



## THE POSSIBILITIES AND LIMITATIONS OF PREVENTIVE ACTION AS A FORM OF OPPOSITION TO THE MOST SEVERE FORMS OF DOMESTIC VIOLENCE

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### Abstract

The prevention of domestic violence, timely and effective protection and support for victims, and multi-sector cooperation have become an important strategic direction of the Republic of Serbia since the adoption of the Law on Prevention of Domestic Violence. The authors put forward a hypothesis according to which the change in strategic direction and the emphasis on prevention contribute to: increasing the trust of citizens in the competent state bodies; better protection of victims; and reducing the number of the most serious cases of domestic violence – those that result in death. Using the statistical method, content analysis, and comparative and formal-legal analysis, the paper analyses the data of the Ministry of Internal Affairs of the Republic of Serbia, the Public Prosecutor's Office and the Court related to domestic violence for the period between 2019 and 2021. The authors determine that: violence against women in partner relationships is the dominant type of domestic violence; that psychological violence is the most prevalent, occurring in 68% of the cases, followed by physical violence in 41% of the cases, and economic and sexual violence; that more than 1/3 of the possible perpetrators are repeat offenders, i.e. persons on whom emergency measures were previously imposed; that the victims do not participate in the adoption of individual protection plans; and that the death of the victim occurs despite the imposed emergency measures and the response of the competent state authorities. For these reasons, the authors emphasise the importance of protection on multiple tracks, and propose a series of measures and actions that should be taken by the competent state authorities.

**Key words:** domestic violence, police, victims, possible perpetrator.

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## МОГУЋНОСТИ И ОГРАНИЧЕЊА ПРЕВЕНТИВНОГ ДЕЛОВАЊА КАО ЈЕДНОГ ВИДА СУПРОТСТАВЉАЊА НАЈТЕЖИМ ОБЛИЦИМА НАСИЉА У ПОРОДИЦИ

### Апстракт

Спречавање насиља у породици, благовремена и делотворна заштита и подршка жртвама и мултисекторска сарадња постају важно стратешко усмерење државе Србије од доношења Закона о спречавању насиља у породици. Аутори постављају хипотезу по којој промена стратешког усмерења и стављање тежишта на превенцију доприноси: повећању поверења грађана у надлежне државне органе; бољој заштити жртвама; и смањењу броја најтежих случајева насиља у породици – оних који су праћени последицом смрти. Применом статистичке методе, анализе садржаја, компаративне и формално-логичке анализе, у раду су анализирани подаци Министарства унутрашњих послова Републике Србије, јавног тужилаштва и суда који се односе на насиље у породици за период између 2019. и 2021. године. Аутори утврђују: да је насиље према женама у партнерским односима доминантна врста насиља у породици, да је психичко насиље најзаступљеније јер се појављује у 68% случајева, а затим следи физичко, у 41% случајева, па економско и сексуално насиље; да више од 1/3 могућих учинилаца чине повратници, односно лица којима су раније изрицане хитне мере; да жртве не учествују у доношењу индивидуалних планова заштите; и да се дешава да дође до смрти жртве и поред изречених хитних мера и реакција надлежних државних органа. Из тих разлога, аутори истичу значај заштите на више колосека и предлажу низ мера и радњи које треба да предузму надлежни државни органи.

**Кључне речи:** насиље у породици, полиција, жртве, могући учинилац.

### INTRODUCTION

The Law on Police (Official Gazette of RS, 6/2016) foresees a large number of measures and actions that police officers can use in order to prevent crime (Vuković, 2017, p. 219). The police are a state body that has a primarily repressive role. The preventive role, often emphasised in theory, and highlighted in legal and by-law regulations, has a secondary importance because there are no reliable parameters for measuring its success. The movement of criminality is a cyclical phenomenon that depends on numerous social factors, and the role of the police in these changes is limited (Kelling & Sousa, 2001, p. 9).

The basic criminal-strategic directions are prevention and repression (Marković, 2019a, p.162). The actions of the police cannot be politically neutral because the criminal strategy follows the guidelines of the criminal policy (Marković, 2023, p.22). Domestic violence, until the crime of the same name was criminalised in our penal legislation in 2002, used to be suppressed through classic incriminations, and through misdemeanours in the area of public order and peace. The focus of criminal policy is slowly shifting from repression to prevention with the adoption and implementation of the current Family Law (FL) (*Official Gazette of*

*the RS, 18/2005*). The definition of domestic violence given by FL is very broad because it includes all possible forms of violence, so each form of violence represents a valid legal basis for providing family law protection against domestic violence (Petrušić & Konstantinović-Vilić, 2010, p. 7).

With this law, the police did not get an adequate role in adopting family law protection measures for victims of domestic violence, and therefore could not develop an adequate criminal strategy. Competent authorities and institutions, the public prosecutor's office and the guardianship authority rarely filed lawsuits (Marković, 2019, p.1094). The public prosecutor's office, whose constitutional competence is "the prosecution of perpetrators of criminal and other punishable acts" (Constitution of the Republic of Serbia, Article 155), could not even be expected to make a sudden turn and assume a preventive role. The provisions of the FL allow for the possibility of filing a lawsuit, but this is not an obligation. Thus, in 2018, the public prosecution filed 297, or 12% of the total number of filed lawsuits (Marković, 2019, p. 1085). The problem increased with the adoption of the new Law on Public Order and Peace (*Official Gazette of the RS, No. 6/2016*), because the offense became "an illegal act that endangers or disturbs public order and peace in a public place". However, the largest number of incidents of domestic violence occur in places that are not public.

The conducted research determined that, in the period between 2018 and 2021, out of a total of 113,505 incidents of domestic violence handled by the police, 95,701, or 84% were committed in an apartment or house, 4,075 in were committed an unfenced yard, and 7,336, or 6.5% were committed on the street or in a restaurant (MUNE, 2022). Therefore, misdemeanour proceedings could be conducted for a very small number of events. The only option the police had was to warn the perpetrator and advise the victim of the possibility of criminal prosecution in a private lawsuit, or the possibility of filing a lawsuit in civil proceedings for the determination of protective measures, in those cases when there was domestic violence that did not have the characteristics of a criminal offense that could be prosecuted *ex officio* (for example, violence between partners) and that did not happen in a public place.

At the same time, the number of criminal acts of domestic violence grew year by year. The peak was reached in 2017, when the police filed the largest number of criminal reports for the criminal offense of domestic violence in our legal system – as many as 7,095, which is almost twice as much as in 2013, when 3,667 criminal reports were filed (Kolarić, Marković, 2021, p. 265), and almost three times more compared to 2007, when 2,553 criminal reports were submitted (Marković, 2018, p. 193). Between 2014 and 2017, 191 people lost their lives in domestic violence – 132 women and 59 men. The number of victims of domestic violence deprived of their lives on an annual basis was at the same, or at a similar level, which tells us that the then strategy of combating domestic violence

did not produce results when it came to the most serious consequences (Kolarić, Marković, 2021, p. 265). It was expected that the implementation of the Law on the Prevention of Domestic Violence (LPDV) (*Official Gazette of the RS, No. 94/2016*), which was adopted with the aim of harmonising Serbian legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence (*Official Gazette of the RS – International Agreements, No. 12/2013*), would reverse the negative trends in this area. Namely, restraining order measures, as well as protection measures (from Article 53 of the Istanbul Convention) are imposed for a certain period of time or until they are changed or abolished, and should be available to all victims of various forms and types of violence and without unnecessary financial or administrative burdens for the victim, whereby they are available independently of court proceedings, or in addition to other court proceedings conducted at the same time in connection with or on the occasion of the committed act of domestic violence. They are issued on an *ex parte* basis with immediate effect (Jovašević, 2018, p. 153). LPDV has prescribed such measures under the name of emergency measures; they last 48 hours and the court can extend them for another 30 days at the proposal of the competent public prosecutor.

#### *THE AIM OF THE RESEARCH*

The goal of the research is to determine whether the implementation of the Law on Prevention of Domestic Violence in Serbia has led to: better protection of women and particularly vulnerable groups of victims of domestic violence; reductions in the number of detected incidents of domestic violence; reductions in the number of family members killed by another family member; reductions in the number of criminal reports for the crime of domestic violence; and prevention of the most serious consequences in cases reported to the police.

#### *METHODOLOGY*

The research is based on the application of the normative method, content analysis, and comparative and formal-logical analysis. The results obtained from the research were processed with the appropriate selection of statistical methods.

Using the method of content analysis, the paper presents the judgments of the European Court of Human Rights and the legislation in Serbia related to the matter of combating domestic violence, as well as specific incidents of domestic violence recorded by the police in the period between 2019 and 2021. The data from the Ministry of Internal Affairs of

the Republic of Serbia, the Ministry of Justice and the Public Prosecutor's Office of the Republic of Serbia relating to the period between 2019 and 2021 was processed using the statistical method.

The main hypothesis from which the authors start is that the implementation of the Law on Prevention of Domestic Violence has led to a change in the criminal-strategic direction and a shift of focus on prevention, which has resulted in an increase in citizens' trust in the competent authorities and better protection of victims of violence. In the first auxiliary hypothesis, the starting point is the assertion that women are the most frequent victims of domestic violence, and that the perpetrators are men, particularly those in partner relationships. At the same time, an even greater percentage of men are those who are the perpetrators of the most serious criminal acts of domestic violence, that is, women are subject to the risk of death in partner relationships, with a high percentage of men committing suicide after murder.

The second auxiliary hypothesis is based on the claim that immediate, adequate and timely response to any knowledge of domestic violence and the obligation to assess the risk of violence leads to an increase in the efficiency and effectiveness of the competent authorities, and the elimination of the main causes that favour discrimination against women, as well as to the reduction of the number of the most serious cases of domestic violence – those that are accompanied by the loss of life of the victims of violence.

#### *SOME DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING DOMESTIC VIOLENCE*

The *European Convention on the Protection of Human Rights and Fundamental Freedoms* does not expressly provide for the right to protection from domestic violence. The European Court of Human Rights assumes that states are responsible for not preventing activities that constitute domestic violence on their territory (Marković, 2018, p. 106). The Court recognises the special vulnerability of women/victims of domestic violence, and the need for more active participation of the state in their protection.

When it comes to the violation of the right to life, i.e. Article 2 of the Convention, the following cases are significant: *Branko Tomašić and Others v. Croatia*, where the ECtHR states that the inability of the state to prevent gender-based violence effectively is a form of discrimination against women (Marković, 2018, p. 107); *Opuz v. Turkey*, where it is pointed out that women are mostly victims of domestic violence, and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to this; *Talpis v. Italy*, where it is stated that by underestimating the severity of the violence in question, with their inertness, the Italian authorities essentially approved that violence; and *A and*

*B v. Georgia* where the ECtHR concludes that this case can be seen as another vivid example of how the general and discriminatory passivity of law enforcement authorities in relation to allegations of domestic violence can create a climate conducive to the further spread of violence against victims simply because they are women.

In the case of *Mudric v. the Republic of Moldova*, it was determined that Articles 3 and 14 were violated (prohibition of discrimination) in connection with Articles 3 (prohibition of torture) and 8 (right to respect for private and family life); the Court found that there were clear facts indicating that the actions of the authorities were not a simple failure or delay in action, because they repeatedly approved of such violence and reflected a discriminatory attitude towards her as a woman (Dimovski, 2021, p. 750). The case of *E. S. and Others v. Slovakia* indicates that domestic violence against women is often hidden from the public and that the truth is only found out later, in the divorce proceedings. In the case of *Volodina v. Russia*, the Court notes that violence on the Internet, or cyber-violence, is closely related to violence offline or in 'real life', and is considered another aspect of the complex phenomenon of domestic violence. Today, social media are a part of many people's lives, and communication via internet platforms has made life easier (Vučković, Lučić, 2023, p. 202). However, such communication does not exclude acts of violence. States have a positive obligation to establish and effectively implement a system of punishment for all forms of domestic violence and to provide sufficient guarantees for victims. In the judgment of *Tunikova and Others v. Russia*, a violation of Article 3 and Article 14, in connection with Article 3 of the Convention, was found and it was pointed out that, in terms of protection against the risk of domestic violence, women in Russia are in a situation of *de facto* discrimination.

When considering the obligation of state authorities to assess the risk and take adequate measures in order to prevent the most serious consequences, we are of the opinion that *Kurt v. Austria* is significant (a violent father murdered the applicant's son in the school the boy attended, which was preceded by reports of domestic violence against his wife, son and daughter, for which criminal proceedings were initiated and a restraining order was issued against him to protect the wife and the family home, but custody was not determined). This decision, as well as the decisions in the cases of *Osman v. United Kingdom* (a mentally ill teacher who developed inappropriate feelings for his student fired shots at that student and his father, and on this occasion the student was wounded and his father was killed), and *Bljakaj and Others v. Croatia* (an alcoholic took the life of a lawyer who represented his wife in a divorce case), which does not directly relate to domestic violence, the obligations of the state from Article 2 of the Convention are indicated to assess the level and nature of the risk, and to take preventive operational measures to pro-

tect an individual whose life is threatened by another individual, where there is a real and immediate danger to his life. In doing so, the Court stated that there was no violation of Article 2 of the Convention if the authorities did not know, or could not have known, that there was a real and immediate danger to the life of a third party, and therefore could not have taken adequate measures to prevent the occurrence of such a consequence (in the case *Kurt v. Austria* detention was not an adequate measure for the level of the assessed risk, because based on the available information, the competent authorities could not determine a real and immediate lethal risk for children, but only a certain level of non-lethal risk in the context of domestic violence, primarily aimed at their mother).

### THE ANALYSIS OF INCIDENTS OF DOMESTIC VIOLENCE

#### Results

*Table 1. The ratio of the number of possible perpetrators, the number of risk assessments where the risk of domestic violence was determined, the number of orders and the ratio of the number of proposals and decisions extending emergency measures (MUP, 2022)*

Period	Number of possible perpetrators	Number of persons who were assessed to be at risk	Number of persons to whom orders were issued	Number of persons for whom proposal was filed to extend emergency measures	Number of persons to whom emergency measures were extended
2019	30,921	21,230	20,887	19,360	18,597
2020	29,201	20,803	20,511	18,949	18,245
2021	29,304	20,915	20,624	19,414	18,712
Total	89,426	62,948	62,022	57,723	55,554

The number of discovered possible perpetrators of domestic violence, as well as the number of persons against whom emergency measures were extended by the court is constant in the observed three-year period.

*Table 2. The ratio of the number of victims of domestic violence at the time of learning about the event and victims when emergency measures were extended by the court (Ministry of Justice, 2022)*

Period	Number of the victims	Number of male victims	Number of female victims	Number of victims when emergency measures were extended	Number of male victims when emergency measures were extended	Number of female victims when emergency measures were extended
2019	33,509	9,817	23,692	21,532	5,933	14,761
2020	31,939	9,813	22,162	21,535	5,929	15,606
2021	31,555	9,393	22,126	21,770	5,836	15,934
Total	97,003	29,023	67,980	64,837	17,698	46,301

The number of victims of domestic violence is also constant on an annual basis, with women being the victims in about 70% of the cases.

*Table 3. The ratio of the number of victims of domestic violence with regard to the gender of the perpetrator when emergency measures are extended by the court (MUNE, 2022; Ministry of Justice, 2022)*

Period	Number of female victims – male perpetrators	Number of male victims – male perpetrators	Number of female victims – female perpetrators	Number of male victims – female perpetrators	Number of female victims in partner relationships - male perpetrators	Number of male victims in partner relationships - female perpetrators
2019	14,761	4,090	1,071	1,436	11,085	1,020
2020	14,439	4,382	1,178	1,547	10,625	1,030
2021	14,674	4,213	1,260	1,623	11,151	1,059
Total	43,874	12,685	3,509	4,606	32,861	3,109

Women are most often the victims of domestic violence in cases where men are the perpetrators, and when they are in a partner relationship (marital, extra-marital, or partner relationship).

*Table 4. Practice of the Group for Coordination and Cooperation (Republic Public Prosecutor's Office, 2022)*

Period	The total number of formed Coordination and Cooperation Groups	Number of meetings	Number of newly received cases reviewed	The number of victims who attended the meetings	Number of adopted individual plans
2019	63	2,818	25,906	194	18,646
2020	63	2,604	23,611	85	16,923
2021	63	2,670	23,577	151	17,424
Total	63	8,092	73,094	430	52,993

The number of meetings held by the Coordination and Cooperation Group and the number of adopted individual plans for the protection and support of victims is approximately uniform on an annual basis, with victims in a negligible number of cases (0.6%) attending the meetings and participating in the development of the plan that is adopted in order to protect them.

### *MURDERS AND SUICIDES IN DOMESTIC VIOLENCE*

Attention is drawn to a worrying figure related to the number of persons deprived of their lives in cases of domestic violence. Namely, the number of those persons remained at a similar level even after the beginning of the implementation of the LPDV (Kolarić, Marković, 2022, p. 224).

In cases of a qualified threat, when we have all the elements of a criminal offense, the Coordination and Cooperation Group is of great im-



portance. The individual protection plan could also include the physical protection of the victim when the suspect is released. We have observed that victims rarely or never attend meetings where cases of domestic violence are discussed, their safety is assessed and protection measures are determined. Does the deputy public prosecutor chairing the Coordination and Cooperation Group give the victim the opportunity to decide whether to participate in the development of the plan? The provisions of the LPDV point out that “the victim also participates in the development of an individual plan of protection and support for the victim, if he/she wishes and if his/her emotional and physical condition allows it” (LPDV, Article 31; Kolarić, Marković, 2019, pp. 232-235). It is hardly acceptable that victims massively refuse to participate in the development of individual plans. It is about their safety, where their primary interest is to stop the existing violence and prevent the possibility of its repetition (Kolarić, Marković, 2021a, p. 345).

*Table 5. Events in which a murder was committed (MUP, 2022)*

Period	The total number of incidents in which a homicide was committed	Number of victims	Female victims	Male victims
2019	49	54	31	23
2020	42	48	28	20
2021	44	48	28	20
Total	135	150	87	63

In the analysed three-year period, the number of murder victims decreased in 2020 and remained at the same level in 2021, with the ratio of the number of women and men deprived of their lives due to domestic violence being even.

*Table 6. Female victims deprived of life (MUP, 2022)*

Period	Female victims	Minor victims	Age 18-30	Age 31 - 40	Age 41-50	Age 51-60	Age 61-70	Over 70 years of age
2019	31	2	3	2	6	12	3	3
2020	28	2	4	2	6	4	3	7
2021	28	3	3	4	3	7	6	2
Total	87	7	10	8	15	23	12	12

The largest number of murdered women (44%) were between 41 and 60 years of age.

Table 7. Male victims deprived of their lives (MUP, 2022)

Period	Male victims	Minor victims	Age 18-30	Age 31 - 40	Age 41-50	Age 51-60	Age 61-70	Over 70 years of age
2019	23	4	2	2	5	5	4	1
2020	20	2	0	2	3	5	3	5
2021	20	1	3	2	4	2	6	2
Total	63	7	5	6	12	12	13	8

The largest number of murdered men (71%) were older than 40 years of age.

Table 8. Male perpetrators of murder – age structure (MUP, 2022)

Period	Male perpetrators	Minors	Age 18-30	Age 31 - 40	Age 41-50	Age 51-60	Age 61-70	Over 70 years of age	Suicide
2019	41	-	10	6	2	14	7	2	12
2020	38	1	6	7	9	7	4	4	10
2021	33	2	7	6	8	5	5	-	9
Total	112	3	23	19	19	26	16	6	31

The number of male perpetrators of murder decreases year by year, they are most often between the ages of 51 and 60, and between the ages of 18 and 30, with 25% committing or attempting suicide after murder, which indicates the presence of strong emotions when committing a crime.

Table 9. Female homicide perpetrators – age structure (MUP, 2022)

Period	Female perpetrators	Minors	Age 18-30	Age 31 - 40	Age 41-50	Age 51-60	Age 61-70	Over 70 years of age	Suicide
2019	10	-	3	4	1	1	-	1	1
2020	7	-	3	-	1	-	2	1	1
2021	13	1	4	2	2	2	2	-	2
Total	30	1	10	6	4	3	4	2	4

Female perpetrators of murder are most often between the ages of 18 and 30, with 13% of the total number of perpetrators committing suicide after murder.

Table 10. The means of murder used by male perpetrators, the total number of victims and the number of female victims in a partner relationship (MUP, 2022)

Period	Male perpetrators	Firearms	Physical force	Knife, axe or a sharp object	Another suitable object	Total number of victims/female victims	Female victims in marital, extramarital, partner or family relationship
2019	41	8	8	20	5	44 / 28	22
2020	38	12	6	16	4	41 / 27	21
2021	33	6	4	17	6	35 / 22	15
Total	112	26	18	53	15	120 / 77	58

Out of a total of 77 female victims who were killed by men, 58, or 75%, were in a partnership with the perpetrator. Male perpetrators most often used a knife, an axe or other sharp objects suitable for committing murder.

*Table 11. Means of murder used by female perpetrators, total number of victims and victims of the opposite sex (MUP, 2022)*

Period	Female perpetrators	Firearms	Physical force	Knife or other sharp objects	Another suitable object	Total number of victims/male victims	Male victims in marital, extramarital, partner or family relationship
2019	10	1	9	3	1	10/7	3
2020	7	1	2	2	3	7/6	4
2021	13	/	5	6	1	13/7	6
Total	30	2	16	11	5	30/20	13

Female perpetrators most often used physical force when committing murder, and in 13, or 65%, of the examined cases men in a partner relationship were killed.

## DISCUSSION

In the analysed period, the police determined the risk of imminent danger of domestic violence for 70% of the total number of possible perpetrators, and they imposed emergency measures. The Public Prosecutor's Office submitted a proposal to extend the emergency measures for 93% of persons, and the court extended the emergency measures in 96% of the cases.

The actions of competent authorities must meet the criteria of efficiency and effectiveness. Bearing in mind the number of reported incidents of domestic violence that decreased in 2020 and 2021 compared to 2019, we could conclude that the competent state authorities acted effectively.

However, the perception of citizens is different. A survey conducted at the request of the OSCE Mission in Serbia in November 2022 showed that 50% of Serbian citizens believed that the problem of violence had worsened, while only 6% believed that the situation improved. Furthermore, 25% believed that the police were effective in preventing domestic violence, compared to 42% who believed that they were ineffective (TMG Insights, 2022).

Women are the victims of domestic violence in 70% of the incidents that were dealt with by the police, that is, in 71% of the cases in which emergency measures were issued. Based on this, we conclude that there are no prejudices affecting the competent police officers when they assess the risk. They act in the same way whether the victims are women or men.

Analysing the events in which emergency measures were extended, we found that in 87% of the events, the violence was committed by a male person, and that women were the most frequent victims when the perpetrators were men, followed by men when the perpetrators were men. At the same time, of the total number of female victims against whom violence was perpetrated by men, as many as 75% suffered violence in partner relationships. If we analyse only the cases of violence in partner relationships, men were the perpetrators of violence against women in 95% of the cases. Our hypothesis is confirmed – domestic violence is gender-based, it most often occurs in partner relationships, and men are mostly perpetrators while women are mostly victims.

In 135 incidents of domestic violence, 150 people lost their lives, and there were 142 perpetrators of murder. Of the total number of victims, 58% were women. The majority of female victims are between the ages of 51 and 60, followed by women between the ages of 41 and 50.

Of the total number of perpetrators of family murders, 79% are male, and they are most often people ages 51 through 60, followed by men ages 18 through 30. In two-thirds of the cases, men take the life of family members of the opposite sex, and in 75% of the cases this happens in partner relationships due to broken family relationships. We have confirmed the hypothesis which states that women are more susceptible to the risk of death in domestic violence, and that the perpetrators of family murders are most often men.

As many as 31 male perpetrators, or 25% of the total number, committed or attempted suicide after the murder. Domestic violence related murders are often accompanied by a strong emotional charge. Suicide most often occurs after the murder of a partner. This happened in 27 of the 31 suicide cases. For this reason, we can conclude that partner murders are most often followed by the perpetrator's suicide. There were cases where female family members were multiple victims. Thus, in Sombor, on the 27<sup>th</sup> of December, 2021, a man (1962) murdered his ex-wife (1966) and two daughters (2002 and 2006) on the ground floor of their house, after which he deliberately caused a fire in the house, and then committed suicide by hanging in the attic of the house (MUP, 2022). There are cases where a partner activates a hand grenade and commits murder and suicide at the same time, but also cases where one of the partners kills their child and then commits suicide (MUP, 2022).

Male victims are older than 40 in 71% of the cases, and if we exclude the murders of children during childbirth (5 male babies), this amounts to 78%. There was a total of 7 male victims who were minors, so minors of both sexes were equally victims of family murders.

Women were perpetrators almost four times less than men. These are mostly women ages 18 through 30. It should be emphasised that out of a total of 30, as many as 6 women, or 20% took the life of their child at

childbirth (five male and one female). It is interesting that official police statistics include the victims of that crime as victims of domestic violence. According to the criminal legislation of the Republic of Serbia, a mother who takes the life of her child during or immediately after childbirth, while the disorder caused by childbirth persists, is privileged (Kolarić, 2008, p. 294). It is necessary to determine in particular whether it is a newborn, i.e. how much has passed since the birth in order to be able to determine the so-called “disorder caused by childbirth” (Kolarić, 2008, p. 296).

For criminal law, human life begins with the beginning of birth. This traditional approach which, in the case of crimes against life and body, leads to a significant distinction between protected objects is undoubtedly derived from the incrimination which privileges the killing of a child during childbirth. The destruction of the foetus in the mother’s womb, from which a living human being should develop, is not treated by criminal law as murder, but as a separate criminal offense of illegal termination of pregnancy (Kolarić, Marković, 2018, p. 150). We can conclude that women are recognised as perpetrators of family murders in fewer cases than men, but it happens if they take the life of a new-born during or immediately after childbirth.

Male perpetrators of murder most often use a knife or other sharp objects as a means of murder, in as many as 47% of the cases.

The second most frequent means of murder in domestic violence is a firearm, and it was used in 23% of the cases.

The victims are often wives and family members – either relatives or in-laws. In two-thirds of the cases, men took the lives of their partner’s family members. Out of a total of 120 victims, 77 were women, and as many as 75% were killed by men with whom they were in a partnership, marital, extra-marital or in-law relationship.

In several incidents of domestic violence, the victim is killed after the imposition of emergency measures<sup>1</sup>. The question arises whether the competent state authorities could have taken more adequate and effective measures to prevent these tragedies. In its decisions, the ECtHR noted the positive obligation of the authorities to take preventive operational measures to protect an individual whose life is threatened by the criminal act of another individual (see: *Osman v. Great Britain*, paragraph 115; *Opuz v. Turkey*, paragraph 128).

Back in 2011, the Government of the Republic of Serbia adopted the *National Strategy for the Prevention and Suppression of Violence against Women in the Family and in Intimate Partner Relationship*, which pays special attention to groups of women who are exposed (or

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<sup>1</sup> Thus, in Sombor, on February 5, 2018, after leaving prison where he had been for violating emergency measures, i.e. committing a misdemeanour under Article 36 of the Penal Code (MUP, 2022), a man (1994) killed his emotional partner (1977).

may potentially be exposed) to multiple discrimination. The strategy encourages the application of international and domestic legal norms and standards that protect human rights, promotes gender equality and prohibits all forms of violence against women in family and partner relationships, as the form of violence that affects women the most (Jovašević, 2020, p. 55). In the new *Strategy for the Prevention and Combating Gender-based Violence against Women and Domestic Violence for the period 2021-2025 (Official Gazette of the RS, No. 47/2021)*, almost ten years later, it is also stated that women are the dominant victims of violence in the family and in partner relationships, and that there is still discrimination against women, while the number of cases of femicide is not decreasing.

Female perpetrators of murder in the context of domestic violence most often use physical force to commit murder, followed by a knife or other sharp objects. Out of a total of 30 victims, female perpetrators took the lives of 20, or 67%, of male persons, 13 of whom were married, cohabiting, partnered or in-laws. However, physical force is most often used against infants or children, while a knife, an axe or some other solid object suitable for murder is used against men.

### CONCLUSION

The individual plan for the protection and support of the victim is adopted in order to protect the victims and prevent the recurrence of violence, not only while the emergency measures last, but also after they are lifted. The coordination and cooperation group, i.e. the competent representatives of state bodies and institutions are obliged to take effective protection measures and to monitor the case as long as there is risk of violence. A victim of violence should have continuous support and protection. If the violence continues even after the imposition of emergency measures and the most serious consequences occur, the responsibility of the state is justified and opens the way for an assessment of the positive obligation of the state to provide protection to its citizens. Since the research shows us that even 30% of possible perpetrators are repeat offenders, this represents an additional obligation for a proactive way of dealing with this form of crime. One step has already been taken with the legal text, which by its nature is based on the *pre crime* concept, but it is now necessary to demand quality in terms of the effectiveness of the pronounced measures in addition to risk assessment, and measures that can be applied.

Proactivity means that the competent state authorities direct their activities to repeat offenders in terms of criminal legislation, but also to possible repeat offenders in terms of the LPDV, as well as repeat offenders who committed offenses. Determining activities and measures within the individual victim protection plan must be planned according to each

specific case, and the participation of the victim in the development of the plan is desirable. So far, victims have rarely been invited to the meetings of the Coordination and Cooperation Group (0.6% of the victims participated). The goal was probably to prevent secondary victimisation, but if the victims want it, they should be given the opportunity to express their views on the measures within the individual protection plan.

The victims of domestic violence are most often women in an intimate partner relationship. The judgments of the ECtHR that we analysed showed us that women are a vulnerable group of persons who are discriminated against in a large number of countries, and that their right to life is often violated. Does the case from Novi Sad, which happened on the 27<sup>th</sup> of May, 2019, when emergency measures were in place and after a qualified threat was reported, when the victim and her parents were deprived of their lives by the victim's husband (MUP, 2022), open new questions in terms of the assessment of positive obligations of the Serbian state related to the right of life? Here the police did impose emergency measures, the Public Prosecutor ordered that the suspect not be deprived of his liberty, but that a criminal complaint be filed in the regular procedure.

In such cases, it should be determined whether the competent state authorities failed to assess whether there was any danger to a person's life and, if they performed the risk assessment, whether they know or could have known that there was a risk of death. In each specific case of domestic violence with fatal consequences, we must take into account the special circumstances of that case, because the assessment of the fulfilment of the state's positive obligation arising from the various provisions of the ECHR largely depends on the specific circumstances of each situation.

The individual protection plan should meet the requirements of each individual case, the special circumstances in which the victim finds themselves in, as well as the individual circumstances related to the personality of the perpetrator. Furthermore, we should insist on multi-faceted protection against violence.

If a criminal offense has been committed, then the Criminal Code (CC) and the Criminal Procedure Law (CPL) come into play. The Criminal Code (*Official Gazette of the RS*, No. 85/2005) criminalises domestic violence. This criminal offense consists in endangering the tranquillity, physical integrity or mental state of a family member. It includes three alternatively prescribed forms of enforcement action: the use of violence, qualified threats, or brazen and reckless behaviour. The CC prescribes the security measure of prohibition of approaching and communicating with the injured party as a type of criminal sanction, by which the court can prohibit the perpetrator of the criminal act from approaching the injured party at a certain distance, prohibit access to the area around the place of residence or work of the injured party and prohibit further harassment of the injured party, i.e. further communication with the injured party, if it

can be reasonably proven that the further performance of such actions by the perpetrator of the criminal offense would be dangerous for the injured party. The security measure is imposed in the judgment. However, before the verdict is pronounced, it is possible to apply the provision of Article 197 of the CPL. It is a measure of prohibition of approaching, meeting or communicating with a certain person. It can last until the verdict becomes final at the most.

It is justified to ask the question of whether the competent institutions took efficient and effective measures to prevent violence and protect the victims, and whether they had knowledge that the perpetrator threatened to take the victim's life. It should not be forgotten that emergency measures are only one of a series of measures provided for by law. In cases where a criminal offense with elements of violence has been committed that is prosecuted *ex officio*, after the imposition of emergency measures, if the conditions for ordering detention are met, the police should arrest the suspect and bring them to the public prosecutor with a criminal report. This is especially true if the suspect sent a qualified threat to the victim. Police arrest is the power of the police, not of the public prosecutor. That is why the police have an obligation to apply it if the legal requirements are met. We cannot say with certainty that the murder would not have occurred if the police had arrested the suspect and if the court had ordered detention, but that the time and the work of the competent state authorities would have influenced the perpetrator, hopefully in a positive direction.

In the direction of multi-faceted protection, it is necessary to insist on the greater activity of the Public Prosecutor's Office in acting according to the provisions of the Family Law. In 2018, 297 lawsuits were filed and 105 were approved; in 2019, a total of 377 lawsuits were filed and 198 were approved; in 2020, 231 lawsuits were filed and 69 were approved, while in 2021, only 176 lawsuits were filed and 54 were approved by the court. In addition to this, including other persons authorised to file a lawsuit, in 2018, a total of 2,479 lawsuits were submitted to the court; in 2019, 2,191 lawsuits were submitted; in 2020, 1,660 lawsuits were submitted, and in 2021, a total of 1,778 lawsuits were filed (Ministry of Justice, 2022). We notice that in the course of 2020 and 2021, there was a sharp decrease in the number of lawsuits filed for the determination of family-law protection measures against domestic violence by the public prosecutor. It seems that victims, as well as others responsible for filing lawsuits, 'rely' more on LPDV and seek protection from violence through the imposition and extension of emergency measures.

However, bearing in mind that a third of the possible perpetrators are repeat offenders, and that emergency measures were already previously imposed on them, this kind of bad practice should be changed and parallel protection provided by legislative regulations should be approached.



Emergency measures adopted in a special, *sui generis* police-judicial court procedure should only be a short-term and quick solution that will promptly and urgently protect victims until more permanent measures are adopted in criminal or civil proceedings.

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## МОГУЋНОСТИ И ОГРАНИЧЕЊА ПРЕВЕНТИВНОГ ДЕЛОВАЊА КАО ЈЕДНОГ ВИДА СУПРОТСТАВЉАЊА НАЈТЕЖИМ ОБЛИЦИМА НАСИЉА У ПОРОДИЦИ

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### Резиме

Применом Закона о спречавању насиља у породици и додељивањем нове, доминантно превентивне, улоге полицији дошло је до промене државне стратегије у супростављању насиљу у породици. Полиција је добила обавезу да процењује ризик од насиља у непосредној будућности. Спречавање насиља у породици, благовремена и делотворна заштита и подршка жртвама, и мултисекторска сарадња постају главно стратешко усмерење државе. Европски суд за људска права је у неколико одлука утврдио да постоје *prima facie* докази да насиље у породици углавном погађа жене. Европска конвенција о заштити људских права и основних слобода не предвиђа изричито право на заштиту од насиља у породици. Европски суд за људска права полази од тога да су државе на својој територији одговорне за неспречавање активности које представљају насиље у породици. Суд препознаје посебну рањивост жена/жртва насиља у породици и потребу за активнијим учешћем државе у њиховој заштити.

У овом истраживању аутори постављају хипотезу по којој промена стратешког усмерења и стављање тежишта на превенцију доприноси: повећању поверења грађана у надлежне државне органе; бољој заштити жртва; и смањењу броја најтежих случајева насиља у породици – оних који су праћени последицом смрти. Применом статистичке методе, анализе садржаја, компаративне и формално-логичке анализе, у раду су анализирани подаци из евиденција полиције, јавног тужилаштва и суда, који се односе на насиље у породици за период између 2019. и 2021. године. На крају, аутори утврђују: да је насиље према женама у партнерским односима доминантна врста насиља у породици; да је психичко насиље најзаступљеније јер се појављује у 68% случајева, праћено физичким, у 41% случајева, па економским и сексуалним насиљем; да више од 1/3 могућих учинилаца чине повратници, односно лица којима су раније изрицане хитне мере; да жртве не учествују у доношењу индивидуалних планова заштите; и да се дешава да дође до смрти жртве и након изречених хитних мера и реаговања надлежних државних органа. Из тих разлога, аутори инсистирају на паралелној заштити коју пружају законодавни прописи. Хитне мере донете у посебном, *sui generis* полицијско-судском поступку треба да буду само краткотрајно и брзо решење које ће благовремено и хитно заштитити жртве док се не донесу трајније мере у кривичном или парничном поступку.