

LEGAL ASSISTANCE FOR THE VICTIMS OF SEXUAL AND GENDER BASED VIOLENCE AMONG THE DISPLACED

As part of the UNHCR-funded project „Sexual and Gender Based Violence – Prevention and Response (SGBV)“, since 2006 Praxis has been providing legal aid to victims of violence among the refugee and IDP population groups. Legal aid includes the provision of information and counseling, as well as in-court representation to victims of domestic violence.

Court procedures are conducted before the municipal courts throughout Serbia and Praxis provides in-court representation to victims of domestic violence in contentious procedures for determining measures of protection against domestic violence, divorce proceedings, exercising parental rights and child support obligations.

In contentious procedures, the courts usually respect the legally determined deadlines for scheduling preliminary hearings, i.e. an 8-day deadline for domestic violence and a 15-day deadline for divorce procedures. In practice, courts are most efficient in considering the claims for child support and in such cases an 8-day deadline is most often respected.

The judges handling these cases are licensed for family court cases and are partly sensitized to understand the specific position of the victims of domestic violence. However, additional education is necessary in order for them to assume a correct attitude towards the perpetrators of violence. The most limiting factor is the Law on Contentious Procedure, which, apart from the evidence given by clients and possible witnesses in the form of testimony, prescribes material evidence, for the purpose of fortifying a judgment, particularly in cases of domestic violence and in cases when a motion for protective measures against violence has been submitted. There are usually numerous stalemates and difficult conditions in such procedures, because violence is not necessarily a physical injury nor does related evidence always exist. Even in cases in which there are medical certificates on the injuries, a court expert's opinion is obligatory which again takes time. Even this is often not sufficient evidence and the witnesses, mostly suggested by the perpetrator, are summoned repeatedly, all of them giving statements in favor of the perpetrator and fearing that his violent behaviour might be directed towards them. Moreover, the worst treatment is given to psychological violence, which is the most difficult to prove. Even though the law does not set apart this type of violence from physical violence, there is almost no material evidence for proving it.

Children, victims of domestic violence, do not have to be directly abused. Only the presence of a minor child during the violent act towards the mother is sufficient to cause negative mental consequences. However, judges usually do not take this into consideration and do not apply the discretionary standards which allow them not to be limited by the claim for the protection against violence and to determine a protective measure which was not requested if they deem that such a measure would give the best protection to the victim.

Generally speaking, the greatest problem in these contentious procedures is the execution of final court decisions, most often those containing measures for the eviction from the apartment or house, especially in small towns. The traditional attitude is that a man is not

„thrown out“ from the house, regardless of the ownership, while the „eviction“ of a woman is treated as a normal event and reasonable behaviour towards a „bad“ wife and mother. The execution of such a measure is rather delayed and in the meantime, the temporary eviction measure limited to a one-year period ceases to be valid. This requires the requesting of a new measure and initiates a devil’s circle with numerous negative consequences for the victims of violence.

The situation becomes the most complicated in cases where a woman has been thrown out from the family home and the children are left with the perpetrator. Her position is rendered even more difficult when she requests custody of her children without having a place to stay and being unemployed. Since these women are usually not allowed by their husbands to get steady jobs and given that they do not have regular incomes, they do not meet the formal criteria for getting custody of their children. It becomes even worse when the children remain with their violent father and over time, under his pressure and influence, get manipulated. When asked by the court to choose the parent with whom they would like to live, they express a negative opinion about their mother, refuse to have contacts with her and state that they would not like to live with her in the future.

The situation is not significantly better in the criminal procedures, initiated mainly by criminal complaints submitted by the police, social welfare centres, municipal prosecutor’s office, as well as non-governmental organizations and lawyers representing the victims.

Once received by the prosecutor’s office, the processing of the criminal complaints is slow and the law does not prescribe any deadlines for bringing decisions upon criminal complaints. The cases are usually decided upon after numerous written and oral urgencies made by the victim’s proxy. However, in certain towns of Serbia, conscious prosecutors do exist, as well as understanding police officers who are efficient and aware of the delicate nature of domestic violence and the necessity of an expeditious response to it in order to protect victims from repeated violence, which in the meantime often occurs.

The consequence of such slow processing is that, over time, the emotions “cool down”, and the statements given by both the victims and the potential witnesses become less expressive and less detailed. Their memory wanes either with time or under the pressure exerted by the perpetrators, which neither the witnesses nor the professional teams in the social welfare centres and educational institutions find easy to resist to.

The system of penalties prescribed by the law is too mild to frighten the perpetrators as well as the court practice in which suspended sentences are in most cases pronounced. The perpetrators are well acquainted with such practice and they are not afraid of the consequences of the criminal procedures for the act of domestic violence.

The procedure of presenting evidence, as is the case in contentious procedures, is more a matter of form than of essence and it usually ends with a routine suspended sentence, all in the attempt of satisfying both parties. In certain cases where the judges consider that there is not enough evidence for the issuance of a condemnatory judgment, they still try to find some kind of proof that the violence was committed in order to have a clear conscience for not “leaving” the perpetrator unpunished.

All the objections related to the contentious procedures, such as physical injuries and relevant evidence, statements of the witnesses mitigating the violence that occurred, the waning of memory over time, psychological abuse and children as indirect victims of violence, can be applied to the criminal procedures conducted before the criminal courts of most municipalities throughout Serbia.

As regards to the parties involved in the procedure, there is a pattern for characterizing them. The perpetrators' statements given before the court and their justification of the violence or their avoiding to admit having done it, could almost lead to the conclusion that all of them had the same wife – a bad wife, a bad mother to their children, a promiscuous woman, a lazy and untidy person, etc. Nevertheless, the perpetrators usually suggest to their victims to return to them and state that everything would have been different had they only obeyed.

Listening to the victims' statements, it also seems as if all of them had the same husband. All the perpetrators of domestic violence are characterized by excessive jealousy, possessiveness, intolerance and aggressiveness towards almost everybody who does not share their opinion. They usually do not hesitate to show outbursts of anger and threats before the court, neither in the presence of a judge nor other parties in the procedure. All of the victims themselves are terrorized by the perpetrators' violence even in the courtroom where they are prevented from giving accurate statements in their presence. If their legal representative does not remind them by asking questions, they tend to forget to present important details on the violence that they and their minor children suffered. They are afraid of the perpetrators' reaction and for that reason keep silent. They feel uncomfortable when they have to talk about the intimate details or to repeat insulting words referred to them by the perpetrator. They prefer to skip this.

Children as witnesses are also in a difficult position, because they try not to hurt either parent, often by mitigating the scenes of violence, or even suppressing them and not mentioning them during the procedure. Only when they are instigated by numerous questions, children eventually open up and testify, but usually when the violent father is not present in the courtroom. Children's testimonies are often considered the least valid. However, in certain cases their statements can be compared to the statements given by the adults, i.e. the same significance and validity can be attributed to them, if the courtroom atmosphere is adequate and in accordance with their age.

Finally, it is difficult for victims of violence and their minor children to exercise their rights through court procedures without the engagement of professionals. For that reason, by hiring a lawyer who provides in-court representation for the victims of violence, this project contributes a great deal to the protection against domestic violence among the displaced population. It is crucial for those victims to have access to complete legal aid, including in-court representation, for all court procedures that can be numerous, complicated and difficult.

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