferred from the totality of the circumstances surrounding the commission of the offence, particularly the type of instrument used and the manner of its use, the part of the body at which the act was directed, the number and intensity of the acts undertaken, as well as the circumstances that prevented the fatal consequence from occurring. The distinction therefore cannot be based primarily on the severity of the injury sustained, but rather on determining whether the offender's intent was directed towards the deprivation of life.

The statistical data for the period from 2020 to 2024 indicate a significant prevalence of aggravated homicide among the criminal offences analysed. It is particularly noteworthy that the number of persons convicted of aggravated homicide amounts to almost half the number of those convicted of the basic form of homicide, while homicide committed in the heat of passion remained extremely rare throughout the entire period under review.

The findings of the research demonstrate that statutory elements relating to the manner of commission, the offender's motives, the circumstances under which the offence was committed, and the offender's subjective relationship to the offence are of decisive importance for the proper legal qualification of homicide offences. In cases of homicide committed in the heat of passion, particular significance attaches to the

existence of intense emotional disturbance, the manner in which it was induced, and its immediate connection with the act of deprivation of life, while in distinguishing attempted homicide from grievous bodily harm, determining the direction of the offender's intent is decisive. The analysis of case law demonstrates that the manner in which these statutory elements are interpreted and applied may be decisive for the legal qualification of the offence. Their existence cannot be established through an isolated assessment of an individual fact, but must be determined on the basis of the totality of the relevant circumstances of the particular case. The criteria identified indicate the need for their consistent application and for greater consistency in case law, thereby contributing to proper legal qualification, legal certainty, and the uniform application of substantive criminal law.

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