

# SUPPORTING VICTIMS OF GENDER-BASED VIOLENCE IN CRIMINAL JUSTICE SYSTEM

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**Abstract:** The paper is focused on the actual status of victims of gender-based violence (with emphasis on domestic violence) in Serbia regarding the efforts made in the field of gender equality and victim support and protection (recently adopted National Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence, as well as the National Strategy on the Rights of Victims and Witnesses of Crime, and the Law on Domestic Violence Prevention). The emphasize is on the empirical data gathered in previously and recently conducted researches on victims' satisfaction and needs articulated by their own experience from contacts with different state agencies, as well as on the requirements and recommendations of the Victims of Crime Directive 2012/29/EU and Istanbul Convention. Quality of the first contact with victim, offering relevant, useful information, efficient support and protection are of great importance not just for victims themselves, but also in proving criminal offences of gender-based violence in criminal proceedings. An adequately treated victim will more likely become a reliable witness.

**Keywords:** gender-based violence, domestic violence, victim, witness, protection, support, criminal proceedings

## INTRODUCTION

Gender-based violence, especially domestic and sexual violence (whose victims are predominantly women) has been topical in Serbia for a very long time. Also, it has been in focus of many international organizations. The latest progress report of the European Commission (2020) criticizes Serbia for serious delay in the adoption of the strategy and action plan on violence against women and domestic violence; it points out that the implementation of the law against domestic violence needs to be

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improved (including for vulnerable women such as women with disabilities and Roma women); the risk of domestic violence increased under the COVID-19 state of emergency due to the imposition of curfews, the potential underreporting of cases or difficulties with removing perpetrators from their homes (EC, 2020: 37).

The first report by the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is in the same line. It notes that in general, patriarchal attitudes and stereotypes still prevail in Serbia regarding the roles, responsibilities and the expected behaviour of women and men in society and the family. It encourages the authorities to continue eradicating prejudices and all practices based on the idea of the inferiority of women or stereotyped gender roles. GREVIO underlines that additional efforts are needed to ensure a more comprehensive response to all violence against women covered by the Istanbul Convention, not only domestic violence (rape, stalking, sexual harassment and forced marriage), and that the few existing support services for these cases of violence are predominantly run by NGOs (operating on a limited budget). Furthermore, police protocols do not mandate cooperation with specialist support services or the routine referral of victims, resulting in the under-utilisation of existing NGO expertise. An integrated system for collecting and monitoring cases of violence disaggregated by type of violence and by relationship between perpetrator and victim does not exist. GREVIO urges the authorities to establish a dialogue with women's organisations and ensure appropriate funding for specialist support services dealing with all forms of violence, including long-term grants based on transparent procedures. It also invites the Serbian authorities to gradually reduce its dependency on international donors and ensure a wider share of funding from the state budget for activities to combat violence against women (GREVIO, 2020: 6-7).

When it comes to criminal justice response, GREVIO stresses that the rates for most forms of violence against women are extremely low. The reasons therefore range from low levels of reporting to lack of guidance on how to build a case, and insufficient training on more recently introduced offences. Although domestic violence cases have seen an increase in the number of persons charged since 2012, which GREVIO welcomes, they have seen an even more marked increase in the number of charges ultimately dropped. Where convictions close the case, the sanctions imposed are often conditional and the full sentencing range is rarely made use of (*Ibidem*).

Serbian Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence 2021–2025<sup>2</sup> confirms that the system of support and assistance services for women victims of domestic violence is not in line with international standards; existing services are not equally available to all victims, and there are no publicly available data on available services (Government of the RS, 2021: 35). Also, ministries of internal affairs, justice and family protection have not agreed about the manner of exchanging notifications and data among the persons designated for liaison (according to the Law on Domestic Violence Prevention<sup>3</sup>, Article 24, paragraph 2). No rulebook on cooperation has been adopted (which would regulate in more detail the mutual rights, obligations and cooperation of state agencies responsible for domestic violence prevention and the provision of protection and support to victims of domestic violence and other crimes envisaged in the Law on Domestic Violence Prevention). In practice, meetings of the groups for coordination and cooperation are not held within the legally prescribed period of at least 15 days; protection and support plans are not adopted in all considered cases (but only if high risk from violence is assessed). Members of most groups have difficulty in adequately understanding the phenomenon of domestic violence and intimate partnerships, in identifying specific forms of violence, the consequences of violence, and some have prejudices about violence against women and specific prejudices against minority groups. It has been observed that in

2 Official Gazette RS, No. 47/2021

3 Official Gazette RS, No. 94/2016





assessing risk factors and choosing measures to ensure safety of women and children in a sustainable manner and when planning protection and support, previous violence is often not investigated or taken into account. There are challenges in recognizing particularly dangerous risks of recurrence or escalation of violence, such as possession and/or use of firearms in previous incidents, participation of perpetrators in armed conflicts in the former SFRY or belonging to certain professions (e.g. police, army) which allows access to legal or illegal weapons. It is also noted that groups for coordination and cooperation did not include in their work representatives of other relevant institutions, nor specialized women's organizations (although they are obliged to do that according to Act on Domestic Violence Prevention), and even victim of violence has not been involved in making individual plans of protection and support (Protector of Citizens, 2020:21-23)

Having in mind previously mentioned problems and obstacles, it is undoubted that victims of gender-based violence, despite different normative solutions, do not enjoy the level of support and assistance that could meet their needs properly and help them in rehabilitation process. So, this kind of response (incoherent, with many flaws and gaps) is more deterring for victims when it comes to their active participation in criminal proceedings. A part of the solution for the problem with criminal justice response to the domestic violence (and other forms of gender based violence) could be found in an adequate relation (especially in the first contact) between a victim of gender-based violence and a state agency (e.g. police, public prosecutor or center for social work), and in the support that must be provide for victim after offence reporting, during the trial and afterwards.

## VICTIM (DIS)SATISFACTION WITH CRIMINAL JUSTICE RESPONSE AND SOCIAL SUPPORT

Victims of domestic violence (or other forms of gender-based violence) who initially turn to the criminal justice system for intervention may be so dissatisfied with the outcome that they do not call for help the next time they need it. Bad experience of other victims could also be deterring, as well as the contact with some other state agency (e.g. centre for social work) which is called for help. So, the first contact with the victim is of great importance. Many research results point out that one of the reasons for not reporting domestic violence or other form of violence (e.g. sexual assault) is distrust of institutions and poor response victims obtained from the professionals (Ćopić, 2002; National Institute of Justice, 2006; Jovanović, Simeunović-Patić, Macanović, 2012; Jovanović, 2015; Petrušić, Žunić & Vilić, 2018; Jovanović, 2018; OSCE, 2019).

According to the survey, conducted by the Autonomous Women's Centre from Belgrade about the experiences of women victims of sexual and partner violence, over 60% of victims were dissatisfied with the information given by the police. The information that the victims find important were related to: their rights and the proceedings - 79%; assistance and protection - 79%; compensation - 60%. The victims got no useful information by the public prosecutors in 56% cases. Also, the victims were not satisfied with the attitude of officials towards them (58% when it comes to the police, and 48% when it comes to the public prosecution office). Over 85% of respondents said officers should be more cooperative and show compassion, rather than suspicion. It should be noted that representatives of the police and the public prosecution office admit that they don't have sufficient knowledge about techniques for interviewing victims, and that they need training in this regard. Besides, representatives of the state authorities do not have leaflets for victims to learn about existing programs of assistance and protection, and most of them are not aware of the existence of NGOs or other agencies providing support. The victims do not receive information on the release or escape of the offender (Jovanović, 2015: 272)



Ten years have passed since the aforementioned survey, but distrust of institutions and inadequate assistance and support are still present as important factors for not reporting violence or to participate actively in the proceedings (these topics were vividly discussed at recently held conference Trust in Institutions - Comprehensive Victim Support organized by the Provincial Protector of Citizens – Ombudsman, September 8-10, 2021<sup>4</sup>). The latest OSCE survey on violence against women in Serbia also noted that women are reluctant to report violence, and that one of the reasons is distrust of institutions. General dissatisfaction with the relevant services prevails, especially distrustful Roma women and members of other marginal groups, because, they say, violence against them is treated as a matter of culture and custom, and is not responded to. Another important finding is the lack of assistance and support services (OSCE, 2019: 57, 66). According to researchers of the domestic violence cases in judicial practice, a relatively small number of victims have previously addressed the competent institutions seeking help, which, among other things, points to a low degree of victims' trust in the institutions of the system (Petrušić, Žunić & Vilić, 2018: 139).

Contacts with social work centres are assessed similarly. The latest research shows that even in these contacts, every third woman received information about the rights she has as a victim of violence, and none have received information about the possibility of organising a case conference to inter-sectorally discuss her situation and needs (Ignjatović, 2021: 19). Although almost all respondents (98.3%) expressed the need for psychosocial support, less than half (40.7%) received information about where they could be obtained, while none received help from the CSR itself (*Ibidem*). In general, more than a third of respondents were completely dissatisfied with the CSR's support (37.3 per cent did not receive support), 28.8% were partially satisfied, while less than a third were fully satisfied (Ignjatović, 2021: 21). Blaming a victim occurred in 18.6%, and 20.3% of the respondents said it was occasionally happening (*Ibidem*: 22).

It seems that women who are the victims of domestic violence want to enhance their own safety, maintain economic viability, and protect their children, so they primarily need relevant information and support. They are less concerned about upholding the law and helping police officer, prosecutor, and judge, especially when they do not trust them. Thus, the victims must not be treated solely as the source of information, as an object – secondary party in criminal proceedings, nor should they be blamed for their own victimization. There is responsibility not only to seek swift justice for criminal offence, but to ease the victims' suffering and make them cooperative.

## WHAT DO VICTIMS WANT AND WHAT ARE THEIR RIGHTS?

The first contact with the victim is of great importance as it is the moment when victim could feel the (dis)trust and decide whether to join the criminal procedure becoming a reliable witness. Thus, it is very important to pay attention to victim needs and rights, trying to meet them from the first contact.

Victims of Crime Summit from 1999 (IACP Victims Summit, 2000) point out what really victims of violent crimes wanted:

- Safety: protection from perpetrators and revictimization;
- Information: verbal and written information about justice system processes and victim services that is clear, concise, and user-friendly;

4 Plenary session Trust in Institutions - Comprehensive Victim Support (ПЛЕНАРНИ СКУП “ПОВЕРЕЊЕ У ИНСТИТУЦИЈЕ - Целовита подршка жртви”) – Protector of Citizens ([ombudsmanapv.org](http://ombudsmanapv.org))





- Support: services and assistance to enable participation in justice processes, recovery from trauma, and repair of harm caused by crime;
- Continuity: consistency in approaches and methods across agencies; continuity of support through all stages of the justice process and trauma recovery.

Victims also wanted to be taken seriously; to be treated with empathy and care; to be questioned without provocation and humiliation; to be accompanied by a “trustworthy person”; not to be bothered with unnecessary, multiple hearings, as well as not to be humiliated and pressed by unnecessary questions by defendant and his/her attorney (Löffelmann, 2006).

According to the results of one survey in Croatia, victims want: information, free legal aid, psychological and emotional support, protection of safety and privacy, compensation (Turković, Ajduković, Mrčela & Krešić, 2007). The same results and conclusions came out of the aforementioned research on needs and attitudes of victims of domestic and sexual violence in Serbia: information and support (medical, psychological, legal, material) are priorities.

Undoubtedly, victims of crime must be treated as persons with specific needs which have been recognized as rights by so called Victims of Crime Directive 2012/29/EU<sup>5</sup>. Its purpose is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. It is emphasized that women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

The importance of the information is emphasized in Article 3 articulating right to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority. The communications with victims should be given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood. Also, it is recommended to allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

It should be ensured that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in the Directive: a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation; (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures; (c) how and under what conditions they can obtain protection, including protection measures; (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice; (e) how and under what conditions they can access compensation; (f) how and under what conditions they are entitled to interpretation and translation; (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made; (h) the available procedures for making complaints where their rights are not respected by the competent

5 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220 / JHA, Official Journal of the European Union L 315, 14. 11. 2012.



authority operating within the context of criminal proceedings; (i) the contact details for communications about their case; (j) the available restorative justice services; (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed (Article 4).

Do victims in Serbia obtain the previously mentioned information? The answer is no, despite the obligation set in the Criminal Procedure Code (CPC)<sup>6</sup>. The public prosecutor and the court are obliged to inform the injured party of rights enlisted in Art. 50 of the CPC. In practice it means that professionals from the prosecution offices simply hand over to victim a sheet of paper with the rights written on it. The same practice is applied in the police, as some participants at the Conference Trust in Institutions – Comprehensive Victim Support said. Information on rights in the criminal proceedings are important, but the information about certain services for support and protection are much more important (e.g. information on contacts of the local NGOs that provide relevant services). Also, lay persons hardly understand legal language, so the information do not mean much if they are not presented properly (in plain and accessible language). Directive 2012/29/EU has suggested that the police officers should provide information to victims (e.g. by handing leaflets). It is proved that the best are those systems in which police officers have a legal obligation to provide specified information to the victim (at the first contact), and to file a report (e.g. the Netherlands and Belgium<sup>7</sup>).

When it comes to the rights of the injured party, there are some omissions in the CPC provisions on attending certain evidentiary actions. Namely, Article 300, paragraph 3 stipulates that the injured party may be present at the examination, but has not provided the obligation of informing her/him. The paragraph 6 does not even mention the injured party, so he/she might miss the examination of witnesses and experts. Thus his/her right to be informed about the time and place of taking certain evidentiary actions has been violated, as well as the opportunity to actively participate in the proceedings, which might have negative impact on the quality of the evidence (Jovanović, 2015:271).

Victim also needs information on offender's release from prison or (on offender's custody) as that information is very important for their sense of safety, but they don't get it nor they know where to ask for it. The Law on Execution of Criminal Sanctions<sup>8</sup> contains the provisions on notification of victims (Article 181) of the criminal offences against life and body, against sexual freedom or against marriage and family when convicted person is released from the enforcement of a custodial sentence, i.e. released conditionally, as well as in case of the escape from prison. The penitentiary institution shall deliver the information to the victim if he/she has demanded that, and if the assessment of risk by the penitentiary institution is indicative of the need for preventive protection of the victim. This Article has no wider application in practice, victims do not know about its existence (nor do professionals), and the second condition related to the risk assessment should be erased (thus the victims of certain violent crimes should be informed anyway if they ask to be informed).

National Strategy on the rights of victims and witnesses of crime for the period 2020-2025<sup>9</sup> set as an objective enhancing the status of victims and witnesses in the criminal justice system of the Republic of Serbia in line with EU standards set in the Directive 2012/29/EU, and the first specific goal is setting up a sustainable National Network of Victim and Witness Support Services in the Republic of Serbia.

6 Official Gazette RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021- Constitutional Court Decision, 62/2021- Constitutional Court Decision

7 These countries are highly positioned on the list of those who show exceptional care for victims. See: Brien, M. E. I., Hoegen, E. H., 2000: 1159

8 Official Gazette RS, No. 55/2014, 35/2019

9 Strategija-ENG.docx (live.com)





Next one is raising awareness among victims and witnesses of crime of the rights afforded to them in the legal system of the Republic of Serbia, while continually informing the general public with that aim in mind. We hope the Strategy and its Action Plan will not be just promising declarations and that victims will really be provided with better, available and coherent services.

## GENDER-BASED VIOLENCE IN JUDICIAL PRACTICE: WHAT IS WRONG WITH THE CRIMINAL JUSTICE RESPONSE?

Statistic data point to a worryingly high proportion of dismissed criminal complaints for domestic violence, and among the reasons for dismissal are deferring criminal prosecution (which results in the dismissal of the criminal complaint if the suspect has fulfilled certain obligation or more of them enlisted in Article 283, paragraph 1 of the CPC). According to data of the Statistical Office of the Republic of Serbia (SORS) in 2004 the percentage of dismissed criminal complaints for domestic violence was 24.9%. Since 2010 the percentage has begun to raise (29.3%); in 2011 it was 35.8%, in 2016 -64.4%, and in 2019 – 60%<sup>10</sup>. In 2019, among the reasons for dismissing criminal complaints, there was deferring criminal prosecution in 3% of cases, while in 78.9% of cases reasons were “no grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed” or “inexpediency of criminal prosecution” (which again indicates the possible application of the so-called “prosecutorial opportunism”), and in 15.6% of cases the public prosecutor assessed that “the reported offence is not a criminal offence which is prosecutable *ex officio*” (SORS, 2020: 16). Presented data indicate the need of conducting research related to such a high number of dismissed criminal complaints for previously mentioned reasons, especially those related to the prosecutorial opportunism. Namely, about ten years ago, it was noted that in the large number of cases of dismissed criminal complaints for domestic violence (at that time about 30%) there were no real or legal reasons for such a decision of the public prosecutor (Konstantinovic Vilić, Petrušić, 2007: 108), so it is worth researching if there are any grounds for such a conclusion today.

Perpetrators of domestic violence are most often conditionally sentenced (in 2019, suspended sentence was represented in the structure of imposed sanctions with 69.5% (SORS, 2020: 77), but a suspended sentence with protective supervision rarely appears in practice, which should be changed. Namely, a conditional sentence with protective supervision is a far better solution, as the convict is obliged to perform certain obligations that are specially-preventive, which is also one of the recommendations of the Istanbul Convention<sup>11</sup> (Article 45, paragraph 2).

The latest statistical data show that 146 persons convicted for domestic violence have been sentenced to prison in the premises where they live (so-called house arrest) (SORS, 2020: 77), but there is a suspicion that among them are those who should not have been sentenced to serve such a sentence, bearing in mind that the commissioners for alternative sanctions indicate that the courts impose “house arrest” on offenders living with victims, which often leads to new violent acts.<sup>12</sup> Criminal Code is clear

10 Statistical Office of the Republic of Serbia, Adult Perpetrators Charged with Domestic Violence 2004-2019, <https://data.statgov.rs/Home/Result/140202?languageCode=sr-Cyrl>

11 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic violence, CETS 210, 2011

12 The commissioners for alternative criminal sanctions spoke about it at the Conference “Perspectives of Alternative Criminal Sanctions and Measures of Restorative Justice in Serbia”, organised by the Centre for Democracy Foundation and Victimology Society of Serbia (30.6.2015, Belgrade). See: Mrvić-Petrović, N., Jovanović, S., 2015.



on that issue as well (although it would be quite logical in the given situation not to think at all about this way of serving the sentence even without explicit provisions about it): Article 45, paragraph 7 of the CC envisages a ban on determining execution of a prison sentence in the premises where the convict lives with a victim of the criminal offence against marriage and family committed by convicted person.

The results of the latest research on domestic violence in judicial practice also indicate a mild penal policy in cases of domestic violence and the presence of an old problem – automatism in stating circumstances relevant to sentencing (still far more mitigating ones) without previous deep consideration (Petrušić, Žunić & Vilić, 2018: 140). Indicative are the results of a survey of domestic violence that occurs in the migrant population, in reception and asylum centres (Marković, Cvejić, 2017) when the failure of employees in these centres under current regulations is justified by “old answers”: “it is a different culture, religion, tradition”; “it is normal for them”; “they will not report, they will not cooperate”; “reporting and conducting the procedure would make their position more difficult, because they don’t want to stay in Serbia”... (Jovanović, 2018: 32-40). On the other hand, the Istanbul Convention imposes general obligation on Member States to ensure that culture, tradition, religion or so-called ‘honour’ is not considered a justification for any act covered by the Convention (Article 12, paragraph 5).

One of the basic needs of the victim of gender-based violence is safety, and it seems that there are problems with that issue in practice. The Law on Domestic Violence Prevention envisages urgent measures that separate offenders and victims which are imposed on offenders by the police immediately, but without victim referral to relevant services for support and information, they could remain ineffective. In contrast to previous research whose results show that detention was ordered very rarely – only in 12.9% of cases, the recently conducted research indicates that detention of domestic violence perpetrators was ordered much more frequently, in as many as 46% of cases. Ordering detention because of the possible influence on witnesses, which is one of the legal grounds for detention, was much less frequent. However, the research has shown that perpetrators of violence have a significant influence on witnesses, especially victims, as evidenced by a large number of victims who later refuse to testify at the main hearing and state that they do not join the criminal prosecution (Petrušić, Žunić & Vilić, 2018: 57-58). As the suspended sentence is still the most common sanction for domestic violence offences, safety of the victim is also questionable, especially if the security measure of prohibiting convergence and communication with the victim is not imposed on offender. Suspended sentence with protective supervision seems to be much better solution for offences where risk of revictimization is low.

That there is something wrong with the risk assessment and the criminal justice response is shown by the data on the number of femicides in Serbia which is not decreasing. More than 30 women are victimized by murder in the context of domestic violence every year, although cases in which the victim of domestic violence has previously sought help from state agencies are very common<sup>13</sup>.

13 There are no official data on femicide (although there should be, as it is an international law requirement), so we have to use data of the Network Women Against Violence. See: Annual Reports on Femicides in Serbia 2010-2020, <https://zeneprotivnasilja.net/femicid-u-srbiji>, accessed on 15. 9. 2021





## CONCLUDING REMARKS

Can our criminal justice system, having an offender and his/her rights in focus, ever meet victims' needs? It seems that a victim is more an object and source of information relevant for criminal proceedings than a person who suffers and has some real needs in order to survive and move on after the offence and criminal proceedings that sometimes add more suffering due to secondary victimization. Adequate contact with the victim, professional but kind, without blaming and deterring is of greatest importance. Relevant information on available services for (medical, psychological, material, legal etc.) support and protection is also important, so it should be considered how to offer it to a victim in an appropriate manner.

Having in mind that Serbia cannot cope with femicide, despite very good legal solutions, improving safety of the victims is of the greatest importance. Proper risk assessment, and the right choice of measures that will protect the victim from the offender, but also giving the necessary information to the victim (about whether the offender is in custody, whether he/she is released from prison on parole or after serving a prison sentence) can make the victim feel more safe and also gain trust in institutions.

We must not forget that the most common cause of prosecution failure is the loss of a witness which was cooperative at the beginning but stopped cooperating with a justice system that was indifferent to his/her basic human needs.

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