

The Protection of Victims of Crimes in Serbia

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Abstract

Public interest or the demand for retributive justice are only some of the postulates required for the creation of instruments and systems of victim protection in criminal law. In addition to the rights of the victim in criminal proceedings, the obligations of others, and not only the police, the prosecution and the court, appear as equivalent. The victim derives his status after the commission of a criminal act, and other entities, from social protection services to independent institutions, participate in his protection. Protection of the victim's rights is an inter-institutional matter, where it is done in the best interest of the victim. The individual approach in the field of victim protection in criminal proceedings must be continuous, with full trust in the institutions. This means that more must be done in the victim protection system, especially in the case of crimes with elements of violence, and especially where the victims are children and other particularly sensitive categories. Constant improvement of knowledge and skills in relation to victim protection among the holders of judicial functions, with police officers and lawyers is a condition without which there is no victim protection system.

Through the construction of a protection system, the victim is enabled to cope more acceptably with the consequences of the criminal act, still also given protection from secondary and repeated victimization. By creating in the national legislation minimum standards in relation to the rights, support and protection of victims of criminal acts, a system of protection based on international and regional standards is created, as they have already been adopted by the domestic legislation. With this approach, a message is sent to the citizens that full respect for the human rights of the accused does not come at the expense of respect for the same rights of the victim.

Keywords: *victim's rights, inter-institutional protection, minimum standards in international and domestic law, protection from secondary victimization*

I. Considerations on Criminal Acts with Elements of Violence

Violence, as a common element of criminal acts or a way of committing a criminal act, is not a separate criminal act. Still, in the case of a large number of criminal acts, we can say that they are committed with violence. In the case of crimes against life and body, against the freedoms and rights of man and citizen, against honor and reputation,

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against sexual freedom, against marriage and family, etc., crimes are mostly committed with violence. Although in our work we do not deal with the criminality of violence as destructive behavior, we must emphasize that it appears as organized violence, individual, ritual, instrumental and other. Violence can be direct (e.g. severe physical injury) or indirect (e.g. abuse and neglect) or violence against people's integrity (psychological, financial, etc.).

At the beginning of the 21st century, crimes committed out of hatred (due to race, religion, skin color or creed, gender, sexual orientation or gender identity, etc.), as well as domestic violence, violence in schools, peer (adolescent and violence towards and between the elderly) violence, violence by organized criminal groups, at sports events, etc.

In the list of destructive behaviors and forms of violence, it is certain that blood and sexual offenses stand out among them. An attack on the life and physical integrity of a person (victim) does not only include murder, aggravated murder, serious and minor bodily injury, human trafficking, etc., but all crimes of violence that deprive another person of their life, injure or threaten their life, health or physical integrity¹.

One of the basic human rights – the right to life – is most radically threatened by the execution of the criminal offense of murder, where the object of protection is the life and body of a person. Homicide as a criminal offense is gender neutral, but the social response and reaction of the state to the dangers that come through threats and the execution of the criminal offense of murder² simply imposed the topic of femicide³ (Pavlović, 2022), as a gender-based murder of women. The theoretical separation of the murder of women stems from the fact that very often the violence suffered by women consequently ends in their murder.

In addition to the lethal outcome, violence often raises the issue of victimization of children, mothers and fathers, the elderly, and even the rights of the unborn child⁴. Therefore, the issue of violence in the last 40 years at the global level has acquired a dimension that requires answers to questions about its characteristics, indicators, risks and/or causes, in order to arrive at the most effective strategies and activities for the prevention and protection of victims of violence. Despite the obvious changes in legislation, doctrine and jurisprudence related to the suppression and prevention of violence, the number of victims of the crime of domestic violence in the last 10 years in the Republic of Serbia has not decreased.

A victim protection system has been established, the general public's perceptions of phenomenology and the protection of victims from violence are also changing, but the protection of victims' rights (from the moment a criminal offense is committed) implies intersectoral action. So, from social protection services, civil society organizations, police, prosecutor's office, courts, victim support services and others. The thus established violence protection system is starting to show results and positive developments,

¹ Z. Pavlović, *Victimization cross life cycles*, Institute for Criminological and Sociological Research and Official Gazeta of Serbia, Belgrade, 2019.

² D. Kolarić, *Krivična dela ubistva – de lege lata i de lege ferenda [Criminal acts of murder – de lege lata and de lege ferenda]*, NBP. Nauka, bezbednost, policija, 20(2), 2015, pp. 145-165.

³ Z. Pavlović, *Criminal Legal Reaction to Femicide*, Univerzitet Privredna akademija Novi Sad, 2022, pp. 146-164.

⁴ Z. Pavlović, *Protecting the rights of the unborn child*, Yearbook Human Rights Protection from Childhood to the Right to a Dignified Old Age Human Rights and Institutions, No. 5, PZG Ombudsman and Institute of Criminological and Sociological Research Novi Sad, 2022, pp. 257-275.

starting with the creation of an attitude to establish a social zero tolerance for violence, all the way to the criminal law reaction.

II. One Example and a Few Questions Related to Violence

In modern criminal proceedings of the Republic of Serbia, we can state that the rights of the accused are respected and guaranteed, in accordance with the standards and rules that are at the level of the most modern countries. With the protection of victims' rights, regardless of good legal solutions, we cannot be completely satisfied with the implementation of those rights. There are several reasons, and one of them could be the lack of adequate coordination between the competent authorities and services, from the moment a criminal offense is committed, and onward until there is a need for it.

In 2021, criminal proceedings against Z.G. were conducted before the Municipal Court in Sombor⁵, for the criminal offense of domestic violence, he was a recidivist, because he was also responsible for the criminal offense of threats and violent behavior in 2010. He was on the run, so he was deprived of his freedom on a warrant, and was in custody from July 29, 2021, until the verdict was passed. On December 22, 2021, he was sentenced by a first-instance verdict for the commission of two criminal acts, non-payment of maintenance and domestic violence to a single prison term of three years and three months, in which he was ordered to prohibit contact and communication with the victims, his wife and daughters M.G. and A.G., one of whom was a child and the other an adult.

By the judgment pronounced in this way, the accused was prohibited from approaching the victims at a distance of less than 100 meters, from further harassing the victims and from further communication for a period of five years. The defendant was ordered to be released immediately, and by the same decision, measures were imposed on him to prohibit him from approaching, meeting and communicating with the victims, as long as there is a need for this, and until the verdict becomes final, i.e. the defendant was sent to serve his sentence, i.e. until March 22, 2022. The control of this measure was supposed to be carried out by the Police Department in Sombor, where he had to report every 2nd and 4th Monday with a ban on leaving his residence. The competent prosecutor's office immediately filed an appeal, but it was not resolved due to procedural reasons. The defense attorney of the convicted did not immediately receive the decision on the termination of detention, and then not even the appeal. During that time, the convict used new violence against the victims for 5 days, harassing them by phone and other things. While the judicial authorities were organizing how to solve procedural problems, on December 29, 2021, the defendant went to the victims' house (which was also his house) and on that occasion took the lives of his wife and two daughters, set their bodies on fire, and then committed suicide. The son and brother of the victims were not at home on the mentioned date.

The questions that arise regarding this event include several aspects: were there really elements that would indicate that the detention measure should be replaced by a milder measure, was it possible that the court could not organize an urgent appeal procedure? In a case where the accused is an abuser of victims of domestic violence,

⁵ <https://www.danas.rs/vesti/drustvo/ugasen-pozar-u-kuci-u-somboru-pronadjena-cetiri-tela/>.

then the question of whether there was a basis for imposing emergency measures of protection, removal of the abuser and a restraining order etc., arises.

It is questionable whether the victims received adequate support and protection from the competent authorities, whether these authorities worked in a coordinated manner, whether the team for the prevention of domestic violence met on the occasion of this event, it is also under question who and how should carry out the risk assessment after the release of a convicted person from detention etc.

To what extent the assessment of the situation in the specific case could have prevented the commission of this criminal act, and whether all competent authorities were involved in its prevention, we have no answer. Because, whether or not all relevant subjects were involved, the consequence of violent behavior is unfortunately such that the number of victims killed in domestic violence in the RS has become higher than it was before the described event. Judging by the writings of the media, issues related to the prevention of a possible negative outcome for victims of violence, after the abolition of detention, cannot be simply recognized. Was the reaction of the socially responsible in the domestic violence protection system adequate? Who was supposed to be the point of attachment after the first-instance judgment was passed and inform the victims of violence about the termination of detention, check whether support and protection measures have been provided, so on and so forth,

A separate question is how the media reported on this event, whether they respected the right of the victims to pray, whether the son and brother of the murdered had the status of a victim in the proceedings. In the search for answers to these dilemmas, let's start in order!

III. Legislative Framework for the Prevention and Suppression of Domestic Violence. The Protection of Victims

In addition to universal international human rights documents (UN Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms) and others. Directive 2012/29/EU on the establishment of minimum standards for the rights, support and protection of victims of criminal acts is of particular importance for the European legal area.

Comparing the provisions of the Directive with the provisions of the Code of Criminal Procedure and other relevant regulations, we note that the provisions of the Directive have been adopted in their entirety on the normative level. One of the big steps in its implementation was the adoption of the Law on Free Legal Aid.

The Istanbul Convention on preventing and combating violence against women and domestic violence is a very important international legal document that pays special attention to the definition of violence against women as gender-based violence. She points to the necessity of coordinated action by institutions and drafting of protocols within all bodies that have in their jurisdiction work with women victims of violence, especially domestic violence.

The Convention determines, for the first time in Europe, binding standards for protection against violence against women and domestic violence, for the protection of victims and punishment of perpetrators. Serbia ratified this convention in 2012, but the actual construction of the system for the protection of women from violence in our

country began in 2002, when the criminal offense of domestic violence was introduced into the Criminal Code for the first time, which said that it is not a private matter of an individual.

The Serbian Family Law from 2005 introduced family law protection measures in cases of domestic violence, while in the legislative sense the most relevant document is the entry into force of the Law on Prevention of Domestic Violence in July 2017. This law completes the institutional framework for responding to violence. At the national level, legislative protection against domestic violence has other forms of articulation, which primarily refers to the Law on Gender Equality, which foresees normative mechanisms for preventing discrimination in all spheres of social life.

Bearing in mind the fact that the issue of attitudes towards domestic violence is considered a strategic, security and even existential issue, this means that seeking an adequate response to these problems is something that concerns not only the immediate victims, but also our descendants, and society as a whole. In this context, it is extremely important what kind of message is given to the public regarding the reaction to domestic violence, especially in relation to violence that results in murder as the final consequence, but also to familiarize the public with the consequences of violence.

IV. The Elderly as Victims of Violence

Violence is considered as any act against another person and against that person's will. By reviewing the relevant literature and positive legal texts in the Republic of Serbia, we did not recognize the appropriate definition of what is considered violence against the elderly, so in this paper we accepted the definition of violence by the World Health Organization (WHO), which defines violence in general as the use of physical force or power, threatened or actual, against oneself self, another person or against a group or community that results in or has a high probability of injury, death, psychological harm, maldevelopment or poverty. The present study used the division or types of violence/abuse of the elderly as defined by the WHO, so we distinguish between physical, psychological, financial and sexual violence/abuse, neglect and neglect. The consequences that occur are the infliction of physical pain or injury on an elderly person, emotional suffering, illegal use of financial resources, endangerment of physical and mental health, and others.

Although in recent years a lot of attention has been devoted to the position of the elderly and the problems they face, there is still no document that would systematically and comprehensively represent the source of law and determine legal protection, legal procedures/procedures for the elderly, but the protection of the elderly as victims of violence regulated through several laws and by-laws. The legal system of the Republic of Serbia recognizes this topic through ratified conventions (Istanbul Convention, etc.), constitutional provisions, legal regulations on social protection, the Law on Prevention of Domestic Violence, the Criminal Code, the Family Law, the Law on Health Care, the Law on Prohibition of Discrimination, Law on road traffic safety, legal provisions of regulations on pension insurance and others (from the set of judicial laws and beyond).

Even before the adoption of these documents in the Republic of Serbia, the National Strategy on Aging was formulated as a document that included the principles of

lifelong development of the individual, respect for diversity and consequently different needs among the elderly population, solidarity and dialogue, achieving equal opportunities for all and affirming personal responsibility, etc.. Therefore, inaction at this moment cannot be justified by the lack of systemic protection, because the instruments are already there, starting with the Constitution of the Republic of Serbia and continuing.

V. Law on Prevention of Domestic Violence

Prevention of domestic violence and the actions of state authorities and institutions in preventing domestic violence and providing protection and support to victims of domestic violence are regulated by the Law on Prevention of Domestic Violence. The provisions of this law do not apply to minors who commit domestic violence. The goal of the law was to regulate the organization and actions of state bodies and institutions in a general and uniform manner and thereby enable effective prevention of domestic violence and urgent, timely and effective protection and support for victims of domestic violence. Domestic violence, according to the provisions of this Law, is an act of physical, sexual, psychological or economic violence by the perpetrator towards the victim with whom the perpetrator is in a current or previous marital or extramarital or partnership relationship, or towards a person with whom he is a blood relative in the direct line, and in the collateral line up to the second degree or with whom he is related by in-laws up to the second degree or to whom he is an adoptive parent, foster parent or foster parent or to another person with whom he lives or lived in a joint household.

The application of this Law is also significant in the field of cooperation in the prevention of domestic violence in criminal proceedings for criminal acts, namely: persecution (Article 138a of the Criminal Code); rape (Article 178 of the Criminal Code); assault on a helpless person (Article 179 of the Criminal Code); fraud by abuse of position (Article 181 of the Criminal Code); illicit sexual acts (Article 182 of the Criminal Code); sexual harassment (Article 182a of the Criminal Code); pimping and facilitating sexual intercourse (Article 183 of the Criminal Code); mediation in prostitution (Article 184 of the Criminal Code); showing, obtaining and possessing pornographic material and exploiting minors for pornography (Article 185 of the Criminal Code); domestic violence (Article 194 of the Criminal Code); failure to provide maintenance (Article 195 of the Criminal Code); violation of family obligations (Article 196 of the Criminal Code); incest (Article 197 of the Criminal Code); human trafficking (Article 388 of the Criminal Code) and other crimes if the crime is a consequence of domestic violence.

The law also applies to the provision of protection and support to victims of the above-mentioned criminal acts. Since the legal regulation in question is aimed at the effective prevention of domestic violence and the unique way of organization and actions of state bodies and institutions, it is important that the legal system organizes and prescribes the application of other regulations when it comes to domestic violence. The Criminal Code, the Code of Criminal Procedure, the Civil Procedure Law are applied to the prevention of domestic violence, in proceedings against perpetrators of crimes specified in the Law on the Prevention of Domestic Violence, and to the provision of protection and support to victims of domestic violence and victims of

crimes specified in this law, Family Law and Police Law. The police, public prosecutor's offices, courts of general jurisdiction, misdemeanor courts, competent state bodies and centers for social work are responsible for preventing domestic violence and providing protection and support to victims of domestic violence and victims of crimes determined by this law.

It is particularly important to point out that the Law on the Prevention of Domestic Violence prescribes that an individual protection and support plan for the victim be drawn up, as well as that a special record of data on cases of domestic violence be kept. How serious the problem of domestic violence (and thus also violence against the elderly) is, can be clearly concluded because the legislator had the need to pass a special law on this matter and to prescribe, in addition to the passed law, that the Government will establish a Council for Suppression to monitor the implementation of that law of domestic violence whose task is to, in addition to monitoring the implementation of the law, improve the coordination and effectiveness of preventing domestic violence and protection against domestic violence.

Such a normative framework would provide a basis for the conclusion that it is sufficient for things to function in the Republic of Serbia in such a way that the victim of a criminal offense is fully protected. But the open questions from the example from the beginning of this paper tell us otherwise.

VI. Instead of Conclusion

The protection of the rights of victims in criminal proceedings has advanced since the end of the 20th century⁶. From the position of an incident subject in criminal proceedings, in modern law the victim is increasingly in the center of attention not only in theory, but also in practice. Thanks to the development of victimology, the protection of human rights, etc., criminal law theory in this century places the victim at the epicenter of its work. The aim is to provide the victim with all his rights, protection and dignity in the proceedings before the competent court. In the international community, but also within the European Union, a whole series of legal instruments have been adopted to date, which provided the basis for the construction of criminal justice systems that put the victim at the center of their work, in a society that will be sensitive to their needs as such, and where the State itself must take part of his responsibility.

Directive 2012/29/EU on the minimum rights of victims is the most important European document in that area and provides victims with support in criminal proceedings in a very detailed and elaborate manner. Together with the Istanbul Convention, the directive, with minor interventions, was successfully implemented into the domestic legislation, thus creating a basis for supporting victims of crimes with elements of violence. Adoption of the Law on free legal aid, development of services in the local community, are just some of the bases for better support for victims. Certain categories of victims are singled out, including unborn children and the rights of the elderly, who are not fully recognized in the protection system, but are not protected either, which leads to their additional, secondary victimization to which they are exposed.

⁶ A. Jain, A. Singh, *Victim-Oriented Criminal Justice System – Need of the Hour*, Indian Bar Review, 44/3, 2017.

Legislative activity in the field of protection of victims' rights is not a sufficient guarantee that the established rights of victims will be adequately used in practice. There are practical problems, but they are not insurmountable, but we will be able to inform the professional and scientific public about the real results only after the establishment of a public database that would allow insight into the effectiveness of implementing support for victims. At the moment, the victim has visibility, from the procedural to the material provisions of the criminal law, but without more precise definitions in the laws and an effective system of protection in practice, the support for the victim will not be complete.

An important segment of support and protection of the rights of victims of crimes with elements of violence means ensuring and improving the preventive role of the media through media content that promotes non-violence and continuously informing the public about the mechanisms of protection against domestic violence, gender-based and other forms of violence, and about available services at the local level. Establish cooperation mechanisms with the media in all institutions, while respecting human rights standards and all ethical principles and reporting codes.

When talking about the rights of victims of crimes with elements of violence, it is necessary to make it more efficient and to sanction journalists and news outlets in cases of unethical media coverage of violence.

It is mandatory to continuously educate professionals in all systems through accredited programs and licensed educators in the field of gender-based, family, sexual violence and violence against members of vulnerable groups (persons with disabilities, the elderly, LGBTI, children...) and periodically evaluate the effects of training. Centers for social work should be given additional and accompanying powers to independently initiate social and family-legal protection procedures. In this way, indirect support is also given to the victims, who very often meet the representatives of the state authorities for the first time, in contact with the centers for social work.

Within all state bodies that work with victims of violence, it is necessary to draw up regulations and protocols on the procedure for protecting victims when they arrive, stay and leave the courthouse. Following the obligations from the Istanbul Convention in the system of protection, Groups for coordination and cooperation were formed, which should now enable victims to participate in the process of planning protection and support, as well as to include in the work of the group other institutions, civil society organizations, whose services are of importance for providing support to victims of violence.

Provide the members of the coordination and cooperation group with greater commitment in the work and development of individual protection and support plans for the victim, through changes in acts in the internal organization and systematization of workplaces and distribution of work within each institution. This particularly applies to public prosecutor's offices, which are in a way the bearers of these activities.

Plan and obligatorily inform the victim about the determination and termination of custody of the accused and about other measures, through the mandatory instructions of the public prosecutor or through the individual plan for the protection and support of the victim prepared by the group for coordination and cooperation.

The process of protecting the victim's rights did not come to an end when the convicted abuser went to prison. That is why it is necessary to impose an obligation on penal institutions to promptly notify the victim and competent institutions (local self-government unit, center for social work in order to ensure adequate post-penal

reception) about the perpetrator's exit from the institution/detention center. And lastly, but not least, to provide the victim with material assistance, so that she can organize her life as long as necessary, and in accordance with the type and severity of the criminal offense with which she was threatened.

To conclude, the normative order in Serbia in the procedure for protecting the rights of victims is not enough for the protection to function.

In addition to certain harmonization of all regulations dealing with the protection and rights of victims, it is also necessary to establish a public database on victims, so that something can be done urgently from legislative visibility so that data on violence and victims cannot disappear from public view. More precise laws and better coordination of work in practice can provide a decisive step in creating a society with zero tolerance for violence.

Unlike some authors who advocate for prompt legal changes, some of which have no basis in domestic law or international documents, we are of the opinion that we should fully implement the adopted laws, plans and strategies, see where we can let's improve the situation, and only after that a suitable solution can be found in a broad discussion.

Victims, family members and their children, as well as society as a whole, deserve special protection, as well as respect through media reporting. Without preventive work and the inclusion of all relevant parts of the system: from social protection services, police, prosecutor's offices, courts, coordination teams, civil society organizations and independent institutions in the effective fight against violence, the number of 30 killed in domestic violence per year in our country will continue to be present as a reality. By creating awareness about the necessity of zero tolerance to violence, that dark reality can be changed. The victims from the above example might have had a chance to live through a different reaction, with all the fences we put forward.

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