



Domestic Violence Prevention and Protection

Report 2008

P R A X I S



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I SUMMARY

With this report we would like to address representatives of relevant institutions and various professionals dealing with the phenomenon of domestic violence and share observations and experience gained over the three year period of working on the implementation of the Sexual and Gender-Based Violence against Refugees and Internally Displaced Persons in Serbia - Prevention and Response Project, implemented by Praxis as the implementing partner of the United Nations High Commissioner for Refugees (UNHCR).

Domestic violence, as a widespread phenomenon, is present in all layers of society, and in the refugee and internally displaced population alike. However, this population group is specific due to the fact that they have already gone through the difficult experience of being forced to flee their homes. Some of them live in collective centers, in extremely difficult living conditions, some in unrecognized collective centers, with the majority of the Roma internally displaced population in illegal, unhygienic settlements. Refugees and internally displaced persons in the Republic of Serbia are for the most part in a very difficult economic and social position. This economic vulnerability sometimes makes it even harder for women to decide to leave the perpetrators, given that they have no choice or have nowhere to go.

The report starts with the presentation of the main project components, which include the provision of free legal aid for victims of domestic violence, including in-court

representation, followed by the provision of accommodation in shelters for victims of domestic violence, as well as the implementation of the awareness raising campaign for professionals and the displaced population itself.

The key precondition for an adequate protection against domestic violence is the understanding of the psychological aspect of this complex phenomenon, its dynamics, sustaining mechanisms, manifestation forms, causes and effects that it has on individuals and the society.

Professionals, employed with state institutions, who deal with the issue of domestic violence, or in various ways come across this problem in their everyday work, have so far failed to gain basic knowledge on the phenomenon during the course of their education. This issue has not yet become a part of the educational programs of schools and universities in Serbia. Only by understanding the psychological aspect of domestic violence and by ensuring a multi disciplinary approach, can we hope to provide adequate protection and achieve better results in combating this very serious social problem.

Domestic violence is a criminal act and a serious violation of basic human rights, which encouraged the international community to adopt a series of acts to restrain and eliminate this phenomenon. As a result of the deep-rooted patriarchic values in this part of the world, this phenomenon was, until recently,



rarely discussed and for decades now, the widely accepted opinion that domestic violence is a private problem of the family and should be resolved within the family, has prevented society in providing an adequate response. Today, mainly thanks to the activists of the women's movement, non-governmental organizations and the media, the situation has changed for the better, and certain progress and improvements are evident in this field.

During the three year experience in providing legal aid to victims of domestic violence, including in-court representation throughout Serbia, Praxis has identified numerous gaps and unresolved issues in the existing legislation, and its enforcement procedures. With the introduction of the criminal act of domestic violence into our criminal legislation, as well as the adoption of the Family Law, the state has clearly defined its standpoint that domestic violence is an unacceptable form of behavior. However, the existing legislation suffers from numerous gaps, and it is still an open issue to what extent survivors of violence are truly protected.

Based on the review of the legal framework which regulates this issue, as well as the court practice in terms of the applicability of the effective legal regulations, we would like to point out numerous and evident gaps that are obstructing the battle against this widespread phenomenon. In addition, this report also includes a recommendation suggesting that, in order to address this problem systematically, it is necessary to introduce into the national legal environment a modern and comprehensive law on the prevention of domestic violence.

II INTRODUCTION

Domestic violence, as the most common form of sexual and gender-based violence, is a criminal act and a serious violation of basic human rights, which often remains hidden from the eyes of the public and escapes justice. This socio-pathological phenomenon has been marginalized and ignored by our society for decades, due to the deeply rooted patriarchic values and beliefs that domestic violence is a private family problem and should be resolved within the family. Up until recently, this phenomenon was not often discussed in the region and it was rarely a subject of a wider research and study.

Today, thanks to the activists of the women's movement in Serbia and their long-standing struggle, certain progress and improvement have been noticed in this field. This mainly refers to the introduction of the criminal act of domestic violence into our criminal legislation, as well as the adoption of the Family Law. Our country has thus clearly expressed its standpoint that domestic violence is a forbidden and socially dangerous behavior. However, there are still many unresolved issues in the existing legislation and in the way it is being implemented. To what extent are persons who survived domestic violence really protected and to what extent are the perpetrators punished is a question that remains unanswered. In addition, it should be taken into account that, in order to successfully combat such a phenomenon, it is necessary not only to adopt adequate legal regulations, but also to intensively work on raising awareness of professionals and the general public, as well as on transforming certain harmful traditional beliefs.

It is necessary to emphasize that sexual and gender-based violence is a widespread and global phenomenon that results from gender inequality. For that reason, many acts have been adopted on the international level and supported by almost all the countries in the world. The inclusion of gender issues in all activities and programs at all levels remains one of the key concerns within the United Nations (UN) system.

The United Nations High Commissioner for Refugees (UNHCR) is a UN agency mandated to provide protection to refugees and implies actions aimed at providing equal access to rights for women and men, girls and boys within the UNHCR mandate. Apart from refugees, the UNHCR mandate also includes asylum seekers, stateless persons, returnees, as well as internally displaced persons in certain circumstances.

Women and girls in all countries and communities in which UNHCR is implementing its activities have limited access to basic rights compared to men and boys, and the present conflicts and crises only tend to intensify discrimination and violence. For that particular reason, UNHCR has recognized sexual and gender-based violence as one of the most serious risks that refugees, asylum seekers, internally displaced persons, as well as members of other vulnerable population groups that are under the UNHCR mandate are exposed to, and has started implementing activities aimed at preventing and eliminating this phenomenon.

In 2004, the UNHCR Representative Office in Serbia initiated a project entitled Sexual and Gender-Based Violence against Refugees and Internally Displaced Persons in Serbia - Prevention and Response, with the aim of providing additional protection to victims of this kind of violence among the displaced, and raising public awareness on the importance of gender equality for the democratization and development of society.

At the beginning of 2006, Praxis joined the project as a local, non-governmental organization with long-standing experience in providing legal aid to refugees and internally displaced persons, and as the implementing partner of UNHCR. In addition to providing legal aid to victims of domestic violence within the marginalized population groups, including in-court representation throughout Serbia, Praxis is also conducting a raising awareness campaign on domestic violence, with the aim of drawing attention of the general public to this complex issue and, by educating professionals, ensuring a better response of the society. In addition, Praxis has been providing accommodation in the shelters for victims of domestic violence, where women are secured physical safety and psychosocial support.

Through this publication, we would like to address representatives of all relevant institutions and numerous professionals dealing with this issue, and to share with them our observations and the experience that we gained during our work, both by providing legal assistance to survivors of domestic violence and by organizing a raising awareness campaign. We would also like to point out

certain gaps and obstacles in the existing legal system, and propose their elimination by the adoption of a separate law that would regulate domestic violence, all aimed at providing better protection for survivors of such violence.

III IMPLEMENTATION OF THE SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES AND INTERNALLY DISPLACED PERSONS IN SERBIA - PREVENTION AND RESPONSE PROJECT

3.1. Domestic Violence against Refugees and Internally Displaced Persons

Domestic violence, as a widely spread phenomenon, is present in all layers of society, and, thus, within the refugee and internally displaced population. There is no statistical data on domestic violence within this population group. However, what makes this population category specific is the fact that these persons have already gone through the difficult and tragic experience of being forced to leave their homes.

At the same time, they are marginalized in society and the country of displacement. Some of them live in collective centers in which the living conditions are extremely difficult, others in unrecognized collective centers, while the majority of the displaced Roma live in illegal, unhygienic settlements. Refugees and the internally displaced persons in the Republic of Serbia are for the most part in a very difficult economic and social position. The economic vulnerability sometimes makes it even harder for women to decide to leave the perpetrators, given that they have no choice or no place to go. Due to displacement, members of the primary family and relatives often live far away from each other and do not have enough capacity to help the person affected by violence.

Without statistical data, we cannot conclude whether domestic violence occurs more or less among the displaced population, but taking into account their vulnerability, once they become victims of this type of violence, refugees and

internally displaced persons suffer additional trauma, and need to be provided with special assistance and protection. In addition, their marginalized position often contributes to the fact that relevant authorities remain blind to their needs, and fail to provide them with adequate protection. The displaced Roma often face stereotypes and discrimination which are sometimes demonstrated by professionals whose responsibility is to protect them.

In some cases, domestic violence often occurred before the displacement. In the early stages of the displacement, violence tends to decrease since people are occupied with other existential issues, only to escalate and intensify at later stages, once durable accommodation and solutions are found.

In cases in which domestic violence occurred as a consequence of displacement, poverty, uncertainty and exclusion, it was drastic. The perpetrator, who had as a refugee or a displaced person lost everything, from property to his identity, is sometimes willing to lose little what is left, and that is his family. Protracted displacement and life in difficult conditions and uncertainty surely contribute to the development of various negative phenomena, including, among other things, this type of violence.

3.2. Legal Aid

From 2006, within this project, Praxis has provided legal aid to 56 refugees and internally

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 **UNHCR**
The UN Refugee Agency



ne
sme
da se
krije

Nema opravdanja za nasilje u porodici!
To je krivično delo!

Za pomoć se obratite nadležnim ustanovama: stanici policije,
zdravstvenim ustanovama, centru za socijalni rad, pravosudnim organima...

displaced persons, victims of domestic violence, representing them before courts and other state institutions throughout the Republic of Serbia. All the victims were female, and in all cases the perpetrators were men.

Out of the total number of women who received legal aid, 23 are refugees (41%), 32 are internally displaced persons (57%), and one woman is a foreign citizen (2%).

The age structure of the victims:

Age Structure	Number of Victims	Percentage
10-19	3	5 %
20-29	7	13 %
30-39	17	30 %
40-49	16	29 %
50-59	12	21 %
60-69	1	2 %

Clients were represented in 84 court proceedings, of which 55 civil lawsuits (divorce proceedings, child custody and alimony proceedings, paternity lawsuits, domestic violence protective measures, eviction proceedings), and 29 criminal proceedings (for the criminal act of domestic violence, alimony defaults, slander, unauthorized possession of weapons and explosive substances, abduction of minors).

In the course of the last three years, Praxis has provided accommodation in the shelter for 16 women, victims of domestic violence.

3.3. Raising Awareness Campaign on Domestic Violence

As of 2006, a total of 29 educational programs for approximately 1,350 participants from 50 municipalities were organized and held by Praxis on the territory of the Republic of Serbia within the raising awareness campaign on domestic violence. The campaign included regional training sessions, roundtables and workshops in collective centers on the subject of Protection against Domestic Violence.

3.3.1. Regional Training Sessions

Praxis organized a total of 18 regional training sessions which covered 49 municipalities in Serbia. The aim of these educational programs was to bring together relevant stakeholders from the local community and help them deal with the issue of domestic violence by establishing a network of institutions, each with a specific role and defined procedure. Taking into account that only a multidisciplinary approach and cooperation of the local institutions can lead to efficient solutions, the seminars organized by Praxis were attended by representatives of the judiciary, police, social welfare centers, local health and educational institutions, Red Cross, humanitarian and non-governmental organizations, lawyers, representatives of the Roma communities, as well as refugees and internally displaced persons themselves. The seminars were moderated by two psychologists, each with long-standing experience in working with women and children victims of domestic violence.

During the past three years, the seminars organized by Praxis were attended by representatives of the following municipalities: Sabac, Loznica, Bujanovac, Presevo, Alibunar,

Plandiste, Kovin, Prokuplje, Kursumlija, Blace, Negotin, Kladovo, Pirot, Bela Palanka, Babusnica, Dimitrograd, Novi Becej, Becej, Zrenjanin, Krusevac, Trstenik, Jagodina, Cuprija, Paracin, Valjevo, Kosjeric, Nova Varos, Priboj, Prijepolje, Velika Plana, Petrovac, Raca, Ub, Obrenovac, Krupanj, Ljubovija, Osecina, Ivanjica, Arilje, Guca, Apatin, Kula, Odzak, Zajecar, Boljevac, Knjazevac, Lebane, Doljevac, and Zitoradja.

3.3.2. Roundtables

In addition to the regional training sessions, Praxis organized four roundtables on the topic Protection against Domestic Violence in the Refugee and IDP Population in the Republic of Serbia. The roundtables were organized in Belgrade and brought together 250 participants from Sabac, Vranje, Subotica, Smederevo, Pozarevac, Cacak, Prokuplje, Novi Pazar, Zajecar, Negotin, Pirot, Zrenjanin, Krusevac, Jagodina, Valjevo, Uzice, and Belgrade. The aim of these roundtables was to gather professionals, particularly representatives of the judiciary, in order to achieve a better understanding of this complex phenomenon, and have an opportunity to discuss various issues related to the existing systems of protection and methods of making this protection more efficient.

The participants of the educational programs recognized the importance of the multidisciplinary approach and institutional networking in addressing domestic violence. However, the general conclusion was that this task was not easy to accomplish due to numerous problems and obstacles that professionals encounter in everyday work, as well as the complexity of the phenomenon itself and factors that affect it. The participants also recognized the

need for continuous education in order to raise the sensitivity and improve the competence of those working with victims of domestic violence.

3.3.3. Workshops in Collective Centers

At the beginning of 2008, another activity was included in the Project, within the raising awareness campaign on domestic violence. Namely, we wanted to reach out to the refugees and internally displaced persons, and bring the issue of domestic violence closer to them. The best way of establishing direct contact with this population group was to visit the collective centers, so Praxis organized one-day workshops on the subject of Protection against Domestic Violence, which were attended mostly by women. The workshops were moderated by a psychologist, and were carried out in the collective centers that accommodate the largest number of beneficiaries located in Raca, Negotin, Kragujevac, Kladovo, Smederevo and Belgrade.

By organizing these workshops, we tried to present the complex phenomenon of domestic violence in a simplified manner which would help our target group to easily recognize the forbidden patterns of behavior that occur in the family. In addition to gaining a better understanding of the phenomena itself, our aim was also to provide them with basic information on the existing laws related to domestic violence, and institutions that could be addressed if such problems were encountered.

In just a few visits to the collective centers in Serbia, one could sense the atmosphere of taboos, stereotypes, suffering and acceptance of one's destiny among the women we spoke to.

IV PSYCHOLOGICAL ASPECT OF DOMESTIC VIOLENCE

Domestic violence is a global world-wide problem. It occurs regardless of partner age, race, religion, education, social and economic status and geographical area. The risk factor for becoming a victim of domestic violence is gender. Based on statistics worldwide, domestic violence is mostly carried out by men against women. It is also a leading cause of death worldwide for women between the age of 19 and 44, more frequent than war casualties, malignancies, traffic accidents, and other forms of violence. Worldwide, it is estimated that 40-70% of homicides of women are committed by intimate partners.¹ At the same time, at least one in three women has suffered beating, has been forced to intercourse, or has otherwise been abused during her lifetime. Statistical data of the Council of Europe indicates that between 12 and 15% of women in Europe suffer domestic violence.

Given that domestic violence is a crime which chronically goes unreported, the information available on its occurrence is also unreliable. According to Dragana Tirelli, the City Magistrate, it is estimated that for every reported case of domestic violence, there are even up to 20 cases that go unreported, which presents a grave figure. The reasons for silence and endurance are numerous and based on historical inequalities of men and women, both in the family and in society. Therefore, we can conclude that the reported cases represent only the tip of the iceberg, and that a vast majority of such cases remains unreported.

Domestic violence can have various forms and can be physical, emotional or psychological, sexual,

and economic. But, regardless of the form, it is never an isolated incident. It is a repeated behavioral pattern by which the perpetrator gains power and control over the victim. Such a behavioral pattern tends to get more complex over time, and can last for years, even decades in some case. According to certain estimates, for example the UK data, a victim calls the police, on the average, after 35 physical assaults. Compared to victims of other forms of violence, a person suffering domestic violence is a constant victim for a longer or shorter period of her life.

Victims of domestic violence are always persons who are the most vulnerable, mainly women, children, and the elderly. Domestic violence affects not only the immediate victim of violence, the person suffering the abuse, but also other family members, friends, colleagues, other witnesses, and society in general. Children growing up with domestic violence are among those most affected by this criminal act. Repeated exposure to this type of violence can influence the development of various social, psychological, and emotional disorders in children, and can also teach them that violence is a normal and acceptable pattern of behavior and means of communication. This increases their risk of becoming the next generation of potential victims or perpetrators of violence.

4.1. Definitions of Domestic Violence and Violence against Women

Domestic violence is dealt by professionals related to various profiles. From the moment a domestic violence case is reported or becomes visible, policemen, doctors, social workers,

1 UNHCR Report Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response, May 2003

teachers, pedagogues, psychologists, lawyers, attorneys, prosecutors, judges, and many others deal with the victim and the perpetrator. Some of them encounter this phenomenon for the first time, some have difficulties in identifying it, and the majority is not sure how to react in such situations. One of the reasons for this lies in the fact that domestic violence is not included in the curricula of the local schools and universities, so professionals know little about the phenomenon itself, its dynamics, and forms that it can take. Understanding the dynamics and structure of domestic violence, as well as the overall context of violence, is crucial for an effective response and intervention strategy that would meet the needs of those suffering violence.

Domestic violence is usually defined as a behavior in which one family member threatens the physical integrity, mental health or peace of mind of another family member². The term includes current or ex spouses, common law partners, persons in emotional or intimate relationships, children, parents and other blood relatives, in-laws and adoptive relatives, i.e. foster relatives, persons who are living or lived in the same household.

Domestic violence is also defined as a pattern of behavior in which one person attempts to gain control and power over another person, especially women, children, and the elderly, through the use of force, threats, and manipulation. This implies any act against another person's will, posing a psychological, sexual, physical or economic threat on that person.

Endangering a person in any of the above ways is a serious violation of basic human rights.

However, due to traditional gender inequalities, women are in a subordinate position compared to men. This order is manifested through various types of male domination over women in all spheres of life. The inequality is based solely on gender, and has been accepted by all communities through the history and to this day.

4.2. Types of Domestic Violence

Domestic violence includes physical, sexual, emotional/psychological and economic violence, as well as any other action or threat that could affect others. This implies all forms of behavior in which one person attempts to intimidate, manipulate, humiliate, isolate, scare, terrorize, threaten, accuse or hurt another person. Harmful traditional practices and human trafficking are various forms of violence against women and can also constitute forms of domestic violence.

Physical violence: beating, slapping, kicking, maiming, pushing, throwing on the ground, tripping, twisting arms, choking, pulling hair, biting, pinching, etc. Physical violence also implies denial of medical assistance and forced consummation of alcohol and/or narcotics. It is also the most extreme form of physical violence that could cause serious physical injuries and death.

Sexual violence: coercion or attempted coercion to any sexual contact or behavior without another person's consent. Sexual violence also implies attempted rape or rape, spousal rape, sexual abuse of children, coerced intercourse after physical abuse, touching, sexual harassment, forced prostitution, etc.

² Family Law of the Republic of Serbia, 2005

Emotional and psychological violence:

undermining the victim's self-respect and self-confidence through constant criticizing, underrating the victim's competence, character, looks, parents and friends, insulting, using abusive names, yelling in private or in public, jealousy and constant accusations, suspicion, questioning, restricting contacts with children, threatening to take the children away, suicidal threats, threatening to kill or hurt the victim, children, family or friends, threatening to leave, throw the victim out, place the victim into a psychiatric institution, destroying the victim's personal belongings, pets or property, isolating her from friends, work, school.

Economic violence: is aimed at making the victim financially dependant through a total control of all financial resources by denying the rights to property and work, depriving the victim of earnings or other valuables, controlling how the means are earned and spent, denying access to and the exercising of civil, economic, and political rights.

Harmful traditional practices: denial of education for girls, early marriage and common law relationships, forced arranged marriages.

Human trafficking for sexual exploitation purposes: recruiting, transfer, transport, carrying, hiding and receiving persons through use of force or threat of violence. In addition to sexual exploitation, human trafficking also includes labor exploitation, forced marriages, slavery or practices similar to slavery, forced begging or crimes, removal of organs, etc.

Rarely does domestic violence imply only one

of the above forms of violent behavior. Behind each case of domestic violence are years of psychological violence that a person, usually a woman, endures in constant fear of possible actions that could be taken by her intimate partner, and physical violence is there only to ensure that this fear does not go away so easily.

4.3. Who Suffers Domestic Violence

Domestic violence can happen to anyone, regardless of one's race, ethnic and cultural background, social and economic status, education or place of residence. The statistical data from around the world indicates that domestic violence is a widespread phenomenon and takes more women's lives annually than war, disease or traffic accidents. In addition, it shows that violence is equally present in rich and in poor families, in urban and in rural areas, between well-educated and uneducated partners, between persons of various professions and ages. The only difference is that in rich urban families, with better educated partners, this secret stays hidden much longer.

Domestic violence has the same dynamics and forms in all cultures and societies. One of the most common characteristics of domestic violence which is present in different cultures is the fact that the victims are mainly women and girls, and the perpetrators are men. Worldwide statistics which indicate this ratio are daunting and inexorable. Nine of ten perpetrators of domestic violence are men. It is true that women can also be perpetrators against their intimate partners or children, but one should never forget this ratio that clearly indicates that, most often, man is the one inflicting violence and that the woman is the person suffering it.

4.4. Reasons for Enduring Domestic Violence

Domestic violence can happen to any woman, regardless of where she lives, her age, ethnicity and education. Women victims of violence are born and live in urban and rural areas alike, they can be both employed and unemployed, married, divorced or living in common law relationships and they can belong to domicile and displaced populations. Therefore, we cannot say that there is one universal victim profile, just as there is no universal perpetrator profile. Victims of domestic violence are not masochists, nor are they women who like violence and who seek violent partners. Women are often asked why they endure such treatment, and why they do not leave the perpetrator. Domestic violence is a complex phenomenon, imbued with strong and ambivalent emotions. In order to be able to understand the behavior of a woman in such situations, one needs to consider the overall context of violence, both broad and narrow. The perpetrator is the man whom she loves or once loved, and he can also be the father of her children. After a period of continued violence, the woman's self-confidence is shattered, and she does not have the courage to break the emotional ties with the perpetrator. A number of additional factors have serious impact on her staying and enduring the violence or returning to the perpetrator several times. According to some studies, a woman leaves the perpetrator and returns to him 7 to 11 times on average before she finally decides to leave him for good. This information, as well as the reasons that women give for staying with or returning to the perpetrator, are of crucial importance for professionals working with women victims of violence.

Hope of Change

Women victims of domestic violence are very committed to their relationship, and often build their entire lives around this relationship, therefore hoping that something will change. When a violent partner repents after the incidence of violence, sometimes even cries, asks for forgiveness for his actions and promises that he will change, the abused woman's hope rises. He then agrees to undergo treatment, admits that his actions were wrong and demonstrates his love for her and the children in various ways. With such behavior, the perpetrator reels the woman back into yet another cycle of violence, exploiting her hope that something will change.

Isolation

In order to maintain power and control over their victim, perpetrators try to isolate them from their family and friends. The perpetrator can restrain all contacts or control conversations, insist on driving her to work and waiting for her afterwards, humiliate her at family events, etc. The violent partner is often extremely jealous and possessive, and thinks that he is entitled to undivided attention and absolute obedience from his partner. He knows that if the woman has contacts with people who are close to her, they could give her support and advise her to leave him or seek help.

Social Denial

Domestic violence is a well kept secret. The community and neighbors are often not aware of what is happening behind the closed doors. The perpetrator tries to maintain the public image of a respected and decent family man. In addition, the community and the institutions

tend to diminish the impacts of violence, claiming that it can hardly be that serious and advise the woman to endure and try to be a better partner. In such circumstances, the woman fears that the community will not believe her, nor support her when she decides to escape the violence and leave her family.

Obstacles for Leaving

The perpetrators have different ways of preventing departure. Even when she decides to leave, he will threaten her, blackmail her and intimidate her, all in an attempt of making her stay. He often threatens that he will take the children away from her, that he will not pay alimony, have her proclaimed insane, interfere with her employment, turn the children and friends against her, threaten to kill her or members of her family, threaten to commit suicide, etc. The purpose of these threats is to provoke fear which will keep her in the relationship and prevent her from taking actions towards leaving.

Faith in Curing the Perpetrator

Women suffering violence, as well as many professionals, believe that the source of their partner's violence is alcohol. When the perpetrator agrees to undergo treatment, she believes that this will motivate him to change and stop being violent, so she decides to stay and support him, trying to save their relationship. Unfortunately, in practice, there is no "cure" and alcohol and violence are not in a cause and effect relationship.

The Danger of Leaving

Many perpetrators intensify their violence when the woman leaves them, either to force her to return or as revenge. Women are often murdered

by their intimate partners when they leave them. Fearing for their lives and the lives of their children, by leaving the perpetrator, they do not believe that they will necessarily be safer. In order to be able to leave, they need a good strategic plan, as well as the assistance and support of the community and relevant institutions.

Economic Dependence

Women who are victims of domestic violence often lack financial means to be independent and to survive without their partners. Women of lower education, unemployed and with no personal property, have nowhere to go and have no means to provide for themselves and their children. Economic independence is a crucial factor in a woman's attempt to escape violence. If she is economically independent, it will be easier for her to leave. In order to leave permanently, apart from other necessary measures, a woman should be informed on all the available programs and ways that she can become financially stronger.

Leaving is a Process

Most women leave and return several times before leaving the perpetrator for good. Reasons are numerous: to see if the perpetrator will change, to collect information necessary for future attempts, to end the isolation she has found herself in, etc. On average, this happens 7 to 11 times. It is important that support and assistance is provided to these women every time, since one of these attempts will turn out to be the last one. Namely, the majority of women suffering violence eventually leave their perpetrator. With adequate support of the community and relevant institutions, a woman would be able to leave much earlier and ensure safety for herself and her children.

4.5. Prejudices on Domestic Violence against Women

Prejudices on male violence against women tend to support and strengthen the male domination over women. They originate from deep-rooted traditional beliefs that women are subordinate to men, and that therefore should endure various forms of discrimination, including violence. In time, prejudices are accepted as a general truth, and even women themselves sometimes do not believe that they have a right to a different way of life, a life without violence. In addition, professionals also have prejudices against women suffering violence and, by not providing them with adequate help, obstruct their leaving process.

Some of the most common prejudices on violence against women are:

Violence is a Woman's Personal Problem

It is often said that violence is a private problem of a family, and that one should not interfere. The perpetrators rely on such beliefs and this is why such violence usually occurs behind closed doors, away from the eyes of others.

The truth is that domestic violence is a serious social problem. First of all, it is a criminal act sanctioned in the provisions of the Serbian Criminal Code. Violence against women also reflects on other social spheres. Women suffering violence are more likely to be absent from work, are frequently ill, are less efficient in performing their social obligations, burden various social funds, etc. In addition, children growing up in a family with violence are under the risk of adopting such a behavioral pattern and transferring it to their own families and society, and by doing so, prevent the cycle of violence to be stopped.

It is Her Fault, She Asked for It

The community usually blames the woman for having initiated the violence with her behavior, and holds her responsible for the consequences. This belief suits the perpetrator, because it justifies his behavior and shifts the responsibility for the violence to the woman.

The truth is that the responsibility for the violence is always on the perpetrator and he alone is responsible for having been violent. By blaming the woman for the violence that she survived, the perpetrator is protected and given the power and right to continue with such a behavioral pattern.

He Has the Right to Slap Her when Upset

Some men believe that they have the right to hit their female partners. This originates from the patriarchal understanding of marriage and the gender roles which traditionally gives greater rights and power to men.

The truth is that marriage itself does not allow anyone to be violent and no one has the right to be abusive.

Women Like Violence

Patriarchal logic produced the prejudice that women like "tough guys" and approve when a man "puts his foot down".

The truth is that women do not like violence, they do not enjoy it. Women are not masochists.

A Little Violence is Good for the Marriage

In our culture, there is a common saying that those who fight actually love each other and that for families in which the perpetrator beats his female partner, it is often said "they are fighting". It is considered that violence is a way of communication between partners, and that a bit of violence can enrich the marital relationship.

The truth is that violence is only a part of a complex pattern of power and control in the relationship, and that it is almost never a reciprocal relationship, but rather a domination of the stronger over the weaker, i.e. the man over the woman and the children.

Destiny of Women is to Suffer Quietly

The community, primary family and relevant institutions often put pressure on the woman to stay in an abusive relationship. Even when she suffers the most severe forms of violence, the message that she receives is to endure, to cope with it, that this is her destiny and that she has no other choice. The social pressure is so strong that she begins to believe that she really has no other option but to stay in the abusive relationship.

The truth is that women should not suffer quietly. All victims of violence have the right to choose and are not obligated to remain quiet and endure.

Violence Only Occurs among the Lower Classes

There is a deeply rooted prejudice that violence occurs more often in poor families or in refugee and internally displaced families.

Based on the experience of various organizations dealing with domestic violence, it occurs in all layers of society alike. Violence has no boundaries in terms of education, social status or economic power. It occurs everywhere.

Perpetrators are usually Alcoholics

Socially, it is more acceptable to put blame for domestic violence on alcohol. Under the influence of alcohol, the perpetrator can lose control, have no memory of what happened and therefore have no responsibility. People often say that he is a good person, but a bit "bad tempered" when he drinks. Even

professionals get confused, and instead of dealing with the problem of domestic violence, often try to address the drinking problem.

Generally speaking, alcohol is not the cause of violence, but it can intensify it. Violence exists regardless of the presence of alcoholism. In more than 70% of the cases, the perpetrators were not under the influence of alcohol. In addition, not all alcoholics are violent. By shifting the cause of violence to alcoholism, the perpetrator is no longer responsible for the act of violence that he committed.

Perpetrators are Mentally Ill

This prejudice is also aimed at shifting the responsibility from the perpetrator to another cause, in this case mental disorder.

However, statistics show that the percentage of the mentally ill perpetrators is equal to the percentage of mentally ill persons in the general population. Mental illness is not a precondition for violence.

4.6. Intimate Partner Violence Theories³

In line with the prevailing prejudices in society, different theories have been developed in the attempt of explaining why domestic violence occurs. Professionals use these theories when decisions are made regarding individual cases. Some of them are not realistic and are based on interpretations of various prejudices and incomplete knowledge.

Mental Disorder Theory

Domestic violence is frequently explained by this theory - perpetrators are mentally ill, but women, on the other hand, enjoy playing the role of the victim. The professionals recommend psychiatric treatment.

³ Health Workers Manual Violence against Women and Health Implications, Autonomous Women's Center

However, the results of the psychological tests of the perpetrators and the victims of violence are not different from the results of other people. In addition, the medication prescribed after the diagnosis does not contribute to the reduction of violence. Also, as mentioned before, statistics show that the percentage of mentally ill perpetrators is equal to the percentage of mentally ill persons within the general population. Therefore, the phenomenon of domestic violence cannot be fully explained by mental illness of the perpetrator or the victim.

Trans-generational Transfer of Violence Theory

According to global statistics, men who grew up in violent families are seven times more likely to end up being abusive. Children growing up in such families adopt violence as a pattern of behavior and practice it later in their own families.

However, even this theory does not entirely explain the causes of violence in intimate partner relations. Not all boys who witnessed or who suffered violence will be violent, nor will all girls end up being victims of violence. And vice versa, neither were all the perpetrators victims of violence in their childhood, nor did all the women victims of violence suffer violence in their primary families.

Violence based on the Relationship Conflict Theory

This theory assumes that both partners are equally responsible for the violence. Violence is considered as a mere marital dispute. If domestic violence is so understood, marriage counseling is advised. What this theory overlooks is the uneven power between the partners and unequal position of the abuser and his victim.

Cycle of Violence Theory

This theory attempts to explain violence as a long-term pattern of violent behavior consisting of three phases:

1. the tension building phase
2. the violence escalation phase
3. the reconciliation or the "honeymoon" phase, i.e. apologies and remorse

This theory explains how violence occurs in certain cases, but cannot explain the dynamics of violence in families in which it occurs unexpectedly (outbursts of rage), and in families in which he believes that his female partner is his possession, and that it is his right and duty to discipline her whenever she deserves it. In such violent relationships, there are no tension building or "honeymoon" phases. The "honeymoon" phase can also be considered as a specific form of emotional abuse, in which he is occasionally merciful towards his female partner, thus giving her false hope that things might change and that there might be an end to the violence.

Rage Theory

According to this theory, violence is explained by a sudden outburst of rage which leads to a loss of control. In fact, anger and rage are normal feelings, and do not imply aggression and violence. The victim of violence can also be angry and furious, but because her position is different than that of the perpetrator, she will not react aggressively. Also, when angry, the perpetrator will not react in an aggressive manner in other, public spheres of his life.

Power and Control Theory

This theory argues that domestic violence is a mechanism by which perpetrators, by using the

power that they have in their partner relationships, control their victims and create a basis for the introduction of physical, psychological, and sexual violence. The aim of domestic violence is for the man to gain and withhold power and control over the woman. The abuser uses different strategies to maintain this situation.

This theory is based on the experience of many women victims of intimate partner violence and domestic violence, who all describe the same mechanism that has been sustained for years - power and control. Domestic violence always presumes the abuse of power in a relationship based on inequality. The traditional male domination model and the disturbed balance of power between men and women is actually the social framework for the occurrence of violence.

4.7. Consequences of Domestic Violence

Domestic violence has various and in some cases long-term consequences for the victim, even when she escapes the violence. The woman's physical and psychological/mental health can be endangered, and the effects of the violence can be reflected directly to the victim, as well as to the children who witness it.

Physical violence can cause various mechanical injuries, both external and internal. Bodily injuries are not the only outcome of violence, even though they are the most visible and indicative. Functional health disorders are also very frequent (chronic pain symptoms, gastrointestinal disorders, muscle pain, etc.) and their causes often remain unknown even to experienced health professionals. Women victims of violence assess their health as poor, and continuous abuse can result in permanent

disability. The consequences of sexual violence are mainly related to the reproductive health, gynecological problems, sexually transmitted diseases, and unwanted pregnancy. In cases of psychological violence during pregnancy, it can cause miscarriage, premature birth, underweight infants even if the full term was reached,⁴ etc.

The most common consequences for a woman's mental health include depression, anxiety and post-traumatic stress disorder. In addition, it has been noted that abused women are prone to alcohol and narcotics abuse, often sleeping drugs abuse. The victims' self-esteem and self-respect are seriously undermined, their will and instinctive mechanisms are debilitated, and they are passive and often internalize and turn to themselves their rage and anger.

For such reasons, as one of the consequences of domestic violence, a woman can also commit self-mutilation and suicide. It is not rare that the victim kills her abuser once the long-suppressed rage comes to surface.

Violence against women is at the same time violence against children, whether they are only witnesses of the violence against their mother or are the immediate victims of violence themselves. Children can develop various forms of psychosomatic and emotional disorders, as well as behavioral disorders. A child's reaction to violence can be aggressiveness, underachievement in school, low self-esteem, withdrawal, nightmares, and various other forms of behavioral changes. In the long-term, children growing up in violent homes, and learning by example, can demonstrate certain forms of violent behavior in social and family relations as adults.

4 Victims and Health: Health Implications of Violence against Women, article by Bosiljka Djikanovic, published in Temida, Issue 3, 2006, Victimology Society of Serbia

4.8. Stages of Victimization⁵

Understanding the process that victims have to go through over time is of crucial importance for understanding domestic violence. This process is also referred to as the victimization process and it evolves through three stages. In each of the stages, the woman needs specific assistance and support.

In the first stage of victimization, when the first violent incident occurs, a woman's initial reaction is disbelief. She can also feel responsible for the incident, and she may start to feel ashamed and disgraced. These feelings can prevent her from immediately asking for help, and sharing the experience with her family or her friends. At this point, she is still loyal to her partner, and is concerned with protecting the family image. Her partner is usually full of remorse and apologies, and she hopes that the violence will never be repeated. She herself also tries to improve, to avoid things that might upset him, to be a better wife and a better housewife.

During the first stage, the woman rarely calls a help service or institution that can provide her with assistance. And, even if she does call, she only asks for information and tries to improve the situation that she is in on her own.

In the second stage of victimization, more violent incidents occur, and the woman begins to fear for her safety and the safety of her children. For one part, she is still trying to find excuses for her partner, she is trying to avoid his rage, and denies the seriousness of the problem. But, after the incidents of violence, she will turn to either someone from her immediate vicinity or to one of the institutions asking for help. The

reaction of the person to whom the woman turns to for help at this stage is very important for her capacity to begin the break away from the process of victimization and domestic violence. If the system of support fails her and if she does not receive the necessary assistance and support, she will return to the path of victimization. She will start to internalize her anger, the feeling of guilt and failure that is constantly intensified by her partner.

During this stage, she will still only ask for information when she calls the SOS phone for victims of violence or contacts the relevant institutions, but additional professional help will also be very important for her. Since she has already started blaming herself, she needs help to reinforce the positive image of herself, and regain her self-esteem and self-respect. Any form of positive support is welcome, be it provision of information, legal representation before institutions, or just believing in her statements and her situation. At this stage, the woman, provided she receives the necessary assistance, is capable of putting up a struggle and escaping the violence.

The third stage of victimization begins after years of endured abuse and a series of life-threatening incidents. This stage is characterized by the feeling of despair and the victim's passivity. She has already internalized her rage and anger, and is now turning it against herself. She feels worthless, guilty, and reconciled with her fate, and at this point various psychosomatic problems occur, including headaches, indigestion problems, insomnia, nightmares, etc. She often does not even link these problems with violence, and talks about the incidents without any emotion.

Women who were abused in their primary families can easily be in the third stage of victimization. They will not question their partner's right to beat them or the idea that they deserve such treatment or that such is their fate. At this stage, the consequences of abuse can be so severe that women often end up in hospitals.

During this stage, the woman needs much more than information, representation, and support. When she reaches the third stage of victimization, she is no longer capable of doing anything for herself, even if she does get the information that could help her. Given that this stage is characterized by her distorted perception of her own worth and of reality, it is necessary to begin building her confidence from the most basic level of self trust and trust in the outside world. She will also need help in structuring and planning her future steps, and learning to make decisions, and it will be necessary for someone to take an active role in the representation of the woman before the institutions and the legal system. The most important thing is to show absolute trust, not judging her and gradually empowering her to become independent.

4.9. Response to Domestic Violence Cases

The prevention and response to cases of violence against women and domestic violence should be provided at different levels of society, such as the state, community and individual levels. The effective legislation, due to its inefficient and inconsistent enforcement, does not secure women with adequate protection against violence. The multi-sector cooperation and coordination of relevant institutions needs to be systematic and more

efficient. Any type of response (both institutional and individual) needs to be based on the understanding of the domestic violence phenomenon itself.

The primary aim of the response in the initial phase should be focused on ensuring the safety of the victim and her children, especially if the woman is in a situation of acute violence. Assessments should be made on the extent to which her safety and life are at risk, and a plan and a strategy for her escape from the threatening situation need to be developed accordingly. Shelters for victims of domestic violence can be a good first step in this strategy, but the road to recovery and escape from violence is long and difficult.

Apart from being accommodated in shelters, women also need psycho-social support and aid. When assisting women victims of domestic violence, once safety has been ensured, long-term goals need to be identified. These goals should include helping the women to identify the consequences that such violence has on their lives and health and providing them with support during the empowering process. A woman needs to regain her self-confidence and her individual powers and capacities, as well as her trust in the social system from which she was isolated for a shorter or longer period of time.

Some victims need specific psychological treatment (psychotherapy) which will address the psychological consequences caused by the violence and include treating symptoms of depression, anxiety, the post-traumatic stress syndrome or the abuse of psycho-active substances and alcohol, etc.

In certain parts of the world, treatment of the perpetrators in the form of group therapy is also implemented, but the effects of such treatment are still not conclusive. For instance, the Domestic Abuse Intervention Center from Vienna organizes the Violence Prevention Training for Abusive Men, as part of the overall social response⁶. Such programs are aimed at helping the perpetrators to develop a sense of responsibility for being violent and accept the responsibility for stopping such violent behavior, as well as to develop empathy for the victim. The drawback of these programs is that the attendance is not voluntary and perpetrators take part only upon the order of the court, police or social welfare center. If violence is present and is still going on in a relationship or a marriage, it is not recommended to refer these couples to marriage therapy/counseling.

Worldwide experience shows that only a systematic solution is a good solution for domestic violence, and that a separate law on the prevention of domestic violence needs to be adopted in order to regulate the issue efficiently and comprehensively. All positive interventions need to be based on the understanding of domestic violence, its forms and consequences that it has on women, children and society as a whole. If the response of each individual, each professional employed with the relevant state institutions and non-governmental organizations, is to be in compliance with the law, but also the needs of the survivor, it is necessary to harmonize the language, the procedures and measures and to stop tolerating the violence.

⁶ Expert paper
*Interventions in
Domestic Violence Cases -
Austrian Model, Rosa Logar,
translation and printing
Autonomous Women's
Center, Belgrade, 2005*

V LEGAL ASPECT OF DOMESTIC VIOLENCE

Violence against women and domestic violence are issues that are globally discussed, since they occur in all cultures and all social classes, i.e. layers. This is why a large number of international legal acts dealing with this issue have been adopted. At the same time, within the Serbian positive legislation, the provisions on the prevention of domestic violence are found in two separate areas of the legislation. On one side, the Family Law defines the rules against domestic violence, including the definition of domestic violence itself, as well as the specific rules of the civil law procedures for the protection of victims of violence. On the other side, the Criminal Code treats the criminal act of domestic violence as a separate crime, along with all other sanctioned criminal acts that could be used to protect the victim of violence, as well as the criminal law sanctions for the perpetrator. In the following section, we will consider these two areas of legislation, as well as the international legal instruments that regulate this issue.

In the course of the review on the national legislation, we will consider only the solutions of the positive law that pertain directly to the prevention of domestic violence, as well as the direct legal response mechanisms. Namely, this report focuses on the domestic violence phenomenon, and not on the indirect consequences, i.e. subsequent legal problems caused by violence in individual cases. This is why this report does not include, for instance, the discussion on the legal position of women who have reacted unlawfully to continuous domestic violence, and who are therefore

bearing criminal responsibility themselves. Similarly, we will not analyze the overall course of the divorce and custody proceedings, and particularly the procedure before the social welfare centers, even though a large number of legal problems in this area originate precisely from the abusive family relations.

5.1. International Law Aspect

Sexual and gender-based violence is a grave violation of the fundamental human rights, and an adequate response and prevention of this phenomenon are in direct connection with the protection of these fundamental human rights. The states are obligated to ensure equal respect, access to and protection of human rights for everyone under their jurisdiction, and without discrimination.⁷ The act of this form of violence itself is a violation of a whole range of human rights including, among others, the right to life, freedom and security, the right to the highest possible level of physical and mental health, the right to equality, the right to equal protection before the law, the right to freedom from torture, inhuman, and degrading treatment or punishment, the right to freedom of movement, thought, expression and association, the right to education, social security and personal development, the right to participate in cultural, political and public life, equal access to public services, work and same wage for the same work, etc. Therefore, this form of violence is also a violation of numerous international treaties that our country has signed and, thus, committed to secure full enjoyment and protection of basic human rights. The Universal Declaration of Human Rights, the

⁷ Article 2 of the Universal Declaration of Human Rights; Articles 2 and 3 of the International Covenant on Civil and Political Rights; Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights

International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and Fundamental Freedoms are just some of the international conventions applicable to these cases.

One of the most important acts in that respect is by all means the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 by the UN General Assembly. This international instrument is often described as a Bill of Rights for women. By adopting the Convention, the international community has announced their position against the inequalities that exist between men and women and gave a clear definition of the discrimination against women. The states signatories of the Convention, all 185 of them, committed themselves to undertake a series of measures to end the discrimination against women and promote gender equality. On that occasion, the Committee on the Elimination of Discrimination against Women was also established, and the states signatories are obliged to submit reports to the Committee on their progress achieved in this area at least once in every four years. Even though the Convention does not explicitly mention violence against women, in the General Recommendation No. 19, the Committee on the Elimination of Discrimination against Women recognizes that gender-based violence can be, in accordance with the Convention, considered as discrimination. This Recommendation also instructs the states signatories to include in their reports to the Committee information on

domestic violence, the measures that are undertaken to prevent and sanction such behavior and the effects of such measures.

Violence against women is still a taboo in many societies, and this is why the issue has just recently found its place on the international scene. The Declaration on the Elimination of Violence against Women, adopted in 1993 by the UN General Assembly is an instrument that should strengthen and complement the process of eliminating the discrimination against women that was started with the adoption of the above 1979 Convention. In addition, the Special Rapporteur on Violence against Women, its Causes and Consequences was appointed by the Commission on Human Rights, indicating that violence against women is no longer a private issue, but rather an issue of respecting the fundamental human rights. The Declaration states the need for a clear definition of violence against women in all its forms, and the need for an open commitment by the states and the international community to fight such violence. It clearly states that violence against women is a serious violation of the fundamental human rights and freedoms, and that it reflects the historical misbalance of power between men and women. In addition, this Declaration calls upon all states to intensify their efforts to eliminate this form of violence, clearly stating that it presents an obstacle to equality, peace and development. This act also underlines that certain categories of women such as the minorities, refugees, women migrants, girls, older women, women with special needs, etc, are under greater risk of violence against women. This Declaration requires the states to undertake various measures to combat this type of violence, including prevention, criminal

prosecution and punishment of the act of violence, committed by the individual or the state (Article 4 of the Declaration). Even though the Declaration on the Elimination of Violence against Women does not have the power of a convention and is not a legally binding act, it contains the provisions of the international common law that are binding for all states⁸.

In addition to the European Convention on Human Rights and Fundamental Freedoms, there are many other regional instruments that deal with the issue. The Council of Europe has a whole set of recommendations that relate to violence against women. It is worth mentioning the Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, which includes, among other things, a list of measures that the states need to undertake against violence against women, relating to the criminal and civil law, court proceedings, programs for assistance and protection of victims of domestic violence, etc. The Recommendation clearly states that the member states are responsible for preventing, investigating and sanctioning all acts of domestic violence, as well as for ensuring protection to victims of violence. It should also be noted that the European Court of Human Rights has an adequate practice in cases of domestic violence and violence against women.

5.2. National Legislation Review - Family Law

The Family Law regulates the issue of domestic violence in three separate chapters. The Chapter I defines the general provisions against domestic violence. The provisions defining the concept of domestic violence and other

material provisions are included in Chapter IX. The procedure for the provision of legal protection against domestic violence is specified in Chapter X, which deals with the procedural law regulations in family relations.

5.2.1. Spousal Equality and Domestic Violence Protection

The Family Law defines, first of all, a whole set of rules relating to the equality of men and women, particularly relating to spousal equality in terms of equal rights and duties. Paragraph 1 of Article 10 of the Law, explicitly prohibits domestic violence, while, furthermore, Paragraph 2 of the same Article guarantees the right to protection against domestic violence. In order to ensure a full range of legal protection means, and especially taking into account that domestic violence is one of the most serious violations of human dignity and other rights of a person, it would be necessary to add in Paragraph 2 of this Article the right of the victim to compensation for damage. This solution could also be justified by the fact that in practice the victim rarely claims material or non-material compensation for the suffered violence, particularly in cases in which the criminal responsibility of the perpetrator is not established.

5.2.2. Concept of Domestic Violence

In accordance with Article 197 of the Law, domestic violence is the "behavior in which one family member endangers the physical integrity, mental health or tranquility of another family member." To ensure the comprehensiveness of the definition and particularly to underline the direct link between the act of violence and the injury to the victim's dignity, the definition

8 Preliminary Report by Radhika Coomaraswamy, Special Rapporteur on Violence against Women, its Causes and Consequences, in line with the Commission on Human Rights Resolution, 1994. E/CN.4/1995/42

needs to be expanded in order to reflect the fact that the act of violence not only endangers but also violates the protected personal properties of the victim, which, it should be noted, include the personal and physical integrity, as well as the personal dignity. Thus, a sound legal basis for claiming non-material compensation would be ensured.

Paragraph 2 of Article 197 of the Law specifies the typical forms of violence such as : infliction or attempted infliction of bodily harm, intimidation by threats of murder or bodily harm of the family member or his/her loved ones, coercion to sexual intercourse, abetment of sexual intercourse, or sexual intercourse with a person under 14 or disabled person, restricting freedom of movement or communication with third parties, insulting, as well as any other insolent, inconsiderate, and malicious behavior. Even though the above list of various types of violence is not final, its extension in order to include other forms of violence recognized by the comparative law and international documents would be justified. Thus, stalking and spying should be included in addition to the restriction of movement or communication with third parties. On the other hand, the Law fails to include well-known economic violence in the list of the forms of violence, which usually refers to the denial or restriction of earnings, employment, financial resources, etc. Finally, the Law defines very widely the term family member who enjoys the protection against violence. Article 197, Paragraph 3, includes within this term spouses or ex spouses, children, parents and other blood relatives, as well as in-laws and adoptive relatives, i.e. foster relatives, persons who are living or used to live in the same family household, common-law partners or ex

common-law partners, as well as persons who used to be or still are in an emotional or intimate relationship, i.e. who have a child together or the child is already conceived, even if they have never lived in the same family household.

5.2.3. Domestic Violence Protection Measures

In accordance with Article 198 of the Law, the court can order one or more listed protection measures against the perpetrators to temporarily ban or restrict personal relations with the victim of violence. The protection measures specified by the Law include:

- a) ordering the eviction from the family apartment or house, irrespective of the property possession right or leaser right;
- b) ordering the repossession of the family apartment or house, irrespective of the property possession right or leaser right;
- c) issuing a restraining order to keep the perpetrator at a specified distance from the victim;
- d) issuing a restraining order to prohibit access to the area surrounding the victim's place of residence or work;
- e) issuing a restraining order to prohibit further harassment of the victim of violence.

With these solutions and the introduction of new and until recently unknown legal protection measures, the national legislation was considerably modernized, yet it seems that, in this part of the regulation, the Family Law failed to fully establish a path towards an efficient civil law protection against domestic violence. Namely, a question that is raised in practice is what happens if the perpetrator fails to comply with the ordered protection measure, i.e. if he violates the court's order. A possible legal response in such a case could lead to the

criminal law which will be considered separately in the part of the report pertaining to the criminal responsibility for domestic violence. However, the civil law could be involved more, firstly by prescribing the well-known "court penalties" for noncompliance with the domestic violence protection measures. Thus, the court would give the authorization, together with the necessary amendments to the Family Law, to order the perpetrator who has failed to comply with the ordered measure to pay an adequate amount of money to the victim of violence. The civil court would also be equipped with the necessary means to ensure compliance with its decisions. The current situation favors the perpetrator and, regardless of the ordered measure, he can continue with his violent behavior, not fearing the court's reaction, relying on the slow and often inefficient processing of criminal acts.

The experience of Praxis shows that, in the dispute proceedings conducted up to date, of all the protection measures, the local courts predominantly issued restraining orders to keep the perpetrator at a specified distance from the victim, restraining orders to prohibit access to the area surrounding the victim's place of residence or work, and restraining orders to prohibit further harassment of the victim. Eviction and repossession orders were issued in extremely rare cases.

A specific problem was identified in practice in relation to the issuance of eviction orders to the perpetrators. In cases when Praxis filed lawsuits against the perpetrators, asking for the eviction measure to be ordered, in reaching a decision, as a rule and contrary to the explicit provisions of Article 198 of the Law, the court got involved in a dispute on the property possession right or leaser

right. If the apartment was the ownership of the perpetrator, which in most cases it was, the court rejected the claim for the eviction measure. However, if the apartment was marital estate, the court frequently rejected the claim for the protection measure and referred the victim to a special procedure to determine the rightful share in the joint marital property. The court is obligated to issue a preventive protection measure, i.e. eviction order, irrespective of the property possession right or leaser right. This does not imply depriving anyone of property or lease rights, but temporarily displaces the perpetrator, for the duration of the ordered protection measure, and gives the victim the right to live in the family apartment or house.

A question frequently brought up by the judiciary professionals, both in court practice and the educational programs organized by Praxis, is what would happen to the perpetrator, and where he would be accommodated after the eviction was ordered, and during its validity. It seems that some of the professionals are more concerned about the perpetrator than about the victim and her children (with the idea that she has the option of going to a "Safe House"). This issue reflects the prejudices and the patriarchic tradition present in our society, which is why the task of reaching a systematic solution lies with the state, and so do the raising awareness campaigns aimed at educating the professional public about this aspect of the problem.

5.2.4. Duration of Imposed Protection Measures

In accordance with the provisions of Article 198 of the Law, the duration of the imposed protection measures is limited to one year maximum. The Supreme Court of Serbia adopted a position, in principle, that the

imposed measures should not be too lenient, which is a confirmation given by the ultimate judicial instance in the country that domestic violence needs to be considered as an exceptionally dangerous social problem, and that the aim of these measures is to ensure durable protection of the victim and her family as a whole. For this reason, in court practice, protection measures are rarely imposed for the duration of less than one year. The eviction order issued to the perpetrator by one of the municipal courts for a period of 6 months remains an isolated case.

On the other hand, in the same Article, the Law stipulates that the time spent in detention and during any other depriving of liberty related to criminal acts or misdemeanors, is included in the duration of the imposed protection measure. Such a legal solution on including the time spent in detention in the duration of the measures cannot be considered justified, because the purpose of sanctioning within the criminal law and the law of torts is considerably different from the purpose of issuing a protection measure according to the provisions of the Family Law. The purpose of a protection measure is to protect the victim personally, while the purpose of an arrest is much more complex and relates to the need to protect not only the private interest, but the public interest as well, i.e. society as a whole. This characteristic is particularly evident in cases when the perpetrator is arrested for having committed a crime or a misdemeanor that is completely unrelated to domestic violence. This is why such a provision needs to be revised and should specify that the time the perpetrator spends in detention is not included in the duration of the imposed protection measure.

5.2.5. Domestic Violence Protection Procedure

The procedural provisions related to the actions of the court and the legal position of the parties involved in the domestic violence protection proceedings are specified in Chapter X of the Family Law, together with the provisions applicable to other specific civil lawsuits pertaining to family relations. This legal solution is a continuation of the tradition to regulate the procedural law in the area of marital and family relations in the legal text that predominantly contains the provisions of the material law. This is, in a way, a codification of the family law, which considerably facilitates its application to the practicing lawyers, judges and attorneys. The introductory provisions of Chapter X of the Law contain the general procedural rules in the area of family relations. The most prominent among these rules is the one requiring that the judges and judicators should have special professional knowledge in the area within which they have been invited to judge, as well as the rule on the urgency of procedure in family matters, with the supporting process rules for the legal operationalization of this principle, first of all by prescribing special timelines for the implementation of specific process activities. This rule on the urgency of procedure is additionally strengthened by the rule specifying that the domestic violence protection procedure is "of special urgency", within the special provisions related to the pronouncing of the protection measures, which will be described in the following parts of the report. For this type of disputes, the Law also prescribes the general rule on the court appearance being closed to the public, and a specific rule related to the reimbursement of

legal costs obligation. In accordance with Article 207 of the Law, the court has the discretion to decide on reimbursement of legal costs in proceedings related to family relations, taking into account the reasons of fairness.

Unfortunately, it seems that this rule cannot be applied completely independently from the outcome of the domestic violence protection measure pronouncing procedure without a grievous breach of the fairness principal, which is also cited by the legislator.

For this reason, in addition to the general provision, there is a need for the inclusion of a specific solution that would be applied in the area of protection against violence, and according to which the legal costs would always be borne by the party against which the protection measure is pronounced. Any other solution, that could, in accordance with the existing legal text, mean that the perpetrator could end up being rewarded if the legal costs were to be fully or partially borne by the victim, can not be considered as justified. Finally, Article 208 of the Law stipulates that the third instance revision of the court's decision is always possible in proceedings related to family relations, which guarantees a high level of legal protection for the parties involved in the proceedings, particularly to the victims of domestic violence.

5.2.6. Position of Victims of Violence in Spousal Disputes

Article 230 of the Law stipulates mediation in spousal disputes instigated by a divorce lawsuit filed by one of the spouses, i.e. attempt at marriage reconciliation. Paragraph 2 of this Article of the Law stipulates cases in which mediation is not necessary. But, the case when

one of the spouses is a victim of domestic violence, i.e. when the divorce lawsuit includes the claim for a domestic violence protection measure to be ordered, is not listed among these specified cases. This legal solution cannot be considered justified, since it is contradictory to the very purpose for which the protection measure is ordered.

According to the definition of the legislator, the purpose of a protection measure is to prevent personal relations between the abuser and the victim. The involvement of the victim in the required mediation procedure, i.e. reconciliation, presents, in practice, an unjustified prolongation of the contact with the abuser. The legal implications of this rather common court practice are very serious for the victim. On one side, the court appearance for reconciliation is done in the absence of legal councils of the parties, and the victim is left alone in the courtroom facing the perpetrator, which in the majority of cases reinforces her fear or her feeling of shame and insecurity, and automatically results in the aggravation of her process position. On the other side, as can be expected, the reconciliation proceedings in these cases are usually unsuccessful, which results in a useless waste of time and unjustified prolongation of the domestic violence protection procedure, which should in accordance with the provision of the Law itself be considered as "of special urgency".

5.2.7. Right to Instigate Legal Proceedings and Territorial Jurisdiction

The right to instigate legal proceedings for a protection measure to be pronounced belongs to the victim of violence, but also to her attorney, as well as the public prosecutor, and the social welfare center. The provision of the

Law authorizing the public prosecutor and the social welfare center to respond in the civil proceedings, even in cases of violence against adults, is yet another legal reflection of the main idea that domestic violence cannot be viewed as a private matter between the perpetrator and the victim, but first of all, as a serious social problem, and its resolving can be initiated ex officio by the public authority. In accordance with Article 284 of the Law, the proceeding is instigated by a lawsuit filed with a relevant court. The Law stipulates that the relevant court in these proceedings, in addition to the court with general territorial jurisdiction, is also the court in the place of permanent residence or temporary residence of the family member against whom the violence is perpetrated. These legal solutions make it considerably easier for the victim to instigate the legal protection proceedings. In accordance with the provision of Paragraph 3 of Article 284 of the Law, the person against whom the protection measure was pronounced has the right to file a lawsuit, instigating a proceeding for the termination of the protection measure. This legal solution, in contrast to the previous ones, cannot be justified with the need of ensuring protection for the victim. The opposite solution would be justified - only the victim should have the right to instigate a proceeding for the termination of the protection measure, and not the perpetrator against whom the measure was pronounced. The purpose of the protection measure is to actually allow the victim to isolate herself from the perpetrator for a certain period of time and to recover and get a grasp of her life, free of fear and violence. The implementation of the exiting solution in practice implies that there is a possibility for the

perpetrator to file a premature claim for the termination of the validity of the measure, i.e. by instigating a legal proceeding, and by doing so, further harass the victim and fully prevent the fulfillment of the purpose for which the protection measure was ordered.

5.2.8. Procedure Urgency

As noted above, in Article 285, the Law stipulates that the protection proceeding against domestic violence is of special urgency. This principal rule is further operationalized under the specific rules in the same Article. Thus, it is stipulated that the first court appearance in the proceeding is scheduled within eight days from the date of receipt of the claim by the court. It is also stipulated that the Court of Appeals is obligated to adopt a decision within 15 days from the date of the appeal submission. These rules should be joined with the rule specified in Article 288 of the Law, stipulating that the appealing of a first-instance decision does not defer the enforcement of the verdict on imposing or the extension of a domestic violence protection measure.

Unfortunately, what is missing in Article 285 of the Law is crucial for a timely adoption of a court decision - the listed rules do not include those related to the obligation of the first-instance court to finalize the first instance proceeding within a legally specified timeline (e.g. within 30 days from the instigation of the proceeding), or the obligation of the court to prepare the written court order for its decision promptly after the finalization of the proceeding (e.g. within 8 days). If the legislator had adopted such or similar rules, the victim would have been in a better process position since she would be able to count on the protection against violence

to become effective within a very short period of time after having had addressed the court. On the contrary, the existing legal gap implies the possibility of stalling the violence protection procedure over a long period of time, which is contradictory to the special procedure urgency principle. In respect to the application of the special procedure urgency rule, it should be noted that the experience of Praxis legal team shows that the legally prescribed timeline of 8 days was respected in only one single case. Usually, the first court appearance is scheduled 20-30 days after the court receives the claim. The court practice to date has also shown that the domestic violence protection procedures normally last a couple of months and, in some cases, even a year. The intervals between the court appearances also range between 20-30 days, and in one case, in a Belgrade court, an interval of 58 days was noted. Further proceedings within the appeals procedure, as well as the court decision enforcement procedure, additionally defer the effectiveness of the imposed measure. Thus, the deadline for filing an appeal with the Court of Appeals is 15 days from the receipt of the decision. When deciding on the appeals, the District Court, in most cases, does not respect the shortened timelines - it usually takes more than 30 days to pass a second instance decision. After the confirmation of the first-instance ruling, we have the classical problems that are the same for the majority of other enforcement cases and which are crucial for the implementation of the measure for the repossession and use of property by the victim of violence, i.e. eviction of the perpetrator. Namely, one usually has to wait for more than 30 days for the decision on the enforcement order proposal, after which it is

usually impossible to deliver the enforcement order. Once the enforcement order is delivered, the appeals period begins, and one has to again wait, sometimes for months, for the second instance decision to be passed.

If the enforcement order is confirmed, one has to further wait for the final enforcement order to be delivered. Upon the delivery and scheduling of the enforcement, there is usually physical resistance against the enforcement procedure. Faced with the physical inability to enforce the order, the bailiff has to request police assistance, which is not easily done and takes time. Namely, the bailiff must try to enforce the order on his own during the first attempt. A request for police assistance is based on the unsuccessful enforcement report. The police normally send only one police officer to assist with the next attempt of enforcement. If he is not able to cope with the perpetrator on his own, he will ask for police "backup".

Each of the above enforcement attempts implies that the perpetrator is at home when the bailiffs arrive, which is often evaded simply by staying away from home. In small towns, where all parties that are involved in the procedure know each other, all aggravating circumstances of the enforcement procedure are multiplied. The overall enforcement procedure can in some cases take even over a year. Thus, in one case, after the eviction, i.e. repossession measure had been imposed, a year elapsed before a single attempt of eviction, i.e. repossession of property was made, let alone the final enforcement. It is almost as if the situation resulted in a generally accepted consensus that the enforcement procedures for the eviction of the perpetrator are not to be implemented, i.e.

cannot be implemented. Praxis had exactly such a case of unenforceability and lack of cooperation in the local community before one of the Municipal Courts.

5.2.9. Departure from Disposition

In accordance with Article 287 of the Law, in the course of the proceeding, the court is not bound by the substance of the legal suit. This means that in a domestic violence protection procedure, the court may impose a measure that was not requested in the legal suit, if the court, as stipulated by the Law, deems that such measure will ensure a more adequate protection to the victim. This is just another in a set of rules that requires a more active role of the judiciary in domestic violence protection procedures. A similar rule on the departure from disposition has already been specified in the introductory provisions of Chapter X of the Law, pertaining to the proceedings in marital relations. Namely, in accordance with Article 205 of the Law, in these proceedings, which include the domestic violence protection proceedings, the court has the power to investigate facts that were not presented by either party in the proceeding, as well as to establish facts that were not contested by the parties. These two legal solutions are aimed at allowing the court to reach the best decision on the protection of the victim in each specific case.

Unfortunately, based on the practice of Praxis, the courts fail to use their powers. We could rather say that they do exactly the opposite, and unjustly drag out the procedure by allowing the defendant to present new evidence, endlessly interrogate the witnesses, omitting to impose fines on the witnesses who fail to obey a subpoena, etc.

5.2.10. Final Considerations and Legal Gaps in the Family Law

If we take a comprehensive look at the provisions of the Family Law relating to domestic violence protection, it can easily be noticed that the positive legal regime suffers from an inconsistent quality of certain parts. While there is a set of legal solutions that are very modern and well developed, there are also other solutions that are outdated and contradictory to the purpose of the legal regulation. However, it seems that incomplete provisions, ones that have been left undeveloped, are the cause of the biggest problems which result in harmful legal gaps, along with the provisions that are completely missing.

This characteristic of the positive legal regime has a decisive influence on its inefficient application in practice. Even if our courts and public prosecutor's offices were well trained to implement the procedure in such cases, which does not seem to be the case, and even if they all had a common commitment to ensure legal protection to the victims of violence, which does not seem to be the case either, they would not be able to apply the existing legal regime efficiently, because it is simply not adequate. Therefore, the legislator has to a great extent prevented an efficient protection against domestic violence, and the gaps have to be compensated by amendments to the existing Law, or even better, by the adoption of a separate law on domestic violence. To reinforce the conclusion about the imperfection of the positive legal regime, we should also mention two sets of provisions that are missing from the Law. On one side, the legal text does not include the rules that would allow the imposing of the temporary protection

measures against violence. It is well known that the imposing of a temporary measure is motivated by the need for a prompt response to an unlawful act. If the acts of violence are repeated or there is a threat that they will be repeated, there is nothing more natural in the legal practice than to demand a temporary measure that could ensure immediate protection for the victim, protection without any delay and as soon as possible (e.g. within 48 hours). Moreover, there should be an explicit provision in the Law allowing the court itself to, in accordance with the rule on the departure from the disposition, impose a temporary protection measure against the violence. On the other side, the legislator has failed to prescribe special rules regarding the burden of proof. It is also a well known fact that acts of domestic violence are very difficult to prove, even in cases in which physical injuries were inflicted to the victims. It was therefore necessary to transpose into the national legislation rules that have already become a part of the highest European and comparative law standards, and according to which the burden of proof of not having committed an act of domestic violence lies on the defendant. The prosecutor would only have to establish the probability that the act of violence occurred, and the defendant would have to prove that the legal provisions defining domestic violence were not violated. It appears that it would be fair to say that the legal system for the protection against domestic violence would have been more efficient if these two sets of provisions had also been included in the Law. If we were to add to the list of deficiencies of the positive law those pertaining to the link between the imposed

measure and criminal responsibility for the noncompliance with the imposed measure, and particularly the exclusive deficiencies of the criminal legal protection against domestic violence, we would get a complete picture of the legal system's inability to fight one of the most harmful and dangerous social phenomena.

5.3. National Legislation Review - Criminal Code

The Criminal Code (CC), to put it simply, contains two sets of provisions on the protection against domestic violence. On one side, there are the new provisions that stipulate domestic violence as a separate crime and prescribe sanctions against the perpetrators. On the other side, the CC contains a large number of general provisions, but also ones that are related to specific criminal acts against life and body, sexual freedoms, and other crimes against marriage and family, which pertain to the protection against domestic violence.

From the most general point of view, we could conclude that, during the past few years, the CC was modernized, i.e. updated with the introduction of modern solutions that are broadly in line with the highest comparative law standards for the prevention of domestic violence, such as those specified in the UN Convention on the Elimination of All Forms of Discrimination Against Women, and the UN Declaration on the Elimination of Violence Against Women. At the same time, the national criminal legislation retained numerous traditional weaknesses in this area, but also produced some new ones, previously unknown. In the following part of the report, we will describe the existing positive legal regime for the criminal legal

protection against domestic violence, including all its weaknesses. Special focus will be put on the recommendations for elimination of the deficiencies within the existing legal solutions.

5.3.1. Hate Crime

It is a well-known fact that in some cases domestic violence is born from the feeling of hate towards the victim of violence. If this hate or intolerance is based on a personal characteristic of the injured party, including gender, age, disability, religion, ethnicity, sexual orientation, etc, and if hate is at the same time the motive for committing such a crime, regardless of its type, this is a so-called "hate crime." Hate crime, so defined or in a similar way, is an integral part of almost all modern legal criminal systems.

Thus, on the basis of the hate crime provisions, in practice, it is possible to develop a more strict sanction policy, in cases in which the crime was committed only because the victim had a personal characteristic which caused the perpetrator to hate her, a characteristic that he did not like, or that he could not accept. This is how the modern legal systems efficiently tackle very serious phenomena in various spheres of discrimination, including domestic violence as a phenomenon that almost always affects women and children.

Unfortunately, the national CC does not recognize the provision that would instruct the court to impose more strict sanctions against the perpetrators of hate crimes. This is why the law should be amended in the part on imposing of the sanctions (CC, Article 54), by introduction of a rule specifying that the court should take into account and treat as an aggravating circumstance the fact that the predominant or exclusive

motive for having committed the crime was hate or intolerance towards the victim, based on one of her personal characteristic.

5.3.2. Security Measures

Chapter VI of the CC pertains to the criminal law security measures. In that respect, it first of all specifies that the purpose of imposing the security measures is to eliminate "circumstances or conditions that may have influence on an offender to commit criminal offences in future" (Article 78), and then in the following Article, it lists the security measures that are available to the court. These measures do not include a measure based on which the perpetrator could be prohibited from contacting or communicating with the victim. This deficiency of the criminal legislation is particularly evident in the area of the protection against domestic violence. Namely, in accordance with the existing legislation, for a crime of domestic violence, and any other criminal act relating to this type of violence, the criminal court can impose against the perpetrator only a prison sanction or a fine, and not a restraining order prohibiting contact or communication with the injured party. Even in case of violation of the same measure imposed by the civil court, which will be considered below, the criminal court cannot impose this measure against the perpetrator. This legal gap is completely inconsistent with the clearly specified purpose of the security measure. Or, if we were to rephrase this, only by issuing a restraining order which prohibits all contacts and communication, combined with a prison sentence or a fine, can a victim of domestic violence be efficiently protected in practice. Thus, it seems that such a deficiency is

actually the "Achilles tendon" of the criminal legal protection against domestic violence - without issuing a restraining order prohibiting all contacts and communication whenever a case involves a crime against life and body, sexual freedoms, or marriage and family, as well as without a regulated responsibility for failing to comply with such a measure imposed by the criminal court, an adequate protection for victims of domestic violence cannot even be discussed.

If the legislator opts to amend the CC in this part, it should be taken into account that the duration of the protection measures should be specified and harmonized with the Family Law (e.g. from minimum one to maximum ten years), the time spent in prison or a health institution should not count toward the duration of the imposed measure and should specify that the failure to comply with a restraining order which prohibits all contacts and communication imposed in a criminal proceeding, constitutes grounds for the revoking of a suspended prison sentence.

5.3.3. Limitation on Criminal Prosecution

The main rule in the CC on the limitation on criminal prosecution specifies that it begins with the date when the crime was committed. Unfortunately, this legal solution cannot be considered as justified in cases in which the criminal acts include elements of domestic violence against minors. Namely, children victims of domestic violence or minors victims of crimes against sexual freedoms, usually due to fear, shame, disgrace, ignorance or other circumstances, do not react adequately against the perpetrator. Therefore, there are cases in which a crime committed against a minor, particularly when the perpetrator is the parent or

a person close to the child, stays undiscovered until the victim grows up, i.e. reaches legal age. In the meantime, due to the extent of the passed sanction, the period of limitation on criminal prosecution can easily expire. The perpetrators of such crimes therefore go unpunished, which is by all means in contradiction with the legislator's original intention.

This is why it would be necessary to amend the formulation of Article 104 of the CC and introduce a rule specifying that the period of limitation on criminal prosecution for criminal acts belonging to the category of crimes against sexual freedom and crimes against marriage and family perpetrated against minors, begins with the date when the injured party has reached legal age.

5.3.4. Sanction Policy

The sanction policy of the legislator and the courts in terms of imposing sanctions against the perpetrators of crimes against sexual freedoms and domestic violence is, to put it mildly, astonishing. On one side, the courts traditionally impose minimum sanctions against the perpetrators of these crimes. The sanctions in this group of crimes are often under the legal minimum or are reduced to suspended sentences. Such sanction policy of the national legislation cannot be considered justified, having in mind that we are dealing with the most serious assaults on the physical and psychological integrity of first of all women and children, with extremely severe consequences for the victims that cannot be removed even years after the crime had been committed. If the CC already stipulates the legal maximum for the perpetrators of these crimes, it is not clear why the greatest majority of the imposed prison sentences are at the level or under the

level of the statutory minimum, i.e. why a great number of sanctions were not imposed in effective rather than suspended sentences. On the other side, if we were to consider the legislator's sanction policy from two different aspects, the situation is not less astonishing. From the aspect of the development of the criminal legislation, it is not clear why the legislator opted to reduce the prescribed sanctions for crimes against sexual freedoms and domestic violence in the latest reform of the CC. It appears that in order to ensure an efficient criminal legal protection against, first of all, various forms of domestic violence, exactly the opposite should have been done, that is, more strict sanctions should have been prescribed. In support of such a standpoint, we could argue that the traditionally lenient sanction policy has not resulted in the decrease of the number of crimes committed within this category, and that it is unclear how the legal reduction of the prescribed sanctions in this area could succeed in fulfilling one of the most important objectives of the sanction policy, and that is to prevent crime.

Thus, the prescribed sanctions need to be made more strict or at least brought back to the levels prior to the latest revision of the CC, in relation to the following crimes: rape (CC, Article 178), sexual intercourse with a helpless person (CC, Article 179), sexual intercourse with a child (CC, Article 180), sexual intercourse through abuse of position (CC, Article 181), prohibited sexual acts (CC, Article 182), pimping and procuring (CC, Article 183), mediation in prostitution (CC, Article 184), showing pornographic material and child pornography (CC, Article 185), as well as bigamy (CC, Article 187), domestic violence (CC, Article 194), failure to provide maintenance (CC, Article 195), and incest (CC, Article 197).

However, if the legislator's sanction policy were to be considered in terms of the difference in the essence of the above crimes, i.e. the personal characteristics of the victims of such crimes, the astonishment is replaced by disgust. In the broadest sense, the legislator's sanction policy in this area was guided by a very precise idea that could be expressed as follows: the more incapable the victim is to stand up to the perpetrator (due to advanced age, disability or illness), i.e. the closer the relations between the victim and the perpetrator are (based on blood relations, marital or extra-marital relations or the relations of trust and confidence), the lower is the prescribed sanction. This is one of the main weaknesses of the CC in the area of the domestic violence protection and therefore deserves special attention and urgent intervention.

5.3.5. Helpless Persons as Victims of Violence

Persons incapable of defending themselves from the assailant because they are old, ill or have a disability, deserve to have special legal protection provided by the state and criminal legislation. In the criminal law area, this would mean that the state has an obligation of adjusting its sanction policy to the needs of those who cannot, as other people, defend themselves from unlawful attacks on their physical and psychological integrity. Accordingly, the sanctions prescribed for crimes committed against helpless persons would have to be higher than those prescribed for crimes committed against persons who are capable of defending themselves from the assailant. Such a response of the criminal legislation to the special needs of helpless persons would be extremely important for an efficient protection against domestic violence,

⁹ NGO
"Iz kruga"
and NGO
"VelikiMali"

and would be in accordance with the evidence collected by other non-governmental organizations⁹, indicating that the elderly, ill and disabled persons are quite frequently victims of sexual violence in their family environment. Unfortunately, our legislator does not recognize this need for special legal protection. Article 178 of the CC stipulates the essence of the criminal act of rape, as well as the sanctions for the basic and qualified forms of the crime. The following article, Article 179 of the CC stipulates the essence of the criminal act on a helpless person. These two crimes do not differ in terms of the criminal act that was committed, but in the personal characteristics of the injured party. Thus, while both of these articles specify the same act of committing a crime, i.e. "sexual intercourse or act equivalent to sexual intercourse", but prescribe different sanctions against the perpetrators. For instance, for the basic form of rape, the prescribed sentence is two to ten years of imprisonment, but for intercourse with a mentally ill person, mentally challenged person, person with mental disorders, as well as disabled person, i.e. persons incapable of resistance, the law prescribes a lower sanction of one to ten years. Similarly, if a severe bodily injury was inflicted on a helpless person due to sexual intercourse or an act equivalent to sexual intercourse, or the crime was committed by several persons, or in a particularly cruel or humiliating manner, or against a helpless person who is a minor, or if the act resulted in the pregnancy of the helpless person, the prescribed sanction is two to twelve years of imprisonment. For all other cases, when the injured party is not a helpless person, a sanction of three to fifteen years is prescribed.

Thus, the legislator's standpoint is that crimes committed by the act of intercourse on a helpless person are less socially dangerous than the same crimes committed against others. Such a discriminatory sanction policy reflects unmistakably the position of the legislator that the personal properties of helpless persons, primarily their physical integrity and personal dignity, are those of less importance and should consequently be less protected than the personal properties of others.

At this point, the discriminatory policy of the judiciary branch should be added and considered alongside to the legislator's discriminatory policy. Namely, the essence of the crime of rape is specified as forced intercourse through the use of force or threat, while the essence of the crime of sexual intercourse on a helpless person is the exploitation of the person's inability or of any other state that makes the person incapable of resistance. In practice, however, the cases involving intercourse on a helpless person through the use of force or threat are regularly not qualified as rape, for which the law prescribes a higher sanction, but almost always as sexual intercourse on a helpless person, for which a lower imprisonment sanction has been prescribed.

5.3.6. Children and Minors as Victims of Violence

The legislator has a similar immoral sanction policy even in the area of the protection of children and minors. In accordance with Article 180 of the CC, sexual intercourse or act equivalent to sexual intercourse with a child, including minors under the age of 14, is sanctioned with one to ten years of imprisonment. The qualified form of this act,

i.e. if the crime resulted in a severe injury of the child, or if the crime was committed by several persons, or if it resulted in the pregnancy of the child, is punished with two to twelve years of imprisonment.

In addition, the legislator defines this act as "sexual intercourse with a child", instead of "sexual intercourse against a child", as was done in defining the sexual intercourse against a helpless person. It seems that there is no need for pointing out that this act can only be understood as "sexual intercourse against a child", primarily based on the assumption that the victim in this specific case does not consent to the act, as well as the fact that, as a rule, no use of force is needed to commit this act, due to the incapacity, i.e. inferior position of the victim. Milder imprisonment sanctions for the basic criminal act of rape are prescribed also for the criminal act of sexual intercourse through abuse of position. Thus, Article 181 of the CC specifies that if the teacher, tutor, but also the guardian, adoptive parent, parent, step father, step mother or any other person engages in intercourse through abuse of position or authority or an equivalent act with a minor (again, using the term "with", instead of "against"), who was entrusted to them for teaching, tutoring, guardianship and care, will be punished with one to ten years of imprisonment.

The legislator prescribes tragically mild imprisonment sanctions even for the criminal act of pimping and procuring of sexual intercourse against a minor. In accordance with Article 183 of the CC, whoever pimps a minor for sexual intercourse, or an equivalent act, or any other sexual act, will be punished with three months to five years of imprisonment, and whoever procures a minor for sexual

intercourse, or an act of equal magnitude, or any other sexual act, will be punished with maximum three years of imprisonment. In comparison to the basic form of sexual intercourse against a child, the prescribed sanctions for the criminal act of showing pornographic material and child pornography under Article 185 of the CC are even milder, regardless of the fact that certain forms of this criminal act also involve the act of sexual intercourse forced on a child. Thus, the CC stipulates that, whoever makes available or shows pornographic material to a child, will be punished with a fine or imprisonment of maximum six months. Whoever uses a child to produce pornographic material, or for a pornographic show, which in practice also implies the act of sexual intercourse, or other acts of equivalent magnitude, will be punished with six months to five years of imprisonment. Finally, whoever sells, shows, or otherwise makes available pornographic content resulting from the above crime, will be punished with two years of imprisonment.

5.3.7. Incest

It appears that the worst example of the legislator's monstrous sanction policy is reserved for the crime of incest under Article 197 of the CC. This Article of the CC stipulates in a simplified manner that any adult who engages in sexual intercourse or any sexual conduct of equal magnitude with an underage relative by blood, or an underage sibling, will be punished with three years of imprisonment. Thus, on one side, the legislator only threatens the perpetrator of a crime, which has been, throughout the history of civilization, treated as the most severe form of moral wrong committed against members of the

family, with a shamefully lenient sanction. The prescribed sanction of three years imprisonment in practice means that the perpetrator can be only fined, or referred to community service, or sentenced to a suspended sentence. At the same time, the extent of the prescribed sanction instructs the prosecutor and the court to use the so-called curtail, or urgent procedure to establish the legal criminal responsibility in which the injured party has quite an unfavorable position, which will be discussed in detail in the following part of the report that deals with the position of the spouse as a victim of forced sexual intercourse. Therefore, the rape of the closest underage relatives, as the worst form of domestic violence, with unforeseeable consequences for the victim, has been made into a privileged crime. The message that the legislator is sending to the potential or real perpetrators of this crime is quite clear: it pays off to rape the closest underage blood relatives, rather than other children and minors, or helpless persons, as well as others who do not possess these personal characteristics.

On the other side, the legislator made no effort in specifying anything else regarding incest, other than specifying the basic form of this crime. Everything is quite simple in this part - all the listed underage relatives are protected by the same sanction; there is no mention of other side-line relatives, regardless of the fact that in most cases, the act of sexual intercourse on underage relatives is committed by other side-line relatives, such as uncles, cousins, and other male relatives; there is no mention of the difference between a child and other injured minors, even though such a difference is stipulated in other crimes involving forced sexual intercourse.

The legislator does not recognize other qualified forms of incest either. It is not stipulated that the prescribed sanction is more severe if the crime resulted in pregnancy or in death of the minor, i.e. child. Finally, there is no mention of other forms of sexual conduct with underage relatives either, even though it appears that this prohibited behavior is quite common.

5.3.8. Spouse as the Victim of Violence

Many years had to pass before the legislator in our country decided to ensure the protection against the criminal act of rape to women who were forced to sexual intercourse by their own spouses. Even in the second half of the 20th century, it was considered that a married woman had to perform certain "predetermined" marital duties for her husband, and that, in that respect, he could have access to this right by the use of force, or threat. Relations between the spouses were then considered as a private issue and one not to be interfered with by the state.

Fortunately, one of the interventions within the national criminal legislation, in the sphere of spousal relations, removed the deficiency related to the violations of sexual freedoms in a marriage. However, instead of stipulating a strict legal regime of criminal responsibility for spousal rape, and especially severe sanctions for the perpetrators of such a crime, just as in the case of the criminal act against minors and other helpless persons, the legislator opted for an absurd solution.

In accordance with Article 186 of the CC, the prosecution of the crimes of rape and sexual intercourse with a helpless person committed against a spouse is initiated by the prosecutor's complaint. Considering its legal implications, this

legal solution implies the following legal regime: if the act of forced sexual intercourse or an act of equivalent magnitude is perpetrated against a spouse, even if the spouse is a helpless person, sick person or otherwise disabled person, the criminal responsibility is established in the curtail procedure specified under the Criminal Procedure Code (CPC). Some of the rules for the curtail procedure specify that the perpetrator may be imposed a more lenient sanction if he confesses the crime in full, the prosecutor does not have to be present during the trial, that the injured party does not have the right to appeal the first-instance decision, etc. This solution of the legislator appears even more absurd with regard to the general rules of the curtail procedure. Thus, on one side, the curtail procedure is instigated by the complaint filed by the prosecutor in case of crimes for which the maximum prescribed sanction is three years. Exceptionally, the curtail procedure can also be used to establish criminal responsibility for crimes for which the maximum prescribed sanction is five years, with the explicated consent of the accused. On the other hand, if the criminal responsibility of the accused is established in the curtail procedure, the maximum imprisonment sanction that can be imposed in such a case is three years. It is not clear how crimes of rape and sexual intercourse with helpless persons, which should, as stated in the CC, be prosecuted in accordance to the prosecutor's complaint, find their place in this group of crimes for which the CPC stipulates the curtail procedure, since these are not crimes for which a maximum sanction of three or five years of imprisonment has been prescribed. It appears, however, that the message which the legislator is sending to

the spouse who has been forced to sexual intercourse within the marriage is once again quite clear: the state intervention should be minimized, some parts of that old regime of "marital duties" are still valid, the victim is less protected than in the case of being assaulted by her extra-marital partner; the perpetrator's punishment could be more lenient if he confesses, the injured party in the proceedings cannot rely on the prosecutor because the prosecutor is not obligated to be present during the trial, and in the end, the injured party does not even have the right to appeal to a higher court instance because, after all, this is a private matter to be resolved between the spouses. In accordance with all the above mentioned, Article 186 of the CC needs to be immediately eliminated from the legal system in the country.

5.3.9. Domestic Violence

The latest intervention of the criminal legislation in the area of marital and family relations with elements of violence, at the beginning of this decade, was to prescribe a new criminal act under the name of "domestic violence". This crime was introduced into the legal system in line with the highest international standards. At the same time, by doing so, the national catalogue of the criminal law provisions was completed with the sanctioning of the relations that were, until recently, considered as private family issues. Unfortunately, right after the introduction of the criminal act of domestic violence, by the subsequent amendments to the CC, the prescribed sanctions for this crime were made inappropriately low. Thus, in accordance with Article 194 of the CC, for the basic form of the act that implies committing the violence, using

threats against life or body, insolent or inconsiderate behavior endangering the peace of mind, bodily integrity or mental state of family members, the perpetrator will be punished with a fine or one year of imprisonment. In case the crime involved the use of weapons, dangerous implements or other means suitable for inflicting serious injury to the body or for seriously impairing the health of a family member, the perpetrator will be punished with three months to three years of imprisonment.

The second qualified form of the criminal act of domestic violence exists if the crime resulted in serious bodily harm or serious health impairment to a family member, or if the crime was committed against a minor, and in that case, the prescribed sanction is one to eight years of imprisonment. However, if the crime resulted in the death of a family member, the perpetrator will be punished with three to twelve years of imprisonment.

To ensure an effective protection for the victims and, especially taking into account their secondary victimization during the course of the procedure for establishing the perpetrator's criminal responsibility, as well as the very lenient sanction policy of the courts, all sanctions for the above forms of domestic violence need to be raised as soon as possible. First of all, the basic form of this crime could not possibly be sanctioned with a fine, but only with an imprisonment sentence of minimum three months to three years. Consequently, the prescribed sanctions for the qualified forms of domestic violence need to be raised as well, with the most serious form of the crime, qualified with the death of a family member, sanctioned with a minimum sanction of five years of imprisonment, and with the generally

prescribed maximum for an imprisonment sanction. At this point, it seems that such a strict legislative policy would be the only adequate response to the proliferation of severe domestic violence, frequently resulting in the death of family members.

5.3.10. Final Considerations on Disregard of Protection Measures and Legal Gaps in the Criminal Legislation

In Article 194, specifying the sanctions for the crime of domestic violence, the CC also incriminates the violation of the domestic protection measures imposed by other courts. The sanction prescribed for this act is a fine or a maximum six month imprisonment sentence. In accordance with this legal solution, it is possible to initiate a proceeding for the establishing of the criminal legal responsibility of the perpetrator who is not complying with the family law protection measure that was imposed in the contentious procedure. This provision presents a commendable effort to link the two legal regimes of the protection against domestic violence and to complement the protection mechanisms and ensure their efficiency. At the same time, it provides the necessary response of the legal system to the act of derogation of the court, i.e. court orders. However, the existing legal solution also has some major weaknesses. First of all, the prescribed sanction is, as for the other forms of domestic violence, very low. Considering the importance of the protected values, in this case the family members who were exposed to violence, as well as the authority of the judiciary, it would be justified to raise the prescribed sanctions, so that instead of a fine, a minimum sentence of six months of

imprisonment is prescribed, and, at the same time, the maximum sentence is raised from six months to five years of imprisonment. It appears that this would ensure better enforcement of the court decisions on the protective measures, i.e. a more efficient family law protection against domestic violence. On the other hand, at this point, we should once again draw attention to the gaps in the CC, in the area of imposing the criminal legal protection measures. As we have already stated, the CC does not recognize the security measure of a restraining order which prohibits all contacts and communication, and which would, in combination with a prison sentence or a fine, by all means be an efficient instrument of legal protection against domestic violence. Left without this criminal legal mechanism, a victim of domestic violence has to address a civil court to ensure a protection measure. However, if the perpetrator violates the imposed protection measure, which happens quite often in practice, a special procedure has to be instigated to establish his criminal responsibility. If we, in addition, take into account the extent of the prescribed sanctions for the derogation of the court decision by which a protection measure was imposed, as well as the lenient sanction policy of the criminal courts, we get a complete picture of the imperfections in terms of the coordination between the two legal regimes for the prevention of domestic violence. Therefore, these two regimes should be further improved through the amendments to the existing legislation. On one side, as we have already explained, the family law responsibility mechanism should be made more efficient and comprehensive by prescribing fines for the noncompliance with

the imposed protection measures. On the other side, the criminal law security measure of a restraining order which prohibits all contacts and communication should be prescribed for the perpetrators of crimes against life and body, sexual freedoms, and marriage and family, which could in individual cases be combined with a fine and an imprisonment sentence. Finally, the criminal responsibility should also be prescribed for the noncompliance with the security measure that was imposed in a criminal procedure. Therefore, the sanction for the noncompliance with a protection measure should not end with the withdrawal of a suspended sentence - if the perpetrator had been imposed with a suspended sentence, as usually happens in cases of noncompliance with other imposed security protection measures, and should be imposed in all cases of derogation of the criminal court decision by which a restraining order prohibiting all contacts and communication was imposed, irrespective of whether the court had delivered an effective or suspended sentence of imprisonment or a fine. If the special incrimination already protects the authority of the civil court, it is even more logical to incriminate the derogation of the court that imposed the security measure and that is leading the procedure for the establishment of the criminal responsibility. That is why it is necessary to, in the Paragraph of the CC that includes the incriminations for the crimes against the judiciary, prescribe a new criminal act of noncompliance with the imposed security measure of a restraining order which prohibits all contacts and communication, as well as to prescribe sanctions against the perpetrators.

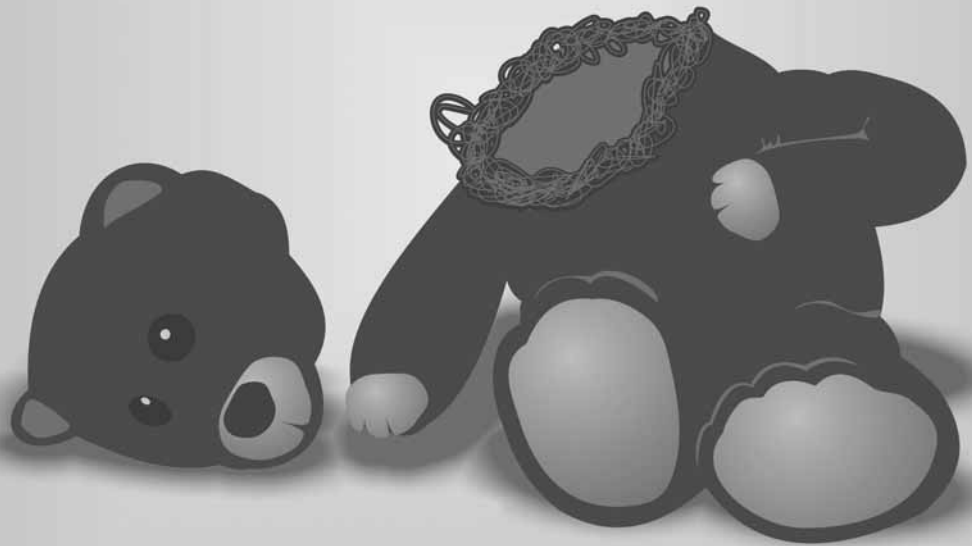
VI RECOMMENDATION - CREATING AN INTEGRATED LAW ON THE PREVENTION OF DOMESTIC VIOLENCE

Based on the conducted analysis of the legal framework for the prevention of domestic violence, it appears that it can be unmistakably concluded that it is necessary to introduce a modern and comprehensive legal text on the prevention of domestic violence into the national legal environment. Namely, based on the analysis of the existing legislation, as well as the court practice with regard to the implementation of these legal solutions, a large number of gaps that are preventing an efficient battle against this widespread phenomenon have been identified. Even if the amendments to the criminal and family legislation were to be introduced, the national legal system would not be adequate to cope with domestic violence in a systemic manner. This is why it is necessary to develop an integrated law on the prevention of domestic violence, in line with the most advanced common law experiences, and particularly those of the Western European countries. One should also mention the Closing Comments of the Committee for the Elimination of Discrimination against Women, which include recommendations for the Republic of Serbia to consider the adoption of a law on domestic violence that would integrate all important elements that are currently found in the Criminal Code and the Family Law.¹⁰ This law should contain efficient family law and criminal law provisions, as well as the provisions on the misdemeanor responsibilities for domestic violence which

are currently lacking from the positive legal environment in the country. It should also include the procedures that should be followed by the police when dealing with domestic violence, as well as the provisions on the measures for the improvement of the public authorities involved in various spheres that are directly or indirectly linked with the domestic violence phenomenon.

*10 CEDAW/C/SCG/CO/1
Closing Comments
of the Committee for
the Elimination of
Discrimination against
Women: the Republic of
Serbia,
Thirty Eighth Session,
14 May - 1 June 2007*

Da li ti ja
ličim na ...



nema opravdanja za nasilje u porodici
to je krivično delo **PRIJAVITE**

P R A X I S



VII EPILOGUE

We would like to take this opportunity to thank all those who have worked with us in the course of the last three years and who took part in providing protection to refugees and internally displaced persons survivors of domestic violence.

Experts that were engaged by Praxis to present the lectures during our seminars, roundtables and workshops gave their special contribution to the project. The material for the psychological aspect of domestic violence, as an integral part of this report, has partly been taken from the lectures given by Marina Bogdanovic and Marija Krivacic that were used for the educational programs provided by Praxis.

We are especially indebted to Professor Sasa Gajin who prepared the part on the legal aspect of domestic violence and transformed the experience of Praxis into a useful analysis of the legal system.

During the implementation of the project, a successful cooperation was established with many local non-governmental organizations, including: Counseling Center against Domestic Violence, Amity, Autonomous Women's Center, Incest Trauma Center and many others.

Our thanks also goes to the staff employed with the government institutions and nongovernmental organizations, as well as the representatives of the media for having demonstrated an exceptional interest for

gender-based violence issues and for having actively participated in our educational programs.

In addition to the staff at Praxis, the attorneys who represented our clients took part in the implementation of the project and helped us prepare this report.

And finally, we hope that the successful cooperation with all our associates will continue in the future, and that this report will contribute to improvements and positive changes in the area of the protection against domestic violence.

