



Analytical Report

Analysis of Monitoring
of the Criminal and Minor
Offence Proceedings
in the Area of Protection
from Gender Based Violence
in the Bosnia and Herzegovina

Aleksandra Petrić and Dženana Radončić

Banja Luka, Zenica, March 2017.

**ANALYTICAL REPORT:
ANALYSIS OF THE MONITORING
OF CRIMINAL AND MINOR
OFFENCE PROCEEDINGS
IN THE AREA OF PROTECTION
FROM GENDER BASED
VIOLENCE IN THE
BOSNIA AND HERZEGOVINA**

IMPRESSUM

TITLE

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PUBLISHERS

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PRINT

Grafid d.o.o. Banja Luka

CIRCULATION

100

Banja Luka, Zenica,
March 2017

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INTRODUCTION

The international standards are recognizing that gender based violence includes various forms of physical, sexual, psychological, and economic violence, including threats of violence, directed toward persons based on their sex/gender that are directly causing injuries, suffering, violating security, as well as violation of other basic human rights. Data are indicating that women and children are the mostly affected, as they are the most frequently exposed to all forms of gender based violence, at the global level, as well as in the Bosnia and Herzegovina (in further text -B&H).¹ There is no harmonized methodology that would enable data collection on gender based violence in a consistent manner, mostly because of the fact that, despite the international standards, current laws and public policies are not defining gender based violence toward recognizing social context of violence directed against women because of their sex/gender, and recognizing those forms of violence that women are exposed disproportionately in relation to men.

Regardless of the fact during past two decades state and entity institutions of the B&H and the institutions of B&H Brčko District (in further text – BD) made significant efforts to improve legislative and public policy framework toward prevention and combating this type of violence, it still persists and represents continuous threat, not only to the individual security and health of women and children that are exposed to gender based violence on daily basis and suffer their consequences, but also to the protection of public health and sustainable social development. Ensuring availability and implementation of the systemic measures of support and protection for women and children survivors of various forms of gender based violence, including judicial protection, and their access to justice, remains continuous task of the institutions at all levels in the B&H.

The states parties of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (in further text - Istanbul Convention), including the B&H, are obliged to *undertake necessary legislative and other measures to improve and protect rights of everyone, especially women, to live free from violence, both in public and private sphere*². Beside this obligation that is mostly directed toward prevention of violence against women, states parties of the Convention will restrain from participation in any act of violence against women, and ensure that official bodies, public officials, officers, institutions, and other actors acting in the name of the state

¹ It is estimated that 35% of women worldwide are experiencing physical and/or sexual violence in a partner relationship, as well as the violence committed by other perpetrators in some period of their lives. Studies conducted in some countries indicate that 70% of women are testifying about physical and/or sexual violence committed by their partners in some period of their lives. Source: *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (2013), World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Research Medical Council. According to data provided by the subjects of protection from domestic violence, collected by the Ministry of Family, Youth, and Sport of the Republic of Srpska, in the period January – June 2016, 621 were registered as victims of domestic violence. Out of this number, 392 victims are adult women (63%) and 71 children – 37 girls and 34 boys (11%). The data are available at the official web presentation of the Ministry.

² Article 4. Paragraph 1 of the Istanbul Convention (Fundamental rights, Equality and Non-Discrimination).

are complied with this obligation, and are undertaking necessary legislative and other measures *of due diligence to prevent, investigate, sanction, and ensure reparation for all acts of violence recognized by this Convention committed by the actors that are not acting in the name of the State.*³ With this solution, the Convention introduces standards of **due diligence** as one of the key principles that should be incorporated in the state policy of combating violence against women. Analysis of the harmonization of the domestic legislation and public policies with the provisions of the Convention are indicating that, although numerous local laws are incorporating positive obligation of the due diligence (obligation to prevent violence, and if the violence occurred, to investigate, prosecute, and punish a perpetrator, and ensure reparation for a victim), and negative obligation of due diligence (obligation to refrain from engaging in any act of violence against women of the actors acting on behalf of the State), in the segment related to ensuring reparation for a victim, we have deviation from the European standard, since the legislation in the Bosnia and Herzegovina recognizes compensation to a victim (in judicial procedure) – as the only form of reparation, and not the other forms of reparation to a victim: rehabilitation and guarantee of non-repetition.⁴ Considering the scope of damage to a society from violence against women and domestic violence, especially the violence perpetuated across generations and as a result of criminogenic behavior, as well as the costs of violence in terms of loss of a labor force and social capital, increased costs of health and social protection, investments in law enforcement agencies and costs of enforcement of sanctions against perpetrators, it is logical for the B&H and all authorized institutions to take over the obligations for prevention and combating violence against women and domestic violence, as well as the obligation for developing the adequate legislative, institutional, and organizational framework for prevention and combating violence against women and domestic violence.⁵

In relation to the normative framework, one can make cautious conclusion that the B&H has satisfying legislative framework, including international obligations and domestic laws that are providing preconditions for prevention and fighting violence against women.⁶ Beside the international legal documents that are integrated in the Constitution of the B&H, and therefore directly applicable in the practice, including especially the human rights treaties⁷, such is the Convention on Elimination of All Forms of Discrimination

³ Article 5, Paragraphs 1 and 2 of the Istanbul Convention

⁴ N. Petrić/N. Galić, *The Baseline Study – Harmonization of the Legislation and Public Policies in the Bosnia and Herzegovina with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (ETS 210)*, second revised edition, Banja Luka 2015, page 3

⁵ *The Framework Strategy for Implementation of the Convention on Preventing and Combating Violence Against Women and Domestic Violence in the Bosnia and Herzegovina, for the Period 2015 – 2018*, the Ministry for Human Rights and Refugees of the Bosnia and Herzegovina, page 6

⁶ „Report and the Analysis of the Monitoring Criminal Proceedings in the Area of Gender Based Violence in the Federation of B&H and the Republic of Srpska“, the Center of Legal Assistance for Women and the Foundation United Women, Zenica and Banja Luka, 2014, available at direct link: http://www.cenppz.org.ba/images/Monitoring_sudjenja_2014.pdf page 18 (in electronic form)

⁷ N. Ademović/J. Marko/G. Marković, *Constitutional Law of the Bosnia and Herzegovina*, Konrad Adenauer Stiftung, Sarajevo 2012, page 15 and further

Against Women (CEDAW)⁸, the B&H also signed and ratified other international legal documents that create legal basis for general prevention of violence against women and domestic violence.⁹

Beside constitutional and legislative framework, institutions of B&H, entities, and BD also adopted numerous public policies in a form of the strategic documents directly or indirectly related to the prevention of violence against women. The Framework Strategy for Implementation of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence at the level of the B&H (in further text – Framework Strategy) is adopted in the five-year framework (2014 - 2018). Time framework of this Strategy is partially matching the entity strategies for combating domestic violence, as the Federation B&H Strategy for Prevention and Fighting Domestic Violence has been adopted for the period 2013 – 2017¹⁰ and the Strategy for Combating Domestic Violence of the Republic of Srpska has been adopted for the period 2014-2019.

For many years, civil society organizations are working toward providing support for women and children through free and gender sensitive legal assistance and psychosocial support, including enabling safe shelter and rehabilitation in the periods of acute violence. Experiences of women that are, for many years, seeking to access their right to a life free from violence, as well as the practice of the key subjects of protection (police, centers for social work, health institutions, prosecutor's offices, courts) are pointing at numerous problems and obstacles toward ensuring efficient systemic protection, as well as prevention of repetition of violence.

Injured persons, as the victims of violence, must have undisturbed access to systemic psychological, social, and health protection and assistance, as well as the access to justice through the judicial process, within which they have specific rights and obligations defined by the criminal-procedural laws, and laws on domestic violence of the Republic of Srpska and the Federation of B&H. .

As the fundamental rights of the injured persons within the criminal proceedings, laws are recognizing possibility of requesting compensation¹¹, receiving information non-implementation and suspension of the investigation, as they have 8 days to appeal to an authorized prosecutor¹², receiving information on results of a plea agreement procedure¹³, receive information on withdrawal of an indictment and suspension of a criminal

⁸ The UN Convention on Elimination of All Forms of Discrimination Against Women – CEDAW, which entered into force at 3 September 1981 as the global and comprehensive legally binding international treaty

⁹ Op.cit. fn 6

¹⁰ Adopted at the 75th session of the Government of the Federation of B&H, held at 11 March 2013

¹¹ Articles 104 – 105 of the Criminal Procedure Code of the Republic of Srpska (ZKP RS), Official Gazette of the Republic of Srpska, no. 53/12, Articles 208 – 209 of the Criminal Procedure Code of the Federation of B&H (ZKP F B&H), Official Gazette of the Federation of B&H, no. 35/03, 37/03, 56/03

¹² Article 232 ZKP RS, Article 239 ZKP F B&H

¹³ Article 246 ZKP RS, Article ZKP F B&H

procedure¹⁴, to be heard as witnesses during investigations and at the main trial¹⁵, and to be present at the main trial. Besides that, an injured person has the possibility to appeal in relation to the decision on costs of a criminal proceeding, and decision on the compensation claim.¹⁶ Obligation of an injured person is to respond on dully invitation of the court to testify in the procedure, except in the cases when she can refuse it, as well as to respect the court, order, and discipline.¹⁷

Protection of rights of an injured person, a victim of gender based violence, and improving her position within the judicial procedure, efficient penalty policy, and implementation of the measures of support and protection as regulated by the laws is very important in the context of prevention and combating gender based violence. It significantly depends on coordinated activities and sensibility of the women and men professionals in the public institutions with primary responsibility to respond – prosecutors, courts, centers for social work, health institutions, and other subjects that are participating and contributing to implementation of criminal proceedings and minor offence proceedings, as well as the governmental institutions that are adopting, implementing, and supervising implementation of laws and public policies in this field.

Monitoring and analysis of the implementation of laws and policies in the judicial practice is therefore the important contribution of the civil society organizations to the continuous efforts to ensure sensitive, efficient, and sustainable system of prevention and combating gender based violence that protects the rights, and respects the needs of women and children survivors of violence.

¹⁴ Article 247 ZKP RS, Article 247 ZKP F B&H

¹⁵ Articles 146, 151, and 279 ZKP RS, Article 100 ZKP F B&H

¹⁶ Article 307 ZKP RS, Article 308 ZKP F B&H

¹⁷ Article 257 ZKP RS, Article 257 ZKP F B&H

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I LEGISLATIVE FRAMEWORK AND POLICIES IN THE AREA OF PREVENTING AND COMBATING GENDER BASED VIOLENCE

Changes of the legislative framework in the area of prevention and combating gender based violence in the Republic of Srpska (in further text – RS) in the period since the last monitoring initiative (2013/2014) are directed toward harmonization of the *Law on Protection from Domestic Violence of the RS with the Minor Offence Law of the RS*, as well as harmonization of the *Criminal Code of the RS (in further text – KZRS)* with the international standards from the Istanbul Convention, ratified by the B&H in 2013.

*Changes and Amendments of the Law on Protection from Domestic Violence of the RS from 2015*¹⁸ are precisely defining the actions of a prosecutor in the context of assessment of existence of characteristics of the criminal offence or the minor offence of Domestic Violence. Changes also introduced the provision that injured person can initiate the minor offence procedure, which is important in terms of improving rights of women and children survivors of domestic violence. In relation to sanctions for domestic violence as a minor offence, changes and amendments are specifying type and purpose of the sanctions for domestic violence as a minor offence, and introduce prison sentence for various forms of domestic violence as a minor offence, which harmonized this Law with the provisions of the *Minor Offence Law of the RS*.¹⁹

At the end of 2016, the Government of the RS presented a Draft of the new KZ RS which, among other novelties, introduced important changes related to harmonization of the criminal law protection for some of the forms of gender based violence with the international standards set in the *Istanbul Convention* and the *Council of Europe Convention on Protection of Children from Sexual Exploitation and Sexual Abuse (Lanzarote Convention)*. Approved draft of the new Criminal Code introduces establishing and managing a special register of persons convicted for criminal offences against sexual integrity of a child, and introduces a new chapter that regulates *criminal offences against sexual abuse and exploitation of a child*. Within *criminal offences against life and body*, new are the *criminal offence of the female genital mutilation* and the *criminal offence forced sterilization*. As a part of the group of *criminal offences against citizens' rights and freedoms*, new is the *criminal offence of stalking*, within the group of *criminal acts against sexual integrity* new are the *criminal offence of sexual extortion* and the *criminal offence of sexual harassment*. Finally, as a part of the *criminal acts against marriage and family*, new draft of the KZ RS introduces *criminal offence of forced marriage*.

As a part of the Strategic Direction 3: Protection of Victims of Domestic Violence, *the Strategy for Combating Domestic Violence of the RS for the Period 2014 – 2019* recognizes

¹⁸ Changes and Amendments of the Law on Protection from Domestic Violence of the Republic of Srpska (Official Gazette of the Republic of Srpska, no. 82/15)

¹⁹ Minor Offence Law of the Republic of Srpska (Official Gazette of the Republic of Srpska no. 63/14)

strategic objective of re-examining penalty policy for domestic violence, and its recognition as the act of equal social danger as any other criminal offence and a minor offence. Priority measures recognized within the Strategy for this strategic direction are directed toward improving actions of police, judicial institutions, and centers for social work through professional development of the officials, exchange of information, experiences, and good practices, and monitoring of actions taken by the subjects of protection.

II COOPERATION WITH THE TARGETED COURTS

The Foundation United Women Banja Luka and the Center of Legal Assistance for Women from Zenica implemented the monitoring of the criminal proceedings and minor offence proceedings in the area of gender based violence in the period from April to the end of November 2016 (8 months), as a part of the activities within the project „Improving Prevention and Combating Gender Based Violence in B&H“. This is the third initiative of monitoring criminal proceedings in the area of gender based violence²⁰ in the RS. Contrary to the previous two monitoring initiatives, it also covers minor offence proceedings of domestic violence, with objective of pointing at situation in this area, and defining recommendations directed toward comprehensive, efficient, and sensitized prevention and combating of gender based violence.

The monitoring was implemented in the partnership with the *Women's Association Most from Višegrad*, the *Citizens' Association Budućnost from Modriča*, the *Association Žena B&H Mostar* and the *Foundation Lara Bijeljina*. It is primary directed on mapping and analyzing the status of protection of rights and recognizing needs of women and children survivors of gender based violence that are appearing as injured persons/witnesses in the judicial proceedings, the penalty policy, and making positive influence on improving procedures and practice of the judicial institutions and other subjects of protection in the area of prevention and combating gender based violence, and contributing to the establishing coordinated and efficient system of protection directed toward support for women and children survivors of violence.

With the objective of receiving support for implementation of the monitoring, women representatives of the Foundation United Women Banja Luka and the Center of Legal Assistance for Women from Zenica had a meeting with the representatives of the High Judicial and Prosecutorial Council of the B&H (HJPC) in March 2016. Valuing contribution and experiences of the court monitoring in the area of gender based violence in the previous initiatives, HJPC sent the recommendation to the targeted courts to support the monitoring, and enable the organizations to adequately monitor criminal and minor offence proceedings in the area of gender based violence.

Monitoring included 22 courts in the B&H, including 12 of the courts in the RS, as follows: the *Basic Court and the District Court of Banja Luka*, the *Basic Court of Modriča*, the *Basic Court of Prnjavor*, the *Basic Court of Višegrad* (active monitoring of the court proceedings per criminal cases and minor offence cases), the *Basic Court and the District Court of Bijeljina*, the *Basic Court and the District Court of Dobo*, the *Basic Court of Sokolac*, the *Basic Court and the District Court of Trebinje* (passive monitoring through receiving and analysis of the verdicts per criminal offence cases and decisions per minor offence cases), and the *Basic Court of Brčko District B&H*.

²⁰ During 2011, the Foundation United Women Banja Luka implemented monitoring of the criminal proceedings in the area of sexual and gender based violence, in cooperation with the Foundation Lara from Bijeljina, and in the period 2013/2014, in cooperation with the Center of Legal Assistance for Women from Zenica.

The coordinating organizations had meetings and established contacts with the representatives of the targeted courts, and signed agreements on cooperation that were defining framework of the judicial proceedings in focus of the monitoring, as well as scope of cooperation and support to the monitors. All targeted courts accepted cooperation, and ensured contact persons in the courts that were continuously ensuring information on schedules of court hearings per cases, access to the court sessions, and case files per cases.

The courts that were targeted for active monitoring of the criminal proceedings, as a rule, ensured fair support to the monitors. Contact persons were timely sending written information about schedule of the court sessions. In all the courts that were targeted for active monitoring, monitors had ensured access to the court hearings that were closed for the public, which indicates that the courts recognized them the status of expert public, and enabled monitoring and analysis of the proceedings of importance for comprehensive assessment of the position of injured person, and support she receives in the criminal proceedings for gender based violence, and minor offence proceedings for domestic violence. As a rule, monitors had ensured access to the case files – indictments, minutes from the hearings, verdicts in the criminal cases, decisions in the minor offence cases, and other documents per request, except in cases when acting judges specifically restricted the access.

The good practice continued by the *Basic Court of Sokolac*, which regularly sent us the verdicts per criminal cases and decisions per minor offence cases in the area of gender based violence in the period between the second and the third monitoring initiative (2014 – 2016). This points at the significant support of the court in the process of independent monitoring, and openness for cooperation with women's nongovernmental organizations in terms of joint work on improving support and assistance for women that are appearing as injured persons in the criminal proceedings and minor offence proceedings for cases of gender based violence.

Fair cooperation with the targeted courts and acting judges, as well as the court personnel, significantly contributed to the objectivity and comprehensiveness of the analysis of the criminal proceedings and minor offence proceedings in the focus of monitoring.

III FRAMEWORK MONITORING METHODOLOGY

Representatives of the coordinating and partner organizations were monitoring trials per criminal and minor offence cases related to gender based violence, preparing summary reports per each monitored court session, based on the joint forms, depending on type of the court case (criminal/minor offence), collecting additional data related to the monitored cases, with objective of conducting well documented mapping of findings related to current practices of judicial institutions and other subjects of protection, as well as the analysis and developing recommendations for improving protection of women as injured persons in the criminal and minor offence proceedings. During the monitoring period, teams of monitors and analysts engaged by the Foundation United Women Banja Luka and the Center of Legal Assistance for Women from Zenica had periodical coordination meetings, with objective of exchanging experiences about the monitoring process, and discussing forms of the monitoring reports and final analysis for the Republic of Srpska and the Federation B&H, which improved the process of independent monitoring of the criminal and minor offence proceedings in this area, and capacity building of the monitors.

Focus of the monitoring were **the criminal offences against life and body, the criminal offences against sexual integrity, and the criminal offences against family and marriage** (Chapters 16, 19 and 20 of the KZ RS), as well as **the minor offence proceedings for domestic violence and issuing protection measures** (based on the Law on Protection from Domestic Violence of the RS), in which injured persons were women and children of both sexes.

IV STATISTICAL OVERVIEW OF THE STRUCTURE OF MONITORED CRIMINAL AND MINOR OFFENCE CASES

**Chart 1:
Monitored Cases per Criminal Offences**

CRIMINAL ACT (*)	Number of Cases
Light Bodily Injury (Article 155 of the KZ RS)	5
Endangering Security (Article 169 of the KZ RS)	7
Rape (Article 193 of the KZ RS)	2
Sexual Intercourse with a Helpless Person (Article 194 of the KZ RS)	4
Sexual Violence Against a Child (Article 195 of the KZ RS)	1
Sexual Intercourse by Abuse of a Position (Article 196 of the KZ RS)	1
Satisfying Lust in Front of Others (Article 197 of the KZ RS)	1
Deprivation of a Minor (Article 205 of the KZ RS)	1
Domestic Violence (Article 208 of the KZ RS)	45
Avoiding Alimony Payment (Article of the 210 KZ RS)	8
Violent Behavior (Article 385 of the KZ RS)	1
Unlawful Production and Trade of Weapons and Explosive Materials (Article 399 of the KZ RS)	1
Sexual Intercourse with a Child (Article 204 of the Criminal Code of Brčko District B&H)	1
War Crime Against Civilians – Rape (Article 142 of the Criminal Code of Yugoslavia)	1
TOTAL	79

(*) **Note:** Number of criminal offences is higher than number of criminal cases that were monitored as merging of criminal proceedings per two or more accused persons and/or two or more criminal offences occurred in some criminal cases.

**Chart 2:
Minor Offence Cases for Domestic Violence per Targeted Courts**

NAME OF THE COURT	Number of the minor offence proceedings
The Basic Court of Banja Luka	10
The Basic Court of Prnjavor	7
The Basic Court of Višegrad	8
The Basic Court of Sokolac	10
The Basic Court of Bijeljina	33
The Basic Court of Trebinje	8
TOTAL	76

The monitors that were monitoring criminal and minor offence proceedings in front of the targeted courts in the Republic of Srpska and the Basic Court of Brčko District B&H attended *121 court sessions*, and had the opportunity to observe various phases of the

proceedings – from the plea hearings to the hearings for sentencing/announcement of a verdict/decision – and to collect additional data related to the monitored criminal and minor offence cases, with the assistance of the acting judges and the court personnel.

Besides monitoring court sessions at the targeted courts, monitors had a regular communication with the designated contact persons from the courts, and collected additional data available in the case files (indictments, notes from the court sessions, reports of the authorized centers for social work, verdicts, etc.) with objective of ensuring comprehensive information per monitored cases.

Due to the limited period of monitoring, the monitors did not have the possibility to monitor all cases from the beginning to the end of the criminal proceedings; therefore data on the course of the criminal proceedings were collected through observing case files as much as they were accessible.

V ANALYSIS OF THE CRIMINAL CASES

This analysis focuses on processing gender based violence in the criminal and minor offence proceedings at the targeted courts. It is primarily directed toward observing position and protection of the rights of the victims – women and children, including minors of both sexes, and focuses on the *application of the material law* (legal qualification, penalty policy, application of the mitigating and aggravating circumstances) *as well as the procedural law* (right to a trial within reasonable time, protection of witnesses that survived violence as the victims in the proceedings, acquiring material compensation in the criminal proceedings through compensation claims).

Analysis of the *minor offence proceedings for domestic violence* points at the practice related to differentiation between the criminal offence and the minor offence of Domestic Violence, duration of the proceedings, structure and duration of the sentences and protection measures, as well as the efficiency of support to women and children survivors of domestic violence through the minor offence procedure.

At the end, the analysis points at *the key findings and recommendations* with primary objective of making influence on improving protection of the rights of women and children survivors of gender based violence, as well as the assistance and support from the subjects of protection (police, prosecutors, courts, centers for social work) within the judicial procedure.

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ANALYTICAL REPORT

5.1. Application of the Material Law in the Criminal Proceedings for Gender Based Violence

5.1.1. Legal Qualification of the Criminal Offences of the Gender Based Violence

The Criminal Code of the Republic of Srpska regulates several criminal offences that can be recognized as the gender *based violence*²¹. Changes of the Law in 2013, introduced increases of the sanctions for majority of the criminal offences in this area, and introduced new criminal offences and measures that the courts may use with objective to protect women survivors of violence that are participating in the criminal proceedings as injured parties. *The international standards* are drawing attention on adequate recognition of various forms of violence against women, and require strengthening of assistance and support for victims.²² Criminal prosecution of the acts of gender-based violence largely

²¹ The criminal offences against sexual integrity, the criminal offences against marriage and family, and the criminal offences against life and body that can have characteristics of the gender based violence

²² The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, among other things, requires from the members states to ensure that adequate state compensation is awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude state parties from claiming regress for compensation awarded from a perpetrator, as long as due regard is paid to the victim's safety (Article 30).

depends from sensibility of the prosecutors that could significantly influence adequate implementation of laws in terms of protecting a victim, and her rights in the practice.

During active monitoring of the criminal proceedings, and reviewing available indictments of the monitored criminal cases, the monitors identified cases in which *prosecutors inadequately assessed the elements of the criminal offences in the process of preparing indictments, and failed to recognize them as the criminal offences for which more severe sanctions are prescribed, or failed to recognize qualified forms of the criminal offences punishable by stricter sanctions.*

For example, in the criminal proceeding at the *Basic Court of Višegrad*, the prosecutor decided to qualify the criminal offence as the *Light Bodily Injury* (Article 155, Paragraph 1 of the KZRS) for which the Law prescribes a fine or up to one year of prison, while description of the elements of the criminal offence in the indictment point at the criminal offence of *Abuse, Torture, or Other Inhuman and Degrading Treatment* (Article 168, Paragraph 1 of the KZRS), for which the Law prescribes up to two years of prison, as a perpetrator threatened to a victim with a cold weapon under her throat, and forced her to take off her clothes and walk, while verbally abusing her, and caused her bodily injuries.

In the criminal proceeding at the *Basic Court of Banja Luka*, the prosecutor qualified the criminal offence as the *Domestic Violence* (Article 208, Paragraph 1 of the KZRS) for which the Law prescribes a fine or from three months to three years of prison sentence, and failed to recognize in the indictment that the act of violence was committed in presence of a child, which is the qualified form of this criminal offence, and for which the Law prescribes from two to ten years of prison sentence. During the testifying of a victim at the main trial, the acting judge asked her if she told the police upon their intervention that a child was present when the violence occurred, and she confirmed it.

The monitors identified additional three criminal cases of *Domestic Violence*, two cases at the *Basic Court of Sokolac*, and one case at the *Basic Court of Bijeljina*, in which description of the elements of the criminal offence in indictments clearly show that violence was committed against minors or in their presence, and they were qualified as the basic form of the Domestic Violence, for which the Law prescribes lighter sanctions.

Changes of the *Criminal Code of the Republic of Srpska* in 2013 formally recognized increased social danger of the violence in a family or family community, as the legislator pointed that violence against a minor or violence committed in a presence of a minor requires more severe sanctions, and that is necessary to recognize the need and apply safety measures in cases of identified risk that victims will be subjected to repeated violence. Presented cases are indicating non-implementation of the legal provisions toward protection of rights and safety of the victims, although, based on identified four criminal cases, it is objectively impossible to conclude about this issue as the widespread practice of the prosecutors.²³ However, it is necessary for judges and prosecutors to recognize

²³The Criminal Procedure Code of the Republic of Srpska is regulating the principle of free assesment of evidence, which includes the right of te court, prosecutor, and other subjects that are participating in the criminal proceedings to assess existence or non-existence of the facts, and they are not bounded or limited to the special rules of evidence (Article 15).

social danger of the gender based violence against women, and ensure consistent assessment of the elements of criminal offences, and implementation of measures that would enable protection of safety and access to legally guaranteed rights for women and children that are directly or indirectly exposed to domestic violence.

Contrary to that, the monitors also identified examples of the sensitivity of the prosecutors in the criminal cases of domestic violence, when children were witnessing violence. In the case at the *Basic Court of Modriča*, the prosecutor qualified act of violence as the *Domestic Violence*, based on the Article 208, Point 3, in the indictment, as it was committed in the presence of an underage family member. In the same case, the prosecutor in the indictment requested issuing of the *safety measure of Restraining Access and Communication with a Particular Person* (Article 62a, Paragraph 1 of the KZRS), with justification that it can be reasonably expected that further violence by the indicted person can be dangerous for the injured person.

This was the only security measure requested by the prosecutor in the criminal cases of domestic violence during monitoring, which points that this measure is insufficiently used in the context of protecting security of an injured person from repetition of violence, having in mind that indicted or accused persons have the possibility of undisturbed communication with the injured person during the criminal proceedings, as they are not in the custody and can make pressure on injured persons not to testify against them, as well as to continue with violence after the verdict.

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In the four criminal cases for domestic violence at the *Basic Court of Višegrad*, the *urgent protection measures* were issued on request of the police, based on the *Law on Protection from Domestic Violence of the Republic of Srpska*, in the *urgent procedure*, immediately after the criminal offence was committed, which can be emphasized as the good practice in the context of protection of women and children survivors of violence.

However, there were no similar measures prior to the criminal proceedings in other criminal cases for the same criminal offence that were monitored at the other targeted courts in the Republic of Srpska and Brčko District B&H. Monitoring findings are showing that subjects of protection from domestic violence are rarely using the existing measures from the Criminal Code of the Republic of Srpska and the Law on Protection from Domestic Violence of the Republic of Srpska for the protection of women and children survivors of domestic violence.

In rest of the criminal cases that were in the monitoring focus at the other targeted courts, the monitors identified consistent assessment and qualification of the criminal offences, without deviations in relation to their characteristics defined by the Criminal Code of the Republic of Srpska and the Criminal Code of the Brčko District B&H.

However, the Law also stipulates the principle of equality of treatment (Article 14) that is important in terms of ensuring the principle of justice, and protecting the rights of an injured person. (Official Gazette of the Republic of Srpska, no. 53/12)

5.1.2. Penalty Policy

5.1.2.1. Penalty Policy for the Criminal Offences of Gender Based Violence

The Criminal Code of the Republic of Srpska regulates the type and scope of sanctions for the criminal offences of gender based violence, and requires from the courts to pay attention on purpose of the punishment and circumstances that influence sanctions to be lighter or stricter (mitigating and aggravating factors) when determining the criminal sanctions within the limits regulated for each criminal offence.²⁴ This is also among the key requirements of the international standards in the area of preventing and combating gender based violence against women²⁵.

5.1.2.2. Penalty Policy for the Criminal Offence of Domestic Violence

Findings of the active and passive monitoring of the criminal cases for Domestic Violence are indicating that this criminal offence is still perceived of a lower social danger, for which courts, as a rule, are sentencing warning sanctions. The most frequent criminal sanctions for the Domestic Violence at the targeted courts in the Republic of Srpska were suspended prison sentences in range from 2 to 6 months, with a probation period in range from 1 to 3 years, as well as the fines in range from 300 BAM to 800 BAM. These findings are showing that the penalty policy for the criminal offence of Domestic Violence remained unchanged in relation to the previous monitoring results.²⁶ Only in one criminal case for the *Domestic Violence, qualified with a severe consequence* (Article 208, Paragraph 2 of the KZRS), committed in conjunction with the other criminal offence (*Unlawful Production and Trade of Weapons or Explosive Materials* from the Article 399, Paragraph 1 of the KZRS) at the *Basic Court of Banja Luka* the joint prison sentence of 4 months was issued to the multiple criminal offence recidivist.

²⁴ Circumstances that are assessed by the courts when determining the criminal sanctions are especially related to the level of criminal responsibility, the degree of danger or injury of the protected good, circumstances under which the perpetrator committed the criminal offence, his previous, life, personal circumstances, and his behavior after the comited criminal offence, as well as other circumstances related to his personality. When determining the criminal sanction for the criminal offence comited in recidivism, the court is onliged to assess if the previously comited criminal offence is of the same type as the new criminal offence, if the motives of the perpetrator match, and the lapse of time since the previous conviction. The court especially considers the financial situation of the perpetrator when determining the fine.

²⁵ The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011) requires from the courts to take into cosideration if the criminal offence has been committed against former or current spouse or a partner, and if the same or similar ciriminal offence has been repeated , when determining the sanctions in the criminal proceedings for violence against women and domestic violence. (Article 46). The court must also pay attention if the criminal sanctions are effective, proportionate, and dissuasive, and can determine other measures, such are monitoring and suvervision of a perpetrator, and withdrawal of parental rights, if in the best interests of a child, which may include safety of a victim, if cannot be guaranted in any other way. (Article 45).

²⁶ Results of the active and passive monitoring of the criminal proceedings of gender based violence in 2011 indicated that the most frequent criminal sanctions for domestic violence were fines in range from 500 BAM to 1500 BAM, and suspended prison sentences in range from 1 to 4 months. In 2013/2014, monitoring results indicated that the most frequent sanctions were suspendend prison sentences in range from 1 to 8 months, and fines in range from 500 BAM to 5000 BAM.

The courts were issuing suspended sentences for the criminal offence of Domestic Violence also to *the multiple recidivists in committing the same or other criminal offences*, as well as to the perpetrators of domestic violence that were once or multiple times sentenced with a fine in the minor offence procedure, based on the *Law on Protection from Domestic Violence of the Republic of Srpska*.

Analysis of the verdicts and sentences shows that the courts did not apply more severe sentences also in cases of the qualified forms of the criminal offences of Domestic Violence. They were using suspended sentences as the warning sanctions even in the cases when violence was committed using a weapon, dangerous tool, or other means suitable to make heavy injuries or impair health (Article 208, Paragraph 2 of the KZRS), when the violence occurred against a minor, or in presence of a minor (Article 208, Paragraph 3 of the KZRS), as well as in the cases when description of the elements of the criminal offence, as presented in the indictment or discovered evidently during investigation procedure, clearly points that the violence occurred over a longer period (several months or years), which points at exceptional persistence and brutality of a perpetrator when committing violence, and these should be considered as aggravating circumstances by the courts, which did not occur in any of the criminal cases of the Domestic Violence.

In almost two thirds of the criminal proceedings for the Domestic Violence that ended within the monitoring period, a perpetrator was exempt from paying the costs of the criminal proceedings²⁷, with considering poor financial situation as the mitigating circumstance. However, the monitors identified inconsistency in opinion of the courts in terms of applying this possibility, as they identified several verdicts in which the court considered poor financial situation of a perpetrator as the mitigating circumstance, but in the same time, he was obliged to pay the costs of the criminal proceeding.

The monitors identified that, when considering *mitigating and aggravating circumstances* in determining sentences for the criminal offences of Domestic Violence, the courts considered a perpetrator as a family man with the obligation to provide for underage children as the mitigating circumstance to a lesser extent, comparing to the previous monitoring periods, when this was identified as the consistent court practice in relation to the criminal offence committed directly against a family. Considering circumstances of having a family and obligations of providing for underage children as the mitigating factor when determining the sentence for the criminal offence committed not only against a woman as the primary victim, but also against the children that are directly or indirectly affected with consequences of violence directly points at lack of the sensibility among judges for the consequences of violence, as well as the fact that domestic violence is directed against a family life and its values.

The most frequently used mitigating circumstances when considering sentences for the criminal cases of domestic violence are poor financial situation, poor health, flow of

²⁷The Criminal Procedure Code of the Republic of Srpska regulates that in the decision that settles the issue of costs the court may relieve a perpetrator of the duty to reimburse all or part of the costs of the criminal proceeding, if their payment would jeopardize subsistence of a perpetrator or persons whom he is obliged to support. (Article 99, Paragraph 4)

time since committing of the criminal offence to adjudication, no previous convictions, guilty plea, correct behavior during the criminal proceeding, but also statement of an injured person that she does not seek prosecution or compensation of damage, while there was almost no criminal cases in which the court stated aggravating circumstances when determining sanctions for domestic violence.

The monitors also identified that *safety measures*²⁸ were not issued by the monitored courts with the criminal sanctions for domestic violence, except in one criminal case, in which the court issued the *safety measure Forfeiture of Items* (a gun) (Article 62 KZRS). Changes of the Criminal Code of the Republic of Srpska in 2013 introduced the safety measures *Restraining Access and Communication with a Certain Person and Removal from the Common Household*²⁹, which can be issued by the court to a perpetrator of the criminal offence with the elements of violence. These measures were not recognized by the courts in the context of influencing prevention of repeated violence, especially having in mind the frequency of repetition of violence and safety of women and children survivors of violence, in order to prevent contacts with the perpetrators.

5.1.2.3. Penalty Policy for the Other Criminal Offences of Gender Based Violence

The criminal offence of *Avoiding Alimony Payment* can be observed as the economic violence directed against family members/relatives, and it especially affects women and underage children, and children that are engaged in regular education after 18 years of age, as in majority of cases, women are taking over the obligation of care and providing for children after cessation of common life, divorce, or in the case of self-supporting parenting. In all monitored cases the monitors identified long term avoiding of the alimony payments (at least 3 years or more), which contributes to the prolonged impact of the economic violence, and more severe consequences of this criminal offence. Apart from the one criminal case, in which the criminal procedure lasted five months from the confirming of the indictment to the verdict, majority of these criminal cases were in the judicial procedure over a year, including the criminal cases that ended with the verdict during the monitoring period.

Monitoring of the criminal cases of *Avoiding Alimony Payment* (Article 210 of the KZRS) shows that the penalty policy ranges within the legally prescribed framework. As a rule, the targeted courts were imposing the fines in range from 300 BAM to 600 BAM for this criminal offence, as well as the suspended prison sentences in range from 4 months to 6 months, with probation period range from one to three years. In all criminal cases that ended with the verdict (5 cases, out of 8 monitored cases in total), the courts ordered

²⁸The court can issue safety measures together with the criminal sanction, and their purpose is to remove conditions or situations that might influence a perpetrator to commit the criminal acts in a future (Article 55 KZRS). These measures include mandatory psychiatric treatment, mandatory addiction medical treatment, ban on carrying out certain occupation, activity, or duty, ban on driving a motor vehicle, and forfeiture of items (Article 56 KZRS).

²⁹ Articles 62a and 62v KZRS

settlement of the obligations, and fully fulfillment of the further obligations, under the threat of revocation of the suspended sentence.

Changes of the KZ RS in 2013 introduced stricter sanctions for *the criminal offences against sexual integrity*, which points at intention of the legislator to raise level of social danger of these criminal offences, and therefore influence stricter penalty policy. As a part of the active and passive monitoring, the monitors observed 10 criminal offence cases in this area, out of which 3 cases were related to the criminal offence of *Sexual Intercourse with a Helpless Person* (Article 194 of the KZ RS), at the *District Court of Dobož*, which ended with the final verdicts. In these cases, the sanctions ranged within legal limits, with the exception of one case in which the sanction was reduced below the legal minimum, with applying of the exceptional mitigating circumstances.³⁰ It is important to emphasize that the monitoring findings are pointing at usage of the mitigating circumstances that are contrary to the legal principles of the purpose of sanctions. For example, in the criminal case for *Attempted Rape* (Article 193, Paragraph 1, in relation to the Article 20 of the KZ RS) at the *Basic Court of Banja Luka*, the verdict, among other details, states *family relationship with the injured person* as the mitigating circumstance, which is contrary to the need of developing and strengthening social responsibility through expressing condemnation of the criminal offence and necessity for enforcing the rule of law (Article 28, Paragraph 3 of the KZ RS). Considering the fact of the family relationship with a victim as the mitigating circumstance, especially in the context of the criminal offence against sexual integrity, the court implies social acceptability of the sexual violence against relatives, which is directly opposite from the strengthening social responsibility for committed violence.

5.1.3. Procedural Law Aspects of the Criminal Cases of Gender Based Violence

5.1.3.1. Right to a Trial within Reasonable Time in the Context of Protecting the Rights of Women Victims

*The Criminal Procedure Law of the Republic of Srpska*³¹ as well as the *international standards*,³² are regulating the rights of indicted persons and victims as injured persons in the criminal

³⁰ In line with the Article 38, Paragraph 1, Point 2, and the Article 39, Paragraph 1, Point 2 of the KZ RS

³¹ The Law requires from the court to conduct the proceeding without delay, and prevent any abuse of the rights of any participant in the criminal proceedings, and limiting duration of the custody for the shortest necessary time (Article 13). Custody can be determined in precisely defined situations (Article 197), and can last or be extended under conditions and within periods defined by the Law (Articles 198, 200, and 202). The Law also regulates deadlines for confirmation of indictment by a pre-hearing judge - 8 days from receiving the indictment, and 15 days from receiving the indictment in more complex cases (Article 243, Paragraph 2), as well as the deadline of 30 days for scheduling the main trial after plea statement of a defendant (Article, 244. Paragraph 4). In the course of proceeding, the court may impose upon prosecutor, defense attorney, attorney-in-fact, or legal representative, or an injured party if their actions are obviously aimed at prolonging the criminal proceedings (Article 208, Paragraph 1). The Criminal Procedure Code of the RS, „Official Gazette of the RS”, no. 53/12 from 11 July, 2012.

³² Here we primarily refer to the Article 6 of the European Convention on Human Rights and Fundamental Freedoms that directly regulates fair trial from the aspect of protecting the rights of a defendant in the proceedings. However, the aspect of a fair trial is also the integral part of protecting the rights of a woman survivor of gender based violence, which is clearly visible from the Istanbul Convention that requires from the states parties to take necessary legislative

proceedings in the context of protecting their human rights and fundamental freedoms related to a fair trial.

Implementation of the domestic laws and the international standards in the criminal proceedings related to protection from gender based violence is important, not only in the context of protecting the rights of indicted persons, but also protecting the rights of women survivors as victims of criminal offences, especially in terms of ensuring access to justice through the *right to a trial within reasonable time*. Women survivors of gender based violence are often exposed to its extended consequences. In the period after reporting violence and police intervention, until indictment and ending of the judicial procedure, women survivors are exposed to safety risks, in terms of communication with a perpetrator, as he is, as a rule, at large since the very beginning of the criminal procedure, or under custody immediately after committing the violence, and released shortly after.

Long term experiences of the civil society organizations that are providing support and assistance to women and children survivors of violence are pointing about the critical period of the judicial procedure in terms of need for protection and assistance for the victims, as perpetrators are frequently repeating violence with greater intensity after the police interventions. In cases of domestic violence, women victims often continue to live in a common household with a perpetrator, and slowness of initiating and leading of the criminal proceedings can discourage them from seeking protection of their rights at the court.

Women are also often exposed to pressures to deny testimony against perpetrators, which can have decisive impact on the statements of women as witnesses during investigations and judicial processes. Beside real danger from continuous physical and psychological violence, women as victims are exposed to economic violence and deprivation of livelihood, especially if they decide to end common life with the perpetrators.

It is important for prosecutors and judges, as well as other subjects of protection from gender based violence that are directly or indirectly contributing to the criminal proceedings (e.g. centers for social work, psychological support services, witness support units, etc.) to recognize these and other specific circumstances related to the criminal acts of gender based violence, and ensure comprehensive and efficient support and assistance to the victims, adjusted to their needs, including initiating, leading, and ending of the criminal proceedings as soon as possible.

Findings of the active monitoring, and analysis of the received verdicts from the targeted courts in the Republic of Srpska are pointing that *criminal proceedings, as a rule, were not durable, and there were no unjustified and frequent delays*. Out of 43 criminal proceedings that ended during the monitoring (including received verdicts), 32 criminal proceedings ended in the period up to 1 year from submitting/confirming indictment, seven

and other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of a victim during all stages of the criminal proceedings (Article 49, Paragraph 1).

proceedings ended in the period from 1 to 2 years, while four proceedings ended in the period over two years. One criminal proceeding for the criminal act *endangering security* (Article 169, Paragraph 1 of the KZ RS) at the *Basic Court of Banja Luka* lasts over four years, and it did not end during the monitoring period. As a rule, prosecutors were submitting indictments in the period from 30 days to 8 months after the criminal act was committed (depending from duration of the investigation), and the courts were confirming indictments in the period from 7 days to 5 months after the prosecutors submitted them.

In one criminal case for *Domestic Violence* (Article 208, Paragraph 1 of the KZ RS) at the *Basic Court of Banja Luka*, the indictment was submitted 1 year and 5 months after the criminal offence was committed, although it showed that all investigation actions were done, and all evidences were collected in the period shortly after the criminal offence was committed. The indictment, the prosecutor requested punitive order and a monetary fine.

The monitoring findings are pointing at the very frequent practice of the prosecutors in relation to the criminal cases of Domestic Violence and other crimes of gender based violence (for which the prescribed main sanction is up to 5 years of imprisonment or a fine), to request *issuing of the punitive order*³³, which, as a special procedure has the objective to shorten the criminal procedure and adopting the verdict without the main trial. Initiating this procedure is conditioned with existence of sufficient and good quality evidence, as well as proposing the sanction against a perpetrator to the court that leads the criminal proceeding. This practice has been identified at all of the monitored courts in the Republic of Srpska, and significantly influenced shortening the criminal proceedings in this field. However, despite short and economic proceedings, as the main argument for using this type of procedure, the practice indicates that this significantly influenced the penalty policy in processing the criminal cases of Domestic Violence, as the most prevalent form of gender based violence, toward the determining suspended sentences as the warning sanctions, and the monetary fines. Besides that, short procedures are limiting possibilities for women survivors of domestic violence to acquire compensation as injured persons in the criminal proceedings.

The judicial practice points at the examples of *prolongation of the proceedings due to impossibility of ensuring presence of indicted persons at the court sessions*, regardless of the fact that courts are using available mechanisms of the Criminal Procedural Law to bring them to the court sessions, as well as *postponements of the sessions because of unpreparedness of the prosecutors*, which happens due to changes of the prosecutors at the court sessions in relation to the same criminal cases. This makes it difficult and calls into question the protection of rights of the women survivors of violence, their access to justice, and efficient protection from violence in a judicial procedure.

In three criminal cases at the *Basic Court of Banja Luka* – one case for *Avoiding Alimony Payment* (Article 210, Paragraph 1 of the KZ RS), and two cases for *Domestic Violence*

³³ Articles 358 -363 ZKP RS

(Article 208, Paragraph 1 of the KZ RS), the court postponed several court sessions due to lack of presence of indicted person or unpreparedness of the prosecutors as they changed. In the first case, for Avoiding Alimony Payment, at the five court sessions that were scheduled within four months, different prosecutor came each time, and the court was deciding to prolong the sessions because of unpreparedness of the prosecutors. The monitors also noted that a woman victim tried to talk with the prosecutor in front of the courtroom, and requested calling the Center of social work as a witness, because this institution is familiar with the case that involves a child with invalidity, which did not happen during the monitoring of this case for which the proceeding is still ongoing.

In the second case, for Domestic Violence, 4 court sessions were scheduled and cancelled due to lack of presence of an indicted person. He was not detained by the court police based on the court order, as he was not available at specified place of residence, and three different prosecutors appeared at the three court sessions. In the third case, 4 court sessions were scheduled by the court within the five months, and all of them were postponed due to lack of presence of an indicted person. At the last session, the court issued detention order of an indicted person. Different prosecutor came at each scheduled court session.

5.1.3.2. Protection of Women Witnesses/Victims during the Criminal Proceedings for Gender Based Violence

The international law and domestic laws are recognizing a number of mechanisms for protection of women and children survivors of violence that are participating in the criminal proceedings as the injured persons and witnesses. *The Istanbul Convention* recognizes measures for ensuring support and safe environment for women that are participating in proceedings for gender based violence as victims/witnesses.³⁴ These standards are, to a significant extent, also recognized by the laws of the Republic of Srpska,³⁵ through provisions related to testimony of the victims in the criminal proceed-

³⁴Parties shall take necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by: providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimization, ensuring that victims are informed, at least in cases where the victims and the family members might be in danger, when the perpetrator escapes or is released temporarily or definitely; informing them, under conditions provided for by internal law, on their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case, enabling victims, in a manner consistent with the procedural rules of internal law to be heard, to supply evidence and have their views, needs, and concerns presented, directly or through an intermediary, and considered, providing victims with appropriate support services so that their rights and interests are duly presented and taken into account, ensuring that measures may be adopted to protect the privacy and the image of the victim, ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible, providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence, enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child. (Article 56).

³⁵Criminal Procedure Code of the RS („Official Gazette of the RS”, no. 53/12), the Law on Protection of Witnesses in the Criminal Proceedings of the RS („Official Gazette of the RS”, no. 48/03), the Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of Republika Srpska („Official Gazette of the RS”, no. 13/10).

ings, conditions under which they can refuse to testify and receive legal assistance of a legal representative/attorney, obligations of the court to protect a witness from insults, threats, and attacks, as well as the questions about previous sexual behavior, issuing protection measures with the purpose of protecting a victim, obligation of the court and prosecutor to inform her about the right to claim compensation, and to inform her about all actions and decisions of prosecutor's office and the court that can influence protection of her rights in the proceeding, such as withdrawing indictment by a prosecutor, and plea agreement between the prosecutor's office and a victim person. The Law regulates protection measures for witnesses under threat and vulnerable witnesses, in the context of providing psychological, social, and other types of professional assistance, as well as the special procedure and conditions for testimony of these witnesses. Children and underage victims of violence are recognized by the special law as protected witnesses, and have rights to special protection and testifying procedure.

Monitoring findings are pointing out that adult women survivors of gender based violence are not recognized as injured persons that have the right to special types of protection and support during testifying, which indicates that the court practice remains unchanged comparing to the previous monitoring initiatives of the criminal proceedings in this area conducted in 2011 and 2013/2014. The monitors identified that the courts are paying attention that perpetrators of violence as defendants enjoy legally guaranteed rights on legal assistance and representation in the court proceeding, whether they have attorneys of their choice or ex officio, in cases when this type of assistance is legally guaranteed.³⁶ The misbalance between the rights of a perpetrator/defendant and the rights of a victim of violence in the criminal proceedings is disturbing, having in mind that both concepts are based on ensuring access to justice and protection of fair treatment.

Out of total 42 criminal cases that were monitored during the active monitoring at 6 courts in the RS and Brčko District B&H, in only two cases, for the criminal offence of *War Crime Against Civilians* (Article 142, Paragraph 1, of the Criminal Code of Yugoslavia), at the *District Court of Banja Luka*, and for the criminal offence of *Avoiding Alimony Payment* (Article 210, Paragraph 1 of the KZ RS), a woman victim had a legal assistance of her choice. In the first case, a woman victim used the legal assistance to claim compensation, which was not considered during the criminal proceeding, while in the second case, a woman victim was present at the trial and testified in presence of her

³⁶ The Criminal Procedure Code of the Republic of Srpska regulates cases of mandatory defense rights application for a perpetrator – at the first questioning if he is mute or deaf or if he is suspected for a criminal offense for which a penalty of long term imprisonment may be pronounced, when responding to the proposal for ordering custody, throughout the custody, after an indictment has been brought for a criminal offense for which a prison sentence of ten years or more may be pronounced, the accused must have a defense attorney at the time of submitting the indictment, and if the court finds it necessary in the interest of justice, due to the complexity of the case, the mental condition of the suspect or the accused or other circumstances, it shall appoint an attorney to defend him (Article 52) Beside that, when requirements for the mandatory defense are not met, and the proceedings are conducted for an offence for which a prison sentence of three (3) years or longer may be pronounced, or when the interests of justice so requires, regardless of the prescribed punishment, a defence attorney shall be assigned to the accused at his request if, due to an adverse financial situation, he is not able to pay the expenses of the defense. (Article 54, Paragraph 1)

legal representative. She requested compensation at the main trial, which was also not considered during the criminal proceeding. In the verdicts, the courts directed both women victims to the litigation procedure to claim compensation. These two cases were also the only criminal cases of gender based violence during the monitoring initiative in which women victims claimed compensations.

Monitoring findings indicate the example of good court practice of ensuring support to an adult woman victim during the testimony, in the criminal case for *War Crime Against Civilians* (Article 142, Paragraph 1 of the KZ Yugoslavia), at the *District Court of Banja Luka*. In this case, the court decided to grant the status of vulnerable witness, with applying the provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. The court provided a separate room for a woman victim from which she testified with the assistance of an officer psychologist from the Victim Support Unit of the District Court Banja Luka, and testifying with usage of technical equipment. Prior testifying, a woman victim was informed by the court about her rights and duties, and she read an oath and sworn in prior to the testifying. The prosecutor also informed her prior to the trial about her right to claim compensation, and she authorized her legal representative to file for compensation.

This was also the only example of implemented assistance and support to an adult woman victim that testified during the criminal proceeding in a monitoring period of the targeted courts in the RS. Other adult women victims did not have the professional assistance; neither were they granted a status of vulnerable witnesses.

Monitoring findings also indicate examples of the criminal proceedings in which professional assistance was not provided to adult women victims that testified at trials, although their need for assistance was evident.³⁷ In the criminal case of *Rape* (Article 193 of the KZ RS), at the *District Court of Banja Luka*, the monitors directly observed two main trial sessions. At the second session, an adult woman victim testified in the courtroom with a presence of a perpetrator, a special recidivist offender. She was not granted with the status of vulnerable witness neither had she received professional assistance of a psychologist, despite objective reasons, and existence of technical and professional capacities of the court to provide this type of assistance and support. In the period between the violent act occurred and initiation of the criminal proceeding, a woman survivor of violence asked several times for the assistance of a civil society organization that provides support and assistance to the victims of gender based violence, and received assistance of a clinical psychologist.

Monitors also identified examples of *violation of rights of a minor victims/injured persons*. In a case for the criminal offence of *Sexual Intercourse by Abuse of a Position* (Article 196, Paragraph 2 of the KZ RS), at the *Basic Court of Višegrad*, in which they observed two main

³⁷ The Law on Protection of Witnesses in Criminal Proceedings of the RS („Official Gazette of the RS“, no. 48/03) recognizes as endangered witnesses persons that are severely physically or psychologically traumatized with circumstances of the criminal act, or persons that suffer from from a serious psychological conditions rendering them unusually sensitive, as well as children and minors (Article 3, Paragraph 3), and therefore are entitled to protection measures regulated by this Law.

trials. During the first main trial, the court heard several witnesses, and a guardian of a minor victim, and made decision to hear a minor victim in the next main trial scheduled in the same court, although it does not have technical preconditions for hearings of a minor witnesses. The second main trial has been cancelled, and the court ordered hearing of a minor victim in premises of the *District Court of East Sarajevo*. Through reviewing the documentation and observing the court sessions, the monitors identified that a minor victim was providing testimony five times – in front of the professional school staff immediately after the act of violence, to the police, with applying measures for hearing minors with support of a psychologist and audio-visual recording, in front of two psychologists, and a neuro-psychiatrist, a court expert witness for minors. Monitors also pointed at long duration of the proceeding, contrary to the *Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of the RS*³⁸ that requires urgent procedure³⁹ in cases when minors are injured persons of the specific criminal offences⁴⁰, among others also the criminal offence *sexual intercourse with abuse of a position*. In this criminal procedure, the investigation lasted 3 months, and the indictment was submitted 5 months after the investigation ended. The two observed main trials were scheduled in the period 3 to 4 months after submitting the indictment, and the case did not end.

Although during the active monitoring there were no criminal cases for gender based violence in which monitors had the possibility to directly observe testimonies of a minor victims at the court, it is important to emphasize the need to ensure, without exceptions, comprehensive cooperation of the courts, prosecutors, and expert professionals that are legally obliged to ensure support and protection of children and minors in the procedure.

5.1.3.3. Support to the Woman Victim to Acquire Compensation in the Criminal Proceedings for Gender Based Violence

Practice of the courts and prosecutor's offices identified during monitoring in relation to claiming and acquiring compensation of a woman victim within the criminal procedure are pointing that women survivors of gender based violence are largely disadvantaged in relation to the indicted persons/perpetrators, especially in the criminal proceedings for domestic violence, as the most prevalent criminal act in this field. The researches conducted by civil society organizations that are providing assistance and support to women⁴¹ indicate that majority of women survivors of domestic violence are unem-

³⁸ The Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of the RS („Official Gazette of the RS”, no. 13/10, 61/13)

³⁹ Ibidem, Article 190

⁴⁰ Ibidem, Article 184, Paragraph 1

⁴¹ The research implemented in 2012 by the Foundation „United Women” Banja Luka, in cooperation with „Prava za sve” Sarajevo, Foundation „Lara” Bijeljina and „Mirjam” Caritas Mostar points that unemployment and poverty are the frequent reasons why women hesitate to leave violent relationships. Due to the pressure of a partner, large number of women left school and job, and they were forced to do a household work and farming, to take care about families for many years. Due to a long absence from a the labor market, they are not competitive, as they lack skills, education, and

ployed, without personal and regular income that would enable them to sustain themselves and their children. Due to that, they are economically vulnerable, in a situation of economic dependence from the perpetrators, extended family members, or limited social assistance payments. Referring women victims to claim compensation in the litigation proceedings for domestic violence they survived could lead to postponement in acquiring this right, and placing burden on victims to have unnecessary costs related to initiating and leading such procedures.

It is necessary to have this in mind during the criminal proceedings for domestic violence, and requires an active role of prosecutors that could provide support to the women victims to claim compensation, especially during preparations for the criminal proceedings, when they are conducting investigations, collecting evidences, and preparing indictments. This would help women victims to prepare and submit compensation request on time, so the court could decide about it during the criminal proceeding.

During the active monitoring of the criminal proceedings at the targeted courts in the RS, the monitors noticed that judges are using the main trials on which victims were invited to testify to inform them with their rights, and possibilities to claim compensation,⁴² and there were no proceedings in which judges failed to do that. Only in one criminal case, the monitors identified that prior to the criminal proceeding a prosecutor informed a woman victim about possibility to claim compensation, which she did through her legal representative during the proceeding.

The monitors identified only two criminal cases (*War Crime Against Civilians and Avoiding Alimony Payment*) within which women victims submitted compensation claims. However, the court did not decide about the claims during the criminal proceedings but directed women victims to initiate litigation procedure. During the previous monitoring period in 2013/2014, women victims submitted ten compensation claims during the criminal proceedings.

working experience. Women over 40 years of age are especially discriminated in the employment process, as well as women from especially marginalized groups, such are Romani women and women with invalidity. Majority of women that ended violent relationships have difficulties to acquire alimony, have no permanent job, and are dependent from their extended families (brothers, sisters, parents), child supplement, or other social payments, if they belong to some of the categories recognized by the law. *Analysis of the Social Inclusion Policies of Women Victims of Domestic Violence – Study of Bosnia and Herzegovina*, July 2012. Publisher United Women Banja Luka. Available at the direct link : http://www.rightsforall.ba/publikacije-bs/docs-bs/Analiza_politika_socijalnog_ukljucivanja_zena_zrtava_nasilja_u_porodici.pdf (last access 17 February, 2017).

⁴²A woman victim can submit compensation claim to the prosecutor and the court at latest until the end of the main trial, or sentencing hearing. A victim is obliged to specify request and submit evidence. If she fails to submit the request until the confirmation of the indictment, the court shall inform her that she may submit it until the end of the main trial, or sentencing hearing. (Article 105). In the verdict pronouncing the accused guilty, the court may award the victim the entire compensation claim, or may award her a part of the claim, and refer her to a litigation proceeding. If the data in the criminal proceeding does not provide reliable basis for either a complete or partial award of the compensation, the court shall instruct a victim that she may take a litigation action to request her entire compensation. If the court adopts the verdict either sentencing the perpetrator or rejecting the indictment, or when the court the decision to dismiss the criminal proceeding, it shall refer a victim that she may claim compensation in the litigation proceeding. The Criminal Procedure Code of the RS (Article 108, Paragraphs 3 and 4), Official Gazette of the RS, no. 53/12

In twelve criminal cases for the criminal offences of Domestic Violence and Sexual Intercourse by Abuse of a Position, the women victims and a legal representative of a minor victims stated during the main trial that they do not want to submit compensation claim. In one criminal case for domestic violence at the *Basic Court of Banja Luka*, a prosecutor withdrew indictment with justification that, among other things, a woman victim refused to testify, and she did not submit compensation claim. Monitoring also indicated existence of sporadic cases in which the fact that a woman victim did not submit compensation claim was stated in the verdicts as mitigating circumstances, and reasons for reducing sentence against a perpetrator.

VI ANALYSIS OF THE MINOR OFFENCE PROCEEDINGS FOR DOMESTIC VIOLENCE IN THE REPUBLIC OF SRPSKA

6.1. Introduction

During the period of active and passive monitoring of the court proceedings for gender based violence in the Republic of Srpska, the monitors also observed the first instance minor offence proceedings for Domestic Violence at six basic courts – through attending the court sessions, collecting additional documentation directly related to the cases, and completing the individual reports from the court sessions from the three basic courts (Banja Luka, Prnjavor, and Višegrad), as well as collecting the final decisions in minor offence proceedings in three basic courts (Sokolac, Bijeljina, and Trebinje). They collected information related to *76 minor offence cases of Domestic Violence*, which provide basis for the analyzing the actions of the subjects of protection toward protection of victims of domestic violence through prevention and combating domestic violence that violates the basic human rights and fundamental freedoms guaranteed by the Constitution and the laws, which has been recognized as the principal objective of the Law on Protection from Domestic Violence of the RS.

The analysis is focusing on implementing protection of women and children survivors of domestic violence that are recognized as the most prevalent victims, which is visible from the statistics of the governmental institutions that are supervising implementation of the Law on Protection from Domestic Violence of the RS, and through the work of the nongovernmental organizations that are providing assistance and support to the victims of violence.⁴³

The key areas in which the monitoring findings are pointing at the judicial practice are implementation of the material law (differentiating actions of domestic violence between existence of characteristics of the criminal offence and the minor offence), penalty policy for minor offence of Domestic Violence (type and level of penalties, duration of the protection measures, adequacy of the existing resources), urgent procedure with objective of the efficient protection of women and children survivors of domestic violence, with issuing urgent protection measures, as well as protection of a woman victim in a minor offence procedure through support of the subjects of protection from domestic violence prior and during the minor offence procedure.

⁴³ The Ministry of Family, Youth, and Sport of the RS Government is regularly collecting information from the subjects of protection from domestic violence in the RS. According to the data collected from the centers for public security in the RS for the period January – June 2016, there were 621 victims of domestic violence registered in total, 429 women and 192 men. There were 37 girls and 34 boys registered among domestic violence victims. Source: *Data per subjects of protection for the period January – June 2016, according to the Rulebook on Content of the Data Base and Reports on Domestic Violence*, available at the web page of the Ministry, at direct link: <https://goo.gl/VHB79D> (last access 16 February 2017) According to the data collected by the Foundation United Women Banja Luka, 30 women and 40 children of both sexes received shelter and assistance of the Safe House for Women and Children Victims of Violence in Banja Luka during 2016.

6.2. Differentiating Actions of Domestic Violence between Existence of Characteristics of the Criminal Offence and Minor Offence

The Criminal Code of the Republic of Srpska and the Law on Protection from Domestic Violence of the Republic of Srpska⁴⁴ are making distinction between actions of domestic violence with characteristics of the criminal offence and the minor offence. „Domestic violence, as a minor offence, represents endangering serenity, psychological, physical, sexual, or economic integrity of other member of a family or family community, while all actions of violence that are resulting with violation of the stated values of member of a family or family community are representing the criminal offence.”⁴⁵ Both laws are stating specific actions of domestic violence, regulating them as the criminal offence or the minor offence, in line with this difference.

Implementation of the legal provisions is seeking an active role of the prosecutors, in terms of consistent recognition of difference between a criminal offence and a minor offence, and initiating adequate procedure, through directing the case to an authorized institution for further action, having in mind the needs for protection of women and children survivors of violence.

The monitoring findings are pointing that, out of 76 monitored minor offence cases, in 27 cases (or 36%) actions of violence had characteristics of actions of the criminal offence of Domestic Violence, and not a minor offence, as they contained physical violence that resulted with injuries. Prosecution as a minor offence actions of violence that contain characteristics of the criminal offence was identified at all targeted courts, as follows: in 11 minor offence cases at the *Basic Court in Bijeljina*, 4 minor offence cases at the *Basic Court in Višegrad*, 3 minor offence cases at the *Basic Court in Trebinje*, 3 minor offence cases at the *Basic Court of Sokolac*, 2 minor offence cases at the *Basic Court in Banja Luka*, and 1 minor offence case at the *Basic Court of Prnjavor*.

For example, in the minor offence case for Domestic Violence at the *Basic Court of Banja Luka*, the police report after the field intervention recorded that a woman victim has a visible injury that could result from violent actions. This statement is also recorded in the police report about hearing of a woman victim in the police station after the violence occurred. The police report also indicates that police officers suggested to a woman victim to go to a health center and take report on injuries. In the request for initiating minor offence procedure submitted to the court, the injury is not mentioned. This indicates that action of violence, which could objectively cause injuries as a perpetrator used an object suitable to inflict it, was neglected by the prosecutor that assessed actions of violence, and concluded they represent a minor offence. In several minor offence cases for Domestic Violence at other monitored courts, multiple injuries were identified as result of physical

⁴⁴ Law on Protection from Domestic Violence of the RS, „Official Gazette of the RS”, no. 102/12 and 82/15.

⁴⁵ Petrić N. „Baseline Study – Analysis of the Harmonization of Laws and Public Policies in the Bosnia and Herzegovina with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence”, Banja Luka, November 2015, the Second Revised Edition, Page 13.

violence by a perpetrator, and they were not recognized by the prosecutors, in terms of existence of characteristics of domestic violence as a criminal offence.

Taking into account that 45 criminal cases of Domestic Violence were observed during the monitoring of the targeted courts in the RS, and that number of minor offence cases processed at these courts in the same period was significantly higher, inconsistent assessment of prosecutors about existence of the characteristics of a criminal offence or a minor offence of the Domestic Violence also points at observing domestic violence as the offence of a lower social danger, which does not result with more severe consequences, both for women and children survivors, and society in general, and therefore requires lower sanctioning within the minor offence procedure.

In all cases in which the monitoring identified inadequate assessment of the characteristics of actions of Domestic Violence by the prosecutors, the monitors also identified psychological violence, which was not considered in terms of endangering, and injuries that occurred by domestic violence actions, and prosecutors did not collect evidences that would be used in the court proceedings, both in the criminal offence and minor offence cases.

6.3. Penalty Policy for the Minor Offence of Domestic Violence in the Republic of Srpska

The Law on Protection from Domestic Violence of the RS regulates that purpose of the minor offence sanctions is influencing a perpetrator and others to restrain from committing minor offences in a future, ensuring necessary protection of health and safety of a victim, as well as eliminating circumstances that are enabling or stimulating actions of domestic violence. Minor offence sanctions regulated by this Law are penalties, warning measures, protection measures, and corrective measures.⁴⁶

The monitoring findings are pointing at the light penalty policy and different practice of the courts in terms of sanctioning Domestic Violence in a minor offence procedure. The most common sanctions that were imposed by the targeted courts during the monitored period were *the protection measure of Prohibiting Harassment and Stalking of a Victim of Domestic Violence* in a period of 6 months (Article 26), at the *Basic Court of Bijeljina*, and a *fine in range from 300 BAM to 1000 BAM*. The highest fines were imposed in minor offence cases of domestic violence committed in presence of children, or against children, at the *Basic Court of Prnjavor*, which points at existence of a certain degree of sensibility of the judges for consequences of domestic violence against children. The courts were also imposing suspended fines, and, to a less extent, suspended protection measures, while the *Basic Court of Sokolac* imposed one admonition in a minor offence procedure for domestic violence.

During the monitoring period, the targeted courts did not imposed prison sentences for a minor offence of domestic violence, also regulated by the *Law on Protection from Domestic Violence of the RS*.

⁴⁶The Article 23 of the Law on Protection from Domestic Violence of the RS („Official Gazette of the RS“, no. 102/12 and 82/15).

Chart 3: Overview of the Sanctions for a Minor Offence of Domestic Violence per Targeted Courts (based on the Law on Protection from Domestic Violence of the Republic of Srpska)

Title of the Court	Penalties (*)		Warning Measures		Protection Measures			
	Fine	Admonition	Suspended Sentence	Removal from the House, Apartment, or other Housing Facility (Article 24)	Restraining from Approaching to a Victim of Domestic Violence (Article 25)	Prohibition of Stalking and Harassment of a Victim of Domestic Violence (Article 26)	Mandatory Psychosocial Treatment (Article 27)	Mandatory Adjudication Treatment (Article 28)
The Basic Court of Banja Luka	7 fines (3 x 300 BAM, 350 BAM, 800 BAM, 850 BAM, 1500 BAM)		4 fines (2 x 300 BAM, 800 BAM, 1500 BAM), with probation periods of 6 months, and 1 year					
The Basic Court of Bijeljina	5 fines (100 BAM, 2 x 300 BAM, 1500 BAM, 2000 KM)		3 fines (300 BAM, 2 x 500 BAM) with probation periods of 6 months	1 protection measure (one month)		25 protection measures (16 measures for 6 months, 8 measures for 3 months, 1 measure for 1 year)	1 measure (6 months)	
The Basic Court of Sokolac	4 fines (100 BAM, 200 BAM, 300 BAM, 500 BAM)	1 admonition	1 fine (300 BAM) with probation period of 6 months			3 measures (2 measures for 6 months, 1 measure for 1 year)	2 measures (6 months)	
The Basic Court of Trebinje	2 fines (300 BAM, 1500 BAM)		6 fines (300 BAM, 2 x 500 BAM, 600 BAM, 1000 BAM, 1500 BAM) with probation periods of 6 months					
The Basic Court of Višegrad					2 protection measures (20 days, 6 months)	5 measures (1 measure for 3 months, 5 measures for 6 months)	2 measures (both for 3 months)	1 measure (3 months)
The Basic Court of Prnjavor	6 fines (700 BAM, 800 BAM, 900 BAM, 2000 BAM, 2800 BAM, 2900 BAM)		2 fines (500 BAM, 1500 BAM) with probation periods of 1 year	1 protection measure for 6 months, and 1 suspended protection measure (6 months)	1 suspended protection measure (1 year) with probation period of 1 year			3 measures (6 months, 1 year)
UKUPNO	24	1	16	3	3	33	5	4

Note: * Prison sanctions were not imposed during the monitoring period, and therefore they are left out from the overview

The courts most frequently imposed protection measures for the period from 3 to 6 months, and only in exceptional cases for the period of 1 year, which is the maximum period regulated by the Law. Two protection measures were imposed as suspended sentences in the minor offence proceedings at the *Basic Court of Prnjavor*. In one minor offence case at the *Basic Court of Prnjavor*, the protection measure of *Obligatory Psychiatric Treatment* was imposed based on the Law on Minor Offences of the RS (Article 65).

In one minor offence case at the *Basic Court of Bijeljina*, a perpetrator violated the protection measure of *Prohibiting Harassment and Stalking of a Victim of Domestic Violence* (Article 26) imposed on the period of 3 months. Based on the request of the police as the authorized subject of protection from domestic violence,⁴⁷ the court imposed the new protection measure of *Removal from the House, Apartment, or other Housing Facility* (Article 24) on the period of one month. Since the imposed minor offence sanction was violated in this case, the court could consider more strict sanction against the perpetrator, based on the KZ RS, which regulates imposing the fine and the prison sentence in range from 3 months to 3 years, in case of violating the protection measure imposed by the court based on the law.⁴⁸ Non-implementation of the measure that points at the intention of the legislators to encourage more strict sanctions for domestic violence, but imposing another protection measure with a shorter period by the court, contributes to perception of the domestic violence as the offence of a lower social danger, and diminishes importance of protection measures in the context of efficient protection of women and children survivors of violence.

Monitoring findings are pointing at significant differences in actions of the targeted courts in terms of type of the minor offence sanctions. For example, the *Basic Court of Banja Luka and the Basic Court of Trebinje* the most frequently imposed the fines and warning sanctions, while the *Basic Court of Višegrad* imposed only protection measures as sanctions. Other targeted courts equally imposed fines, suspended fines, and protection measures. In six minor offence cases, at the *basic courts of Višegrad, Bijeljina, Sokolac and Prnjavor*, the judges imposed two sanctions against perpetrators, both fines and protection measures, or two different protection measures.

In the decisions about imposing protection measures as minor offence sanctions, the courts were, in line with the legal provisions, also deciding about specific subjects of protection from domestic violence that are responsible for their implementation and supervision in the practice. Having in mind that the monitoring was implemented within limited period and with limited resources, objectively it was not possible for the monitors to collect information about implementation of the protection measures as minor offence sanctions, in terms of activities of the subjects of protection from domestic violence. Implementation of such analysis that would include continuous monitoring of the activities of the centers for social work, health institutions, and police, would

⁴⁷ Institutions responsible for implementation of the protection measures are, based on the Law on Protection from Domestic Violence of the RS obliged to supervise their implementation, to report to the court, suggest termination, extension, or change with some other measure (Article 33, Paragraph 2).

⁴⁸ Article 208, Paragraph 6 of the KZ RS

provide comprehensive assessment of the efficiency of the protection measures toward prevention and combating domestic violence in the RS.

In terms of the applying mitigating and/or aggravating circumstances recognized by the *Law on Minor Offences of the RS*⁴⁹, in the minor offence procedures for Domestic Violence, the courts predominantly applied mitigating circumstances, and in a very few minor offence cases they also applied aggravating circumstances. The most commonly used mitigating circumstances were guilty plea, acceptance of responsibility, remorse, no previous convictions, poor financial situation, unemployment, while the aggravating circumstances used sporadically in the first degree decisions were gravity of violence and persistence in committing minor offence of domestic violence.

Similarly as in the verdicts for the criminal offence of Domestic Violence, the monitors identified using care for family/having a family as the mitigating circumstance in several decisions for minor offence of domestic violence at the *Basic Court of Bijeljina* and the *Basic Court of Sokolac*. This circumstance is in conflict with the nature of the minor offence committed against family members, and should not be used as the basis for mitigating the sanctions. For example, in the minor offence case for Domestic Violence at the *Basic Court of Sokolac*, the court stated care for family/having a family as the mitigating circumstance in the decision for determining sanction against recidivist in committing minor offence of Domestic Violence.

The monitors identified differences in the court practice in terms of assessment of circumstances of recidivism in minor offence (and/or criminal offence) of Domestic Violence (so called special recidivists), as well as recidivism in committing other types of minor offences in the context of imposing sanctions. For example, at the *Basic Court of Bijeljina*, the court did not impose sanction against a perpetrator that is special recidivist, but applied the *urgent protection measure of Restraining from Approaching and Communication with a Victim of Domestic Violence* for 30 days, while in another minor offence case at the same court, in which a perpetrator is also special recidivist, the court imposed the minimum prescribed sentence – the fine of 1500 BAM⁵⁰ (violence against parents and an underage sister). In a minor offence case for Domestic Violence at the *Basic Court of Banja Luka*, a perpetrator special recidivist was sentenced with suspended fine of 800 BAM, with probation period of 1 year.

In 6 minor offence cases of Domestic Violence at the *Basic Court of Bijeljina* and the *Basic Court of Sokolac*, the violence has been committed in front of a child. The courts did not consider this fact in the process of determining sanctions, but they imposed protection measures and suspended fines. The court practice identified during the monitoring points at unawareness of the special protection of rights and wellbeing of a child emphasized in the *Law on Protection from Domestic Violence of the RS* that

⁴⁹ Articles 45–46 of the Law on Minor Offences of the RS („Official Gazette of the RS”, no. 63/14).

⁵⁰ The Law on Protection from Domestic Violence of the RS provides the fine in range from 1500 BAM to 4500 BAM for an adult family member who commits acts of domestic violence regulated in the Article 6 of this Law in presence of a child (Article 42, Paragraph 3).

regulates high fines for this type of domestic violence. The Law especially states that children enjoy the right on special assistance and protection from violence, and should always be considered as the victims if they are present during acts of violence against other family member, although acts of violence are not committed against him/her.⁵¹

6.4. Urgent Procedure in the Minor Offence Cases of Domestic Violence

The Law on Protection from Domestic Violence of the RS requires from the subjects of protection to cooperate and exchange needed data and information, and to act in urgent procedure, without delays, paying attention on protection of interests and wellbeing of a victim, especially if victims are children, elderly persons, persons with invalidity, or persons under and persons under guardianship.⁵² Shortening of time of initiating and leading proceedings for domestic violence is in the interest of ensuring efficient and timely protection of women and children survivors of violence was one of the key arguments for regulating acts of domestic violence that have the characteristics of the minor offence when this Law was adopted, contrary to the criminal law protection and the criminal procedure for domestic violence which, as a rule, lasts longer and prevents prosecutor's offices and courts, as well as other institutions (police, centers for social work, health institutions) to ensure protection and assistance to the victims of violence.

The monitoring findings are indicating that minor offence proceedings for Domestic Violence at the targeted courts were lasting in average 3-6 months, counting from the period of submitting request for initiating a minor offence proceeding by the police, to the issuing first degree decisions of the courts. It is important to emphasize that in almost all minor offence proceedings for Domestic Violence during the monitoring period, with rare exceptions (one or two cases), the courts were making decisions at the first and only court session, which points at the long period from the initiating a minor offence procedure until scheduling the first court session.

Monitors identified the good practice of minor offence proceedings for Domestic Violence at the *Basic Court of Višegrad*, which ensured urgent procedure for all minor offence cases of Domestic Violence, the same day or following day after the acts of violence were committed. In all requests for initiating minor offence procedure for domestic violence during the monitoring period, the police requested from the court to impose the protection measure of *Prohibition of Stalking and Harassment of a Victim of Domestic Violence* (Article 26). The Court imposed this protection measure in majority of the cases, independently, or together with the other protection measure. In 4 minor offence cases in the urgent procedure at the same court, urgent protection measures were imposed with objective of removing direct danger for physical and psychological integrity, and

⁵¹ Ibidem, Article 18, Paragraph 3

⁵² Ibidem, Article 11

ensuring safety of a victim.⁵³ Issuing of these protection measures was preceding the criminal offence proceedings that were initiated at the same court.

At the other courts that were targeted by the monitoring, the monitors identified only 2 minor offence cases for Domestic Violence at the *Basic Court of Bijeljina*, that were leaded in the urgent procedure, which indicates that the implementation of the Law on Protection from Domestic Violence of the RS toward minor offence prosecution of domestic violence does not contribute to faster and more efficient protection of victims of domestic violence, and preventing and combating domestic violence, which has been recognized as the key objective of this Law.

6.5. Protection of the Rights of a Woman Victim in a Minor Offence Procedure for Domestic Violence

Contrary to the criminal proceedings, minor offence proceedings for Domestic Violence emphasize protection of rights of a victim of violence through the *Law on Protection from Domestic Violence of the RS*, as the special law that regulates mandatory procedures and support to the victims of violence by the specific subjects of protection – police, prosecutor’s offices, centers for social work, health centers, schools, and the courts.⁵⁴

The monitoring findings of the targeted courts within minor offence proceedings for Domestic Violence are indicating that women survivors of domestic violence, as a rule, did not have specific assistance and support at the court sessions they appeared as injured parties, especially in terms of acquiring rights on free legal assistance, and timely information on the right to claim compensation within a minor offence procedure. None of the women victims that appeared at the monitored court sessions for minor offence proceedings of domestic violence had legal representative, which influenced the fact they did not submitted claims for compensation. In several minor offence proceedings at the targeted courts, the monitors identified that the courts did not pay special attention to inform a woman victim prior to her statement about her rights, namely to request compensation.

In 2 minor offence proceedings at the *Basic Court of Bijeljina*, the court considered failure of a woman victim to request compensation as the mitigating circumstance when imposing sanction, which indicates lack of awareness among judges about the need to support woman victim to acquire her rights, and they considered her omission to use her rights as mitigating circumstances when imposing sanctions against a perpetrator.

Monitors identified the example of good practice in all minor offence proceedings for Domestic Violence at the *Basic Court of Višegrad*, in which representatives of the Center of social work directly participated, and provided active support to a woman victim,

⁵³ Articles 13-14 of the Law on Protection from Domestic Violence of the RS are regulating purpose, type, and procedure of imposing urgent protection measures.

⁵⁴ Articles 8-10 of the Law on Protection from Domestic Violence of the RS are regulating rights of the victims of violence on special assistance and protection, and obligations of the subjects of protection.

while this was not the case in the proceedings that were actively monitored at the other courts that kept written communication with the authorized centers for social work, without active support to the victims of violence in the courtroom. In several requests for initiating minor offence proceedings at the other courts, the police stated they informed the Center of social work, which did not appear at the court in a later phase of the proceeding, and did not take special actions toward support and assistance to a woman victim of violence during a minor offence procedure.

Minor offence proceedings for Domestic Violence at the *Basic Court of Višegrad* were also the only proceedings in which the police as the subject of protection took active role through requests for imposing urgent protection measures, and urgent procedure for domestic violence, and there were the example of good practice for actions of the key subjects of protection through cooperation and support to a woman victim with objective of her protection from violence.

VII THE FINAL OBSERVATIONS

Analysis of the criminal and minor offence proceedings for gender based violence in the Republic of Srpska has the objective to point at the court practice in terms of implementation of laws and international standards in the area of protection of the rights of women and children victims of violence that are participating in the proceedings as injured persons, through enabling access to justice and acquiring assistance and support during the judicial procedure.

The monitoring findings presented in the report are primarily directed on enabling the overview of current situation in this area, and action toward improving position of victims of gender based violence. They are directed to women and men representatives of the police, courts, prosecutor's offices, centers for social work, authorized ministries and institutions that are supervising work of the judicial institutions, and implementation of the laws and obligatory international standards in the area of preventing and combating gender based violence, as well as to women and men representatives of the civil society that are implementing activities in the area of preventing and combating gender based violence.

7.1. Monitoring of the Criminal Proceedings

In relation to the legal qualification of the criminal offences of gender based violence, the monitoring findings are pointing at cases in which prosecutors, when preparing and submitting indictments, *inadequately assessed elements of the criminal offences* in the process of preparing indictments, and failed to recognize them as the criminal offences for which more severe sanctions are prescribed, or failed to recognize qualified forms of the criminal offences punishable by stricter sanctions.

This practice has been identified in relation to the criminal offence cases of Domestic Violence, both in the case of adult women and minors victims, but also in relation to the other criminal offences of gender based violence.

The practice also indicates *insufficient usage of the safety measures regulated by the KZ RS* in the context of protecting security of a victim of violence from danger of repeated violence, having in mind that a perpetrator of violence has possibility of undisturbed communication with her during the criminal offence procedure and after the verdict, as he is not into the custody and can make pressure on her not to testify, and conduct continuous violence. The monitoring results indicate that, out of 45 criminal offence cases of Domestic Violence, in only one case at the Basic Court of Modriča the prosecutor in the indictment requested safety measure of Restraining Access and Communication with a Specific Person (the Article 62a, Paragraph 1 of the KZ RS), because of reasonable fear that further acts of violence by a perpetrator would be dangerous for a woman victim.

In four criminal offence cases for Domestic Violence at the *Basic Court of Višegrad*, *urgent protection measures* were imposed based on the *Law on Protection from Domestic Violence*

of the RS in the urgent procedure, immediately after acts of violence have been committed, which can be praised as a good practice in the context of protecting women and children survivors of violence. However, absence of requests for urgent protection measures from the other subjects of protection and imposing of these measures by the other courts that were targeted by the monitoring points at their insufficient usage in protection of women and children survivors of domestic violence.

In relation to the penalty policy for the criminal offences of Domestic Violence, monitoring findings are pointing that domestic violence has been continuously perceived as the offence of a lower social danger for which courts, as a rule, are sentencing warning sanctions. The courts were issuing suspended sentences for the criminal offence of Domestic Violence also to *the multiple recidivists in committing the same or other criminal offences*, as well as to the perpetrators of domestic violence that were once or multiple times sentenced with the fine in the minor offence procedure, based on the *Law on Protection from Domestic Violence of the Republic of Srpska*.

The monitors identified that, when considering *mitigating and aggravating circumstances* in determining sentences for the criminal offences of Domestic Violence, the courts considered a perpetrator as a family man with the obligation to provide for underage children as the mitigating circumstance to a lesser extent, comparing to the previous monitoring periods, when this was identified as the consistent court practice in relation to the criminal offence committed directly against a family. Considering circumstances of having a family and obligations of providing for underage children as the mitigating factor when determining the sentence for the criminal offence committed not only against a woman as the primary victim, but also against the children that are directly or indirectly affected with consequences of violence directly points at lack of the sensibility among judges for the consequences of violence, as well as the fact that domestic violence is directed against a family life and its values.

In relation to the penalty policy for the other criminal offences of gender based violence, the monitoring findings indicate that penalty policy ranges within the legally prescribed framework, with exception of one criminal offence case for the Sexual Intercourse with a Helpless Person, at the District Court of Dobo, in which the court imposed sanction below prescribed minimum sentence with applying exceptional mitigating circumstances. However, monitoring findings are pointing at usage of the mitigating circumstances that are contrary to the legal principles of the purpose of sanctions. In the criminal case of Attempted Rape at the Basic Court of Banja Luka, the verdict states *family relationship with the injured person* as the mitigating circumstance. This is contrary to the need of developing and strengthening social responsibility through expressing condemnation of the criminal offence and necessity for enforcing the rule of law (Article 28, Paragraph 3 of the KZ RS). Considering the fact of the family relationship with an injured person as the mitigating circumstance, especially in the context of the criminal offence against sexual integrity, the court implies social acceptability of the sexual violence against relatives, which is directly opposite from the strengthening social responsibility for committed violence.

In relation to a trial within reasonable time in the contest of protecting rights of a woman victim, monitoring findings indicate that *criminal proceedings for gender based violence, as a rule, were not durable, and there were no unjustified and frequent delays*. Out of 43 criminal proceedings that ended during the monitoring (including received verdicts), 32 criminal proceedings ended in the period up to 1 year from submitting/confirming indictment, seven proceedings ended in the period from 1 to 2 years, while four proceedings ended in the period over two years.

The monitoring findings are pointing at the very frequent practice of the prosecutors in relation to the criminal cases of Domestic Violence and other crimes of gender based violence (for which the prescribed main sanction is up to 5 years of imprisonment or a monetary fine), to request *issuing of the punitive order*, which, as a special procedure has the objective to shorten the criminal procedure and passing verdict without the main trial. This practice has been identified at all of the monitored courts in the Republic of Srpska, and significantly influenced shortening the criminal proceedings in this field. However, despite short and economic proceedings, as the main argument for using this type of procedure, the practice indicates that this significantly influenced the penalty policy in processing the criminal cases of domestic violence, as the most prevalent form of gender based violence, toward the determining suspended sentences as the warning sanctions, and the monetary fines. Besides that, short procedures are limiting possibilities for women survivors of domestic violence to acquire compensation as injured persons in the criminal proceedings.

The judicial practice points at the examples of *prolongation of the proceedings due to impossibility of ensuring presence of indicted persons at the court sessions*, regardless of the fact that courts are using available mechanisms of the criminal procedural law to bring them to the court sessions, as well as *postponements of the sessions because of unpreparedness of the prosecutors*, which happens due to changes of the prosecutors at the court sessions in relation to the same criminal cases. This makes it difficult and calls into question the protection of rights of the women survivors of violence, their access to justice, and efficient protection from violence in a judicial procedure.

In relation to protection of women witnesses during the criminal proceedings for gender based violence, monitoring findings are pointing out that adult women survivors of gender based violence are not recognized as victims that have the right to special types of protection and support during testifying, which indicates that the court practice remains unchanged comparing to the previous monitoring initiatives of the criminal proceedings in this area conducted in 2011 and 2013/2014. The monitors identified that the courts are paying attention that perpetrators of violence as defendants enjoy legally guaranteed rights on legal assistance and representation in the court proceeding, whether they have attorneys of their choice or ex officio, in cases when this type of assistance is legally guaranteed.

The only example of good practice in terms of support and assistance to adult woman witness during the monitored criminal proceedings was identified at the District Court of

Banja Luka. Other adult women witnesses in the criminal proceedings that were monitored did not have support of expert professionals, and no status of vulnerable witnesses. The monitoring findings also point at the practice of violating rights of underage witnesses/victims of violence.

In relation to support to a woman victim to claim compensation in the criminal proceedings for gender based violence, monitoring findings indicate that judges are using the main trials on which victims were invited to testify to inform them with their rights, and possibilities to claim compensation, and there were no proceedings in which judges failed to do that. Only in one criminal case, the monitors identified that prior to the criminal proceeding a prosecutor informed a woman victim about possibility to claim compensation, which she did through her legal representative during the criminal proceeding. There were no criminal cases identified during the monitoring in which the courts awarded compensation to a woman victim within criminal proceeding.

7.2. Monitoring of the Minor Offence Proceedings

In relation to differentiating actions of domestic violence between existence of characteristics of the criminal offence and the minor offence, the monitoring findings are pointing that, out of 76 monitored minor offence cases, in 27 cases (or 36%) actions of violence had characteristics of actions of the criminal offence, and not the minor offence, as they contained physical violence that resulted with injuries. Taking into account that 45 criminal cases of domestic violence were observed during the monitoring of the targeted courts in the RS, and that number of minor offence cases processed at these courts in the same period was significantly higher, inconsistent assessment of the prosecutors about existence of the characteristics of criminal offence or minor offence of the domestic violence also points at observing domestic violence as the offence of a lower social danger, which does not result with more severe consequences, both for women and children survivors, and society in general, and therefore requires lower sanctioning within the minor offence procedure.

In relation to penalty policy for domestic violence in the minor offence procedure, the monitoring findings are pointing at the light penalty policy and different practice of the courts in terms of sanctioning domestic violence in the minor offence procedure. The most common sanctions that were imposed by the targeted courts during the monitored period were *the protection measure of prohibiting harassment and stalking of a victim of domestic violence in a period of 6 months, and fines in range from 300 BAM to 1000 BAM*. The courts were also imposing suspended fines, and, to a less extent, suspended protection measures, while the only one admonition and no prison sentences were imposed in a minor offence procedure for domestic violence. Monitoring findings are pointing at significant differences in actions of the targeted courts in terms of type of the minor offence sanctions. For example, the *Basic Court of Banja Luka and the Basic Court of Trebinje* the most frequently imposed fines and warning sanctions, while the *Basic Court of Višegrad* imposed only protection measures as sanctions. Other targeted courts equally imposed fines, suspended fines, and protection measures.

In the minor offence cases of Domestic Violence, *the courts predominantly applied mitigating circumstances, and in a very few minor offence cases they also applied aggravating circumstances.* Similarly as in the verdicts for the criminal offence of Domestic Violence, the monitors identified using care for family/having a family as the mitigating circumstance in several decisions for minor offence of domestic violence at the *Basic Court of Bijeljina and the Basic Court of Sokolac.* This circumstance is in conflict with the nature of the minor offence committed against family members, and should not be used as the basis for mitigating the sanctions.

The monitors identified differences in the court practice in terms of assessment of circumstances of recidivism in minor offence (and/or criminal offence) of Domestic Violence (so called special recidivists), as well as recidivism in committing other types of minor offences in the context of imposing sanctions.

In relation to ensuring urgent procedures in the minor offence proceedings of Domestic Violence, the monitoring findings are indicating that these proceedings at the targeted courts were lasting in average 3-6 months, counting from the period of submitting request for initiating a minor offence proceeding by the police, to the issuing first degree decisions of the courts. It is important to emphasize that in almost all minor offence proceedings of Domestic Violence during the monitoring period, with rare exceptions (one or two cases), the courts were making decisions at the first and only court session, which points at the long period from the initiating a minor offence procedure until scheduling the first court session. This indicates that implementation of the Law on Protection from Domestic Violence of the RS does not contribute to faster and more efficient protection of victims of violence, and to prevention and combating domestic violence. Monitors identified good practice of a minor offence proceedings for domestic violence at the *Basic Court of Višegrad,* which ensured urgent procedure for all minor offence cases of domestic violence, the same day or following day after the acts of violence were committed.

In relation to protection of the rights of a woman victim in the minor offence proceedings of Domestic Violence, the monitoring findings are indicating that women survivors of domestic violence, as a rule, did not have specific assistance and support, especially in terms of acquiring rights on free legal assistance, and timely information on the right to claim compensation within a minor offence procedure. The monitors identified example of good practice in all minor offence proceedings of Domestic Violence at the *Basic Court of Višegrad,* in which representatives of the Center of social work directly participated, and provided active support to a woman victim, while this was not the case in the proceedings that were actively monitored at the other courts that kept written communication with the authorized centers for social work, without active support to the victims of violence in the courtroom.

VIII RECOMMENDATIONS

8.1. General Recommendations

- It is necessary to ensure comprehensive cooperation of the courts, prosecutor's offices, and authorized subjects of protection in the criminal and minor offence proceedings for acts of gender based violence, and professionals that are legally obliged to ensure protection of the rights of women and children victims of violence, ensure support and assistance when they are testifying as injured persons in the judicial proceedings and prevent actions that are minimizing access to their rights in the practice.
- Prosecutors, judges, and representatives of all subjects of protection from violence defined by the law must have legal obligation and continuous access to education on work with women and children victims of gender based violence, in order to ensure them access to systemic, efficient, and sensitive support and assistance in situations when they, as victims, are testifying as a part of investigation procedures, and criminal and minor offence proceedings.
- The Law on Protection of Witnesses under Threat and Vulnerable Witnesses of the Republic of Srpska should recognize victims of criminal offences of gender based violence as a special category of victims that testify in the proceedings, and provide them with access to all types of protection and support regulated by this Law.
- Bodies that supervise work of the prosecutor's offices and the courts, as well as all subjects of protection from domestic violence and other forms of gender based violence must ensure consistent monitoring of implementation of measures of protection and support, regulated by the domestic laws and obligatory international standards, with the primary objective and focus on improving protection of victims and prevention of repetition of violence, harmonization of procedures, and the judicial practice.

8.2. Recommendations for the Prosecutors

- In relation to actions of the prosecutors toward initiating criminal proceedings for cases of gender based violence, it is necessary to ensure that investigations are conducted and indictments submitted within shortest possible time following the acts of violence, or knowledge about the criminal offence, with paying attention especially on the situations where victims of violence are minors, as well as the need to protect safety of both adult and minor victims in the period after acts of violence. This is of special importance having in mind that victims of violence are often exposed to pressures and intimidations by perpetrators of gender based violence in this period, as they are, as a rule, at large, which can have significant influence of the readiness of victims to testify at the court, especially in relation to those women victims who have legal possibilities to refuse to testify.

- In relation to application of material law in terms of qualification of the criminal offences of gender based violence, it is necessary for prosecutors to ensure consistent assessment of the elements of the criminal and minor offences, paying attention at the protection of rights and needs of the victims of gender based violence, all circumstances under which violence has been committed, as well as influence in the context of a social danger of an act of violence, in terms of preventing and combating violence.
- In relation to use of the protection mechanisms for women and children survivors of gender based violence, it is necessary for prosecutors to recognize the need and request from the court to impose safety measures regulated by the KZ RS.
- In relation to the role of prosecutors in protection of women and children victims of gender based violence in the criminal proceedings, and their possibility to use their rights as injured persons, it is necessary to avoid changes of prosecutors in the same criminal proceeding, as they affect postponements of the court sessions, and prolonging the criminal proceedings, and avoid requesting short procedures by the penal order, which prevent testimonies of women victims of violence within proceedings, and acquiring compensation.
- In relation to the right and possibilities of a woman victim to set, specify, and acquire compensation within the criminal proceedings, it is necessary for prosecutors to enable women survivors of gender based violence to acquire information on possibilities to claim compensation in early phases of the criminal proceedings, in order for them to precise the compensation request on time, and to ensure consistent and adequate support and assistance to women in terms of collecting evidences to support their claims.

8.3. Recommendations for the courts

- In relation to the support for women and children survivors of gender based violence, and are participating in the criminal proceedings as injured persons, it is necessary for the courts to recognize them as vulnerable witnesses, with all the rights related to this status, regardless of their age and whenever possible, which will encourage them to testify in the criminal proceedings, and provide good quality evidence to the courts.
- To strengthen the role of witness support units in those courts where they are already established, and to work on establishing these units in those courts that are missing this type of support for witnesses, and to conduct continuous activities of empowering and training of women and men officers of these units for work with women and children survivors of gender based violence and witnesses in the judicial proceedings.
- In relation to the right to trial within a reasonable time in the context of protecting rights of women and children survivors of violence, it is necessary for the courts to

ensure urgent procedures and prevent unnecessary delays that are exposing victims of violence to danger of repeated violence and pressure not to testify.

- In relation to the protection of the right of a woman victim in the criminal proceedings for gender based violence and minor offence proceedings for domestic violence, it is necessary for the courts to strengthen cooperation with all subjects of protection, and nongovernmental organizations that are providing assistance and support to women and children survivors of violence prior, during, and after the judicial proceedings.
- In relation to penalty policy for criminal offences of gender based violence and minor offences for domestic violence, it is necessary for the courts to recognize that circumstances of family life and providing for children, as well as circumstances of kinship with a woman victim cannot be observed and considered as mitigating circumstances and reasons for alleviation of sanctions.

8.4. Recommendations for the centers for social work

- In relation to the role of the centers for social work as subjects of protection from domestic violence, defined by the Law on Protection from Domestic Violence of the Republic of Srpska, as well as the institutions of the social care that are contributing to the criminal proceedings for gender based violence and minor offence proceedings for domestic violence, it is necessary for women and men professionals that are working in the centers, including social workers and psychologists to recognize social danger of all forms of gender based violence against women and children, and ensure consistent and coordinated support and assistance to the injured persons, based on their specific needs and legal responsibilities and authorities of the social services, in coordination with the other subjects of protection. This is related to the assistance and support during testifying, as well as after the criminal and minor offence proceedings.
- In relation to comprehensive support to women and children survivors of gender based violence within criminal and minor offence proceedings, it is necessary for the centers for social work to continuously enable access to information about rights on social protection and care, and possibilities for survivors of violence to use them in the practice, as well as available services of support, regardless if they are offered by public institutions or nongovernmental organizations, including free legal assistance, SOS telephones, and psychological counseling, as well as safe houses for women and children survivors of violence.

8.5. Recommendations for the police

- In relation to the role of police as subject of protection from domestic violence, defined by the Law on Protection from Domestic Violence of the Republic of Srpska, it is necessary to ensure improved cooperation with other subjects of protection during interventions related to domestic violence, and to use all available mechanisms with

the purpose of informing, supporting, and assisting victims of violence, including also the cooperation with the nongovernmental organizations that are providing assistance and support to victims of violence.

· In relation to initiating minor offence proceedings for domestic violence, it is necessary that police officers recognize and use authorities in terms of requesting of urgent protection measures to be imposed by the courts, with the purpose of protection of women and children survivors of violence, and submitting these requests without delays, paying attention to protection of safety of victims, and removing danger from repetition of violence.

**ANALYSIS OF THE CRIMINAL
PROCEEDINGS AND IMPOSED
PROTECTION MEASURES
FOR GENDER BASED VIOLENCE
IN THE FEDERATION OF
BOSNIA AND HERZEGOVINA**

I INTRODUCTION

1.1. Legislative Framework and Public Policies

Gender based violence represents any form of violence against of a person based on his/her affiliation to a particular sex, with use of physical or psychological force, including rape, physical violence, sexual harassment, incest, and pedophilia.⁵⁵ Despite generally neutral formulation (integral part of the definition "...against women" is often omitted), this expression is almost unanimously used for referring to violence against women and the opposite. Gender based violence is the result of unequal distribution of power between men and women, and therefore, relevant international documents are determining this term as the violence directed against woman, because she is a woman, or affects women disproportionately.⁵⁶ Violence against women represents violation of human rights, and based on that, according to the Explanatory Report of the Istanbul Convention, "States parties are required to organize their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish, and provide reparation for such acts of violence. Failure to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor."⁵⁷

Legislative framework and public policies at the state, entity, and BD level should be observed in line with the obligations from the Istanbul Convention. The Constitution of the F B&H guarantees prohibition of discrimination based on sex, as the precondition for prevention of violence against women. Additionally, numerous acts that are implementing the principles of the Law on Prohibition of Discrimination of the B&H⁵⁸ and the Law on Gender Equality of the B&H⁵⁹ were adopted at the level of entities. These two laws are representing the framework for exercising equal rights and possibilities for all persons in B&H, and are setting up the system of protection from discrimination on various grounds, including sex. The Family Law of the F B&H⁶⁰ is prohibiting domestic violence, and the Criminal Code of the F B&H⁶¹ is incriminating domestic violence, as well as other criminal offences that are defined in a gender neutral way, except those criminal offences that, by their nature, can be directed only against women as victims, but they provide basis for prosecuting perpetrators of violence, and protection of the victims of gender based violence. This creates the framework for general prevention of

⁵⁵ The definition originally provided in *One Hundred Words for Equality: A Glossary of Terms on Equality Between Women and Men*, published by the Office for Official Publications of the European Communities, European Communities, 1998, taken over from the web site of the Autonomous Women's Center Belgrade.

⁵⁶ The Article 3, Point d) of the Istanbul Convention

⁵⁷ The Istanbul Convention – Explanation (Explanatory Report), Point 59

⁵⁸ The Law on Prohibition of the Discrimination of the B&H („Official Gazette of the B&H”, No. 59/09 and 66/16).

⁵⁹ The Law on Gender Equality of the B&H – consolidated text („Official Gazette of the B&H”, no. 32/10).

⁶⁰ The Family Law of the F B&H („Official Gazette of the F B&H”, no. 35/05, 41/05).

⁶¹ The Criminal Code of the F B&H („Official Gazette of the F B&H”, no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10 and 42/11).

the violence against women, among other criminal offences. The Law on Protection from Domestic Violence of the F B&H⁶² is defining measures and mechanisms of protection in cases of domestic violence.⁶³ Novelties introduced with the Law on Protection from Domestic Violence, adopted in the F B&H Parliament in December 2012 are related to precise definition of the domestic violence, regulating the urgent procedure in imposing the protection measures, paying attention on their purpose to protect a victim of violence, regulating other forms of protecting a victim from violence, such are the following: determining the source of financing for the safe houses, adopting programs of the measures at the federal and cantonal level for prevention, protection, and combating domestic violence, obligation of the establishing referral mechanisms for action aimed to protect a victim of violence in each local community, and the obligation of the multidisciplinary approach in providing protection to a victim of violence, including the obligation to keep statistical data on reported cases of violence.⁶⁴

Beside the constitutional and legislative framework, the institutions of the B&H, entities, and BD adopted several public policies in a form of the strategic documents directed specifically or indirectly on prevention of violence against women; such are the above mentioned strategies for prevention and combating violence against women and domestic violence.⁶⁵

However, regardless of the accomplished formal progress and defined public policies, the problems are still visible, in relation to the lack of harmonization between laws in different jurisdictions in terms of incrimination of violence and protection of victims, but also in relation to their inconsistent implementation and obstacles in efficient prevention of violence against women.⁶⁶ These are largely related to the predominant lack of recognition of the violence against women as the human rights violation, as well as wider and alarming social problem.⁶⁷

⁶² The Law on Protection from Domestic Violence of the F B&H („Official Gazette of the F B&H”, no. 20/13).

⁶³ The Framework Strategy of the B&H, Page 11.

⁶⁴ The Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina recognizes every act of domestic violence as the criminal offence, and the purpose of the Law on Protection from Domestic Violence is protection of a victim of violence, through imposing and implementation of the protection measures. See more in: Prevalence and the Characteristics of the Violence Against Women in the Bosnia and Herzegovina, the Agency for Gender Equality in the B&H, 2013, Pages 28 and 29

⁶⁵ Beside these specific documents, wider defined and comprehensive strategic documents were adopted with objective to determine the strategic direction in prevention of violence against women through reaching gender equality (the Gender Action Plan of the B&H), role of women in peace and security (the Action Plan for Implementation of the UNSCR 1325), as well as several strategic documents that are completely or partially directed on promotion of gender equality and empowerment of women, as the preconditions for prevention of violence, through development, employment, and social inclusion. The Framework Strategy of the B&H, Page 26

⁶⁶ Ibid, Page 13

⁶⁷ Ibid

1.2. Access to the Courts

In accordance with the previous practice and established relations of trust, and after the meeting held in March 2016, the High Judicial and Prosecutorial Council of the B&H (in the further text: HJPC *B&H*) sent the recommendation letter to invite courts to, in line with the procedural laws, support activities within the project: „Improving Prevention and Combating Gender Based Violence in Bosnia and Herzegovina“. The activities presupposed enabling to the Center of Legal Assistance to Women from Zenica (in the further text: *Center*) and the Foundation United Women from Banja Luka (in the further text: *UWBL*), as well as the partner nongovernmental organizations, to adequately monitor trials in the cases of gender based violence. This is the third cycle of the monitoring of the criminal proceedings in cases of gender based violence, with a novelty related to monitoring and analysis of the minor offence proceedings for imposing the protection measures, based on the provisions of the Law on Protection from Domestic Violence of the F B&H.

Referring to the recommendation of the HJPC B&H, the meetings were held with the presidents of the courts targeted for the active and passive monitoring. The final texts of the protocols of cooperation were discussed and agreed upon, the courts appointed contact persons, and agreed upon the concrete way of enabling the access to archived and current cases, as well as access to the ongoing criminal proceedings.

Six Protocols of Cooperation were signed with the presidents of the targeted courts for **monitoring**, as follows: the Cantonal Court and the Municipal Court in Zenica, the Cantonal and Court and the Municipal Court in Mostar, the Municipal Court in Kakanj, and the Municipal Court in Bugojno. The passive monitoring was conducted in the Cantonal Court and the Municipal Court in Tuzla, and the Municipal Court in Orašje, without the need for formal signing of the protocol of cooperation.

The signed Protocols of Cooperation are not identical by their content, as in the several cases, directly at the meetings. Texts of the protocols have been changed, and adjusted to the demands of the presidents of the courts targeted for monitoring. Changes of the protocols of cooperation did not hinder the monitoring process, except partially at the Municipal Court in Mostar. In relation to this court, the content of the Protocol was changed to include the provision on protection of the personal data. We believe that adding the provision on protection of the personal data represents the example of good practice, as the subjects of protection from gender based violence should have interest to prevent abuse of personal data for any person, and to allow their processing to the extent that is necessary for reaching a certain purpose. Processed data collected by the monitoring of the criminal proceedings were completely **anonymous**, from the phase of collecting data (through the case files), filling in the form that monitors sent to the analyst, and analyzing the data, and preparing the report. This is the fourth time that the Center⁶⁸ is conducting the monitoring of the judicial institutions with using the

⁶⁸ The Center conducted monitoring of the criminal proceedings three times at the municipal and cantonal courts in the F B&H, and one monitoring of the work of the Cantonal Prosecutor's Office of the Zenica – Dobož Canton.

same principles of not interfering in the judicial procedure, impartiality, professionalism, and confidentiality, and these were never questioned. Although we are praising the mentioned practice, which is in line with the Law on Protection of the Personal Data of the B&H⁶⁹, adding provisions on protection of the personal data in the protocols of cooperation was largely hampering the process of collecting, systematizing, and anonymizing the data by the contact person at the Municipal Court of Mostar, which slowed down the monitoring process.

Although the monitoring period was limited, there were visible less current cases per the targeted criminal offences at the certain courts, and such is the Municipal Court in Mostar. The smallest number of cases per monitored criminal offences was identified at this Court, with significant delays of the court sessions, due to severe lack of the human resources. Smaller number of cases per monitored criminal offences should be carefully analyzed, as this does not mean there is less violence against women. Only the part of the committed acts of violence against women is reported to the authorized law enforcement institutions, which do not prosecute all reported perpetrators of violence, depending on the available/collected evidence.

The Protocol of Cooperation has been signed with the Cantonal Court of Mostar, but unfortunately the cooperation did not happen in the practice. The appointed contact person never sent us the schedule of trials, data on archived cases, and any other important data related to the monitoring. The Center contacted the Court on several occasions and using different means of communication, but there were no response. Due to that, none of the data presented in this Report relates to the Cantonal Court of Mostar.

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ANALYTICAL REPORT

1.3. Monitoring Methodology and Structure of the Analysis

The monitoring was conducted in the period from March to December 2016 at the all targeted courts. Monitoring process included collecting, verifying, and placing collected data into function through filling in standardized individual reports after the monitoring, as well as the integral chart for each monitor, which they periodically submitted to the analyst. Through organization of the periodical coordination meetings, teams of the Center and UWBL established common form of the reporting, exchanged experiences, and good practices in overcoming obstacles in accessing courts, as well as the structure of the final analysis.

For the purpose of this analysis and the project, five monitors were collecting data through active monitoring of the trials – observing the court sessions, as well as passive monitoring in terms of getting insights and collecting archived data for the criminal offence cases targeted by the monitoring. The active monitoring included direct monitoring of the proceedings through ensured access of the monitors to the trials, among which some were closed for the public. Allowing access to the trials is of key importance for identifying practice of the courts and treatment of a victim in the proceeding through

⁶⁹ „Official Gazette of the B&H“, Number: 49/06, 76/11 and 89/11.

providing psychological and legal assistance, informal behavior of a prosecutor toward a perpetrator and a victim, as well as quality of the information about possibility of requesting compensation claim.

The monitoring focused on the criminal proceedings in which victims/injured persons were women or girls, for the following criminal offences:

- a) The criminal offences against life and body (Murder; Heavy Bodily Injury; Light Bodily Injury);
- b) The criminal offences against sexual freedom and morality (Rape; Sexual Intercourse with a Helpless Person; Sexual Intercourse with a Child; Indecent Acts; Satisfying Lust in front of a Child or a Minor; Incitement into Prostitution; Abusing a Child or a Minor for Pornography; Incest);
- c) The criminal offences against a marriage, family, and youth (Domestic Violence; Avoiding Alimony Payment; Common Law Marriage with a Junior Juvenile)

The Center monitored in total **249 criminal cases, and 134 cases** related to the **imposing protection measures** based on the Law on Protection from Domestic Violence of the F B&H.

The analytical report is in line with the previously established structure of the analysis of criminal proceedings⁷⁰, therefore, in the first part it focuses on the legislative framework and public policies of combating gender based violence in the Federation B&H. It also presents established cooperation with the courts, methodology of collecting data, as well as the statistical overview of the monitored cases.

After these introductory considerations aimed to provide the overview of current situation and entire monitoring process, the second part of the report presents the analysis of the entire sample of the criminal offences, with separate parts related to the aspects of the applying the material law and the procedural law. Aspects of the material law include analysis of the issue of legal qualifications (basic or qualified form of a criminal offence), penalty policy (type and amount of imposed criminal sanctions in a case of conviction), as well as mitigating and aggravating circumstances (identifying the most common mitigating/aggravating circumstances imposed by the courts, which are significantly influencing imposed criminal law sanction). Procedural law aspects include the analysis of the right for a trial within reasonable time (taking into consideration that this represents the legal standard whose concretization depends on circumstances of a specific case), protection of women witnesses during proceeding (providing necessary psychological, legal, and other type of the professional assistance, recognizing special statuses of a witness, timely and completely providing of information in a suitable way), as well as acquiring the right

⁷⁰ „Report and the Analysis of the Criminal Proceedings in the Area of Gender Based Violence in the Federation of Bosnia and Herzegovina and the Republic of Srpska“, the Center of Legal Assistance for Women and the Foundation United Women, Zenica and Banja Luka, 2014.

on compensation through compensation claims (informing the victims in a suitable way with the possibility to claim compensation and the analysis of the cases in which such claim was requested, in order to conclude if this is the proclaimed right that has never taken hold in the practice of the criminal courts).

The second part will also present the analysis of the cases per specific criminal offences, contrary to the previous analysis that focused on the totality of monitored cases regardless of the specifics of the criminal acts in the monitoring focus. Purpose is to analyze tendencies per specific criminal offences, as the conclusions will be more relevant due to a smaller and more homogenous sample. Within the third title of the second part, the analysis focuses on the minor offence proceedings in which protection measures were imposed based on the Law on Protection from Domestic Violence. The third and final part of the analysis includes the final considerations and recommendations, since the analysis and its conclusions are representing the base for useful and feasible recommendations that are placing entire report into function of improving current situation and pointing at the need for systemic approach in solving the problems related to violence against women.

1.4. Structure of the Sample

Chart 1: Monitored Cases per Criminal Offences

CRIMINAL OFFENCE	Monitored
166 Murder	14
172 Heavy Bodily Injury	2
173 Light Bodily Injury	30
203 Rape	8
204 Sexual Intercourse with a Helpless Person	1
205 Sexual Intercourse with Abuse of a Position	1
206 Coercion to Sexual Intercourse	1
207 Sexual Intercourse with a Child	8
208 Indecent Acts	17
210 Incitement into Prostitution	2
211 Abusing a Child or a Minor for Pornography	4
216 Common Law Marriage with a Junior Juvenile	2
222 Domestic Violence	146
223 Avoiding Alimony Payment	5
362 Violent Behavior	2
Other	6
TOTAL	249

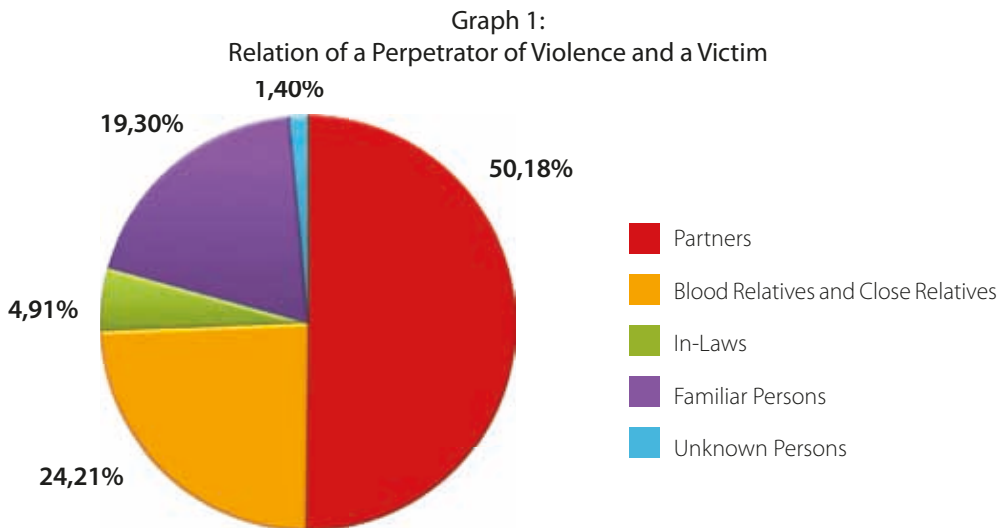
Note: Number of the criminal offences is higher than number of the criminal cases, as criminal proceedings merged in a certain number of cases, per two or more indicted persons and/or two or more criminal cases. **In relation to the penalty policy, including determining criminal law sanctions (mitigating and aggravating circumstances), and treatment of a woman victim during a proceeding relevant is the total number of completed cases, 225.**

II ANALYSIS

2.1. Analysis of the Total Sample of Criminal Offences

Access to justice for victims of violence against women consists of several key elements: a) incrimination of violence in the criminal legislation in order to enable processing of the perpetrators of violence in the criminal proceeding, b) obligation of reporting violence to the authorized institutions, c) obligation of imposing urgent measures of protection of a victim and her children, d) efficient investigation of the acts of violence, e) protection of a witness, f) availability of the legal assistance for victims, g) punishing perpetrators of violence in proportion to the gravity of the offence, and h) ensuring compensation to a woman victim.⁷¹ This part of the report focuses on the analysis of the efficiency of processing criminal offences of violence against women, divided per certain aspects, as noted in the titles.

It is important to emphasize that women are often exposed to serious forms of violence, namely verbal, physical, psychological, sexual violence, rape, etc. The statistics indicate that every third woman worldwide is exposed to violence, and perpetrators are mostly their current or former partners.⁷² Such tendencies reflect in the conclusions of this analysis, which is visible from the graphic overview (Graph 1).



Note with the Graph 1: in five cases, two perpetrators were identified per case; in 21 cases, where perpetrators were partners of a victim (husband, former husband, common law partner) children were present together with a woman in a moment of violence, and in two cases other relatives were present; in four cases in which violence was committed by a son, besides mother her other children or other in-laws were mentioned; in one case, a victim is daughter, but her child is also mentioned – therefore higher number of perpetrators appear in the cases, when we consider relations with all direct victims or those who are just mentioned as they were present in moments of violence, but they are not mentioned in verdicts.

⁷¹ The Framework Strategy of the B&H, Page 20.

⁷² Orange Report 2016: the Annual Report on Status of Women's Human Rights in Bosnia and Herzegovina, Page 34.

The collected data in relation to total number of monitored cases indicate that **intimate partner (current or former) of a woman victim was perpetrator of violence in more than half of the cases**. Within this number, 50,18%, the largest percentage are husbands (31,23%), common law partners (8,42%), and former husbands (5,96%), as well as former common law partners (2,11%), boyfriend/former boyfriend (1,75%, and, 0,70%). Blood relatives (father, brother, son, grandfather) are perpetrators in 24,21% cases, while in 19,30% cases, perpetrator of violence was acquaintance of a victim (neighbor, person from a working environment, etc.) Father in law and other in-laws were perpetrators of violence in 4,91% cases, while unknown persons to a victim were perpetrators of violence in only 1,40% cases. These data clearly indicate that persons from a close environment of women victims are more dangerous for their health and physical integrity than acquaintances or unknown persons.

According to the age structure, the largest number of perpetrators of violence are between 46 and 50 years of age (18,10%), then perpetrators between 41 and 45 years of age (16,50%), and perpetrators of violence between 18 and 24 years of age, and between 25 and 30 years of age that are equally represented.

2.1.1. Material Law Aspects

2.1.1. a) Legal Qualification

As emphasized in the other reports and the analysis⁷³, the most frequent problem with the legal qualifications is related to processing perpetrators for the basic (unqualified) form of violence, for which the lighter sanctions are prescribed, although description of the facts indicate qualified form of violence. The second problem identified during the monitoring is related to decisions of the prosecutors and courts to use lighter qualified forms of the criminal offences. Sometimes there is a qualified form of the criminal offence, but description of the facts point at other qualified form of the offence, as one act of violence can be recognized in several qualified forms with different prescribed sanctions.

When we consider all monitored cases of violence, 55,50% perpetrators of violence were prosecuted for the qualified form of violence, while 44,50% perpetrators of violence were prosecuted for the basic form of violence. **Although the qualified form of violence was identified in majority of the cases, this percentage does not change the conclusion that in significant number of cases, criminal offence of violence was qualified in its basic form, while it should be observed in its qualified form.**

Analysis of the cases in which the criminal offence was identified in its qualified form revealed that the largest percentage goes to the criminal offence of domestic violence,

⁷³ See: Criminal Responsibility and Sanctioning of the Perpetrators of Domestic Violence – the Analysis and Recommendations on Criminal Law Sanctions in Cases of Domestic Violence in the Bosnia and Herzegovina, OSCE, Sarajevo 2011, Page 63; „the Report and Analysis of the Monitoring of Criminal Proceedings in the Area of Gender Based Violence in the Federation of Bosnia and Herzegovina and te Republic of Srpska“, the Center of Legal Assistance for Women and the Foundation United Women, Zenica and Banja Luka, 2014, Pages 29 and 30 (in electronic form).

both in relation to the total sample of all criminal offences, and the sample of the criminal offence of Domestic Violence. Hundred and eighteen (118) cases of Domestic Violence were recognized in the qualified form, which makes 80,80% of total number of these criminal offences (100 cases in relation to the Paragraph 2, 6 cases in relation to the Paragraph 3, and 12 cases in relation to the Paragraph 4.). Since the Domestic Violence is predominant criminal offence in total number of monitored cases, 57,30%, it is easier to identify predominantly lighter qualifications of the acts of violence on this sample.⁷⁴

Two disturbing conclusions were identified. Prosecutors and courts are not considering children as victims even if they are present during concrete act of Domestic Violence.⁷⁵ When children are direct victims of physical assault and recognized as victims, such offence is not qualified appropriately. Considering children as the victims of Domestic Violence means that the offence should be qualified as the Article 222, Paragraph 4 (the basic form of the offence of violence committed against a child or a minor), with the fine or prison up to one year as prescribed sentences. Wrong qualification within the same article leads to significantly lighter sanctions against a perpetrator of domestic violence. Despite that, monitoring revealed the cases when the offence of Domestic Violence was qualified in the basic form or inappropriate qualified form, despite presence and physical assault against children, as shown in the following examples.

Examples:

- **„...A man, visibly under influence of alcohol, endangered peace and tranquility of his wife and underage son with violence, upon arriving to a family house where he lives with his wife and five underage children, in a way that he hit his wife twice with an open fist upon verbal quarrelling in a bedroom, while she was lying on the bed, and then he started choking her. In that moment, an underage son, also the victim of violence entered the bedroom and helped his mother to leave the room. After that, a man approached to an underage victim, and punched him in the head several times with a closed fist, after which the woman victim and underage victim received medical assistance in the health center...“** This offence has been qualified based on the Paragraph 2 of the Article 222 (this form presupposes that the offence from the Paragraph 1 has been committed against a family member that lives in the common household with a perpetrator), although the conditions were met for this offence to be qualified based on the Paragraph 4 of the same Article as one of the victims is a minor (and the Law for this form of the offence provides stricter sanction). **Lighter qualification of the offence contributed to the suspended sentence against the perpetrator.**
- In the second example, the perpetrator had beaten his wife up, **“...when she confronted him to defend a daughter and a son against his punches. In presence of**

⁷⁴ Following with the qualified criminal offences of the Indicent Acts, in 50,00% of total number of cases per this criminal offence, Light Bodily Injury 17,90%, Murder 25,00%, Sexual Intercourse with a Child 50,00%, and Rape 44,40%.

⁷⁵ When children are present during physical violence of a father against mother, or they are directly affected with the attack, such acts are endangering peace and psychological health of a child/minor.

the children, he hit his wife with the closed fist in the face and broke her four front teeth, while he was verbally assaulting their underage daughter with words: stupid cow, monkey, whore, junkie, hitting her in the same time with his closed fist, with a boot, and a metal lighter to her head. He pulled up their underage son for his hair, and put a knife around his neck. Despite this, the offence has been qualified as the Article 222, Paragraph 2 of the Criminal Code of the F B&H (violence against a family member that lives in the common household with a perpetrator), which neglects underage children as the victims. **Lighter qualification of the offence contributed to the suspended sentence against the perpetrator.**

- In the next example, an underage daughter witnessed verbal quarrel among her parents, upon which a perpetrator (father of an underage child) committed physical assault in a way that he pushed her mother to the bed, started to choke her, and was punching her with his closed fist to her face. **During the whole period of the attack, an underage daughter was present**, yet the offence has been qualified as the Article 222, Paragraph 2, and not Paragraph 4. **Lighter qualification of the offence contributed to the suspended sentence against the perpetrator.**

Lighter qualification of the offence was identified also in relation to the other criminal offences, such is Murder.

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Examples:

- The Court qualified the criminal offence of the Murder in its basic form, although the explanation states that the offence **has been committed ruthlessly**, with obvious persistence in committing the act (**six stab wounds**), although **the act was committed at the public place, in front of a large group of citizens**, which points at his ruthless nature, and despite the fact that the perpetrator **was stalking and harassing the victim for a certain period prior he attacked her**.
- The criminal offence of Murder has been qualified in its basic form, despite the circumstances stated in the indictment, and the facts determined during the latter phase of the criminal proceeding related to the way of committing the act, as **the perpetrator had severely beaten the woman victim, strangled her, and threw her to the dump, where the animals were tearing her for some time, and the body was found by passers, which shocked the public in that community and elsewhere.**
- A woman victim was beaten in the house, in front of the guests, first by **her underage son**, using the belt (with a metal buckle), water hose, electric cable, and plastic bathtub, and then **her common law partner beat her up with his closed fists and feet, pulled her up and smashed her to the floor several times. After she lost conscience, he jumped at her head several times.** After committing the act, the perpetrator took cell phones from the guests to prevent them calling the police. Witnesses called the ambulance the next day, but **the woman victim died, due to fatal injuries and brain**

swelling. Prosecutor and the Court qualified this offence in its basic form, failing to consider cruelty and brutality of the act committed in the presence of several persons, as well as durable and intensive pain the woman victim suffered almost three days before she died. The Court did not even consider aggravating circumstances when imposing the sentence.

- After the sexual intercourse, in a peaceful situation, **without previous quarrels or any form of irritation, the perpetrator began to cuddle his wife, and then strangling her until she stopped to give signs of life.** After murdering his wife, the perpetrator put on his clothes, called and waited for the police to come. The Court accepted the qualification of the offence in its basic form, compensating it with the aggravating circumstances – the fact that a perpetrator used the moment of intimacy when he began to strangle the victim that did not expect the attack, and she could not provide any resistance.

Problems with qualification of the criminal offences also appear when the prosecutor's office incorrectly qualifies the offence, regardless of its form.

Example:

- In a case of the Sexual Intercourse with a Child, committed by a stepfather of the victim, the prosecutor's office qualified it as "two criminal offences of Rape" (since several sexual intercourses were committed against the same person), which is wrong qualification since the victim is a child, so the Court *changed the qualification into the Article 207 – Sexual Intercourse with a Child.* The problems with the qualification did not end here as the offence was committed on several occasions, and the court qualified it in its basic form, although it could qualify the offence as the Article 207, Paragraph 4, which presupposes that several sexual intercourses were committed on the same occasion. In this case, the offence was not recognized as the prolonged act of violence.

Concurrence of the criminal offences was identified in 34 cases, out of which the largest number of the observed criminal offences concurred with unrelated criminal offences; such are Malicious Mischief, Robbery, Blackmailing, etc. in the cases when conditions were met for concurrence of related criminal offences of violence against women, prosecutors and **the courts mostly fail to identify existence of the concurrence.** Additional problem is lack of qualifying the offence as prolonged; in cases when description of the facts related to the act of violence indicate that a perpetrator(s) committed the same/similar offence on several occasions against the same victim. According to the Law, when the perpetrator commits prolonged criminal offence, provisions related to concurrence

of the criminal offences will not apply.⁷⁶ In one of the monitored cases, prolonged domestic violence, including sexual violence, for which the perpetrator was partially prosecuted and punished with the fine, was not qualified as prolonged criminal offence.

From the above presented problems and the examples, conclusion can be made that the prosecutor's offices, with acceptance of the courts, often lightly qualify the criminal offences of gender based violence, including the basic qualifications, lighter qualified forms, or failing to recognize existence of the concurrence and/or prolonged criminal offence, when it was obvious from description of facts, which consequently also leads to the lighter sanctions against perpetrators.

2.1.1.b) Penalty Policy

Imposed sanctions in the monitored cases were analyzed in order to acquire data on frequency of the imposing of specific criminal sanctions, as well as other details that are characterizing the sanctions imposed for the criminal offences of gender based violence, which means that only completed cases were observed. Sanctions or other suitable measures against a perpetrator are, based on the provisions of the Criminal Procedure Law of the Federation of Bosnia and Herzegovina (in the further text: *ZKP F B&H*), divided on penalties (Prison, Long Term Prison, Prison for Minors, and Fine), warning measures (Court Warning and Suspended Sentence), safety measures (Obligatory Psychiatric Treatment; Obligatory Treatment of Addiction; Restraining from Carrying Out Professional Work, Activity, or Functions; Restraining from Driving a Motor Vehicle; Forfeiture), and educational measures (Disciplinary Measures, Intensified Supervision, and Institutional Measures).

Although we agree that general statistical data on imposed sanctions for specific criminal offences within some period are not suitable alone to provide grounds for conclusion about the penalty policy, the monitoring enables collecting the data on entire cases, not just imposed sanctions. Due to that, it is possible to conduct plausible analysis about the adequacy of the penalty policy. Although the legislator often determines minimum and maximum of the penalties, preventing the court, except in rare circumstances, to lighten the penalty policy below the limit that the legislator considers as adequate and legitimate in a certain moment and near future⁷⁷, decisions of the courts about certain type and amount of criminal law sanctions is considered with respect to connection between general and special part of the criminal code (such are the provisions about imposing and lightening sanctions).⁷⁸

⁷⁶ The Article 55 of the KZ F B&H „Prolonged criminal offence is committed when the perpetrator intentionally commits several identical or similar criminal offences which, given the way they were committed, their time connection, and other real linking circumstances form a whole.“

⁷⁷ Ibid.

⁷⁸ Also V. Ikanović, lecture at the seminar organized by the Center of Education of Judges and Prosecutors of the Republic of Srpska, held on 14 May 2015 in Tuzla, „Discussion about Selected Issues from the Court Practice in the Criminal Law Area Related to the Inequality“, with the title Penalty Policy in B&H and the Court Practice.

Out of total number of the monitored cases, 90,4% (225 cases) ended with the verdict (rejecting, identifying, convicting or acquittal), and in 9,60% cases the proceeding did not end during the monitoring period. Out of total number of closed cases, convicting verdicts were made in 96,52% cases (here we also include identifying verdicts in which the courts determined if an unlawful act has been committed in a mental incapacity of a perpetrator, based on which the courts imposed safety measures), acquittal verdicts were made in 1,74% cases, while rejecting verdicts were made in 1,74% cases. All other concussions related to representation of specific sanctions will be made in relation to the total number of the cases that ended with convicting and identifying verdicts during the monitoring. Following is the graphic review of representation of specific sanctions in relation to the cases that ended during the monitoring period. (Graph 2).

Graph 2
Verdicts

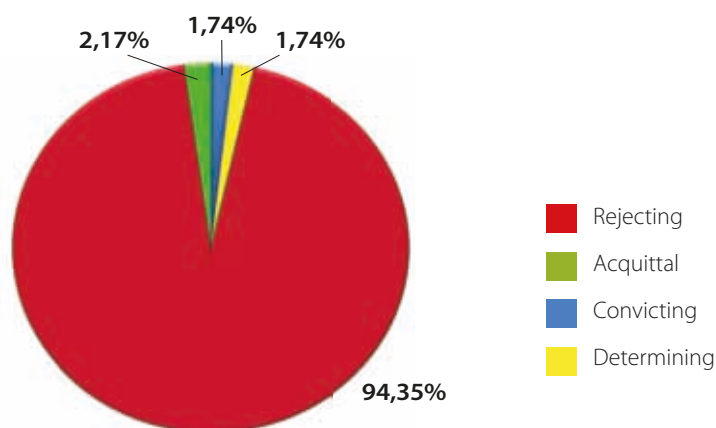


Chart 2:
Structure of the Imposed Sanctions

SANCTIONS		Number	%	
Warning Measures	62,45%	Suspended Sentences	152	62,81%
		Court Warnings	1	0,41%
Penalties	25,31%	Prison	51	21,07%
		Long Term Prison	2	0,83%
		Fine	9	3,72%
Safety Measures	10,33%	Obligatory Psychiatric Treatment	10	4,13%
		Obligatory Treatment of Addiction	1	0,41%
		Forfeiture	14	5,79%
Educational Measures	0,82%	Intensified Supervision	2	0,83%
TOTAL		242		

Note: total number of sanctions is higher than number of closed cases since several criminal law sanctions were imposed in a few cases.

Within structure of the imposed sanctions (Chart 2) warning measures are dominant, concretely suspended sentences that were imposed in 152 cases (which makes 62,81%). Penalties were imposed in 62 cases (25,62%), and the most frequent penalty was prison (82,25% in relation to total number of penalties), fine (14,51% in relation to total number of penalties), and long term prison (3,22% in relation to total number of penalties). Safety measures were imposed in 10,33% cases, and educational measures in 0,83% cases. The monitoring identified the cases in which, despite existence of the preconditions, the courts failed to impose safety measures. For example, in one case related to the criminal offence of Domestic Violence, a perpetrator plead guilty, while the case documents indicate he is a drug addict, yet, the Court failed to impose safety measure.

Identified cases of lighter sanctions for the attempts of severe criminal offences are especially worrying. The courts are neglecting the provisions of the KZ F B&H that for attempted criminal offence the perpetrator will be punished within the range of a sanction prescribed for that offence, and can be punished with a lighter sanction only exceptionally. When the courts decide to impose lighter sanction, such court decision should be explained and justified with existence of the exceptional mitigating circumstances.

Example:

In a case that did not end with a death of a woman victim only by coincidence, her acquaintance used all of his force to punch a victim's head with a baseball bat. A victim suffered severe and multiple life threatening head injuries, in a form of multiple fractured skull, internal brain and ear hemorrhage, and swelling of brain tissue. Despite heavy and life threatening bodily injures, the court imposed 2,5 years prison sentence against the perpetrator, and did not find any aggravating circumstances.

Suspended sentences are predominant for the criminal offence of Domestic Violence. Majority of the prison sentences that were imposed as suspended sentences are relatively low and determined duration was up to one year. Probation period varies, since KZ F B&H regulates it can be from one to five years. In majority of the cases with imposed suspended sentence, the shortest probation period was determined in duration up to 12 months (even in 50,00% of the cases). Following are the probation periods from 18 to 24 months (in 28,29% cases), and from 12 to 18 months (in 15,79% cases). In rest of the 5,92% cases, the probation period was longer than 24 months. Perceiving domestic violence as the criminal offence of less importance and less social danger leads to the lighter sanctions against the perpetrators. The issue that minor children are omitted as the victims in the legal qualifications of the offence is contributing to such penalty policy. Apart from that, the courts are automatically imposing suspended sentences and alternately fines, although the practice indicates these as inadequate sanctions against the the perpetrators, as they did not restrain from repeating the same/similar criminal offence.

Examples:

- In a case related to the criminal offence of the Domestic Violence, the Court recognized and considered mitigating and aggravating circumstances of importance for imposing sanction. As aggravating factors, the Court considered four previous convictions, out of which two convictions for the same criminal offence, and two convictions for the similar criminal offence, and imposed the fine. It is unclear why the Court considered (poor) financial situation of a perpetrator, the fact that he is unemployed as one of the mitigating circumstances, and still imposed the fine.
- The verdict of a municipal court found a perpetrator guilty for the criminal offence of Domestic Violence, and imposed suspended prison sentence of 1 year. After 2 years, perpetrator committed the same criminal offence, and the court again imposed the suspended sentence.
- In a case related to the criminal offence of Domestic Violence, the court formally considered aggravating circumstances related to persistence and continuity of a perpetrator in committing physical and psychological violence against family members, yet it still imposed suspended sentence, founding that only threat of imprisonment would reach the purpose of sanctioning determined by the Law, considering “specifics of the offence”, and the need for a perpetrator to correct his behavior and participate in further upbringing of his underage children that were previously victims of persistent and continuous violence committed by their father.

Different examples are rare but still identified by the monitoring, when the court assessed that suspended sentence is not adequate as it was imposed before, and did not deter the perpetrator to repeat the same/similar criminal offence.

Example:

In one case, the court considered that previous convictions did not have educational influence on a perpetrator to understand social condemnation of the committed criminal offences, and stop repeating the same or similar criminal offences, so it imposed the prison sentence.

The problem that is predominantly reflected within penalty policy, starts with an inadequate legal qualification, continues through considering predominantly mitigating circumstances that are just listed without explanation why the court considered them as such (aggravating or mitigating circumstances), and why and how they are influencing sanctions, and ends with the imposing sanction within minimum range or even below legally recognized minimum. Accomplishing objectives of the special and general prevention are under question due to these issues.

2.1.1.c.) Mitigating and Aggravating Circumstances

When deciding about type and amount of the criminal law sanction, the courts predominantly identify mitigating circumstances, while aggravating circumstances are

identified and considered to a less extent. **Monitoring results indicate that mitigating circumstances were identified in 68,00% cases in relation to the total number of cases that ended during the monitoring, while aggravating circumstances were identified in 31,11% of the cases.** When imposing sanctions, the criminal law obliges the courts to consider range of the sanctions prescribed for the specific criminal offence, general purpose of the sanctioning, as well as the mitigating and aggravating circumstances that include “motives for committing the criminal offence, level of danger or injury of a person, property, or an object, circumstances under which the offence has been committed, previous life of a perpetrator, his personal situation and behavior after he committed the criminal offence, and other circumstances related to the perpetrator”⁷⁹.

In relation to the legally prescribed circumstances that are influencing the sanction to be lighter or stricter, we differentiate following: level of guilt⁸⁰, motives of the perpetrator for committing the offence⁸¹, level of endangering or injuring protected good, circumstances under which the criminal offence has been committed⁸², previous life of a perpetrator⁸³, personal situation of a perpetrator, behavior of a perpetrator after the committed criminal offence, and other circumstances related to a perpetrator. These circumstances do not represent the closed list, as the court is left with the possibility to consider additional circumstances that are not explicitly stated within the above mentioned aggravating circumstances as they are regulated by the Criminal Code of the Federation of B&H (in further text: *KZ F B&H*), neither they represent body element of the criminal offence of the Domestic Violence, and which can be considered as the legally recognized circumstances under which the criminal offence has been committed. These are following: abuse of authority, committing the offence in presence of a child, committing the act by two or more people in cooperation, extreme violence that precede or was used when committing the offence.⁸⁴

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⁷⁹ The Article 49 of the KZ F B&H.

⁸⁰ Level of guilt includes level of sanity, type of guilt, but only beyond measure necessary for existence of the criminal offence and the guilt, premeditation, intent of the perpetrator, but only when it does not constitute separate element of the legal body of the criminal offence; contribution of the victim, but only when it does not constitute separate element of the legal body of the criminal offence. See: Lj. Filipović, a judge of the Supreme Court of the Federation B&H, presentation during the education organized by the Center of Education of Judges and Prosecutors of the F B&H, held at 14 May 2015.

⁸¹ Reasons that motivated the perpetrator to commit the criminal offence (motives). Examples of motives for committing the criminal offence that can influence the offence (when they do not represent legal body of the criminal offence) are, as follows: necessity, altruism, hate, envy, revenge, jealousy. *Ibid.*

⁸² Time and place of committing the criminal offence, way of committing (impudence, cruelty, determination, ruthlessness, the offence committed at the public place, in presence of children, as a part of the group, endangering other persons during committing the acts of offence...), a person against which the offence is committed, used means, abusing certain position, condition or relation of trust. All circumstances must be considered when imposing the sentence only if they are not element of the legal body of the criminal offence. *Ibid.*

⁸³ Previous convictions and imposed sanctions for the minor offences against perpetrator are of special importance.

⁸⁴ N. Petrić/N. Galić, The Baseline Study – Analysis of the Harmonization of Legislation and Public Policies in the Bosnia and Herzegovina with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (ETS 210), second ammended edition, Banja Luka 2015, page 115.

Examples of Good Practice:

- As example of the good practice, we are presenting the case related to the criminal offence of Sexual Intercourse with a Child, in which the court considered previous conviction in relation to the same offence and the same victim as the aggravating circumstance, as well as the circumstance of prolonged criminal offence, and imposed prison sentence up to 3 years.
- In a second case related to the criminal offence of Domestic Violence, the court considered the circumstances of previous conviction of a perpetrator, his status of general recidivist in committing the criminal offences, continuity in committing the criminal offence during a longer period, the fact that a child was present during the offence, which certainly influenced its physical and psychological health, the fact that acts of the violence included choking the victim which could certainly be dangerous for her health and life and could lead to death consequence, and therefore considered acts of violence as the edge of Attempted Murder. Unfortunately, this example does not represent widespread court practice.

Previous conviction of a perpetrator for the same or similar criminal offences was the most used aggravating circumstance in the monitored cases. Other legally defined circumstances were appearing in approximately same number of cases, and their qualification varies, since the courts do not always use legal formulations, but sometimes are directly describing circumstances they considered, without their classification within suitable category, so these will be presented for the purpose of illustration.

As the aggravating circumstances the courts were considering the following circumstances that will be cited using original way they were presented in the verdicts: „a victim is old and helpless person“; „a perpetrator showed persistence in insulting and hurting an official“; „**duration of the period during which a perpetrator was committing the violence against his wife**“⁸⁵; „behavior of the perpetrator upon committing the criminal offence“; „the offence was committed without remorse or any critical relation toward the act of violence“; „the offence was committed at the public place, a perpetrator killed the woman victim in front of her mother“; „level of kinship with a victim (daughter) against which the perpetrator committed the criminal offence of the Sexual Intercourse with a Child, and using the opportunity when nobody was in the house, the offence was committed in a state of mental competence, a perpetrator was aware of absolute prohibition“; „expressed calm, lack of sympathy, brutality, and hate, which makes the offence extremely difficult, planning of the offence, as well as celebration after committed offence of the Murder“; prolonged criminal offence, and „...during which the perpetrator showed perfidy reflected in the fact that her used poor material situation of a minor victim and lack of protection within her family, and brought her in situation of dependency in a way that he was buying her gifts and giving money“; „previous

⁸⁵ Although the violence lasted for a longer period against the same victim, it was not qualified as the prolonger criminal offence.

convictions, exploitation and abuse of circumstance that a minor victim is a daughter of his common law partner“.

In a certain number of monitored cases, the courts did not consider aggravating circumstances, regardless of the fact that a perpetrator was committing the criminal offence over the period of several years, a woman victim of the offence, abusing relations of trust, etc.

Example:

In a case related to the prolonged criminal offence of the Sexual Intercourse with a Child, in which the victim was a minor daughter of the perpetrator, and the fact that violence occurred in the period between 12 and 16 years of her age, the court did not consider aggravating circumstances related to circumstances under which the perpetrator committed the offence.

When imposing sanctions, the courts are more frequently considering **the mitigating circumstances**. We can point at the following atypical circumstances: poor financial situation of a perpetrator (unemployed, without the property), no previous convictions of a perpetrator; the fact that a victim does not join the prosecution, neither she claims compensation, which we consider as especially problematic, as requesting or not requesting the compensation does not represent relevant circumstance for determining existence of responsibility for the criminal offence or determining the sanction; **very** proper conduct in the court, expressed **sincere** remorse; admission of guilt; age (regardless if the perpetrator is old or young, this is mitigating circumstance), family man (a father of minor children, which were also frequent victims of violence committed by their father); expressed remorse and **strong** promise that such behavior will not be repeated; lack of interest of a victim for criminal prosecution, recovering alcoholic, person with invalidity of a poor health situation, etc.

Example:

The court took guilty plea as the mitigating circumstance, although a perpetrator admitted the offence at the end of the criminal proceeding, which means that the whole evidence procedure was conducted, and his confession did not shorten the criminal proceeding.

Unfortunately, one of the largest problems with the mitigating/aggravating circumstances is related to the situation in which the court only lists the considered circumstances, but does not provide explanation why and in what way certain circumstance was considered relevant for choosing and imposing the sanction. Just listing the circumstances, without accompanying explanation or with deficient and clumsy explanation, questions justification of using such circumstances when imposing the sentence. Disturbing conclusion is that the courts still⁸⁶ consider family situation and obligation to provide for minor children as the mitigating

⁸⁶ „Report and the Analysis of the Monitoring of Criminal Proceedings in the Area of Gender Based Violence in the Federation of Bosnia and Herzegovina and the Republic of Srpska“, the Center of Legal Assistance for Women and the

circumstance, which indicates lack of understanding of the acts of violence against women as especially socially dangerous offences with a long term consequences for entire family.

2.1.2. Procedural Law Aspects

2.1.2.a.) Right to a Trial within Reasonable Time

Right on determining the civil rights and obligations, and deciding about the criminal indictment within reasonable time is one of the guarantees of the right to a fair trial encompassed in the *European Convention on Protection of Human Rights and Fundamental Freedoms*.⁸⁷ Although the right on a trial within reasonable time as the integral part of the right to a fair trial represents procedural law warranty established primarily in favor of a perpetrator, here we will consider it in a light of protecting the status and ensuring effective legal protection for a woman victim. *The Istanbul Convention* also stipulates that member states will undertake necessary legislative and other measures, in order to ensure that investigations and judicial procedures for all forms of violence regulated by this Convention are conducted without unnecessary delays, and to consider all rights of a victim during all phases of the criminal proceeding.⁸⁸

In this part, the report is structured in a way to analyze the time span between individual actions within a whole pre-criminal and criminal proceeding, in the following chronological flow: committing the offence – reporting the offence – submitting the indictment – confirming the indictment – imposing the first degree verdict. In relation to the total number of monitored cases, in 63,11% cases the criminal offence has been reported within the same day when it was committed. Timely reporting the offence is of key importance for collecting the evidence, especially in relation to sexual offences (Sexual Intercourse, Rape, etc.). In 20,44% cases, the offence has been reported in the period from 1 to 5 days, in 7,11% cases in the period from 6 to 30 days, while in 9,34% cases, the offence has been reported after one month.

When there are reasonable doubts that the criminal offence has been committed, the prosecutor's office is initiating investigation with the order, in which it determines the scope direction, and methodology of conducting investigation.⁸⁹ After ending of the investigation, if the collected evidences are confirming reasonable doubts that the criminal offence has been committed by a person, the prosecutor's office is submitting the indictment to the authorized court.⁹⁰ The Criminal Procedure Code did not determine within which period the investigation should end, which is understandable consider-

Foundation United Women, Zenica and Banja Luka, 2014, page 36. (electronic version).

⁸⁷ Guarantee is regulated in the first sentence of the Article 6 of the Convention: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time..."

⁸⁸ The Article 49, Paragraph 1 of the Istanbul Convention.

⁸⁹ The Article 231 of the ZKP F B&H.

⁹⁰ See more: T. Bubalović/N. Pivić, Criminal Procedure Law – Special Section, University in Zenica, Zenica 2014, page 61 and further.

ing the nature of investigation. The Law only emphasizes that „the prosecutor ends the investigation when he finds that circumstances of the act are sufficiently clarified to raise the indictment.“ Identified cases of violence against women in which several years passed from the committing the offence until the confirming the indictment are especially disturbing, although there were no reasons for postponement of the proceeding, as the investigation has been conducted immediately after the perpetrator committed the offence, the prosecutor took statements from a perpetrator and a woman victim, and collected numerous material evidence.⁹¹ The monitoring results indicate that, as a rule, the investigation lasts over 30 days (in 87,60% cases), between 15 and 30 days in 7,20% cases, and other ranges are in much smaller percentage.

After submitting the indictment to the court, the judge for a preliminary hearing can confirm or reject all or some points of the indictment **within the period of eight days**, and in more complicated cases, **within the period of fifteen days** from receiving the indictment. If the judge for a preliminary hearing rejects all or some points of the indictment, he adopts the decision which he sends to the prosecutor. Complaint on this decision can be submitted within 24 hours.⁹² The period from submitting to confirming the indictment in the monitored cases mostly ranged between 1 and 5 days (in 44,60% cases), following with the period of over 30 days, this breaks the prescribed legal deadline (in 20,10% cases). The indictment has been confirmed within the period between 6 to 10 days in 15,70% cases, and within the same day when it has been submitted in 7,60% cases. In the period between 11 and 15 days, and between 16 and 30 days, the indictment has been confirmed per 6,00% cases.

Duration of the criminal proceeding was considered in relation to relevant period which begins with the confirmation of the indictment, and ends with adoption of the first degree verdict (regardless of the legal remedies). The analysis indicate that majority of the monitored cases ended within the period of one year (91,11% cases), up to two years in 6,67% cases, up to five years in 1,78% cases, and over five years in 0,44% cases.

Unusual tendency has been identified that majority of the cases ended within, in principle, reasonable period of one year. Here is important to say that criminal proceedings for severe criminal offences (such are the Murder, Rape, etc.) ended much faster than the criminal proceedings for the offences of Domestic Violence. Such practice supports the conclusion that the Domestic Violence is still perceived as the offence of less importance, edging with the minor offences, although this offence often precedes “severe” criminal offences, such is Murder.

At some courts, the monitoring identified unjustifiably many postponements of the court sessions, with or without justified reasons. The courts are frequently omitting to impose disciplinary measures against all persons that are participating in the criminal proceeding, in the case of irrational and repeated postponements of the court sessions.

⁹¹ See: Key recommendations of the CEDAW Committee on the combined fourth and fifth report of the Bosnia and Herzegovina (CEDAW/C/B&H/CO/4-5) important for preventing and combating violence against women in the B&H.

⁹² The Article 243 of the ZKP F B&H.

Example:

In a case related to the criminal offence of Indecent Acts, the main trial has been scheduled for 12 September, and postponed for 24 October, as the court expert could not come to the trial due to previously scheduled trial in front of the other court. Continuation of the main trial happened on 15 November, when the prosecutor changed the indictment just with a few words. Continuation of the trial was scheduled on 6 December, and postponed due to absence of the cantonal prosecutor due to a death in a family. Continuation of the main trial has been scheduled for 7 January, and postponed because of absence of the cantonal prosecutor due to a technical mistake – incorrectly entered date of the trial. Continuation of the main trial on 3 February, and the court decided to return the trial at the beginning, due to the fact that period of 30 days passed since the last court session.

2.1.2.b.) Protection of the Women Witnesses/Victims during the Criminal Proceeding

Protection of the women victims during the criminal proceeding can be observed in two directions. The first aspect is related to providing direct psychological assistance and support in the proceeding during the hearing of the victim. The second aspect is related to ensuring free legal assistance, not a legal counselor, but attorney that would be able to represent interests of a victim during the proceeding, especially in relation to claiming compensation. Eight out of ten cantons in the Federation of B&H adopted the laws on free legal assistance that are identifying the public institution authorized to provide free legal assistance (cantonal institutions). Not all relevant laws are recognizing victims of domestic violence as the category of a beneficiary, or recognize such a status only during the period when the victim is sheltered in the safe house. Additional difficulty, due to which women victims are left without legal assistance, is property census, which does not tolerate event shared marital property.

Besides legal assistance, the psychological support is necessary in order to ensure protection of women victims during the criminal proceeding, and prevent harmful influence of the hearing for a victim's psychological condition. This hearing should be conducted with the assistance of a psychologist, a pedagogue or other professional, depending from the needs of a woman victim. This obligation is directly required by the Law for underage victims.⁹³ The Law on Protection of Witnesses under Threat and Vulnerable Witnesses of the F B&H⁹⁴ provides the possibility for protection of a personal safety of a victim of the criminal offence in order to ensure his/her testimony. As the witness protection measures, the Law recognizes providing psychological, social, and professional assistance, adequate schedule of presenting evidences at the main trial, supervising the way of hearing the witness, removing a perpetrator from the courtroom during the hearing of a witness, testifying via technical equipment for transferring images and sound, limiting the rights of a perpetrator and his attorney to review the case files and

⁹³ The Article 100 of the ZKP F B&H.

⁹⁴ The Law on Protection of Witnesses under Threat and Vulnerable Witnesses of the F B&H („Official Gazette of the F B&H”, number 36/03).

documents.⁹⁵ Besides securing the technical and professional support, adequate reaction of the court against any behavior directed toward limiting the rights of a victim is of key importance for efficient and fair implementation of the proceeding, which is shown in the following example.

Example:

In a case related to the criminal offence of Rape, which was closed for the public due to protecting the interests of an underage girl victim, **a witness of the defense tried to present a victim as incredible/drunk**, but „...The court did not give a faith to his statements, especially to the statement of a witness XY, directed toward presenting a victim in a very bad light“.

In relation to special protection measures for victims during the hearings, the monitoring identified that the hearing with assistance of a psychologist, pedagogue, or other professional was conducted in 6 cases, and a minor victim had the assistance of a psychologist/pedagogue in 3 cases. In relation to the special measures of witness support during the hearing, based on the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of the F B&H, a woman victim had a status of vulnerable witness in 5 cases – in 4 cases in relation to the criminal offence of Rape (in one case, there were two perpetrators), and in 1 case related to the criminal offence of Indecent Acts. Since the monitoring targeted cases of violence against women that usually involve physical and sexual violence, data are clearly indicating that providing psychological and legal assistance was unsatisfying. Sense of vulnerability of a woman victim/witness is the most often result of the general mistrust in criminal justice system, cumulated with the fear and trauma due to suffered violence. Inadequate and unprofessional actions of the authorized official institutions are leading to re-traumatization of victims⁹⁶, and their withdrawal from the participation in the criminal proceeding.⁹⁷

The prosecutors often relay on testimonies of the women victims in the criminal proceedings, and insufficiently engage in collecting other type of evidence; such are medical and psychological expert testimonies, photo documentation of injuries, witnesses, etc. Although there is the awareness about numerous difficulties in collecting evidence against perpetrators of violence, as there could be a few direct evidences, it is of key importance for the professionals to ensure good documentation about the offence, and collect all available evidences. Since as the rule the victim is questioned by the police officers (after reporting the offence), by the prosecutor's office, and finally at the court, re-traumatization is inevitable. Combined with a fear and possible threats, as well as economic insecurity, the women victims often withdraw their statements, or even explicitly

⁹⁵ The Articles 7-13 of the Law on Protection of Witnesses under Threat and Protected Witnesses of the F B&H.

⁹⁶ The Framework Strategy of the B&H, page 24.

⁹⁷ In accordance with the Article 97 of the ZKP F B&H, marital and common law partners of the perpetrators, their parents, children, adopted childre/adoptive parents are the persons that can refuse to testify. Since the marital and common law partners are the most common victims of the criminal offences related to violence against women, as well as children, the usage of this right is very common in the criminal proceedings.

request ending of the criminal prosecution. Continuation of the criminal proceeding should not be under question due to withdrawal of a woman victim, and regardless of her testimony/request for ending the criminal prosecution. The prosecutor's office is responsible for collecting the adequate evidence material. It is not acceptable to give up from the criminal prosecution of the violence against women with a hope that family relations could normalize. It is necessary to ensure systemic education and economic empowerment of women, in order to provide her with necessary support to persist within the criminal proceeding. It is also necessary to discourage such behavior with the adequate penalty policy. Due to lack of information, the women victims of violence are hardly and slowly acquiring the right on protection and assistance guaranteed by the law, which leads to mistrust in the work of the judicial institutions, and consequently to the lack of reporting of the criminal offences of violence.

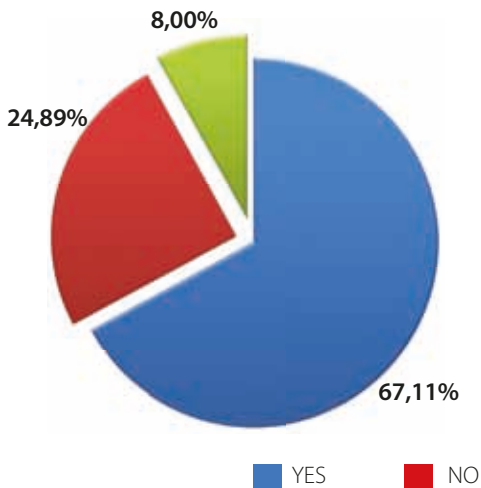
2.1.2.c.) Acquiring Compensation through the Compensation Claims

The Article 208 of the ZKP F B&H regulates that the request for acquiring compensation in the criminal proceeding can be submitted by a person that is authorized to acquire such compensation in the litigation procedure. This legal definition aims also to protect the basic rights of the victims that suffered material and/or non-material damage from the criminal offence.

Beside passive prosecutors that rarely show the initiative for collecting additional documentation to support implementation of the compensation claims, the courts also preferably direct victims to request compensation through the litigation procedure. Out of 207 cases in which data were available through the monitoring, in 151 cases the victim was informed by the court about the possibility to request the compensation, while in 56 cases there is no track about such action of the court (Graph 3). The information about compensation claim itself does not mean necessarily that a woman victim understood the essence of her right, as the monitoring revealed the need for acting judge to use understandable way and language adjusted to the ignorant parties to explain the nature of the compensation claim. Because of lack of understanding and lack of legal assistance/attorney, in 183 monitored cases, the victim did not want to request the compensation, or did not react in that direction, while in 24 cases, the victim requested the compensation, and the court did not decide on it within the criminal proceeding. (Graph 4). The women victims were regularly directed to litigation proceedings, and chances are small that they will initiate such proceedings at all.

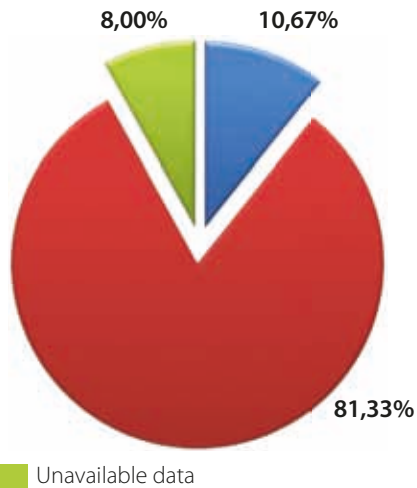
Graph 3:

Did the victim of violence received information about possibility to request the compensation?



Graph 4:

Did the victim of violence claimed compensation during the criminal proceeding?



Example:

Fragment from the convicting verdict: "(Victim) joined the criminal prosecution of a perpetrator, and requested compensation of material damage... the victim is directed to initiate the litigation procedure in relation to the request for compensation". This platitude is the most frequently used, with no supporting explanation why the victim is directed to the litigation procedure, and why the court considered that deciding about the compensation would unjustifiably prolong the criminal proceeding.

The Criminal Procedure Code did not regulate explicit obligation of the courts to decide about the compensation claim if the party requests it during the proceeding, but it states that the court will decide about the claim „if such action would not significantly prolong the criminal proceeding“.⁹⁸ The courts accepted this exception as a rule, believing that each compensation claim would prolong the criminal proceeding, and this is the reason why there was no compensation claims decided upon during the criminal proceeding in monitored cases. It is logical to assume that criminal law judges perceive as additional challenge to decide about compensation claims using the rules of the litigation procedure. However, although there is complex issue of determining existence and scope of the non-material damage, the court decision has been easier with the adoption of the so called Orientation Criteria and the Amounts for Determining Level

⁹⁸ The Article 207 of the ZKP F B&H.

of Fair Monetary Compensation of the Non-Material Damage.⁹⁹ Additional option for the courts, once when ZKP F B&H provisions come to life in practice, is the possibility of imposing temporary safety measures¹⁰⁰, in order to ensure implementation of the court decision on compensation.

The compensation claim includes **the compensation of damage, return of a property, and request for annulment of the legal business**, and it does not mean much to the women victims as they are often unfamiliar with the law. Due to that, one of the most important questions is how to help the women victims to claim compensation if they do not have enough material resources to hire an attorney/legal representative. Since a prosecutor is also taking a statement from a woman victim within the investigation, he also has the possibility in early phase of the proceeding to explain her nature and procedure of the compensation claim, and to encourage the victim to request it within the criminal proceeding. Determination of a woman victim to claim compensation in the investigation phase is very important, as the prosecutor then collects all necessary evidence, also those needed for preparing and deciding upon the compensation claim. Although there is predominant opinion that a prosecutor cannot request compensation, as this represent dispositive right of a woman victim, yet he can create good grounds within the investigation, and make easier for the court to adopt decision on the compensation request submitted by a woman victim (for example, through ordering psychiatric expert testimony or some other expert testimony) in order to determine the scope of caused non-material damage.¹⁰¹

2.2. Analysis of the Cases by the Criminal Offences

2.2.1. The Criminal Offence of Murder (The Article 166 of the KZ F B&H)

In total 14 cases have been analyzed per this criminal offence, and they were monitored in two cantonal courts (Zenica – 8 cases, Tuzla 6 cases). Complicity was identified in one case, with total 15 perpetrators of this criminal offence. The perpetrators are mostly belonging to age group between 51 and 55 years of age (26,66%), following the age group between 31 and 35 years of age (20,00%).¹⁰² The most common perpetrators are present or former husbands, or partners/boyfriends of the women victims (in 60,00% of

⁹⁹ Orientation Criteria have been adopted at the session of the Civil Department of the Supreme Court of the Federation B&H, held at 20 February 2006. They should enable harmonized implementation of the Article 200, Paragraph 1 of the Law of Obligations, published in „the Official Gazette of the SFRY“, number 29/78, with the changes and amendments 39/85 and 57/89, and as such taken over as the law and amended („the Official Gazette of the RB&H“, number 2/92, 13/93 and 13/94).

¹⁰⁰ The Article 216 of the ZKP F B&H.

¹⁰¹ Opinion and proposal have been presented at the round table on the topic “Compensation Claims of the Victims of War Crimes as a Part of the Criminal Proceedings – Future Steps Toward Improving the Practice of the Entity Judicial Institutions”, held in Doboj on 14 February 2017, organized by the TRIAL International. Round table participants discussed obstacles, perspectives, but also accomplishments related to the compensation claims of the victims of war crimes.

¹⁰² Equal percentage (13,30% per groups) are represented the perpetrators in the age groups of 18-24, 25-30, 56-60 and over 60 years of age.

the cases), following with the acquaintances (26,67%). Other blood relatives and father in law of the victim are equally represented as the perpetrators (6,67 %). For 73,33% of the perpetrators, this criminal offence has been qualified in its basic form, while for 26,67% of the perpetrators in the aggravated form of the offence. All qualified forms of this criminal offence are related to the Paragraph 2, Point a) („**who murders another person on cruel or vicious way**“). In 5 cases, the criminal offence of murder was attempted, while in 6 cases, the offence was qualified in concurrence with other criminal offence (1 case of the each – Heavily Body Injury, Rape, Violent Behavior, and other criminal offence that was not in the monitoring focus), and in 2 cases, the concurrence was with the criminal offence of the Domestic Violence. In relation to the urgent procedure for the criminal offences of Murder, the monitoring identified urgent actions of the authorized institutions. In 73,03% cases, the offence was reported the same day when it was committed, and the most common duration of the investigation is over 30 days (86,70% cases). The submitted indictments were the most frequently confirmed by the courts within the period between 1 and 5 days (66,70% cases). In all monitored cases, the criminal proceedings ended within a period of one year. In 88,20% cases, the courts imposed convicting verdicts, and in 11,80% cases identifying verdicts (as the criminal offence was committed in mental incapacity, therefore the court did not impose the sanction, but safety measure).

In the structure of the sanctions, and in relation to the perpetrators, predominant are the prison sentences (up to 20 years) in 73,33%, while long term prison and safety measure of the Obligatory psychiatric treatment are equally represented (each per 13,33%). Since the safety measures can be imposed together with the prison sentences, here we should mention that the most common imposed safety measure is Forfeiture (usually an object with which the criminal offence is committed). In 5 cases, the court imposed the safety measure of the Obligatory Psychiatric Treatment (in some cases independently as the Forceful Treatment in the Health Institution, and in some cases as the Obligatory Psychiatric Treatment, cumulatively with the prison sentence).

When determining the mitigating and aggravating circumstances, the monitoring results indicate that the court more frequently use mitigating circumstances. In relation to the total number of the perpetrators (15) mitigating circumstances are determined in 14 cases (82,40%), as follows: guilty plea, no previous convictions, previous life of a perpetrator, his personal circumstances, remorse, limited sanity, family circumstances (father of a minor child!), the only breadwinner in a family. Aggravating circumstances are determined in 8 cases, as follows: expressed calm, emotionless, brutality and hate, which makes the offence extremely severe; planning the offence, as well as celebration after the committed offence; way of committing the offence: the perpetrator had severely beaten the woman victim, strangled her, and threw her to the dump, where the animals were tearing her, and the body was found by passers, which shocked the public; persistence during committing the offence (six stabs by the knife), the offence committed on the public place in presence of a large group of citizens, which points at a perpetrator's ruthlessness, he was previously stalking and harassing a woman victim;

special recidivism. Recidivism was identified in relation to four perpetrators (26,67%). Out of this number, one perpetrator has been convicted for one similar and one different criminal offence, and 3 perpetrators have been previously convicted for different criminal acts. In 71,43 % cases, the victims were explicitly informed about the possibility to claim compensation. The monitoring analysis of the case files indicates that in 14,29% cases, the victim hasn't been informed about the possibility to claim compensation, while this data was unavailable in rest of the cases. When such claim was submitted during the criminal proceeding (in 35,71% cases), the court directed the victims to initiate litigation procedure.

Structure and relation of the perpetrators and the women victims clearly indicate that persons from the closest environment of a woman are the most common perpetrators of Murder. Even if the recidivism is not recorded, the perpetrator is often violent person that was committing violence against a victim prior to the murder, and she was not reporting it due to vulnerability and mistrust into the judicial system. Even if the violence has been previously reported, it was not prosecuted. For example, in one of the most difficult cases of Murder, committed in complicity, the victim was previously reporting the perpetrator, and however, the investigation was cancelled due to lack of (material) evidence. The second most obvious issue is related to the legal qualification. Although the courts provide explanation in the verdict that the criminal offence has been committed on cruel and/ruthless way, they fail to correct the legal qualification, and therefore impose (lighter) sanction for the basic form of the criminal offence.

2.2.2. The Criminal Offence of Heavy Bodily Injury (the Article 172 of the KZ F B&H)

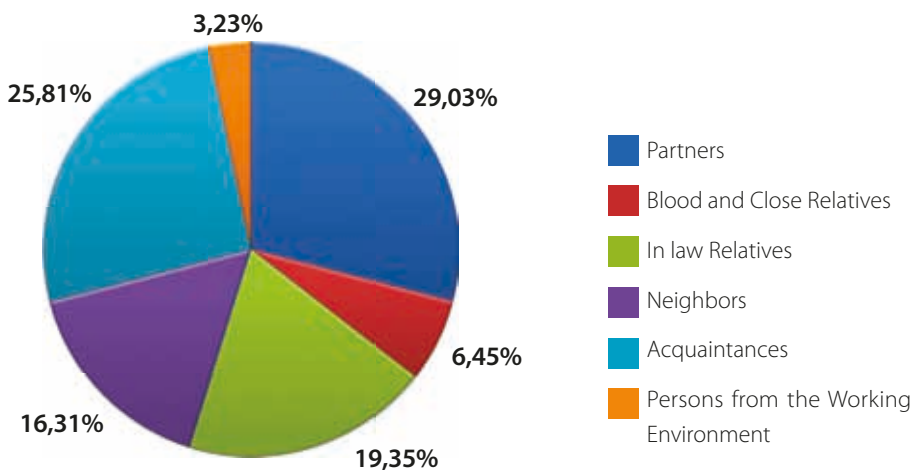
Two cases have been analyzed per this criminal offence. In both cases the criminal offence was qualified in its basic form, and one case was in conjunction with the criminal offences of Robbery and Aggravated Theft. Both offences were reported the same day when committed, and investigation lasted over 30 days. Indictments were confirmed within the legal deadline of 15 days. One of the criminal proceedings did not end until the end of the monitoring, and the other ended within a period of one year. In the case that ended, convicting verdict was imposed, with suspended sentence, and up to 36 months of the probation period. The court considered previous conviction (criminal offence of Forest Theft) as the aggravating circumstance, and guilty plea, sincere remorse and apology, and the fact that he reconciled with the victim who has forgiven him, as the mitigating circumstances. In the case that ended during the monitoring, the perpetrator was a relative of the victim; she did not claim compensation, although she was informed about such possibility.

2.2.3. The Criminal Offence of Light Bodily Injury (The Article 173 of the KZ F B&H)

In total 30 cases were analyzed in relation to this criminal offence, and they were monitored at the three courts (the Municipal Court Orašje – 85,70%, the Municipal Court Ka-

kanj – 10,70%, and the Municipal Court Zenica – 3,60%). Complicity has been identified in 1 case, therefore there were in total 31 perpetrators of this criminal offence. In the largest number of cases (51,70%) the perpetrators fit into the age group 18-24 years of age. The most common perpetrators are partners of the woman victim (former husband, common law partner, former common law partner, boyfriend), in 29,03% cases. Other perpetrators of this criminal offence are acquaintances (25,81%), neighbors (16,13%), father in law, and other in law relatives both per 9,68% cases, and other blood relatives (6,45%). In one case (3,23%), the perpetrator was court police officer (as the person from working environment of a victim).

Graph 5:
Sanctioned perpetrators of the criminal offence Light Bodily Injury



Graph 5 clearly shows the majority representation of the partners and relatives of the victim as the perpetrators of the criminal offence, which justifies dilemma in relation to the legal qualification.

Lack of clarity of the legislator caused unclear line between the criminal offence of Domestic Violence (regulated by the Article 222 of the KZ F B&H)¹⁰³ and the criminal offence of Light Bodily Injury, committed against a family member of a perpetrator (regulated by the Article 173, Paragraph 2 of the KZ F B&H).¹⁰⁴ If the legislator's intention with the mentioned qualified form of the criminal offence Light Body Injury wanted to cover situations when a family member of the perpetrator's family has been physically injured, than such situations are not covered with the criminal offence of Domestic Violence. With the interpretation we are reaching the conclusion that the criminal offence of Domestic Violence (in its basic form)

¹⁰³ „Whoever, by violence, insolent or arrogant behavior violates peace, physical integrity or mental health of a member of the family, shall be punished by a fine or imprisonment for a term not exceeding one year.”

¹⁰⁴ „Whoever inflicts a light bodily injury upon his spouse, common law partner, or parent of his child with whom he does not share a household, or impairs his/her health in a minor way, shall be punished by imprisonment for a term not exceeding one year.”

presupposes psychological, verbal, and lighter physical violence which does not lead to body injuries, but violates peace, bodily integrity, or psychological health of the victim. It is clearly visible from the number of monitored cases that the courts do not have common classification of violent behavior against a family member. Due to that, some courts are qualifying causing the injuries of the family member as the criminal offence of Domestic Violence, and some courts as the criminal offence of the Light Bodily Injury, and third courts, although rarely, as conjunction of the criminal offences of Domestic Violence and Light Bodily Injuries. Mentioned differences are significantly affecting the penalty policy.

In 82,75% cases, this criminal offence has been qualified in its basic form, while in 17,24% cases, it was qualified in aggravated form (the criminal offence committed against marital partner or common law partner). Concurrence was identified in 5 cases with different criminal offences (such are Malicious Mischief, Violating Safety, etc.). This criminal offence was the most frequently reported the same day when it was committed (in 75,00% cases), investigation regularly lasts over 30 days (in 96,40% cases), while in 46,40% cases, the indictment was confirmed by the court within the deadline of 15 days. The criminal proceedings most frequently ended within a period of one year (in 89,30% cases), courts were, in majority of cases, imposing convicting verdicts (in 86,20% cases), with suspended sentences (probation period up to 12 months). The prison sentence was imposed by the courts in 5 cases (up to one year), the fine in 5 cases (the most common up to 1.000 BAM). The mitigating circumstances were more commonly considered by the courts (75,00%), and these were mostly related to guilty plea, remorse, no previous convictions, family status, and financial circumstances. Aggravated circumstances (32,10%), are previous conviction (in 57,10% cases for the same or similar criminal offences). In 63,00% cases, there were no data in the case files about direct information to a victim on possibility to claim compensation provided by the court, which contributed that in 85% cases the victim did not request it.

2.2.4. The Criminal Offence of Rape (the Article 203 of the KZ F B&H)

Eight cases of the criminal offence of Rape were monitored at five different courts. One case was committed in complicity, therefore there were in total 9 perpetrators of this criminal offence that in 50,00% cases are between 18 and 24 years of age. The most common perpetrator of this criminal offence was acquaintance of the victim (in 44,44% cases), unknown person (22,22%), and former partner/boyfriend, father, and other in law relative (all per 11,11%). The analysis confirmed that 5 out of 9 perpetrators are up to 24 years of age. In 62,50% cases, the criminal offence has been qualified in its basic form, while in 50,00% cases, concurrence was identified with other, predominantly different criminal offences. In all monitored cases, the offence was reported in the same day when it was committed, and the criminal proceeding ended within a period of one year. In relation to all perpetrators, the courts adopted convicting verdicts, and imposed prison sentences (up to 5 years), and one educational measure (intensified supervision). As the aggravating circumstances, the courts mostly considered persistence in

committing the offence, and as the mitigating circumstances (that were considered in several cases) the courts considered no previous convictions, (sincere) remorse, age of the perpetrator, and family circumstances. In three cases, victims provided statement with the assistance of a psychologist, and in one case, the court sessions were closed for the public in order to protect interests of a minor victim. In that case, a witness of the defense tried to present the victim as incredible/drunken, but the court did not consider his testimony. One compensation claim has been submitted, but the court did not decide about it in the criminal proceeding.

2.2.5. The Criminal Offence of Sexual Intercourse with a Helpless Person (the Article 204 of the KZ F B&H)

One case was analyzed in relation to this criminal offence. The perpetrator was over 65 years of age, and the offence was qualified as prolonged, in its basic form, in concurrence with the criminal offence of Indecent Acts. The offence was reported after 30 days, and both investigation and confirmation of the indictment lasted over 30 days. The criminal proceeding ended within a period of one year, with convicting verdict, and imposing the prison sentence up to one year. The court identified only mitigating circumstances, including the circumstances under which the offence was committed, previous life of the perpetrator (,...guilty plea, sincere remorse, readiness to compensate for a damage requested by a guardian of the victim, **the fact that a mother-guardian stated that she does not request criminal prosecution, and she does not want exposing her daughter as the victim and herself to unpleasantness of the judicial proceeding**, the fact that the perpetrator is a **senior person**, with no previous convictions for similar or different criminal offences). Special measures of protection for the victim were applied in this case, as she provided statement to the court with a presence of a psychologist.

2.2.6. The Criminal Offence of the Sexual Intercourse with Abuse of Position (the Article 205 of the KZ F B&H)

One case has been monitored in relation to this criminal offence (at the Municipal Court Orašje). The perpetrator belongs to the age group between 56 and 60 years of age, a person from the working environment of a victim. The criminal offence was committed in its qualified form, and the offence was reported more than 30 days after it was committed. The investigation lasted more than 30 days; the indictment was confirmed in the period between 16 and 30 days, while the criminal proceeding ended within a period of one year. The court adopted the convicting verdict, and imposed the prison sentence in duration of one year. As the aggravating circumstance, the court considered previous conviction for the similar criminal offence, and there were no mitigating circumstances. The verdict and other case files are not clearly showing if the victim has been informed about the possibility to claim compensation, and she did not requested it during the criminal proceeding.

2.2.7. The Criminal Offence of the Coercion to Sexual Intercourse (the Article 206 KZ F B&H)

One case has been analyzed through the monitoring at the Municipal Court in Bugojno. The offence was committed in complicity of two minor perpetrators who became adult during the trial. Both perpetrators were acquaintances of the victim (one of them a former partner/boyfriend). The criminal offence was qualified in its basic form in relation to both perpetrators, in concurrence with the criminal offence Blackmail (as they were blackmailing the victim with photographs, and extorting some money from the victim on several occasions). More than 30 days passed from the committing the offence to reporting it, and the criminal proceeding ended within the period of one year. The court adopted convicting verdict for both of the perpetrators, and imposed suspended sentence (with probation period up to 12 months) and educational measure (intensified supervision). The victim did not claim compensation, however the perpetrators promised at the court they will return extorted money to the victim, which represents one of the aspect of the compensation claim, related to the return of the property/goods seized by committing the criminal offence (money).

2.2.8. The Criminal Offence of Sexual Intercourse with a Child (Article 207 of the KZ F B&H)

Eight cases have been analyzed through monitoring at the Cantonal Court of Tuzla, the Municipal Court of Tuzla, and the Municipal Court of Orašje. Two perpetrators were from the age group between 18-24 years of age, two from the age group between 25-30 years of age, and three from the age group between 41-45 years of age.¹⁰⁵ The perpetrators had different relations with the victims, with no significant similar pattern among some of the category – common law partner, partner/boyfriend, father, and acquaintance. Three cases were qualified in the aggravated form (Paragraph 2 and 5 of the Article 207 KZ F B&H), and in one case, the prosecutor identified prolonger criminal offence in concurrence with the criminal offence of Incest. In relation to all cases, the investigations lasted for more than 30 days, and the indictments were confirmed within the 15 days. Among the completed cases (in total six), only one criminal proceeding lasted up to two years, while rest of the five cases ended within the period of one year. In all six cases, the court adopted convicting verdicts (different durations), and one suspended sentence (with probation period of up to 36 months). In 40,00% of the completed cases, the court identified aggravating circumstances (predominantly previous convictions), and in 100% of the cases the court considered mitigating circumstances (guilty plea, fair behavior, etc.).

Example:

The court did not consider any aggravating circumstance in the case in which the perpetrator, in the period from 1 January 2014 until 3 August 2015, in a family house, aware that he is having sexual relations with a child and wanting it, began the relation-

¹⁰⁵ One perpetrator was from the age group between 31 – 35 years of age.

ship with a minor girl, born at 21 March 2001, and had sexual intercourse with her on several occasions, which resulted with her pregnancy, after which he continued to live in a common law community. The court did not recognize the offence as the concurrence (with the Common Law Community with a Junior Juvenile), and no prolonged criminal offence (perpetrator's intention to commit several the same or similar criminal offences, in relation to way of execution, their time connection, and other real circumstances that connect them as a whole, which are conditions met in this case). In the second case, the court did not consider any aggravating circumstances, although the offence was of prolonged nature, committed by the perpetrator against his minor daughter (in the period between 12 and 16 years of her age). There were no compensation claims in relation to these cases.

2.2.9. The Criminal Offence of Indecent Acts (the Article 208 of the KZ F B&H)

The analysis of this criminal offence included 17 cases. In one case, the offence was committed in complicity, with total 18 perpetrators mostly belonging to the age group between 51-55 years of age, which are, in majority of the cases, acquaintances of the victims (in 73,30% cases). In six cases, the offence was qualified in the aggravated form, with concurrence with predominantly similar criminal offences (Sexual Intercourse with a Helpless Person and Sexual Intercourse with a Child). The criminal offence of Indecent Acts was mostly reported within the first five days after the committing it, and the indictments were mostly confirmed within 15 days from the submitting it to the court (exception was identified in three cases in which the confirmation of indictment lasted over 30 days). The criminal proceedings mostly ended within a period of one year (64,30% cases), although the monitoring revealed longer duration of the proceedings, even between 4 and 5 years (14,30% cases). In relation to 14 perpetrators, the court adopted convicting verdicts (with imposed 4 prison sentences in duration up to one year, and 10 suspended sentences with different probation periods), and one acquittal verdict. Safety measures were imposed in two cases (Obligatory Psychiatric Treatment and Obligatory Treatment of Addiction). In only two cases, the court considered aggravating circumstances.¹⁰⁶ Mitigating circumstances were considered in majority of the cases (57,10% cases), and mostly no previous convictions, guilty plea, and remorse for committed offence. Although majority of the victims clearly received the information about compensation claim (in 64,30% cases), only one compensation has been requested. In one case, the indictment failed to qualify the criminal offence as of prolonged nature, although the perpetrator was conducting the actions with characteristics of this criminal offence over the period of two years.

¹⁰⁶ There were no aggravating circumstances in the case in which the perpetrator was deputy director of the school in which the victim lived as a subtenant.

2.2.10. The Criminal Offence of Forcing into Prostitution (the Article 210 of the KZ F B&H)

Two monitored cases were analyzed, and in one case the offence was qualified in its aggravated form. Criminal proceeding for one case ended within a period of one year, while the proceeding for the other case lasted between 4 and 5 years. The courts adopted convicting verdicts in both cases (one prison sentence in duration up to three years, and one suspended sentence with probation period up to 48 months). The court did not consider aggravating circumstances (although there were four women victims in one case, among which two minor girls, the court called upon provisions on reduction of the sentence, based on the Articles 50 and 51 of the KZ F B&H). As the mitigating circumstances, the courts considered guilty plea, and no previous convictions in both cases. The perpetrators in both cases were acquaintances of the victims. There were no compensation claims, and in one case file it is visible that the victims were directly informed about it.

2.2.11. The Criminal Offence of Abusing a Child or a Minor for Pornography (the Article 211 of the KZ F B&H)

The four cases were analyzed (criminal offence qualified in its basic form), monitored at the Municipal Court in Zenica and the Municipal Court in Mostar. In two cases, the perpetrators were belonging to the age group between 25-30 years of age, and all of them were in various relations with the victims (father, husband, partner/boyfriend, acquaintance, and unknown person). Concurrence was identified in two cases, with two criminal offences per case (Violent Behavior, Light Bodily Injury, and Violating Safety). The criminal proceeding in all cases ended within a period of one year, and the courts adopted convicting verdicts (one prison sentence up to one year, and three suspended sentences). The court did not consider aggravating circumstances (even in the case in which the perpetrator was border police inspector, and the offence was prolonged nature). As the mitigating circumstances the courts considered no previous convictions, guilty plea, and the family status. No compensation claims were submitted during the criminal proceedings.

2.2.12. The Criminal Offence of Common Law Marriage with a Junior Juvenile (the Article 216 of the KZ F B&H)

Two cases were monitored, and both perpetrators are in the age group between 25 and 30 years of age (common law partner and partner/boyfriend of a victim). The criminal proceeding ended in one case within a period of one year, with the court adopting the convicting verdict with suspended sentence and probation period of one year. No compensation claim was submitted during the criminal proceeding.

2.2.13. The Criminal Offence of Domestic Violence (the Article 222 of the KZ F B&H)

Hundred and forty six (146) cases were monitored, out of which the criminal offence proceedings for 136 cases ended during the monitoring. The largest number of cases was monitored at the municipal courts in Zenica, Bugojno and Tuzla. Since no complicity was identified, the number of cases corresponds to the number of perpetrators that mostly fit into the age group between 46-50 years of age (23,97%). Following the age group of perpetrators is between 41-45 years of age (22,60%). In 66,67% cases, the perpetrators were spouses or common law partners of the victims (47,17% spouses, 6,29% former spouses, 10,69% common law partners, and 2,52% former common law partners). Close male blood relatives of the victims (father, brother, son, grandfather) make in total 30,18% of the perpetrators of the domestic violence, and their representation in the total sample corresponds to the mentioned order. Other blood relatives make 1,26% of the perpetrators, and other in-law relatives make 1,89%.¹⁰⁷ In 78,68% cases, the criminal offence were qualified in the aggravated form (mostly per Paragraph 2 in 69,10% cases, Paragraph 3 in 4,40% cases, and Paragraph 4 in 8,10% cases)¹⁰⁸. *Despite presented statistics, in majority of the cases the conditions were met for the qualified form of the criminal offence, mostly per Paragraph 4, since the acts of violence were often committed in presence of the children, and even against them, but without physical injuries* (waking up children during the night, intimidations, physical assaults against a mother in presence of the children, whether a mother defends the children from the attacks, or the children are defending a mother). For example, in one case, a mother was beaten up because she „confronted a husband, defending a daughter and a son from his punches“, yet, despite this, the criminal offence was qualified as the Paragraph 2 (when the act of violence is committed against a family member that lives in a household with the perpetrator, and for which the prescribed sentence is fine or up to three years of prison), and not as the Paragraph 4 (when the criminal offence of domestic violence is committed against a child or a minor, with prescribed sentence from one to five years of prison). In several cases, the monitoring revealed that the offence was committed over longer period; however, it was not qualified as the prolonged criminal offence.

According to the analyzed data, only in 5,10% cases, the offence was qualified as the prolonged criminal offence, although the collected information suggests that prolonged criminal offence of domestic violence is much more represented in the practice. Even when the court makes the assessment that the victim has been continuously physically and psychologically abused, the acts of violence are rarely recognized as the prolonged criminal offence. Concurrence of the criminal offence of Domestic Violence was identified in 10 cases (7,40%), mostly with the other, non-similar criminal offences. Only in

¹⁰⁷ In 18 cases, beside spouse, current and former common law partner, the victims were also the children; in two cases, beside a mother, the victim of violence was also a sister of the perpetrator; in one case, beside a daughter victim of violence was also a granddaughter of the perpetrator; in one case, beside a mother victim of violence was a sister and other relative of the perpetrator, and in one case, beside a spouse, the victim was also the other in-law relative of the perpetrator.

¹⁰⁸ In some cases, the criminal offence has been qualified in the aggravated form, per two paragraphs of the Article 222 KZ F B&H, due to which, sum of percentages per individual aggravated forms of the offence was higher than 78,68%.

one case, the perpetrator was indicted for the concurrence of the criminal offences of Domestic Violence and Light Bodily Injury, although the victims suffered such injuries in a significant number of the monitored cases.

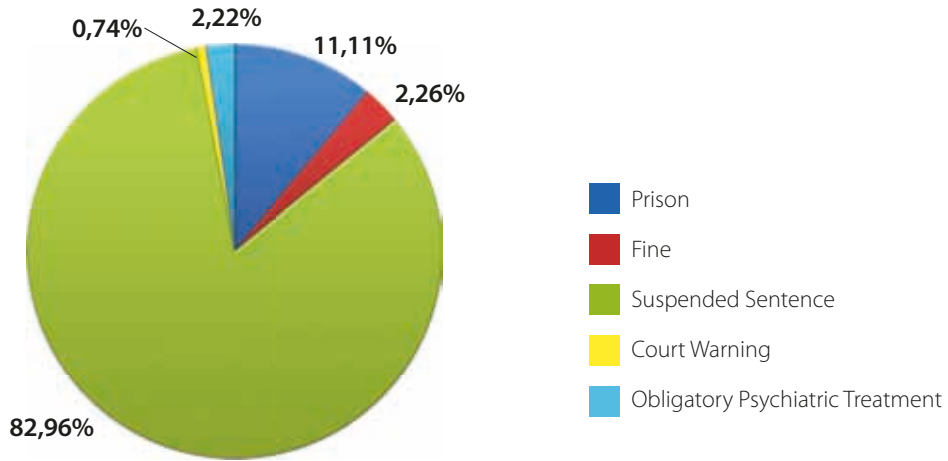
Criminal offence of Domestic Violence is mostly reported the same day when committed (in 64,70% cases), investigation usually lasts over thirty days (in 83,80% cases). *Disturbing data is that the confirmation of indictment in a significant number of cases of Domestic Violence lasts over 30 days* (in 27,20% cases). Having in mind the obligation of urgent processing in these cases, this represents delaying that should not be overlooked. Still, in majority of the cases, the indictments were confirmed within the period of five days (45,60%).

The criminal proceedings were mostly ending within the period of one year (94,10%), although the monitoring identified seven cases in which the criminal proceedings lasted between one and two years, and one criminal proceeding that lasted over five years. The convicting verdict was adopted in 97,06% cases, while identifying verdict was adopted in 2,21% cases. The courts imposed six safety measures (4,44%), out of which four safety measures of the Obligatory Psychiatric Treatment, and two safety measures of the Forfeiture. In one case, the court adopted identifying verdict, and imposed suspended sentence and the safety measure of the Obligatory Psychiatric Treatment, the perpetrator committed the offence in a state of mental incapacity, and the court could not found him guilty, neither could it impose the criminal sanction.

In the four cases (2,96%) the courts imposed fines, and in 15 cases (11,11%), the courts imposed prison sentences up to one year. The courts also imposed 113 (in 83,70% cases) warning measures, out of which 112 suspended sentences, and 1 court warning¹⁰⁹. In majority of cases, probation periods were up to one year, or between one and two years (Graph 6).

Graph 6:
Sanctions for the criminal offence of Domestic Violence

¹⁰⁹ Safety measure of Forfeiture has been imposed with one prison sentence, and one suspended sentence; the safety measure of Obligatory Psychiatric Treatment, with one suspended sentence, due to which the number of sanctions is higher than number of the verdicts.



The cases in which the suspended sentences were imposed by the courts included various forms of violence, battering, death threats, threats with “coming to work and insulting”, taking away the children, insulting at the public places and in the presence of other persons (in one case, in front of the Center of social work), forced haircut and degradations, sexual violence, etc. Children were also the frequent victims, even elderly family members. Despite that, the courts were mostly deciding to impose the lightest sanction. *Safety measures are rarely imposed (only in six cases, which makes 4,44%), although in majority of cases the monitoring identified that the perpetrators committed the acts of violence under influence of alcohol and under state of limited sanity due to specific psychological problems/illness* (for example, in one case, the perpetrator was drug abuser, but the court did not impose adequate safety measures).

The aggravating circumstances were considered in 29,60% cases, and were mainly related to the previous convictions of the perpetrators, although this circumstance was identified in 39,00% cases, out of which in 37,70% cases for the similar criminal offences (in majority of the cases for the same criminal offence – Domestic Violence). *Although existence of previous convictions should be formally considered as the aggravating circumstance, the courts are still imposing the same sanction – suspended sentence, which makes the recidivism of the perpetrator of less importance as the circumstance of influence for type and amount of the sanctions.* Example: with a previous verdict of a municipal court, the perpetrator has been pronounced guilty for the criminal offence of Domestic Violence, and the suspended sentence up to one year was imposed. After two years and expiration of the probation period, he repeated the criminal offence, and again received suspended sentence. These examples are numerous, and show that existing penalty policy does not contribute to the special prevention.

In 66,70% of the cases, the courts considered mitigating circumstances, mostly personal circumstances of the perpetrator (family man, married, father of a minor children, poor financial situation), no previous convictions, guilty plea and remorse, fair behavior dur-

ing the criminal proceeding. Circumstance that the victim is not interested for criminal prosecution is often considered as the mitigating circumstance (explicitly, or within justification of the verdict). When considering this circumstance, the courts are neglecting principles of accusation and legality of criminal prosecution that presuppose the prosecutor is in charge of criminal prosecution, if there are evidences on committed criminal offence. Attitude of the victim about the need for criminal prosecution is irrelevant for continuation of the prosecution and sanctioning of the perpetrator, especially because the victims are stating that as they are forced due to systemic lack of care and support. Only in one case, the victim had the support of a psychologist during providing testimony at the court, and in several occasions, the monitoring identified aggressive approach of a defendant's attorney toward the victims in several cases.

Example:

In one case of violence committed by a former husband against the victim during a car drive in a presence of two children, the prosecutor had to intervene on several occasions due to aggressive defense of the perpetrator. Defense attorney wanted to present the victim as indifferent parent, and during her testimony at the court he asked her way she is avoiding her obligation to support the children, and why she never found a job and source of income, providing example about numerous job opportunities, and the fact that his defendant is paying another woman 50 BAM to clean his apartment of 20 square meters, adding that money can always be earned. In the same case, the defendants asked when the other punch happened, on which kilometer and how, although he previously punched the victim to her abdomen several times with the closed fist, and smashed her head to the front car glass, which dazed the victim. On this way, the defense attorney tried to point at inconsistencies in the testimony of a victim, as well as lack of details, which could suggest false testimony. In another case, the monitoring identified inadequate and friendly behavior of a prosecutor toward the perpetrator, with no reactions from the court. Such action of a prosecutor created whole ambient of insecurity for a victim.

2.2.14. The Criminal Offence of Avoiding Alimony Payment (the Article 223 KZ F B&H)

Five cases from the four different courts were analyzed. The perpetrators are mostly from the age groups between 31-35 and 51-55 years of age (40,00% per each group). All cases were qualified in the basic form, with one case of prolonged criminal offence. Criminal proceedings ended within a period of one year, except one that lasted up to two years. In four cases, the court adopted convicting verdict (with imposed four suspended sentences), while in one case the court adopted rejecting verdict. In only one case the court considered previous conviction for similar criminal offence as the aggravating circumstance (although in three cases the case files indicate that the perpetrators were previously convicted). The court considered mitigating circumstances in three cases (unemployment/poor financial situation, retirement, guilty plea). Compensation claims were submitted in two cases, but no decision was made in the criminal proceedings.

2.2.15. The Criminal Offence of Violent Behavior (the Article 362 of the KZ F B&H)

Two cases in the qualified form were monitored, and both perpetrators were acquaintances of the victims. Only one case ended (within two years), with the court adopting acquittal verdict, as the perpetrator committed the criminal offence in mental incapacity. The court did not impose safety measure. *It is not clear why the court did not adopt identifying verdict, and impose safety measure, as in other cases when the criminal offence was committed in mental incapacity.*

2.2.16. Other Monitored Cases

Other monitored cases include the criminal offences of **Extortion from the Article 296 of the KZ F B&H, Causing General Danger from the Article 323, Paragraph 1 of the KZ F B&H, Violating Safety from the Article 183, Paragraph 2 of the KZ F B&H**, two cases of **Seizure of the Child from the Article 217 of the KZ F B&H**, and the criminal offence of **Preparing of a Criminal Offence from the Article 339 of the KZ F B&H**. Three cases did not end, while in rest of the three cases the criminal proceedings ended with the court adopting convicting verdicts (one prison sentence, and two suspended sentences). Aggravating circumstances were not considered by the courts, and mitigating circumstances was guilty plea and fair behavior during the criminal proceeding. In two cases, the criminal offence has been committed through sending text messages (telecommunication means used with the objective of violating safety and extortion of another person). No compensation claims were submitted during the proceedings.

2.3. Analysis of Imposed Protection Measures

Adoption of the Law on Protection from Domestic Violence in the F B&H from 2013¹¹⁰, which replaced the Law on Protection from Violence from 2005¹¹¹, had the objective of ensuring protection for victims of domestic violence in the urgent procedure, without complicated proceeding.¹¹² Implementation of this Law should be ensured through the municipal courts – minor offence departments, police, centers for social work, and other institutions authorized for social and health protection, with obligation of the joint and coordinated work.¹¹³ Concrete protection determined by this Law is related to imposing of so called protection measures. Available protection measures, such are removal from the apartment, house, or other residential area, restraining order, and restraining from harassment or stalking of a victim, can serve as the key component of preventing

¹¹⁰ „The Official Gazette of the F B&H“, No. 20/13 (13 March 2013).

¹¹¹ „The Official Gazette of the F B&H“, No. 22/05, entered into force on 7 October 2005. Changes and amendments were published in „The Official Gazette of the F B&H“, No. 51/06, and entered into force on 7 September 2006.

¹¹² According to this Law, domestic violence exists if there are reasonable doubts that acts of physical, psychological or sexual pain or suffering and/or economic harm were committed by one family member against another family member.

¹¹³ The Article 3 of the Law on Protection from Domestic Violence.

further exposure of a victim to violence.¹¹⁴ Having in mind the international standards, it is of key importance to understand protection measures as a special and additional form of legal protection for victims of domestic violence, and these are not sanctions against the perpetrator. Implementation of the protection measures should not be conditioned with initiating other proceeding, and in any case, they are not replacement for the criminal proceeding of the criminal offence of Domestic Violence. Since the Law stipulates that authorized subjects of protection are obliged to ensure urgent proceedings for cases of domestic violence¹¹⁵, purpose of the protection measures is to protect a victim without delays, prevent further violence and occurrence of harmful consequences, as well as conduct efficient corrective measures and treatment of violent persons. Such quick reaction of the authorized institutions cannot be provided in the criminal proceeding, due to which imposing of the protection measures is within authority of the minor offence departments of municipal courts, which ensures quick access to the court and efficiency of the proceeding. Obligatory reporting of domestic violence is stipulated for health professionals, social workers, teachers, educators, health, educational, and other institutions, as well as nongovernmental organizations who in performance of their duties find out for committed acts of domestic violence, for family members or any citizen who knows about committed acts of domestic violence. A victim of domestic violence can, but does not have to report it.¹¹⁶

The analyzed data of 134 cases, collected through monitoring of the minor offence proceedings for imposing protection measures at three municipal courts in Zenica, Bugojno and Kakanj will be presented in the following text.

The courts can impose protection measures against the perpetrators of domestic violence, as follows: 1) Removal from the Apartment, House, or other Housing Facility, and Restraining from Return to the Apartment, House, or other Housing Facility, 2) Restraining from Approaching to a Victim of Violence, 3) Restraining from Harassment and Stalking of a Person Exposed to Violence, 4) Obligatory Psychosocial Treatment, 5) Obligatory Treatment of Addiction, and 6) Temporary Detention.¹¹⁷ If it find necessary, the authorized court can impose several protection measures against a perpetrator.¹¹⁸ In relation to the monitored cases, the court imposed two or more protection measures in 78 cases. Majority of these were cumulative protection measures of Restraining from Approaching to a Victim of Violence, and Restraining from Harassment and Stalking of a Person Exposed to Violence.

¹¹⁴ Observations on implementation of the Law on Protection from Domestic Violence in the practice of authorized institutions, Domestic Violence – Response of Authorized Institutions and Protection of Victims in the Federation of Bosnia and Herzegovina and the Republic of Srpska, OSCE, July 2009, Page 4.

¹¹⁵ The Article 4 of the Law on Protection from Domestic Violence.

¹¹⁶ The Article 8 of the Law on Protection from Domestic Violence. The same article stipulates that a person that fails to implement the obligation to report domestic violence is committing the minor offence, except in case when a victim of violence does not report it.

¹¹⁷ The Article 9 of the Law on Protection from Domestic Violence.

¹¹⁸ The Article 20, Paragraph 1 of the Law on Protection from Domestic Violence.

Request for imposing the protection measure can be submitted by police department within 12 hours from the moment of knowledge of criminal offence. In exceptional cases, the request can be submitted by the prosecutor's office, if there are justified reasons for that.¹¹⁹ Within 12 hours from receiving the request for imposing the protection measure from the Article 9, Paragraphs 1), 2) and 3)), the court is also obliged to decide on the request. When the request for imposing the protection measure from the Article 9, Paragraphs 4) and 5), is submitted, the court is obliged to ensure opinion of the court expert within seven days if necessary, proceed per request, and adopt decision.¹²⁰ Collected data indicate that the courts mainly respect legal deadlines for adopting decision. However, significant number of cases (19) was identified, in which urgent procedure was not applied. In these 19 cases, all related to imposing protection measures of Restraining from Approaching to a Victim and Restraining from Harassment and Stalking of a Victim, the monitoring identified late imposing of protection measures – within 2 days and up to seven months and 24 days (within these two end values, the monitoring identified various periods from the submitting the request to adoption of the court decision, as follows: four days, 25, 29 days, three months, 13 days, etc.) In one case, the court imposed protection measure in duration of two months after three months have elapsed since the perpetrator committed the criminal offence of domestic violence against his mother and common law partner. Due to such late reactions of the court at timely submitted request, imposed protection measure may lose its purpose. The international standards related to imposing of the protection measures are suggesting that a testimony of a woman victim or a statement provided under oath should be sufficient evidence basis for imposing the protection measures. The basic purpose of these measures is requiring such low standard of evidence.¹²¹

Institutions authorized for implementation of the imposed protection measures are obliged to regularly monitor its implementation, prepare and submit the report to the authorized court¹²², propose cessation or replacement of the measure, if they find it necessary.¹²³ Upon receiving the report on implementation of the imposed protection measure, submitted by the institutions authorized to implement it, the authorized court can replace the imposed protected measure with another, cancel the decision on imposed protection measure, or impose fine for failure to comply with the imposed protection measure from the Article 45 of this Law.¹²⁴ The Law stipulates the fine in amount of 1.000,00 BAM up to 1.500,00 BAM for the minor offence of failure to comply with the imposed protection measure.

¹¹⁹ The Articles 17 and 18 of the Law on Protection from Domestic Violence.

¹²⁰ The Article 19 of the Law on Protection from Domestic Violence.

¹²¹ Observations on implementation of the Law on Protection from Domestic Violence in the practice of authorized institutions, Domestic Violence – Response of Authorized Institutions and Protection of Victims in the Federation of Bosnia and Herzegovina and the Republic of Srpska, OSCE, July 2009, page 15.

¹²² Authorized court is determined according to the place where the victim has a place of residence.

¹²³ The Article 22a of the Law on Protection from Domestic Violence.

¹²⁴ The Article 20, Paragraph 2 of the Law on Protection from Domestic Violence.

With the purpose of implementation of the Law on Protection from Domestic Violence, several bylaws were adopted, which remained into force upon changes of the Law from 2013, with obligatory harmonization with the new Law, as follows: the Bylaw on the Manner of Implementing Protection Measures within the Authority of Police¹²⁵, the Bylaw on the Manner and Place of Implementation of the Protection Measure of Obligatory Psychosocial Treatment of the Perpetrator of Domestic Violence¹²⁶, and the Bylaw on Manner and Place of Implementation of Protection Measure of Obligatory Treatment of Addiction from Alcohol, Drugs or Other Psychotropic Substances of the Perpetrators of Domestic Violence¹²⁷.

In more than 50,00% of the cases, the courts imposed two or more protection measures, and due to that, total number of imposed measures is significantly higher than number of monitored minor offence proceedings. The courts imposed in total 227 protection measures. The courts mostly imposed the protection measure of *Restraining from Harassment and Stalking of a Person Exposed to Violence*, in total 107, with different duration (87 protection measures in duration of one year, 19 protection measures in duration of two years, and one protection measure in duration of six months). Following are the protection measures of *Restraining from Approaching to a Victim of Violence*, in total 86 (out of which 67 protection measures were imposed in duration of one year, 12 protection measures in duration of two years, 3 protection measures in duration of three months, 2 protection measures in duration of six months, 1 protection measure in duration of two months, and 1 protection measure in duration of one month). The courts also imposed 23 protection measures of *Removing from the Apartment, House, or Other Housing Facility, and Restraining from Returning to the Apartment, House, or other Housing Facility* (14 protection measures in duration of one year, 5 protection measures in duration of two years, 1 protection measure in duration of ten months, 1 protection measure in duration of eight months, and 1 protection measure in duration of one month). *Obligatory Psychosocial Treatment* was imposed by the court three times (each time in duration of three months), while the *Obligatory Treatment of Addiction* was imposed by the court in eight cases¹²⁸.

In one case at the Municipal Court of Zenica, the minor offence proceeding for imposing of the protection measure was suspended due to inception of the criminal proceeding. We believe this decision of the court was wrong as the protection measures are directed toward protection of a victim, and are to be imposed independently from the initiated criminal proceeding, which is of key importance, since the minor offence proceeding for imposing the protection measure and the criminal proceeding for the same offence of violence are not mutually exclusive. In 20 monitored cases, the criminal proceedings were also initiated for the same offence, out of which two cases ended with adoption of

¹²⁵ „The Official Gazette of the F B&H”, No. 19/14.

¹²⁶ „The Official Gazette of the F B&H”, No. 60/06.

¹²⁷ „The Official Gazette of the F B&H”, No. 23/08.

¹²⁸ In different duration: four times in duration of three months, two times in duration of one month, once in duration of one year, and once in duration of six months.

the convicting verdicts and suspended sentence against the perpetrators. In the same number of cases (20) monitors could not acquire information if the criminal proceeding was initiated. Due to that, in relation to the cases in which this information was available, the monitoring identified only 17,50% of cases in which the criminal proceeding was initiated.

Out of 134 monitored cases, in 3 cases the court rejected the request for imposing the protection measure. In one case, the court rejected the request due it was submitted late, and due to lack of prompt action of police, a victim remained unprotected. In another case, the court rejected the request as the perpetrator was under house arrest with using electro surveillance.

The most disturbing conclusion is that in 82,50% cases, the criminal proceeding were not initiated. In significant number of cases, the judges are neglecting the obligation of urgent proceeding. As the improvement in the practice, the monitoring identified that when imposing the protective measures to the perpetrators (such is the obligatory treatment of addictions), the judges also cumulatively impose measures directed toward protection of victims (mostly restraining from approaching to a victim of violence and restraining of harassment and stalking of a person exposed to violence).

In relation to protection measures, the monitoring identified improvement in the court practice. Cumulative protection measures are imposed more frequently, especially toward protection of a victim, but also treatment of a perpetrator, when necessary. However, there is still disturbing inconsistency in applying the principle of urgent proceeding for protection measures, and relatively low number of imposed protective measures related to rehabilitation of the perpetrators, despite increased need for such measures. Also, there is small number of criminal proceedings for violence against women initiated parallel with the minor offence proceedings for imposing the protection measures, which could indicate lack of understanding about separate legal protection of protection measures that are not excluding parallel inception of the criminal proceedings.

Here we should emphasize that governmental institutions still did not establish methodology and mechanisms of systemic and continuous monitoring of number and type of cases of violence against women, which affects assessment of real situation and planning of the adequate measures of preventing and combating gender based violence. Besides that, even when they exist, such data bases and collected data would be only a top of the iceberg, having in mind a low rate of reported violence.

III THE FINAL OBSERVATIONS

Violence against women is still invisible, because it is actually much more represented than shown in numbers currently available to the public. Lack of recognizing of acts of violence by the victims, fear, insecurity due to economic dependence, and general mistrust in work of the judicial institutions are contributing to this, and emphasizes necessity of developing integrated policies of preventing and combating violence against women. The issue of violence against women should not be narrowed to the committed criminal offence, but also perceived as disturbing and widespread social phenomena that should be addressed through systemic and parallel actions. Criminal prosecution is only one aspect of social response on violence against women, which is insufficient and still not satisfactory. As the first step, it is necessary to establish the common data base, and based on collected data to develop adequate policies for preventing and combating violence against women. In this process, civil society organizations with long term experience in the area of protecting women from violence are irreplaceable partners to the state institutions. Until we put in use the precise data on general prevalence of violence against women, it is of special importance to analyze available data on criminal offence cases in which violence against women is processed. Criminal proceedings represent useful basis for identifying general prevalence of specific criminal offences of violence against women, structure of the perpetrators, and institutional reaction on acts of violence against women, and adequacy of support to women victims. Following are some of the most important conclusions.

Objectives of special and general prevention of gender based violence are violated with inadequate and light sanctions against the perpetrators of violence. Analysis of the entire process, which ends with adoption of frequently inadequate sanction, and begins with inadequate legal qualification, usually lighter, which presupposes lighter sanction. In relatively rare cases concurrence with light and heavy bodily injuries as well as prolonged criminal offence are identified, especially in relation to the criminal offence of Domestic Violence. Lighter penalties against the perpetrators are conditioned with more frequent consideration of mitigating circumstances, even when it is absurd to consider family status of a perpetrator as the mitigating circumstance when members of the same family were victims of violence. It seems that age of a perpetrator is almost always considered as the mitigating circumstance, in combination with the financial situation (old, young, and pensioner, unemployed). One of the largest issues related to the mitigating/aggravating circumstances is situation when the court only lists circumstances considered when imposing sanctions, without explanation why and in what way certain circumstance is considered relevant for type and scope of the sanction. Just listing the circumstances without accompanying justification, or with vague and unclear justification, is questioning usage of these circumstances by the courts when imposing sanctions. Courts are often calling upon statement of a victim that she gives up from the criminal prosecution and does not claim compensation as the mitigating circumstances, which is contrary to the principles of accusatory and legality. Passivity

or even withdrawing victims from participation in the criminal proceedings should be observed in wider context of fear, lack of alternative, and lack of concrete support (professional, financial, legal). Due to lack of information, women victims of violence often slowly acquire their rights on protection and assistance guaranteed by the laws, which lead to the lack of trust in work of judicial institutions, and causal lack of reporting of the criminal offences of violence.

The monitoring identified unusual tendency that majority of the cases ended, conditionally saying, within reasonable deadline of one year. Criminal proceedings for aggravated criminal offences (such are Murder, Rape, etc.) are ending much faster than the criminal proceedings for Domestic Violence. Such practice underlines the conclusion that Domestic Violence is still perceived as the offence of a lower social danger, on the borderline with the minor offences, although Domestic Violence usually precedes "heavy" criminal offences, such is Murder. There are unjustifiably many postponements of the court sessions at some courts, and the courts are failing to impose disciplinary measures against all persons that participate in judicial proceedings when it comes to irrational and repeated postponements of the court sessions.

In relation to reparation for the women victims, the analysis expectedly shows that the courts do not decide on compensation claims in criminal proceedings, and sometimes fail to inform a victim about possibility to claim compensation. Besides passive prosecutors that rarely sow the initiative for collecting additional evidence for supporting decision on compensation claim within the criminal proceeding, the courts also preferably direct victims to claim compensation in litigation procedure.

In relation to the protection measures, improvement in the court practice was identified in relation to more frequent imposing of the cumulative protection measures. However, there is still disturbing inconsistency in applying the principle of urgent proceedings for imposing the protection measures, and relatively low number of imposed protection measures in relation to treatment and rehabilitation of the perpetrators, despite increased need for imposing such measures. Also, it is evident that in small number of cases of violence against women the prosecutors initiated criminal proceedings parallel with the minor offence proceedings with imposing protection measures, which could point at lack of understanding for distinct nature of legal protection of the protection measures that are not excluding the criminal proceedings.

Numerous cases of recidivism in committing the criminal offences of violence against women are indicating insufficient education of all relevant professionals, including those that should work on prevention of the same/similar criminal offences. It is not enough to impose sanctions against perpetrators of violence, although this rarely happens in relation to cases of domestic violence, but it is necessary to work with them professionally in order to prevent recidivism in committing the criminal offences. It is of key importance to train professionals for successful implementation of the modern methods of rehabilitation and treatment of perpetrators of violence. The courts rarely impose protection measure of the obligatory psychosocial treatment of perpetrators, so

we can conclude that existing capacities are also not used in the practice. Key elements for access to justice are still not at satisfactory level, especially ensuring legal assistance to the victims, providing professional assistance to a woman victim and her children as witnesses in the proceedings, adequate penalties imposed against the perpetrators, equal consideration of aggravating and mitigating circumstances, and ensuring reparations for harms caused by acts of violence.

IV RECOMENNDATIONS

4.1. Prevention

- It is necessary to develop capacities of local communities and nongovernmental organizations in order to contribute to networking of all relevant institutions for prevention and combating violence against women;
- It is necessary to improve cooperation between institutions and nongovernmental organizations that are working on the issue of violence against women at the local level (**police, centers for social work, civil society organizations**);
- It is of key importance to continue work on harmonization of legislative and institutional framework with the Istanbul Convention (**legislators at all levels**);
- To ensure comprehensive and efficient prevention of violence against women (**legislators, police, centers for social work, health and educational institutions, civil society organizations**);
- To improve methodology and develop institutional preconditions for common data bases on number and structure of reported acts of violence against women (**responsible ministries, centers for social work, F B&H Bureau of Statistics**);
- To increase awareness on prevalence and long term harmful consequences of violence against women, and to promote non-violent behavior (**B&H Agency for Gender Equality, F B&H Gender Center, educational institutions, civil society organizations, centers for social work, police**);
- To adjust penalty policy to the prevalence of gender equality in B&H society (**courts and prosecutor's offices**)

4.2. More Efficient Sanctioning of the Acts of Violence against Women

In order to ensure access to justice for women through improving preconditions for imposing penalties against perpetrators of violence against women, it is necessary to conduct the activities, as follows:

- To ensure continuous education and increasing sensibility of the professionals from different sectors that are relevant for violence against women (**police, prosecutor's office, courts, centers for social work, health institutions, educational institutions**);
- To change/amend provisions of the Criminal Code of F B&H that are defining the criminal offence of Domestic Violence on a way to recognize children as victims in case they are witnessing acts of violence against other family member (**F B&H Parliament, F B&H Government**);

- In changes and amendments of the Law on Protection from Domestic Violence to plan determining of the minimum standards of evidence for imposing the protection measures, that would be different from the standards of evidence for the criminal offence sanctioning of a perpetrator **(F B&H Parliament)**;
- In changes and amendments of the Law on Protection from Domestic Violence to explicitly regulate that the protection measures are unique and urgent form of protection of the victims, which does not exclude possibility of initiating criminal proceedings, when conditions are met **(F B&H Parliament)**;
- To encourage acting judges to conduct urgent proceedings per requests for imposing the protection measures, following the provisions of the Law on Protection from Domestic Violence, and to still pay attention that the protection measures directed toward a perpetrator of violence, such is the obligatory psychosocial treatment, do not provide protection for the victims, due to which it is necessary to impose these measures cumulatively with the measures of protection for the victims **(courts)**;
- To regulate violation of the protection measures as the criminal offence in relevant laws, the Criminal Code of the F B&H, or the Law on Protection from Domestic Violence **(F B&H Parliament)**;
- To encourage acting judges to equally consider mitigating and aggravating circumstances when imposing sanctions against the perpetrators, and to provide systematic details in verdicts to justify why and in what way they considered specific circumstances **(F B&H Center of Education of Judges and Prosecutors)**;
- To consistently recognize the status of victims for the minors through adequate qualification of the aggravated form of the criminal offence of Domestic Violence **(prosecutor's offices, courts)**;
- To stimulate judges (through sessions of the council, specialized educations, and round tables/seminars) to, without exceptions, use the adequate way to inform the victims about their right to claim compensation, and to decide on these claims within criminal proceedings, except in exceptional circumstances **(presidents of the courts, F B&H Center of Education of Judges and Prosecutors)**;
- To introduce obligatory practice of sending the forms with explanations on submitting the compensation claims with the invitations for hearings of witnesses **(prosecutor's offices and courts)**

4.3. Support and Protection of Victims

- To create preconditions for economic empowerment of women victims of gender based violence **(F B&H Parliament, cantonal assemblies, ministries of labor and social policy at all levels)**

- It is necessary to improve system of informing women about available services of protection (**police, prosecutor's offices, centers for social work, civil society organizations**)
- To establish multidisciplinary and coordinated system of protection for women victims of gender based violence (**police, prosecutor's office, centers for social work, civil society organizations**);
- To establish the practice of directing women victims of gender based violence to specialized nongovernmental organizations that are working on providing legal assistance, to ensure free and good quality legal assistance for the victims (**prosecutor's offices, police, courts**);
- To organize intensive multimedia and informative-educational campaign for promoting possibilities of submitting compensation claims in the criminal proceeding (**B&H Agency for Gender Equality, F B&H Gender Center, in cooperation with all relevant actors**).

COMMON RECOMMENDATIONS

The Foundation United Women, Banja Luka and the Center of Legal Assistance for Women, Zenica

- Harmonization of the entity laws in the Bosnia and Herzegovina in the area of preventing and combating gender based violence with the international standards, with focus on the Istanbul Convention, with objective of harmonizing legal protection of women survivors of violence, and improving their access to justice and protection in the judicial proceeding;
- To introduce stricter penalty policy in the area of gender based violence in the context of general and special prevention, in line with the legislative tendencies of regulating stricter sanctions for such criminal offences, and increasing social danger of violence against women in the Bosnia and Herzegovina;
- To enable access to free and sensitized legal assistance for women survivors of violence and witnesses in the proceedings at all courts in the Bosnia and Herzegovina, without applying of the existing property census that currently prevents women to acquire legal assistance in the judicial proceedings, especially in terms of the effective exercise of the compensation claims;
- To ensure continuous education and improved sensibility of professionals from various sectors relevant for prevention and combating violence against women;
- To establish the practice of directing the victims of gender based violence to specialized nongovernmental organizations that are working on providing legal assistance, in order to ensure free and good quality of legal support to the victims;
- To organize intensive multimedia and informative-educational campaign for promoting possibilities of submitting compensation claims in the criminal proceeding;
- To create preconditions for economic empowerment of women victims of gender based violence.



"This material is completely financed by the Swedish International Development Cooperation Agency (Sida) and Kvinna till Kvinna. Sida and Kvinna till Kvinna does not necessarily agree with the opinions expressed. The author alone is responsible for the content."