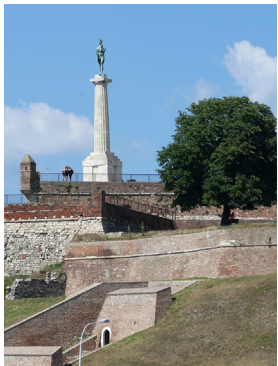


Implementation of Serbia's Domestic Violence Legislation

December 2017



**autonomous
women's
center**
11000 belgrade, tiršova 5a
Tel/fax: +381 11 2687 190
e-mail: azc@azc.org.rs
web: www.womenngo.org.rs

**The Advocates**
FOR HUMAN RIGHTS

Implementation of Serbia's Domestic Violence Legislation

A Human Rights Report

The Advocates for Human Rights
Minneapolis, Minnesota USA

Autonomous Women's Center
Belgrade, Serbia

December 2017

**autonomous
women's
center**
11000 belgrade, tiršova 5a
tel/fax: +381 11 2687 190
e-mail: azc@azc.org.rs
web: www.womenngo.org.rs



ABOUT THE ADVOCATES FOR HUMAN RIGHTS

The mission of The Advocates for Human Rights is to implement international human rights standards in order to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities. The Advocates has produced more than 80 reports documenting human rights practices in more than 25 countries, and works with partners overseas and in the United States to restore and protect human rights. The Advocates for Human Rights holds Special Consultative Status with the United Nations.

The Advocates for Human Rights

330 Second Avenue South, Suite 800

Minneapolis, MN 55401 USA

612-341-3302

hrights@advrights.org

www.theadvocatesforhumanrights.org



ABOUT AUTONOMOUS WOMEN'S CENTER

Autonomous Women's Center (AWC) is a women CSO, specialized in protection of women from domestic, intimate partner and sexual violence, with more than 20 years of experience in providing consultant and legal support to women. AWC developed programs for educations on VAW for professionals in all relevant institutions and conducted researches and policy analyses in this field. For more then 15 years, AWC is monitoring state policies, prepares legislative proposals and amendments and publicly advocate for policy changes. AWC coordinates network of women CSO's in Serbia called Women against violence, and is a member of the two largest European women networks Women Against Violence Europe (WAVE) and European Women's Lobby (EWL).

Autonomous Women's Center

Tiršova 5a

11000 Belgrade, Serbia

+381 11 2687 190

azc@azc.org.rs

www.womenngo.org.rs/en/



ACKNOWLEDGMENTS

This report was authored by The Advocates for Human Rights and the Autonomous Women's Center.

Special thanks to Oak Foundation and Sigrid Rausing Trust for providing the financial support to produce this report.

Special thanks and acknowledgments are due to Vanja Macanovic, Natasa Jovanovic, Sonja Lalic, Amy Bergquist, Karen Coppens, Theresa Dykoschak, Madeline Lohman, Kara Lyons, Jennifer Miernicki, Rose Park, and Robin Phillips.

The authors would like to thank the many volunteers, interns, and others who helped with the preparation of this report.

© 2017 The Advocates for Human Rights

All rights reserved. Published 2017.

ISBN: 0-929293-81-9

This report is dedicated to the women of Serbia.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	6
INTRODUCTION	11
POLICE	14
ATTITUDES REGARDING DOMESTIC VIOLENCE	14
POLICE TRAINING	15
RESPONSES TO REPORTS OF DOMESTIC VIOLENCE	16
RISK ASSESSMENTS	18
INFORMATION TO VICTIMS	18
COLLECTING EVIDENCE FROM THE SCENE AND POLICE REPORTS	19
Reporting on prior incidents	21
WARNINGS	22
ARRESTS	23
POLICE ROLE IN CRIMINAL AND MISDEMEANOR PROCEEDINGS	24
POLICE ROLE IN FAMILY LAW PROCEEDINGS: ENFORCEMENT OF PROTECTIVE MEASURES AND VIOLATIONS OF PROTECTIVE MEASURES	27
FAMILY LAW JUDGES	29
ATTITUDES	29
CONFRONTATION	31
PROTECTIVE MEASURES: GENERALLY	31
PROTECTIVE MEASURES: IMMEDIATE PROTECTION IS NOT AVAILABLE	33
No <i>ex parte</i> orders	33
Interim protective measures are available but delayed	33
PROTECTIVE MEASURES: EVICTION	34
COURT DELAYS	36
Heavy case loads	37
Undue reliance on reports from CSWs	37
Delays arising from service of summons	39
PROBLEMS IN ENFORCEMENT AND EXECUTION OF ORDERS	39
INFORMATION SHARING AMONG ACTORS	41
NO DOMESTIC VIOLENCE SCREENINGS PRIOR TO MEDIATION OR RECONCILIATION	42

PROSECUTORS.....	44
TRAININGS AND ATTITUDES	45
INVESTIGATIONS	46
CHARGING: MISDEMEANOR VERSUS CRIMINAL	46
EVIDENCE AND VICTIM TESTIMONY	48
DISMISSING CRIMINAL CHARGES.....	50
PRIVATE PROSECUTION	51
DEFERRAL OF PROSECUTION	52
Humanitarian fines and community service	53
Psychosocial treatment.....	54
MEASURES TO SECURE THE DEFENDANT	55
Detention	56
COURTROOM SECURITY.....	57
SENTENCES.....	58
Security measures.....	60
ROLE IN FAMILY LAW PROTECTIVE MEASURES	60
CRIMINAL JUDGES.....	64
ATTITUDES.....	64
COURTROOM SECURITY.....	66
TIMELINES	67
CRIMINAL PROCEEDINGS	69
Evidence: victim testimony	69
Evidence: forensic	71
Evidence: other	71
Measures to secure the defendant and for unobstructed criminal proceedings.....	72
Predominant Aggressor Determinations	73
Violations of Family Law Protective Measures	73
SANCTIONS.....	74
Punishments.....	75
Influential Factors	76
Cautionary measures: suspended sentence	77
Protective supervision	80

Security measures 81

REHABILITATION 83

MISDEMEANOR JUDGES 85

NO SPECIALIZATION 86

TRAINING AND ATTITUDES 87

SUMMARY VS. REGULAR MISDEMEANOR PROCEEDINGS 88

EVIDENCE 89

CONFRONTATION 90

RESTRAINING ORDERS 91

SENTENCING 91

DUAL CHARGES AND CONVICTIONS 94

PROTECTING THE VICTIM – PRECAUTIONARY MEASURES 94

APPEALS 97

CENTERS FOR SOCIAL WORK 98

 TRAINING 98

 ATTITUDES 99

 SAFETY OF CSW WORKERS 99

 RISK ASSESSMENTS 100

 VICTIM SERVICES 101

 Financial assistance 101

MANDATORY REPORTING 103

REQUESTS FOR PROTECTIVE MEASURES 104

OPINIONS AND REPORTS TO THE FAMILY LAW COURTS 105

BATTERER INTERVENTION PROGRAMS 107

 CHILDREN 110

VICTIM SERVICES 112

 SHELTERS AND SAFE HOUSES 112

 LEGAL AID 115

OTHER NGO VICTIM SERVICES 118

 TRACKING FEMICIDES 119

DOCTORS 120

 IMPLEMENTATION OF THE HEALTH PROTOCOL 120

BARRIERS TO EFFECTIVE RESPONSES TO DOMESTIC VIOLENCE	122
Attitudes.....	122
Domestic violence screenings.....	123
Heavy patient loads	124
ADDITIONAL MEASURES TO PROTECT VICTIMS.....	124
Referrals to resources	125
Mandatory reporting	125
EVIDENCE	127
Health protocol form	128
Injury classification and qualification.....	129
Forensic doctors.....	130
INTER-AGENCY ACTIONS.....	132
CONCLUSIONS AND RECOMMENDATIONS.....	134
PARLIAMENT	134
MINISTRY OF THE INTERIOR.....	135
MINISTRY OF JUSTICE.....	135
MINISTRY OF HEALTH	136
MINISTRY OF SOCIAL POLICY	136
POLICE	137
PROSECUTORS.....	137
CRIMINAL JUDGES.....	139
MISDEMEANOR JUDGES	140
FAMILY LAW JUDGES	140
CSWs	141
DOCTORS.....	141
INTER-AGENCY ACTIONS.....	142
APPENDIX A. EXCERPTS OF LAWS	143
Criminal Code (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/12, 104/13, 108/14, 94/16)	143
Criminal Procedure Code (Official Gazette no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, and 55/2014).....	149
Family Law (Official Gazette no. 18/2005, 72/2011 and 6/2015).....	160

Law on Public Peace and Order (Official Gazette, no. 51/92, 53/93, 67/93, 48/94, 101/2005, 85/2005) (replaced by Law on Public Peace and Order (Official Gazette no. 06/2016))..... 163

Law on Public Peace and Order (Official Gazette of RS no. 06/2016) (replacing Law on Public Peace and Order (Official Gazette, no. 51/92, 53/93, 67/93, 48/94, 101/2005, 85/2005)) 164

Misdemeanor Law (Official Gazette no. 65/2013)..... 165

Law on Police (Official Gazette, 2005 and no. 92/2011) (replaced by Law on Police, Official Gazette, no. 06/2016)..... 178

Law on Police (Official Gazette, no. 06/2016) 180

Law on Social Protection (Off. Gazette, no. 24/2011) 182

APPENDIX B. COMMENTARY ON THE LAW ON PREVENTION OF DOMESTIC VIOLENCE 185

 I. GENERAL PROVISIONS 185

 II. AUTHORITIES AND INSTITUTIONS..... 187

 III. PROCEEDINGS 189

 IV. COOPERATION IN THE PREVENTION OF DOMESTIC VIOLENCE 192

 VI. PROTECT AND SUPPORT VICTIMS OF DOMESTIC VIOLENCE AND VICTIMS OF CRIMES DEFINED BY THIS LAW 195

 VII. A RECORD OF CASES OF DOMESTIC VIOLENCE..... 196

 VIII. APPLICATION OF MONITORING 198

 IX. SANCTIONS..... 198

 X. CLOSING AND FINAL CONDITIONS 198

APPENDIX C. LIST OF TERMS AND ABBREVIATIONS..... 200

EXECUTIVE SUMMARY

Violence against women is a global epidemic that deprives women of their human rights and is deeply rooted in gender inequalities. The World Health Organization estimates that 35 percent of women worldwide have experienced either physical or sexual violence at some point in their lives.¹

Women's experiences in Serbia are no different. A study by the Serbian Directorate for Gender Equality determined that, in 2010, 37.5 percent of women in the Republic of Serbia² were victims of domestic violence; 54.2 percent were victims over the course of their lives.³ Men were the perpetrators of violence in the vast majority of cases.⁴ In nearly three-quarters of cases of violence against women, the perpetrator was a current or ex-husband or partner, and perpetrators repeated violence more than once in 75 percent of cases, and more than five times in 50 percent of cases.⁵ At least 192 women were reportedly killed by family members or partners in Serbia between January 1, 2010, and December 31, 2015,⁶ and this number may be even higher because the government does not track data on femicides.

Despite these high percentages, however, few cases of domestic violence make their way into and through the judicial system. As described by the Ombudsman, the number of criminal reports that police submit to the public prosecutor is ten times lower than the number of cases police receive, and the number of police-initiated misdemeanor proceedings is even lower.⁷ At least three-quarters of reported cases of domestic violence end with a warning by police.⁸ And indictment and trial occur in a mere 25 percent of criminal reports submitted to the public prosecutors.⁹ Twenty-five percent of charges of domestic violence are dismissed, and deferred criminal prosecution is applied in another 15.2 percent of cases.¹⁰

Serbia has undertaken a number of measures to address violence against women. The government has ratified several relevant treaties. Serbia should be commended as a leader in the region and one of the

¹ World Health Organization, Violence against women: Intimate partner and sexual violence against women, Fact sheet, Updated November 2017, <http://www.who.int/mediacentre/factsheets/fs239/en/>.

² Excluding the territory of the Autonomous Province of Kosovo and Metohija and the Autonomous Province of Vojvodina.

³ List of issues and questions with regarding to the consideration of periodic reports: Serbia, Addendum, Replies of Serbia to the list of issues to be taken up in connection with the consideration of its combined second and third periodic reports (CEDAW/C/SRB/2-3), CEDAW/C/SRB/Q/2-3/Add.1, ¶139 (citing *Mapping of Domestic Violence against Women*).

⁴ *Id.*

⁵ *Id.*

⁶ Women against Violence Network, Femicide: Narrative and Quantity Annual Report for 2015, and Femicide: Statement for 2013, both available at <http://www.zeneprotivnasilija.net/en/femicide-in-serbia>.

⁷ Republic of Serbia Protector of Citizens, Special Report of the Protector of Citizens on the Implementation of the General and Special Protocols on Protection of Women against Violence, para. 14, Belgrade, Nov. 2014 ("2014 Special Report of the Ombudsperson").

⁸ *Id.* at ¶14.

⁹ *Id.* at ¶15.

¹⁰ *Id.*

first countries to ratify the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).¹¹

Serbia has also enacted several laws that address violence against women specifically. Serbia included domestic violence as a crime in its Criminal Code in 2002. The Family Law entered into force in July 2005, which at that time included new protection measures against domestic violence. These measures include eviction of the perpetrator from the shared home and restraining orders from approaching persons or places. Due to the Family Law’s broader definition of “family member,” the scope of persons covered by its civil protections is greater than those covered under the Criminal Code.¹²

Beginning in 2010, several ministries also adopted protocols relating to domestic violence. The General Protocol¹³ recognizes that the police, social protection system, health institutions, public prosecutors, and courts have affirmative obligations to act in cases of domestic violence.¹⁴ In addition, the Ministry of Interior, the Ministry of Health, and the Ministry of Labor, Employment and Social Policy each adopted special protocols addressing how these ministries should act in response to reports of domestic violence. The Ministry of Justice and State Administration adopted a special protocol for judges and public prosecutors (“Judicial Protocol”) in January 2014.

Despite these advances, however, full implementation of Serbia’s laws has not been achieved and certain practices and procedures have a negative impact on safety for victims and accountability for offenders in Serbia. The description below summarizes the main findings of this report.

Family law courts can issue civil protective measures; however, the law does not include *ex parte* protective measures. The lack of emergency protection from family law courts and delays in the issuance of orders for protection weaken protection for victims in Serbia. The Istanbul Convention requires parties to ensure that restraining or protection orders are available for immediate protection.¹⁵

¹¹ The Istanbul Convention addresses several forms of violence against women and directs States parties to exercise due diligence to prevent, investigate, punish, and provide reparation for acts of violence, including domestic violence. Council of Europe, Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”), Treaty No. 210, Art. 5, ¶2.

¹² The scope of those covered under the definition of domestic violence in the new Law on Prevention of Domestic Violence, which entered into force on June 1, 2017, is similarly broad.

¹³ Vesna Jarić, ed., “General Protocol for Action and Cooperation of Institutions, Bodies and Organizations in the Situations of Violence against Women within the Family and in Intimate Partner Relationships” (“General Protocol”), Multisectoral Cooperation – Institutional Response to Violence against Women, Belgrade, Serbia, United Nations Development Program, 2013, General Protocol, at 14. In addition to the General Protocol, the Multisectoral Cooperation also includes the Special Protocol For Action of The Centre for Social Work – Custody Authority in Cases of Domestic and Intimate Partner Violence against Women (“CSW Protocol”), Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women (“Police Protocol”), Republic of Serbia Ministry of Health – Special Protocol for The Protection and Treatment of Women Victims of Violence (“Health Protocol”), and Overview of The Procedure to be followed by Educational Institutions in Case of Violence Against Girls and Family Violence. These protocols are available at http://www.rs.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_opsti%20protokol_eng.pdf?download.

¹⁴ General Protocol, at 14.

¹⁵ Istanbul Convention, Art. 53, ¶¶1, 2.

No such authority existed under Serbian law at the time of research.¹⁶ It can take the courts months – or even years – to issue protective measures because of heavy caseloads, procedural delays caused by the perpetrator, or extended deadlines to receive Centers for Social Work (CSWs) reports, even though such reports are not required. Family law judges appear to uniformly require reports from the CSW to issue even interim protective measures. In addition, even though violations of protective measures are crimes, family law judges are not required to provide their orders to the police, which can result in violations not being prosecuted. Courts also do not monitor compliance with the protective measures.

Moreover, when judges issue protective measures, the majority are restraining orders. Family law judges rarely order the violent party to be evicted from a shared home.¹⁷ Indeed, judges stated a preference to avoid granting eviction measures if another protective measure can achieve the same purpose. And interviewees indicated that the rare situations where judges granted eviction were cases of extreme physical violence or where there was evidence that the perpetrator had financial capacity to support himself.

The family law courts are not the only courts plagued by delays in proceedings. The most common reasons cited for delays in other courts were problems in serving perpetrators and high caseloads. Between January 1, 2013 and June 30, 2014, courts concluded only 60 percent of the proceedings that had been initiated during that time.¹⁸ Criminal proceedings relating to domestic violence typically last two years, and there were reports of cases lasting five years. One exception to delayed proceedings is the summary proceeding in misdemeanor courts, which sometimes conclude in less than 24 hours; however, amendments to the definition of public place in the Law on Public Peace and Order have reduced the law's application in domestic violence cases.

Judicial and police responses to domestic violence cases remain weak. Criminal and misdemeanor sanctions are minimal, with suspended sentences imposed in most criminal cases.¹⁹ There were reports of repeat offenders receiving multiple suspended sentences. Prosecutors also defer prosecutions and imposed humanitarian fines or community service instead. Police issue an overwhelming number of warnings in response to domestic violence; one study identified that police issue warnings in 71 percent of reports.²⁰ These responses have a chilling effect on victim reports and foster a sense of impunity in perpetrators.

In addition to these weak responses, judges are requiring more evidence to impose sanctions, and judges and prosecutors place a significant amount of weight on victim testimony. Victim recantation or refusal to testify is common in domestic violence proceedings because of the social and economic pressure placed on victims. As a result of these recantations, prosecutors do not bring criminal charges, or judges drop cases. Further, even when victims testify, family law and misdemeanor courts use the

¹⁶ Article 17 of the LPDV, which entered into force on June 1, 2017, provides that police can impose temporary emergency measures to temporarily remove the perpetrator from the house and ban the perpetrator from contacting or approaching the victim. It is not clear yet whether these provisions will be implemented effectively.

¹⁷ See, e.g., Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

¹⁸ 2014 Special Report of the Ombudsperson, ¶16.

¹⁹ *Id.*

²⁰ *Id.* at ¶26.

dangerous practice of confrontation. This practice can be particularly harmful because it places the victim within a short distance of her attacker, allowing a perpetrator to intimidate and exert power over the victim. In addition to potentially re-traumatizing the victim, this practice may result in the court misinterpreting the victim's testimony or body language, given the lack of judicial training on the dynamics of domestic violence.

Although interviewees shared examples of system actors who demonstrated a deep understanding of the dynamics of domestic violence and a commitment to ending impunity, there were also examples of professionals whose interactions with victims demonstrated patriarchal, victim-blaming attitudes. Many of these attitudes could be countered through good training programs on the dynamics of domestic violence and the roles of these professionals; however, such trainings are not universally available. Of particular concern was the lack of training available to doctors and judges. Police appear to have taken significant steps to extend training to the greatest number of employees.²¹

Victims also receive limited services and support. Free legal aid is not generally available, and the strict requirements to qualify exclude many victims where it does exist. Although the new Law on Prevention of Domestic Violence (LPDV),²² described below, states that victims of domestic violence have the right to free legal aid under a special law, the Law on Free Legal Aid has not yet been adopted by the government. Legal aid at reduced cost is available in certain locations; however, the legal services provided are often limited to drafting documents. The NGOs that provide these services face funding shortages. In addition, there are economic and procedural barriers for women to use the limited number of shelter spaces that are available, and financial aid from the government is too low to assist women in breaking economic dependence on violent partners.

Some recent legal developments and amendments to laws are positive steps, and the impacts of these changes are noted throughout the report, where relevant. Amendments to the Criminal Code also entered into force in June 2017, adding crimes for stalking (Article 138a) and sexual harassment (Article 182a). These amendments also increased the minimum penalty for rape from three years to five years²³ and removed the requirement that victims initiate cases of marital rape by motion.²⁴

In addition to the Family Law's protective measures, victims can also obtain protection through a separate law, the LPDV. Serbia's LPDV entered into force on June 1, 2017 and will have positive and negative consequences for victims. On one hand, the LPDV allows police to issue temporary, emergency eviction and restraining orders that can be extended by the court up to 30 days and requires collaboration among system actors on domestic violence cases.²⁵ The LPDV also provides that violations of the emergency protection orders are misdemeanors subject to summary proceedings and punished by up to 60 days in prison. On the other hand, victims are left unaware of court decisions because courts

²¹ See, e.g., *Id.* at 22-23.

²² Entered into force on June 1, 2017. This law provides protection for victims that is separate and in addition to the Family Law's protective measures.

²³ Criminal Code, Art. 178, ¶1.

²⁴ *Id.*, Art. 186.

²⁵ Violations of these emergency measures are misdemeanor offenses, subject to imprisonment for up to 60 days. LPDV, Art. 36.

are not required to inform the victim whether they decided to extend the emergency order or not. The LPDV also references the Council for the Prevention of Domestic Violence, which will monitor the implementation of the law.²⁶ The LPDV also provides for the creation of a Central Register to assist professionals in domestic violence proceedings, but this register had not been established at the time of publication.

²⁶ *Id.*, Art. 35.

INTRODUCTION

Serbia has made significant advances in enacting multiple laws and protocols that address domestic violence. These laws include the Criminal Code, which specifically criminalizes domestic violence, the Family Law, which provides for protective measures in cases of domestic violence, and the Law on Public Peace and Order, which is used in misdemeanor proceedings related to domestic violence.²⁷ The recent Law on Prevention of Domestic Violence (LPDV) is another step forward in addressing domestic violence in Serbia, and references to the LPDV are included throughout this report, where relevant.

First, Article 194 of the Criminal Code prohibits domestic violence and is the main provision under which acts of violence between family members can be prosecuted.²⁸ Article 194(1) defines domestic violence as the “use of violence, threat of attacks against life or limb, insolent or ruthless behaviour [that] endangers the tranquility, physical integrity or mental condition of a member of his family.”²⁹ The relationship between the victim and perpetrator is a key element of Article 194.³⁰ The protections of Article 194 do not extend to ex-spouses or unmarried intimate partners who do not have mutual children or live in the same household because these individuals are not included within the Criminal Code’s definition of “family member.”³¹ Article 194(5) also states that violations of civil protective measures are crimes punishable by imprisonment and a fine.

Appellate courts have strictly interpreted endangering tranquility under Article 194(1) as a “consequence” of a crime that causes long-lasting effects.³² Thus, a single act would not endanger someone’s tranquility under Article 194(1) unless it resulted in long-term consequences.³³ In a case where a husband poured water over his wife and forced her to sleep wet next to an open window during winter, the appellate court overturned the basic court’s conviction, stating:

. . . It is not enough that the perpetrator of the criminal act jeopardized the tranquility of the family for the first time. It is necessary that this disturbance lasts for a shorter or longer period of time . . . [that] the endangerment presents a continuous condition for members of the family. . . . This court finds the ruthless behavior of the defendant did

²⁷ Most misdemeanor cases involving domestic violence were charged under Article 6 or 12 of the previous Law on Public Peace and Order. The parallel provisions under the new Law on Public Peace and Order are Articles 7, 8, and 9.

²⁸ Article 194(4) also addresses domestic violence offenses that result in the death of a family member, but prosecutors may use Article 114(10) for aggravated murder because it carries a higher penalty. Interview with Criminal Judge, Location B, Oct. 16, 2014. Article 114(10) carries a prison sentence of ten years minimum or thirty to forty years, and Article 194(4) carries a prison term of three to fifteen years. Article 194(4) applies to murder by negligence, while a prosecutor must show premeditation to use Article 114. Interview with Prosecutor, Location B, Oct. 16, 2014 (explaining that, conversely, the aggravated murder provision of Article 114 requires premeditation).

²⁹ Criminal Code, Art. 194(1).

³⁰ Interview with Prosecutor, Location F, Oct. 20, 2014.

³¹ Criminal Code, Art. 112(28). These individuals are, however, covered by the definition of family member under Article 197 of the Family Law.

³² Interview with Criminal Judge, Location B, Oct. 16, 2014.

³³ *Id.*

not jeopardize the tranquility of the victim, considering the fact that he has committed this action only during one instance³⁴

Second, the Family Law clearly prohibits domestic violence and further provides that “[e]veryone has the right to protection from domestic violence in accordance with the law.”³⁵ Specifically, domestic violence is defined as “the behavior by which one family member endangers the physical integrity, mental health or tranquility of another family member.”³⁶ “Family members” include spouses and former spouses, children, those who live in the same family household, those who live or lived together, and those who are or were in an emotional or sexual relationship or have a child in common.³⁷ Since the Family Law definition includes those who are or were in a relationship, the group of persons who qualify as victims of domestic violence under the civil Family Law is broader than that under the Criminal Law.

The Family Law describes five protective measures that a court may order against domestic violence perpetrators:

1. the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property;
2. the issuance of a warrant for moving into a family apartment or house, regardless of a right to property or a lease to immovable property;
3. prohibition of getting closer to a family member than a certain distance;
4. prohibition of access to the vicinity of the place of residence or workplace of a family member;
5. prohibition of further molestation of a family member.³⁸

With regard to misdemeanor domestic violence cases, those offenses were charged under Articles 6 or 12 of the previous Law on Public Peace and Order. These articles were not specific to domestic violence and generally addressed violence. Article 6 covered disruptions of public peace and order by arguments or shouting, interference with safety, threats to life or of bodily harm, insults or mistreatment, use of force, or provocation or participation in physical fights.³⁹ Article 12 addressed indecent, impudent, or ruthless behavior that interferes with peace or disrupts public order and peace.⁴⁰ The new Law on Public Peace and Order that entered into force in January 2016 includes articles that parallel these offenses; however, the sanctions are lower in many cases⁴¹ and its definition of “public place” precludes its

³⁴ *Id.*

³⁵ Family Law, Art. 10(2).

³⁶ *Id.*, Art. 197.

³⁷ *Id.*

³⁸ Family Law, Art. 198(2).

³⁹ Amendments to the Law on Public Peace and Order that entered into force on January 26, 2016, also are not specific to domestic violence and are general articles addressing quarrels or noise in public places (Art. 7), or insults and the use or threat of violence (Art. 9). Law on Public Peace and Order (Off. Gazette of RS, no. 6/2016).

⁴⁰ Amendments to the Law on Public Peace and Order that entered into force on January 26, 2016, also are not specific to domestic violence and are general articles addressing rude, insolent or ruthless behavior (Art. 8). Law on Public Peace and Order (Off. Gazette of RS, no. 6/2016).

⁴¹ *Id.*, Arts. 7-9.

application to domestic violence situations unless they occur in public, were audible, or the consequences occurred in public.⁴²

Beginning in 2010, several ministries adopted protocols related to domestic violence. The General Protocol recognizes that the police, social protection system, health institutions, public prosecutors, and courts have positive obligations to act in cases of domestic violence.⁴³ The special protocols for the police, health care, CSWs, and judiciary/public prosecutors detail specific actions that these actors should take in responding to domestic violence.⁴⁴

Several of these changes were developed following major reforms within the judicial system in Serbia. In 2010 and 2012, new laws on the organization of courts, judges, and prosecution entered into effect, and the Criminal Code and Criminal Procedure Code were amended in 2013. These laws significantly increased the role of public prosecutors in criminal cases and altered the roles of criminal judges and the police.

Despite the legal and policy advances and efforts to improve court structures, significant gaps remain both within the language of the laws and with their implementation to protect victims of domestic violence and hold perpetrators accountable. As described by one interviewee, “[i]t is our experience that there are a lot of things on the books, but problems arise when you implement them.”⁴⁵

To monitor the implementation of these laws, the Autonomous Women’s Center and The Advocates for Human Rights conducted fact-finding interviews in Serbia to assess the government’s implementation of domestic violence laws. The authors conducted two monitoring missions in October 2014 and February 2015 in four cities, including several municipalities within the capital, Belgrade. The authors conducted 92 interviews with ministry officials, non-governmental organizations (NGOs), shelter workers, Centers for Social Work (CSW) employees, police, judges, prosecutors, health care workers, ombudspersons, and local government officials. Since the monitoring missions, The Autonomous Women’s Center has provided information on legislative updates and other developments.

This report presents findings on the implementation of relevant legislation and makes recommendations, based on international human rights standards, on ways to increase victim safety and offender accountability.

⁴² *Id.*, Art. 3.

⁴³ General Protocol, at 20.

⁴⁴ The Special Protocol for the Judiciary in cases of violence against women in the family and intimate relationships was issued by the Ministry of Justice and State Administration, and it is dated Jan. 14, 2014. It addresses the special role of the public prosecutors, and criminal, family, and misdemeanor judges. Number 119-01-00130/2013-05, available at mpravde.gov.rs/files/Protokol_p14.1.2014..doc. This document was not available in English.

⁴⁵ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014.

POLICE

Police play an essential role in responding to domestic violence in Serbia. Police are a gateway to the justice system and receive the highest number of reports within Serbia's legal and social service systems.⁴⁶ They also serve as a point of access to victim services; for example, most referrals to CSWs come from the police.⁴⁷

Serbian laws and policies give police important responsibilities in domestic violence cases.⁴⁸ Several laws, primarily the Criminal Procedure Code, Law on Police, and Misdemeanor Law, set forth the police authority and roles. In addition, the Ministry of the Interior (MoI) adopted the Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women (Police Protocol) in February 2013.⁴⁹ The protocol describes appropriate police conduct in cases of domestic violence and requires ongoing assessment of measures to protect against domestic violence, identification of needs and improvements, and monitoring, including collection and dissemination of data.⁵⁰ Both the Police and General Protocols provide detailed procedures for police to follow in domestic violence cases and their interactions with other actors.

Police have taken steps to disseminate the Police Protocol,⁵¹ and reports of their efforts to implement the protocol have been positive.⁵² Although police have shown marked progress in improving their response to domestic violence, interviews reflected additional areas for improvement, including training and implementation of procedures, evidence collection and reporting to prosecutors, eliminating the use of warnings, and increasing requests for misdemeanor precautionary measures.

ATTITUDES REGARDING DOMESTIC VIOLENCE

As an entry point to the justice system, police demeanors and attitudes often impact whether a victim will pursue justice.⁵³ Interviewees expressed a range of opinions on the police, from exemplary police officers to those who blamed the victim for bringing violence upon herself.⁵⁴

⁴⁶ 2014 Special Report of the Ombudsperson, at 25.

⁴⁷ Interview with CSW, Location G, Oct. 21, 2014 (majority of cases notified by the police); Interview with CSW, Location C, Oct. 14, 2014 (police report 70 percent of the cases); Interview with CSW, Location F, Oct. 21, 2014 (majority of cases notified by the police).

⁴⁸ This role increases under the LPDV because police have the authority to order temporary, emergency restraining orders and evictions.

⁴⁹ 2014 Special Report of the Ombudsperson, at 15.

⁵⁰ Police Protocol, at 89.

⁵¹ Interview with Police, Location B, Oct. 13, 2014; Interview with Police, Location E, Oct. 15, 2014 (reporting that they received a printing of a smaller, pocket version of the Police Protocol).

⁵² Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; *see also* Interview with NGO, Location J, Feb. 23, 2015 ("Police did the most to give life to their Special Protocol.").

⁵³ As described below in Collecting Evidence from the Scene and Police Reports, the information that police gather and relay from the scene informs the prosecutors, who, in turn, decide whether to qualify an incident as a criminal offense and whether to detain a perpetrator. When police incorporate their personal attitudes in the information they convey, this can influence the prosecutor's response and result in serious crimes going unpunished. Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with NGO, Location J, Feb. 25, 2015.

One NGO recognized the great contribution that police can make in protecting victims of violence, describing particular officers with whom they have good cooperation as “pearls within the institution.”⁵⁵ Such officers are important allies when other officers fail to respond appropriately. The NGO described a police officer who refused to intervene in a domestic violence case within the Roma community. The victim had been dragged and had rope marks on her legs. The initial police officer assessed the situation as “not being serious” and without risk. The victim repeatedly called the police for help over several hours, but could not elicit a response. Finally, an NGO contacted a “pearl” police officer at home, who then contacted his colleague and resolved the situation.⁵⁶

Interviews revealed concerns about police attitudes that minimize violence and result in police inaction.⁵⁷ In one example involving repeated physical violence against a woman and her children, the police blamed the victim and asked, “How did you provoke him so that he got so crazy? It’s 11:00 p.m. and the children are not in bed, so he has a reason to beat you. You are at home all day, and you make the same lunch every day.”⁵⁸ In another example, an elderly victim was subjected to physical violence by her husband and son. At times, they cut off the electricity to her part of the house. When she reported to the police, the police spoke with everyone, but did nothing else. As a result, the elderly victim did not contact the police again.⁵⁹

POLICE TRAINING

The Police Protocol calls for training on regulations and principles of police conduct, dynamics of domestic violence, prejudices, the prosecutor’s role, court procedures, support groups for victims, and information exchange with other sectors.⁶⁰ In addition, the Police Protocol urges basic training for all officers working on domestic violence reports, with specialized training for officers who more frequently address issues of domestic violence.⁶¹ Such trainings are especially important to counteract police attitudes that minimize violence. As observed by one interviewee, “Abusers use all the mechanisms to make it impossible for the victim of domestic violence to get protection. It is very dangerous because institutions like the CSW and police do not recognize hidden indicators of violence and often believe the abusers.”⁶²

⁵⁴ Interview with NGO, Location F, Oct. 22, 2014 (insulting the victim’s nationality). *See also* Interview with Police, Location B-1, Oct. 17, 2014; Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁵⁵ Interview with NGO, Location G, Oct. 20, 2014.

⁵⁶ *Id.*

⁵⁷ Interview with NGO, Location J, Feb. 23, 2015; Interview with Criminal Judge, Location A, Oct. 13, 2014 (police prioritize physical violence); Interview with NGO, Location H, Oct. 23, 2014 (reporting that police lecture domestic violence victims to “keep silent, to be more tolerant,” and then leave).

⁵⁸ Interview with NGO, Location F, Oct. 22, 2014.

⁵⁹ Interview with NGO, Location J, Feb. 23, 2015.

⁶⁰ Police Protocol, at 88.

⁶¹ *Id.*, at 88-89.

⁶² Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

The police appear to have taken significant steps to train officers on domestic violence.⁶³ Interviews revealed that the police receive trainings from multiple sources, including the MoI,⁶⁴ local police directorates,⁶⁵ and NGOs.⁶⁶ Police reported completing at least some basic training for responding to domestic violence,⁶⁷ including annual or semi-annual trainings.⁶⁸ Interviews revealed, however, that not all police undergo appropriate training.⁶⁹ Other interviews revealed specific training gaps, such as recognizing signs of coercive control.⁷⁰

RESPONSES TO REPORTS OF DOMESTIC VIOLENCE

Police maintained they respond to all reports of domestic violence.⁷¹ Interviews revealed, however, that whether they respond at times depends on their assessment of the “veracity” of the caller and the severity of the situation.⁷² At least one interview revealed instances when police dismissed a woman’s fears in high-risk cases. A CSW interviewee described how the police would not respond to long-term violence despite the perpetrator’s repeated break-ins into the victim’s home:

He was leaving different notes saying, “God will punish you.” He was unscrewing light bulbs. She was afraid he would put something in her food. He would leave semen in her

⁶³ Information reported to the Protector of Citizens by the police directorates and police stations. There were 487 police officers trained in nine municipalities between January 2013 and June 2014. 342 of these officers were in Niš, 59 in Vranje, and 40 in Cacak. 2014 Special Report of the Ombudsperson, at 22-23. At least one NGO, however, reported that most police in their area were not aware of the current protocols. Interview with NGO, Location H, Oct. 23, 2014.

⁶⁴ Previous Law on Police, Art. 153. The Ministry of the Interior is required to implement advanced training in its in-house educational institutions and other units; however, it was unclear whether the Ministry of the Interior had developed trainings for police officers to specialize in domestic violence. Interview with Police, Location G, Oct. 20, 2014.

⁶⁵ Interview with Police, Location B, Oct. 13, 2014; Interview with Family Judge, Location F, Oct. 20, 2014; Interview with Police, Location H, Oct. 24, 2014. Each police directorate has designated two coordinators, and police officers reported that they had conducted trainings with respect to the Police Protocol.

⁶⁶ Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location B, Oct. 15, 2014; Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁶⁷ Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location B, Oct. 13, 2014 (describing visits to all 27 of the police districts to give three-hour lectures on domestic violence); Interview with Police, Location B, Oct. 17, 2014.

⁶⁸ Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁶⁹ Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location D, Oct. 15, 2014 (reporting NGO seminar attendance but “no official training”).

⁷⁰ Interview with CSW, Location B, Oct. 15, 2014 (but noting that the police deal well with indicators of sexual and physical violence). Coercive control includes tactics such as stalking, monitoring or regulating the victim’s activities of daily living such as her access to money, food, and transportation. The tactics may include controlling how the victim dresses, cleans, cooks, or performs sexually. These types of extreme control measures target the victim’s autonomy, independence and dignity in ways that compromise her ability to make decisions to escape from the subjugation. The Advocates for Human Rights, *Coercive Control: A New Model for Understanding Domestic Violence*, StopVAW, available at www.stopvaw.org.

⁷¹ Interview with Police, Location B, Oct. 17, 2014.

⁷² Interview with Police, Location B, Oct. 17, 2014; Interview with Police, Location B-1, Oct. 17, 2014; Interview with Police, Location D, Oct. 15, 2014.

towels. . . . She was trapped in this apartment for months. He would break the lock and she would fix it, and he would break the lock, and she would fix it. It was a very expensive lock, so that was part of the economic abuse. He even used a drill to break the lock. . . . [The police] would not respond. They would say, ‘she is calling again.’ They would not intervene in the proper way. They would not go to the crime scene.⁷³

Police generally recognize that “[t]he first and the main duty of the officer who comes to the scene is to stop the violence and to separate the victim and the perpetrator.”⁷⁴ In addition, at least one police station reported bringing a female officer when responding to domestic violence calls if she is on the shift.⁷⁵ Police take statements⁷⁶ and, if there are objects that may be used as evidence, they conduct an onsite investigation,⁷⁷ take pictures of the home, and collect weapons used by the perpetrator.⁷⁸ With regard to telephone reports, police appear to be implementing some portions of the Police Protocol, including those that relate to collecting information. Officers from at least four police stations reported that they ask the recommended questions from the Police Protocol,⁷⁹ including questions about victim safety, presence of weapons, details about the event, and the parties’ history of violence.⁸⁰

If a party needs medical attention, police either call for assistance or transport the injured person to the emergency room.⁸¹ Not all police consistently follow these practices, however, and there were examples of police failing to provide appropriate responses to victims with visible injuries. An NGO described the story of a woman with severe injuries:

Last year, we had a case of a woman with so many injuries. . . . She asked the police to take her to the health care center, but they did not. . . . After she fainted [from the injuries], they got scared and informed the health care service. She is a victim of violence, and the police came and brought both of them, the victim and perpetrator, in the same car to the police station. . . . After [an NGO filed a petition against the police officers], she experienced a lot of pressure from the police that she dared to file a petition against them. . . . The complaint against the police was for both not bringing her to the health center and also for bringing them both in. . . . She suffered more serious

⁷³ Interview with CSW, Location E, Oct. 15, 2014.

⁷⁴ Interview with Police, Location F, Oct. 20, 2014.

⁷⁵ Interview with Police, Location E, Oct. 15, 2014. This reflects the good practice in the Police Protocol of having female police officers interview female victims. Police Protocol, at 84

⁷⁶ Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location D, Oct. 14, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location B, Oct. 13, 2014; Interview with Doctor, Location F, Oct. 22, 2014 (noting that they go to the scene with police and police always separate the victim and perpetrator).

⁷⁷ Interview with Police, Location C, Oct. 14, 2014.

⁷⁸ Interview with Police, Location D, Oct. 14, 2014.

⁷⁹ Police Protocol, at 78-79; Interview with Police, Location B, Oct. 13, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location D-1, Oct. 14, 2014.

⁸⁰ Interview with Police, Location E, Oct. 15, 2014.

⁸¹ *Id.*; Interview with Police, Location B, Oct. 17, 2014; Interview with Doctor, Location H, Oct. 22, 2014 (stating the police always call for medical assistance in cases of domestic violence); Interview with Police, Location D, Oct. 14, 2014 (stating they refer both parties to doctors, if there are no other witnesses).

harm because the police wouldn't take her there. . . . Her lips were lacerated, and she had a swollen eye.⁸²

RISK ASSESSMENTS

Risk assessments are an effective tool that police can use to identify dangers to victims.⁸³ The Police Protocol recognizes their importance and references the need for officers to assess the risks to victims and themselves.⁸⁴ One police officer pointed out that “all parts of the system should be working on risk assessments, because the next cycles of violence could be much stronger, and the victim could be killed. What happens in our leaky system?”⁸⁵

Despite the importance of risk assessments, interviews revealed that police were not consistently using them.⁸⁶ One officer, who looked to the Ministry for further guidance, admitted being unsure of what actions to take because the Police Protocol did not provide an assessment tool. Other officers used the common risk factors listed in the Police Protocol.⁸⁷ The 2017 LPDV includes provisions requiring police to conduct risk assessments when they receive reports of domestic violence.⁸⁸ It is crucial that police use the standard risk assessment tools and receive training to ensure consistent and effective implementation.

INFORMATION TO VICTIMS

Pursuant to the Law on Police⁸⁹ and the Police Protocol,⁹⁰ police are required to inform victims of their rights and the measures they or prosecutors take with respect to the perpetrator.⁹¹ Police generally

⁸² Interview with NGO, Location F, Oct. 20, 2014. In another example, a perpetrator would not let his wife go to the doctor and she suffered violence for many years. When she finally called the police, they did not bring her to the health care center for an assessment of untreated injuries of potentially dislocated joints or broken bones.

⁸³ Risk assessments are tools to establish how safe or at risk of future violence a survivor may be, ensure that she receives appropriate protection, and help her develop a safety plan.

⁸⁴ The Police Protocol includes a list of 14 common risks in domestic violence situations. Police Protocol, at 81.

⁸⁵ Interview with Police, Location B, Oct. 13, 2014.

⁸⁶ Interview with Prosecutor, Location A-1, Oct. 13, 2014. Risk assessments by police officers are even more important because prosecutors report not using risk assessments and relying on the police and victims for this information.

⁸⁷ Interview with Police, Location F, Oct. 20, 2014; Police Protocol, at 81.

⁸⁸ See LPDV, Art. 16.

⁸⁹ The previous Law on Police provided that “[i]n performing law enforcement duties, the police shall provide information and advice to individuals relevant to their personal safety and property, as well as other related information obtained by the police....” Law on Police (2005, 2011), Art. 189.

⁹⁰ The Police Protocol acknowledges that the victim needs information about all participants involved in providing assistance and ensuring safety, and the Police Protocol requires the police to clearly inform the victim of her legal rights, especially the protective measures and the measures and actions to be undertaken by police in the future against the perpetrator. Police Protocol, at 85-86.

⁹¹ If the prosecutor determines that there are no elements of an *ex officio* crime, the Police Protocol requires police officers to inform the victim of the qualification, tell her that she can file a private complaint, and notify the victim of police measures undertaken in connection with the Misdemeanor Law (Police Protocol, at 83). Article 51 of the Criminal Procedure Code also states that the prosecutor must notify the victim that they can object to the prosecutor's decision. The LPDV also requires that relevant institutions that have the first contact with a victim of domestic violence give the victim complete notification of authorities, legal persons and associations and the

reported that, after taking a victim's statement, they inform her of her options.⁹² Police typically do so verbally rather than provide information in writing,⁹³ even though she may be in shock after the violence.⁹⁴ Moreover, police practice on providing information was inconsistent. The Gender Equality Provincial Ombudsperson expressed concern about the failure of police to inform a victim about her right to file protective measures.⁹⁵ Police admitted that the information a victim received regarding applications for protective measures under the Family Law depended on which officer responded to the scene.⁹⁶ The LPDV, however, now requires police to send written information to a victim if they issue an emergency protection measure, including which measures they issue and when they will expire.⁹⁷

COLLECTING EVIDENCE FROM THE SCENE AND POLICE REPORTS

Police intervention at the scene is the first step to protect victims and hold perpetrators accountable. Other duties include “[c]ollect[ion of] all data necessary to inform and prove the criminal offense or misdemeanor of domestic or intimate partner violence.”⁹⁸ This information is especially important as it can impact the qualification of charges. Pursuant to the Criminal Procedure Code, prosecutors qualify whether an incident is a criminal offense based on information from the police.⁹⁹ Reports that document repeat violence involving the same parties can compel prosecutors to charge acts as criminal, rather than misdemeanor, offenses.¹⁰⁰ Prosecutors also rely on police information to identify next steps to take in the investigation.¹⁰¹

actions provided for protection and support, in a way and language that a victim of violence can understand. LPDV, Art. 29.

⁹² Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location D, Oct. 14, 2014. One police station reported good practices in providing referrals to SOS hotlines and the local municipality, but it was unclear whether they also provided information on protective measures. Interview with Police, Location E, Oct. 15, 2014.

⁹³ Interview with Police, Location D, Oct. 14, 2014.

⁹⁴ Interview with Police, Location B, Oct. 13, 2014; Interview with Police, Location E, Oct. 15, 2014.

⁹⁵ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁹⁶ Interview with Police, Location F, Oct. 20, 2014. The police interviewee attributed this shortfall to the lack of training to familiarize all officers with the new protocols and regulations, the high number of new police officers, and the lack of recent or new trainings before the police respond to the scene.

⁹⁷ LPDV, Art. 17.

⁹⁸ Police Protocol, at 80. The Criminal Procedure Code also states: “[i]f there are grounds for suspicion that a criminal offense which is prosecutable *ex officio* has been committed, the police [are] required ... to detect and secure traces of the criminal offense and objects which may serve as evidence, as well as to collect all information which could be of benefit for the successful conduct of criminal proceedings,” Criminal Procedure Code, Art. 286, and notify the public prosecutor within no more than 24 hours about the performance of the measures the police have taken. Criminal Procedure Code, Art. 286; Interview with Police, Location H, Oct. 24, 2014.

⁹⁹ Criminal Procedure Code, Art. 43; Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B, Oct. 17, 2014. Interview with Police, Location B-1, Oct. 17, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location B-2, Oct. 15, 2014.

¹⁰⁰ Interview with Prosecutor, Location F, Oct. 20, 2014.

¹⁰¹ Criminal Procedure Code, Art. 285; Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Police, Location B, Oct. 17, 2014; Interview with Police, Location D, Oct. 14, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014 (“We mostly collect evidence through the police but we can do it directly as well.”). 2014 Special Report of the Ombudsperson, p. 26-27 (stating “out of the total number of 6624 criminal charges pressed with the [prosecutors], the majority of them were pressed by the police – 5284, followed by victims – 1051, and

As described in the Prosecutors Section on Evidence and Victim Testimony, when police do conduct effective investigations and gather evidence, they can help promote successful prosecutions even without victim cooperation. In one case of severe physical violence, the police immediately photographed the scene and victim.¹⁰² Although the victim later withdrew her statement, the prosecutor and courts could still use evidence from witnesses and police photographs.¹⁰³ The offender received a six-month prison sentence.¹⁰⁴

Nevertheless, interviews revealed that police at times prepare incomplete reports or fail to collect all information from the scene,¹⁰⁵ which prevents critical information from being relayed to the prosecution.¹⁰⁶ For example, the Police Protocol directs police to specify the type and location of the victim's injuries and, with the victim's consent, take photographs.¹⁰⁷ The type and extent of injuries affects how the prosecutor qualifies an incident. Police, however, are not consistently following this procedure, and prosecutors reported that police rarely take photographs.¹⁰⁸ Instead, police defer to forensic doctors or experts to photograph and describe a victim's injuries.¹⁰⁹ Not all victims, however, visit a forensic or medical doctor, and consequently, police observations in their report may be the only documented description of injuries.¹¹⁰

Interviewees offered several explanations for the gaps in information collection. Police do not have a checklist of the information prosecutors need to charge and prosecute domestic violence offenses. Without this tool, the prosecutor on call bears the responsibility for asking the appropriate questions so that police do not omit any information.¹¹¹ Given these gaps, several interviewees recommended

other bodies and institutions – 289.”). Information collected by the police can also be used in misdemeanor proceedings or by the Family Law courts in connection with requests for protective measures.

¹⁰² Interview with Criminal Judge, Location F, Oct. 20, 2014.

¹⁰³ As described in the Criminal Judge Section on Evidence: victim testimony, victims may decide to withdraw their statements for a variety of reasons, including fear, financial constraints, or a misunderstanding of the process.

¹⁰⁴ Interview with Criminal Judge, Location F, Oct. 20, 2014.

¹⁰⁵ Interview with NGO, Location F, Oct. 22, 2014.

¹⁰⁶ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

¹⁰⁷ Police Protocol, at 83. The Police Protocol also requires the police to “[c]ollect clothes that are torn or bloody, as well as objects that can provide traces, etc., in accordance with the rules of criminal tactics and techniques” and “[p]hotograph and describe the appearance of the scene of events as found...”

¹⁰⁸ Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location E, Oct. 15, 2014 (stating “but also when the patrol is at the crime scene and doing interviews there, the police record in the report any injuries police might notice. When we file a misdemeanor petition or in the case of criminal charges and are witnessing in the court, usually the other side would ask us what we witnessed in [the] crime scene. And they insist on a description.”).

¹⁰⁹ Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location G, Oct. 20, 2014 (forensic experts report to the scene when the violence is more severe); Interview with Police, Location H, Oct. 24, 2014 (stating “it’s not up to us to assess.”); Interview with Police, Location D, Oct. 14, 2014; Interview with Police, Location B, Oct. 17, 2014; Interview with Police, Location B, Oct. 17, 2014. Despite the emphasis on the medical report, however, police rarely refer victims to forensic doctors for reports that are “more seriously accepted as evidence” by the courts. Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location B, Oct. 17, 2014.

¹¹⁰ Interview with Police, Location F, Oct. 20, 2014.

¹¹¹ Interview with Prosecutor, Location I, Feb. 27, 2015.

additional trainings on securing a crime scene and effective reporting to prosecutors for charging decisions, as well as the development of a standard checklist of questions.¹¹² At least one police station had established a standard list of 11 questions,¹¹³ but this did not appear to be a widespread practice. The Ministry of the Interior has created a checklist for specialized officers to conduct risk assessments required by the LPDV.¹¹⁴

Reporting on prior incidents

Police reports also provide critical documentation of an offender's history. The Police Protocol broadly requires police to submit to prosecutors a history of all prior convictions, records of domestic violence protective measures and any violations, reports of violence to the police, and information from other sources.¹¹⁵ An NGO indicated, however, that they still advise their clients to ask for copies of police reports in case they became unavailable.¹¹⁶ Police also reported they rarely received orders for protective measures from family law courts.¹¹⁷

Shortfalls in police reports can create serious gaps in the prosecution process. Because police provide information to misdemeanor judges, proper collection and transmission of all relevant information is essential.¹¹⁸ Misdemeanor courts may assume that police include the perpetrator's history of violence,¹¹⁹ when in fact, not all police stations do so.¹²⁰ Without it, a judge may erroneously assume there is no prior misdemeanor history and consequently, fail to identify repeat offenders. One NGO specifically attributed ineffective criminal prosecutions to omissions of domestic violence histories in police reports.¹²¹ As with misdemeanor judges, criminal judges do not typically investigate a perpetrator's history but tend to rely on the police report. If that report omits his history, they cannot make an appropriate assessment, particularly when the current incident does not involve extreme violence.¹²²

A positive development is that risk assessments under the LPDV require a specialized police officer to assess whether the perpetrator has previously committed domestic violence.¹²³ The police provide this risk assessment to the Center for Social Work and the public prosecutor who, if he or she moves to

¹¹² Interview with Attorney, Location J, Feb. 25, 2015; Interview with Police, Location B, Oct. 13, 2014.

¹¹³ Interview with Police, Location G, Oct. 20, 2014; Interview with Attorney, Location J, Feb. 25, 2015; Interview with Police, Location B, Oct. 13, 2014.

¹¹⁴ Personal communication from NGO to The Advocates for Human Rights, via email, Nov. 19, 2017 (on file with authors).

¹¹⁵ Police Protocol, p. 83; Interview with Police, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location F, Oct. 20, 2014.

¹¹⁶ Interview with NGO, Location J, Feb. 23, 2015.

¹¹⁷ See Police Role in Family Law Proceedings: Enforcement of Protective Measures and Violations of Protective Measures.

¹¹⁸ Interview with Misdemeanor Judge, Location B, Oct. 17, 2014; Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014.

¹¹⁹ Interview with Misdemeanor Judge, Location H, Oct. 24, 2014.

¹²⁰ Interview with Misdemeanor Judge, Location B, Oct. 17, 2014.

¹²¹ Interview with NGO, Location H, Oct. 23, 2014.

¹²² *Id.*

¹²³ LPDV, Art. 16.

extend the emergency measures, also assesses the risk again and provides the risk assessment to the court.¹²⁴

WARNINGS

When a victim is finally encouraged to report the violence and police only issue a warning, she loses her trust in the institutions. . . . The police justify issuing warnings by saying that it was a one-off incident that happened for the first time. They keep forgetting the possibility a victim suffered and was exposed to violence for many years and that perhaps this was the [first] time she reported the violence.

- Gender Equality Ombudsperson¹²⁵

Police may issue warnings to persons “whose actions or failure to act may endanger personal or third-party safety or property, disturb public order or endanger traffic, or when there are reasonable grounds to expect that a person may commit, or induce another to commit, a criminal offense.”¹²⁶ Available data indicated that police overwhelmingly issued warnings in response to domestic violence, instead of pursuing criminal or misdemeanor actions. The Ombudsman’s 2014 report indicated that in 14 municipalities and cities, 71 percent of reports ended with an oral warning by the police to the perpetrator of violence. Just 10.6 percent of reports ended with the police pressing criminal charges, and 5.5 percent of reports ended with the police initiating misdemeanor charges.¹²⁷ The Gender Equality Ombudswoman also expressed concern about the high number of warnings.¹²⁸

The circumstances for which police used oral warnings varied. Some police insisted they never issue warnings in any circumstances¹²⁹ or would not use them in cases where there were visible injuries.¹³⁰ Others reserve warnings for certain cases,¹³¹ such as cases involving intoxication or verbal insults.¹³² Several officers reported seeking direction from the prosecutor.¹³³

At times, police used warnings in cases when they should pursue charges. One officer issued a warning in response to a violation of a restraining order instead of seeking criminal prosecution.¹³⁴ Another interviewee revealed how the police issued an oral warning after a husband beat his wife in front of the CSW.¹³⁵ Others used warnings for repeat offenders.¹³⁶

¹²⁴ LPDV, Arts. 16 and 17.

¹²⁵ Interview with Gender Equality Ombudsperson, Novi Sad, Oct. 22, 2014.

¹²⁶ Previous Law on Police, Art. 39; 2016 Law on Police, Art. 72.

¹²⁷ 2014 Special Report of the Ombudsperson, p. 26. 2629/3713, 395/3713, and 205/3713, respectively.

¹²⁸ In 2013, 62 percent of police reports ended in warnings. Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (2,564 out of 4,114).

¹²⁹ Interview with Police, Location B-1, Oct. 17, 2014.

¹³⁰ Interview with Police, Location F, Oct. 20, 2014.

¹³¹ Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location B, Oct. 17, 2014.

¹³² Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location B-2, Oct. 15, 2014.

¹³³ Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location B-1, Oct. 17, 2014.

¹³⁴ Interview with Police, Location E, Oct. 15, 2014; Criminal Code, Art. 194, para. 5.

¹³⁵ Interview with Minister of Social Policy, Belgrade, Oct. 18, 2014.

ARRESTS

The 2013 Criminal Procedure Code curtailed police authority to arrest and detain perpetrators. Police formerly decided whether to detain perpetrators.¹³⁷ After 2013, public prosecutors decide whether acts are criminal offenses and whether the police should arrest and hold the suspect in custody.¹³⁸ Absent criminal court approval extending detention, the period of custody is limited to 48 hours.¹³⁹ Police reported that prosecutors make these determinations, but do not notify police in a timely manner.¹⁴⁰ In addition to delays, officers also expressed frustration because prosecutors rarely impose detention even though necessary for victim safety.¹⁴¹ In these cases, shelters are the only immediate option to protect victims.¹⁴²

Police can detain perpetrators for misdemeanor offenses for a limited period of time.¹⁴³ Interviewees, however, were unclear on their authority. Some police indicated they had discretion to hold a perpetrator in custody for 48 hours,¹⁴⁴ while others waited until the prosecutor determined criminal charges.¹⁴⁵ Interviewees also reported different durations for detention, ranging from 4 hours¹⁴⁶ to 12

¹³⁶ Interview with Police, Location F, Oct. 20, 2014.

¹³⁷ Interview with Police, Location H, Oct. 24, 2014.

¹³⁸ Interview with Police, Location F, Oct. 20, 2014; Interview with NGO, Location J, Feb. 25, 2015; Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location B, Oct. 13, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Police, Location B-1, Oct. 17, 2014.

¹³⁹ Criminal Procedure Code, Art. 294; Interview with Police, Location G, Oct. 20, 2014. This 48-hour period of time allows the police to collect evidence, take witness statements, obtain medical documentation, and create criminal complaints, while the perpetrator does not have contact with others. If the police complete their work before the 48 hours expires, the prosecutor can authorize the defendant's release.

¹⁴⁰ Interview with Police, Location F, Oct. 20, 2014.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Police Protocol, at 82. First, if the perpetrator is drunk, police are able to hold him for up to 12 hours. Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location B, Oct. 13, 2014; Interview with Police, Location B, Oct. 17, 2014; Misdemeanor Law, Art. 193 (if there is a risk the perpetrator will continue to carry out violations). Second, police can detain in situations of aggravated violence (Interview with Police, Location D-1, Oct. 14, 2014) or if a person's life is threatened. Interview with Police, Location C, Oct. 14, 2014. Third is a situation where police estimate that the perpetrator will continue the violence. Misdemeanor Law, Art. 190; Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location E, Oct. 15, 2014. Fourth, they can detain for up to 24 hours if there are no judges or prosecutors on call. Misdemeanor Law, Art. 190 (if cannot be immediately taken to court and the police suspect he will immediately resume the offense); Interview with Police, Location D-1, Oct. 14, 2014. Fifth is a situation where the police catch the perpetrator conducting a criminal offense. Interview with Police, Location B, Oct. 13, 2014. In this situation, the police must bring the perpetrator directly to the prosecutor. Criminal Procedure Code, Art. 291. And finally, if the prosecutor has decided not to pursue criminal proceedings, the police can detain the person according to misdemeanor proceedings. Interview with Police, Location B, Oct. 13, 2014; Interview with Police, Location D-1, Oct. 14, 2014.

¹⁴⁴ Interview with Police, Location E, Oct. 15, 2014 (stating "the perpetrator would be brought to the station, because my authority is that I don't need the prosecution consent to detain him for 48 hours. Those are my authorities").

¹⁴⁵ Interview with Police, Location C, Oct. 14, 2014; Interview with Police, Location D-1, Oct. 14, 2014 (stating "in case the prosecutor has decided that, according to the Criminal Code, the perpetrator is to be detained for 48 hours, we inform the perpetrator of the decision, and he will be taken to prosecutor for summary proceedings where the prosecutor decides to do summary proceedings.").

hours¹⁴⁷ to 24 hours.¹⁴⁸ This confusion may result in police failing to effectively exercise their authority to detain a perpetrator. Such authority is especially important in misdemeanor cases, where judges report they lack authority to detain defendants.¹⁴⁹

POLICE ROLE IN CRIMINAL AND MISDEMEANOR PROCEEDINGS

Police are required to immediately submit criminal complaints to the public prosecutors.¹⁵⁰ After this step, police involvement in criminal proceedings is limited to testifying,¹⁵¹ collecting further evidence,¹⁵² assisting with service of process as needed,¹⁵³ and enforcing court orders.¹⁵⁴

In contrast, police play a larger role in misdemeanor proceedings.¹⁵⁵ Under the Misdemeanor Law, the injured party, the public prosecutor, or another authorized party can initiate misdemeanor proceedings.¹⁵⁶ In reality, victims rarely, if ever, file such a request.¹⁵⁷ Instead, police generally initiate

¹⁴⁶ Interview with Police, Location D-1, Oct. 14, 2014.

¹⁴⁷ Interview with Police, Location B, Oct. 13, 2014.

¹⁴⁸ Misdemeanor Law, Art. 190; Interview with Police, Location B, Oct. 13, 2014, Previous Law on Police Art. 53, para. 1 (stating it cannot exceed 24 hours for disturbance of peace or endangering public order).

¹⁴⁹ The misdemeanor courts report that they do not have the authority to detain defendants, so it is important that the police detain when necessary to protect victims from further harm. Interview with Misdemeanor Judge, Location B, Oct. 17, 2014.

¹⁵⁰ Under Article 281 of the Criminal Procedure Code, police are required to immediately submit criminal complaints to the public prosecutors.

¹⁵¹ Police disagreed on the frequency with which they testified in criminal proceedings. One officer stated that ninety percent of cases went to deferral (Interview with Police, Location G, Oct. 20, 2014) while another indicated that the officers who made the complaint and were at the scene will frequently be called to clarify facts. Interview with Police, Location G, Oct. 20, 2014. *See also* Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location D-1, Oct. 14, 2014.

¹⁵² Criminal Procedure Code, Arts. 285 and 286.

¹⁵³ Criminal Procedure Code, Art. 242; Interview with Family Law Judge, Location I, Feb. 26, 2016. The police may also be involved in the service of process on criminal defendants or respondents in Family Court proceedings. One of the many complaints regarding problems with the criminal proceedings was the delay in service. At least one police station was complimented for its procedures and coordination with the courts with respect to serving a summons on a defendant. In that station, the police will call the court if they are unable to find a defendant, and they then send a written report as well. The court reported that this knowledge allowed the court to use other measures to secure the defendant's presence. Interview with Criminal Judge, Location F, Oct. 20, 2014.

¹⁵⁴ Interview with Criminal Judge, Location A-2, Oct. 13, 2014. Police bring people to court-ordered treatment. If a defendant receives a suspended sentence, the Criminal Court cannot place the perpetrator in the hospital. If the defendant then refuses to comply with an order for treatment, the court can order the police to take the perpetrator to the hospital for treatment.

¹⁵⁵ Misdemeanor offenses relating to domestic violence are described in more detail in the Misdemeanor Judges Section of this report.

¹⁵⁶ Misdemeanor Law, Arts. 127 (public prosecutor), 179, 180 (initiation of misdemeanor proceedings).

¹⁵⁷ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

these proceedings, after a determination by the public prosecutor.¹⁵⁸ If the prosecutor decides not to pursue a criminal case,¹⁵⁹ police may initiate misdemeanor proceedings.¹⁶⁰

Some police interviewees expressed confusion as to their role in misdemeanor proceedings. One police officer explained they cannot initiate misdemeanor proceedings when the prosecutor abandons criminal proceedings.¹⁶¹ This misunderstanding can result in missed opportunities to pursue valid misdemeanor claims in the absence of criminal prosecution.

Police do not consistently notify victims once they initiate misdemeanor proceedings. For example, when the prosecutor did not initiate criminal proceedings for light bodily injuries, police were expected to initiate misdemeanor proceedings and inform the victim of her right to initiate private criminal prosecution.¹⁶² At least one officer reported he informs the victim after he initiates proceedings,¹⁶³ yet others indicated the victim would need to ask the police to learn this status.¹⁶⁴

As described in the Misdemeanor Judges Section on Summary vs. Regular Misdemeanor Proceedings, police acting as petitioner decide whether to file the misdemeanor as a summary or regular proceeding.¹⁶⁵ Summary proceedings can be resolved in as little as one day and sanctions imposed immediately.¹⁶⁶ In most cases, police filed domestic violence-related offenses as summary proceedings.¹⁶⁷

¹⁵⁸ Interview with Misdemeanor Judge, Location H, Oct. 24, 2014; Interview with Police, Location G, Oct. 20, 2014; Interview with Misdemeanor Judge, Location B, Oct. 17, 2014; Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B-1, Oct. 17, 2014; Interview with Police, Location B, Oct. 17, 2014; Interview with Police, Location E, Oct. 15, 2014.

¹⁵⁹ Criminal Procedure Code, Art. 284. If the public prosecutor dismisses a criminal complaint that was submitted by a police authority, the prosecutor will notify the police of the dismissal.

¹⁶⁰ Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B, Oct. 17, 2014; Interview with NGO, Location J, Feb. 23, 2015 (police file a misdemeanor when the prosecutor drops criminal charges). Some police indicated they notify the prosecutor when they initiate misdemeanor proceedings. Interview with Police, Location B-1, Oct. 17, 2014. Because there is sometimes a two- to three-month delay in the prosecutor's decision, this is a critical step if the prosecutor has not yet determined whether the actions contain elements of criminal offenses.

¹⁶¹ Interview with Police, Location H, Oct. 24, 2014.

¹⁶² Interview with Police, Location D-1, Oct. 14, 2014

¹⁶³ Interview with Police, Location E, Oct. 15, 2014.

¹⁶⁴ Interview with Police, Location B, Oct. 17, 2014.

¹⁶⁵ Summary proceedings compared to regular proceedings are described in the Misdemeanor Judges Section on Summary vs. Regular Misdemeanor Proceedings. Interview with Misdemeanor Judge, Location H, Oct. 24, 2014; Interview with Police, Location H, Oct. 24, 2014 (explaining that once the prosecutor qualifies as a misdemeanor, he will not interfere on whether summary or regular). Police sometimes reach this decision in consultation with the misdemeanor judge. Interview with Police, Location G, Oct. 20, 2014.

¹⁶⁶ Interview with Police, Location H, Oct. 24, 2014; Interview with Police, Location G, Oct. 20, 2014.

¹⁶⁷ Indeed, up to 80 percent of misdemeanor cases were routed as summary proceedings in certain jurisdictions. Interview with Police, Location H, Oct. 24, 2014. For a discussion of the difference between summary and regular misdemeanor proceedings, see the Misdemeanor Judges Section on Summary vs. Regular Misdemeanor Proceedings; Interview with Misdemeanor Judge, Location H, Oct. 24, 2014.

In addition, police have an opportunity to request precautionary measures that would protect the victim, including restraining orders.¹⁶⁸ They rarely do.¹⁶⁹ One misdemeanor judge, for example, had never seen a request for precautionary measures in her 10 years as a judge.¹⁷⁰ Not surprisingly, with the low number of precautionary measures, police receive few calls regarding violations of those measures.¹⁷¹

Police can ask the court to order precautionary measures for addiction treatment, and they also play a role in their implementation.¹⁷² They transport perpetrators to health institutions for expert opinions on drug or alcohol addiction.¹⁷³ If the perpetrator does not comply with outpatient treatment, the police can bring him for regular checkups; this practice, however, is reportedly rare.¹⁷⁴

Of concern were reports that police had initiated misdemeanor proceedings against both the man and the woman in domestic violence cases.¹⁷⁵ For example, when there are conflicting statements on verbal violence, police may note in the complaint who reported the incident for the court's consideration.¹⁷⁶ This practice can deter victims from reporting violence to the police out of fear they will be charged with an offense. Even more concerning were reports that both parties were indeed charged, even when one used verbal abuse and the other used physical violence.¹⁷⁷ Although dual misdemeanor charges were reportedly rare, data was unavailable to determine the extent of this practice.¹⁷⁸

¹⁶⁸ Precautionary measures also include mandatory drug or alcohol treatment. Misdemeanor Law, Art. 52. Interviewees were inconsistent on whether judges can issue precautionary measures without a request from the petitioner. Interview with Misdemeanor Judge, Location F, Oct. 21, 2014; Interview with Police, Location B-1, Oct. 17, 2014 (explaining judges will issue the measures, even without a request); Interview with Police, Location B, Oct. 17, 2014 (explaining they are not authorized to request measures and judges order few measures); Interview with Police, Location E, Oct. 15, 2014 (reporting they are not authorized to request measures); Interview with Police, Location H, Oct. 24, 2014 (explaining that requests are limited to alcohol treatment or seizure of objects).

¹⁶⁹ Precautionary measures may be imposed to eliminate conditions that enable or encourage a perpetrator to commit a new offense. Misdemeanor Law, Art. 51; Interview with Police, Location F, Oct. 20, 2014.

¹⁷⁰ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

¹⁷¹ Interview with Police, Location E, Oct. 15, 2014.

¹⁷² Interview with Misdemeanor Judge, Location H, Oct. 24, 2014; Misdemeanor Law, Art. 59. Judges can also request the evaluation of whether this measure is warranted.

¹⁷³ Interview with Misdemeanor Judge, Location H, Oct. 24, 2014.

¹⁷⁴ *Id.*

¹⁷⁵ Interview with NGO, Location J, Feb. 23, 2015; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location H, Oct. 24, 2014.

¹⁷⁶ Interview with Police, Location B-1, Oct. 17, 2014.

¹⁷⁷ Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location E, Oct. 15, 2014 (misdemeanor charge for verbal violence and criminal or misdemeanor charge for physical violence).

¹⁷⁸ Dual charges are addressed in more detail under the Misdemeanor Judges Section on Dual Charges and Convictions of this report.

POLICE ROLE IN FAMILY LAW PROCEEDINGS: ENFORCEMENT OF PROTECTIVE MEASURES AND VIOLATIONS OF PROTECTIVE MEASURES

Police rarely, if ever, receive copies of orders for protective measures from the family law courts,¹⁷⁹ even though the violations of such measures are criminal offenses.¹⁸⁰ This creates a gap in the enforcement of orders. As noted by one officer, “How can we file a criminal charge when we do not have in writing who actually has a protection measure?”¹⁸¹ When police do not know of these orders, the burden is on victims to demonstrate to the police that the measures are in place.¹⁸²

Some good practices for sharing orders were identified between CSWs, who receive the orders from the courts, and police, but these were uncommon.¹⁸³ When systems actors share information regarding protective measures, however, there can be positive results:

We received notification by the institute for penalties and corrective facilities (jail) that the person who was convicted and confined is being released today. They notified us that they had information that he intends to go back to the house where the victim lives, although there is a protective measure [prohibiting him from approaching the house]. We contacted the case manager at the CSW, and we found out that measure expired. [Then we contacted] the victim, and we informed her that she should file a request for an extension of the measure. We are now conducting the risk assessment, and we will send that assessment to the competent authority.¹⁸⁴

Police lack direct authority to enforce the Family Law protective measure evicting the perpetrator. If the perpetrator does not voluntarily comply with eviction, the victim must seek an additional order from an enforcement judge. Only after the enforcement judge issues that order can police assist court executors with the eviction.¹⁸⁵ This additional proceeding places further burden on victims and delays protection. Even with the enforcement judge’s order, police still face barriers to enforcing eviction orders. For example, police explained they cannot enter someone’s home without a warrant, even if they are acting to enforce an eviction.¹⁸⁶ The police further described that “If we can see through the window the

¹⁷⁹ Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location B, Oct. 13, 2014; Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location B, Oct. 17, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B-1, Oct. 17, 2014; Interview with NGO, Location J, Feb. 23, 2015; Interview with Family Law Judge, Location I, Feb. 26, 2015.

¹⁸⁰ Criminal Code, Article 194, ¶5.

¹⁸¹ Interview with Police, Location B, Oct. 13, 2014.

¹⁸² Interview with Police, Location G, Oct. 20, 2014; Interview with NGO, Location J, Feb. 25, 2015 (victims have to have a copy of the order); Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B, Oct. 17, 2014.

¹⁸³ Interview with NGO, Location J, Feb. 23, 2015.

¹⁸⁴ Interview with Police, Location F, Oct. 20, 2014.

¹⁸⁵ Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location E, Oct. 15, 2014.

¹⁸⁶ Interview with Police, Location B, Oct. 17, 2014.

person who needs to be evicted, we will notify the prosecutor. We will ask for a warrant to enter with force, but in practice, we don't get those warrants."¹⁸⁷

¹⁸⁷ *Id.*

FAMILY LAW JUDGES

Family law judges may encounter victims of domestic violence in a variety of proceedings, including divorce, parental rights, and child custody proceedings. Importantly, family law judges also preside over requests for protective measures in situations of domestic violence. As the primary avenue through which many victims seek civil protection from domestic violence, the family court's responsiveness and application of appropriate measures is especially important. As interviews revealed, family law judges in Serbia struggle to balance significant caseloads and a high volume of petitions that are "urgent" requests. Many interviewees experience extensive delays in requests for interim and final protective measures, and interviews revealed that not all protective measures are regularly granted or even requested. Moreover, even if a judge grants the protective measures, courts do not monitor compliance or inform the police of the protective measures. Interviewees also reported delays and difficulties in enforcement. Many judges have received training on domestic violence by NGOs or third parties.¹⁸⁸ As findings revealed, however, more systematic training is still needed to address problems with judges' responses to domestic violence.

ATTITUDES

Judges at times display attitudes that prioritize preservation of the family over victim safety. In one example, a judge in a divorce proceeding "verbally attacked the victim and told her she should reconsider the divorce as she is still young."¹⁸⁹ Even though the victim had protective measures against her husband for a broken jaw and bruises on her arms, the judge tried to convince the victim to give her marriage another try.¹⁹⁰ The judge never addressed the man, leading the interviewee to believe the judge faulted the victim for the domestic violence.¹⁹¹ An interviewee reported judges have also advised women to give up the domestic violence cases to expedite their ongoing divorce cases.¹⁹²

Judicial misunderstandings of domestic violence can translate to shorter terms for orders for protection or delays, even in situations of severe violence. In one example, the court issued protective measures for only eight months, even though the perpetrator had previous criminal charges for inflicting head injuries on the woman and had destroyed her property.¹⁹³ In another case, a judge delayed ruling on the issuance of interim measures for an entire year. In this case, the perpetrator held a knife to the woman's

¹⁸⁸ Interview with Family Law Judge, Location F, Oct. 20, 2014 (stating "we regularly attend seminars on domestic violence. But we need more seminars and trainings. This is not enough."); *see also* Interview with Family Law Judge, Location B-1, Oct. 13, 2014; Interview with Family Law Judges, Location B-2, Oct. 17, 2014; Interview with Family Law Judge, Location I, Feb. 25, 2015 (describing seminars offered by NGOs and bar associations).

¹⁸⁹ Interview with NGO, Location F, Oct. 22, 2014. The victim was not represented by an attorney. *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Interview with CSW, Location C, Oct. 14, 2014.

¹⁹³ Interview with Family Law Judge, Location B-1, Oct. 13, 2014. He destroyed her garden in his actions. *Id.*

throat, set her parents' house on fire, and grabbed the daughter by her hair to slam her head into a wardrobe. When finally granted, the measures only protected the victim and not her children.¹⁹⁴

Even ten years after the Family Law's adoption, judges remain unclear on evidentiary standards and what constitutes "sufficient evidence" to issue protective measures.¹⁹⁵ One interviewee described judicial apprehension in deciding requests for protective measures: "They ask for additional reports. They want this. They want that. All that prolongs the case."¹⁹⁶ The interviewee also noted that judges require victims to demonstrate beyond a reasonable doubt—the standard applied in criminal cases—that violence occurred, instead of applying the lower burden of proof applicable in civil cases.¹⁹⁷ Judges also disagreed whether a victim must carry the burden of proof on her own¹⁹⁸ or whether the court has an investigative duty to assist a petitioner to present her evidence.¹⁹⁹ One judge explained that the court is obliged to ask the victim for possible witnesses to summon or if she spoke to the police so the judge can request the report.²⁰⁰ This practice, however, does not appear to be widespread.

Interviews revealed that judges may distrust a victim's claim of domestic violence. For example, judges explained they rely on an intuitive "feeling" when assessing whether domestic violence has occurred or individuals are being truthful.²⁰¹ Because judges are charged with the collection and assessment of evidence,²⁰² it can be particularly harmful to victims when a judge does not understand the behaviors that victims and perpetrators exhibit and how these behaviors may be inconsistent with traditionally expected responses to non-violent situations. As described below, these misperceptions are particularly harmful when judges use confrontation.

Judges voiced their perception that false reporting was prevalent, particularly as a means of exploiting the system.²⁰³ Judges opined that lawyers might attempt to abuse the civil process and obtain faster results with falsified domestic violence claims.²⁰⁴ For example, one family law judge reported that "if the

¹⁹⁴ Interview with NGO, Location B-1, Oct. 14, 2014. As described *infra* in the Criminal Judges Section on Sanctions: Influential Factors, the perpetrator was sentenced by the criminal court to seven months in prison.

¹⁹⁵ Interview with NGO, Location J, Feb. 25, 2015.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (success in petition for protective measures depends on whether the victim provides sufficient evidence in support of her complaint).

¹⁹⁹ Interview with Family Law Judge, Location F, Oct. 20, 2014.

²⁰⁰ *Id.*

²⁰¹ *See, e.g.*, Interview with Family Law Judges, Location B-2, Oct. 17, 2014 (stating "every family judge has to have a feeling for children and psychology knowledge to recognize abuse of rights."). *See also* Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (explaining that credibility is assessed "according to practiced behavior and the way they address each other"); Interview with Family Law Judge, Location G, Oct. 20, 2014, stating:

[I assess the credibility of the parties by] questioning them, observing their behavior. In some cases the abuser will acknowledge that they inflicted the injury, and then he'll promise that he will never do it again, and say that he regrets it. And sometimes you can evaluate his violence by his demeanor in court: the way that he treats the court and the victim . . .

²⁰² Interview with Family Law Judge, Location F, Oct. 20, 2014 (stating "our work is based exclusively on the interrogation of the parties and witnesses, on police reports, and medical records").

²⁰³ *See, e.g.*, Interview with Family Law Judges, Location B-2, Oct. 17, 2014.

²⁰⁴ Interview with Family Law Judges, Location B-2, Oct. 17, 2014

mother is aware that she won't get parental custody, then she may decide to use that domestic violence provision" in divorce proceedings.²⁰⁵ Further, judges suggested that parties requesting eviction may be seeking to gain advantage, and courts therefore must "be very careful" when this measure is considered.²⁰⁶ One judge commented, "Only in cases of eviction or moving are there possible abuses," and further expressed a belief that 30 percent of eviction requests were based on a false report of domestic violence.²⁰⁷

CONFRONTATION

Judges often use confrontation, a process employed by the court to provide parties with an opportunity to question witnesses and opposing parties face-to-face.²⁰⁸ One family law judge explained they are compelled to confront the victim with the perpetrator:

If we fail to [use confrontation] and there are disputed facts, the judgment will be overturned and will require confrontation to be done. Confrontation is important because, based on demeanor and faces, you can tell who is telling the truth or lying, and you can describe this in the judgment and say that demeanor was not enough to convince the court he was telling the truth. I can't remember a case where there was no confrontation. [The appellate courts] always overturn the decision if there is no confrontation. We confront witnesses with the abuser and victim. Witnesses – you read written evidence, hear the abuser and based on what he says, you unfold the evidence. Then one-by-one, the witnesses come in and the abuser is present while the witnesses give the testimony. The defendant then says the witness is lying. Then you organize confrontation between the witness and the defendant.²⁰⁹

The use of confrontation in domestic violence cases is an unreliable way for judges to assess testimony because perpetrators' controlling and coercive tactics may frighten victims and impact their testimony. As judges do not conduct formal risk assessments, such practices can heighten an already high-risk situation.²¹⁰ Moreover, this practice is particularly threatening to victims because confrontation is often conducted in small courtrooms that place a victim and perpetrator within close proximity.²¹¹

PROTECTIVE MEASURES: GENERALLY

The Family Law includes five types of protective measures that can be requested by or for victims of domestic violence. Interviewees consistently reported that the most common protective measures

²⁰⁵ Interview with Family Law Judge, Location F, Oct. 20, 2014.

²⁰⁶ Interview with Family Law Judges, Location B-2, Oct. 17, 2014; *see also* Interview with NGO, Location H, Oct. 23, 2014 (stating "judges think that it [the eviction measure] is systemically being abused. They usually think that women are overprotected.").

²⁰⁷ Interview with Family Law Judges, Location B-2, Oct. 17, 2014.

²⁰⁸ Interview with Family Law Judge, Location I, Feb. 26, 2015.

²⁰⁹ *Id.*

²¹⁰ Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

²¹¹ *Id.*

issued are prohibitions against further molestation and restraining orders.²¹² Findings revealed wide variation as to the party most likely to file a petition for a protective measure,²¹³ but females are most often the petitioners or the victims.²¹⁴

Serbia's legislation does not explicitly require physical injury or a certain level of violence for the court to order protective measures, but despite this, interviewees indicated that judges are requiring severe levels of physical injury to issue protective measures.²¹⁵ One interviewee described a case where the perpetrator inflicted past injuries of such severity that the victim's spleen ruptured. Yet, the court rejected her request for protective measures because it did not find the violence she presented to be serious enough.²¹⁶

Granting more than one protective measure – whether they are requested or initiated by the judge *sua sponte* – can be important as perpetrators may skirt the legal limits of the court's orders.²¹⁷ In one case, a judge did not issue an order banning further harassment, but issued a restraining order limiting how close the perpetrator could approach the victim's workplace and home. The perpetrator measured the distance to her home and then urinated in the victim's direction from the street. Because he was

²¹² Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location H, Oct. 23, 2014; Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with Family Law Judge, Location I, Feb. 26, 2015.

²¹³ There is a consensus among family law judges that filings by public prosecutors are extremely rare. *See* Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating "I have had no motions filed by [the] public prosecutor. And I think my colleague hasn't either"); Interview with Family Law Judge, Location H, Oct. 23, 2014 (stating the court had not seen a prosecutor apply for a protective measure during her five years as a judge); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (recalling no filings by public prosecutor); Interview with Family Law Judge, Location F, Oct. 20, 2014 (recalling no cases filed by CSW or prosecutor). *But see* Interview with Prosecutor, Location A, Oct. 13, 2014 (stating that she applied for protective measures "very frequently"); Interview with Prosecutor, Location F, Oct. 20, 2014 (stating there are many cases for which they have filed for protective measures).

²¹⁴ *See* Family Law, Art. 284(2) (stating that the law allows civil actions regarding domestic violence or requests for protective measures to be commenced by "a family member who was subject to domestic violence, his legal representative, the public prosecutor and the guardianship authority."); Interview with Family Law Judge, Location G, 20 Oct 2014; Interview with Family Law Judge, Location H, 23 Oct 2014 (stating that CSWs cooperate with a lawyer who prepares the application and the lawyer on behalf of the victim does it). One family law judge reported that "there were only two applications by the prosecution office and none from the Centre for Social Work" during the course of his family law court career. Interview with Family Law Judge, Location B-1, 13 Oct 2014; *see also* Interview with Family Law Judge, Location F, 20 Oct 2014 (usually not against women); Interview with CSW, Location E, 15 Oct 2014 (stating that CSW lawyers do not assist victims with filing for protective measures; they refer them to NGOs); Interview with CSW, Location F, 21 Oct 2014 (stating that they want victims to file themselves so they are less likely to drop case).

²¹⁵ *See, e.g.*, Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014 (implying that only domestic violence resulting in severe injuries merits one-year orders for protection).

²¹⁶ Interview with CSW, Location I, Feb. 27, 2015

²¹⁷ Interview with CSW, Location E, Oct. 15, 2014 (stating "perpetrators are constantly violating these orders and making threats. Some stop after the first time, but most go on. . . . They are not stopped in an adequate way").

outside the mandated distance and the victim did “not need to look at him,” the judge did not find the perpetrator to be in violation of the order.²¹⁸

PROTECTIVE MEASURES: IMMEDIATE PROTECTION IS NOT AVAILABLE²¹⁹

No *ex parte* orders

Ex parte orders for protective measures, which can be issued without a hearing, provide immediate protection from the danger victims face.²²⁰ Yet Serbia’s Family Law does not empower judges to issue emergency orders *ex parte*; instead, judges always hold a hearing to issue interim protective measures.²²¹ One interviewee explained that procedural law requires both parties be summoned, but that temporary protective measures may be issued in exceptional cases with heavy physical violence.²²² Even then, some judges require evidence before they will issue a protective measure *ex parte*, such as medical documentation and a police report.²²³

Under the 2017 LPDV, additional protection is available through the police issuance of temporary, emergency restraining orders and orders for the perpetrator to distance himself from the family home or apartment; however, these measures still require prosecutors to request and courts to approve extensions beyond the initial 48 hours. With court approval, the measures can only be extended up to 30 days.²²⁴

Interim protective measures are available but delayed

Family law judges reported issuing temporary, interim protective measures in more than 50 percent of cases.²²⁵ Interim protective measures are intended to be issued more quickly than final protective

²¹⁸ Interview with Family Law Judge, Location I, Feb. 26, 2015.

²¹⁹ See Prosecutors Section on Measures to Secure the Defendant: Detention and Criminal Judges Section on Criminal Proceedings: Measures to secure the defendant and for unobstructed criminal proceedings (detention is underused).

²²⁰ Istanbul Convention, Art. 53 – Restraining or protection orders, ¶12 (“Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders [] are: available for immediate protection . . . ; where necessary, issued on an *ex parte* basis which has immediate effect . . .”).

²²¹ Interview with Family Law Judge, Location I, Feb. 26, 2015 (stating “we do our best to complete case in one to two hearings. So there are no interim measures”). But the same judge described the second hearing as scheduled within 15 days but sometimes a whole month goes by. *Id.* See also Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating the victim cannot obtain immediate protection orders without a hearing. Instead, the victim must go to a shelter for protection).

²²² Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

²²³ Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location B-2, Oct. 13, 2014.

²²⁴ LPDV, Art. 21.

²²⁵ Interview with CSW, Location H, Oct. 22, 2014; Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (stating that interim measures are issued often); Interview with Shelter, Location H, Oct. 22, 2014 (stating “almost all who want to initiate civil procedure get granted interim protective measures”). The Supreme Court of Cassation has accepted the use of interim measures based on the law of execution of sentences. See Interview with Supreme Court of Cassation, Oct. 16, 2014. Interim measures are in effect until the dispute is resolved and the protective measures become final. Interview with Family Law Judge, Location G, Oct. 20, 2014.

measures to provide protection during the proceedings,²²⁶ in cases of severe physical violence, or where perpetrators cannot be summoned.²²⁷ In the absence of *ex parte* orders, interim protective measures can provide some degree of protection if issued timely.

Quick issuance, however, does not appear to be common. Most judges still require the CSW's professional opinion before issuing temporary measures.²²⁸ One judge stated they request a CSW report the same day they receive the case and schedule a hearing within eight days.²²⁹ An NGO representative disagreed, stating there was "no way" the courts scheduled hearings for interim measures within that timeframe.²³⁰ At least one interviewee reported delays of several months to obtain interim measures, despite two urgent notices sent to the court.²³¹

PROTECTIVE MEASURES: EVICTION

Evicting a perpetrator of domestic violence from the home can promote the safety of the non-violent partner and empower her to recognize she does not need to tolerate violence.²³² Yet family law judges sparingly grant requests for the protective measure of eviction.²³³ As one interviewee reported, "The most controversial issue is eviction. Everything else goes smoothly and easily."²³⁴

Interviews revealed a number of reasons for judicial reluctance to order eviction. Some judges are cautious partly because of unfounded beliefs of false reporting. Many judges expressed their strong

²²⁶ Interview with Family Law Judges, Location B-2, Oct. 17, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (explaining that, with evidence showing the violence is happening, the protective measure could be issued the same day); Interview with NGO, Location B-1, Oct. 14, 2014 (explaining the court will not grant interim protective measures without the CSW's report). Serbia's highest court - the Supreme Court of Cassation - indicated that these temporary measures can be issued even before filing the complaint. See Interview with Supreme Court of Cassation, Oct. 16, 2014.

²²⁷ Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

²²⁸ Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014 (issuing interim measures at first hearing, considering medical records and police report, if available from victims); Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with CSW, Location D-1, Oct. 14, 2014 (stating that the court can issue interim protective measures without the CSW but the court approaches them and asks for a report and findings as soon as possible); Interview with Family Law Judge, Location H, Oct. 23, 2014 (can issue interim measure from a hearing if receive the report from the CSW).

²²⁹ Interview with Family Law Judge, Location H, Oct. 23, 2014.

²³⁰ Interview with NGO, Location H, Oct. 23, 2014.

²³¹ Interview with CSW, Location E, Oct. 15, 2014.

²³² Interview with Republic Institute for Social Protection, Belgrade, Feb. 25, 2015 (noting more success in convincing women not to tolerate violence when the perpetrator was evicted or detained).

²³³ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (stating "there are only a few cases where the protective measure of eviction has been granted. Eviction is one of the measures not used often enough to make perpetrators understand that they cannot act in the manner in which they are acting"); Interview with NGO, Location H, Oct. 24, 2014 (stating no eviction measures are issued); Interview with CSW, Location H, Oct. 22, 2014 (reporting that court has not yet granted an eviction request); Interview with Republic Institute for Social Protection, Belgrade, Feb. 25, 2015 ("[Eviction] absolutely does not happen here."); Interview with CSW, Location G, Oct. 21, 2014 (stating that requested eviction measures are never granted); Interview with Prosecutor, Location G, Oct. 20, 2014 (recalling how a woman and her children stayed in a shelter for two years while the perpetrator stayed in the house alone); Interview with CSW, Location C, Oct. 14, 2014; Interview with Family Law Judge, Location I, Feb. 26, 2015 (reporting grants of evictions in only one or two cases).

²³⁴ Interview with CSW, Location H, Oct. 22, 2014.

aversion to eviction, with one judge explaining, “If it is established during the proceedings that another protective measure can achieve the purpose of protection, then it won’t be granted.”²³⁵ Other interviewees explained that courts do not evict perpetrators because they assume they are the homeowners and thus it is “easiest to remove the victim.”²³⁶ As a result, victims must leave the home, sometimes fleeing to shelters or safe houses. In one example, the court refused to issue the eviction measure, compelling the victim and her children to flee to a safe house. One of the children was sent to foster care, and another became delinquent. But the interviewee speculated that had the perpetrator been the one evicted from the house, the mother “might have been able to preserve her family.”²³⁷

Another reason for the lower number of eviction orders stems from barriers to request the measure itself. Interviewees conceded that victims may not be aware they can seek this protection.²³⁸ Interviewees also reported that victims may also fear the perpetrator or the reaction of their community.²³⁹ As a result, a social worker reported that a victim only requests evictions “when it comes to shared property over the house or flat. If it is not a shared property, they really just wish to run away, [and] they mostly return to their primary families.”²⁴⁰ In addition, the victim may not seek eviction because she cannot independently afford housing. Serbia’s protective measures do not provide for financial assistance. In one case, the woman lost 90 percent of her ability to speak, but ultimately could not remain in the home because she lacked the resources to cover rent.²⁴¹

Interviews revealed that, in the rare cases when judges grant eviction, their decisions rest on two factors: physical violence and the perpetrator’s financial capacity. First, although there are no requirements to demonstrate physical violence for eviction or other measures in the Family Law, courts are unofficially requiring evidence of this violence.²⁴² In the case described in the paragraph above, the court only granted eviction due to the extreme physical injuries she sustained. She had injuries over her entire body, with the majority of injuries on her head. Because of her head injuries, she lost 90 percent of her ability to speak.²⁴³ Second, the focus of granting eviction measures should be the safety of the victims or persons at risk.²⁴⁴ Yet at least two interviewees identified that, other than in cases of physical

²³⁵ Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with NGO, Location H, Oct. 23, 2014 (“Judges do explain why [they] deny the eviction measure. They say that the measures issued are sufficient for the protection of the victim, to protect her from further violence”); Interview with CSW, Location H, Oct. 22, 2014 (explaining that no eviction order has been granted yet).

²³⁶ Interview with City Council Member, Location G, Oct. 21, 2014.

²³⁷ Interview with NGO, Location B-1, Oct. 14, 2014.

²³⁸ Interview with Family Law Judges, Location B-2, Oct. 17, 2014; Interview with CSW, Location F, Oct. 21, 2014 (explaining that women believe the owner should not have to leave the home).

²³⁹ Interview with NGO, Location H, Oct. 24, 2014.

²⁴⁰ Interview with CSW, Location H, Oct. 22, 2014.

²⁴¹ Interview with Family Law Judge, Location G, Oct. 20, 2014.

²⁴² Interview with CSW, Location B-2, Oct. 15, 2014 (recalling an eviction granted in a case involving psychological, physical, and sexual violence as reported by the CSW); Interview with Family Law Judge, Location F, Oct. 20, 2014 (explaining eviction is rare and only in the case of physical violence); Interview with NGO, Location H, Oct. 23, 2014 (stating for an eviction to be granted, you need severe violence, “repeated violence during the trial, to have great fear of the perpetrator, [or] to have it proposed by the CSW”).

²⁴³ Interview with Family Law Judge, Location G, Oct. 20, 2014.

²⁴⁴ Istanbul Convention, Art. 52.

violence, judges granted eviction orders based on the financial capacity of the perpetrator to afford another residence²⁴⁵ and not on protection for the non-violent partner and her children.

COURT DELAYS

Several interviewees reported delays in family law court proceedings. Delays with respect to domestic violence cases are of particular concern because of the potential for further violence. Perpetrators have threatened to harm or kill the victims before the court issues protective measures.²⁴⁶ Unlike criminal courts, family law judges cannot detain perpetrators when these risks are present.²⁴⁷

The Family Law requires the initial hearing for protective measures to occur within eight days after the action is filed with the court.²⁴⁸ Nearly all interviewed parties – including judges – confirmed knowledge of this eight-day requirement.²⁴⁹ But where courts had trouble meeting the eight-day requirement, judges explained that the parties lived far away or there was insufficient time to serve and respond to the summons. In these cases, the court prolonged the hearing for another eight days.²⁵⁰ The second hearing may also be delayed due to, among other things, the volume of urgent cases before the court. A judge acknowledged that “sometimes a whole month goes by [before the second hearing is scheduled].”²⁵¹ Other perpetrator tactics in the appeals stage, such as not appearing for or claiming illness before a hearing, can delay implementation of eviction measures for as long as three months.²⁵²

Despite the clear requirements under the Family Law and the classification of these proceedings as “particularly urgent,”²⁵³ protective measures may not be issued for up to a year after filing.²⁵⁴ Assuming a number of factors are met, the average time between the filing of a petition and order for a protective measure could be less than two months.²⁵⁵ Interviews also revealed examples of cases in which petitions for protective measures have been pending before family law courts for several years.²⁵⁶

²⁴⁵ Interview with Family Law Judge, Location H, Oct. 23, 2014 (describing an eviction measure granted to a woman with three children because her husband was financially “well-off”); Interview with NGO, Location B-1, Oct. 14, 2014 (explaining an eviction was granted because the perpetrator had two apartments and had money).

²⁴⁶ Interview with NGO, Location F, Oct. 22, 2014.

²⁴⁷ *Id.*

²⁴⁸ Family Law, Art. 285(2); *see also* Interview with CSW, Location H, Oct. 22, 2014.

²⁴⁹ *See, e.g.*, Interview with CSW, Location H, Oct. 22, 2014; *but see* Interview with Family Law Judge, Location H, Oct. 23, 2014 (indicating the deadline was 15 days).

²⁵⁰ Interview with Family Law Judge, Location F, Oct. 20, 2014.

²⁵¹ Interview with Family Law Judge, Location I, Feb. 26, 2015.

²⁵² Interview with CSW, Location B-2, Oct. 15, 2014. *But see* Interview with Supreme Court of Cassation, Belgrade, Oct. 16, 2014 (stating that the verdict is enforced until the appeal process ends).

²⁵³ Family Law, Art. 285(1).

²⁵⁴ Interview with NGO, Location F, Oct. 22, 2014; Interview with CSW, Location B-2, Oct. 15, 2014 (stating that most take a half-a-year or a year, but noting that one was granted in less than six weeks). In another example, the court did not schedule a hearing and, after six months requested another opinion from the CSW, further delaying the proceedings. *Id.*

²⁵⁵ Some of the factors described by interviewees include swift completion of service of process, the court having “all the documentation,” and a defendant confession. Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with CSW, Location I, Feb. 27, 2015 (describing duration as one to two months); Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (describing duration as sometimes more than two months); Interview with Family Law Judge, Location H, Oct. 23, 2014 (describing duration as 90 days and not more than

Interviews revealed that court delays can be traced to three primary factors: heavy caseloads, judicial requirements of a CSW report, and perpetrators evading service of the summons. As a result, victims experience significant delays requesting even interim protective measures. And delays in the court proceedings provide perpetrators with time to manipulate the victim from seeking protection.²⁵⁷

Heavy case loads

Although actual numbers vary significantly among courts and territories, interviewees reported that family law judges handle as many as 1,400 cases at any given point in time.²⁵⁸ Some judges described hearing three to four domestic violence cases each a week,²⁵⁹ while others reported only five or six such cases annually.²⁶⁰ At present, there is no specialization among these judges to facilitate greater efficiency on issues of domestic violence.²⁶¹

An overburdened court system can impact victim safety. In one example, the court did not schedule a victim's first hearing until after summer holidays, well beyond the eight-day requirement. The victim had been subjected to long-term violence and worried about her safety, but the court responded there were not enough judges to expedite the hearing.²⁶² After intervention by the ombudsperson, her hearing was scheduled within a month,²⁶³ which was still outside the timeframe set by the Family Law.

Undue reliance on reports from CSWs

Contrary to the Family Law and the strict timing requirements noted above, nearly every interviewee indicated that a CSW report is required or requested by the court prior to the issuance of any order for protective measures.²⁶⁴ The Family Law provides that if the guardianship authority (i.e., CSW) is not the

three hearings); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (describing it takes four hearings on average).

²⁵⁶ Interview with NGO, Location B-1, Oct. 14, 2014 (stating that interim measures took more than a year in a divorce case initiated in 2011, that was still ongoing); *see also* Interview with Republic Institute for Social Protection, Belgrade, Feb. 25, 2015 (stating "it can take years, not just months. Then the measure loses all purpose There was terrible violence in 2011. The complaint was filed in 2012 by the CSW. . . [T]he case has not yet been processed and it's 2015. The violence continues."); Interview with CSW, Location G, Oct. 21, 2014 (stating that time between filing and granting the petition is at least a year); Interview with NGO, Location H, Oct. 23, 2014 (stating that final measures can take up to two years).

²⁵⁷ Interview with NGO, Location H, Oct. 23, 2014; *see also* Interview with CSW, Location B-2, Oct. 15, 2014.

²⁵⁸ *See, e.g.*, Interview with Family Law Judge, Location I, Feb. 26, 2015 (stating "I deal with 1,400 cases"); Interview with Family Law Judge, Location A-2, Oct. 13, 2014 (stating the caseload is 1,200 cases).

²⁵⁹ Interview with Family Law Judge, Location H, Oct. 23, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014.

²⁶⁰ Interview with Family Law Judge, Location I, Feb. 26, 2015; *see also* Interview with CSW, Location E, Oct. 15, 2014.

²⁶¹ In the early 2000s, a pilot program was launched by one municipal court to introduce and shepherd civil cases through specialized chambers of the court. *See* Interview with Family Law Judges, Location B-2, Oct. 17, 2014; *see also* Interview with Minister of Social Policy, Belgrade, Oct. 18, 2014 (stating he had "been suggesting for years to have special family courts").

²⁶² Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

²⁶³ *Id.*

²⁶⁴ These reports are requested for protective measures whether on an interim or final basis when the CSW is not the petitioner. *See, e.g.*, Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (stating CSW report is not required); Interview with Family Law Judge, Location I, Feb. 26, 2015; Interview with Family Law Judge, Location H,

party that files for a protective measure, “the court *may* ask the guardianship authority to provide help in acquiring the necessary evidence and state its opinion on the appropriateness of the required measure.”²⁶⁵ The courts regularly use this permissive portion of the Family Law. In the majority of cases shared by interviewees, the CSW was asked to provide evidence (including information regarding the family’s living arrangements, occupations, and prior interactions with police and CSW) and also opine on the appropriateness of requested protective measures.²⁶⁶

One judge opined that this reliance on CSW reports arises from judicial concerns regarding sufficiency of evidence and a fear of higher courts overturning their order. Because courts cannot cross-reference court records throughout the country and across case types (as described in the section on Information Sharing Among Actors), some judges rely on the CSW report to inform them of prior criminal convictions.²⁶⁷ The judges’ lack of specialized knowledge on domestic violence may also contribute to their increased reliance on CSW reports.²⁶⁸ In general, the courts agree with the CSW’s recommendations regarding the protective measures,²⁶⁹ although a few examples showed circumstances in which the court reached a different conclusion.²⁷⁰

CSWs reported having a very short period of time, sometimes as little as 24 or 48 hours, to complete an opinion for the court.²⁷¹ This short timeframe can be attributed to the court’s delay in relaying the request, compounded by weekends and other CSW responsibilities.²⁷² Many CSW reporting deadlines set by the courts fall outside the mandated eight days in which the initial hearing must be scheduled. For example, one judge allows the CSW up to 10 days to complete an opinion on interim protective measures and a month for an opinion related to a final court decision.²⁷³ Even when the court receives

Oct. 23, 2014 (stating it is needed for both interim and final measures); Interview with Family Law Judges, Location B-2, Oct. 17, 2014 (stating CSW opinion is mostly needed for temporary protective measures); Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with CSW, Location F, Oct. 21, 2014.

²⁶⁵ Family Law, Art. 289(1) (emphasis added).

²⁶⁶ Interview with Family Law Judge, Location I, Feb. 26, 2015; Interview with CSW, Location F, Oct. 21, 2014 (stating “mainly whatever we propose, it’s granted”).

²⁶⁷ Interview with Family Law Judge, Location I, Feb. 26, 2015.

²⁶⁸ Interview with NGO, Location F, Oct. 22, 2014 (stating “the judge has no expert knowledge so needs to involve the CSW”).

²⁶⁹ Interview with NGO, Location F, Oct. 22, 2014 (stating judges agree with CSW opinion in 90 percent of cases); Interview with Family Law Judge, Location F, Oct. 20, 2014 (stating judges agree in 99 percent of cases); Interview with Family Law Judge, Location H, Oct. 23, 2014 (recalling no cases where judges have disagreed with CSW recommendations).

²⁷⁰ Interview with Family Law Judge, Location G, Oct. 20, 2014. *See also* Interview with NGO, Location F, Oct. 22, 2014 (where the court extended a protective measure contrary to the CSW report finding violence had ceased).

²⁷¹ Interview with CSW, Location H, Oct. 22, 2014.

²⁷² *Id.*

²⁷³ Interview with Family Law Judge, Location G, Oct. 20, 2014; *see also* Interview with NGO, Location B-1, Oct. 14, 2014 (stating it can take 15 days, up to a month-and-a-half, for the court to receive the CSW opinion); Interview with Family Law Judge, Location F, Oct. 20, 2014 (stating 2 to 3 weeks for a CSW opinion is “very fast”); Interview with CSW, Location E, Oct. 15, 2014 (describing duration as two weeks); Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (describing duration as 15 days); Interview with Family Law Judge, Location B-2, Oct. 13, 2014

the CSW opinion, courts may still be slow to issue a decision. One interviewee described a court response as “quick” when the judge issued an order 36 days after receiving the CSW opinion.²⁷⁴

Delays arising from service of summons

Further delays arise as a result of the court’s inability to effect service of summons on respondents. When this happens, the proceedings become unnecessarily protracted.²⁷⁵ For example, one judge noted that proceedings could be delayed by up to a month when a respondent cannot be found at his registered residence or the court is unable to notify the respondent by post, thus requiring police intervention.²⁷⁶

As described by one judge, however, there are various service methods available for those who are “resourceful.” He explained, “I wrote a letter to police station to say, ‘This is urgent, so please deliver summons to him and police found him at 2:00 a.m. and served the summons.’”²⁷⁷ But when judges do not proactively find solutions, the burden falls on the victim to find ways for the court to serve the perpetrator. Until that happens, her case will never begin.²⁷⁸

PROBLEMS IN ENFORCEMENT AND EXECUTION OF ORDERS

The court is required to immediately deliver a judgment issuing protective measures to the CSWs where the victim and respondent each live.²⁷⁹ Interviewees reported inconsistent compliance with this obligation.²⁸⁰ Some CSWs reported receiving copies of all such orders, even if they were not the petitioners.²⁸¹ Others, however, reported that the family court did not provide them copies, even when the CSW was the petitioner.²⁸²

(dismissing 8 days as impossible so describing 15 days to one month as more realistic); Interview with NGO, Location F, Oct. 22, 2014 (estimating between three weeks and a few months).

²⁷⁴ Interview with CSW, Location B-2, Oct. 15, 2014.

²⁷⁵ Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating the defendant need not be present in civil cases for the court to proceed if it can be demonstrated that he received the summons); Interview with Family Law Judge, Location H, Oct. 23, 2014 (describing that notice is required to hold a hearing). *But see* Interview with Family Law Judge, Location I, Feb. 26, 2015 (stating there cannot be judgments in a party’s absence).

²⁷⁶ Interview with Family Law Judge, Location F, Oct. 20, 2014. Police may also say it is not part of their job to serve a summons, and they are not able to bring the perpetrator to family court for procedures. *See* Interview with Family Law Judge, Location B-2, Oct. 13, 2014.

²⁷⁷ Interview with Family Law Judge, Location I, Feb. 26, 2015. *See also* Interview with Supreme Court of Cassation, Oct. 16, 2014 (regarding use of temporary proxies).

²⁷⁸ Interview with NGO, Location B-1, Oct. 14, 2014.

²⁷⁹ Family Law, Art. 289; Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with Family Law Judge, Location H, Oct. 23, 2014.

²⁸⁰ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

²⁸¹ Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (sometimes copies to police, too); Interview with Family Law Judge, Location I, Feb. 26, 2015. *But see* Interview with CSW, Location I, Feb. 27, 2015 (describing problems with receiving decisions from the criminal court absent a request, even if CSW was the complainant).

²⁸² Interview with CSW, Location E, Oct. 15, 2014.

When asked, interviewees largely agreed that protective measures are sufficient in scope,²⁸³ but differed on their overall effectiveness. Findings revealed that perpetrators take advantage of gaps in the system to delay the enforcement of orders. For example, interim protective orders lack execution measures. In one case, a victim secured an interim measure of child custody, but the perpetrator evaded service of the court's order and kept custody of the child.²⁸⁴ The victim had to take multiple steps, including complaining to the ministries and initiating two execution proceedings. Several months later, the perpetrator still had the child.²⁸⁵ Another tactic used by perpetrators manipulates procedural gaps with respect to the final order.²⁸⁶ Similar to interim protective measures, a final order is not in effect if the perpetrator claims he did not receive it, even if he knows of it.²⁸⁷ These actions can delay the enforcement of orders by months.²⁸⁸

Of particular concern is that the mere issuance of measures does not guarantee safety due to lack of enforcement and supervision.²⁸⁹ Family law courts do not monitor compliance with the orders, and they are not involved in punishing violations of the orders.²⁹⁰ One NGO interviewee commented, "There is no one to supervise them or control them. It's not a punishment, not even a warning. It's just a paper that means nothing."²⁹¹

The lack of monitoring and enforcement has been identified as a gap in the law.²⁹² Interviewees indicated that perpetrators violate the orders and do so with impunity.²⁹³ One interviewee indicated that "perpetrators are constantly violating these orders and making threats. Some stop after the first time, but most continue. They change their tactics."²⁹⁴ In one example, a victim was seriously harmed

²⁸³ See, e.g., Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating "I think the law includes all of the measures [appropriate to protect victims]").

²⁸⁴ Interview with CSW, Location E, Oct. 15, 2014.

²⁸⁵ Interview with CSW, Location E, Oct. 15, 2014.

²⁸⁶ Interview with Family Law Judge, Location H, Oct. 23, 2014 (stating "and when it comes to execution, it is a problem because they are using any means – trying by any means to avoid their responsibilities."); Interview with NGO, Location J, Feb. 23, 2015.

²⁸⁷ Interview with CSW, Location E, Oct. 15, 2014.

²⁸⁸ *Id.*

²⁸⁹ Interview with CSW, Location H, Oct. 22, 2014; Interview with NGO, Location H, Oct. 23, 2014; Interview with CSW, Location E, Oct. 15, 2014 (describing a woman with protective measures who was seriously harmed after their issuance); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (explaining "before issuing measure of protection, the court has no means to protect a victim unless she calls the police"); Interview with CSW, Location I, Feb. 27, 2015.

²⁹⁰ Criminal courts can sanction perpetrators for violating orders for protective measures under Criminal Code Art. 194, ¶15.

²⁹¹ Interview with NGO, Location H, Oct. 23, 2014.

²⁹² Interview with CSW, Location I, Feb. 27, 2015; Interview with Minister of Social Policy, Belgrade, Oct. 18, 2014; Interview with NGO, Location J, Feb. 25, 2015.

²⁹³ Interview with CSW, Location E, Oct. 15, 2014 (stating "they are not stopped in an adequate way. . . . There are a lot of perpetrators that do not want to comply with court decisions, and they just don't").

²⁹⁴ *Id.*

despite a measure ordering the perpetrator to stay away from her home and workplace. He waited for her in front of her workplace and stabbed her in the neck with a pair of scissors.²⁹⁵

INFORMATION SHARING AMONG ACTORS

The Family Law requires the court to deliver a copy of its judgment to the CSW in the territories where the victim and respondent live.²⁹⁶ Interviewees reported, however, that judges are inconsistent in doing so, except where the CSW has initiated the action.²⁹⁷ One judge confirmed that the court sends a copy to the parties or the proxy “and no one else.”²⁹⁸

CSWs are not legally required to transmit the judgment to any other authorities, such as police.²⁹⁹

Interviewees were nearly unanimous in their response that orders for protective measures are not reported to the police,³⁰⁰ despite the fact that violations of these measures are crimes.³⁰¹ As a result, victims who lack a copy of the order may not receive protection when the police are not aware of the order and reported violations go unprosecuted. As stated by one interviewee, “issuance of these measures does not guarantee safety to women generally.”³⁰²

Even where the court learns of a violation, the court does not affirmatively report it and instead relies on the victim to do so.³⁰³ In one case, a parent violated his order by physically abusing a child protected under it. When the victim alerted the court to the breach, “the only thing the court could do was tell the victim to immediately take the child to a doctor to make a record of the injuries and then direct her to

²⁹⁵ *Id.* See also Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (noting there is no protection unless the victim calls the police.).

²⁹⁶ Family Law, Art. 284(2).

²⁹⁷ See, e.g., Interview with CSW, Location E, Oct. 15, 2014 (stating that “from time to time, they would send [the orders], but usually not.”); Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location D-1, Oct. 14, 2014.

²⁹⁸ Interview with Family Law Judge, Location I, Feb. 26, 2015. The interviewee also indicated that the CSW receives a copy of the order, even if the CSW is not the petitioner. *Id.*

²⁹⁹ Interview with CSW, Location I, Feb. 27, 2015; Interview with Police, Location B-1, Oct. 17, 2014. Few of the parties interviewed indicated that information learned during the course of a domestic violence proceeding is regularly reported to public prosecutors so that criminal charges could be levied if appropriate. See, e.g., Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating “we [haven’t contacted the police when we learn of a violation of interim protective measures] to date, because the victim does it before we can. She will report to the CSW, to the police.”). But see Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (explaining he sends charges of violence to the prosecutor’s office).

³⁰⁰ See, e.g., Interview with Family Law Judge, Location G, Oct. 20, 2014. One judge indicated that sometimes the police would receive information on protective measures relating to harassment. See Interview with Family Law Judge, Location B-2, Oct. 13, 2014; see also Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location B-1, Oct. 13, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location D, Oct. 15, 2014; Interview with Police, Location F, Oct. 20, 2014.

³⁰¹ Criminal Code, Article 194, para. 5.

³⁰² Interview with CSW, Location H, Oct. 22, 2014.

³⁰³ Interview with Family Law Judge, Location G, Oct. 20, 2014.

the CSW to take further steps.”³⁰⁴ In contrast, police indicated that when victims notify them of a violation, they report it to a judge and potentially even the prosecutor.³⁰⁵

There also appears to be a lack of clear communication among courts themselves. Without a centralized, shared database between civil and criminal proceedings, a criminal court must affirmatively inform a family law court of ongoing proceedings and vice versa.³⁰⁶

In addition, Serbian law lacks a mechanism to consolidate civil cases involving the same parties. Inconsistent decisions between divorce and protective measure proceedings can result in violent perpetrators continuing to have access to and exposing victims and children to further harm. In one example, a judge granted protective measures in a domestic violence case, including prohibition of access to the victim and the children. A different judge handling the divorce and custody issues, however, allowed the perpetrator to visit the children.³⁰⁷ In cases such as these, it becomes possible for protective measures to be in effect while proceedings for parental rights or divorce continue without any reference to the domestic violence.³⁰⁸ One family law judge indicated that protective measures may be issued in divorce and custody cases,³⁰⁹ a practice that would consolidate and reduce inconsistencies, but this does not appear to be common.³¹⁰

NO DOMESTIC VIOLENCE SCREENINGS PRIOR TO MEDIATION OR RECONCILIATION

Under the Family Law, divorce proceedings include a mediation procedure³¹¹ composed of: 1) reconciliation “to resolve the troubled relation between spouses without conflict and without divorce;”³¹² and 2) settlement “to reach an agreement on the exercise of parental rights and an agreement on the division of joint property.”³¹³ A few judges acknowledged they would not proceed with mediation in cases involving violence.³¹⁴ One judge explained that “in violence cases, we rarely send them to counselling centers . . . mediation is worthless.”³¹⁵

³⁰⁴ Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

³⁰⁵ Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location F, Oct. 20, 2014.

³⁰⁶ See, e.g., Interview with Family Law Judge, Location B-1, Oct. 13, 2014. But see Interview with Family Law Judge, Location H, Oct. 23, 2014 (stating that a national database allows judge to see if there are criminal or other proceedings pending).

³⁰⁷ Interview with CSW, Location B-2, Oct. 15, 2014 (explaining the Family Law allows court to issue protective measures in divorce proceedings, but courts do not do this).

³⁰⁸ *Id.*

³⁰⁹ Interview with Family Law Judge, Location G, Oct. 20, 2014

³¹⁰ Interview with Family Law Judge, Location H, Oct. 23, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (explaining the court “accidentally” received both the divorce and protective measure proceedings).

³¹¹ Family Law, Arts. 239 and 240. The Family Law provides that court-managed mediation “is regularly carried out” in matrimonial disputes that are initiated by one spouse. Family Law, Art. 230(1).

³¹² Family Law, Art. 234.

³¹³ *Id.*, Art. 241(2).

³¹⁴ One judge affirmatively stated that he “would never recommend mediation when it comes to domestic violence situations.” Interview with Family Law Judge, Location B-1, Oct. 13, 2014. But see Interview with Family Law Judge, Location H, Oct. 23, 2014.

³¹⁵ Interview with Family Law Judge, Location I, Feb. 26, 2015.

The Family Law, however, neither requires pre-screening for domestic violence nor prohibits mediation in cases involving domestic violence.³¹⁶ The lack of mandatory screening is troubling, because judges refrain from speaking with parties separately due to suspicion of bias.³¹⁷ If one party disagrees with reconciliation, the court is required to cease mediation.³¹⁸ But given the coercive dynamics inherent in domestic violence, a victim may not feel safe to voice her disagreement. Consequently, perpetrators can continue to use coercive behaviors against the victim during mediation and influence the outcome of the divorce.

Furthermore, the court is not required to stop a reconciliation procedure when domestic violence is discovered.³¹⁹ In these cases, judges will still send the case to reconciliation. One family law judge explained, “Regardless of whether I want to or not . . . along with the summons we have to send an invitation for reconciliation.”³²⁰

The judge conducting mediation is obligated to recommend psychosocial counseling to the mediating couple.³²¹ If the parties agree, the judge turns over the mediation proceeding to appropriate third party specialists.³²² As with other procedures under the Family Law, the requirement to recommend counseling contains no exceptions for cases involving domestic violence. Yet, best practices discourage marriage counseling in domestic violence.³²³

³¹⁶ See, e.g., Family Law, Art. 230(2), describing circumstances in which mediation will not be carried out.

³¹⁷ Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating that mediation must proceed “whether there is violence or not”).

³¹⁸ Interview with Family Law Judge, Location I, Feb. 26, 2015; Interview with Family Law Judge, Location G, Oct. 20, 2014 (explaining if there is further violence, reconciliation would be suspended until relations are normalized); Interview with NGO, Location F, Oct. 22, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

³¹⁹ Interview with Family Law Judge, Location H, Oct. 23, 2014.

³²⁰ Interview with Family Law Judge, Location I, Feb. 26, 2015.

³²¹ Family Law Judge, Location G, Oct. 20, 2014.

³²² Family Law, Art. 233; Interview with Family Law Judge, Location G, Oct. 20, 2014 (stating that when there are children, the court turns the reconciliation process over to the CSW).

³²³ United Nations Department of Economic and Social Affairs Division for the Advancement of Women, *Handbook for legislation on violence against women* (New York: United Nations, 2009), §3.9.

PROSECUTORS

The weakest link is the prosecutor. . . . We wouldn't go for notification of criminal complaints because we notice they get annoyed. Who are we to file criminal complaints? They mostly reject them after a while. There has to be reform in the prosecutor's office. Someone has to be in charge of prosecuting violence.

- Interview with CSW worker³²⁴

Prosecutors play an important role in holding offenders accountable for domestic violence. Under Serbia's Criminal Procedure Code, the public prosecutor is the authorized body for prosecuting certain crimes *ex officio*.³²⁵ For those offenses, the prosecutor oversees pre-investigation proceedings, determines whether to pursue or defer criminal prosecution, conducts investigations, coordinates testimony, and files indictments and appeals, among other actions.³²⁶ In addition to prosecuting domestic violence crimes and violations of protective measures, prosecutors propose measures to secure a defendant during criminal proceedings, and they can apply for Family Law protective measures.

Following changes to the justice system, prosecutors now bear a new responsibility to conduct investigations, a role previously belonging to criminal judges.³²⁷ The shift has substantially increased prosecutors' workloads.³²⁸ One interviewee explained that 1,600 court investigations had been transferred to 6 prosecutors, who were struggling to process the cases before the statutes of limitations tolled.³²⁹ Others expressed misgivings about the lack of support for prosecutors as they transitioned into this new role. An NGO explained, "[W]ith the new law, I have a sense that the state left them wandering blind in the dark. They are lacking staff, lacking premises, lacking administrative staff, lacking money for various things."³³⁰ She concluded that specialization was sorely needed to engage committed prosecutors on domestic violence cases.³³¹

The Ministry of Justice (MoJ) has promulgated a domestic violence protocol to govern judges and prosecutors. The protocol makes recommendations and issues directives to prosecutors, judges, and the magistrate's court on procedure, responsibilities, and training.³³² Dissemination of and training on the

³²⁴ Interview with CSW, Location G, Oct. 21, 2014.

³²⁵ Criminal Procedure Code, Art. 5.

³²⁶ *Id.*, Art. 43.

³²⁷ Interview with NGO, Location H, Oct. 23, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

³²⁸ Interview with NGO, Location H, Oct. 23, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

³²⁹ Interview with Prosecutor, Location G, Oct. 20, 2014.

³³⁰ Interview with NGO, Location J, Feb. 25, 2015.

³³¹ *Id.*; see also Interview with Shelter, Location H, Oct. 22, 2014.

³³² *Special protocol for the judiciary in cases of violence against women in the family and intimate relationships*, The Republic of Serbia: Ministry of Justice and State Administration, Beograd (Jan. 14, 2014). It also outlines legislation regarding domestic violence to create a national normative framework, defines the role of the Ministry of Justice in monitoring and prioritizing cases of domestic violence, outlines the role that the Judicial Academy should play in educating new personnel as well as research on violence against women, and calls for intersectoral cooperation.

protocol appeared to be inadequate,³³³ and interviewee responses demonstrated a lack of awareness of the instrument.³³⁴ When asked, an interviewee admitted the protocol added little to shaping the state response other than the directive to treat domestic violence as “urgent.”³³⁵ In practice, she had yet to see change that reflects such urgency.³³⁶

TRAININGS AND ATTITUDES

Interviews revealed some prosecutor attitudes and practices that demonstrated support for victims. One prosecutor explained:

I need to believe the victim. She has been living with the abuser for years and knows best what he is capable of. If she is ready to finally report violence, it must be a very dangerous situation, and we must respond. We always try and provide protection to the victim.³³⁷

Interviews revealed other positive practices by prosecutors to hold offenders accountable. For example, prosecutors initiated summary criminal proceedings against a man who inflicted repeated violence on his victim.³³⁸ Within 30 days, they obtained a conviction and one-year prison sentence for the abuser.³³⁹ In addition, the prosecutors secured protective measures that allowed the woman and her children to safely return home from the shelter after only eight hours.³⁴⁰

Systems actors expressed frustration, however, that good practices are frequently lost when knowledgeable individuals left positions, indicating a need for greater consistency, a systematized response across the sector, and specialization. There are no prosecutor specializations for domestic violence.³⁴¹ One city had a prosecutor who collected strong evidence, but that practice disappeared from the office after he left.³⁴² An official remarked, “There are good examples of specific individuals, but not the system.”³⁴³

³³³ Shadow Report of the Autonomous Women’s Center (AWC) on the Follow-up state’s report to the Concluding observations of the Committee, April 2016, Recommendation No. 23, ¶148 (noting that the Ministry of Justice never published or distributed the special protocol to courts or prosecutors, and it is difficult to locate on the Ministry’s website).

³³⁴ Interview with Prosecutor, Location F, Oct. 20, 2014 (indicating that they lack a formal protocol to respond to domestic violence reports).

³³⁵ Interview with NGO, Location J, Feb. 23, 2015.

³³⁶ *Id.*

³³⁷ Interview with Prosecutor, Location I, Feb. 27, 2015.

³³⁸ Interview with CSW, Location H, Oct. 22, 2014.

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014. Prosecutors have worked with the legal academy to train other prosecutors on using the criminal law to prosecute domestic violence, as well as other specific areas, such as using Criminal Procedure Code measures to protect witnesses, *Id.*, deferrals, and applying psychosocial treatment measures. Interview with Prosecutor, Location H, Oct. 23, 2014.

³⁴² Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

³⁴³ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

Other prosecutors exhibited harmful attitudes that viewed women victims as dishonest or mutually violent. One prosecutor explained that mothers may report domestic violence as a way to gain child custody.³⁴⁴ She also added that investigations can reveal mutual violence by both parties.³⁴⁵ Other interviewees opined that prosecutors treat domestic violence as a lower priority compared to other offenses, such as crimes against property or drug offenses.³⁴⁶

Some trainings are available to prosecutors that could address such misperceptions, but those trainings that are mandatory typically focus on minor victims.³⁴⁷ NGOs, such as Autonomous Women’s Center, offer trainings on domestic violence, but these trainings are not mandatory.³⁴⁸

INVESTIGATIONS

Public prosecutors are required to accept crime reports from any source, including police, victims, and other institutions.³⁴⁹ Police particularly stressed that they notify prosecutors of every case of domestic violence.³⁵⁰ But reporting does not always result in investigations.³⁵¹ An interviewee from a CSW described the prosecutor’s failure to investigate the murder of a woman who made repeated reports:

There were multiple reports of violence against the woman by her partner. After several years of living together, she died suddenly. And it wasn’t recorded anywhere as a death resulting from violence. There was an autopsy. We went to the prosecutor’s office multiple times to ask whether the findings of the autopsy had arrived, but the prosecutor’s office never replied. They wouldn’t say whether the findings had come in or what they were. And it wasn’t noted in the statistics that her death was due to domestic violence. Unofficially, she choked on a fruit stone, but officially, they don’t know. Unofficially, there was a cherry pit found in her lungs. . . . At the time when she died, she had a baby who was 40 days old.³⁵²

CHARGING: MISDEMEANOR VERSUS CRIMINAL

As indicated in the Police Section on Collecting Evidence from the Scene and Police Reports, prosecutors qualify whether an incident is a criminal or misdemeanor offense and direct police with respect to

³⁴⁴ Interview with Prosecutor, Location F, Oct. 20, 2014.

³⁴⁵ *Id.*

³⁴⁶ Interview with NGO, Location B-1, Oct. 14, 2014. *See e.g.*, Interview with NGO, Location F, Oct. 22, 2014 (stating “[i]t looks like the public prosecutors act in the best interest of the victim, but they are governmental and state officials, so they have their own interest”); Interview with NGO, Location J, Feb. 23, 2015 (stating that prosecutors are just doing their job and are not very interested).

³⁴⁷ Interview with Prosecutor, Location I, Feb. 27, 2015; Interview with Prosecutor, Location G, Oct. 20, 2014 (explaining the judicial center provides the training on child victims).

³⁴⁸ Interview with Prosecutor, Location I, Feb. 27, 2015.

³⁴⁹ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

³⁵⁰ Interview with Police, Location G, Oct. 20, 2014.

³⁵¹ *See* Interview with CSW, Location G, Oct. 21, 2014 (explaining the CSW does not notify prosecutors of all domestic violence cases because it has noticed that prosecutors become annoyed). Therefore, some cases of domestic violence may not be reported due to a lack of confidence in the prosecutor’s office.

³⁵² Interview with CSW, Location G, Oct. 21, 2014.

investigations.³⁵³ Interviews with police revealed frustration over prosecutor decisions on qualification.³⁵⁴ An officer explained that, despite a strong police report, prosecutors still overlook criminal elements.³⁵⁵ Without heavy injuries or repeat violence, prosecutors are less likely to qualify an offense as a crime.³⁵⁶ In one reported case, a husband struck his wife across her face; because there were no injuries, the prosecutor classified the offense as a misdemeanor.³⁵⁷ Charging decisions can also be influenced by the perpetrator's attitude. In one case, an offender inflicted bruises all over the victim's body and caused genital injuries by forcing a bottle into her vagina.³⁵⁸ The prosecutor declined to charge him because he viewed the abuser's "sincere repentance" as adequate compensation for the victim.³⁵⁹

There are certain instances when prosecutors may choose misdemeanor charges in lieu of criminal prosecution, such as violence reported for the first time. Prosecutors explained that a single act of light violence will not lead to criminal charges.³⁶⁰ Rather, single incidents must rise to the level of grievous bodily injury or severe threats to trigger criminal charges.³⁶¹ Barring this, prosecutors will look for a history of violence to qualify an offense as a crime.³⁶² But many repeated, light acts of violence may go unnoticed by prosecutors, especially when they lack access to a person's full history or when other sources, such as police reports, fail to present this history to them.³⁶³

Even for repeat violence, prosecutors may choose lesser misdemeanor charges where victims have previously recanted their statements. For five years, one woman continued to file complaints, with medical documentation evidencing serious injuries, against her husband.³⁶⁴ But her lack of resources prevented her from further cooperation in the case. Each time trial began, she changed her testimony because she had no place to live.³⁶⁵ When she again refused to cooperate with the prosecution, the prosecutor filed a misdemeanor charge.³⁶⁶ The husband was convicted, but only fined as punishment.³⁶⁷

³⁵³ The principle of double jeopardy bars the state from prosecuting a suspect under both the misdemeanor law and criminal code for the same offense. Euro. Ct. Human Rts., *Maresti v. Croatia*, App. No. 55759/07, Sept. 25, 2009; Interview with Misdemeanor Judge, Location H, Oct. 24, 2014.

³⁵⁴ See, e.g., Interview with Police, Location F, Oct. 20, 2014.

³⁵⁵ Interview with Police, Location B-1, Oct. 13, 2014. In that case, the prosecutor could still help file a misdemeanor charge, but it required police encouragement for them to do so. Interview with Police, Location B-1, Oct. 13, 2014.

³⁵⁶ Interview with Police, Location D-1, Oct. 14, 2014; Interview with Prosecutor, Location B-1, Oct. 13, 2014 (stating that criminal prosecution relies heavily on physical evidence or it will not go forward); Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014 (require forensic medical report before issuing criminal charge).

³⁵⁷ Interview with Police, Location B-1, Oct. 17, 2014.

³⁵⁸ Interview with CSW, Location G, Oct. 21, 2014.

³⁵⁹ *Id.*

³⁶⁰ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

³⁶¹ *Id.*; Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

³⁶² Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014.

³⁶³ Interview with NGO, Location J, Feb. 23, 2015.

³⁶⁴ Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

³⁶⁵ Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

EVIDENCE AND VICTIM TESTIMONY

Without her testimony, I can't do much.

-Prosecutor citing a case where a husband broke his wife's arm³⁶⁸

With sufficient evidence, prosecutors will readily bring criminal charges *ex officio*. For example, one woman reported her husband who raped her, pulled her hair, punched her mouth, threw her to the ground, and strangled and beat her.³⁶⁹ The victim had medical reports, a forensics report, and photos documenting her injuries.³⁷⁰ The substantial evidence, along with the perpetrator's confession to pulling her hair and throwing her, was sufficient for the prosecutor to initiate prosecution.³⁷¹

Interviews revealed that prosecutors require certain evidence before they will initiate charges. For example, prosecutors may require a forensic report before they will bring charges for serious violence.³⁷² Prosecutors attach extreme importance to victim testimony,³⁷³ and without her cooperation, are reluctant to pursue domestic violence cases.³⁷⁴ As frontline responders, police expressed frustration by prosecutors' emphasis on victim testimony. Police explained that the first question the prosecutor usually asks when presented with a case is, "Does she want to testify?"³⁷⁵ They complained that an "atmosphere is being created that, if a victim is not willing to testify, nothing further is going to happen. If we are not able to persuade the prosecutor, then nothing more can happen."³⁷⁶

Prosecutorial emphasis on victim testimony continues even after charges are filed and throughout the proceedings. If the victim withdraws her statement, prosecutors determine whether to continue or dismiss the case.³⁷⁷ Some prosecutors insist that victim cooperation does not influence their decision to continue criminal prosecution.³⁷⁸ In fact, interviews revealed prosecutors can and have successfully secured convictions without victim testimony using other evidence.³⁷⁹ Police reported they are called to

³⁶⁸ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

³⁶⁹ Interview with Police, Location D-1, Oct. 14, 2014.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² Interview with Prosecutor, Location G, Oct. 20, 2014.

³⁷³ *See, e.g.*, Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with CSW, Location G, Oct. 21, 2014; Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with NGO, Location J, Feb. 23, 2015; Interview with Prosecutor, Location G, Oct. 20, 2014.

³⁷⁴ Interview with CSW, Location G, Oct. 21, 2014.

³⁷⁵ Interview with Police, Location B-1, Oct. 13, 2014.

³⁷⁶ *Id.*

³⁷⁷ Interview with Criminal Judge, Location B, Oct. 16, 2014. A criminal judge cannot continue the case against the prosecutor's decision. *Id.*

³⁷⁸ *See, e.g.*, Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

³⁷⁹ Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015 (suggesting use of witnesses, evidence of bodily injury, or CSW records pertaining to the family). Prosecutors will continue with a case, as long as there is evidence of the injury. Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Police, Location G, Oct. 20, 2014.

testify in almost all criminal cases.³⁸⁰ One prosecutor described how witnesses helped prove a husband inflicted light injuries on his wife.³⁸¹ On her way to the police station to report violence, the woman encountered police officers and explained what happened.³⁸² Although she later invoked her right not to testify, the prosecutors called the patrol officers and a doctor to testify about their observations.³⁸³ In another case, a woman suffered light injuries, including red patches on her face and a swollen eye.³⁸⁴ The police visited the home to photograph the scene and victim.³⁸⁵ Although the victim later withdrew her statement, prosecutors introduced testimony by a neighbor, photographs, the police report, and medical report to convict the defendant and sentence him to six months' imprisonment.³⁸⁶ Prosecutors have also relied successfully on evidence from the scene. After a man beat the victim while she was driving, prosecutors coordinated with police to inspect the car as a crime scene and obtain forensic reports.³⁸⁷ They secured a six-month prison term for the offender.³⁸⁸

More often, however, prosecutors drop the case when victims withdraw their statement.³⁸⁹ One prosecutor admitted to simply feeling "powerless" when a victim withdraws her statement.³⁹⁰ As described by a judge, "the victim's statement is the main piece of evidence in domestic violence cases, so when prosecutors lose the victim's statement, it makes no sense to continue with the case."³⁹¹ One interviewee estimated that approximately one-third of cases are dropped.³⁹²

Prosecutors have even dismissed cases involving serious violence because of victim recantation. One woman endured years of psychological, physical, sexual, and economic violence by her husband.³⁹³ He beat his wife with different tools, cut off her hair with a razor, forced her to stand under a cold shower,

³⁸⁰ Interview with Police, Location G, Oct. 20, 2014.

³⁸¹ Interview with Prosecutor, Location I, Feb. 27, 2015.

³⁸² *Id.*

³⁸³ Although the lower court acquitted him, the court of appeals referred the case for retrial. Interview with Prosecutor, Location I, Feb. 27, 2015.

³⁸⁴ Interview with Criminal Judge, Location F, Oct. 20, 2014.

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ Interview with Prosecutor, Location F, Oct. 20, 2014.

³⁸⁸ *Id.*

³⁸⁹ Interview with NGO, Location F, Oct. 20, 2014. But police may file misdemeanor charges if prosecutors abandon the criminal case. Interview with Police, Location D-1, Oct. 14, 2014. Without victim testimony or other evidence, such as medical certificates or witnesses, it is likely the prosecutor will drop charges or the court will acquit the defendant. Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014 (explaining that prosecutors drop cases more often than pursuing them when victims withdraw their statements); Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014 (explaining an acquittal is certain unless there is medical evidence); Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (without victim testimony, the state cannot prove the facts through witness testimony or other evidence, and the offender will likely escape prosecution); Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014; Interview with NGO, Location F, Oct. 22, 2014.

³⁹⁰ Interview with Prosecutor, Location A-1, Oct. 13, 2014.

³⁹¹ Interview with Criminal Judge, Location B, Oct. 16, 2014.

³⁹² Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

³⁹³ Interview with Police, Location D-1, Oct. 14, 2014.

and stalked her continuously.³⁹⁴ He left several suicide notes to their two minor daughters, calling their mother a “whore” and “horrible person.”³⁹⁵ As a result of her husband’s brutality, the woman only had three teeth left.³⁹⁶ He tried to commit suicide by hanging himself when the police arrived to arrest him and by running into the walls of his detention cell.³⁹⁷ But after six months of investigations, the wife decided to withdraw her statement.³⁹⁸ Despite witnesses, medical records and other evidence, prosecutors dropped the case.³⁹⁹

When a victim states her intention not to testify, some prosecutors may actually charge victims for false testimony.⁴⁰⁰ Some prosecutors have threatened victims they will bring criminal charges against her if she lies and provides false testimony.⁴⁰¹ A service provider stated, “It is a very big problem, because they do not assess the woman is very, very scared, and that is the reason why she withdraws her statement.”⁴⁰² As a result, the interviewee advises women not to initiate criminal proceedings if she thinks she will recant, because it will be counterproductive for her.⁴⁰³ This practice is not universal throughout Serbia, but even prosecutors who know she is telling the truth still apply it.⁴⁰⁴

DISMISSING CRIMINAL CHARGES

As described above, victim recantation or refusal to cooperate is a major reason prosecutors dismiss charges. Reported reconciliation between the parties can also influence a prosecutor to dismiss charges. Serbian law allows prosecutors to dismiss a criminal complaint if the suspect has genuine remorse and indemnified the damage.⁴⁰⁵ One mother fled her son’s abuse by moving to a shelter, where she lived for two or three years.⁴⁰⁶ The mother filed a criminal complaint against her son, but after they reconciled, the prosecutor dropped the charges.⁴⁰⁷ The violence continued, compelling the mother to file a second complaint for the violence.⁴⁰⁸ This time, the son received six months’ imprisonment.⁴⁰⁹

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ Criminal Code, Art. 334. *See also* Interview with NGO, Location J, Feb. 23, 2015; Interview with Police, Location B-1, Oct. 17, 2014; Interview with Shelter, Location F, Oct. 21, 2014. *But see* Interview with Criminal Judge, Location H, Oct. 23, 2014 (stating he or she had never seen a charge for false testimony against a victim); Interview with NGO, Location J, Feb. 23, 2015.

⁴⁰¹ Interview with NGO, Location J, Feb. 23, 2015.

⁴⁰² Interview with Shelter, Location F, Oct. 21, 2014.

⁴⁰³ *Id.*

⁴⁰⁴ A criminal judge who had been a judge for 30 years never saw a prosecutor charge a victim with false testimony. Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014 (reluctantly charging if there is no evidence that the victim did not provide false testimony).

⁴⁰⁵ Criminal Procedure Code, Art. 284 (this applies to crimes punishable by prison terms up to three years, and for which, “in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair”).

⁴⁰⁶ Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁴⁰⁷ Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁴⁰⁸ *Id.*

PRIVATE PROSECUTION

There is little recourse when a prosecutor dismisses criminal charges. Victims can complain to the higher prosecutor, but in reality, this rarely happens.⁴¹⁰ Victims may initiate private prosecution when prosecutors dismiss a case, but are not typically successful because they lack evidence.⁴¹¹ Private prosecution is also rare because of the financial costs and likelihood of an unfavorable outcome.⁴¹² Most victims do not pursue additional proceedings, leading to closure of the case.⁴¹³ Police also explained they “are helpless to do anything” when the charges are dropped.⁴¹⁴ Their only hope is that the criminal charges remain in the abuser’s record, so the prosecutor may impose detention the next time he commits violence.⁴¹⁵

Victims may also initiate private prosecution for other reasons. Public prosecutors cannot prosecute light bodily injuries of intimate partners who are not married and have no children because these individuals do not fall within the definition of “family member” in the Criminal Code.⁴¹⁶ Instead, these persons must privately prosecute light bodily injury under Article 122, which does not trigger public prosecution unless a weapon is used, or endangerment under Article 125.⁴¹⁷ The other option is for the case to be relegated to a misdemeanor proceeding. One woman sustained a black eye and posted a photo of her injured face on Facebook.⁴¹⁸ The prosecutor declined to pursue criminal charges because the parties were unmarried, did not have a common child, and did not live together.⁴¹⁹ In these types of cases, the victim “is obligated to file a criminal charge, obligated to be present at the hearings, and that is all up to her.”⁴²⁰

In extreme cases, abusers have themselves used private prosecution to retaliate against victims. In one case, the prosecutor initiated two criminal charges against the father for kidnapping his children and abusing their mother.⁴²¹ The father-offender, in turn, filed criminal charges against the mother alleging

⁴⁰⁹ *Id.*

⁴¹⁰ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁴¹¹ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁴¹² See Interview with Criminal Judges, Location A-1, Oct. 13, 2014 (explaining that the lack of evidence in cases under Article 122 is why prosecutors have not brought charges *ex officio*); Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with NGO, Location J, Feb. 23, 2015. See also Prosecutors Section on Evidence and Victim Testimony (some prosecutors may charge victims for false testimony).

⁴¹³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁴¹⁴ Interview with Police, Location H, Oct. 24, 2014.

⁴¹⁵ *Id.*

⁴¹⁶ Criminal Code, Art. 112(28). These individuals are covered by the definition of family member under Family Law, Art. 197.

⁴¹⁷ Criminal Code, Arts. 122, 125; Interview with Prosecutor, Location A-1, Oct. 13, 2014. When a woman does file under Article 122, prosecutors assess those cases and may still file *ex officio* proceedings for domestic violence. Interview with Criminal Judges, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014 (stating that private prosecution is required for light violence inflicted without a weapon).

⁴¹⁸ Interview with NGO, Location J, Feb. 23, 2015.

⁴¹⁹ *Id.*

⁴²⁰ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁴²¹ Interview with CSW, Location B-2, Oct. 15, 2014.

that she was violent.⁴²² Although the CSW made four attempts to obtain temporary custody for the mother, as well as punishment and detention of the father, they were unsuccessful because of the pending criminal proceedings against the mother.⁴²³ The parties divorced, but the mother still had not regained custody of her children at the time of the interview.⁴²⁴

DEFERRAL OF PROSECUTION

Serbia's Criminal Procedure Code authorizes deferral of prosecution in specific cases, allowing a defendant to postpone or escape charges for an offense. Deferral is allowed for offenses punishable by fines or sentences up to five years,⁴²⁵ which includes domestic violence crimes under Articles 194(1) and (2). Prosecutors may defer prosecution if the suspect agrees to any of several obligations, including, *inter alia*: remedying the consequences; paying a humanitarian fine; undergoing substance abuse treatment; completing community service; undergoing psychosocial treatment to eliminate violent behavior; or complying with court-issued decisions or restrictions.⁴²⁶ Once the defendant completes his deferral obligations, the prosecutor dismisses the criminal charge.⁴²⁷

Use of deferral varies widely.⁴²⁸ For example, interviews revealed that some prosecutors commonly use deferral in domestic violence cases.⁴²⁹ Out of 6,624 criminal complaints made from January 2013 through the first half of 2014, 493 of those ended in deferral.⁴³⁰ Other interviewees estimated between 30 and 90 percent of domestic violence cases end in deferral.⁴³¹

Prosecutors cited various reasons why they rely on deferral. One prosecutor viewed deferral as an effective warning, especially if the victim decides not to testify.⁴³² In cases where the victim recants and there is no other evidence, prosecutors invite both parties in "for peaceful resolution of the dispute, the deferral of the criminal prosecution. . . ."⁴³³ The prosecutor illustrated, "Deferral is used when they regret reporting. . . . A week goes by, and the fight is over. But that is when the violence isn't serious. It's

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ Prosecutors are required to check if deferral has been used before and if the defendant has completed any obligations ordered. Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014. Deferral is not allowed when children are victims of violence. Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴²⁶ Criminal Procedure Code, Art. 283(1-3), (5-7). This deferral is also referred to as the "principle of opportunity." Interview with Prosecutor, Location A-2, Oct. 13, 2014. Compensation to the victim is rare because the parties are typically spouses. Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴²⁷ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴²⁸ Many criminal cases are reportedly resolved in this manner. Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁴²⁹ *See e.g.*, Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴³⁰ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014 (this data reflects cases where the victim of violence was a woman). Of the 6,624 criminal reports, 1,702 cases were dismissed. *Id.*

⁴³¹ Interview with Police, Location G, Oct. 20, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014.

⁴³² Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴³³ *Id.*

more of a family argument than domestic violence.”⁴³⁴ Yet such practices do not take into account the fear and lack of economic resources that induce many women to reconcile.⁴³⁵

Other interviews suggest that deferral is rare due to policies or personal aversion.⁴³⁶ One interviewee explained the basic prosecution office instructed prosecutors to avoid deferral in domestic violence cases.⁴³⁷ That same interviewee also viewed deferral as an inefficient and counterproductive practice.⁴³⁸

Prosecutors are not required to obtain victim consent to use deferral, which can leave the victim uninformed about the case’s status.⁴³⁹ For example, after police filed criminal charges, a woman visited the prosecutor’s office over several months to learn the status of multiple charges against her abuser.⁴⁴⁰ Each time, the prosecutor’s office told her they did not know.⁴⁴¹ After her legal aid attorneys filed a complaint to the higher prosecution office, a prosecutor finally informed her that the case had been deferred. Their office had no obligation, however, to inform her of this outcome.⁴⁴²

Humanitarian fines and community service

Humanitarian fines and community service are two deferral obligations that prosecutors commonly order in domestic violence cases. For example, one defendant had several cases pending in the first nine months of 2014. Of seven cases, he was ordered to pay humanitarian fines in two cases and complete 300 hours of community service in a third case.⁴⁴³

Humanitarian fines, typically 30,000 to 50,000 dinars (250 to 416 euros), are common where no physical or repeat violence is involved.⁴⁴⁴ Prosecutors will typically allow an offender to miss payments for one to two months before questioning him about his compliance.⁴⁴⁵ In cases of non-payment, the prosecution

⁴³⁴ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴³⁵ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; *see also* Interview with Prosecutor, Location H, Oct. 23, 2014 (noting that some victims report violence to ultimately preserve the family).

⁴³⁶ Interview with Prosecutor, Location A-1, Oct. 13, 2014. In a large city, data for the first nine months of 2014 showed eight offenders received deferral for domestic violence. Interview with Prosecutor, Location A-2, Oct. 13, 2014. A prosecutor reported using deferral in only 7 of 427 cases of domestic violence. Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴³⁷ Interview with Prosecutor, Location A-1, Oct. 13, 2014.

⁴³⁸ *Id.*

⁴³⁹ Interview with Prosecutor, Location G, Oct. 20, 2014. The prosecutor explained that they always contact the victim in domestic violence cases before applying deferral. Other prosecutors also sought victim agreement before ordering deferral. Interview with Prosecutor, Location H, Oct. 23, 2014. In one instance, when a victim opposed deferring prosecution via damage compensation, the prosecutor did not defer the proceedings. Interview with NGO, Location H, Oct. 23, 2014.

⁴⁴⁰ Interview with NGO, Location G, Oct. 20, 2014.

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ Interview with Prosecutor, Location A-2, Oct. 13, 2014. In one case, the defendant was ordered to pay a humanitarian fine in the amount of 50,000 dinars. *Id.*

⁴⁴⁴ Criminal Procedure Code, Art. 283(2); Interview with Prosecutor, Location G, Oct. 20, 2014. Offenders can pay the fine in installments for up to one year. Proceeds from the fines go to various purposes, including a government account to respond to the 2014 floods or families with ill children. One defendant did agree to pay 250,000 dinars for a humanitarian fine. Interview with Police, Location H, Oct. 24, 2014.

⁴⁴⁵ Interview with Prosecutor, Location G, Oct. 20, 2014.

can resume.⁴⁴⁶ Although prosecutors use humanitarian fines, some find it has no impact on wealthy families and only burdens poor families.⁴⁴⁷ One woman implored a prosecutor not to impose a 1,000 dinar (8 euros) humanitarian fine because she said, “I will have to work to get this money.”⁴⁴⁸

On the other hand, community service may not impose a financial burden on the family, but requires a contract with the municipality or other institution.⁴⁴⁹ These contracts reportedly did not exist in some areas, and without the contracts, the justice system has nowhere to send defendants to complete this obligation.⁴⁵⁰

Psychosocial treatment

Under Article 283(6) of the Criminal Procedure Code, the prosecutor may defer prosecution if the suspect completes psychosocial treatment. Prosecutors reportedly rely heavily on this option, seeing psychosocial treatment as an opportunity for defendants to change.⁴⁵¹ Some prosecutors even favor it in lieu of other deferral measures.⁴⁵² Women victims also have preferred treatment over a humanitarian fine that will penalize them as well.⁴⁵³

As described in the CSW Section under Batterer Intervention Programs, these treatment programs are at an initial stage and not widely available throughout the country. Observers remained skeptical of the program’s effectiveness or the capacity to enforce treatment.⁴⁵⁴ An interviewee explained, “Some don’t want to go. Some don’t regularly attend the sessions. If there is a lack of will, they will not receive the treatment.”⁴⁵⁵ A prosecutor explained that the defendant may agree to treatment, but they later learn the defendant never even contacted the treatment institution to begin.⁴⁵⁶ The allocation of responsibility aggravates these problems. An MoJ unit for the execution of criminal sanctions supervises the enforcement of obligations,⁴⁵⁷ but it is unclear who actually monitors compliance with treatment.

⁴⁴⁶ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴⁴⁷ Interview with Prosecutor, Location H, Oct. 23, 2014.

⁴⁴⁸ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁴⁹ Criminal Procedure Code, Art. 283(3); Interview with Prosecutor, Location G, Oct. 20, 2014. There were limited reports of the duration of community service, but one prosecutor reported that a domestic violence offender was ordered to complete 300 hours of community service. Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁵⁰ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁴⁵¹ Interview with NGO, Location H, Oct. 24, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014 (stating her office has deferred 20 cases of domestic violence for psychosocial treatment in 2013 and 2014). The defendant must consent to treatment. Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁵² Interview with Prosecutor, Location H, Oct. 23, 2014; *see also* Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁵³ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁵⁴ Interview with NGO, Location H, Oct. 23, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014 (explaining that several offenders had not received the treatment despite their referral).

⁴⁵⁵ Interview with Prosecutor, Location F, Oct. 20, 2014.

⁴⁵⁶ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁵⁷ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

When offenders do not attend, prosecutors reinstate the original criminal proceedings but do not pursue enforcement of or punishment for their non-compliance.⁴⁵⁸

MEASURES TO SECURE THE DEFENDANT

The Criminal Procedure Code provides several mechanisms to secure the defendant's presence and facilitate unobstructed proceedings. These measures, including a restraining order and detention, can provide protection to victims throughout criminal proceedings.⁴⁵⁹ Prosecutor requests for these measures are especially important early on because judges do not have *ex officio* authority to issue them until confirmation of the indictment.⁴⁶⁰

Findings underline the need for clearer guidance for prosecutors on their application.⁴⁶¹ As indicated by their title, these measures are intended to secure the defendant rather than protect the victim.⁴⁶² Victims may withdraw their statements when they believe they "cannot be protected" during trial.⁴⁶³ A judge similarly concluded that the state must provide better protection to victims once they decide to report.⁴⁶⁴

In addition, the law does not direct prosecutors to conduct a risk assessment that could guide them in using these measures,⁴⁶⁵ nor do prosecutors have formal risk assessment tools that could aid them in this task.⁴⁶⁶ Interviews revealed high-risk cases where prosecutors did not request measures that may have protected victims from violence or even death. An NGO worker described a murder case where the perpetrator was sentenced to four years' imprisonment for raping his daughter.⁴⁶⁷ Although the parents divorced, they continued to live together using separate entrances because the wife could not sell the home.⁴⁶⁸ Although the wife reported violence several times, the prosecutor did not order any measures:

The day before the murder happened, she called the police, and the police have the obligation to consult with the basic prosecutor's office. The police called the prosecutor, and they said to go for regular procedure—meaning to file criminal charges. They filed criminal

⁴⁵⁸ Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014.

⁴⁵⁹ Criminal Procedure Code, Art. 188. The prosecutor or court may summon a defendant in writing, informing him of the crime with which he charged, and when and where he is to appear. Criminal Procedure Code, Art. 191. The prosecutor or court may issue an order to bring a defendant in if a summoned defendant fails to appear, if service of summons cannot be completed, or if detention has been ordered. Criminal Procedure Code, Art. 195. Police hold the responsibility to execute an order and bring him in. Criminal Procedure Code, Art. 196.

⁴⁶⁰ Criminal Procedure Code, Arts. 197-98, 211-12, 337. The prosecutor retains authority to submit a motion proposing these measures throughout proceedings, including prior to the indictment. *Id.*

⁴⁶¹ See Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

⁴⁶² Criminal Procedure Code, Chapter VIII, Measures to Secure the Presence of the Defendant and for Unobstructed Conduct of Criminal Proceedings; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁴⁶³ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁴⁶⁴ Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

⁴⁶⁵ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

⁴⁶⁶ See Interview with Prosecutor, Location B-1, Oct. 13, 2014 (relying on conversations with the police or the victim to evaluate the danger a victim faces and to inform their decisions); Interview with NGO, Location J, Feb. 25, 2015 (explaining that there is a risk assessment checklist but it is not noted in the Ministry of Justice protocol).

⁴⁶⁷ Interview with NGO, Location J, Feb. 23, 2015.

⁴⁶⁸ *Id.*

charges, and he didn't [end up in prison]. Then she also called the CSW, and they called the police, and the police went as regular patrol and found that she was killed by a knife. In this case, we wanted to ask for responsibility of basic prosecutor because they didn't take into consideration all of the risks in the case, because he was in prison before and a repeat offender.⁴⁶⁹

Detention

Prosecutors may file a motion for detention during the investigation or after filing an indictment.⁴⁷⁰ Because police rarely can detain without prosecutor approval and criminal judges can only detain after the indictment is filed, prosecutors hold great responsibility in rendering this decision.⁴⁷¹ Some prosecutors claimed they seek detention in more than 90 percent of cases, and the detention can last up to 30 days.⁴⁷² Yet interviewees reported that detention is underused in domestic violence cases.⁴⁷³ One prosecutor reported that of the 20 domestic violence offenders in that prosecutor's office in 2014, only 3 were held in detention.⁴⁷⁴

Detention serves a number of purposes. Foremost, it can provide a measure of protection to victims.⁴⁷⁵ In one example, when a husband moved back in with his wife after serving a prison term for domestic violence, he committed violence again and inflicted severe injuries on her.⁴⁷⁶ Despite the CSW's and police efforts, they could not persuade the prosecutor to order detention.⁴⁷⁷ After being summoned by the police, the perpetrator fled the country.⁴⁷⁸ The prosecution was unable to find him for several

⁴⁶⁹ Interview with NGO, Location J, Feb. 23, 2015.

⁴⁷⁰ Criminal Procedure Code, Arts. 212, 214, 216; Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with CSW, Location C, Oct. 14, 2014; Interview with Police, Location B-1, Oct. 13, 2014; Interview with Police, Location C, Oct. 14, 2014. In at least one city, prosecutors are on call to make decisions on continued detention of an offender. Interview with Police, Location G, Oct. 20, 2014.

⁴⁷¹ Criminal Procedure Code, Art. 212; Interview with NGO, Location J, Feb. 25, 2015; Interview with Police, Location G, Oct. 20, 2014; Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with CSW, Location C, Oct. 14, 2014; Interview with Police, Location B-1, Oct. 13, 2014; Interview with Police, Location C, Oct. 14, 2014.

⁴⁷² Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

⁴⁷³ Interview with NGO, Location B-1, Oct. 14, 2014; Interview with CSW, Location C, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014.

⁴⁷⁴ Interview with Prosecutor, Location I, Feb. 27, 2015.

⁴⁷⁵ Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014. Detention can also have a stronger effect than sanctions, which are typically suspended sentences. Interview with Prosecutor, Location A-2, Oct. 13, 2014. In addition, detention can speed up criminal proceedings, prevent evasion of service, and prevent the defendant from influencing the victim and other witnesses. Criminal Procedure Code, Art. 195; Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015. Detention can also provide a window to forensically examine a victim's injuries. Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015.

⁴⁷⁶ Interview with CSW, Location H, Oct. 22, 2014.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

months, and the woman felt unsafe at home.⁴⁷⁹ She ended up staying in a shelter because she was so afraid while he remained free.⁴⁸⁰

Article 211 of the Criminal Procedure Code provides a number of reasons to impose detention, including recidivism or interference with witnesses.⁴⁸¹ In addition, prosecutors rely on other criteria to reach this decision.⁴⁸² When the suspect is dangerous, a repeat offender, or addicted to alcohol, prosecutors are more likely to order detention.⁴⁸³ Other prosecutors appropriately assess a victim's fear in determining next steps. When deciding when to seek detention, a prosecutor explained, "We call her and ask her, because she knows the best whether her life is in danger and her health is in danger, and she is afraid. . . that's how we most frequently assess how dangerous it is for her."⁴⁸⁴

At times, however, prosecutors follow victims' wishes without due regard for the victims' safety or the dynamics of power and control. A woman reported her ex-husband for violence on two occasions.⁴⁸⁵ The second time, he followed her and her friend home and asked to talk over Easter. When she refused, he deliberately crashed his car into her friend's vehicle. He texted her, "This is how this Easter has passed, but you will see what the next Easter will be like."⁴⁸⁶ The prosecutor proposed a 30-day detention for him, but the woman asked the prosecutor to cancel the measure. Although the prosecutor thought there was a serious risk the defendant would hurt her, he was released.⁴⁸⁷

In another case, a husband prevented his wife from eating and sleeping for two to three months. The prosecutor declined to seek detention, as he surmised there was no risk of physical danger. He concluded, "[t]he victim has free will to leave the house, as there is no physical violence."⁴⁸⁸ Later, the husband came home drunk, beat her, pushed her to the ground, and broke her arm. After the woman reported the new violence, the prosecutor finally ordered detention.⁴⁸⁹

COURTROOM SECURITY

As described in the Criminal Judges Section on Courtroom Security, there are measures to protect victim witnesses. Prosecutors described a new procedure in place since October 2013 by which they and judges can grant the status of especially vulnerable or fragile witnesses.⁴⁹⁰ With vulnerable status, the witness can use a proxy and testify via technology; confrontation is allowed, however, if the defendant

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ Criminal Procedure Code, Art. 211.

⁴⁸² Criminal Procedure Code, Art. 211. Prosecutors may choose to detain a perpetrator if he is hiding, avoids the summons, is a flight risk, may destroy, hide or falsify evidence, influence witnesses, or repeat or complete the criminal act or execute a threat.

⁴⁸³ Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015.

⁴⁸⁴ Interview with Prosecutor, Location H, Oct. 23, 2014.

⁴⁸⁵ Interview with Prosecutor, Location I, Feb. 27, 2015.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁴⁸⁹ *Id.*

⁴⁹⁰ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

requests it.⁴⁹¹ While this protection is often provided for minor victims, prosecutors also apply it to adult victims of long-term violence who are in a “constant” state of fear.⁴⁹²

Interviews revealed these measures are either limited to certain times during proceedings, minimizing their effectiveness, or are unused.⁴⁹³ The benefit of especially vulnerable witness classification is it prevents victims from seeing or having physical contact with perpetrators.⁴⁹⁴ Nevertheless, a prosecutor admitted that these courtroom protections do not protect women and girls from violence outside the courtroom, such as stalking.⁴⁹⁵

At the time of interviews, efforts were underway to reform security for victims and witnesses, and the country was in the process of drafting an action plan to improve their status and establish standards on the protection of victims during criminal proceedings.⁴⁹⁶ In April 2014, the High Prosecutor’s Office in Belgrade created a service to provide information to victims and witnesses during criminal proceedings, and plans were underway to expand this service to four High Prosecutor’s Offices in other cities.⁴⁹⁷

SENTENCES

Prosecutors propose the type and duration of criminal sanctions, which may include prison, a fine, suspended sentence, or judicial admonition.⁴⁹⁸ Their recommendation shapes the outcome, as judges follow prosecutors’ suggestions in “most cases.”⁴⁹⁹ But interviews overwhelmingly show lenient sentencing with few prison sentences due to both Serbia’s laws and practices of state actors.⁵⁰⁰ Interviews suggest that prosecutors favor suspended sentences in practice, especially for first-time offenders.⁵⁰¹

⁴⁹¹ Criminal Procedure Code, Arts. 103, 104; Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014.

⁴⁹² Interview with Prosecutor, Location F, Oct. 20, 2014.

⁴⁹³ See, e.g., Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁴⁹⁴ Interview with Prosecutor, Location F, Oct. 20, 2014.

⁴⁹⁵ Interview with Prosecutor, Location A-1, Oct. 13, 2014.

⁴⁹⁶ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

⁴⁹⁷ *Id.* The service seeks to help the victim understand his or her role in the proceedings and provides a leaflet on basic witness rights, as well as contact information for the victim or witness to speak with a prosecutor about the case. As of January 2017, these services existed in Novi Sad, Niš, and Kragujevac. Personal communication from NGO to The Advocates for Human Rights, via email, Jan. 11, 2017 (on file with authors).

⁴⁹⁸ Interview with Criminal Judge, Location B-2, Oct. 13, 2014. Some prosecutors avoid proposing fines because they penalize the entire family. Interview with Prosecutor, Location A-2, Oct. 13, 2014. Prosecutors can also request protective measures for certain domestic violence crimes; however, as described in more detail in the Criminal Judges Section on Sanctions: Protective supervision, these measures are rarely requested or imposed. Criminal Procedure Code, Art. 512(2) allows proposals for protective supervision or judicial admonition for crimes punishable by less than three years imprisonment or a fine.

⁴⁹⁹ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁵⁰⁰ See, e.g., Interview with Criminal Judge, Location B-2, Oct. 13, 2014.

⁵⁰¹ See, e.g., Interview with Prosecutor, Location A-2, Oct. 13, 2014.

An interviewee attributed lenient sentencing practices to the law itself.⁵⁰² The prosecutor pointed to a legislative gap to address low-level, long-term violence and described prosecuting a son who repeatedly committed low-level violence against his mother.⁵⁰³ The prosecutor charged him three times and secured prison terms lasting several months.⁵⁰⁴ The prison sentences were too short, however, and he continued to abuse her each time he was released.⁵⁰⁵ The prosecutor explained, “The violence isn’t at such a level that he could get ten years and then be put away permanently.” The prosecutor later added that in cases with short sentences, “We don’t really achieve anything.”⁵⁰⁶

Interviews also show that prosecutorial practices contribute to light sentencing. One NGO cited prosecution as the largest “gap” in sentencing because prosecutors do not recognize high-risk cases or have access to all of the information to qualify an offense as a crime.⁵⁰⁷ The NGO described a perpetrator who had 10 or 15 cases involving minor incidents. Because the prosecutor did not have a database of all prior incidents displayed together, the justice system focused on the current incident instead of viewing the perpetrator’s actions cumulatively.⁵⁰⁸ As a result, he avoided criminal proceedings.⁵⁰⁹

Prosecutor misperceptions about domestic violence may also influence the sanctions they seek. A prosecutor explained that sending a defendant to prison may make him angrier upon his release.⁵¹⁰ But if he is repentant, the interviewee reasoned, a suspended sentence should have an adequate effect on him.⁵¹¹ A prosecutor explained, “When I can see that he is a *real* abuser, I will propose jail”⁵¹²

In addition, prosecutors may view a dangerous situation as meriting a lighter punishment, such as reconciliation.⁵¹³ In one case, a victim would not testify but the prosecutor used medical evidence to continue prosecution.⁵¹⁴ The victim later had a baby with her abuser during the appeals process.⁵¹⁵ The prosecutor interpreted the birth of their child as reconciliation and did not seek a prison sentence

⁵⁰² Prosecutors also complained about judicial practices, reporting that courts hand down punishments lower than what the law allows. Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵⁰³ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁵⁰⁴ *Id.* The son was sentenced to six months’ imprisonment the first time and to nine months’ imprisonment plus alcohol addiction treatment the second time. *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.* When asked if the prosecutor requested a restraining order, the interviewee could not recall. *Id.*

⁵⁰⁷ Interview with NGO, Location J, Feb. 23, 2015.

⁵⁰⁸ *Id.* The NGO described that the entire community was afraid of the perpetrator. He stalked the victim, would go into her house when she was not there and take her laptop, and he damaged her car.

⁵⁰⁹ Interview with NGO, Location J, Feb. 23, 2015.

⁵¹⁰ Interview with Prosecutor, Location G, Oct. 20, 2014. *See also* Interview with Prosecutor, Location I, Feb. 27, 2015.

⁵¹¹ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁵¹² *Id.* (emphasis added).

⁵¹³ *Id.*

⁵¹⁴ *Id.* (explaining that when a victim has reconciled with her abuser and relations have “normalized,” the prosecutor may seek a suspended sentence).

⁵¹⁵ *Id.*

because “relations normalized.”⁵¹⁶ Such interpretation does not, however, hold an offender accountable, nor does it take into account spousal rape and other relevant factors.

Security measures

As described in the Criminal Judges Section on Sanctions: Security measures, courts may impose security measures at sentencing to reduce the risk of recidivism.⁵¹⁷ Security measures, particularly restraining orders and confiscation of harmful objects, can serve an important purpose in protecting victims against continued violence.⁵¹⁸ For example, many of Serbia’s prisons are at capacity, allowing offenders to remain free up to three years before incarceration.⁵¹⁹ In these cases, a restraining order can provide protection to victims, especially because any measures to secure the defendant cease at the end of the proceedings.⁵²⁰

Prosecutors have authority to propose security measures to the court,⁵²¹ and courts generally defer to them and grant their recommendations.⁵²² Not all prosecutors, however, demonstrated sufficient knowledge of these measures to even make such a proposal. For example, a prosecutor stated that although Article 194 works well, prosecutors need a mechanism to prevent the abuser from approaching the victim.⁵²³ Furthermore, prosecutors may not see a need for criminal security measures if a victim has already applied for protective measures.⁵²⁴

ROLE IN FAMILY LAW PROTECTIVE MEASURES

Prosecutors play two roles with respect to protective measures under the Family Law. First, they can apply for measures on behalf of the victim and second, they prosecute violations of protective measures.

A violation of a protective measure is a crime punishable by a fine and a prison term of three months to three years.⁵²⁵ As with other charging decisions, prosecutors decide whether to pursue a violation of protective measures.⁵²⁶ Reports vary as to how consistently prosecutors pursue charges under Article 194(5). At least two prosecutors reported pursuing charges for violations of protective measures under

⁵¹⁶ *Id.*

⁵¹⁷ Criminal Code, Art. 78.

⁵¹⁸ *Id.*, Art. 79(7), (10).

⁵¹⁹ Interview with NGO, Location B-1, Oct. 14, 2014.

⁵²⁰ See Section on Measures to Secure the Defendant, *supra* (measures provide protection throughout proceedings).

⁵²¹ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014. These measures are sometimes based upon the recommendation of an expert. Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁵²² Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (explaining that courts grant security measures in “almost 100 percent of cases” involving alcohol or substance abuse when requested).

⁵²³ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁵²⁴ See Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵²⁵ Criminal Code, Art. 194(5).

⁵²⁶ Interview with Police, Location F, Oct. 20, 2014.

the Family Law.⁵²⁷ As with protective measure applications, the Republic Prosecutor's Office has not tracked the number of criminal prosecutions for violations of protective measures.⁵²⁸

Interviews indicated prosecutors do not require additional violence to file charges under Article 194(5).⁵²⁹ One prosecutor explained she will proceed under Article 194(5) even in cases where the victim has invited the perpetrator to approach her.⁵³⁰ One woman had a restraining order against her abusive husband, but asked him to meet to discuss joint possessions.⁵³¹ When they argued, she called the police.⁵³² Although she invited him and he did not use physical violence during their meeting, the prosecutor charged him for violating the protective measure.⁵³³

Both criminal judges and prosecutors acknowledged some prosecutors do not pursue violations.⁵³⁴ A few criminal judges stated they "never" see cases prosecuting violations of protective measures.⁵³⁵ Another prosecutor admitted never prosecuting a perpetrator for such a violation.⁵³⁶ She shared an example of a Roma woman, who obtained a protective measure ordering her ex-husband and his new wife to stay away from her in the house they shared.⁵³⁷ According to the terms, she was expected to remain in one room of the house, because she had nowhere else to live.⁵³⁸ While she felt safer during the daytime in her room, she was frightened to stay there at night.⁵³⁹ Her ex-husband eventually violated the order, beat her severely, slammed her head into the wall, and kicked her.⁵⁴⁰ Instead of charging the husband for violating the protective measure, the prosecutor told the victim to ask the police to escort her back to her bedroom.⁵⁴¹

Although some prosecutors appropriately charge offenders for the violation plus any additional violence,⁵⁴² at times, prosecutors only bring charges for the violation or the violence, but not both. A prosecutor described charging an offender under Article 194(5) for breach of the protective measure only. A man violated a protective measure by pushing his ex-wife and threatening her, "I will beat you

⁵²⁷ Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014.

⁵²⁸ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

⁵²⁹ Interview with NGO, Location F, Oct. 22, 2014.

⁵³⁰ Interview with Prosecutor, Location A-1, Oct. 13, 2014.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ Another CSW interviewee described how the prosecution failed to respond at all to notifications about violations of an interim protective measure, even though the victim was being subjected to ongoing psychological violence. Interview with CSW, Location E, Oct. 15, 2014.

⁵³⁵ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁵³⁶ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² Interview with NGO, Location H, Oct. 23, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014. Interviews also revealed that prosecutors pursue violations that do not involve physical violence. Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

and break your arms and legs.”⁵⁴³ The man already had domestic violence criminal charges pending against him. But although he committed new violence as well as the violation, the prosecutor only charged the violation under Article 194(5).⁵⁴⁴ Conversely, prosecutors may only prosecute the act of domestic violence and not the violation of protective measures. One NGO explained, “In some cases they are reporting violations of the protective measures to the prosecutors...for paragraph 5, they do not file so many charges. It’s more often from Article 194(1-3).”⁵⁴⁵ For example, one defendant continued to violate the restraining order protecting his ex-wife and child.⁵⁴⁶ He was so dangerous that the CSW moved the mother and child to a shelter in another city. Although he had received jail sentences for his violence – the longest sanction being five months – there was no mention of prosecution for his violations of the protective measures.⁵⁴⁷

In addition to prosecuting violations, prosecutors are authorized to apply for civil protective measures on behalf of a victim.⁵⁴⁸ Interviews generally revealed, however, that prosecutors rarely use their authority to apply for protective measures, or they use it in limited circumstances.⁵⁴⁹ The Republic Prosecutor’s Office does not track the number of applications prosecutors make for these measures.⁵⁵⁰

Prosecutors are not required to seek victim consent before applying for such measures.⁵⁵¹ A prosecutor admitted “we can involuntarily violate some of her rights” when they do not consider the victim’s wishes.⁵⁵² In fact, some prosecutors perceive it is in the public interest to apply regardless of her wishes.⁵⁵³ In one case, a man punched his ex-wife and gave her a black eye.⁵⁵⁴ Because the prosecutor perceived the violence as severe, she applied for a restraining order for the victim *ex officio*.⁵⁵⁵

⁵⁴³ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁵⁴⁴ *Id.*

⁵⁴⁵ Interview with NGO, Location J, Feb. 23, 2015.

⁵⁴⁶ Interview with CSW, Location G, Oct. 21, 2014.

⁵⁴⁷ *Id.*

⁵⁴⁸ Family Law Act, Art. 284(2). *See also* Family Law Judges Section on Protective Measures: Generally.

⁵⁴⁹ Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014 (explaining that prosecutors handle criminal proceedings and refer the criminal judge to family proceedings to check for protection measures); *see also* Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (stating the public prosecutor does not always inform victims they can apply for protective measures); Interview with Prosecutor, Location I, Feb. 27, 2015; Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (stating that she handled only two applications for protective measures by a prosecutor); Interview with Police, Location B-1, Oct. 13, 2014 (stating they had seen one prosecutor apply for protective measures); Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with NGO, Location J, Feb. 25, 2015.

⁵⁵⁰ Interview with Deputy Public Prosecutor, Location B-1, Oct. 16, 2014.

⁵⁵¹ Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵⁵² Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵⁵³ Interview with Prosecutor, Location A-2, Oct. 13, 2014; *see also* Interview with Family Law Judge, Location B-1, Oct. 13, 2014. But other prosecutors do speak with the victim beforehand and provide her with referrals. Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵⁵⁴ Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁵⁵⁵ *Id.*

Under the new LPDV, which entered into force in June 2017, prosecutors are designated to play a role with respect to its emergency measures. If police issue temporary, emergency restraining orders or orders for the perpetrator to distance himself from the family home or apartment, prosecutors are the designated party to request 30-day extensions of these measures within 24 hours after their issuance.⁵⁵⁶

⁵⁵⁶ LPDV Art. 18.

CRIMINAL JUDGES

[The criminal suits] usually last the longest. . . I don't see the benefit from it...[they are] exhausted from it. There's no benefit because they [the perpetrators] got a suspended sentence. Some [women] even say, 'If I knew that, I wouldn't have been involved.'

- NGO worker⁵⁵⁷

Domestic violence constitutes a large proportion of the criminal caseload. Judges estimated that up to one-third of their criminal cases relate to domestic violence.⁵⁵⁸ Another court oversaw criminal prosecutions for approximately 600 domestic violence offenders from 2010 to 2014.⁵⁵⁹ After amendments to the misdemeanor Law on Public Peace and Order, anecdotal reports indicate an increase in the number of criminal proceedings and detentions for domestic violence.⁵⁶⁰

Criminal laws impose higher sanctions than misdemeanors. New changes to the Criminal Code also broaden the means by which the criminal justice system can hold offenders accountable. The Criminal Code was amended in November 2016, and articles addressing stalking (Article 138a) and sexual harassment (Article 182a) entered into force on June 1, 2017. In addition, both the Criminal Code and Criminal Procedure Code include protections that can be ordered to protect a victim during and after criminal proceedings. Thus, criminal judges have a unique opportunity to employ these legal provisions to promote victim protection.

Interviews revealed, however, that judges are not ordering these measures. Criminal cases are lengthy, and without these protections, victims are exposed to further violence for an extended period of time. Moreover, judges typically suspend sentences or order short prison terms for those convicted of domestic violence, which fails to hold offenders accountable.

ATTITUDES

Judicial attitudes varied across interviewees, with some judges demonstrating concern for victim safety and others exhibiting harmful misperceptions about domestic violence. At least one NGO found criminal

⁵⁵⁷ Interview with NGO, Location J, Feb. 23, 2015.

⁵⁵⁸ Before the new Law on Public Peace and Order, the number of charges for domestic violence under the Criminal Code and Misdemeanor Law were nearly the same in one town. Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014. There were more than 800 criminal charges and 773 motions for a misdemeanor action. *Id.* One criminal judge estimated that five to ten percent of his cases related to domestic violence. Interview with Criminal Judge, Location A-2, Oct. 13, 2014. Another criminal judge estimated 20 to 30 percent related to domestic violence cases. Interview with Criminal Judges, Location A-1, Oct. 13, 2014. Domestic violence criminal cases have increased from 2009 to 2013, and a criminal judge estimated that 20 percent of criminal cases involve domestic violence. Interview with Criminal Judge, Location B, Oct. 16, 2014. *See also* Interview with NGO, Location H, Oct. 23, 2014; Interview with NGO, Location B-1, Oct. 14, 2014 (stating that domestic violence is more often prosecuted as a crime than a misdemeanor).

⁵⁵⁹ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁵⁶⁰ Communication between NGO and The Advocates for Human Rights, via internet, May 10, 2017 (notes on file with authors).

judges reluctant to change their practices.⁵⁶¹ For example, some judges resisted the Judicial Protocol, questioning why they need a protocol when a law already exists.⁵⁶²

Judges' misperceptions can influence decisions that impact victim safety. For example, some criminal judges cited drinking as the cause of domestic violence.⁵⁶³ Whether the offender has consumed alcohol can influence judicial decisions, such as whether to detain a suspect or issue post-conviction security measures.⁵⁶⁴ It can also impact sentences. One criminal judge explained the reason they order suspended sentences with alcohol addiction treatment is because offenders act under the influence of alcohol in "90 percent of those cases."⁵⁶⁵

Interviews revealed that domestic violence remained a low priority for some criminal judges. For example, judges may prioritize the preservation of the family over victim safety. A criminal judge hearing a domestic violence case told the victim and defendant together, "That's one of the most stupid criminal offenses that breaks families."⁵⁶⁶ Such attitudes fail to send a message of zero tolerance for violence, and do not encourage victims to report violence again. Other cases are viewed as more important than domestic violence against women. When asked about the Judicial Protocol for domestic violence, a criminal judge dismissively responded there were "other urgent cases" like offenses against minors.⁵⁶⁷

Poor attitudes also lead judges to focus on victims' behavior, and interviews revealed that judges blame victims for not reporting violence sooner. Judges view the law as strong, but expect more from victims:

Article 194 encompasses everything necessary. We are facing a different problem: that the violence is being reported quite late. It might be that the victims are not aware of the law, or they are not educated enough to gather the evidence necessary to report an instance of domestic violence. . . . We are facing the problem that the woman will report the violence and then withdraw her position with the police. If victims would report every situation of violence, then we would not have femicide[s].⁵⁶⁸

Other judges believed that victims might be lying. One criminal judge stated, "In 90 percent of cases, we are really on the side of the victim, but sometimes you cannot exclude the possibility that the victim is trying to harm the perpetrator and wants him to go to prison."⁵⁶⁹ Another judge questioned the credibility of one victim who sustained bruising and implied she falsified her evidence. Because the

⁵⁶¹ Interview with NGO, Location J, Feb. 25, 2015.

⁵⁶² Interview with Police, Location B-1, Oct. 13, 2014.

⁵⁶³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁵⁶⁴ Interview with Criminal Judge, Location G, Oct. 20, 2014 (stating that judges prefer to detain suspects when they are addicts or alcoholics who should not be released).

⁵⁶⁵ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁵⁶⁶ Interview with NGO, Location H, Oct. 24, 2014.

⁵⁶⁷ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁵⁶⁸ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁵⁶⁹ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

woman worked in an emergency room, the judge commented she could secure any kind of report she wanted from doctors.⁵⁷⁰

Effective trainings can change attitudes and harmful misperceptions. Trainings organized by the judicial academy, however, are not always mandatory and may be limited to lectures.⁵⁷¹ Moreover, any trainings that provide formal certification focus on cases involving juvenile victims, rather than domestic violence overall.⁵⁷² Those trainings that do occur for judges are primarily driven and led by women's NGOs.⁵⁷³

COURTROOM SECURITY

Courts do not always have adequate security to keep victims safe. In addition, there is a lack of courtroom measures to fully support witnesses who are afraid to testify,⁵⁷⁴ and those that exist are not being implemented.⁵⁷⁵ As described in the Prosecutors Section on Courtroom Security, status as a vulnerable victim will trigger certain witness measures, but those measures remain in place only during her testimony.⁵⁷⁶ Criminal system actors recognize that while a defendant can be removed from the courtroom during victim testimony,⁵⁷⁷ additional measures are needed to ensure witnesses feel safe afterward.⁵⁷⁸ Furthermore, courtrooms in Serbia can be very small, aggravating an already intimidating situation for a victim.⁵⁷⁹

This lack of security can intimidate victims from testifying freely and consequently impact the case's outcome. In one case, a husband beat his wife and threatened her. During the trial, the defendant aggressively challenged the allegations of violence in front of the victim. The judge described how the case resulted in only a fine:

The woman said, "He didn't beat me. He never abused me." And she started to cry. The defendant was so insolent and rude during the trial. And in the end, I saw that the woman simply didn't dare to say anything, and in the end, he got a fine...I think 50,000 dinars. . . . I think that woman is suffering still, if she is still with him. I don't think she will dare to leave. . . . He was so insolent. He said, "Just ask me if I ever touched her."⁵⁸⁰

⁵⁷⁰ Interview with NGO, Location H, Oct. 23, 2014.

⁵⁷¹ Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014; Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁵⁷² Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁵⁷³ See, e.g., Interview with Family Law Judges, Location B-2, Oct. 17, 2014.

⁵⁷⁴ Interview with Prosecutor, Location H, Oct. 23, 2014. Audiovisual testimony was not yet available in at least one of the cities visited during this monitoring. Interview with Prosecutor, Location G, Oct. 20, 2014.

⁵⁷⁵ Interview with Criminal Judge, Location H, Oct. 23, 2014 (stating "in criminal proceedings, we do not have special measures for the protection of victims").

⁵⁷⁶ Interview with NGO, Location J, Feb. 23, 2015.

⁵⁷⁷ Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014.

⁵⁷⁸ Interview with Prosecutor, Location H, Oct. 23, 2014.

⁵⁷⁹ Interview with NGO, Location J, Feb. 23, 2015.

⁵⁸⁰ Interview with Criminal Judge, Location G, Oct. 20, 2014.

Serbia's legislation allows for harmful practices that can further intimidate or traumatize a victim. Under the Criminal Procedure Code, a judge may use confrontation to assess parties' credibility when their testimonies conflict.⁵⁸¹ Multiple criminal judges, however, recognized the harm in confrontation and refused to use it.⁵⁸² One judge explained, "I would rather believe the story of the victim without confrontation rather than confront them, as this is counterproductive."⁵⁸³

TIMELINES

Criminal proceedings in domestic violence cases are often protracted and typically last two years.⁵⁸⁴ One judge illustrated the delays over the past few years.⁵⁸⁵ Since the first half of 2011, there were 650 domestic violence cases; by the start of 2014, 260 of those cases remained unfinished.⁵⁸⁶ One interviewee described how she filed a constitutional complaint because criminal proceedings lasted beyond the six-year statute of limitations for domestic violence against a mother and child.⁵⁸⁷ Because the case lasted seven or eight years, the child victim was an adult at the trial.⁵⁸⁸ By that time, the child (now adult) changed his statement and testified the violence did not happen.⁵⁸⁹

Even high-risk cases can take years in the criminal justice system.⁵⁹⁰ One perpetrator, a former boxer, abused his wife and three children for ten years.⁵⁹¹ He inflicted serious injuries, including concussions and a broken arm, and he threatened to kill his wife.⁵⁹² Although the CSW submitted its opinion three

⁵⁸¹ Criminal Procedure Code, Art. 99, 89. See the Misdemeanor Judges Section on Confrontation for more information regarding the use of confrontation and its harms.

⁵⁸² Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with Criminal Judges, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁵⁸³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁵⁸⁴ Interview with CSW, Location I, Feb. 27, 2015; Interview with Criminal Judge, Location B, Oct. 16, 2014; Interview with NGO, Location B-1, Oct. 14, 2014 (explaining that it could take from four months up to three years to reach a sentence); Interview with Prosecutor, Location B-1, Oct. 13, 2014 (explaining that some cases can last for several years); Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (stating that criminal trials last too long); Interview with CSW, Location H, Oct. 22, 2014 (stating that proceedings could easily last longer than one year and more typically last two years); Interview with Criminal Judge, Location H, Oct. 23, 2014 (explaining that domestic violence proceedings range from six months to two years). Other interviewees estimated criminal cases last an average of six months, but can be as short as one month or as long as one year. Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with NGO, Location F, Oct. 22, 2014. Another interviewee estimated criminal proceedings last from one month to one-and-a-half years. Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁵⁸⁵ Interview with Criminal Judge, Location F, Oct. 20, 2014

⁵⁸⁶ *Id.* These were cases with Article 194 charges.

⁵⁸⁷ Interview with NGO, Location B-1, Oct. 14, 2014.

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

⁵⁹⁰ For example, cases involving a weapon are more complex and can last one to two years. Interview with Prosecutor, Location A-2, Oct. 13, 2014.

⁵⁹¹ Interview with CSW, Location C, Oct. 14, 2014.

⁵⁹² *Id.*

times and stressed urgency, the criminal case continued for five years.⁵⁹³ Ultimately, the woman was forced to move out of the home with her children to try to stay safe.⁵⁹⁴

Interviews revealed several reasons for the long delays in criminal proceedings. As discussed earlier, some judges blame victims for not informing authorities about the violence. One judge explained, “Usually the court is being accused of lack of efficiency, but it is not our problem because the victims are not reporting sufficiently.”⁵⁹⁵

Existing court infrastructure and procedures also pose barriers to faster proceedings. For example, judicial rotations can exacerbate the length of procedures as a new judge takes over cases.⁵⁹⁶ When witnesses fail to appear, prosecutors must postpone hearings until the judge’s schedule can accommodate them again.⁵⁹⁷ Service of process also causes delays.⁵⁹⁸ A judge explained that court summoners only deliver to certain areas, forcing them to rely on postal mail to serve defendants in other areas.⁵⁹⁹ Internal postal procedures do not always align with litigation needs, creating additional problems for service by post.⁶⁰⁰ There is, however, a public board where the summons can be posted.⁶⁰¹ It was unknown whether criminal judges are systematically using this procedure.

In addition, defendants may try to evade a summons,⁶⁰² especially when they believe they can avoid service by not signing the summons.⁶⁰³ Some judges still view service of process as complete with or without a signature.⁶⁰⁴ Newer judges, however, are reluctant to regard defendants as served without their signature because the law does not explicitly address it.⁶⁰⁵ Nevertheless, defendants’ evasion means that a criminal court’s timeframe for successfully summoning a defendant typically requires one month.⁶⁰⁶ In one case, criminal proceedings began in January 2011 for a defendant, but three years later, he continued to change residences to hinder the case.⁶⁰⁷ In another example, a violent husband

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁵⁹⁶ Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁵⁹⁷ Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014.

⁵⁹⁸ See also the Family Law Judges Section on Court Delays: Delays Arising from Service of Summons for additional description of service problems that arise with respect to civil cases. Although the Criminal Procedure Code provides that participants in proceedings avoiding receipt of a summons may be fined up to 150,000 dinars, (Criminal Procedure Code, Art. 193) interviewees did not indicate that criminal judges had used this article.

⁵⁹⁹ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁰⁰ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁶⁰¹ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁰² Interview with CSW, Location G, Oct. 21, 2014; Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014; Interview with NGO, Location B-1, Oct. 14, 2014.

⁶⁰³ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.*

⁶⁰⁶ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁶⁰⁷ Interview with CSW, Location G, Oct. 21, 2014.

repeatedly evaded the summons for his offense.⁶⁰⁸ After complaining to the ministry for help, an NGO finally located his whereabouts after four attempts.⁶⁰⁹

These delays put victims at risk and allow offenders to escape accountability. The length of criminal proceedings can discourage victims from reporting violence in the first place.⁶¹⁰ And when victims do come forward, the delays can jeopardize a woman's safety and even compel her to return to the violent situation. An NGO stated:

The major problem now is the length of the proceedings. Women lose trust. When coming here, they are full of enthusiasm. They think we are going to solve their problems. But as the time passes, they lose faith, they see there's no solution and they go back [to their abusers].⁶¹¹

Detention, as described below and in the Prosecutors Section on Measures to Secure the Defendant: Detention, can speed up proceedings.⁶¹² One NGO requested the criminal court schedule a hearing multiple times, but the abuser delayed the proceedings by avoiding the summons.⁶¹³ Once the police finally detained him, however, the criminal case proceeded quickly.⁶¹⁴ While criminal judges have authority to detain a defendant, judges must first meet certain conditions before they can exercise this authority. As with other measures to secure the defendant's presence, judges must receive a prosecutor's motion or confirmation of the indictment before they can order detention.⁶¹⁵

CRIMINAL PROCEEDINGS

Evidence: victim testimony

Like prosecutors, criminal judges attach a great deal of weight to victim testimony in court proceedings.⁶¹⁶ One judge referred to the victim's statement as the "key evidence."⁶¹⁷ Thus, whether a victim chooses to testify can greatly impact the case's outcome. When a victim refuses to testify, the case is often closed.⁶¹⁸

⁶⁰⁸ Interview with NGO, Location B-1, Oct. 14, 2014.

⁶⁰⁹ *Id.*

⁶¹⁰ Interview with Police, Location D, Oct. 15, 2014.

⁶¹¹ Interview with NGO, Location H, Oct. 24, 2014.

⁶¹² Interview with NGO, Location F, Oct. 22, 2014; Interview with Prosecutor, Location B-1, Oct. 13, 2014

(explaining that detention can speed up proceedings to even up to one month); Interview with NGO, Location B-1, Oct. 14, 2014. In addition, a woman's residence in a shelter can influence a judge to work more quickly to process cases. Interview with CSW, Location H, Oct. 22, 2014.

⁶¹³ Interview with NGO, Location B-1, Oct. 14, 2014.

⁶¹⁴ *Id.*

⁶¹⁵ Criminal Procedure Code, Article 212.

⁶¹⁶ *See, e.g.,* Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015.

⁶¹⁷ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶¹⁸ A judge explained, "I end the case after the wife's refusal to testify." Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

Victim recantation or refusal to testify is common in criminal proceedings.⁶¹⁹ Victims may not want to testify for various reasons, including fear of ongoing threats, economic dependence, or their safety and children's welfare.⁶²⁰ An interviewee stated, "The problem is if the husband gets sent to prison, then she will be left without any financial support for the kids."⁶²¹ In other cases, victims have misunderstood that someone else will testify for them if they choose not to testify.⁶²²

When a victim refuses to testify, it often limits the evidence judges will admit. For example, one judge reported that using the testimonies of others would run contrary to the victim's will.⁶²³ When this happens, judges typically release the defendant.⁶²⁴ Judges may also exclude the victim's prior statements to police and other actors from the proceedings.⁶²⁵ In one example, a woman visited a doctor and obtained documentation of her physical injuries.⁶²⁶ The wife decided not to testify, and her statement to the doctor was inadmissible as it was not made under oath.⁶²⁷ After her husband claimed her bruises came from falling down the stairs, the judge released her husband.⁶²⁸

Even if the case proceeds without victim testimony, her decision not to testify can reduce the likelihood of a conviction. A prosecutor explained that the court decides whether a victim's refusal to testify will be considered a mitigating factor or not.⁶²⁹ Even with other evidence, refusals to testify have resulted in acquittals.⁶³⁰ Despite a medical certificate, one judge focused on the victim's non-cooperation in his decision to acquit the defendant.⁶³¹

⁶¹⁹ See, e.g., Interview with Prosecutor, Location A-1, Oct. 13, 2014 (estimating that the victim reconciles and wants to drop charges in every third case); Interview with Prosecutor, Location I, Feb. 27, 2015 (stating it is a "significant" amount). Police reasoned that prosecutors should assume the role of taking the victim's statement at the scene to reduce the risks of secondary victimization and victim recantation. Interview with Police, Location G, Oct. 20, 2014. But others stated that victim recantation prevents the prosecutor from using her statement provided in earlier proceedings. Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Criminal Judges, Location A-1, Oct. 13, 2014; Interview with Prosecutor, Location I, Feb. 27, 2015. Serbian law allows victims the right to not testify against their spouses. Criminal Procedure Code, Art. 94(1); Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Criminal Judge, Location F, Oct. 20, 2014. Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (even a woman who has separated from her abuser but has not finalized her divorce can invoke her right not to testify).

⁶²⁰ Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (attributing victim's refusal to cooperate to her fear); Interview with Prosecutor, Location I, Feb. 27, 2015; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015. See also Interview with Prosecutor, Location A-1, Oct. 13, 2014.

⁶²¹ Interview with Doctor, Location B-1, Oct. 15, 2014.

⁶²² Interview with Prosecutor, Location I, Feb. 27, 2015.

⁶²³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁶²⁴ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁶²⁵ *Id.*

⁶²⁶ *Id.*

⁶²⁷ *Id.*

⁶²⁸ *Id.*

⁶²⁹ Interview with Prosecutor, Location B-1, Oct. 16, 2014.

⁶³⁰ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁶³¹ *Id.* On appeal, the court overturned this acquittal, and this led to a conviction.

Despite many examples revealing a different outcome, the authors learned of at least one case where the court convicted and sentenced a violent offender to prison despite the victim's recantation.⁶³² The victim withdrew her prior statement and called the abuser a "wonderful father and husband" who was occasionally "irritable, because he worked a lot."⁶³³ Nevertheless, the court still sentenced him to 18 months in prison plus imposed a security measure of alcohol treatment.⁶³⁴

Evidence: forensic

Although judicial practices suggest otherwise, interviewees emphasized that other evidence can support a case in the absence of victim testimony. A forensic doctor explained:

The problem is domestic violence is a crime, which is under the obligation of the professional litigators. It is *ex officio*. It is usually said, "I cannot continue with this procedure if the person does not want to provide testimony anymore." This is not right. If the judge has these photos of tramline bruises,⁶³⁵ and it was obvious that it was a domestic violence attack, her testimony is not necessary. The problem is, in many cases, she does not want to proceed with the charges, because she decided to go home and reconcile with the husband.⁶³⁶

Historically, courts have not regarded medical records produced by non-forensically trained doctors as sufficient evidence,⁶³⁷ and other evidence, such as witnesses or forensic documentation, is needed.⁶³⁸ Forensic experts can support doctors' reports and provide critical testimony about injuries, especially when there is no victim or witness testimony.⁶³⁹ Increasingly, the testimony or certificate must be provided by a forensic specialist to carry weight with a court. If a woman can produce forensic documentation, it can serve as firm evidence for the court and is a "big help" for victims.⁶⁴⁰

Evidence: other

Other witness testimony or forensic evidence may also be "sufficient for conviction."⁶⁴¹ A judge described a case where a wife suffered light bodily injuries from her husband.⁶⁴² The victim's mother

⁶³² Interview with Prosecutor, Location I, Feb. 27, 2015.

⁶³³ *Id.*

⁶³⁴ *Id.*

⁶³⁵ Tramline bruises are caused by using a cylindrical object, such as a baseball bat, to strike and results in a "pale linear central area lined on either side by linear bruising." Forensic Medicine for Medical Students, at <http://www.forensicmed.co.uk/wounds/blunt-force-trauma/bruises/>, last visited Aug. 21, 2017.

⁶³⁶ Interview with Doctor, Location B-1, Oct. 15, 2014.

⁶³⁷ *Id.*

⁶³⁸ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁶³⁹ Interview with Prosecutor, Location I, Feb. 27, 2015.

⁶⁴⁰ Interview with Doctor, Location B-1, Oct. 15, 2014.

⁶⁴¹ Interview with Criminal Judge, Location A-2, Oct. 13, 2014. *See also* Interview with Prosecutor, Location B-1, Oct. 13, 2014 (stating the "destiny of the case depends on the statement provided by the witnesses"); Interview with NGO, Location H, Oct. 23, 2014 (explaining that prosecutors can use other evidence in the absence of medical reports); Interview with Prosecutor, Location F, Oct. 20, 2014 (explaining that without forensic reports, witness statements or photographic evidence can also suffice).

⁶⁴² Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

filed charges against her son-in-law.⁶⁴³ At the trial, both of the victim's parents testified about the abuse, and there was medical documentation of the injuries. The victim refused to testify and stated her parents were lying.⁶⁴⁴ The judge still convicted the perpetrator, but ordered a suspended sentence instead of imprisonment.⁶⁴⁵

Criminal judges were inconsistent in whether they use reports from the CSW as evidence in proceedings.⁶⁴⁶ A judge explained that the Supreme Court has stated the CSW report is a non-binding opinion, but that has not prevented her from accepting those reports as evidence.⁶⁴⁷ This practice is not without risk, as appellate courts may reject such admissions. One interviewee reported that a judge's decision was overturned because the court accepted a CSW report into evidence.⁶⁴⁸

Measures to secure the defendant and for unobstructed criminal proceedings

The Criminal Procedure Code provides for several measures to secure the defendant's presence at trial and facilitate proceedings. The measures most relevant to domestic violence include detention and a prohibition against approaching, meeting, or communicating with specific persons, i.e. a criminal restraining order.⁶⁴⁹ These measures can provide important protection to victims who lack safe shelter or protective measures, and judges conceded that criminal restraining orders can be effective in stopping further violence.⁶⁵⁰

Yet interviews revealed concerns that failure to implement these measures puts victims at risk. Overall, interviewees reported these measures were underused in domestic violence cases.⁶⁵¹ One judge stated that fewer than 20 percent of defendants are detained in cases before municipal courts.⁶⁵² An NGO worker in a large city could recall only one judge who issued a measure to protect her client throughout the criminal proceedings.⁶⁵³ When these measures are used, they are not implemented quickly.⁶⁵⁴ Other interviewees suggested the provisions are not specific to domestic violence victims, weakening their effectiveness.⁶⁵⁵

⁶⁴³ *Id.*

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*

⁶⁴⁶ Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁴⁷ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁴⁸ *Id.*

⁶⁴⁹ Criminal Procedure Code, Art. 188(3), (7). As indicated above under the Prosecutors Section on Measures to Secure the Defendant, criminal judges cannot *ex officio* issue these measures until after the indictment is confirmed, but before then, judges can approve prosecutor requests for these measures. Criminal Procedure Code, Art. 198.

⁶⁵⁰ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁶⁵¹ *See e.g.*, Interview with NGO, Location F, Oct. 22, 2014 (explaining that although police arrest offenders for 48 hours, judges have released them); Interview with NGO, Location B-1, Oct. 14, 2014.

⁶⁵² Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁶⁵³ Interview with NGO, Location J, Feb. 25, 2015. Courts have detained dangerous perpetrators throughout criminal proceedings. Interview with Prosecutor, Location I, Feb. 27, 2015.

⁶⁵⁴ Interview with NGO, Location F, Oct. 22, 2014.

⁶⁵⁵ Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

Predominant Aggressor Determinations

Reports of dual charges in criminal cases were rare.⁶⁵⁶ Those few cases where both parties are charged with domestic violence suggest that judges do not always identify self-defense and preemptive violence. One judge recalled a case where both parties inflicted physical injuries on each other.⁶⁵⁷ Medical documentation showed they each sustained the same level of injury.⁶⁵⁸ Although it is unclear whether the report identified injuries as defensive, the judge decided to impose suspended sentences on both parties.⁶⁵⁹

The authors heard at least one case where a judge handed down a conviction for preemptive violence.⁶⁶⁰ In a case where a daughter attempted to kill her violent father, the judge recounted:

Three times a week, he got drunk because he was criticized for not being able to produce a son and only had daughters. When he would get drunk, he would get violent. For no special reason or trigger, he would inflict injuries, grievous injuries.

One day, he beat his wife and threw her off the balcony onto concrete. He continued to punch her until the daughter took a kitchen knife and stabbed him in the back.⁶⁶¹ Details of his long-time abuse emerged during the case, and the father asked the court to acquit his daughter.⁶⁶² Nevertheless, the judge convicted and sentenced the daughter to protective supervision.⁶⁶³

Violations of Family Law Protective Measures

Violations of civil protective measures are criminal offenses under Article 194(5) of the Criminal Code, which states that violations can be punished by imprisonment of three months to three years, as well as a fine.⁶⁶⁴ Not all criminal judges demonstrated knowledge or experience in applying this article to violations of protective measures. One criminal judge had never handled any violations under Article 194(5) and did not view such violations to be within her jurisdiction.⁶⁶⁵ The judge erroneously explained that the family court handles those measures and their violations, while the criminal court handles security measures under the Criminal Code.⁶⁶⁶

⁶⁵⁶ Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Prosecutor, Location A-2, Oct. 13, 2014 (stating she had never had a dual charge case); Interview with Police, Location E, Oct. 15, 2014 (explaining the woman would be charged with a misdemeanor offense for calling him a name, while the man would be charged with either a misdemeanor or crime for physical violence). Those dual charges that do proceed typically end in reconciliation. Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁶⁵⁷ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁶¹ *Id.*

⁶⁶² *Id.*

⁶⁶³ *Id.*

⁶⁶⁴ Criminal Code, Art. 194(5).

⁶⁶⁵ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁶⁶⁶ *Id.*

When judges do apply Article 194(5), interviews revealed they are properly holding offenders accountable for violations of protective measures independent of any additional acts of violence.⁶⁶⁷ At least one judge explained that when a perpetrator commits violence, he is held accountable for two offenses under Article 194. The justice system can hold him responsible first for the violent act itself and second for the violation of the protective measure under Article 194(5).⁶⁶⁸ One interviewee described how a judge responded to a violation that did not involve physical violence.⁶⁶⁹ The perpetrator violated his protective measure by going near the front of the victim's building.⁶⁷⁰ Although there was no violence, the judge issued a six-month prison sentence.⁶⁷¹ In another case, a judge issued a prison sentence after a perpetrator stalked his partner near the shelter where she was staying, even though he did not commit physical violence.⁶⁷²

Other interviewees, however, expressed frustration over criminal judges' sentencing for violations. An NGO worker reported that some judges only issue suspended sentences unless the violation includes severe physical violence or violence against children.⁶⁷³ In another case where the perpetrator had a restraining order, he approached the victim's home and broke her window.⁶⁷⁴ The court handed down a suspended sentence for the violation.⁶⁷⁵ According to the NGO, their client continues to experience violence.⁶⁷⁶ Fines are also a typical sentence for violations of protective measures.⁶⁷⁷

At worst, courts may not convict an offender at all under Article 194(5). A prosecutor recounted how a dangerous abuser committed three incidents of violence against his victim, despite having a restraining order prohibiting him from coming within 50 meters of her.⁶⁷⁸ He was so violent that their child trembled with fright whenever encountering him.⁶⁷⁹ In the final encounter, he made a threat, but committed no physical violence.⁶⁸⁰ The judge examined only the last incident involving no physical violence and decided to acquit him.⁶⁸¹

SANCTIONS

Under the Criminal Code, courts can issue four types of sanctions upon conviction: 1) punishment; 2) security measures; 3) corrective measures;⁶⁸² and 4) cautionary measures.⁶⁸³

⁶⁶⁷ Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁶⁶⁸ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁶⁹ Interview with NGO, Location H, Oct. 23, 2014.

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ Interview with NGO, Location B-1, Oct. 14, 2014.

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.*

⁶⁷⁷ Interview with Prosecutor, Location F, Oct. 20, 2014.

⁶⁷⁸ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁶⁷⁹ *Id.*

⁶⁸⁰ *Id.*

⁶⁸¹ *Id.* On appeal, the court overturned the acquittal and returned the case for retrial. *Id.*

⁶⁸² Corrective measures are those imposed on minors. Criminal Code, Art. 4(3).

Punishments

Authorities can impose three types of criminal punishments for domestic violence: 1) imprisonment; 2) fines; and 3) community service.⁶⁸⁴ Criminal judges do not typically order fines as they perceive them to be ineffective as punishments.⁶⁸⁵ Similarly, judges do not usually impose community service for domestic violence, since it requires the defendant's agreement and is perceived to be ineffective in protecting victims.⁶⁸⁶ The most commonly issued punishment is a prison term, but that is often curtailed to a suspended sentence.⁶⁸⁷

Prison sentences for domestic violence vary according to the level of violence.⁶⁸⁸ Article 194(1), the endangerment of the "tranquility, physical integrity, or mental condition" of a family member, carries the lowest prison term, with a range of three months to three years.⁶⁸⁹ Under Article 194(2), the use of weapons or objects to inflict serious injury or seriously impair health increases the prison sentence to a range of six months to five years.⁶⁹⁰ Under Article 194(3), infliction of serious bodily harm or health impairment increases the punishment to a prison term of two to ten years.⁶⁹¹ In practice, most domestic violence is prosecuted under Article 194(1).⁶⁹² Convictions under Article 194(1) typically result in a short prison term or suspended sentence.⁶⁹³

Various systems actors, including criminal judges and prosecutors, acknowledged that sentences are lenient and generally lower than the maximum prescribed by law.⁶⁹⁴ Interviews revealed that judges issue light sentences even in cases involving weapons, serious injuries, and repeat violence. One criminal judge recounted how a perpetrator beat his wife and used the phone cable to strangle her.⁶⁹⁵ He owned a gun, with which he threatened police when they arrived.⁶⁹⁶ The prosecutor filed several charges for

⁶⁸³ *Id.*, Art. 4.

⁶⁸⁴ *Id.*, Art. 43(1)-(3). Admonitions are not possible in domestic violence cases. Interview with Criminal Judge, Location A-1, Oct. 13, 2014. At least one criminal judge, however, stated that admonition is allowed under Article 194(1) for first-time offenders. Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁸⁵ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁶⁸⁶ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁶⁸⁷ Interviewees recognize the deterrent effect of prison. At least one criminal judge opined that imprisonment is the most effective sanction, because the experience changes the way offenders think. Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁶⁸⁸ See Criminal Code, Article 194.

⁶⁸⁹ *Id.*, Article 194(1). The offender must have used violence, the threat of attack against a person's life or body, or "insolent or ruthless behavior."

⁶⁹⁰ *Id.*, Article 194(2). See also Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁶⁹¹ Criminal Code, Article 194(3). Article 194(3) also punishes domestic violence committed against a juvenile. In addition, domestic violence resulting in death leads to a prison term of three to fifteen years. Criminal Code, Article 194(4).

⁶⁹² Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁶⁹³ *Id.*; Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁶⁹⁴ Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Police, Location F, Oct. 20, 2014 (explaining that punishments sometimes fall below even the minimum sanction prescribed by law); Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014.

⁶⁹⁵ Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁶⁹⁶ *Id.*

offenses against his wife, the police, their children, and for possession of illegal weapons.⁶⁹⁷ For all these charges, including the strangulation, the judge imposed just three months' imprisonment.⁶⁹⁸

In another case involving repeat violence, a husband bruised his wife's face, injured her eye, and fractured her nasal bone.⁶⁹⁹ This was repeat violence, as her husband had been detained for violence one year prior.⁷⁰⁰ This time, her injuries were regarded as low-level injuries—including the broken bone—for which her husband received just six months' imprisonment.⁷⁰¹

Lenient sentences fail to hold offenders accountable, which can, in turn, deter victims from reporting violence. In one case, a man beat his wife on three separate occasions, including publicly in the prosecutor's building where he head-butted her and caused her to bleed.⁷⁰² The court ordered a five-month suspended sentence for his violent behavior.⁷⁰³ CSW staff explained that mild sanctions such as these are one of the reasons victims reconcile with their perpetrator.⁷⁰⁴ After multiple suspended sentences and repeated violations of her protective measure, the victim eventually returned to him and never reported violence again.⁷⁰⁵

Influential Factors

The victim's profile can also influence the type of sanction courts issue.⁷⁰⁶ When the victim is a child, an offender is more likely to receive a jail sentence.⁷⁰⁷ After one abuser held a knife to his wife's throat, set her parents' house on fire, and slammed his daughter's head into a wardrobe, he was sentenced to seven months in prison.⁷⁰⁸ An NGO worker opined the judge issued a prison sentence because the defendant directed his violence against a minor.⁷⁰⁹ Had he only been violent toward his wife, the interviewee would have expected a lighter sentence.⁷¹⁰

In addition, victims' opinions can influence the type and severity of sanctions.⁷¹¹ During sentencing, judges may take into account a victim's request for a reduced sentence or the possibility for reconciliation.⁷¹² At times, judges may even ask the victim whether her abuser should serve prison time

⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.*

⁶⁹⁹ Interview with Prosecutor, Location F, Oct. 20, 2014.

⁷⁰⁰ *Id.*

⁷⁰¹ *Id.*

⁷⁰² Interview with CSW, Location G, Oct. 21, 2014.

⁷⁰³ *Id.*

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.*

⁷⁰⁶ Domestic violence against a juvenile family member is punished under Article 194(3) of the Criminal Code and therefore carries a higher sanction.

⁷⁰⁷ Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁷⁰⁸ Interview with NGO, Location B-1, Oct. 14, 2014. The victim also sought protective measures under the Family Law for these actions, as described in the Family Law Judges Section on Attitudes.

⁷⁰⁹ Interview with NGO, Location B-1, Oct. 14, 2014.

⁷¹⁰ *Id.*

⁷¹¹ Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷¹² Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

for the violence.⁷¹³ This places victims in the difficult position of balancing their own needs against holding offenders accountable, particularly in a climate where economic support is minimal. One abuser was sentenced to prison for one year, but after four months, his wife asked the judge to release him since there was no one to work the land and their children were hungry.⁷¹⁴

A history of violence also plays a role in sentencing. Without a criminal history, Article 194(1) will generally result in a suspended sentence.⁷¹⁵ Although repeat violence may increase the punishment, the sentences may still be disproportionately low for the violence. A court sentenced one husband to 30 days' imprisonment under Article 194(1).⁷¹⁶ One year later, he committed violence again and was sentenced to just five months' imprisonment under Articles 194 and 138.⁷¹⁷ Low sentences for repeat offenders do not effectively hold them accountable, nor do they deter future violence. In fact, the defendant remained extremely dangerous and continued to violate the protective measures.⁷¹⁸

Authorities often justify their lenient sentencing for repeat violence by saying the requirements for criminal or misdemeanor offenses have not been met.⁷¹⁹ Others point to the lack of information sharing on cases. With 40 criminal judges in the court, a judge may not know if he or she is seeing a repeat perpetrator with each new case.⁷²⁰

Cautionary measures: suspended sentence

For less serious offenses, a court may impose two types of cautionary measures if they will deter future criminal behavior: 1) judicial admonitions, which are rarely used,⁷²¹ and 2) suspended sentences.⁷²²

Suspended sentences are common sanctions for domestic violence in Serbia.⁷²³ In one province, 82 percent of criminal domestic violence cases resulted in punishments, most of which were converted to suspended sentences.⁷²⁴ A criminal judge also perceived the number of suspended sentences in Serbia

⁷¹³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷¹⁴ Interview with Republic Institute for Social Protection, Belgrade, Feb. 24, 2015. *See* Centers for Social Work Section on Victim Services: Financial assistance for information regarding financial support limits.

⁷¹⁵ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷¹⁶ Interview with CSW, Location G, Oct. 21, 2014.

⁷¹⁷ Interview with CSW, Location G, Oct. 21, 2014. Article 138 is Endangerment of Safety.

⁷¹⁸ *Id.*

⁷¹⁹ *Id.*

⁷²⁰ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷²¹ Several criminal judges reported they do not issue admonitions for domestic violence. Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Criminal Judge, Location A-1, Oct. 13, 2014 (explaining that admonitions may only be issued for offenses carrying a maximum of one year imprisonment and thus do not apply to domestic violence offenses).

⁷²² Criminal Code, Art. 64.

⁷²³ Interview with Criminal Judge, Location F, Oct. 20, 2014; Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014; Interview with NGO, Location F, Oct. 22, 2014; Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷²⁴ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014. *See also* Interview with Prosecutor, Location I, Feb. 27, 2015 (reporting that of five convictions for domestic violence in 2014, three resulted in prison sentences and two resulted in suspended sentences).

to be unjustifiably high.⁷²⁵ Indeed, there were reports of courts issuing suspended sentences even in cases involving objects as weapons.⁷²⁶ In one case, police described a man who repeatedly whipped a woman with sticks.⁷²⁷ Despite his use of objects, he received only a suspended sentence.⁷²⁸

For offenses under Article 194(3), judges are required to impose prison sentences.⁷²⁹ For serious cases under Article 194(1),⁷³⁰ however, judges retain discretion to impose a suspended sentence.⁷³¹ When imposing a prison sentence of less than two years, a judge may consider several factors that allow a suspended sentence instead of imprisonment.⁷³² Where the judge finds a suspended sentence is an adequate deterrent of future crime and has weighed the other factors,⁷³³ the court may place the defendant on probation for one to five years.⁷³⁴

Interviews revealed several reasons why judges order suspended sentences. Some judges view them as the most effective sentences to protect victims against domestic violence.⁷³⁵ Judges particularly appreciated their deterrent effect because of the threat of imprisonment.⁷³⁶ Courts are also more likely to impose suspended sentences for offenses perceived as less serious or for first-time offenders.⁷³⁷ Violence with no physical injuries, including psychological or economic violence, typically results in a suspended sentence.⁷³⁸ This practice, however, creates the risk that judges will downplay threats made

⁷²⁵ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷²⁶ Under Article 194(2) of the Criminal Code, offenders using weapons, dangerous implements or other means capable of inflicting serious bodily harm shall be punished with imprisonment from six months to five years.

⁷²⁷ Interview with Police, Location D-1, Oct. 14, 2014.

⁷²⁸ *Id.*

⁷²⁹ Article 194(3) of the Criminal Code imposes a prison sentence of two to ten years. Grievous bodily injury would result in a prison sentence, such as a two-year sentence for a first-time offender or up to ten years for a repeat offender. Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁷³⁰ Such serious violence might include long-term violence or grievous bodily harm. Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷³¹ *Id.*

⁷³² Criminal Code, Art. 66(1), (4). The court may consider the defendant's personality, previous conduct, conduct after the crime, his level of culpability, and other factors related to the commission of the crime. Criminal Code, Art. 66(4).

⁷³³ *Id.*, Art. 64(2).

⁷³⁴ *Id.*, Art. 65.

⁷³⁵ Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁷³⁶ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷³⁷ *Id.*; Interview with Republic Institute for Social Protection, Belgrade, Feb. 24, 2015; Interview with Criminal Judge, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷³⁸ Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (stating that serious bodily injuries will trigger a prison sentence); Interview with Police, Location D-1, Oct. 14, 2014.

by dangerous offenders and impose suspended sentences.⁷³⁹ Other judges view suspended sentences as appropriate when other factors, such as chemical addiction or financial problems, are present.⁷⁴⁰

At times, judges assess victims' situations. When a victim has reconciled with her abuser, judges will generally impose a suspended sentence.⁷⁴¹ In these cases, the suspended sentence is "supportive" of what the parties have decided.⁷⁴² Some judges are also influenced by a victim's economic situation and see prison as a greater burden on unemployed mothers whose breadwinner is now incarcerated.⁷⁴³ One judge recognized this dilemma and suggested that Article 194's provisions be broadened beyond sanctions to also provide financial support for the victim.⁷⁴⁴ Other judges look at the victim's security when perpetrators are forced to complete a prison term. According to one judge, a suspended sentence is a better option for a victim who fears for her safety because the perpetrator may be angry after he is released.⁷⁴⁵ Other times, judges do not recognize the role they play in holding offenders accountable and instead place responsibility on the victim to take steps. One judge explained that when the offender is "violent by nature," a suspended sentence would be ineffective. In these cases, "there is not much we can do."⁷⁴⁶ In this case, she simply advises the woman to find a job so she can become independent and get a divorce.⁷⁴⁷

Although judges generally reserve suspended sentences for first-time offenders, interviews revealed that even repeat offenders may receive multiple suspended sentences.⁷⁴⁸ A repeat offender could potentially evade prison and instead receive a series of suspended sentences carrying longer probation periods. Under her practice, a judge explained that if a perpetrator reoffends while under a suspended

⁷³⁹ Interview with Criminal Judge, Location A-2, Oct. 13, 2014 (even repeat offenders who make threats receive multiple suspended sentences). It can take two to three repeat offenses involving psychological violence before an offender will be ordered to prison.

⁷⁴⁰ Interview with Criminal Judge, Location F, Oct. 20, 2014. Appellate courts' decisions reveal an inclination toward suspended sentences and alcohol addiction treatment, as well.

⁷⁴¹ Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁴² Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁴³ Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with Police, Location D-1, Oct. 14, 2014.

Judges may also be inclined to impose a suspended sentence when the victim is the offender's wife. Interview with Republic Institute for Social Protection, Belgrade, Feb. 24, 2015.

⁷⁴⁴ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷⁴⁵ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁴⁶ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁷⁴⁷ *Id.*

⁷⁴⁸ Interview with Criminal Judge, Location A-2, Oct. 13, 2014. The additional suspended sentence would carry a higher prison term of one to five years. *Id.*

sentence, he could receive a second suspended sentence and modified protective measures.⁷⁴⁹ It might not be until the abuser's third offense that he is finally imprisoned.⁷⁵⁰

Interviewees also reported they did not consider suspended sentences adequate sanctions for domestic violence.⁷⁵¹ Offenders have committed violence while on probation, and some judges estimated that perpetrators reoffend under a suspended sentence in 30 to 40 percent of cases.⁷⁵² One interviewee explained, "Unfortunately, this is how it is, and this happens many times."⁷⁵³ One offender had ten criminal complaints against him. At least three of the complaints were for violence against his wife, for which he received suspended sentences. When his wife sought refuge at her parents' home, he set his parent-in-laws' barn on fire.⁷⁵⁴ He beat her in public and continued to perpetrate violence.⁷⁵⁵ After the police filed another criminal complaint, he again received a suspended sentence of five months.⁷⁵⁶ In the case where the offender whipped the victim with sticks, he committed additional violence while under the suspended sentence.⁷⁵⁷ During the second criminal trial, the victim ended up withdrawing her statement.⁷⁵⁸ As described in this report, victim recantation can result in closure of the case.

Protective supervision

In addition to a suspended sentence, a judge may order protective supervision.⁷⁵⁹ Protective supervision can provide additional measures for victim safety while an offender is on probation, including: prohibition against visiting specific places; prohibition against substance abuse; visits to professional and other counseling centers; and mitigation of the damage, including reconciliation with the victim.⁷⁶⁰ Although protective supervision includes important measures that can support and protect victims, judges tend to prioritize those that focus on substance abuse.⁷⁶¹ Addiction treatment is often ordered as, according to one judge, "we are trying to remove the cause of the violence."⁷⁶²

⁷⁴⁹ Interview with Criminal Judge, Location B-2, Oct. 16, 2014. If the offender re-offends under a suspended sentence, the sentence is revoked. In the case where the offender re-offends after completing his suspended sentence, that new offense can serve as an aggravating circumstance in any future proceedings and could increase the chance of prison as a sanction. Interview with Criminal Judges, Location A-1, Oct. 13, 2014. Recommission of an offense during the suspended sentence results in a cumulative sentence of the previous suspended sentence and the new offense's sentence. Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷⁵⁰ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁵¹ Interview with Prosecutor, Location A-1, Oct. 13, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷⁵² Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁷⁵³ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷⁵⁴ Interview with CSW, Location G, Oct. 21, 2014.

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ Interview with Police, Location D-1, Oct. 14, 2014.

⁷⁵⁸ *Id.*

⁷⁵⁹ Criminal Code, Art. 71-73. The court may examine factors including the defendant's personality, history, attitude after the crime and toward the victim, and the circumstances surrounding the crime. Criminal Code, Art. 72.

⁷⁶⁰ *Id.*, Art. 73.

⁷⁶¹ Interview with Criminal Judge, Location B-2, Oct. 16, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014 (explaining that of 600 prosecutions, 18 cases ended with a protective supervision measure of inpatient

Interviews reveal, however, that judges infrequently use protective supervision. One interviewee, who had been working as a criminal judge since 2007, admitted never ordering protective supervision in domestic violence cases.⁷⁶³ Another judge, who had been in the position for 9.5 years, only ordered protective supervision twice.⁷⁶⁴

Despite the array of measures, a criminal judge stated doubtfully, “Protective supervision sounds better than it is in practice.”⁷⁶⁵ It does not “function well in practice” because Serbia lacks the institutional infrastructure and agreements with existing institutions to execute protective supervision.⁷⁶⁶ Without infrastructure, “defendants are left on their own, and there is no way to check if there is compliance or not.”⁷⁶⁷ Consequently, the responsibility to monitor compliance often falls to the victim, who is informed that she must report violations of a suspended sentence.⁷⁶⁸

Failure to comply with protective supervision can result in judicial admonition, an alternative or extended protective supervision, or revocation of the suspended sentence.⁷⁶⁹ Although judges may revoke a suspended sentence and incarcerate a defendant for non-compliance, a criminal judge admitted they typically extend the duration of the protective supervision instead.⁷⁷⁰

Security measures

At the time of sentencing, security measures may be imposed to eliminate factors that could induce an offender to reoffend.⁷⁷¹ A court may impose various measures, such as chemical addiction treatment, psychiatric treatment, and confiscation of objects.⁷⁷² Importantly, when the offender’s further conduct poses a threat to victims, the court may issue a restraining order as a security measure for the victim.⁷⁷³ Article 89a of the Criminal Code allows the court to prohibit offender communication and contact with the victim.⁷⁷⁴

Overall, interviews indicate judges are not imposing restraining orders as often as they should. One judge admitted Article 89a is new and used infrequently.⁷⁷⁵ But the judge also insisted that when the

psychiatric treatment, 6 for out-patient psychiatric treatment, 3 for drug treatment, and 35 for alcohol treatment; 90 resulted in acquittals). Article 73 of the Criminal Code addresses protective supervision measures of treatment.

⁷⁶² Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁶³ Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁷⁶⁴ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁶⁵ Interview with Criminal Judge, Location B, Oct. 16, 2014.

⁷⁶⁶ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁶⁷ *Id.*

⁷⁶⁸ *Id.*

⁷⁶⁹ Criminal Code, Art. 71(4). Criminal Procedure Code, Art. 545. Prosecutors may revoke probation if the individual does not fulfill the obligations.

⁷⁷⁰ Interview with Criminal Judge, Location H, Oct. 23, 2014.

⁷⁷¹ Criminal Code, Art. 78.

⁷⁷² *Id.*, Art. 79.

⁷⁷³ *Id.*, Art. 80(6), 89a.

⁷⁷⁴ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁷⁵ *Id.*

prosecutor requests security measures, the court usually grants them.⁷⁷⁶ One NGO worker described a positive practice where the judge handed down a conviction along with a three-year restraining order as a security measure.⁷⁷⁷ It was the first time she had seen a judge grant a restraining order for a domestic violence client.⁷⁷⁸ Nevertheless, another interview illustrated judges' disregard of the restraining order where it would be needed. In the case where a perpetrator was sentenced to prison for holding a knife to his wife's throat, his entry into prison was postponed because the prisons were full.⁷⁷⁹ Yet the prosecutor neither requested nor did the court impose any security measures while he remained free.⁷⁸⁰

One reason for its underuse may be due to the novelty of Article 89a and judges' unfamiliarity with it.⁷⁸¹ When asked if he ever issues restraining orders, a criminal judge erroneously responded that restraining orders were issued under the Family Law.⁷⁸² Another criminal judge expressed skepticism about how well they protect victims, given that no one is systematically monitoring compliance, as described below.⁷⁸³

Security measures can play an important role in protection, particularly where limited prison capacity can delay defendants' entry into prison for years.⁷⁸⁴ Some judges recognized the value of security measures in domestic violence.⁷⁸⁵ But others did not, even in cases involving high lethality risk. In one case, a husband beat his wife, injuring her face and body with a chair and other objects.⁷⁸⁶ As authorities prepared to indict him, the man beat his wife again. Nevertheless, "since he was an alcoholic," the judge imposed a suspended sentence and the security measure of addiction treatment.⁷⁸⁷ The judge did not, however, impose a restraining order.⁷⁸⁸

One husband who served prison time for marital rape continued to harass his wife after his release and their divorce.⁷⁸⁹ He stalked her by telephoning her 200 times per day, calling her while she was on holiday and telling her, "I see you," and contacting her bosses at work.⁷⁹⁰ Eventually, he was resentenced to prison.⁷⁹¹ Security measures, however, would have provided another layer of protection for the victim and held the offender accountable.

⁷⁷⁶ Interview with Criminal Judge, Location A-2, Oct. 13, 2014. See Prosecutors Section on Sentences: Security measures.

⁷⁷⁷ Interview with NGO, Location J, Feb. 25, 2015.

⁷⁷⁸ *Id.*

⁷⁷⁹ Interview with NGO, Location B-1, Oct. 14, 2014.

⁷⁸⁰ *Id.*

⁷⁸¹ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁸² Interview with Criminal Judge, Location G, Oct. 20, 2014.

⁷⁸³ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁸⁴ Interview with NGO, Location B-1, Oct. 14, 2014.

⁷⁸⁵ Interview with Criminal Judges, Location A-1, Oct. 13, 2014.

⁷⁸⁶ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁷⁸⁷ *Id.*

⁷⁸⁸ *Id.*

⁷⁸⁹ Interview with Criminal Judge, Location A-1, Oct. 13, 2014.

⁷⁹⁰ *Id.*

⁷⁹¹ *Id.*

Compliance with security measures is not monitored or enforced by a central body, such as probation. Instead, interviews revealed that monitoring remains *ad hoc* for most measures,⁷⁹² and it is commonly up to the defendants or victims to report compliance.⁷⁹³ For example, one prosecutor ordered alcohol treatment for an offender sentenced to prison.⁷⁹⁴ It was the victim who later informed the prosecutor the measure was never enforced because the prison did not have a treatment program.⁷⁹⁵

The security measure of chemical addiction treatment has some degree of monitoring. In these cases, the court must check with treatment providers about offender compliance.⁷⁹⁶ This is an important enforcement step, as many defendants reportedly do not attend treatment until threatened by the court.⁷⁹⁷ It is unknown, however, how often or regularly courts check offender compliance.

When offenders do not comply with security measures, sanctions are weak. Judges might modify the measure or force defendants to undergo treatment.⁷⁹⁸

REHABILITATION

These previous records should be available. The court should know a defendant's past.

– High Criminal Court Judge⁷⁹⁹

Serbia's Criminal Code allows for legal and judicial rehabilitation of an offender.⁸⁰⁰ Rehabilitation eliminates all legal consequences of a person's crime and expunges his criminal record.⁸⁰¹ First-time offenders may benefit from *legal rehabilitation* if they have not committed a new criminal offense during a specified time period.⁸⁰² An offender sentenced to three to five years' imprisonment may benefit from *judicial rehabilitation* if he has not committed a new crime, merits rehabilitation based on

⁷⁹² One NGO explained that offenders are required to report to judges regularly about their compliance with security measures. Interview with NGO, Location F, Oct. 22, 2014.

⁷⁹³ See Interview with NGO, Location F, Oct. 22, 2014. *But see* Interview with Criminal Judges, Location A-1, Oct. 13, 2014 (insisting that judges are in constant communication with doctors who report to them on compliance). Police also noted that criminal courts do not communicate information about security measures, resulting in a lack of police knowledge of these measures. Interview with Police, Location C, Oct. 14, 2014.

⁷⁹⁴ Interview with Prosecutor, Location G, Oct. 20, 2014.

⁷⁹⁵ *Id.*

⁷⁹⁶ Interview with Criminal Judge, Location A-2, Oct. 13, 2014. There were reports of a draft agreement to charge an official with monitoring to ensure compliance, but the agreement was not yet formally completed at the time of monitoring. Interview with CSW, Location H, Oct. 22, 2014. The court is to request a report from the medical institution administering treatments. Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁹⁷ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁷⁹⁸ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁷⁹⁹ *Id.*

⁸⁰⁰ "Rehabilitation occurs either by virtue of law itself (legal rehabilitation) or by a petition of the convicted person pursuant to decision of the court (judicial rehabilitation)." Criminal Code, Art. 97(2).

⁸⁰¹ *Id.*, Art. 97(1).

⁸⁰² *Id.*, Art. 98.

his conduct, and has financially indemnified the damage.⁸⁰³ Rehabilitation is allowed whether the court has imposed a suspended sentence or prison sentence.⁸⁰⁴

There are grave consequences when rehabilitation is granted in domestic violence cases. Rehabilitation creates the serious risk that the criminal history of a domestic violence offender will become unknown. A criminal judge explained they are unaware of prior convictions if a defendant re-offends after rehabilitation.⁸⁰⁵ The judge stated they will not know, “as the sentence gets expunged. The court does not [receive] notice of the prior sentence. In the past, reports stated the sentence that was expunged, but now we cannot see it at all.”⁸⁰⁶ Under the new Criminal Code, this gap remains and all of the offender’s prior criminal records are no longer available to the court.⁸⁰⁷

A criminal judge explained she could learn of prior convictions from police reports, which retain information about expunged sentences.⁸⁰⁸ Police confirmed they maintain files of past penal records, even in cases of expungement, which they must deliver to the judge as part of the charging report.⁸⁰⁹ Whether this is happening consistently in practice, however, is unclear.

⁸⁰³ *Id.*, Art. 99. The court must also take into account other factors in granting rehabilitation, including the “nature and significance” of the crime. *Id.*, Art. 99(2).

⁸⁰⁴ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

⁸⁰⁵ *Id.*

⁸⁰⁶ *Id.*

⁸⁰⁷ Interview with Criminal Judge, Location B-2, Oct. 16, 2014.

⁸⁰⁸ Interview with Criminal Judge, Location F, Oct. 20, 2014.

⁸⁰⁹ Interview with Police, Location H, Oct. 24, 2014.

MISDEMEANOR JUDGES

Prior to amendments in January 2016, the police typically initiated misdemeanor proceedings related to domestic violence⁸¹⁰ as violations of Articles 6 and 12 of the Law on Public Peace and Order.⁸¹¹ The 2016 amendments had a significant impact on misdemeanor domestic violence cases.⁸¹² The law now defines public space as the space available to an unspecified number of persons. This restricts the domestic violence actions that can be adjudicated as misdemeanors when the violence does not occur in a public space, but in a private residence. Although the amendments include an exception to this definition if the actions are audible to the public, anecdotal reports noted a significant decrease in the number of misdemeanor domestic violence cases.⁸¹³ Nevertheless, Articles 7, 8, and 9 of the new Law on Public Peace and Order may still be used with respect to domestic violence cases that occur in public or that fall within the noted exception, albeit to a lesser extent.⁸¹⁴

Articles 7, 8, and 9, like Articles 6 and 12 of the previous Law on Public Peace and Order, are not specific to domestic violence and are general articles addressing violence.⁸¹⁵ By way of example, insolent or ruthless behavior⁸¹⁶ covers a broad range of acts in the domestic violence context, like “when a perpetrator breaks things around the house, if he takes off his pants, shows his butt or pees – that’s all a reality . . . or calls her names, humiliates her in this manner.”⁸¹⁷ Misdemeanor proceedings are intended

⁸¹⁰ Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location D-1, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location B-1, Oct. 13, 2014; Interview with Police, Location B-1, Oct. 17, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location D, Oct. 15, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015. Misdemeanor Law, Arts. 126 and 179 provide that an injured party (or competent authority under Article 179) can request to initiate misdemeanor proceedings. Article 127 states that the public prosecutor is a party to the proceedings. If the public prosecutors abandon the request for the proceedings, they are supposed to notify the injured party within eight days pursuant to Article 127. Article 128 provides that other authorities are supposed to inform the injured party if they initiate misdemeanor proceedings. Under Article 180, injured parties can continue with or change the proceedings if the public prosecutor drops them.

⁸¹¹ Interview with Police, Location G, Oct. 20, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸¹² Communication between NGO and The Advocates for Human Rights, via internet, May 10, 2017 (notes on file with authors). Misdemeanor judges also have jurisdiction over violations of the LPDV’s emergency measures.

⁸¹³ *Id.*

⁸¹⁴ The interviews on which this Section is based were conducted before the 2016 amendments; however, articles 7, 8, and 9 in the new Law on Public Peace and Order parallel Articles 6 and 12 of the previous Law on Public Peace and Order, which were in effect at the time of the interviews.

⁸¹⁵ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸¹⁶ Previous Law on Public Peace and Order (Official Gazette of RS, no. 51/92, 53/93, 67/93, 48/94, and 101/2005), Article 12, Law on Public Peace and Order (Off. Gazette of RS, no. 6/16), Art. 8.

⁸¹⁷ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014 (explaining that Article 6, paragraph 2 for serious threats was used less frequently). *See also* Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014 (noting that ruthless behavior was widely defined). “Rude, impertinent, reckless behavior” is now defined as behavior or

to cover the “lighter offenses,”⁸¹⁸ but one interviewee recalled a case where the defendant physically beat his wife but was prosecuted under the misdemeanor law.⁸¹⁹

Domestic violence proceedings were among those identified as a priority for misdemeanor judges.⁸²⁰ How and when misdemeanor proceedings are used in domestic violence cases is not accurately known.⁸²¹ Statistics on the number of domestic violence misdemeanor cases were unavailable at the time of fact-finding, as there were no official records or electronic databases.⁸²² In addition, institutions were not required to collect this information.⁸²³ Some ombudspersons have assumed responsibility to request this information in their jurisdiction; however, at least one institution has failed to report each year.⁸²⁴

NO SPECIALIZATION

Misdemeanor judges manage a large number of cases that cover an extensive range of legal issues. One court had 5,000 misdemeanor cases pending.⁸²⁵ Other interviewees reported having up to 1,500 cases per year per judge,⁸²⁶ covering numerous bylaws.⁸²⁷

Despite the array of legal issues, there are no specialized misdemeanor judges,⁸²⁸ and “all judges do all kinds of work whether they are the president of the court or just a judge.”⁸²⁹ In fact, one interviewee

actions in public, endangering the safety of citizens or disturbing the public order, offending public morals, or destroying or damaging property. Law on Public Peace and Order (Official Gazette of RS, no. 6/16), Art. 3(12).

⁸¹⁸ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸¹⁹ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸²⁰ *Id.* According to the same interviewee, misdemeanor judges also gave priority to other cases of violence, including violence at sporting events or participating in a fight.

⁸²¹ Individual judges reported that their rough estimates from years ago indicated that approximately 10 to 15 percent of their misdemeanor cases related to violence, but this number was not specific to domestic violence. Interview with Misdemeanor Judge, Location F, Oct. 21, 2014. Other available statistics indicated that approximately 18.8 percent of domestic violence reports to the police resulted in motions for misdemeanor actions (773 out of 4,114 reports) and 87.3 percent of those motions resulted in misdemeanor proceedings (675 initiated proceedings out of 773 motions for misdemeanor actions). Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁸²² Interview with Misdemeanor Judge, Location F, Oct. 21, 2014. One interviewee noted that there were electronic and handwritten entries, and cases relating to violence and violations of public peace and order were placed in physical folders with a particular color so they were easily recognized by court staff. Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸²³ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁸²⁴ *Id.*

⁸²⁵ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸²⁶ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸²⁷ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014. These bylaws cover everything from traffic cases, to taxes and customs issues, commercial laws, veterinary laws, municipal decisions, tourism, and public peace and order, which could include domestic violence. Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014. Laws that govern Misdemeanor Judges that are used in domestic violence situations include the Law on Offenses (Misdemeanor Law), which amendments took effect on March 1, 2014, and the Law on Public Peace and Order.

⁸²⁸ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸²⁹ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

explained that judges are assigned an equal distribution of case topics.⁸³⁰ Therefore, all judges preside over domestic violence cases. This lack of specialization without additional training is of particular concern because the dynamics of domestic violence are different than those of violence between strangers.

Interviewees acknowledged that specialization provides judges with “a lot of education and [] a lot of experience.”⁸³¹ In addition, interviewees indicated that specialization would increase efficiencies and expedite cases.⁸³² There have been some initiatives to foster specialization. Between 2008 and 2011, a team of ten misdemeanor judges in Belgrade focused exclusively on domestic violence cases.⁸³³ These judges heard approximately 20 domestic violence cases per month, in contrast to the typical situation of three such cases per month.⁸³⁴ Following structural changes to the judicial system, requests to re-institute this specialization in domestic violence cases did not pass.⁸³⁵

TRAINING AND ATTITUDES

Misdemeanor judges have completed some training on domestic violence, especially from NGOs,⁸³⁶ but judges did not report recent trainings on domestic violence involving adults.⁸³⁷ Of particular concern were the judges who demonstrated no knowledge of the Judicial Protocol on domestic violence.⁸³⁸ With the 2017 LPDV, however, NGOs have increased efforts to ensure judges understand the new law and have seen immediate results. On June 1, 2017 – the same day the LPDV entered into force – a misdemeanor judge issued a 30-day prison sentence for a violation of an LPDV emergency measure.⁸³⁹

Without adequate training, judges may hold harmful attitudes toward victims. Many judges shifted blame from the perpetrator to other causes. One judge suggested that victims brought physical violence on themselves because they “provoked or verbally abused” their husbands for years until the husbands finally snapped.⁸⁴⁰ That same judge implied that victims may make false reports, referencing a victim who reported physical violence at the advice of her divorce attorneys to gain advantage.⁸⁴¹ Another judge noted that testimony from bystanders who witnessed the event is more reliable than testimony from the injured party herself.⁸⁴² Other interviewees blamed causes other than the perpetrator. For

⁸³⁰ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸³¹ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸³² *See Id.*

⁸³³ *Id.*

⁸³⁴ *Id.*

⁸³⁵ *Id.*

⁸³⁶ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸³⁷ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸³⁸ *Id.*; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015. One positive development, however, was the creation of a Misdemeanor Judge Bench Book.

⁸³⁹ Personal communication from NGO to The Advocates for Human Rights, via email, June 5, 2017 (on file with authors).

⁸⁴⁰ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁴¹ *Id.*

⁸⁴² Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

example, one judge noted that most offenses occurred because of alcohol abuse.⁸⁴³ There are also attitudes that prioritize preservation of the family over victim safety. In an example in which a husband abused his wife and three children, the court attempted to help the family over a 10-year period of time. Ultimately the court deemed its efforts “unsuccessful” because the wife divorced her abusive husband, and the court was unable to “preserve their marriage.”⁸⁴⁴

On the other hand, some interviewees recognized the barriers that victims of domestic violence may face, including economic dependence, that compel the victim to “reconcile” with him.⁸⁴⁵ Interviewees referenced the impact that misdemeanor fines or sentences have on the victim. For example, if the perpetrator is ordered to pay a fine, this fine may draw from resources the victim and family needs.⁸⁴⁶

SUMMARY VS. REGULAR MISDEMEANOR PROCEEDINGS

Interviewees indicated that the speed of misdemeanor proceedings was a key consideration in determining whether to proceed as a misdemeanor or criminal offense.⁸⁴⁷ As indicated in the Criminal Judges Section on Timelines, criminal proceedings can drag on from months to years, negating the purpose of punishment if perpetrators go unsanctioned for so long. In contrast, lighter misdemeanor sanctions can be immediately imposed and enforced, including the precautionary measure of removing the perpetrator, to limit consequences to victims.⁸⁴⁸ Minimizing court delays is important as long proceedings deter victims from reporting violence and increase the likelihood she may not testify.⁸⁴⁹

Misdemeanor courts conduct expedited proceedings, also described as summary or urgent summary proceedings. Summary proceedings allow the courts to provide a swift response and immediately hold offenders accountable. Judges are on duty to hear these proceedings seven days a week and can conduct summary proceedings immediately after the incident and in as little as one day.⁸⁵⁰

Police and misdemeanor judges collectively make a determination on whether to bring the defendant for summary proceedings⁸⁵¹ based in part on an assessment of the danger of recidivism and the severity of the offense.⁸⁵² As a result, summary proceedings are applied to more extreme cases, such as where the victim sustained injury or the perpetrator was under the influence of alcohol.⁸⁵³ Interviewees

⁸⁴³ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014. Alcohol may be a contributing factor to abuse, but it is not the cause thereof. See “Myths About Alcohol and Domestic Violence,” last updated Apr. 2015, at http://www.stopvaw.org/myths_about_alcohol_and_domestic_violence.

⁸⁴⁴ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸⁴⁵ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁴⁶ *Id.*

⁸⁴⁷ Interview with Police, Location H, Oct. 24, 2014; Interview with Police, Location B-1, Oct. 17, 2014.

⁸⁴⁸ Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁸⁴⁹ Interview with Police, Location D, Oct. 15, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵⁰ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014; Interview with NGO, Location H, Oct. 23, 2014; Interview with Police, Location H, Oct. 24, 2014 (explaining that summary procedures sometimes are conducted in as little as two to three hours); Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵¹ Interview with Police, Location H, Oct. 24, 2014.

⁸⁵² Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵³ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with NGO, Location H, Oct. 23, 2014.

reported that summary proceedings are used in as many as 80 or 90 percent of domestic violence cases.⁸⁵⁴

One problem noted with respect to summary proceedings was the availability of evidence, in particular the expert assessment on measures for drug or alcohol addiction. The court is usually not able to obtain these assessments in the same day. Yet detention cannot last longer than 24 hours, even if the court believes that the perpetrator will re-offend.⁸⁵⁵ Thus, if the perpetrator is detained on a Friday evening and the assessment cannot be obtained until Monday, he will be released over the weekend.⁸⁵⁶ One interviewee noted that defendants will return when summoned on the first working day;⁸⁵⁷ however, this ignores the dangerous situation in which victims are placed, especially over the weekends when perpetrators are released pending the assessment.

Although misdemeanor courts generally complete regular misdemeanor proceedings faster than criminal proceedings,⁸⁵⁸ regular proceedings are still prone to delays. The most-cited cause for delays was service of process on the defendant.⁸⁵⁹ Under the Misdemeanor Law, service is accomplished by mail or other authorized services,⁸⁶⁰ although some judges reported that personal service is mandatory in misdemeanor proceedings.⁸⁶¹ If attempted by postal mail, defendants can delay proceedings by not responding to post office delivery notifications.⁸⁶² Defendants may also change addresses without notifying authorities, further hindering service.⁸⁶³

EVIDENCE

Police provide information for misdemeanor proceedings, including the defendant's criminal records⁸⁶⁴ and prior misdemeanor reports or convictions.⁸⁶⁵ This information allows judges to see the defendant's complete history, such as prior convictions that can serve as aggravating factors.⁸⁶⁶ Some judges,

⁸⁵⁴ Interview with Police, Location H, Oct. 24, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵⁵ Misdemeanor Law, Art. 192; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵⁶ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁵⁷ *Id.*

⁸⁵⁸ Some interviewees noted that regular proceedings could be completed in a few months, with charges presented to the court within a month and an additional month before reaching the judge. Interview with Misdemeanor Judge, Location F, Oct. 21, 2014; Interview with NGO, Location F, Oct. 22, 2014; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014. Misdemeanor proceedings must be completed within the two-year statute of limitations. Interview with Police, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁵⁹ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁶⁰ Misdemeanor Law, Art. 156. For example, Article 156 also provides that service can be carried out electronically in certain conditions, and if service by mail is ineffective, Article 160 provides for ways to post service in the court or on its website.

⁸⁶¹ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁶² Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁶³ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁶⁴ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸⁶⁵ Interview with, Police, Location G, Oct. 20, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014. The Misdemeanor Law also requires the court to maintain a register of convictions for a four-year period. Misdemeanor Law, Art. 324-31.

⁸⁶⁶ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

however, reported having no knowledge of prior offenses at all, which can result in lower sentences than warranted.⁸⁶⁷ Judges may also fail to recognize repeat offenders or escalating offenses when they do not receive complete information. One judge shared an example to highlight the importance of prior history:

It was about the case of two persons who have been in a relationship for several years, a partner relationship. He wanted to marry her, but she wanted to end the relationship. And then he started committing violence against her in various manners, texting her with threatening or disturbing messages. He keeps popping up in town, seeing her, visiting her at her job, and even commits physical violence He has several ongoing misdemeanor procedures, so he has several files, charges filed for the initiation of misdemeanor proceedings. In one of them, he was even issued a protective measure of a restraining order...and of course he violated this measure.⁸⁶⁸

The perpetrator, against whom “tens of procedures” had been initiated, received a prison sentence of 30 days.⁸⁶⁹

CONFRONTATION

The use of confrontation by misdemeanor judges to evaluate credibility presents a safety issue for victims called to testify.⁸⁷⁰ In confrontation, the witness and defendant face each other and repeat statements about disputed facts so judges can determine their “veracity.”⁸⁷¹ As described by one judge, “One meter is the usual distance. They are standing and looking at each other in the eyes.”⁸⁷² Even if judges did not use the same distance, victims would still be near the defendants because the misdemeanor courtrooms observed were small and lacked adequate security. At least one judge also reported fights in these courtrooms.⁸⁷³

In addition to the danger posed by confrontation, misdemeanor judges’ assessments do not reflect an understanding of the dynamics of domestic violence. If the purpose of confrontation is to uncover the truth between conflicting statements, its use in domestic violence cases may not achieve that goal. Victims of domestic violence may be frightened, and the perpetrator’s controlling and coercive behavior may influence her testimony and demeanor.

Nevertheless, judges still use behavior to assess credibility in confrontation.⁸⁷⁴ A judge explained they observe if the person “looks [them] in the eyes or at the floor, if that person has nervous hands or

⁸⁶⁷ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁶⁸ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁶⁹ *Id.*

⁸⁷⁰ Misdemeanor Law, Art. 207. Spouses and blood relatives are relieved from a duty to testify against a defendant, but victims who choose to testify or are otherwise compelled cannot receive a protective witness status in misdemeanor courts. Misdemeanor Law, Art. 211; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁷¹ Misdemeanor Law, Art. 215; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁷² Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁷³ *Id.*

⁸⁷⁴ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

legs...those are some signs. But it's all individual."⁸⁷⁵ Again, these actions may not be related to the information they are stating, but the fact that victims are in close range of their violent offenders.

In addition, the use of confrontation may have serious consequences on the integrity of the judicial system. The possibility of being faced with one's perpetrator in close quarters may be enough to compel victims to not appear for misdemeanor proceedings.⁸⁷⁶ In one example, a woman who had been subjected to constant violence refused to appear for confrontation when the higher misdemeanor court ordered a retrial in the first instance court. When she did not appear, he was acquitted.⁸⁷⁷

A Gender Equality Deputy Ombudswoman summarized the impact of confrontation:

It reveals how much the system failed to recognize how to protect the victim. When you have no other evidence, especially in these kinds of cases, it is really an extreme situation. To ask for confrontation, even with all other evidence, I find that devastating. Those who make judgments do not have an accurate perception of what it is like for the victim. I think that the prosecution and the justice system, in addition to the social work centers, need to be trained and sensitized for these proceedings.⁸⁷⁸

RESTRAINING ORDERS

The Misdemeanor Law allows restraining orders to protect victims during the course of regular misdemeanor proceedings. Similar to Family Law protective measures or Criminal Code measures, a judge can prohibit a defendant from approaching a victim or location during the course of misdemeanor proceedings.⁸⁷⁹ This measure is issued based on information from the injured party and police, and it can remain in effect through the misdemeanor proceedings.⁸⁸⁰ Even though these measures have the potential to protect victims, no judges reported granting them for domestic violence cases. This under-use may be due to the large number of domestic violence acts that proceed as summary proceedings or because of a lack of judicial awareness.

SENTENCING

Amendments to the Law on Public Peace and Order only slightly reduced prison sanctions from the former law's sanctions for Articles 6 and 12. Under the prior law, misdemeanor sanctions included fines from 5,000 to 150,000 dinars (45 euros to 1,400 euros) for a natural person,⁸⁸¹ warnings,⁸⁸² prison

⁸⁷⁵ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁷⁶ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁷⁷ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014.

⁸⁷⁸ *Id.*

⁸⁷⁹ Misdemeanor Law, Art. 126. *See also* Family Law Judges Section on Protective Measures: Generally and Criminal Judges Section on Criminal Proceedings: Measures to secure the defendant and for unobstructed proceedings.

⁸⁸⁰ *Id.*, Art. 126; Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014. Appeals against such measures do not stay the restraining order's execution (Misdemeanor Law, Art. 126), and Article 308 of the Misdemeanor Law states that appeals of interim measures must be made within 24 hours and decided by the higher court within 48 hours to limit any damage to the defendant if the court erroneously issued the measures.

⁸⁸¹ Misdemeanor Law, Arts. 32-33, 39.

⁸⁸² *Id.*, Arts. 32, 50.

sentences for up to 60 days,⁸⁸³ and community service.⁸⁸⁴ Sentences could include both fines and imprisonment,⁸⁸⁵ or they could be combined with addiction treatment.⁸⁸⁶ Unlike criminal courts, the misdemeanor court cannot issue suspended sentences,⁸⁸⁷ but can issue admonitions.⁸⁸⁸

The lack of comprehensive data collection hampers a full understanding of the types of misdemeanor sentences judges are imposing. Some judges noted they were more likely to impose prison sentences,⁸⁸⁹ especially combined with precautionary measures for treatment in a confined institution.⁸⁹⁰ Other judges and interviewees reported that prison sentences were rare,⁸⁹¹ and most misdemeanor sentences were instead mild, such as fines with protective measures.⁸⁹²

Monetary amounts of fines are reportedly low. One misdemeanor judge noted that the maximum fine judges usually issue is 10,000 dinars (approximately 80 euros).⁸⁹³ Verbal violence carries even lower fines, as low as 5,000 dinars (approximately 40 euros),⁸⁹⁴ while physical assault carries between 10,000 and 12,000 dinars (approximately 80 to 100 euros).⁸⁹⁵ The highest fine reported was up to 30,000 dinars (approximately 250 euros).⁸⁹⁶ One explanation for low fines is that issuing a fine so large that a defendant cannot pay is inefficient.⁸⁹⁷ If defendants do not pay, their fines can be converted into prison sentences, with 1,000 dinars (approximately 8 euros) translating into one day in prison.⁸⁹⁸ Some judges recognized the balance between a fine's economic impact on the family and the perpetrator's actions.⁸⁹⁹ The new Law on Public Peace and Order establishes a minimum fine of 5,000 dinars, but the misdemeanor court can only order imprisonment in certain circumstances.⁹⁰⁰

⁸⁸³ *Id.*, Arts. 33, 37; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014. Article 9 of the new Law on Public Peace and Order allows imprisonment for 10 to 30 days.

⁸⁸⁴ Misdemeanor Law, Arts. 33, 38.

⁸⁸⁵ *Id.*, Art. 34.

⁸⁸⁶ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁸⁷ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁸⁸⁸ Admonitions are warnings and do not require the defendant to pay fines or serve any time in prison. Criminal Code, Art. 64(2).

⁸⁸⁹ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015 (explaining that prison sentences are most frequently issued for up to 30 days).

⁸⁹⁰ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁸⁹¹ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁸⁹² Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location E, Oct. 15, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁸⁹³ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁹⁴ *Id.*

⁸⁹⁵ *Id.*

⁸⁹⁶ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁸⁹⁷ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁸⁹⁸ *Id.*

⁸⁹⁹ Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014.

⁹⁰⁰ Described circumstances include insulting others, committing violence against others, threatening public order and peace, or rude, insolent or arrogant behavior in groups of three or more people. Law on Public Peace and Order (Off. Gazette of RS, no. 6/2016), Arts. 7 – 9.

Judges consider many factors when determining sentences,⁹⁰¹ including the degree of responsibility, whether it involves verbal or physical violence,⁹⁰² as well as the defendant's remorse,⁹⁰³ history, financial condition,⁹⁰⁴ and deterrent effect.⁹⁰⁵ Interviewees indicated that prison sentences were more typically imposed on repeat or non-repentant offenders⁹⁰⁶ where the act resulted in more serious consequences or the victim requested it.⁹⁰⁷ In a case where a husband beat his pregnant wife until she escaped to a safe house, the judge sentenced the defendant to prison based on his lack of remorse and the victim's wishes. The perpetrator said, "She is my wife. I can do what I want" and did not deny beating her when she was pregnant. His wife wanted the court to "make him go to prison. I want to have a break."⁹⁰⁸ In another example, a misdemeanor judge reduced a perpetrator's fine to 5,000 dinars (approximately 40 euros). The perpetrator slapped his wife twice, but the judge decided to limit the fine because it was his first offense, their household income was low, and the victim stated there were no long-term consequences.⁹⁰⁹

Often, judges must assess the case based on limited information. One interviewee explained how many victims do not report violence until it has occurred for some time. Without prior reports, the court may use his "clean" history as a mitigating circumstance, even if violence had been occurring for years. But when the court sentences the defendant, it creates a record. If he repeats the offense, the court can use the prior conviction as an aggravating factor.⁹¹⁰

Another misdemeanor judge summarized the complex family issues they face:

Very often, victims of domestic violence practically beg us not to issue prison sentences to the perpetrator, because the perpetrator is usually the only one who financially supports the family. So the execution of the prison sentences will make him unable to work and detrimentally affect the family. There are many cases where they say that, after serving prison time, he will commit worse violence because of the frustration of serving prison time, and they also say they are going to go on living with the perpetrator. . . . When it comes to prison sentences, it largely depends on the statement of the victim and if she's afraid to go back home.⁹¹¹

⁹⁰¹ Decisions to order addiction treatment are made based on the opinions of medical experts. Misdemeanor Law, Art. 59.

⁹⁰² Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁹⁰³ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹⁰⁴ Misdemeanor Law, Art. 42; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹⁰⁵ Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014.

⁹⁰⁶ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁹⁰⁷ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁹⁰⁸ *Id.*

⁹⁰⁹ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁹¹⁰ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹¹¹ *Id.*

DUAL CHARGES AND CONVICTIONS

Police interviewees reported charging both parties in a domestic violence situation with violations of the Law on Public Peace and Order, including in situations where one party used verbal violence and the other physical violence.⁹¹² Interviewees disagreed on the frequency with which they saw dual charges. For some judges, it was a rare occurrence,⁹¹³ while others reported seeing it frequently.⁹¹⁴ One NGO interviewee reported misdemeanor dual sentences were rare, but in the absence of adequate data, they relied on individual reports to draw this conclusion.⁹¹⁵

When both parties are charged, misdemeanor judges must decide how to assess each party's culpability. One judge reported looking for use of self-defense,⁹¹⁶ as self-defense within the legal limits can acquit the party.⁹¹⁷ The wife whose husband received a 5,000 dinar fine, discussed above, was charged with a misdemeanor herself. She threatened her husband with a kitchen knife, but the judge recognized her use of self-defense and mitigated the charges against her. The judge also explained he did not see sense in fining the family twice.⁹¹⁸

Not all judges consider that a party may act in self-defense. As explained by one judge, when both parties use physical violence, it is difficult to sentence one person and release the other.⁹¹⁹ Interviewees reported that the typical outcomes in these circumstances are convictions⁹²⁰ and fines for both parties.⁹²¹ At least one judge explained she considered the broader context beyond the single incident, but still saw victim responsibility. If she determined that the victim had been subject to many years of violence – whether economic, physical, or psychological – that was unreported or resulted in police warnings, the judge would consider the long-term violence as a mitigating factor when sentencing the victim in cases of mutual violence. She would issue an admonition, not a sentence, to the victim.⁹²²

PROTECTING THE VICTIM – PRECAUTIONARY MEASURES

The Misdemeanor Law provides for precautionary measures that can be imposed as part of misdemeanor sentences to eliminate conditions that encourage recidivism.⁹²³ Precautionary measures include restraining orders and treatment programs.⁹²⁴

⁹¹² Interview with Police, Location F, Oct. 20, 2014; Interview with Police, Location E, Oct. 15, 2014.

⁹¹³ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁹¹⁴ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁹¹⁵ Interview with NGO, Location J, Feb. 25, 2015.

⁹¹⁶ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014. Article 13 of the Misdemeanor Law addresses self-defense.

⁹¹⁷ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁹¹⁸ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

⁹¹⁹ Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014.

⁹²⁰ *Id.*

⁹²¹ Interview with Police, Location F, Oct. 20, 2014; Interview with NGO, Location J, Feb. 23, 2015.

⁹²² Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹²³ Misdemeanor Law, Art. 51, 53.

Misdemeanor judges can order mandatory alcohol and drug treatment as a precautionary measure, but only with a doctor's expert opinion.⁹²⁵ Misdemeanor judges appear to view addiction treatment as the solution to violence, rather than recognizing that alcohol and drug use contributes to, but is not the cause of violence.⁹²⁶ One misdemeanor judge opined that "violence against women is mostly related to alcohol abuse" and that most perpetrators are alcoholics.⁹²⁷ Reflecting a preference for offender welfare over victim safety, one judge touted the success that perpetrators can have in "healing" with alcohol treatment.⁹²⁸ Some misdemeanor judges reported they monitor whether perpetrators re-offend after completing treatment, but it was unknown whether all misdemeanor courts do so.⁹²⁹

Misdemeanor courts can also order a new precautionary measure of psychiatric treatment for mentally incompetent offenders.⁹³⁰ One judge lauded this measure as a way to prevent future offenses and as the first opportunity to treat perpetrators pleading insanity.⁹³¹ The misdemeanor courts rely on reports of the treatment institutions to inform them of offender compliance.⁹³² At the time of fact-finding, this precautionary measure was still new and its effectiveness in protecting victims and preventing future violence still unknown.

Despite this potential, interviewees reported that judges rarely order precautionary measures. For example, one police officer was not aware of any misdemeanor cases in which the judge imposed these measures.⁹³³ A misdemeanor judge admitted she had not issued a precautionary measure during her 10 years on the bench.⁹³⁴

One reason these measures are infrequently issued is because of uncertainty in the procedure for requesting or imposing them. The Misdemeanor Law does not specify who is required or able to request precautionary measures at or as part of sentencing. During interviews, police and misdemeanor judges

⁹²⁴ Misdemeanor judges can issue orders restraining an individual from approaching the injured person or a particular location for up to a year. Misdemeanor Law, Art. 61.

⁹²⁵ Misdemeanor Law, Art. 59. The expert's opinion needs to describe whether such treatment is necessary, how long the treatment should last, and whether the perpetrator should be confined in an institution or do the treatment on an outpatient basis. Interview with Misdemeanor Judges, Location H, Oct. 24, 2014. As medical treatment, these precautionary measures are covered by health insurance and the perpetrator does not have to pay for them. *Id.*

⁹²⁶ See "Myths About Alcohol and Domestic Violence," last updated Apr. 2015, at http://www.stopvaw.org/myths_about_alcohol_and_domestic_violence.

⁹²⁷ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹²⁸ *Id.*

⁹²⁹ *Id.*

⁹³⁰ This precautionary measure was available beginning on March 1, 2014. Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Misdemeanor Law, Art. 60; Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014. As stated in Article 19 of the Misdemeanor Law, alcohol cannot be the basis for mental incompetence. As with other misdemeanor sentences, the treatment needs to occur within a year of judgment, in either a closed facility, such as a psychiatric hospital or prison, or in an out-patient facility. Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014.

⁹³¹ Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014.

⁹³² *Id.*

⁹³³ Interview with Police, Location F, Oct. 20, 2014.

⁹³⁴ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014.

disagreed widely on who has authority to request precautionary measures. Some police officers indicated they were unable to make this request, and the judge imposed them at his own initiative.⁹³⁵ Misdemeanor judges, however, stated they could not grant precautionary measures unless requested by the petitioner, i.e., the police in most cases or the victim.⁹³⁶ Yet other police officers stated they could request the measures and the misdemeanor judge could impose them without a request.⁹³⁷ And still other misdemeanor judges stated that certain precautionary measures (restraining orders) could be requested by the petitioner or victim⁹³⁸ while others (mandatory alcohol or psychiatric treatment) could only be granted through expert testimony of health professionals.⁹³⁹

Another reason for the reported rarity may be due to a lack of confidence in their impact. Police, judges, and CSWs criticized the effectiveness of precautionary measures because of the lack of execution and monitoring.⁹⁴⁰ The Misdemeanor Law does not specify which authority is responsible for monitoring their compliance.⁹⁴¹ Police also suggested that precautionary measures are issued infrequently because the danger associated with misdemeanors is perceived to be lower.⁹⁴²

Violations of precautionary measures are subject to sanctions.⁹⁴³ Reports of violations, however, are rare.⁹⁴⁴ Violations would likely be reported to the police and not directly to the misdemeanor courts. The misdemeanor courts are required to provide copies of their judgments to the police,⁹⁴⁵ informing police of the order and enabling them to communicate violations to the prosecution. It is unclear whether perpetrators are not violating these orders, victims are not reporting violations, or if a lack of communication between misdemeanor courts and police precludes effective identification of violations.

⁹³⁵ Interview with Police, Location B-1, Oct. 17, 2014; Interview with Police, Location E, Oct. 15, 2014.

⁹³⁶ Interview with Misdemeanor Judge, Location F, Oct. 21, 2014 (indicating they could *sua sponte* issue the measure of compulsory treatment of alcohol abuse).

⁹³⁷ Interview with Police, Location B-1, Oct. 17, 2014.

⁹³⁸ Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014.

⁹³⁹ Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judge, Location F, Oct. 21, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹⁴⁰ Interview with Police, Location B-1, Oct. 17, 2014; Interview with Misdemeanor Judge, Location B-2, Oct. 17, 2014; Interview with CSW, Location H, Oct. 22, 2014; Interview with Police, Location H, Oct. 24, 2014.

⁹⁴¹ The Misdemeanor Courts receive more information on compliance with precautionary measures of addiction treatment administered in a confined institution. Institutions where the offender receives treatment report to an execution judge, and if the institution determines that the offender no longer needs treatment, they submit a proposal to terminate the treatment measure. Interview with Misdemeanor Judges, Location H, Oct. 24, 2014.

⁹⁴² Interview with Police, Location B-1, Oct. 17, 2014.

⁹⁴³ Misdemeanor Law, Art. 62. Defendants who violate the restraining order are subject to sanctions under the regulation that provides for the offense for which he received the measure. Violations used to be subject to sanctions of up to 30,000 dinars or 30 days in prison, and some judges continued to cite these as the sanctions. Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014; Interview with Misdemeanor Judges, Location H, Oct. 24, 2014; Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

⁹⁴⁴ Interview with Police, Location E, Oct. 15, 2014.

⁹⁴⁵ *Id.*

APPEALS

Victims of misdemeanors are generally not allowed to appeal decisions because appeals can only be filed by the petitioner or the defendant.⁹⁴⁶ If, as in most cases, the police filed the petition, there are limited circumstances in which an injured party can file an appeal.⁹⁴⁷ Adding to this limitation, if the police filed the petition, the misdemeanor courts are not required to inform the injured party on whether the defendant has been acquitted or convicted.⁹⁴⁸ The court provides a copy of the judgment to the petitioner, defendant, and the prison, if applicable.⁹⁴⁹ Victims are left without knowledge of the outcome, unless they are informed by the police or the defendant himself.

⁹⁴⁶ Misdemeanor Law, Art. 259.

⁹⁴⁷ Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014; Misdemeanor Law, Art. 259.

⁹⁴⁸ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015; Interview with Misdemeanor Judges, Location B-2, Oct. 17, 2014. According Article 252 of the Misdemeanor Law, publication of the judgment does not require a copy of the judgment to be provided to the injured party; rather, only the applicant receives a copy of the judgment if required. Furthermore, Misdemeanor Law, Art. 256 provides for delivery of the judgement for those who are not the applicant in situations where there was a decision on a property claim or against a person whose item was forfeited under the verdict or who had confiscation orders.

⁹⁴⁹ Interview with Misdemeanor Judge, Location I, Feb. 26, 2015.

CENTERS FOR SOCIAL WORK

Everyone has the right to protection from domestic violence in accordance with the law.

-Family Law, Article 10(2).

Centers for Social Work (CSWs) in Serbia provide a wide variety of services and assistance to individuals and families, including processing social welfare payments, counseling, and serving as the guardianship and custody authority for children and vulnerable adults in cases of abuse.⁹⁵⁰ As the primary authority over social support and services, CSWs play a crucial role in ensuring victim safety and accountability for perpetrators. These multiple roles, however, can lead to confusion for social workers. On the one hand, this allows for a single entity to coordinate both the social support and legal response necessary to protect the victim. On the other hand, it can lead to a conflict of interest between counseling the victim and serving as an impartial expert in their reports and testimony to the courts.⁹⁵¹

Adding further to these demands, at the time of fact-finding, CSWs reported a hiring freeze, with no new hires made to replace departing staff.⁹⁵² As a result, each social worker addressed domestic violence cases among 300-500 families per year. As expressed by one social worker, “We don’t even have time to think,” and they were severely overburdened.⁹⁵³ Given the key role that CSWs play in providing services and referring victims to other services, this case burden and shortage of resources leaves social workers unable to dedicate the time necessary to provide victims with the support, detailed analysis, and monitoring as directed by the CSW Protocol.

TRAINING

Many CSW staff appear to be well-trained to handle domestic violence cases and reported receiving trainings on domestic violence from the government or NGOs.⁹⁵⁴ At least one outside observer noted improvements in the CSW response to domestic violence cases.⁹⁵⁵ Unfortunately, not all interviewees at the CSWs reported completing domestic violence-specific training.⁹⁵⁶ Without appropriate training, CSW workers may deny victims necessary services or even place victims in further danger through unsafe practices, like reconciliation or mediation.⁹⁵⁷ In one example, social workers not only failed to recognize

⁹⁵⁰ CSW Protocol, p. 40-1. Laws applicable to the CSWs include the Law on Social Protection and the Family Law.

⁹⁵¹ Interview with CSW, Location C, Oct. 14, 2014; Interview with CSW, Location E, Oct. 15, 2014.

⁹⁵² Interview with CSW, Location C, Oct. 14, 2014; Interview with Minister of Social Policy, Belgrade, Oct. 18, 2014 (describing a hiring freeze for one year that was still in place at the time of the interview).

⁹⁵³ Interview with CSW, Location C, Oct. 14, 2014.

⁹⁵⁴ Interview with CSW, Location B-2, Oct. 15, 2014; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with CSW, Location F, Oct. 21, 2014 (noting a discrepancy in training levels); Interview with CSW, Location G, Oct. 21, 2014; Interview with CSW, Location C, Oct. 14, 2014; Interview with CSW, Location H, Oct. 22, 2014; Interview with CSW, Location I, Feb. 27, 2015.

⁹⁵⁵ Interview with Police, Location F, Oct. 20, 2014.

⁹⁵⁶ Interview with CSW, Location I, Feb. 27, 2015.

⁹⁵⁷ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (stating “abusers use all the mechanisms to make it impossible for the victim of domestic violence to get protection. It is very dangerous because institutions like the CSW and police do not recognise hidden indicators of violence and often believe the

factors indicating violence, but insulted the victim's lifestyle and told her they distrusted her.⁹⁵⁸ Such reactions deter victims from reporting violence and indicate a need for mandatory training for all social workers. Although the CSW Protocol has been widely disseminated, not all staff have received training on its implementation.⁹⁵⁹

Some interviewees reported that social workers were afraid to provide assistance in domestic violence cases.⁹⁶⁰ One solution offered to this problem was specialization, as social workers responded to all issues facing their clients.⁹⁶¹

ATTITUDES

Interviews revealed harmful attitudes to be deeply ingrained in some social workers. Outside observers perceived that some CSW workers are influenced by misperceptions and beliefs that "family should be preserved at any cost."⁹⁶² For example, a social worker focused only on the children and failed to secure protection for the non-violent parent. The mother had physical injuries, but instead of seeking protective measures, the center merely placed her in another apartment. She was later killed by her abuser.⁹⁶³

Some social worker attitudes reflect notions of patriarchy and victim-blaming. One CSW refused to assist a victim in enforcing an eviction order because "that's his house."⁹⁶⁴ A Deputy Ombudswoman for Gender Equality described a generally held belief that the traditional role of women in Serbia is "to be the pillar of the family and to take care of children;" thus, if she stays in a violent relationship, she is guilty of exposing her children to violence.⁹⁶⁵ As a result, the ombudswoman reported receiving many complaints against social workers threatening to remove children from their mother because she was a victim of violence.⁹⁶⁶ Such threats can discourage victims from coming forward to report violence.

SAFETY OF CSW WORKERS

Social worker concerns in providing assistance may be grounded in the lack of protection against perpetrators.⁹⁶⁷ Even if security guards are posted at the centers, they are unable to physically respond

abusers"); Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (describing examples of CSWs trying to reconcile the victim with her abuser or interrogating the victim at the same time as the abuser).

⁹⁵⁸ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁹⁵⁹ Interview with CSW, Location I, Feb. 27, 2015.

⁹⁶⁰ Interview with Police, Location B-1, Oct. 13, 2014; Interview with CSW, Location B-2, Oct. 15, 2014.

⁹⁶¹ Interview with CSW, Location F, Oct. 21, 2014; Interview with CSW, Location I, Feb. 27, 2015 (stating "no professional can follow everything or have the necessary knowledge for all areas, especially if one considers the complexity of the work").

⁹⁶² Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁹⁶³ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014.

⁹⁶⁴ *Id.*

⁹⁶⁵ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

⁹⁶⁶ *Id.*

⁹⁶⁷ Interview with CSW, Location H, Oct. 22, 2014; Interview with CSW, Location I, Feb. 27, 2015; Interview with CSW, Location C, Oct. 14, 2014 (providing an example of a perpetrator waiting for the social worker in front of the institution and sending threatening messages, and reporting that there was no strategy to protect social workers from attacks); Interview with Doctor, Location I, Feb. 27, 2015 (reporting at least two violent incidents at the CSW).

to perpetrators.⁹⁶⁸ In one case, a domestic violence victim was murdered in front of her social workers.⁹⁶⁹

Furthermore, public prosecutors do not always prosecute violence against CSW staff, and other institutions are similarly unwilling to hold offenders accountable. A CSW staffperson described a dangerous offender they encountered:

He could never control his behavior. Even when talking to a professional, he would come at you physically and get in your face, even with a security guard present. The guard can't stop him physically. So we called the police, the police made an official report, and I don't know if the police filed a criminal complaint. But if they did, the prosecutor's office dismissed it. Whenever protection has been needed for the professionals here, we have never received it.⁹⁷⁰

Perpetrators also attack CSW staff using legal means by filing complaints to the Ombudsperson or criminal complaints against CSW workers for misuse in carrying out their duties.⁹⁷¹ One interviewee had two criminal proceedings filed by perpetrators pending against her.⁹⁷² Another was sued by the perpetrator for "abusing [her] official position" after she notified the prosecutor of the violation of an interim protective measure.⁹⁷³

Interviewees reported that these tactics dissuade social workers from taking actions to protect victims.⁹⁷⁴ In one example, even though the perpetrator threatened the social worker, he was still able to continue visitation with his children by threatening a lawsuit against the CSW.⁹⁷⁵

RISK ASSESSMENTS

Staff at CSWs consistently indicated that they conducted risk assessments during initial interviews with victims to determine whether the situation was urgent.⁹⁷⁶ Their assessment is crucial because other

⁹⁶⁸ Interview with CSW, Location C, Oct. 14, 2014.

⁹⁶⁹ Interview with Doctor, Location I, Feb. 27, 2015.

⁹⁷⁰ Interview with CSW, Location G, Oct. 21, 2014 (explaining the prosecutor will say that the requirements for a criminal or misdemeanor offense are not met). In this particular example, the interviewee also described how the perpetrator had set fire to the barn of his partner's parents, and his violence towards the CSW staff continued after she and her children were placed in a safe house in another location.

⁹⁷¹ Interview with CSW, Location G, Oct. 21, 2014; Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (referring to custody issues relating to children); Interview with CSW, Location E, Oct. 15, 2014 (describing complaints against social workers that are directed to the Ministry of Social Work and ombudsman); Interview with CSW, Location C, Oct. 14, 2014. Social workers also do not receive vulnerable witness status when testifying in court proceedings in their professional capacity, even if they do not want to reveal their personal information in the perpetrator's presence. Interview with CSW, Location F, Oct. 21, 2014.

⁹⁷² Interview with CSW, Location I, Feb. 27, 2015.

⁹⁷³ Interview with CSW, Location E, Oct. 15, 2014. The perpetrator had approached too close to the victim and removed the electricity installation box at the victim's apartment.

⁹⁷⁴ *Id.* (stating "the center for social work will say, let's not push the buttons, it will calm down"); Interview with Doctor, Location I, Feb. 27, 2015 (explaining "[CSW staff] are afraid of abusers and abusers manage to exert control over them in many cities.")

⁹⁷⁵ Interview with CSW, Location C, Oct. 14, 2014.

institutions do not do so.⁹⁷⁷ Furthermore, at least one family law judge stated that they rely on CSWs' risk assessments in their opinions to the court.⁹⁷⁸ Although different CSWs use a similar risk assessment process, there is no standard form, which can lead to inconsistencies or gaps in how they evaluate the risk to the victim.⁹⁷⁹

VICTIM SERVICES

One of the objectives of social welfare is to prevent and remove consequences of abuse.⁹⁸⁰ After the initial interview and assessment, CSW staff both provide services to the victim and begin an investigation into the domestic violence.⁹⁸¹ As a result, CSWs can be the gateway for victims to receive many services, such as shelter placement, referrals to doctors, financial assistance, or legal aid.⁹⁸²

Victims have the right to participate in the assessment of their needs and decide whether to accept services. Importantly, the law respects victim autonomy and states “[n]o service can be provided without the consent of users, i.e. their legal representative, except in cases specified by the Law.”⁹⁸³ One CSW interviewee, however, noted that victims do not always have options for services, and indicated the need for specialized counselling centers relating to family violence to achieve the requirement set forth in the law.⁹⁸⁴

Financial assistance

Economic independence is becoming more and more important. Women recognize that it's more important. If they have no chance to gain independence, they go back to their abusers.

- CSW worker⁹⁸⁵

⁹⁷⁶ CSW Protocol, p. 54-7; Interview with CSW, Location C, Oct. 14, 2014; Interview with CSW, Location I, Feb. 27, 2015; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location H, Oct. 22, 2014; Interview with CSW, Location G, Oct. 21, 2014; Interview with CSW, Location F, Oct. 21, 2014; Interview with CSW, Location B-2, Oct. 15, 2014; Interview with Counseling Center, Location H, Oct. 22, 2014.

⁹⁷⁷ See, e.g., Police Section on Risk Assessments and Doctors Section on Additional Measures to Protect Victims.

⁹⁷⁸ Interview with Family Law Judge, Location B-2, Oct. 13, 2014. See also Interview with Family Law Judge, Location I, Feb. 26, 2015; Interview with Family Law Judge, Location G, Oct. 20, 2014.

⁹⁷⁹ Interview with CSW, Location I, Feb. 27, 2015; Interview with CSW, Location B-2, Oct. 15, 2014.

⁹⁸⁰ Law on Social Protection, Art. 3; Interview with CSW, Location D-1, Oct. 14, 2014 (stating “our priority is to stop violence and support women to leave the immediate threat”).

⁹⁸¹ Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location G, Oct. 21, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with Counseling Center, Location H, Oct. 22, 2014; Interview with CSW, Location F, Oct. 21, 2014. Serving as a central referral service to help victims of domestic violence find shelter in a safe house, medical care for any injuries, and free legal advice. Interview with CSW, Location F, Oct. 21, 2014.

⁹⁸² Interview with CSW, Location I, Feb. 27, 2015; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with Counseling Center, Location H, Oct. 22, 2014

⁹⁸³ Law on Social Protection, Art. 35, paras. 1 and 2; Interview with CSW, Location I, Feb. 27, 2015 (explaining the victim's opinion is crucial in what the CSW will do and what she considers to be a threat to her security).

⁹⁸⁴ Interview with CSW, Location I, Feb. 27, 2015. There are counseling centers affiliated with the CSWs that address, but do not exclusively focus on, domestic violence.

⁹⁸⁵ Interview with Counseling Center, Location H, Oct. 22, 2014; see also Interview with Shelter, Location F, Oct. 21, 2014.

Economic dependence is a serious barrier to women seeking to leave violent relationships.⁹⁸⁶ The Law on Social Protection provides that “[t]he right to different forms of financial support is exercised in order to ensure existential minimum and support to social inclusion of the user.”⁹⁸⁷ The law provides several forms of financial support with varying eligibility requirements.⁹⁸⁸ CSWs can provide victims with a cash stipend,⁹⁸⁹ support in seeking employment, and other financial assistance.⁹⁹⁰ Interviewees reported, however, that levels of social support are too low to allow women to live independently.⁹⁹¹ One CSW worker even described level of financial assistance as “insulting, because you cannot survive two days off that.”⁹⁹² Economic conditions and high unemployment further limit the amount of assistance that CSWs can provide, a problem for women who can access shelter but have nowhere to live afterward.⁹⁹³ Many families rely on a single breadwinner and one-time assistance is likely to be used for rent or children’s needs, rather than helping build financial independence.⁹⁹⁴

Governments on the local level have sought to fill this gap by passing regulations specific to victims of domestic violence. These policies seek to provide women with adequate support so they can rent flats, access social housing, or find employment.⁹⁹⁵ Financial assistance also fluctuates depending on local

⁹⁸⁶ Interview with Shelter, Location G, Oct. 21, 2014 (women will return to their abusers if they are not able to meet their needs “and think it is better to put up with the violence because their financial needs are met”).

⁹⁸⁷ Law on Social Protection, Art. 5(2).

⁹⁸⁸ Law on Social Protection Section VII, in particular one-off financial assistance under Article 110. Interview with CSW, Location G, Oct. 21, 2014.

⁹⁸⁹ Interview with CSW, Location D-1, Oct. 14, 2014.

⁹⁹⁰ CSW Protocol, p. 40-1 (listing a goal of independent living); Interview with Counseling Center, Location H, Oct. 22, 2014.

⁹⁹¹ One NGO interviewee indicated that her understanding was that social assistance could provide for 20,000 dinars at the most. But by way of demonstration on how limited these funds are, diapers require 3,000 dinars per month. Interview with NGO, Location H, Oct. 24, 2014. Another indicated that one-time financial assistance of 5,000 dinars was available, with additional amounts potentially available from a local government commission. Interview with CSW, Location G, Oct. 21, 2014. Yet another stated that one-time aid was at least 15,000 dinars, and up to 40,000 dinars, but it was only available once per year; formerly, it was available twice per year. Interview with CSW, Location E, Oct. 15, 2014. Other CSWs indicated that financial assistance for rent could reach up to 30,000 dinars per month. Interview with CSW, Location H, Oct. 22, 2014. And a social worker stated that victims can apply for aid in the form of two payments of 15,000 dinars within a year. Additional support amounts are also available to support families with children. Interview with Shelter, Location F, Oct. 21, 2014.

⁹⁹² Interview with CSW, Location C, Oct. 14, 2014.

⁹⁹³ Interview with Child and Social Care, Location F, Oct. 22, 2014.

⁹⁹⁴ Interview with CSW, Location E, Oct. 15, 2014; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location G, Oct. 21, 2014; Interview with Child and Social Care, Location F, Oct. 22, 2014; Interview with CSW, Location F, Oct. 21, 2014 (also noting problems with perpetrators not complying with court orders for child support or alimony). Interview with Police, Location D-1, Oct. 14, 2014 (observing that when victims have jobs, places to live, and the support of their families, the violence stops).

⁹⁹⁵ Interview with City Council Members, Location H, Oct. 24, 2014; Interview with Counseling Center, Location H, Oct. 22, 2014; Interview with CSW, Location H, Oct. 22, 2014; Interview with CSW, Location D-1, Oct. 14, 2014 (describing eligibility limits on salary and period of time living in the city prior to benefits); Interview with CSW, Location I, Feb. 27, 2015. In addition to financial aid, victims are entitled to a benefit of 30 percent of the victim’s average salary for one year by demonstrating a defined need, residency, unemployment and no ownership of real estate. However, some interviewees indicated that the benefit may no longer exist. Interview with City Secretariat, Location B-2, Oct. 16, 2014; Interview with CSW, Location E, Oct. 15, 2014 (but not all centers used it); Interview with NGO, Location B-2, Oct. 14, 2014 (one-year financial aid of 11,000 dinars per month for her and 5,000 dinars

government will. Previous financial aid benefits specific to victims of domestic violence were removed in one location after a change in local government.⁹⁹⁶

Women also face barriers in requesting financial assistance.⁹⁹⁷ The onerous process of applying can cause delays of up to a year.⁹⁹⁸ One NGO described how it took one mother six weeks just to gather all the paperwork to apply for financial assistance:

She had to get her documents confirming she is unemployed and papers that would prove that she is alone with her grandmother [with whom she was living]. Then, they asked for documents showing what property the grandmother has, what inheritance does she have, what property does she own, and a statement from two witnesses confirming she is a single mother. With all these documents, she realized the right to get 3,500 dinars a month. . . . Just to obtain all this she had to pay 1,500 dinars in advance - she had to invest this money. If it happened that her grandmother owned some land, she wouldn't be granted financial help. And her grandmother has nothing to do with her child.⁹⁹⁹

MANDATORY REPORTING

Social workers face a conflict of interest between their obligation to report domestic violence to the authorities and, at the same time, provide services for victims.¹⁰⁰⁰ On one hand, the CSW Protocol and Law on Social Protection set forth rights to privacy and confidentiality of information.¹⁰⁰¹ Mandatory reporting in all circumstances removes victim autonomy for deciding when to separate from their abusers.¹⁰⁰² On the other hand, the CSW Protocol requires every authority to report domestic violence crimes to the police or prosecutor upon detection.¹⁰⁰³

per month per child available to low-income women who stayed at a shelter and registered with the CSW); Interview with Child and Social Care, Location F, Oct. 22, 2014; Interview with Secretariat, Location F, Oct. 22, 2014 (subsidies to private employers to hire victims of domestic violence and pay one-year salary for similar jobs in similar occupations); Interview with City Council Member, Location G, Oct. 21, 2014 (local government pays salaries).

⁹⁹⁶ Interview with CSW, Location E, Oct. 15, 2014.

⁹⁹⁷ Interview with NGO, Location H, Oct. 24, 2014.

⁹⁹⁸ Interview with CSW, Location E, Oct. 15, 2014.

⁹⁹⁹ Interview with NGO, Location H, Oct. 24, 2014.

¹⁰⁰⁰ Interview with CSW, Location E, Oct. 15, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with CSW, Location C, Oct. 14, 2014 (stating "there is a controversial role in proceedings that you have to both prosecute and then also serve as a rehabilitator. The system deals with it poorly").

¹⁰⁰¹ CSW Protocol, at 37; Law on Social Protection, Arts. 37, 38.

¹⁰⁰² General Protocol, at 25-26 (stating "when, based on the interview, it is obvious that children or other vulnerable family members are exposed to domestic violence against women, it is necessary to report the case to the centre for social work;" stating "The officer, who in line of duty learns about grave and immediate danger from violence, shall act in accordance with the law and take and initiate actions to protect the victim against violence. In these cases it is necessary to report, without delay, the knowledge of danger from violence to the policy").

¹⁰⁰³ CSW Protocol, at 67. This reporting is through a criminal complaint.

Inconsistent responses from CSWs on reporting obligations reflect confusion about steps they should take. Some CSWs indicated they did not have an obligation to report.¹⁰⁰⁴ Others only complied when they perceived a high risk of continued violence or severe consequences for the woman.¹⁰⁰⁵ Some CSW staff reported they tried to secure victim consent before reporting, but others stated they would still report without it.¹⁰⁰⁶

The CSW Protocol also charges CSWs with assisting a victim to participate in criminal proceedings and to initiate criminal proceedings when the victim is unable to do so.¹⁰⁰⁷ Interviews revealed that CSWs do not always follow this mandate. In one example, the CSW did not report to the authorities because they were instructed to protect the abuser's military job. A judge explained:

The husband abused the wife so much that she lost the ability to speak. She can barely say a word. He is a member of the army. He abused her so much, sexually, too. Whenever he wanted, she would have to [have sex with him]. She ended up in the military medical academy and the doctors informed the CSW, warning that the center has to take certain measures to stop that violence. In my opinion – and the CSW admits – there was even an order from the army because he would lose his job...

The medical academy first sent the memo to the CSW to do something because of his violence, but then his work – the military – sent a memo to the CSW not to do anything because he would lose his job. He abused her for multiple years—physically, sexually, in all ways. . . . The CSW and the police did nothing to inform the prosecutor about the previous offenses.¹⁰⁰⁸

Because the authorities did not intervene, it was left to the victim to initiate the criminal complaint.¹⁰⁰⁹

REQUESTS FOR PROTECTIVE MEASURES

Various bodies, including a victim or CSW as guardianship authority can initiate actions for protective measures.¹⁰¹⁰ The CSW Protocol states that CSW obligations include filing or helping file domestic violence complaints in the family and criminal courts.¹⁰¹¹ One judge highlighted the benefits of this CSW

¹⁰⁰⁴ Interview with CSW, Location I, Feb. 27, 2015 (noting no legal requirement to report to the police but an informal understanding to keep the police informed when there are elements of a criminal offense); Interview with CSW, Location E, Oct. 15, 2014 (noting no agreement to report to the police, although usually the victims are already in contact with the police, and noting the lack of official channels through which the CSW could notify prosecutors when they identify domestic violence that could be a criminal offense).

¹⁰⁰⁵ Interview with CSW, Location F, Oct. 21, 2014.

¹⁰⁰⁶ Interview with CSW, Location C, Oct. 14, 2014 (noting they report with the victim's consent, unless there has been a history of violence).

¹⁰⁰⁷ CSW Protocol, at 68.

¹⁰⁰⁸ Interview with Criminal Judge, Location G, Oct. 20, 2014; *see also* Interview with Prosecutor, Location G, Oct. 20, 2014. This example was also referenced in the Family Law Judges Section on Protective Measures: Eviction.

¹⁰⁰⁹ Interview with Criminal Judge, Location G, Oct. 20, 2014.

¹⁰¹⁰ Family Law, Art. 284(2); Interview with CSW, Location D-1, Oct. 14, 2014. The victim's legal representatives and public prosecutors are also authorized to initiate actions for protective measures.

¹⁰¹¹ CSW Protocol, at 50.

role because, with their experience, CSWs provide well-written petitions with appropriate evidence and propose the best solutions.¹⁰¹²

Whether the CSW files petitions for victims varies across cities. In some locations, interviewees reported that CSWs rarely file petitions for protective measures.¹⁰¹³ According to the Ombudsperson, the number of protective measures initiated by social workers is small – 274 over an 18-month period of time - compared to 534 criminal charges.¹⁰¹⁴ In other locations, CSWs usually request protective measures.¹⁰¹⁵ Although the Ombudsperson indicated that victims initiate most procedures for protective measures,¹⁰¹⁶ one judge reported that 90 percent of petitions came from women in shelters or safe houses.¹⁰¹⁷ This data indicates that CSW staff in shelters and safe houses can provide a great deal of support to women seeking this remedy, even if they are not providing direct legal aid. One family law judge reported that there were no victim-initiated actions in his or her court; instead, CSWs most frequently initiate the actions and provided evidence to support the request.¹⁰¹⁸

OPINIONS AND REPORTS TO THE FAMILY LAW COURTS¹⁰¹⁹

When a non-CSW party applies for protective measures, the court may request the CSW investigate and provide an opinion on the appropriateness of the protective measure.¹⁰²⁰ Family law judges consistently make this request, even though CSW opinions are not mandatory.¹⁰²¹ In addition, judges typically follow the CSW's opinion on the severity of the situation and what measures to impose.¹⁰²²

¹⁰¹² Interview with Family Law Judge, Location I, Feb. 26, 2015.

¹⁰¹³ Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014; Interview with CSW, Location F, Oct. 21, 2014 (describing how they encourage the victim to file because she may be less likely to drop the case).

¹⁰¹⁴ 2014 Special Report of the Ombudsperson, Annex 1, Table 6, at 54.

¹⁰¹⁵ Interview with CSW, Location G, Oct. 21, 2014; Interview with Prosecutor, Location G, Oct. 20, 2014; Interview with CSW, Location I, Feb. 27, 2015 (victims rarely file); Interview with Family Law Judge, Location I, Feb. 26, 2015.

¹⁰¹⁶ 2014 Special Report of the Ombudsperson, p. 35, n.130.

¹⁰¹⁷ Interview with Family Law Judge, Location G, Oct. 20, 2014.

¹⁰¹⁸ Interview with Family Law Judge, Location I, Feb. 26, 2015.

¹⁰¹⁹ CSW opinions and reports are used significantly less in criminal cases. Interview with CSW, Location H, Oct. 22, 2014 (stating they provide reports to prosecution, while criminal judges sometimes ask for a report and experts sometimes testify). Prosecutors may request CSW opinions and reports, but criminal judges do not have CSW reports in most cases. Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Prosecutor, Location A, Oct. 13, 2014 (stating "sometimes misdemeanor charges are not recorded but CSW has known about the situation for 20 years"); Interview with Prosecutor, Location I, Feb. 27, 2015; Interview with Prosecutor, Location F, Oct. 20, 2014 (noting that CSW reports may be used to determine whether to proceed with criminal proceedings and used as evidence if victim decides not to testify, in lieu of dropping the case); Interview with Criminal Judge, Location A-2, Oct. 13, 2014. One judge reported requesting CSW reports if there was insufficient evidence and believed that the violence was not a one-time incident. The judge would use the CSW report as evidence for certain facts. Interview with Criminal Judge, Location H, Oct. 23, 2014.

¹⁰²⁰ Family Law, Art. 286; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (explaining the court could ask for the opinion if the CSW did not initiate the request for protective measures).

¹⁰²¹ Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with CSW, Location D-1, Oct. 14, 2014 (stating the opinion is requested for every domestic violence case, including interim protective measures, even though not required); Interview with Family Law Judge, Location H, Oct. 23, 2014 (explaining interim protective measures can be granted at the first hearing if the CSW report justifies the measures and opinion needed for

Under the Family Law, the court should schedule an initial hearing within eight days of receiving the application for protective measures,¹⁰²³ but in reality most CSWs do not submit their reports to the court within this timeframe.¹⁰²⁴ The reports require several steps, as illustrated by a social worker:

...a special interview with the victim, then with the children, then with the perpetrator. Then we need to go out into the field. After that, we need one day to prepare the report. In complicated cases where there are psychological disorders or any type of addiction, we need to collect the data from relevant institutions. We need more time. Our principle is that those cases are subject to urgent procedures. So the very day that we receive the summons of the request, we send the summons for interviews, and it takes approximately two weeks to finish all that. In high-risk, urgent cases, the court issues an interim protective measure. So we don't want to be too fast, in order not to endanger the entire procedure.¹⁰²⁵

One CSW interviewee explained that, because of court delays in notifying them, they only had 24 to 48 hours to prepare their opinion within the court's deadline to schedule the first hearing.¹⁰²⁶ Some centers have sought to overcome these delays through agreements with institutions, such as the police and health institutions, that send them information.¹⁰²⁷ This practice not only facilitates compliance with the statutory deadlines but demonstrates coordination within the system.

interim measures); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (observing that it is rare to issue *ex parte* emergency orders, unless they have medical documentation and a police report); Interview with Family Law Judges, Location B-2, Oct. 17, 2014 (observing they primarily need the opinion for interim measures); Interview with CSW, Location E, Oct. 15, 2014; Interview with CSW, Location F, Oct. 21, 2014 (stating they always ask for an opinion in protective measure cases); Interview with Family Law Judge, Location F, Oct. 20, 2014.

¹⁰²² Interview with Family Law Judge, Location G, Oct. 20, 2014; Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with CSW, Location F, Oct. 21, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014 (noting agreement in 99 percent of cases); Interview with Family Law Judge, Location H, Oct. 23, 2014 (noting no case in which he disagreed with CSW opinion). *But see* Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (stating they do not accept CSW opinions in unresolved property disputes requiring a protective measure); Interview with Family Law Judges, Location B-2, Oct. 17, 2014 (stating that CSW opinions are not mandatory for court).

¹⁰²³ Proceedings for protection from domestic violence have been identified as particularly urgent, and the first hearing is to be scheduled to occur within eight days after the action was filed with the court. Family Law, Art. 285 (1)-(2); Interview with CSW, Location D-1, Oct. 14, 2014 (try to respond as soon as possible); Interview with Family Law Judge, Location H, Oct. 23, 2014 (CSWs provide reports for interim protective measure request within 8 days).

¹⁰²⁴ Report timing also depends on the availability of the parties for the CSW to interview them. Interview with CSW, Location E, Oct. 15, 2014 (describing the report is made within two weeks if the family is known to the CSW, but otherwise up to one month); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (calling the eight day requirement "impossible"); Interview with CSW, Location F, Oct. 21, 2014 (estimating a period of two weeks to issue summons and conduct interviews). In many locations, judges and centers reported that CSW reports were prepared within the time frames set by the court. One judge, however, implied that social workers did not comply with these deadlines and would schedule a hearing to incentivize a timely submission. Interview with Family Law Judge, Location B-2, Oct. 13, 2014.

¹⁰²⁵ Interview with CSW, Location F, Oct. 21, 2014.

¹⁰²⁶ Interview with CSW, Location H, Oct. 22, 2014.

¹⁰²⁷ *Id.*

In practice, courts generally extend the deadline and ask that reports be provided within 15 to 30 days of initiating proceedings, which CSWs can meet,¹⁰²⁸ instead of the eight days required by the Family Law.¹⁰²⁹ Judicial reliance on and the extended period of time for CSW reports, however, delay the issuance of protective measures, leaving victims unprotected and failing to fulfill the goal of providing swift protection.

BATTERER INTERVENTION PROGRAMS

Some CSWs have initiated batterer intervention programs and received specialized training.¹⁰³⁰ At the time of fact-finding, these programs were still new and not available in all parts of Serbia. Some centers had not had any perpetrators go through the program.¹⁰³¹

Where programs do exist, CSWs operate them, decide perpetrator eligibility, and determine successful completion.¹⁰³² Procedures relating to these programs, however, are still underdeveloped and inconsistent across interview locations. In some cities, prosecutors can defer criminal proceedings and order perpetrators into treatment;¹⁰³³ in others, the programs are voluntary so the court cannot force perpetrators to complete the program.¹⁰³⁴ Responsibility for monitoring is unclear, and in the absence of direction, the party who should be monitored for attending batterer intervention programs – the perpetrator – is unlikely to report his own compliance.¹⁰³⁵ Without formal protocols that incorporate best practice standards, CSWs lack direction on steps that they should take if participants do not complete the program.¹⁰³⁶

¹⁰²⁸ Interview with CSW, Location G, Oct. 21, 2014 (estimating the submission of the report within 15 days); Interview with Family Law Judge, Location G, Oct. 20, 2014 (noting they accept the report within 10 days for interim protective measures and one month for a final report; CSWs usually meet these deadlines); Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (noting courts allow 15 days; CSWs usually meet that deadline); Interview with Family Law Judge, Location F, Oct. 20, 2014 (noting two to three weeks are allowed for the report on final protective measures); Interview with Family Law Judge, Location B-2, Oct. 13, 2014 (noting 15 days to one month and the threat of a fine if CSWs do not issue the opinion within that time).

¹⁰²⁹ Family Law, Art. 285(2).

¹⁰³⁰ Interview with CSW, Location C, Oct. 14, 2014; Interview with CSW, Location F, Oct. 21, 2014; Interview with Counseling Center, Location H, Oct. 22, 2014.

¹⁰³¹ Interview with CSW, Location G, Oct. 21, 2014.

¹⁰³² Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with CSW, Location H, Oct. 22, 2014.

¹⁰³³ Interview with CSW, Location H, Oct. 22, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014; Interview with CSW, Location G, Oct. 21, 2014 (noting that prosecutors can order the program but have not done so); Interview with Prosecutor, Location H, Oct. 23, 2014.

¹⁰³⁴ Interview with CSW, Location D, Oct. 14, 2014; Interview with CSW, Location C, Oct. 14, 2014.

¹⁰³⁵ Interview with CSW, Location B-2, Oct. 15, 2014.

¹⁰³⁶ See The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central and Eastern Europe and the Former Soviet Union*, 2016, available at http://www.theadvocatesforhumanrights.org/uploads/bip_report_january_2016.pdf.

Recommended Best Practice Standards for Batterer Intervention Programs

The Advocates for Human Rights report on *Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe and the Former Soviet Union* describes essential elements of an effective government intervention program for batterers and makes recommendations for developing and reviewing batterer intervention program in countries around the world.¹

Increasingly, laws are calling for programs into which to direct aggressors or the perpetrators of domestic violence in addition to or in place of jail. The direction of these programs has begun to take various forms and follow different models. Some of these efforts have evolved into formal programs, called Batterer Intervention Programs (BIPs) or perpetrator programs² that are designed to end batterers' use of violence by changing their underlying beliefs. Other responses have focused primarily or solely on treating batterers or psychological problems or working with both the batterer and the victim to address relationship dynamics.

Both research and recognized best practices support formal programs that prioritize two goals: victim safety and offender accountability. Offender programs, the Duluth Model of batterer programs being a well-known example, are usually victim-centered, court-mandated programs. They are typically grounded in the understanding that domestic violence is a form of violence against women that stems from the historically unequal power relations between women and men. Maintaining victim safety is the program's first priority. The goal of the offender program is to end the violence by holding offenders accountable to accept responsibility and modify their underlying beliefs of entitlement. Stand-alone counseling approaches, on the other hand, typically focus on addressing a batterer's mental health, substance abuse, or relationship dynamics. Under the counseling approaches, ending the violence is a by-product of solving the underlying psychological or relationship problem.

The Advocates has identified five essential elements of an effective program based on this human rights framework.

- 1) **Be part of an overall human rights-based system response.** First and foremost, batterer programs should not exist in isolation. Instead, they should be part of an existing system's overall response to domestic violence. At a minimum, that system should include criminal sanctions for batterers, civil remedies for victims, prevention strategies, and protective measures including shelters and other services for victims. The various organizations that are part of the domestic violence response should coordinate their efforts to ensure the overall system is working effectively.³ Furthermore, the various parts of the system should share a common theory of domestic violence grounded in a human rights analysis with mechanisms to create systems change when necessary. A shared philosophy across system actors as well as perpetrator programs is necessary to create consistent program responses.⁴ The reality is that not every country has a functioning, coordinated system within which a batterer

¹ The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe & Former Soviet Union*, January 2016. Available at: http://www.theadvocatesforhumanrights.org/uploads/bip_report_january_2016.pdf

² In the United States, programs for batterers are often referred to as Batterer Intervention Programs (BIPs). However, that same term is not as prevalent in other parts of the world. In our research, The Advocates also uses the term "Batterer Interventions", "programs for batterers/perpetrators", or "batterer/perpetrator programs."

³ These efforts are often called a coordinated community response (CCR).

⁴ This shared philosophy includes a victim-centered, gendered approach that recognizes the dynamics of power and control in relationships and encourages perpetrators to change behavior by taking responsibility and forgoing beliefs of entitlement to use violence.

program can effectively operate. In such situations, priority should be focused on improving the systems' overall response before expecting batterer programs to function.

- 2) **Maintain formal links to the criminal justice system and victim advocacy.** An effective batterer program, as any intervention based on best practices, will emphasize accountability while prioritizing victim safety. To meet these goals, an effective batterer program will maintain formal links to the criminal justice system and victim services through the coordinated system response. The link to the criminal justice system promotes accountability and compliance with a program by ensuring consequences for offenders' use of violence and failure to comply with the terms of the program. The batterer program's links to victim advocacy groups facilitates focusing on the victim's needs and providing her with necessary information to allow her to make decisions that improve her safety and the safety of her children. Systems must hold offenders accountable for their use of violence, and the system itself must be accountable to victims.⁵
- 3) **Avoid dangerous practices.** While counseling approaches can provide important services, they should not be a substitute for an offender program that is based on a gendered understanding of power and control dynamics in a relationship and adequately tied to the criminal justice system. Counseling approaches, used alone, do not hold batterers accountable and do not focus on changing their underlying beliefs that validate the use of violence in the first place. While some counseling approach techniques could serve as a supplement to an offender program, focusing solely on these techniques can be dangerous because they avoid addressing the real causes of battering and become another means for the batterer to control his partner.⁶ In addition, batterers may in fact retaliate with more violence in response to the counseling.⁷
- 4) **Make referrals.** The truth is that many batterers need other services, including treatment for substance abuse or past trauma. It is harmful to victims, however, to assume abusers must be healthy before they can be expected to stop battering their partners. Domestic violence is not caused by substance abuse or mental illness. As such, substance abuse or mental health treatment does not "cure" domestic violence. In cases where batterers need mental health services or substance abuse treatment, they should receive referrals as a supplement—never a substitute—to an offender program.

⁵ To this end, effective programs make perpetrators waive their right to confidentiality, so program facilitators can share threats to victim's safety or other non-compliance with the criminal justice center and victim advocates. This prioritization of a victim's right to safety over a perpetrator's right to confidentiality, is a hallmark difference from a counseling approach based on traditional patient/counselor relationship.

⁶ Anger management training is a popular response to domestic violence but is not a substitute for a perpetrator program. Perpetrators may feel angry if they are unable to control their partners, but anger is not the cause of domestic violence. Perpetrators, many of whom are able to control anger outside the home, also show patterns of coercive and abusive behavior when they are not angry. Furthermore, while batterers may "appear" out of control, they, in fact, strategically use a showing of anger as a means of control.

⁷ Couples counseling, for example, is often ineffective in domestic violence cases, and it can be extremely harmful. Power cannot be redistributed in the relationship if the batterer is unwilling to give up control and the victim is afraid of retaliation if she speaks freely about relationship issues and the violence. The reality is that some couples stay together after domestic violence has occurred. For these couples, counseling may be appropriate only if certain limited criteria can be met, including: that a counselor trained to understand the dynamics of domestic violence is convinced that the violence has ended; the offender has successfully completed a reputable offender program; the victim has worked with an advocate and developed a safety plan; the victim feels safe and enters counseling voluntarily; the counselor has discussed the risks of counseling and is convinced that violence will not resume as a result of the counseling sessions.

- 5) **Conduct ongoing risk assessment and risk management by well-trained practitioners.** Accurate risk assessment may help protect victims by identifying which batterers are most likely to reoffend and risk management techniques can apply increased accountability and supervision to dangerous offenders. However, accurate risk assessment or categorization of types of domestic violence can be very difficult, and incorrectly assessing risk can prove fatal for victims. Moreover, if risk management is not reliable and ongoing, victims may be lulled into a false sense of security, exposing them to greater risk. Facilitators of batterer programs and system stakeholders at all levels should be well-trained in conducting ongoing risk assessment and risk management.

CHILDREN

Child custody arrangements are another instance where CSWs interact with domestic violence victims and abusers.¹⁰³⁷ The Family Law requires the court to request findings and expert opinions from institutions, including the CSWs, before deciding on a child's rights or the deprivation of parental rights.¹⁰³⁸ Opinions from the CSW can heavily influence the court,¹⁰³⁹ and thus, which parent is awarded custody.

Some interviews revealed that CSWs follow practices that grant mutual custody. Only one CSW interviewee stated they would never suggest mutual custody of children in domestic violence cases.¹⁰⁴⁰ Overall, interviews suggested that CSWs preferred children to have contact with both parents regardless of violence against the mother.¹⁰⁴¹ One CSW employee did not want to "punish the child" because the perpetrator's abuse was almost exclusively directed against his wife and usually not in the children's presence.¹⁰⁴² Such attitudes place victims "in a vulnerable position because the system supports the abuser"¹⁰⁴³ and contradict best practices to consider the perpetrator's violent history when determining custody arrangements.¹⁰⁴⁴

CSWs also have primary responsibility for preventing child abuse and removing children from negligent or abusive families.¹⁰⁴⁵ This sometimes conflicts with their role in assisting women victims of violence. At

¹⁰³⁷ Interview with Family Law Judge, Location G, Oct. 20, 2014 (CSWs recommend visitation in controlled circumstances on their premises); Interview with Family Law Judge, Location H, Oct. 23, 2014; Interview with CSW, Location D, Oct. 14, 2014 (suggesting supervised visitation at the CSW when risk of endangerment is high); Interview with CSW, Location I, Feb. 27, 2015 (describing how they may ask the court to limit contact and for the CSW to be present for visitation); Interview with CSW, Location D-1, Oct. 14, 2014 (noting that supervised visits may be recommended on a case-by-case basis).

¹⁰³⁸ Family Law, Art. 270. *See also* CSW Protocol, p. 50 (addressing the provision of expert testimony in family and criminal court proceedings on domestic violence).

¹⁰³⁹ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014; Interview with Family Law Judge, Location F, Oct. 20, 2014; Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location I, Feb. 27, 2015; Interview with CSW, Location C, Oct. 14, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014.

¹⁰⁴⁰ Interview with CSW, Location D-1, Oct. 14, 2014.

¹⁰⁴¹ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014. This attitude is reflected in Family Law, Art. 7(1), stating "The mother and father have joint parental rights."

¹⁰⁴² Interview with CSW, Location C, Oct. 14, 2014.

¹⁰⁴³ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

¹⁰⁴⁴ Istanbul Convention, Art. 31.

¹⁰⁴⁵ Interview with CSW, Location H, Oct. 22, 2014.

least one CSW did not view a woman's status as a victim of violence as a reason for her to lose parental rights.¹⁰⁴⁶ Other CSWs, however, indicated that being a victim "does not improve parental competencies."¹⁰⁴⁷ Those CSWs temporarily remove children from families when a woman is unable to ensure her own physical safety.¹⁰⁴⁸ One CSW explained that, in a significant number of cases, they concluded that the victim neglected her children.¹⁰⁴⁹ The fear of losing their children can deter victims from reporting violence and seeking help.¹⁰⁵⁰

¹⁰⁴⁶ Interview with CSW, Location I, Feb. 27, 2015 (recalling never initiating an action to remove parental rights from a victim of violence).

¹⁰⁴⁷ Interview with CSW, Location F, Oct. 21, 2014.

¹⁰⁴⁸ Interview with CSW, Location H, Oct. 22, 2014.

¹⁰⁴⁹ Interview with CSW, Location F, Oct. 21, 2014.

¹⁰⁵⁰ Tanja Ignatović, Consequences of violence against women in an intimate relationship on children and the answer of public services on this issue, Autonomous Women's Center, Belgrade, 2013, p. 37, ¶ 6 ("As a result [of inappropriate CSW interventions], women feel fear of losing custody over their children and show less willingness to seek help from public services.").

VICTIM SERVICES

SHELTERS AND SAFE HOUSES

The CSW Protocol provides that the security of a victim may be ensured by removing her from her home and placing her into a secure environment, i.e., a shelter or safe house.¹⁰⁵¹ Shelters and safe houses provide a refuge for women and their children to immediately escape violence. These locations provide basic necessities, such as food and clothing, as well as counseling and legal services.¹⁰⁵² But some perceive the focus on removing the victim to a shelter rather than eviction of the violent perpetrator as punishing the victim.¹⁰⁵³

In Serbia, there are 13 or 14 shelters, most of which are operated by local social services¹⁰⁵⁴ and supported with funding from the local government.¹⁰⁵⁵ Although the Council of Europe recommends 719 shelter spaces for Serbia's population, estimates and reports of the number of places are almost 65 percent lower than the recommended number.¹⁰⁵⁶ Despite this reported shortfall, most CSWs did not have problems placing victims in shelters.¹⁰⁵⁷

¹⁰⁵¹ CSW Protocol, p. 56; *see also* Law on Social Protection, Art. 55 (stating “shelter service shall be ensured by the local self-government unit, except in cases foreseen by this Law”); Interview with CSW, Location D-1, Oct. 14, 2014; Interview with CSW, Location G, Oct. 21, 2014 (commenting that if the victim is in immediate danger, does not have support from family or friends, and cannot meet her basic needs, the CSW will find her a place in a safe house); Interview with City Secretariat, Location B-2, Oct. 16, 2014. The Istanbul Convention states: “Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.” Council of Europe Convention on preventing and combating violence against women and domestic violence, Art. 23.

¹⁰⁵² Interview with NGO, Location B-2, Oct. 14, 2014; Interview with Shelter, Location F, Oct. 21, 2014 (providing a psychologist and pedagogue); Interview with Shelter, Location H, Oct. 22, 2014 (providing psychological services).

¹⁰⁵³ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with NGO, Location J, Feb. 23, 2015.

¹⁰⁵⁴ There are one or two shelters that are operated by NGOs. Shadow Report of the Autonomous Women's Center (AWC) on the Follow-up state's report to the Concluding observations of the Committee, April 2016, ¶157 (citing data gathered by the Network “Women against violence”). Two additional shelters for elderly and homeless persons can provide emergency shelter for women and children victims of domestic violence. *Id.* *See also* Interview with City Council Member, Location G, Oct. 21, 2014; Interview with Child and Social Care, Location F, Oct. 22, 2014; Interview with Shelter, Location F, Oct. 21, 2014.

¹⁰⁵⁵ Law on Social Protection, Art. 55 (stating, “Shelter service shall be ensured by the local self-government unit, except in cases foreseen by this Law”); Interview with CSW, Location H, Oct. 22, 2014 (describing how funding transitioned from donations to the local municipality in 2001). Since 2011, local governments are obliged to pay for shelters. Interview with Republic Institute for Social Protection, Belgrade Feb. 25, 2015.

¹⁰⁵⁶ Women Against Violence Europe, *WAVE Report 2015: On the Role of Specialist Women's Support Services in Europe*, p. 92, Table 13, 2016 (noting 257 spaces in 12 shelters); Shadow Report of the Autonomous Women's Center (AWC) on the follow-up state's report to the Concluding observations of the Committee, April 2016, ¶ 58 (noting 151 places without counting one shelter).

¹⁰⁵⁷ Interview with CSW, Location I, Feb. 27, 2015. At least one CSW, however, suggested that shelters had insufficient capacity. Interview with CSW, Location C, Oct. 14, 2014.

Regulations under the Law on Social Protection state that women can stay at a shelter for up to six months, but interviews revealed that not all municipalities comply with these regulations.¹⁰⁵⁸ For example, the average stay reported by one NGO was three months.¹⁰⁵⁹ Service providers noted three months' stay is too short for women to obtain protection or get a divorce.¹⁰⁶⁰

Insufficient funds limit the services that shelters can provide. One safe house reported that it costs 1,100 dinars (9 euros) per day to shelter a victim.¹⁰⁶¹ As a result, shelters strive to offer services that are needed and should be provided by the government, but lack funding to do so.¹⁰⁶² Interviewees echoed concerns that shelters do not provide comprehensive services to women and only address their physical needs.¹⁰⁶³ At the time of research, staff also explained that new regulations created a hiring freeze,¹⁰⁶⁴ further limiting the services that could be provided to shelter residents.

Interviewees expressed concern about particular requirements or gaps in existing shelter practices.¹⁰⁶⁵ Onerous shelter requirements may deter victims, leaving them without safe refuge or forcing them to return to the perpetrator. Some CSWs reported that the only condition to enter a shelter was their assessment of the need for placement there.¹⁰⁶⁶ Others, however, required the victim to initiate all necessary court proceedings to qualify for entry.¹⁰⁶⁷ Women are not able to remain anonymous in CSW-run shelters.¹⁰⁶⁸ In addition, shelter is not always free. Only three of the state-run shelters are free-of-charge.¹⁰⁶⁹ Others charge women, which prevents many victims, especially those without economic means, from obtaining this protection.¹⁰⁷⁰

¹⁰⁵⁸ Interview with NGO, Location F, Oct. 22, 2014 (6 months); Interview with Shelter, Location F, Oct. 21, 2014 (up to 6 months); Interview with NGO, Location J, Feb. 23, 2015 (three months); Interview with Shelter, Location H, Oct. 22, 2014 (three months, plus another month, if needed); Interview with Shelter, Location G, Oct. 21, 2014 (six months but can stay longer).

¹⁰⁵⁹ Interview with NGO, Location B-2, Oct. 14, 2014.

¹⁰⁶⁰ *Id.*; Interview with Shelter, Location G, Oct. 21, 2014 (the justice system is too slow).

¹⁰⁶¹ Interview with NGO, Location B-2, Oct. 14, 2014; Interview with NGO, Location J, Feb. 25, 2015 (others cost 1,000 euros per month); Interview with Shelter, Location F, Oct. 21, 2014 (43,000 dinars per month).

¹⁰⁶² Interview with Shelter, Location H, Oct. 22, 2014.

¹⁰⁶³ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with CSW, Location E, Oct. 15, 2014.

¹⁰⁶⁴ Interview with Shelter, Location H, Oct. 22, 2014.

¹⁰⁶⁵ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with CSW, Location E, Oct. 15, 2014; Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with NGO, Location J, Feb. 23, 2015 (mostly the women have to leave).

¹⁰⁶⁶ Interview with CSW, Location G, Oct. 21, 2014.

¹⁰⁶⁷ Interview with CSW, Location F, Oct. 21, 2014.

¹⁰⁶⁸ Interview with NGO, Location J, Feb. 25, 2015.

¹⁰⁶⁹ Women Against Violence in Europe, *Supporting the Sustainability and Autonomy of Women's Organizations Providing Services in Eastern Europe for Women and Children Survivors of Domestic Violence*, 2015, at 132.

¹⁰⁷⁰ Interview with CSW, Location H, Oct. 22, 2014; Interview with Shelter, Location H, Oct. 22, 2014. *See also* Women Against Violence Europe, *Country Report 2013: Reality Check on European Services for Women and Children Survivors of Violence: A Right for Protection and Support?* at 175. The two NGO-run shelters offer services free of charge. *Id.*

Interviews revealed discriminatory practices and caps in accepting all women into shelters. In particular, interviewees reported difficulty in placing Roma women, women with disabilities,¹⁰⁷¹ and women with psychiatric diagnoses in shelters.¹⁰⁷² In one example, a woman with a psychiatric diagnosis was denied access to a women's shelter without any assessment of how her diagnosis could impact other residents. Over the course of three months, during which NGOs sought shelter for her, she was able to obtain an order of eviction of the perpetrator. Within days, he and other family members pressured her to withdraw these measures. In the opinion of the NGO, the woman would have had better protection had she been admitted to the shelter at the beginning.¹⁰⁷³

Local shelter regulations also impact shelter funding schemes. For example, regulations on licensing of services have not been reconciled between the national and local levels. One shelter does not meet the licensing requirements for the number of employees, yet does not receive enough financial support that would enable them to meet the requirements.¹⁰⁷⁴ Shelters also must provide protection without discrimination as to the victim's residency or ethnic origin.¹⁰⁷⁵ One difficulty arises from shelter financing by local governments. When women seek shelter in another territory, that municipality must seek reimbursement from the woman's territory of origin to cover her shelter costs.¹⁰⁷⁶

Because shelters provide refuge for those fleeing domestic violence, support from other institutions is necessary to protect victims and shelter staff from perpetrators. The locations of the shelters and safe houses are intended to be confidential, but this is not always the case.¹⁰⁷⁷ Confidentiality is especially important if the shelter lacks adequate security to protect residents and workers from violent abusers.¹⁰⁷⁸ In one example, a perpetrator discovered the address of a safe house and waited outside for the victim.¹⁰⁷⁹ The CSW identified this as high risk because the perpetrator had brutally beaten the victim and her children and sexually assaulted the victim. They notified the police, only to learn the

¹⁰⁷¹ Interview with Shelter, Location F, Oct. 21, 2014 (noting that construction did not take disabilities into account); Interview with NGO, Location F, Oct. 20, 2014 (noting physical barriers to the shelter and services are not available for hearing impaired victims); Interview with Family Law Judge, Location I, Feb. 26, 2015 (noting shelters are not accessible for persons with disabilities).

¹⁰⁷² Interview with CSW, Location E, Oct. 15, 2014; Interview with NGO, Location J, Feb. 23, 2015; Interview with NGO, Location J, Feb. 25, 2015 (noting barriers in psychiatric diagnosis cases); Interview with CSW, Location E, Oct. 15, 2014 (noting barriers for Roma women); Interview with NGO, Location F, Oct. 20, 2014 (noting barriers in psychiatric diagnosis cases).

¹⁰⁷³ Interview with NGO, Location J, Feb. 25, 2015.

¹⁰⁷⁴ Interview with Shelter, Location H, Oct. 22, 2014.

¹⁰⁷⁵ Istanbul Convention, Art. 4, para. 3, and Art. 23.

¹⁰⁷⁶ Interview with CSW, Location H, Oct. 22, 2014; Interview with Child and Social Care, Location F, Oct. 22, 2014.

¹⁰⁷⁷ Interview with NGO, Location B-2, Oct. 14, 2014 (describing how women are driven to the safe house to keep the location secret, but confidentiality is difficult in smaller communities); Interview with NGO, Location B-2, Oct. 16, 2014; Interview with NGO, Location J, Feb. 25, 2015; Interview with Child and Social Care, Location F, Oct. 22, 2014 (describing a perpetrator who found the secret location); Interview with Shelter, Location H, Oct. 22, 2014 (describing perpetrators who found the secret location); Interview with City Council Member, Location G, Oct. 21, 2014 (describing local media that covered the construction of one shelter).

¹⁰⁷⁸ Interview with Shelter, Location G, Oct. 21, 2014 (describing their private, temporary security).

¹⁰⁷⁹ Interview with Shelter, Location F, Oct. 21, 2014.

police would not intervene unless he physically harmed her.¹⁰⁸⁰ In another case, a perpetrator kidnapped his stepchild from school and brought her to the shelter to upset the victim. He then attacked one of the shelter workers.¹⁰⁸¹ Despite his actions and pending criminal charges, he retained visitation rights with his children.¹⁰⁸²

In the absence of adequate security, some shelters resort to imposing their own measures on residents. In one shelter, the doors are locked at 3:00 p.m., and residents are not able to leave the building. This can result in residents being locked in for up to four days over holiday weekends.¹⁰⁸³

LEGAL AID

Domestic violence victims often need legal assistance, including help in preparing applications for protective measures, filing criminal complaints, seeking a divorce, or requesting child custody.¹⁰⁸⁴ Legal representation ensures that women are less likely to become discouraged with and abandon court proceedings.¹⁰⁸⁵ The 2017 LPDV states that victims of domestic violence have the right to free legal aid under a special law.¹⁰⁸⁶ As of September 2017, the Law on Free Legal Aid had not been adopted, however, and the current draft excludes NGOs as providers of free legal aid for domestic violence victims.¹⁰⁸⁷

Legal aid is available through NGOs,¹⁰⁸⁸ CSWs,¹⁰⁸⁹ or municipalities.¹⁰⁹⁰ There are strict requirements to qualify for free legal aid.¹⁰⁹¹ The qualification requirements, however, do not comport with the reality.

¹⁰⁸⁰ *Id.* Ultimately, after the victim temporarily left the safe house to go to work, the perpetrator attacked the victim with a hammer outside of her work and hanged himself. *Id.*

¹⁰⁸¹ Interview with Shelter, Location G, Oct. 21, 2014.

¹⁰⁸² *Id.*

¹⁰⁸³ Interview with NGO, Location J, Feb. 25, 2015.

¹⁰⁸⁴ The Istanbul Convention requires States parties to “provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.” Council of Europe Convention on preventing and combating violence against women and domestic violence, Art. 57. At the time of the fact-finding missions, the Serbian government was in the process of drafting a law on Legal Aid that would increase the scope of covered individuals. Interview with NGO, Location F, Oct. 22, 2014; Interview with Consultant, Location J, Feb. 23, 2015.

¹⁰⁸⁵ As noted by one NGO: “It will be in vain if she gets the attention of the police and the prosecutor, but then she freezes the moment she faces the perpetrator in court. . . . The little things that he will say in the court will disturb her will cause her to start shaking and be unable to read. [The victims] need attorneys to represent them.” Interview with NGO, Location G, Oct. 20, 2014; Interview with CSW, Location H, Oct. 22, 2014.

¹⁰⁸⁶ LPDV, Art. 30.

¹⁰⁸⁷ Personal communications from NGO to The Advocates for Human Rights, via email, dated Nov. 3, 2016 and Sept. 8, 2017 (on file with authors).

¹⁰⁸⁸ Interview with NGO, Location H, Oct. 24, 2014 (describing provision of legal advice, but not direction representation); Interview with NGO, Location H, Oct. 23, 2014 (describing their obligation to provide legal aid to safe house residents as part of an intersectional agreement); Interview with NGO, Location B-2, Oct. 14, 2014; Interview with NGO, Location F, Oct. 22, 2014 (describing role to provide information on civil and criminal cases and write complaints and charges for the court); Interview with CSW, Location E, Oct. 15, 2014 (explaining that NGOs provide legal assistance, while CSW attorneys provide advice and recommendations); Interview with CSW, Location B-2, Oct. 15, 2014 (describing providing information about rights but referral to NGOs because CSWs do not provide legal aid); Interview with NGO, Location G, Oct. 20, 2014 (describing hiring attorneys to represent victims but does not have consistent funding for these services); Interview with NGO, Location B-2, Oct. 14, 2014; Interview with NGO, Location B-1, Oct. 14, 2014; Interview with Shelter, Location H, Oct. 22, 2014.

As reported by one CSW, a monthly income of only 36,025 dinars (300 euros) disqualified one from free legal aid,¹⁰⁹² even though legal fees for just one hearing could cost 150 euros.¹⁰⁹³

Interviewees also reported several variations of “free” legal aid. Unfortunately, not all municipalities provide free legal aid.¹⁰⁹⁴ One municipality uses a sliding income scale; those on welfare do not pay, but others pay reduced fees.¹⁰⁹⁵ Full representation is not available for victims in all proceedings.¹⁰⁹⁶ In one location, the municipality provides assistance in writing petitions, but not in representing victims in court.¹⁰⁹⁷ When victims do qualify, the quality of legal representation may be insufficient for the services needed.¹⁰⁹⁸

Because of these gaps, one judge observed that women who are economically dependent on their violent partners are most often unrepresented by attorneys in family court. In contrast, perpetrators almost always have legal representation.¹⁰⁹⁹

This need has been filled, in part, by NGOs that provide free legal counseling to victims of violence.¹¹⁰⁰ NGOs provide both civil and criminal representation to victims. One CSW interviewee praised the quality of services provided by NGO attorneys, noting they request better and broader legal protections for

¹⁰⁸⁹ Interview with CSW, Location G, Oct. 21, 2014 (explaining the CSW lawyer will write the petition for protective measures or file a criminal complaint if the victim is not able to initiate proceedings herself); Interview with City Council Member, Location G, Oct. 21, 2014 (stating the “CSW has a huge number of lawyers and they extend free legal aid to their users”); Interview with CSW, Location D-1, Oct. 14, 2014 (noting each CSW has legal aid); Interview with Shelter, Location G, Oct. 21, 2014 (explaining that lawyers at the CSW-run shelter were paid by the client’s municipality of origin, but clients pay if employed).

¹⁰⁹⁰ Interview with CSW, Location H, Oct. 22, 2014 (explaining that, since 2010, the local chamber represents victims of domestic violence free of charge; 26 lawyers signed up to represent women in protective measures from violence, divorce proceedings, parental rights, and criminal proceedings); Interview with CSW, Location G, Oct. 21, 2014; Interview with Family Law Judge, Location H, Oct. 23, 2014 (describing free legal aid for writing motions for protective measures, but no representation at court); Interview with City Council Member, Location G, Oct. 21, 2014 (describing a free legal aid office with two attorneys); Interview with Criminal Judge, Location B-1, Oct. 16, 2014.

¹⁰⁹¹ Interview with CSW, Location E, Oct. 15, 2014; Interview with CSW, Location B-2, Oct. 15, 2014 (noting how it rarely determines that it can provide free legal assistance). For example, a monthly salary of 300 euros would not qualify for free legal aid, but it is insufficient to be able to hire attorneys to assist with the process. *Id.*

¹⁰⁹² Interview with CSW, Location B-2, Oct. 15, 2014.

¹⁰⁹³ Personal communication from NGO to The Advocates for Human Rights, via email, Nov. 19, 2017 (on file with authors).

¹⁰⁹⁴ Interview with Consultant, Location J, Feb. 23, 2015.

¹⁰⁹⁵ Interview with City Council Member, Location G, Oct. 21, 2014; Interview with Shelter, Location G, Oct. 21, 2014 (if employed, have to pay for services of CSW shelter lawyer).

¹⁰⁹⁶ Interview with NGO, Location H, Oct. 23, 2014 (noting that legal aid at NGO is free, but costs a reduced fee at the ombudsman’s office).

¹⁰⁹⁷ Interview with Family Law Judge, Location H, Oct. 23, 2014; Interview with NGO, Location F, Oct. 22, 2014.

¹⁰⁹⁸ Interview with CSW, Location E, Oct. 15, 2014.

¹⁰⁹⁹ Interview with Family Law Judge, Location H, Oct. 23, 2014 (noting that courts can present evidence even if not proposed by the prosecuting party, but this presumably only assists unrepresented parties if the judge is willing to take these steps).

¹¹⁰⁰ *Id.* See also Women Against Violence Europe, *Country Report 2013: Reality Check on European Services for Women and Children Survivors of Violence: A Right for Protection and Support?* 2014, at 175.

victims than municipal legal aid attorneys.¹¹⁰¹ They have increased the number of volunteer attorneys by working with the local legal chamber.¹¹⁰² Reliance on the chamber can be uncertain, however, as one interviewee noted their local chamber had stopped supporting these measures.¹¹⁰³

At times, NGOs must curtail the breadth of services they can offer. One NGO does not always have financing to cover legal services and at times must turn victims away.¹¹⁰⁴ Some NGOs collect funds from clients or attempt to recover fees from the perpetrator, which can be difficult.¹¹⁰⁵ Others limit their services. One NGO provides free legal representation to victims in a particular municipality, but only legal advice and assistance with applications for protective measures to those outside that area.¹¹⁰⁶

¹¹⁰¹ Interview with CSW, Location E, Oct. 15, 2014.

¹¹⁰² Interview with NGO, Location H, Oct. 23, 2014; Interview with Shelter, Location H, Oct. 22, 2014.

¹¹⁰³ Interview with City Council Members, Location H, Oct. 24, 2014.

¹¹⁰⁴ Interview with NGO, Location B-1, Oct. 14, 2014.

¹¹⁰⁵ Interview with NGO, Location H, Oct. 23, 2014.

¹¹⁰⁶ Interview with NGO, Location F, Oct. 20, 2014.

OTHER NGO VICTIM SERVICES

The NGO sector is very important because you also have institutional violence against victims of domestic violence due to the lack of education of people working in the institutions. That's why I think the role of the NGO sector is bigger than the people from NGOs perceive. . . . That's why NGO people are here: to assist her, to mediate, and to [support her], to serve as people they can lean on, rely on, to fill in the holes and gaps in the system.

-NGO worker¹¹⁰⁷

NGOs fill important gaps where the government response is lacking, including counseling, hotlines, and tracking of domestic homicides. NGOs also educate the community and systems actors on women's rights¹¹⁰⁸ and create informational materials, such as pamphlets for schools and libraries.¹¹⁰⁹ In addition, NGOs conduct targeted workshops for vulnerable communities such as Roma women and rural women.¹¹¹⁰

First, NGOs provide comprehensive counseling services to victims of domestic violence.¹¹¹¹ NGO counseling covers not only the crisis situation that victims are in and safety plans, but also provides support in other areas of life, including access to benefits and social welfare, referrals to legal aid, and assistance in finding a job or a flat.¹¹¹² NGOs that provide these services, however, have limited resources. Some are only able to provide these essential services because of volunteers and in-kind contributions from local governments.¹¹¹³ Despite these challenges, NGOs continue to provide needed support services to women.¹¹¹⁴

Second, NGOs operate several SOS hotlines around the country and meet a large need.¹¹¹⁵ For example, one hotline received approximately 250 calls per month.¹¹¹⁶ These services are especially important in the absence of a national, free, state-funded hotline, but funding for these helplines was uncertain and

¹¹⁰⁷ Interview with NGO, Location H, Oct. 24, 2014.

¹¹⁰⁸ Interview with NGO, Location H, Oct. 24, 2014; Interview with NGO, Location B-2, Oct. 16, 2014.

¹¹⁰⁹ Interview with NGO, Location B-2, Oct. 16, 2014.

¹¹¹⁰ Interview with NGO, Location H, Oct. 23, 2014.

¹¹¹¹ Interview with NGO, Location J, Feb. 23, 2015; Interview with NGO, Location D-1, Oct. 14, 2014.

¹¹¹² Interview with Shelter, Location H, Oct. 22, 2014.

¹¹¹³ Interview with NGO, Location H, Oct. 24, 2014.

¹¹¹⁴ *Id.*

¹¹¹⁵ Interview with NGO, Location D-1, Oct. 14, 2014; Interview with NGO, Location J, Feb. 23, 2015; Interview with NGO, Location B-2, Oct. 16, 2014; Interview with NGO, Location F, Oct. 22, 2014; Interview with NGO, Location F, Oct. 20, 2014. The Istanbul Convention requires parties to "take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention." Art. 24.

¹¹¹⁶ Interview with NGO, Belgrade, Oct. 14, 2014.

piecemeal.¹¹¹⁷ Some hotlines receive partial financing from local municipalities.¹¹¹⁸ Others are funded exclusively by foreign donations and struggle to be included in local budgets.¹¹¹⁹ Volunteers staff other hotlines in the absence of reliable funding.¹¹²⁰

Changes to local laws on privacy have added a burdensome step for victims seeking helpline service. Previous laws permitted oral consent, but SOS hotlines must now ask victims to appear in person and give written consent. NGOs that do not obtain this written approval are subject to reports by local municipalities for violating the laws.¹¹²¹

TRACKING FEMICIDES

Between 26 and 32 women are killed each year by their partners, yet the government does not track, disaggregate, or report these statistics. To fill this gap, one NGO collects information through the media on femicides. Even these numbers do not reveal the full extent of femicides because they do not include victims whose deaths were not covered by the news.¹¹²²

NGOs also bring complaints on femicides to ombudspersons.¹¹²³ These complaints seek to identify problems in the system's response to the victims and ask for accountability.¹¹²⁴ In one example, the perpetrator killed his ex-girlfriend and committed suicide.¹¹²⁵ The complaint noted prior reports to the police. One month before her murder, the perpetrator grabbed her from a restaurant, put her in his car, and drove her to the forest. A bystander followed them and saved the woman from being lit on fire by the perpetrator. After another violent incident, he was placed in a psychiatric hospital for one month. Upon his release, he stole his son's gun and killed his ex-girlfriend. The complaint identified police failures in this case and sought disciplinary measures against responsible persons.¹¹²⁶ Unfortunately, the NGO did not have sufficient resources to write appeals to the ombudsperson for all femicides that occur in the country.¹¹²⁷

¹¹¹⁷ A working group was established for a national hotline that was planned to start in May 2015. Interview with Republic Institute for Social Protection, Belgrade, Feb. 25, 2015. Discussions were ongoing on funding and who would manage the hotline. *Id.* As of July 2017, the National SOS Helpline had not been established. Personal communication from NGO to The Advocates for Human Rights, via email, July 14, 2017 (on file with authors).

¹¹¹⁸ Interview with City Council Member, Location G, Oct. 21, 2014; Interview with Secretariat, Location F, Oct. 22, 2014.

¹¹¹⁹ Interview with NGO, Location G, Oct. 20, 2014.

¹¹²⁰ Interview with NGO, Location B-2, Oct. 16, 2014.

¹¹²¹ Interview with NGO, Location G, Oct. 20, 2014.

¹¹²² Interview with NGO, Location B-2, Oct. 16, 2014.

¹¹²³ Interview with NGO, Location J, Feb. 23, 2015.

¹¹²⁴ *Id.*

¹¹²⁵ *Id.*

¹¹²⁶ *Id.*

¹¹²⁷ *Id.*

DOCTORS

If they end up on the autopsy table, all of us lost the battle.

-Health Center¹¹²⁸

IMPLEMENTATION OF THE HEALTH PROTOCOL

Health care providers are important first responders as they can link victims of domestic violence via referrals to services or the criminal justice system.¹¹²⁹ Because victims may seek treatment for injuries, doctors may identify signs of domestic violence before anyone else.¹¹³⁰

Serbia's Ministry of Health (MoH) recognized this important role, and in 2010, adopted a special protocol for Serbia's health care sector to protect and treat women victims of violence.¹¹³¹ The protocol for health workers identifies prevention and intervention techniques, including identifying and documenting violence, conducting risk assessments, safety planning, making referrals, and undergoing training.¹¹³² Specifically, it includes a form for documenting domestic violence.¹¹³³

Interviews revealed inconsistent implementation of the Health Protocol.¹¹³⁴ Health care professionals had not received sufficient training on the protocol. The protocol itself does not contain clear directives on what to do with the information collected, the MoH has not monitored its use, and there are no sanctions for failing to follow the protocol.

Interviewees reported varying levels of knowledge of the Health Protocol. Some had completed training on it,¹¹³⁵ while others knew little to nothing about it.¹¹³⁶ NGOs have stepped in to fill this gap. One

¹¹²⁸ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹¹²⁹ Health care providers also play a role in the assessment and treatment of drug and alcohol addictions and mental health treatments.

¹¹³⁰ Interview with Health Center, Location D, Oct. 15, 2014.

¹¹³¹ Health Protocol, at 93 (cover letter); Interview with Ministry of Health, Belgrade, Feb. 23, 2015 (stating "Our special protocol was in place before the general protocol. Minister recognized the problem and that the idea caught on and each new minister recognized this was an important area").

¹¹³² Health Protocol, at 104-15.

¹¹³³ *Id.*, Annex 1, at 117.

¹¹³⁴ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014 (stating "even though [doctors] are the only ones that had the special protocols already, in practice they do not apply them"); Interview with Doctor, Location F, Oct. 21, 2014 (stating "it is not because they don't want to [implement the protocol] but in some situations, they may be worried about their own safety").

¹¹³⁵ Interview with Health Care Center, Location H, Oct. 22, 2014. Urgent care physicians (i.e., emergency responders) also reported that they do not use the special protocol. Interview with Urgent Care Providers, Location H, Oct. 22, 2014.

¹¹³⁶ Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; Interview with Doctor, Location F, Oct. 21, 2014; Interview with Health Center, Location G, Oct. 21, 2014. Interview with Health Center, Location D, Oct. 14, 2014 (explaining doctors use a form they developed on their own for reports); 2014 Special Report of the Ombudsperson, page 37; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (stating "we don't know [about the protocol]. No one has told us"); Interview with Health Center, Location D, Oct. 15, 2014. *But see* Health Center, Location E, Oct. 15, 2014 (praising the Health Protocol). One institution reported a thorough training and

interviewee reported they learned of the protocol from an NGO training, not from the MoH.¹¹³⁷ The lack of training on the Health Protocol indicates that doctors are not consistently following procedures to identify violence among their patients and make referrals.

The Health Protocol itself contains gaps and lacks clear directives. The Health Protocol and form do not instruct health care institutions on how to handle the completed forms.¹¹³⁸ As a result, there is no protocol to provide the forms to those who collect data or for use in court proceedings, and responses are *ad hoc*. Some doctors send the form to an NGO that had not received direction to collect such information.¹¹³⁹ Other doctors complete the forms, but only provide them to the court on request.¹¹⁴⁰ Police reported they rarely receive this form.¹¹⁴¹ In one case, the police only received the form because the victim herself provided it to them.¹¹⁴² A doctor completed training on how to report domestic violence and who to notify, but admitted that “in reality, we write reports, and that is it.”¹¹⁴³

Of particular concern is the fact that the Health Protocol does not direct doctors to provide a copy of the form to the victim. Without specific directions, health care providers’ responses vary. Some health care providers claimed they automatically provide the victim with a report copy if she decides to report to the police,¹¹⁴⁴ but this did not appear to be standard procedure.¹¹⁴⁵ One health center reported they only provide a free copy when the victim requested it.¹¹⁴⁶ Others provide the form to the victim but do not offer information on what to do with it.¹¹⁴⁷

The MoH has also not closely monitored implementation of the Health Protocol. One practitioner noted, “the Ministry did issue the protocol but isn’t very interested in following the effects.”¹¹⁴⁸ The MoH explained that its officials change frequently, making it difficult to follow projects through to completion.¹¹⁴⁹ Recording and tracking cases of domestic violence by the institutions themselves occurs

implementation plan, with yearly education seminars, a prevention card published by the Ministry of Health to guide questioning, and an expert team for staff to approach with questions, but they were an outlier. Interview with Health Care Center, Location H, Oct. 22, 2014.

¹¹³⁷ Interview with Health Center, Location G, Oct. 21, 2014.

¹¹³⁸ Interview with Health Center, Location B-2, Oct. 15, 2014; The Ministry of Health noted its interest in revising the existing protocol to clarify instructions. Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

¹¹³⁹ Interview with Health Center, Location B-2, Oct. 15, 2014.

¹¹⁴⁰ Interview with Doctor, Location F, Oct. 21, 2014.

¹¹⁴¹ Interview with Police, Location H, Oct. 24, 2014.

¹¹⁴² *Id.*

¹¹⁴³ Interview with Emergency Doctor, Location B-2, Oct. 15, 2014.

¹¹⁴⁴ Interview with Health Center, Location D, Oct. 14, 2014; Interview with Doctor, Location I, Feb. 27, 2015.

¹¹⁴⁵ Interview with Ministry of Health, Belgrade, Feb. 23, 2015; Interview with NGO, Location H, Oct. 23, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (noting it is provided without a request); Interview with Health Care Center, Location H, Oct. 22, 2014 (noting she does not receive a copy but has a right to all medical documents when authorities start a proceeding); Interview with Health Center, Location D, Oct. 14, 2014 (noting the victim should receive a copy of the form and not pay for a medical record); Interview with Doctor, Location I, Feb. 27, 2015 (noting the victim always gets a copy).

¹¹⁴⁶ Interview with Doctor, Location F, Oct. 21, 2014.

¹¹⁴⁷ Interview with Doctor, Location I, Feb. 27, 2015.

¹¹⁴⁸ *Id.*

¹¹⁴⁹ Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

in limited ways. Some health care centers maintain a physical book of domestic violence cases, unconnected to any other system or the patient's medical file. This method inhibits information sharing when patients change providers and prevents statistical analysis on cases.¹¹⁵⁰ One professional noted the only way to keep track of a patient who left was if he knew the new doctor.¹¹⁵¹

Interviews with health care practitioners reflected confusion on their responsibility to collect data. Some centers acknowledged they are required to keep statistics on victims of domestic violence.¹¹⁵² Other health centers were unaware of data collection requirements and even surprised when the MoH requested data in September 2014 on the number of domestic violence reports.¹¹⁵³ As one doctor recalled, “[w]e did not keep those records because nobody told us we should.”¹¹⁵⁴

Between 40 to 70 percent of health care institutions submit reports under the protocol.¹¹⁵⁵ Health care providers who resist using the protocol explained that it is administrative work or too time-consuming.¹¹⁵⁶ There is no penalty for those who do not follow the protocol. Furthermore, the MoH's oversight only extends to public institutions, excluding private health care providers from any direction it could provide.¹¹⁵⁷

Institutions have not prioritized technical collaboration on domestic violence. The Health Protocol form is not electronic and must be physically forwarded to the police, CSWs, prosecutors, and the MoH.¹¹⁵⁸ Some health centers have electronic records,¹¹⁵⁹ but they do not appear to be nationally centralized. Child abuse is recorded electronically in a central database, so it is theoretically possible to do so for adult domestic violence, as well.¹¹⁶⁰

BARRIERS TO EFFECTIVE RESPONSES TO DOMESTIC VIOLENCE

Attitudes

[T]he entire environment and society puts pressure on the victim not to report the violence, and women often drop the cases even if they report the domestic violence.

¹¹⁵⁰ Interview with Doctor, Location C, Oct. 14, 2014; Interview with Health Center, Location G, Oct. 21, 2014 (noting they lack resources to have people convert the information to statistics).

¹¹⁵¹ Interview with Health Center, Location B-2, Oct. 15, 2014.

¹¹⁵² *Id.*

¹¹⁵³ Interview with Doctor, Location F, Oct. 21, 2014. Others collect data. Interview with Health Care Center, Location H, Oct. 22, 2014.

¹¹⁵⁴ Interview with Doctor, Location F, Oct. 21, 2014.

¹¹⁵⁵ Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

¹¹⁵⁶ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014 (stating “we had a recent case where the doctors who was on duty during the night said that she did not have time to deal with the victim as she had been working all night”); Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014; Interview with Health Center, Location G, Oct. 21, 2014.

¹¹⁵⁷ Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

¹¹⁵⁸ Interview with Health Care Center, Location H, Oct. 22, 2014.

¹¹⁵⁹ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014.

¹¹⁶⁰ Interview with Health Care Center, Location H, Oct. 22, 2014.

– Interview with Doctor¹¹⁶¹

At times, doctors are simply unwilling to address domestic violence. A health practitioner explained, “A lot of people don’t want to deal with this type of issue, especially when related to court and prosecutors. So they don’t want to have additional burden in their work.”¹¹⁶² One provider reported that doctors defer to patients’ primary physician and advise them to “‘wait for your doctor to come back from vacation.’ They will avoid this discomfort because it’s not comfortable to work with.”¹¹⁶³ Another agreed, “They do not want to accept that [domestic violence] exists.”¹¹⁶⁴

Other doctors described their fear of documenting domestic violence because of potential consequences. One doctor was afraid of reporting the incorrect person.¹¹⁶⁵ Another interviewee reiterated this reluctance, stating that doctors are “afraid of doing something wrong” because they saw it as a sensitive and delicate issue.¹¹⁶⁶ NGOs have helped fill this gap by providing basic training on domestic violence to some health care professionals,¹¹⁶⁷ but NGOs lack the resources, capacity, and mandate to train all doctors.

These harmful attitudes prevent victims of domestic violence from receiving necessary care and assistance. In one example, a woman was physically abused in a public place. Her partner strangled her, twisted her arm, then dragged her toward their car. The police referred her to the health center, but she did not receive medical attention after waiting some time. When asked, the health center blamed the victim because she did not introduce herself to the doctor on duty and left the center. The head of the health center also suggested the victim should have gone to her family doctor instead.¹¹⁶⁸

Domestic violence screenings

The MoH has not made domestic violence trainings a priority.¹¹⁶⁹ Training on screening and documenting domestic violence has been sporadic at best.¹¹⁷⁰ Doctors are required to complete educational credits each year to maintain their licenses, but trainings on domestic violence are elective, not mandatory.¹¹⁷¹ All doctors are authorized to classify injuries,¹¹⁷² and there have been efforts to train

¹¹⁶¹ Interview with Doctor, Location F, Oct. 21, 2014.

¹¹⁶² Interview with Health Center, Location D-1, Oct. 14, 2014.

¹¹⁶³ Interview with Health Care Worker, Location C, Oct. 14, 2014.

¹¹⁶⁴ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹¹⁶⁵ Interview with Doctor, Location E, Oct. 15, 2014; *see also* Interview with Health Center, Location D, Oct. 14, 2014 (stating “when we are part of a wider system and cooperate with courts and prosecutors, colleagues are afraid and they would go over the fact of domestic violence”).

¹¹⁶⁶ Interview with Doctor, Location E, Oct. 15, 2014.

¹¹⁶⁷ Interview with Health Center, Location D, Oct. 14, 2014; Interview with Health Center, Location G, Oct. 21, 2014; Interview with Health Center, Location B-2, Oct. 15, 2014.

¹¹⁶⁸ Interview with Gender Equality Ombudswoman, Novi Sad, Oct. 22, 2014.

¹¹⁶⁹ Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

¹¹⁷⁰ Interview with Doctor, Location F, Oct. 21, 2014; Interview with Emergency Doctor, Location B-2, Oct. 15, 2014 (stating “there was training during some conferences on emergency and internal medicine”); Interview with Urgent Care Providers, Location H, Oct. 22, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014; Others indicated that only select doctors receive training, as those who attend trainings are expected to share information with their colleagues. Interview with Health Center, Location D, Oct. 15, 2014.

¹¹⁷¹ Interview with Ministry of Health, Belgrade, Feb. 23, 2015; Interview with Doctor, Location B-1, Oct. 15, 2014.

medical students on clinical forensic examinations, which can be used to document domestic violence.¹¹⁷³ Practicing doctors are not required, however, to complete this training,¹¹⁷⁴

Heavy patient loads

According to the Ombudsperson, health care providers specifically referenced workload as a barrier to fully serving victims of domestic violence under the Health Protocol.¹¹⁷⁵ For example, doctors in an emergency center may perform 50 examinations in a single evening.¹¹⁷⁶ In other hospitals, salary quotas compel doctors to see more patients. One doctor reported minimum quotas of 35 patients per day to qualify for an appropriate salary.¹¹⁷⁷ In one treatment center, doctors have only fifteen minutes to both treat each patient and ask about domestic violence.¹¹⁷⁸ Thus, even doctors who are willing to assist victims of domestic violence may be limited by the short amount of time they have.

ADDITIONAL MEASURES TO PROTECT VICTIMS

Medical professionals do not always take adequate measures to safeguard the safety of victims. As directed by the Health Protocol, doctors should meet with patients without third parties present.¹¹⁷⁹ Such separation allows victims the opportunity to speak freely with their doctor, if they choose, and doctors to provide them with additional information.

Medical professionals were inconsistent about whether they separate couples. Some invoke confidentiality to isolate patients¹¹⁸⁰ but others insist there is “no way I can prevent the husband from coming with us.”¹¹⁸¹ A doctor explained:

I had one case where a patient came with her abuser, but she did not say that she was a victim of domestic violence. It was our suspicion that she was a victim of domestic violence because she was scared, looked at her husband all the time and was reluctant to talk. She had visible injuries and came here because she had a headache and could not explain how she has sustained her injuries. Her husband would not leave her alone at any moment, even when we insisted that we wanted to speak to her alone. He refused to leave. I don't know what happened later, as the patient became the responsibility of the person responsible for dealing with her head injuries.¹¹⁸²

One professional, however, described his clinic's practice, which included steps to protect the woman:

¹¹⁷² Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

¹¹⁷³ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹¹⁷⁴ *Id.*

¹¹⁷⁵ 2014 Special Report of the Ombudsperson, §4.8.5, at 37.

¹¹⁷⁶ Interview with Health Center, Location G, Oct. 21, 2014.

¹¹⁷⁷ Interview with Health Care Worker, Location C, Oct. 14, 2014.

¹¹⁷⁸ *Id.*

¹¹⁷⁹ Health Protocol, at 108.

¹¹⁸⁰ Interview with Health Center, Location D, Oct. 14, 2014.

¹¹⁸¹ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014.

¹¹⁸² Interview with Emergency Doctor, Location B-2, Oct. 15, 2014.

The moment we report grievous [bodily harm] . . . we will have the team here from the CSW and police. They will accompany her to exams, and the perpetrator will be put in detention right away. We will not let her go out of the center alone if [her safety] is not taken care of.¹¹⁸³

Also, medical professionals do not typically perform risk assessments or create safety plans with victims.¹¹⁸⁴ Although the Health Protocol includes a risk assessment,¹¹⁸⁵ only one interviewee mentioned using one to determine whether to send a victim to a safe house.¹¹⁸⁶

Referrals to resources

Referrals can help victims find needed support and assistance. Yet CSWs noted that fewer than ten percent of the referrals they received were from health care centers.¹¹⁸⁷ The police also expressed concern about the low number of referrals they received from health institutions. One police interviewee reported receiving only two referrals related to domestic violence over several years.¹¹⁸⁸

A number of health care providers insisted they refer women to safe houses, the CSW, or police.¹¹⁸⁹ However, medical providers often place the burden of requesting a referral on the woman, with one interviewee stating “it is upon her to tell us.”¹¹⁹⁰ Such expectations contradict the Health Protocol’s directives to inform the patient about safe houses, hotlines, NGOs, and service providers.¹¹⁹¹ Only a few health care personnel mentioned discussing options with women regardless of whether they admitted to being a victim of domestic violence.¹¹⁹² Written materials that could facilitate referrals and information to victims are not always available. One medical group used referral brochures from the local NGO until the NGO ran out of funding.¹¹⁹³

Mandatory reporting

In more than ten percent of the cases, health care providers identify violence, but do not report it, and in some cases, they do not even record it, nor do they inform other bodies and institutions to that effect.

¹¹⁸³ Interview with Health Care Center, Location H, Oct. 22, 2014.

¹¹⁸⁴ Interview with Emergency Doctor, Location E, Oct. 15, 2014.

¹¹⁸⁵ Health Protocol, at 112.

¹¹⁸⁶ Interview with Health Care Center, Location G, Oct. 21, 2014; *see also* Interview with Doctor, Location I, Feb. 27, 2015 (as a rule, ask questions, but not always directly).

¹¹⁸⁷ Interview with CSW, Location C, Oct. 14, 2014; Interview with CSW, Location E, Oct. 15, 2014.

¹¹⁸⁸ Interview with Police, Location C, Oct. 14, 2014.

¹¹⁸⁹ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014; Interview with Doctor, Location C, Oct. 12, 2014; Interview with Doctor, Location F, Oct. 21, 2014; Interview with Health Care Center, Location D-1, Oct. 14, 2014. Other medical professionals reported referring patients to domestic violence hotlines, but offered no other resources or referrals. Interview with Health Care Center, Location G, Oct. 21, 2014.

¹¹⁹⁰ Interview with Doctor, Location F, Oct. 21, 2014 (provide information on safe houses if the victim says she wants to go to one); Interview with Emergency Doctor, Location B-2, Oct. 15, 2014 (stating “we only intervene if the victim has nowhere else to go”).

¹¹⁹¹ Health Protocol, at 113.

¹¹⁹² Interview with Health Care Center, Location H, Oct. 22, 2014.

¹¹⁹³ Interview with Urgent Care Providers, Location H, Oct. 22, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (noting there are no brochures to provide victims).

-Special Report of the Protector of Citizens¹¹⁹⁴

Serbian law and policy on mandatory reporting of domestic violence is not clear, and this has led to inconsistent practices by health care providers. Article 332 of the Criminal Code provides that officials or authorized persons who do not report certain criminal offenses are subject to imprisonment of six months to five years.¹¹⁹⁵ This includes abuse leading to serious injury, serious impairment of health, or death of a family member.¹¹⁹⁶ The Criminal Code includes an exception from punishment for physicians with respect to reporting criminal offenses.¹¹⁹⁷ The Health Protocol, however, does not reflect this exception.

Interviews revealed that doctors disagree on their obligation to report domestic violence to authorities. Some medical professionals said they are required to report, even without victim consent.¹¹⁹⁸ Other interviewees indicated that there is no obligation to report domestic violence to the police,¹¹⁹⁹ while others stated they are exempt from reporting light injuries.¹²⁰⁰ Others report domestic violence in all cases.¹²⁰¹

Providers rely on victim consent in different ways. Some interviewees report serious injuries without the victim's consent.¹²⁰² Other health care providers stated that they are legally prohibited from reporting without a woman's consent.¹²⁰³ One interviewee explained they need "absolute consent of the patient.

¹¹⁹⁴ 2014 Special Report of the Ombudsperson, page 4, ¶21.

¹¹⁹⁵ Criminal Code, Art. 332, subd. 2 (describing reporting for offenses that are punishable under law by five or more years of imprisonment).

¹¹⁹⁶ *Id.*, Art. 194 (3)-(4). *See also* Health Protocol, at 112 (stating "doctors shall report the following offenses: abuse in the family if leading to serious bodily injury or serious impairment of health or was inflicted on a minor or has resulted in death of the family member").

¹¹⁹⁷ Criminal Code, Art. 332, subd. 4.

¹¹⁹⁸ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (stating "we are required by the law to report any case of physical injuries regardless of the cause of the injury. We are not required to do it when someone fell because there was no one else involved in that"). However, there may be many reasons that a victim chooses not to identify the source of her injuries, and if doctors are not properly trained in identifying domestic violence or providing appropriate referrals to potential victims, this is a gap that leaves victims unprotected because they may not receive referrals to the police in situations of grievous injuries or services or safe houses that they may decide to use in the future.

¹¹⁹⁹ Interview with Emergency Doctor, Location B-2, Oct. 15, 2014.

¹²⁰⁰ Interview with Health Center, Location B-2, Oct. 14, 2014; Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; *see also* Interview with Health Care Center, Location H, Oct. 22, 2014.

¹²⁰¹ Interview with Health Center, Location G, Oct. 21, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014.

¹²⁰² Interview with Health Care Center, Location H, Oct. 22, 2014 (stating "if we identify grievous bodily injuries that threaten her life in a way ... right away and without the consent of the women, we report it to the police"); Interview with Health Center, Location D, Oct. 14, 2014 (stating "in the case of serious bodily harm, then doctors are obliged to inform police"); Interview with Health Care Center, Location H, Oct. 22, 2014 (explaining if the injuries are serious, her consent is not needed); Interview with Doctor, Location I, Feb. 27, 2015 (stating "if someone's life is threatened, when there is high risk, when the risk assessment is high [I have a duty to notify the police], but even then, I will inform her [that I am providing the notice]"); Interview with Doctor, Location B-1, Oct. 15, 2014; Interview with Health Center, Location B-2, Oct. 15, 2014.

¹²⁰³ Interview with Doctor, Location F, Oct. 21, 2014 ("[a]ccording to the law on patient confidentiality, they have a right to keep their data private."); *see also* Interview with Health Center, Location B-2, Oct. 14, 2014 (doctor would

So I can't force her, but I can inform her of rights and possibilities, inform, and give advice."¹²⁰⁴ Another provider only reports domestic violence with patient consent, but might "exert some pressure" to get it.¹²⁰⁵

Such practices may deter victims from speaking openly with and reporting violence to their doctor for fear doctors will document their words or report to the CSW if treating an injured child.¹²⁰⁶ Uncertainty has also caused doctors fear of being sued if they report without authority. One health center requested direction from the court on how to proceed when there is no consent.¹²⁰⁷ As a result, practitioners are likely to be cautious and not report cases to the police.¹²⁰⁸

EVIDENCE

Medical professionals also play an important role in perpetrator accountability through the medical reports they provide to the police, prosecutors, and courts.¹²⁰⁹ A Gender Equality Ombudsperson explained, "If the prosecutor's office does not have enough proof and facts pointing to the victim suffering violence, they will not go before the court. So [the protocol form] is not just administrative work, but it is important work that helps the victim."¹²¹⁰

Medical reports are valued as evidence in court proceedings. Without medical certificates, courts are not able to determine whether the injury was grievous or light,¹²¹¹ which affects criminal charges and convictions.¹²¹² Judges and prosecutors place heavy reliance on this evidence when they question victim credibility: "If there are injuries and medical certificates, then it's obvious that there was physical

include information in the patient's file to be later available to the doctor or to the victim, if needed, but not to doctors who may be covering for her on vacation); Interview with Doctor, Location I, Feb. 27, 2015 (if no legal obligation, I think that privacy should be respected. Do not provide a copy of the protocol form directly to the police, but they are informed that physical injuries occurred); Interview with Health Care Center, Location H, Oct. 22, 2014 (Doctors identify light or grievous bodily injury based on physical exam, and Article 332 of the Criminal Code requires mandatory reporting of grievous injuries or risk to health); Interview with Doctor, Location C, Oct. 14, 2014.

¹²⁰⁴ Interview with Health Center, Location D, Oct. 14, 2014.

¹²⁰⁵ Interview with Doctor, Location C, Oct. 14, 2014.

¹²⁰⁶ Interview with NGO, Location F, Oct. 22, 2014.

¹²⁰⁷ Interview with Doctor, Location F, Oct. 21, 2014 (also noting that consent not required if there is an official request from the court or public prosecutor); Interview with Doctor, Location C, Oct. 14, 2014.

¹²⁰⁸ Doctors also exhibited hesitation to report because of the impact it may have on their medical practice. One interviewee stated, "If you call the police, victims take their medical records and go to another health center." Interview with Health Center, Location B-2, Oct. 15, 2014.

¹²⁰⁹ Medical reports also help victims with applications for protective measures in Family Law courts. One Family Law Judge indicated that they would grant an *ex parte* order for protective measures if there were injuries and the victim provided medical documentation and there was a police report. Interview with Family Judge, Location G, Oct. 20, 2014; *see also* Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with Family Law Judge, Location B-1, Oct. 13, 2014 (explaining if the victim submitted a detailed medical record, the court may issue protective measures without witness testimony); Interview with Family Law Judge, Location F, Oct. 20, 2014 (explaining they can use reports from health centers because they do not have forensic reports).

¹²¹⁰ Interview with Gender Equality Deputy Ombudsman, Belgrade, Oct. 16, 2014.

¹²¹¹ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

¹²¹² Criminal Code, Art. 194(1), (3).

violence, and the victim is telling the truth.”¹²¹³ According to one judge, “The victim goes to the doctor and gets confirmation of the injuries suffered, and we use the certificate issued by the doctor. This is different than cases where it is ‘word against word.’”¹²¹⁴

Medical reports can also form the basis for a prosecution when the victim will not testify.¹²¹⁵ One criminal judge recalled a case where “we had medical documentation and she refused to testify, and he was convicted in the end.”¹²¹⁶ But without this evidence or testimony, charges are dropped.¹²¹⁷ Even if there are other witnesses, without victim testimony or medical documentation, authorities will end the case.¹²¹⁸

Health protocol form

Reflecting the importance of medical reports in prosecution, the Health Protocol includes a detailed form for health care providers to use when diagnosing and treating a domestic violence victim. The Health Protocol form includes a diagram where doctors can identify the location of injuries, as well as describe injuries.¹²¹⁹

Health care providers do not consistently use the form in domestic violence cases, because it is not legally mandated or they do not know it exists.¹²²⁰ Instead, some providers use a less-detailed, general medical certificate that applies to a variety of cases.¹²²¹ A forensic doctor explained the impact of providing less detail, “In the other, [non-forensic] medical center, the doctor does not have time to do such a detailed report. Normally the doctor will just say ‘a couple of bruises.’ In court, this does not

¹²¹³ Interview with Misdemeanor Judges, Location F, Oct. 21, 2014; *see also* Interview with Family Law Judge, Location B-2, Oct. 13, 2014; Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location A-1, Oct. 13, 2014.

¹²¹⁴ Interview with Criminal Judge, Location A-2, Oct. 13, 2014; Interview with Misdemeanor Judge, Location [B-2], Oct. 17, 2014 (stating “medical records are the most important evidence we can have”).

¹²¹⁵ Interview with Prosecutor, Location G, Oct. 20, 2014 (stating “an acquittal is certain unless maybe there is a medical finding”); Interview with Prosecutor, Location H, Oct. 23, 2014; Interview with Criminal Judge, Location B-2, Oct. 16, 2014 (observing it is common that family members will not testify); Interview with Prosecutor, Location A-2, Oct. 13, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014.

¹²¹⁶ Interview with Criminal Judge, Location H, Oct. 23, 2014.

¹²¹⁷ Interview with Criminal Judge, Location G, Oct. 20, 2014; Interview with Prosecutor, Location A-2, Oct. 13, 2014 (stating “[W]e know that the trial will be unsuccessful if there is no [medical] documentation”).

¹²¹⁸ Interview with Criminal Judge, Location A-2, Oct. 13, 2014.

¹²¹⁹ Health Protocol, Annex 1, at 117-22.

¹²²⁰ Interview with Urgent Care Providers, Location H, Oct. 22, 2014; *see also* Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014; Interview with Health Center, Location D, Oct. 14, 2014 (noting the form has not been adopted in the law on health security); Interview with Doctor, Location E, Oct. 15, 2014 (noting the form is not included in the law on health protection); Interview with Doctor, Location B-1, Oct. 15, 2014 (noting use of the form is not mandatory). One prosecutor noted that they had never seen the Health Protocol medical form. Interview with Prosecutor, Location H, Oct. 23, 2014. Another indicated that they did not receive the form in all cases. Interview with Deputy Public Prosecutor, Location I, Feb. 27, 2015.

¹²²¹ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014; Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; Interview with Ministry of Health, Belgrade, Feb. 23, 2015.

work.”¹²²² Where doctors explain such light bodily injuries, however, the court can use this information as evidence.¹²²³

Clear medical evidence can support effective prosecutions, and police cited the need to improve the information that doctors recorded. Police complained, “We lack in our practice good medical reports where all the injuries are described properly...[in our health or emergency centers] only short descriptions of injuries are provided.”¹²²⁴ The need for detailed reports is underscored by the fact that the examining doctor who wrote the less-detailed, general report may not testify in court. Instead, forensic experts may testify based on their review of the medical report.¹²²⁵ If the medical report is not sufficiently detailed, the forensic expert may have no independent knowledge to bolster his or her findings.¹²²⁶

Injury classification and qualification

Forensic expert testimony and medical reports help prosecutors qualify the injuries for charging purposes¹²²⁷ or to establish the cause of the injuries.¹²²⁸ Detail in the medical report and evaluation of injuries affects the qualification of the injury as light or serious. As described by one interviewee:

She said that she was strangled. It was manual strangulation. The boundary between serious and not serious is the loss of consciousness. It can occur from the lack of oxygen and because the blood vessels are pressed. If consciousness was lost, it means that the person was in danger for her life. If she does not lose consciousness, it is a light injury, but if she has very obvious bruising on her neck, it is a very important warning that the next attack could be fatal.¹²²⁹

Interviewees disagreed over whether doctors merely should describe and classify the injury medically or draw conclusions about the legal classification of the injury, which affects the charges.¹²³⁰ One practitioner deferred to the courts and stated, “Our job is to say the injury and then after that, it is up to

¹²²² Interview with Doctor, Location B-1, Oct. 15, 2014. *See also* Interview with Police, Location E, Oct. 15, 2014; 2014 Special Report of the Ombudsperson, at 15, §3 (the protocol form “is important for uniform documenting of violence by health workers, and is of great forensic and medical importance.”) and at 28, §4.6 (citing to Protector of Citizens document with recommendations, no. 13-3575/12 of 20.08.2013, ref. no. 23407).

¹²²³ Interview with Criminal Judge, Location F, Oct. 20, 2014.

¹²²⁴ Interview with Police, Location D-1, Oct. 14, 2014.

¹²²⁵ Interview with Criminal Judge, Location H, Oct. 23, 2014; Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014.

¹²²⁶ Interview with Prosecutor, Location H, Oct. 23, 2014 (stating “we have no problem with the expertise processes. It may be a problem sometimes when injuries are not well described”).

¹²²⁷ Interview with Deputy Prosecutor, Location I, Feb. 27, 2015.

¹²²⁸ Interview with Prosecutor, Location F, Oct. 20, 2014 (stating “doctors need to qualify the injury [as light/grievous]” and involve medical expert witnesses to establish the cause of the injuries).

¹²²⁹ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹²³⁰ Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (noting they describe the injuries and means by which the injuries were inflicted and may indicate a suspicion of domestic violence if very obvious). Patients may be sent to multiple specialists for up to 3 or 4 days to classify injuries. Interview with Health Center, Location D, Oct. 14, 2014.

the court to determine whether it is light injury or serious injury.”¹²³¹ Police, prosecutors, and judges, meanwhile, claimed that only doctors could classify light or grievous bodily injury.¹²³² With health care sectors expecting the justice system to classify injuries and vice versa, this creates a gap in consistent injury classification for charging purposes.

Forensic doctors

All health professionals, not just forensic specialists, can perform forensic examinations and compose valid medical documents with appropriate training.¹²³³ A forensic doctor indicated that forensic professionals do not need to be involved in every case and other medical providers should play a role:

In the beginning of domestic violence, the injuries are not so serious, and it is really easy to make this report: three bruises, four abrasions, but it is an important time for prevention. . . . All general practitioners and surgeons should be doing this besides the treatments. It is up to the Minister of Health to make that not an option but their duty.¹²³⁴

With only four forensic institutes in the entire country, these institutes are not easily accessible for all women.¹²³⁵ Access to forensic doctors is even more sharply limited, since they only work between 8 a.m. and 2 p.m., and patients are expected to schedule appointments in advance to meet them during that limited time window.¹²³⁶

Moreover, the costs of a forensic examination may be out of reach for many victims. If a woman requests a forensic exam herself, rather than being referred by a prosecutor,¹²³⁷ she must pay for the exam.¹²³⁸ A forensic doctor reported costs of 3,000 dinars (25 euros) for producing the record and 2,500 dinars (21 euros) for the doctor fee, which could be waived.¹²³⁹ Others estimated costs as high as 10,000 dinars (approximately 80 euros) for a forensic exam and report,¹²⁴⁰ which is approximately 30 percent of an average monthly salary in Serbia.¹²⁴¹

¹²³¹ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹²³² Interview with Criminal Judge, Location A-1, Oct. 13, 2014; Interview with Police, Location G, Oct. 20, 2014; Interview with Prosecutor, Location F, Oct. 20, 2014 (stating “doctors need to qualify the injury and if nobody disagrees with their classification of the injury, we can read the report and we consider it to be true as an established fact”). Some police, however, stated that urgent care doctors never qualify or grade injuries, and only forensic medicine has the authority to provide a detailed report. Interview with Police, Location E, Oct. 15, 2014.

¹²³³ Health Protocol, at 112.

¹²³⁴ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹²³⁵ *Id.*

¹²³⁶ *Id.*

¹²³⁷ If there are serious injuries, prosecutors require a forensic medical report. Interview with Prosecutor, Location G, Oct. 20, 2014.

¹²³⁸ Interview with Doctor, Location F, Oct. 21, 2014.

¹²³⁹ Interview with Doctor, Location B-1, Oct. 15, 2014.

¹²⁴⁰ Interview with Police, Location D-1, Oct. 14, 2014.

¹²⁴¹ Serbia Wages, Trading Economics, <https://tradingeconomics.com/serbia/wagesm>, last visited Sept. 8, 2017.

The simple act of taking photographs demonstrates how doctors can perform many of the tasks of forensic doctors. The Health Protocol indicates that doctors should take photographs where possible.¹²⁴² Systems actors described the importance of photographic medical evidence to hold offenders accountable. For example, a police officer compared the detail between a forensic report and the medical reports from an urgent care doctor and a general practitioner. The general practitioner indicated “she was facing domestic violence and she had problems with swallowing as he choked her.” The urgent care report stated she had bruises on her neck but did not include photos. In contrast, the forensic report included five photographs with detailed descriptions, which allowed the prosecutor to corroborate her statements with respect to strangling and sexual assault. As a result, prosecutors prepared criminal charges against the perpetrator.¹²⁴³ Despite their important role, health care providers outside of forensic centers uniformly reported they never take photographs of injuries.¹²⁴⁴

¹²⁴² Health Protocol, at 111.

¹²⁴³ Interview with Police, Location D-1, Oct. 14, 2014.

¹²⁴⁴ Interview with Doctor, Location F, Oct. 21, 2014 (stating “we don’t have cameras to do that”); Interview with Emergency Doctor, Location B-2, Oct. 15, 2014; Interview with Doctor, Location E, Oct. 15, 2014; Interview with Urgent Care Doctor, Location F, Oct. 22, 2014 (deferring to police to take photos); Interview with Health Care Center, Location H, Oct. 22, 2014; Interview with Health Center, Location D, Oct. 14, 2014; Interview with Health Center, Location G, Oct. 21, 2014; Interview with Urgent Care Providers, Location H, Oct. 22, 2014 (stating “our law does not regulate [permit] it”); Interview with Police, Location G, Oct. 20, 2014 (deferring to police to take photos).

INTER-AGENCY ACTIONS

Interviews revealed an increased focus on improving formal cooperation among sectors involved in responses to domestic violence. These activities have occurred on the local level in certain locations for several years.¹²⁴⁵ The General Protocol and Special Protocols have established specific actions for the police, CSWs, doctors, educational institutions, public prosecutors, and the courts,¹²⁴⁶ including regular meetings and discussion of specific cases.¹²⁴⁷ The General Protocol also enumerates participants in the local cooperation agreements.¹²⁴⁸ Women’s NGOs are not specifically listed, but are signatories to some local agreements.¹²⁴⁹ Their omission overlooks the critical role NGOs play, however, and one participant attributed the success of their interagency coordination to groups like their women’s NGO.¹²⁵⁰

Under the protocols, CSWs take a leadership role in coordinating the community response to ensure institutions’ actions are “timely and holistic” and meet victims’ needs.¹²⁵¹ The protocols direct CSWs to lead the creation and signature of local cooperation agreements on the local level, act as case leads, and host case conferences.¹²⁵² By late 2014, the Ministry of Social Policy reported that 99 CSWs had established the multi-sectoral teams called for under the special protocol, while 11 were not familiar with the requirement.¹²⁵³ The ministry planned to follow up with those 11 CSWs on the protocol.¹²⁵⁴ The multi-sectoral teams also needed to create their own procedures on how they will operate. Some interviewees reported that procedures had been created; others were uncertain.¹²⁵⁵

Moreover, the protocols address holding conferences on specific cases. Individual case conferences are a step forward that fosters information sharing among multiple agencies, but gaps identified in one case may not result in changes throughout the system. Directing interagency efforts toward overall, systemic change remains an area for development.

The 2017 LPDV includes provisions that require police, public prosecutors, courts, and CSWs to exchange information on a variety of cases, including domestic violence.¹²⁵⁶ The LPDV establishes, in each public prosecutor’s office, a group for cooperation that includes representatives from the public prosecutor’s office, the police, and CSWs.¹²⁵⁷ These groups are required to meet at least every 15 days to discuss new

¹²⁴⁵ Interview with CSW, Location H, Oct. 22, 2014 (describing developing the first local protocol between 2006 and 2008); Interview with Doctor, Location I, Feb. 27, 2015.

¹²⁴⁶ General Protocol, Section 7, at 20.

¹²⁴⁷ Judicial Protocol, Section 6.

¹²⁴⁸ General Protocol, Section 7, at 20.

¹²⁴⁹ Interview with CSW, Location H, Oct. 22, 2014.

¹²⁵⁰ Interview with Health Center, Location H, Oct. 22, 2014.

¹²⁵¹ General Protocol, at 28; CSW Protocol, Section 1, at 37.

¹²⁵² General Protocol, Section 9.9, at 27; CSW Protocol, Section 2, at 68.

¹²⁵³ Interview with Minister of Social Policy, Belgrade, Oct. 18, 2014.

¹²⁵⁴ *Id.*

¹²⁵⁵ Interview with Republic Institute for Social Protection, Belgrade, Feb. 25, 2015; Interview with Police, Location G, Oct. 20, 2014; Interview with CSW, Location I, Feb. 27, 2015.

¹²⁵⁶ LPDV, Art. 24.

¹²⁵⁷ *Id.*, Art. 25.

reports of domestic violence, establish protection plans for the victims involved, and discuss ongoing cases.¹²⁵⁸ Of note, the LPDV does not require the group to invite representatives from organizations working with victims of domestic violence when discussing a victim's protection plan;¹²⁵⁹ however, the group is required to invite the victim if she requests to participate and is able to do so.¹²⁶⁰

The new law also seeks to improve data collection. The LPDV requires the creation of a Central Register of information from the police, public prosecutor, basic courts, and CSWs on reported cases of domestic violence, emergency measures, and protective measures; however, only public prosecutors have access to all of the information.¹²⁶¹ At the time of publication, the Central Register had not been established.¹²⁶²

¹²⁵⁸ *Id.*, Arts. 25-27.

¹²⁵⁹ *Id.*, Art. 25 (meetings may be attended, where appropriate).

¹²⁶⁰ LPDV, Art. 31.

¹²⁶¹ *Id.*, Art. 32-33. The police, courts, and CSWs have limited access to the available information.

¹²⁶² Personal communication from NGO to The Advocates for Human Rights, via email, Sept. 8, 2017 (on file with authors).

CONCLUSIONS AND RECOMMENDATIONS

Serbia has the legal structure to respond to domestic violence and comply with its international and regional obligations to protect victims and hold perpetrators accountable. It has taken significant steps to expand this legal structure over the last 15 years, since it first criminalized domestic violence in 2002, and it should be commended for being one of the first countries in its region to ratify the Istanbul Convention.

Nevertheless, gaps remain in its laws and practices to meet its obligations more effectively. The Advocates for Human Rights and Autonomous Women’s Center provide the following recommendations to improve Serbia’s response and implementation of its laws:

PARLIAMENT

- As a matter of urgency, adopt legislation that ensures **accessible and free legal aid** for victims of domestic violence, including the Law on Free Legal Aid, that allows and funds NGOs to be legal aid providers.
- Adopt measures specifically intended to **protect domestic violence victims throughout the duration of criminal proceedings** and ensure that no contact orders are implemented in practice.
- Amend the Criminal Code to **disallow the use of rehabilitation** for domestic violence offenders.
- Amend the Family Law to **prohibit mediation and reconciliation** in divorce proceedings where there is domestic violence.
- Amend the LPDV in accordance with the commentary in Appendix B.
- Ensure the provision of **adequate resources to support NGOs** that serve victims of domestic violence.
- Establish and adequately fund a **national, free, 24-hour SOS hotline** for victims of domestic violence run by a coalition of NGOs that work with women victims of domestic violence.
- With regard to victim services, **amend privacy laws** that prevent NGOs from providing immediate helpline services to victims and that require victims’ written consent to use those services.
- Consider the creation of multi-agency **domestic violence fatality review teams** that include NGOs that work with women victims of domestic violence to identify domestic violence homicides, identify gaps in the criminal justice system, and make recommendations to address those problems.
- Establish **mandatory standards for batterer intervention programs** based on best practice standards and consultations with NGOs who work with women victims of domestic violence.¹²⁶³

¹²⁶³ The Advocates for Human Rights, *Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe & the Former Soviet Union*, 2016.

MINISTRY OF THE INTERIOR

- Support efforts to ensure that police officers have adequate professional support for their work to positively implement the LPDV and ensure steady implementation of the law across the entire country.
- Require **regular training on domestic violence for police** that is based on best practices and provided in consultation with or led by NGOs that serve domestic violence victims. Such activities should train and direct police to describe and document **physical injuries**, identify predominant aggressors, conduct effective and ongoing **risk assessments**, and implement relevant legislation, including the LPDV.
- Ensure appropriate **staffing and resources** to ensure victims receive services identified by law and the Special Protocol.
- **Develop written tools** for police responding to domestic violence incidents to carry and regularly monitor how police provide reports to specialized domestic violence officers.
- Ensure all police districts maintain **official records** under the requirements of the Special Protocol, Law on Police, LPDV, and other relevant laws.
- Continue training, develop written tools, and direct police to **conduct investigations** that support evidence-based prosecutions.
- **Provide security mechanisms for shelters and safe houses** to protect those who live and work there from threats or attacks from perpetrators.

MINISTRY OF JUSTICE

- Require **regular training on domestic violence** for judges and prosecutors that is based on best practices and provided in consultation with or led by NGOs that serve domestic violence victims. Trainings should address dynamics and causes of domestic violence, sensitivity to victims, preparation and evaluation of risk assessments, victim recantation, use of self-defense, promotion of victim safety, and the laws relating to domestic violence, including the LPDV.
- Provide adequate resources to support the **specialization and training** of justice systems actors, including prosecutors and judges, in cases involving adult domestic violence.
- Ensure appropriate **staffing and resources** to ensure victims receive services identified by law and the Special Protocol.
- Develop systems to **facilitate communications** among police, prosecutors, and judges to ensure sharing of information regarding criminal and misdemeanor arrests, charges, prosecutions, Family Law protective measures, and LPDV measures.
- **Promote effective coordination** among family law judges, CSWs, executive judges, prosecutors, and police to ensure police receive information on orders for Family Law protective measures and agencies refer violations for prosecution as criminal offenses.
- Establish comprehensive, **national data tracking** of domestic violence reports, complaints, convictions, acquittals, and sentences. Undertake measures to:
 - Include data under the LPDV, criminal, misdemeanor, and family laws.
 - Ensure this information is accessible to the judicial systems, including in cases of rehabilitation;

- Systematically track criminal and misdemeanor sentences by article, gender, and relationship between the defendant and the injured party.
- Undertake measures to ensure that all murders committed as a result of domestic violence are tracked, including by incorporating indicators of “domestic violence” and “method of homicide” into existing crime data tracking and reporting systems.

MINISTRY OF HEALTH

- Amend the Special Protocol to direct health care providers to give a **copy of completed medical reports** to the patient.
- Disseminate **informational materials on services and referrals** for victims of domestic violence in all health centers.
- Conduct **regular monitoring of health care institutions** to ensure all providers are properly trained in domestic violence and effectively implementing the Special Protocol and LPDV.
- Ensure appropriate **staffing and resources at health care institutions** to ensure victims receive services identified by law and the Special Protocol.
- Amend Ministry of Health procedures and laws to **require all doctors to implement the form** from the special protocol and impose sanctions on doctors who do not use it.
- **Track data at a national level** relating to cases of domestic violence.

MINISTRY OF SOCIAL POLICY

- Ensure appropriate **staffing and resources at CSWs** to ensure victims receive services identified by law and the Special Protocol.
- Establish a **standardized risk assessment tool** for social workers and provide training on its use and the development of a **safety plan**.
- Review current financial assistance levels with a view to providing a sufficient and consistent level of financial support for victims of domestic violence that is available on the national and local levels.
- Establish a **mandatory screening mechanism** for CSWs to use to identify domestic violence in divorce cases.
- Provide sufficient resources to CSWs to expedite the preparation of **opinions and recommendations** relating to applications for protective measures to ensure their timely issuance.
- Provide training and a standardized form, including a standardized risk assessment, for CSW workers to draft their opinions, in consultation with NGOs that serve domestic violence victims,.
- Expand the number of **shelter and safe house beds** to meet Council of Europe recommendations.
- **Remove barriers for women seeking to enter a shelter or safe house**, including fees or requirements for women to take certain legal actions against their perpetrators. Prohibit the denial of entry into shelter and safe houses based on victims' region or ethnic origin.
- **Provide security mechanisms for shelters and safe houses** to protect those who live and work there from threats or attacks from perpetrators.

POLICE

- Ensure ongoing training, in consultation with or led by NGOs that serve domestic violence victims, on the relevant legislation and dynamics of domestic violence, including:
 - Procedures under the Special and General Protocols and the LPDV, including the list of questions to collect information
 - Coercive control;
 - Investigation and evidence collection;
 - Returning to visit the victim 36-72 hours after the incident to check her status, photograph newly appearing injuries, follow up with any new problems that have arisen since the last point of contact, such as the return of the perpetrator or victim needs with work, daycare, and housing;
 - Completion of a written report on incidents of domestic violence;
 - Predominant aggressor determinations;
 - Best practice protocols to handle gone-on-arrival cases, which includes checking on the victim in the first 24 hours and locating a safe place for her if she is at risk at her home.
 - Provision of information to victims on their rights and resources.
- Treat and respond to all reports of domestic violence as urgent, without assessment of the caller’s “veracity.”
- Immediately **cease the use of warnings** in cases of domestic violence.
- Conduct thorough investigations and evidence collection that support evidence-based prosecutions, i.e. gather all evidence necessary for prosecution without dependence on the victim’s court testimony;
- Complete a **written report** for all alleged incidents of domestic violence.
- Provide equipment and training to police officers to take photographs of injuries for use in legal proceedings.
- Offer victims-**transport** or arrange for her transport to a health care facility, shelter, or other safe place.
- Provide **victims with written information** on her rights, referrals to victim services, case status in misdemeanor or criminal proceedings, including any police initiation of misdemeanor proceedings.
- Undertake measures to ensure **police access to offenders’ prior history**, records of Family Law orders for protective measures, and records of LPDV emergency measures.
- Ensure meaningful and consistent police participation in local **inter-agency responses**, including the Group for Coordination and Cooperation as set forth in the LPDV.
- **Provide security mechanisms for shelters and safe houses** to protect those who live and work there from threats or attacks from perpetrators.

PROSECUTORS

- Ensure **ongoing training**, in consultation with or led by NGOs that serve domestic violence victims, on dynamics of domestic violence, victim absent prosecutions, risk assessment,

emergency measures under the LPDV, and other best practices with regard to domestic violence.

- Designate at least one prosecutor per municipality to specialize in domestic violence cases under the LPDV.
- Adopt a policy that directs prosecutors to **pursue domestic violence cases**, regardless of the level of injury or evidence, when there is sufficient evidence to support a conviction. Such a policy should be accompanied by trainings for prosecutors and police in how to collect and use evidence, such as photos, recorded statements, medical reports, and neighbor and family reports, with the anticipation victim testimony may not be available.
- Treat crimes involving domestic violence as or more seriously than other crimes and take measures to expedite these cases.
- Implement a policy that promotes **victim-absent prosecutions** in cases of victim recantation or refusal to testify. Prosecutors should pursue all domestic violence cases independent of victim cooperation, and use expert testimony to demonstrate to the court why victims recant or refuse to testify against the defendant.
- Ensure the collection of evidence to support **evidence-based prosecutions** with a view to promoting prosecutions that are not dependent on victim testimony. Evidence should include witness statements, photographs of injuries and the scene, forensic and medical documentation, call records, and other documentation of a history or reports of abuse, such as CSW reports.
- **Pursue all violations of Family Law civil protective measures** independent of and in addition to any other violence committed by the perpetrator.
- **Initiate early contact with the victim** to promote her safety, explain the prosecution proceedings, and obtain information that police may not have found.
- **Refrain from deferral** in all cases involving domestic violence.
- Ensure that when **psychosocial treatment** is ordered, that such programs are effective and offender participation is monitored.
- **Propose sentences** in domestic violence cases that are commensurate with the gravity of crimes of violence against women and promote sanctions that are comparable to those for other violent crimes.
- In cases where suspended sentences are imposed, propose **protective supervision** measures with the aim of protecting the victim, including a prohibition against visiting locations or events, in the context of the victim's stated wishes and the risk to her safety. Ensure victims have access to a trained service provider to assess her risk to help inform this decision.
- Consistently enforce protective supervision by **revoking probation** in cases of non-compliance with protective supervision measures.
- Upon sentencing, propose **security measures** to protect victims, including restraining orders and confiscation of objects, such as weapons.
- Promote victim safety:
 - during victim testimony by **granting vulnerable witness status** to domestic violence victims under the Criminal Procedure Code;

- providing a separate and secure waiting area for victims in the courthouse;
- throughout criminal proceedings by proposing relevant measures to secure the defendant, including detention and a restraining order.
- **Keep victims regularly informed** of the status of proceedings and their rights, including court support systems to protect them as victims or vulnerable witnesses, and other victim resources.
- Apply for **Family Law civil protective measures** on behalf of victims where victims have provided informed consent to do so or the victim is unable to apply for a protective measure on her own.
- **Partner with community groups** that support domestic violence victims to promote victims' access to services and basic needs resources.
- Ensure meaningful and consistent participation in **local interagency responses**, including the Group for Coordination and Cooperation as set forth in the LPDV.

CRIMINAL JUDGES

- Ensure training of all criminal judges, in consultation with or led by NGOs that serve victims, on the dynamics of domestic violence, the LPDV, best practices in domestic violence, and the implementation of the Ministry of Justice Special Protocol.
- **Assign high priority** to domestic violence cases and take measures to expedite them.
- Grant prosecutors' requests for **measures to secure the defendant's presence** that can protect victims of domestic violence. Upon confirmation of the indictment, proactively issue measures to secure the defendant's presence that protect victims of domestic violence, including a restraining order or detention.
- Impose **sentences for domestic violence** that are commensurate with the gravity of crimes of violence against women, are comparable to those for other violent crimes, including prison sentences. To this end, for domestic violence cases:
 - **Limit suspended sentences to cases where victim safety is not an issue**, including for violations of protective measures;
 - **Refrain from imposing fines** that punish victims who share joint financial resources with their perpetrators.
- If a suspended sentence is ordered in a domestic violence case, issue **protective supervision measures**, including the prohibition to visit special places.
- Upon conviction, **impose security measures**, including a restraining order and confiscation of weapons, in domestic violence cases with the aim of protecting the victim.
- Conduct **ongoing and effective risk assessments** based on best practice standards, such as using all appropriate and available sources to obtain information, avoiding eliciting safety or risk information from victims in open court, informing victims about the risk assessment and referrals to victim services and resources.
- Analyze effectiveness and enforcement of **criminal sentences** and the impact of sentences in recidivism rates.
- Refrain from using confrontation in all domestic violence cases.

MISDEMEANOR JUDGES

- Establish and support a **specialized misdemeanor bench** dedicated to domestic violence cases and ensure an adequate number of judges and appropriate resources.
- Analyze effectiveness and enforcement of **misdemeanor sentences** and the impact of sentences in recidivism rates.
- Assess the effectiveness of the **precautionary measures of addiction and psychiatric treatments** with respect to reducing recidivism.
- **Refrain from using confrontation** in all domestic violence cases.

FAMILY LAW JUDGES

- Ensure **ongoing training**, in consultation with or led by NGOs that serve domestic violence victims, on the dynamics of domestic violence, mechanisms for service of process, risk assessments, burdens of proof, and evidentiary requirements in family law proceedings, including the appropriate use of CSW reports.
- Refrain from using **confrontation** in Family Law proceedings.
- In consultation with NGOs that serve victims, develop and **distribute information** on Family Law civil protective measures, victims' rights, and referrals to services and resources.
- Conduct ongoing and effective **risk assessments** based on best practice standards (e.g., using all appropriate and available sources to obtain information, avoiding eliciting safety or risk information from victims in open court, providing information to victims about referrals to victim services and resources).
- Where requested or indicated by a risk assessment, **order all possible measures** as requested to protect the victim, including eviction, and issue other necessary protective measures that have not been requested but are deemed necessary.
- Where service is completed and the **respondent does not appear for a hearing**, issue the protective measures based on the victim's petition if there is sufficient evidence for a finding of domestic violence.
- **Ensure the pronouncement of orders for Family Law protective measures at hearings** to eliminate procedural gaps that allow perpetrators to delay their enforcement.
- **Issue interim measures** on the basis of the victim's fear of imminent danger of domestic violence.
- Establish and communicate the expectation of **full and timely information from CSWs, police, and prosecutors** in cases of Family Law protective measures and violations thereof.
- Require judges to **separately screen all parties to divorce proceedings** for domestic violence.
- Establish a system by which all **orders for protective measures are immediately transmitted** to CSWs, police, and prosecutors to ensure their implementation and the immediate enforcement of violations under Article 194(5) of the Criminal Code.
- Refrain from conducting **mediation or reconciliation** in divorce cases involving domestic violence.

CSWS

- Ensure **ongoing training**, in consultation with or led by NGOs that serve domestic violence victims, for all CSW staff, on:
 - Preparation of applications for protective measures with the victim's consent;
 - Information they must provide to all victims with respect to their rights;
 - Impact of mutual child custody in situations of domestic violence; and
 - Preparation of opinions and recommendations relating to applications for protective measures and their timeframes.
- Conduct **ongoing risk assessment** that uses appropriate risk assessment tools, the practitioner's own expertise, the offender's history, and the victim's perception of the risk.
- Ensure that **victims of domestic violence participate** in the assessment of their needs and consent to the services they receive.
- Expand the good practice of establishing **job placement programs** for victims of domestic violence.
- Ensure meaningful and consistent CSW participation in **local inter-agency responses**, including the Group for Coordination and Cooperation as set forth in the LPDV.

DOCTORS

- Require all doctors, medical students, and health care providers to complete mandatory and regular **training on the Special Protocol and the identification and documentation of domestic violence cases**, including:
 - Treating patients who may be victims of domestic violence, following a gender-sensitive, survivor-woman-centered, and human rights-based approach;
 - Recognizing and understanding the signs of domestic violence, including understanding coercive control and asking questions about domestic violence in cases of clinical symptoms that may suggest potential domestic violence;
 - Gathering the patient's medical history and conducting a medical examination;
 - Reporting requirements, including the harms of mandatory reporting without informed consent by the victim;
 - Referring victims to additional resources;
 - Using follow-up appointments to assess the patient's well-being;
 - Discussing basic safety measures, risk assessments, and safety plans with patients;
 - Providing follow-up care.
- Require all doctors and medical students to **complete forensic training** to document and classify injuries and training on the completion of the Special Protocol form.
- Ensure that **medical certificates or reports**, including forensic reports, are available for free.
- Allocate resources to provide health care centers with **photography equipment and training on how to document physical injuries**, to supplement other means of documentation.
- Ensure the infrastructure to protect **privacy, safety, and confidentiality of patients**, including private consultation rooms and requirements that consultations be held without a partner or third party present.

- Provide for **electronic completion of medical records** and the Special Protocol form to promote efficiency in reporting, sharing, and maintaining records.
- Display and also make available in private hospital areas **informational materials** on domestic violence and services for victims.
- Ensure meaningful and consistent health care participation in **local inter-agency responses**.

INTER-AGENCY ACTIONS

- **Incorporate NGOs** who work with victims of domestic violence in the coordination and cooperation meetings established under the LPDV when they request to participate.
- Continue to **foster the development of inter-agency coordination** and also incorporate the identification of **systemic problems** and a mechanism through which to correct them.
- Ensure **compliance with best practice standards** of an interagency response, including paying attention to risk, context, and severity; engaging with victims on an ongoing basis; ensuring swift and sure consequences for continued abuse; and reducing unintended consequences.

APPENDIX A. EXCERPTS OF LAWS

Unofficial translations unless otherwise noted.

Criminal Code (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/12, 104/13, 108/14, 94/16)

Article 4(3)), Criminal Sanctions and their General Purpose

(3) A criminal sanction may not be imposed on a person who has not turned fourteen at the time of the commission of an offence. Rehabilitation measures and other criminal sanctions may be imposed on a juvenile under the conditions prescribed by a special law.

Article 43, Types of Punishment

The following sanctions may be pronounced to a perpetrator of criminal offence:

- 1) imprisonment;
- 2) fine;
- 3) community service;
- 4) revocation of driver's license.

Article 64, Purpose of Suspended Sentence and Judicial Admonition

- (1) Cautionary measures are suspended sentence and judicial admonition.
- (2) Within the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of a suspended sentence and judicial admonition is not to impose a sentence for lesser criminal offences to the offender who is guilty when it may be expected that an admonition with the threat of punishment (suspended sentence) or a caution alone (judicial admonition) will have sufficient effect on the offender to deter him from further commission of criminal offences.

Article 65, Suspended Sentence

- (1) By suspended sentence, the court determines punishment of the offender and concurrently determines that it shall not be enforced provided the convicted person does not commit a new offence during a period set by the court, which may not be under one or longer than five years (probationary period).
- (2) The court may order in a suspended sentence that the penalty shall be enforced if the convicted person fails to restore material gain acquired through commission of the offence, fails to compensate damages caused by the offence or fails to fulfil other obligations provided in provisions of criminal legislation. The court shall set the time for fulfilling such obligations within the specified probationary period.
- (3) Security measures ordered together with suspended sentence shall be enforced.

Article 66, Requirements for Pronouncing a Suspended Sentence

- (1) A sentence of imprisonment of under two years may be suspended.
- (2) For criminal offences punishable by imprisonment of ten years or more severe penalty, the sentence may not be suspended.
- (3) A suspended sentence may not be pronounced when more than five years have elapsed from the time the sentence pronounced to a perpetrator for premeditated criminal offence became final.
- (4) In determining whether to pronounce a suspended sentence the court shall, having regard to the purpose of suspended sentence, particularly take into consideration the personality of the offender, his previous conduct, his conduct after committing the criminal offence, degree of culpability and other circumstances relevant to the commission of crime.

(5) If both a term of imprisonment and a fine are imposed, only the prison sentence may be suspended.

Article 71, Suspended Sentence with Protective Supervision

(1) The court may order protective supervision of an offender under suspended sentence during probation.

(2) Protective supervision includes assistance, care and protection measures provided by law.

(3) If the court establishes during the course of protective supervision that the purpose of this measure has been achieved, it may terminate protective supervision before the expiry of the specified time period.

(4) If a convicted person under protective supervision fails to fulfil the obligations ordered by the court, the court may caution such person or may replace the previous obligation by another or extend protective supervision within the probation period or revoke the suspended sentence.

Article 72, Requirements for Ordering Protective Supervision

(1) When pronouncing a suspended sentence, the court may order protective supervision of the offender if, considering his personality, previous conduct, attitude after committing of the offence and particularly his attitude towards the victim of the offence and circumstance of its commission, it may be assumed that protective supervision would enhance achieving the purpose of suspended sentence.

(2) The court orders protective supervision in the judgement pronouncing suspended sentence and determines measures of protective supervision, duration and manner of implementation thereof.

Article 73, Protective Supervision

Protective supervision may comprise one or more of the following obligations:

- 1) reporting to competent authority for enforcement of protective supervision within periods set by such authority;
- 2) training of the offender for a particular profession;
- 3) accepting employment consistent with the offender's abilities;
- 4) fulfilment of the obligation to support family, care and raising of children and other family duties;
- 5) refraining from visiting particular places, establishment or events if that may present an opportunity or incentive to re-commit criminal offences;
- 6) timely notification of the change of residence, address or place of work;
- 7) refraining from drug and alcohol abuse;
- 8) treatment in a competent medical institution;
- 9) visiting particular professional and other counselling centres or institutions and adhering to their instructions;
- 10) eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence.

Article 78, Purpose of Security Measures

Within the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of security measures is to eliminate circumstances or conditions that may have influence on an offender to commit criminal offences in future.

Article 79, Types of Security Measures

(1) The following security measures may be ordered to offenders:

- 1) compulsory psychiatric treatment and confinement in a medical institution;
- 2) compulsory psychiatric treatment at liberty;
- 3) compulsory drug addiction treatment;
- 4) compulsory alcohol addiction treatment;

- 5) prohibition from practising a profession, activity or duty;
- 6) prohibition to drive a motor vehicle;
- 7) confiscation of objects;
- 8) expulsion of a foreigner from the country;
- 9) publication of the judgement;
- 10) restraining orders against approaching and communicating with the injured party,
- 11) bans on attending certain sporting events.

(2) Under the conditions prescribed by this Code, certain security measures may be imposed on a mentally incompetent person who committed an unlawful act provided under law as a criminal offence (Article 80, para 2).

Article 80, Ordering Security Measures

- (1) Where grounds under this Code exist, the court may impose one or more security measures on an offender.
- (2) Compulsory psychiatric treatment and confinement in a medical institution and compulsory psychiatric treatment at liberty shall be imposed as an individual sanction on a mentally incompetent criminal offender. In addition to these measures, ban on practising certain professions, activities or duties, bans on driving a motor vehicle and confiscation of objects may also be ordered.
- (3) Measures specified in paragraph 2 of this Article may be ordered to an offender whose mental capacity is substantially impaired, if under pronouncement of a penalty or suspended sentence.
- (4) Compulsory drug addiction treatment, compulsory alcohol addiction treatment, bans on practising a particular profession, activity or duty, bans on driving a motor vehicle, confiscation of objects and publication of judgements may be ordered if the offender is under pronouncement of penalty, suspended sentence, judicial admonition or if the offender is remitted from punishment.
- (5) Expulsion of a foreigner from the country and ban to attend certain sporting events may be pronounced if an offender is under pronouncement of penalty or suspended sentence.
- (6) A restraining order prohibiting physical proximity and communication with the injured party may be made if an offender has been sentenced to a fine, community service, revocation of a driving license, or if he has received a suspended sentence or judicial admonition.”
- (7) For joinder of criminal offences a security measure shall be ordered if determined for one of the offences in joinder.

Article 89a, Restraint to approach and communicate with the injured party

- (1) The court may prohibit an offender from approaching the injured party at a specified distance, from accessing the area surrounding the injured party’s residence or place of work, and further harassment of the injured party, *i.e.* further communication with the injured party, provided it is reasonable to believe that any such further action taken by the offender would pose a threat to the injured party.
- (2) The court shall determine the duration of the measure specified in paragraph 1 of this Article, which may not be less than six months or more than three years, calculating from the date of final decision, with the proviso that time spent in prison and/or medical institution wherein the security measure was enforced is not calculated into the duration of this measure.
- (3) The measure referred to in paragraph 1 hereof may be revoked before it has expired should grounds on which it was imposed have ceased to exist.

Article 97, General Concept of Rehabilitation

- (1) Rehabilitation shall delete conviction and terminate all legal consequences thereof, and the convicted person shall be deemed with no criminal record.
- (2) Rehabilitation occurs either by virtue of law itself (legal rehabilitation) or by petition of the convicted person pursuant to decision of the court (judicial rehabilitation).
- (3) Rehabilitation shall not prejudice the rights of third parties deriving from the conviction.

Article 98, Legal Rehabilitation

- (1) Legal rehabilitation may be granted only to persons who, prior to conviction in respect of relevant rehabilitation, had no prior convictions or are by law considered without prior convictions.
- (2) Legal rehabilitation ensues if:
 - 1) the person convicted but remitted of a penalty, or under pronouncement of judicial admonition, does not commit any new criminal offence within one year after the judgement becomes final;
 - 2) the person under a suspended sentence does not commit any new criminal offence during probation period and within one year after the end of probation;
 - 3) the person sentenced to a fine, community service, revocation of driving licence or imprisonment up to six months does not commit any new criminal offence within the period of three years after the penalty is enforced, is under statute of limitations or remitted;
 - 4) the person sentenced to imprisonment of six months to one year does not commit any new criminal offence within the period of five years after the penalty is enforced, is under statute of limitations or remitted.
 - 5) the person sentenced to imprisonment of one to three years does not commit any new criminal offence within the period of ten years after the penalty is enforced, is under statute of limitations or remitted.
- (3) Legal rehabilitation shall not ensue if the secondary penalty has not been enforced or if security measures are still in force.

Article 99, Judicial Rehabilitation

- (1) Judicial rehabilitation may be granted to a person sentenced to imprisonment of three to five years, if within the period of ten years after such sentence is served, is under statute of limitations or remitted, that person does not commit a new criminal offence.
- (2) In the case referred to in paragraph 1 this Article, the court shall grant rehabilitation if it finds that the convicted person deserves rehabilitation due to his conduct and if, according to his financial abilities, he has compensated for the damages caused by his criminal offence, and the court is obliged to take into consideration all other circumstances of relevance for granting rehabilitation, and particularly the nature and significance of the offence.
- (3) Judicial rehabilitation may not be granted if a secondary penalty has not yet been enforced or if security measures are still in force.

Article 112, Meaning of Terms for the Purpose of this Code

...

(28) A family member shall mean spouses, their children, spouses' progenitors in the direct line, common law partners and their children, adoptive parents and adopted children, foster parents and foster children. A family member shall also mean siblings, their spouses and children, former spouses, their children and parents of the former spouses if they live in the same household, as well as persons who have a child together or who have conceived a child even though they have never lived together in the same household.

Article 114, Aggravated Murder

Whoever:

...

10) causes death of a member of his family whom he previously abused;

...

shall be punished with imprisonment from thirty to forty years.

Article 122, Light Bodily Injury

(1) Whoever causes light injury or minor health impairment, shall be punished with fine or imprisonment of up to one year.

(2) If the injury is caused by a weapon, dangerous implement or other means suitable to inflict serious injury or serious health impairment, the offender shall be punished with imprisonment up to three years.

(3) A court may pronounce judicial admonition to the perpetrator referred to in paragraph 2 of this Article, if he was provoked by rude or violent conduct of the injured party.

(4) Prosecution for the offence referred to in paragraph 1 of this Article shall be instituted by private action.

Article 125, Endangerment

(1) Whoever leaves another without assistance in a state or circumstances dangerous to life or health that he induced, shall be punished with imprisonment from three months to three years.

(2) If the act specified in paragraph 1 of this Article results in serious health impairment or grievous bodily harm of the abandoned person, the offender shall be punished with imprisonment from one to five years.

(3) If the act specified in paragraph 1 of this Article results in death of the abandoned person, the offender shall be punished with imprisonment from one to eight years.

(4) If the offence referred to in paragraphs 1 through 3 hereof has been perpetrated against a minor or a pregnant woman, the offender shall be punished with imprisonment of six months to five years for the offence from paragraph 1, with imprisonment of one year to eight years for the offence from paragraph 2, and with imprisonment of two to twelve years for the offence from paragraph 3.

Article 138, Endangerment of Safety

(1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him/her, shall be punished with fine or imprisonment up to one year.

(2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the act has caused disturbance of the general public or other serious consequences, shall be punished with imprisonment of three months to three years.

...

Article 138a, Persecution

(1) Whoever, during a certain period of time:

1) without authorization follows or take other actions aimed at the physical approximation of another person against the will of that person;

2) contrary to the will of another person is trying to establish contact with him directly, through a third party, or through the means of communication;

3) is abusing the personal information of another person or a person close to him for the sake of offering goods or services;

4) threatens to attack the life, body or freedom of another person or a person close to him;

5) takes other similar actions in a way that may significantly jeopardize the personal life of the person against whom action is taken,

shall be punished by a fine or imprisonment up to three years.

(2) If the offense referred to in paragraph 1 of this Article caused danger to life, health or body of the person against whom the offense is committed or the person close to him, shall be punished with imprisonment from three months to five years.

(3) If the offense referred to in paragraph 1 of this Article has caused the death of another person or a close relative, the perpetrator shall be punished with imprisonment from one to ten years.

Commentary: this article was recently added and entered into force on June 1, 2017.

Article 178, Rape

(1) Whoever forces another to sexual intercourse or an equal act by use of force or threat of direct attack against the body of such or other person, shall be punished with imprisonment from five to twelve years.

(2) If the offence specified in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honour, or by threat of other grave evil, the offender shall be punished with imprisonment from two to ten years.

(3) If the offence specified in paragraphs 1 and 2 of this Article resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years.

(4) If the offence specified in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years.

Commentary: paragraph 1 of this article was amended and the minimum penalty increased from three to five years. This amendment entered into force on June 1, 2017.

Article 182a, Sexual Harassment

(1) Whoever sexually harasses another person shall be punished by a fine or imprisonment up to six months.

(2) If the offense in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment of three months to three years.

(3) Sexual harassment is any verbal, non-verbal or physical conduct which has the purpose or effect of violating the dignity of persons in the area of sexual life, and which causes fear or creates a hostile, humiliating or offensive environment.

(4) Prosecution for the offense specified in paragraph 1 of this Article shall be undertaken by motion.

Commentary: this article was added and entered into force on June 1, 2017.

Article 194, Domestic Violence

(1) Whoever by use of violence, threat of attacks against life or body, insolent or ruthless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his family, shall be punished with imprisonment of three months to three years.

(2) If in committing the offence specified in paragraph 1 of this Article weapons, dangerous implements or other means suitable to inflict serious injury to body or seriously impair health are used, the offender shall be punished with imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article results in grievous bodily harm or serious health impairment or if committed against a minor, the offender shall be punished with imprisonment from two to ten years.

(4) If the offence specified in paragraphs 1, 2 and 3 of this Article results in death of a family member, the offender shall be punished with imprisonment from three to fifteen years,

(5) Whoever violates a measure against domestic violence that was imposed on them by the court in accordance with the law shall be punished with imprisonment from three months to three years and a fine.

Commentary: “that regulates family relations” added after “law” in paragraph 5, as of June 1, 2017.

Article 332, Failure to Report a Criminal Offence or Offender

(1) Whoever knows that another person has committed a criminal offence punishable under law by thirty to forty years imprisonment or only knows of such offence and fails to report it before the offence or perpetrator thereof are detected, shall be punished by imprisonment up to three years.

(2) An officer or a responsible person who knowingly omits to report a criminal offence of which he became aware in the performance of his duties, provided that under the law the offence in question is punishable with imprisonment of five years or more, shall be punished with imprisonment of six months to five years.

(3) An official or responsible person who knowingly fails to report a criminal offence of his subordinate who committed the offence in discharge of his official, military or work duty, if such an offence is punishable by imprisonment of thirty to forty years, shall be punished by imprisonment of one to eight years.

(4) A spouse, common-law spouse, lineal blood relative, sibling, adoptive parent or adoptee of the offender as well as a spouse of any of the former or person cohabiting with any of the former, as well as the offender’s defence attorney, doctor or confessor shall not be punished for the offence specified in paragraphs 1 and 2 of this Article.

Article 334, False Reporting

(1) Whoever reports a person of committing an offence prosecuted *ex officio*, while aware that such person is not the offender, shall be punished by imprisonment of three months to three years.

(2) Whoever plants traces of a criminal offence or otherwise causes criminal proceedings to be instituted for an offence prosecuted *ex officio* against a person whom he is aware is not the perpetrator of that offence shall be punished with imprisonment of six months to five years.

(3) Whoever reports himself as perpetrator of an offence prosecuted *ex officio* although aware that he is not the offender, shall be punished by fine or imprisonment up to one year.

(4) The penalty specified in paragraph 3 of this Article shall also be imposed on whoever reports commission of an offence prosecuted *ex officio* although aware that such an offence has not been committed.

Criminal Procedure Code (Official Gazette no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, and 55/2014)

Article 5, Taking the Start of Prosecution

For offenses which are prosecuted *ex officio*, the authorized prosecutor is the public prosecutor, and for criminal offenses which are prosecuted privately the authorized prosecutor is a private prosecutor.

Criminal prosecution begins:

- 1) by the first action of the public prosecutor or authorized officials of the police at the request of the public prosecutor, undertaken in accordance with this Code to check the grounds for suspicion that a criminal act or that a person has committed a criminal offense;
- 2) by submission of a private prosecution.

If the Public Prosecutor declares that he is abandoning prosecution (Article 52), he may be replaced by a subsidiary prosecutor, under the conditions prescribed by this Code.

Article 43, The Rights and Duties of Public Prosecutor

The basic right and the basic duty of the public prosecutor is to prosecute offenders.

For offenses which are prosecuted *ex officio*, the public prosecutor is authorized to:

- 1) direct the pre-trial proceedings;
- 2) decide on the non-prosecution or disposal;
- 3) conduct an investigation;
- 4) conclude plea agreements and agreements on testimony;
- 5) file and represent prosecution before the competent court;
- 6) drop the charges;
- 7) appeal against court decisions which are not final and submit extraordinary legal remedies against final court decisions;
- 8) undertake other actions as prescribed by this Code.

Article 89, Confronting the defendant

The defendant may be confronted with a witness or another defendant, if their statements do not agree on the facts that are the subject of proof.

The persons confronting each other are placed facing each other and are asked by the authority conducting the procedure to one another repeat their accounts on each disputed circumstance and to discuss the veracity of their statements. The course of confrontation and statements made by the confronted persons will be entered into record by the authority conducting the proceedings.

Article 94, Exemption from the duty to testify

The following are released from the duty of giving evidence:

- 1) the defendant's spouse or common-law spouse or other person with whom the defendant lives in a common law marriage or other permanent association;
- 2) the defendant's blood relatives in the direct line, collateral relatives to the third degree, and in-laws to the second degree ;
- 3) adopter and adoptees of the defendant.

Juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except if the defendant so demands.

The authority conducting proceedings is required to caution the person referred to in paragraph 1 of this Article that he does not have to testify before questioning or as soon as it learns about his relationship with the defendant. The caution and reply are entered into record.

A person with valid grounds to decline to testify in connection with one of the defendants is relieved of the duty to testify in connection with all the other defendants, if by the virtue of his testimony it cannot be limited only to the other defendants.

Article 99, Confrontation of Witnesses

The witness may be confronted with another witness or defendant if their statements do not agree on the facts that are the subject of proof.

In the confrontation of witnesses shall apply the provisions of Article 89, paragraph 2 of the Code.

Article 102, Basic Protection

The authority conducting the proceedings shall protect an injured party or witness from insults, threats and any other attacks.

The public prosecutor or the court will caution a participant in proceedings or other person who, before the authority conducting proceedings insults an injured party or a witness, threatens him or endangers his safety, and the court may also fine him up to 150,000 dinars.

An appeal against a ruling imposing a fine is decided on by the panel. The appeal does not stay the execution of the ruling.

Upon receiving notification from the police or the court or on its own knowledge of the existence of violence or serious threats against the injured party or witness, the public prosecutor will prosecute or notify the competent public prosecutor.

The public prosecutor or the court may require the police to take measures to protect the injured party or a witness in accordance with the law.

Article 103, Particularly Vulnerable Witness

The authority conducting proceedings may *ex officio*, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances.

The decision on determining the status of especially vulnerable witness is issued by a public prosecutor, the presiding judge or an individual judge.

If it deems it necessary to protect the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article shall issue a decision on setting up a proxy to the witness, and a public prosecutor or the court will appoint an attorney in the order from the list of lawyers to the court submitted by the competent bar association for determination of the assigned counsel (Article 76).

No special appeal is allowed against a ruling approving or denying a request.

Article 104, The Rules of Questioning Particularly Vulnerable Witness

An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavoring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings.

If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located.

An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article.

An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence.

No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article.

Article 188, Types of Measures

Measures that can be taken against the accused for securing his presence and for the smooth conduct of criminal proceedings are:

- 1) calls [summonses];
- 2) Bringing [a defendant in];
- 3) prohibition of approaching, meeting or communicating with a particular person and visiting certain places;
- 4) house arrest;
- 5) guarantee [bail];
- 6) ban on leaving the apartment;
- 7) detention.

Article 191, Content of Call [Summons]

The presence of a defendant in criminal proceedings is secured by summoning him. Summonses are issued to the defendant by the public prosecutor or the court.

A defendant is summoned by the delivery of a sealed written summons containing: the title of the authority conducting proceedings issuing the summons, first name and surname of the defendant, legal designation of the criminal offence with which he is charged, place where the defendant is to appear, date and time when he is to appear, remark that he is being summoned in the capacity of defendant and caution that in case of a failure to appear a harsher measure referred to in Article 188 of this Code will be ordered against him, official seal and first name and surname of the public prosecutor or judge issuing the summons.

Article 193, Calling Participants in the Proceedings

Before the indictment is filed, the public prosecutor summons witnesses, experts and other participants in the proceedings, and if the public prosecutor fails to do so, at the request of the defendant and his counsel, the summons is issued by the preliminary hearing judge.

After the indictment, the participants in the proceedings referred to in paragraph 1 of this Article is summoned by the court, or by parties and the defense counsel, if they undertake to do so.

When a minor who is under 16 is summoned as a witness, the summons is made through his or her parents or legal guardian, unless this is not possible because of the need to act urgently, or for other reasons.

A participant in the proceedings avoiding the receipt of a summons may be fined up to 150,000 dinars. The ruling on the fine is issued by the court.

An appeal against the ruling referred to in paragraph 4 of this Article is decided on by the panel. An appeal does not stay execution of the ruling.

The provisions of paragraph 4 of this Article shall not apply to a minor.

Article 195, The Order

The public prosecutor or the court may issue an order that the defendant be brought in:

- 1) if a duly summoned defendant fails to appear, without justifying his absence;
- 2) if service of the summons could not be performed, and the circumstances obviously indicate that the defendant is evading the receipt of a summons;
- 3) if a ruling ordering detention has been issued.

The order referred to in paragraph 1 of this Article shall be issued in writing. The order shall include the name and surname of the defendant who is to be brought in, place and year of birth, legal name of the offense with which he is charged with specifying the provisions of the criminal code, the reason for ordering the defendant to be brought in, the official seal and signature of the public prosecutor or judge who ordered the defendant to be brought in.

Article 196, The Execution of Orders for Bringing a Defendant In

The order under Article 195, paragraph 1 of the Code is executed by the police.

An authorised police officer entrusted with the execution of the order referred to in Article 195 paragraph 1 of this Code serves the order to the defendant and calls him to come with him. If the defendant refuses, he will bring him in by force.

...

Article 197, The Conditions for Determining

If there are circumstances indicating that the accused might interfere with the process by influencing the victim, witnesses, accessories or accomplices or could repeat the criminal offense, complete an attempted criminal offense or to commit a criminal act in question, the court may prohibit the defendant approaching, meeting or communicating with a particular person or prohibited from visiting certain places.

In addition to the measure referred to in paragraph 1 of this Article, the court may order the defendant to report periodically to the police commissioner of the state administration body responsible for the enforcement of criminal sanctions or other state body specified by law.

Article 198, Deciding on the Extent

The court decides on ordering the measure referred to in Article 197 of this Code on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio*.

During the investigation, a reasoned decision on ordering, extending or terminating the measures referred to in paragraph 1 of this Article is issued by the judge for preliminary proceedings, and after the indictment is filed, by the president of the chamber, and at the trial, by the panel. If the measure was not proposed by the public prosecutor, and the proceedings are conducted for a criminal offense that is prosecuted *ex officio*, the opinion of the public prosecutor will be sought before the decision is rendered.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article the defendant will be cautioned that a harsher measure (Article 188) may be ordered against him if he violates the prohibition ordered against him. The ruling is also delivered to the person in relation to whom the measure against the defendant was ordered.

The measure referred to in paragraph 1 of this Article may last for as long as a need for it exists, but not longer than the time of the final judgment, or the commitment of the defendant to serve a custodial criminal sanction. The court is required to examine once every three months whether the measure is still justified.

The parties and defence counsel may appeal against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also appeal against a ruling denying a motion for ordering the measure. An appeal does not stay execution of the ruling.

Control of the application of the measure referred to in paragraph 1 of this Article is performed by the police.

Article 211, The Reasons for Custody

Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if:

- 1) he is in hiding or his identity cannot be established or in the capacity of defendant he is clearly avoiding appearing at the trial or if there exist other circumstances indicating a flight risk;
- 2) there exist circumstances indicating that he will destroy, conceal, alter or falsify evidence or traces of a criminal offence or if particular circumstances indicate that he will obstruct the proceedings by exerting influence on witnesses, accomplices or concealers;
- 3) particular circumstances indicate that in a short period of time he will repeat the criminal offence, or complete an attempted criminal offence, or commit a criminal offence he is threatening to commit;
- 4) the criminal offence with which he is charged is punishable by a term of imprisonment of more than ten years or a term of imprisonment of more than five years for a criminal offence with elements of violence, or he has been sentenced by a court of first instance to a term of imprisonment of five years or more, and the way of commission or the gravity of consequences of the criminal offense have disturbed the public to such an extent that this may threaten the unimpeded and fair conduct of criminal proceedings.

In the case referred to in paragraph 1 item 1) of this Article, detention ordered solely because the identity of the person cannot be established lasts only until that identity is established, and detention ordered solely because a defendant obviously avoids appearing at the trial may last until the publication of the judgment. In the case referred to in paragraph 1 item 2) of this Article, detention will be revoked as soon as the evidence because of which detention was ordered is secured.

When it pronounces a judgment ordering a term of imprisonment of less than five years, the court may order detention for a defendant who is at liberty if the reasons referred to in paragraph 1 items 1) and 3) of this Article exist, and it will revoke detention for a defendant who is in detention if the reasons for which it was ordered no longer exist.

Article 212, Deciding on Detention

The court decides on ordering detention on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio*.

Before issuing the decision referred to in paragraph 1 of this Article, the court will question the defendant in connection with the reasons for ordering detention. The questioning may be attended by the public prosecutor and the defence counsel.

The court is required to inform in a suitable manner the public prosecutor and the defence counsel on the time and place of the defendant's questioning. The questioning may also be performed in the absence of persons duly notified.

By exception from paragraph 2 of this Article, the decision ordering detention may be issued without questioning the defendant if the circumstances referred to in Article 195 paragraph 1 items 1) and 2) of this Code, or a danger of delays, exist.

If detention was ordered in accordance with paragraph 4 of this Article, the court will within 48 hours of the hour of the arrest question the defendant in accordance with the provisions of paragraphs 2 and 3 of this Article. After the questioning, the court will decide whether to leave the decision ordering detention in force or to repeal detention.

Article 214, Detention during Investigation

Detention during the investigation may be ordered, extended or repealed by a ruling of the judge for preliminary proceedings or the panel (Article 21 paragraph 4).

The ruling extending or repealing detention is issued *ex officio* or on a motion of the parties and the defence counsel.

The parties and defence counsel may appeal against the ruling on detention to the panel (Article 21 paragraph 4). The appeal, ruling and other documents are immediately delivered to the panel. An appeal does not stay execution of the ruling.

A decision on the appeal is issued within 48 hours.

Article 216, Custody after indictment

From the filing of the indictment to the court until the commitment of the defendant to serve a custodial criminal sanction, detention may be ordered, extended or repealed by a ruling of the panel.

The ruling ordering, extending or repealing detention is issued *ex officio* or on a motion of the parties and the defence counsel.

The panel is required even without a motion of the parties and the defence counsel to examine whether reasons for detention still exist and to issue a ruling extending or repealing detention, at the expiry of each 30 days until the indictment is confirmed, and at the expiry of each 60 days after the indictment is confirmed and up to the adoption of a first instance judgment.

If after the indictment is confirmed detention is repealed because there are no grounds for suspicion about the existence of a criminal offence, the court will examine the indictment in accordance with Article 337 of this Code.

The parties and the defence counsel may appeal against the ruling referred to in paragraph 2 of this Article, and the public prosecutor may also appeal against a ruling denying a motion for ordering detention. The appeal, ruling and other documents are immediately delivered to the panel. An appeal does not stay the execution of the ruling.

Detention ordered or extended in accordance with the provisions of paragraphs 1 to 5 of this Article may last until the commitment of the defendant to serve a custodial criminal sanction, but no longer than the expiry of the duration of the criminal sanction pronounced in the first-instance judgment.

Article 242, Basic Rules on Delivery

Documents are as a rule delivered by an official of the authority conducting proceedings which issued the decision or directly at that authority, through the post office or other organisation registered to deliver documentation, authorities of local self-government, by letter rogatory through another public authority, by telecommunication or electronic means, and exceptionally also through the police.

Summons for a trial of other summons may also be verbally communicated by the authority conducting proceedings to a person who is before it, with a caution about the consequences of not attending. The summons and caution will be entered in the record which will be signed by the person summoned, except if it is designated in the trial transcript, and the service is thereby deemed executed.

Delivery may also be undertaken by posting on a notice board or webpage of the authority conducting proceedings, and, with the consent of the person to whom the delivery is to be made, also through a proxy for receiving documents, through a post office box or electronic mail. Delivery is deemed executed by the expiry of a time limit of eight days from the date of the posting of the document on the notice board or webpage of the authority conducting proceedings, or from the reception of a receipt that the document was served on the proxy for receiving documents, delivered to a post office box, or to an electronic mail address.

Article 280, Submitting a Criminal Complaint

State and other bodies, legal and natural persons report criminal offences which are prosecutable *ex officio* about which they were informed or they learn in other manner, under the conditions stipulated by law or other regulation.

It is stipulated by the Criminal Code in which cases a failure to report a criminal offence represents a criminal offence.

The submitter of the criminal complaint referred to in paragraph 1 of this Article will relate details known to him and undertake measures to preserve the traces of the criminal offence, objects on which or by means of which the criminal offence was committed, and other evidence.

Article 281, The Manner of Submitting and Recording a Criminal Complaint

A criminal complaint is submitted to the competent public prosecutor, in writing, orally, or by other means.

If a criminal complaint is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting. If the criminal complaint is communicated by telephone or other telecommunications medium an official note will be made, and if the complaint was submitted by electronic mail it will be saved on an appropriate recording medium and printed.

If a criminal complaint was submitted to the police, an incompetent public prosecutor or a court, they will receive the complaint and deliver it to the competent public prosecutor immediately.

Article 283, Deferral of Prosecution

The public prosecutor may defer criminal prosecution for criminal offenses punishable by fine or imprisonment up to five years if the suspect accepts one or more of the following measures:

- 1) to eliminate the detrimental consequences caused by the criminal offense or to compensate the damage caused;
- 2) to the account specified for payment of public revenues pay certain amounts of money, which are used for charitable or other public purposes;
- 3) to perform certain community service or humanitarian work;
- 4) to fulfill the payment obligations which have fallen due;
- 5) to submit to an alcohol or drug treatment program;
- 6) to undergo psychosocial treatment to eliminate the causes of violent behavior;
- 7) to carry out the obligation established by a final court decision, and respect the limit determined by the court.

The prosecuting attorney's order to defer will determine the time limit within which the suspect must fulfil commitments, but that period may not be longer than one year. Control over the execution of the obligations is performed by the Commissioner of the administrative body competent for execution of criminal sanctions, in accordance with the regulation issued by the Minister of Justice.

If the suspect fulfils the obligation referred to in paragraph 1 of this Article within the prescribed time limit, the public prosecutor will dismiss the criminal complaint by a ruling and notify the injured party, and the provision of Article 51 paragraph 2 of the Code shall not apply.

The funds referred to in paragraph 1, item 2) of this Article shall be awarded to charitable organizations, funds, public institutions or other persons or entities, after a public competition announced by the ministry in charge of judicial affairs.

The public tender referred to in paragraph 4 of this Article performed by the commission formed by the Minister of Justice.

Notwithstanding paragraphs. 4 and 5 of this Article, the commission may, at the request of a natural person, without conducting a public competition, propose that the funds referred to in paragraph 1, item 2), are awarded for medical treatment of children abroad, if the treatments are not provided in the Republic Fund for Health Insurance.

Implementation of a public competition, the criteria for allocation of funds, the composition and operation of the commission shall be regulated by an act of the Minister of Justice.

The decision on the allocation of funds under paragraph 1 item 2) of this Article by the Government.

Article 284, Rejection of Criminal Charges

The public prosecutor will dismiss a criminal complaint by a ruling if it proceeds from the complaint that:

- 1) the reported act is not a criminal offense that is prosecuted *ex officio*;
- 2) the statute of limitations has expired or the offense is subject to amnesty or pardon or there are other circumstances which permanently exclude prosecution;
- 3) there are no grounds for suspicion that a criminal offense which is prosecutable *ex officio* has been committed.

The public prosecutor will notify the injured party within eight days about the dismissal of the criminal complaint and the reasons thereof and advise him of his rights (Article 51 paragraph 1), and if the criminal complaint was submitted by a police authority, he will also notify that authority.

In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal complaint if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case the provision of Article 51 paragraph 2 of this Code will not be applied.

Article 285, The Authority of the Public Prosecutor

The public prosecutor manages preliminary investigation proceedings.

In order to exercise the powers referred to in paragraph 1 of this Article, the public prosecutor shall take the necessary actions to prosecute offenders.

The public prosecutor may order the police to take certain actions to detect crimes and locate suspects. The police are obliged to execute the order of the public prosecutor, as well as to inform him regularly on the actions taken.

In the event of failure of the police on the orders, the public prosecutor shall act in accordance with Article 44 para. 2 and 3 of this Code.

During the pre-investigation proceedings the public prosecutor is authorised to assume from the police the performance of an action which the police had undertaken on its own pursuant to the law.

Article 286, Police Powers

If there are grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed, the police are required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all information which could be of benefit for the successful conduct of criminal proceedings.

For the purpose of fulfilling the duty referred to in paragraph 1 of this Article, the police may: seek necessary information from citizens; perform necessary inspection of vehicles, passengers and luggage; restrict movement in a certain space for a necessary period of time and up to a maximum of eight hours; undertake necessary measures in connection with the establishment of the identity of persons and objects; post a wanted circular for a person and objects being searched for; in the presence of a responsible person inspect certain facilities and premises of public authorities, enterprises, shops and other legal persons, inspect their documentation and if needed seize it; undertake other necessary measures and actions. A transcript or an official note will be made of facts and circumstances established during the performance of certain actions, as well as objects found or seized, which may be of interest for the criminal proceedings.

By order of the preliminary proceedings, and on the request of the prosecutor, the police can in order to fulfill the obligations specified in paragraph 1 of this Article obtain a record of telephone communications or the base stations used, or perform location of the place from where a communication is being conducted.

The police immediately, or no later than 24 hours after performing them, notify the public prosecutor about the performance of the measures and actions referred to in paragraphs 2 and 3 of this Article.

A person against whom any of the measures and actions referred to in paragraphs 2 and 3 of this Article has been applied is entitled to submit a complaint to the competent judge for preliminary proceedings.

Article 291, Police Arrest

The police may arrest a person if there exists a reason for ordering detention (Article 211), but it is required to take such a person without delay to the competent public prosecutor. When bringing the person in, the police will submit to the public prosecutor a report on the reasons for and time of the arrest.

The person arrested must be advised of the rights referred to in Article 69 paragraph 1 of this Code.

If the taking of the arrested person [to the prosecutor] due to unavoidable obstacles lasted more than eight hours, the police are required to explain the delay in detail to the public prosecutor, about which the public prosecutor will draft an official note. The public prosecutor will enter in the note the arrested person's statement about the time and place of the arrest.

Article 294, Keeping a Suspect in Custody

The public prosecutor may exceptionally keep in custody for the purpose of questioning a person arrested in accordance with Article 291 paragraph 1 and Article 292 paragraph 1 of this Code, as well as

the suspect referred to in Article 289 paragraphs 1 and 2 of this Code, not more than 48 hours from the time of the arrest, or the response to a summons.

The public prosecutor, or upon his authorisation, the police, issues and serves a ruling on custody immediately, or not more than two hours after the suspect was told that he would be kept in custody. The ruling must specify the offence of which the suspect is accused, grounds for suspicion, date and time of deprivation of liberty or response to a summons, as well as time of commencement of the custody.

The suspect and his defence counsel are entitled to appeal against the ruling on custody within six hours of the delivery of the ruling. A decision on the appeal is issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal does not stay the execution of the ruling.

The suspect is entitled to the rights referred to in Article 69 paragraph 1 of this Code.

The suspect must have a defence counsel as soon as the authority conducting proceedings referred to in paragraph 2 of this Article issues a ruling on custody. If the suspect does not retain a defence counsel on his own within four hours, the public prosecutor will secure one for him *ex officio*, according to the order on the list of lawyers submitted by the competent bar association.

Article 337, Examination of the Indictment

The panel (Article 21 paragraph 4) will examine the indictment within 15 days from the expiry of the time limit for submitting a response to the indictment (Article 336 paragraph 1).

If the panel determines that another court is competent for the criminal offence which is the subject-matter of the charges, it will issue a ruling on the incompetence of the court and after the ruling becomes final it will deliver the case to the competent court.

When the panel determines that a better clarification of the state of the matter is required in order to assess whether the indictment is justified, it will order a supplemental investigation, or an investigation to be conducted, or certain evidence be collected.

The public prosecutor will, within three days from the day the decision of the panel referred to in paragraph 3 of this Article is communicated to him, issue an order to supplement or to conduct an investigation, and a private prosecutor will collect evidence within 30 days from the date of announcement of the decision. At the request of the prosecutor, the panel may extend this time limit, for justified reasons.

If the public prosecutor misses the deadline referred to in paragraph 4 of this Article, he is required to notify the immediately superior public prosecutor of the reasons for missing the deadline, and in case a private prosecutor misses the aforesaid time limit, it will be presumed that he has decided to desist from prosecution and the charges will be dismissed by a ruling.

If the panel determines that the files contain transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, it will issue a ruling excluding them from the files. A special appeal against this ruling is allowed.

Once the ruling referred to in paragraph 6 of this Article becomes final the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

Article 512, The Conditions for Holding Hearings

For criminal offences punishable by a fine or a term of imprisonment of up to five years as the principal penalty, the public prosecutor may in his motion to indict request the holding of a hearing for the imposition of a criminal sanction.

The public prosecutor may make the request referred to in paragraph 1 of this Article if he deems the holding of a trial unnecessary because of the complexity of the case and the evidence collected, and especially because the defendant was arrested during the commission of the criminal offence or has confessed the criminal offence.

If the public prosecutor acts in accordance with paragraph 2 of this Article, he may propose that the court impose on the defendant:

1) a term of imprisonment of up to two years, a fine of up to two hundred and forty daily amounts or up to five hundred thousand dinars or probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to five years – if the defendant has confessed to the commission of a criminal offence punishable by a term of imprisonment of up to five years;

2) a term of imprisonment of up to one year, a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars, up to two hundred and forty hours of community service, revocation of the driver's license for up to one year, probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to three years, with a possibility of placing the defendant under protective supervision or imposing a judicial admonition – if the defendant has committed a criminal offence punishable by a fine or a term of imprisonment of up to three years as the principal penalty.

Article 545, Initiation of Proceedings [to revoke probation]

Proceedings for revoking probation are instituted at the request of an authorised prosecutor before the court which adjudicated in the first instance:

- 1) if it was said in the judgment in which probation was imposed that the penalty would be enforced if the convicted person failed to return the proceeds from crime, indemnify the damage he had caused by the criminal offence or fulfil other obligations stipulated by the criminal law within a specified time limit;
- 2) if a convicted person on whom protective supervision has been imposed does not fulfil the obligations ordered by the court.

Family Law (Official Gazette no. 18/2005, 72/2011 and 6/2015)

Article 7, Parents

- (1) Parental rights belong to the mother and father together

Article 10, Domestic Violence

- (1) Domestic violence is prohibited.
- (2) Everyone has, in accordance with the law, the right to protection from domestic violence.

Article 197, Domestic Violence

- (1) Domestic violence, under this law, is the behavior of a family member that threatens the physical integrity, mental health or tranquility of another family member.

- (2) domestic violence, in terms of paragraph 1 of this Article, shall be limited to:

First causing or attempting to cause bodily injury;

Second causing fear of the threat of death or bodily harm to a family member or another close to him/her;

Third forced sexual intercourse;

Fourth incitement to sexual intercourse or sexual intercourse with a person under 14 years of age or a disabled person;

Fifth restricting freedom of movement or communication with third parties;

Sixth insults, like any other presumptuous, reckless and malicious behavior.

(3) Family members within the meaning of paragraph 1 of this Article shall be considered:

First spouses or former spouses;

Second children, parents and other blood relatives, and persons in-law or adoptive relations or persons associated by foster care;

Third persons who live or have lived in the same household;

Fourth common-law spouses or former common-law partners;

Fifth Persons who have each been or are still in an emotional or sexual relationship, or who have a child together or the child is to be born, although they have never lived in the same household.

Article 198, Protection Measures

(1) The court may order one or more measures of protection from domestic violence pertaining to a family member who acts violently, temporarily prohibiting or restricting personal relationships with other members of the family.

(2) Measures of protection from domestic violence are:

1. order for eviction from the family apartment or house, regardless of the right of ownership or lease of real property;
2. issuing of orders to move into the family apartment or house, regardless of the right of ownership or lease of real property;
3. prohibition of getting closer to a family member than a certain distance;
4. restriction of access to the place of residence or place of work of a family member;
5. prohibition of further harassment of a family member.

(3) The measure of protection from domestic violence can last up to a year.

(4) The time spent in custody as well as any deprivation of liberty in connection with a criminal offense or an offense is included in the duration of the measures of protection against domestic violence.

Article 229, Scope of the Mediation Process

The mediation procedure (hereinafter: mediation) involves a process of reconciliation attempt (hereinafter: reconciliation) and procedure for attempted amicable resolution of disputes (hereinafter: the settlement).

Article 230, When Conducting Mediation

(1) Transmission is regularly carried out with the procedure in marital disputes launched by a lawsuit of one of the spouses.

(2) Mediation in marital conflict is not implemented:

1. If one spouse does not agree to mediation;
2. If one of the spouses is incapable of reasoning;
3. If the residence of a spouse unknown;
4. If one or both spouses live abroad.

Article 231, Who Carries Out Mediation

(1) Mediation, as a rule, is conducted by the court.

(2) The notice of the mediation hearing shall be submitted with the action for annulment or divorce.

(3) The judge in charge of the mediation cannot participate in the decision at a later stage of the proceedings, unless the mediation has been successful.

Article 232, Mediation

(1) Upon receipt of a claim for annulment or divorce, the court shall schedule a hearing for mediation that takes place before an individual judge.

(2) The judge in charge of the mediation shall recommend to the spouses to undergo psycho-social counseling.

(3) If the spouses agree to psycho-social counseling, the court shall at their request or with their agreement, entrust the mediation to the competent guardianship authority, marital or family counseling, or other institution that specializes in mediation in family relations.

(4) Delegating is done by submitting a claim for annulment or divorce.

Article 233, When conducting reconciliation

Reconciliation is conducted only in the marital dispute launched by a lawsuit for divorce.

Article 234, Purpose of Reconciliation

The purpose of reconciliation is to resolve the troubled relationship between spouses without conflict and without divorce.

Article 239, Duration of Reconciliation

(1) The court or the institution which is entrusted with the mediation process is required to implement reconciliation within two months from receipt of the action to the court or institution.

(2) If an institution which is entrusted with the mediation process does not inform the court on the results of reconciliation, within three months from the date when it was sent for divorce, the reconciliation procedure will be implemented by the court.

(3) The court shall schedule the reconciliation hearing within 15 days after the deadline referred to in paragraph 2 of this Article.

Article 240, When conducting settlement

The settlement is carried out in a marital dispute launched by a lawsuit for annulment of marriage or for divorce, in which reconciliation failed.

Article 241, The purpose of settlement

(1) The purpose of settlement is to resolve the troubled relationship between spouses without conflict after the annulment or divorce.

(2) The court or the institution which is entrusted with the mediation process will seek that the spouses reach an agreement on the exercise of parental rights and agreement on the division of joint property.

Article 270, Findings and expert opinion

Before making a decision on the protection of children's rights or the award or taking of parental rights, the court is obliged to ask for the findings and expert opinion of the guardianship authority, family counseling or other institution specialized in mediation in family relations.

Article 284, Initiation of Proceedings

(1) The procedure in the dispute for protection against domestic violence is initiated by an action.

(2) An action to determine the extent of protection against domestic violence, as well as the extension of the measures of protection against domestic violence, may be submitted: a family member against whom violence is committed, his legal representative, the public prosecutor and the guardianship authority.

(3) The claim for the termination of the protection of domestic violence may be submitted by a family member against whom the measure is determined.

Article 285, Particular Urgency

(1) The procedure in the dispute for protection against domestic violence is particularly urgent.

(2) The first hearing shall be scheduled so that it takes place within eight days from the day the complaint was received by the court.

(3) The second instance court shall render a decision within 15 days of the submission of the appeal.

Article 286, Guardianship Authority

If the guardianship authority did not institute proceedings in the dispute for protection against domestic violence, the court may ask the guardianship authority to assist in obtaining the necessary evidence and to give an opinion on the appropriateness of the requested measures.

Article 289, Records and Documents about Domestic Violence

(1) The court is obliged to immediately submit the judgment in a dispute over protection of domestic violence both to the guardianship authority in the territory where the family member against whom violence is committed has permanent or temporary residence, and to the guardianship authority in the territory where a family member against whom a measure of protection is determined has permanent or temporary residence.

(2) The guardianship authority shall keep records and documents both on the persons against whom violence is committed and on the persons against whom a certain measure of protection has been ordered.

(3) The minister responsible for family protection prescribes the method of keeping records and documentation.

Law on Public Peace and Order (Official Gazette, no. 51/92, 53/93, 67/93, 48/94, 101/2005, 85/2005) (replaced by Law on Public Peace and Order (Official Gazette no. 06/2016))

Article 6

Whoever disrupts public order and peace by argument or shouting, or interferes with safety of citizens shall be punished by a fine of up to 20,000 dinars or imprisonment for up to 20 days.

Whoever interferes with safety of another by threatening one's life or bodily harm, or threatens the same to someone with a close relationship to that individual shall be punished by a fine of up to 25,000 dinars or imprisonment for up to 30 days.

Whoever uses insults or mistreatment of another, uses force against another, provokes physical fight or participates in one, which results in interference of citizen's peace or disruption of public order and peace, shall be punished by a fine of up to 30,000 dinars or imprisonment for up to 60 days.

When any violations 1 through 3 above are committed in a group, the punishment will be imprisonment up to 60 days.

Article 12

Whoever engages in the act of begging, indecent, impudent and ruthless behavior, which results in interference with citizen's peace or disruption of public order and peace, shall be punished by a fine of up to 20,000 dinars or imprisonment for up to 30 days.

Whoever organizes begging or who participates in group begging shall be punished by a fine of up to 30,000 dinars or imprisonment for up to 60 days.

Law on Public Peace and Order (Official Gazette of RS no. 06/2016) (replacing Law on Public Peace and Order (Official Gazette, no. 51/92, 53/93, 67/93, 48/94, 101/2005, 85/2005))

Article 3, Definitions

For the purposes of this Act the following terms have the following meanings:

...

2) a public place - is space available to an undetermined number of persons whose identity is not determined in advance, under the same conditions or without special conditions;

...

12) rude, impertinent, reckless behavior - is the behavior of a person or undertaking actions in public, endangering the safety of citizens or disturbs public order, offends morality of citizens, destroys or damages property;

...

It shall be a violation or an offense under this Act if it was committed in a public place, and when the action executed at a place in terms of paragraph 1, item 2) above is not considered a public place, if the place is available regarding the audibility or public places or the consequence occurred in a public place.

Article 7, Arguing, clamor and noise in public places

When a fight or cry disturbs public order or creates anxiety among citizens - shall be punished by a fine of 5,000 to 20,000 dinars.

Whoever disrupts public order or creates anxiety among citizens, performing music and other content, using musical instruments, radio and television receivers and other audio devices, as well as mechanical sources of noise and acoustic signals (ignition, horn, etc.) - shall be punished between 5,000 and 30,000 dinars.

When an offense referred to in paragraphs. 1 and 2 of this Article shall be in a group of three or more persons - shall be fined 20,000 to 50,000 dinars.

Article 8, Rude, insolent and ruthless behavior

When rude, insolent or arrogant behavior violates public order or endangers property or offends morality of citizens - shall be fined 10,000 to 150,000 dinars or work in the public interest 80-360 hours.

When an offense referred to in paragraph 1 of this Article shall be committed in a group of three or more persons - shall be sentenced to work in the public interest of 240 to 360 hours or by imprisonment for 30 to 60 days.

Article 9, Insulting, of violence, threat or hail

Whoever insults another or commits violence against others or threatens to disrupt public order shall be fined 20,000 to 100,000 dinars or by imprisonment for 10 to 30 days.

Whoever by provoking a fight or by participating in it disrupts public order - shall be fined 50,000 to 150,000 dinars or by imprisonment for 30 to 60 days.

When an offense referred to in paragraphs. 1 to 2 of this Article shall be in a group of three or more persons - shall be punished by imprisonment for 30 to 60 days.

The attempt to paragraphs 1, 2 and 3 of this Article shall be punished.

Article 25, Protective measures

Protective measures of forfeiture, compulsory treatment of addicts of alcohol and other psychoactive substances, mandatory psychiatric treatment, restraining the victim, facilities or place of the offense for violations of this law, in addition to fines, can be imposed under the conditions prescribed by the law regulating misdemeanors

Misdemeanor Law (Official Gazette no. 65/2013)

Article 13, Self-Defense

No offense if the act is prescribed as an offense was committed in self-defense.

Self-defense is a defense that it is necessary to the offender of his good or good to another to avert an immediate and unlawful attack.

The perpetrator who has exceeded the limits of necessary defense may be punished less severely. If this exceeds the limits under particularly mitigating circumstances, the offender may be released from punishment.

Article 19, Insanity

An insane perpetrator is not responsible for the offense.

Insane is an offender who could not understand the significance of his proceedings or could not control his actions due to mental illness, temporary mental disorder, mental retardation or other severe mental disorder.

An offender whose ability to comprehend the significance of his work or the ability to control his conduct was considerably diminished due to a condition referred to in paragraph 2 above (considerably diminished mental capacity) can be mitigated punishment.

It is not considered insane, an offender who uses alcohol or otherwise brought himself in a state of not being capable to comprehend the significance of his actions or could not control his actions if at the time of bringing himself into such a state, he was aware or ought to and could be aware that in such a state, he can commit the offense.

Article 32, Penal Sanctions

Sanctions are:

- 1) fines;
- 2) penalty points;
- 3) warning;
- 4) protective measures;
- 5) educational measures.

Article 33, Penalties

For the offense, a prison sentence, a fine and community service may be prescribed.

Within the general purpose of sanctions (Article 5, paragraph 2) the purpose of punishment is to express social reproach to an offender for committing the offense and to influence him and to all other persons not to committ offenses in the future.

Article 34, The Method of Prescribing Penalties

For an offense, imprisonment and fine and both may be imposed together.

. . . .

Article 37, Imprisonment

Imprisonment may not be prescribed for a period of less than one or more than sixty days.

Imprisonment may not be imposed on a pregnant woman after three months of pregnancy, or the mother until the child reaches one year of age, and if the child was stillborn or died after birth until after six months from the date of delivery.

Article 38, Community Service

Community service is unpaid work for the benefit of society, which is not done under duress, that does not offend human dignity, and that does not generate profit.

Community service can not last less than 20 hours nor for more than 360 hours.

When imposing community service, the court will have regard to the type of offense, age, physical and working ability, psychological traits, education, preferences and other special circumstances related to the personality of the offender.

If the convicted person does not perform part or all punishment imposed in the sentence of community service, the court shall replace this punishment by imprisonment by fixing one day in prison for each initiated eight hours of community service.

Article 39, Money Fine

Law or regulation imposing a fine may be prescribed in the range:

1) 5,000 to 150,000 dinars for a natural person or a responsible person;

...

Notwithstanding the provisions of paragraphs. 1 and 2 of this Article, a fine may be prescribed in a fixed amount for a natural person and responsible person of 1,000 to 10,000 dinars for entrepreneurs from 5,000 to 50,000 dinars for a legal entity from 10,000 to 100,000 dinars.

2016 amendments:

Notwithstanding the provisions of paragraph 1 of this Article, a fine may be prescribed in a fixed amount for a natural person and a responsible person from 1,000 to 50,000 dinars, for an entrepreneur from 5,000 to 150,000 dinars, and for a legal person from 10,000 to 300,000 dinars.

....

Article 42, Sentencing

The penalty for violations are measured within the limits prescribed for the offense, and in doing so take into account all the circumstances that affect the sentence to be higher or lower, in particular: the weight and consequences of the offense, the circumstances under which the offense was committed, the degree of responsibility of the offender, previous convictions, the personal circumstances of the offender and the offender behavior after the offense has been committed.

Previously imposed sanctions cannot be considered as an aggravating circumstance, if more than four years have elapsed from the date of the decision until a new passing.

In determining the amount of the fine, the financial condition of the offender shall be taken into account.

Article 50, Warning

Instead of a fine, a warning may be issued if there are circumstances which significantly diminish the responsibility of the offender, so that it can be expected that in the future refrain from committing offenses and without penalty.

A warning may be imposed if the offense is reflected in the non-fulfillment of requirement or the offense has caused damage, and the perpetrator after the initiation of the proceedings but prior to the conviction, has fulfilled the prescribed obligation, or eliminated or compensated for the damage suffered.

Article 51, The purpose of prescribing [protective measures]

Within the general purpose of sanctions (Article 5, paragraph 2), the purpose of the application of protective measures is to eliminate the conditions which enable or encourage the offender to commit new offenses.

Protective measures may be prescribed by law and regulation.

Article 52, Types of Protective Measures

For violations may be prescribed the following protective measures:

- 1) forfeiture;
- 2) prohibition to perform certain activities;
- 3) the prohibition of the legal person from performing certain activities;
- 4) prohibition of the responsible person from performing certain tasks;
- 5) prohibition of driving a motor vehicle;
- 6) compulsory treatment of alcohol and substance abuse;
- 7) compulsory psychiatric treatment;
- 8) access to the victim, objects or the scene of the violation;
- 9) ban on attending certain sports events;
- 10) publication of the judgment;
- 11) removal of an alien from the territory of the Republic of Serbia;
- 12) confiscation of animals and ban on keeping animals.

Protective measures of forfeiture, compulsory treatment of addiction to alcohol and other psychoactive substances, mandatory psychiatric treatment, access to the victim, objects or the scene of the offense, and the removal of aliens from the territory of the Republic of Serbia may be imposed under the conditions prescribed by this law and not provided for by regularion for a certain offense.

Protective measures to prohibit the performance of particular activities and the publication of the judgment cannot be imposed on minors.

Article 53, Protective Measures

When the conditions for the imposition of protective measures provided for in this or any other law, one or more protective measures may be imposed on the offender.

Protective measures shall be imposed with the punishment, warning or educational measure.

Notwithstanding paragraph 2 of this Article, protective measures may be ordered individually if such possibility is prescribed.

Article 59, [Treatment of Alcohol and Substance Abuse]

Mandatory treatment of alcohol and substance abuse may be imposed to a person who commits an offense due to addiction to alcohol or psychoactive substances and in which there is a danger that, due to this addiction, continues to commit a crime.

Before taking actions referred to in paragraph 1 of this Article, the court shall obtain the opinion of an expert, or an authorized health organizations.

In imposing the measures referred to in paragraph 1 of this Article, the offender shall be ordered compulsory treatment in an appropriate medical or other specialized institution. If the offender without justifiable reason refuses treatment, the measures will be enforced by force.

The protective measures referred to in paragraph 1 of this Article may last no longer than one year, and the enforcement of the measures shall be terminated before expiry of the period specified in the judgment if the health organization finds that the treatment is completed.

Article 60, Mandatory Psychiatric Treatment

An offender who has been in a state of mental incompetence has committed an offense, the court shall impose mandatory psychiatric treatment if it finds that there is a serious risk that the offender will re-offend, and psychiatric treatment is needed to eliminate the danger.

Mandatory psychiatric treatment is the only sanction that can be pronounced independently on an infrequent offender.

Under the terms of paragraph 1 of this Article, the court may impose mandatory psychiatric treatment on an offender whose mental capacity is substantially diminished, if he was fined, community service, reprimand or is exempt from punishment.

Mandatory psychiatric treatment is carried out at liberty and lasts until there is a need of treatment, but not longer than one year.

For a more successful treatment, it may be determined to periodically carry out the treatment in a medical institution with the continuous treatment in an institution not exceeding 15 days, and can be taken up to two times during the year.

If in the case of no. 1 and 3 of this Article, the offender fails to undergo treatment at liberty or of his own accord, the court may order that the protective measure implemented in a medical institution under the terms of paragraph 4 of this article.

Article 61, Restrict access to the injured, building or [location]

Restricting access to the injured, buildings or spot is pronounced to prevent the offender from re-offending or continuing to threaten the victim.

The measure referred to in paragraph 1 of this Article shall be imposed on the applicant's written proposal for initiating criminal proceedings or on an oral request of the [injured] pronounced during the hearing in misdemeanor proceedings.

The decision of the court issuing the restraining order must contain: the time period in which it is executed, data on persons who the offender cannot access, an identification of objects the offender cannot access and at what time, place or location in which the offender is prohibited access.

Prohibition to approach the injured includes the measure of prohibiting access to a shared flat or household during the period covered by a ban.

Protective measures prohibiting access may be imposed for a period of one year, counting from the enforceability of the judgment.

The injured party, police department responsible for enforcement measures, and competent guardianship authority shall be informed of the court's decision to impose a restraining order if the measure applies to ban the perpetrator access to children, a spouse or family members.

Article 62, Violation of the prohibition of access to the injured, building, or [location]

The offender where in the final judgment has been prohibited access, and who approaches the victim, premises or [place] during the duration of the measure or makes contact with the injured party in an improper way or in unauthorized time shall be subject to sanctions under the regulation which provides for the offense for which he received this measure.

Article 85, Execution of Punishments and Protective Measures

The imposed sentence and the protective measure cannot be executed if one year has elapsed since the date of the verdict.

The statute of limitations to execute the punishment and protective measures begins from the date of the judgment imposing the punishment or protective measure.

The statute of limitations to execute the punishment and protective measures shall be suspended for the period during which the execution cannot be undertaken by law.

The statute of limitations is interrupted by any act of the competent authority which relates to the execution of the sentence or protective measures.

After each interruption, the statute of limitations begins to run again.

Execution of the sentence or protective measures is precluded in any case when twice as much time as is required by law for the enforcement of the sentence or protective measures.

Article 121, Representative of the Legal Person

A representative of the legal person is a person authorized to represent the legal person or represents the legal person on the basis of a law or other act.

A representative of the legal person referred to in paragraph 1 of this Article, except the legal representative, must have a written authorization of the authority that appointed the representative.

A representative of the legal person may be just one person.

Article 126, Damages

The injured party, in terms of this law, is the person whose personal or property rights have been violated or threatened by an offense.

The injured party who has reached the age of sixteen can file a request for initiating criminal proceedings.

The injured party has the right on his own or through his legal representative or authorized agent:

1) submits and represents a request for initiating criminal proceedings;

- 2) submit evidence, make proposals and point out a property claim for damages or restitution of things;
- 3) declares an appeal against the judgment or decision was made on his request to initiate criminal proceedings;
- 4) submit evidence on which the court may order that the defendant, in the course of misdemeanor proceedings, must not approach the victim, facilities or the scene of the offense.

Process measure prohibiting access in paragraph 3, item 4) of this Article may last as long as the reasons for its imposition, but no later than when the proceedings are concluded.

An appeal against the ruling imposing a restraining order shall be filed within three days from the date of delivery and not postpone the execution.

Article 127, The Public Prosecutor as a Party to the Proceedings

The public prosecutor is a party to the offense proceedings.

Public Prosecutor:

- 1) takes measures to detect, investigate and obtain the necessary evidence for the prosecution of offenses and the successful conduct of misdemeanor proceedings before the court;
- 2) files a request for initiating criminal proceedings, appeal or extraordinary remedy against the court's decision;
- 3) takes other actions to which he is authorized by this law and special regulations.

The public prosecutor is actually competent to act in misdemeanor proceedings if he has submitted a request for initiating misdemeanor proceedings.

If the Public Prosecutor first filed for court proceedings, proceedings shall be conducted upon request, and continue at the request of the injured party or other authority responsible for the submission of the request for proceedings if the public prosecutor withdraws the request.

If he gives up the request for initiating misdemeanor proceedings, the public prosecutor shall within eight days from the date of withdrawal of the application, notify the injured party or other person authorized to institute proceedings in order to continue the process.

If the injured party or other authorized body to initiate misdemeanor proceedings already filed a motion to institute proceedings, the proceedings shall continue on that request.

Article 128, The Other Entity Authorized to Submit Claims

When another authority is in charge of filing misdemeanor proceedings, he has all the rights of the public prosecutor as a party to the proceedings, except those belonging to the public prosecutor, as a state body.

The competent authority referred to in paragraph 1 of this Article shall inform the injured party whether he submitted a request to initiate misdemeanor proceedings.

If the competent authority under paragraph 1 of this Article shall file a request for initiating misdemeanor proceedings for an offense for which a prison sentence is prescribed, it shall inform the competent public prosecutor, who will decide on the takeover of prosecution.

The competent public prosecutor shall inform the competent authority referred to in paragraph 1 of this article in writing of the decision referred to in paragraph 3 of this article.

Article 156, Delivery of Letters

Documents shall be served by mail, other services authorized for delivery, an official of the court or other authority or directly to the court premises.

Delivery can be carried out electronically, in accordance with special regulations if there are conditions.

The delivery is done every day in the workplace or in the business premises during business hours, or in an apartment from 7 to 22 hours, or in court when the person to whom delivery is to be made is there or when the court calls for the summons to be delivered.

Delivery may take place at another time and in another place on the basis of a special decision by the court at the request of the person to whom delivery is made, which the person to whom the delivery is made is obliged to show.

Call for an oral hearing or other summons and the court may verbally communicate to the person in front of it there, along with instruction on the consequences of failure to appear. Such verbal call will be recorded in the minutes which the person summoned shall sign, unless the call is recorded in the minutes of the hearing, which is deemed to have been served.

Article 160, Submission of an Absent Person

If one is not found at the address where the delivery was to be made, it will be left in the mailbox or to the door a notice that the person to be served take it over by the court within 15 days of attempted delivery.

At the end of the term in paragraph 1 of this Article, the writing will be posted on the bulletin board and website of the Court, if there are technical conditions. Delivery is completed after a period of eight days from the date of posting documents on the notice board and website of the court.

The notice referred to in paragraph 1 of this Article shall contain: name and surname of the person who has attempted delivery, status in the proceedings, the date and time when the delivery was attempted, the address where the delivery was attempted, indicating in writing a warning that in case of not taking copies of documents in court, in which deadline copies of the paprt will be displayed on the board and on the website of the court, and that in this case at the end of eight days, it will be deemed delivered.

If it is established that the person to whom the communication is to be delivered is absent or temporarily residing at a different address, and that it therefore cannot be written at the time of delivery, the document shall be returned to the court with an indication where the absent is, and when and where he will be able to perform the service of documents.

If, during a repeated attempt, the writing cannot be delivered in time and place to be determined in the manner described in paragraph 4 of this Article, the document will be posted on the bulletin board and website of the court if there are technical conditions. Delivery is completed after a period of eight days from the date of posting documents on the notice board and website of the court.

2016 amendments:

If the writing can not be delivered to the address referred to in Article 158, paragraph 1 of this law, the court will check the address and if the repeated attempt writing cannot be delivered to the address at which the person is registered, shall be treated in the manner prescribed in paragraph second this article.

Article 179, The Application for Initiating Criminal Proceedings

The request for initiating misdemeanor proceedings shall be filed by the competent authority or injured party (hereinafter referred to as the applicant).

The authorized bodies referred to in paragraph 1 of this Article are administrative bodies, authorized inspectors, public prosecutors and other agencies and organizations exercising public authority in charge of direct enforcement or control over enforcement of rules regulating the infractions.

Article 180, The Subsidiary of the Motion to Initiate Misdemeanor Proceedings

The injured party is entitled to file a request for initiating misdemeanor proceedings always unless the law does not require the initiation of misdemeanor proceedings exclusively by the authorized body under Article 179, paragraph 2 hereof.

The injured party who has filed a request for initiating misdemeanor proceedings has the status of a party to the proceedings.

If in the case of paragraph 1 of this Article, the authorized body does not submit a request for initiating misdemeanor proceedings, the injured party may in accordance with the provisions of this Act submit such a request.

If a request for initiation of proceedings is filed by an authorized body before it starts the proceedings upon the request of the injured party, it shall proceed to request the initiation of proceedings from the competent authority.

Misdemeanor charges filed by the injured party to the competent authority under the terms of this Law shall be considered a request for initiating misdemeanor proceedings if the authorized body itself does not initiate misdemeanor proceedings.

In the case of the preceding paragraph, the authorized body shall, within eight days of the filed misdemeanor charges, inform the injured party in writing that he has acted with the misdemeanor charges.

The injured party may, during the proceedings, continue prosecution if the public prosecutor withdraws the request for proceedings. The injured party may remain in the earlier application or change it.

Article 190, Bringing the Suspect to Commit an Offense Before Initiating Proceedings

Authorized police officers can and without a court order arrest a person caught in the act of breaching:

- 1) if the person's identity can not be determined or there is a need authentication;
- 2) if there is no permanent or temporary residence;
- 3) if by going abroad you can avoid responsibility for a misdemeanor, and in terms of the offenses for which it can not issue a misdemeanor warrant;
- 4) if by bribing it is prevented from continuing the offense or if there is a risk that it will immediately proceed with the commission of an offense.

Bringing a suspect in the cases referred to in paragraph 1 of this Article shall be made without delay.

If in the cases referred to in paragraph 1 of this Article, the suspect is found committing the offense and cannot be immediately taken to court, and there are grounds to suspect that the suspect will escape or there is danger that they will immediately resume the offenses, a police officer may detain the suspect for up to 24 hours.

In the case referred to in paragraph 3 of this Article, the authorized officer shall forthwith notify the detained person, as well as diplomatic and consular representatives of the State of his country of residence, or representatives of relevant international organizations if the detained person is a refugee or a stateless person.

Notwithstanding paragraph 1, retention measures of this article can be imposed on a minor only by court order.

2016 amendments:

The retention decision is taken on possession of the suspect.

Against the decision of detention, the accused and his counsel have the right to appeal within four hours of delivery of the decision on detention.

An appeal is decided by a single judge of the territorial competent magistrates' court within four hours of receiving the complaint.

The appeal does not stay the execution of the decision.

The provisions of paragraphs 6 to 9 of this article shall also apply to the detention of persons under the influence of alcohol or other psychoactive substances.

Article 191, Retention of the Defendant

In the trial, the accused may be detained by a court order in the following cases:

- 1) if you can not establish his identity or place of residence or temporary residence, and there is reasonable doubt that they will escape;
- 2) if by going abroad you can avoid responsibility for the offense punishable by imprisonment;
- 3) if he was caught in the commission of the misdemeanor and detention is required to prevent further commission of the misdemeanor.

A judge shall inform family members of detained persons or other persons responsible for the care of a minor if a detention is prescribed.

Article 192, Order on Detention

On retention of the accused, the court makes an order indicating the day and hour when he was ordered detained as well as the legal basis for retention. Retention can not be longer than 24 hours.

The order of detention shall be communicated to the defendant with a signature.

An accused person who is detained shall be allowed without delay to notify the person of their choice, as well as diplomatic and consular representatives of the State of which he is a citizen or representative of relevant international organizations when it comes to refugee or stateless person or counsel, if the defense counsel was not present during his hearing.

Article 193, Detention of Persons under the Influence of Alcohol or Other Psychoactive Substances

A person under the influence of alcohol or other psychoactive substances found committing offenses may be detained on the order of a court or upon the decision of authorized police officers if there is a risk that it will continue to carry out violations.

Detention in a case referred to in paragraph 1 of this Article may last until the sobering up, but no longer than 12 hours.

If the person referred to in paragraph 1 of this Article, the driver of a motor vehicle and has more than 1.20 mg/ml of alcohol in the blood or is under the influence of other intoxicating substances, retention is required.

Retention is mandatory when a person referred to in paragraph 1 of this Article refuses to submit to a test for the presence of alcohol or other intoxicating substances.

If possible, in the case referred to in paragraph 1 of this Article, the judge shall inform family members of the detained person or other persons responsible for the care of the minor if detention is prescribed.

Article 207, Property Witnesses

Persons who are likely to be able to give information about the offense and the perpetrator and other relevant circumstances are called as witnesses.

2016 amendments:

The injured party may be examined as a witness.

Article 211, Exemption from the Duty to Testify

They were released from the duty to testify:

- 1) the spouse of the defendant;
- 2) defendant's relatives by blood in a direct line, relatives in the lateral line to the third degree, and relatives by marriage to the second degree inclusive;
- 3) an adopted child and adoptive parent of the defendant;
- 4) religious confessor about what the accused has confessed to.

The judge conducting misdemeanor proceedings shall under paragraph 1 of this Article, prior to their hearing or as soon as it learns about their relation to the defendant, warn that they do not have to testify. The warning and answer must be entered in the record.

The minor who due to age and mental development is unable to comprehend the importance of his privilege not to testify may not be examined as a witness, unless the defendant himself demands.

A person who has basis to deny testimony to one of the defendants is exempt from the duty to testify against other defendants if his testimony, by its nature, cannot be restricted solely to the other defendants.

Article 215, Confrontation of Witnesses

Witnesses may be confronted if their testimony disagrees with respect to important facts. Faced with each other individually about each circumstance on which their testimony disagrees and to hear their answer on the record.

At the same time only two witnesses may be faced.

To confront witnesses, the provisions of Article 205, paragraph 2 hereof shall apply.

A minor under fourteen years, who will be heard as a witness, cannot face the defendant and the other witnesses.

The minor aged fourteen and under the age of eighteen, which will be heard as a witness, cannot face the defendant and the other witnesses, if due to the nature of the offense, the consequences and other circumstances, this person is particularly sensitive, or is at a particularly difficult mental state.

Article 252, Publication of the Judgment

The verdict is published orally if the defendant is present, and a written judgment with an explanation shall be forwarded to the defendant and the applicant only if it is requested.

If the judgment is announced, the minutes shall include only the verdict and notes that the judgment was orally delivered, a brief explanation of the judgment, and instruction on legal remedy.

If the defendant requests that it receive a written judgment, the court is obliged to submit it within eight days from the date of publication.

The defendant shall be served, and will only submit a copy of the sentence to the claimant if:

- 1) the defendant states that it does not require a written judgment to be delivered;
- 2) when the defendant waived the right to appeal.

Waiver of the right to appeal shall be filed with the minutes and must contain the signatures of the accused and the judge.

The court is obliged to elaborate and submit a written copy of the verdict with an explanation at the request of the applicant. The deadline for an appeal of the applicant shall run from receipt of the written copy of the verdict with an explanation.

Article 256, Delivery to the Participants in the Proceeding

Written judgment shall be delivered to the applicant and to the accused under the provisions of this law.

The judgment is delivered on the injured party which is not the applicant if the decision is on a property claim, a person whose item was forfeited under the verdict, as well as the person against whom the measure of confiscation orders was pronounced.

Article 259, Persons Authorized to Lodge an Appeal

An appeal may be filed by the defendant, the defense counsel and the applicant.

An appeal may be lodged against the judgment and on the decisions issued in misdemeanor proceedings only if the right to appeal is not excluded by law.

In favor of the defendant may appeal his or her spouse, blood relative in a direct line, brother, sister, legal guardian, foster parent, adopted child, foster parent and a person with whom, cohabiting or other permanent community life.

The deadline for an appeal runs from the date the defendant has been sent a copy of the judgment and if the defendant has a defense attorney from the day when it is delivered to the copy of the judgment.

A legal representative and a representative of a legal entity may appeal on behalf of the legal person.

If the protective measure of confiscation of objects whose owner is not the defendant is pronounced, the owner of the items may appeal only in respect of the decision on the measure.

Article 308, The Execution of a Finality

The conviction can be carried out before its finality in the following cases:

- 1) if the defendant cannot prove their identity or has no residence or does not live at the address at which he is registered, or has his permanent residence abroad or if he goes abroad to stay, and the court finds that there is reasonable doubt that the accused will escape execution the sanctions imposed;
- 2) if the defendant is sentenced for a serious offense in the field of public peace and order, traffic safety and gross misdemeanor endangering the life or health of people or if it is in the interest of overall safety and security of goods and financial transactions or morality or for an offense of which can cause serious consequences, and there is reasonable suspicion that they will continue with the infringement, repeat offense, or to escape the enforcement of the sanctions.

In the cases referred to in paragraph 1 of this Article, the court will determine the verdict that the defendant before the judgment approaches its execution.

If the defendant files an appeal against the judgment rendering execution of the judgment before its finality, the court is bound to submit the appeal with the case file to the second instance misdemeanor court within 24 hours, counting from the time when the appeal was received, and the second instance misdemeanor court shall on appeal decide its verdict to the court within 48 hours counting from the time of receipt of the case file.

The verdict from paragraph 1 of this Article, the applicant may file an appeal within 48 hours counting from the time of receipt of the judgment.

Article 324, Register of Sanctions

In order to keep a record of misdemeanor sanctions imposed shall be a single register of sanctions.

The sanction register is a centralized electronic database that stores and process all data.

Article 325, Storage and handling of data in the register of sanctions

The register is kept on a central electronic data carrier at the ministry in charge of Justice, which is responsible for its maintenance and preservation.

The ministry in charge of justice shall take technical, personnel and organizational data protection measures, in accordance with established standards and procedures, which are needed to protect data from loss, destruction, unauthorized access, alteration, disclosure and any other abuse, as well as to establish the obligation of people employed in the processing of keeping the confidentiality of the data.

Article 326, Data controller in the register of sanctions

The president of the misdemeanor court appoints operator data in the registry that has the following powers and duties:

- 1) to ensure the lawful, systematic and timely entry, delete and modify data in the registry;
- 2) provides authorized persons access to the register;
- 3) issue certified extracts from the register and verify that person is not entered in the register;
- 4) ensure the preservation and archiving of documents, which is the basis for registration, delete or modify data in the register;
- 5) undertake other actions necessary for the smooth and regular updating of data in the registry, in accordance with the law.

Article 327, The data entered in the register of sanctions

In the register of sanctions shall be entered the following data:

- 1) full name and personal identity number of the convicted natural person, entrepreneur or a responsible person in the legal entity or passport number of a foreign natural person, the entrepreneur and the name and headquarters operations;
- 2) for the punished legal entity name and address, tax and ID number;
- 3) decision, and the final decision on imposing sanctions;
- 4) legal qualification of the offense committed;
- 5) type and description of imposed sanctions;
- 6) the imposed protective measures;
- 7) misdemeanor court that rendered the judgment or authority that issued the misdemeanor warrant;
- 8) Magistrates Court that made the entry;
- 9) the date of entry.

Article 328, Data entry in the register of sanctions

Data input from Article 327 of this law shall be made by the court which has issued a final or a final decision which is the basis for entry or the court of first instance in whose territory was issued a misdemeanor order which is the basis for the entry.

Data entry in the register of sanctions is done immediately after the occurrence of finality, and the finality of the decision imposing the sanctions, which the competent court takes into account *ex officio*.

The issuer of the misdemeanor order, in accordance with Article 173, paragraph 3 of this law, is obliged immediately after the deadline referred to in Article 173, paragraph 2 of this law to submit a copy to the competent court of the issued misdemeanor warrant with the statement of finality, and notes whether the fine was paid.

Article 329, Deleting data from the register of sanctions

Sanctions imposed on a legal, physical and responsible person and entrepreneur shall be deleted from the records *ex officio* if the person in question within four years from the date the decision imposing sanctions does not commit a new offense.

Notwithstanding paragraph 1 of this Article, a warning clears up within a year of the decision imposing the sentence.

Juvenile imprisonment shall be deleted within two years of when the sentence is carried out, outdated or forgiven, unless a new offense was committed.

Protective measures will not be deleted from the misdemeanor records until it is completed or until the expiration date of the protective measures expires.

Article 330, Issuance of information from the register of sanctions

Data on the punished persons from the register of sanctions can only be given to another court, competent prosecutor's office, police and inspection authorities in connection with criminal proceedings or proceedings for an offense pending against a person who has previously been convicted of a misdemeanor, the competent authorities responsible for the enforcement of sanctions for violations, or competent bodies participating in the deletion of the sentence.

At the reasoned request of a body in the previous paragraph, data from the register of sanctions for the accused can be provided for the person in question if certain legal consequences of the punishment or protective measures are still in place or if there is a justified interest based on law.

Citizens and legal entities must, at their request, be given information about their punishment for violations.

Citizens and legal entities cannot be required to submit proof that they are not punished for violations other than as expressly required by law.

The application for information from the register of sanctions shall be submitted with proof of payment for the requested service. The fees for issuing data from the register of sanctions are prescribed by a special act by the Minister of Justice.

Article 331, The Register of unpaid fines and other monetary amounts

In order to facilitate the collection of fines, compensation and payment of other monetary amounts adjudicated on the basis of damages, property claim or seizure of property, a single registry of unpaid fines and other monetary amounts (hereinafter referred to as the register of fines) shall be kept.

The register is a centralized electronic database where all data is kept in the register.

All unpaid fines, trial costs and other monetary amounts which have been imposed by a final and enforceable decision of the court or by a final and executive misdemeanor warrant shall be entered in the register of fines.

Storage and handling of data in the register of fines shall be pursuant to the provisions on the register of sanctions under Article 325 and 326 of this law.

[Law on Police \(Official Gazette, 2005 and no. 92/2011\) \(replaced by Law on Police, Official Gazette, no. 06/2016\)](#)

Article 39, When Warnings May be Issued

Authorized officers shall warn a person whose actions or failure to act may endanger personal or third-party safety or property, disturb public order or endanger traffic, or when there are reasonable grounds to expect that a person may commit, or induce another to commit, a criminal offense.

Article 53, When a person may be detained

If the law does not specify otherwise, authorized officers shall detain a person who disturbs the peace or endangers public order when it is not possible otherwise to establish order or eliminate the disturbance. Detention can last up to 24 hours.

The detention of a person extradited by foreign security services or who is to be bound over to a competent authority may not exceed 48 hours.

A detention order must be issued and served on the detainee within two hours following his or her transfer to official property. The detainee is entitled, at any time during detention, to appeal against the detention order. The court shall rule on the appeal within 48 hours.

The appeal shall not suspend execution of the detention order.

Detention shall end when the grounds for ordering it have ceased to apply, or by order of the competent court.

If a member of the armed forces is detained, military police shall be notified without delay.

Article 76, Records of personal information and other data

The police shall keep records of:

- 1) Persons who for any reason are deprived of freedom in whole or part (transported, detained, restricted, arrested, in custody or other);
- 2) Persons under reasonable suspicion of having committed a criminal offense;
- 3) Criminal offenses subject to public prosecution committed by persons unknown; victims of such offenses;
- 4) Criminal offenses subject to private prosecution committed by persons unknown;
- 5) Persons wanted by the authorities , and objects and persons banned from entering the country;
- 6) Identity checks of persons;
- 7) Persons who have undergone identity checks, fingerprinting, police photographing or DNA analysis;
- 8) Field reports, field sources and persons under special police protection;
- 9) Field techniques and methods as applied;
- 10) Events;
- 11) Means of enforcement as applied;
- 12) Complaints.

Article 81, Time-limits for maintaining records of personal information and other data

Information defined in Article 76 of this Act shall be kept in official records.

- 1) As to Point 1, for three years after a ruling on further proceedings against a person whose freedom has been restricted, after the person has been released from the restriction;
- 2) As to Point 2, for five years following the deadline for rehabilitation by law, if the person has not been charged again;
- 3) As to Point 3, for five years after the statute of limitations has expired for the offense;
- 4) As to Point 4, for one year after the statute of limitations has expired for the offense;
- 5) As to Point 5, until the person is found or it is determined that further search is unwarranted;
- 6) As to Point 6, for two years following the identity check;
- 7) As to Points 7, 8, 9, and 10, permanently;
- 8) As to Point 11, for ten years following the use of the enforcement measures;
- 9) As to Point 12, for ten years after the complaint is received.

Article 153, Professional development and advanced training

Pursuant to this Law, professional development and advanced training means acquiring and improving professional knowledge, skills, attitudes and behavior, and increasing efficiency and effectiveness in the discharge of police tasks.

The Minister shall specify:

- 1) The program for professional development, including approach and training methods, and professional exams for trainees;
- 2) Content and form of professional development and advanced training pursuant to Point 1) of this article;
- 3) Rights, duties and responsibilities of trainees in professional development and advanced training;
- 4) Criteria for selection of candidates for attending professional development courses, pursuant to published notice;
- 5) Other issues related to professional development and advanced training.

Professional development and advanced training pursuant to paragraph 1 of this Article are implemented in the Ministry's in-house educational institutions and other united.

During professional development training, trainees shall be provided with board and lodging, as well as other rights as determined by the Minister in the decision specified in paragraph 2, Point 3) of this Article.

Trainees who successfully complete the professional development training are required to remain for a minimum of three years in the Ministry or to repay a proportional amount of costs from training and education.

Article 154, Implementing professional development and advanced training

The Minister shall issued programs for professional development and advanced training.

Pursuant to Paragraph 1 of this Article, the Director General of Police shall specify plans for individual forms of professional development and advanced training within the framework of available funds in the budget.

Police officers may participate in other forms of professional development and advanced training in programs conducted by domestic and foreign institutions, in accordance with separate programs and plans.

Foreign participants may take part in implementing professional development and advanced training specified in paragraph 1 of this Article, pursuant to agreement.

Article 189, Cooperation, protection of rights and providing legal assistance to individuals

In performing law enforcement duties, the police shall provide information and advice to individuals relevant to their personal safety and property, as well as other related information obtained by the police, unless doing so would constitute a violation of law.

An individual whose personal rights are endangered may turn to the police for the protection of rights if, in the particular case, there is no other legal protection for the rights and if infringement of the rights is related to the individual's personal safety or property.

The police shall provide assistance to an individual upon request pursuant to Paragraph 2 of this Article, if the request is in accordance with police purview; otherwise, the police must forward the request to competent authorities and inform the individual.

Law on Police (Official Gazette, no. 06/2016)

Article 18, The relationship between the police, public prosecutor, and the court

The police in preliminary investigation and pre-trial investigation apply police powers laid down in the Criminal Procedure Code and acting at the orders and requests of the public prosecutor and the court.

In trial, the police act at the orders of the Magistrate's Court.

Article 28, Police conduct in cases of domestic violence

If there are reports of violence or threats of violence in the family, police officers are obliged to, in cooperation with other competent authorities, immediately take the necessary measures and actions in accordance with the law, whose commission is to prevent or stop the violence that may result in bodily injury or deprivation of life.

Article 35, Protecting rights and providing legal assistance to citizens

In performing police duties, police are obliged to provide citizens with information and advice on the nature of their personal and property safety, if it is not contrary to the law and does not endanger policing.

....

Article 53, Police assistance in the execution of the procedures in out of court settlement

If, during the execution of an act of the State body or natural or legal person with public authority, or an authorized legal or natural person in the extra-judicial settlement (hereinafter referred to as the execution) resistance is reasonably expected, the police will, upon written request, provide assistance to facilitate the safe conduct of the execution.

...

Article 54, Assistance in the execution

The written request of an authorized entity referred to in Article 53, paragraph 1 of this Law, shall be submitted to the relevant local organizational unit of the police, at least five working days before the date set for the execution.

The request for assistance shall specify the reasons for which the requestor needs police help, and the request shall be accompanied by a copy of the act to be done, with the confirmation of enforceability, evidence of the attempted commission without police assistance and evidence on the involvement of related services that are necessary for execution.

In urgent cases, the requirements of paragraph 1 of this Article may be presented verbally, by submitting a written request within 48 hours.

The chief of police department or the head of the police station shall decide on the involvement of the police and the scope and manner of providing assistance in carrying out the execution and promptly inform the applicant.

Before the start of the execution, police are obliged to warn the defendants or other persons present that [they] will use coercive measures against them if they are obstructed or prevented [from] the execution.

Article 56, Police assistance to health workers

At the invitation of doctors, police officers will assist health professionals in coping with the physical resistance of a person with mental disabilities, who because of the mental distress, seriously and directly endangers his own life, health, or safety, or the life, health or safety of another person, which should be placed in a psychiatric institution without his consent, while the person provides physical resistance and until the disposal and elimination of immediate danger of that person is provided.

....

Article 72, The conditions for the use of warning

A police officer will warn the person whose behavior, operation or failure to act may endanger his safety or the safety of another person or the safety of property, disrupt public order or endanger road safety or when it is reasonably expected that this person could make or cause another person to commit an offense or a misdemeanor.

Article 86, Conditions of detention

A police officer will retain the person when another statute prescribes it.

Passing judgment on the detention and an appeal procedure on a detention decision shall be made in accordance with the law under which the detention is determined.

Detention is terminated when the reasons for which it was specified cease, or by court decision.

....

Article 88, Temporary restriction of freedom of movement

A police officer may, in accordance with the law, temporarily restrict, up to a maximum of eight hours from the decision, the freedom of movement of a person in a certain area or in the house, in order to:

- 1) Prevent the commission of crimes or offenses;
- 2) Locate and arrest perpetrators of crimes and offenses;
- 3) Find and arrest a person being traced;
- 4) Find clues and items that may serve as evidence in criminal and misdemeanor proceedings.

Decisions to restrict the freedom of movement in a particular area or facility are made by the police director or chief of the police administration or the person they so authorize.

Temporary restriction of freedom of movement cannot last longer than the achievement of the purposes for which the authorization was applied.

To limit the freedom of movement for more than eight hours requires the approval of the competent court.

Article 131, Training, Professional Development, and Training

Training of employees in the Ministry, in terms of this law, for the purpose of career development, involves the acquisition and improvement of knowledge, skills, attitudes and behaviors in order to increase efficiency and effectiveness in the conduct of police and other internal affairs.

...

The Ministry can carry out training, professional education and training of third parties, in accordance with the law.

Article 133

Professional Education and Training in the Ministry is carried out according to relevant programs and training plans.

....

Article 252

The police, in order to perform the tasks within the purview of the Ministry, may process personal information and keep records.

The records referred to in paragraph 1 of this Article shall be prescribed by a special law.

Law on Social Protection (Off. Gazette, no. 24/2011)

Article 3, Social Welfare Obligations

Social welfare objectives shall be as follows:

- 1) Reaching or maintaining minimum financial security and independence of individuals in meeting their subsistence needs;
- 2) Enabling access to social welfare rights and services;
- 3) Creating equal opportunities for independent living and encouraging social inclusion;

- 4) Maintaining and improving family relations, and promotion of family, gender and intergenerational solidarity;
- 5) Preventing and removing consequences of abuse, neglect or exploitation.

The social welfare objectives shall be reached by providing the social welfare services and other activities which prevent, reduce, or eliminate dependence of individuals and families of social welfare services.

Article 5, The social welfare services and financial assistance

...

The right to different forms of financial support is exercised in order to ensure existential minimums and support to social inclusion of the user.

Article 35, Right to Self-Decision and Participation in Decision-Making

Users shall have the right to participate in the assessment of their condition and needs and in making a decision on whether to accept such service provision, as well as to timely receive all the information necessary for making such, including description, goal and benefit of the proposed service, as well as the information about the proposed alternative services and other information relevant to the service provision.

No service can be provided without the consent of users, i.e. their legal representative, except in cases specified by the Law.

....

Article 37, The Right to Data Confidentiality

Users shall have the right to confidentiality of all private data contained in the documentation which is processed for report-making, i.e. for records, including the ones concerning their personality, behavior and family circumstances, manner of social service use during the procedure and use of social services.

Users' right to data confidentiality may be deviated from only in cases foreseen by the Law.

Article 38, The Right to Privacy

User shall have the right to respect of privacy during social service provision.

Asking for the information or undertaking actions necessary for providing the services or ensuring the right of user shall not be considered a violation of the user's privacy.

Article 55, Placement at the Shelter

Placement at a shelter shall ensure a short-term placement and safety of a user, finding of sustainable solutions for crisis situations and meeting of the user's basic needs and enable access to other community-based services.

Shelter service shall be ensured by a local self-government unit, except in cases foreseen by this Law.

Article 110, One-Off Assistance

One-off assistance shall be assistance provided to a person who is unexpectedly or momentarily in the state of social need, and a person who is referred to residential or family placement and does not have the funds to obtain clothing, footwear and to cover travel costs that are necessary for placement.

One-off assistance may be cash and in-kind.

Local self-government unit shall be responsible for the provision of one-off cash and in-kind assistance.

The procedure and payment of one-off cash-assistance shall be conducted by a center for social work, while the procedure and allocation of assistance in kind shall be conducted by a body, organization or service designated by the act issued by the local self-government unit.

Local self-government unit shall prescribe in details the conditions and manner of exercise and amount of one-off assistance.

The amount of one-off assistance cannot be higher than the average income per employee in the local self-government unit, in a month before the month of the payment.

The Government shall decide on allocation of the one-off assistance referred to in Paragraph 7 of this Article.

APPENDIX B. COMMENTARY ON THE LAW ON PREVENTION OF DOMESTIC VIOLENCE

Unofficial translation – entered into force on June 1, 2017.

Commentary:

The Advocates for Human Rights (“The Advocates”) reviewed the Law on Prevention of Domestic Violence (hereinafter, the “LPDV”). The Advocates bases its comments on an unofficial translation of the LPDV.

The Advocates congratulates the Serbian government for undertaking the difficult process of drafting laws to protect its citizens from domestic violence. The LPDV reflects an important step forward to meet Serbia’s positive obligations under the international and regional treaties that it has ratified. In particular, The Advocates notes that there are several positive aspects of the LPDV that will promote victim safety, including:

- 1) The express aim of the LPDV is to enable the effective prevention of domestic violence and provide urgent, timely, and effective protection and support of victims of domestic violence
- 2) The creation of an emergency order for protection issued by the police that can be extended up to 30 days by the court
- 3) Sanctions for violations of the emergency order for protection
- 4) Inter-agency collaboration
- 5) Information sharing among system actors

The Advocates offers the following comments on the LPDV. Comments by The Advocates are incorporated below the relevant articles.

"Sl. glasnik RS", br. 94/2016

I. GENERAL PROVISIONS

Subject of the Law

Article 1

This law regulates the prevention of domestic violence and actions of state bodies and institutions in preventing domestic violence and providing protection and support to victims of domestic violence.

This law does not apply to minors who commit domestic violence.

Purpose of the Law

Article 2

The aim of this law is to regulate the organization and conduct of state bodies and institutions in a general and unique manner, thus enabling the effective prevention of domestic violence and the urgent, timely and effective protection and support for victims of domestic violence.

Preventing domestic violence, immediate danger of domestic violence, domestic violence
Article 3

Preventing domestic violence consists of a set of measures that reveal whether the immediate threat of violence is threatened and the set of measures that are applied when the immediate risk is detected.

The immediate danger of domestic violence exists when the behavior of the potential perpetrator and other circumstances show that he is ready, in the immediate time, to do for the first time or repeat domestic violence.

Domestic violence, under this Act, shall be the act of physical, sexual, psychological or economic violence of a perpetrator to the person with whom the offender is in a current or former marital or extra-marital or partner relationship or to persons with whom he is a blood relative in a direct line, and lateral to the second degree, or with whom-law up to the second level or to whom is adoptive parent, adopted, or foster child or foster parent or another person with whom he lives or has lived in the household.

Commentary: This definition of domestic violence is similar to the broader definition under the Family Law. This is a commendable step taken by the Serbian government in recognizing that domestic violence occurs in relationships where individuals do not or no longer live together. However, the more restricted definition of family member under the Criminal Code has not been modified and continues to exclude these relationships from protection under the criminal laws. The Advocates recommends amendments to the Criminal Code to make consistent the definitions under the LPDV, Family Law, and Criminal Code, in accordance with best-practice standards.

The application of this law to certain offenses
Article 4

This law also applies to cooperation in preventing domestic violence (art. 24-27) in criminal proceedings for criminal offenses:

- 1) persecution (Article 138a Criminal Code);
- 2) Rape (Article 178 Criminal Code);
- 3) sexual intercourse with a helpless person (Article 179 Criminal Code);
- 4) sexual intercourse with a child (Article 180, Criminal Code);
- 5) sexual intercourse by abuse of position (article 181, Criminal Code);
- 6) illicit sexual intercourse (Article 182 of Criminal Code);
- 7) sexual harassment (Article 182a Criminal Code);
- 8) procuring and enabling sexual intercourse (Article 183 of the Criminal Code);
- 9) pimping (Article 184 Criminal Code);
- 10) showing, obtaining and possessing pornographic material and exploitation of minors for pornography (Article 185 of the Criminal Code);
- 11) inducing a minor to attend sexual acts (Article 185a Criminal Code);
- 12) neglect and abuse of a minor (article 193 of the Criminal Code);
- 13) domestic violence (Article 194 Criminal Code);
- 14) failure to provide maintenance (Article 195 Criminal Code);
- 15) violation of family responsibilities (Article 196 of the Criminal Code);
- 16) incest (Article 197 Criminal Code);
- 17) trafficking in persons (Article 388 of the Criminal Code);
- 18) other criminal offenses, if the offense was the result of domestic violence.

This law shall also apply to the provision of protection and support to victims of offenses referred to in paragraph 1 of this Article (hereinafter: the offenses specified in this law).

Application of regulations

Article 5

Unless the law provides otherwise, the prevention of domestic violence, in proceedings against perpetrators of criminal offenses stipulated in this law, and in providing protection and support to victims of domestic violence and victims of crimes defined by this Law shall apply the Criminal Code, Criminal Procedure Code, the Law of Civil Procedure, Family Law and the Law on Police.

Disciplinary Responsibility

Article 6

Failure of judges, public prosecutors and deputy public prosecutors in the timeframe specified in this law constitutes misconduct.

Commentary: This article provides important accountability for system actors to act under the LPDV. Additional protections should be established to ensure the effective implementation and ongoing monitoring of their actions and an effective and accessible complaint mechanism to hold actors responsible for their obligations under the law.

II. AUTHORITIES AND INSTITUTIONS

Article 7

The police, public prosecutor's offices, courts of general jurisdiction and misdemeanor courts, as the competent national authorities, and centers for social work, as institutions, are responsible for the prevention of domestic violence and the provision of protection and support to victims of domestic violence and victims of crimes defined by this law.

In addition to the competent state authorities and centers for social work, other institutions in the field of children, social protection, education, education and health are involved in the prevention of domestic violence by providing assistance and information on violence, as well as providing support to victims of violence (hereinafter: State bodies and institutions responsible for the implementation of this law), as well as bodies for gender equality at the level of local self-governments.

Support to victims of domestic violence and victims of crimes defined by this law can also be provided by other legal and natural persons and associations.

Commentary: The Advocates recommends that this provision explicitly recognize that NGOs that serve victims of domestic violence also provide support.

Police
Article 8

The head of the regional police administration designates police officers who have completed specialized training to prevent domestic violence and provide protection to victims of violence (hereinafter: the competent police officer).

Commentary: The Advocates commends the Serbian government for continuing to emphasize the need for police officers to have specialized training in domestic violence and recommends that all police officers, whether deemed domestic violence specialists or not, receive training on the dynamics of domestic violence. These trainings should be lead by or conducted in consultation with NGOs that serve victims of domestic violence.

Prosecutor's Office
Article 9

In each public prosecutor's office, in addition to those specific competencies, the public prosecutor determines deputy public prosecutors who have completed specialized training to exercise competencies of the public prosecution in domestic violence prevention and prosecution of offenders defined by this law.

Commentary: Serbia should be commended for recognizing the need for prosecutors to receive specialized training for domestic violence prosecutions. As indicated in the report, specialized knowledge is important because the dynamics in domestic violence crimes are different than in crimes between strangers. The Advocates recommends that all prosecutors receive training on domestic violence and that the Serbian government ensure that any specialized prosecutors receive adequate support and resources.

Courts
Article 10

The president of each court of general jurisdiction and the misdemeanor court determine judges who have completed specialized training to try cases of preventing domestic violence and the criminal acts defined by this Law.

As objects of preventing domestic violence are considered the procedures for the extension of the emergency measures, the procedures for determining the rate of protection against domestic violence provided by the Family Law (hereinafter: the degree of protection from domestic violence) and misdemeanor proceedings for offenses under this law (Article 36).

Commentary: Again, Serbia should be commended for recognizing the need for judges to have specialized knowledge on domestic violence. This specialized knowledge is important because there are different dynamics in situations of domestic violence that can impact a party's or a victim's actions in civil or criminal proceedings. The Advocates recommends that all judges receive training on domestic violence.

Center for Social Work
Article 11

The head of each center for social work determines, among the employees in the center, a team of experts to help prevent domestic violence and provide support to victims of violence.

Commentary: The Advocates commends the Serbian government for including provisions where each CSW will have a team of experts on domestic violence. The Advocates recommends that the Serbian government also require all CSW employees to receive training on domestic violence that is lead by or conducted in consultation with NGOs that serve victims of domestic violence.

III. PROCEEDINGS

General Rules

Article 12

State agencies and institutions responsible for implementation of this law are obliged to prevent, in a fast, effective and coordinated manner, domestic violence and petty crime defined by this law and to provide victim protection, legal aid and psychosocial and other support for the sake of her recovery, empowerment and independence.

Commentary: The Advocates commends the Serbian government for recognizing the importance of providing immediate services to victims of domestic violence. The Law on Free Legal Aid has been pending for years, however, and still has not been passed. The Advocates recommends that Serbia adopt legislation that ensures accessible free legal aid for victims of domestic violence, including the Law on Free Legal Aid, which would allow NGOs to be legal aid providers.

a) Prevention of domestic violence

Registration and identification of domestic violence

Article 13

Everyone must report domestic violence or imminent danger from it to the police or the public prosecutor without delay.

State and other bodies, organizations and institutions are obliged to immediately report to the police or the public prosecutor any knowledge about domestic violence or immediate danger from it.

The competent national authorities and centers for social work (Art. 8-11) are obliged, within their regular activities, to recognize domestic violence or the threat of it.

Recognition can arise from a study of the application which was submitted on a victim of violence by anyone, the detection of traces of physical or other violence on the victim, and other circumstances indicating the existence of domestic violence or imminent danger of it.

A public prosecutor who has reported violence or imminent threat of it, is obliged to immediately forward the application to the police officers, so that they notify the competent police officer (Article 14, paragraph 1).

Acting police officers

Article 14

Police officers are obliged to immediately inform the competent police officer of any domestic violence or immediate danger from it, no matter how they find out, and are entitled to, on their own or at the request of a competent police officer, bring the potential perpetrator to the relevant organizational unit of the police to conduct the procedure.

Staying in the competent organizational unit of the police to conduct the procedure may not exceed eight hours.

During the proceedings in the competent organizational unit of the police, a potential offender has to be instructed and be allowed to contact and use services of counsel and legal aid in accordance with the Constitution and laws of the Republic of Serbia.

Acting competent police officer

Article 15

The responsible officer must make it possible for the perpetrator who was brought to the relevant organizational unit of the police the opportunity to comment on all relevant facts, to collect the necessary information from other police officers, immediately assess the risk of immediate danger of domestic violence (hereinafter referred to as risk assessment) and that, under the conditions stipulated herein (Article 17, paragraph 1), to issue an emergency measure for preventing domestic violence (hereinafter referred to as an emergency measure).

If the offender has not been brought to the relevant organizational unit of the police, the competent officer assesses the risk immediately upon receipt of notification of police officers on domestic violence or immediate danger from him.

Prior to the completion of the risk assessment, the competent officer may, if necessary, seek the opinion of the center for social work.

Risk Assessment

Article 16

Risk assessment is based on available information and takes place as soon as possible.

In the assessment of risk, particular consideration is given to whether the possible perpetrator has, before or immediately before the risk assessment, committed domestic violence and whether he is ready to repeat it, has threatened murder or suicide, possesses a weapon, is mentally ill or an abuser of psychoactive substances, whether there is a conflict over child custody or on ways of maintaining personal relations between the child and the parent who is a possible perpetrator, whether he is a possible perpetrator with imposed emergency measures or specific measures of protection from domestic violence, whether the victim is experiencing fear and how she assesses the risk of violence.

The competent police officer immediately submits all available information of domestic violence or imminent danger from him and risk assessment - if it indicates an immediate threat of violence – to a basic public prosecutor in whose territory is the permanent or temporary residence of the victim, the center for social work and group of coordination and cooperation.

If the competent officer establishes that the danger is not immediate, all available information of domestic violence or the threat of it, and its risk assessment is delivered to the basic public prosecutor and the center for social work.

Emergency Measures

Article 17

If, after risk assessment, there is an imminent danger of domestic violence, a competent police officer brings an order imposing an emergency measure to the perpetrator brought to the relevant organizational unit of the police (Article 15, Paragraph 1).

Emergency measures are: measures of temporary removal of the offender from the apartment and measure of a temporary ban on the offender to contact the victim of violence and approach her.

The order can include both emergency measures.

The order contains: name of the body that brings it, information about the person to whom emergency measures are imposed, the type of urgent measures to be imposed and their duration, day and time of imposing emergency measures and the obligation of a person to whom an emergency measure was ordered to report to the police officer after its expiration.

The order is given to the person to whom the urgent measures are imposed. If he refuses to receive orders, the authorized officer shall draw up on the note, which is considered to be the order delivered.

The competent officer shall submit the order, immediately after its delivery, to the basic public prosecutor in whose territory is the permanent or temporary residence of the victim, the center for social work and group for coordination and cooperation, and the victim of violence in writing to inform on the type of emergency measures imposed.

Acting Public Prosecutor

Article 18

Upon receipt of the notification, risk assessment and orders, the basic public prosecutor examines the notification and evaluates the risk assessment of the competent police officer.

If it subsequently establishes an immediate danger of domestic violence, he is obliged to file a court motion to extend the emergency measures, within 24 hours from the time of delivery of orders to the person to whom emergency measures were imposed.

In addition to the proposal, the basic public prosecutor submits to the court the risk assessment of the competent police officer, his evaluation of its risk assessment and other evidence pointing to an immediate risk of domestic violence.

Of the court in the first instance

Article 19

The proposal to extend the emergency measures shall be filed with the basic court in whose territory the permanent or temporary residence of the victim is located, and the judge shall decide on the proposal.

The court extends the emergency measure if, after evaluating the risk assessment of the competent police officer, the evaluation of the risk assessment made by the basic public prosecutor, the appraisal of the presented evidence and claims from the proposal of the basic public prosecutor and the statement of the person to whom the emergency measure was pronounced establish immediate danger of domestic violence; otherwise, the judge refuses the proposal as unfounded.

Decision on the proposal shall be adopted without holding a hearing, within 24 hours of receipt of the proposal to extend the emergency measures.

An appeal against the decision of the basic court

Article 20

The public prosecutor and the person to whom emergency measures are imposed can file an appeal against the decision of the basic court with a higher court within three days of receipt of the ruling, and through the basic court that issued the decision.

The basic court is obliged to forward the appeal and all case files to the higher court within 12 hours of receipt of the appeal.

An appeal shall be decided by a larger higher court of three judges, within three days after it has received an appeal from the basic courts.

The High Court may reject the appeal and confirm the decision of the basic court or adopt the appeal and revise the decision of the basic court. The court cannot abolish the decision of the basic court and returned the case to the main court for a new action.

The appeal does not stay the execution of the decision of the basic court.

The law governing civil procedure shall apply to the procedure for deciding on the extension of an emergency measure, unless this law provides otherwise.

The duration of the emergency measures

Article 21

Emergency measures imposed by the competent police officer are in effect for 48 hours after delivery of the order.

The Court may extend an emergency measure for 30 days.

If the emergency measures for temporary removal of the offender from the apartment are extended, the person to whom it is pronounced may take necessary personal belongings from the apartment accompanied by police officers.

b) Special provisions on criminal proceedings

Obligation to Report offense

Article 22

A person who has information on the criminal offense defined by this Law shall be obliged to report it to the police or public prosecutor.

The urgency in decision-making on measures to ensure the presence of the accused

Article 23

In criminal proceedings conducted for the criminal offenses defined in this law, the court shall within 24 hours decide on the proposal of the Public Prosecutor to determine the extent of prohibition of approaching, meeting or communicating with a particular person and visiting certain places, measures of house arrest and ban on leaving the apartment.

IV. COOPERATION IN THE PREVENTION OF DOMESTIC VIOLENCE

The persons designated liaison

Article 24

The persons responsible for the connection shall be appointed in the police administration, basic and higher public prosecutor's office, primary and higher court, and center for social work.

They are appointed by the head of the police department, the public prosecutor, the court president and head of the Center for Social Work, from among the competent police officers and judges and deputy public prosecutors who have completed specialized training, and employees of the center for social work.

The persons designated for the purposes of daily communication exchange information and data relevant to the prevention of domestic violence, detection, prosecution and trial of offenses specified in this law and to provide protection and support to victims of domestic violence and victims of crimes defined by this law.

The Minister for Internal Affairs, Minister of Justice and the minister responsible for family protection shall mutually prescribe the manner of exchanging information and data between the persons designated for liason.

Commentary: The Advocates commends Serbia for requiring these key actors to coordinate with respect to domestic violence cases and notes that it is an important step; however, it is critical that NGOs who work with victims of domestic violence are an integral part of this collaboration and are able to participate on their request. In addition, all participants should receive training so that these collaborations are effective.

The group for coordination and cooperation

Article 25

In the area of each of the basic public prosecutor's office shall be established a group for coordination and cooperation.

It examines each case of domestic violence that was not concluded with a final court decision in a civil or criminal proceeding, cases when the protection and support to victims of domestic violence and victims of offenses under this Act should be provided, makes an individual plan of protection and support to victims and proposes to the relevant public prosecutor's office measures of judicial procedures.

The Group for Coordination and Cooperation holds meetings at least once every 15 days, and minutes of the meetings are kept.

Meetings may, where appropriate, be attended by representatives of education, educational and health institutions and the National Employment Service, representatives of other legal entities and associations and individuals who provide protection and support to victims.

The group for coordination and cooperation shall adopt rules of procedure that will govern its operation and decision making.

Commentary: The Advocates recommends that NGO participation should not be discretionary. These collaborations should include representatives from NGOs who work with victims of domestic violence, and those representatives should be central to this process and able to participate on their request.

The composition of the group for coordination and cooperation

Article 26

Group for Coordination and Cooperation consists of representatives of basic public prosecutor's offices, police departments and centers for social work, from the areas for which the group is formed.

Members of the group for coordination and cooperation are appointed by managers of the authority, from the ranks of deputy public prosecutors who completed specialized training and competent police officers and employees in centers for social work who work on domestic violence cases.

The group for Coordination and Cooperation is chaired by a member of the group from the ranks of deputy public prosecutor.

If prosecuting offenders of criminal offenses determined by this law are more publicly prosecuted, the senior public prosecutor appoints his deputy, who has completed specialized training, to participate in and chair working groups.

Rules on Cooperation

Article 27

The Minister of Justice, the Minister for Internal Affairs, and the minister responsible for family protection shall, by mutual consent, issue rules on cooperation, which shall closely regulate their respective rights.

The rules of cooperation define the obligations and cooperation of state bodies and institutions responsible for implementation of this law in preventing domestic violence and providing protection and support to victims of domestic violence and victims of crimes defined by this law.

Commentary: This Article follows some of the best practices of inter-agency actions: that there are rules of cooperation that define the roles of the participants and that responses are victim-centered. Again, The Advocates recommends that NGOs who work with victims of domestic violence be included as key participants in these collaborations.

V. TRAINING

Specialized Training

Article 28

The police officials and public prosecutors, deputy public prosecutors and judges who apply the law are required to complete specialized training according to the program adopted by the Judicial Academy.

Specialized training conducted by the Judicial Academy for public prosecutors, deputy public prosecutors and judges, in cooperation with other professional institutions and organizations, and for police officers specialized training is conducted by the Criminal Police Academy.

Upon completion of specialized training, the Judicial Academy and the Police Academy trainees are issued certificates of completion of training.

The issuance and form of certificates shall be regulated by an act of the Judicial Academy and the Police Academy.

Commentary: The Advocates recommends that the Judicial Academy and Criminal Police College receive input from representatives of NGOs who work with victims of domestic violence to ensure that the required specialized training reflects the unique dynamics of domestic violence crimes and trains participants in how to protect and support victims of domestic violence.

VI. PROTECT AND SUPPORT VICTIMS OF DOMESTIC VIOLENCE AND VICTIMS OF CRIMES DEFINED BY THIS LAW

The right to information

Article 29

State agencies and institutions responsible for implementation of this law are obliged, in the first contact with a victim of domestic violence or a victim of an offense under this Act, to give the victim a complete information about the authorities, legal entities and associations that provide protection and support, in a way and in a language the victim of violence understands.

Commentary: The Advocates recommends that, to ensure effective implementation of this Article, one entity should be designated as responsible to review and maintain the list of information provided to victims. In addition, the responsible entity should be required to consult with NGOs who work with victims of domestic violence to ensure that the information is up-to-date.

The right to free legal aid

Article 30

A victim of domestic violence and victim of an offense under this Act shall be entitled to free legal aid, under a special law.

Commentary: The Advocates recommends that Serbia adopt legislation that ensures accessible free legal aid for victims of domestic violence, including the Law on Free Legal Aid, which would allow NGOs to be legal aid providers.

Individual plan of protection and support to victims

Article 31

Upon receipt of the risk assessment that identified an immediate danger of domestic violence, the group for coordination and cooperation develops an individual plan of protection and support of victims, which contains comprehensive and effective measures to protect and support victims, but also other family members needing support.

The victim also participates in the preparation of an individual plan of protection and support, if he so wishes and her emotional and physical condition allows.

Measures of protection must ensure the safety of the victim, stop the violence, prevent it happening again and protect the rights of victims, and provide measures of support to enable the victim to provide psychosocial and other support for the sake of her recovery, empowerment and independence.

The individualized plan of protection and support to the victim determines the executors of concrete measures and deadlines for their implementation, as well as the plan to monitor and evaluate the effectiveness of planned and implemented measures.

Individual plans of protection and support to victims are also made for victims of criminal offenses under this Act.

Commentary: The Advocates recommends amendments to this article to recognize that any safety plan for an adult victim of domestic violence requires her input and that victims should not, and will not, be compelled to participate in or take any actions with respect to safety plans. In addition, The Advocates repeats its recommendation that collaborations include representatives from NGOs who work with victims of domestic violence.

VII. A RECORD OF CASES OF DOMESTIC VIOLENCE

Logs

Article 32

The competent police department keeps records of reported cases of domestic violence and of imposing and carrying out of emergency measures and enforcement of protective measures against domestic violence.

The records of the police administration contain:

- 1) data on reported cases of domestic violence (participants of the event, time, place, collected statements, the circumstances of the case, the information about possible victims and others);
- 2) information on the notified possible perpetrator (name, surname, ID number, address of residence or domicile, information on previously defined measures of protection from domestic violence);
- 3) information on risk assessment and the names of the authority which has risk assessment submitted;
- 4) information on the imposition of emergency measures (the date and the number of orders to impose emergency measures, their duration and the time of the beginning of their lifetime);
- 5) information on the extension and execution of emergency measures (number and date of the basic court to extend the emergency measures, information on the execution of emergency measures);
- 6) data on the execution of measures of protection from domestic violence.

The Basic Court shall keep records of their decisions on the proposals for the extension of emergency measures and of certain measures of protection against domestic violence.

Record of the Basic Court on proposals for the extension of emergency measures include:

- 1) information about the person to whom an emergency measure was extended (name, surname, ID number, address of residence or domicile, information on previously defined measures of protection from domestic violence);
- 2) number and date of the decision extending an emergency measure;
- 3) number and date of the decision rejecting the proposal to extend the emergency measures;
- 4) information on the appeal against the decision rendered on the proposal for the extension of emergency measures;
- 5) information concerning the decision taken on the appeal.

The records of the Basic Court on certain measures of protection against domestic violence include:

- 1) information about the person against whom is issued a certain measure of protection from domestic violence (name, surname, ID number, address of residence or domicile, information on previously defined measures of protection from domestic violence);
- 2) information about the court decision on measures of protection from domestic violence (number and date of the decision, the type of measure that is defined and its duration);
- 3) information on the appeal against the court's decision on measures of protection from domestic violence;
- 4) information concerning the decision taken on the appeal;
- 5) information on the extension or termination of protective measures against domestic violence.

The basic prosecutor's office keeps track of proposals for the extension of emergency measures and requirements for the determination of protective measures against domestic violence.

Records of the basic public prosecutor's office include:

- 1) Information regarding the person against whom is the proposed extension of emergency measures (name, surname, ID number, address of residence or domicile, information on previously defined measures of protection from domestic violence);
- 2) information on the extension of emergency measures (date and number of the proposal for the extension of emergency measures, the name of the court where the proposed extension of emergency measures, the court's decision on the proposal of the public prosecutor, data about the decision on appeal);
- 3) the identity of any action for the determination of protective measures in the family;
- 4) the type of protective measures against domestic violence whose determination is sought;
- 5) information on the court's decision concerning the action to determine the degree of protection from domestic violence (number and date of the decision, the type of measure that is determined and duration of the measure);
- 6) information on the extension or termination of the measures of protection from domestic violence.

The competent social work center keeps track of the implementation of individual plans of protection and support to victims.

The records center for social work includes:

- 1) name, surname, ID number and address of permanent or temporary residence of the victim;
- 2) information on the individual level of protection and support to victims;
- 3) information on planned measures to protect victims;
- 4) information on planned measures to support the victim;
- 5) information on the executors of concrete measures to protect and support and deadlines for their implementation;
- 6) information on the plan to monitor and evaluate the effectiveness of planned and implemented measures.

The records of police departments, basic courts, basic public prosecutors' offices and social work centers are kept in electronic form and make the main record on cases of domestic violence (hereinafter: the Central Records), led by the Republic Public Prosecutor.

Data can be entered into the Central Records only by using the corresponding protected access codes.

Data is stored in the registers and in the Central Records for ten years and thereafter deleted.

Access to records

Article 33

Access to data from the Central Records is allowed only to exercise the jurisdiction provided for in this law and with the use of protected access codes.

The deputy public prosecutor who exercises the competencies of the Public Prosecutor's office in preventing domestic violence and prosecuting offenders defined by this law (Article 9) has the right to access to all data from the Central Records.

The competent police officer has the right to access the Central Records for the section that contains the records of regional police departments and competent social welfare centers, the competent courts

only in the part which contains data from records kept by basic courts, and the centers for social work - just in that part which contains data from records kept by the centers for social work.

Commentary: The Advocates commends the creation of a centralized database of information shared among key systems actors. The Advocates recommends that it is created as soon as possible and that there is one entity designated to monitor that all designated actors are submitting up-to-date information.

Protection of personal data

Article 34

State agencies and institutions responsible for implementation of this law are obliged to protect personal data, according to the law governing the protection of personal data.

To collect the data contained in the records did not require the consent of the person to whom the data relate.

VIII. APPLICATION OF MONITORING

Council for combating domestic violence

Article 35

The government establishes the Council for the Prevention of Domestic Violence (hereinafter: Council), which monitors the application of this law and improves the coordination and effectiveness of prevention of domestic violence and protection from domestic violence.

The members of the Council are composed of representatives of state bodies and institutions responsible for implementation of this law.

The Council may, if necessary, engage in the work and representatives of scientific and other professional institutions and associations whose activities are related to the protection of domestic violence.

The composition, operation and decisions of the Council shall be regulated the Government's act on the Council's education.

IX. SANCTIONS

Violations

Article 36

Imprisonment for up to 60 days shall be imposed on a person who violates an emergency measure that had been imposed or extended.

A fine of 50,000 dinars to 150,000 dinars shall be imposed on the responsible person in the state and other authorities, organizations, and institutions that fails to immediately report or react to the police or the public prosecutor, or obstructs reporting or responding to any knowledge about domestic violence or immediate danger of it (Article 13, paragraph 2).

Conviction for an offense referred to in paragraph 1 of this Article may be enforced before its finality, according to the Law on Misdemeanors.

X. CLOSING AND FINAL CONDITIONS

The deadline for the adoption of implementing regulations

Article 37

Bylaws envisaged by this law shall be passed within three months from the entry of this law into force, with the exception of the measure taken by the group for coordination and cooperation that will be issued within 30 days from the date of their education.

Deadline for education group for coordination and cooperation between the Council and the posting of certain liaison**Article 38**

Until the effective date of this law shall be formed groups for coordination and cooperation between the Council and appointed the persons designated as liaison.

Final provision**Article 39**

This law comes into force eight days after its publication in the "Official Gazette of the Republic of Serbia", and shall apply from 1 June 2017.

APPENDIX C. LIST OF TERMS AND ABBREVIATIONS

Admonition – sanctions on conviction that are warnings from a judge that do not require the defendant to pay fines or serve time in prison and are intended to deter offenders from committing further criminal offenses. See also Judicial Admonition.

Aggravating factors/circumstances – factors that increase liability or make a crime more serious

Batterer Intervention Program (BIP) – a program that batterers attend designed to teach how to resolve family problems without using violence, usually as part of the legal system response to an act of domestic violence. A BIP may also be referred to as a “perpetrator behavior program,” “behavior treatment program,” or “perpetrator rehabilitation program.”

Cautionary Measures – there are two types of cautionary measures under the Criminal Code: a suspended sentence and judicial admonition (Art. 64, CC).

Center for Social Work – also referred to as CSW.

Confrontation – a process employed by courts where parties can question or address witnesses and opposing parties face-to-face.

Court executors – appointed by the courts to implement or enforce court orders.

CSW – Center for Social Work.

CSW Protocol – Special Protocol for Action of the Centre for Social Work – Custody Authority in Cases of Domestic and Intimate Partner Violence against Women.

Ex officio – “from the office.” These may refer to *ex officio* powers that can be exercised by an officer which are not specifically conferred upon him, but are implied by his office. *E.g.*, a prosecutor may initiate prosecution *ex officio* for certain crimes and does not require the victim to initiate proceedings.

Ex parte – a court proceeding or order that is done for the benefit of one party only, and without notice to the opposing party. In the domestic violence context, *ex parte* generally means a process granting protective measures without both parties present.

Expunge – to remove. Expungement in domestic violence could mean that the domestic violence case is erased from the perpetrator’s criminal record.

Femicide – the murder of a woman because she is a woman.

General Protocol – General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship

Guardianship authority – activities of family protection, family aid and guardianship, in terms of the Family Law that are performed by a Center for Social Work (Art. 12, Family Law)

Health Protocol – Republic of Serbia Ministry of Health – Special Protocol for the Protection and Treatment of Women Victims of Violence

Interim Protective Measures – temporary protective measures that are intended to be issued more quickly to provide protection during court proceedings for longer-term protective measures (Family Law)

Judicial Admonition – a warning or caution from the judge instead of punishment. Judicial admonition can also be imposed along with a suspended sentence (Art. 77, Criminal Code)

Judicial Protocol – The Special Protocol for the Judiciary in cases of violence against women in the family and intimate relationships.

Judicial Rehabilitation – deletes conviction and terminates all legal consequences of the Criminal Code, and the convicted person shall be deemed to have no criminal record (Art. 99, Criminal Code). Judicial rehabilitation is granted by a judge in certain circumstances. Contrast to Legal Rehabilitation, Art. 98, Criminal Code, which occurs by virtue of the law itself in certain circumstances.

Legal Rehabilitation – deletes conviction and terminates all legal consequences of the Criminal Code, and the convicted person shall be deemed to have no criminal record (Art. 98, Criminal Code). Legal rehabilitation occurs by virtue of the law itself in certain circumstances. Contrast to Judicial Rehabilitation, Art. 99, Criminal Code. Judicial rehabilitation is granted by a judge in certain circumstances.

Mandatory reporting – when someone is legally required to report that they know of domestic violence or suspect potential domestic violence.

Marital rape – non-consensual sex in which the perpetrator is the victim’s spouse.

Measures to secure the defendant – mechanisms to secure the defendant’s presence in court and facilitate unobstructed proceedings (Criminal Procedure Code, Art. 188, et al.).

Mediation – legal process, generally supervised by the courts, where parties negotiate their differences and attempt to reach a mutual solution. This often involves a neutral third party facilitator, which is the court under Serbian law. In Serbia, mediation includes both “reconciliation” and “settlement” (Art. 229, Family Law).

Mitigating factors/circumstances – factors that decrease liability or partially justify the behavior. Mitigating factors can result in a reduced sentence.

Ombudsman – the Ombudsman of Serbia (also referred to as the Protector of Citizens) is an independent and autonomous government body, responsible for the protection and promotion of rights and liberties.

Police Protocol – Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women.

Precautionary measures – measures that may be imposed as part of a misdemeanor sentence to eliminate conditions that enable or encourage a perpetrator to commit a new offense (Arts. 51 and 53, Misdemeanor Law).

Private prosecution – when a victim or injured party must carry out the prosecution by herself or hire an attorney to do so. The private prosecutor is the person who has submitted a private prosecution in connection with a criminal offence prosecutable by law by private prosecution.

Protective measures (Art. 198, Family Law) –measures ordered by the court to restrict a domestic violence perpetrator’s rights, such as eviction, a restraining order, prohibition against further violence of the family member, and an order to move into a family home.

Protective Supervision – measures of assistance, care, supervision and protection that can be ordered in addition to a suspended sentence. (Art. 71, et al., Criminal Code).

Protector of Citizens – see Ombudsman.

Psychosocial – a mental health term meaning something, such as a treatment plan, that has both mental and social aspects.

Reconciliation – process to “resolve the troubled relation between spouses without conflict and without divorce.” (Art. 234, Family Law). Reconciliation may also include an informal practice by police and other authorities to encourage parties to reconcile and stay together.

Risk assessment –a procedure used to assess the danger and likelihood of death for a victim in a domestic violence situation.

Security measures – measures ordered with a criminal sentence to eliminate circumstances or conditions that may have influence on an offender committing criminal offences in future. (Art. 79, 80, Criminal Code) There are several security measures including compulsory psychiatric, alcohol, and drug addiction treatments; confiscation of objects; and restraining orders prohibiting physical proximity and communication with aggrieved parties.

Sua sponte – of one’s own will; voluntarily. Commonly used when judges issue orders not specifically requested by parties to a proceeding.

Summary proceedings – expedited court proceedings. Also referred to as urgent proceedings.

Suspended sentence – when the court issues a sentence but it is not imposed on the perpetrator unless he violates a condition of the sentence during a specific timeframe. (Art. 65, Criminal Code).

Urgent proceedings – see summary proceedings.

Warning – when a perpetrator is not sanctioned, but instead is told that future punishment will occur if the actions happen again.

THE ADVOCATES FOR HUMAN RIGHTS

Women's Human Rights Report Series

(Publications are available at TheAdvocatesForHumanRights.org)

- Implementation of Montenegro's Domestic Violence Legislation, July 2017
- Assessment of Domestic Violence Laws, Policies, & Practices in Central and Eastern Europe and the Former Soviet Union, 2016
- Implementation of Croatia's Domestic Violence Legislation: Follow-Up Report, March 2016
- Recommendations for Effective Batterer Intervention Programs in Central & Eastern Europe & the Former Soviet Union, January 2016
- Safe Harbor: Fulfilling Minnesota's Promise to Protect Sexually Exploited Youth, 2013
- Implementation of Mongolia's Domestic Violence Legislation, 2014
- Implementation of the Republic of Moldova's Domestic Violence Legislation, 2012
- Implementation of Croatia's Domestic Violence Legislation, 2012
- Documenting the Implementation of Domestic Violence Laws: A Human Rights Monitoring Methodology, 2011
- Sex Trafficking Needs Assessment for the State of Minnesota, 2008
- Domestic Violence in Tajikistan, 2008
- Implementation of the the Bulgarian Law on Protection against Domestic Violence: A Human Rights Report, 2008
- Journey to Safety: The Battered Immigrant Woman's Experience, 2008
- Domestic Violence and Child Abuse in Georgia: An Assessment of Current Standings of Law and Practice Regarding Domestic Abuse and Child Abuse in Georgia, and Recommendations for Future United Nations Country Team Involvement, 2006
- The Government Response to Domestic Violence Against Refugee and Immigrant Women in Minneapolis/St. Paul Metropolitan Area: A Human Rights Report, 2004
- Domestic Violence in Poland, 2002
- Sexual Harassment and Employment Discrimination in Poland, 2002
- Domestic Violence in Armenia, 2000
- Domestic Violence in Moldova, 2000
- Domestic Violence in Ukraine, 2000
- Domestic Violence in Uzbekistan, 2000
- Trafficking in Women: Moldova and Ukraine, 2000
- Sex Discrimination and Sexual Harassment in the Workplace in Bulgaria, 1999
- Domestic Violence in Nepal, 1998
- Domestic Violence in Macedonia, 1998
- Domestic Violence in Albania, 1996



Changing the world for good.