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DOMESTIC VIOLENCE: CRIMINAL JUSTICE PERSPECTIVE AND SOCIETAL REACTION

ABSTRACT: Domestic violence in the Republic of Serbia has been showing a long-term upward trend, and in some phenomenological forms, it has reached alarming proportions. In just the first five months of 2024, nine women have lost their lives at the hands of their spouses or partners. The existing legal measures have proven inadequate, both in the number of charges filed and in the severity of the criminal penalties imposed. Unfortunately, domestic violence remains widespread, both in Serbia and globally. This paper focuses on analysing domestic violence from a criminal justice perspective and examining the penal policy related to this criminal offence. Timely and appropriate responses to domestic violence can prevent many adverse consequences. The aim is to explore, through relevant literature, how domestic violence is defined in legislation and to examine the legal system's response to this criminal offence. In light of contemporary international standards, particularly the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (commonly known as the Istanbul Convention), which has been ratified by the Republic of Serbia, it was necessary to introduce new legal regulations to ensure full alignment with these international standards, as well as to define new essential charges and tighten certain criminal penalties. This was precisely the goal of enacting the Law on Prevention of Domestic Violence.

KEYWORDS: *domestic violence, Criminal Code, femicide, societal reaction.*

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1. Introduction

Domestic violence is a phenomenon that occurs worldwide, across all cultures, regardless of economic status or social class. Although it has existed since the earliest times, domestic violence only began to receive significant attention in the 1970s with the emergence of feminist movements advocating for women's rights. Only then did this deeply concealed social issue begin to be unveiled. Statistics indicate that perpetrators are most often men, while the victims are predominantly women and children. The high number of domestic violence cases with tragic outcomes has highlighted the need for state and media involvement in addressing this complex problem.

Domestic violence is defined as a form of sexual, psychological, or economic abuse inflicted by one family member on another. It is a widespread issue that leads to adverse physical, psychological, social, and financial consequences for women, children, families, and the broader community. International law regards domestic violence as a violation of the fundamental human rights of those affected and obliges countries to take effective measures to combat its various forms. According to the Family Law of the Republic of Serbia (2005), domestic violence is behaviour that threatens "physical integrity, mental health, or tranquillity of another family member."

We are witnessing a continuous increase in this form of violence. However, there has been a growing awareness among both society and the government of the severity of the issue. As a result, the Criminal Code of the Republic of Serbia (2005) now includes additional incriminations alongside the previously established criminal offences. Previous provisions of the Code provided clear solutions in cases where violence had already occurred, as there was an actual criminal offence and, thus, legal grounds for detention. However, there was no solution for situations involving threats of recurring violence or immediate risks of violence. Consequently, there was no mechanism in place to remove the perpetrator from the shared environment and thereby protect the victim.

The main objective of the Law on Prevention of Domestic Violence (2016) is to fill the legal vacuum that exists between the initial reports

of violence or threats of violence and the commencement of relevant legal proceedings. It is precisely within this legal void that victims are particularly at risk of experiencing further or escalating violence.

The first section of this paper will provide an overview of how domestic violence is addressed by the Family Law and the Criminal Code of the Republic of Serbia. The second section will focus on the specifics of the Law on Prevention of Domestic Violence, particularly in the context of the government's response to this issue. Finally, the third section will present statistical data on the number of reported cases of domestic violence, charges filed, and convictions in the Republic of Serbia over a period of ten years.

2. Criminal offence of domestic violence in the Criminal Code of the Republic of Serbia

It is important to note that criminal-law protection is secondary to family protection and should therefore be employed in cases of domestic violence only when primary protection measures are no longer viable. Family Law (Article 197, Paragraph 1) defines *domestic violence* as any behaviour by which one family member jeopardises the physical integrity, mental health, or tranquillity of another. The law also lists some typical examples of this type of violence, such as:

- a) inflicting or attempting to inflict physical harm;;
- b) instilling fear by threatening to kill or inflict physical harm on a family member or another close person;
- c) forcing someone into sexual intercourse;
- d) coercing someone into sexual intercourse or engaging in sexual intercourse with a person under fourteen years of age or with an incapacitated person;
- e) restricting freedom of movement or communication with others;
- f) exhibiting insulting or otherwise inconsiderate and malevolent behaviour.

Therefore, domestic violence encompasses several types: physical, psychological, sexual, and economic. Physical violence includes actions such as beating, striking the body or head, causing injuries with sharp or blunt objects, throwing someone against a wall or onto the floor, pulling hair, kicking, causing burns, etc. Psychological violence includes intimidation, constant criticism, insults, instilling insecurity in the victim, possessive behaviour, emotional reservedness, setting unrealistic demands on the victim, etc. Sexual violence encompasses any violation of sexual freedom and sexual morality, coercion into sexual intercourse, rape, etc. Economic violence involves forcibly taking money and valuables, controlling earnings and inflow of funds, using money exclusively for personal needs, depriving the victim of work resources, preventing them from finding employment, hindering their career advancement, and similar actions.

The principle of societal care for the family, as a primary social group and an important component of the social structure, is established by the Constitution of the Republic of Serbia (2006). According to the Constitution, the family is entitled to various forms of legal, economic, social, and other types of protection and support, as defined by legal and other regulations and measures of socio-economic and social policy. Article 66 of the Constitution stipulates that “families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection,” while the methods for accessing this protection are regulated by laws and regulations derived from the Constitution. This highlights the family’s importance and role in the Serbian socio-political system. The protection of the family as a fundamental human right is also addressed by other provisions in the Constitution of the Republic of Serbia, particularly in the section on Human and Minority Rights and Freedoms.

Domestic violence was introduced as a criminal offence in the Criminal Code of the Republic of Serbia in 2002, through amendments to the existing criminal law. This action represented both a governmental and societal response to the previous legal framework, which had proven to be inadequate and ineffective and marked a discernible shift in Serbia’s stance toward this socially dangerous and unacceptable behaviour.

The criminal offence of domestic violence is categorised under crimes against marriage and family and includes one basic form, three more severe/aggravated forms, and one special form (Bošković & Skakavac, 2018, p. 68).

The basic form involves either the use of violence or threats to life or bodily harm, or insolent or inconsiderate behaviour that jeopardises the tranquillity, physical integrity, or mental state of a family member. The act, therefore, involves harming or endangering the physical or mental integrity of a family member through the use of force or serious threats to their life or body. The passive subject is an adult family member (blood relatives and anyone living within the family unit), while the perpetrator is someone residing within the same family unit. The act must be such that it is objectively likely to endanger the tranquillity, physical integrity, or mental state of a family member. There must be a causal link between the endangerment and the act.

The first aggravated form exists if the basic form is associated with specific means of execution, that is to say, if a weapon, dangerous tool, or another object capable of causing severe bodily injury or serious harm to health is employed. Weapons and dangerous tools are typical means used to inflict severe bodily injuries or significant harm to health. A weapon is an item primarily designed for attack or defence and includes two main types – firearms and cold weapons. A tool is an item intended for tasks related to community service or work, but it can also be used for offensive or defensive purposes. The suitability of other objects for causing severe bodily injury or serious health damage is a question of fact and is evaluated on a case-by-case basis.

The second aggravated form is linked to the acts described in the basic and first aggravated forms as well as to the outcome and the age of the family member involved. The offence exists if the previous forms have resulted in serious bodily injury or significant health damage or if it was committed against a minor.

The most severe form (third aggravated form) exists if the basic and aggravated forms have resulted in the death of a family member through negligence.

The perpetrator (active subject) and the victim (passive subject) of the offence must come from the same family. However, an instigator or accomplice may be someone outside the family. The criminal offence of domestic violence can only be committed with direct intent, while a more severe consequence is attributable to the offender's negligence, except when the passive subject's age is a factor, i.e., when the offence is committed against a minor. It is necessary to carefully determine all the objective and subjective circumstances to establish whether the crime in question is an aggravated form of this criminal offence or it can be classified another criminal offence.

The special form applies to a family member who breaches court-ordered protective measures against domestic violence.

3. Law on Prevention of Domestic Violence: Specific Features

Domestic violence is regarded as one of the most serious violations of human rights. Feminist research indicates that one in three women worldwide has been subjected to some form of abuse within her family during her lifetime. The root causes of domestic violence stem from etiological foundations rooted in societal factors as well as in the distinct area of family-related factors of delinquency. In most cases, the causes of domestic violence are a combination of societal, psychopathological, and cultural-historical factors. The primary motive for domestic violence is to gain and maintain control over certain family members. Research indicates that domestic violence escalates over time, it becomes more frequent and increasingly severe and brutal (Bošković, 2012).

The constitutional basis for enacting the Law on Prevention of Domestic Violence (2016) can be found in Article 97, Paragraph 2 of the Constitution of the Republic of Serbia (2006). This article stipulates that the Republic of Serbia shall among other things “organise and provide for the exercise and protection of freedoms and rights of citizens, constitutionality and legality, and proceedings before courts and other state bodies.”

The goal of this law is to establish a standard within the Serbian legal system that mandates the removal of perpetrators of domestic violence from the home, not only after violence has already occurred but

also when there is an imminent risk of any form of violence. The principle of *zero tolerance* for violence is in effect implemented. The law establishes a specific procedure for competent state and other authorities, organisations, and institutions, and mandates the imposition of urgent measures against perpetrators; these measures deprive perpetrators of certain rights in order to protect the victim through a strictly regulated process. The urgent measures provided by this regulation are one of the legal institutes used to prevent the recurrence of violence or the possibility of its occurrence. Additionally, the law aims to ensure an effective response from the competent state authorities to prevent or address violence before criminal proceedings are initiated.

An imminent risk of domestic violence exists when the behaviour of a potential perpetrator indicates that they are ready to commit or repeat domestic violence in the immediate future. Under the provisions of the Law, domestic violence is defined as any act of physical, sexual, psychological, or economic violence perpetrated against a person with whom the perpetrator is currently or has previously been in a matrimonial or domestic partnership. It also applies to individuals related to the perpetrator by blood in the direct or collateral line up to the second degree, or through marriage up to the second degree – this includes adopted children, adoptive parents, foster parents, or anyone with whom the perpetrator is living or has lived in a shared household.

The provisions of this law also apply to cooperation in preventing domestic violence in criminal proceedings for the following criminal offences: stalking (Art. 138a CC); rape (Art. 178 CC); sexual abuse of an incapacitated person (Art. 179 CC); sexual abuse of a child (Art. 180 CC); sexual abuse through misuse of position (Art. 181 CC); prohibited sexual acts (Art. 182 CC); sexual harassment (Art. 182a CC); procuring and pandering (Art. 183 CC); mediation in prostitution (Art. 184 CC); display, acquisition, and possession of pornographic material and exploitation of minors for pornography (Art. 185 CC); inducing a child to witness sexual acts (Art. 185a CC); neglect and abuse of a minor (Art. 193 CC); domestic violence (Art. 194 CC); failure to provide maintenance (Art. 195 CC); violation of family duties (Art. 196 CC); incest (Art. 197 CC); human trafficking (Art. 388 CC); and other criminal offences resulting from domestic violence.

The prevention of violence and provision of protection and support to victims of domestic violence, as well as to victims of the above listed criminal offences, fall under the purview of the following authorities and institutions: the police, public prosecutor's offices, general jurisdiction courts, misdemeanour courts, as well as centres for social work and social protection institutions. The law mandates the specialisation of all competent state authorities acting in accordance with these provisions. Additionally, besides the competent state authorities and institutions, support to victims may also be provided by other legal and natural persons in the community.

The institutional cornerstone, or the initial link in the chain of societal response to violence, is the police officer specialised in the prevention of domestic violence; this officer has undergone specialised training to effectively prevent violence and offer protection to victims. In this regard, all police officers are required to promptly inform the competent police officer (specialised in the prevention of domestic violence) about any instance of domestic violence or imminent risk of violence, regardless of how they were made aware of it. They also have the authority to either independently or at the request of the competent officer, bring a potential perpetrator to the competent police organisational unit for processing. This detention can last no longer than eight hours. During this time, the individual must be given the opportunity to give a statement on all relevant facts. The police officer is required to immediately assess the risk of imminent domestic violence and, in accordance with the law, implement an urgent measure to prevent such violence.

In addition to urgent measures, a significant new development that warrants special attention is the risk assessment conducted by the competent police officer. According to the provisions of the Law, the risk assessment must be based on available information and conducted as promptly as possible. When assessing risk, particular attention is given to the following factors:

- 1) whether the potential perpetrator has previously or immediately prior to the risk assessment committed domestic violence,
- 2) whether they are likely to repeat it,
- 3) whether they have threatened with murder or suicide,

- 4) whether they possess arms,
- 5) whether they are mentally ill or are abusing psychoactive substances,
- 6) whether there is a conflict over child custody or regarding the maintenance of personal relationships between the child and the parent who is a potential perpetrator,
- 7) whether an urgent measure or a protection measure against domestic violence has been imposed on the potential perpetrator
- 8) whether the victim experiences fear and how they assess the risk of violence.

If the risk assessment reveals a threat that is not immediate, all available information should be submitted to the competent public prosecutor, the competent centre for social work, and the coordination and cooperation group.

The risk assessment for domestic violence is a serious and complex process (task, procedure). The burden of assessing the perpetrator's personality falls solely on the police. We believe this issue warrants serious professional discussion and suggest that, despite their specialisation, the police should work alongside additional experts, such as psychologists, social workers, special education teachers, and others. Currently, the police bear significant responsibility, as they must assess whether an immediate risk of violence exists based on domestic violence reports, often without detailed expert analysis. They then implement urgent measures and forward all necessary information to the public prosecutor, in charge of the subsequent proceedings.

If, upon conducting the risk assessment, the competent police officer identifies an immediate threat of domestic violence, they are required to issue an order imposing an urgent measure. The legislation outlines the following possible urgent measures:

- 1) the temporary removal of the perpetrator from the home, and
- 2) a temporary prohibition preventing the perpetrator from contacting or approaching the victim.

The order may impose both of these urgent measures on a single perpetrator. After the perpetrator has been served with an order imposing urgent measures, the competent police officer must deliver the order to the public prosecutor, the centre for social work, and the coordination and cooperation group. The urgent measures imposed by the competent police officer remain in effect for 48 hours from the moment the order is served. Once the measures have been imposed, the competent police officer is required to submit the order along with the evidence to the public prosecutor, who has 24 hours to decide whether to request an extension of the urgent measures from the court for a period of up to 30 days. The public prosecutor submits a request for the extension of the urgent measure to the court in the jurisdiction where the victim has permanent or temporary residence. The court must render a decision within 24 hours on whether to extend the urgent measures. This decision is made solely based on the prosecutor's request, without the presence of the parties involved. The individual subject to the extended measures has the right to appeal the court's decision.

Violating an urgent measure or an extended urgent measure constitutes an offence punishable by imprisonment of up to 60 days; the offence proceeding may be processed under a summary procedure, which allows for the execution of the sentence before the judgement becomes final.

In addition to the aforementioned laws, which serve as pillars of societal response to domestic violence, it is essential to mention that the Government of the Republic of Serbia, upon the proposal of the Ministry of Labour, Employment, Veteran and Social Affairs, has adopted a Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence for the Period 2021-2025. In addition to this strategy, the following by-laws are also in effect: General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship[s], Republic of Serbia Ministry of Health - Special Protocol for The Protection and Treatment of Women Victims of Violence, Special Protocol for Action of the Centre for Social Work – Custody Authority in Cases of Domestic and Intimate Partner Violence against Women, General Protocol on Protection of Children from Abuse and Neglect (2005) and others.

4. Domestic violence statistics

In this section of the paper, we will analyse official data regarding punitive policies related to the criminal offence of domestic violence. For the analysis of domestic violence, we used data from the Statistical Office of the Republic of Serbia for the period 2013-2022, as presented in Table 1. The data were collected through individual questionnaires completed by the competent public prosecutor's offices and courts and subsequently processed statistically. We opted to present the results spanning a ten-year period because of our aim to assess the impact of the enactment of the Law on Prevention of Domestic Violence, the subsequent increase in societal awareness regarding the unacceptability and punishability of such behaviour, and, most importantly, the influence this legislation has had on both potential and actual victims of domestic violence.

Table 1. Number of criminal complaints submitted, charges, and convicted persons.

YEAR	Criminal complaints	Charges	PERSONS CONVICTED of domestic violence
2013.	3782	2026	1532
2014.	3642	1309	1712
2015.	5040	1837	1778
2016.	7244	2386	2065
2017.	7759	3077	2713
2018.	7916	3385	2974
2019.	7308	2984	2627
2020.	5932	2729	2337
2021.	5663	2621	2230
2022.	5531	2398	2021

As shown in Table 1, the number of criminal complaints for domestic violence remains consistently high each year. This statistic, when considered in isolation, suggests that domestic violence is becoming in-

creasingly prevalent and is reaching alarming levels. The data show that the peak in complaints occurred during the period of active efforts to pass the Law on Prevention of Domestic Violence and immediately after its implementation. This increase may also reflect that, unlike in the past, victims are now more empowered to report domestic violence, feel less obliged to endure any type of abuse, and trust that the competent authorities are ready to offer protection. Moreover, society's efforts to combat domestic violence are now more visible than ever through the channels of mass communication, which encourage victims to report domestic violence more freely. However, it is crucial to acknowledge and not overlook the fact that a significant "dark figure" of domestic violence persists, despite victims' growing awareness of the improved protection available from competent entities. The increase in the number of criminal complaints has undoubtedly been influenced by the activities of the Victimology Society of Serbia, the Autonomous Women's Centre, the SOS helpline for domestic violence, the Counseling Against Family Violence centre, the Safe House for women, and other similar organisations. Data from the last five years of the observed period show a slight decrease in the number of criminal complaints. This is encouraging and should serve as motivation for the competent authorities, as it indicates that the comprehensive efforts of both the authorities and society against domestic violence are beginning to yield results.

Other statistical indicators relate to the number of charges in relation to the number of criminal complaints. Examining the period in question, we find that this ratio ranges between 40% and 50%. Looking at these data, we can conclude that the activity of public prosecutors in addressing domestic violence is at a satisfactory level. We assume that this data was also influenced by the provisions of the Criminal Procedure Code (2021) and the possibility of reaching a plea agreement between the public prosecutor and the accused. The Criminal Procedure Code allows for plea agreements (bargains) to be made after an investigation order has been issued, either before or after the charge has been filed, and up until the conclusion of the main hearing. This agreement embodies one form of the opportunity principle within Serbia's criminal procedure.

The final column in the table shows the number of persons convicted for domestic violence. Comparing this number with the number of charges reveals that these aspects of criminal policy are at a satisfactory level.

5. Conclusion

Domestic violence is a universal and pervasive issue affecting all societies. This global pathological phenomenon has profound consequences both on an individual and societal level. It ranks among the most severe forms of violence, as it infringes upon the fundamental human rights and freedoms of family members, which includes the right to life, liberty, and security, as well as the right to physical, psychological, and sexual integrity.

Although statistics indicate an increase in domestic violence incidents following the enactment of the Law on Prevention of Domestic Violence (2016), this does not imply that such behaviour was significantly less common in the past. On the contrary, domestic violence was previously often neglected, tolerated, and “swept under the carpet.” Unlike today, victims were not encouraged to report such violence, which undoubtedly impacted statistical data, thereby reflecting a substantial “dark figure” of this phenomenon.

From a statistical perspective, domestic violence, as a socially dangerous behaviour, has shown a downward trend in recent years, particularly compared to the period when this form of violence was tolerated and no significant measures were taken to prevent or address it. Not only has the criminal-law protection for victims of domestic violence been strengthened, but society has also taken a significantly more active stance, both ethically, by condemning such behaviour, and procedurally, by implementing a range of measures aimed at preventing and combating this issue.

The exceptionally high percentage of domestic violence incidents resulting in fatalities is particularly concerning, especially given that in the first five months of 2024 nine women in the Republic of Serbia were murdered by their spouses or partners.

Analysis of legal practice reveals that this type of crime is often met with inadequate and delayed responses from the competent state authorities and societal entities, as well as institutions. This is especially true for police intervention units, which frequently downplay the severity of less extreme forms of domestic violence, such as insults, threats, psychological abuse, and insolent and disrespectful behaviour.

Inadequate responses from state authorities and other entities discourage victims from reporting these criminal offences, which leads to feelings of abandonment. Consequently, the lack of reporting may result in centres for social work not providing the necessary support.

Raising societal awareness about all forms of violence against women and domestic violence is crucial for effective prevention. While there has been progress in increasing awareness and combating prejudices, customs, traditions, and practices that reinforce stereotypical views of women's roles, these issues are still deeply entrenched.

By signing and ratifying international agreements, as well as implementing relevant strategies and by-laws, the government assumes both a moral and political obligation to prevent violations of women's human rights within the family, the basic unit of society. In recent years, there has been a concerning rise in cases of domestic violence resulting in fatalities. The victims are most commonly women who had previously suffered abuse from their husbands and had not received adequate protection from law enforcement, centres for social work, or their immediate surroundings.

At the very end, we conclude that while criminal-law protection for victims of domestic violence and societal responses have improved in recent years, this does not necessarily mean that these measures are sufficient or that they ensure greater security for the victims.

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