

ORIGINAL ARTICLE / ОРИГИНАЛНИ РАД

Modalities and legal treatment of obstetrical violence in the Republic of Serbia

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**SUMMARY**

Introduction/Objective The problem of obstetric violence is a relatively new topic both in the field of medicine and in the field of law. The aim of the work is to analyze the problem and propose a solution in order to encourage the adequate application of the normative framework, improve the treatment of pregnant women and women in labor in gynecological-obstetrical institutions, protect women's reproductive health, restore trust, respect and understanding in the mutual communication between health workers and pregnant women/birth mothers.

Methods Several scientific methods were used in the work – desk research, descriptive method and analysis, and synthesis of available literature as well as relevant announcements, normative method, and logical research. In the research part of the paper, the primary method is the case study and analysis of obstetric violence in practice. Finally, a functional analysis was performed.

Results Through the analysis of case studies and modalities of obstetric violence in gynecological-obstetrical institutions in Serbia, as well as the analysis of research carried out so far, as many as 16 forms of obstetric violence were identified.

Conclusion Adequate implementation of legal and by-laws governing this area should be systematically encouraged, the treatment of pregnant women and women in labor in gynecological-obstetrical institutions should be improved, women's reproductive health should be protected with dedication, proper application of medical treatments, be treated with respect and understanding, exclude acts of discrimination, torture, inhumane and humiliating treatment, and ensure adequate and functional conditions for the stay of pregnant women and mothers in labor in a gynecological-obstetrical institution.

Keywords: obstetric violence; women's reproductive health; family; Family Law; Criminal Code

INTRODUCTION

The Constitution of the Republic of Serbia [1] stipulates that everyone has the right to protect their physical and mental health, as well as that human life is inviolable. The Law on Health Care [2] regulates, among others, the principle of respect for human rights and values and the rights of the child in health care, which implies ensuring the highest possible standard of human rights and values in the provision of health care, as well as guiding the best interests of the child in all activities health care provider. The Law on Patients' Rights [3] stipulates that the patient is guaranteed an equal right to quality and continuous health care in accordance with his health condition, generally accepted professional standards and ethical principles, in the best interest of the patient and with respect for his personal views. This law provides for a whole set of rights that patients enjoy. The Law on Prohibition of Discrimination [4] prescribes a general prohibition of discrimination and stipulates that everyone is equal and enjoys equal status and equal legal protection, regardless of personal characteristics.

The Constitution of the Republic of Serbia [1] stipulates that everyone has the right to freely decide on the birth of children, as well as that the mother is provided with special

support and protection before and after childbirth. The Family Law of the Republic of Serbia [5] stipulates that a woman can freely decide on giving birth, and that mother and child enjoy special protection from the state. The provisions of the Criminal Code [6] in the chapters that prescribe criminal offenses against human health, against sexual freedom, freedoms and rights of man and citizen and against life and body protect, in terms of the object of criminal protection, precisely the right to mental and physical health within rights to health care, sexual freedoms, freedoms and rights of man and citizen, and human life and body, as values that are very often the object of injury or endangerment by various actions, which not infrequently happen precisely in the sphere of exercising the right to health care for children, pregnant women and maternity.

The aforementioned provisions certainly speak of the values that we unequivocally protect with the modern legal order, which are the embodiment of the democratic framework of living and acting. Why is it important to point out the whole set of constitutional and legal provisions that protect the right to health care of all citizens, especially children, pregnant women and mothers in labor, and the right to protect the physical and mental health of every citizen? It is important because the violation, among

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others, of these provisions is directly related to the problem of violence against women during pregnancy, before and after childbirth. It should be said that the problem of violence against women before childbirth, during and after childbirth was not recognized for a long time in the wider social context, nor was it analyzed from either a medical or a legal point of view. Until the middle of the 20th century, obstetric violence, nor actions directly or indirectly related to obstetric violence, were the subject of critical review by neither the scientific or professional public. The problem of violence against women during childbirth therefore and according to the opinion of other authors „represents a relatively new topic both in medical studies and in sociological-feminist research on violence against women in general, and until the end of the last century it was sporadically thematized in wider feminist literature, becoming more visible only in the last two decades” [7].

At this point, before elaborating in more detail the concept and forms of obstetric violence, the importance and consequences it leaves on society and the individual, it is necessary to point out certain standards regarding the ethics and professional behavior of health workers, highlight the principle of *Primum non nocere*, and the postulates of the Hippocratic Oath which represents the foundation of the ethics of healthcare workers since the fourth century BC, when Hippocrates gave the first codification of ethical principles.

Namely, the principle *Primum non nocere* is one of the oldest ethical principles of ancient medical practice, which was also established by Hippocrates, with the basic meaning “to help or at least to do no harm.” This principle is based on three very important postulates, namely morality, honesty, and fairness in dealing. Having said that, the determination of morality, which in principle consists of two components of moral reasoning and moral behavior as a psychological function, implies “man’s ability to dictate to himself the norms that he will adhere to during his life, as well as to punish himself if he does not adhere to the norms that he gave himself.” Each person possesses morality, and morality is, in addition, “the right and obligation of the individual to live and behave according to the principles of honesty and integrity” [8].

There is no doubt that the changes in the health system of the states have been changing for centuries in accordance with “social and technological requirements,” [9] whereby the problem of overtime work of health workers “as a situation that is very common in practice but which should be avoid” [10] but the fact that “today in all countries there is a code of ethics for health workers” [11], the basis of which is certainly Hippocrates’ point of view on medical ethics, whose premises were contained even in Hammurabi’s code (2100 BC).

The basic values that healthcare professionals should stand for are: “human and nation health, the life of patients, and the physical and psychological integrity of individuals and certain vulnerable groups” [11]. In Geneva in 1948, the World Medical Association adapted the Hippocratic Oath to current times. The Declaration of Geneva “emphasizes all four fundamental principles of medical ethics from the

Hippocratic Oath. A doctor is ordered to perform his duties conscientiously and with dignity, to respect and be grateful to his teachers and to his colleagues as to brothers and sisters” [12].

Consequently, “observing the existence of violence during childbirth is related to the protection of women’s basic human rights to physical and personal integrity, self-determination and privacy” [7]. Namely, the application of certain procedures, interventions and ways of dealing with health care workers, which include “coercion, denial of information, disrespect and obstetric violence and inciting fear in the person giving birth are completely inconsistent with the goals of organizing healthy, safe and civilized ways of childbirth, which are globally changed the conditions of obstetrics during the 20th century” [7].

Building on what has been said, and before proceeding to the analysis of the case study, it is necessary to define the concept, meaning, scope and appearance of forms, i.e., the modalities of behavior which in modern literature is denoted by the term obstetric violence, and which actually refers to the actions of health workers which contains elements of violence against women during pregnancy, before childbirth, during childbirth and immediately after childbirth.

Based on past experience in practice, obstetric violence is considered to be any type of negligent treatment of women in gynecological-obstetrical institutions, and any type of physical, psychological or emotional abuse during pregnancy, before and during childbirth, as well as after childbirth. Obstetric violence represents “a specific form of violence against women that violates the regulations governing human rights” [13], rights guaranteed by family law, rights in the field of health care and patients’ rights. Obstetric violence is a modern term that in practice can include a series of specifically committed acts that contain the elements of a criminal offense, for which the Criminal Code foresees criminal liability. Obstetric violence can include a series of actions by health workers that can produce different consequences both for the pregnant woman and the woman giving birth, as well as for the entire family – degrading and inhumane births, health complications for both the mother and the child, psychological disorders, postpartum trauma, mistrust in the health care system, and often the death of the mother and/or baby.

Obstetric violence very often implies an inhumane approach, unscrupulous attitude of health workers towards pregnant women and mothers who use “their authority and an obvious disproportion in their position in relation to pregnant women and mothers” [14], “abuse of interventionist measures, medicalization and returning the process from natural to pathological, which results in the loss of a woman’s right to decide about her own body and negative impacts on the quality of life of herself and the child” [15]. Therefore, different modalities of obstetric violence can be recognized in the world, regardless of the level of development of the country, political system, social status of women, level of education and any other parameter, and these modalities are most often related to verbal violence, physical violence, sexual violence, social discrimination,

neglect and inadequate use of medical procedures and skills by health workers, despite the fact that such an approach is unacceptable for the profession they perform, and for society itself [16].

In 2019, the International Organization for Human Rights during Childbirth published a report entitled “Abuse and violence against women during the provision of health care during the reproductive period,” with an emphasis on childbirth, in which it presented the position of women during pregnancy, childbirth, and after childbirth. The report points out that “abuse and violence against women in terms of reproductive health protection is present all over the world and occurs most in situations when women ask for medical treatment to reduce their pain and alleviate suffering, or when they ask to explain to them the medical treatment that will be carried out, the consequences of the treatment and her current state of health” [17].

According to research carried out in Serbia on a sample of 30 women from Belgrade selected by combined purposive and snowball sampling, evenly distributed on the basis of age (from 18 to 55 years) and education (primary, secondary, and higher education), according to the set criteria of rudeness and disrespect the intimacy of a woman giving birth, connected with the indicators related to the testimonies of rude treatment, excessive infliction of pain, and exposure of the woman's body to examination and the view of an excessive number of people, the following conclusion was reached, among other things: “the rudeness of health workers during the delivery of a woman consisted in ugly and incorrect treatment, with disrespect for the intimacy of the person giving birth, in some cases in not maintaining hygienic conditions, in insults, sexist remarks, but also in direct violence, which, all together, bearing in mind the number of such responses (since appears in almost every interview), cannot be treated as an anomaly in relation to the usual way of dealing in maternity wards, but as a custom that is widely represented” [7].

METHODS

Several scientific methods were used in the work – desk research (bibliographic and hemerographic research that enables the creation of an acceptable previous theoretical framework, because it is based on the analysis of available modern bibliographic documents), descriptive method and analysis and synthesis of available professional and scientific contemporary literature from the country and abroad, as well as relevant announcements with respect to the chronological approach, the normative method in the analysis of current national legislation, and logical research. In the research part of the paper, the primary method is the case study and analysis of obstetric violence in practice. Finally, a functional analysis was performed.

RESULTS

In mid-January 2024, Serbia was shaken by the news from Sremska Mitrovica regarding alleged violence against a woman during childbirth. It is a case of childbirth in a hospital in Sremska Mitrovica, a city about 75 kilometers away from Belgrade.

For one woman, Marica Mihajlović, the world stopped on January 12, 2024 when she did not hear her baby's cry after giving birth. According to her statement sent to the public from her account on a social media network six days after the unfortunate event, she suffered violence that affected both her health and the life of the child, who died during childbirth. Her statement read: “The doctor hit and insulted me, squeezed my jaw, threatened to hit me... to crush my head, he insulted me on ethnic grounds” [18].

The autopsy of the baby of Marica Mihajlović indicated that death occurred due to a violent birth. According to the conclusion of the forensic pathologists: “Based on the clinical course and the autopsy findings, we are of the opinion that the unfavorable outcome occurred due to severe perinatal asphyxia of the fetus and massive aspiration of meconium, and the consequent occurrence of bilateral pneumothorax and bilateral suprarenal hemorrhage. The presence of a subgaleal hematoma was also verified.” [19, 20].

This case alarmed Serbia and encouraged other women to tell similar, bitter experiences. It turned out that obstetric violence in Serbia is not a new topic. For years, women in Serbia have been faced with certain modalities of obstetric violence during pregnancy, during childbirth, and after childbirth – emotional threats and blackmail, conditions for the provision of services, failure to provide pregnant women with enough information to make their own decisions, disrespect for the privacy and preferences of the mother-in-law, denial of food or water, vaginal examination without consent, neglect of complaints and pain of the woman in labor, verbal and emotional insults and humiliation, inability to move and forced to lie down, sexual comments or sexual abuse, physical violence, medical procedures without the consent of the pregnant woman, non-presentation and domineering behavior etc.

In 2015, the “Center for Mothers” association conducted a survey on the experiences of women in maternity wards, which produced worrying results. From then until today, almost nothing has changed. The research was part of a regional campaign called “Freedom to Give Birth”, whose aim was to draw public attention to the treatment of women and their rights during childbirth, as well as the importance of good communication between staff and birth attendants during childbirth [21]. The research showed that “maternity wards in Serbia are places where pregnant women come with anxiety and give birth in an unpleasant atmosphere, where unknown people do not explain what is happening to them, nor support them during childbirth, but follow their birth plan and make decisions for themselves.” The father is almost completely excluded from the birth, and even when he attends the birth, he is present primarily as an “assurance that there will be no

verbal abuse of the woman in labor, and not as support and help during the birth” [22].

Even before the case of Marica Mihajlović from Sremska Mitrovica, numerous experiences of obstetric violence in gynecological-obstetrical institutions were publicly reported, which showed that medical treatments for the protection of women’s reproductive health were not applied in accordance with regulations, and that national regulations (in the first in line with the Constitution and the laws whose key provisions are listed at the beginning of the work) are very often completely ignored or inadequately applied in the practice of the actions of health-care workers.

Research conducted by three female lawyers in Serbia during 2022 included the analysis of over two hundred cases and experiences of women who experienced obstetric violence in gynecological and obstetric institutions. The respondents confirmed with their experiences that obstetric violence is not an individual problem, but a serious systemic problem. A total of 110 respondents gave their consent for quoting the statements they gave as part of the research. The results of the research showed that 16 forms of violence and abuse, i.e., inhumane treatment of the examined patients, were identified [17]. Research shows that “various forms of obstetric violence are present, and that their form ranges from verbal insults, through abuse with serious physical injuries, to the death of the woman or the baby.” In each form of obstetric violence, different intensities of violence with different degrees of consequences were observed [17]. Figure 1 shows the types of violence in gynecological-obstetrical institutions, which were found through the aforementioned research.

The research yielded data that the most reports of obstetric violence were for four health institutions (Narodni Front Gynecology and Obstetrics Clinic; University Clinical Center of Vojvodina, Betanija Clinic for Gynecology and Obstetrics; University Clinical Center of Niš, Clinic for Gynecology and Obstetrics; University Clinical Center of Serbia, Višegradska Clinic for Gynecology and Obstetrics) [17]. Figure 2 shows the most common forms of violence in the four gynecological and obstetric institutions with the most reports.

DISCUSSION

From the presented case from Sremska Mitrovica and the analysis of the modality of obstetric violence in gynecological-obstetric institutions in Serbia, it can be concluded that the main problem with obstetric violence until now was that any form of violence by health workers in

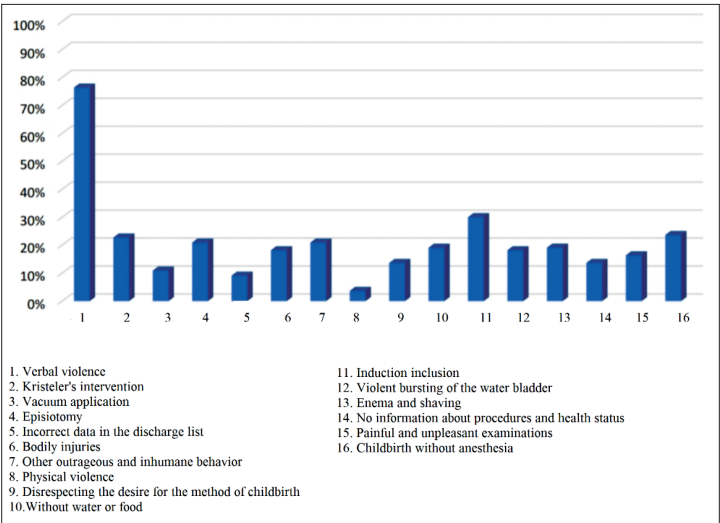


Figure 1. Types of violence in gynecological and obstetric institutions

Source: Mijatović M, Stanković J, Soković-Krsmanović I. Treatment of women in gynecological and obstetric institutions, Belgrade, 2022, 42.

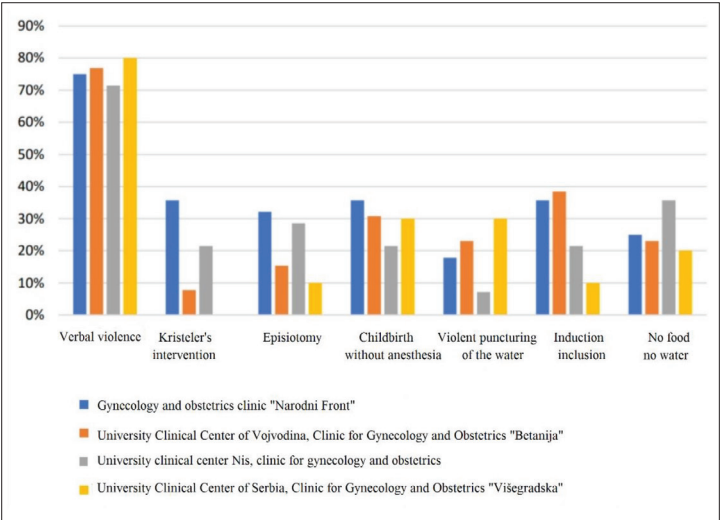


Figure 2. The most common forms of violence in four gynecological and obstetric institutions with the most reports

Source: Mijatović M, Stanković J, Soković-Krsmanović I. Treatment of women in gynecological and obstetric institutions, Belgrade, 2022, 43.

gynecological-obstetric institutions was understood for years as an individual problem, and not a systemic problem that society has been facing for a long time.

Obstetrical violence violates not only the provisions of the Constitution as the highest legal act of the state, but also the entire legal framework that provides certain guarantees and security to citizens, protecting concretely defined values whose protection and security is a feature of the modern state and society. At the beginning of the work, the laws are listed, each of which in its domain provides valid guarantees to all citizens in the field of health care, health insurance, rights and duties of patients and general prohibition of discrimination, and in accordance with these provisions, and support, among other things, to women in the field of application of medical treatments in order to protect women’s reproductive health.

The provisions of the Family Law of the Republic of Serbia, which stipulates that a woman can freely decide on giving birth, and that mother and child enjoy special state protection, are also key. The Family Law also stipulates that everyone is obliged to be guided by the best interest of the child in all activities concerning the child. The state has the obligation to take all necessary measures to protect the child from neglect. The state has an obligation to respect, protect and promote the rights of the child [5]. The provisions of the Family Law and Family Law, formulated in this way, are the basis of the provisions of the Criminal Code of the Republic of Serbia, which prescribes criminal offenses against human health, criminal offenses against sexual freedom, criminal offenses against the freedoms and rights of man and citizen, and criminal offenses against life and body, which protect, in terms of the object of criminal law protection, the right to mental and physical health within the right to health care, sexual freedom, freedom and rights of man and citizen, and the life and body of man, as values that are very often the object of injury or endangerment by various actions, which are not they rarely happen precisely in the sphere of exercising the right to health care for children, pregnant women and mothers in labor. It should be said that “every type of violence manifests itself by injuring and jeopardizing first and foremost safety and trusting relationships, and is characterized by power and control over the victim” [22]. However, even though the provisions of the criminal legislation in the domain of criminal liability of persons responsible for the commission of an offense which in a specific case may have features of a criminal offense (which in each specific case is assessed by the prosecution through the preliminary investigation procedure and investigation) cannot be bypassed, it should be investigated that the protection of the family, makes mother and child “primarily family law, so here the criminal law protection is actually subsidiary, i.e., it is resorted to only in those cases of attacks on the stated values, when they cannot be adequately protected by the norms of another branch of law” [23].

In accordance with what has been said, it should be said that the laws properly, in accordance with the constitutional norms, regulate the areas concerning the protection of women’s reproductive health, the life and health of children and the rights of the family. It is essential to draw conclusions from past experiences regarding the need for proper enforcement of existing regulations, improved communication and collaboration within gynecological-obstetrical institutions, and more effective judicial actions. Specifically, authorities should address the criminal liability of individuals whose actions—or lack thereof—endanger the health and lives of mothers and children, whether in abstract terms or in concrete situations during pregnancy, childbirth, and postpartum.

CONCLUSION

Considering the various forms of violence and abuse, including inhumane treatment of women before, during, and after childbirth, it is important to emphasize several critical points. Research from 2022 identified 16 distinct forms of obstetric violence, with medical procedures often performed in ways that cause unnecessary suffering and pain. It is not uncommon for doctors to leave a patient in labor for other, seemingly more pressing obligations, raising concerns about how well the next doctor is informed about the patient’s condition. Obstetric violence is not an isolated issue. Poor treatment by healthcare workers in gynecological-obstetrical institutions extends beyond the experiences of individual women who share their stories. Public awareness must be raised to address this systemic problem, as silence and tacit approval of inhumane treatment, especially towards women in their most vulnerable moments, will not lead to meaningful change. Let us be reminded that the Law on Patients’ Rights [3] stipulates that the exercise of patient rights is based on the partnership of the patient as a recipient of health services and a health worker, that is, a health associate as a provider of health services. The partnership implies mutual trust and respect between the patient and the healthcare worker, i.e., the healthcare associate at all levels of healthcare, as well as the rights and duties of partners in that relationship. This law foresees a whole set of rights that patients enjoy, among which are: the right to access to health care, the right to information, the right to the quality of health service provision, the right to patient safety, the right to information, the right to free choice, the right to other professional opinion, right to consent, and other rights.

It is necessary to systematically encourage the adequate application of legal and by-laws governing this area, to improve the treatment of pregnant women and mothers in obstetrics and gynecological institutions, to protect women’s reproductive health with dedication and proper application of medical treatments, to treat women with respect and understanding, to exclude acts of discrimination, torture, inhumane and humiliating treatment, and provide adequate and functional conditions for the stay of pregnant women and mothers in labor in a gynecological-obstetrical institution. In other words, it is necessary to systematically approach the prevention of any form of obstetric violence, with an adequate and legally prescribed approach to the criminal liability of responsible persons in situations where any form of violence from this sphere occurs.

Ethics: The authors declare that the article was written according to ethical standards of the Serbian Archives of Medicine as well as ethical standards of institutions for each author involved.

Conflict of interest: None declared.

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Модалитети и законски третман акушерског насиља у Републици Србији

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САЖЕТАК

Увод/Циљ Проблем акушерског насиља представља релативно нову тему и у области медицине и у области права. Циљ рада је анализа проблема и предлог решења како би се подстакла адекватна примена нормативног оквира, побољшао третман труднице и породиље у гинеколошко-акушерским установама, заштитило репродуктивно здравље жене, повратило поверење, поштовање и разумевање у међусобној комуникацији здравствених радника и труднице/породиље.

Метод У раду је коришћено више научних метода – деск истраживање, дескриптивни метод и анализа и синтеза доступне литературе као и релевантних саопштења, нормативни метод, те логичко истраживање. У истраживачком делу рада примаран је метод студије случаја и анализе акушерског насиља у пракси. На крају је извршена функционална анализа.

Резултати Анализом студије случаја и модалитета акушерског насиља у гинеколошко-акушерским установама у Србији, као и анализом до сада спроведених истраживања, идентификовано је чак 16 облика акушерског насиља.

Закључак Треба системски подстаћи адекватну примену законских и подзаконских прописа који уређују ову област, побољшати третман трудница и породиља у гинеколошко-акушерским установама, заштити репродуктивно здравље жена посвећеношћу, правилном применом медицинских третмана, односити се према њима са поштовањем и разумевањем, искључити акте дискриминације, мучења, нехуманог и понижавајућег поступања, и обезбедити адекватне и функционалне услове боравка трудницама и породиљама у гинеколошко-акушерским установама.

Кључне речи: акушерско насиље; репродуктивно здравље жене; породица; Породични закон; Кривични законик