DOMESTIC VIOLENCE AND FIREARMS MISUSE

A study on the practice of institutions of the criminal justice system in response to domestic violence committed through misuse or threat of misuse of firearms

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POINTED AT YOU

This study was conducted within the project “Reduce Risk - Increase Safety - Towards Ending SALW Misuse in the Context of Domestic Violence,” implemented by the United Nations Development Program (UNDP) in Serbia. The project is implemented with the financial support of the Federal Foreign Office, Germany, and contributes to the implementation of the Roadmap for a sustainable solution to combat illicit possession, misuse, and trafficking of small arms and light weapons (SALW) and related ammunition in the Western Balkans by 2024.

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ABOUT THE RESEARCH

Domestic violence is a global phenomenon and occurs in all societies, regardless of their political or economic context, the degree of institutional development achieved, the dominant norms and attitudes of the community, or the level of the development of human rights culture. Domestic violence is one of the most serious forms of criminal behavior in the community, as it not only impacts the lives of a small circle of individuals, but also causes trauma and loss with transgenerational consequences.

The victims of domestic violence are most often women and children, and it occurs primarily between partners, married and unmarried. Although the number of reported cases of domestic violence increases each year in Serbia, it remains infrequently reported compared to other crimes. Furthermore, despite the presence of laws, various measures, and practices in Serbia aimed at preventing and combating violence against women, it remains a worrying reality, and in recent years the number of women murdered has remained almost unchanged.

The high degree of availability and the prevalence of (illegal) firearms represents a great threat in cases of violence against women and is one of the indicators of a high risk of a woman being killed - femicide. This is evidenced by the fact that in the past seven years almost a third of women killed in Serbia have been killed by firearms.[1] In addition, firearms are misused for the purposes of intimidation, control, and psychological and sexual violence. Due to the very possibility of firearms misuse to commit violence, many victims are too scared to report violence, while the presence of firearms can deter witnesses of violence from intervening and helping victims.

In Serbia, the legal framework for the prevention of and protection from domestic violence and violence against women has been improved, as has the legal framework related to firearms control, procurement, possession, and carrying. The manner in which this framework is applied and the institutional response to the needs of persons in situations of violence greatly influence and shape the general reaction to violence in society and social tolerance to such behavior, as well as attitudes towards the misuse of firearms.

Unfortunately, the findings of the first interdisciplinary research on femicide in Serbia indicate that often due to the lack of a timely and efficient reaction by relevant institutions to reports of domestic violence that preceded instances of murder, in a large number of cases the fatal outcome of violence was not prevented. In some cases, the danger may have been immediately minimized, but the circumstances that endangered the safety of the victim were left unconsidered. In domestic violence lawsuits, instances of measures being imposed on both the plaintiff and the defendant have sent the wrong message that both parties are equally responsible for such violence.[2] Moreover, approx-

[1] Lacmanović, V. "Femicid u Srbiji: potraga za podacima, odgovorom institucija i medijska slika," (Femicide in Serbia: a search for data, the response of institutions, and media image), *Annals for Istrian and Medi terranean Studies*, *Series Historia et Sociologia*, January 29, 2019, p. 44.

[2] Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji*, Udruženje građanki *FemPlatz (Social and Institutional Response to Femicide in Serbia,* FemPlatz - Citizens' Association*)*, Pančevo, 2019, p. 352.

imately 60% of criminal charges for domestic violence are dismissed due to a lack of evidence and the "insufficient" willingness of the victim to participate in the proceedings. These data clearly indicate that additional efforts are needed to improve the implementation of the legal framework, as well as to better link the prevention of and protection from domestic violence alongside improving firearms control.

The goals that must be sought are adequately sanctioning those who commit violence, preventing future acts of violence, and restoring victims' trust in institutions and in the belief that reporting violence will secure quick and adequate protection from violence and support for a permanent way out of such situations.

Based on an analysis of legal regulations and collected data on the processing of cases of domestic violence in which firearms were used to commit crime, this study provides a critical review of the response of the criminal justice system and identifies areas where action is needed to reduce the risk of firearms misuse related to domestic violence. Key legal gaps and obstacles in the implementation of existing laws have been mapped, as well as institutional shortcomings in the knowledge and awareness of professionals regarding the link between firearms misuse and gender-based violence. The collected data should provide a basis for improving the knowledge of professionals in the criminal justice system about the risks and consequences of firearms misuse in the context of domestic violence.

The research was conducted within the project "Reduce Risk - Increase Safety - Towards Ending SALW Misuse in the Context of Domestic Violence," which is part of the implementation of the Roadmap for a sustainable solution to combat the illicit possession, misuse, and trafficking of small arms and light weapons (SALW) and related ammunition in the Western Balkans by 2024.[3]

The project is implemented by the United Nations Development Programme (UNDP) in Serbia, with the financial support of the Federal Foreign Office, Germany. The goal of the project is to reduce the risks and impact of the misuse of firearms and provide protection for victims of domestic and partnership violence. The project seeks to answer a range of questions regarding the misuse of firearms for domestic violence, particularly for gender-based violence. The most specific purpose of the project is to improve the legislative and strategic framework and institutional practices in order to effectively respond to the complexities of domestic violence, strengthen the prevention system, and increase awareness among women and men, and girls and boys, of the dangers of firearms.

[3] The Roadmap for a sustainable solution to combat the illicit possession, misuse, and trafficking of small arms and light weapons and ammunition in the Western Balkans by 2024 was jointly developed by the six Western Balkans jurisdictions, under the auspices of Germany and France, in coordination with the European Union and with technical support from the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (UNDP SEESAC). The Roadmap is the most comprehensive arms control exercise in the region, covering all key aspects, from securing the stockpiles of weapons and ammunition to mainstreaming gender in firearm control and countering firearms trafficking. The Roadmap was adopted at the London Summit in 2018. The text of the Roadmap is available at the following address: https://www.seesac.org/f/docs/publications-salw-control-roadmap/Regional-Roadmap-for-a-sustainable-solution-to-the.pdf

ABSTRACT

The research was conducted on a nationally representative sample that included all cases of domestic violence, femicide, and attempted femicide related to firearms misuse for which criminal proceedings were finalized during the period from June 1, 2017, the date of the coming into force of the Law on the Prevention of Domestic Violence, through December 31, 2019.

The aim of the research was to analyze the practice of institutions of the criminal justice system in responding to domestic violence committed through misuse or the threat of misuse of firearms, as well as to give recommendations for improving the prevention of domestic violence and the protection of its victims.

KEY FINDINGS

- According to available data on court judgments, the majority of perpetrators of domestic violence committed through misuse or the threat of misuse of firearms were married, had an average of two children, had a secondary level education, and were not employed.
- Half of the perpetrators had not been previously convicted, while the majority admitted to having committed a crime, yet generally were not repentant of the crime and considered their actions appropriate.
- In committing criminal offenses, the perpetrators most often used a pistol/revolver, as well as other B category firearms, which individuals can procure, hold, and carry on the basis of a document from the competent authority, but in many verdicts there was no data found regarding the possession of a license for carrying a firearm.
- The most prevalent type of domestic violence crime committed through firearm misuse was that of violence against a marital or non-marital partner. In more than half of the cases, there was no data found regarding the existence of previous violence, nor on the previous relationship between the perpetrator and the victim, which signifies the failure of courts to consider the history of these relations, as well as their failure to consider the wider context, including gender.
- Most victims were indicated as not having sought help from institutions due to previous violence, while in more than half of the cases there was no information on this issue.

- When sentencing perpetrators, courts have generally cited mitigating and aggravating circumstances while failing to explain why they considered certain circumstances to be mitigating or aggravating, at the same time not taking into sufficient account that domestic violence is held as a more dangerous form of violent behavior than other forms.

- Approximately half of the perpetrators were remanded to custody. In a majority of cases they were convicted, next most commonly they were penalized according to a plea agreement, while in one case the public prosecutor dropped the indictment entirely.

- The most prevalent sentence imposed was imprisonment, alongside a security measure: the security measure of the confiscation of the object with which the crime was committed was most common, followed by mandatory rehabilitation treatment for alcoholism/drug addiction, and, to a lesser extent, the security measure of prohibiting the approach of and communication with the victim.

- The shortest sentence documented was five months in prison, and the longest 40 years - for aggravated murder committed with a firearm. It is the authors opinion that based on data found through their research, the penalties for criminal acts of domestic violence in which the perpetrator threatened and/or misused firearms were too lenient, especially bearing in mind the social danger of these acts.

- In not a single case where a maximum sentence of five years could have been imposed was it, and most sentences were one year or less.

MAIN RECOMMENDATIONS

- The practice of courts regarding the punishment of perpetrators of domestic violence committed with firearms must be changed, especially in terms of stricter punishment.

  It is necessary that sustainable support services be provided to victims of violence, as well as that adequate programs to work with perpetrators of violence against women be implemented.

- The legal framework must be improved, particularly in regard to the conditions for the acquisition, possession, and carrying of firearms, while legal regulations for the prevention of and protection from domestic violence must be more closely connected to regulations on the acquisition, possession, and carrying of firearms.

- Statistical records of cases of domestic violence committed with firearms should be established, including data on gender, age, victim-perpetrator relationship, type and origin of firearms used, a description of events, and other relevant information, including the institutional response to these cases, while judicial records must be improved so that data on the misuse of firearms is clearly recorded.

- It is necessary that cooperation between state bodies in charge of prevention and protection from domestic violence be enhanced, the level of trust of victims in institutions be increased, and better and more adequate mechanisms for protection against violence and the prevention of new violence be provided.

- It is also necessary to work on creating a safer environment and providing gender-responsive support services that meet the needs of victims of violence.

- It is important that in dealing with reports of domestic violence, the attention of legal professionals be focused on determining in detail the circumstances of each individual case of violence caused by the threat or misuse of firearms, especially if the perpetrators have participated in armed conflicts or have access to weapons based on the nature of their professions.

- It is of special importance that not only insight into the act of violence in connection with which the procedure has been initiated be provided, but also a comprehensive overview of the perpetrator's previous behavior, i.e., the history of his/her violent acts and the like.

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ABBREVIATED TERMS

AP – Action plan

ATT – Arms Trade Treaty

BCBP – Beogradski centar za bezbednosnu politiku (Belgrade Center for Security Policy)

BCL – Basic criminal law

CC – The Criminal Code

C.C. – The Constitutional Court

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CINS – Centar za istraživačko novinarstvo Srbije (Center for Investigative Journalism of Serbia)

CSW – Center for Social Work

DFO – Diazafluoren

EU – European Union

FL – The Family Law

FRA – Fundamental Rights Agency

CCG – Coordination and Cooperation Group

GREVIO – Group of Experts on Action against Violence against Women and Domestic Violence

HPPO - Higher Public Prosecutor's Office

LPDV – Law on the Prevention of Domestic Violence

LPPO – Local Public Prosecutor's Office

MLEVSA – The Ministry of Labor, Employment, and Veterans and Social Affairs

MOI – Ministry of the Interior

NAP – National Action Plan

NFTC – National Forensic Technical Center

NGO – Non-governmental organization

OSCE – Organization for Security and Co-operation in Europe

OGRS – Official Gazette of the Republic of Serbia

PS – Police Station

PA – Police Administration

PD – Police Department

RPPO – Republic Public Prosecutor's Office

USA – The United States of America

SALW – Small arms and light weapons

SEESAC – South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons

UN – The United Nations

UNDP – United Nations Development Programme

UNODC – United Nations Office on Drugs and Crime

WHO – World Health Organization

CCP – The Code of Criminal Procedure

INTRODUCTION

The victims of weapons misused in the context of domestic violence and partnerships are mostly women. The misuse of weapons is not limited to the killing of women; firearms are often used as a means of intimidation, threats, psychological violence, sexual abuse and rape, victim control, and other forms of violence. This violence most often occurs in the private sphere, within the household, and due, on the one hand, to the high social tolerance for gun ownership and, on the other, to the pervasiveness of domestic violence, these cases of violence are rarely reported to institutions. In families and partnerships where perpetrators have access to weapons, there is a high risk that these weapons will be misused, and the consequences of that misuse are extremely severe and far-reaching. Also, the awareness of the victim that the perpetrator possesses a weapon is a factor that can keep the victim in constant fear of the possible misuse of such a weapon.

This study on domestic violence and firearms misuse has been conducted within the project "Reduce Risk - Increase Safety - Towards Ending SALW Misuse in the Context of Domestic Violence," implemented by the United Nations Development Program (UNDP) in Serbia, in cooperation with the Ministry of Interior, the Ministry of Justice, and the Coordination Body for Gender Equality of the Government of the Republic of Serbia. This project contributes to the implementation of the Roadmap for a Sustainable Solution to Combat the Illicit Possession, Misuse, and Trafficking of Small Arms and Light Weapons (SALW) and Related Ammunition in the Western Balkans by 2024.

The aim of this study is to map and assess the practice of the criminal justice system in response to domestic violence committed through misuse or threat of misuse of weapons, as well as to improve the prevention of domestic violence and enhance protection for its victims. The research is part of a broader program of the United Nations Development Programme aimed at reducing risks and improving protection against domestic violence.[4]

Based on the analysis of legal regulations and collected data on the processing of cases of domestic violence in the context of access, possession, or misuse of firearms, the response of the criminal justice system has been considered. The findings and insights produced have enabled the identification of areas in which action should be taken to improve the functioning of the criminal justice system and thus reduce the risk of the misuse of firearms related to domestic violence. Key gaps and obstacles in the application of existing laws have been mapped, as well as institutional shortcomings in the knowledge and awareness of professionals in the criminal justice system about the correlation between firearms misuse and gender-based violence. The data collected and processed represent a basis for the development of evidence-based tools to improve the knowledge of professionals in the criminal justice system about the risks and consequences of the firearms misuse in the context of domestic violence.

Finally, we would like to thank Dr. Vida Vilić, Gorjana Mirčić Čaluković, Ivana Milovanović, and Valentina Lepojević, who have all made valuable contributions and provided support in collecting and processing data for this research.

[4] Additional information on this program is available at the UNDP website: https://www.rs.undp.org/content/serbia/en/home/library/womens_empowerment/reduce-risk---increase-safety.html

THEORETICAL FRAMEWORK OF THE STUDY

Society, Domestic Violence, and Firearms Misuse

Domestic violence and victims of domestic violence - a phenomenon of prolonged duration

Domestic violence is a global phenomenon and occurs in all societies, regardless of their political or economic context, the degree of institutional development achieved, the dominant norms and attitudes of the community, or the level of the development of human rights culture. Domestic violence is one of the most serious forms of criminal behavior in the community and a multifaceted phenomenon, which includes the scope of the criminal act, trauma, and loss, making it not just "antisocial behavior" but an agent affecting the standing and processes of the social life, social structures, and institutions of a community.

Analyses of domestic violence have shown that it is conditioned by the way of life of a society, i.e., the structural and cultural shaping of gender relations in society or what we call the gender regime of a social community. Gender regimes are "relatively structured relations between men and women, masculinity and femininity, in the institutional and non-institutional environment, at the level of discourse and at the level of practice."[5] In this regard, the character of gender regimes, the degree and nature of gender inequalities, signify the context in which intimate family and partnership relations are established and developed, which are in themselves based on agreed-upon power relations and gender roles. There are characteristics by which we can essentially separate and distinguish domestic violence from non-domestic violence. Domestic violence always implies the abuse of power and the attempt to exercise control, most often against family members who have less power and/or who depend on others. All statistics, including our formal and informal institutional data, indicate that women are the most common victims of violence, and men, especially as their partners, are the most common perpetrators of violence.[6] Thus, domestic violence is a set of behaviors aimed at controlling members of the family community through the use of force, intimidation, and manipulation. In partner violence, the perpetrators are predominately and overwhelmingly men over women, at a ratio of 9:1.[7]

Documented research shows that globally, almost 35% of women have experienced physical and/or sexual violence from an intimate partner. This figure does not include sexual harassment. Some national studies claim that this number may be as high as 70% of women. It is alarming that women who have experienced this type of violence have a higher rate of depression, HIV, or abortion compared to women who have not been exposed to this form of violence.[8] A 2018 global study by the United Nations Office on Drugs and Crime (UNODC) confirmed that the killing of women represented the most extreme form of violence against women, as an element of gender-based discrimination and abuse against women. The data indicated that the murders of women and girls are related to gender and represent a serious global problem, both in rich and poor countries. While men represent the vast majority of victims of murder by a stranger, women

[5] Blagojević, M., Žene i muškarci u Srbiji 1990–*2000. Urodnjavanje cene haosa (Women and men in Serbia 1990–2000. Degeneration as a price of chaos)*, ISFF, Belgrade, 2002, p. 311.

[6] Slavković, I., Ignjatović, T. (pr.), *Nasilje u porodici – čija je odgovornost?*, [*Domestic violence - whose responsibility is it?],* Autonomous Women's Centre, Program for the Development of Good Practices in the Field of Domestic Violence, Belgrade, 2006, p. 5.

[7] Ajduković, D., Ajduković, M., "Nasilje u obitelji: što zdravstveni djelatnici mogu učiniti," ["Domestic Violence: What Healthcare Professionals Can Do"] *Medicina fluminensis*, Vol. 46, No. 3, 2010, p. 292–299.

[8] *Facts and figures: Ending violence against women.* UNWOMEN, 2020. Available at: https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures.

are much more likely to die at the hands of someone they know. In 2017, 87,000 women were killed, and more than half, 58% or 50,000 women, were killed by intimate partners or family members - meaning that 137 women around the world are killed by one of their family members every day. More than a third, or 30,000, of the women killed in 2017 were killed by their current or former intimate partner, someone we would normally expect a woman to be able to trust.[9]

The EU's Fundamental Rights Agency (FRA) conducted a survey on violence against women in European Union (EU) countries by conducting 42,000 interviews. The results of the research showed that about 31% of women had experienced one or more cases of physical violence since the age of 15.[10] More common forms of physical violence included pushing, slapping, scratching, or pulling a woman's hair.[11] Also, one in three women (33%) indicated having experienced physical and/or sexual violence from the age of 15, while about 8% of women who had experienced physical and/or sexual violence in the 12 months prior to conducting the research interviews. Amongst women who indicated having (current or former) partners, 22% had experienced physical and/or sexual violence by a partner after turning 15.[12] The data revealed that only 2% of EU citizens were not aware of domestic violence, and that 87% believed that the EU should be involved in the fight against domestic violence. Although some progress has undoubtedly been made in EU countries in improving public awareness and putting the issue of violence against women in the spotlight, women in all the EU Member States continue to suffer violence at the hands of their violent partners.

In Serbia, domestic violence is part of the cultural matrix of gender roles and traditional family patterns of behavior. The influence of patriarchal and traditional cultural attitudes and values, marked as processes of retraditionalization and repatriarchalization, has defined the cultural matrix and marked the daily life of men and women and their families. The process of pauperization, especially among the urban population, as well as great economic and social insecurity in general, among other factors, has surely contributed to domestic violence reaching a dramatic scale and becoming a forceful dynamic in Serbia.[13] Research carried out in 2018 on violence against women in Serbia and conducted on a representative sample of women aged 18 to 74 living in Serbia showed the significant scope of various forms of violence against women. Namely, the data indicated that 62% of women had experienced some form of gender-based violence from the age of 15, with 42% having experienced sexual harassment, 22% having experienced physical and/or sexual violence in a relationship or outside it, and 11% having experienced persecution. When analyzing partner violence, the data indicated that 45% of surveyed women who were in a relationship had experienced violence by a partner after the age of 15, with 44% having experienced psychological violence, 17% physical violence, and 5% sexual violence from a partner.[14]

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[9] UNODC, 2018. Available at: https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

[10] FRA – *European Union Agency For Fundamental Rights*. Available at: https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report.

[11] *Violence against Women: an EU-wide Survey. Main Results Report,* FRA – European Union Agency for Fundamental Rights, Publications Office of the European Union, Luxembourg, 2014, p. 20.

[12] *Ibid*., p. 17.

[13] Nikolić-Ristanović, V., *Porodično nasilje u Srbiji* [*Domestic Violence in Serbia]*, Victimology Society of Serbia and Prometheus, Belgrade, 2002, p. 13.

[14] *OSCE-led Survey on the Well-being and Safety of Women*, OSCE, Belgrade, 2019, p. 21–33.

Analyses of situations of violence between marital and extramarital partners have shown that it is less frequently reported than other crimes, among other things because family members are not seen rightly, in an objective way, as potential perpetrators, yet also because of the fear of further abuse, as well as possible damage to the reputation of the family. Due to the likely large figure of "dark," or unreported cases, it is difficult to speak with confidence about accurate records and accurate data on domestic violence,[15] with data from research on domestic violence and violence against women suggesting that there are only singular, unconnected records of institutions (the police, social work centers, or court records on committed crimes). According to the data of the Republic Public Prosecutor's Office (RPPO), in 2019, almost 1,000 fewer people were reported to the prosecutor's offices in Serbia for the crime of domestic violence than in the previous year. However, this does not necessarily mean that domestic violence is decreasing, as according to the police the number of reports of this type of violence is growing from year to year. Violence was mostly reported as being committed by men, with the victims largely being women. And although according to the RPPO, the number of victims had decreased alongside the drop in the number of criminal charges, there was a noticeable increase in the number of minors as victims of violence.[16] RPPO data on injured persons as victims of domestic violence from 2017 to the end of 2019, show that in 2017 there were 6,419 women, 1,820 men, and 317 minors as victims of domestic violence, while in 2018 there were 5,166 women, 1,861 men, and 284 minors as victims of domestic violence. In 2019, 4,493 women were victims of domestic violence, which clearly represents a smaller number of women victims of domestic violence compared to the previous two years. Within these indicators, regarding the frequency of domestic violence and its gender dimension, expert opinions have explicitly emphasized that a reduction in the number of criminal charges does not mean that violence is decreasing. In 2019 alone, the Ministry of Interior recorded more than 28,000 cases of domestic violence, while in 2018 25,500 cases of domestic violence were recorded.[17] Thus, previous research on domestic violence should be assessed in the context of several relevant facts:[18]

- domestic violence involves a wide spectrum of threatening behaviors of one or more family members;
- a woman could be exposed to domestic violence throughout her life;
- domestic violence is the product of, or related to, the interactive action of a number of factors;
- the consequences of exposure to violence are numerous and significantly affect mental and physical health;
- there is a clear link between the presence of domestic violence and the amount of violence in a society, including violence reported in the media;

[15] Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji*, *op. cit*., [*Social and Institutional Response to Femicide in Serbia*] p. 39.

[16] "Nasilje u porodici sve prisutnije, ali broj krivičnih prijava opada" ["Domestic violence is increasingly present, but the number of criminal charges is declining"], CINS, December 10, 2020. Available at: https://www.cins.rs/nasilje-u-porodici-sve-prisutnije-ali-broj-krivicnih-prijava-opada/.

[17] According to Tanja Ignjatović from the Autonomous Women's Centre, the Law on Prevention of Domestic Violence, which has been in effect since mid-2017, has enabled the police to intervene urgently and to immediately ban the perpetrator from contact and force him/her to leave the house or apartment for 48 hours. This period can be extended afterwards on the basis of a court decision. This has encouraged victims to report threats, psychological harassment, and low-intensity violence. *Ibid*.

[18] Ajduković, M., Pavleković, G. (ur.), "Nasilje nad ženom u obitelji," ["Violence against Women in the Family"] *Ljetopis Socijalnog rada*, 7(1), 2000, p. 12–16.

- there is a cross-generational transmission of violence; and
- violence is a violation of basic human rights.

Women victims of domestic violence, or, a radical pattern of discrimination against women

Relationships between men and women, and thereby their real position in society, as well as the degree of discrimination against women, are significantly determined by attitudes and values about men and women shared by the wider community. Gender discrimination takes place in circumstances characterized by patriarchal interests and ideologies. The manifestation of gender "rights" via control, domination, and subordination is actually a definition of the social reality of violence against women and the abuse of rights in different segments of society.[19] Men's violence against women and women's violence against men are not the same; their social origins are clearly different because such violence takes place within the historical, cultural, political, economic, and psychological context of gender. In this sense, gender represents a view of the established roles and relations between men and women, and it is also the basic organizational principle of institutions and distribution of resources. Yet despite significant social changes in recent years, gender remains the prevailing context of violence that cannot be ignored or trivialized.[20]

A plethora of studies and data, both throughout the world and in Serbia, have shown that domestic violence is widespread in all the regions of the world and that its most common victims are women, as well as that it is deeply rooted in cultures around the world - so that it seems almost invisible. It is considered a "phenomenon of long duration" and therefore its continuous presence is unsustainable, both for social security and for the solidarity of each community. Thus, violence against women implies a wide range of violent behavior, from verbal harassment and other forms of psychological/emotional abuse, to daily physical and sexual abuse, and at the most extreme end of the spectrum is femicide, i.e., the murder of a woman.[21] The ubiquity of violence in family and intimate partnerships is a part of life and a great burden on the lives of millions of women around the world. It is estimated that 87,000 women were intentionally killed globally in 2017, and that more than half, or 50,000 women, were killed by their intimate partners or family members, while more than a third, or 30,000 women, were killed by their then current or former intimate partner. Less than 40% of women exposed to violence were indicated to have sought or be seeking some form of assistance. While men are still more likely to be victims of murder in general, women are killed by their marital and intimate partners in greater numbers. About 81% of the victims of the murders recorded in 2017 were men and boys, and more than 90% of the suspects in the murders were men. However, the

[19] In research and literature on women's issues, this social phenomenon is known as the "gender paradox"\ and it shows that ;"when a woman-related trait or behavior is assessed negatively or as less valuable - \ then gender is relevant, that is, when a woman-related trait or behavior is assessed positively or as valuable - then gender is irrelevant." See in detail: Rosener, J. B., "Leadership and the Paradox of Gender," in: Walsh, R., M. (ed.), *Women, Man and Gender – Ongoing Debates*, Yale University Press, New Haven, 1997, \ p. 296.

[20] Loseke, D. R., Kurz, D., "Mens Violence Toward Women Is The Serious Social Problem," in: Loseke, R. D., Gelles, J. R., Cavanaugh, M. M., *Controversies in Family Violence*, Sage Publication, 2005, p. 84.

[21] Understanding and addresing violence against women, 2012. Available at: https://apps.who.int/iris/\ bitstream/handle/10665/77433/WHO_RHR_12.35_eng.pdf?sequence=1.

study indicated that differences along gender lines among victims changes with age.[22] In countries where such data is available, it is evident that most women turn to family and friends for help, while very few seek help from formal institutions, such as the police or health services, with less than 10% of women turning to the police for help.[23]

Data on the prevalence of violence against women, published in a report on the Gender Equality Index, are derived from a survey conducted by the OSCE (Organization for Security and Cooperation in Europe) in eight countries in Eastern and Southeastern Europe in 2018, including Serbia. The report shows that various forms of gender-based violence are widespread in Serbia, and that these forms of violence, including physical, psychological, and sexual violence, are used to maintain dominance over women in intimate and family relationships, but they are also present in various communities, manifested across numerous spheres of women's social life.[24] The results of research on violence against women in the second decade of the 21st century could supplement and be seen to correspond to, without any major or substantial changes, research conducted in Serbia since 2001. One such study showed that almost every second surveyed woman (46.1%) had experienced some form of psychological violence in the family, every third (30.6%) had experienced a physical attack from a family member, while every fourth (26.3%) had been threatened with violence. In all forms of violence identified by this research, the perpetrator was most often the husband or partner: in 63.5% of cases of psychological violence, 72.8% of threats, 74.8% of physical violence, 75% of weapon misuse, and 88.5% of sexual violence.[25] Regardless of the fact that there are laws, various measures, and practices in Serbia aimed at preventing and combating violence against women and the murder of women, violence against women remains constantly present, with the number of women killed in recent years almost unchanged. According to media articles analyzed by the **Women Against Violence** Network, in the period from January 1 to December 31, 2018, at least 30 women were killed in Serbia. Eight attempted murders of women were recorded, and in three more cases there was suspicion of femicide. The largest number of women (43%) had been killed with a knife. In previous reporting years, every third woman had been killed with a firearm, while now it is every fifth. Although a decline in the number of firearms killings is evident, it can be seen that the total number of femicides remained virtually unchanged, indicating that perpetrators had simply utilized other weapons instead of firearms to kill their victims.[26]

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[22] *Homicide kills far more people than armed conflict, says new UNODC study*, United Nation Information service, 2019. Available at: http://www.unis.unvienna.org.

[23] The World's Women 2015, Trends and Statistics, p. 159. Available at: https://unstats.un.org/unsd/gender/downloads/worldswomen2015_report.pdf.

[24] In 1994, UNICEF conducted a comprehensive analysis of the position of women in countries in transition. Experts noted that violence against women is widespread in all countries in transition, but that, in contrast to relatively well-documented other forms of violence, this form often goes unnoticed and undocumented. That domestic violence is often officially unregistered influences the formation of a the erroneous attitude that violence is not a particularly significant and serious social problem. Konstantinović Vilić, S., "Predrasude i stereotipi o nasilju u porodici," ["Prejudices and stereotypes about domestic violence"] in: *Pravom protiv nasilja u porodici* [With Right against Domestic Violence], Collection of Works, Women's Research Center for Education and Communication, Nis, 2002, p. 28.

[25] Vidaković, I., "Rasprostranjenost nasilja u porodici," ["Prevalence of domestic violence"] in: Nikolić-Ristanović, V. (ur.), *Porodično nasilje u Srbiji* [*Domestic Violence in Serbia*], Victimology Society of Serbia and Prometheus, Belgrade, p. 15.

[26] *Femicid – ubistva* žena *u Srbiji. Kvantitativno-narativni izveštaj 1. januar – 31. decembar 2018. godine*. [Femicide - murders of women in Serbia. Quantitative-narrative report January 1 - December 31, 2018] Available at: https://zeneprotivnasilja.net/images/pdf/FEMICID_Kvantitativno-narativni_izvestaj_za_2018_godinu.pdf.

Data from 2019 indicated 26 cases of femicide, as well as one documented case of a woman committing suicide after suffering violence for many years. In the same period, 12 attempts at femicide were recorded in a family-partner context, and one case of a woman's attempted suicide after suffering violence for many years. Most commonly, women had been killed with a knife (11), while three women with a pistol, three with a hunting rifle, and three were drowned. Two women had been beaten to death, while four women had been killed in other ways: one with a blunt object, one with an axe, one with a mace, and one burned with gasoline, while one had committed suicide by hanging, after years of violence by her husband.[27] The same report for 2020 documented 26 femicides in the family-partner context, with the perpetrators killing four more people in addition to the victims of femicide, while five more deaths of women were suspected of being femicides. In the same period, there were 13 attacks on women in a family-partner context (attempted murder, infliction of grievous bodily harm, etc.) which could also have possibly resulted in a fatal outcome.[28]

Thanks primarily to the long-term efforts of women's NGOs in Serbia to make violence against women and domestic violence more socially visible, as well as to their persistent, systematic public advocacy and lobbying for the adoption of appropriate legal solutions, a good legal framework has been established in Serbia for the prevention and combating of domestic violence and for the protection of victims. At the same time, it is necessary to state emphatically, as the first interdisciplinary research of femicides in Serbia demonstrated, that "a large number of murders of women were not prevented because there was no timely and efficient response of system institutions, primarily the prosecutor's office, to reports of domestic violence. Instead of providing the victim with all the necessary protection, assistance, and support, in some cases the social work centers minimize the danger and do not consider the circumstances that endanger the safety of the victim. In domestic violence proceedings, the court does not make a clear distinction between the victim and the perpetrator, but imposes protection measures on both the plaintiff and the defendant, implying that they are equally responsible for the violence, which only encourages the perpetrator."[29] In Serbia, violence against women, with its dramatic scope and deep dynamics, devastates the human and civilizational potential of society and "shakes" its moral structure, representing a cause for great concern.[30]

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[27] *Femicid – ubistva* žena *u Srbiji. Kvantitativno-narativni izveštaj 1. januar – 31. decembar 2019. godine*, [Femicide - murders of women in Serbia. Quantitative-narrative report January 1 - December 31, 2019.], from the Group: Zene Protiv Nasilja. [Women Against Violence]. Available at: http://www.zeneprotivnasilja.net/.

[28] *Femicid – ubistva* žena *u Srbiji. Kvantitativno-narativni izveštaj 1. januar – 31. decembar 2020. godine*. [Femicide - murders of women in Serbia. Quantitative-narrative report January 1 - December 31, 2020] Available at: https://www.womenngo.org.rs/images/femicid/FEMICID_Kvantitativno-narativni_izvestaj_2020._godina.pdf.

[29] Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji*, *op. cit.* [Social and Institutional Response to Femicide in Serbia], p. 352.

[30] Five out of six women surveyed indicated believing that violence against women is common, and more than a third that this violence is very common. More than a quarter of them indicated personally knowing a person from amongst family and friends who had been exposed to violence against women, and a similar percentage knowing a woman from their neighborhood who had been a victim of violence. Many of the women surveyed had heard of help services for vulnerable women (73% of them had at least heard of one of the three organizations mentioned); however, only a small number of women had turned to these services: after the most severe physical and/or sexual violence, only 3% of victims had contacted a women's safe house and 1% a victim support organization. *OSCE-led Survey on the Well-being and Safety of Women*, Available at: https://www.osce.org/files/f/documents/7/5/419756_1.

Firearms - a tool utilized to realize domestic violence on a global scale

It is known that the attention of all global and regional communities is focused on ending violence against women, both in the form of political demands and through action, as well as through various research programs. The 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the so-called Istanbul Convention) requires states to have an unequivocal obligation to deal with and prevent violence against women and domestic violence, relying on previous international instruments, such as the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). There has long been an urgent call to action to resolve weapons misuse in the context of violence against women. That is why in recent years there has been a convergence of the international agenda on women, peace, and security regarding small arms control, especially with the adoption of the United Nations Security Council Resolution 1325 and the Arms Trade Treaty (ATT). Namely, armed violence is one of the most frequent forms of violence among people in the societies of the modern world. Of the nearly 875 million small arms and light weapons in the world today, more than 75% are in the possession of individuals and structures other than state, military, or police forces (such as in the possession of private security companies, private armies, paramilitary groups, etc.), or hidden in homes.[31] Research demonstrates that women around the world are not exposed to the greatest risks of injury and violent death committed with small arms on the streets and battlefields, but rather – and to a degree paradoxically - in their own homes.

To gain a true understanding of this violence, and accordingly of the victims of violence and the circumstances of the violence, as well as of adequate institutional responses to violence perpetrated through the misuse of various firearms,[32] it is essential, above all, to collect and analyze data on the gender structure of domestic violence, including on violence with a fatal outcome. Violence committed through misuse of firearms, as deadly violence, is considered to be highly gender-based and gender-specific. Although men are the majority of firearms victims and perpetrators, it must be emphasized that many more women have been killed, injured, and/or intimidated by firearms in circumstances of intimate partner violence and domestic violence.[33] Thus, it is women who are the primary victims of gender-based violence perpetrated by men through the misuse of firearms. Violence committed with weapons affects women, men, girls, and boys in various, often different ways - both as perpetrators and as targets of armed violence. It is an undeniable fact that men are the predominant owners of firearms in all societies.

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[31] Bastick, M., Valasek, K., "Converging Agendas: Women, peace, security, and small arms", *Small arms survey: Women and guns*, 2014. Available at: http://www.cambridge.org/gb/academic/subjects/politics-international-relations/international-relations-and-international-organisations/small-arms-survey-2014-women-and-guns?format=PB.

[32] SALW is an acronym for "*small arms and light weapons*" . The term "firearms," found prevalently in the literature and in documents on gender-based violence or domestic violence, implies small arms. "Small Arms" denote a weapon designed for individual use. This includes, but is not limited to; revolvers and self-loading pistols, rifles, carbines, machine guns, assault rifles, and light machine guns. *Small Arms Review Conference UN*, 2006. Available at: https://www.seesac.org/f/img/File/Res/UN-Documents/UN-International-SALW-Tracing-Instrument-2005-130.pdf.

[33] WHO – *World Health Organization*. Available at: https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf.

In all cultures, the majority of violence is perpetrated by men, but men and boys are also more likely to be victims of firearms-related injuries and deaths. Namely, the culture of society in general seems to have accepted, and in a sense approved and even ingrained into the traditional model of masculinity, that a weapon is a representative symbol of the "male" pattern of behavior, often reflected in authority, privilege, prestige, and/or power. However, as evidenced by innumerable sources and studies, the presence of guns in the home increases the risk of accidents, homicides, and suicides for family members, while weapons and their misuse also play a significant role in intimidating and prolonging the abuse of women (as spouses).

Globally, as previously noted, 137 women are killed each day by a member of their family or by their intimate partners. Of the women deliberately killed in 2017, more than a third were killed by their current or former intimate partner, and every third of these femicides was committed with a firearm. In countries with high rates of gun ownership, firearms are the principal mechanism for killing and intimidating intimate partners. According to data derived from certain analyses and estimates in the United States, approximately a quarter of women are abused at some point in their lives, and women are 11 times more likely to be killed with a gun than in other countries with similar statuses and levels economic development.[34] When analyzing the most serious form of abuse, incidents that result in death, more than half of the murders of intimate partners are committed with firearms. A large proportion of homicides are related to domestic violence, which is considered a widespread problem across the total US population.[35] Also, research conducted in the USA has shown that the presence of a gun in the house increases the risk of women being killed by their intimate partners, while the mere presence of a firearm can have a frightening effect on women, incapacitating and demoralizing them from leading a normal life.[36] Moreover, according to research data, current or former intimate partners commit more than 1.5 million physical or sexual assaults in the United States each year, and one in four women states that her intimate partner has harmed her during her life. About half of female victims survive these injuries, but only about 20% of the injured seek medical help. Despite this, the emergency departments in America treat almost 250,000 patients a year, mostly women, due to injuries inflicted on them by an intimate partner. Intimate partners injured by women account for 1% of 5% of visits to hospital emergency departments due to intentional injuries.[37]

Gender inequality, tolerance of violence, the culturally accepted use of violence against women, as well as models of masculinity involving the possession of firearms, and, along with it, the tradition of weapons are factors that together create a climate in which greater risk of domestic violence is made possible, as is the normalization of the possession and use of firearms. The argument that women are at greater risk of domestic vio-

[34] *Mayors Against Illegal Guns. Guns laws and violence against women*. Available at: http://3gbwir1ummda16xrhf4do9d21bsx.wpengine.netdna-cdn.com/wp-content/uploads/2014/10/Guns-and-Violence-Against-Women-Everytown-for-Gun-Safety.pdf.

[35] Frattaroli, S., *Q&A: Domestic Violence and Guns*, John Hoppkins Bloomberg School of Public Health, 2009. Available at: https://www.jhsph.edu/news/stories/2009/frattaroli-domestic-violence.html.

[36] *Violence Against Women*, Amnesty International, 2017. Available at: https://www.amnestyusa.org/themes/womens-rights/violence-against-women/.

[37] Sorenson, S. B., Wiebe, J. D., "Weapons in the Lives of Battered Women," *American Journal of Public Health*, AJPH, 2004. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448464/.

lence, especially in cases where there is access to firearms and/or firearms possession, is supported by case studies in South Africa, the United Kingdom, and the United States. On average, based on data drawn from 104 countries and territories, it is estimated that 60,000 women and girls worldwide were violently killed each year from 2007 to 2012. These deaths account for approximately 16% of all premeditated murders committed worldwide. Countries with a high rate of fatal violence also exhibited a higher percentage of women killed with weapons. The United Nations Global Study on Women Murders and Violence Against Women in 2018 highlights that murders of women make up 58% of all murder victims.[38] The same UN study from 2019 indicates that 60% of women victims of murder were killed at the hands of intimate partners or family members. It is clear that such killings are part of a pattern that represents the deadly culmination of gender-based abuse and violence.[39] It should be emphasized once again that despite men being the more numerous victims of murder, women are, more than anyone else, the victims of murder by an intimate partner, as well as of suicide caused by intimate partner violence. In countries with low rates of female homicide, most homicides occur at home, and the perpetrators are most often intimate partners or close or extended family members. Research indicates that firearms were used in over 50% of intimate partner murders.[40]

In examining the area of Southeast Europe, which includes Serbia, it can be seen that the high prevalence of small arms and light weapons leads to violence and encourages it, which inexorably leads to the spread of crime and a greater sense of insecurity throughout the region. Authorities, supported by international organizations (the United Nations, OSCE, EU) and regional agreements (The Stability Pact for South Eastern Europe), have undertaken establishing policies and taking measures to better control the availability, trade, and use of small arms and light weapons.[41] In addition, responsible authorities are trying to create comprehensive and targeted programs to combat and reduce violence against women and girls. Yet this type of violence remains widespread and persistent.

[38] Global Study on Homicide, UNODC, 2018. Available at: https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html.

[39] Statement on International Day for the Elimination of Violence against Women, UNDOC, 2019. Available at: https://www.unodc.org/unodc/en/press/releases/2019/November/statement-on-international-day-for-the-elimination-of-violence-against-women.html.

[40] Geneva Decleration on Armed Violence and Developement, Lethal Violence against Women and Girls, 2015. Available at: http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/gbav-2015/chapter-3.html.

[41] https://www.seesac.org/SALW-Control-Roadmap/

Firearms misuse and domestic violence in Serbia - context and consequences

The connection between the weapons misuse and domestic violence and gender differences, the cultural patterns of masculinity associated with the traditional cult of weapons in this area,[42] and the insufficient social awareness of the dangers it brings to communities all contribute, among other things, to the difficulty of finding, gathering, and utilizing accurate data on the degree of domestic violence in relation to the misuse of weapons for the purpose of intimidation, threats, and, ultimately, deadly violence. Research on violence conducted over different periods of time shows that there has undoubtedly been an increase in domestic violence and violence against women in Serbia. For example, in the period from January 2009 to June 2010, the crime of domestic violence was committed against a total of 5,423 persons, of which 4,253 were females (78.4%), while in the same period there were 36 murders of women in the family or in the intimate partnership context (23 in 2009 and 13 in the first half of 2010).[43] Almost a decade later, OSCE conducted a qualitative and quantitative survey on violence against women, which included Serbia. The data show that 33% of women have experienced physical violence and its consequences from a current partner, 44% from a former partner, 43% from a non-partner, and 44% from an intimate partner/non-partner. This means that 250,000 women have been injured or have faced physical consequences of violence, and this is only based on the most severe cases that women have identified during their adult life. Ninety percent of current partners (compared to 82% in the EU) and 70% of former partners (compared to 65% in the EU) lived with women at the time of the first incident of violence (or threat of violence).[44] Given that women are the most frequent victims of domestic violence, the existence of domestic violence is a leading indicator for femicide.[45] Furthermore, in the representative analysis of the social and institutional response to femicide, the collected data from the list of court cases showed that in the period from the beginning of 2015 to the end of 2019, 65 cases of the murder of women were confirmed in Serbia. These women were mostly the victims of aggravated murder; among other things, they were deprived of their lives in a cruel and insidious manner, with reckless violent behavior, following previous abuse, out of reckless revenge, and/or other base motives.[46] In this region, the possession of firearms is embedded in the culture of masculinity, and thusly is violence, as manifestations of the traditional discourse of the culture of society, where the number and distribution of legal and illegal weapons undoubtedly have gender characteristics and implications. In this context, the analysis of domestic violence and violence against women through the misuse of firearms in Serbia, for all its specifics, scope, and consequences, necessarily deserves the attention of all - both through well-founded and specified research and

[42] The "cult of weapons," as it is known in everyday life in Serbia, implies the traditional practice of heritage as a reflection of patriarchal/traditional culture - for example, "shooting the apple" during a wedding ritual, shooting at celebrations at the birth of a male child and other customs from that patriarchal aspect of the traditional cultural circle.

[43] Babović, M., Ginić, K., Vuković, O., *Mapiranje porodičnog nasilja prema ženama u Centralnoj Srbiji* [Mapping domestic violence against women in Central Serbia], SeConS, Belgrade, 2010, p. 27.

[44] OSCE-led Survey on Violence Against Women: Serbia - Results Report, OSCE-led Survey on the Well-being and Safety of Women., p. 9.

[45] Mršević, Z., "Femicid" ["Femicide"], *Pravo i Politika*, 1, Faculty of European Legal and Political Studies, Novi Sad, 2013, p. 55–56.

[46] Konstantinović Vilić, S.,Petrušić, N., *Pokušaj femicida i femicid u Srbiji: sprečavanje i procesuiranje* [Attempted femicide and femicide in Serbia: prevention and prosecution] Citizens' organization *FemPlatz*, Pančevo, 2021. Available at: http://femplatz.org/library/publications/2021-04_Femicid_-_Pokusaj_femicida_i_femicid_u_Srbiji.pdf.

the organized action of relevant institutions, both at state level and locally. It is estimated that there are over three million weapons in Serbia, while other sources indicate a slightly smaller number - between 1.6 and 2.6 million legal and illegal weapons. According to the official data of the Ministry of Internal Affairs (MUP - Ministarstvo Unutrašnjih Poslova), there are almost a million pieces of legal weapons in Serbia. The unofficial estimate of the Ministry of the Interior is that there are between 200 and 900 thousand pieces of illegal weapons.[47] Data for the period 2012–2016 show that 21.2% of deaths due to firearms misuse were women, who also accounted for 16.6% of victims of harm due to firearms misuse. Of the total number of murder cases committed by the victim's partners with weapons, women were the victims in 91.1% of cases. The surveyed data also indicated that 44.7% of men who owned weapons had stated that they possessed weapons solely for self-defense, while private security forces held the majority of firearms (51.2%).[48]

A large number of the murders of women (67% to 80%) were committed by an intimate partner, as indicated by research.[49] This shows that women are at higher risk of violence in the family environment, within which, as already mentioned, there is often the possibility of access to weapons and/or possession of firearms. Women make up 63.2% of people killed by a family member with a firearm, compared to 36.8% of men, i.e., 55 women and 32 men were killed with a firearm by a family member between 2012 and 2016.[50] In cases of domestic violence, almost 70% of the resulting deaths are women, the perpetrator is usually a current or former partner, and approximately one in three of these femicides is committed with a firearm.[51] This preponderance of domestic violence and the consequences of the misuse of weapons in the context of violence against women have their roots in the social structure, the most noticeable element being a kind of culture of masculinity which, among other things, presupposes the possession and use of weapons.

Victims of domestic violence as a consequence of firearms misuse in Serbia

The high level of availability and prevalence of (illegal) firearms, their easy and fast procurement, and their simple use pose a huge threat in cases of violence against women and are one of the indicators of a high risk of femicide. This is supported by the fact that in the past seven years in Serbia, almost a third of women killed have been killed with firearms.[52] Research conducted in Serbia indicates that pistols and revolvers are the most commonly used firearm in armed incidents in this region, especially weapons in illegal possession. Contrary to the belief that the largest number of such incidents occurs in clashes involving criminal circles, it has been shown that weapons are very often used in family disputes or in conflicts between close friends and neighbors. In 72% of cases of firearms misuse , the victims and perpetrators were family members, friends, neighbors, or acquaintances. While victims most often come out of street clashes with

[47] *Zavisni od oružja* [Dependent on Weapons], Belgrade Center for Security Policy, BCSP, Available at: https://bezbednost.org/publikacija/zavisni-od-oruzja/.

[48] Serbia Small Arms and LightWeapons (SALW) Survey 2012–2016, *op. cit*.

[49] Konstantinović Vilić, S.,Petrušić, N., Beker, K., *op. cit*., p. 40.

[50] Božanić, D., *Gender and small arms in Serbia: Fast Facts*, SEESAC, 2019, p. 19.

[51] Men account for an overwhelming majority of firearm owners in Serbia, while women own only a minor share of firearms. In 2016, 489,499 men and 27,554 women held firearm licenses. Between 2012 and 2016, men acquired 91.3% of all licenses, compared to 8.7% acquired by women.. *Ibid*., p. 9.

[52] Lacmanović, V., *Femicid u Srbiji: potraga za podacima, odgovorom institucija i medijska slika*, [Femicide in Serbia: in search of data, the response of institutions, and media image] *op. cit*.

minor or severe injuries, the outcome of armed domestic violence is overwhelmingly death. Relevantly, half of the victims of all analyzed armed incidents were aged 18-35. Men were shown to be the perpetrators 32 times more often than women, while women were five times more likely to be victims than men. On average, one in three women victims of gender-based violence is killed with firearms, including those held legally and illegally.[53]

All the analyses and data show that men make up the absolute majority of perpetrators and victims in firearms-related incidents. Women are commonly the victims and very rarely the perpetrators of such incidents. Investigative findings warn that the presence of firearms in the house dramatically increases the risk and probability of death in incidents of domestic violence, in which a great number of victims are women. A survey on the connection between firearm ownership and the killing of women in the period from 2007 to 2012 showed that Serbia ranks 17th out of 48 observed countries in terms of the rate of these killings.[54] The culture of violence and the pronounced "cult of weapons" and the perpetrators and victims of the misuse of small arms and light weapons determine this profile of violence and do so in a very gender-specific way. Three of the femicides that took place in Serbia in 2013, 2015, and 2016 were followed by mass murder and all three cases involved the misuse of firearms - in one case the killer was a participant in the war in Slavonia in 1991, while in another it is assumed that the weapons used in the mass murder had been brought over from Slavonia during the civil war of the 1990s.[55] Possession of firearms is considered a significant facilitating factor for the manifestation of domestic violence and violence against women. Women and men often have different attitudes towards the possession and use of weapons. Women to a greater degree than men perceive the presence of firearms as a threat to their security and, therefore, for the most part, favor stricter control of access to weapons.[56] Firearms records in Serbia are an important item in analyzing the causes and consequences of violence against women in the family and in ascertaining the number of weapons among the population in Serbia. The high percentage of women amongst victims of firearms misuse indicates the high rate of lethality of firearms and is a strong argument in favor

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53 The research was conducted for the Office of South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons . This analysis included 470 entries of citizens on the"Weapons on Target" platform and in print media reports that primarily concerned the type of weapons used in incidents and (il)legal possession, and included datat on the gender and age of victims and perpetrators, their relationship, the outcome in the context of incidents, the characteristics of violence (urban or rural), the spatial environment, and the time of day and year. *Mašina*. Available at: https://www.masina.rs/?p=6338.

54 Racovita, M., *Lethal Violence against Women and Girls. Every Body Counts. Global Burden of Armed Violence*, Cambridge University, Cambridge, 2015. Available at: http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf.

55 Case 1: In Velika Ivanča, on April 9, 2013, LJ. B. killed seven women and six men with a gun, and according to the Minister of Police, he was also a participant in the war in Slavonia in 1991; Case 2: In Kanjiža, R. Š., on May 17, 2015, shot dead four women and two men with a shotgun; Case 3: In Žitište, on July 1, 2016, S.Z. killed two women and three men by shooting from a Kalashnikov, and wounded over 20. The weapon with which this mass murder was committed was in illegal possession, and it is presumed that the father of S.Z. had brought it over from Slavonia during the war of the 1990s. Lacmanović, V., op. cit., p. 45.

56 Gender and SALW Control Legislative and Policy Frameworks in SEE. Available at: https://www.seesac.org/f/docs/Gender-and-Security/Brief01-2eng_web.pdf.

of firearm control, especially in the context of domestic violence.[57] Women are also cited as the most common victims of weapons in the reports of the Women Against Violence Network, which showed that 33% of women killed in the period between 2012 and 2016 were killed with firearms in family-partnership relations. According to data from that period on deaths in family-partnership relations, 170 women were murdered, of whom 57 were killed with firearms. In 2019, the number of femicides committed with firearms decreased. During this period, every tenth woman that was killed with a gun or a hunting rifle, while in half of the cases in which women were killed with firearms, it was in the illegal possession of the perpetrator. In every third such case, femicide was preceded by earlier reports of violence committed by the perpetrator to one of the competent institutions (police, social work center, prosecutor's office) or to several institutions at the same time. Every fourth perpetrator killed himself after committing femicide, and every fifth attempted to do so.[58] In two cases of femicide, possession of weapons had been noted previously, yet despite the competent institutions reacting to the reports and confiscating weapons from the perpetrators, it did not result in the protection of two women, who were killed with other types of weapons. This crucially highlights that when assessing risk, the possession of weapons cannot be considered in isolation from other factors; all (potential) risk factors must be considered thoroughly and consistently and adequate measures must be taken in relation to them.[59] In 2020, there were 26 femicides documented in a family-partner relationship context, with the incidents in total resulting in the killing of four other victims in addition to the primary women targets, while the murders of five more women are suspected to be femicide.[60] What is especially alarming in these findings is that the number of femicides committed with firearms has increased again; in 2020, on average, every third woman killed was killed with a firearm. Firearms are a major risk factor for women who suffer violence, regardless of whether they are in legal or illegal possession of the perpetrator or the perpetrator has access to such a weapon.[61]

It is clear that domestic violence and violence against women through the misuse of weapons represents a great burden for every community, destroys its human capital, and carries with it significant social consequences. Victims of domestic violence committed with firearms, as well as all victims of domestic violence, still appear to lack quick and safe access to justice and satisfactory and adequate protection through the institutional protection system. Every country's policies, as well as public policies of all kinds, should seek to ensure that prevention and protection mechanisms are sustainable and productive, and take concrete steps to reduce the availability and misuse of firearms - both in the context of domestic violence and violence against women, and in the wider social context.

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57 Spasić, D., Tadić, M., Firearms *Abuse and Gender-Based Violence, „*Center" Association, Public Policy Research Center, Belgrade, 2017, p. 25

58 *Femicid – ubistva žena u Srbiji, Kvantitativno-narativni izveštaj 1. januar – 31. decembar 2019. godine* [Femicide - Murders of Women in Serbia, Quantitative-Narrative Report January 1 - December 31, 2019], *op. cit*.

59 *Ibid*.

60 *Femicid – ubistva žena u Srbiji, Kvantitativno-narativni izveštaj 1. januar – 31. decembar 2020. godine*, [Femicide - Murders of Women in Serbia, Quantitative-Narrative Report January 1 - December 31, 2020], *op. cit*.

61 *Ibid*.

LEGAL FRAMEWORK

Domestic violence against women and intimate partner violence have been recognized internationally as illegal and socially dangerous behaviors that violate fundamental human rights. A detailed presentation of the international legal framework for the prevention of domestic violence and violence in intimate partnerships and the protection of women from these forms of violence, as well as a thorough presentation of the international legal framework for firearm ownership and control are beyond the scope of this publication, so the international legal framework will be presented only to the extent necessary to convey the context.[62]

The legal framework for the prevention of and protection against domestic violence and the legal framework for the possession of firearms in Serbia, as well as the connection between firearms misuse and domestic violence, will be briefly presented. The aim of this work is not to offer an exhaustive and comprehensive presentation of laws and other regulations, but to provide relevant insight into the legal framework that regulates these two crucial issues, as well as their interrelationship.

Legal framework for the prevention of and protection from domestic violence

In the last 20 years, Serbia has developed a legal system for the prevention and protection of women from domestic violence and violence in intimate partnerships primarily due to the long-term efforts of women's NGOs.[63] Harmonizing the legal framework and establishing effective mechanisms for legal protection of women from violence also represents the fulfillment of international obligations that Serbia has undertaken by ratifying international documents (e.g., the UN Convention on the Elimination of All Forms of Discrimination against Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – the Istanbul Convention). In this way, the state has clearly decided to be actively engaged in preventing and eradicating violence against women, especially as violence is one of the mechanisms by which women are held in a subordinate position in relation to men, thereby reducing their ability to enjoy human rights and freedoms.

The legal framework for the prevention of and protection against domestic and intimate partnership violence in Serbia has been developing and improving in recent years, but has not yet been fully harmonized with the provisions of the Istanbul Convention.[64] Mechanisms for protection against domestic violence are regulated by the Criminal-Code,[65] the Family Law,[66] and the Law on the Prevention of Domestic Violence,[67] and these will be briefly presented in that order.

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[62] For more information on the international legal framework regarding the prevention of domestic violence and intimate partnership violence and the protection of women from domestic and intimate partnership violence at the international level, see: Legal framework (endvawnow.org), Handbook for legislation on violence against women.pdf (un.org); at the regional level – The Counci of Europe, see: GREVIO (coe.int); Regarding the control of small arms and light weapons, see: International legal framework (unodc.org); SALW Control - SEESAC.

[63] Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji* [Social and Institutional Response to Femicide in Serbia], *op. cit*.

[64] Available at: Final report on Serbia (coe.int).

[65] The Criminal Code, *Official Gazette of the Republic of Serbia (OGRS)*, no. 85/2005, 88/2005 , 107/2005, 72/2009, 11/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

[66] Family Law, *OGRS*, no. 18/2005, 72/2011 – state law, and 6/2015.

[67] The Law on the Prevention of Domestic Violence, *OGRS*, no. 94/2016.

It should be borne in mind that at the time this report was prepared, there was no valid strategic document in Serbia relevant to the prevention of and protection against gender-based violence.[68] The National Strategy for the Prevention and Suppression of Violence against Women in the Family and in Partnerships (2011) expired in 2015, and a new strategy has not been adopted. At the end of 2020, a working group was formed to draft a new strategy. The program for the protection of women from domestic violence, partnership violence, and other forms of gender-based violence in the Autonomous Province of Vojvodina for the period from 2015 to 2020 has also expired. The National Strategy for Gender Equality for the period from 2016 to 2020, supplemented by its Action Plan for the period from 2016 to 2018, also expired in 2020, and it should be emphasized that the Action Plan for 2019-2020 was never adopted. In this strategy, one of the special goals was to increase the protectiong of women from gender-based violence in the family and in partnerships.[69]

Criminal Code mechanisms for protection from domestic violence

The Criminal Code (CC) recognizes and defines the criminal offense of domestic violence (Article 194 of the CC), which has five forms. The basic form of this criminal offense (Article 194, paragraph 1 of the Criminal Code) comprises several actions - the use of violence, the threat of attack on life or body, or insolent or reckless behavior, while the recognized consequences of this form of criminal offense are the endangerment of the peace, physical integrity, or mental state of a family member. The prescribed punishment for this form of the crime of domestic violence is imprisonment, from three months to three years.

For this crime to be prescribed, it is imperative that the action has been taken against a family member, where a family member is considered to be: a spouse, one's children, ancestors of the spouses directly related by blood, extramarital partners and their children, adoptive parent or child, or a foster parent or child. Family members also include siblings, their spouses, and children, ex-spouses and their children, and parents of ex-spouses, if they live in a joint household, as well as persons who have a joint child or persons whose joint child is about to be born even though they have never lived in the same family household (Article 112, paragraph 1, item 28 of the Criminal Code). In the literature, there are criticisms of determining a family member in this way; i.e., it is pointed out that certain groups of persons are excluded from criminal law protection against domestic violence, and that this definition needs to be expanded.[70]

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[68] At the beginning of 2021.

[69] In the Evaluation of the National Action Plan (NAP) for the implementation of the Strategy for Gender Equality for the period 2016-2018, it is stated that in relation to changes in the prevailing gender patterns and the improvement of the culture of gender equality, the NAP is most effectively implemented in the field of increasing the security of women from gender-based violence, domestic violence, and partnership violence. In addition, certain shortcomings in the application of standards, quality of services, cooperation with various actors, and record keeping are listed. Read more: *Final evaluation report of the Action Plan for the implementation of the National Strategy for Gender Equality of the Republic of Serbia*, SeConS, Belgrade. Available at: https://www.secons.net/files/publications/99-publication.pdf.

[70] For example, ex-spouses who do not live in a joint household and do not have a joint child, former extra-marital partners, who may live in a joint household but are still not considered family members, and parents of extramarital partners are excluded from criminal protection against domestic violence. See for more details: Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji*, *op. cit*.

The second defined form of the criminal offense of domestic violence is stipulated by a weapon, dangerous tool, or other means suitable for seriously injuring the body or seriously impairing health being used in committing the offense (Article 194, paragraph 2 of the Criminal Code). It should be borne in mind that in this form of crime, it does not require that an injury has occurred, only that the qualifying circumstances imply the use of weapons, dangerous tools, or means that are suitable for severe injury or severe damage to the body. Recognized weapons here include both cold steel weapons and firearms, and the prescribed punishment for this form of crime is imprisonment, from six months to five years.

The third form of the criminal offense of domestic violence is defined by the committed violence causing a serious bodily injury or serious impairment of the health of a family member or by it being committed against a minor (Article 194, paragraph 3 of the Criminal Code). In this form, the qualifying circumstance is the occurrence of a serious consequence of the act (severe bodily injury or severe impairment of health), or if the act was committed against a minor (up to 18 years of age). The prescribed punishment for this form of crime is imprisonment, from two to 10 years.

The fourth form of the criminal offense of domestic violence, which is also the most serious form of this offense, is defined by the violence leading to the death of a family member (Article 194, paragraph 4 of the Criminal Code). The punishment for this most severe form of domestic violence is imprisonment, from three to 15 years.

The fifth form of the criminal offense of domestic violence is a violation of any measure of protection against domestic violence imposed by the court on the perpetrator of violence (Article 194, paragraph 5 of the Criminal Code). These measures are prescribed by the Family Law, which are presented within the section addressing family law protection from domestic violence. This form of crime is punishable by imprisonment, from three months to three years, and a fine.

It is necessary to point out that the Criminal Code does prescribe the imposition of security measures (Article 89a), and these measures may consist of the perpetrator being forbidden from approaching the injured party and from communication with the injured party. This measure can be imposed alongside other measures, such as: the perpetrator may be fined, sentenced to work in the public interest, have his/her driver's license revoked, a sentence of suspension, or a court reprimand. If the court imposes a security measure, it may prohibit the perpetrator from approaching the injured party at a defined distance, prohibit them from access to the area around the injured party's place of residence or place of work, and prohibit any further harassment of the injured party, i.e., further communication with the injured party, as these actions of the perpetrator of the crime are deemed dangerous for the injured party. The duration of the security measure is determined by the court, and it cannot be shorter than six months or longer than three years. A security measure may be lifted before the expiry of the period for which it was imposed if the reasons for which it was imposed cease to exist.

Family law protection from domestic violence

After the introduction of the criminal offense of domestic violence into criminal law in 2002, which later underwent certain amendments, the adoption of the Family Law (FL) in 2005 prescribed family law measures for protection against domestic violence, thus improving the system of legal protection to prevent and combat domestic violence.

Family law protection from domestic violence includes the prohibition of domestic violence and the recognition of the right to protection from domestic violence to family members, prescribing the measures of family law protection against domestic violence and the conditions under which these measures are determined, as well as regulating special proceedings in litigation protection from domestic violence.[71]

Domestic violence is here regarded as behavior by which one family member endangers the physical integrity, mental health, or tranquility of another family member (Article 197, paragraph 1 of the Family Law). The provisions of the Family Law do not explicitly list all cases of domestic violence, but prescribe that domestic violence is considered in particular to be: infliction or attempted infliction of bodily injury; causing fear by threatening to kill or inflict bodily injury on a family member or a person close to her/him; coercion into sexual intercourse; inducing sexual intercourse or sexual intercourse with a person under the age of 14 or with an incapacitated person; restriction of freedom of movement or communication with third parties; insult; and any other insolent, reckless, and/or malicious behavior (Article 197, paragraph 2, items 1-6 of the Family Law).

The subjects which the right to family law protection from domestic violence encompasses, i.e., defining who is considered a family member, has a broader determination than that provided in the Criminal Code. Those considered family members include: a spouse or ex-spouse; children, parents, and other blood relatives, as well as in-laws or adoptive relatives, i.e., persons bound by foster care; persons living or having lived in the same family household; extramarital partners or former extramarital partners, including persons who have been or are still in an emotional or sexual relationship with each other, or who have a joint child or one about to be born, even though they have never lived in the same family household (Art. 197 paragraph 3 of the Family Law).

Measures of family law protection against domestic violence are determined exhaustively, i.e., a total of five protection measures are prescribed: 1) issuance of orders for eviction from a family apartment or house, regardless of the right of ownership, i.e., lease of real estate; 2) issuing an order for moving into a family apartment or house, regardless of the right of ownership, i.e., lease of real estate; 3) placing a ban on the approaching of a family member at a certain distance; 4) prohibition of access to the area around the place of residence or place of work of a family member; and 5) prohibition of further harassment of a family member (Article 198, paragraph 2 of the Family Law).

Furthermore, it is prescribed that the court may order against a family member who has committed violence, one or more measures of protection from domestic violence, which temporarily prohibits or restricts the maintenance of personal relations with another family member (Article 198, paragraph 1 of the Family Law). The measure of protection against domestic violence may last for a maximum of one year (Article 198, paragraph 3 of the Family Law), yet may be extended until the reasons for which the measure was imposed cease to exist (Article 199 of the Family Law), but may cease before the expiration of the time for which it was determined if the reasons for which the measure was determined cease to exist (Article 200 of the Family Law).

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[71] For more details please see: Petrušić, N., Konstantinović Vilić, S., *Family Law Protection from Domestic Violence in the Judicial Practice of Serbia,* Autonomous Women's Centre and Women's Research Centre for Education and Communication, Belgrade and Niš, 2010. Available at: http://www.zicni.org.rs/wp-content/uploads/2017/12/Porodicno-pravna-zastita-od-nasilja-u-porodici-u-pravosudnoj-praksi-Srbije.pdf.

The purpose of protection measures against domestic violence is to prevent new acts of domestic violence, as well as to protect the physical and mental integrity, health, and safety of a family member who has been exposed to violence, which is why it is not prescribed how many times the protection measure can be extended – it may be done indefinitely until the reasons for which it was pronounced cease to exist. A lawsuit for determining a measure of protection against domestic violence and a lawsuit for extending the duration of a measure of protection determined by the court, in addition to being initiated by the family member against whom the violence was committed and her/his legal representative, may be initiated by the public prosecutor or relevant guardianship authority (Article 284, paragraph 2 of the Family Law).

Combating domestic violence - prevention and protection

Upon ratifying the Istanbul Convention,[72] Serbia was obligated to harmonize its legislation, i.e., to improve the system of prevention of and protection against domestic violence and violence against women.[73] Towards this end, the Law on the Prevention of Domestic Violence (LPDV) was adopted, the aim of which is to regulate in a general and singular manner the actions of state bodies regarding the prevention of and protection from domestic violence (Article 2 of the Law on the Prevention of Domestic Violence).[74] This law applies to cases of domestic violence, but also to all criminal offenses of gender-based violence, which are listed in the law (Article 4, paragraph 1 of the Law on the Prevention of Domestic Violence).[75]

The law determines the competent bodies and institutions for the prevention of domestic violence and the provision of protection and support to victims of domestic violence; namely, the police, the public prosecutor's offices, courts of general jurisdiction, misdemeanor courts, and centers for social work (Articles 7-11 of the LPDV) Their roles and obligations are also determined by this law. The competent police officer is obliged to assess the risk of imminent danger of domestic violence on the basis of collected information, immediately or as soon as possible (Articles 15 and 16 of the LPDV). It is prescribed that the risk assessment is based on available notifications and takes place as soon as possible (Article 16, paragraph 1 of the LPDV). The risk assessment shall take into account, inter alia, whether the potential perpetrator has committed domestic violence previously or immediately before the risk assessment and is prepared to repeat it, whether he has threatened to kill or commit suicide, whether he possesses a weapon, whether the possible perpetrator has had an urgent measure or a security measure of protection against domestic violence imposed on him/her, whether the victim experi-

[72] Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, *OGRS* - International Agreements, no. 12/13.

[73] This includes, among other things, changes in criminal legislation and the establishment of state responsibility for the provision and adequate functioning of general and specialized services. Read more: Brankovic, Biljana, *News from the Future: the Istanbul Convention and Responsibility of the State for Combating Violence against Women; General Services – Operationalisation of Due Diligence Principle (baseline survey)*, UNDP, Belgrade, 2013.

[74] The Law on the Prevention of Domestic Violence, *op. cit.*

[75] The following are those criminal offenses: persecution (Article 138a of the Criminal Code), rape (Art. 178, CC), sexual intercourse with an incapacitated person (Art. 179, CC), sexual intercourse with a child (Art. 180, CC), abuse of position (Art. 181, CC), illicit sexual acts (Art. 182, CC), sexual harassment (Art. 182a, CC), assisting and/or facilitating illegal sexual intercourse (Art. 183, CC), showing, obtaining, and/or possessing pornographic material of minors and exploiting minors for pornography (Art. 185, CC), inducing a child to attend sexual acts (Art. 185a, CC), neglect and abuse of a minor (Art. 193, CC), domestic violence (Art. 194, CC), failure to provide alimony (Art. 195, CC), violation of family obligations (Art. 196, CC), incest (Art. 197, CC), trafficking in human beings (Art. 388, CC) and other criminal offenses, if the criminal offense is a consequence of violence in families.

ences fear, and how the officer assesses the risk of violence (Article 16, paragraph 2 of the LPDV).[76]

The competent police officer is authorized to issue an order imposing an urgent measure on the perpetrator if he/she determines that there is an immediate danger of violence. This can be a measure of the temporary removal of the perpetrator from a residence and a measure of temporary prohibition of the perpetrator from contacting the victim of violence and approaching her/him (Art. 17, LPDV), which may last up to 48 hours upon its delivery, and which the court may extend for another 30 days (Art. 21, LPDV). After receiving the notification, risk assessment, and order, the basic public prosecutor evaluates the risk assessment of the competent police officer and if he/she determines there is an imminent danger of domestic violence, he/she is obliged to submit a proposal to the basic court to extend the emergency measure within 24 hours of receiving the order. (Articles 18 and 19, LPDV). Any violation of such urgent measures is incriminated as a misdemeanor, and a prison sentence of up to 60 days is prescribed (Article 36, LPDV).

This law stipulates that cooperation in the prevention of domestic violence it to take place through designated liaison officers and coordination and cooperation groups (CCG). These liaison officers are appointed in each police administration, in the basic and higher Public Prosecutor's Offices (HPPO), in the basic and higher courts, and in the centers for social work. Their task is to exchange information and data relevant for the prevention of domestic violence and other acts of gender-based violence, as well as for the provision of protection and support to victims (Article 24 of the LCP). Also, it is prescribed that a group for coordination and cooperation shall be formed in the area of each basic public prosecutor's office (BPPO), which is to consist of representatives of the basic public prosecutor's offices, police administrations, and centers for social work (Articles 25 and 26, LPDV). The task of the coordination and cooperation groups is, among other things, the development of an individual plan for the protection and support of each victim (Art. 25, para. 2, LPDV). Protection and support for victims of domestic violence and victims of gender-based violence includes: the right to information about bodies, legal entities, and associations that provide protection and support to victims of domestic violence, as well as the right to free legal aid and individual protection and a support plan for victims, containing comprehensive and effective measures of protection and support for each victim, as well as for other family members who need support. The victim should also participate in the development of an individual plan for his/her protection if he/she is willing and if his/her emotional and physical condition allows it (Articles 29–31, LPDV). Risk assessment and development of an individual victim protection and support plan are the most important and effective measures for the safety and protection of the victim.

It is prescribed that records of all cases of domestic violence be kept, including of all procedures and measures (Articles 32-34, LPDV). The law prescribes in detail which state bodies and institutions are to keep records (police administration, basic courts, basic public prosecutor's offices, centers for social work) and which data the records should contain. All records make up the Central Record on Cases of Domestic Violence kept by the Republic Prosecutor's Office in electronic form. However, it should be em-

[76] As well as whether the possible perpetrator is mentally ill or abuses psychoactive substances, and whether there is a conflict over custody of the child or about the manner of maintaining personal relations between the child and the parent who is the possible perpetrator.

phasized that monitoring the implementation of this law has proven very difficult, as there is no publicly available, reliable, and consolidated data, and the Central Register of Domestic Violence Cases is not accessible, i.e., not publicly available.

Relevant ministries and bodies responsible for the prevention and protection against violence, following the adoption of the Law on the Prevention of Domestic Violence, have adopted numerous internal documents (instructions, guidelines) with the aim of more effectively implementing this law: the Republic Public Prosecutor issued the General Mandatory Instruction on the formation of groups for coordination and cooperation and the manner of collecting and submitting data on the application of the law (2017); the Ministry of Labor, Employment, and Veterans and Social Affairs (MLEVSA) has issued an Instruction on the implementation of the obligations of the centers for social work in the application of the Law on the Prevention of Domestic Violence (2017); the Ministry of the Interior has adopted a Risk Assessment Instrument for dealing with cases of domestic violence, which also contains a Risk List; while the Ministry of Justice, in cooperation with the Autonomous Women's Centre, has developed Gender-sensitive Guidelines for the conduct of public prosecutors, police officers, and employees of social work centers in cases of domestic violence.[77]

Legal framework for the possession (keeping, carrying, use) of firearms

In addition to the ratifying of international agreements at the international level, which have thereby become part of Serbia's domestic legislation, documents at the Council of Europe level are important for the issue of firearms possession, as well as for the process of joining the European Union, i.e., the obligation to harmonize the national legal system with the EU acquis. The international legal framework relating to the possession of firearms is here presented very briefly, while the national legal framework is presented in some detail.

The Arms Trade Treaty, adopted under the auspices of the United Nations, was ratified by the Republic of Serbia in 2014.[78] The aim of this agreement was to establish a framework of rules, i.e., the highest possible common international standards, regarding the international trade in conventional arms, so as to prevent and eradicate the illicit trade in these weapons and to prevent their circulation. Within this treaty, individual states are left with a wide degree of freedom in assessing and regulating issues relevant to the trade, procurement, possession, and storage of weapons. Also relevant, in addition to this treaty, are the provisions of UN Security Council Resolution 1325, which does not deal directly with armaments but is important for women's greater participation in decision-making in this area, as well as for the security and protection of women from violence in both armed conflicts and post-conflict periods.[79]

Also important is the Roadmap for a Sustainable Solution to the Illegal Possession, Misuse, and Trafficking of Small Arms and Light Weapons and Their Ammunition in the Western Balkans by 2024 (2018).[80] The vision of the Roadmap is the Western Balkans as a

[77] Cited according to: Konstantinović Vilić, S., Petrušić, N., Beker, K., *Društveni i institucionalni odgovor na femicid u Srbiji* [Social and institutional response to femicide in Serbia], op. cit.

[78] The Law on the Ratification of the Arms Trade Treaty, *OGRS*, no. 14/2014.

[79] Available at: http://mzprs.org/component/bdthemes_shortcodes/?view=download&id=1ae4c90eadcab8a8832a4c66ac82db.

[80] The document is available at: https://www.seesac.org/f/docs/publications-salw-control-roadmap/Regional-Roadmap-for-a-sustainable-solution-to-the.pdf.

safer region, where comprehensive and sustainable mechanisms, fully harmonized with the European Union and other international standards, are in place to identify, prevent, prosecute, and control the illegal possession, misuse and trafficking of firearms, ammunition and explosives. Among the set goals are the harmonization of arms control legislation with international standards, as well as a significant reduction in the supply, demand, and misuse of firearms through raising awareness of the dangers of firearms, promoting arms control and better information, and significantly reducing the number of illegally possessed weapons. In this document, special emphasis is placed on the promotion of gender equality, and it relies on the gender analysis of the control of small arms and light weapons/firearms in the region,[81] highlighting the key recommendations of the gender analysis.[82] Therefore, some of the sub-goals of the Roadmap are: the full integration of gender and age perspectives in small arms and light weapons/firearms control policies, ensuring the substantial participation of women in small arms and light weapons/firearms control, and raising awareness and reducing firearms misuse in cases of violence against women, domestic violence, and other forms of gender-based violence.

The Roadmap also lists some key issues identified in the Western Balkans related to the inconsistent and non-standardized collection of accurate, up-to-date, and comprehensive information on all aspects of arms control. These data are often not detailed enough, especially when it comes to classifying data by gender and age. Institutional coordination is generally inadequately established, which prevents the development of evidence-based policies, a necessary basis for an effective and efficient response to the dangers of small arms and light weapons/firearms, while data from existing records are often not comparable. In addition, it is estimated that a great number of weapons are still in the illegal possession of citizens (made most obvious by cases of traditional shooting at various celebrations), something especially critical in the misuse of firearms in cases of gender-based violence and the need to solve these problems.

At the level of the European Union, there are several relevant directives – Directive 91/477/EEC,[83] Directive 2008/51/EC,[84] Directive 2017/853,[85] as well as the European Union Strategy Against Illicit Firearms, Small Arms, and Light Weapons, and their Ammunition (2018).[86] The directives prescribe the conditions for the acquisition, possession, and carrying of weapons. Among other things, it is stipulated that states may allow the acquisition and possession of weapons classified in category "B,"[87] to persons over 18 years of age (exceptions exist for hunting and shooting) who have good reason for such engagement and who are unlikely to be dangerous to themselves, to others, or to the public order and peace (e.g., an indicator of such danger is a previous conviction for

[81] Gender and small arms and light weapons in Southeast Europe, SEESAC, 2016. Available at: https://www.seesac.org/f/docs/Armed-Violence/Gender_and_SALW_publication_eng-web.pdf.

[82] A Practical Tool for Integrating the Gender Perspective in SALW Legislative and Policy Framework, SEESAC, 2016. Available at: http://www.seesac.org/f/docs/Gender-and-Security/Gender_and_SALW_Toolkit_eng.pdf.

[83] The text of the directive is available at: EUR-Lex - 31991L0477 - EN - EUR-Lex (europa.eu).

[84] The text of the directive is available at: Direktiva 2008/51/EZ Europskog parlamenta i Vijeća od 21. svibnja 2008. o izmjeni Direktive Vijeća 91/477/EEZ o nadzoru nabave i posjedovanja oružja (europa.eu).

[85] The text of the directive is available at: EUR-Lex - 32017L0853 - EN - EUR-Lex (europa.eu).

[86] The text of the directive is available at: https://data.consilium.europa.eu/doc/document/ST-13581-2018-INIT/en/pdf.

[87] Category "B" comprises all firearms (short, long, semi-automatic, repeating, single-shot, double-barreled, revolvers, and smooth-barreled), except those from categories "A" and "C" and convertible weapons.

a violent crime committed with intent).[88] In addition, it is stipulated that states should monitor the fulfillment of conditions for the acquisition and possession of weapons during the entire period the permit covers, as well as to periodically examine licenses for the possession of firearms at intervals not exceeding five years.[89]

In 2019, the Republic of Serbia adopted the Small Arms and Light Weapons Control Strategy for the period 2019-2024, along with the Action Plan for the implementation of the strategy for 2019-2020.[90] The strategy is based on respecting international law, in particular humanitarian law, and on respecting human rights, the gender perspective, and the principles of democracy as part of an overall effort to reduce and control small arms and light weapons, ammunition, and explosives for civilian use. It is highly pertinent that this strategic document clearly indicates the gender dimension in the possession, use, misuse, and effects of small arms and light weapons, and states that special attention shall be paid to the implementation of preventive measures to prevent violence against women, domestic violence, and other forms of gender-based violence, including informing and raising the awareness of citizens about the connection between gender-based violence and the possession of small arms and light weapons.[91] It is additionally important that the Strategy recognizes the potential of civil society and expresses readiness to intensify cooperation with civil society organizations. In the Action Plan (AP) for the implementation of the strategy for the period 2019-2020, within measure 5.4. – Incorporating and adhering to gender-based principles in the implementation of the AP - two activities were planned: raising awareness and reducing firearms misuse in cases of violence against women, domestic violence, and other forms of gender-based violence (activity 5.4.1); and ensuring the substantial participation of women in controlling small and small arms (activity 5.4.2). Both activities were planned to be implemented continuously from the first quarter of 2019. However, by March 2021, no report on the implementation of the first action plan was available, nor has an action plan been adopted for the next period of validity of the strategy.

Until the end of 2020, the National Action Plan for the implementation of Resolution 1325 of the United Nations Security Council - Women, Peace, and Security for the period 2017-2020 was in force in Serbia.[92] In the chapter related to protection, Special Goal 4 is contained: Improved normative conditions and institutional capacities for the accessible and effective protection of women. Activities recognized towards achieving this goal, inter alia, were: the introduction of a gender perspective in all public policies in the field of defense and security in order to improve the protection and security of women (activity 4.1); improving the efficiency of the security system and all other actors to take the necessary legislative and other measures to fully prevent, investigate, and punish acts of violence against women in conflict, post-conflict recovery, crises, and emergencies (activity 4.3); and to take the necessary measures to seize firearms or impose restrictions on access to firearms for perpetrators of violence (activity 4.5). However, a report on the implementation of this action plan is not yet available, and the impact of the planned measures cannot be analyzed or assessed.

[88] Article 1. para. 6 of Directive 2017/853/EC.

[89] *Ibid*., Art. 1. para. 6. and 7.

[90] The Small Arms and Light Weapons Control Strategy for the period 2019-2024, and the Action Plan for the implementation of the strategy for 2019-2020, *OGRS*, no. 44/2019.

[91] *Ibid*., Measure 5.5.

[92] The National Action Plan for the implementation of Resolution 1325 of the United Nations Security Council - Women, Peace, and Security for the period 2017-2020). Availabe at: Zakljucak Vlade o usvajanju NAP za primenu R_1325 SB UN u R_Srbiji.pdf (mod.gov.rs).

In Serbia, the Law on Weapons and Ammunition was adopted in 2015; it has been amended twice after its adoption.[93] This is the fundamental law governing the acquisition, possession, and carrying of weapons, while certain relevant provisions are also found in the Law on Police[94] and in the Law on Wild Animals and Hunting.[95] As already mentioned, in Serbia, weapons classified in category "B" can be procured, kept, and carried on the basis of a document issued by the competent authority,[96] and a permit can be obtained by persons who meet the legally prescribed conditions. It is prescribed that weapons from category "B" can be procured and held by natural persons who are: adults; citizens of the Republic of Serbia or permanently residing foreigners; medically fit to hold and carry a weapon; who have not been convicted of crimes against life and limb, against freedoms and rights of man and citizens, against sexual freedom, against marriage and family, against property, against human health, against the general security of people and property, against the constitutional order and security of the Republic of Serbia, against state bodies, against public order and peace, against humanity and other goods protected by international law, or who are not in the process of having proceedings conducted against them for any of the aforementioned criminal offenses; who have not been legally punished in the last four years for offenses in the field of public order and peace for which a prison sentence is prescribed and for offenses under the Law on Weapons and Ammunition; who, on the basis of security and operational checks on the place of residence or stay and place of work, do not indicate by their behavior that they will pose a danger to themselves, others, and public order and peace; who are trained to handle firearms; who have a justifiable reason for obtaining a firearm; and who have conditions for safe storage and keeping of weapons.[97] Regarding weapons for personal security from category "B," the reason for acquisition and possession of weapons is deemed justified if the person provides reasonable evidence that his personal safety could be endangered due to the nature of work or other circumstances, while for hunting weapons it is necessary to submit proof of eligibility and possession of a hunting card and for sports weapons a certificate of active membership in a sport shooting organization.

Although the validity of the license, i.e., the weapon certificate, is not limited in time, a natural person who has been approved to acquire a weapon, i.e. issued a weapon certificate, must submit a new certificate to the competent authority every five years, i.e., after the expiration of the medical certificate, which may not be older than one month.[98] In addition, it is prescribed that the competent authority is obliged to inform the selected doctor of the natural person about this development immediately upon the issuance of the weapon permit, while whenever the selected doctor of the natural person holding and carrying the weapon becomes aware of a relevant change in the health condition of the person possessing a permit for holding and carrying weapons, the doctor must immediately inform the nearest organizational unit of the Ministry of the Interior.[99] In addition, it is prescribed that the competent authority, ex officio, takes into account whether the natural person holding the weapon meets all the prescribed conditions, and if any of the prescribed conditions cease to exist, the competent authority shall issue a decision to confiscate all weapons permits, weapons, and ammunition.[100]

[93] The Law on Weapons and Ammunition, *OGRS*, no. 20/2015, 10/2019, and 20/2020.
[94] The Law on Police, *OGRS*, no. 6/2016, 24/2018, and 87/2018.
[95] The Law on Wild Animals and Hunting, *OGRS*, no. 18/2010 and 95/2018.
[96] Art. 5. Para. 1. The Law on Weapons and Ammunition, *op. cit*.
[97] *Ibid*., Art. 11.
[98] *Ibid*., Art 12. Para. 5.
[99] *Ibid*., Art. 12. Para. 7. and 8.
[100] *Ibid*., Art. 28. Para. 1. and 2.

It should be borne in mind that carrying a weapon in a public place is forbidden, except in prescribed cases. Among other reasons, this permit can be issued to a person who has a registered weapon if the person meets all the aforementioned prescribed conditions, and including one additional condition - it is necessary that it be shown that his/her personal safety is significantly endangered or could be endangered to such an extent that carrying weapons is seen as reasonable for the purposes of personal safety.[101] A person who holds a permit to carry a weapon may not make the weapon visible to other persons in a public place, i.e., he must not carry a weapon in a manner that causes disturbance to other persons,[102] and the validity of this permit is limited to five years.[103] The law stipulates that the owner of a weapon is obliged to handle the weapon carefully and to keep it conscientiously, so that it does not come into the possession of unauthorized persons and does not endanger the safety of people and objects.[104]

Regarding the conditions that a natural person must meet for the acquisition, possession, and carrying of weapons, it should be highlighted that security and operational checks shall be performed in accordance with the provisions of the Law on Police.[105] Firstly, the relevant data from the official records of the Ministry of the Interior are reviewed, followed by an operational-field check. As a rule, this security check is to be performed according to places of residence, stay, employment, education, and any other places where the person being checked passes, in the following manner: by a direct conversation with the person being checked; direct observation of a police officer performing the security check; direct conversations with other persons at the discretion of the police officer conducting the inspection; insight into public data, official records, and data collections kept by competent authorities and institutions; checking data on the basis of international police cooperation; and, if necessary, checking data through other relevant security services, in accordance with the law.

The presented legal framework refers to weapons that are in the legal possession of natural persons, but it should be borne in mind that in Serbia, the possession of illegal weapons is a serious problem. At the international level, the problem of illegal possession and carrying of weapons has also been widely recognized,[106] which is reflected in the Roadmap for a Sustainable Solution to the Illegal Possession, Misuse and Trafficking of Small Arms and Light Weapons (SALW) and their Ammunition in the Western Balkans by 2024, as well as the Control Strategy for small arms and light weapons in the Republic of Serbia. Both of these documents set goals related to reducing the estimated number of firearms in illegal possession, i.e., reducing the threat of illegal possession and misuse of small arms and light weapons, ammunition, and explosives for civilian use.

In the period from 2015 to 2018, several legalization procedures were carried out in Serbia, during which thousands of weapons were handed over and thousands of requests for registration of weapons were submitted, which is one of the successful methods for reducing weapons in the illegal possession of citizens.[107]

[101] *Ibid*., Art. 25. Para. 3.
[102] *Ibid*., Art. 25. Para. 9.
[103] *Ibid*., Art. 25. Par. 10.
[104] *Ibid*., Art. 32. Para. 1.
[105] Article 102. Para. 4. item 7, Art. 141 Para. 3. and Art. 144 of the Law on Police, op. cit.
[106] For more detail, see: Stevanović Govedarica, G., *Small arms and light weapons, gender-based violence, and domestic violence: an analysis of the normative framework and practice*, UNDP, 2020. Available at: Reduce risk -Increase safety – Towards ending SALW misuse in domestic violence context (seesac.org).
[107] *Ibid*.

The Criminal Code of the Republic of Serbia recognizes numerous criminal offenses in which the use of weapons or the threat of the use of weapons is a qualifying/aggravating circumstance, which entails a more severe punishment.[108] These include, but are not limited to: criminal offenses of light bodily injury (Article 122 of the Criminal Code); endangerment with dangerous tools during a fight or quarrel (Art. 124, CC); aggravated theft (Art. 204, CC); causing general danger (Art. 278, CC); preventing an official from performing an official action (Art. 322, CC); attack on an official in the performance of official duties (Art. 323, CC); obstruction of justice (Art. 336b, CC); attack on a lawyer (Art. 336c, CC); making and procuring weapons and means intended for committing a criminal offense (Art. 347, CC); the illicit production, possession, carrying, or trafficking of weapons and explosives (Art. 348, CC), etc. As previously stated, the use of weapons is a qualifying/aggravating circumstance in the criminal offense of domestic violence (Art. 194, Para 2., CC).

Although exceeding the defined scope of this research, it must be pointed out that in Serbia there is additional legislation regarding the possession, carrying, and use of service weapons, i.e., that prescribes which persons and for which purposes/positions they may carry and use weapons. In addition to the Law on Weapons and Ammunition, this issue is also regulated by the Law on Police, the Law on Wildlife and Hunting, the Law on Forests,[109] the Law on Detective Activity,[110] and the Law on Private Security.[111] Beyond these, there are other regulations pertaining to officials of various state-level and other bodies which contain special provisions on the carrying of service weapons, primarily related to conditions for employment, i.e., recruitment, as is the case with police officers, members of the Serbian Army, members of the Security Information Agency, the Military Security Agency, the Military Intelligence Agency, customs officers, and members of the security service of the Directorate for the Execution of Criminal Sanctions and of the Judicial Guard.[112]

Legal framework - the connection between firearms misuse and domestic violence in Serbia

The connection between the misuse of firearms and violence in general and in particular between domestic violence and violence against women has been confirmed by a substantial bedrock of research, some of which is presented in the theoretical part of this research.

The examination of the national legal framework regarding domestic violence and the acquisition, possession, and carrying of weapons has clearly shown that there have been improvements in laws and regulations in both areas, yet certain gaps remain. Although the gender dimension of firearms-enabled violence is indisputable, the connection between firearms misuse and domestic violence in Serbia is not sufficiently recognized and is not adequately regulated. While it is a positive sign that the Republic of Serbia has engaged in more detailed and restrictive regulations regarding the acquisition, possession, and carrying of weapons, it is still necessary that Serbia connect and improve these laws in the context of domestic violence, intimate partner violence, and other forms of gender-based violence.

[108] The Criminal Code of the Republic of Serbia, *op. cit*.
[109] The Law on Forests, *OGRS*, no. 30/2010, 93/2012, 89/2015, and 95/2018.
[110] The Law on Detective Activity, *OGRS*, no. 104/2013 and 87/2018.
[111] The Law on Private Security, *OGRS*, no. 104/2013, 42/2015, and 87/2018.
[112] More details in: Stevanović Govedarica, G., *Small arms and light weapons, gender-based violence, and domestic violence: an analysis of the normative framework and practice*, op. cit.

Firstly, regarding the prescribed conditions for the acquisition, possession, and carrying of weapons, it is prescribed that a person must demonstrate justifiable reasons for obtaining a firearms license. However, this standard has not been delineated further, meaning it often falls on individual police officers to assess whether and when a natural person has justified their reasons for obtaining a weapon to a sufficient degree. Bearing in mind the "culture of weapons" ingrained in Serbia, this matter should be regulated in greater detail, especially given the high probability that the reasons provided by a natural person will be considered justified without further, appropriate detailed consideration and verification.

Furthermore, among the conditions that a natural person should fulfill, it is prescribed that he/she has not been sentenced to imprisonment for crimes: against life and body; against freedoms and the rights of man and citizen; against sexual freedom; against marriage and family; against property; against human health; against the general security of people and property; against the constitutional order and the security of the Republic of Serbia; against state bodies; against public order and peace; and against humanity and other rights protected by international law or against persons for criminal offenses. It is also stipulated that he/she has not been legally punished in the last four years for offenses in the field of public order and peace for which a prison sentence is prescribed and for offenses under the Law on Weapons and Ammunition. However, the conditions as established in their current form regarding the listed criminal offenses and misdemeanors that would preclude a person from obtaining a weapon permit, fail to include a provision precluding persons on whom urgent measures have been imposed under the Law on the Prevention of Domestic Violence, persons on whom measures have been imposed to protect against violence under the Family Law, and persons against who no criminal proceedings have been instituted , but which may be pending, due only to the application of the institute of the postponement of criminal prosecution under Article 283 of the Code of Criminal Procedure (CCP).[113]

Additionally, among the conditions for obtaining a permit for the acquisition, possession, and carrying of weapons, it is prescribed that the permit may be issued to persons who, based on security and operational checks at the place of residence, stay, or place of work, do show an indication that they will not pose a danger to themselves or others and or to the public order and peace. While this stipulation is positive, its essential flaw is that it does not explicitly prescribe that the police officers who perform security and operational checks are obliged to obtain opinions of family members on the character and behavior of a family member seeking a firearms license, or their opinions on a weapon being kept in the household, or on mutual family relations. It is necessary to ensure that any interview with family members be conducted without the presence of the person requesting a firearms license, while also respecting the highest level of confidentiality. There is currently no obligation to inform ex-partners/spouses that a person has obtained a permit to acquire, keep, or carry a weapon, although research clearly shows that one of the most critical moments jeopardizing the safety of victims and one of the highest indicators for a risk of death is when the victim leaves the perpetrator.

The obligation to inform the police and the chosen doctor of the natural person who has sought and received a permit is both relevant and indeed stipulated, i.e., it is prescribed that the competent authority is obliged to inform the chosen doctor of the natural person about their being issued the weapon permit immediately upon its issuance, while

[113] The Code of Criminal Procedure, *OGRS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019 and 27/2021 – Decision of the Constitutional Court (C.C).

the chosen doctor is required, upon finding out about any relevant change in the health condition of the natural person who holds and carries a weapon that might affect his/her health ability to hold and carry a weapon, to immediately inform the nearest organizational unit of the Ministry of the Interior. However, this provision, too, is lacking further delineation, raising a number of questions. For example, amongst numerous similar considerations, what happens in situations where a person does not have a chosen doctor? Is the chosen doctor obliged to inform the patient about the duty of notification he has under this law, especially bearing in mind the relationship of confidentiality between the doctor and the patient? Why are specialist doctors (e.g., psychiatrists) and other medical staff excluded from this obligation? Moreover, the question of the connection of private health care institutions, which are not part of the state health care system, and yet in which it is possible to perform a health examination for holding and carrying firearms, could also be relevantly raised.

As already mentioned, for a certain number of criminal offenses, committing them through the misuse of weapons or the threat of a weapon is prescribed as a qualified, form of the basic offense. However, it should be emphasized that the misuse of weapons is not prescribed as a qualifying circumstance in any form of the crime of murder, which is extremely pertinent in cases of femicide, or in crimes against sexual freedom.

The Special Protocol on the Conduct of Police Officers in Cases of Domestic Violence against Women considers firearms to be a risk factor and prescribes the procedure for checking the possession of firearms in reporting violence, as well as details the procedure to be followed regarding firearms (legal and illegal) when police go to the scene of events, where the presence of weapons is specifically stated as one of the most common risks: *the perpetrator of violence has access to, uses or threatens to use firearms*.[114] It is further prescribed that it is to be determined at the scene whether a firearm has been misused or exists. If there is one, the firearm is to be confiscated with a certificate for the temporary seizure of items, to be followed up by a proposal to initiate the appropriate procedure for the confiscation of the weapon. In the case of the illegal possession of a firearm being discovered, it is necessary that measures be taken for its finding and confiscation, in accordance with the provisions of the CCP. As already mentioned, upon the adoption of the Law on the Prevention of Domestic Violence, the possession of firearms has been legally prescribed as a risk factor, in the section on risk assessment. Although this provides a solid framework for dealing with cases of domestic violence committed through the misuse of firearms or the threat of the use of such weapons, certain omissions have been identified in practice, for which attempts at correction have been made through more detailed instructions for police officers.[115]

Also, despite the clear connection between domestic violence and violence against women and the possession/misuse of firearms, no special measure has yet been prescribed that would mandate the obligatory confiscation of firearms from a person re-

[114] Available at: https://iskljucinasilje.rs/wp-content/uploads/2016/09/Poseban-protokol-o-postupanju-policijskih-slu%C5%BEbenika-u-slu%C4%8Dajevima-nasilja-nad-%C5%BEenama-u-porodici-i-u-partnerskim-odnosima.pdf.

[115] For example, in the proceedings conducted by the Protector of Citizens, it was found that some police administrations had been failing to check on possession/access to firearms entirely, while some police administrations had been checking only firearms in legal possession. Upon receiving relevant recommendations, the Ministry of the Interior sent guidelines regarding relevant actions to all police administrations and organizational units of the Police Directorate, in accordance with the recommendations of the Protector of Citizens. Listed according to: Stevanović Govedarica G., *Small arms and light weapons, gender-based violence, and domestic violence: an analysis of the normative framework and practice*, op. cit.

ported for domestic violence, except in cases where firearms have been recognized as a means of executing a criminal offense, though the practice of police officers shows that weapons are being confiscated in accordance with internal procedures.

Another great challenge is that Serbia has yet to establish a single, comprehensive, and cohesive record of cases of domestic violence, violence against women, and gender-based violence. In this sense, it is not possible to monitor the prevalence of firearms misuse or the threat of their misuse in the context of domestic violence and other forms of gender-based violence, and especially to examine the institutional response and outcomes of cases of violence in which firearms were seized or misused.

Finally, it should be borne in mind that research shows that certain professions, whose members carry firearms due to the nature of their work, especially the police profession, create conditions that can favor patterns of violent behavior and contribute to greater difficulty in identifying, preventing, and sanctioning such conduct.[116]

Recommendations issued to the Republic of Serbia – CEDAW and GREVIO

The Republic of Serbia is a signatory to almost all universal human rights treaties and many regional ones. As part of its commitments, Serbia regularly reports to international committees on the implementation of the conventions. During 2019, the CEDAW Committee adopted the Concluding Observations on the Fourth Periodic Report of the Republic of Serbia on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women,[117] while the GREVIO Group (Group of Experts on Action against Violence against Women and Domestic Violence) published in 2020 the First Evaluation Report of Serbia on the Implementation of the Council of Europe Convention on Combating Violence against Women and Domestic Violence.[118]

While it is not the intention of this study to provide a detailed presentation of the recommendations addressed to Serbia, it should be noted that the CEDAW Committee expressed concern, inter alia, about the frequent misuse of firearms in domestic violence and intimate partner violence. For this reason, it recommended that Serbia revise its relevant laws and policies, including those related to the possession and handling of firearms, in order to more effectively prevent and combat violence against women and protect victims of violence.

The GREVIO group, in addition to numerous recommendations addressed to Serbia with the aim of improving the prevention of and protection against domestic violence and violence against women, in addressing risk assessment, indicates that no information was available on the ways in which coordination and cooperation groups assess whether perpetrators have access to firearms, noting that in Serbia there is a high risk that perpetrators have access to firearms, given its recent history.

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[116] For more detail, see: Đan, Aurelija, *Members of the police as perpetrators of partner violence,* Belgrade Center for Security Policy, Belgrade. Available at: pripadnici_policije_kao_ucinioci_partnerskog_nasil.pdf (bezbednost.org); Đan, A., *Domestic violence with an official badge,* Belgrade Center for Security Policy, Belgrade, October 2013. Available at: posledice_partnerskog_nasilja_koje_ine_pripadnici_.pdf (bezbednost.org).

[117] CEDAW/C/SRB/CO/4, March 8, 2019. Available in English at: https://undocs.org/en/CEDAW/C/SRB/CO/4.

[118] GREVIO/Inf (2019) 20, Serbia, January 22, 2020. Available at: GREVIO publishes its first baseline report on Serbia - Newsroom (coe.int).

RESEARCH DESCRIPTION AND METHODOLOGY

Subject of the research

The subject of the research is the public prosecutor and court practice in processing cases of domestic violence committed through the misuse of firearms, including cases of domestic violence that resulted in an attempt to take the life of a family member and those that resulted in the death of a family member. The analysis of these cases examines the specifics of the institutional approach and the penal policy in cases of domestic violence committed through misuse of firearms. Through in-depth interviews and focus group discussions, attitudes and understanding of the risk of domestic violence in cases where the perpetrator has access to/possesses firearms were examined, including consideration of this factor when developing individual protection and support plans for victims of violence.

Objectives, purpose, and scope of the research

The aim of the research was to examine the response of the criminal justice system based on the analysis of legal regulations and collected data on the processing of cases of domestic violence in the context of access, possession, or the misuse of firearms. The knowledge that has been acquired is intended to enable the identification of areas in which action should be taken to reduce the risk of misuse of firearms related to domestic violence by improving the functioning of the criminal justice system. Therefore, the research has focused on mapping key gaps and obstacles in the application of existing laws, as well as on institutional shortcomings in terms of the knowledge and awareness of professionals in the criminal justice system on the correlation between firearms misuse and gender-based violence. The research also has the aim of identifying illustrative examples of good practice and lessons learned, based on which it should be possible to create recommendations for improving court practice and legislation in this area.

The research has enabled the collection of data that should serve as the basis for the development of evidence-based tools to improve the knowledge of professionals in the criminal justice system about the risks and consequences of firearms misuse in the context of domestic violence.

Research design and methodology

Description of the research

The research on the practice of processing cases of domestic violence in the context of access, possession, and/or misuse of firearms comprises four interrelated components: a review and analysis of the regulations that criminalize domestic violence committed through firearms misuse, including regulations on domestic violence resulting in the death of a family member, as well as regulations on the acquisition, possession, and carrying of firearms in the context of domestic violence; the collection and analysis of data on the practice of the criminal justice authorities in processing cases of domestic violence committed by firearms misuse, including cases of domestic violence committed through misuse of firearms resulting in an attempt to take the life of, or resulting in the death of, a family member; focus group discussions with representatives of coordination and cooperation groups; and semi-structured in-depth interviews with public prosecutors, representatives of centers for social work, and police officers in order to determine their views and gain greater understanding of the relationship between domestic violence and access/possession/misuse of firearms.

The research was conducted in four phases.

In the first phase (desk research), the relevant literature was studied and metadata was collected from available sources.

In the second phase, letters were sent to public prosecutor's offices and courts with a description of the research and a request for data (requests for access to information of public importance) in order to obtain relevant research material. Questionnaires for collecting data from submitted public prosecutor's and court decisions, for collecting data from complete lists of public prosecutor's and court cases for case studies, and for (here questionnaires were accompanied by written guides) focus group discussions and semi-structured in-depth interviews were prepared. Bearing in mind that public prosecutor's offices do not keep special records on criminal offenses committed with weapons or the threat of weapons, in agreement and in cooperation with the Republic Public Prosecutor's Office, several public prosecutors' decisions were requested from each prosecutor's office (rejection of criminal charges, suspension), in order to attain a suitable research sample.

In the third phase, the data from the public prosecutors' and court decisions submitted to the researchers were systematized, processed, and analyzed. Focus group discussions and in-depth interviews were conducted and the collected information was systematized and processed and a report with the corresponding findings was prepared. Within this phase, based on insights into the public prosecutors' and court decisions, cases of domestic violence committed through misuse of firearms were selected for analysis and then analyzed by the case study method.

In the fourth phase, all the collected, processed, and systematized data were interpreted and the text of the study was prepared with recommendations for improving the response of the relevant institutions to domestic violence committed through misuse of firearms.

Data sources and research limitations

Relevant laws and bylaws, as well as relevant literature, were utilized as sources for the review and analysis of regulations.

The research was conducted at the time of the Covid-19 pandemic and during the terms of numerous epidemiological measures, due to which it was not possible to gain insight into the complete files of the public prosecutors' and court cases. Therefore, the sources of data were information, as well as anonymized decisions submitted by public prosecutors' offices and courts, acting on requests for access to information of public importance. The impossibility of collecting information through research of case files is a limiting factor because the research material consists only of public prosecutors' decisions and court decisions.

The sources of data regarding attitudes and understanding of the relationship between domestic violence and access/possession/misuse of firearms were focus group participants/respondents - members of coordination and cooperation groups, public prosecutors, representatives of centers for social work and police officers. Due to the limitations

caused by the pandemic, the focus group discussions and interviews were conducted in a digital environment, resulting in certain limitations in direct communication and interaction.

One specific limitation of the research is the impossibility of finding out certain data that were anonymized, though they had no relevance with respect to the identification of participants or revealing their personal identity. Namely, although the Rulebook on replacement or omission (pseudo-anonymization and anonymization) of data in court decisions very precisely regulates which personal data is omitted, the submitted decisions also anonymized data that do not directly or indirectly reveal the identity of the participant.[119]

Description of the sample

The research was conducted on a nationally representative sample that includes all cases of domestic violence, femicide, and attempted femicide related to firearms misuse documented and processed in the period from June 1, 2017, when the Law on the Prevention of Domestic Violence came into effect, through December 31, 2019.

The sample consists of cases of domestic violence committed through the misuse of firearms (Article 194, paragraphs 2–4 of the Criminal Code), regardless of the sex of the victim and the perpetrator; cases of murder (Art. 113, CC) or attempted murder (Art. 113 in conjunction with Art. 30, CC), aggravated murder (Art. 114 CC); and attempted aggravated murder (Art. 114 in conjunction with Art. 30, CC) committed with firearms whose victims were women and the perpetrators men.

In the preparatory phase of the research, data and decisions of all courts and prosecutors' offices were requested, comprising: 66 basic and 25 higher courts, and 58 basic and 25 higher public prosecutors' offices.

The courts submitted data and a total of 844 anonymized final decisions related to the criminal offense of domestic violence under Art. 192 Para. 2–4. of the Criminal Code, regardless of the means and manner of execution.

Regarding higher public prosecutor's offices, according to the submitted data, in the period from June 1, 2017 to December 31, 2019, 15 higher public prosecutors' offices (Čačak, Kraljevo, Pirot, Požarevac, Prokuplje, Šabac, Sombor, Užice, Valjevo, Vranje, Zrenjanin, Jagodina, Pancevo, Niš, and Negotin) did not reject any criminal charges, suspend any investigation, or drop any charges of domestic violence under Art. 194. Para. 4 of the CC; all these crimes were prosecuted. Also, in this same period, for 10 higher public prosecutors' offices, there were no criminal charges documented for the criminal offense of domestic violence from Art. 194. para. 4 of the CC (Kragujevac, Kruševac, Leskovac, Novi Sad, Sremska Mitrovica, Zaječar, Belgrade, Novi Pazar, Smederevo, Subotica). In the files from basic public prosecutors' offices, there were five confirmed cases related to Art. 194. Para. 2 and Para. 3 of the CC, i.e., of the criminal offense of domestic violence committed with a firearm.

[119] Supreme Court of Cassation, number: Su I-1 83/20-2 from June 30, 2020. Consolidated text. Available at:https://www.vk.sud.rs/sites/default/files/attachments/PRE%C4%8CI%C5%A0%C4%86EN%20TEKST-%20PRAVILNIK%20o%20zameni%20i%20izostavljanju%20%28pseudonimizaciji%20i%20anonimizaciji%29%20podataka%20u%20sudskim%20odlukama.pdf, (accessed on February 2, 2021).

After receiving the submitted data and decisions of the public prosecutors' offices and courts, questionnaires for collecting data from each decision were completed. Based on the data from the completed questionnaires, it was determined that 30 cases of the criminal offense of domestic violence committed with a firearm and three cases of attempted murder or the murder of women met the set criteria. Accordingly, the direct subject of the research was 33 decisions, 28 from final court decisions and five from public prosecutors' offices – the breakdown of these cases is shown below in Table 1.

Table 1: Details of the sample

Name of the competent authority	Number of Decisions
Basic Public Prosecutor's Office in Stara Pazova	1
Basic Public Prosecutor's Office in Šabac	1
Basic Public Prosecutor's Office in Kraljevo	1
Basic Public Prosecutor's Office in Vrbas	1
First Basic Public Prosecutor's Office in Belgrade	1
Basic Court in Čačak	1
Basic Court in Jagodina	1
First Basic Court in Belgrade	1
Second Basic Court in Belgrade	2
Third Basic Court in Belgrade	1
Basic Court in Mladenovac –Court Unit of Sopot	1
Basic Court in Leskovac	1
Basic Court in Šid	1
Basic Court in Ruma	1
Basic Court in Sombor	3
Basic Court in Užice	1
Basic Court in Zrenjanin	1
Basic Court in Stara Pazova	3
Basic Court u Stara Pazova– Court Unit of Inđija	1
Higher Court in Novi Pazar	1
Higher Court in Belgrade	1
Higher Court in Vranje	1
Basic Court in Despotovac – Court Unit of Svilajnac	1
Basic Court in Novi Sad	2
Basic Court in Lazarevac	2
Basic Court in Kragujevac	1
Total number of cases	33

The quantitative research covers all cases of domestic violence (as defined in Article 194, paragraphs 2 and 3 in connection with paragraph 1 of the Criminal Code) committed with the misuse of firearms (comprising both the threat that firearms will be used and the actual misuse of firearms), regardless of the sex of the perpetrator and the victim, and all cases of attempted murder and murder committed with firearms, whose victims were women and the perpetrators men - a total of 28. It should be noted that in most court cases, in addition to the crime of domestic violence being prosecuted so too was the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives (Art. 348 para. 2, in conjunction with para. 1 and para. 4, in conjunction with para. 1 and para. 5, in conjunction with para. 1. of the CC). Data from these cases were statistically processed, summarized, and analyzed from the substantive and procedural perspectives, with special emphasis on the profile of the victim and the perpetrator, the manner in which the act was committed, the nature and history of the perpetrator-victim relationship, the qualification/aggravated status of the act, the type and degree of punishment administered, the consideration of aggravating and mitigating circumstances, the imposition of security measures, and the level of the respect of the principle of urgency in the conducting of the proceedings.

Qualitative research, i.e., more in-depth analysis, was carried out on 21 court-processed cases - 18 cases of domestic violence committed using firearms (consisting of the misuse of firearms), regardless of the sex of the perpetrator and the victim, as well as two cases of attempted murder and one case of murder committed with firearms and in which the victims were women and the perpetrators were men.

Five reported cases of domestic violence committed through the misuse of firearms (threat of use or the misuse of, Art. 194, Para. 1 and Art. 194 Para. 2 in conjunction with Paragraph 1 of the CC) in which the relevant basic public prosecutors' offices rejected the criminal charges have been shown in the summary, but were not analyzed in detail because there was not enough data for this type of analysis. The review of these cases is presented in the section "Review of public prosecutors' cases in which the criminal report was rejected."

Seven court-prosecuted cases of domestic violence (Art. 194 para. 1, Art. 194 para. 2, in conjunction with para. 1, Art. 194 para. 3, in conjunction with paragraphs 1 and 2 of the CC) in which domestic violence was committed with the misuse of firearms in the form of a threat that the firearm will be used, but in which the firearm was not misused, are also summarized, but they were not included as subjects of detailed analysis because according to the description of the crime in the verdict, the same or a similar pattern of firearm threat was common to all seven cases. An overview of these cases is presented in the section "Review of court-prosecuted cases of domestic violence committed with firearms in the form of the threat to misuse firearms."

At the time in which the research was designed, the focus group discussions were planned to be held in person, which is why the division according to the competencies of the appellate courts was applied. However, as already mentioned, due to the epidemiological situation and the emergency measures imposed banning gatherings indoors, four focus group discussions were held online, via the Zoom platform, each lasting 90 minutes[120]. Participants were allowed to participate in any focus group, not necessarily

[120] Focus groups were facilitated by Gorjana Mirčić Čaluković and Ivana Milovanović.

one that covered the territory of their competent appellate court. A total of 27 focus group participants participated in the four sessions, 8 men and 19 women, a breakdown of which can be found in Table 2.[121]

Table 2: Focus Group Discussions Breakdown

Date	Territory/Appellation	Number of Participants
October 23, 2020	Belgrade	7
October 25, 2020	Niš	5
December 2, 2020	Kragujevac	10
December 4, 2020	Novi Sad	5

The participants of the focus groups were members of the coordination and cooperation groups, as well as professionals invested with obligations to act according to the Law on the Prevention of Domestic Violence, namely: professionals from the police and from centers for social work, representatives from the basic public prosecutors' offices, and one judge involved in deciding on cases of imposing emergency measures according to the LPDV. The work experience of focus group participants was varied - most of the participants had dealt with the topic of the prevention of and protection from violence for less than 10 years; this was followed by the following levels of work experience, which were equally represented; more than 10 years, between 10 and 15 years, more than 15 years; while the fewest amount of participants had been dealing with this topic for more than 20 years. At the beginning of each discussion, the participants were briefly introduced to the project and the topics to be discussed, confidentiality was agreed, and procedural rules were established.

After the focus group discussions, in-depth, semi-structured interviews were conducted with deputy higher public prosecutors and representatives of centers for social work, i.e., persons with many years of experience in working on cases/incidents related to the prevention of and protection from violence. These interviews had the character and purpose of validating, i.e., their goal was to confirm the results and findings from the focus groups. These in-depth semi-structured interviews[122] were conducted during February and March 2021, and in this period eight professionals were interviewed - four each from higher public prosecutors' offices and centers for social work.[123]

[121] A larger number of participants were registered for the focus group discussions than the final number of those who actually participated. One focus group was not joined by police officers, who had previously registered, but then explained that they had not been granted permission to participate. In the second focus group discussion, representatives of the centers for social work were absent, who had cancelled their participation at the last moment, stating that they had urgent business obligations.

[122] Invitations to participate in the interviews were also sent to the Ministry of the Interior, but despite the initial affirmative response and the expressed readiness of four competent police officers to participate in the interviews, no final confirmation had yet been received at the time this research was concluded, i.e., the competent police officers had not responded to the call for an interview.

[123] In-depth interviews were conducted by Dr. Vida Vilić.

FINDINGS AND DISCUSSION OF FINDINGS

Review of public prosecutors' cases in which the criminal report was rejected

1. The Basic Public Prosecutor's Office in Stara Pazova, by a decision issued on February 8, 2019, rejected to engage in criminal proceedings in regard to a criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC, citing there were no grounds for suspicion that the suspect committed this crime or any other crime that would warrant prosecution, ex officio. Criminal charges were filed against the suspect, stating that on January 29, 2019, during a verbal argument with his out-of-marriage partner, he took a gun in his hands, put it in his mouth, causing this partner to leave the house in a state of fear, after which he called her on the phone and said he would "kill her like a dog if she doesn't show up at the door of their home." Police conducted a search but found no gun. The suspect denied committing the crime and stated that he did not possess a gun. The injured party exercised her right to refuse to testify. The brother of the injured party, to whom she went after the mentioned quarrel, stated that the injured party told him that she had been arguing with her partner, but that he did not know the reason for their quarrel. The test for the presence of alcohol in the suspect determined that he had a blood alcohol level of 1.11 that day.

2. The Basic Public Prosecutor's Office in Šabac, with its decision on October 11, 2017, rejected the unsigned criminal report of the applicant marked with the name of the injured party accusing the defendant of the criminal offense of domestic violence under Art. 194. Para. 3 in connection with Para. 1 of the CC citing that there were no grounds for suspicion that the suspect committed the said criminal offense against and to the detriment of the injured party. The criminal report states that on August 5, 2017, the suspect threatened his wife in the family home that he would kill her and, holding a gun in his hand, hit the victim on the head, face, arms, and legs, thus injuring her in the form of a fractured bones, bruises, and hematomas, due to which the victim left the house. Checking the data in the criminal report, the police officers, on the order of the prosecution, conducted an interview with the parents of the injured party and persons who had certain relevant information about the event, upon which they were informed that the accused party was not in Serbia, but working in Switzerland at the time of the qualifying occasion, and was on good terms with his registered spouse. The reported husband of the injured party asserted that the allegations in the criminal charges had no basis in reality and that the injured party and he were on good terms. Police officers performed checks at the Health Center and determined that the injured party did not report for medical treatment. It was also determined that the injured party had left Serbia on July 29, 2017 and that she did not return until August 24, 2017. The report of the Police Station (PS) states that during 2015, 2016, and 2017, it had received several anonymous reports with the same style and writing font.

3. By the decision of the Basic Public Prosecutor's Office in Vrbas, the criminal report submitted by the legal representatives of the injured parties of the criminal offense of domestic violence from Art. 194. para. 2 in connection with para. 1 and the criminal offense under Art. 138a para. 1, point 2 of the CC was dismissed, considering that the suspect had died on June 22, 2018, which permanently excludes criminal prosecution. The criminal report states that on June 9, 2018, the suspect committed physical and psychological violence against his wife and daughter in the form of insulting his wife and daughter in an alcoholic state and threatening his wife with a gun he was holding in his hand. Urgent measures of temporary removal from the apartment and a ban on contacting the victim of violence were imposed on the suspect by the decision of Police Station of Kula starting from June 11, 2018, which were then extended by the decision of the Basic Court in Vrbas –unit in Kula, for a period of 30 days.

4. On August 29, 2018, the Basic Public Prosecutor's Office in Kraljevo issued a decision rejecting the criminal report the injured party's attorney had submitted to that prosecutor's office against the suspect for the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC because it was deemed that there were no grounds for suspicion that the reported person committed the criminal offense for which he was reported and for which he would be prosecuted, ex officio. The criminal report states that on January 3, 2018, in the bedroom of the family home, the suspect shouted at his out-of-marriage partner, struck her in the face and hands with his fists, pulled her hair, knocked her to the floor and kicked her, called her "a whore," took the pistol he was holding under the pillow and put the barrel of the pistol in the victim's mouth. On the same occasion, it was reported the suspect told the victim that he would kill her and her children, that he would "take the white coffins out of the house," then hit her in the temple, twisted her right fist, kicked her in the back, and pushed her so that she fell on the glass table, which broke. According to the the report, the injured party suffered critical injuries described in the medical certificate submitted with the report. A check through the register of the prosecutor's office established that there was no report of a critical event in the records of the duty service of the police station, so it was ordered that the police officers check the allegations. On August 15, 2018, the injured party's attorney filed a motion with the prosecutor's office stating that the injured party had completely withdrawn from any further criminal prosecution of the reported person, and would like to withdraw the criminal report in its entirety because in the meantime relations between the partners had stabilized, and that they had peaceably resolved their differences, so any further prosecution would be without purpose. On August 22, 2018, the injured party submitted a statement in which she claimed that she filed the report "in jealousy and anger" and that "there was no violence, which is why she withdraws all charges."

5. On January 26, 2018, the First Basic Public Prosecutor's Office in Belgrade issued a decision rejecting the criminal report of the police filed on November 25, 2017 against the suspect for the criminal offense of Domestic Violence under Art. 194. Para. 1 of the CC committed against his wife and minor son, citing that there were no grounds for suspicion that he had committed a crime for which we would be prosecuted, ex officio. The criminal report states that the reported person had insulted the injured party every day in the family household, threatened to kill her if she called the police, and said that he would throw her off the terrace. On December 24, 2017, he was also reported to have insulted his wife and aggressively approached her, so their eldest son stood between them, wanting to protect his mother. The reported suspect pushed him away and continued to threaten that he would go and get a gun to kill them, that he would set them on fire, throw them off the terrace, and then started breaking furniture around the house. The suspect denied committing the crime, and the injured party did not want to testify using her legal right. Therefore, the prosecution's decision states that the criminal report was rejected "*having in mind the circumstance that the defendant denies committing the crime and that there is no other evidence that would compromise his defense*."

Review of court-prosecuted cases of domestic violence committed through misuse of firearms in the form of the threat of the misuse of firearms

1. The Basic Court in Despotovac - Court Unit in Svilajnac, *passed a verdict finding the perpetrator guilty* – deciding that on July 9, 2015 in the afternoon he was able to understand the significance of the act and manage his actions, was aware of the illegality of the committed act that he would attack life and body and, by reckless behavior, endanger the peace, physical integrity, and mental health of members of his family

- his wife and daughter, and that he had indeed committed the criminal offense of domestic violence under Art. 194. para. 3 in connection with para. 1 of the CC. According to the verdict, the perpetrator insulted and beat his wife, pushed and hit his daughter, and then threatened his wife "*that she could not escape, that he would find her no matter where she tried to hide, that he would kill her and do his time in prison, and that if he saw her kissing another man on the street or anywhere else he would pull out a gun and kill her*." By the same verdict, the perpetrator was found guilty of the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 2, in connection with para. 1 of the CC because a large amount of firearms and ammunition (air rifle, pistols, bombs, bullets) were found in his vicinity. The perpetrator did not confess to the crime of domestic violence, and regarding the other crime, stated that the weapons and ammunition found near him date from the time when he had been officially deployed in the field in Kosovo* and was in charge of weapons and ammunition there, which were contained in a safe place and whose location, as the perpetrator stated, his wife had reported to the police.

The court did not accept the defense of the perpetrator and determined that he had committed both criminal acts in a sane state and with intent. For the criminal offense of domestic violence under Art. 194. para. 3 in connection with para. 1 of the CC, the court imposed a prison sentence of 10 months, while for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives, a prison sentence of six months was pronounced, but in the end the perpetrator was issued a single prison sentence of one year, which he would serve under house arrest in the premises in which he lived, his family house, without the use of electronic surveillance. In addition to the prison sentence, the court also imposed a fine in the amount of 100,000.00 dinars on the perpetrator and the confiscation of the items - firearms and ammunition – that had been listed in the operative part of the verdict.

2. On January 25, 2017, the Basic Public Prosecutor's Office in Novi Sad filed an indictment against the perpetrator for the criminal offense of Domestic Violence under Art. 194. para. 3, in connection with para. 1 of the Criminal Code and for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC. On June 1, 2017, the office submitted to the court an agreement on the recognition of a criminal offense concluded between the perpetrator and the Deputy Prosecutor of the Public Prosecutor's Office in Novi Sad, in the presence of the perpetrator's defense counsel. After the hearing on the plea agreement, on June 5, 2017, the court *rendered a verdict accepting the plea agreement and finding the perpetrator guilty of the crimes listed in the indictment*. According to the operative part of the verdict, the perpetrator had committed the criminal offense of Domestic Violence in the following manner: on November 4, 2016, in a state of compromised sanity, but not to a significant degree, and still aware of the intent of his act, he used violence against his stepdaughter, a minor victim, pulled her by the hair after a verbal argument with her, dragged her by the hair around the house, and hit her several times with his fists in the area of her head, after which the injured party ran away from the house and reported the violence. During the collection of the necessary information, the officials found and confiscated from the perpetrator a small-caliber Baikal rifle, model Vostok 211-R, caliber 5.56 mm, serial number (...), which the perpetrator had possessed without authorization.

   The perpetrator was found guilty by the court for both the criminal offense of domestic violence under Art. 194. para. 3 in connection with para. 1 of the CC and issued a

* References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

prison sentence of one year and three months and for the criminal offense of the illicit production, possession, carrying, of trafficking of weapons and explosives under Art. 348 para. 1 of the CC, sentencing him to three months imprisonment; cumulatively, a single prison sentence of one year and five months was imposed. Based on Art. 348 para. 6 of the CC, the firearm was confiscated from the perpetrator and handed over to the competent police administration for further processing.

3. By the Judgment of the Basic Court in Lazarevac on June 13, 2017, the perpetrator *was found guilty* of the criminal offense of Domestic Violence under Art. 194. para. 1 and 2 of the Criminal Code and sentenced to one year in prison. In addition to the punishment, the perpetrator was also issued the security measure of obligatory treatment for drug addiction, as it was deemed there was a serious danger that he would continue to commit criminal acts due to this addiction.

   According to the verdict, the perpetrator had committed the criminal offense of domestic violence in the period from October 30 to December 26, 2016 against his mother and maternal grandmother by insulting and cursing them, hitting his mother with a wooden frame for pictures, inflicting light bodily injuries on her, and threatening to kill them "*because he had bought a clean gun for 250 euros, that he will pay a drug addict to shoot them in the legs and that he will set fire to the house to remove all evidence because their bodies would be charred*," as a result of which the peace, physical integrity, and mental state of the victims were deemed to have been endangered. At the time of committing the criminal offense, the perpetrator's level of sanity was deemed to be compromised, but to only a moderate level and not significantly, and it was deemed that he was aware of the intent of the act he had committed. Although the operative part of the verdict states that the perpetrator had threatened the victims with a gun, the explanation of the verdict does not mention any weapons. The perpetrator had been previously convicted of the criminal offense of domestic violence by a verdict on February 5, 2016, which had sentenced him to eight months in prison and the security measure of compulsory treatment for drug addiction.

4. On December 2, 2019, the Basic Court in Novi Sad issued a verdict *finding the perpetrator guilty* of the criminal offense of Domestic Violence under Art. 194. para. 2 in connection with para. 1 of the CC. The verdict did not contain an explanation, but based on Art. 429. para. 1. item 1 of the CCP, the perpetrator was sentenced to a suspended sentence of 10 months imprisonment, which would not be executed if the perpetrator did not commit a new crime within two years from the issuance of the verdict. The perpetrator was also banned from approaching and communicating with the injured party in such a way that the perpetrator was prohibited from approaching the injured party at a distance of less than 100 meters, from accessing the place of residence and the place of work, and from any further harassment of the injured party, i.e., further communication with the injured party for two years from the day of the issuing of the judgment. The operative part of the verdict states that the perpetrator committed the crime by threatening his ex-wife from December 2016 to August 28, 2017: that he would take the children, that they would have nothing to live on, and that he would stop paying the loan they had taken together. It is also stated that he had gone on to send messages on several occasions threatening to fulfill his promise, that "*someone will be the master and someone will die*," that she would be next, and that he will be worse to her than those who killed half the people in Serbia. In addition, "*he had drawn her into contact with some unknown man, said that the victim had wanted to kill herself under the influence of drugs, and had threatened that he would kill himself with a gun in front of that unknown man*." On the same day, he had insulted the victim, spat on her, kicked her, and slammed her with the car door, means of

force deemed sufficient to seriously injure the body and impair health, that he forcefully struck her with his left arm, from which the victim suffered minor bodily injury in the form of bruising of the left lower leg and upper arm. She had called the police for the sake of her safety. The court found that the perpetrator was sane at the time of committing the criminal offense and committed the criminal offense with direct intent. The firearm, a pistol, that was mentioned in the operative part of the verdict when describing the manner of committing the criminal offense was not mentioned in the further text of the verdict.

5. By the Judgment of the Basic Court in Lazarevac on December 29, 2017, the perpetrator, who had been previously (2013) convicted for the criminal offense of Unauthorized Possession of Narcotic Drugs under Art. 246a of the Criminal Code, was *sentenced to a suspended sentence* of six months in prison for the criminal offense of domestic violence under Art. 194. para. 3 of the CC. The security measure of obligatory treatment for alcoholism was also imposed on the perpetrator. The verdict does not contain an explanation because the parties waived the right to appeal the passed and published verdict (Article 429, paragraph 1, item 1 of the CCP). The operative part of the verdict states that on September 17, 2017, the perpetrator, in a state of significantly reduced mental capacity, in an alcoholic state, endangered the physical integrity of his family members, mother, and brothers, one of whom is a minor, with a knife capable of causing bodily injury and a stainless-steel pot. On September 17, 2017, the perpetrator had first verbally argued with his mother, to whom he threatened that "*he has an arsenal of weapons and that he will kill all of them in the house*," that he would "*tear her apart with his teeth*," that he "*does not need weapons*", prompting the injured party, together with the minor son, to leave the house in fear. When she returned, she could not enter the house because the perpetrator had locked the door, and when she asked that he open the door, he came put on the balcony with a knife in his hand and headed towards his mother and minor brother. There was mutual pushing and the perpetrator inflicted light bodily injuries to his minor brother and mother with the knife in his hand; he then took a stainless-steel pot and hurled it at his brother and struck him, as a result of which he suffered light bodily injuries. According to the operative part of the verdict, the perpetrator acted with intent, aware of the intent of this act, and was aware of the illegal nature of his act. Although in the operative part of the verdict, in the description of the manner of the committing the criminal offense, it is stated that the perpetrator threatened to have an arsenal of weapons, nothing is stated in the further text of the verdict regarding the weapons.

6. On July 19, 2019, the Basic Court in Kragujevac rendered a verdict *finding the perpetrator guilty* of the criminal offense of Domestic Violence under Art. 194. para. 2, in connection with para. 1 of the CC, citing that at the end of July 2018, by using violence and insolent and reckless behavior, he had endangered the peace, physical integrity, and mental state of his family member, his ex-partner, with whom he had two minor children, using a means capable of causing serious bodily injuries . This was done in the following manner: while she was in the eighth month of pregnancy, he had put a kitchen knife with a blade length longer than 10 cm under her throat, in a position he had forced her into by grabbing her by the neck and thrusting her against the door. On the same day, the perpetrator had called the victim on the phone and threatened that she would "*get a bullet in the head*," and he also posted a picture with a gun on his Facebook profile. The perpetrator was sentenced to eight months in prison, which he was to serve under house arrest, in the premises where he lives, with the application of electronic surveillance, according to which he must not leave the premises where he lives, except in cases prescribed by the law governing the execution of criminal sanctions. According to the court, at the time of committing the criminal offense, the

perpetrator was sane and acted with intent. The perpetrator did not admit committing the crime, stating that he had had not threatened the injured party at all. The Center for Social Work submitted a report to the court in which it assessed that there was a risk of violence recurring due to an unresolved emotional connection and an unsettled parental relationship. The injured party refused to be placed with the minor children in a shelter for victims of domestic violence. The verdict states that at the meeting of the group for coordination and cooperation on February 4, 2019, an individual plan of protection and support for the injured party was adopted and within the plan the task of the center was defined, which is to provide support to the injured party in submitting a court request for protection against domestic violence. The court verdict did not state whether a check had been made on whether the perpetrator possessed the weapon with which he had threatened the injured party.

7. On October 28, 2019, the Basic Court in Stara Pazova issued a guilty verdict sentencing the perpetrator to imprisonment for a term of one year and six months for the criminal offense of domestic violence under Art. 194. para. 3 in connection with para. 1 and 2 of the Criminal Code, an offense he had committed on August 18, 2019 under the influence of alcohol of 1.18 mg/ml of alcohol in the body. According to the court, the perpetrator was able to understand the significance of his act and manage his actions, was aware of his act whose execution he intended, and that by insolent and reckless behavior and violence he had endangered the peace, physical integrity, and mental state of his family member, his 17-year-old son according to the following description: on August 18, 2019, after a verbal argument, he told his son that he would "*go and get a gun to kill him*." The perpetrator then hit his son in the head above the ear with a wooden curtain rod of about 3 m, which he had in his hands and which is a means capable of seriously injuring the body and impairing health, and inflicted minor bodily injuries. In addition to imprisonment, the perpetrator was banned from approaching and communicating with the injured son, by prohibiting the perpetrator from approaching the injured party at a distance of less than 15 meters and from communicating with the injured party for two years from the issuance of the verdict. There is no information in the court verdict on whether it was checked as to whether the perpetrator possessed the gun he had mentioned in his threat.

The findings of the quantitative research of judicially prosecuted criminal offenses

DATA ON THE CRIMINAL ACTS

The legal qualification of the criminal offenses in the sample and the corresponding indictment and verdicts are the same in almost all cases, excepting only one, where the criminal offense in the indictment is qualified as; the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 4, in connection with para. 1, and as domestic violence from Art. 194. para 2, in connection with para. 1 of the CC, and in the verdict as; the illicit production, possession, carrying, and trafficking of weapons and explosives from Art. 348 para. 5, in connection with para. 1 of the CC and domestic violence from Art. 194. para 2, in connection with para. 1 of the CC. In this case, the court ruled that the defendant had committed the criminal offense under Art. 348 para. 5 in connection with para. 1 of the CC because he had *carried weapons and ammunition without authorization, but for the acquisition and possession of which he had received approval from the competent authority*, which differs from the indictment which prescribes the criminal offense of the illicit production, possession, carrying, and trafficking of weapons and explosives under Art. 348 para. 4, in connection with para. 1 of the CC, which consists in the *unauthorized possession of items* referred to in para. 1 of this law.

Legal qualification of the criminal offense in the indictment		
	Number	%
Article 194. Para. 1, CC	1	3.6
Article 194. Para. 1. and Article 194. Para. 2, in connection with Para. 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1, CC	11	39.3
Article 194. Para. 2, in connection with Para. 1. and Article 138. Para. 1, CC	1	3.6
Article 194. Para 2 and 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1 and Article. 348. Para. 2, CC	2	7.1
Article 194. Para. 2, in connection with Para. 1 and Article. 348 Para. 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1 and Article 348. Para. 4, CC	1	3.6
Article 192. Para. 2, in connection with Para. 1 and Article 194. Para. 3, in connection with Para. 1 and Article 348. Para. 2, in connection with Para. 1, CC	1	3.6
Article 194. Para. 3, in connection with Para. 1, CC	2	7.1
Article 194. Para. 3, in connection with Para. 1, CC and Article 348. Para. 2, in connection with Para. 1, CC	2	7.1
Article 194. Para. 3, in connection with Para. 1, CC and Article 348. Para. 1, CC	1	3.6
Article 114. Para. 1. Item 11, Article 348. Para. 4, in connection with Para. 1 and Article 246a Para. 1, CC	1	3.6
Article 114. Para 1. Item 11, and in connection with Article 30 and Article 348 Para 1, CC	1	3.6
Article 113 in connection with Article 30, Article 348, Para. 1, CC	1	3.6
TOTAL	**28**	**100**

Legal qualification of the criminal offense in the verdict		
	Number	%
Article 194. Para. 1, CC	1	3.6
Article 194. Para. 1. and Article 194. Para. 2, in connection with Para. 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1, CC	11	39.3
Article 194. Para. 2, in connection with Para. 1 and Article 138. Para. 1, CC	1	3.6
Article 194. Para 2 and 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1 and Article. 348. Para. 2, CC	2	7.1
Article 194. Para. 2, in connection with Para. 1 and Article. 348 Para. 1, CC	1	3.6
Article 194. Para. 2, in connection with Para. 1 and Article 348. Para. 4, CC	1	3.6
Article 192. Para. 2, in connection with Para. 1 and Article 194. Para. 3, in connection with Para. 1 and Article 348. Para. 2, in connection with Para. 1, CC	1	3.6
Article 194. Para. 3, in connection with Para. 1, CC	2	7.1
Article 194. Para. 3, in connection with Para. 1, CC and Article 348. Para. 2, in connection with Para. 1, CC	2	7.1
Article 194. Para. 3, in connection with Para. 1, CC and Article 348. Para. 1, CC	1	3.6

Article 114. Para. 1. Item 11, Article 348. Para. 4, in connection with Para. 1 and Article 246a Para. 1, CC	1	3.6
Article 114. Para 1. Item 11, and in connection with Article 30 and Article 348 Para 1, CC	1	3.6
Article 113 in connection with Article 30, Article 348, Para. 1, CC	1	3.6
TOTAL	**28**	**100**

The most commonly represented criminal acts in the sample are those qualified as criminal acts from Art. 194. Para. 2 of the Criminal Code - domestic violence committed through the misuse of firearms. In five court proceedings, the perpetrator was convicted for the criminal offense of the illicit production, possession, carrying, and trafficking of weapons and explosives under Art. 348 of the CC; one of the perpetrators was convicted of this act for the unauthorized possession of an explosive device (bomb), whose possession is not allowed to citizens (Article 348, para. 2, CC), while the other four were convicted for the possession of weapons and ammunition for which they did not have a permit issued by the competent authority. Other perpetrators who committed the crime of domestic violence by threatening with a firearm or misusing a firearm had a legal license to possess the weapon. Slightly more crimes in the sample were committed in rural areas (42.9%) than in the city (35.7%).

Type of Place at which the crime was committed		
	Number	%
Village	12	42.9
City	10	35.7
No data	6	21.4
TOTAL	**28**	**100**

Most crimes in the sample were committed in a common apartment, i.e., the house, of the victim and the perpetrator (60.7%), which is understandable, given that these are cases of domestic violence. The acts were mostly committed in the afternoon and evening, which can be explained by this being the time when family members are most likely together.

Specific place (space) of execution		
	Number	%
Apartment/house/yard of the perpetrator	1	3.6
Apartment/house/yard of the victim	5	17.8
Common apartment/house/yard of the perpetrator and victim	17	60.7
Cafe	1	3.6
The street	2	7.1
The house where the victim took refuge, the house of her parents	1	3.6
The house of the defendant's parents	1	3.6
TOTAL	**28**	**100**

Time of the execution of the crime (exact date and time per the operative part of the indictment)		
	Number	%
Morning (8 am - 12 pm)	3	10.7
Early afternoon (12–4 pm)	3	10.7
Late afternoon (4–8 pm)	9	32.1
Evening (8 pm –00 am)	4	14.3
Night (00–4 am)	1	36
No data	5	17.8
Duration longer than one day	1	3.6
Two acts of violence, one in the evening and one in the morning	1	3.6
Acts lasted for several hours of a day or all day	1	3.6
TOTAL	**28**	**100**

As for the motives for committing the crime, the court, as a rule, does not determine them. Only from five verdicts can the motive be clearly ascertained: in three cases it was jealousy, in one selfishness, and in one "refusal to divorce."

Motives for committing the criminal offense		
	Number	%
Jealousy	3	10.7
Greed	1	3.6
Refusal to divorce	1	3.6
No data	23	82.1
TOTAL	**28**	**100**

DATA ON THE PERPETRATORS

Based on the collected data, it is not possible to determine the exact profile of the perpetrators as much of the data are lacking; either they had been unnecessarily anonymized in the records, or no such data seemed to exist or be available because they refer to facts that were never recorded or determined. Without intending to generalize the findings, we provide what data it was possible to amass on the perpetrators.

Firstly, all the perpetrators are male. They are of different ages and occupations, most of them are married, and on average they have two children. A majority for whom data was available had finished secondary education, were unemployed, and had been born in the city. Among the perpetrators on whom relevant data was found, 42.9% lived in urban areas, which could be indicative of firearms being more accessible to perpetrators in urban areas.

Gender of the perpetrators		
	Number	%
Male	28	100
Female	0	0.00
TOTAL	**28**	**100**

Age		
	Number	%
26	1	3.6
31–40	3	10.7
41–50	1	3.6
51– 60	5	17.8
No data	18	64.3
TOTAL	**28**	**100**

Marital status		
	Number	%
Married	15	53.6
Not married	2	7.1
Engaged in a non-marital partnership	4	14.3
Divorced	5	17.8
No data	2	7.1
TOTAL	**28**	**100**

Number of children		
	Number	%
One child	4	14.3
Two children	12	42.9
Three children	3	10.7
Four Children	3	10.7
Six children	1	3.6
No children	2	7.1
No data	3	10.7
TOTAL	**28**	**100**

Profession		
	Number	%
Owner of a private company	1	3.6
Machine locksmith	1	3.6
Economic technician	1	3.6
Textile technician	1	3.6
Agricultural laborer	3	10.7

Police officer	1	3.6
Driver	2	7.1
Auto mechanic	1	3.6
Military pensioner	1	3.6
Worker/laborer	2	7.1
Electrician	1	3.6
Pensioner	2	7.1
No profession	2	7.1
No data	9	32.1
TOTAL	**28**	**100**

Level of Education		
	Number	%
Incomplete elementary education	1	3.6
Elementary school	6	21.4
Secondary School or higher	15	53.6
No data	6	21.4
TOTAL	**28**	**100**

Employment status		
	Number	%
Employed	4	14.3
Unemployed, seeking employment	7	250
Pensioner	2	7.1
Seasonally Employed	2	7.1
Owner of a private company	1	3.6
Temporary work abroad (Switzerland)	1	3.6
Farmer	3	10.7
No data	8	28.6
TOTAL	**28**	**100**

Place of birth		
	Number	%
Village	4	14.3
City	9	32.1
No data	15	53.6
TOTAL	**28**	**100**

Place of residence		
	Number	%
Village	7	25.0
City	12	42.9
No data	9	32.1
TOTAL	**28**	**100**

Regarding prosecution, perpetrators who had not been previously convicted made up the dominant category (50%), but the number of those who had been previously convicted is far from small (35.7%). Among them, only one had been previously convicted of a crime committed through misuse of weapons. Although research has shown that previous participation of perpetrators in armed conflicts is a relevant indicator in the context of the perpetration of violence misusing firearms, it was not possible to ascertain perpetrators' involvement in this regard because relevant data had not been recorded or was not found - only one perpetrator was reliably reported to have participated in armed conflicts.

Regarding access to firearms, data on the affiliation of perpetrators to the army, police, or other bodies that provide access to weapons is also highly pertinent. Only three perpetrators in the sample were indicated to be members of these services.

Previously Convicted		
	Number	%
Yes	10	35.7
No	14	50.0
No Information	4	14.3
TOTAL	**28**	**100**

Earlier convictions for crimes committed through misuse of weapons		
	Number	%
Yes	1	3.6
No	15	53.6
No data	12	42.9
TOTAL	**28**	**100**

Previous participation in armed conflicts		
	Number	%
Yes	1	3.6
No data	27	96.4
TOTAL	**28**	**100**

Engaged in the army, police, or other service that provides access to weapons		
	Number	%
Yes	3	10.7
No	17	60.7
No data	8	28.6
TOTAL	**28**	**100**

The perpetrators generally did not indicate regret for having committed their criminal acts and considered their actions appropriate, though the majority did acknowledge committing the act. For the most part, the perpetrators were indicated to have been sane at the time of committing the crime, and exhibited direct intent. There is a higher

number of those who were not under the influence of alcohol at the time of committing the crime (12) than those who were (10), while severe inebriation was reported in as many as seven perpetrators. One perpetrator was under the influence of psychoactive substances at the time of the crime.

Expressed remorse for the act committed (according to the court)		
	Number	%
Yes, true regret and remorse	1	3.6
Undetermined	1	3.6
Only verbally expressed remorse	2	7.1
Showed no regret / considered his action appropriate	11	39.3
No data	13	46.4
TOTAL	**28**	**100**

Attitude towards responsibility for the criminal act		
	Number	%
Acknowledged having committed a crime	7	25.0
Primarily shifted the responsibility to the victim	1	3.6
No explanation offered or attitude exhibited	3	10.7
Refusal/no acknowledgement of having committed a crime	5	17.8
No data	12	42.9
TOTAL	**28**	**100**

Mental state/capacity at the time of committing the crime		
	Number	%
Sane/Mentally sound	15	53.6
Sanity/Mental capacity compromised, but not to a significant degree	5	17.8
Significantly impaired mental state/sanity	6	21.4
Not mentally sound	2	7.1
TOTAL	**28**	**100**

Degree of intent		
	Number	%
Direct intent	26	92.9
Incompetent	2	7.1
TOTAL	**28**	**100**

Under the influence of alcohol at the time of committing the crime		
	Number	%
Not under the influence	12	42.9
Mildly under the influence	2	7.1

Moderately under the influence	1	3.6
Heavily intoxicated	7	25.0
No data	6	21.4
TOTAL	**28**	**100**

Under the influence of drugs/psychoactive substances at the time of committing the crime		
	Number	%
No	19	67.9
Yes	1	3.6
No data	8	28.6
TOTAL	**28**	**100**

Regarding the relations between the perpetrators and the victims, they were mostly indicated as poor (16), though in almost half of the verdicts there was no relevant data recorded. This would seem to be the result of the courts' tendency to focus on the crime itself without consideration of the broader context and gender dimensions of the crime.

The relationship between the perpetrator and the victim prior to the crime being committed		
	Number	%
Acceptable	2	7.1
Poor	16	57.1
No data	10	35.7
TOTAL	28	**100**

DATA ON THE WEAPONS

Analysis of data on the misuse of firearms in committing the criminal offenses in the sample, reveals that the most commonly used firearm was a pistol (revolver), while other firearms from category "B" were employed most of the other cases - short, long, semi-automatic, repeating, single-shot, or double-barreled guns which persons may procure, hold, and carry on the basis of a document from the competent authority.[124] However, in the sample, only four perpetrators had a permit from the competent authority to possess, but not to carry a firearm, while seven did not have a permit to hold or carry a firearm.

In four cases, a bomb/grenade was used to commit the crime - firearms from category "A," which includes mines and explosives, automatic short and long firearms, weapons hidden in other objects, and firearms with a silencer, all of which physical persons cannot legally procure, hold, or carry.[125] It is worrying, however, that in as many as 17 of the cases of domestic violence in the sample, there is no information in the verdicts regarding the perpetrator's legal status to hold/carry a firearm. When the data on the misuse of firearms in the committing of a criminal offense are compared with the data on the qualification of the offense, it is evident that eight perpetrators were convicted for the

[124] Article 4 para. 2 and Art. 5 Para. 2, the Law on Weapons and Ammunition, op. cit.
[125] *Ibid.*, Art. 4 para. 1 and Art. 5 para. 1

illegal possession and carrying of weapons, while another perpetrator for the illegal carrying of weapons, for which he had a permit to possess, but not to carry.

Type of firearm used in committing the criminal offense		
	Number	%
Pistol (revolver)	13	46.4
Hunting rifle	2	7.1
Air rifle	1	3.6
Pistol and rifle	1	3.6
Bomb/grenade	4	14.3
Threat of firearm misuse	7	25.0
TOTAL	**28**	**100**

The large number of perpetrators who misuse firearms for which they did not have a possession permit, as well as the large number of those who threatened or misused a bomb/firearm whose possession is by definition illegal, is an indication of the large number of weapons very likely still in the illegal possession of citizens in Serbia. Correspondingly, this indicates that many types of firearms can likely be obtained relatively easily on the black market. Their misuse also appears common in cases of gender-based violence, which has been confirmed by the findings of previous research.[126]

Perpetrator's possession of a firearms license		
	Number	%
Yes	4	14.3
No	7	25.0
No data	17	60.7
TOTAL	**28**	**100**

Confiscation of firearms after the initiation of criminal proceedings		
	Number	%
Yes	16	57.1
No	3	10.7
No data	9	32.1
TOTAL	**28**	**100**

DATA ON THE VICTIMS

Compared to the number of perpetrators (28), the number of victims is far higher - 44, as committing the crime often resulted in the injury or violation of multiple victims.

Approximately one-fourth of the victims were male and three-fourths female, which confirms the gender specificity of violence committed through firearms misuse. Among the victims were seven children, six aged 14-18. The age of the adult victims (37 in total) is not known as this information was anonymized in the verdicts.

[126] See: Božanić, D., *Gender and small arms and light weapons in Southeast Europe,* SEESAC, Belgrade, 2016, p. 23; Roadmap for a Sustainable Solution to the Illegal Possession, Misuse, and Trafficking of SALW and their Ammunition in the Western Balkans by 2024, *op. cit.*, p. 10.

Gender		
	Number	%
Male	11	25.0
Female	33	75.0
TOTAL	**44**	**100**

Age		
	Number	%
Child, under 14 years of age	1	2.3
Child, aged 14–18 years	6	13.6
Adult, No other data	37	84.1
TOTAL	**44**	**100**

At the time of the crime, according to the category of marital status, the largest percentage of victims were married (43.2%), while 9.1% of victims lived in a non-marital union. In a large number of verdicts, the data on the marital status of the victims were anonymized, so this information was gathered from either the testimony of the defendant, a victim's testimony, or the testimony of other witnesses. It is also difficult to ascertain precisely how many children may have been victims of violence, as this information, while extremely pertinent, is often not investigated or reported, despite children being the most common indirect victims of domestic violence. The data on how many children the victim had remains unknown in 56.2% of cases. For only 19 victims was this information available, 12 of whom were known to have one, two, or three or more children, while seven victims had no children.

Marital Status		
	Number	%
Married	19	43.2
Engaged in a non-marital partnership	4	9.1
Divorced	2	4.5
Not Married	7	15.9
No data	12	27.3
TOTAL	**44**	**100**

Number of Children		
	Number	%
One	5	11.4
Two	5	11.4
Three or more	2	4.5
No data	25	56.2
No children	7	15.9
TOTAL	**44**	**100**

For those victims on which relevant data was available, a majority lived in a rural area (36.4% of the total amount of victims), while the number of those living in the city was slightly lower (31.8% of the sample). However, in almost a third of the cases, there was no available data on the victim's place of residence (29.5%). Data on the place of residence contrasts with data collected in previous surveys, which indicated the largest number of victims of domestic violence had a place of residence in the city.[127]

The places of birth of the victims differ from their places of residence, with most of the victims were indicated to have been born in suburban areas (45.4%).

Place of residence		
	Number	%
Village	16	36.3
City	14	31.8
Suburban settlement	1	2.3
No data	13	29.5
TOTAL	**44**	**100**

Place of birth		
	Number	%
City	2	4.5
Village	9	20.4
Suburban settlement	20	45.4
No data	13	29.5
TOTAL	**44**	**100**

Profession		
	Number	%
Director of a pre-school institution	1	2.3
No data	43	97.7
TOTAL	**44**	**100**

That data regarding the occupation, education, and employment of the victims was reported for only one of the victims in the sample, and it is discouraging and seemingly testament to how little attention the courts pay to victims of violence committed through the misuse of firearms.

[127] Petrušić, N., Žunić, N., Vilić, V., *The criminal offense of domestic violence in judicial practice: new trends and challenges,* OSCE Mission to Serbia, Belgrade, 2018, p. 111.

Education		
	Number	%
Higher education	1	2.3
No data	43	97.7
TOTAL	**44**	**100**

Employment		
	Number	%
Employed	1	2.3
No data	43	97.7
Total	**44**	**100**

Data on the relationship between the victim(s) and the perpetrator of the criminal offense of domestic violence committed through the misuse of firearms show that the most common form of violence was committed against a spouse or non-marital partner. The percentage of cases in which the parent was the perpetrator and his child a victim of violence was 13.7%, while the number of cases in which the perpetrator of violence was a child (adult child) and a parent was the victim was essentially the same (13.7%).

Relationship of the victim to the perpetrator		
	Number	%
Spouse	12	27.3
Non-marital partner	5	11.4
Former spouse	3	6.8
Father	2	4.5
Mother	4	9.1
Son	6	13.6
Daughter	5	11.4
Sister	1	2.3
Brother/Son in-law	1	2.3
Mother in-law	1	2.3
Stepdaughter	1	2.3
Maternal grandmother	1	2.3
Brother/male cousin	2	4.5
TOTAL	**44**	**100**

When it comes to previous violence, that for 56.8% of cases there is no data is again seemingly symptomatic of the failure of courts to review the history of the perpetrator-victim relationship, despite this being, among other relevant factors, pertinent to the sentencing. As a rule, the courts appear to be focused only on establishing certain facts related to the criminal offense provided by the prosecution. In 38.6% of the cases

in the sample, data indicated that the victims of violence had previously been exposed to violence by the perpetrator, which corresponds closely to the data that in 35.7% of the cases the perpetrator had been previously convicted. Only two verdicts stated that the perpetrator had not mistreated the victim before.

The verdicts generally did not contain data on whether the perpetrator had previously threatened to use a firearm (true for 63.6% of the cases), while 15 verdicts contained information that the perpetrator had not previously used or threatened to use a weapon. This information should be viewed with caution, however, as some victims do not disclose this information for fear of the perpetrator.

Previous mistreatment of the victim by the perpetrator		
	Number	%
Yes	17	38.6
No	2	4.5
No data	25	56.8
TOTAL	**44**	**100**

The perpetrator had previously threatened to use a weapon against the victim		
	Number	%
Yes	1	2.3
No	15	34.1
No data	28	63.6
TOTAL	**44**	**100**

None of the victims possessed a weapon and therefore there was no incidence of a victim using one. Also, no victim was in an alcoholic state at the time of committing the crime, nor, according to the court, did any victim contribute to or in any way provoke the committing of the crime.

Possession of a weapon by the victim		
	Number	%
No	44	100
Yes	0	0
No data	0	0
TOTAL	**44**	**100**

The victim's behavior affecting the committing of the criminal offense (according to the court)		
	Number	%
No	44	100
Yes	0	0
No data	0	0
TOTAL	**44**	**100**

According to the verdicts, a relatively small number of women had sought help for previous violence - only 9.1%. However, in 56.8% of the cases in the sample, there was no relevant data available. Compared to the percentage of women who sought help from institutions, the number who had previously reported violence was only slightly higher (11.4%). In 68.2% of the verdicts, however, there was no information in this regard, seemingly because the court had determined not to consider this circumstance. It is obvious that despite numerous campaigns by state officials calling on women victims to report violence against women and numerous media reports on the occurrence of violence against women, women victims of violence have not displayed that they are sufficiently encouraged or willing to report such incidents, nor do they seem to have sufficient trust in the activities of institutions. When it comes to violence committed with firearms, i.e., threats that they will be used, data shows that women are additionally discouraged from reporting this violence for fear of their own safety.

If the perpetrator had previously mistreated the victim, had the victim turned to an institution for help?		
	Number	%
Yes	4	9.1
No	15	34.1
No data	25	56.8
TOTAL	**44**	**100**

If the perpetrator had previously mistreated the victim, had the victim reported it to the police/prosecutor's office?		
	Number	%
Yes	5	11.4
No	9	20.4
No data	30	68.2
TOTAL	**44**	**100**

DATA ON DETENTION, SANCTIONS, AND APPEALS

According to the data from the verdicts, half of the perpetrators were sentenced to incarceration, but for 11 of the 28 perpetrators there was no information regarding detention in the verdicts.

In 81.1% of cases, the perpetrators were convicted, in four cases the public prosecutor and the defendant entered into a plea agreement, while in only one case was the accusation rejected due to the withdrawal of the case from indictment by the public prosecutor.

The content of the plea agreement due the recognition of a criminal offense on the part of the defense and the acknowledgement of guilt is not known, as in these cases, in accordance with Art. 429. para. 2 of the CCP, the written judgments were only partially explained, i.e., only the reasons that guided the court in accepting the agreement were stated. Of the judgments in which the court, in accordance with Art. 317 of the CCP, accepted the plea agreement, none were found to contain an agreement on the obligation of the perpetrator to fulfill the property claim submitted by the victim.

Perpetrator sentence to incarceration		
	Number	%
Yes	14	50.0
No	3	10.7
No data	11	39.3
TOTAL	**28**	**100**

When it comes to sentences, the most common sentence was imprisonment, which was imposed on seven perpetrators – or 39.3% of the sample. Two of the seven perpetrators were sentenced to prison only, while other perpetrators were issued an additional security measure, namely: confiscation of the object with which the crime was committed for three perpetrators; mandatory treatment of alcoholism/drug addiction against the three perpetrators; two sentenced to imprisonment were also issued a fine; and one was banned from approaching and communicating with the injured party(ies).

Eight perpetrators, 28.7% of the sample, were issued suspended sentences. The length of the prison sentence was generally less than one year (75%), while the probation period was generally longer than two years (87.5%). Among the eight perpetrators issued suspended sentences, five were issued the security measure of the confiscation of weapons, two were issued the security measure of compulsory treatment of alcoholism, and two were issued a security measure prohibiting the further harassment of the injured party.

From the sample of 28 cases, in 12 cases the security measure of confiscation of the object with which the crime was committed (weapons and ammunition) was imposed, in four cases a security measure forbidding the approaching and harassing the victim was imposed, and in one case a measure forbidding further harassment of the victim.

House arrest was imposed on five perpetrators, three with electronic surveillance, and two without electronic surveillance. Three of the five perpetrators were also issued the security measure of the confiscation of weapons, one of them was fined, and one of them was given the security measure banning them from approaching and harassing (communicating with) the injured party.

The lengths of the sentences of imprisonment/house arrest were in 35.4% of cases shorter than one year, while in all other cases they were one year or longer. The shortest prison sentence issued was five months, and the longest 40 years - imposed for aggravated murder committed with a firearm. In considering the penalties for domestic violence offenses in which the perpetrator threatened to use or used a firearm, the penalties are too lenient, especially given their social danger. It would be expected that the punishments would be more appropriately severe, especially bearing in mind that among the 28 perpetrators there were eight who had singe sentence imposed, despite being found guilty of two crimes: 7 were found guilty of both domestic violence and the unauthorized possession of weapons, and one for domestic violence and the unauthorized carrying of weapons. The length and severity of the sentences imposed, however, run contrary to this expectation.

If we compare the findings on sentences only for criminal acts of domestic violence with the findings of previous research, it can be concluded that the threat and misuse of firearms in committing these acts does not seem to significantly affect the length and/or severity of the sentence. Namely, according to the findings of the research into court practice in processing criminal acts of domestic violence, regardless of legal qualification, in the period from January 2006 to May 2007, 47.1% of prison sentences imposed for such cases were shorter than one year.[128] For domestic violence offenses in which the use of firearms was threatened or used in the sample gathered for this study, sentences of imprisonment of less than one year were imposed in 35.4% of cases, which is only 11.7% less than in cases of domestic violence period from January 2006 to May 2007. When sentencing for the crime of domestic violence committed with firearms, the courts generally impose relatively mild sentences. In no case was the maximum sentence of five years imprisonment imposed, and most sentences were either one year or less than one year in incarceration.

Court decision (type of judgment)		
	Number	%
Guilty	21	82.1
Dismissal (removal of charge)	1	3.6
Plea agreement of guilt	4	7.1
Security measure only	2	7.1
TOTAL	**28**	**100**

The criminal sanction imposed by the court in the first issuance of the verdict		
	Number	%
Incarceration	2	7,1
Incarceration, the security measure of the confiscation of weapons, and the security measure of prohibiting the approaching and harassing of the injured party(ies)	1	3.6
Incarceration, fine, and the security measure of the confiscation of weapons	3	10.7
Incarceration, fine, the security measure of the confiscation of weapons, and the security measure of mandatory treatment for alcoholism	1	3.6
Incarceration and the security measure of mandatory treatment for alcoholism	2	7.1
Incarceration and the security measure of mandatory treatment for narcotics abuse	1	3.6
Incarceration and the security measure of prohibiting the approaching and harassing of the injured party(ies)	1	3.6
The security measure of obligatory treatment and confinement in a psychiatric institution	2	7.1
Probation	1	3.6
Probation, fine, and the security measure of the confiscation of weapons	1	3.6
Probation, the security measure of mandatory treatment for alcholism to remain out of incarceration, and the security measure of the confiscation of weapons	1	3.6
Probation, the security measure of mandatory treatment for alcoholism, and the security measure of the confiscation of weapons	1	3.6

[128] *Ibid.*, p. 135.

Probation, fine, the security measure of the confiscation of weapons, and the security measure of prohibiting the approaching and harassing of the injured party(ies)	1	3.6
Probation and the security measure of the confiscation of weapons	2	7.1
Probation and the security measure of prohibiting the approaching and harassing of the injured party(ies)	1	3.6
House arrest with electronic surveillance	1	3.6
House arrest with electronic surveillance and the security measure of the confiscation of weapons	2	7.1
House arrest with electronic surveillance and the security measure of prohibiting the approaching and harassing of the injured party(ies)	1	3.6
House arrest without electronic surveillance and the security measure of the confiscation of weapons	1	3.6
House arrest without electronic surveillance, fine, and the security measure of the confiscation of weapons	1	3.6
Charge dismissed	1	3.6
TOTAL	**28**	**100**

The criminal sanction imposed by the court in the second issuance of the verdict		
	Number	%
Probation and the security measure of the confiscation of weapons	1	3.6
Incarceration, fine, and the security measure of the confiscation of weapons	1	3.6
No second issuance of a verdict	26	92.8
TOTAL	**28**	**100**

Length of imprisonment or house arrest		
	Number	%
5 months	1	5.9
6 months	2	11.8
7 months	1	5.9
8 months	1	5.9
10 months	1	5.9
1 year	4	23.5
1 year and 2 months	1	5.9
1 year and 5 months	1	5.9
1 year and 6 months	1	5.9
2 years and 2 months	1	5.9
6 years	1	5.9
14 years and 2 months	1	5.9
40 years	1	5.9
TOTAL	**17**	**100**

Type of security measure issued*		
	Number	%
Confiscation of a weapon(s)	17	60.7
Mandatory psychiatric treatment and custody in a health institution	2	7.1
Mandary treatment for alcoholism in an institution	3	10.7
Mandary treatment for alcoholism	1	3.6
Mandary treatment for narcotics abuse	1	3.6
Prohibition of approaching and harassing the injured party(ies)	3	10.7
Prohibition of harassing the injured party(ies)	1	3.6
TOTAL	**28**	**100**

* A sentence without any accompanying security measure was imposed in only six cases, while some sentences were accompanied by the imposition of two security measures.

Length of Probation		
	Number	%
4 months to 2 years	1	12.5
6 months to 1 year	1	12.5
6 months to 2 years	2	25.0
8 months to 2 years	1	12.5
10 months to 2 years	1	12.5
1 to 3 years	1	12.5
1 years and 10 months to 5 years	1	12.5
TOTAL	**8**	**100**

When determining the type and severity of punishment, courts are to treat various circumstances as relevant and assess their impact on committing a criminal offense. In many court judgments, mitigating and aggravating circumstances were cited by the courts in a very general way, without delving into the actual effect of their action. Also, automatism was observed in the courts' determining of mitigating and aggravating circumstances, as certain circumstances from the legal provision prescribing the rules on sentencing (Article 54 of the Criminal Code) were observed to be stated without the court seeming to take into account that violent relationships in the family have an innately higher degree of danger compared to other forms of violent behavior. Among the mitigating circumstances cited were the circumstance that the "injured party is not interested in criminal prosecution or making a property claim," and that the perpetrator "had served on duty as an authorized official of the Ministry of the Interior during the aggression of NATO forces from March 24 to June 26, 1999."

MITIGATING CIRCUMSTANCES RELATED TO THE PERPETRATOR TAKEN INTO ACCOUNT BY THE COURT WHEN DETERMINING A SENTENCE FOR EACH CASE OF THE SAMPLE
1. Correct conduct before the court, the degree of guilt of the defendant. The court assessed the circumstance that the defendant was the owner of a private company and that he no longer lived in partnership ty with the injured party, which, according to the court's assessment, would fulfill the purpose of punishment.
2. Personal, family, and property circumstances of the defendant - the father of a minor child, who does not own immovable property, who has not previously been convicted, and who admitted to have carried the weapons and ammunition that were found with him.
3. A verdict dismissing the accusation was passed.
4. A decision was issued imposing the security measure of mandatory psychiatric treatment and custody in a health institution.
5. A decision was issued imposing the security measure of mandatory psychiatric treatment and custody in a health institution.
6. Plea agreement on the recognition of guilt of the criminal offense, no other mitigating circumstances stated.
7. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
8. Admission, sincere remorse, the perpetrator has not been previously been convicted for these criminal acts, the injured parties have not joined the criminal prosecution, the claims related to property and other personal and property circumstances against the defendant have not been filed.
9. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
10. The injured party is not interested in criminal prosecution or making a property claim.
11. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
12. Father of two minor children, married, unemployed, recipient of social support.
13. The perpetrator has no previous convictions and is the father of one child.
14. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
15. The perpetrator is middle-aged, he admitted to committing the crime, and he has not been previously convicted.
16. Plea agreement on the recognition of guilt of the criminal offense, no other mitigating circumstances stated.
17. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
18. Plea agreement on the recognition of guilt of the criminal offense, no other mitigating circumstances stated.
19. The perpetrator is a family man, the father of two children, he was in a mental state of moderate incapacity, his ability to understand the significance and intent of his act and manage his actions were reduced by a noticeable, but not significant, degree, and he expressed regret over this event.
20. The perpetrator has not been previously convicted, is the father of a minor child, in the specific case the attempted murder from the cited criminal offense was not fully realized, i.e., the offense remained an attempt, the perpetrator left off in the committing of the criminal offense, i.e., he shot himself in the head with the same gun, leaving him injured, on which occasion his life was also endangered, while in relation to the criminal offense of the procurement, possession, and carrying of weapons and explosives according to Art. 348, paragraph 1 of the Criminal Code, the court assessed as mitigating circumstances "that the defendant fully admitted committing this criminal offense, which facilitated the court's conducting of this procedure."
21. The perpetrator has not been previously convicted.
22. The perpetrator has not previously convicted, served as an authorized official of the Ministry of the Interior in the period from March 24 to June 26, 1999 during the aggression of the NATO forces, he performed his duty for the purposes of state security and participated in the defense of the country in that period, he is the father of six children, one of whom is a minor, the injured parties did not join the prosecution, stating that they had reconciled in the meantime and that they were on good terms with the perpetrator.

23. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
24. The youth of the perpetrator.
25. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
26. The judgment does not contain any specific explanation in this regard, no mitigating circumstances are stated.
27. Not previously convicted, personal and family circumstances (father of three minor children).
28. No explanation of the judgment was provided so that it was not possible to establish whether any mitigating circumstances were considered.

As opposed to mitigating circumstances, which are referenced and taken into account frequently and extensively in the reasoning of the courts' judgments, aggravating circumstances are cited to a significantly lower degree. In 14 cases from the sample, no aggravating circumstances were cited. In cases in which the court did cite aggravating circumstances, these are most often in the form of previous convictions, that the act was committed against family members, etc. There are also examples of good practice. In one case, the court assessed as an aggravating circumstance the perpetrator's persistence in committing the crime, i.e., that the perpetrator had previously been violent towards the injured party, which, as stated, "*speaks of continuous violence against her for a long time; that the injured party withdrew her criminal charges and that she did not report him every time indicates her fear and that she did not have the support of her family at the time*." In one case, the court stated that it was "*convinced that the perpetrator did not understand the significance of the committed crime*," which it assessed as an aggravating circumstance. It is puzzling that the court did not consider as an aggravating circumstance the perpetrator committing certain acts of the criminal offense in the presence of a minor.

AGGRAVATING CIRCUMSTANCES RELATED TO THE PERPETRATOR TAKEN INTO ACCOUNT BY THE COURT WHEN DETERMINING A SENTENCE FOR EACH CASE OF THE SAMPLE
1. Persistence in committing the crime, the fact that he was violent towards the injured party before, speaks of continuous violence against her for a long time; that the injured party withdrew her criminal charges and that she did not report him every time indicates her fear and that she did not have the support of her family at the time.
2. The Court did not recognize any aggravating circumstances.
3. A verdict dismissing the accusation was passed.
4. A decision was issued imposing the security measure of mandatory psychiatric treatment and custody in a health institution.
5. A decision was issued imposing the security measure of mandatory psychiatric treatment and custody in a health institution.
6. Plea agreement on the recognition of guilt of the criminal offense, no aggravating circumstances referenced.
7. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
8. Gravity of the criminal offense, the manner, place, and time of the committing of the criminal offenses, the degree of guilt of the perpetrator.
9. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
10. Previously convicted.
11. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
12. Previously convicted, the gravity of the criminal offenses, and their consequences.

13. The Court did not recognize any aggravating circumstances.
14. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
15. The Court did not recognize any aggravating circumstances.
16. Plea agreement on the recognition of guilt of the criminal offense, no aggravating circumstances referenced.
17. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
18. Plea agreement on the recognition of guilt of the criminal offense, no aggravating circumstances referenced.
19. Previously convicted.
20. The defendant's attitude towards the victim - the perpetrator committed the criminal offense of attempted murder against his wife and the purpose of punishment in this particular case would not have been achieved by a mitigated punishment.
21. The behavior of the perpetrator after the committing of the crime.
22. The Court did not recognize any aggravating circumstances.
23. Plea agreement on the recognition of guilt of the criminal offense, no aggravating circumstances referenced.
24. Previously convicted.
25. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
26. The judgment does not contain any specific explanation in this regard, so no aggravating circumstances are referenced.
27. The number of criminal acts executed "exceed the measure necessary for the existence of the criminal offense in question."
28. No explanation of the judgment was provided so that it was not possible to establish whether any aggravating circumstances were considered.

An analysis of the data from the appeal procedures could not be performed because the judgments do not contain this data.

Were the legal remedies stated?		
	Number	%
Yes	1	3.6
No	3	10.7
No data	24	85.7
TOTAL	**28**	**100**

Second verdict issued		
	Number	%
Revision of the first verdict issued	1	3.6
No data	27	96.4
TOTAL	**28**	**100**

Qualitative analysis of court cases - domestic violence

CASE no. 1

The modality of execution, summary of critical events, and legal qualification of the criminal offense

On October 17, 2016, the District Public Prosecutor in Čačak filed an indictment with the Basic Court in Čačak against the perpetrator O. S. for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives defined by Art. 348 para. 4, in connection with para. 1, and of Domestic Violence that defined by Art. 194. para. 2 in connection with para. 1 of the Criminal Code.[129] In the meantime, the Criminal Code was changed, so the Basic Court in Čačak rejected the indictment due to the practical incompetence of that court.[130] On April 11, 2018, for the same event, the Basic Public Prosecutor filed an indictment against the defendant for the criminal offense of Domestic Violence under Art. 194. para 2 in connection with para. 1 of the CC.[131]

By the verdict of the Basic Court in Čačak on July 5, 2018, the perpetrator O. S. was found guilty of the criminal offense stated in the indictment[132]. According to the factual description of the crime, on August 10, 2016, at around 2:50 pm in the village of M. - Čačak, the perpetrator, in a sane state and with direct intent, aware of the illegality of his actions, endangered the tranquility and physical integrity of his (ex) wife by threatening to take her life with a firearm. On the mentioned day, after the hearing for the divorce lawsuit, which ended at around 2 pm, the perpetrator addressed the injured party in the court premises with the words: "*You will see*!," causing the injured party to be in serious fear, as the perpetrator had said he would not allow her to divorce and that he would sooner kill her.

The injured party, bearing all of this in mind, went for her safety to the village of M. where her parents, brother, and grandmother lived. The perpetrator came to this household, got out of the vehicle, carrying a *Rhoner* pistol, model SM-110, caliber 6.35 x 15 mm , and eight bullets, caliber 6.35 x 15 mm, and called for the victim. When she saw him, she started running towards the back of the yard. The perpetrator chased after her and pointed a gun at the victim and said to her: "*I will kill you*!" When he was intercepted by the victim's father, the perpetrator got by and continued to chase the injured party all the time, saying: "*I will kill you, I will kill you!*" When he reached a distance of 5 meters from her, he again pointed a gun at her, prompting the victim's parents to stand in front of her. The perpetrator told them to take cover and that he wanted to kill the victim because she wanted a divorce. At that moment, the victim's uncle also entered, approached the defendant from behind and grabbed his hand with the intention of taking his gun. The victim used this moment to flee in the direction of the uncle's house and hide from the perpetrator. In the meantime, the victim's brother arrived, who managed to remove the gun from the perpetrator and throw it aside, after which the police arrived.

The court weighed the argument of the perpetrator's defense counsel alleging that in this particular case it should be considered a minor crime, such as the endangerment of safety or the endangerment with dangerous tools in a fight or quarrel, and found that these allegations of the defense were unfounded since the perpetrator and the victim were still married, since although the divorce litigation was ongoing, it had not been finalized at the hearing held on the critical day.

[129] Legal decision no. 216/6.
[130] Criminal Procedure no. 475/17 from December 17, 2017.
[131] Legal decision, no. 127/18.
[132] Legal decision, no. 244/18.

Data on the perpetrator

According to the verdict, the perpetrator was 54 years old at the time of the crime, had finished high school, was employed (he was the owner of a private company), had a monthly income of approximately 30,000.00 dinars, owned a house and production facilities, had been married and later divorced, was the father of two adult children, and was convicted by the final judgment of the Basic Court in Čačak, decision no. 196/17 of August 23, 2017 for the criminal offense prescribed by Art. 194. para. 5 of the Criminal Code to a sentence of imprisonment for a term of three months, conditionally up to one year, and issued a fine in the amount of 30,000 dinars. This punishment was imposed on the perpetrator because during the criminal procedure he violated the security measure issued against him for domestic violence, which had been imposed by the court in the civil procedure on the basis of the Family Law.

The perpetrator did not confess to/acknowledge committing the crime. When questioned by the public prosecutor, he stated that he and his wife had had a divorce hearing based on her lawsuit, but that the hearing had been previously postponed. After the hearing, he said he had called his wife because he wanted to talk to her, considering that he did not want to divorce and that they could find another solution. He called her on the phone as many as 50 times, but she did not answer, so he was very angry and annoyed. He called from the apartment, after which he returned to the house in the village, in a state of stress. He took a "wrapped bundle" from the closet, but stated that he did not know for sure what it was, that he had assumed it was a gun that was out of use and which he had never fired, and it had been with him for a long time. After that, he claimed that he went to the victim's grandmother, and when he approached by car, he saw the victim's vehicle parked, which is why he entered the yard to talk to her. In his hand he held the "bundle" that he had taken from home. He was under stress and just wanted to talk to the victim, who started running away from him. He claims that he did not threaten her, that he did not shout at her and it was not clear to him why she was running away. He claimed that he did not take the gun out of the "bundle", but could not explain why he was carrying the "bundle." He did not have a permit to hold and carry a weapon, and the gun had been there for ages, from his father and grandfather. When he entered the yard, he saw the father of the victim sitting in the yard, and later the relatives of the victim who lived nearby who he claimed came and beat him, so that he suffered injuries on his face and body. He said that he did not know why he was beaten, given that he had not said or shouted anything.

In his testimony at the main trial, the perpetrator changed his statement regarding the possession of a gun. He stated that the gun had been given to the victim many years ago by his aunt, who lived in Germany, but he did not know where the gun was for a long time. While they were married, they had thought about what to do with the gun, they had even thought about throwing it away. After the postponed hearing for the divorce, the perpetrator said he had been called by his brother, who had read in the newspapers that the legalization of weapons was in progress, so he had taken the gun that day to hand it over to the police. Then, as he stated, he remembered that he should stop by to see his wife, who was with his parents, to show her the gun because it was theirs and to inform her that he was going to hand it over to the police. When he got out of his car, he was holding the gun, while in his other hand he was holding a bag with bullets. His

wife's father was present, next to his wife, so when he pulled out a gun to show it to her, she started running and shouting: "*He's going to kill me, he's going to kill me!*" According to the perpetrator, the uncle of the victim and other family member arrived, by whom he was then attacked from behind and his head hit, from which he suffered head injuries and broken teeth. Later, the police came and dragged him around on the ground. He did not want to divorce his wife, because they gained much through their marriage and there was no reason for them to divorce. He stated that he had never been violent towards her, sometimes they quarreled, but these were usual marital quarrels. He confirmed that they quarreled "more fiercely" two years ago, but that he did not attack her physically even then. Regarding that event, the injured party had filed a criminal complaint, but later withdrew it.

The court did not accept the stated defense of the perpetrator, finding that it was illogical and calculated to mitigate his actions. According to the verdict, the fact that the perpetrator had injuries after the critical event and had submitted a medical certificate was not disputable, but there was no evidence that these injuries were inflicted on the perpetrator by close relatives of the injured party, and they were not deemed as relevant material in the criminal proceedings in terms of affecting the existence and committing the criminal offense charged against him.

The findings and opinion of the neuropsychiatrist indicated that the perpetrator had no history of psychiatric disorders, that the marital relationship with the victim had deteriorated in the last two years when the perpetrator had shown a greater degree of jealousy and aggressive behavior with elements of physical and psychological abuse of his wife and that her decision to sue for divorce had provoked in him intense jealousy, anger, rage, and the inability of the perpetrator to accept his wife's departure and divorce, and for some time before the critical event he had threatened her, culminating in the critical occasion. The expert concluded that the perpetrator rarely consumed alcohol and in small quantities, yet on the critical occasions he was under the influence of alcohol in the amount of 0.13 mg/l of alcohol in his blood, which had been determined from alcohol testing done five hours after the critical event. Further, the expert concluded that the perpetrator had been in a state of intoxication at the time of the critical event, which had caused him to be in a state of heightened affect, angry and enraged with aggression, but that this was controlled, signifying that he was in a state of impaired mental capacity when committing the crime, but not to a significant degree, because the level of alcohol in the perpetrator could not have significantly affected his state of consciousness and mental function. According to the expert's findings, "*such an affect was caused by jealousy and the inability to rationally and maturely accept a divorce, but his condition did not significantly disturb the capacity of his consciousness to control his behavior*." The perpetrator was not addicted to any psychoactive substances, and had no permanent mental illness or disorder.

Based on the findings and opinion of the expert, the court determined that the perpetrator committed the criminal offense of domestic violence in a sane state, i.e., that his mental capacity was impaired, but not significantly. With regard to the perpetrator's guilt, the court found that the perpetrator acted with direct intent, was aware that he was threatening his wife with a gun, which possessed the functional capacity to cause serious bodily injury and seriously impair health, and that his actions were illegal; that

threatening to kill her with a gun endangered her peace and bodily integrity, and that this was his intent. The fact that the perpetrator then fully consciously and intentionally undertook the actions of the said criminal offense is also further confirmed by the fact that he was later, as can be seen from the excerpt from the criminal record (CR) for the perpetrator, convicted of the criminal offense under Art. 194. par. 5 of the CC for violating the security measure of protection against domestic violence determined by the court.

Data on the victim

There was no information about the victim of this crime in the verdict, and the relationship between the victim and the perpetrator can only be concluded on the basis of the testimony of the injured party during the criminal proceedings. The aggrieved party, heard as a witness, confirmed that she had been married to the perpetrator since 1992, that they had two adult children and that the problems in the marriage began in 2014 when the perpetrator changed his behavior towards her, and at this time the victim discovered that he was seeing another woman. At this, she proposed to him that they divorce, but he did not accept, and since then, psychological and physical violence against her had begun. The quarrels grew more frequent and more intense, and when the perpetrator pulled her hair during a quarrel and threw a chair at their son, she reported the physical violence to the police on September 1, 2014. After this, he demanded that the victim move out of the family home. During her move, in which she was assisted of her brother and father, the perpetrator had also behaved aggressively, shouting, insulting them, slapping their son, pulling her into the house, and kicking her father in the stomach; eventually, the brother managed to bring the situation to a calmer state and they left the house. She then moved to an apartment in Čačak. Although the perpetrator was left alone in a house in the village, he often came to the apartment where she moved, and she could not prevent him from doing so. Each time he came by quarrels would ensue, leading to an incident on October 15, 2014, when the perpetrator beat her and broke everything in the house. She did not report this event, and as for the event from September 1, 2014, she withdrew her report due to her fear of the perpetrator. She stated that she did not have the support of her parents to divorce because they were "very patriarchal" and they would be ashamed if she divorced. No one in the family supported her in making the decision to divorce, even though everyone knew about her problems. On one occasion when her brother tried to talk to the perpetrator about their relationship, the perpetrator then told her about her brother: "*Watch out that he does not disappear in the dark*!" She pointed out that she had received the most intense beatings on September 25, 2015; she took photographs of the injuries to her face and body, which were clearly visible. So, she went to her children who were studying in Belgrade and took refuge there because she was not sure that anyone would provide protection from the perpetrator.

According to the victim, she was afraid of the perpetrator because he constantly threatened to kill and destroy her, he kept coming to her apartment, and she did not even try to replace the lock out of fear. At that time, she was informed in several places how she could protect herself, so she even came to the prosecutor's office and finally filed a divorce lawsuit on May 9, 2016. She managed to talk to the perpetrator and on that occasion they agreed to divorce by mutual agreement; however, when she submitted the proposal for divorce to him, he did not want to sign it, but tore it up. Then she decided to

file a lawsuit for divorce, and from that moment the threats intensified even further, the perpetrator threatened that he would kill her, that there would be no divorce, that "they may go to the grave together, but they would not divorce." The perpetrator threatened that if he ever went to prison he would kill her when he got out of prison. His behavior was domineering and he demanded that when he called her, she had to answer because if she didn't then he would come to Čačak and physically harass her. She reported the perpetrator to the police, but withdrew the reports out of fear.

The course of criminal proceedings

In the evidentiary procedure, the court heard: from the perpetrator and the injured party; the testimonies of five witnesses (which were read); the findings and opinion of the National Criminal Technical Center (NCTC) from Užice; the findings and opinion of a neuropsychiatric expert; the record of alcohol testing; the record of the investigation; a report on the forensic examination of the scene as forensic technical documentation; a report of the Center for Social Work with photographs; criminal procedural law files 25/16; and an excerpt from the criminal records for the perpetrator.

Examined as a witness, the injured party stated, among other things, that she was in Belgrade with the children when the perpetrator received a summons for a divorce hearing. He called her on the phone, shouted, threatened to kill her, cursed the children, and threatened to go to Belgrade if she did not withdraw the lawsuit. After that, he behaved "normally" for a while because he hoped that the lawsuit would be withdrawn. A divorce hearing was scheduled for August 10, 2016. The perpetrator behaved "normally" before the trial - they talked. However, he stated in the courtroom at the hearing that he did not want to divorce, while the injured party confirmed her intention. When the judge explained that the marriage must be divorced, the perpetrator turned to her at one point with a clear and sudden change in his expression, and hissed, "*You will see*." The judge noticed, but did not hear the words spoken correctly and so referred the injured party to report the perpetrator to the police if there were still threats and disturbances.

The injured party stated that after the hearing, she felt threatened and was afraid that the perpetrator would do something, considering that he was constantly threatening her. When she was near her apartment, she turned on her phone to call her parents, but at that moment the perpetrator called her. She answered and said she was not at home and hung up. After that, another call followed, to which she also responded, at which point the perpetrator threatened her with death, saying that he would find her wherever she was that day and that, if she was with her parents, he would come and kill everyone. She hung up and turned off the phone, and after two hours she decided to go to her parents. When she was with her parents, she saw the perpetrator coming by car. She also saw him holding a bag in his hand, insulting and cursing her, so her father reacted, asking the perpetrator what he wanted with the injured party, and when the perpetrator got out of the car and reached the injured party's father, he pushed him away with his hand and cursed at her father and mother and continued to approach her. She started running, screaming, and asking someone to call the police. Then the perpetrator pointed a gun at her head.

Speaking about the weapon, the injured party stated that she did not know that they had ever had a weapon in the house, that she had never seen a gun in the house before, and that as for the gun that the perpetrator had brought with him and held in his hand, she could not describe it well because she doesn't know much about weapons - she simply saw him holding a gun in his hand. She joined the criminal prosecution and filed a property claim.

The parents, brother, uncle, and daughter-in-law of the injured party were questioned. They confirmed that they had seen the perpetrator carry out the critical act, that he had come to the house where the victim was and made threats with a gun. Their testimonies were in full agreement with the testimony of the injured party and the court accepted them as credible.

Inspecting the report of the Center for Social Work (CSW) of the City of Čačak dated September 1, 2016, the court determined that the perpetrator and the injured party were on the records of the Center dating back to September 30, 2014, when the injured party had reported to the police that the perpetrator physically attacked and psychologically abused her and their son. The report of the Center further states that on October 1, 2015, the spouses separated, that the injured party moved to live in an apartment in Čačak, and that they had agreed to make a decision by the end of 2015 on whether to divorce or continue living together. However, after some time, the Center established that "the situation is unchanged, that they live separately, but that no divorce proceedings have been initiated, that they go to family therapy, and that the injured party went to a psychiatrist." The report further stated that the injured party informed the CSW on August 29, 2016 that she had filed for divorce, because relations between her and the perpetrator had further deteriorated, and that on September 25, 2015, her husband brutally beat her, but that she did not report it, only documenting her injuries by taking photographs. Also, the CSW reported that the perpetrator threatened to kill the aggrieved party almost every day, that he came to the apartment where she lived (which was a joint property), that he insulted her, broke and destroyed her furniture, and that he damaged her car by breaking the windshield, that he would control her movement, that he accused her of irrational grievances, and that he checked her calls, as well as tore her dress during a conflict. She reported an event to the Center on August 10, 2016, at which point the CSW asserted in its report that "*the threat to the victim is of high intensity, given that there are open threats and acts of violence, as well as illegal possession of weapons with which the perpetrator has threatened the victim... the intensity of violence has increased and is becoming more and more brutal (...) considering the previous experience of the injured party, the perpetrator is able to fulfill his threats and injure her*." According to the CSW, the safety of the injured party was highly endangered, and, as the perpetrator was in custody at the time of compiling the report, the CSW assessed that his release from detention posed a great risk to the safety of the injured party and proposed security measures for protection against domestic violence.

Inspecting the findings and opinion of the National Criminal Technical Center (NCTC), Užice division, dated October 5, 2016, it was determined that the pistol found in the possession of the perpetrator was of the *Rhoner* brand, model SM-110 caliber 6.35 x 15 mm, that it was a functional weapon, that he had also carried eight bullets of caliber 6.35 x 15

mm, which correspond to the pistol in question; thus, according to the Law on Weapons and Ammunition, the pistol found with the perpetrator was a firearm, and the bullets were functional ammunition corresponding to this pistol.

The criminal offense was committed on August 10, 2016, the indictment was filed on March 28, 2018, and the verdict was passed on July 5, 2018, which means that one year 10 months and 25 days passed from the committing the criminal offense to the passing of the verdict, and from the filing of the indictment to the passing of the verdict, three months and seven days.

Criminal sanction, mitigating and aggravating circumstances

The court sentenced the perpetrator to six months in prison, which would include the time he had spent in detention in the period from August 10 to October 7, 2016, and determined that the prison sentence shall be executed in the premises where the perpetrator lives with the application of electronic surveillance. In addition to the punishment, the perpetrator was also issued the security measure of the confiscation of the object with which the crime was committed.

In deciding on the criminal sanction, the court considered the correct conduct of the perpetrator before the court as a mitigating circumstance. Among the aggravating circumstances, the court referenced that the perpetrator committed continuous violence against the injured party for a long period of time, that he had been censured for violating the security measure imposed on him for the prevention of domestic violence, all indicating his persistence in committing a crime. The verdict further states that "*the court is convinced that the perpetrator did not understand the significance of the committed crime, which is also an aggravating circumstance.*" Recognizing the circumstance that the perpetrator is the owner of a private company and no longer lives in partnership with the injured party, the court decided that the perpetrator should serve his sentence where he resides, with electronic surveillance, so that he can continue with his business and so that the survival of his company and his existence are not questioned.

Also regarding perpetrator, the court imposed the security measure of the confiscation of the weapons for reasons of general security and the possibility that these items could be misused again for committing a criminal offense.

COMMENTARY

This case of domestic violence illustrates the degree of poor effectiveness of the system of protection against domestic violence and the inadequate reaction of the competent authorities. In the specific case, the committing of the criminal offense was preceded by continuous psychological and physical violence of the perpetrator against the victim, which the victim repeatedly reported and from which she sought protection. The very fact that the victim withdrew the reports is evidence that she felt she wasn't being supported to get out of the situation of violence. While knowing from the reactions of the professionals that withdrawing the reports meant that the perpetrator would not be prosecuted, the withdrawal

of the report was an expression of the victim's justified fear of the perpetrator and doubts that the institutions could protect her. Although legally irrelevant from the aspect of the possibility of prosecuting the perpetrator, in practice it is noticeable that the withdrawal of reports by victims is often used as an excuse by institutions for their inaction; in many cases they rely only on the testimony of the victim, failing to collect other evidence. This, in essence, wrongly shifts the responsibility for not prosecuting the perpetrators to the victim.

Symptomatic of this systemic failure is the report of the Center for Social Work which states that the perpetrator and the injured party "are on the records of the Center from September 30, 2014, when the victim reported to the police that the perpetrator brutally beat and psychologically abused her and their son," as is that on September 25, 2015, she submitted photographs from which it was established that she had survived physical violence and suffered bodily injuries. The assessment of the risk and the degree of endangerment of the victim, given by the CSW in 2016, is completely correct, but it was given only later when the perpetrator was in custody. From 2014 to 2016, practically, nothing was done to provide the victim with adequate protection, except that the perpetrator and the injured party were referred to family therapy, which, in itself, relativizes the responsibility of the perpetrator and cannot be applied in a situation of domestic and partner violence. Also, at least regarding the incident reported on September 25, 2015, it is unclear as to why the CSW did not file a report to the police, ex officio, or initiate civil proceedings to impose security measures for protection against domestic violence under the Family Law, nor organize a case conference in accordance with the General Protocol on the Conduct and Cooperation of Institutions, Bodies, and Organizations in Situations of Violence against Women in the Family and in Partnerships.133 It is evident that there was a violent pattern of behavior and that the violence itself escalated over time and became more brutal. The perpetrator violated the eventual security measures prescribed by the Family Law, and for this crime he was sentenced to only three months of probation with a conditional period of one year. This is on the border of the lower minimum for this type of offense, which is inadequate from the aspect of both general and special prevention. As such, this punishment does not sufficiently inhibit the perpetrator from committing criminal offenses in the future, especially as it was imposed conditionally, at a time when another criminal proceeding was already being conducted against him for the same criminal offense which he refused to recognize as such. This sentence is one which the defendant would not likely perceive as a punishment, especially considering the continuity in the manifestation of violence and the violent pattern of behavior.

Such continuous violent behavior of the defendant should have been considered intersectorally, at a meeting of the Coordination and Cooperation Group (CCS), because the obligation of the group is to consider current cases, i.e., any case of domestic violence that has not ended with a final court decision in civil or criminal proceedings (Article 25 of the LPDV). Since the prosecutor filed the indictment

[133] A case conference can be convened by a case manager (expert of the center for social work) in order to adopt a plan of measures for protection and support of victims and non-violent members of their families, in order to ensure the safety of the victim, stop violence, and prevent the recurrence of violence. The General Protocol on the Conduct and Cooperation of Institutions, Bodies, and Organizations in Situations of Violence against Women in the Family and in Partner Relationships. Available at: https://www.minrzs.gov.rs/sites/default/files/2018-11/Opsti%20protokol%20nasilje%20u%20porodici.pdf.

only on March 28, 2018, and given that the LPDV had come into effect on July 1, 2017, there was enough time for the public prosecutor to present this case to a CCS meeting and initiate multisectoral consideration. At such a meeting, he would have certainly received the information that the injured party presented during the criminal proceedings in the description of the act that the defendant was charged with. It certainly would have included the events of September 1, 2014, when the victim filed a criminal complaint, which she gave up, and the event of September 25, 2015, when she survived physical violence and received bodily injuries, with which the CSW was familiar, since the injured party had reported the incident to the CSW - but not to the police. Other events described by the injured party during the interrogation in this criminal proceeding could also have been included, with special reference to the fact that one of the events was attended by the joint son of the parties to this proceeding, who was also a victim of his father's violent behavior. These could be included in the consideration of the crime of domestic violence by demonstrating the full period and duration of its execution, and not by describing only the last event. Such an indictment would certainly be supported by the findings of the CSW, where the family had been on the register since September 30, 2014, as well as could have included the family members of the injured party, who were evidently aware of what was happening to her from the beginning, and who gave testimony in the court procedure in relation to previous events, as well as have included the injured party herself, who on this occasion wished to testify and who testified to all the above in her trial testimony. The public prosecutor also had the space and time to gain more detail from the injured party and thus determine whether action could be initiated, or sentencing be made more severe, due to the long-term exposure to violence, due to the fear she described in her testimony, fear that prevented her from changing the lock on the apartment, fear that kept her from filing reports after each incidence of violence, fear which drove her to seek refuge in Belgrade with their children, fear which drove her on the critical day to go to her parents, and finally, fear that she would lose her life, especially evident when the defendant pointed a gun to her chest – all of this could have been evaluated in the context of the impairment of her mental health, and to what extent she suffered trauma as a survivor. The above-mentioned facts speak of the defendant's determination and his intention not to give up anything, especially not to give up violence in the presence of the victim's son or relatives. Since the plaintiff conducted the evidentiary actions for more than a year and a half, he could have contributed in a significantly more impactful way, one which could have helped to ensure that the punishment to which the defendant would be sentenced would be stricter, and thus more appropriate to the severity of the acts committed.

In addition to the above, the question also arises as to what protection measures the victim had after the defendant's temporary custody was terminated on October 7, 2016 through July 5, 2018, when the verdict in this criminal matter was finally rendered. In this case, the most expedient would have been the imposition on the defendant, at the suggestion of the public prosecutor, of a security measure prohibiting him from approaching, meeting, or communicating with the injured party(ies) and from visiting specific places, according to Art. 197

of the Code of Criminal Procedure - measures which can stay in effect until the relevant verdict becomes final, i.e., until the defendant is sent to serve a criminal sanction consisting of the deprivation of liberty, the possible violation of which entails the imposition of a more severe measure such as incarceration.

This case also highlights that the attitude of the extended family members is very important for victims of violence. In this particular case, because of their patriarchal attitudes, they deterred the victim from divorcing and abandoning the perpetrator. The victim of violence herself testified to this. This lack of support from the primary family must be a signal for institutions to develop a support network with the victim, i.e., to map people who could provide support, including the support of the Center for Social Work and all other available support mechanisms to protect and empower the victim, which the Center would have been able to do after a case conference.

When it comes to firearms, the perpetrator did not have a permit to hold or carry them. It is clear that he threatened to kill on several occasions and that this was known to the Center for Social Work. However, the police were not informed about this, so no checks regarding the possession of weapons were performed. At the same time, it is necessary to keep in mind that leaving a perpetrator with pathological jealousy , something that evidently existed here, represents a particularly risky period for the victim, because the the perpetrator becomes aware that he will no longer be able to control the victim. That such a perpetrator possesses a firearm, or has access to a firearm in such circumstances, significantly increases the likelihood of more drastic forms of violence such as femicide or attempted femicide, which is also confirmed by this case.

Although the victim of violence testified in her statement that she did not know that the weapon was in the house, the veracity of this statement should be taken with caution, as such testimony can be an expression of, or the result of, fear of the perpetrator, but also of the fear that she might bear responsibility for not reporting illegal weapons in the house.

The sentence imposed was also on the verge of a lower minimum, and the incarceration only in the form of house arrest. The public prosecutor obviously agreed with this sanction, which is confirmed by the fact that no appeal was filed against the verdict, and the defendant did not appeal either because he obviously understood the sentence was mild. Although the verdict states that the court took into account that the perpetrator had already been convicted of violating protection measures and that he continuously manifested violence, it is obvious that they did not appreciate the gravity of these elements adequately, especially given that the defendant showed special persistence during the crime, admitted that he called the injured party 50 times in just one day, and that he did not want to divorce because he thought that there was no need for a divorce. That the act was committed with a functional firearm, for which the perpetrator did not have a permit to hold or carry, that he acted with direct intent and that more serious consequences were prevented thanks to the intervention of the victim's

relatives who managed to snatch the gun from the perpetrator - all of which should have been weighed with special and serious consideration - the court clearly did not weigh to a sufficient extent, nor did the public prosecutor create conditions for the punishment to be more appropriate by performing all possible evidentiary actions. Ultimately, the sentence thus imposed does not achieve the goals of special and general prevention, nor does it represent adequate social condemnation for the committed crime. Thus, it does not contribute to strengthening the obligation to respect the law, nor does it strengthen or inspire trust in the rule of law.

CASE no. 2

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office in Jagodina filed an indictment against the defendant for two criminal offenses: the illicit production, possession, carrying, and trafficking of weapons and explosives prescribed by Art. 348 para 4, in connection with para. 1. of the CC and of domestic violence, prescribed by Art. 194. para. 2, in connection with para. 1of the CC.[134]

The Basic Court in Jagodina found the defendant guilty of the criminal offenses of illicit production, possession, carrying, and trafficking of weapons and explosives prescribed by Art. 348 para. 5, in connection with para. 1 (the indictment alleged a criminal offense under Article 348, paragraph 4 of the CC) and sentenced him to a single term of imprisonment of two years and four months.[135] The verdict was revoked by the decision of the Court of Appeals in Kragujevac (criminal legal procedure 287/17 of March 21, 2017), and the case was returned for a new trial.

In the secondary court procedure, the court found that the defendant committed the criminal offense prescribed by Art. 348 para. 5 in connection with para. 1 of the CC, which comprises the unauthorized carrying of items referred to in para. 1. of this Article (firearms, ammunition, etc.) for the procurement and possession of which he had the approval from the competent authority. According to the factual description of the criminal offense in the verdict, the perpetrator committed this criminal offense on November 12, 2014, in the evening hours and in a sane state, aware that his offense was prohibited, by carrying weapons and ammunition for which he had the approval from the competent authority to possess, but did not have the approval from the competent body to carry; namely, a pistol of (...) brand and five pistol bullets caliber 9x9mm from various manufacturers; he carried the said ammunition and weapons from his house to the yard of his wife's family house, where the police stopped him and confiscated his weapon and ammunition.

The second criminal offense for which the perpetrator was accused and convicted was of domestic violence prescribed by Art. 194. para. 2 in connection with para. 1 of the CC.

[134]Criminal procedure no. 5/15 of November 11, 2015.
[135]Legal decision no. 481/15 of December 6, 2016.

The perpetrator committed this crime on November 12, 2014 in Jagodina, in a sane state, by threatening to attack the life and body and endangering the peace and mental state of his ex-wife in the following manner: He called the injured party, who was in Jagodina, in the family house, and after a short verbal discussion about the documentation for an intended trip abroad, he threatened the injured party that he would attack her life and body with a gun by saying: "*I'm coming, I'm just going to load the gun with nine bullets*," and then: "*I'm coming with a loaded pistol containing six bullets*," which he followed up by coming to the family house where the victim was with the mentioned weapon before police officers of the Police Administration (PA) of Jagodina intercepted him on site and confiscated his weapon and ammunition. According to the court, the perpetrator was aware of his action and intended its execution, as well as the felonious consequences that would have followed.

Data on the perpetrator

At the time of committing the crimes, the perpetrator; was 49 years old; had graduated from mechanical engineering high school; was a machinist working temporarily in Switzerland; was divorced and the father of a minor child. He has not been convicted before. He had been married to the injured party since 2014, the marriage was divorced, according to his statement in 2015, and they had not lived together since then.

In his defense at the main trial, the perpetrator stated that on November 12, 2014, the injured party, then his wife, wanted to leave Jagodina to wash the car at a carwash, left at 2 pm and returned around 6 pm. When she returned, she told him that she had gone to her parents and fallen asleep there, and he told her, "*Now go back to where you were*." She packed her things to go to her parents, which she often did after their quarrels, but she also took his documents along with her belongings, documents that were necessary for him the next day because he had to travel abroad. When he called her to return the documentation to him, she just hung up. He called her again and told her that he would come to Jagodina to get the documentation, and she, as he stated, replied: "*Go ahead and grab the gate and that's where you'll stay*." He stated that he did not call her again, nor curse at her, nor did he insult her. Since he knew that the victim's father had a weapon, when he went to Jagodina he took a CZ-99 pistol, which he possessed with approval from the competent authority, and ammunition, though he stated he could not recall exactly how many bullets there were. When he arrived in Jagodina, about 100 meters from the house of the injured party, the police were waiting for him and asked if he had a weapon. He replied that he did. He handed over the weapons and ammunition he had with him to the police officers, and when they asked him where he was going with the weapons, he said that he was going to the injured party to take his personal documents. According to the perpetrator, he did not take the weapon in order to injure anyone, but out of fear for his personal safety, because the victim had threatened him that if he touched the gate, that's where he would stay. The police officers confiscated his weapon and took him to the PA.

The perpetrator further stated that in May he had sent a message to the injured party in which he stated that he was begging her to stop "spitting on him", that the message was

sent as a request and not as a threat, and he had not intended to do anything bad. When the injured party had gone to see him in Switzerland, she had reported him for violence, but the procedure was suspended.

In the repeated procedure, the perpetrator added that he did not even know that one of the bullets was in the gun, he admitted that he had made a mistake in taking the weapon, but had only done so because he was afraid for his own safety. He said that had he wanted to do something, he had had opportunities to do so, because they had slaughtered a pig that day, and that he had had a knife in his hand. He also stated that he sent requests via Facebook for her to stop speaking ill of him, muddying his name, and sending threats and calling, but that these were only requests. When they had separated, he had destroyed the papers for the injured party to go abroad, because he realized that it was in the interest and intention of the injured party to get those papers, since, as he stated, "the most painful point for the injured party is money," and when he told her that he will hurt her where it hurts the most, he meant canceling the paperwork to go abroad and stopping funding. According to the perpetrator, he had sent money to support the injured party while she lived in J. to support her and her daughter. He stated that he had no contact with the injured party after the divorce, but every time he came from Switzerland, the injured party would file a report against him for, as far as he suspected, calling her at night.

Data on the victim

There is no other information about the injured party in the verdict other than that which was part of the testimony that she had given during the trial proceedings. When questioned as a witness, the injured party stated that on the critical day, after washing the car, she was completing some other work related to documentation she needed to go abroad. She agreed with the perpetrator to return to M. at around 4 pm, but due to her obligations in J., she arrived in M. at around 4.15 pm. This angered the perpetrator, who was standing in the yard in an alcoholic state, so he told her in a raised voice, holding a knife and a butcher's blade because they were slaughtering a pig: "*Go back where you came from*." She tried to calm the situation down, but failed, and the defendant kept telling her to go back from where she came from, so she packed up and headed towards J. to avoid an argument. While they were in the yard, they were not alone. The victim was driven to J. by her sister in her vehicle, and when she arrived in Jagodina, she went to her parents. Then she received a message on her mobile phone that had only the letter "J" written on it, assuming that he wanted to write something, but that he couldn't because he was in an alcoholic state. After a while, he called her on his mobile and landline phone and said that he was coming to Jagodina with a loaded pistol containing six bullets, and that he made additional threats, but that she was scared and did not remember them exactly. After that he called the landline again, and when her mother answered, he repeated that he was coming to them with a loaded gun. The injured party then took the threats seriously and called the PA in Jagodina. Five or six police officers came to her parents' house and waited in the yard. After this event, the defendant called and apologized to the injured party several times, so she went to him in Switzerland to try to save the marriage, but he then also beat her in Switzerland, which is why there were proceedings being conducted before the Swiss judicial authorities, and for which he had been detained.

There is no information in the verdict about the previous relations between the perpetrator and the injured party, nor about when the disagreements started while they were married. There is also no data on how the violence was manifested, if any. The defense of the perpetrator and the testimony of the injured party do not agree on the facts regarding their relationship before the critical event. The perpetrator claims that the proceedings against him due to domestic violence in Switzerland were suspended, while the injured party alleges that he was detained in Switzerland due to domestic violence against her.

The course of criminal proceedings

During the criminal proceedings, the ammunition was examined with the help of a ballistics expert, who stated his findings and opinion of September 25, 2015 that the pistol was functional, meaning that live ammunition could be fired from it, and that the ammunition found corresponded to the firearm.

The court inspected the certificate on temporarily seized items - weapons and ammunition. The forensic-technical documentation was inspected, which contains two photos of a mobile phone, with messages, as follows: "*Stop spitting on me, you know very well that I did nothing to you, and you know that I will return it as least twice as much, where it hurts the most*. "

The report of the Ćuprija PA was inspected, stating that by checking through the Unified Information System in the Registry of issued weapons certificates, trophy weapons approvals, and approvals for holding weapons of legal entities, it was determined that the police station of Ćuprija had issued weapons certificate number 3840 for the CZ- pistol, 9x9mm caliber, issued in the name of the defendant. An excerpt from the Criminal Records of the Police Administration in Jagodina for the defendant from June 6, 2016 was inspected, from which it was determined that he had not been previously convicted.

The mother of the perpetrator, the mother of the injured party, and two police officers of the Jagodina PA were examined as witnesses. The perpetrator's mother stated, among other things, that she had not heard the quarrel between the perpetrator and the injured party, but that she knew that the injured party had taken the perpetrator's documents and that the perpetrator had called her to return the documents to him and that she had told him "*Go ahead and come, but you won't get past the gate when you come*." The mother said she had heard that because the speakerphone was on as he spoke on the phone. When the perpetrator got ready and then went to Jagodina, she checked if he had taken the gun and saw that it was gone. She immediately called the injured party and her mother and said that one of them should get the documents/passport and bring them to the front of the gate because the perpetrator took the weapon with him. After about thirty minutes, she said the police came to her to confiscate any additional weapons, if there were any. She handed over a hunting rifle and a carbine, which had been bought by her husband, but had remained with the perpetrator after his father's death. The witness also stated that her son never attacked or threatened anyone, but rather that he had been threatened. She said that she had not reported these threats to the police because she was burdened with other jobs. She stated that whenever the perpetrator and the injured party quarreled, the injured party "picked up and left."

The mother of the injured party stated that her daughter was in the process of collecting certain documentation that she needed in order to obtain a visa. When she went to Mijatovac, where she had lived with the perpetrator, he told her: "Go to your parents." The victim replied that she wanted to stay in Mijatovac and help with household chores, but the perpetrator's mother insisted that the victim go to Jagodina. The victim took their car from her mother-in-law and came to Jagodina around 1 pm. The victim's mother was sitting in the yard and asked her daughter why she had come, to which she replied that the defendant and his mother had told her that they did not need her help and that they would come by Mijatovac in the evening. The injured party did not say at that time that the perpetrator had made any threats to her or insulted her. The perpetrator later called her on the phone at around 8 pm and said: "*I am coming with a gun and nine bullets, I will destroy your seed and your people, you will not exist*." A document he needed to take was with the injured party, so she said to come, that there was no problem, and that they would give him the documentation. In about ten minutes, the perpetrator's mother called her to tell her he was heading towards Jagodina with a full gun, and that he said that he would kill them. After this conversation, she immediately called a taxi, went to the Police Department in Jagodina, and reported that the perpetrator was heading towards their house with a weapon.

The police officers of the Jagodina PA, heard as witnesses, testified that, after having received a report that a person with a weapon was moving from Mijatovac to Jagodina towards the injured party's house, they went to the scene and waited for the perpetrator. When a person matching the description of the reported person approached, they stopped him, identified him, searched him and found a CZ-99 pistol, five 9mm bullets that were in the magazine and one 7.65 caliber bullet, which was also in frame as the last bullet. The gun was found on the left side of the reported person, behind his belt. The reported person was then handcuffed with official handcuffs, his weapon was confiscated, and he was taken to the premises of the Police Administration. The reported person did not enter the yard of the injured, but was stopped some ten meters from the yard. None of the victims were outside, nor near the place where they stopped the reported person.

Evaluating the presented evidence, the court determined that the perpetrator committed the criminal offense of the illicit production, possession, carrying, of trafficking of weapons and explosives prescribed by Art. 348, para. 5 in connection with para. 1 of the CC, because he was carrying weapons without authorization, weapons for which he had approval from the competent authority to procure and possess. The perpetrator admitted that on the critical occasion he was carrying weapons and ammunition listed in the indictment, that when he went to Jagodina, he took with him the CZ-99 pistol, which he possessed with the approval of the competent authority, and ammunition, and that he had handed over to the police officers the weapons and ammunition he had had with him. However, he stated that he did not take the weapon to injure anyone, but out of fear for his personal safety, because the victim had threatened him that if he grabbed the gate, he would stay there, and he knew that her father had a weapon. The court did not accept this part of the perpetrator's defense because the perpetrator was aware that he did not have a permit to carry a gun and bullets. From the ballistic report, the court determined that the weapon certificate had been issued for possessing the said weapon, but not for carrying it, and that this was known to the perpetrator.

The court changed the legal qualification from the indictment in relation to this criminal offense because it accepted the allegations of the perpetrator's defense that he did not know where the bullet of 7.65 mm caliber came from because he did not have a weapon of that caliber. Although the bullet was undoubtedly seized on the critical occasion from the defendant, the court concluded that there was no evidence to challenge the defendant's statement in this regard. Correspondingly, the court found that the defendant could not be found guilty of the criminal offense under Art. 348 para. 4 of the CC, but under Art. 348 para. 5 in connection with para. 1 of the CC, as this provision deals with the carrying of the objects of the act prescribed from para. 1. of the same article, which address the acquisition and holding of weapons without the approval of the competent authority. Since it was not proven that the perpetrator intentionally carried a 7.65x17 mm bullet, the court omitted the allegations relating to this particular bullet from the operative part of the verdict, thus adapting the operative part to the factual situation established at the trial and making it more favorable to the perpetrator, as the court did not add on this further charge.

In relation to the criminal offense of domestic violence prescribed by Art. 194. para. 2 in connection with para. 1 of the CC, the court found that the perpetrator committed this crime. The court found that the defense offered by the perpetrator was contradictory in and of itself, that it was illogical and unconvincing, and that it was disputed by the concurring statements of the injured party and the witnesses inconsidering the defense of the perpetrator, who denied that he threatened and insulted the injured party, stating that he had called her asking to return the documents, that she just hung up, that he called again and said that he would come to get the documentation, to which she replied "*Go ahead and grab the gate and that's where you'll stay*," that he did not make any threats or insult her by phone, that he had taken the gun with him because he knew that her father has a weapon, that he did not take the weapon to hurt anyone, nor would he ever, but out of fear for his personal safety because the injured party had threatened him, that he did not beat the injured party, that he never insulted or threatened her, nor had he intended to do anything bad to her.

In considering the sent messages found on the mobile phone, which the perpetrator acknowledged as true, comprising a message in May in which, according to him, he was asking the injured party to stop "spitting on him," and that the message was sent as a request and did not contain a threat, nor did he intend to do anything wrong, the court found that the full text of the message indicated the perpetrator's dissatisfaction with the victim's behavior, but it could not be concluded that there was any threat, especially having in mind the perpetrator's explanation in the retrial; that the message via Facebook was a request to stop talking about him and telling lies and to stop sending threats and calling.

Regarding the duration of the criminal proceedings, it can be concluded that the duration of the proceedings from committing the criminal offense to the passing of the second instance verdict was quite long - two years, ten months, and twelve days.

Criminal sanction, aggravating and mitigating circumstances

The Basic Court in Jagodina, by its criminal decision of no. 116/17 of July 13, 2017, in a secondary procedure, sentenced the perpetrator to seven months in prison for the criminal offense of illicit production, possession, carrying or trafficking of weapons and explosives, and, for the criminal offense of domestic violence, to imprisonment for a term of six months; cumulatively, the perpetrator was sentenced to a single prison sentence of one year. This was accompanied by the security measure of the confiscation of objects – gun and ammunition.

By the verdict of the Court of Appeals in Kragujevac, (criminal legal procedure 287/17 of March 21, 2017), the case was returned for a new trial. Thus, the first instance verdict was changed in regard to the sentences so that they were retained as properly determined sentences of seven and six months and he was sentenced to a single suspended sentence of one year of incarceration with a probation period of three years[136]. The punishment was accompanied by the security measure of the confiscation of the weapon, as was pronounced by the first instance of the verdict.

In determining the type and severity of the sentence, the first instance court considered the existence of the following mitigating circumstances: the personal, family, and property circumstances of the perpetrator; that he was the father of a minor child, that he did not own real estate , that he had not been previously convicted, and that he had acknowledged that he illicitly carried the weapon and the ammunition they found with him. According to the assessment of this court, there were no aggravating circumstances. The same mitigating circumstances were stated by the Court of Appeals in the second instance verdict, though with its decision it changed the sentence from the first issuance of the verdict and imposed a suspended sentence on the perpetrator, a sentence below the legally prescribed minimum, because it assessed that since there were mitigating circumstances and no aggravating circumstances.

COMMENTARY

In this case, possible murder was averted due to the perpetrator's mother, who, realizing that the perpetrator was moving towards the victim with a weapon, informed the victim, which gave her and her family the opportunity to inform the police about the movement of the perpetrator.

It should be noted that in the first issuance of a verdict, a stricter sentence was imposed - two years and four months, but after the Court of Appeals in Kragujevac amended the verdict, in a secondary procedure, the first sentence was more than halved - one year in prison for both crimes – domestic violence and the unauthorized carrying of weapons. It should also be noted that the court imposed a more severe prison sentence for the unauthorized carrying of a weapon for which he had a permit - seven months in prison – than for the crime of domestic violence – with the use of a weapon – for which we was sentenced to six months in prison, although both of these offenses are punishable by six months to five years in prison. It is obvious that the court did not consider the social

[136] Court of Appeals Decision KŽ1 n-1056/17 of 26. 9. 2017.

danger of the criminal act of violence committed by the perpetrator against his wife. Also, the court did not use the opportunity to impose a security measure prohibiting the perpetrator from approaching and contacting the victim.

The determined punishment that is on the border of the legally prescribed minimum for the criminal offense of domestic violence from Art. 194. para. 2 in connection with para. 1 of the CC is, among other things, a consequence of the insufficiently established factual situation in this criminal matter.

From the description provided above, it can be established that the court favorably assessed the defense of the defendant and that it did not fully give credence to the testimony of the injured party. Namely, the court finds that the messages that the defendant sent to the injured party were not threatening and recognized the defendant's defense that this was a request.

However, taking into account the part of the testimony of the injured party which asserted that proceedings had already been conducted against the defendant in Switzerland for the violence committed against her, and even assuming that these proceedings were suspended, as the defendant states, this could serve as fundamental material for consideration, and for further referencing or investigation, in determining whether and what kind of violence against the injured party occurred, i.e., whether the critical event could be assessed as "repeated" violence. Certainly, the more serious consideration of this information would contribute to a better identification and more thorough description of the perpetrator's behavior.

If we connect the event from Switzerland with the event that is the subject of this procedure, it is unlikely that the defendant sent only requests to the injured party between these two events, but rather much more realistic that the messages were threatening, if not directly declarative in content, but in implied essence, i.e., they should have been interpreted as a warning for the later event.

The court did seek to more thoroughly examine the context or implication of the defendant's statement that he would injure the injured party "where it hurts the most," accepting his defense that he meant foreign/financial documentation, without seeking more detailed commentary from the injured party in this circumstance. More complete determination of these details could have been carried out by the public prosecutor before the indictment was filed.

It would seem that the public prosecutor also failed to give full credence to the testimony of the injured party. Namely, the injured party alleged that in the afternoon of the critical day the defendant was under the influence of alcohol, but despite this, during the procedure it was not determined whether the defendant was abusing alcohol, i.e., whether he was in a state of full or impaired mental capacity at the time of the crime, something that could have been accomplished by the public prosecutor issuing an order for the psychiatric evaluation of the defendant. The public prosecutor was also obliged to request a report from the

competent center for social work, and to obtain any data from this institution that it might have, i.e., to order the center to conduct an observation of this family and determine the dynamics of the family atmosphere. In this case, there was a complete lack of measures from this institution, considered crucial for providing support to the victim, either through the development of a plan of measures and services, or through the development of a security plan for and with the injured party.

During the evidentiary procedure of a crime of domestic violence, it is necessary to obtain a police report from the diary of events on all previous possible reports of the injured party and their outcome, as the simple fact that the defendant was not previously convicted is not enough to assess the perpetrator's earlier life. Also obligatory is an evaluation of data from misdemeanor records, especially in the field of public order and peace. None of these obligations were carried out.

The question of what protection, if any, was provided to the injured party for the two-year, 10-month, and 12-day duration of this criminal procedure can justifiably be raised here. Namely, having in mind the circumstances of the given case - that the defendant was charged with two criminal offenses, that only a mere combination of happy circumstances prevented the likely committing of an even more serious criminal offense – murder - the public prosecutor had an obligation to impose upon the defendant, at the very least, a security measure prohibiting the approaching of, meeting with, or communicating with the injured party and the visiting of certain places, according to Art. 197 of the Criminal Procedure Code, and this could have provided some degree of concrete protection to the injured party.

The factual situation established during this procedure resulted in the court not finding even a single aggravating circumstance on the part of the defendant, which further resulted in the mitigation of the cumulative sentence below the legally prescribed minimum and the ultimately inadequate punishment of the defendant.

In regard to mitigating circumstances, it remains unclear why in both the first and second instances, the courts assessed the circumstance of the defendant not possessing real estate as mitigating, especially if bearing in mind that this could can be assessed as the evidence of financial problems of the defendant and thereby be seen as a risk. The separation of partners, possession of weapons, threats, and stalking of the victim are all indicators or risk that are present in this case, in addition to those that were not identified by the public prosecutor during the proceedings, but which might exist, such as the perpetrator's previous life (event diary, misdemeanor records, circumstances in Switzerland), and the possible abuse of alcohol by the perpetrator; these represent risks that can lead to violence and its escalation, which indeed happened in this case.

Bearing in mind that during the conducting of this criminal procedure, i.e., it was completed on September 24, 2017, the adoption of the LPDV had taken place,

according to which the obligation of the Coordination and Cooperation Group (CCG) was to consider ongoing cases and to assess the risk of domestic violence, the public prosecutor, as the chairman of the CCG, could have initiated such a process and contributed to a more comprehensive determination of the facts, which would likely have led to a more adequate punishment of the defendant.

The verdict also states that the mother of the perpetrator handed over a hunting rifle and a carbine to the police during the search of the house, which according to her had been bought by her husband, but which had remained with the perpetrator after his father's death. It remains unclear whether the perpetrator had a possession permit for these weapons.

Bearing in mind all the above, the institutions in this case did not take all the measures to which they were authorized by law, nor did they consider the broader context in which this event took place, which they were obliged to do given that the crime of domestic violence that was committed must be viewed in a broader context, rather than as an isolated event, as it was treated here. Such omission by the institutions in relation to the criminal offense of domestic violence resulted in a sentence lower than the minimum, which did not achieve the purpose of appropriate punishment.

CASE no. 3

The modality of execution, summary of critical events, and legal qualification of the criminal offense

By the indictment of the First Basic Public Prosecutor's Office in Belgrade, the perpetrator was accused of having committed the criminal offense of domestic violence under Art. 194. para 2 in connection with para. 1 of the CC in the following manner: on October 10, 2014 at around 6.30 pm in Belgrade in an apartment in the street (...) by using violence and reckless behavior, he endangered the physical integrity and tranquility of a member of his family – his non-marital partner, the injured party, using means capable of inflicting severe injury to the body; this occurred after a short quarrel, in the presence of their joint minor child, when he struck the victim several times with an open fist in the face, and then entered the bedroom from which he returned holding an unknown brand pistol, which the victim did not know that was in the apartment, and proceeded to hit the victim several times with the tip of the barrel of the pistol in the area of the upper chest and in the area of the left temple; he also broke the laptop, the victim's mobile phone, chair, and dishes, and then fired several shots from the gun through the window, after which he left the apartment with the child.[137] According to the court, the perpetrator could understand the significance of his offense and manage his actions, meaning that he was aware of his act, whose execution he intended, that his actions violated the law.

The First Basic Court in Belgrade passed a verdict which, according to Art. 422. para 1. item. 1 of the CCP (dismissal of the plaintiff from the accusation), rejected the accusa-

[137] Criminal procedure no. 6843/14 from November 23, 2017.

tion against the perpetrator.[138] The verdict stated that after the verdict was announced all parties waived their right to appeal, and since they did not insist on its written dispatch, there was no recorded explanation of the verdict, as prescribed by Art. 429. para. 1. item 1 of the CCP.

Data on the perpetrator

There is no information about the perpetrator because all such information was anonymized.

Data on the victim

There is no information about the victim or the previous relationship between the perpetrator and the victim.

The course of criminal proceedings

There is no information on the main hearings held, on the moment at which the prosecutor dropped the charges during the proceedings, nor on the reasons for its withdrawal. The indictment stated that the criminal offense was committed on October 10, 2014, the indictment was filed on November 23, 2017, and the verdict of rejection was passed on December 18, 2017, which means that the duration from the alleged committing of the criminal offense to the rejection of the verdict was three years, two months, and eight days.

Court decision

The court dismissed the charge against the perpetrator.

COMMENTARY

Bearing in mind the description of the criminal offense set forth in the operative part of the indictment detailing that the defendant fired several shots from a pistol through the window, which in an urban environment could have been reported by a third party who could be a possible witness, and that several things were broken in the apartment (laptop, damaged phone, chairs, table, dishes), this could have been noted in the report on the police intervention, and documented as evidence. Also, the police officers who intervened could have been questioned as witnesses to this event and testified on what they saw when they came to the scene, who they found in the apartment, what state they found th injured party in , , whether they noticed injuries on her – all such information should have been obtained, especially having in mind the description detailed in the indictment, on the basis of which it could have been proven that domestic violence occurred. In relation to possible weapons, the court order, at the suggestion of the public

[138] Legal decision 30 K no. 167/17 from 18. 12. 2017.

prosecutor, could have ordered a search of the apartment and all premises used by the defendant, and collected information from his parents or other persons close to him to determine their possible knowledge of weapons held or accessed by the accused, all with the aim of finding them and preventing the accused from committing similar acts in the future. If the above were to be supported with a medical certificate, a written record of the bodily injuries sustained on the specified day, consideration of the means by which the injuries were inflicted, and a report of from the Center for Social Work on the relations in this family, the dynamics of these family relations, as well as data from the event diary of earlier reports related to the accused and any corresponding outcomes, and an excerpt from the criminal and misdemeanor records – then enough evidence would be collected cumulatively that could corroborate the allegations of the indictment and lead to a conviction, even if the injured party did not want to testify and the defendant partially or completely denied the crime or defended himself by keeping silent. However, according to the available data, it cannot be determined whether the public prosecutor performed the stated evidentiary actions, i.e., which actions he took in the specific case, while the reasons for the public prosecutor's withdrawal from the indictment remain unknown.

CASE no. 4

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Second Basic Public Prosecutor's Office in Belgrade proposed the imposition of the security measure of mandatory psychiatric treatment and custody in a health institution against the perpetrator R. M., charging him with committing the criminal offense of domestic violence under Art. 194. para. 2. in connection with para. 1 of the CC in a state of insanity.[139]

The Second Basic Court in Belgrade passed a decision imposing on the perpetrator the security measure of mandatory psychiatric treatment and custody in a health institution due to the criminal offense of domestic violence under Art. 194. para 2 in connection with para. 1 of the CC.[140]

According to the description of the events of the criminal offense in the decision, the perpetrator, on June 8, 2017, at around 3 pm in the yard of the family house in a state of acute psychotic disorder (insanity), and unable to understand the significance of his crime or manage his actions, by using violence endangered the peace and the bodily integrity of his family members – his mother and father. The perpetrator did this in the following manner: after talking to the injured party, he was revolted by the knowledge that the injured party would close the family business, first with his arms outstretched and his jaw clenched, he headed towards the injured party, and then went to the house,

[139] Criminal procedure no. 2270/17 of June 26, 2017.
[140] Legal decision no. 415/17 of September 13 2017.

where he found the victim's weapons, took a rifle and a pistol and went to his room, making a commotion. This upset the perpetrator's mother, who warned her husband. Fearing for the safety of the accused, the father ran into the house, and when he saw that the weapon was not in its place, he entered the perpetrator's room and found him holding a rifle in his right hand and a pistol in his left. The father then, fearing for the safety of the perpetrator, who was holding the rifle pointed at the floor, started shouting: "*Put the rifle down, drop the rifle*!" -and when the perpetrator started lowering the rifle, he saw that there was also a gun in his right hand, upon which he mechanically grabbed the accused's arm to pull the gun out of it. At that moment, the gun fired. After that, the perpetrator's father fell to the floor, and the perpetrator continued to hit him on the head and body with the gun. The perpetrator's mother then arrived, who he also hit on the forehead with the pistol grip.

According to the findings and opinion of the court expert of June 20, 2017, the perpetrator's father suffered a laceration on the upper and lower eyelid, a laceration of the right temple, a laceration of the upper lip on the right side, and multiple bruises and hemorrhages on his body and head, injuries which individually and collectively at the time of being received for treatment were categorized as minor bodily injuries. The perpetrator's mother received a laceration in the middle of the forehead, which is a minor bodily injury.

Having in mind that the perpetrator, by using violence, endangered the bodily integrity and tranquility of his family members with a device capable of inflicting serious bodily injury - a gun, the court found that his actions met all the essential features of an illegal act defined by law as domestic violence from Art. 194. para 2, in connection with para. 1 of the CC.

Data on the perpetrator

The verdict contains only data on the perpetrator's mental health, which the court determined based on the findings and opinion of the Commission of Forensic Psychiatric Experts of June 17, 2017, which stated that the perpetrator was a person of solid intellectual capacity, but suffered from an acute psychotic disorder (resulting in temporary insanity) and that he had committed the crime under the influence of psychopathological phenomena that are characteristic of the referenced mental illness and a state of psychotic anxiety. At the main trial, the representative of the Commission of Experts also stated that the perpetrator had been medically treated for three months because even before the critical event, changes in his behavior had appeared several years before, but that the treatment had not improved his mental functioning. He stated that due to this, as well as due to the fact that he had resorted to using a firearm, it was necessary to continue his treatment in a closed institution.

In his defense at the main trial, the perpetrator stated that he was having a conversation with his father in the yard on the critical occasion. His mother came and said that she had shut down the family business, about which he had had no knowledge, and thus he saw his existence was endangered. He then entered the house and called the accountant, who said that he did not know about it yet, that it had to pass through the Business Registers Agency. After that, he went to the room, where he found his father's weapons,

which he had intended to clean and prepare for sale. He held a carbine and a pistol in his hand. The father came to the room, told him to put the rifle down, but he did not see that he also had a gun. He lowered his rifle, and when his father saw that he also had a gun, he tried to steal it from him so as not to do any harm to himself. They were fighting over the gun and at one point the gun fired. The father got scared and let go of the gun, and he hit his father three times in the head. He hit him twice with the pistol grip, and once with his fist. Then his mother arrived. He told her to call the police and an ambulance, and his mother attacked him because she did not know what was happening in the room. As a result, he struck her in the forehead. Police soon arrived. Police officers saw the weapon in his hands and ordered him to drop his weapon and lie on the floor, which he did. On the critical occasion, he had drunk one beer and taken the medicine Xalol. He drank beer on the doctor's recommendation to facilitate urination because he had a hydrocele. He stated that he was ready to have daily interviews with a psychologist and a psychiatrist and to report for consultations in a disciplined manner for a longer period of time, if necessary. In the closing argument, the defendant's defense counsel stated that in this particular case, the defendant's free treatment was sufficient, bearing in mind the great support and readiness of the family to participate in the defendant's treatment, which would give satisfactory results, and that this measure can be revoked at any time and treatment in a closed institution can be continued.

Considering the perpetrator's mental attitude towards the committed crime, and bearing in mind the findings and opinion of the expert, the court determined that the perpetrator's ability to understand the significance of his crime and manage his actions were incapacitated, which means that the crime was committed in a state of insanity.

Data on the victims

There is no other information in the court decision about the victims of this crime, except that they are the perpetrator's parents. There is no other information about the perpetrator's previous behavior towards the injured party, except for the statement of the perpetrator's father that the perpetrator had been behaving strangely in the time leading up to the critical event because even the smallest detail that did not suit him provoked indescribable anger, causing the perpetrator to hit him twice before, but he had not reported it to the police. The perpetrator's mother also pointed out that she noticed that the perpetrator had been behaving strangely and that he was taking some medication due to psychophysical exhaustion. She also stated that the weapons belonged to her husband, that he had a permit to possess them and that they were kept safe in different parts of the house, but that the perpetrator had been aware that his father owned the weapons.

The injured parties did not file a property claim, but joined the prosecution in order to assist the perpetrator, stating that the perpetrator had their full support and assistance.

The course of criminal proceedings

In the evidentiary procedure, the court heard testimony from the perpetrator, the injured witnesses, and reviewed the written evidence of the court experts: the findings

and opinion of the expert and the Commission of Court Experts, the report on the forensic examination, the report of the specialist doctor, and the report from the Criminal Record.

The father and mother of the perpetrator were heard as witnesses. The court fully accepted their statements as credible because they were in accordance with the statement of the defendant and supported by medical documentation on the type, severity, and cause of the injuries to the injured parties.

The criminal procedure was relatively efficient, lasting three months and five days. The criminal offense was committed on June 8, 2017, the proposal for imposing a security measure was submitted by the Second Public Prosecutor's Office in Belgrade on June 26, 2017, and the decision on imposing a security measure was made on September 13, 2017.

Criminal sanction, mitigating and aggravating circumstances

The security measure of obligatory psychiatric treatment and custody in a health institution was imposed on the perpetrator. According to the court's decision, the measure would be implemented in the Special Prison Hospital in Belgrade, to be suspended when the court determined that the need for treatment and keeping the perpetrator in a health institution ceased. It was not possible to find out from the verdict whether the weapon was returned.

COMMENTARY

This case illustrates the lack of adequate community mental health services that should provide comprehensive treatment and protection to patients in the environment in which they live, in a way that would be easily accessible to patients and their families.

At the same time, this case is an illustrative example pointing to the need to consider the possibility that among the conditions provided for in Article 11 of the Law on Weapons and Ammunition, in addition to checking the health of the person who applied for possession and carrying weapons to submit a new certificate every five years, i.e., after the expiration of the validity of the medical certificate on the health ability of a person to hold and carry a weapon, and which has expired less than one month prior to submission, as prescribed by Art. 12 para. 5 of the same law, the same obligation could be applied to persons who live in a joint household with the applicant. Also, this period of five years may need to be shortened to three years or less in order to prevent the potential misuse of firearms by these persons, and thus to prevent the committing of a criminal offense.

CASE no. 5

The modality of execution, summary of critical events, and legal qualification of the criminal offense

At the proposal of the Second Basic Public Prosecutor's Office in Belgrade, a procedure was initiated against the perpetrator for the purpose of imposing the security measure of compulsory psychiatric treatment and custody in a health institution due to justified suspicion that he had committed the crime of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.[141]

The Second Basic Court in Belgrade issued a decision imposing on the perpetrator the security measure of obligatory psychiatric treatment and custody in the Special Prison Hospital Belgrade for having committed the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.[142]

According to the factual description of the crime as established by the court, the perpetrator in the period from the beginning of June 2017 until June 25/26, 2017, in the family house, had threatened to attack life and body, that is, he had threatened the tranquility and physical integrity of his family members – his wife, daughters, and son-in-law with his insolent and reckless behavior. According to the court, the perpetrator committed the act in an insane state, when his ability to understand the significance of the act and the ability to manage his actions were incapacitated, under the influence of psychopathological phenomena characteristic of the mental illness paranoid psychosis.

During this period, the perpetrator phychologically abused his wife, accusing her of adultery, forcing her to tell him about her lovers, placing a bottle of brandy and a knife in front of the victim, and asking her to describe her sexual experiences with other men she allegedly had. He also threatened to stuff a cucumber into her vagina and thus prevent her from sleeping with other men. He also threatened to kill himself and their entire family, whose members shared the same yard. On one occasion, on June 25, 2017, he told a neighbor to go to his wife because she was in poor health and needed help, only to return later and when he did not find his neighbor "in action," he asked in anger whether the doctor had come to his wife, thinking of the neighbor, and since she denied it, he threatened the injured party, while foam was coming to his mouth, that he would write a banner on the gate "*f***ing for free with food and drink*" and that he would tie her naked with a rope while other men sexually abused her, all the while accusing his wife of cheating on him with other men. All of the above happened in the presence of their two daughters, whom he told that they were not his children and that he would kill them all. In the night between June, 25/26, 2017, the perpetrator threatened in a visibly intoxicated state, in the presence of his son-in-law, that he would blow up himself and all the occupants with a bomb he kept in the house.

Based on the findings and opinion of the Commission of Forensic Psychiatrists, the court determined that he had committed these acts in an insane state.

[141] Criminal Procedure no. 2472/17 of July 24, 2017.
[142] Legal decision br. 832/17 of August 24, 2017.

Data on the perpetrator

Due to the anonymity of the perpetrator's personal data, the perpetrator's age could not be determined, nor could his level of education, occupation, employment, marital status, or whether he had been previously convicted.

The perpetrator partially admitted to the allegations from the criminal report and the indictment insofar as he did not dispute that he had discussions with his injured wife during the designated period, due to his suspicions of cheating on him. He denied that he had threatened the injured party, that he endangered her bodily integrity, without denying that on the night of June 25/26, 2017, he had said he kept a bomb in the common house, though he stated that he did not threaten to endanger the physical integrity of his wife, daughter, and son-in-law. In his closing remarks, he stated that he believed that he did not need further treatment, since his health condition had improved in the last two months due to treatment in the prison hospital, but that he still accepted the position of forensic psychiatrists that he was still in need of further treatment and would be willing to undergo this treatment.

The commission of the forensic psychiatrists stated in its finding and opinion that the perpetrator suffers, and was suffering, from a mental illness, paranoid psychosis, that he committed the illegal act under the influence of psychopathological phenomena characteristic of that condition and that there was a serious danger that the perpetrator might commit a serious crime in the future.

Data on the victim

The court decision does not contain more detailed information about the victims of the crime: the perpetrator's wife, daughters, or son-in-law. Also, data on the relations between the perpetrator and his family members before committing the crime and data on the existence of any form of violence were lacking.

The course of criminal proceedings

During the criminal proceedings, the court heard from the perpetrator, questioned the injured parties, and with the consent of the parties read the expert psychiatric evaluation for the perpetrator, the report of the specialist doctor, the findings and opinion of the guardianship authority, the certificate on temporarily seized items, and the report from the Criminal Records.

The injured parties stated everything in full faith and agreement: that the accused, by threatening to attack life and body and by reckless behavior, had endangered the peace and bodily integrity of his family members in the manner, degree, time, and place described in the proposal of the Second Public Prosecutor's Office in Belgrade. The court determined that the perpetrator committed the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.

The criminal proceedings were short and efficient. The crime was committed over the period from the beginning of June to June 25/26, 2017, the proposal for imposing a security measure was submitted on July 24, 2017, and the court decision was made on August 24, 2017. A month has passed from the committing of the criminal act to the decision on imposing the security measure.

Criminal sanction, mitigating and aggravating circumstances

The perpetrator was issued the security measure of mandatory psychiatric treatment and custody in the Special Prison Hospital in Belgrade.

COMMENTARY

In this case, the perpetrator was a person who had only been determined in court proceedings to have mental health problems and to need treatment. Since, according to the verdict, changes in the perpetrator's behavior had begun to occur during June 2017, when he first committed psychological violence against his wife, it is symptomatic that none of the residents suspected that the perpetrator had mental health problems and needed professional help. It is obvious that there is a need for raising public awareness and education in order to earlier and more accurately identify mental health problems, which in this case would have meant contacting mental health services and providing psychosocial rehabilitation services, which would potentially have prevented the committing of the crime. In this regard, it is necessary in the context of Serbia to work on overcoming widespread prejudices and stigmatization towards people with mental health problems, as this is often the reason why individuals and families whose members have mental health problems do not seek psychosocial assistance in life/crisis situations, which could prevent the development of a more severe mental illness and the escalation of violence. It is especially necessary to develop a system of information on the dangers of the misuse of firearms, especially towards household members, with clear guidelines for recognizing and understanding risks, changes in behavior, and family dynamics, with clear steps and information on which institution to contact so that appropriate actions may be taken on time and violence and misuse of firearms prevented.

Also, it would be advised that the CCG of the competent prosecutor's office monitor the implementation of security measures and provide, as expediently as possible, an individual protection and support plan before releasing the defendant from treatment, in order to prevent the possible recurrence of violence, i.e., to give the victim(s) all the necessary information that would enable them to notice certain changes in the defendant's behavior, i.e., in this instance if his behavior towards his wife or his underage daughters changed. It would certainly be useful to invite at least one relevant expert to this CCG meeting, in order to convey to the CCG members the professional knowledge related to the characteristics and treatment of paranoid psychosis, and whether this includes regular therapy, whether there might be a deterioration in health after treatment, and how it could possibly be manifested and recognized. The injured party should be informed about all these details prior to the perpetrator's release from treatment.

CASE no. 6

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The indictment of the Third Basic Public Prosecutor's Office in Belgrade accused the perpetrator of committing the criminal offense of domestic violence under Art. 194. para. 3 in connection with para. 1 and 2 of the CC.[143]

On March 30, 2018, an agreement on the confession of guilt of a criminal offense was concluded between the Deputy Public Prosecutor and the perpetrator and was submitted to the court,[144] in which it was stated that the perpetrator confessed to committing the said criminal offense in the manner stated in the indictment and that the parties agreed that the perpetrator be sentenced to house arrest[145] for a period of one year, without the application of electronic surveillance measures. An agreement was reached to impose the security measure of the confiscation of the object of the crime, to release him from paying the costs of the criminal proceedings, as well as to fully waive the right to appeal against the court decision in accepting the agreement, except the right to appeal as defined by Art. 319. para. 3 of the CCP.

After the hearing on the decision on the plea agreement, the Third Basic Court in Belgrade passed a verdict accepting the plea agreement and finding the perpetrator guilty of the crime for which he was charged.[146]

According to the factual description of the criminal offense stated in the verdict, on June 6 and 7, 2017, the perpetrator endangered the physical integrity of his minor son, born in 2002, by using violence and threatening to attack his life and body, using weapons and dangerous tools in the following manner; when the minor victim came to the perpetrator on June 6, 2017, he was asked to bring the money that the perpetrator had left for safekeeping. When he found that he was missing 2,500 dinars, he repeatedly asked his son to tell him what he had spent the money on, and when his son did not do so, he repeatedly hit him on the legs with a leather belt with a metal clasp and a hard plastic tube about 80cm meters long, and then went to work while the minor victim remained in the apartment.

The next day, on June 7, 2017, at around 6:30 am, the perpetrator woke up the minor victim and insisted that he tell him what he had spent the money on, then again took the hard plastic pipe with which he hit the minor victim several times on the legs, arms, and back, telling him: "*I will kill you, I will kill you!*" He then asked him: "*Do you want me to kill you*?" After this, he went to the closet in the room and took out a single-action pistol of the brand Ecol, model Firat Compact, 9 mm caliber, put it on the forehead of the minor victim and asked him: "*Do you want me to kill you?*" He then cocked the pistol and

[143] Criminal procedure no. 2105/17, legal decision no. 322/18, court decision no. 128/18 of March 30, 2018.
[144] *Ibid*.
[145] The perpetrator is sentenced to imprisonment, provided that the sentence will be executed without the application of electronic surveillance measures, in such a way that the perpetrator must not leave the premises in which he resides.
[146] Court decision no. 138/18 of May 11, 2018.

fired one bullet into the floor, then proceeded to put the pistol chamber first to the minor victim's eye and then to his knee, and asked: "*Do you want me to shoot you in the knee so you're disabled for life?*" He then put the gun to his son's ear and said, "*You want to see it shoot?*" proceeding to hit him several times with the pistol grip on his head, then with the barrel of the gun he hit him several more times on the arms and legs. When he noticed that the minor victim was bleeding from a wound on his head he said: "*Look, you're bleeding, go wash yourself, walk the dog, you have 15 minutes, wash yourself and lie down*." The son tried to clean the wound on his head, but the wound started to bleed again, so the perpetrator told him: "*Go take a walk so that everyone can see you,*" which the son did, later going to his mother, who took him to a doctor, where it was stated that in this event he had suffered light bodily injuries in the form of hematomas in the lower half of the back, three surface wounds in the area of the head and several hematomas on both arms, his back, and both legs. According to the court, the perpetrator was aware of his actions, which he carried out with intent, he could understand the significance of his actions and manage them, and he was aware that his actions were prohibited.

Data on the perpetrator

Due to the anonymity of the data, it was not possible to find any basic personal or other data about the perpetrator.

Data on the victim

Other than that he was the minor son of the perpetrator, there was no other information about the victim of the crime in the verdict. Also, there was no data on the relationship between the perpetrator and the minor victim prior to the committing of the criminal offense, or on whether the perpetrator had previously committed violence.

The course of criminal proceedings

After the indictment was filed, a plea agreement concluded on March 30, 2018 was submitted to the court. The hearing for deciding on the plea agreement was held on May 11, 2018. The pre-trial judge found that the plea agreement contained all necessary data provided by Art. 313 and 314 of the CCP: a description of the criminal offense which was the subject of the accusation, a confession of the perpetrator that he committed the criminal offense which was the subject of the accusation, an agreement on the type and amount of punishment, an agreement on the costs of the criminal proceedings, a statement of the waiver of the parties and the defense counsel to appeal the decision, except in the case referred to in Art. 319. para. 3 of the CCP, and signatures of the parties and defense counsel. The judge also ruled that all the preconditions regarding the evidence attached to the agreement were fulfilled and based on his examination of them he concluded that: they were not in contradiction with the confession of the perpetrator; that the accused had committed the crime; that the punishment in respect of which they concluded the agreement was within the law; and that there were no obstacles from Art. 338 para. 1 of the CCP. The offense described was a criminal offense, not covered by amnesty, or pardon, and not obsolete, there were no other circumstances that would

preclude prosecution, and there was sufficient evidence to justify the suspicion that the perpetrator had committed the offense that was the subject of the indictment, which were attached to the agreement. Based on such assessments, the judge accepted the plea agreement.

A month and 11 days passed from the indictment to the passing of the verdict, and 11 months and four days from the committing of the criminal act to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The perpetrator was sentenced to one year in incarceration (house arrest) on the basis of a plea agreement, with the provision that the sentence be executed without the application of electronic surveillance measures, conditional to the perpetrator not leaving the premises where he lives, except in cases prescribed by the Law on the Execution of Non-Institutional Sanctions and Measures. In the event that the perpetrator was to voluntarily leave the premises in which he was living once for more than six hours or twice for up to six hours, he would serve the rest of the prison sentence in prison, with the time of his detention, during which had been held from June 12, 2017 until June 14, 2017, factored into the prison sentence. There were formal legal conditions for imposing this sentence, considering that the perpetrator lived in his own household, i.e., the victim did not live with him. The security measure of confiscating the objects used to commit the crime - a gun and ammunition – was also imposed on the perpetrator.

COMMENTARY

In this case, a plea agreement was applied. This institution, as described in the CCP, puts victims in an unenviable position, whose consent is not required for concluding an agreement. We believe that such a legal solution is not adequate and that, following the example of solutions in comparative law for certain categories of crimes - such as crimes against life and body, various forms of sexual violence, domestic violence, persecution, etc. - it would be necessary to prescribe an obligation on the public prosecutor to obtain the consent of the victim(s). We also believe that it is necessary to prescribe the possibility for the victim to file a complaint, as this respects the justified interest of the victim(s) of the crime that the procedure has a secure and fair outcome.

Furthermore, despite that there was no available data on the previous life of the defendant, the question can justifiably be asked as to whether the sanction of one year of imprisonment, served as house arrest, is really adequate for the committed crime. Namely, the defendant used violence against his underage son, who was 15 years old at the time of the crime, on two distinct occasions; first, by hitting him several times on the legs with a leather belt with a metal clasp and a hard plastic pipe, and then the next day continued to use violence by hitting him several times with the same pipe on his legs, arms, and back, before proceeding to use escalated violence in taking the single-action pistol to abuse the minor further, placing the pistol on the victim's forehead, cocking it, firing a bullet at the floor, and then putting the pistol to the minor's eye, then

his knee, then next to his ear, before then striking him several times with the pistol grip on the head, and then, using the barrel of the pistol, on the arms and legs.

Given that this crime is punishable by two to 10 years in prison, for the mitigation of punishment in terms of Art. 56. para. 1. item. 3, it is necessary that there be especially mitigating circumstances which would indicate that the purpose of punishment could be achieved even with a reduced sentence. At the same time, in order for a prison sentence to be carried out at home, it is also necessary that the conditions prescribed by Art. 45. para. 3 of the Criminal Code, i.e., the perpetrator's personality, his previous life, and his degree of guilt be assessed, that other circumstances under which the perpetrator committed the crime are also assessed, and that it can be expected that the purpose of punishment would be achieved in such a way. Therefore, it is justified to ask what particularly mitigating circumstances the public prosecutor and the court that accepted the agreement found and/or recognized, how the relevant institutions assessed the circumstances under which the crime was committed, and, finally, how they concluded that even with such a mitigating sentence the purpose of the punishment on the perpetrator, who had continuously and in an escalating manner committed violence against his underage son, would be appropriately achieved.

All this leads to the conclusion that the special duty of the public prosecutor, particularly in a case such as this, was to deal with establishing facts from the previous life of the perpetrator, i.e., his personality in general, not only by obtaining excerpts from criminal and misdemeanor records, but also by checking any relevant data from the event diary. It is very unlikely that the defendant, who under such circumstances committed a crime against his minor son, had not been previously violent towards him, and likely towards the victim's mother or other family members.

Since the dictum of the agreement states that the boy later turned to the mother, who then took him to the doctor, it can be inferred that the mother did not attend these events and that she does not live in the same household with the defendant, i.e., that her partner and she had separated and that it is probable, but never directly stated, that the minor son lives with the mother, given that the defendant was sentenced to imprisonment in the form of house arrest. If this was not the case, then the mentioned decision would have violated the Criminal Code, considering that Art. 45. para. 5 stipulates that a person convicted for a criminal offense against marriage and family who lives with the injured party in the same family household cannot be sentenced to imprisonment in the premises where he lives.

Regarding the specific protection provided to the minor victim, it can be concluded from the available data that after the crime was committed on June 7, 2017, the defendant was probably inaccessible to the prosecuting authorities, because he was only deprived of liberty five days later, on June

12. After a 48-hour detention, he was released. In this regard, the question could be asked: Was there really no basis for the public prosecutor to propose any security measures to define/contain the presence of the defendant under the Criminal Procedure Code, which would have at the same time indirectly provided protection to the injured party? Also, what protection could have been offered to the minor in the period that followed, as almost nine months passed, starting from June 2017 until March 2018, before the agreement with the defendant was concluded, and two more months, until May 2018, before the agreement was adopted. All these issues could have been discussed at a CCG meeting, since the implementation of the LPDV had already begun.

This case is also an illustrative example of how transgenerational violence can occur. From the perspective of the fifteen-year-old boy, taking into account the trauma resulting from what he survived, and even assuming, though not likely, that no other events outside of this procedure had occurred, it leaves a bitter taste in the young man's life and realistically creates the possibility that one day when this boy grows up he himself could be inclined to "take justice into his own hands" and punish his father for the violence he had committed against him, by being the one committing the violence. This is why it is so extremely important that when sentencing, the general purpose of punishment is taken into account, as well as the effects that a certain punishment has on the future life of the injured party, especially if they are minors.

CASE no. 7

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Court in Mladenovac - Court Unit in Sopot, passed a verdict not containing an explanation, in accordance with Art. 429. para. 1. item. 1 of the CCP, so that it could not be established when the prosecution filed the indictment and for which criminal offense.[147]

According to the factual description of the criminal offense stated in the verdict, on April 12, 2016, the perpetrator endangered the peace and bodily integrity of his non-martial partner by using violence, threatening to attack life and body, and by insolent and reckless behavior in the following manner: the injured party returned home with unpaid bills and lay down on the bed. The defendant started an argument, then started breaking things around the house, and then at one point sat on the injured party and started punching her in the head. After that, he started to take the gun that was under the bed, but his partner prevented him from doing so. After he fell, the victim remained lying on the box of the gun, and the perpetrator kicked her in the abdomen on the left side. According to the court, the perpetrator was in a sane state, aware of his act which he carried out with intent, and he was aware that his act was prohibited. The court qualified the crime as the basic form of the criminal offense of domestic violence under Art. 194. para. 1 of the CC.

[147] Criminal procedure no. 219/2015 of October 18, 2017.

Data on the perpetrator

The perpetrator was an economic technician by profession, divorced, the father of four minor children, employed, and not previously convicted. Due to the anonymity of the data on the perpetrator, as well as the fact that the verdict does not contain an explanation, the age of the perpetrator, the behavior before committing the crime, and the arguments of his defense are unknown.

Data on the victim

Other than that she was the perpetrator's non-marital partner, there is no available data on the victim.

The course of criminal proceedings

Since the verdict did not contain an explanation, there is no data on the course of the criminal proceedings.

After the verdict was announced, the deputy public prosecutor and the defendant waived their right to appeal, so that the verdict became final on October 18, 2017.

The procedure was extremely inefficient; four years, six months and six days passed from the committing of the criminal offense to the finality of the verdict, which is unacceptably long considering that it is a criminal offense of domestic violence.

Criminal sanction, mitigating and aggravating circumstances

The court passed a verdict finding the perpetrator guilty of the criminal offense of domestic violence under Art. 194. para. 1 of the CC. A conditional sentence was imposed on the perpetrator - a prison sentence of four months with a probation period of two years, as well as the security measure of the confiscation of the weapon, a Zastava M88 pistol and seven 9 mm bullets.

COMMENTARY

The court qualified this crime as domestic violence as the basic form of domestic violence, although during the committing of the crime, as stated in the verdict, the perpetrator "started to take the gun that was under the bed, but his wife prevented him from doing so," in addition to this description: "after he fell, the victim remained lying on the gun box." Although we have no insight into the data concerning the legality of the possession of the weapons, because the reasoning of the verdict is absent, the very fact that the perpetrator tried to take a gun, which his non-martial partner prevented him from doing, unequivocally leads to the conclusion that domestic violence was committed using firearms in the form of a threat. The fact that the injured party was aware of what could happen to her, i.e., that the defendant could have committed a more serious crime by using a gun, and fought to prevent it, must not be neglected, i.e., it was necessary that this be taken into account in weighing the sentence.

However, the injured party's "success" in preventing the defendant from committing a serious crime was interpreted in favor of the defendant when sentencing him, as the court imposed a conditional sentence with a prison sentence of only four months, at the lower minimum for this offense.

Also, the operative part of the verdict does not state which injuries, by type and severity, the injured party suffered, though it is very clearly evident that, according to the description, when the defendant sat on the injured party and started hitting her on the head with his fists (...) and kicked her in the area of the abdomen on the left side, the injured party must have suffered bodily injuries which should have been ascertained by the report of the specialist doctor, and then qualified by the findings and opinion of a forensic expert. An accurate stating of injuries, and above all the mechanism of their occurrence, certainly influences the sentencing. This is because the defendant kicking the injured party once, causing her to suffer a minor injury in the form of redness or bruise is very different from "kicking" her repeatedly, several times, as appeared to the case here, which would cause the injured party more noticeable injuries. At the same time, through the types of injuries, along with other evidence, we could roughly conclude how long the violent act lasted, i.e., how long the victim was exposed to suffering and pain, which also affects sentencing.

All of the above – along with a detailed check that could have been done of the perpetrator's previous life, which should include not only a report from the criminal record but also of possible earlier reports for the same or similar acts, even if the charges were rejected or the perpetrator acquitted - would offer a much clearer picture of the perpetrator's personality and readiness/likelihood to repeat such an act, elements which also affect sentencing. Also, taking into account that this procedure was conducted at the time when the LPDV had come into effect, the CCG would have been obliged to consider this case as an ongoing one, and perform a risk assessment based on all parameters, which would have to take into account all the above, but also a more thoroughly researched estimation of the earlier life of the perpetrator. This would contribute to determining a punishment that would appropriately correspond to both the act committed and the personality of the perpetrator, which would thereby achieve the purpose of the punishment.

Were such actions to have been taken, the public prosecutor would have had the opportunity to propose to the court that a longer sentence be imposed on the defendant, and to propose that the defendant be sentenced to at least one security measure, such as a ban on approaching and communicating with the injured party under Article 89a of the Criminal Code so as to provide concrete protection to the victim.

As is, the case is a glaring example of the mild penal policy of courts in cases of domestic violence. This is confirmed in the specific case by the perpetrator waiving the right to appeal, indicating its favorable treatment of him. The imposed sentence of imprisonment for a period of four months and the corresponding conditional sentence do not represent an adequate punishment for the criminal offense of the misuse of weapons, nor provide general and special prevention or protection.

CASE no. 8

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office in Leskovac filed an indictment against the perpetrator S. G. for two criminal offenses: of domestic violence under Art. 194. para. 2, in connection with para. 1 of the CC; and the criminal offense of endangering security under Art. 138 para. 1 of the CC.[148]

The Basic Court in Leskovac found the perpetrator guilty of the criminal acts for which he was accused.[149]

According to the data from the verdict, on October 23, 2018, at around 9 pm and on October 24, 2018, at around 9 am, the perpetrator endangered the peace, physical integrity, and the mental state of the victims, his father and mother, through the use of violence, threatening to attack life and body, and with insolent and reckless behavior, using means capable of inflicting serious injury to the body or severe impairment to health – a rolling pin and a gas pistol - and by threatening to attack the life and body and endanger the safety of his sister, while his ability to understand the significance of his actions and to manage his actions was significantly reduced due to mental disorders and behavioral disorders and due to alcohol use - addiction syndrome F 10.2 and acute intoxication F 10.0. The act was committed by the perpetrator in the following manner: after coming home drunk and first insulting and cursing at his mother and father; at one point, while leaving the living room, he turned to his father and mother and, holding a rolling pin in his hand, threatened them with the words: "*Now I'm going to break you*!" The perpetrator's father grabbed the rolling pin and managed to snatch it from his hand and throw it aside, after which the perpetrator went to a house in the same yard and continued shouting, threatening, cursing, and insulting. The father, sister, and underage son of the perpetrator went to his room to tell him to calm down and to not disturb the neighborhood. The perpetrator then threatened his sister that he would kill her and commanded her to leave the room. When the perpetrator's father intervened, he told him: "Why are you interfering , I will kill you all," then pulled a gun out from next to the bed, which he raised and said: "*I will kill you all*," to which the father told his sister and the perpetrator's child to leave the room, and tried to persuade the perpetrator to put the gun down. The next morning, around 9 o'clock, the perpetrator insulted and cursed at his father again.

According to the court, at the time of committing the criminal offense, the perpetrator's mental capacity was significantly reduced due to mental and behavioral disorders resulting from alcohol use and acute intoxication, but he had acted with direct intent because he was aware that his crime was prohibited and with the intention to commit it.

Data on the perpetrator

The perpetrator was 42 years old at the time of the crime, had finished high school in textiles, was a textile technician by profession, without a job, married, and the father of two children. He had been previously convicted several times: by the verdict of the Mil-

[148] Criminal procedure no. 2107/2018 of November 13, 2018.
[149] Legal decision no. 747/2018 of November 26, 2018.

itary Court in Niš on January 19, 2014 to a prison sentence of six months and one year of probation for the criminal offense under Art. 226. para. 1 of the Basic Criminal Code, and by the judgment of the Basic Court in Leskovac on July 3, 2018 to imprisonment for a term of three months and two years of probation for the criminal offense prescribed by Art. 203. para. 1 of the CC.

According to description of events of the verdict, the perpetrator had separated from his family a few years prior and had moved in to an old house in the same yard as his parents, while his parents and son continued to live in another house sharing the yard, where his sister would occasionally stay when she brought her underage daughter to her mother to take care of her. The perpetrator had been left by his wife and his underage daughter was taken to live with her. While in the community with his wife, the perpetrator had consumed alcohol excessively; when his wife left him, he continued to drink alcohol and was intoxicated every day, due to which he had an epileptic seizure and was hospitalized for treatment. After leaving the hospital, he continued to drink excessively and in such a state committed violence, and behaved insolently and recklessly towards his parents.

At the main trial, the perpetrator fully admitted to committing the criminal offenses for which he had been accused.

According to the expert's findings and opinion, the perpetrator did not have a temporary or permanent mental illness, nor a temporary mental disorder or mental limitation at the time of the crime, but that the perpetrator was in a state of acute mental and behavioral incapacity due to alcohol use in the form of the addiction syndrome diagnosed by F 10.2, and in an acutely intoxicated state with a diagnosis of F 10.0, i.e., acute intoxication due to alcohol use. These disturbances and conditions, at the time of committing the crime, led to his ability to understand the significance of his crime and to manage his actions being significantly reduced and, due to the danger that he would repeat the crime in such conditions, the expert suggested that the court impose upon him the security measure of the obligatory treatment of alcoholism in a closed institution, because treatment at large would not be expedient or appropriate from the forensic point of view.

Data on the victims

There is no more detailed information in the verdict about the victims of the crime; the father, the mother, the sister, and the minor son of the perpetrator (14 years old). There is information about the relationship between the perpetrator and the injured parties before the crime; the perpetrator had often shown violence in a drunken state and behaved insolently and recklessly towards his family members, thus endangering their peace, physical integrity, and mental health. The perpetrator's mother had already filed criminal charges against him for such behavior, but later withdrew them, when the perpetrator promised to improve his behavior - which did not happen.

The course of criminal proceedings

The criminal report was filed by the perpetrator's mother. According to the perpetrator, measures prescribed by the Law on Prevention of Domestic Violence had been applied,

for which a report on the event was initiated, the perpetrator's statement taken, and a risk assessment made by an authorized official of the Police Department (PO) of Vučje; a decision was made prohibiting the perpetrator from approaching, meeting, and communicating with the injured parties and he was ordered to report to the PO in Vučje on Thursdays, Saturdays, and Tuesdays from 9 am to 12 noon, with a warning that if he were to violates these measure, a more severe measure would be applied to him, i.e., detention.[150] The perpetrator violated these measures immediately after they were pronounced, when at 10:30 pm the same evening, he came to the door of the house where his father, mother, and sister were, started knocking on the door, and shouted sarcastically: "*You have accommodated me well*!," and then began swearing, which is why the injured party – his mother told him to go away, which he did, retreating to the house where he was staying. As he also violated the second measure by not report to the PO of Vučje on the same day from 9 am to 12 noon, he was remanded in custody by a decision on October 25, 2018.

During the criminal proceedings, the perpetrator was questioned, his father, mother, and sister were interrogated as witnesses, and the following were examined: the report on the event of criminal indictment no. 587526/18 of October 24, 2018 and risk assessment number 22422/2018-1-1 of October 24, 2018, the record of statement 22422 / 2018-1-1 of October 24, 2018, the report on the event – domestic violence case no. 587526/18 of October 25, 2018, the findings and opinions of the expert of November 10, 2018, and the medical documentation for the perpetrator, as well as an excerpt from the criminal records.

Based on the presented evidence, the court determined that the perpetrator came home drunk on October 23, 2018 at around 9:00 pm and sat down to dinner with his parents, sister and his underage son, who quickly finished dinner and left the room. Then the perpetrator started insulting his parents, addressing them with curses and swearing, telling his mother that she was a "*bitch, whore, harlot, wench*" and then his father and mother "*you are to blame for everything, I don't care , you are beasts, I don't hive a f..., I don't give a sh..about you , but what do I care, I can't even look at you*," and then at one point he turned to the injured party and taking a rolling pin in his hand threatening them: "*Now I will break you*!" His father approached him, grabbed the rolling pin, they struggled, but the father managed to take it from his hand at which point the perpetrator left the house and went to the house where he was staying. After going to that house, he continued to shout, yell, curse, insult and threaten, so the father, sister, and underage son went to the room where he was, told him to calm down, not to make noise, and not to disturb the neighborhood, to which he addressed them with words of threat: "*If I don't see you get out of the room, I'll kill you!*" He then took out a pistol, which he raised and said: "*If I don't see you get out of the room, I will kill you*!" At that moment, the perpetrator's father told the perpetrator's sister and son to leave the room, which they did. He then began to persuade the perpetrator to put down the gun, telling him that he did not need it and when the defendant had calmed down his father left the room and returned to the other house. The next day, October 24, 2018, at around 5:00 am, the perpetrator came to the house where the victims lived and started knocking on the door and window. His mother got up and told him that there was no need to knock, and that she would make him a sandwich, which she did, after which the perpetrator returned to the house where he was staying. At around 9:00 am, the perpetrator came to the house

[150] Criminal procedure. 747/2017 of October 24, 2018.

where his father was, started shouting and looking for food and cursing "F*** you in the mouth!" to which they responded by asking him not to shout and swear. The perpetrator then returned to his house, and 20 minutes after that,based on the report made by his mother, the police arrived.

With regard to the legal qualification of criminal offenses, the court found that the actions of the perpetrator met all the conditions of the criminal offense of domestic violence from Art. 194. para. 2 in connection with para. 1 of the CC and all the conditions of the criminal offense of endangering security from Art. 138 para. 1 of the CC since by using violence, threatening to attack life and body, and insolent and reckless behavior, he had endangered the peace, physical integrity, and the mental state of his family members; regarding his father and mother, with means, a rolling pin and a gas pistol, capable of inflicting serious injury to the body and serious violations of their health and by threatening to attack life and body, he had endangered his sister's safety. Although the nephew, a minor, was present during the perpetration of psychological violence against the perpetrator's parents, he was not treated as a victim of the criminal offense in the proceedings.

The criminal proceedings lasted a very short time. The indictment was filed on November 13, 2018, and the verdict was passed on November 26, 2018. The criminal offense was committed on October 23 and 24, 2018, which means that a month and two days passed from the committing of the criminal offense to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The court first determined individual prison sentences for the perpetrator; for the criminal offenses of domestic violence under Art. 194. para. 2. in connection with para. 1 of the CC, a sentence of imprisonment for a period of three months was imposed on the perpetrator; and for the criminal offense of endangering security under Art. 138th item. 1 of the CC, a sentence of imprisonment of two months in prison was imposed on the perpetrator. Cumulatively, the perpetrator was imposed with a single prison sentence of seven months, which factored in the time he had spent in detention.

In addition to the sentence, the court imposed the security measure on the perpetrator of the obligatory treatment of alcoholism in the Special Prison Hospital in Belgrade, which could not be longer than the sentence imposed.

When weighing the type and degree of the sentence, the court recognized the following mitigating circumstances: the perpetrator's confession that he committed the crime, sincere remorse, the fact that he had not been previously convicted for these exact crimes, that the injured did not join the prosecution, nor apply any other personal or property claims against the defendant. Regarding aggravating circumstances, the court recognized the gravity of the criminal offenses, the manner, place, and time of committing of the criminal offenses, and the degree of guilt of the perpetrator. It is especially worrying that the court did not consider as an aggravating circumstance the fact that the perpetrator committed certain acts of the criminal offense in the presence of a minor.

COMMENTARY

This case is an illustrative example of the inadequate application of the LPDV, i.e., the imposition of urgent protection measures under this law. Namely, if we adhere to the list of risks, which includes 22 risks, and which was prepared for the competent police officers by the Ministry of the Interior, in this case, and only according to the available data, the following risks have been determined:

- **the perpetrator had committed domestic violence previously to, or immediately before, the risk assessment (the defendant's mother had reported him for violence several times, but withdrew her reports);**
- **possession of, and threatening to use, weapons (he pulled out a gun, which he raised, and told the victims that he would kill them all);**
- **threat to kill family members ("if I don't see you get out of the room, I'll kill you");**
- **abuse of alcohol to the extent that the perpetrator endangered his own health and was hospitalized (the perpetrator had previously excessively consumed alcohol, but when his wife left him, he continued to drink alcohol to an even greater degree and was drunk every day, due to which he had an epileptic seizure and was placed in hospital treatment);**
- **evidence of previous convictions (the perpetrator had been convicted twice);**
- **previously pronounced emergency measures which the perpetrator had violated ;**
- **the victims had experienced fear of the perpetrator (the available documentation does not directly describe the fear of the victims, but considering the circumstances under which the act was committed, it is evident that there was fear among the victims);**
- **children are direct or indirect victims (the minor son of the defendant is a direct victim, as he witnessed all the violent acts of the defendant, i.e., he was present when the perpetrator repeated several times, even holding a gun, his threat to kill them all, and so his intent was also directed at his minor son);**
- **previous behavior of the possible perpetrator in relation to the victim (there is information that the perpetrator often showed violence in a drunken state and that he had behaved insultingly and aggressively towards his family members);**
- **problems with work and finances (the defendant was without a job and was living in a house on the property of his parents' house, which clearly indicated a bad financial situation);**
- **mental health problems (due to mental disorders and behavioral disorders stemming from alcohol abuse, the defendant had developed a syndrome of addiction, F 10.2, and exhibited a state of acute intoxication, F 10.0).**

Of the 22 risks potentially relevant in such cases, as many as eleven were recorded. If we add to these risks other data that could have been available to the competent police officer from the diary of events on previous records, where it could have been recorded that he had committed violence against other family members (his wife had left him with their minor daughter), it is highly likely that the perpetrator displayed similar behavior in the past and could have been reported by his wife and accused for violence in the earlier period, especially given that the perpetrator was constantly under the influence of alcohol (he was stated as being drunk every day), implying a high risk of domestic violence. Exacerbating this case was that there was no suitable place for the imposition of an emergency measure.

After ascertaining all the above risks, the competent police officer would be obliged to inform the duty prosecutor, who is authorized to state whether the specific actions achieve the characteristics of a criminal offense, qualify the offenses, and determine whether the defendant could be detained in terms of the Code of Criminal Procedure. The public prosecutor could then have issued this statement in such a way that he, and on the basis of the data given to him by the police officer, assessed the risk and reached a decision. Therefore, risk assessment must always be performed, and not only according to LPDV; in this procedure the public prosecutor could have cited the list for risk evaluation prepared by the Ministry of Justice, by which the public prosecutor could have determined that there were as many as 12 risks of domestic violence.

When the emergency measure had already been determined (although it is not clear why the perpetrator's underage son was not cited here, since he had been exposed to and survived the violent acts the entire time), its violation should not have resulted in the measure of detention prescribed. According to the LPDV, if an emergency measure is violated, a misdemeanor procedure is conducted by which the perpetrator can be sentenced to imprisonment for up to 60 days, according to Art. 36 of the LPDV, therefore there were no ground "in this phase" for the introduction of a measure to define/contain the presence of the defendant under the Criminal Procedure Code.

Following the actions of the institutions in this case , if they had already (although inexpediently) assessed that there were grounds for imposing an emergency measure according to the LPDV, then the police would be obliged to initiate misdemeanor proceedings. While the perpetrator would be serving a prison sentence for the committed misdemeanor, the public prosecutor could then have presented the case at the CCG meeting, which would provide an individual plan of protection and support to the victim as defined by Art. 31. The LPDV envisages measures that all institutions are obliged to take. Thus, the competent center for social work would be obliged to conduct a family observation, collect information on the dynamics of family relations, assess the risk of recurrence and escalation of violence, assess the perpetrator's parental capacity, and take appropriate measures in accordance with the Family Law (for example, corrective measures, supervision over the exercise of parental rights, or to file a lawsuit for the protection of the rights of the child, i.e., for the partial deprivation of parental

rights), as well as to provide the necessary support to the victims, primarily the perpetrator's minor son. Furthermore, the police would be obliged to inform the proceedings about the length of the sentence served by the defendant for violating the emergency measure, i.e., when the sentence expired, and the public prosecutor to check in his records for the possible existence of other criminal charges against the same suspect for acts against the same injured persons (even those that were rejected due to, for example, the victim's refusal to testify). Though this was not accomplished, the merging of these considerations and data into one case would more thoroughly cover the criminal offense in question and in this way, the public prosecutor would be able to see the "bigger picture" of this case.

Depending on the length of the sentence to which the perpetrator was sentenced, the public prosecutor could organize a hearing of the suspect before the expiration of the sentence, and order his psychiatric evaluation, and, after the sentence expired, propose to the court that the suspect be imposed with either the measure of detention as the most severe, or some other measure, e.g., a measure prohibiting him from leaving the apartment, as described in Art. 208 of the CCP. By taking such action, the court would forbid the defendant to leave the apartment in which he was staying without permission (according to the data from the verdict, the perpetrator had separated from his family a few years ago and moved to live in an old house in the same yard, while in another adjacent house his parents and his son continued to reside) and determined the conditions under which he would have to stay in the apartment, such as a ban on using the telephone and/or the Internet or on receiving certain persons in the apartment, with a warning that if he were to violate this measure, he could be detained. What measure the public prosecutor would propose (again) depends on the assessment of the risk of the recurrence of violence. For the purpose of assessment, the public prosecutor might request a report on the perpetrator's behavior during the serving of the sentence from the institution where the suspect would serve a prison sentence for the committed misdemeanor. The court would be obliged to decide on this proposal of the public prosecutor within 24 hours in accordance with Art. 24 of the LPDV.[151]

However, if we do not follow the actions of specific institutions, but act only on the basis of the report and data presented in this case, taking into account all identified risks, then after the police officer reported the case to the Deputy Public Prosecutor, he had all the elements to immediately qualify the crime domestic violence and to order detention of the suspect for up to 48 hours in terms of Art. 294 of the Criminal Procedure Code, because there were special circumstances that indicated that the suspect could interfere with the proceedings by influencing witnesses (the injured parties of his father, mother, sister, and son), and special circumstances that indicated that he would, in the near future, likely repeat a crime, or attempt to commit, or commit the crime of threatening force

[151] In criminal proceedings conducted for criminal offenses determined by this law, the court is obliged **to decide within 24 hours on the proposal of the public prosecutor on the measure** of prohibiting approaching, meeting, or communicating with certain persons and visiting certain places, the measure of prohibiting the accused of leaving his/her residence, and the measure of a **ban on leaving the living premises** (Article 24, LPDV)**.**

(as we can see, he threatened to kill them all with the use of a gun, while already under imposition!). After the expiration of the detention and interrogation of the accused, the public prosecutor would then have the opportunity to propose some measures to ensure that the presence of the accused, as already explained in the commentary on the actions of the institutions, would be monitored. We also consider incorrect the court's position that the perpetrator committed two criminal acts of domestic violence – against his father and mother - and also the criminal offense of endangering the safety of his sister. Namely, first of all, it is unclear why the court did not recognize in the perpetrator's actions that there was another victim of the crime of domestic violence - a minor son. Although during the proceedings it was undoubtedly established that he threatened his father, sister, and minor son when he took out a pistol from behind the bed, raised it and said: "If I don't see you get out of the room, I will kill you!," the court somehow failed to recognize that this act of domestic violence was also committed against a minor, for which he would be threatened with imprisonment from two to 10 years. It also remains open to question why the crime against his sister was qualified as a security threat and not as domestic violence. Namely, the sister is a member of the family, because she is in the second degree of the collateral line with the defendant, and the condition to live with the perpetrator in a joint household does not apply to her (this condition primarily refers to ex-spouses and their children and parents of ex-spouses, because this kinship ends with divorce, and therefore an additional condition is set for living in a joint household; on the other hand, kinship between siblings never ends, because it is a blood relationship, so the target, not the linguistic interpretation of the legal norm must be applied here); this is true all the more so because the sister, according to the degree of kinship, also enjoys the right of a privileged witness in the sense of the provision of Art. 94. para. 1. item. 2 of the Code of Criminal Procedure. In court practice, there are several verdicts in which a violent act between a grandson as the perpetrator and a grandfather as the injured party has been qualified as domestic violence (although the relation of grandson is not definitely covered by Article 112, item 28 of the CC), as well as verdicts in which a brother has been convicted for the domestic violence he committed against his sister. In addition, not only common sense, but also the targeted interpretation of the legal norm unequivocally indicate that a sister is a member of the family, although the practice in the Republic of Serbia on this issue is uneven, as evidenced by this decision.

It remains unclear in the case whether there was a firearms permit for the pistol and, if so, in whose name it was issued.

The sentence imposed is unacceptably lenient, given the number of victims and the fact that the perpetrator had previously, and for a long period of time, exhibited violence against family members and that urgent measures to protect against domestic violence had been imposed on him, and which he had violated almost immediately.

The court appears to have favorably assessed the mitigating circumstances,

both that the perpetrator had not been previously convicted for these particular acts, that the injured parties did not join the criminal prosecution, and that the defendant admitted the act. In this regard, we point out that in cases of domestic violence, the imposition of urgent measures of protection against domestic violence must be considered an aggravating circumstance, regardless of the fact that they do not have the character of a criminal conviction, because the reason for their imposition is a sure sign that there is imminent danger that the perpetrator will commit domestic violence for the first time, or repeat the act. Also, having in mind the specificity of this crime, especially that it was committed against parents by their child, then testimony about the crime is frequently refused, so the non-joining of this party to the prosecution is a circumstance that could have been expected, while its interpretation in favor of the defendant is benevolent, especially in view of the circumstances under which the act was committed.

Therefore, taking into account all the circumstances of the case, the number of injured persons, and that the court expert proposed treatment in closed conditions, the sentence of imprisonment for seven months with the security measure of mandatory treatment of alcoholism, which cannot last longer than the imprisonment, is not adequate to achieve the purpose of punishment, while the possibility of recovery in such a short period of time is highly questionable.

CASE no. 9

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office of Sremska Mitrovica - Department in Šid, filed an indictment against the perpetrator for the criminal offense of domestic violence prescribe by Art. 194. para. 2 in connection with para. 1 of the CC.[152]

The Basic Court in Šid passed a verdict finding the perpetrator guilty of the criminal offense stated in the indictment.[153] According to the factual description of the crime, on November 10, 2017, at around 4 pm, the perpetrator, by insolent and reckless behavior and with the use of firearms, endangered the peace, physical integrity, and mental state of his adult son - the injured party, in the following manner: while verbally arguing in the yard of the family house where they live in a joint household, he took a hunting rifle brand IZ 27-E caliber 12 mm, and fired one shot that hit the victim and inflicted light bodily injuries in the form of a circular wound about 3 cm in diameter and lacerations about 1 cm in the area of the right gluteus. As a result, the injured party felt his safety and security threatened, and the actions caused him fear and anxiety. The victim went with his wife to her parents and reported the incident to the police.

[152] Criminal procedure no. 341/2017 of December 1, 2017.
[153] Legal decision no. 166/2017 of December 12, 2017.

Data on the perpetrator

Given that the judgment, based on Art. 429. para. 1. item 1 of the CCP does not contain an explanation, there are only basic data about the perpetrator: that he was 60 years old at the time of the crime, a farmer by profession, had finished primary school, supported himself from agriculture, owned a house and property, was married, was the father of two adult children, and had not been previously convicted.

At the time of committing the criminal offense, the perpetrator was deemed sane, able to understand the significance of his offense and manage his actions, and had acted with direct intent.

Data on the victim

There was no information in the verdict about the victim of this crime. There was also no data on the previous relationship between the victim and the perpetrator prior the committing of the crime, or on whether the perpetrator had committed violence against him before.

The course of criminal proceedings

The verdict does not contain an explanation, so it was not possible to see the course of the criminal proceedings. The perpetrator was in custody according to the decision of the Basic Court in Šid and his detention had been imposed, since he was deprived of liberty.[154]

The procedure was efficient: a month and two days passed from the committing of the criminal act to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The perpetrator was sentenced to one year in incarceration, in the form of house arrest, which he was to serve in the premises where he lived, with the use of electronic surveillance, with the condition that if once for more than six hours or twice for up to six hours he was to leave the premises where he lived, the court would order that the remainder of the imprisonment sentence be served in Prison.

In addition to the punishment, the security measure of the confiscation of the hunting rifle and the corresponding firearms license was imposed on the perpetrator.

COMMENTARY

According to the data from the verdict, at the time of the crime, the perpetrator and the victim lived in a joint household. Therefore, it is questionable as to why the court would have determined that the perpetrator should serve his sentence in the premises where he lived, given that Art. 45. para. 5 of the Criminal Code

[154] Case br. 166/2017 of November 12, 2017.

explicitly stipulates that a person convicted for a criminal offense against marriage and family, who lives with the injured party in the same family household, cannot be ordered to serve his prison sentence in the premises where he lives. This measure of sentencing could only possibly be considered if in the meantime the perpetrator and the victim had stopped living in a joint household. However, there is no information in the verdict that this happened.

When it comes to the severity of the sentence imposed on the perpetrator of this criminal offense, it is relatively adequate in type and degree; it is above the legally prescribed minimum for the criminal offense in question, for which a prison sentence of six months to five years is prescribed, and given that at the time of the proceedings he was a previously unconvicted person of advanced age.

However, given the LPDV had already come into effect, this case could have been discussed at a CCG meeting in order to fully establish the relations in this family, as well as the father-son relationship in general, so as to prevent possible violence in the future.

Namely, having in mind that the defendant is a father who was 60 years old at the time of the crime, it is not impossible that at some point he was a victim of violence by his adult son, violence which he could not stop because the son was stronger, and that he, therefore, as a way to compensate for the difference in strength, took up arms. This is why it was important for CCG to have considered the case, whereby the center for social work could have taken measures within its competence, and in order to prevent the possible future risk of recurrence of violence on either side.

CASE no. 10

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office of Ruma filed an indictment against the perpetrator for: the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC, which he committed against his wife; the criminal offense of domestic violence under Art. 194. para 3. in connection with para. 1 of the CC, which he committed against his daughter; and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 2 in connection with para. 1 of the CC.[155]

By the verdict of the Basic Court in Ruma, the perpetrator J. M. was found guilty of all criminal offenses named in the indictment.[156]

[155] Criminal procedure no. 17/18 of January 15, 2019.
[156] Legal decision no. 14/19 of April 18, 2019.

According to the factual description of the criminal act established in the verdict, the perpetrator threatened to attack the life and body and endangered the peace and physical integrity of his wife and his underage daughter - with whom he lived in a joint household, using weapons, according to the following manner: on November 23, 2018, in the period from 1.00 to 18.00 in Brestač, he first hit his wife several times on the head and below the right shoulder with the wooden table leg , as a result of which she suffered minor bodily injuries in the form of multiple bruises on the head and a minor bruise below the right shoulder. He then grabbed the underage daughter by the neck with his hand and inflicted a minor bodily injury in the form of a minor bruise on her neck up to 1 cm long. Throughout the physical attack, the defendant threatened the victims with the activation of a hand grenade, model M-75, which he held without authorization, on which the serial number was removed, and which belongs to a category "A" weapon, whose possession under Art. 4. of the Law on Weapons and Ammunition is not allowed to citizens. According to the court, the perpetrator was able to understand the significance of his act, while his ability to manage his actions was reduced, but not significantly, and he was aware of his act and committed it with intent, which means that he was accountable and that he acted with direct intent.

From the forensic expert evaluation of the injured party's injuries, the court determined that the perpetrator's wife suffered minor bodily injuries in the form of a bloody wound on her head, and minor bruises below the shoulder. According to the expert's findings and opinion, the hemorrhages on the head were caused by manual blows and blows to the head with a blunt hard object, with the manual blows and blows with a wooden table leg on the head qualified as done by means of not regarded as capable of a high degree of inury, and that the injuries occurred in several acts. The injuries sustained by the perpetrator's minor daughter were minor bodily injuries in the form of a bruise on the neck about 1 cm long, which could have been caused by blunt-hard mechanical force, whereby the grasping of the neck with fingers of the hand with low intensity is a suitable way to inflict the violation occurred in one act. During the examination of the perpetrator's wife, the forensic expert stated the existence of small nodules in the occipital part of the head, which were a consequence of bone ossification and not injuries.

Data on the perpetrator

The perpetrator finished one grade of primary school, worked as a seasonal worker, was married, and had four minor children. He had previously been convicted for the criminal offense of attempted theft under Art. 203. para. 1 of the CC, for which he was sentenced to a conditional sentence of four months with a probation period of one year. After committing the criminal offense, he was remanded in custody on November 23, 2018. Due to the anonymity of the data in the verdict, the age of the perpetrator cannot be determined.

The perpetrator lives in a joint household with his wife and four minor children. The eldest daughter was born in 2002, and the youngest child was seven months old at the time of the incident. Due to his doubts about his wife's fidelity, there were often quarrels between them. He had regularly consumed marijuana since the age of eighteen, usually doing so once a day, but he had not been treated for addiction to drugs.

During the interrogation at the main trial, the perpetrator stated, among other things, that he had an argument with his wife because he suspected that she had been cheating on him with another man, his childhood friend, and that this infidelity had lasted for 17 years, which he repeatedly accused her of. A few days before the critical event, his wife and children had left him and went to her father's, where she stayed for 3-4 days, with the explanation that she did so because he was harassing them. He was sorry that she had taken the oldest daughter because he had wanted to take her to get her a job in a company. He was holding a black hand grenade in the household, which was in black plastic, and he had said earlier that he would blow himself up with that explosive, when he saw that his wife and daughter did not respect him and that they were lying to him.

According to the perpetrator, two days before the critical event, his daughter informed him that she had missed her bus home, so he went to the bus station to pick her up, because she was hanging out with what he deemed bad girls that he thought were prostitutes, which is why he then slapped her. On the critical day, he said that he did not verbally or physically attack or harass his wife or daughter, nor did he threaten them with a grenade. He had only rebuked his wife for not taking care of the children. According to him, the bomb had been brought home by his underage son about a month before, which he had allegedly found in the forest. He used marijuana before the critical event on November 22, 2018, and he does not rule out the possibility that he consumed it on November 23, 2018. He said that he did not consume alcohol because when he would drink, he would become aggressive. According to him, the injuries to his daughter could have occurred when he slapped her in the face, while the injuries to his wife could have been caused by her hitting her head herself.

According to the findings and opinion of the expert specialist in neuropsychiatry, the perpetrator had a tendency to take the narcotic drug marijuana, but did not exhibit an addictive pattern. The perpetrator did not suffer from any mental illness or disorder, so it was not necessary to impose a safety measure of mandatory treatment. At the time of the critical event, the perpetrator was able to understand the significance of his act, while his ability to manage his actions was reduced due to having consumed marijuana, but not to a significant degree.

Data on the victims

There is no other information in the verdict about the victims of the criminal acts other than that it was stated that they were the perpetrator's wife and eldest daughter (born in 2002). According to the statement of the perpetrator and the testimonies of the victims, the relations in the family were poor, there were frequent quarrels and discussions between the perpetrator and the injured wife due to the jealousy of the perpetrator and the suspicion that his wife had cheated on him with his childhood friend. The perpetrator's wife stated that she was not interested in prosecuting the perpetrator, that she did not wish to file a property claim, and she had suggested to the court that the perpetrator be released.

The course of criminal proceedings

During the evidentiary proceedings, the court considered; statements from the injured parties, five witnesses and forensic experts; the report of the Health Center Pećinci, the report on domestic violence of the Center for Social Work Pećinci dated December 14, 2018; the warrant of entry into the apartment and other premises; the certificate of temporarily seized items; the reading of the form of the Health Center Pećinci for recording and documenting violence in the family from November 26, 2018; the findings and opinion of a neuropsychiatric expert; the findings and opinion of a ballistics expert; and an excerpt from the criminal records of the perpetrator. The perpetrator was deprived of liberty after being indicted for a criminal offense on November 23, 2018, when he was ordered into custody.

Examined as a witness, the perpetrator's injured wife stated that the perpetrator had grabbed her by the hair on the critical occasion, that he had also come into conflict with his underage daughter and slapped her because she did not arrive home on time and because he thought she was hanging out with problematic friends. On the same occasion, he threatened to activate the bomb and that he would kill himself with it, because no one was listening to him. Due to the conflict with the perpetrator, she went to an acquaintance who was a police officer and reported to him, after which she was interrogated at the Center for Social Work. The court accepted the testimony of the injured party as credible and, based on her testimony, determined that there were quarrels and quarrels between her and the perpetrator, that the perpetrator repeatedly "harassed" her with allegations of cheating on him with someone else, that he pulled her by the hair and beat her, and that on the critical occasion he also struck their underage daughter. Also, the testimony of this witness that the perpetrator said that he would activate the grenade and would kill himself was accepted. The court did not accept the testimony of the witness when she stated that her husband did not beat her with any wooden object on the critical occasion and that he did not have a hand grenade with him. According to the court, this part of the witness's testimony is unconvincing and obviously calculated to diminish the perpetrator's responsibility, and it is in contradiction with the testimony of another witness - the perpetrator's daughter.

The minor daughter of the perpetrator testified that there were occasional quarrels and arguments with her father, that her father behaved in an ugly way if she was late from school, that he had grabbed her by the neck with his hand and had slapped her, that she had deduced that her mother had head injuries and that her mother then told her that her father had hit her with the wooden leg of the table. According to her statement, on the critical occasion, her father had held a hand grenade in his hand, and from his behavior, she could conclude that there might be an explosion; she was afraid for herself and her father, and thus her mother had reported the whole case to the police.

From the testimony of witness R.M., a police officer in the police station of Pećinci, it was established that the perpetrator's wife reported on November 23, 2018 that the perpetrator used violence against her and her underage daughter, so he had gone to the perpetrator's house and behind the house, on a moped covered with a tarpaulin and a jacket, he found a black hand grenade model M-75, which was then temporarily confiscated from the perpetrator.

The witness I. I. testified that the injured party - the wife of the perpetrator came to her on November 23, 2018 to report her husband, who had allegedly beat her and their underage daughter, to her father, police officer I. S. The witness gave her a phone to call her father and heard the injured party ask for a patrol to come since her husband had beaten her.

The witness I. S. stated that he had not been on duty on the critical day, but that the injured party called him on his daughter's phone and informed him that her husband had beaten her and that he had a bomb with him on that occasion.

From the testimony of witness Š. R. , the court determined that on November 23, 2018, the injured party came to the Center for Social Work in Pećinci and asked for help. On that occasion, she stated that she and her daughter were mistreated by her husband and that she needed to be placed in a "safe house."

The witness G. D. testified that in November and December 2018 she had been engaged in the non-governmental organization "Praxis" Belgrade, as a teaching assistant working with Roma children, and that on November 23, 2018, she had been scheduled to visit the household of a young student, the injured daughter, J.K., but that the perpetrator's wife had called her the same day and said that she should not come to the house because her husband had hit her and her daughter, that they had both gone to the doctor for help, and that a bomb was found in the household.

From the read findings and opinion of the ballistics experts, the court determined that the hand grenade model M-75 was an explosive in correct condition, , but that the release handle did not have a serial number as it was deleted, that it was a mine-explosive type device that falls into category "A" according to Art. 4. of the Law on Weapons and Ammunition, and that the bomb in question cannot be procured, held, or carried by natural persons, because it is intended exclusively for military use.

In considering the perpetrator's defense, the court did not accept as true the part of his defense statement that he did not physically attack his wife on the critical occasion, that there was no conflict between them, that he only resented his wife for allowing their son to bring a bomb into the house, that he did not endanger their safety by threatening to detonate a hand grenade, and that he did not beat his wife on the head with the leg of a table. According to the court, this part of the defense was in contradiction with other presented evidence and it was unconvincing, illogical, and obviously calculated to minimize the perpetrator's responsibility. The defense attorney of the perpetrator, ex officio, stated in his closing remarks that he considered that the conducted evidentiary procedure did not establish that the perpetrator committed the criminal acts he had been charged with, so he proposed that the court acquit the perpetrator, and if the court were to rule that the perpetrator did commit elements of the crime of domestic violence, that they consider that the crime was committed to a lesser degree than that stated in the indictment, in which regard he proposed that the court impose a lenient criminal sanction on the defendant.

The procedure was efficient: four months and 25 days passed from the committing of the criminal act to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The court, in reference to the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the Criminal Code in relation to the injured wife of the perpetrator, determined a prison sentence of four months. For the criminal offense of domestic violence under Art. 194. para. 3. in connection with para. 2 and 1 of the CC, the court imposed a sentence of imprisonment for a term of one year. For the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 2 in connection with para. 1 of the CC, the court sentenced him to imprisonment for a term of one year and a fine in the amount of 80,000 dinars. Cumulatively, the perpetrator was sentenced to a single prison sentence of two years and two months and a fine in the amount of 80,000 dinars. In addition to the punishment, the security measure of the confiscation of the object with which the crime was committed was also imposed on the perpetrator. As a mitigating circumstance during the sentencing, the court considered the circumstance that the injured wife had not joined the criminal prosecution or filed a property claim, and as an aggravating circumstance that the perpetrator had been previously convicted.

COMMENTARY

Evidence of violence in this case was facilitated by a number of pieces of evidence provided by the services contacted by the victim of violence. Of particular importance are the report of the Health Center, which recorded and documented the injuries, and the notification of the Center for Social Work on the reported violence. The reaction of the police, who found and confiscated the weapons, was also adequate. The perpetrator was also detained, which is significant in that it prevented the committing of new violence.

There is no information on whether the victim had previously reported violence, or whether, in accordance with the LPDV, the Coordination and Cooperation Group prepared an individual protection and support plan for victims of violence – the wife and underage daughter of the perpetrator, which would have been apt, especially bearing in mind that it could be indirectly learned that it was a multi-member family with four minor children, the youngest of whom is a seven-month-old baby. There is also no data on whether the CSW requested information from the school attended by the perpetrator's underage daughter about her behavior and school achievements, nor on the cooperation and attitude of both parents towards the child, which would be crucial for additional insights into the dynamics of family relations and the parental capacity of the perpetrator with regard to the injured parties. However, it is obvious that the wife attempted to protect the perpetrator to a degree in the court proceedings, denying that the perpetrator had a bomb with him, which is an indicator that the competent services, primarily the Center for Social Work, may have not taken enough steps that could have encouraged and supported the victim. This is especially worrying given the allegations of jealousy and the perpetrator's suspicion of his wife's infidelity, which often led to quarrels between them, as he repeatedly accused her of cheating on him with his childhood friend over 17 years. In addition, for the context of domestic violence and partnership, it is indicative that the victim left

the perpetrator with the children a few days before the critical event with the explanation that he was harassing them, that the perpetrator had previously threatened to detonate a bomb because, according to his accusations, his wife and daughter were not respecting him and lying, and that the perpetrator had attempted to shift the responsibility for parenthood to his wife, reproaching her for not taking care of the children, while he himself was inclined to consume the narcotic drug marijuana, according to the findings and opinion of the expert. All of these indicators may indicate an increased risk of recurrence and escalation of domestic violence.

Having in mind that the perpetrator committed two criminal acts of domestic violence, one of which was committed against a minor, and that the criminal act was committed using a weapon whose possession is not allowed, the sentence imposed is inadmissibly mild.

Namely, for the criminal act committed against his wife, for which a standard of from six months to five years of imprisonment is prescribed by the law, while the court determined a prison sentence of four months. The criminal offense committed against the underage daughter is punishable by two to ten years, yet the court issued a sentence of one year in prison for this offense. In both of these cases, the court administered sentences below the legal minimum, thus mitigating the sentences. However, to mitigate the punishment, in terms of Art. 56. para. 1. item. 3,, there must be particularly mitigating circumstances which indicate that the purpose of punishment can be achieved even with a reduced sentence. Therefore, the question can be justifiably raised as to what the court particularly assessed as mitigating circumstances, bearing in mind that according to the available data, the only such circumstance is the aggrieved wife not joining the criminal prosecution or filing a property claim - not factors that could be assessed as particularly mitigating, especially in relation to two committed criminal offenses of domestic violence, one of which was against a minor. At the same time, if, during the procedure, the CCG had analyzed possible earlier reports of domestic violence, it could certainly contribute to a more thorough weighing of the sentences in this criminal matter, which would likely lead to the imposition of a more severe and fitting punishment, i.e., the non-application of the mitigation of punishment.

Contrastingly, in examining the established punishment for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 2 in connection with para. 1 of the CC, for which a sentence of one to eight years in prison is prescribed, and for which the court determined a sentence of one year, i.e., at the limit of the legal minimum, it is noteworthy that it is not determined below the legal minimum, i.e., that it was not mitigated as were the two crimes of domestic violence. This opens space for a broader discussion on which principles, issues, and attitudes are guiding the representatives of judicial bodies in assessing the social danger of certain groups of crimes, and whether a more lenient attitude is primarily related to crimes against marriage and family. If they are embracing such an approach, then the question is with what reason, for it is evident that the same rules are not applied and that there is a more lenient penal policy for these crimes.

CASE no. 11

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office in Sombor indicated the perpetrator of the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, and trafficking of weapons and explosives under Art. 348 para. 2 of the CC.[157]

On September 12, 2017, the Basic Court in Sombor passed a verdict finding the perpetrator guilty of the criminal offenses for which he was accused. In the verdict, within the factual description of the crime established by the court, it is stated that the perpetrator endangered the peace and bodily integrity of his family members, his wife and son, by threatening to attack life and body on July 25, 2017 at around 9 am, doing so in the following manner: he took an M-75 hand grenade from the house and, holding the bomb in his hand, he went out into the yard, approached the victims and threatened them: "*Now you want me to kill you both, huh, you will push me will you? I will kill you all, you will not disturb me in my house, let's see what you are really like...*" - and while he was saying that, he pulled the metal fuse out of the bomb. By these actions, the perpetrator committed the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC. In addition, in the period from an unspecified day to July 25, 2017, the perpetrator kept firearms and ammunition for firearms, the possession of which is not allowed to citizens, in the premises of the house, as follows: one M-70 AB 2 automatic rifle, caliber 7.62 mm, with four frames, and a combat knife and 60 7.62 mm caliber bullets for an automatic rifle, at the same time illegally possessing a mine-type explosive device that citizens are also not allowed to keep - one M-75 hand grenade. In this way, the perpetrator committed the criminal offense of the illicit production, possession, carrying or trafficking of weapons and explosives under Art. 348 para. 2 of the CC. These weapons and ammunition were confiscated from the perpetrator by police officers during the intervention and search of the house on July 25, 2017.

Data on the perpetrator

Due to the anonymity of the data, as well as to the verdict not providing an explanation, only some data on the perpetrator are available: he finished high school, was unemployed, married, the father of two adult children, and had not been previously convicted.

According to the court, the perpetrator's sanity in committing the crime of domestic violence was significantly reduced due to temporary mental disorder as a consequence of severe alcoholism, but he was aware of his crime and committed it with intent, and thus he acted with direct intent. Regarding the committing of the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 2 of the CC, the perpetrator was able to understand the significance of his act and manage his actions, which means that he was sane and acted with direct intent, as he was aware that his act was prohibited while intending its execution.

[157] Criminal procedure no. 339/17 of August 16, 2017.

Data on the victim

Other than that they are the perpetrator's wife and son, there is no information about the victims. There is also no data on the relationship between the perpetrator and the victim prior to committing the crimes, nor on the previous existence of violence. In the disposition of the verdict, it is stated that committing the criminal offense of domestic violence was preceded by a discussion between the perpetrator and his son. The injured parties did not file a property claim in the criminal proceedings.

The course of criminal proceedings

The verdict was pronounced without an explanation, based on Art. 429 of the CCP, so the course of the proceedings could not be attained. The procedure was extremely efficient: a month and 13 days passed from the committing of the criminal act to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The court first determined individual sentences for each of the committed criminal offenses, as follows: for the criminal offense of domestic violence, a sentence of imprisonment for a term of six months was imposed; for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. of the CC, the court sentenced the perpetrator to imprisonment for a period of nine months and a fine in the amount of 50,000 dinars. Cumulatively, a single sentence of imprisonment for a period of one year and two months and a fine in the amount of 50,000 dinars were imposed. In addition to the punishment, the court imposed two security measures on the perpetrator: the security measure of mandatory treatment for alcoholism in a special institution and the security measure of the confiscation of weapons and ammunition.

COMMENTARY

This case stands a prototypical example of the nature of the criminal act of domestic violence, as in one act the perpetrator committed violence against both his wife and his son. Although the Criminal Code prescribes the indictment of two criminal offenses in such circumstances, which is the position of both theory and practice,158 the court sentenced the perpetrator to only one criminal offense of domestic violence, and for this he was sentenced to six months in prison. Thus, the attitude of the court here was in contradiction with the decisions that were analyzed in this research, indicative of the inconsistency of court practice on this issue.

It is also obvious that the court did not fully consider the true social danger of the criminal offense of domestic violence committed by the misuse of firearms, nor of the criminal offense of illegal possession of weapons and ammunition for which a sentence of only slightly higher than the legal minimum was imposed,

[158] Stojanović, Z., *Commentary on the Criminal Code,* Official Gazette, Belgrade, 2020, p. 229.

even though the perpetrator possessed an entire arsenal of firearms that cannot be owned by individuals at all.

This case also indicates that the court did not sufficiently take into account the terms of Article 54 para. 1 of the Criminal Code, which stipulate that the court will impose a sentence on the perpetrator within the limits prescribed by law for that act, bearing in mind the purpose of the punishment and taking into account all circumstances that may affect the punishment being more severe or less severe (mitigating and aggravating circumstances), in particular: the degree of guilt, the motives with which the crime was committed, the degree of endangerment or violation of the protected common and individual welfare, the circumstances under which the crime was committed, the previous life of the perpetrator, his personal circumstances, his attitude after the crime, and especially his attitude towards the victims of the criminal offense, as well as other pertinent circumstances related to the the perpetrator.

The fact that what were, practically, two criminal acts of domestic violence were wrongly qualified as one, for which the court imposed a sentence on the border of the lower minimum, is partly due to the public prosecutor. The public prosecutor had the opportunity to consider this case by initiating a CCG meeting so as to determine all the facts, especially those related to the perpetrator's earlier life (earlier reports of the same crime and the outcome of these proceedings), to determine relations in the family by ordering the Center for Social work to conduct an observation of the family and determine the dynamics of family relations, and to then state these findings in the closing remarks and thus significantly contribute to the sentence being imposed for a longer, more suitable period.

CASE no. 12

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office in Sombor, through an indictment, accused the perpetrator of committing the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosive substances under Art. 348 para. 2 in connection with para. 1 of the CC, in connection with Art. 60 of the CC.[159]

On January 31, 2019, the Basic Court in Sombor issued the first instance of the verdict,[160] but it was revoked by a decision of the Novi Sad Court of Appeals.[161] In the repeated procedure, the court passed a verdict finding the perpetrator guilty of the two criminal acts committed for which he had been accused in the indictment.[162]

[159] Criminal procedure no. 262/18 from May 25, 2018.
[160] Court decision no. 91/18.
[161] Court ruling no. 334/19 of May 9, 2019.
[162] Court decision no. 297/19 of July 11, 2019.

The criminal offense of domestic violence, as stated in the verdict, was committed by the perpetrator on May 7, 2018, at around 12:30 pm, in the family house, in the following manner: while holding a green hand affect grenade, Kashikara model 50-PZ, in his hand in the living room where his wife was, he shouted to his wife: "*Get out if you don't want to go flying*!," causing the victim to leave the house immediately. In this way, the perpetrator endangered the safety of a member of his family - his wife - by using violence and threatening to attack her life and body. The criminal offense of the illicit production, possession, carrying, of trafficking of explosive substances under Art. 348 para. 2 in connection with para. 1 of the CC in connection with Art. 60. of the CC was by committed by perpetrator in that he had kept the grenade in his house without authorization, contrary to the provisions of Art. 2, 7, and 8 of the Law on Weapons and Ammunition, a weapon whose possession is forbidden to citizens.

Data on the perpetrator

The perpetrator finished primary school, was unemployed, a farmer by occupation, earned about 12,000 dinars a month on seasonal jobs, owned a house, was in a partnership (the disposition of the verdict states that he was in a non-marital union), is the father of two minors and one adult child, had been convicted by a verdict of the Municipal Court of Apatin for the criminal offense of unauthorized use of another company, for which he was sentenced to imprisonment for five months and two years of probation, and convicted by a verdict of the District Court of Sombor for the criminal offense of robbery, for which he was imposed a sentence of imprisonment for two years and three months.

When questioned during the criminal proceedings, the perpetrator stated that on May 6, 2018, he was celebrating St. George's day in his family house together with his partner, with whom he had been in a non-marital union for 14 years. He stated that he had drunk a lot that day, as did his wife, which was very strange to him because she was explicitly against drinking. She was drunk "*like a beast*." He drank alcohol almost until the morning hours and the next day, on May 7, 2018, he continued to consume alcohol. Sometime around 9 in the morning, his son was carrying some sound systems to return to the owner, and he turned to his wife because she had been drinking the day before and expressed his dissatisfaction and asked, "*Where did you get the idea to get drunk*?" She replied: "*If you can drink, why can't I*?" He also told her that she didn't have to break all the glasses, that they wouldn't have any left for the children to drink from. After that she turned and went outside, not having said anything, nor did he know she had gone to call the police. She soon came with the police, and they asked him where the explosive was. He was surprised, as he stated, because he did not know what they were talking about. 10 years ago, he mentioned, he had had a grenade casing with him and he used it for an ashtray, coffee saucer, and the like. It could be easily obtained during the war, and on one occasion he had hung it on the ceiling. Later that day, while they were sitting and drinking coffee, he had pointed his wife's attention to the ceiling and said: "*If you ever leave me, that is my destiny*." According to the perpetrator, he did not make any threats against her. Their two joint children also lived in the household, and until recently, so too had the daughter of the victim from her previous marriage, but by the time the crime was being legally processed, she had moved to Vrdnik amd was living with her

grandmother. Throughout their life together, he claimed to have never hurt his wife, his children, or her daughter. Nor had he ever threatened them. He did not know why his wife reported him. He didn't understand her motives. He did not own the explosive in questions, and the casing he mentioned had disappeared 10 years ago and he did not know where it was anymore.

In the main trial proceedings, the perpetrator partially changed his statement insofar as he stated that he had had a bomb that he had brought from the battlefield 20 years ago, but due to the passage of time he did not know where the bomb was and whether it was the bomb that was found in the house. Regarding the bomb found at the end of the house, he stated that "*he did not know what the bomb was doing there*", and that he would "*like to know*," and that the bomb he had brought back from the battlefield was green, probably a Kashikara. He claimed that he had previously made two suicide attempts, by cutting himself with a razor. He was in the hospital both times. There were occasions before for which the police had come to the house because of quarrels, because of banging things in the house, but that this had been because of his son from his first marriage. He maintained his earlier statement that he never had a hand grenade in his hand and that he could not even tell his wife to get out or she will be blown away, because they were not inside but outside. Disagreements between him and his wife arose only regarding finances. During such misunderstandings, his partner would say that she would get up and go and leave together with the children. He claimed that he would never do anything bad to his partner and family, because he was not such a man, and that if the police had come earlier or the Center had taken action, this had always been about his son. He also added that, a week before the critical event, he and his wife had argued and this was because of her infidelity - because she had a lover and had said that she hoped she might marry him. While the perprator had been in custody, she had met him, and that he had then told her that she was old and that he didn't need her anymore, so the relationship was broken. He also said that his partner had stated that she wanted to live with him, although she was dissatisfied many times because of the material shortage, but he had never been violent towards her. He also accused the Center for Social Work of issuing a report that was unrealistic, that they never helped him when it was needed, and here they were accusing him of something he did not do.

The report of the psychologist of the Center for Social Work from May 23, 2018, stated that the perpetrator had tried to commit suicide several times; by hanging, drowning, and cutting his veins.

According to the findings and opinion of the forensic psychiatrist, the perpetrator had been in a severe degree of alcohol intoxication at the time of the crime, but did not suffer from temporary or permanent mental illness, mental incapacity, or any other serious mental disorder. In addition, there were no signs of dependence on the use of alcoholic beverages or narcotics. The finding further explained that in a state of alcoholic intoxication, confusion arises in the brain system, and there are significant disturbances of consciousness in terms of disorientation, especially in time and space and towards other persons. It asserted that consciousness in this phase of drunkenness is not disturbed in a straight line, but it fluctuates, which is also influenced by stimuli

from the environment, especially those of affective origin. In such cases, opinion and intellectual operations are disturbed, comprehension, reasoning, and critical faculties are disturbed, and attention is significantly weakened. The ability of the perpetrator to understand the significance and essence of the crime he committed and to manage his actions was deemed as significantly reduced, a consequence of the severe degree of alcohol intoxication, which from the forensic psychiatric aspect belongs to temporary mental disorders.

With regard to the perpetrator's mental capacity, based on the forensic psychiatric expert evaluation, the court determined that the perpetrator committed the crime in a state of significantly reduced mental capacity; due to severe alcohol intake, his ability to understand the significance of his crime and manage his actions was significantly reduced. It was deemed that the perpetrator was aware that he was threatening his non-marital partner as a member of his family, that the threat was aimed at life and body, and that he had made the threat while holding a bomb in his hand, a weapon capable of inflicting serious injury to the body and serious damage to health. Though he had endangered his life as well, his intent had been directed at the family home, as well as at all those who would possibly prevent him from activating the bomb. According to the court, the perpetrator was aware of the consequences of his threat to the injured party, wanted to induce fear and anxiety, and was aware of the prohibited nature of his actions. The perpetrator was also deemed to be aware of holding a bomb in the house, the possession of which was forbidden to the citizens, and that he had intended this offense and was aware of its prohibition.

Data on the victim

The victim of the crime was the perpetrator's non-marital partner. There is no other information about her in the verdict, except that she had been in an extramarital relationship with the perpetrator for 14 years, that they lived in the same family household with four children; two minor children, the perpetrator's son from his previous marriage, and the daughter of the victim, who had later moved away. Insight into the relationship between the perpetrator and the injured party can be gained based on a report by a psychologist from the Center for Social Work, which stated that conflicts had existed since the beginning of the union, that the family had been dysfunctional for years, burdened by a poor financial situation and illness. The report further stated that the perpetrator consumed alcohol excessively and could not control his behavior in an alcoholic state. For years, conflicts between the partners, insults, threats, the destruction of furniture, etc. had periodically occurred in the family. The victim would then leave her partner and go to her mother's household, but return after some time. It was deemed that conflicts had not been reported or prosecuted because of fear and on account of the inactivity of the victim. During the conversation with the injured party, the CSW psychologist determined that the injured party had expressed fear that the perpetrator, when released from prison, would realize his threats and physically attack her. This is why she stated: "*It is best for me to run away, he will kill me when he gets out of prison, he will not take medication, he often drinks alcohol.*" According to the victim, the children were also

afraid of the perpetrator, the younger daughter had shown poor results in school, as well as suffered from a hormonal illness for which she went to therapy and received growth hormones. The conclusion of the psychologist was that there was a high risk of the perpetrator's violent behavior towards family members continuing.

The course of criminal proceedings

In the evidentiary procedure, the perpetrator was questioned, the injured party and the son of the perpetrator testified as witnesses, and the following were presented: the record of the ballistic expert, the record of the search of the apartment and other premises, the record of the determining of the presence of alcohol in the perpetrator's body, the risk assessment of the Center for Social Work for the perpetrator, excerpt from criminal records regarding the perpetrator, the forensic psychiatric expert findings and opinion, the report of the psychologist of the Center for Social Work, and photo-documentation.

The wife, heard as a witness, stated, among other things, the following: that they had celebrated St. George's day on May 6, 2018. The next day, May 7, 2018, they were sitting at a table when the perpetrator, holding "something green in his hand" told her to go outside, saying: "*Get out if you don't want to go flying*!" She was afraid for him because he had already tried to kill himself before and immediately ran outside. She had always been there to save him. When she went out on the street, her daughter came, and the injured party shouted to her: "*Oh, dad wants to kill himself again!"* as well as the words that he had uttered.

In relation to the allegation of the injured party that the perpetrator had held "*something green in his hand*," the court found that the injured party had not explicitly said that it was a hand grenade because she had wanted to reduce the criminal responsibility of the defendant. The report of the Center for Social Work indicated that the victim had moved from the family home to her mother's house several times due to domestic violence, but soon returned, and that conflicts were not reported or processed due to fear. In the specific case, a long time passed from the execution of the action to the hearing of the injured party at the main trial (because she had previously used the legal right not to testify), during which their joint life as a family had continued, so that in this case, according to the court, the injured party acted similarly to how she had in previous occasions, sympathetically - she gave a statement aimed at achieving a better position of the perpetrator in the criminal proceedings. The words she claimed to have said to her daughter immediately after she left the house clearly indicate that she was soundly convinced at the time that the perpetrator had been holding a bomb in his hand, which is why the house was searched by the police on the same day.

The son of the perpetrator, heard as a witness, testified that on the critical occasion, after their celebrations together the day before, he had gone to return the sound system they'd borrowed when his stepmother had called him and told him to come home because his father had taken out a grenade and threatened to use it. He came home immediately, but his father was already asleep. He woke him up and asked where the bomb was, but his father didn't want to say anything.

From the report on the forensic examination of the scene and the attached photos, it was determined that the green hand grenade that the perpetrator had held in his hand during the committing of the crime was found in the yard of the family house, in the back part against the wall, on May 9, 2018.

According to the findings of the expert for weapons and ballistics, the hand grenade type M-50-P3-RZK-8606-P was found, a defensive explosive weapon, manufactured in the Kruševac Institute in 1986, and used to fight the enemy in open and closed spaces and trenches, shelters, populated areas, and forests. Its operation is simple; after activation, in an interval of 4.5-5 seconds, detonation occurs. The bomb is not allowed; it must not be owned by citizens; it was technically functional and usable.

Based on the presented evidence, the court determined that the perpetrator committed two criminal acts simultaneously and in the manner stated in the indictment. The allegations of the perpetrator's defense that he had not held the grenade in his hands, that he did not tell the injured party to get out, and that he did not know where the bomb was, were not accepted because they contradicted other evidence presented.

The criminal proceedings were not efficient, especially bearing in mind that no appeal was lodged against the verdict. One year, two months and four days passed from the committing of the criminal act to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

In sentencing the perpetrator, the court first determined the penalties for each separate criminal offense: for the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC, a sentence of imprisonment for a term of 10 months was imposed; for the criminal offense of the illicit production, possession, carrying, or trafficking of explosive substances under Art. 348 para. 2 in connection with para. 1 of the CC in connection with Art. 60 of the CC, a prison sentence of one year and two months and a fine in the amount of 20,000.00 dinars was imposed. Cumulatively a single sentence - a conditional prison sentence of one year and 10 months, with a probation period of five years. In addition to the suspended sentence, the perpetrator was also fined 20,000 dinars and was imposed the security measure of confiscation of the object that was used to commit the criminal offense - a green hand grenade, Kashikara type, model 50-PZ, serial number 8605.

In determining the type and degree of punishment for the perpetrator, the court considered as mitigating circumstances that the perpetrator was a father of two minor children, in a non-marital union, unemployed, and was a recipient of social assistance. As aggravating circumstances, the following were cited: previous conviction, the gravity of the committed crimes, and their potential and real consequences. Considering that the injured party stated that she was not afraid of the perpetrator at the time of the trial and that there was no danger, as well as that 10 years had passed since the perpetrator's last conviction, the court believed that the purpose of punishment could be achieved with a suspended sentence. As an ancillary penalty, a fine was imposed, the amount of which was determined bearing in mind that the perpetrator was a provider for his family and was a recipient of social assistance.

COMMENTARY

This case is an illustrative example of the ineffective work of the institutions of the system in preventing violence and providing assistance to family members. The violence to which family members were exposed was known to the Center for Social Work, which in its report for the purposes of criminal proceedings describes in detail the situation in the family: that violence had existed from the very beginning of the family's union (14 years), that in cases of acute "conflicts" the victim would go to the mother's household, but return after some time, which points to the cyclical dynamics of violence in a partnership which the CSW did not directly reference, but did employ the term "conflicts." According to the CSW report, violence (insulting, threatening, destroying household items) had not been previously reported or prosecuted due to the victim's fear and inactivity, as well as because the wife expressed fear that the perpetrator would carry out his threats to attack when he was released from prison. Such an approach in reporting clearly shows that the CSW shifted responsibility for the non-response for stopping violence from the institutions to the victim, although, ex officio, it was obliged to report violence and provide support to the victim to get out of the situation of violence, especially as a guardianship authority, and to protect the best interests of minor children also exposed to domestic violence and who the CSW psychologist determined as afraid of the perpetrator. It is also pertinent that the younger daughter had shown poor results in school and that she had a hormonal illness, for which she was going to therapy and receiving growth hormones. It is also indicative that this family had been suffering from multiple problems (family dysfunctional for years, a poor financial situation, and the illness of family members), all of which was known to the CSW and which should demand the additional efforts of experts to empower the victim to get out of the violence. Despite such knowledge and the conclusion of psychologists during the criminal proceedings that there was a high risk of the continuation of violent behavior of the perpetrator towards family members, the CSW failed: to take measures to protect the victims of domestic violence, including minors; to support the victim in enhancing her parental capacity; and to ensure the long-term safety of her and her children. In addition, the CSW did not take any action against the perpetrator in terms of supervising the exercise of parental rights or stopping his violent behavior towards the partner and their children.

It should also be noted that help and support had not been provided to the perpetrator, who several times had attempted suicide by hanging, drowning, and cutting veins, and bearing in mind that he had been on the battlefield, which could have resulted in post-traumatic stress disorder, manifested in the suicidal thoughts and tendencies of the defendant. On the other hand, the CSW's assessment that "there is a high risk of continuing violent behavior of the perpetrator towards family members" did not influence the court to impose a functional sentence of imprisonment, relying on the testimony of the injured party that "she is not afraid of the perpetrator now and that there is no danger," although it is quite clear that the injured party lived in permanent fear of the perpetrator. This court decision is also inappropriate given the previous life of the perpetrator who had already been convicted of a crime with elements of violence

(robbery), for which he had been imposed a true prison sentence of two years and three months, while it is also legally erroneous and contrary to common sense to expect that a suspended sentence would compel the defendant not to commit criminal offenses in the future. When it comes to sentencing, that the court took into account as a mitigating circumstance that the defendant was the father of two minor children, although not as aggravating circumstances that he was violent in their presence and had not adequately cared for them, is completely unfounded. .

Seeing as the court had already decided to impose a suspended sentence in this particular case, there was certainly grounds for it to be under protective supervision according to the provisions of Art. 71. in connection with Art. 73. para. 1. item. 7 of the Criminal Code, i.e., to order the defendant to refrain from the use of alcoholic beverages, with the condition that if he did not fulfill the obligations assigned to him, i.e., he did not refrain from the use of alcoholic beverages during the supervised time, then his suspended sentence would come into effect, as per Art. 71. para 4 of the CC. In this way, conditions would be created for eliminating at least one of the risks of domestic violence possibly recurring, thereby hopefully somewhat alleviating the position of the injured party. As this is a perpetrator addicted to alcohol and who, according to the findings and opinion of a forensic psychiatrist, was severely intoxicated at the time of the crime, which from a forensic psychiatric point of view qualified as a temporary mental disorder - it would be even more expedient to, either at the request of the public prosecutor or by order of the court, propose the imposition of the security measure of the mandatory treatment of alcoholism, in line with the findings of the relevant expert and according to terms of Art. 84 of the CC, by which the court could impose this measure on the defendant, ensuring treatment of the perpetrator in this regard.

CASE no. 13

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor in Sombor filed an indictment against the perpetrator for the criminal offense of domestic violence under Art. 194. para. 1 of the CC and Art. 194. para. 2 in connection with para. 1 of the CC.[163]

On March 27, 2018, the Basic Court in Sombor passed a verdict finding the perpetrator guilty of one extended criminal offense of domestic violence under Art. 194. para. 2. in connection with para. 1 of the CC, in connection with Art. 61 of the CC.[164] In contrast to the indictment, the court found that the perpetrator committed one prolonged crime of domestic violence, given that there was a temporal connection between the crimes committed by the same perpetrator, applying the same situation, against the same injured party, and with the existence of a single intent on the part of the perpetrator.

[163] Criminal procedure no. 69/18 of February 9, 2018.
[164] Legal decision no. 33/18 of March 27, 2018.

The verdict states that on October 8, 2017, the perpetrator in the catering facility "N.," by using violence, threatening to attack life or body, and by insolent and reckless behavior endangered the peace, physical integrity, and mental state of his non-marital partner in the following manner: addressing her first with the words: "*I will kill you, I will close the tavern, I am the boss , you Ustasha scum, f*** your sorry mother* ," and then physically attacking the injured party by approaching her and striking her with an open fist in the face, and then kicking her in the stomach area. On the next occasion, on December 16, 2017, around 10 pm, in a state of significantly reduced mental capacity due to severe alcohol intoxication having significantly reduced his ability to understand the significance of his work and to manage his actions, yet aware of his actions and intent on its execution, he endangered, by applying violence and threatening to attack life or body, the tranquility, physical integrity, and mental state of his non-marital partner by reckless and insolent behavior in the following manner: he started an argument with the injured party and insulted her, saying "*that she is scum and a whore*" and then issued the following words of threat "*that he would drive her out into the street, kill her, send some people to kill her.*" He then rushed to her and began hitting her with his fists on her body and head, and when the injured party replied that she was no longer afraid of him, the defendant took a hard rigid plastic tube from a vacuum cleaner, about 50 cm long and with a diameter of about 5 cm, and continued to hit her on the body. He then from under the living room bed took a Norconia air rifle, type B-36 caliber 4.5mm and aimed the rifle in the direction of her body and on that occasion he said: "*I can't kill you with this, but I can maim you*." He then grabbed her by the neck, squeezing it with his hand, and dragged her to the kitchen elements, where he tried to take a knife from his desk, threatening "*to slaughter her*" but the injured party managed to break away and run away from the home.

Regarding medical documentation for the injured party, a forensic medical examination had been performed. According to the expert's findings, there were surface injuries to the head and left arm, qualified as minor bodily injuries.

Hemorrhages on the left upper arm, as stated in the finding, could have been the result of the vacuum cleaner tube, the injuries possibly occurring when the victim's upper arm was raised in a defensive act towards the oncoming injured object to deflect it. The hemorrhages on the head were not of a defensive nature, and could have been caused by the direct striking of the vacuum cleaner tube against the parieto-occipital part of the head.

Data on the perpetrator

According to the available data from the verdict, the perpetrator was a citizen of the Republic of Serbia and Great Britain, a police officer by profession, living in an extra-marital union, the father of one child, literate, graduated from high school, owned a house, two apartments, three shops, and a Mercedes passenger vehicle, was supported by local rent and a monthly salary of 400-600 euros, and had not been previously convicted. Due to the anonymity of the data, the age of the perpetrator remains unknown.

At the hearing before the prosecutor and later at the main trial, the perpetrator denied the allegations from the indictment. In relation to the event of October 8, 2017, he stated that it was possible that the event took place in a catering facility, but that he did not remember anything because he was under the influence of alcohol. As for the second event from December 16, 2017, he stated that it was true that he started arguing with his wife, that at one point she jumped on him and tore his T-shirt, but there was no further physical contact between them. He claimed to have not pulled the victim by the hair or hit her with a pipe, and so believed that the injuries had not resulted from his hitting her and or their struggling. Regarding the acts of the crime, he only admitted to pushing her away from him because he did not want any physical conflict and that he then took his mobile phone to call the police. However, the wife then took the mobile phone, put it in her purse, and went out. After that, the police came. He had an air rifle, in legal possession, and it stood on a chair between the living room and the bedroom. He claimed to have not used the rifle or taken it in his hands. He also claimed that he did not take a knife or a vacuum cleaner pipe and that he did not force the victim out of the apartment. However, he partially regretted what he did and wanted to apologize to both the injured party and her family, stating that "*some of the blame is also borne by him*," that something like that would not happen again, and that it had all affected him enough.

According to the findings and opinion of the expert psychiatrist, the perpetrator was in a severe degree of alcohol intoxication at the time of the crime, when confusion occurs in the brain system and there are significant disturbances of consciousness, and the opinion and intellectual operations are disturbed and attention is significantly weakened. The psychiatric examination did not determine the existence of dependence on the use of alcoholic beverages, so the expert did not suggest imposing the safety measure of obligatory treatment for alcoholism. A review by a psychologist found that the perpetrator's personality traits could be regarded as: violent and aggressive behavior, impulsivity, explosiveness, character traits of rudeness and stubbornness, low tolerance threshold for frustration, focused on his own needs, with a reduced ability to delay impulses and poor control of emotional impulses, indicating behavior dominated more by emotions than rational control. It was also stated that alcohol use further reduces behavioral control mechanisms, weakens capacity, and impulse control becomes even lower. According to the psychologist, the perpetrator violated measures that had been previously imposed on him due to these stated personality traits, and had tried to satisfy his needs without deeper thinking. It was also pointed out that if the perpetrator were to drink again and be in a state of heavy alcohol intoxication, the control of behavior would again be weak and his impulses out of control, which would likely manifest itself in demeanor and aggressive behavior could occur - but that this could also happen without the influence of alcohol.

The court found that the perpetrator committed an extended criminal offense of domestic violence in a state of significantly reduced mental capacity due to severe alcohol intoxication, which had significantly impaired his ability to understand the significance of his act and to manage his actions, but that he was aware of his act and carried it out with intent, which means that he acted with direct intent.

Data on the victim

There is no information about the victim of the crime in the verdict, except that she was the non-married partner of the perpetrator and that they had one child together. There is also a lack of information on the relationship between the perpetrator and the injured party prior to the committing of the extended criminal offense of domestic violence. It is mentioned that the court inspected the file K1 133/17 and the corresponding decision which extended the urgent measure of the temporary removal of the perpetrator from the apartment in Sombor and the measure of forbidding the perpetrator from approaching the same house or contacting the victim of violence prior to these critical events, but the verdict did not specify the content of that decision. In addition, the court inspected the file K1 183/17 and determined that the urgent measure of temporary removal of the perpetrator from the apartment and the measure forbidding the perpetrator from contacting the injured party were extended. Based on these reports, it could be clearly concluded that the perpetrator had previously committed violence against his non-martial partner, in connection with which the relevant institutions had taken the referenced measures.

The course of criminal proceedings

In the evidentiary procedure, the perpetrator was interrogated, and the following witnesses gave testimony: the injured party, her mother, and another witness. The court also considered the findings and opinions, which were read, of three experts and who also testified at the main trial. The risk assessment was inspected, as were the alcohol test report from the perpetrator's drug test, the report of a specialist doctor dated December 16, 2017, a report by the Center for Social Work, the decisions of the Basic Court in Sombor P2-NP 91/17, dated September 2, 2017, P2-NP 127/17, dated October 9, 2017, and decision K1 183/17 of December 18, 2017, while files K 183/17, P2-NP 124/17 (KI 133/17) were accessed, as was an excerpt from the criminal records on the perpetrator.

The aggrieved party, heard as a witness, stated that the perpetrator had repeatedly "*violated the prohibitive measures on access and communication*." She described the event as stated in the operative part of the verdict and the court accepted her testimony in its entirety as realistic and convincing. She stated that she would sue the perpetrator for damages.

The mother of the injured party was also heard as a witness, whose testimony was also fully accepted by the court. She offered information about another incident. Although she was not an eyewitness to the critical incident, she knew about it because her daughter had called her on the phone at around one o'clock that night to pick her up and told her that the perpetrator had attacked her, beaten her, took a knife and tried to stab her, but that she had broken away and managed to escape. According to her statement, the perpetrator had a problem with alcohol, and would behave aggressively when drunk. She described that her daughter had complained several times that he had been drinking, and that the witness had advised her that they should talk about it. The victim also told her mother that she had seen a rifle in the apartment and that the police had confiscated it.

In its report, which was read at the main trial within the evidentiary procedure, the Center for Social Work stated that there was domestic violence caused by alcohol abuse. It was proposed that the possibility of imposing a measure of compulsory treatment for alcoholism be considered in order to stabilize the addictive needs of the perpetrator and reduce the risk of recurrence of violence, but an expert psychiatrist with a specialty related to alcohol and forensic medicine considered that such a measure was not necessary. The risk assessment report stated that there was a risk of imminent danger of domestic violence.

The court also inspected the decision approving the prosecution's proposal of extending the urgent measure of temporary removal of the perpetrator from the defendant's apartment, in connection with the event of September 2, 2017. Also, the decision from October 9, 2017 was inspected, which adopted the proposal of the prosecution and extended the urgent measure of temporary removal of the perpetrator from the apartment and prohibited him from accessing the injured party and their son. The decision of December 18, 2017 was also inspected, which also extended the urgent measure of temporary removal from the apartment and the ban on contacting the injured party. Inspecting these decisions, the court determined that there had been a previous history of domestic violence, which had led to the issuance of emergency measures, though neither the perpetrator nor the injured party had complied with these measures.

The procedure was completed in a relatively short time: three months and 11 days passed from the committing of the last criminal offense to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The court found the perpetrator guilty for the criminal offense of domestic violence under Art. 194. para. 2 in connection with Art. 61. of the CC and imposed a prison sentence of 10 months, which factored in the time the perpetrator had spent in detention from January 19, 2018 onwards.

Based on Art. 89 of the CC, the court imposed a measure prohibiting the perpetrator from approaching and communicating with the injured party, thus prohibiting access to the area around the place of residence and place of work of the damaged party at a distance of 100 meters and forbidding further communication with the injured party for a period of two years, effective from the day the verdict became final, but that the time spent in prison would be not included in the duration of this measure.

The security measure of the confiscation of the weapon - an air rifle – was also imposed on the perpetrator.

When sentencing the perpetrator, the court recognized the following mitigating circumstances; that he had not been previously convicted, that he was the father of one child. The court did not recognize any aggravating circumstances. According to the court, imprisonment in this case could achieve the purpose of punishment, as the perpetrator "*showed persistence in committing the crime and did not respect the measures banning access and communication, so the imposition of imprisonment is the only way to affect him in terms of re-education*."

COMMENTARY

This is another case illustrative of institutions not taking adequate protection measures that would be more effective in stopping and preventing violence. There is no description of the previous events in the case file due to which urgent measures had been imposed according to the LPDV on two occasions. However, if we leave the first event for which the perpetrator was imposed urgent security measures, and shift our focus to the second time, when the institutions responded the same way again, then we have to question the risk assessment performed by the competent police officer and then by the deputy public prosecutor who evaluated the measures, and even of the court that extended them. We have to wonder on what basis did the institutions estimate that the violence would be stopped the second time around by applying the same urgent security measures that had clearly not been effective the first time. It is obvious that the risk needed to be better assessed and that the imposed emergency protection measures alone were not enough to prevent violence, especially if their violation was not sanctioned. It is evident that parallel to the imposition of emergency measures for the first time on September 2, 2017, it was necessary at the CCG meeting to develop an individual plan for protection and support of the victim of violence, within which the Center for Social Work could provide further measures, including a plan of measures and services that could administered within the competence of the Center so as to provide support the victim, as well as empower her. The public prosecutor could also have taken measures by investigating the perpetrator's previous life; whether he suffered from some mental illness, whether charges had previously been filed against him before September 2017, whether there was any criminal or misdemeanor history, and, if so, what was the outcome of these possible proceedings. An expert examination of the perpetrator and other similar procedures could have been ordered, which might have prevented the violence from happening again, as early as October 9, 2017, and then for it to escalate even further with the event in December 2017.

Considering only the data that is available, it is evident that the second emergency measure was clearly not an adequate choice in this case, given that the perpetrator had already violated the previously imposed emergency measure, that there was alcohol abuse present, that the perpetrator had access to weapons in connection with the work he performed, and that he owned an air rifle. When this information is added to the information gathered at the CCG meeting held after the imposition of the first emergency measure in September 2017 (about which there is no data, and there were conditions for it to be held), the public prosecutor would have sufficient grounds to initiate criminal proceedings based on the terms of the criminal offense of domestic violence, as well as have grounds to propose to the court an imposition on the perpetrator of a security measure prohibiting him from approaching, meeting, or communicating with the victim and from visiting certain places, as prescribed by Art. 197 of the Criminal Procedure Code, which could also have possibly prevented the violence in December 2017.

The 10-month prison sentence for a prolonged act of domestic violence committed with the misuse of firearms is not fully adequate, especially having in mind that due to violence against the perpetrator's partner, urgent protection measures were

imposed and extended. Although these are not criminal sanctions, they certainly needed to be regarded as aggravating circumstances. The court concluded, however, that there were mitigating, but not aggravating, circumstances.

We also point out that in the case file the court stated that "there had been domestic violence before, which led to the issuance of emergency measures because neither the perpetrator nor the injured party complied with these measures." In this regard, it is important to emphasize that the emergency measure is imposed on the perpetrator and that it is he, and only he, who is obliged to comply with and respect the prohibitions imposed on him, and that in no case can it be said that the "injured party" does not comply with the emergency measures, as these measures in no way established an obligation on the injured party.

In addition to this, we single out the statement from the report of the Center for Social Work that there was domestic violence caused by alcohol abuse and that it was necessary to consider the possibility of imposing a measure of mandatory treatment for alcoholism. The problem with this claim by CSW worded as it was may indicate that it was based on a belief that alcohol abuse was the cause of domestic violence and that, if cured, the violence would cease, which is a common prejudice encountered in practice. A good example in this case, however, is that this seeming prejudice had already been refuted by the findings and opinion of court experts, namely the referenced psychologist, who stated that aggressive behavior could also occur without the influence of alcohol, as well as the psychiatrist, who stated that there was no dependence on alcohol use and, therefore, did not propose the imposition of a safety measure on the compulsory treatment for alcoholism. Thus, it can clearly be concluded that alcohol is not the cause of domestic violence, as this case illustrates all too well.

Despite the leniency of the imposed sentence, it is pertinent that the public prosecutor incorporated two events in the indictment (there is no data, but there may have been room for another event to be covered), as in this way the case is considered on a larger scale, and as a case of extended domestic violence, which is the proper course of action in such cases of domestic violence. One other example of good practice was that the defendant was sentenced to a security measure prohibiting the approaching of or communicating with the injured party under Art. 89a of the Criminal Code, as in this way the injured party was provided with concrete protection.

CASE no. 14

The modality of execution, summary of critical events, and legal qualification of the criminal offense

On August 17, 2017, the Basic Public Prosecutor's Office in Užice filed an indictment against the perpetrator for the criminal offense of domestic violence under Art. 194. para 2. in connection with para. 1 of the CC.

The Basic Court in Užice passed a verdict against the perpetrator for the criminal act for which he had been accused. According to the factual description of the criminal act as compiled in the verdict, the perpetrator, in the period September 2016 - April 2017 in the apartment where he lived in the same household with his wife, in an alcoholic state, and by reckless and aggressive behavior endangered her peace and mental state in the following way: many times he cursed her mother, insulted her repeatedly with the words that "*you don't look like anything*," and forced her to leave the house.[165] He was in an alcoholic state when on April 15, 2017, he told his wife to hand over the amount of 1,000 euros to him, and on this occasion he threatened her with a gun, of the so-called "starter" variety, which he was holding in his hands. According to the court, he was aware of his actions whose execution he intended, aware that his actions were prohibited, and in a state in which his ability to understand the significance of his offense and manage his actions was impaired, but not significantly so.

Data on the perpetrator

Due to the anonymity of the data, the age of the perpetrator could not be determined, and since the verdict did not contain an explanation, other data on the perpetrator could not be gathered. As for personal data, the perpetrator was a citizen of the Republic of Serbia, married, the father of two minor children, literate, finished primary school, was a laborer by profession, was employed in the city administration, earned around 30,000 dinars a month, and had not been previously convicted.

Data on the victim

Except that she was the perpetrator's wife, there is no information about the victim. There is also no data on the relationship between the perpetrator and the victim or on the existence of violence prior to the committing of the crime.

The course of criminal proceedings

It was not possible to reconstruct the course of the criminal proceedings as the verdict did not contain an explanation. After the verdict was announced, the parties waived their right to appeal, and the duration of the procedure from the execution of the last criminal offense to the passing of the verdict was four months and 27 days.

Criminal sanction, mitigating and aggravating circumstances

The court sentenced the perpetrator to a suspended sentence of six months in prison, with a probation period of one year from the day the verdict became final, and imposed two security measures: the security measure of confiscating the gun used to commit the criminal act and a security measure of compulsory treatment for alcoholism, that cannot last longer than two years.

[165] Legal decision no. 347/17 of September 12, 2017.

COMMENTARY

The scarce data at our disposal do not allow any significant comments to be made on this case.

However, having in mind that the indictment charged the defendant with committing the crime in a period lasting seven months, from September 2016 to April 2017, it can be concluded that violence in this family had been reported before, but if we take a closer look at the allegations in the indictment, it is peculiar that if the domestic violence had occurred over a sustained period of seven months, there is only one event in April that is cited, when the defendant cursed the injured party's mother several times, insulted her with the words that "you don't look like anything," forcing her to leave the house, (...) and in an alcoholic state, threatened her with a gun. It can be reasonably concluded that the public prosecutor failed to state in the indictment all the actions that the defendant took during the period that is the term established in the indictment. Other examples should have been included that would be further evidence of acts of insolent behavior, what words he used to insult the injured party, what words he used to curse her mother, and other details could have been used to better describe the situation, or to cite other situations, when he drove her out of the house (e.g., during the night, while the victim was in a nightgown, or while it was raining without a jacket and umbrella, or that she was kicked out of the house shoeless, etc.). Doing so would offer a clearer picture of the specific actions of reckless behavior and the like. Furthermore, we can conclude from the personal data that the defendant is the father of two minor children, so the question must be asked as to whether at least once in this seven-month period were the children present when the defendant committed violence against the injured party. Such a situation would have to be recorded in some of the charges, and thus entered in the description of the indictment.

All that is proposed above, i.e., a detailed description of the actions taken by the defendant, is particularly pertinent because it can affect the sentencing, i.e., it contributes to the sentencing being more appropriately severe. Namely, the more specific the description in the indictment, the easier it is for the court to understand the circumstances under which the crime was committed, while such detail also offers insight into the personality of the perpetrator, his persistence, brutality, and the like. Judging by the description in this indictment, the public prosecutor failed to do so.

CASE no. 15

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The criminal complaint against the perpetrator was filed by his daughter for the crime of domestic violence. Based on her report, on August 11, 2016, the police officers of the Zrenjanin Police Department went to the perpetrator's family house and determined that the perpetrator was in illegal possession, i.e., without the permission of the com-

petent authority, of; a Crvena Zastava pistol with two barrels, and 30 pieces of ammunition, caliber 9 mm, a pistol of the brand Boroving with two barrels, and eight pieces of ammunition caliber 7.65 mm, and a second Crvena Zastava 9mm pistol with two barrels and 15 pieces of ammunition, caliber 9 mm. Police officers confiscated the firearms and ammunition from the perpetrator.

The Basic Public Prosecutor in Zrenjanin, by an indictment dated December 18, 2016, accused the perpetrator of committing the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

By the verdict of the Basic Court in Zrenjanin of July 25, 2019, the perpetrator was found guilty of the criminal offenses listed in the indictment; for the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC, and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

In the description of the manner of committing the criminal offense, the verdict states that the perpetrator committed the criminal offense of domestic violence on August 10, 2016, in the following manner: that at around 9 pm he endangered the peace and mental state of his wife by insolent and reckless behavior with a weapon (here, a gun) and dangerous tool(here, a saw and a knife), by telling her: "*You gave birth to idiots, are you aware of that? They called from the bank again, they want to take my house*," he tore his clothes off, he threatened to kill himself, but he wouldn't kill her because she was stupid, and then he asked the injured party to bring him a wood saw, which she did. After that, the perpetrator sawed into the door and a two-seat sofa with the saw. He then asked the injured party to bring him a kitchen knife, which she also did. The defendant then sliced apart three pillows with a knife and punctured the two-seat sofa in three places, then knocked down the closet, scattered things and electrical appliances around the house, went to the bedroom and took a gun, which he returned with to the living room where the injured party was. He first pointed the gun at himself and threatened to kill himself, then turned it to the floor, took two papers, and wrote on them: "*You killed me for 50,000 dinars, f*** your mother! I created you and I call on god to curse you to die hungry and thirsty.*"

The second criminal offense for which the perpetrator was convicted is the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1. of the CC. This act was found to have been committed by the perpetrator, as stated in the operative part of the judgment, in such a way that until August 10, 2016, contrary to Art. 5. para. 2 of the Law on Weapons and Ammunition of the RS, and without authorization, i.e., without the permission of the competent body of the Ministry of the Interior of the Republic of Serbia, the Police Department in Zrenjanin, he had kept the firearms and ammunition described in the indictment.

Data on the perpetrator

The perpetrator was born in 1966, which means that he was 50 years old at the time of the crime. He graduated from the Naval Technical High Military School, he was a military pensioner, he earned a monthly pension of about 40,000.00 dinars, he was the father of two adult children, and had been not been previously convicted. The perpetrator was remanded in custody and was held in custody from July 24 to July 25, 2015. The perpetrator's adult children lived independently, but the perpetrator was dissatisfied with the attitude that the children had had towards him and the injured party after leaving the family home because they had not offered or provided them with any assistance when they were in a financial crisis. The financial crisis and the children's attitude towards him, according to the findings and opinion of the forensic psychiatrist's expert evaluation, led to the accumulation of negative emotions of anger, rage, resentment, and disappointment. Due to the perpetrator's dissatisfaction, his wife had often been exposed to psychological violence, because the perpetrator was prone to "*shouting and destroying things that were in the house where they lived*."

In the hearing before the public prosecutor, the perpetrator did not completely dispute the allegations from the indictment. He admitted that on the critical occasion in the presence of his wife he took the actions that are charged against him, but that the actions were not directed towards his wife, but their children, because they do not help them financially, and that he believes that the behavior he exhibited in no way endangered his wife, nor did he commit any violence against her. In addition, he stated that he had possessed weapons and ammunition for years, those which were confiscated from him on a critical day by police officers, but that the pistol that was a Crvena Zvezda 9mm with two matching chambers and three sets of 9mm caliber ammunition he had bought back in 1994 at the store Zastava Oruzje in Kragujevac, that he has a military license, that he did not know that the gun should have been reported and registered again, and that he had inherited the other two guns with the corresponding ammunition from his late father and had not reported them to the competent authorities. In his defense at the main trial, the perpetrator fully admitted to committing the crimes he is charged with and stated that he regretted doing so. In his closing remarks, he stated that he agreed with the sanction proposed by the prosecution, as well as with the proposal to pay the costs of the legal procedure, requesting that he be allowed to pay the costs in several monthly installments.

The findings and opinion of the forensic psychiatrist's expert evaluation stated that the perpetrator was deeply troubled at the time of the critical event, in the thick of a financial crisis, and that the children's attitude towards him had led to the accumulation of negative emotions of anger, rage, resentment, and disappointment, and that his behavior on the critical occasion represented an escalated manifestation of these accumulated feelings. After the critical event, the perpetrator was detained for treatment as he was deemed dangerous to himself due to suicidal thoughts, but the diagnosis that was given to him at that time - adjustment disorder, is not a permanent category but a transient one. The expert also determined that the perpetrator understood that he was not allowed to keep undeclared weapons, as he was a retired from the military. At the time of committing the criminal offense, the perpetrator had a state of temporary men-

tal disorder in the form of the so-called adjustment disorder, due to which, regarding the crime of domestic violence, his ability to understand the significance of his actions and manage his actions was significantly reduced, while regarding the crime related to possession of weapons, the perpetrator had been able to understand the significance of his actions and manage them.

Based on the findings and opinion of the expert, the court determined that the perpetrator committed the crime of domestic violence in a state when he was at a significantly reduced capacity to understand the significance of his act and to manage his actions due to a state of temporary mental disorder in the form of the so-called adjustment disorder, under which he acted with direct intent, with awareness of and intent to commit his actions, and awareness that his act was prohibited. The perpetrator committed the second crime in a sane state and with direct intent, he was able to understand the significance of his act and to manage his actions, he was aware of his act, and committed it with intent.

Data on the victim

According to available data, the victim of the crime of domestic violence was the perpetrator's wife, she had two adult children, at the time of the crime she lived in the same family household with the perpetrator, but left the family home after the critical event. She did not file a property claim and did not join the criminal prosecution.

When it comes to the relationship between the perpetrator and the injured party, the findings and opinion of the Center for Social Work Zrenjanin state that the injured party had suffered psychological violence for a long time, but had normalized various behaviors of the perpetrator, becoming accustomed to them over the years; that she had no real insight into the degree of vulnerability to which she had been exposed, that she suffered from low self-esteem and had denied and minimized any violence. Therefore, the court did not accept the part of the testimony of the injured party at the main trial that the perpetrator's behavior did not constitute any violence against her and that she did not feel threatened.

The course of the criminal proceedings

During the evidentiary procedure, the perpetrator was heard, the testimony of the injured party was read as a witness, and the following were presented; the report on the investigation of the scene, the certificate on temporarily seized items, the report of the specialist doctor, the report on examining the person for alcohol, the decision of the Municipal Court of Zrenjanin of November 11 and 26, 2009, the findings and opinion of the case manager of the Center for Social Work, the report on the court expert, the findings and opinion of the forensic psychiatrist, and a criminal record excerpt on the perpetrator.

The procedure did not meet the standards of proceedings within a reasonable time - a long period of time elapsed from the committing of the criminal offense to the filing of

the indictment: one year, four months and eight days; from the filing of the indictment to the finality of the verdict, a year, 11 months, and 10 days passed; three years, three months, and 18 days passed from the committing of the criminal offense to the finality of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The court first determined the punishment for each criminal offense: for domestic violence, a sentence of six month of imprisonment was imposed, and for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348. para. 1. of the CC, the court sentenced him to four months imprisonment. Cumulatively, the court imposed a single suspended prison sentence of eight months on the perpetrator, with a probation period of two years.

In addition to the suspended sentence, the court fined the perpetrator 20,000.00 dinars and imposed two security measures: the security measure of the confiscation of the objects with which the crime was committed (the pistols and ammunition described above) and the security measure prohibiting further harassment of the injured party for six months effective from the day the verdict becomes final, while time spent in prison is not included in the duration of this measure.

In sentencing, the court found that there were no aggravating circumstances. As mitigating circumstances, the court recognized: that he was a middle-aged perpetrator, that he fully admitted to committing criminal acts and that he had not been previously convicted. Bearing in mind the circumstances under which the acts were committed, the gravity of the criminal acts, the degree of guilt of the perpetrator, mitigating circumstances, and the lack of aggravating circumstances, the court concluded that in this particular case the purpose of punishment could be achieved "through only the conditional threat of a prison sentence." When deciding on the manner and degree of punishment for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1. of the CC, the court, citing the provisions of Art. 56 and 57 of the CC, whereby the court assessed the mitigating circumstances as "particularly mitigating" , sentenced the perpetrator to imprisonment below the legally prescribed minimum.

COMMENTARY

This case of domestic violence provides an example of how continued violence and fear of abusers can paralyze the defensive abilities of women, especially those who are not financially independent. For many of them, as with the woman in this case, the strategy of survival in such circumstances is unconditional obedience to the wishes of the perpetrator and an unrealistic perception of the situation and their own vulnerability, and to some extent her indifference to criminal proceedings, given that they lasted more than three years, which certainly diminished the sense of justice from the victim's point of view.

Namely, it is evident that the injured party had been suffering from psychological violence for a long time, because the perpetrator was prone to "shouting and destroying things that were in the house where they live." After obtaining information about previous violence, the public prosecutor had grounds to order an expert examination of the injured party in order to determine the state of her mental health, i.e., whether and to what extent her exposure to violence over a long period of time had led to the deterioration of her health. Indications for expert intervention also arise from the findings and opinion of the Center for Social Work Zrenjanin, which stated that the injured party would normalize various types of the perpetrator's behavior to which she had become accustomed over the years, shifting her tolerance limits and preventing her from having any objectively real insight into the degree of her vulnerability. It was also stated that she had low self-esteem and denied and minimized violence. The public prosecutor could also have described and referenced the data on previous events in the indictment. By acting in this way, the public prosecutor would have enabled the sentence to be imposed for a longer period of time, and perhaps the defendant sentenced to be a more effective prison sentence.

Also, having in mind that the court expert determined that the perpetrator was in a state of temporary mental disorder in the form of the so-called adjustment disorder, and that the financial crisis and children's attitude and (non)response towards it had led to the accumulation of negative feelings of anger, rage, resentment, and disappointment, and that the court sentenced him to probation, in this case there would seem to be grounds for the perpetrator to be placed under protective supervision.. This would be possible according to the provisions of Art. 71. in connection with Art. 73. para. 1. item. 9. of the CC, i.e., that the defendant could be ordered to visit certain professional and other counseling centers or institutions and be obligated to follow their instructions, under the threat that if he did not fulfill the obligations assigned to him, i.e., did not visit counseling centers within the established time, then he could be recalled and the suspended sentence be activated as prescribed by Art. 71. para. 4. of the Criminal Code. If the court were to proceed in this manner, the accused would certainly be faced with concrete repercussions, the threat of which would help to compel him to not commit such and similar criminal acts in the future, which is the essential purpose of punishment.

CASE no. 16

The modality of execution, summary of critical events, and legal qualification of the criminal offense

On October 18, 2017, the Basic Public Prosecutor in Stara Pazova submitted to the court an agreement on the recognition of a criminal offense concluded between the Public Prosecutor's Office of Stara Pazova and the perpetrator Š. M. and an indictment for the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.[166] On the same day, the Basic Court in Stara Pazova passed a verdict accepting the agreement on the recognition of the criminal offense concluded on October 18, 2017 between the Basic Public Prosecutor's Office of Stara Pazova and the perpetrator, in the

[166] Criminal procedure no. 84/17 of October 18, 2017.

presence of defense counsel.[167] The verdict found the perpetrator guilty of the criminal offense of domestic violence for which he had been accused.

He committed this act in the following manner: on September 22, 2017, at around 4 pm in Krčedin, in the family house, he endangered the peace, physical integrity, and mental state of the family members of his wife Z. Š. and his adult son D. Š. He committed the crime under the influence of a blood alcohol level of 0.97 mg/l, as a result of which his abilities to understand the significance of his crime and to manage his actions were diminished, but not significantly, a condition he brought himself to by using alcohol, and with the use of firearms - a pistol, a means capable of inflicting serious injury to the body and severe impairment to health. The perpetrator first cursed his wife and forced her out of the house, giving her two hours to do so. If she did not do that, he threatened that he would kill her with the gun. When his son, the injured party, got his attention with the question: "*How long will you cause problems while you are drunk*?" and tried to protect his mother, the perpetrator also started forcing him out of the house, giving him 24 hours to do so. After this, the perpetrator entered the room next to his son, took out a Tokarev single-frame TT pistol, caliber 7.62 mm and seven bullets caliber 7.62 mm and began loading the gun with the ammunition. Fearing for their safety, the victims went downstairs and out of the house, while the perpetrator remained in the upstairs room with the gun in his hand.

Data on the perpetrator

The verdict contains only basic information about the perpetrator: that he finished high school, was a farmer by profession, earned an annual income of about 6-7 million dinars, was married, the father of two adult children, the owner of a house and a passenger car, and had not been previously convicted.

Data on the victims

There are no data on the victims, wife and son of the perpetrator, nor on the previous relationship between the victims and the perpetrator.

The course of criminal proceedings

It took 26 days from the committing of the criminal offense to the conclusion of the agreement on the recognition of the criminal offense, and one month and nine days from the committing of the criminal offense until the verdict became final.

Criminal sanction, mitigating and aggravating circumstances

The court sentenced the perpetrator to a suspended sentence of imprisonment for a term of six months, with a probation period of two years from the day the verdict became final. Two security measures were imposed on the perpetrator: mandatory treatment of alcoholism at large, which was to be performed in the Health Center and was to last no longer than two years, and the security measures of confiscating the weapons used to commit the criminal offense – the Tokarev single-frame TT caliber 7.62 mm pistol and seven bullets, caliber 7.62 mm.

[167] Legal decision no. SPK-83/17 of October 18, 2017.

COMMENTARY

The agreement on the recognition of the criminal act enabled the procedure to be carried out quickly. The question is, however, whether the conditional sentence would be considered fair by the perpetrator's wife and son, the victims of the violence, if they were able to plead and partake in the case.

Also, bearing in mind that the crime was committed in September 2017, when the LPDV had already taken effect, this case would have to be discussed at a CCG meeting, where the previous relations between the victim and the perpetrator and the existence of possible earlier reports for this would have to be determined, as would of other previous criminal offenses, while the Center for Social Work was obligated to conduct an observation of the family, determine the dynamics of family relations, and develope a plan of measures and services that would provide protection to the victims of this offense.

By gathering all such information, the CCG could then make an informed decision on whether in this particular case there are grounds for litigation and for imposing measures for protection against domestic violence under the Family Law, while certainly in the criminal proceedings the imposition of the security measure of banning the approaching of and communication with the injured party (ies) from Art. 89a should have been considered, as the imposition of some of these measures would have provided the victims of violence with concrete protection, while also additionally influencing the accused more impactfully to not commit such and similar crimes in the future, achieving the true purpose of punishment.

CASE no. 17

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Basic Public Prosecutor's Office in Stara Pazova filed an indictment, criminal procedure no. 313/17 of July 26, 2017, against the perpetrator M. D. for the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.

The Basic Court in Stara Pazova - Court Unit in Indjija, passed a verdict finding the perpetrator M. D. guilty of the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.[168]

The verdict states that the perpetrator committed the crime in such a way that on July 14, 2017, around 11:30 pm in Golubinci, in front of the sports hall, able to understand the significance of his act and manage his actions, aware of the prohibition of his act, and intent on its execution, by using violence and reckless behavior endangered the peace, physical integrity, and mental state of a member of his family - his wife, the injured party

[168] Legal decision no. 539/17 of August 22, 2017.

M.B., by running with a gun of an unknown brand in his hand towards the injured party, who, returning from work, got off the bus, and who was caused fear that the defendant would physically assault her, which forced her to flee from him towards a passenger vehicle that was parked nearby, where her cousin was waiting for her. The victim shouted to call the police because the perpetrator had a gun with him, so an attack on the victim was prevented.

Data on the perpetrator

The verdict contains only personal data about the perpetrator: that he was born in 1977, which means that he was 40 years old at the time of the crime, was married, the father of two minor children, a driver by profession, literate, finished high school, was unemployed, and was subsisting by performing occasional jobs as a driver and thus earning about 3,000.00 dinars a day. He had not been previously convicted.

Data on the victim

There is no information, except that the dispositive of the verdict shows that the crime was committed against the perpetrator's wife.

The course of criminal proceedings

The verdict does not contain an explanation because the parties, the defense counsel and the injured party, waived their right to appeal. The criminal offense was committed on July 14, 2017, the indictment was filed on July 26, 2017, and the verdict was passed on August 22, 2017, when it became immediately final, which means that a month and eight days passed from the committing of the criminal offense to the passing of the verdict.

Criminal sanction, mitigating and aggravating circumstances

For the committed crime, the court sentenced the perpetrator to a suspended sentence of imprisonment for a term of six months with a probation period of two years from the day the verdict became final, provided that the perpetrator, if the suspended sentence were activated, would be credited with time spent in custody from July 15 to August 22, 2017. The injured party was instructed to file a damage claim in the civil procedure.

COMMENTARY

Bearing in mind that the operative part of the verdict states that the perpetrator was holding a gun of an unknown brand in his hand, it is evident that it was not found, and a court decision regarding firearms was entirely lacking. The court did not have an opportunity to impose a security measure on the perpetrator to confiscate the object - the gun. Considering that the verdict does not contain

an explanation, and that the description does not state other circumstances related to the relationship between the defendant and the injured party, nor is there any other information documented in this regard, then it is not possible to speak reliably about the measures that could possibly have been taken. However, even with such scarce data, there were certainly grounds for the defendant to be imposed this security measure and that of a ban on the approaching of and communicating with the injured party under Art. 89a. of the Criminal Code.

However, bearing in mind that the act was committed and proceedings undertaken when the LPDV had already come into effect, the CCG should have been engaged to consider this report and determine other facts that would be relevant for sentencing.

Namely, if the defendant ran at the victim in a public place with a gun in his hand, we can only assume how he likely behaved at home. That he is documented as having chased her when she got off the bus on her way home from work could indicate that he had either followed her before, or, knowing her daily activities, was waiting in front of the sports hall for her to get off the bus, because he knew what time she would come back from work. That the cousin was also waiting for the injured party could be indicative of such monitoring events happening before and suggest that the injured party was afraid of the defendant and had asked for support from family members. If we connect all these assumptions, which were very likely true, we could conclude that there was a possible separation of the defendant and the injured party, that the defendant had not accepted it, which could be a consequence of abuse of control and power in the partnership, but also of pathological jealousy, given that the defendant chased the victim with a gun in his hand, perhaps in order to "punish" her for the decision she had made against his will. While this is now speculation, had the CCG considered this report of violence and determined all these circumstances that we cite as assumptions, there would have been significantly more data upon which could serve as grounds for other measures to be taken.

So, although there is virtually no data, with only on the brief description from the operative part of the verdict provided, it is possible to declare that the public prosecutor should, whenever receiving a criminal report of this content, at an initiated CCG meeting, consider and proceed to find answers to the following:

- whether criminal or misdemeanor charges have been previously filed against the suspect for criminal offenses with elements of violence; whether domestic violence has previously been reported by this injured party or possibly a parent or some other partner; whether the suspect has been previously convicted; and whether there are criminal and misdemeanor records related to the suspect (from the police);
- whether the injured party has reported to the CSW, and on what basis; the prosecutor is to obtain any such report from the Center for Social Work based on the conducted procedure;

- **an interview should have been conducted with the injured party, her cousin, parents, and other persons close to the victim, i.e., persons referred to by the victim as persons who have direct or indirect knowledge of possible previous violent events;**
- **whether the victim has turned to other entities for help: the Health Center, a non-governmental organization, etc.; whether any children have been present at a violent event; whether any children have shown problems at school or kindergarten with non-adaptation, aggression, hyperactivity, or the like, or are themselves exposed to peer violence and the like (and other similar information that could be obtained from the victim), the corresponding relevant information should be obtained from any institutions that the victim has pointed out;**
- **whether, depending on all this collected information, an expert examination of the injured party should be sought regarding the possible consequences for the injured party due to long-term exposure to violence or other relevant concerns;**
- **all evidentiary actions related to a specific reported event must be carried out in full, which is already an established practice.**

By acting in this way, the public prosecutor would respond to all obligations imposed on him both within the CCP and within the LPDV, and would be able to order and take adequate measures to fulfill his essential obligation - to provide victims with comprehensive, effective, and comprehensive protection and support. Also, in this way he would contribute to the creation of an appropriate indictment and more likely succeed in obtaining a sentence that would be more adequate for the committed act and the perpetrator.

CASE no. 18

The modality of execution, summary of critical events, and legal qualification of the criminal offense

On January 3, 2019, the Basic Public Prosecutor's Office in Stara Pazova filed an indictment against the perpetrator M. Z. for the committed criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC, by which he proposed to the court that a sentence be imposed on the perpetrator of imprisonment for a term of five months and that a security measure banning communication with the injured party also be imposed.[169] On January 15, 2019, the Prosecutor's Office submitted to the court an amended and partially amended indictment for the same criminal offense, with an plea agreement based on the admission of guilt of the perpetrator for the criminal offense.[170] The Basic Court in Stara Pazova passed a verdict finding the perpetrator guilty of the criminal offense of domestic violence under Art. 194. para. 2 in connection with para. 1 of the CC.[171]

[169] Criminal procedure no. 1/19 of January 3, 2019.
[170] Criminal procedure no. 2/19 of January 15, 2019.
[171] Legal decision no. 1/19 of January 15, 2019.

The verdict states that the perpetrator on December 7, 2019 in Indjija committed the offense of domestic violence, under the influence of alcohol at about 0.29 mg/ml, able to understand the significance of his act and to manage his actions, aware of his act and intent on its committing, by using violence and threatening to attack the life and by insolent and reckless behavior, endangered the peace, physical integrity, and mental state of his non-marital partner D.V. from Indjija, with whom he had two minor children,. This occurred in the following manner: first the perpetrator started a verbal argument with the injured party in the apartment, after which they went together to the house of the defendant's parents to continue the discussion. Once there, he invited the injured party to go with him to his parents' bedroom, where he took a Crvena Zastava hunting rifle owned by the defendant's father, put in a bullet, and aimed the rifle at her forehead, at which point he told her she was a bad wife and a bad mother. He then told her to open her mouth and he put the barrel of the rifle in the victim's mouth then saying that he would not kill her, so that the children would not judge him tomorrow; the victim then left the house. The defendant had also told her that he would take her children, and if they reported him to the police, he would get out of prison, find her and kill her in the center of town, and that while he would get out of prison, she would never leave the ground. Throughout the duration of his actions, he had been aware of the criminality of them.

Data on the perpetrator

There are only basic data about the perpetrator in the verdict: he was born in 1987, at the time of committing the crime he was 31 years old, he finished high school in electrical engineering, was unemployed, earned a living - a monthly income of 10,000-15,000 dinars, had no property, was living in a non-marital union, was the father of two minor children (8.5 and 2.5 years), and had been previously convicted by: the judgment of the Basic Court in Stara Pazova no. 284/15, for the criminal offense under Art. 289. para. 3 of the CC, for which he was issued a conditional sentence of imprisonment for a period of two months, with a probation period of one year; and the judgment of the Basic Court in Stara Pazova no. 669/17 for the criminal offense under Art. 229. para. 2 in connection with para. 1 of the CC, for which he was imposed a conditional sentence of one year and one month with a probation period of three years.

Data on the victim

The only information available on the victim of the crime was that she was the perpetrator's non-marital partner.

The course of criminal proceedings

Part of the explanation had been omitted from the verdict submitted to the researchers, so that the course of the criminal procedure could not be analyzed. It is only stated that the Basic Public Prosecutor's Office submitted an agreement on the recognition of the criminal act to the court. The criminal offense was committed on December 7, 2018,

the indictment was filed on January 5, 2019, it was amended on January 15, 2019, and when the agreement on the recognition of the criminal offense was submitted to the court the same date, the verdict was passed on January 15, 2019, upon which it came into final force. A little more than a year passed from the committing of the criminal act to verdict's finality.

Criminal sanction, mitigating and aggravating circumstances

The court sentenced the perpetrator to "house arrest" for five months with the use of electronic surveillance and imposed a security measure prohibiting him from approaching, at a distance of less than 30 meters, and communicating with the injured party, for one year, effective the day the verdict became final.

COMMENTARY

In this case, an agreement on the recognition of a criminal offense was concluded, which was accepted by the court, so the perpetrator was sentenced to "house arrest" for a period of five months, with the use of electronic surveillance and a security measure was imposed prohibiting him from approaching, at a distance of less than 30 meters, and communicating with the injured party, for one year, effective the day the verdict became final.

In this case, as in the already mentioned cases in which the agreement on the recognition of the criminal act was accepted, the victim's perspective and inclusion was completely neglected. Also, there is no information on whether the injured party had left the defendant during the procedure, but as the court determined that the sentence be executed at home, if this were not the case, then it could be said to violate Art. 45th para. 5 of the Criminal Code. As in previous cases, the question arises as to which circumstances the court considered particularly mitigating in sentencing, given that the defendant was sentenced to imprisonment below the statutory minimum, especially given the circumstances under which the crime was committed.

Namely, the perpetrator used a firearm in such a way that he aimed a hunting rifle in which he had inserted bullet at the forehead of the victim, forced her to open her mouth, and then put the barrel of the gun in her mouth, making serious threats (that he would take her children, and if she reported him that he would find her when he left prison and kill her " in the very center of town" and that he would get out of prison but that she "would never leave the ground"). This behavior of the accused, his persistence, and the attitude with which he tells the victim "no one can do anything to me" must have caused deep trauma to the mental health of the victim. Also, it is unlikely that violent events had not happened in this relationship before, as this behavior indicates a certain continuity of violent behavior, i.e., that there had been violence in this family, even if the victim may not have reported it All of this could have been determined through a diagnostic procedure conducted by the Center for Social Work.

In this regard, the conclusion of an agreement on the recognition of the criminal offense of domestic violence must not be carried without the detailed collection of information, both those related to the specific event and those related to the wider context within the family. Therefore, cases that end with the conclusion of such an agreement must first be considered at a CCG meeting in which the victim takes part, either by attending the meeting, or by the timely and complete consideration of information gathered and provided by the Center for Social Work, in order to give the victim the opportunity to partake.

All this is important for the purpose of determining an adequate punishment for the perpetrator, i.e., a punishment that will achieve the purpose of punishment – to dissuade the perpetrator from repeating such or similar crimes. In this particular case, given the manner in which the crime was committed and the serious threat to the victim, it seems unlikely that the sentence imposed would achieve the purpose of punishment and the full protection of the victim.

Review of court cases - attempted murder and murder

CASE no. 1

The modality of execution, summary of critical events, and legal qualification of the criminal offense

In the indictment of the higher public prosecutor in Novi Pazar, the perpetrator M. H. was charged with the criminal offense of aggravated attempted murder under Art. 114 para. 1. item. 11. in connection with Art. 30 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 4 in connection with para. 1 of the CC.[172]

In the first-level court procedure, the court found the perpetrator M. H. guilty of the criminal offense of aggravated attempted murder under Art. 114 para. 1. item. 11. in connection with Art. 30 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 4 in connection with para. 1 of the CC. In committing these crimes, he acted with direct intent, with the capacity to understand the significance of the act as well as to control his actions reduced, but not significantly. On May 16, 2013 at around 17:00 in the village of Đerekare near Tutin, in the direction of his cousins, the injured parties, from a CZ 70 pistol, caliber 7.65 mm, from the front of his yard by the gate at the road, and from a distance of 13-14 meters, the perpetrator *"fired two projectiles in the direction of the injured parties, the first in the direction of one of the injured parties at a moment when the injured party was in an upright position, with the back of his body facing towards the accused. The first shot wounded the injured party, the gunshot striking him in the left half of the occipital region of the head and left ear. The second shot was fired in the direction of the other injured party at a moment when the injured party was facing the perpetrator with the right side of the body with the upper half of his body in a bent position. The fired projectile struck the injured party immediately behind the right ear, and the projectile remained at the bottom of the wound canal, in the middle part of the back of the neck, the direction of the wound extending from right to left backwards, resulting in what was characterized as minor bodily injury, so consequences in the form of deprivation of life did not occur."*

After that, the defendant returned to his yard, where he fired five short-range projectiles at his wife from a pistol, at a distance of about 80 cm, based on the analysis of gunpowder and particles done at the home with the chemical DFO (diazafluoren-9-1), *"inflicting bullet wounds to her head (...) Due to the passage of a projectile through her brain and immediate loss of consciousness, she fell suddenly down, when she also received a gunshot wound from a projectile whose entrance was on the right side of the chest (...) the bullet's path continued backwards through the right lung and through the eighth intercostal space, directly next to the spinal column (...) and while this had been inflicted while the victim was still in the phase of falling, now, as she was already on the ground in a supine position, with her left side facing the ground, she was inflicted with the next bullet, whose entrance opened a wound in the central area of the sternum at the lower level of the sternum (...) then, the accused took the corpse of the now deceased victim from the mentioned place, the victim whose death was directly, caus-*

[172] Criminal procedure no. 6/17 of June 1, 2017.

ally connected with the above injuries, which had caused violent damage to vital brain centers and bleeding from ruptured blood vessels along the blood canals of the head and torso, at the same time taking with him the gun from which he had fired the bullets, to the village road and put the body in the vehicle, which was parked on the road, and drove to the place called the "Tahirović plane" in the village of Đerekare, where he left the body and departed the scene."

The qualification of the act in the verdict is the same as in the indictment - aggravated attempted murder under Art. 114 para. 1. item. 11 in connection with Art. 30 of the Criminal Code, as well as the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC, due to the unauthorized carrying of firearms, a CZ 70 pistol, caliber 7.65 mm, which he had previously procured and kept without authorization, contrary to Art. 5. para. 3 and Art. 7 para. 1 of the Law on Weapons and Ammunition.

The autopsy found that the victim's death was violent and that it occurred due to damage to important brain centers and bleeding from the shooting of the right lung and ruptured blood vessels along the canal inflicted by projectiles fired from a small firearm. During the criminal procedure, forensic expertise and expertise in the field of ballistics were performed. According to the joint finding and opinion of the experts, the violent death of the injured party was the directly result of the injuries inflicted by the shots to the head and torso that she received, which were caused by the action of five projectiles fired from a firearm.

In the second-instance procedure, the Court of Appeals in Kragujevac determined that the perpetrator committed the criminal acts listed in the indictment and the first-instance verdict.

Data on the perpetrator

At the time of the crime, the perpetrator was living in the village, in a family consisting of his mother, wife, two children, and brother. In the same village, and in the immediate vicinity of the perpetrator's house, was the house of the injured party, the cousins (on the preparator's father's side) of the perpetrator. The family of the perpetrator and the injured party in the same village owned a common undivided forest and due to felling in that forest there were certain disagreements, which had been the subject of conversation in the yard earlier on the same day of the critical incident (May 16, 2013), resulting in the police being summoned, coming, and issuing them all a warning. Later, after the police had left, at around 5:00 PM, one of the victims left his house carrying a gun behind his belt, followed by his brother, the other victim, who was holding a knife in his hand. They both entered the perpetrator's yard, where there were both his mother and his brother, who was doing certain work around the tractor. There followed a verbal argument, at which point the perpetrator fired a projectile through the window from a room in the family house. He then left the family house and fired another projectile from the gun at the entrance. During that time, the injured parties left the perpetrator's yard, returned to the village road, and moved away in the direction of their house, when the perpetrator, holding a gun in his hand, came to the front of his yard by the gate by the

road, and in the direction of the injured parties, from a distance of about 13-14 meters, fired two bullets from a pistol. He then returned to his yard and fired five projectiles at close range from his handgun at his wife, which first led to the immediate loss of consciousness of the victim, and then, after the victim was inflicted with wounds from additional bullets fired from the firearm, as a result of which her violent death occurred. The perpetrator put the body of the victim on his shoulder, put it in the vehicle that was parked in front of the gate and drove it to the nearby forest, where he left the body and departed the scene.

After the crime was committed, the perpetrator fled to Luxembourg, and an international arrest warrant was issued for him by Interpol. Inspecting the report of the Republic of Serbia Ministry of the Interior - Directorate for International Operational Police Cooperation, it was determined that the Novi Pazar Police Department was informed that the perpetrator was deprived of liberty on December 18, 2016 in (...) by an organized unit for controlling crime, that he had stayed two weeks with his brother, where he had been hiding in the attic, that the perpetrator was not registered in their system records, except for the crime of the illegal possession of a weapon, when pistols were found in his possession during his arrest: a Blow brand pistol, model F-92, caliber 9 mm, painted grey, with 17 pieces of ammunition; and a 7.65-mm M-70 Crvena Zastava pistol. He told police in Luxembourg that he had killed his wife with the M-70 Crvena Zastava pistol.

The perpetrator was a re-offender because he had previously committed criminal acts, which was determined by the first-instance court on the basis of insight into the excerpt from the criminal records. *It is interesting to note that there is a difference between the allegations about the details of the accused in the first instance verdict regarding the criminal sanction for previously committed crimes and the data stated in the reasoning of the first instance verdict and the second instance verdict of the Court of Appeals.* In the explanation of the first instance verdict, based on the excerpt from the criminal records, it is stated that the perpetrator had been convicted by the verdict of the Municipal Court in Tutin, in 2008, for the criminal offense under Art. 275. para 1 of the CC, for which he was sentenced to imprisonment for a period of two months. In 2012, for the criminal offense under Art. 122 para. 2 of the CC, he was sentenced to imprisonment for a term of four months. By a verdict from 2013, for a criminal offense under Art. 194. para. 1 of the CC (domestic violence), he was given a suspended sentence. These data differ from the data on the accused, where it is stated that the accused was sentenced to suspended sentences in all three cases of committing criminal offenses. The same is stated in the judgment of the Court of Appeal.

The findings and opinion of the neuropsychiatric expert and the Commission of Neuropsychiatric Experts stated that the perpetrator was 26 years old at the time of the crime, had grown up in a complete family, as the fifth of six children, had two minor children, and completed four grades of elementary school; he did not like school and repeated it. He was engaged in agriculture, and as a hobby he had hunted game. He and his wife had been married for seven years. He had his wife's name tattooed on the inside of his left upper arm, but the tattoo was created after her murder. He had been in custody before the critical event for five or six days after a report "that he beat a woman, who left him

several times ("moved"), but would come back again." He had called a psychiatrist a year before the critical event due to the mental problems he felt, at which point he had been diagnosed with "*conversion-dissociative disorder with physical disorders that are of a psychological cause, but non-psychotic in nature, i.e., neurotic disorders that do not significantly affect mental capacity*."

The diagnosis from the defendant's discharge list reads: "*Recurrent depressive disorder of a moderate degree that does not significantly affect sanity (F 33.11) and emotionally unstable personality disorder, impulsive type (F 60.30). These are permanent, deep-rooted, unadapted patterns of behavior, and are manifested in a wide range of personal and social situations. This disorder has a pronounced tendency towards impulsive actions without thinking about the consequences and with affective instability*."

In the finding and opinion of the neuropsychiatrist expert, it was stated: that the perpetrator's personality was characterized by a disorder in the form of emotional instability, with the dominance of a lowered threshold of frustrations. Immediately before committing the crime, he had become emotionally tense due to the conflict situation with his wife and brothers, whose psychological qualification was affected anger of medium intensity. It was stated that the perpetrator had not suffered from temporary or permanent mental illness at the time of the expert evaluation or at the time of the committing of the act, or from a temporary mental disorder, and that there was no data on the possible consumption of alcohol orpsychotropic substances, or whether the expert commission found any evidence of these impacting his behavior. Psychotic signs and symptoms were not recorded from the discharge list and other medical documentation and examinations; therefore, there was no loss of insight into reality, nor was diminished mental capacity recorded. A state of depression and anxiety with a predominance of bodily symptoms was noted, with the presence of a type of emotional instability in his characteristic personality functioning, and this was linked to the existence of difficulties in impulse control, which was a permanent characteristic of personality. Suspicions of possible pathological jealousy were not confirmed, nor were the presence of "voices" in the accused, neither during the psychiatric examination, nor in the medical documentation.

According to the expert's findings, the accused was a person able to understand the significance of the act he was committing, but his ability to manage proceedings was reduced due to unadapted impulse control, though not significantly, which had impaired his mental capacity during the committing of the crimes, but not significantly. Fear, irritability, and anger were present during the critical event. When he confronted his wife, he had not been afraid, but there was significant irritation and anger, yet not in the intensity that would compromise his ability to reason and decide. It is thereby alleged that the accused was able to understand the significance of the act he was committing, that his ability to manage the proceedings was reduced to a degree, but not significantly, and therefore *"accountability was reduced by a moderate, but not significant basis*."

In his defense at the main trial, the perpetrator explained the course of events in detail, but claimed that this would not have happened if his cousins, with whom he was not

on good terms, had not entered his yard. He fired several bullets from the pistol in their direction, and then returned to the yard, where his wife met him and said: "*Why did you shoot them, did you do it for me, you fool, you can't do anything to me with that, I will continue to go to him, and I love him more than you and your brother and your whole family*." He had a gun in his hand, his wife went to take his gun, and then it fired, but he allegedly could not remember this moment and could not say how many bullets he fired. He alleged that he saw her fall, then he entered the house, followed by his daughters aged five and three, and then by his uncle, whom he told to take the children and to look after them that day, which he did, and he went out into the yard next to his wife, who was dead, and where nobody else was anymore. He hugged, kissed, and cried over his wife, staying next to her; he could not separate from her because, as he stated, "he loved her very much and he had grown up with her, he literally loved her more than himself." He told his uncle, who came out at the time, that he intended to kill himself, and with that intention he went to the mountain with the body of the deceased. After some 100 meters of walking, he allegedly saw a parked vehicle on the road with the windows open and the keys in the vehicle, put his wife in the vehicle in the front seat, got into the vehicle and headed towards the mountain. Near the forest he stopped the vehicle by the roadside, took his deceased wife to a meadow not far from the vehicle, laid her down and wanted to commit suicide next to her because the gun was in his pocket all the time, but in the meantime his mother had come. Though she refrained from approaching or did not want to, she began to beg him and implore to all possible forces not to do what he had intended. He then covered his wife with something and gave up his intention to kill himself. He stated that the conflict with the injured uncle's brothers existed because of his wife, who had been in an intimate relationship with one of the brothers, but that he, as he stated, had got over it so that there would be no conflict, and that he had talked about this all with his wife, that they had argued about it, but that he forgave her, because he loved her very much. He stated that he had been monitoring his wife because of the connection she had with his cousin, that he would often see her with his mother's phone because she did not have her own, that he later learned that she had obtained a phone "*which he took from her (...) while on his mother's phone he had seen that many times at night around 12 o'clock she had talked to the injured party (his cousin), that it happened that she inserted other phonecards into his mother's phone secretly, as well as into his phone when he forgot it*." Because of that, there had been conflicts, so she had reported him to the police and proceedings had been conducted against him, but he, as he stated, "*forgave her everything*." He also stated that he was infinitely sorry that he had shot his wife, and that when he had done that, he was in a very agitated and angry state.

In the closing argument and appeal, the defense counsel for the perpetrator pointed out that according to the description of the factual situation in relation to the injured party D. F., it was a criminal offense of manslaughter under Art. 115. CC and that the perpetrator should be found guilty of this crime, and not aggravated attempted murder under Art. 114 para. 1. item. 11 of the CC.

With regard to the perpetrator's sanity, the court found that the perpetrator had committed the crime in a sane state, when his ability to understand the significance of his act and manage his actions was reduced, but not significantly. Regarding the guilt of

the perpetrator, the court determined that he had deliberately tried to take the lives of several people, while he had killed one person.

Data on the victim

The first-instance and second-instance verdicts lack information about the perpetrator's murdered wife, her age, occupation, employment, education, etc. Much more attention was paid to other victims, who in this case were heard as witnesses, than to the injured party who had been deprived of life. Data on the injuries and the manner of the occurrence of the injuries were given in detail on the basis of the findings and opinions of experts of the relevant profession.

The first-instance verdict stated that the court did not accept as credible the testimony of the perpetrator's mother, who stated that everything worked well at the beginning of the marriage between the perpetrator and her daughter-in-law, but that afterwards quarrels and arguments had begun because her daughter-in-law would take their phones, insert cards, and was maintaining a special relationship with the perpetrator's cousin which could be seen in that she would dress up when he came, she would talk to someone at night on the phone, and hide her phone in the cradle mattress, but that she did not want to admit anything and then one night she left the children, ran home to her family, and reported the perpetrator to the police. According to the first instance court, this statement, as well as the testimonies of witnesses that the victim had told the perpetrator that she loved the injured party more than him and his family just before the shots were fired, were aimed at reducing the perpetrator's guilt and presenting the injured parties in a negative context.

The injured parties also spoke about the perpetrator's wife – his cousins (sons of the perpetrator's uncle), who were heard as witnesses. The injured party D. H. stated that he had "*respected the injured party as a cousin-in-law and regarded her as a sister*." The other cousin said that he had respected the victim, just as had his brother, as a sister, but that the perpetrator was very jealous and that the victim would complain to their wives about his jealousy. The father of the injured party stated that his daughter had been married to the perpetrator for six years, but that he did not notice the intolerance between them. He noticed that the perpetrator was jealous "*because if his daughter came home as a guest, she would stay for only three or four days, during which time the perpetrator would sit near the house non-stop*." The day his daughter was killed, the perpetrator had called him on the phone and said, "*You'll see what awaits you today*."

Unlike the first instance court, the second instance court regarded as credible the testimony of witness Š. H. in the part where the witness stated that he had heard from the perpetrator that there might be "something" between the victim and D. H., as well as witness I. H. - the perpetrator's mother, that "*her daughter-in-law had a specific relationship with D. H.*" (the sone of the perpetrator's uncle), given that it did not contradict the testimony of witness H.H., who stated that "*the victim F. had often come to her house to charge her mobile phone and had once sworn at one child to let her charge her phone*." Also, the second instance court accepted the testimonies of witnesses who had

testified that the murdered victim had addressed the perpetrator on the critical occasion with the words "*Why did you shoot them, did you do it for me, you fool, you can't do anything to me with that, I will continue to go to him, and I love him more than you and your brother and your whole family*."

The course of the criminal proceedings

The Higher Public Prosecutor's Office in Novi Pazar filed an indictment against the perpetrator M. H. on June 1, 2017. The first-instance verdict was rendered and made public on December 31, 2018. The senior public prosecutor in Novi Pazar and the defendant's defense counsel filed an appeal against the verdict. The verdict of the Court of Appeals in Kragujevac was passed and publicly announced on July 16, 2019. The perpetrator was found guilty of two criminal offenses: aggravated attempted murder under Art. 114 para. 1. item. 11 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

During the criminal proceedings, the following evidence was presented: on-site investigation reports, a reconstruction of the event, forensic examination of the scene, a ballistic expert report, an autopsy, a forensic expert report, a forensic psychiatric expert report, an interrogation of the defendant, and the interrogation of witnesses. A total of 15 witnesses were questioned, including the two injured parties, and the father of D. F. Witnesses were questioned on the circumstances of the committing of the criminal offense, the conduct of the perpetrator after committing the criminal offense, and the relationship between the injured parties and the perpetrator. Below are some of the comments from the testimonies of the witnesses.

The witness and injured party M.H. stated, among other things, that a month before the critical event, there had been an alternation between him and the perpetrator's brother about cutting down the forest, in which the police had intervened. On the critical occasion, he was passing by the perpetrator's house when the perpetrator's brother, who was in the yard and doing something around the tractor, addressed him and said: "*Did you call the police, you spy*," to which he had replied that he had called them and would do so again if need be. The perpetrator's brother went towards him, and the witness began to retreat towards his house, when he noticed that his own brother was following him, and that the perpetrator had left the house and was headed in his direction. The perpetrator had a pistol in his hands and he started firing. The witness's brother was hit first, so the witness bent down to see if he was alive and then he was also hit. He found out about the murder of the perpetrator's wife in the hospital.

The injured party D.H. stated that he was living and working in Luxembourg, that his family was there, and that he had arrived 5-6 days before the critical event. He said that earlier on the day of the critical moment his brother and a relative had gone to the forest to see how many trees the perpetrator and his brother had cut down. On the critical occasion, he was following his brother and was calling him to return, when the perpetrator flew out of his yard and started firing. He felt that he was injured in the area of his head, which is why he fell, when his brother approached him, who was also hit.

The witness I. H. (the perpetrator's mother) stated in her testimony, among other things, that on the critical occasion her son S. H. was in the yard when the injured parties approached and her son, the perpetrator M. H., had come out of the house and fired one bullet. She heard the injured party D. H. tell the perpetrator to shoot if he was a man and then she heard two more shots. She saw that the victim then came out of the house and said to the perpetrator: "*You fool, did you do it for me, what did you do, they are better than you*." When the perpetrator had left the scene of the crime, she followed him and saw how he put the gun to his head, so she begged and begged him to remove it, which he did, and then he covered the victim's body and left.

The witness H.H. stated that on the critical occasion she was in the house when she heard commotion, went out in front of the house and saw the perpetrator and his wife, who was pulling his arm and telling him: "*Why did you wound them, I love them, and I don't love you*." then she saw that the perpetrator took the gun and put it to the victim's head, and she told him: "*C'mon, what are you doing, not that*," and then the defendant started crying and said: "*Poor me, what's wrong with me*" and that there was a bang and she went home out of fear.

The witnesses S. S., M. A., and I. S. testified that they saw the perpetrator take his late wife out of the car, put her on the ground, kiss her, pull at his hair, and punch himself in the head, then flee into the woods when he heard police sirens. The witness I. S. also testified that a month before the critical event he had had a minor conflict with the perpetrator when he was passing by his truck. The perpetrator had stopped him with an ax in his hand and asked him what he was looking at in the direction of his house, which surprised him and he replied: "*What's it to you, am I looking at your wife or mother*?" To which the perpetrator reacted by swinging the ax and the witness closed the truck door, asking him why he would to that, to which the perpetrator replied that he would see what would happen as he saw the witness had been looking in the direction of his house. The witness stated that the accused had told him several times that he should not look in the direction of his house. In this part, the second instance court did not accept the testimony of witness I. S. with the explanation that "*it is without effect on this criminal matter*".

In the judgment of the Higher Court, the criminal offenses were qualified as in the indictment - aggravated attempted murder under Art. 114 para. 1. item. 11 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, of trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

The Court of Appeals stated in the second-instance verdict: "*The analysis of the established factual situation undoubtedly established that the defendant met all the objective characteristics of having committed the criminal offense in question under Art. 114 para. 1. item. 11 of the CC in attempting murder, and regarding Art. 30 of the CC, and that these features derive from the circumstances of the case and the facts that have been established so far and which have been established during the procedure. Therefore, the allegations of the defendant's defense counsel that the defendant's actions should be defined as a criminal offense under Art. 115 of the Criminal Code in relation to the injured party F. D. are assessed as unfounded, because in order for there to be a crimi-*

nal offense of manslaughter under Art. 115 of the Criminal Code, it is necessary that the person was brought to strong agitation through no fault of his own, by severe insult on the part of the murdered person, which has not been established in the specific case."

Six years and two months passed from the date of the committing of the criminal offense on May 16 2013 until the passing of the judgment of the Court of Appeals on July 16, 2018. The indictment was filed on June 1, 2017, the verdict of the higher court was passed on December 31, 2018, and the verdict of the appellate court on July 16, 2019.

Criminal Sanctions, Mitigating and Aggravating Circumstances

The first-instance verdict sentenced the perpetrator to 15 years in prison and a fine, with a 14-year prison sentence for aggravated attempted murder of several persons, while a prison sentence was imposed for the illegal production, possession, carrying, or trafficking of weapons and explosives lasting one year and six months and a fine in the amount of 100,000.00 dinars.

In choosing the amount of the sentence, the court took into account the following mitigating circumstances on the part of the perpetrator: that he was a family man, the father of two children, was in a state of medium-intensity affection and that his ability to understand the significance of his act and manage his actions was reduced to a moderate, but not significant degree, and that he expressed regret over this event. The court assessed the previous convictions of the perpetrator as an aggravating circumstance, but that they were "*not because of similar criminal acts*."

As a second instance court, the Court of Appeals reversed the Higher Court's verdict regarding the sentence and sentenced the perpetrator cumulatively to 14 years and two months in prison; 14 years for aggravated attempted murder, and a penalty of six months for the other crime. According to this decision, the perpetrator was also issued the security measure of the confiscating of the weapon with which he had committed the crimes.

The Court of Appeals found that the first instance court did not assess the health condition of the defendant, arising from the submitted documentation of the General Hospital Novi Pazar, as well as the circumstances under which the crime was committed; "*because the injured parties had agitated emotional tensions in the form of psychological content; first by agitating fear of the highest moderate intensity, and then by agitating anger of the highest medium intensity," and so "having in mind these circumstances, as well as the fact that the injured parties had joined the criminal prosecution, that the injured party D.had carried a knife with him, and that the injured party M. had carried a pistol, as well as the gravity of the committed criminal acts and the degree of guilt of the defendant*," and bearing all this in mind alongside all the other circumstances and evidence weighed, the court changed the verdict and sentenced him to 14 years in prison for the charge of aggravated attempted murder, and for the illegal production, possession, carrying, and trafficking of weapons, a prison sentence of six months and a fine in the amount of 100,000.00 dinars. Cumulatively, the perpetrator was sentenced

to only one imprisonment term of 14 years and two months, which factored in the time spent in detention from December 19, 2016 to April 6, 2017 and from April 6, 2017 until the decision was made sending him to prison for the execution of criminal sanctions. The security measure of the confiscation of the gun with which he committed the crime was also imposed on the perpetrator.

COMMENTARY

According to the data from the case, the offense of femicide was preceded by continuous psychological violence of the perpetrator against his late wife due to suspicion of infidelity. The perpetrator had complete control over the victim, as evidenced by the allegations against the perpetrator providing details on how he had checked her phone conversations, as well as the statement of the victim's father that during the victim's visits to her parents, while staying at her parents' house, the perpetrator would constantly come by and "sit near the house." In this regard, we first point out that the court failed to consider the full scale of the history of violence that culminated in the murder of the victim.

This case is an illustration of the helplessness of victims in patriarchal environments, who are often without any direct support in a possible attempt to get out of the situation of violence. From the testimony of the mother-in-law of the victim of femicide M. H., it can be concluded that the fidelity of the wife was considered of greatest value and an unconditional obligation, which must not be violated at any cost. It is also obvious that the appellate court had "understanding" for the perpetrator's jealousy because it emphasized in the verdict that it accepted as credible statements that the perpetrator's wife "had a special relationship" with the perpetrator's cousin.

The perpetrator had been previously punished for the crime of domestic violence, but it still remains uncertain whether he was given a suspended sentence for this crime or a real prison sentence, as different data are stated in the first and second instance verdicts. However, it is symptomatic that the court assessed the circumstance that the perpetrator had previously been punished for the crime of domestic violence as an aggravating circumstance, yet then immediately diminished this circumstance by stating pithily that the convictions were not pronounced "for the same crimes." This circumstance is also a confirmation that the court in this case did not adequately consider the gender-based motive of the criminal offense.

The crime was qualified as an attempted aggravated murder of several persons, while one person (the perpetrator's wife) was indeed deprived of life; the attempted murders of other persons remained only attempted. We consider the court's conclusion that it is not a case of manslaughter to be correct, as the defendant's defense counsel had pleaded in the appeal, which would exclude the possibility that the act could be qualified as aggravated attempted murder. On the other hand, given that the perpetrator in this case committed a premeditated murder of his wife, and attempted murder of his two relatives, it is exceedingly apparent

that this case should have acquired the status of both the crimes of committed murder and attempted murder; with this charge, the murdered victim would be given due respect and her right to life, as the most important human right, would be more appropriately considered. Despite this, the court still decided to qualify the crime as an attempted aggravated murder of several persons, even though one person was deprived of life, and the murders of others remained attempted, because the perpetrator's intent was directed to deprive several persons of their lives.

However, even qualified as the intentional deprivation of life of several persons in an attempt, the imposed punishment is too mild. Such a conclusion is indicated by the fact that this form of aggravated murder was punishable by imprisonment of at least 10 years and up to imprisonment of 30 to 40 years (according to the since-amended Criminal Code, this offense is now punishable by at least 10 years in prison up to life imprisonment). In particular, it should be borne in mind that in this case the perpetrator deprived one person, his wife, of life, and that for this act, if the perpetrator had not tried to kill another person immediately before the murder of his wife, he could be punished with a different, more severe criminal punishment – and that the act was committed out of low motives (jealousy) from Art. 114 para. 1. item 5 of the CC, for which the corresponding punishment could be prescribed.

In this regard, we point out that any establishment of a future system for femicide monitoring should require the registration of victims of femicide in court cases concerning cases of aggravated murder of several persons in an attempted trial, given that in the court practice documented here, cases of attempted aggravated murder can apparently include situations where one person was indeed deprived of life since the murders of other persons remained attempted.

Having in mind the standards of criminal proceedings conducted "within a reasonable time," the procedure in this case lasted far too long, and the length of the procedure was mostly affected by the inefficient work of the prosecutor, having in mind that the act was committed in May 2013, and the indictment was filed only in June 2017.

CASE no. 2

The modality of execution, summary of critical events, and legal qualification of the criminal offense

By the Indictment of the Higher Public Prosecutor's Office in Belgrade no. 266/18 of March 21, 2018, the perpetrator R. D. was charged with committing the criminal offense of attempted murder under Art. 113 in connection with Art. 30 of the Criminal Code and the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

The court found the perpetrator guilty of the criminal offense from the indictment on December 18, 2017 as based on the following occurrence of events: at around 8:20 am,

in a state of moderately, but not significantly reduced mental capacity, aware of his act whose execution he intended, he tried to take his wife's life, the injured party R.T., by approaching the vehicle in which the injured party was in the passenger seat, and firing four projectiles at her from a CZ M-70 7.63 mm caliber pistol and inflicted injuries in the form of gunshot wounds to the soft tissues of the right upper arm, to the chest, to the abdomen, and to the left half of the pelvic cavity and the left area of the buttocks, injuries which at the time of infliction represented severe and life-threatening bodily injury. By carrying out these acts, the perpetrator committed the criminal offense of attempted murder under Art. 113 of the Criminal Code in connection with Art. 30 of the CC. The perpetrator was also found guilty of unauthorized possession of a gun in his apartment in the period from an unspecified date in December 2017 to December 18, 2017, an act he was aware was prohibited, but which was committed with intention, thus qualified as the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

From the medical documentation and the findings and opinion of the forensic expert of the forensic medicine specialist, the number and type of injuries that the injured party suffered on the critical occasion were determined. The expert's conclusion was that the victim was hit by a total of four projectiles fired from a handgun - a pistol, and that she suffered injuries described in detail above. According to the expert, the injuries at the time of the infliction and offense were estimated to be severe and life-threatening bodily injury, with a fatal outcome being prevented only by timely and adequate treatment. Four projectiles were fired successively at the victim, one after the other, in a short time interval and from the same firearm. The discharge list and the operative findings show that the injured party was brought to the hospital by ambulance in an extremely serious condition, that she was diagnosed with gunshot wounds, and that she was operated on and treated at the Department of Surgery from December 18 to December 27, 2017.

Ballistic expert evaluations determined, among other things, that no particles characteristic of the remains of gunpowder were found on the victim's clothes, which shows that the distance from the victim to the end of the barrel of the weapon was more than 80 cm, so it was determined that the bullets had been shot precisely at the body. Two projectiles remained in the body and were removed during the operation, one was found in the clothing worn by the damaged party at the time of the attack, and one on the passenger seat (together with traces of blood).

It follows from the findings and opinion of the ballistics expert that the pistol with which the crime was committed was fully functionally and that the two projectiles in question found on the scene had originated from bullets fired from this pistol.

Data, character, and behavior of the perpetrator

Data on the perpetrator's age, education, occupation, and employment are anonymized in the verdict. Also, data on the family life of the perpetrator in the primary family, his behavior in childhood and adolescence, as well as relations in the primary family were lacking. The perpetrator was the father of a minor child, a daughter aged eight and a half.

According to the statement of the perpetrator, he "*had been under great psychological pressure since October 2017 and that he had thought that criminals were following him in order to get information he had at his disposal, regarding the work he performed for the police*". He had noticed that his "*e-mail accounts and mobile phone had been hacked*." Because of this, he had been afraid for his life and the life of his family, so a week before the critical event, he had taken a CZ pistol from his father's apartment without his knowledge. Due to his mental problems, he had turned to several places and asked for help, but he had not received therapy because he was waiting for the doctor to return from a seminar. He had taken the gun with him on the critical day out of fear, afraid that something would happen to him and that someone would do something to his child.

Speaking about his relationship with the injured party, the perpetrator stated that "*until a certain moment, their marriage had been harmonious, in the last two or three years there had been problems between him and the injured party, they had had poor communication, but there had been no quarreling between them. He had been making sure to stay away from home as much as possible so that there would be no conflict between the two of them ...* " He further stated that their marriage was like any other, that he had never threatened to kill his wife, that he had taken out a loan for an apartment, he tried to be a good father to their daughter, he took her to school every morning, and when his wife couldn't, he brought her back from school, and that he insisted on her playing sports and going to English. The perpetrator did not want to answer the court's question of why he had tried to deprive his daughter of both parents if he wanted to be a good father.

From the doctor's certificate and discharge list in the name of the perpetrator, it can be seen that the perpetrator was hospitalized from December 18 to December 26, 2017 and that he was found to have a gunshot wound in the right parietal area of the head with imploded skull fractures in the same area and contusions in the focal area of the brain, with the consequent deprivation of the left side of the body; injuries caused by a projectile fired from a handgun and which represented severe and life-threatening injuries at the time of hospital admission. According to the final diagnosis: "*There was a deliberate self-injury by firing from a revolver.*"

The perpetrator R.D. first defended himself before the higher public prosecutor by remaining silent, and then according to the minutes of the suspect's interrogation from March 2, 2018, he stated "*that he is under very strong therapy for which reason he cannot completely reconstruct events from the past, and could not remember the critical event of December 18, 2017.* " He only remembered that he had woken up from unconsciousness after having shot himself in the head and tried to reach for the gun and shoot himself again, but a man pushed the gun away, after which he fainted and woke up in the hospital. He learned from his defenders that he had shot his wife on the critical day, but he does not remember that. The doctors at the prison hospital explained to him that he was suppressing that unpleasant and stressful event and that he felt as if it was not him at that moment, but someone else. He had brought the gun, which he took from his father, to his apartment. He remembered that he went to work in the morning

hours of that morning on December 18, 2017, and otherwise he usually left around 8:00 AM, and that he does not know what happened next. He asserted that he did not carry the gun with the intention of killing the injured party. After the fact, he would often wake up at night and wonder why he did it. He lost everything; his family, his job, and his apartment. After shooting himself, he recalled that he regained consciousness, was lying on the sidewalk, on his back, that there was a lot of blood on the right side of his head and that he remembers that someone pushed the gun away, that is, he remembers that metallic sound (...) and that then someone approached and put a towel on his head, after which he fainted again. He doesn't remember calling for help, but recalls hearing some moaning. He could not remember whether he had had communication with his wife on the critical morning, he could not remember standing in front of their building, or shooting himself in the head, nor why he did it, nor when and from where he took the gun. When he was told that he had told the pre-trial judge that he had been conscious all along, he stated that he might have said that, but that the injury was fresh and that he was not aware of everything that had happened.

In his testimony at the main trial, the perpetrator stated the same as he had in questioning by the prosecution, adding that he was sorry that all this had happened to their daughter because she was deprived of the opportunity to spend her childhood with both parents. When told that he had stated in the investigation that he had taken the gun a week before the critical event, he responded by saying that he could not remember exactly now, but he thinks that it was a maximum of seven days. He did not dispute that he did not have a permit to hold and carry a gun. He explained that he had served his military service and knew how to handle weapons, but when he took the gun, he did not check if there was ammunition in it. He had taken it in a panic and took it him with him that morning, because the night before he saw that project data for the Ministry of the Interior were being hacked and zipped, so he was afraid that someone would do something to him.

The perpetrator's defense counsel stated that he was proposing certain corrections to the indictment insofar as the perpetrator had acted in a state of reduced sanity to a significant degree, especially given that after the event the perpetrator attempted suicide by shooting himself in the head. He proposed concluding a plea agreement, but the prosecution did not accept it. According to the defense, "*it essentially represents the confession of the crime by the defendant and suggests that the court appreciate it, as well as the defendant's conduct after committing the crime.*" It was also pointed out that the court should appreciate that *"the defendant sought help from a doctor and psychologist, because he had felt certain mental problems and turned mostly to private practice, but did not receive adequate help, and this would not have happened if help had been received*."

From the findings and opinions of forensic experts in forensic psychiatry and medical psychology, it appeared that the perpetrator was a person of very good intellectual capacities, in the area of the upper average, with mixed personality disorder, and that he had not been diagnosed with mental illness, mental retardation, a temporary mental disorder, or other severe mental disorders. At the time of the committing of the criminal offense, no current psychopathological substances were discovered with him. He was

a mentally healthy person, but, bearing in mind his personality issues and disagreements with his wife in the pre-offense period, his ability to understand the significance of the crime, as well as his ability to manage proceedings at the time of the crime were reduced to a moderate, but not significant level. Regarding the perpetrator's psychological attitude towards the committed acts, the court assessed that the perpetrator had been aware of his acts, their prohibition, and that he had displayed intent to commit them, i.e., that he had acted with direct intent.

The court did not accept the part of the perpetrator's defense that he had never threatened the injured party that he would kill her and his explanations of all that he had to lose. The court accepted the allegations of the perpetrator's defense that he contacted several places and asked for the help of a doctor, and that in recent years there had been problems in the marriage between him and the injured party.

Data on the victim

There is almost no personal information about the victim of the attempted femicide, except that at the time of the crime she was the perpetrator's wife and the mother of one child, and that she worked as the director of a preschool institution.

Examined as a witness, the victim stated that she had been married to the perpetrator since November 1, 2008 and that the first disagreements and problems in the marriage began on Christmas 2010. On that occasion, her husband R. D. threatened her with a weapon, and she reacted by calling the police and the police came to the apartment and made an official note. Their daughter was less than a year old at the time. The Center for Social Work was informed about this event. She was then told that the gun had been confiscated and that they should go to a marriage counseling, where she went two or three times, but the perpetrator did not appear. She states that on one occasion, when he threatened her, he had firmly threatened her with the "*wrath*" that he would kill her with that gun and that she would "*pay dearly*" for having reported him. After that, she filed for divorce, but, as her mother had just passed away, she gave up the divorce. After 2012, threats began again, with perpetrator saying that she would "*remember who R. D. was*." She called the police again, but this time his gun was not confiscated because he "*had connections in the police*." Since 2017, he had been distancing himself from his family; "*he led his life - hiked, played sports, and neglected his family. Since that time, there had been virtually no communication between them. He would not spend any holidays with his family and his daughter. He led a bachelor's life, he focused on himself*. " When she was supposed to go to a seminar on Kopaonik in December 2017, the perpetrator had taken her travel papers from her the day before she left, and when she tried to take the travel papers from him, he pushed her so that she hit her head on the door and suffered the injury of a hematoma around the eye. She did not go to the doctor, but she took a photo of the injury on the phone and showed that photo to her mother-in-law, who was convinced by the perpetrator that she was self-harming. The perpetrator constantly threatened her that he had nothing to lose and that he would kill her, and that if she didn't like it, she could leave.

In her testimony, the victim stated that she had slept with her daughter locked in her room on the night of December 16/17, 2017, because the perpetrator had threatened her in the previous days. She heard that he had come in the early morning hours between 3:00 and 4:00 am. On the night of December 17/18, 2017, while lying in the living room,

she heard around 00:30 am that he had entered the apartment, saw that for some time he was standing above the bed in which she slept, watching, so she had got up and went to another room. She stated that she had also locked the room because R. D. had threatened to kill her.

The victim further stated that she did not know if the perpetrator had ever consulted a doctor for any help while they were together, not even a psychiatrist, "*he never wanted to take any medicine, not even for a fever or toothache. She did not notice that he had had any health problems.*" She stated that ten days before the event, she had complained to her colleague that the perpetrator had threatened to kill her.

According to the victim, the morning of the critical event, they had gone together to take their daughter to school, and then to continue towards work. They stood side by side in front of the entrance, there was no quarrel between them or confrontation, they had mostly remained silent. She was surprised that R.D. was standing with her at all and noticed that he was pulling his hand in and out of the bag he was holding on his right shoulder; she had thought that he may have been recording with his phone, but then she had noticed that the phone was vibrating in his pocket. He asked her to return to the apartment for fifteen minutes, did not tell her why he asked for this, and she did not agree. At one point he squeezed her left arm and said, "*You're going to pay for everything!*" She had then noticed that the female colleague of hers who she had been waiting for in front of the entrance was now coming in an official vehicle; she stopped the vehicle, opened the door, sat down in the passenger seat, put on her seat belt, and reached out to close the door. At that moment, R. D. came close, nearly entering the vehicle and started firing. He first hit her in her right arm, then shot her in the area of her stomach, and then the groin of her left leg; she remembered seeing blood on her leg, and she could not feel her leg, so she shouted: "*Help! Help!*" and stopped a man on the street. She saw R. D. lying on the sidewalk, very close to the vehicle, but she had not seen when he had shot himself. She was given emergency care in the hospital; an operation was performed, her liver, leg, arm, lungs, and chest were injured. She was in the hospital for ten days, and at the time of court proceedings she still could not feel the foot of her left leg. Doctors told her after the operation that she had suffered a lot of internal bleeding and that it was a great concern whether she would survive. She noted that she was still afraid for her life because R. D. had wanted to kill her that day and did not succeed in his mission. She still felt threatened, unprotected, and afraid for her safety and the safety of her child. When he had threatened her previously, R. D. put his finger on her temple showing how he was going to kill her while saying he was going to kill her with one bullet. She stated that she had been afraid to leave the perpetrator, even though threats were constant throughout their entire marriage, because the perpetrator said that nothing would save her and that he had acquaintances everywhere in both the police and the gendarmerie.

The course of criminal proceedings

The Higher Public Prosecutor's Office in Belgrade filed the indictment on May 21, 2018. The verdict was passed and publicly announced on December 7, 2018. The perpetrator was found guilty of two criminal offenses: attempted murder, under Art. 113 of the Criminal Code in connection with Art. 30. of the CC, and the criminal offense of the illicit production, possession, carrying or trafficking of weapons and explosives under Art. 348 para. 1 of the CC.

During the court procedure, the following evidence was presented: forensic examination of the scene, ballistic expert reports, forensic expert reports, expert evaluations of a forensic psychiatry specialist and a medical psychology specialist, microtrace expert reports, the reading of written evidence (medical documentation, report of the Special Prison Hospital doctor), the testimony of the defendant, the testimony of the victim as a witness, the testimony of other witnesses. Witnesses testified about the circumstances of the relationship between the perpetrator and the injured party, the event itself, since there were eyewitnesses, and regarding the events that followed the committing of the crime.

The injured party described in detail the event when the perpetrator shot at her, and the court, considering her testimony, accepted her allegations regarding the important facts related to the committing of the criminal offense. It also accepted the part of the testimony of the injured party in which she detailed events that preceded the committing of the criminal act and her description of their mutual relationship in the marriage with the perpetrator.

The witness who was an eyewitness to the event, because she was sitting in the driver's seat when the perpetrator shot, stated that she had come to pick up the victim to go to work, according to the usual agreement with the injured party. She saw the victim and her husband standing together, which was unusual. When the victim had seated herself in the passenger seat, the perpetrator headed towards the car, so the witness thought he would ask her something, perhaps go with them. She then saw him pull out a gun and start shooting, so she got out of the vehicle, rushed out into the street and called: "*Help!*" She also saw the perpetrator lying next to the passenger door. She called the police and an ambulance. The victim was covered in wounds, her legs full of blood, and the seat was soaked in blood. She stated that she had been intensively spending time with the injured party for two years, and had been told by the victim about ten days before the critical event that the perpetrator had threatened to kill her. She knew that there were quarrels between them and that the injured party wanted to move out of the apartment. There were quarrels , as the injured party told her, because the perpetrator did not want to have any obligations regarding the child or to participate in her growing up, and also because he had taken the victim's and the child's passports. After coming from the seminar, she saw that the victim had had a bruise under her right eye, and that this was two weeks before the critical event. Additionally, the injured party had told her that she was afraid of the perpetrator; that she slept in their child's room and locked the door.

A witness, a driving instructor, was driving down the street where the event took place on the critical day. He saw a vehicle stopped in a side street and a man next to the vehicle. He also saw a female person stop traffic and shout, "Help!" When he got out of his vehicle, he saw a male person lying next to that other vehicle, with blood and a gun next to him. The man was conscious all the time, shouting: "*Help, help me*!" And moving his hands, which is why the witness pushed away the gun that was next to his body with his foot. He also saw that the injured man was approached by a young woman, whom he later heard was a nurse, and put a towel under his head. During that time, he and another man who had come out of the kindergarten helped the woman who was in the passenger seat and was bleeding profusely; blood was leaking in the area of her stomach,

legs, and arms. An ambulance arrived and first took away the woman who was injured, and then the man who was lying next to the vehicle.

A witness who was nearby because he came out of a nearby kindergarten where he had just left his child was also heard from. This witness stated that he was walking towards his vehicle, which was twenty meters away from the kindergarten, when he heard "*someone throwing firecrackers*," which was strange to him. He saw a man lying next to a stopped vehicle and a gun next to his body. He also heard a woman shouting from the stopped vehicle: "*I'm in pain*!" He approached her and saw that she had been shot in the abdomen. There was a strong smell of gunpowder in the vehicle. He was trying to help the injured woman in the vehicle, but he would not move her.

The court concluded that regarding the actions of the perpetrator met all the elements of the criminal offense of attempted murder from Art. 113 of the Criminal Code in connection with Art. 30 of the Criminal Code and of the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the CC. The explanation of the verdict, among other things, states "*how in the specific case the defendant intentionally engaged in committing the criminal offense of murder under Art. 113 of the Criminal Code, and the death of the injured party was prevented by timely and adequate treatment, so that there was no consequence in the form of the deprivation of life of the injured party, that the court determines, in regard to the perpetrators actions against the injured party, assessing all the circumstances, especially the degree of guilt of the defendant, the gravity of the crime, the means and manner of committing the crime, and the severity of injuries to the injured party, that this was a case of the attempted crime defined according to Art. 113 in connection with Art. 30 of the CC*."

Considering the factual situation established at the main trial, the court made a minor change in the operative part of the verdict in relation to the dispositive of the indictment. The change refers only to the place of the execution, citing another name of the street in relation to the name stated in the indictment.

The attorney of the injured party filed a property claim and proposed that the court oblige the perpetrator to pay material damage and the treatment costs of the injured party, all in the amount of one million and five hundred thousand dinars, and a total amount of five million dinars for non-pecuniary damage in all forms. Based on Art. 258. of the CCP, the court instructed the injured party to pursue the property claim in civil proceedings because, according to the court, there were insufficient grounds for adjudicating the property claim in the criminal proceedings, given that the injured party had not submitted evidence of material damage or treatment costs, nor determined individually the amounts claimed in the name of non-pecuniary damage, the determination of which requires expertise.

The criminal act was committed on December 18, 2017, the indictment was filed on May 21, 2018, and the verdict was passed on December 7, 2018, which means that almost a year passed from the day the crime was committed until the end of the criminal procedure.

Criminal sanction, mitigating and aggravating circumstances

The perpetrator was sentenced to five years and six months in prison for the criminal offense of attempted murder, and for the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the Criminal Code was sentenced to one year in prison and a fine in the amount of 10,000 dinars. Cumulatively, a single prison sentence of six years, a fine in the amount of 100,000 dinars and the security measure of confiscating the gun with which the crime was committed was imposed on the perpetrator. The time that the perpetrator had spent in detention from December 26, 2017 was factored into the term of imprisonment.

When sentencing the perpetrator, the court considered the following mitigating circumstances: that he had not been previously convicted, that he was the father of a minor child, that the specific intended consequence of the said criminal offense did not occur, i.e., that the offense remained an attempt and was not completed as he had shot himself in the head with the same pistol, so that he was also injured, on which occasion his life was endangered, while in relation to the criminal offense of the production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 1 of the Criminal Code, the court assessed as mitigating circumstances "*that the defendant fully admitted the committing of this criminal offense, which facilitated the court in conducting this procedure*." Regarding aggravating circumstances, the court considered the defendant's attitude towards the victim, i.e., that the defendant had committed the criminal offense of attempted murder against his wife and that the purpose of punishment in this particular case would not have been achieved with a reduced sentence.

COMMENTARY

An analysis of the circumstances that immediately preceded the execution of the act raises the question of the qualification of the act, which was qualified in the indictment and in the verdict as the attempt of the so-called "ordinary" murder under Art. 113. of the CC. However, based on the description of the act of execution and all the circumstances related to the committing of the criminal offense in this particular case, it can be concluded that the objective and subjective elements for qualification of the criminal offense could represent aggravated murder with heinous intent from Art. 114 para. 1. item. 1 of the CC. That there is specific intent as a qualifying circumstance is indicated by the very manner in which the perpetrator carefully designed and executed the act. This intent of the perpetrator manifested itself through objective elements, which include the secret and covert planning of the manner of committing the murder: the perpetrator went with his wife, which was unusual, waited for his wife to enter the official vehicle and immediately after her entering, before she could close the vehicle door but while reaching out to do so, approached unhindered and fired at her with a pistol; in the given circumstances she could not expect an attack on herself, nor did she have any possibility to defend herself. Subjective elements that are illustrative of the perpetrator's actions with heinous intent are: the use of a relationship of trust, the helplessness of the injured party, and the lack of resistance on her part. These circumstances point to the conclusion that both objective and subjective conditions are met for the existence of heinous intent as a qualifying circumstance.

The perpetrator was sentenced for an attempt at femicide and even assuming its qualification as an attempt at so-called "ordinary murder" was the proper charge, the sentence is too lenient. Although the legislator in principle prescribes the possibility of mitigating the punishment for an attempted criminal offense (per Article 30, para. 2 of the CC), when sentencing, the court is obliged to take into account the degree of endangerment and value of the protected "good," and in this case human life is of the highest value. The sentence of imprisonment for five years and six months for a criminal offense that remained an attempt only due to the fact that the death of the injured party was prevented by timely and adequate treatment is too lenient to achieve general and special prevention or protection.

The lenient punishment is a consequence of the court misjudging the mitigating circumstances, assigning them too much importance. As a mitigating circumstance, the court assessed that the defendant admitted the criminal acts, which, as stated in the verdict, facilitated the court's implementation of the procedure. Given that the crime was committed in a public space, in the presence of numerous witnesses, that all the evidence that is usually presented during the prosecution of this type of crime was presented, it is unclear how the confession of the perpetrator facilitated the proceedings. Furthermore, even though the testimony of the victim of the femicide attempt clearly revealed that the perpetrator did not pay parental attention to his daughter, that his behavior created a bad family atmosphere in which the daughter grew up, and that he tried to take the mother's life, the court still recognized that the perpetrator was the father of a minor child as mitigating circumstance. In addition, when sentencing, the court assessed as a mitigating circumstance the fact that the act remained in the attempt and that the consequences of the act were absent, although the perpetrator did not voluntarily give up the act, nor did he do anything to prevent the consequences of the act. To the exact contrary, it was indeed a completed attempt, because the perpetrator fully undertook the act of committing the crime of murder and the consequence was absent only because timely surgical intervention was undertaken.

In this case, the court failed to deal in detail with the gender-based motive of the act, which remains undetermined. The court did not seek to ascertain the reasons for which the perpetrator permanently threatened the victim, nor did it seek to uncover the manner in which the perpetrator sought to control the victim and manage her life before finally attempting to kill her. The court's attention was focused nearly exclusively on the critical event, an approach which failed to reveal or consider the violent pattern of the perpetrator's behavior towards the victim and the instrumental nature of the violence he used during the marriage, exercising power and control over the victim.

According to the testimony of the victim of the attempted femicide, she had been exposed to various forms of violence since 2010, especially death threats, as a form of psychological violence. The first threat of murder resulted in referral to a marriage counseling center. No measures were taken regarding the perpetrator's absence from the marriage counseling center, which obviously

encouraged the perpetrator, so he again threatened the victim with murder for reporting threats. Even later, reports of murder threats were not processed. The gun was not confiscated from the perpetrator, because, according to the victim, he "had connections in the police," to which the perpetrator had himself referred. Failure to take measures to protect the victim from partner violence by the competent authorities is an indicator of the degree of inefficiency of the institutions of the system responsible for the prevention of and protection from domestic violence. In this particular case, failure to take measures to protect against violence contributed to the victim losing all hope of obtaining institutional protection, and she remained living with the perpetrator, fearing for her life and the life of her child, mistakenly believing that it reduced her risk of murder, which the perpetrator had constantly threatened.

Regarding the property claim of the victim of the attempted femicide, the court did not decide on it, but instructed the victim to pursue her claim in civil litigation, which it justified with the statement that the injured party had not provided evidence of material damage or treatment costs or amounts claimed in the name of non-pecuniary damage, the determination of which requires expertise. In this regard, we point out that the request for compensation of non-pecuniary damage suffered by the child alone was not pointed out in the procedure, which is otherwise a common practice in such cases. On the other hand, when it comes to compensation for the damage suffered by the victim of the attempted femicide, the court had the opportunity, if not the obligation, to request from the injured party a determination of the individual amounts of claims for each type of non-pecuniary damage and to order the necessary expert to be involved as such at an early stage. This would have allowed her to determine the amounts of the damage claims on a timely basis for the pending decision. The failure of the court to do so has far-reaching consequences for the victim of femicide, who will no doubt have to incur costs and invest further time in order to exercise the right to compensation in damages.

CASE no. 3

The modality of execution, summary of critical events, and legal qualification of the criminal offense

The Higher Public Prosecutor's Office in Vranje charged G.P. with the criminal offenses of: aggravated murder under Art. 114 para. 1. item 11 of the CC, the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 4. in connection with para. 1 of the CC and the unauthorized possession of narcotics from Art. 246a para. 1 of the CC.[173]

By the judgment of the Higher Court in Vranje, G. P. was found guilty of the criminal offenses listed in the indictment.[174] The operative part of the verdict contains descriptions of the manner in which the aforementioned criminal offenses were committed.

[173] Criminal procedure no. 30/17 of Septmeber 8, 2017.
[174] Legal decision no. 53/17 of June 14, 2018.

The criminal offense of aggravated murder under Art. 114 para. 1. item 11 of the CC was committed by the perpetrator according to the following description of events: on May 4, 2017, at around 6:00 pm, on the state road of the first B-class, on the route Lučane-Bujanovac, near the turn for S ..., Bujanovac municipality, he, in a sane state and with intent, killed two people, his mother-in-law D.I. and his wife J.P., and moderately injured his minor daughter H.P.. The perpetrator knew that his wife and mother-in-law (at the time of the crime the perpetrator and his wife were married), together with their underage daughter, would travel in a black BMW jeep at a certain time from Kosovo** in the direction of Bujanovac, so he hired a taxi, driven by the driver S., to drive him in the same direction. When they came across the passenger vehicle driven by their mother-in-law, D. I., the taxi driver, on the instructions of the perpetrator G. P., flicked his lights on and off and by doing so was able to signal the vehicle in which his mother-in-law, wife, and daughter were, to stop. The mother-in-law, D. I., stopped the vehicle and parked it just to the side of the roadway on the right, while the taxi driver of the vehicle in which the perpetrator travelled turned the vehicle off the road and parked it in front of the vehicle driven by the perpetrator's mother-in-law. Then the perpetrator got out of the taxi, entered the jeep at the back left door, where his wife was sitting with the child, then got out of the jeep, went back to the taxi, got into the vehicle, went back to the jeep again, opened the back left door of the vehicle and positioned himself so that part of his body and right foot were in the jeep and with his left foot standing on the road, and then fired several shots from a 7.62 mm CZ M-57 pistol, with the factory number erased, in the direction of the mother-in-law, D.I., in the back area of the right side, inflicting three gunshot wounds to her chest, as a result of which she died on the spot. He then got out of the jeep and fired several shots in the direction of his wife, J. P., inflicting gunshot wounds in the area of the right side of her back, so that due to a gunshot wound passing through the chest, the victim died in the hospital. On that occasion, the perpetrator inflicted a minor bodily injury on the underage daughter in the form of a gunshot wound to the lower part of the right forearm. After that, he got into the taxi and went to Bujanovac, and then he drove away in an unknown direction and was on the run for a period of time.

The perpetrator committed the second criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives in such a way that in the period from May 4 to June 15, 2017, as well as on June 15, 2017 in the act of murder, in the place of P..., in a sane state and with direct intent, unauthorizedly held and carried a firearm, pistol brand CZ M-57 caliber 7.62 mm, with a deleted serial number, with a frame and ammunition. This weapon was confiscated from him on June 15, 2017 at 6:10 pm in the motel "Predejane" by officials of the Vranje Police Department.

The third criminal offense of the unauthorized possession of narcotics under Art. 246a para. 1 of the CC, the perpetrator committed on June 15, 2017 in such a way that in the motel "Predejane" he had unauthorizedly kept a smaller quantity, for his own consumption, substances that are on the list of psychoactive controlled substances of the Rulebook on Determining the List of Psychoactive Controlled Substances[175]: five foil-packs of lexilium 3 mg, with 10 tablets each, three foil-packs of lexilium 5 mg, with nine tablets, and one foil-pack of lexilium 3 mg, with six tablets - a total of 83 tablets, and one foil-

[175] Rulebook on Determining the List of Psychoactive Controlled Substances, Official Gazette of the RS, no. 100/16.

** References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999)

pack of Xanax 0.5 mg, with two tablets. Police officers from the Vranje Police Department confiscated these substances from the perpetrator.

Data on the perpetrator

The perpetrator at the time of the critical event was an electrician by profession, unemployed, had finished the third degree of vocational school, was married, the father of a minor child, middle-class, and according to his statement he had been previously convicted in Kosovo*** for a felony theft and the crime of grievous bodily harm. Due to the anonymity of the data, the age of the perpetrator could not be determined. The perpetrator was remanded in custody and had been in custody since June 15, 2017 at the time of court proceedings.

The perpetrator did not admit that he committed the crime of aggravated murder in the manner stated in the indictment. In his testimony at the main trial, he stated that he was sorry for everything that happened on the critical day, because his daughter was also a participant in the event. At the time of the crime, he had still been officially married to his now deceased wife, but a year before this event, they had started living separately - she was living with her parents. On that day, May 4, 2017, according to him, he came at the invitation of his mother-in-law D. I. to meet, because she allegedly said she had something important to tell him. He was suspicious why he was calling him, so he asked his acquaintance to take him by taxi to the agreed place. In the village of Lucane, he saw the vehicle of his now deceased mother-in-law, told the driver to "blink his lights on and off" in order to stop the vehicle, but she did not do that, because she did not recognize the vehicle in which he was. Because of that, the driver had then stopped in front of her vehicle, so he went out to tell her that he had come by taxi, and she told him to tell the taxi driver to go to the first free parking lot, so that they would not be on the main road. So, they came to the first parking lot which was about a minute's drive away. The perpetrator got out of the taxi, went to the jeep, and sat in the back seat where his daughter was sitting. He started playing with his daughter, when the victim D. I. told him to leave her alone and "*that they had come to talk about something*." He replied that he had time, just to play a little with the child, so he asked his wife what she did with the divorce, to which she did not answer him, but D.I. replied "*that it means nothing to them, and if he needs a divorce he should finish with it*." He asked her, "*Then why are you taking my money, if you are not planning a divorce?*" She replied that she had spent the money he had given for the divorce on fuel because the vehicle was not running on water, then she started laughing, saying that if he wanted to see his daughter from now on, he would have to pay 200 euros for fuel, and if he wanted to see his family, he would have to give 36,000 euros within seven days and 500 euros if he wanted to see his child. He told her to leave him alone, that he would file for divorce and that the court would decide when he would see the child, and everything else. The late mother-in-law D. I. then told him that she would not allow them to divorce until he paid that money, to which he replied that he did not have that money because he was not working.

When he said he didn't have the money, the injured party D. I. told him to say goodbye to his family: "*We will kill your mother and father, expect a video of us killing them, and we*

*** References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999)

will cut your sister to pieces." That, as he stated, hit him very hard emotionally, because he was very close to his sister, who was ill. His head dropped, he saw only a gun in the hands of his now deceased mother-in-law and heard her say to him: "*H. is in my hands now*. " Then the victim J. P. said she did not want to see him again, and D. I. laughed. At one point, J.P. screamed, he raised his head, which had remained in a drooped position, he saw the gun again and "*from that moment he had a black out and he couldn't remember anything*." He did not admit to carrying a gun when he went to meet his mother-in-law.

With regard to the second criminal offense, the perpetrator admitted that on the critical occasion he was carrying a 7.62 mm CZ M-57 pistol for his own safety because the brother of the now deceased mother-in-law D. I. had threatened him. He also said that, regardless, he had wanted to hand over the gun to the police because he did not know where the gun had come from.

He had been taking the drugs Lexilium and Seroxate for stress, Formidal for sleep, and two other drugs.

Assessing the perpetrator's defense, the court found that with such a defense, the perpetrator was trying to "*put himself in the most favorable position and reduce his criminal responsibility*." The court did not accept the perpetrator's defense because it was "*absolutely contrary to all the evidence presented*." The verdict further states that the defense wanted to show that this was the result of some kind of agitation caused to the accused, which, given all the evidence presented, the court could not accept, because the accused was not in a state of strong irritation and none of the evidence indicates that the late D.I. could have brought him into such a state by any of her actions that the accused would experience "*a complete blackout of the events*."

In the finding and opinion of the forensic psychiatrist's expert, it was stated that the perpetrator was sane at the time of committing the criminal offense, able to understand the significance of his crime, and to manage his actions. He had not been diagnosed with a mental illness, temporary mental disorder, mental incapacity, or other severe mental disorder. The additional finding and expert opinion stated that all the diagnoses of diseases, conditions, and syndromes submitted in specialist reports for the perpetrator (pathological gambling, dissocial personality disorder, generalized anxiety disorder, etc.) did not affect his mental capacity.

The court stated in the verdict that the perpetrator had been aware of his act and intent on its execution. He had committed the crimes in a state of sanity, that his ability to understand the significance of his crime and to manage his actions was maintained for each of the offenses individually. In terms of guilt, during the committing of the crime of aggravated murder, according to the court, the perpetrator acted with direct intent, he was aware that his actions could result in the death of the victims D.I. and J.P., which he had sought, while in relation to his underage daughter H.P. the perpetrator had acted with possible intent, i.e., he was aware that due to his actions a prohibited consequence could occur, and that he was willing to risk the occurrence of such a consequence.

Data on the victims

The perpetrator killed two victims, while inflicting light bodily injuries on one other victim. The victims were the mother-in-law, wife, and daughter of the perpetrator. There is no information about the victims in the verdict, except about the relationship of kinship with the perpetrator. From the testimony of the father of the perpetrator's wife, N. I., the victim J. P. was married to the perpetrator at the time of committing the crime, but that they were not living together because in 2016 they had actually separated. According to N. I., the dissolution of the marital union was due to the fact that the perpetrator "committed violence against his (the witness's) daughter." On one occasion, he had beaten the witness's wife, the late D. I., and the witness's daughter when the perpetrator's own daughter was just one year old, for which he had been "arrested and prosecuted."

The explanation of the verdict states that the autopsy report stated: "*It is determined that the perpetrator fired several bullets at the now deceased D. I. and at the now deceased. J. P. in the area of the chest, which resulted in the infliction of severe bodily injuries, as follows: as a result of these severe injures the now deceased victim D. I. died on the spot, while the now deceased victim J.P., who suffered multiple injuries causing substantial blood loss, died after an hour and a half*." In the finding and opinion of the forensic specialist from August 15, 2017, it was stated that the underage daughter, victim H.P., received a mild bodily injury in the form of a gunshot wound to the lower part of the right upper arm, which was situated longitudinally, 1 cm long, which indicates that the gunshot wound to the right upper arm was inflicted by a projectile that ricocheted or previously acted on the body-tissue of J. P., or on some other structure in the passenger vehicle.

The course of the criminal proceedings

During the criminal proceedings, the following were heard and/or considered: the testimony and interrogation of the perpetrator, the testimony and questioning of the witnesses, the findings and opinions of forensic experts and forensic psychiatry experts, the findings of the Institute of Forensic Medicine in Ni**š**, the ballistic expert report, the certificate on temporarily seized items, the forensic-chemical expert report, autopsy report, case file SPK 1/18, the report on the investigation, and an excerpt from the criminal records for the perpetrator.

The aggrieved party N. I., the husband of the aggrieved party D. I., examined as a witness, stated, among other things, that he did not know when his wife was leaving for Bujanovac with her daughter and granddaughter. That day, she had only told him that the perpetrator called and asked to see the child, because he was intending to leave the country because "*they were looking for him everywhere because of committed crimes*." The witness had cut off all contact with the perpetrator after his daughter had separated from him, and even before that he had not been on good terms with him, nor with his parents. He stated that the perpetrator had exhibited violent behavior from the very beginning of the marriage, that they had been against the relationship, but J. P. had still married him.

Witness I. Š. stated that on May 4, 2017, at around 6:00 PM, he closed a boutique in Bujanovac and drove home with his wife and child. When he came near the place where the turnoff for T ... is, he noticed a Mercedes jeep that was parked off the side of the road,

with the front and rear left doors on the jeep open. He started to continue past the vehicle, but his wife told him to stop because she saw a child in the vehicle and blood outside the vehicle on the road. He stopped and parked near the said vehicle, they got out of their vehicle and saw a woman lying outside the vehicle on the road, holding a child with her left hand, and that the child was crying. His wife immediately took the child and he noticed that the woman then fainted, after his wife took the child. He saw a woman in the front seat, he thought she was alive, because she had made movements, so he assumed that she wanted to get out of the car.

Witnesses D.Z. and S.Z. stated that on May 4, 2017, they were in a field in the afternoon when they heard several gunshots, one after the other, and a scream resembling a woman's voice, but they could not see anything from the field because of trees and bushes.

Inspecting the case file, the court found that the perpetrator S., who was driving the taxi on a critical occasion, admitted to committing a criminal offense - assisting the perpetrator after committing of a criminal offense under Art. 333. para. 3 in connection with para. 1 of the CC and that the Higher Public Prosecutor had concluded an agreement with him on the recognition of a criminal offense, which was adopted by a decision and a final verdict was passed, sentencing him to imprisonment for a term of six months. In his testimony, S. stated that he was in his taxi on the critical occasion when he saw the perpetrator in the rear-view mirror in a forward-bent position shooting at a person sitting in the driver's seat, and his position was such that he was with one leg in the vehicle and another outside the vehicle. He saw the perpetrator's hand with a gun "*point in the direction of the person sitting in the back seat, and then, with a gun in his hand, he rushed back into his vehicle (the taxi), sat in the passenger seat and threatened him to start up the vehicle immediately and why wouldn't he. He could not succeed in starting the motor because he was disturbed by all that he'd just seen.*"

The court inspected the report of the ballistics expert, which stated that the pistol seized from the perpetrator was a fully functional firearm, that bullets had been fired from the pistol after its last cleaning and that the ammunition of nine bullets from the frame of the pistol, caliber 7.62 x 39 mm, represented the correct corresponding combat ammunition.

The perpetrator committed the crime on May 4, 2017, the indictment was filed on September 8, 2017 and amended on February 22, 2018, and the verdict was passed on June 14, 2018, which means that from the committing of the crime to the issuing of the verdict one year, one month and 10 days had elapsed, while three months and 22 days elapsed between the amendment of the indictment and the issuance of the first instance of the verdict.

Criminal sanction, mitigating and aggravating circumstances

The perpetrator G.P. was first sentenced by the court to 40 years of imprisonment for aggravated murder, two years of imprisonment for the illegal production, possession, carrying, or trafficking of weapons and explosives, and six months of imprisonment for the criminal offense of the unauthorized possession of narcotics. Cumulatively, he was issued a single sentence of imprisonment for the term of 40 years, which included the time spent in detention starting from June 15, 2017.

According to the operative part of the verdict, a pistol with a frame and ammunition was confiscated from the perpetrator, which was to be handed over to the competent police department, and the drugs - psychoactive controlled substances, were to be destroyed according to the final verdict.

Among the mitigating circumstances, the court stated that the perpetrator had not been previously convicted, although the perpetrator himself stated that he had been convicted, which is stated in the operative part of the verdict, but was not confirmed by an excerpt from the Criminal Records. As an aggravating circumstance, the court cited the behavior of the perpetrator after committing crime of aggravated murder.

The injured parties were referred to civil litigation to realize their property claim.

COMMENTARY

In accordance with the filed indictment, the court correctly qualified the criminal offense as the aggravated murder of several persons under Art. 114 para. 1. item. 11 of the CC, which was committed in conjunction with the criminal offense of the illicit production, possession, carrying, or trafficking of weapons and explosives under Art. 348 para. 4. in connection with para. 1 of the CC and the unauthorized possession of narcotics from Art. 246a. para. 1 of the CC. The available data, however, do not allow us to find out more about the previous relationship between the perpetrators and the victims, nor did the court deal with these matters. From the testimony of one of the examined witnesses - the father of the murdered wife of the perpetrator and the husband of the murdered mother-in-law of the perpetrator, it is known that from the beginning of the marriage the relationship between the perpetrator and his wife had been problematic, that the perpetrator had beaten his wife, for which he was convicted, and that all of this had led to the de facto dissolution of the marital union a year before the murder. Thus, this case of femicide also confirms the findings of many research studies that the leaving by a spouse or partner of a perpetrator is a significant risk factor for victims of domestic violence, which the victims are often unaware of.

Also, this case confirms that the possibility of preventive action existed before the committing of the femicide and that the victims, primarily the perpetrator's wife, had reported previous cases of violence. Although the court correctly assessed the punishment of the perpetrator by imposing the sentence for the maximum period of time, the verdict did not reference all of the aggravating circumstances that were present in this case, such as the fact that two murders were committed in the presence of a minor child and the manner of murder. Also, as in other cases reviewed in this study, the court again referred the injured parties to civil litigation for the realization of a property claim, although there is a legal possibility to decide on a property claim within the criminal procedure, especially since the victim in this case is the minor daughter of the injured party and the perpetrator. Therefore, it was quite justified for the court to decide on the property claim in the criminal procedure so that the surviving victim and her extended family would not be exposed to additional trauma and secondary victimization.

Focus group discussions and validation interviews

The analysis of the cases examined the specifics of the approach and penal policy in cases of domestic violence committed with firearms. Upon its completion, semi-structured in-depth interviews were conducted with public prosecutors and representatives of social work centers, while focus group discussions were held with representatives of coordination and cooperation groups in order to hear from the perspective of professionals and gain a greater understanding of the risk of domestic violence, and approaches to it, in cases when the perpetrator has access to/possesses a firearm, including consideration of this factor when developing individual protection and support plans for victims of violence. Representatives of the coordination and cooperation groups were selected as participants in the focus group discussions, having in mind their key function in the system of prevention and protection against violence, which is described in more detail in the section devoted to the legal framework.

The findings of the focus group discussions were divided into four parts according to the respective topics discussed, which related to the consideration of cases of domestic violence in which firearms were used directly, as well as to the legal regulations and practice in the prevention of and protection from domestic violence. Also, topics related to the acquisition, possession, and carrying of weapons were discussed, including situations of both legal and illegal possession on the part of the perpetrator, i.e., the perpetrator has access to a weapon, regardless of whether the weapon or threat of a weapon is used for violence. As stated in the section on the research methodology, following the focus group discussions, in-depth validation interviews were conducted with professionals who have been dealing with this topic for a long time and who thus have in-depth experience; their statements are in italics within the topics covered.

The connection between possession and carrying of firearms and domestic violence

Some of the key issues related to this topic that were selected for discussion in the focus groups and in interviews with professionals, were: the impact of the possession and carrying of firearms on the prevalence of domestic violence; the link between domestic violence and firearms misuse; the impact of fear of the presence/availability of firearms affecting victims and their reporting of violence; as well as the effective protection of the victims from perpetrators of violence and the corresponding misuse of weapons or threats with weapons.

The prevailing opinion amongst focus group participants was that the possession and carrying of firearms can affect domestic violence in those cases when the perpetrator possesses a weapon; that the possession and carrying of firearms implies a higher prevalence of domestic violence, as well as contributes to a sense of power being established in the perpetrator in familial contexts, and thus to the empowerment of perpetrators of domestic violence. One of the focus groups pointed out that there were not many documented cases of domestic violence committed through the direct use of firearms and that almost none of the participants had encountered such a case. However, other focus groups stated that a large number of reported cases of domestic violence, which

were committed by making death threats, were precisely in cases when the perpetrator possessed a weapon, i.e., had access to a weapon.

> *From the cases I have come across, I believe that the connection between firearms possession and domestic violence is great. Namely, if we start from the psychology of the perpetrator himself, the fact that the perpetrator owns a weapon gives him additional security, that is, the weapon gives him even more power. On the other hand, the victim's knowledge that the perpetrator has a weapon in the house puts the victim in an even more subordinate position. The abuser does not even have to threaten, he does not have to use a weapon, it is enough to know that he owns a weapon.*

The victim's knowledge that the perpetrator possesses a weapon, legally or illegally, influences her decision to report the perpetrator because she is afraid of a possible (worse) outcome. One focus group discussed a case of violence committed through firearm misuse in which the victim had not reported this situation and which ended in murder, illustrative of the great fear victims have of reporting a perpetrator who has a weapon. Threats with weapons or the misuse of weapons are relatively common, but some participants believed that the mere fact that someone possesses a firearm does not necessarily affect the prevalence of actual violence.

> *If we are talking about the criminal act of domestic violence itself, one of the ways of committing it is the threat of the use of a firearm to attack the life and body of that person. Whether it is domestic violence or someone qualifies it as a threat to safety, the victim feels degraded due to the knowledge of the existence of weapons and is thus influenced to make decisions against her will.*

The perpetrator's mere possession of a weapon represents additional pressure on the victim, regardless of whether that weapon has been used to commit violence, as well as a kind of intimidation of the victim. Men who are licensed to hold/carry a weapon therefore feel a greater sense of power and opportunity to threaten with that weapon. Numerous situations have been observed in which victims have not reported violence precisely because of the threat of the perpetrator to kill them if they were to do so. All the while the victims were aware that the perpetrator possessed a firearm, which further exacerbated the seriousness of this threat and the concrete possibility of this threat being realized.

> *In principle, the perpetrator does not even need to take out the weapon he has in a drawer or closet and show it, because the victim's knowledge that the perpetrator has a weapon is a fact sufficient to cause fear. Sometimes the abuser may only have to verbally state: "I will kill you!," and it is enough to cause great fear because the victim knows that he has the means to do so.*

> *This is a specific psychological phenomenon that most greatly influences the victim to not report violence, because in fact "nothing happened," and there is no grounded suspicion that it will happen.*

> *The greater the pressure, the greater the fear. That is a fact.*

If the victim knows that the partner has a weapon, it represents a sustained state of fear for her because she does not know when he might use it. If victims were sure that institutions would protect them, they would report violence more often.

The focus group participants were in agreement that the link between firearms misuse and domestic violence should be the focus of public and professional interest.

Weapons are not talked about much in professional circles or in the public. It becomes talked about only when a tragedy occurs. And then the story is sensationalistic, in a very inadequate way.

It was stated that the general public should be more made more aware about the connection between domestic violence and possession of weapons, considering that the public does not recognize this connection to any significant degree. It was pointed out that the possession of weapons in Serbia, especially hunting weapons, has been normalized, which leads to non-recognition of the possible misuse of weapons. In addition, there are many cases where such legally held weapons have been misused, much more often than those in illegal possession. In general, only when a victim of violence points out that the perpetrator illegally possesses a weapon does it become the focus of interest of professionals, and then such a weapon is found and confiscated. However, it is important that this issue gain more attention and become more prioritized amongst professionals; that the knowledge of possible misuse should motivate them to check if there is a possible weapon in illegal possession, even when the victim has not pointed it out.

One of the focus groups emphasized the need for more frequent control, primarily through greater engagement of police officers, of both weapons that are legally authorized to citizens and illegal weapons. All that has followed us for years, the battlefields and all those related events that comprise our recent historical and social backdrop has almost certainly led to a great deal of weapons in the hands of citizens that are not recorded. It is necessary that such weapons be found and recorded through campaigns, in order to ascertain who exactly is in possession of these weapons. Checks and assessments are certainly made regarding requirements for the acquisition and possession of weapons, but special emphasis must be placed on the psychological stability of the persons who procure and keep them.

Opinions and information were sought on the practice and protocols of professionals and competent authorities, acting upon reports for any criminal offense, including domestic violence, in their checking on whether a perpetrator possesses a weapon. When it comes to the legal possession of weapons, this fact is checked through police databases, so that most participants believed that there are no problems. If the report states that the crime was committed with the misuse of weapons, checks on illegal possession of weapons are performed according to the Criminal Procedure Code, i.e., by issuing orders for the search of apartments and other premises and receiving notifications from citizens, mostly housemates, and any such items are taken away. All weapons are confiscated from all family members in these cases, at all pertinent addresses, and all family members are checked.

The police are obliged to confiscate weapons immediately during each report of domestic violence. In one such case, a hunting rifle was confiscated, but when checking the perpetrator through the system, it was seen that he also had a gun in legal possession, but he did not want to say where the gun was. The police immediately conducted a complete search of the house which the man owned on the territory of the municipality in which he was living, but also in another city, with the police in that city informed. His vehicle was also searched, but the gun was not found. The man was immediately detained, preventively, because it was determined that he had been drinking and threatening, so the fact that he did not want to say where his weapon was was treated by the police as a risk. After a couple of conversations followimg his being detained, he said where the gun was and the gun was found. However, it was seen that there were indeed risks, but the woman was able to report him for the first time.

It seems to me that our main source of information is the victim herself, and only after this, the police/officials who are the first to be on the spot. We sometimes have a tendency to devalue the victim's subjective feeling.

It happens that in the reports of police officers you already have data on whether the perpetrator has a weapon in legal possession, this is something that is always checked.

The legal possession of weapons is not in dispute. But the question of illegal weapons does not always arise - and it could and should. It would be useful, for example, for the victim to join the meeting of the coordination and cooperation group via the online application and to ask directly for all the information that we see that we are missing - it could be known to her.

The prosecutor will certainly initiate a search, ex officio, because as soon as the victim says that she thinks that the perpetrator has a weapon, a search is ordered and it is almost a standard procedure for all prosecutors. But somehow the story ends there; if no weapon is found, it is no longer sought. For example, the perpetrator had moved it somewhere and the police did not find it. If, e.g., the victim comes in a month and says that he now has the knowledge that the weapon has been moved to another place, if the prosecutor does not listen and does not trust the victim, there could be a problem, such as "and last time you said he had it, but we didn't find it," so "are you really sure he has a weapon, maybe you imagined it," etc. In this case, only some prosecutors will order a search again, while others will think that the victim is exaggerating things. It is in these "gaps" in trust that femicide can occur.

One of the focus groups stated that information on the possession of weapons is most often obtained during the actions of the center for social work, in cases when violence has not been reported, but in which counseling work is being performed due to disturbed family relations. In these cases, victims often "talk" about the violence, as well as that they have not reported the violence before, among other things, due to the knowledge that the perpetrator has a weapon. Also, some participants cited examples in which the

possession of a weapon influenced the victim not to testify in criminal proceedings or to wish that the perpetrator not find out that she had reported the violence.

> *We had the following situation here in October. The situation arose suddenly, seemingly out of nothing, he was a good neighbor, that's how everyone described him. One evening he waited for the woman to leave work after the shift was over, with the help of the illegal weapon he had with him he forced her and her male colleague to sit with him in the car, drove them, and then started attacking them, suggesting the two of them were in a relationship, and fired a bullet at both her head and his head. He had an illegal gun with him, which no one knew was in his possession, but she knew about it, I learned that from a later conversation with her. She knew, but out of fear she had not dared to tell anyone that he had an illegal weapon.*

It is common for the victim to report violence with the threat of a weapon after a certain time, and not at the moment when she experienced violence. In these situations, a problem may arise because at the time of such a (late) report, the suspect no longer has a weapon in the house, e.g., because he hid it somewhere. In any case, if the victim reports that the perpetrator has a weapon in illegal possession, the weapon will be confiscated during the search of the apartment. However, in practice, the opposite of what was described above will happen; that for victims who have not previously reported suffering physical and psychological violence, when they do find out that there are weapons in the house or experience the threat of the misuse of firearms, they then may more frequently decide to report the violence. Knowing that there are weapons in the house, for a certain group of victims, can be a kind of line they draw and from which they decide to report violence. The police act according to internal instructions when it comes to weapons, both in legal and illegal possession. The police are allowed to confiscate such weapons as a precaution, and after that it is determined whether there are elements of the crime of domestic violence. Also, some participants indicated that there are women who do not expect their husbands/partners to shoot them, they "may expect to be slapped or physically abused in various ways, but while living together, some women have no fear of being abused in the form of being shot at." The fear of the abuse of firearms increases significantly when the victimized partner has already separated (divorce, breakup) from the victim; when she has left him, but she knows that he cannot stand the separation and that he is "ready to commit great evil." Then there is an increased fear and risk that he might misuse the weapon, that he might intercept and kill her somewhere, and it is at this moment that some women report that the ex-husband/partner possesses the weapon in illegal possession.

> *The brain of a victim of violence functions differently because she is under trauma. When a victim reports violence, very few professionals will ask the victim if they have any knowledge that the perpetrator has a weapon in their possession illegally. If the victim is not directly threatened with a weapon, for example, with a gun to the forehead, but the perpetrator has said: "Do you know what I have, do you know what I could use?," it is quite certain that the victim, in reporting the case as survivor of violence, might forget to mention the fact that the perpetrator*

has a weapon that he keeps somewhere, because she is overcome by her trauma. That is why it is important that the professional who examines the victim for the first time uses the list of risks and specifically, in each case, asks the question related to the existence of weapons in illegal possession, i.e., whether a weapon is available to him, whether because of the nature of his work, or whether his primary family members have it - because such questions could remind and trigger the victim to talk about it, even if she had forgotten to mention it at the moment (of reporting) out of fear and agitation. The Law on the Prevention of Domestic Violence implies that a risk assessment is mandatory, but this measure may need to specify that it is necessary to list all the issues and risks that the victim should be asked about.

Most focus group participants indicated believing that the actions of state authorities are identical in all cases of reported domestic violence, and that is also holds true in cases in which the victim reports violence but does not report that the violence was committed with a weapon - in the sense that he has threatened her or hit her with a gun - as well as in cases when the victim has reported that the violence was committed with a weapon or the threat of misusing a weapon. The opinions expressed were generally that the list of risks is accurate enough and that there is no need to change it, even when it comes to the possession of illegal weapons, because these checks are certainly performed.

The first thing when responding to and reporting violence or when there is a suspicion of violence is for the police to officially check whether the perpetrator is in possession of legal weapons. The specific person as well as all family members are checked, and the weapon is confiscated from any persons who are in the same household, because as a rule, that weapon is available to everyone, and rarely does anyone keep it locked away. Another thing is that regardless of the existing records, the victim is always asked whether the perpetrator is in possession of a weapon or if one is available to him, regardless of whether it is legal or not.

In addition, it was positively assessed that in the risk assessment form used by the police there is an item related to the possession of weapons, as they are "on the front line".

Weapons are confiscated immediately as soon as police officers arrive on the scene, both from the perpetrator and from other family members living in the same household. It is also important to inform the employer, in case the violence is transferred from the family to the workplace or if the perpetrator has a weapon based on his occupation.

Some participants expressed the belief that checking for the possession of weapons would be useful in situations where no criminal charges have been filed for violence, but where it is determined that there is a risk of imminent danger of domestic violence, given that possession of weapons or access to weapons always represents a risk. This

type of inspection should be conducted for and extended to all criminal offenses with elements of violence, not only domestic violence but also, for example, violent behavior, abuse, torture, and the like, as well as regarding violations with elements of violence, as sometimes these phenomena are indicative of the very structure of the personality and can draw attention to the person having a "short fuse" and as such could potentially use a weapon.

It was emphasized that it is the instructional obligation of the Republic Public Prosecutor, which applies to all prosecutor's offices, to propose the detainment of a perpetrator who has committed the crime by misusing a firearm. If the firearm was not used directly in committing the criminal offense, checks are also to be made as to whether the perpetrator has a weapon in illegal possession, and the weapon is then to be confiscated according to the rules of administrative procedure. It is interesting that all the participants in one focus group agreed that there is no legal act (law, bylaw) that prescribes the obligation of the competent authorities to check for the possession of weapons in cases of domestic violence, which leads to the conclusion that this possibility, to decide on the basis of a free assessment of whether to perform this check or not, falls on the individual, relevant professionals themselves. However, the participants still believed that the practice in this area is sufficiently developed, so that checks are always performed.

The coordination and cooperation of different sectors

The joint action of different sectors is the essence of comprehensive prevention of and protection against violence. Focus groups and interviews discussed (dis)satisfaction with the work of coordination and cooperation groups; in assessing the efficiency and effectiveness of cooperation between different sectors, especially in the context of firearms possession/access; regarding the possible need for additional formalization of cooperation; and in considering the manner of communication and exchange of data between the court, the prosecution, and the police regarding the possession of firearms and acts of violence.

Focus group participants mostly indicated the belief that cooperation between different sectors has improved in recent years through the establishment of coordination and cooperation groups. Some asserted that there is always room for improvement and that there should be better cooperation between state bodies in order to more effectively protect and empower victims, but also to take measures to encourage the reporting of violence and to examine circumstances that increase fear in victims. Regarding co-operation in relation to violence in which weapons are misused and/or whose misuse is threatened, although there are no specific regulations or protocols to this effect, the participants generally considered the practice to be good.

> *I think that the Law on the Prevention of Domestic Violence has pushed the boundaries, because it has "forced" people to cooperate. This did not happen before this law.*

The initiation of the group's work begins as soon as the report from the competent police officer arrives. The legal deadline is 15 days to hold a group meeting, of course, it can be earlier but it should not be later. It is very important that the members of the group are prepared and have all the available information. There is no point in gathering if not all of the relevant information has been gathered. In practice, it happens that members come unprepared. Then it is not possible to validly assess the situation and plan, but you have to wait for the next meeting for them to obtain valid information, so preparation for the meeting is the key thing. Representatives of the institutions must have all the data from the records kept by the body they represent, in order to be able to answer all the necessary questions concerning the risk assessment.

It seems to me that not all the sub-systems (prosecutor's office, police, center for social work) have all the protocols; it is only when we have good practice and cooperation that we can have good results. People work under the Law on the Prevention of Domestic Violence without even knowing what the law looks like. According to all our protocols, there are indicators of what is high risk, what is low, and what is medium risk.

Cooperation regarding weapons stems from the essence and goals of the coordination and cooperation groups. It does not matter from whom the information on the possession of weapons was obtained, the procedure is always the same, with only some participants stating that there was good cooperation with women's organizations. In three focus groups, it was pointed out that there are no regular official channels of communication and exchange of data regarding the possession of firearms and violence, but that such data can be provided by the police at the oral request of the prosecutor. However, one of the focus groups stated that regular channels of communication exist, that information on the legal possession of weapons is obtained as a function of duty, and that a risk assessment determines whether a person has a weapon, so that a channel of communication exists, either in written or oral form. The police officer who acts upon the report of domestic violence also has this information during the initial check of the persons who are participants in the reported event. All available information is provided to the prosecutor's office, and later to the court upon request. Thus, there is no single form of data exchange between the court, the prosecutor's office, and the police in the sense that it there is a strict form that they fill in with each other, but there is an exchange of information.

I think it is great that there are groups for coordination and cooperation, as well as for just connecting different institutions. It's a great idea and it worked great in the beginning. But I see two problems here now. The first problem is that there are very few people in all these institutions, and there is a large number of cases. Every time, 15-20 cases are discussed in the group, nothing can be done with quality, everything becomes routine. It is necessary to hire more people, because there is fatigue in those who are working, then the right decisions are not made, cases are considered superficially. Another problem is that not everyone in the coordination groups is sufficiently sensitized, there are also people with attitudes

that are full of prejudices. It is necessary to sensitize experts, but that is a problem in our society and I do not know how we will be able to change that in our society. Multisectoral education is also desirable; joint education should be done to avoid one-sidedness. We have to empathize with and understand the victim. And we have to be non-violent in our daily life as well.

Regular channels of communication between the prosecutor's office and the police take place through daily consultations during on-call hours, and certainly during the work of the coordination and cooperation group. On the other hand, the court and the prosecution communicate in accordance with the rules of criminal procedure. Communication has been improved in some environments by using online applications to hold group coordination and collaboration meetings.

If during the meeting the members of the group for coordination and cooperation see that they do not have, for example, the answer to the question about the existence of illegal weapons, it can always be agreed that one of them asks the victim, if it was missed during the first interrogation. The law should include a provision stipulating in which cases the use of the list of risks is mandatory, under the threat of misdemeanor punishment (professionals who do not use the list), when higher instances do not give mandatory instructions in this regard.

If we look at it formally, groups are formed everywhere and mostly meet in accordance with the law, that is, twice a month. However, practically, only two-thirds of the coordination and cooperation groups do so, out of a total of 87 groups. Within those two thirds, one third is not at all interested in what they do, and I have even heard that these groups are chaired by associates, not deputies as required by law, to cooperate with the police only formally, to have it documented that they were when were not there. Relatedly, another third would like to do something, but they are not sure how, while one third really tries to work, although it also depends on the resources, i.e., the available services in the given area. Not all environments have the capacity to provide just about all services, and some have almost no services at all. There are 24 districts in Serbia, of which as many as eight districts do not have a single safe house or a non-governmental organization that provides services. When we talk about the work of the group, it implies the development of an individual plan of protection and support; what should these people foresee for victim support measures, when this is the situation? For example, we might order detention as a help measure, and here the prosecutors will somehow manage it. But what can the support system do when you don't have empowerment mechanisms for psychosocial treatments, workshops… you have nothing to offer. Then everything is referred to the center for social work, and it can only provide support for 15 minutes, one day, if there is time.

In the last year, due to the Coronavirus situation, the meetings of the coordination and cooperation groups have been irregular. I can call the prosecutor at any time of the day or night, and I know that we will immediately try to find a solution to the problem, that he will give me advice or instructions on how to proceed.

Agreements and exchange of information are very important for good cooperation and success. Of course, any notification should be made in writing. This cooperation means a lot to us.

Opinions and findings of focus group participants regarding the existence of guidelines/instructions for the police during intervention in the case of domestic violence when firearms are misused differed according to the sectors in which the participants were engaged. According to the participants who are not police officers, there is no single protocol on the conduct of the police, but in some police administrations there is a special protocol on the handling of weapons, which applies to all crimes with elements of violence, and thus domestic violence. However, these are individual protocols adopted only by some police administrations. On the other hand, police officers state that there are detailed guidelines and instructions, from receiving a report of domestic violence to the procedure itself during an intervention. In addition, there is a handbook for police officers, which is of a more general nature, but in part covers dealing with firearms. However, according to some participants, the handling of weapons has become standard routine with the police and has become further crystallized through practice, especially since the adoption of the LPDV. Namely, an item for checking on the status of weapons is now included in the list of risks, i.e., whether it is a legal weapon or a person simply has access to weapons, and there are directives of the Police Administration for uniformed police officers and criminal police officers who continue to deal with such persons on how to act in such cases and in which cases to act. It was stated that all checks are carried out urgently whenever there is an indication that a person possesses a weapon in any way. First of all, it is checked whether there are weapons in legal possession, and then, through conversations with the victim, witnesses of the event, the neighbors, and others, they find out about any indications of the possession of illegal weapons, after which the already mentioned measures and actions are taken (search of vehicles, apartments, other premises, etc.).

If the criminal offense was committed with the misuse of firearms, the weapon is temporarily confiscated, but neither the court nor the prosecutor's office are informed about the outcome of the administrative procedure. Opinions were that the judiciary has no information if a weapon has been returned or permanently confiscated. It was considered that it would be useful for the coordination and cooperation group to receive such information, especially in cases of violence presented repeatedly to the group as ongoing cases that are considered over several months, i.e., while monitoring the case in the group. It was also stated that only police officers who work in these precise fields have access to databases on the possession of weapons, so it is impossible for other police officers, even those who act on reports of violence, to immediately find out that information. The participants asserted that it is necessary to provide access to records and other bodies in order to enable more expedient and adequately efforts.

There is no single way to exchange data in terms of access to the same databases, but information is exchanged at group meetings, official correspondence, or in personal contact. A single database would make our operation and work much

easier. We don't have a program for the basic public prosecutor's office either, we instead still "run everything on foot."

One of the topics discussed was the confiscation of weapons at various stages of the proceedings - from the reporting of violence to the conclusion of criminal proceedings. Focus group participants pointed out that if a criminal report for domestic violence has been filed, then the weapon would have already been confiscated, but if during the proceedings the prosecutor learns that the suspect is threatening the victim with a firearm and that there is a danger of retaliation, he will inform the police and they will then confiscate the weapon. Such behavior of the defendant represents a new criminal offense, so a new criminal report is filed, and the defendant could be ordered into custody due to the special circumstances that indicate that he could repeat the crime if he were released. Also, if during the criminal proceedings for domestic violence it happens that the perpetrator, e.g., one who serves as a security guard or in another occupation that provides access to weapons, and has started threatening the victim with weapons, or the victim has knowledge that he has acquired illegal weapons, this information can be immediately verified by the public prosecutor's request to provide the necessary information, or, even faster, can be checked by phone, through a competent police officer, to establish this fact and possibly initiate a search of the apartment and the confiscation of any such weapons. Then the already existing criminal procedure would be extended to encompass this new act of domestic violence if there has been a threat of using such weapons - yet even if there has been no such threat, the weapon could be confiscated. In addition, in cases of subsequently acquired weapons in illegal possession (subsequent to the proceedings being initiated), then further criminal proceedings would be conducted for the criminal offense of the unauthorized acquisition, possession, carrying, or trafficking of firearms, ammunition, or explosives.

If the defendant is in the process of obtaining a permit to hold or carry a weapon during the criminal proceedings for domestic violence then this procedure will be suspended until the end of the criminal proceedings, if this information is available to police officers. There is, however, a potentially worrisome "gap" here. A police officer who acts in cases of domestic violence, does not have the opportunity to check through the records as to whether the procedure for obtaining a permit to carry or hold a weapon is ongoing, because these police departments represent completely separate services – the Criminal Service and Administrative Service. Despite this "gap," a police officer dealing with cases of domestic violence is to physically check this information whenever he receives it, because it will be treated as a "new report." However, the question remains as to whether the Service for Administrative Affairs actually has the information that a person who has been indicted and is being prosecuted for violence against a victim has in the meantime begun the process of obtaining a weapons permit. This is why it would be important for these police records to be synchronized.

Interestingly, most participants from the other sectors did not appear to know what happens to firearms in the event of a dismissal of a criminal complaint, acquittal, or in the case of a public prosecutor's withdrawal from the charge, but assumed that checks

would be potentially made again for the issuing of firearms licenses and that the weapon would be returned because no basis for permanent confiscation of the weapon would then have been established. However, they believe that in such cases, it would be justified to conduct additional medical examinations in terms of the mental health of the applicant, primarily examinations related to the applicant's mental functioning, socialization, and the like. One of the focus groups pointed out that in these cases the procedures for the return of weapons and security checks are far more rigorous than in cases where no reports have been filed. The temporarily confiscated weapons would be permanently confiscated in the event of a conviction, and they believed that the weapons would not be returned in the above-mentioned cases either. It was also pointed out that prosecutors have a duty to inform the police about the outcome of the criminal procedure, and the police make the final decision in the administrative procedure, about which, conversely, they do not inform the prosecution.

The prevalence of the misuse of firearms by police officers and other persons carrying firearms at work, in the context of domestic violence, is a topic that divided the opinions of the participants. Namely, in three focus groups, the participants pointed out that in practice they rarely encounter the committing of the crime of domestic violence by persons authorized to carry weapons as part of their work (police, army, security). In contrast, most participants in one focus group had the completely opposite opinion, i.e., they thought that this phenomenon is more common than generally thought.

> *They are full of themselves, but they protect each other and do not take weapons away so easily. They protect themselves; they do not want to "betray their service" if someone uses a service weapon.*

Although most focus group participants stated that there are not many cases of domestic violence in which a person has access to weapons due to their work, they indicated that in these cases, when the perpetrator is a police officer or a member of the military, there is always a threat of weapons during domestic violence. It was especially emphasized that in these situations the victim is afraid to report violence precisely because of the nature of the perpetrator's occupation, i.e., due to the fact that he is a member of the army or police, and that the victim is convinced that the competent state authorities will be biased because they are his colleagues, and that these perpetrators are in a more privileged position. If, however, violence is reported, there is no difference in the treatment of these cases compared to other cases and the weapon is also confiscated, so that the perpetrator cannot use it at work.

> *The very fact that weapons are available to them leads us to think that they are probably more likely to threaten to misuse weapons. My impression is that it is perhaps more verbal, in the sense that there is no need to show the weapon and threaten with it when the victim already knows that he has it.*

Most of them consider weapons as a demonstration of power. People who have a weapon ex officio may in principle be more inclined to use a weapon than others, but perhaps that is my prejudice.

An example of a married couple who were police officers was pointed out, their case ended with the work of a group for coordination and cooperation, where the assessment of all participants was that there was no risk because it was a simple family quarrel, and it was estimated that there was no risk a gun being misused. As another example, a case of a police officer and his family member were cited; there were no criminal charges, only the efforts of a coordination and cooperation group, and the case ended with an official note.

I do not see a big difference in the behavior of professional security officers and other people for whom this is not their primary occupation. There is always a search, weapons are confiscated. We have not had cases where police or military officers misused firearms when committing acts of domestic violence. We have police officers who committed domestic violence, but they did not commit this act with the threat or misuse of firearms. We have a different case, we have a victim who was a police officer and who shot herself in the stomach because of the violence she suffered in the family. The weapon was available to her and she tried to harm herself with it, the weapon was taken away from her. The weapon was within reach of her partner, who was not a police officer, but he did not use it. My impression is that when violence occurs with the misuse of firearms, the perpetrator kills the victim. Professionals (police, soldiers) mostly face constant psychological violence.

We had a case of domestic psychological violence in which the son of a police officer lived in the same house as the officer with his wife and children and mother, here the violence was against the mother. His weapon was confiscated even though his service was related to carrying a weapon. He is still on duty, but he is an unarmed police officer. These are people who love guns, for whom it is normal for guns to be there next to them. This applies to members of the army and police. It is also easy for them to get weapons because they move in such circles.

On the other hand, in one focus group, participants pointed to a large number of reported cases of domestic violence committed by members of the military or police, as well as by other persons who have access to weapons in the course of their work. An in-depth discussion on this topic was conducted in this focus group because the participants pointed out that the qualification of the perpetrator, i.e., the fact that he has a service weapon, imparts additional weight and seriousness in the context of domestic violence. There were also some examples in which different actions of the competent authorities had been noticed, especially when the perpetrators of domestic violence were members of the police or the army, based on which it was concluded that these perpetrators have a privileged position compared to others because there are situations where ser-

vice weapons are not confiscated, despite their cases being more serious forms of the crime of domestic violence. However, participants considered that these were individual failings, and not indicative of this being a regular practice. They also pointed out that there is no uniform practice in the actions of the competent authorities; in some cases, the military police had confiscated the weapons; in some cases, the perpetrators had been reassigned to another job that did not involve carrying a service weapon; in some cases their access to weapons had been restricted so that they could use them only at work and not outside work, while in a small number of cases the procedure had been the same as in cases where the perpetrator was a person who was not a member of the army and police.

> *Whether it is an official who has a weapon or not, it is always confiscated. These are most often military personnel or sometimes police officers. Weapons are very reluctantly confiscated from a colleague, but it is an official obligation, their task is to intervene. It is an excellent strategic duty of the police.*

> *The police are especially afraid to use their service weapons, because there is a fear of losing their jobs - although I think it also depends on the part of the country we are talking about; the system does not protect such perpetrators as it once may have done.*

> *I think police officers are more brutal perpetrators, but they don't use weapons because they think of themselves. They know that if they threaten with weapons, their service weapons will be confiscated. They protect themselves, not the victim.*

> *Our experience is that they generally do not draw weapons, but it is most often the threat of the type: "You know that I have a weapon." So far, in practice, we have not had a weapon drawn by such persons. I think it's the perpetrator's fear of losing his job if he commits abuse with his weapon.*

When it comes to the weapon to which the perpetrator of violence has access in connection with work, it all depends on the organization in which the person works. When a reported person is a member of the army or police, there are special protocols. The immediate superior of the person who has been reported for domestic violence is notified, and the head of the body in which the reported person works conducts further proceedings regarding the confiscation of service weapons. Weapons are certainly temporarily confiscated until the end of the disciplinary procedure in that body and during the criminal procedure. In the case of a security guard, the responsible position at the employer is notified and the weapon in question is also temporarily confiscated until a decision is made on the submitted report for domestic violence. However, there is no special protocol between the police and legal entities on the handling of weapons available to a person in a private legal entity and everything is carried out on a voluntary basis. In practice, there have been no problems in this regard; the responsible persons at such private businesses have cooperated and it has not happened that the responsible

person did not act on the verbal "order" of the police. In the police dispatches related to domestic violence, there is a note related to weapons, but it is not so precise, especially not when it comes to weapons that are available to the reported person in connection with the work he performs in a private legal entity.

Assessing risk and reducing risk

Some of the key issues related to this topic that were discussed in focus groups and in the interviews with experienced professionals were: the adequacy of the assessment of the risk of violence in cases when the perpetrator has a firearm in legal/illegal possession or when he/she has access to a weapon; the impact of this knowledge on the risk assessment itself; attitudes towards the introduction of measures, such as monitoring the conduct of persons licensed to hold and/or carry weapons; and the adequacy of certain legal solutions in this context.

Most participants expressed the belief that the coordination and cooperation groups assess the risk of violence well in cases where the perpetrator has a firearm in legal/illegal possession or when he/she has access to a weapon, especially since the possession of a weapon is explicitly listed in the risk list. They asserted that domestic violence or the risk of violence create an obligation to check whether the perpetrator possesses a weapon, and that it should be confiscated if so, because the possession of the weapon itself certainly represents a security risk. The representative of the Center for Social Work especially pointed out that the workers of the center have the obligation to report if one of the family members owns a weapon if family relations have been reported as disturbed. However, one of the problems cited was the non-reporting of violence, i.e., the insufficient trust of victims in the work of the relevant state bodies.

> *I think that victims have never had much trust in the system, and in the last few years it seems to me that they have even completely lost faith in the system. They almost don't trust anyone. However, if it happens that the victim, while going through the hell of violence, has "run into" a good police officer/employee of the center for social work / prosecutor / judge, the victim may open up. If that doesn't happen, she will strengthen her distrust of the system. The fact that violence has been reported does not necessarily mean that institutions have managed to stop the violence, and it often means that the violence has become even greater. If the institutions do not take measures in relation to the registered person, e.g., the perpetrator is removed, detained, or taken into custody, i.e., if direct measures of restraint are not applied to him, he will be even worse. The system is very benevolent towards perpetrators, calls for the presumption of innocence, does not trust the victims, believes that they led to the violent event, is full of prejudices and stereotypes, and while waiting for anything to be proven, as it lasts indefinitely, a woman might be killed.*

Participants expressed an almost unanimous view on the need for more efficient and effective control/supervision over the behavior of persons licensed to hold and carry weapons. They pointed to the provisions of Art. 12 of the Law on Weapons and Ammu-

nition, which stipulates that control through a medical examination is performed every five years, but the majority considered this term too long. Some participants indicated that one year is an appropriate period for the justification of a firearms license to be reviewed. In addition, they stated that a simple standard medical examination is not enough, but a particularly thorough examination of mental health should be carried out, and they supported such an attitude with practical experiences. Therefore, the majority believed that the for holding weapons conditions should be made stricter and that more detailed checks on the suitability of persons for holding weapons should be conducted through more detailed and in-depth medical examinations and psychological examinations. In addition, the history of such applicants should be examined in more detail for aggressive or violent behavior, especially of those holders of licenses to possess hunting weapons, because almost anyone can be issued a license just by paying a membership fee to a hunting/sport association.

> *To me it would be great, but I don't know if it is possible to achieve it in our society, if some more sensitive criteria could be introduced - for example, when extending a weapon permit, everyone should be checked to see if they have had violent incidents. This can only make it more difficult for a perpetrator of violence to access legal weapons.*

The participants expressed the opinion that (periodic) supervision of a person who has been issued a license to hold a weapon should be implemented and that regular and frequent control of that person should be performed: examination that is more detailed than a standard medical examination, which would include the detailed examination of the mental health and psychological state of a person licensed to hold or carry a weapon. Some participants professed that the police do a good job of checking the applicant for a license, because the data is collected by the police officer in charge of the area where the applicant lives, and thus knows well the circumstances and people in "their area."

> *There have been two murders with firearms in my city during my working life, 10 years apart. For neither of these two acts was prior violence recorded in any system, whether because the victims were restrained from doing so or could not report or for some other reason, we do not know. The fact is that they were not anywhere in the system. When it comes to the first family, that is, the case that happened 10 years ago, it was done after a divorce, during which no violence was recorded, and an agreement was reached very quickly. It is obvious that some expectations remained unfulfilled because when the woman became independent after the divorce, the perpetrator killed both her and himself. The other family was on the records of the center, but for some reason, the violence had once again not been documented.*

Most participants agreed that it is important that family members with whom a person lives in a joint household be informed about anyone in the household applying for and obtaining a permit to hold or carry a weapon, as well as about the returning of any weap-

ons, because family members should absolutely be knowledgeable of and in agreement about any weapons in their home environment. This indicates that the practice of not only informing family members, but also of obligatory conversation with them, in the context of their opinions regarding such a matter, should be introduced.

> *I think it is important that all members of the family household, even the extended family, whether they live together or not, should know that one of the family members has acquired a weapon. I believe that the moment a request for a firearms license is submitted, the whole immediate family should be informed about it, especially family members living under the same roof. No one can say better than a family member what a person is like, not even a psychologist. In many of the most heinous femicides that have taken place, members of the immediate family, as well as the extended family, were killed (for example, in addition to the primary woman target, the perpetrator kills the father-in-law, mother-in-law, even his own mother if she protected the woman). That is why it is important that this circle of people be informed and asked about the procurement of weapons.*

> *If there is any information whatsoever from people living in a joint household that there is a danger of the misuse of weapons, the police should go to it and search. Everyone should be informed if a weapon is found, but my assumption is that family members already know that the perpetrator has a weapon. These victims are always suggested to report any situation that could be dangerous in terms of the use of firearms.*

> *If something is suspicious to me when I am out on duty, on the scene, I call a colleague immediately and get a check and information by phone. Certainly, family members feel calmer and safer if they know that the police or the prosecution have found the weapon and confiscated it. This sends the message that it was done by the system, not by the wife or family member. The perpetrator is clearly presented with the procedure – with a clear message that establishes that it is the family who has suffered, but that it is the system that takes the actions to prevent violence.*

Information on the presence of weapons is important to all family members and does not constitute a violation of the right to privacy, but an important factor that affects the lives of all other family members. When conducting security checks, family members are also checked, so some participants in the focus groups believed that family members are directly or indirectly informed that their family member has intended/applied to acquire a weapon.

> *It would be good to have a conversation with family members before issuing a permit to possess a weapon, because they know best how someone behaves. We all know that one model of behavior is usually present in the house, while on the street, at work, and in other public places it can be completely different*.

In two of the focus groups, the deputy public prosecutors agreed that instituting the postponement of criminal prosecution should never be applied to the criminal offenses under Art. 4. para 1 of the LPDV, i.e., they state that there is such a defined obligation of the Republic Public Prosecutor, regardless of whether a weapon was misused or not. Therefore, regardless of the fact that formally the option of postponing criminal proceedings could be applied, depending on the amount of the threatened punishment (up to five years), it does not apply to these criminal acts. Also, it is stated that the instituting of the postponement of criminal prosecution is never applied to the criminal offense from Art. 348. of the CC (unauthorized possession of weapons). On the other hand, in one focus group there was no unified position on the possibility of applying the postponement of criminal prosecution. One group of participants believed that it is desirable to institute the postponement of criminal prosecution in some forms of domestic violence. They would delay prosecution for minor forms of violence, especially in cases where the victim wants to continue living together with the perpetrator. They would then refer them to psychosocial treatment and other such similar interventions until, as they stated, they yielded positive results. In situations where weapons have been misused directly in committing domestic violence, as a rule, the postponement of criminal prosecution would not apply. The second group of participants pointed out that the postponement of criminal prosecution is prohibited in most criminal offenses under Art. 4. of the LPDV. For example, the application of this institute is excluded in the criminal offense of domestic violence, while in other criminal offenses it is applied more restrictively. Also, one focus group stated that if the criminal prosecution is postponed, the police are to confiscate the weapon from the reported person in the administrative procedure. Even if the prosecution rejects the criminal report, the police can still confiscate the weapon, which is done at the discretion of the police and is the result of its assessment. The weapon can be returned, but only after a detailed check has been done. Based on their own assessment, the police can confiscate weapons and are not bound by the decision of the prosecution; they have operational records for persons against whom criminal charges have been filed and criminal records. The fact that a criminal complaint has been filed against a person can be considered an “aggravating” circumstance, i.e., a circumstance that will affect the decision on this party obtaining a weapons permit, as well as the decision to return a weapon to the respective party. Participants in this focus group stated that the use of such procedures and measures is assessed on a case-by-case basis, but that there have been no such situations involving weapons thus far.

Regulations related to domestic violence and abuse of weapons

Some of the key issues related to this topic were: the adequacy of regulations on the acquisition and possession of weapons and regulations in related to domestic violence; the connection between regulations in these two areas; and the need for possible changes to existing regulations.

Some participants stated that they were not sufficiently familiar with the legislation and procedures related to the acquisition and possession of weapons, but based on their

knowledge they believed that the legislation is sound because numerous checks are performed to determine whether the applicant has been convicted or reported for a criminal offense, in addition to other security checks of the applicant. It was expressed that the police check the suitability of a person thoroughly before issuing weapons permits and have the discretion to decide on the request if other participants who are not police officers are not sufficiently familiar with the procedures followed by the police to decide on the request. In addition, the participants positively assessed the procedure of the re-registration of weapons, given that the suitability of such persons for possessing of weapons was additionally examined.

Focus group participants generally expressed that the regulations related to domestic violence are sound and adequate and that all relevant matter is covered, and they pointed out that it is beneficial that there is a possibility of forming subgroups for coordination and cooperation in prosecutor's offices in municipalities. This enables better monitoring of families in question and enhanced knowledge of their dynamics down to the smallest details, and thus greater access to information regarding the possible possession of illegal weapons. At one of the focus groups, it was pointed out that since the beginning of the application of the LPDV, there had been only two cases of domestic violence with the misuse of firearms, and in both cases it was a "starter gun" i.e., there was a threat of the gun being used.

> *The law on prevention of domestic violence is good in my opinion, it is better to have it, because when I remember earlier times - how we had a lot of difficulties and how we were often just groping in the dark, waiting, now it is incomparably better. We used to waste time, just making no progress.*

> *In general, I really think that by acting according to the Law on the Prevention of Domestic Violence, we have been able put out a lot of fires when it was very risky. Passions are often agitated on both sides, so this action of the state has generally prevented more serious consequences. Nevertheless, I believe that while the injured party may have been rescued from the immediate situation to a great extent, the law does not offer more permanent solutions. And when the procedures are over, the injured parties are always left alone. I think that they should be supported even after that.*

> *There has been inconsistency since the Law on the Prevention of Domestic Violence was passed; there have been questions about what violence is and what constitutes "normal" behavior. There have been different thoughts and prejudices from professionals who have had an impact on actions taken. These differences are mainly seen in the meetings of the coordination and cooperation groups.*

> *This law introduced innovations in terms of coverage of persons, events, and situations that need to be addressed; it covered a wider range of phenomena and situations, it expanded the circle of people, but also the scope of work.*

Furthermore, participants stated that the Law on Weapons and Ammunition was satisfactory, but that its implementation should be improved, primarily within the police. This chiefly refers to more frequent updating of data on temporarily and permanently seized weapons. Participants highlighted the provisions of Art. 11. of the Law on Weapons and Ammunition, which prescribes the conditions for (non)obtaining a permit. One such condition preventing the attaining of a permit is a conviction, including for crimes against the family, but this does not apply to urgent security measures or measures prescribed by the Family Law.

> *As for the Law on Weapons and Ammunition, it is important that it be more restrictive when it comes to governing granting permits; who can carry weapons and who cannot. If someone has already been convicted of crimes with elements of violence, they should not have a license to possess a weapon. Also, when imposing security measures, for example, the confiscation of weapons, stricter measures should be prescribed, i.e., the confiscation measure could last longer, the weapon not be returned automatically, but a reassessment be made as to whether the weapon should be returned to that person.*

Amendments to this law no longer record the existence of trophy and sports weapons, so it is necessary that this field of weapons be regulated in more detail and be brought up-to-date in the police records system. When dealing with reports of domestic violence, the police have access to check on the legal possession of weapons, but it is not specified which specific weapon is legalized, i.e., it is not known whether it is a standard firearm, sporting weapon, trophy weapon, weapon with specialized barrels or not, etc.

> *As far as both laws are concerned, I believe that there should be a single record of persons who have weapons, who have previously been reported for violence, and persons who are in the process. These records would be common to the prosecution, the police, and the center for social work, so that we could all access them at any time.*

A police officer who acts in cases of domestic violence does not have access to records from which he/she could see whether and how many times the same weapon was confiscated, whether it was returned, whether an administrative procedure was conducted and the like. In this regard, the police officers who act in cases of domestic violence, those who go out in the field and get to the scene first when it comes to such interventions, should be given greater powers when it comes to accessing data on the possession of weapons of persons reported for domestic violence and this data should not only be limited to criminal-specialized members of the police. Therefore, checks on the possession of weapons in legal possession should be more up-to-date, meaningful, and accessible to a larger circle of persons within the police.

> *In one's obtaining a weapons permit, I think the checks must be much more rigorous. It is important to link the competent police officer who coordinates cases of domestic violence with the records of the service that decides on weapons per-*

mits, so that they can cooperate. Perpetrators should be permanently prevented from being allowed to possess weapons legally. That is why a quick check is necessary. The electronic systems and records of these services must be linked and the data displayed immediately. I think that this is very important, that the electronic records systems are much better connected and much more up-to-date. Communication must be simultaneous and synchronized.

Focus group participants believed that a link should be established between firearm ownership (The Law on Weapons and Ammunition) and domestic violence, through amendments to the LPDV. Many participants also stressed the importance of linking these two laws with the Family Law.

In practice, there are cases where we have only Family Law protection measures . These Family Law measures have been in place for 15 years but have not yet been sufficiently recognized, although both the Center for Social Work and the Public Prosecutor are authorized to file a lawsuit for family protection measures.

We have a Family Law, through which we work on protection measures. This law must undergo some changes, we cannot achieve all these measures, because one body cannot initiate and process civil proceedings. Others have to get involved, this law has limitations.

It was also pointed out that the legislation related to the acquisition and possession of weapons and the legislation related to the protection of victims from violence through firearms misuse, function cohesively. For example, the prosecutor's office noticed submissions from the police interested in the outcome of the proceedings; whether the person has been convicted, whether the procedure is ongoing and the like, mainly due to obtaining the necessary information for the administrative procedure conducted for the permanent confiscation of weapons. When it comes to the procedure for obtaining a permit to hold/carry a weapon, it was indicated that the procedure is rigorous, checks are performed in detail, data from criminal records for all crimes with elements of violence are obtained, operational records of perpetrators are checked, and the like, and that not a small number of applicants had been rejected for just one of these elements being present. However, it was expressed that it would be beneficial for police officers to be informed by the prosecutor's office and the center for social work, as well as by the competent police station in the place of residence of the person who has applied for a permit to hold/carry a weapon, i.e., that their operational procedures include obtaining information from all these institutions, before making a decision on whether to issue a permit to a person to hold/carry a weapon. Participants believed that it is positive that there is a possibility to examine the possession of weapons in cases of domestic violence, according to the provisions of the Criminal Procedure Code, but also under the Law on Police, in which the provisions of Art. 92 prescribes cases in which the police may seize items. Some participants proposed the introduction of an explicit legal provision which would prescribe the obligation to confiscate weapons in cases of domestic violence, among other things, by introducing a special security measure in the Criminal Code.

In addition, some participants held that in order to better connect these two topics, it is necessary to introduce into the legislation a provision related to the possession of weapons which would completely deny persons convicted of domestic violence the right to possess weapons in any such occasion, even if rehabilitation (legal or judicial) has been completed. Also remarked was that legislation related to protection against violence should include special provisions in the area of risk assessment related to the verification of the possession of illegal weapons, e.g., in these circumstances a conversation with family members of the person who was reported for violence should always be conducted, as well as with persons who are close to the perpetrator - neighbors, relatives, and the like.

> *When we are informed that an illegal weapon has been found, the criminal report for domestic violence is accompanied by a report for the criminal offense under Article 348 of the Criminal Code for illegal possession of a weapon, and if the victim indicates having seen the perpetrator taking the weapon out of the house, i.e., carrying it around the city, then we inform the higher public prosecutor's office, so that a report is then filed for the illegal carrying of a weapon. This the police do well.*

In one of the focus groups the opinion was expressed that it is necessary to further enhance the criteria for obtaining a permit to hold a weapon, and to make extremely stringent the conditions that must be met for the carrying of weapons on any grounds, both for persons convicted of domestic violence and those against whom criminal charges have been filed, since, according to them, except for officials, no one should have a license to carry a weapon, not only when it comes to domestic violence, but in general for the sake of social and public safety. As for domestic violence, when a person is convicted of the crime of domestic violence or any other act with elements of violence, carrying a weapon should never be a possibility, even when rehabilitation has occurred. Some participants considered it necessary to introduce an obligation that a request for information be submitted to social work centers in the process of evaluating the grounds for issuing a permit to hold/carry a weapon, bearing in mind that they most directly cooperate with families in which relations have broken down, even before incidents of domestic violence are reported.

Some participants thought that permits for carrying weapons are rarely issued, and therefore that there is no need to prescribe additional criteria. Regarding the legal or judicial rehabilitation of a person convicted of domestic violence, it was pointed out that a person who has been formally treated regains the status of being unconvicted because previous convictions are deleted from criminal records, but that this does not mean that these data do not remain with the police forever. Namely, the police still have this data at their disposal and use it, they are not deleted from the records available to the police – it remains permanently visible to them. This needs to be used to permanently confiscate weapons and to prohibit and prevent the issuance of new permits.

It can be concluded that the majority of focus group participants were unified regarding the importance of introducing a gender perspective in the issue of firearm ownership, considering that it is necessary that it be exhaustively and explicitly prescribed by the provisions of the law regulating permit conditions. One of the focus groups gave the direct recommendation of including a gender perspective in the Law on Weapons and Ammunition, by introducing provisions regarding domestic violence and related crimes as conditions for evaluation in obtaining a permit regarding the following aspects: specific security checks, unifying records, more frequent checks of the mental health and personality of the potential weapon holder, his/her relationship with the primary family, and any reports that have been possibly filed against him/her, with special reference to criminal offenses with elements of violence or misdemeanors in the field of public order and peace. Relatedly, it was stated that it would be expedient for the LPDV to be enhanced more specifically in terms of conducting checks (on risks) related to the possession of weapons, whether legal or illegal, as well as regarding risks related to situations when the reported person has access to weapons and the like. Also, participants asserted that this issue is particularly pertinent, especially given the prevalence of domestic violence and the rate of unreported violence, as well as the connection between these two phenomena. Participants believed that the gender identity aspect of firearm ownership stems from guns being mostly owned by males. Thus, the gender perspective must be taken into account when issuing and controlling firearm ownership in the context of domestic violence.

CONCLUSIONS

- Domestic violence is a global phenomenon that exists in all societies of the modern world, regardless of the achieved level of political, economic, or institutional development of a social community. Domestic violence is one of the most serious forms of criminal behavior in society.

- Theoretical and empirical research and literature on the phenomenon of domestic violence, at the global and local level, show that violence in family and partnership relationships is oriented along gender lines. Domestic violence is the result of the unequal distribution of gender power relations, it is marked by gender stereotypes, it is widespread and frequent, and the dynamics of violence are cyclical and permanent.

- Domestic violence is a set of behaviors whose goal is to control members of the family through the use of force, intimidation, and manipulation. In partner violence, the perpetrators are overwhelmingly men over women, at a ratio of 9: 1.

- Violence against women implies a wide range of violent behaviors; from verbal harassment and other forms of psychological/emotional abuse, to daily physical and sexual abuse, to, at the most extreme and violent end of the spectrum, femicide, i.e., the murder of a woman.

- Data from research at the global level show that the intimate, family murder of a partner/spouse is the leading cause of the murder of women and indications show that the rate of the murder of women is likely to increase due to this type of violence.

- In Serbia, domestic violence is part of the complex, cultural matrix of gender roles and traditional family patterns of behavior. Therefore, it is gender-specific and directed, represented in all forms of behavior; it is ubiquitous, but its true, overall dimensions remain not fully defined. Research on violence has shown that its victims, most commonly and far exceeding the number that are men, are women and children.

- A sound legal framework for the prevention, suppression, and protection of victims of domestic violence has been established in Serbia. The first interdisciplinary study of femicide in Serbia showed that a large number of murders of women were not prevented, because there was no timely and efficient reaction of the system's institutions, primarily on the part of the prosecutor's office, to reports of domestic violence that had preceded the murders. Due to the great degree of figures that remain still "in the dark," it is difficult to speak with confidence about accurate records and accurate data on domestic violence in Serbia.

- Gender inequality, tolerance of violence, the culturally accepted use of violence against women, the model of masculinity marked by the possession of firearms, and thus the tradition of the cult of firearms creates a climate in which the risk of domestic violence looms pervasively and where the possession and use of firearms is normalized.

- Violence through the misuse of firearms is highly gender-based and marked. Men are the majority of victims and perpetrators of firearm-related homicides, but many more women have been killed, injured, and/or harassed with firearms in circumstances of intimate partner violence and domestic violence. Global research shows that firearms are used in over 50% of intimate partner murders. Men make up the vast majority of firearm owners in Serbia, while women own only a small proportion of firearms.

- In Serbia, there are no precise records or accurate data on the extent of domestic violence and the misuse of weapons for the purpose of intimidation, threats, and, in the end, deadly violence. There are no established institutionalized mechanisms that dependably record the stages of the process, the state, and the consequences of each individual case of domestic violence.

- The wide availability and prevalence of (illegal) firearms, the easy and fast possibility of their acquisition, and the simplicity of their use represent a huge threat in cases of violence against women and are one of the leading indicators of a high risk of femicide. This is supported by the fact that almost a third of women murdered in Serbia were killed with firearms.

- On average, every third woman murder victim of gender-based violence was killed with a firearm, both legal and illegal. Half of the victims of all analyzed armed incidents were aged 18-35. Men are the perpetrators of such violence 32 times more often than women, while women are five times more likely than men to be victims.

- The presence of firearms in the house dramatically increases the risk and probability of death in incidents of domestic violence, in which a great percentage and number of victims are women. A survey on the link between firearm ownership and the killing of women between 2007 and 2012 found that Serbia ranked 17th out of 48 countries in terms of the rate of these killings.

- Firearms records in Serbia are a key element in analyzing and determining the causes and consequences of violence against women in the family and the amount of weapons among the population in Serbia. The high percentage of women killed with firearms indicates the high fatality rate of firearms and is a strong argument in favor of firearm control, especially in the context of domestic violence.

- It is critical that the policies of all authorities, as well as public policy, provide and implement sustainable and productive mechanisms of prevention and protection; that they take steps to reduce the availability and misuse of firearms, both in the context of domestic violence and violence against women and in the wider societal/cultural context. Domestic violence and violence against women through the misuse of weapons is a great burden for any community, destroys its human capital, and implies significant social consequences.

- Although the legal framework for the prevention of and protection from domestic violence and violence against women has been improved in Serbia, as well as the legal framework related to the control, procurement, possession, and carrying of firearms,

in each of these areas there remain certain shortcomings and opportunities for improvement. Also, the analysis of the legal framework shows that it is necessary to bring the legal framework for the prevention of and protection against domestic violence and violence against women into greater alignment with the legal framework related to the control, procurement, possession, and carrying of firearms.

- This research on domestic violence and firearms misuse was conducted on a nationally representative sample that included all cases of domestic violence in which femicide, attempted femicides, and violence committed through the misuse of firearms was present which were processed and for which the final judgments were rendered in the period from June 1, 2017, when the implementation of the Law on the Prevention of Domestic Violence came into effect, to December 31, 2019.

- The sample included all court-prosecuted cases in which final judgments were issued for domestic violence (Art. 194, paragraphs 2–4 of the CC) committed with the misuse of firearms (including a *threat* that firearms will be used and *misuse* of firearms)) regardless of the sex of the victim and the perpetrator; as well as for cases of murder (Art. 113, CC) or attempted murder (Art. 113 in conjunction with Art. 30, CC), aggravated murder (Art. 114, CC), and attempted aggravated murder (Art. 114 in conjunction with Art. 30, CC) committed with firearms, whose victims were women and the perpetrators men. There were 28 such cases and they were quantitatively analyzed.

- The qualitative research of this study, i.e., in-depth analysis, includes 21 court-processed cases - 18 cases of domestic violence (Article 194, para. 2 and 3 in connection with para. 1 of the CC) committed through misuse of firearms (implying *the use* of firearms), regardless of the sex of the perpetrator and the victim, as well as two cases of murder and one case of attempted murder committed with firearms in which the victims were women and the perpetrators men.

- The most common criminal offenses in the sample were those qualified as criminal offenses under Art. 194. para. 2 of the Criminal Code - domestic violence in which firearms were used. In five court proceedings, the perpetrator was convicted of the criminal offense of the illicit manufacturing, possession, carrying, or trafficking of weapons or explosives (Article 348, CC), with one of the perpetrators being convicted of this offense for the unauthorized possession of an explosive device (a grenade), whose possession is not allowed to citizens (Article 348, para. 2, CC), while the other four were convicted of the possession of weapons and ammunition for which they did not have a permit from the competent authority. Other perpetrators who committed the crime of domestic violence by threatening to use a firearm or misusing a firearm had a legal license to possess a weapon.

- A slightly higher rate of crimes were committed in rural areas (42.9%) compared to those committed in the city (35.7%). Most crimes were committed in a joint apartment, i.e., the home of the victim and the perpetrator (60.7%), which is expected, given that these were domestic violence cases. The acts were mostly committed in the afternoon and evening, which could be explained by this being the time when family members are most likely together.

- The exact profile of the perpetrators could often not be determined because most of the data on the perpetrator was not available - either they had been unnecessarily anonymized, or they did not exist in the records at all because they refer to information that was never established/recorded in the course of criminal proceedings.

- All perpetrators in the examined cases were male, of varying ages and occupations, and on average were married and had two children. A large number of them had completed secondary education, were unemployed at the time of the crime, and were born in the city. Among the perpetrators, 42.9% lived in the city, which could indicate that firearms are more accessible to perpetrators in urban areas than in rural environments.

- According to available data, half of the perpetrators had not been previously convicted (50%), but the number of those who had been is not insignificant (35.7%). Among them, only one had been previously convicted of a crime committed through the misuse of weapons. The court proceedings did not establish whether the perpetration of violence with the use of firearms was connected with the previous participation of the perpetrators in armed conflicts.

- Three perpetrators worked in occupations that provided access to firearms.

- A quarter of perpetrators admitted to committing their crime (25%), a large percentage indicated not regretting their crime and considered their actions adequate (39.3%). Only 3.6% of perpetrators were documented as having expressed real regret and remorse.

- When it comes to the motives for committing the crime, the court, as a rule, does not determine them. Only from five verdicts could clear conclusions about the motive be reached: in three cases it was jealousy, in one greed, and in another the "refusal to divorce."

- The perpetrators were regarded mostly as sane at the time of committing the crime (53.6%) and as acting with direct intent (92.9%). There was a significant percentage of perpetrators whose mental capacity (and thus, accountability) was recognized as significantly reduced (21.4%), while 7.1% of perpetrators were regarded as being in a state of insanity. The percentage of those documented as not being under the influence of alcohol at the time of the crime was higher (42.9%) than those who were (35.7%), while severe drunkenness was documented in 25% of the perpetrators. Only one perpetrator was recorded as being under the influence of psychoactive substances at the time of the crime.

- The relations between the perpetrators and the victims were mostly regarded as poor (57.4%), but in a large number of verdicts there is no data on the state of the relations (35.7%), which implies the court's focus on the act itself, without considering the wider context and gender dimensions of the acts.

- To commit criminal offenses, the perpetrators in the sampled cases most often used a pistol/revolver (46.4%), as well as other firearms from category "B" - short, long,

semi-automatic, repetitive, single-shot, double-barreled, and smooth-barreled guns, which natural persons may procure, hold, and carry on the basis of a permit issued by the competent authority. In four cases a bomb/grenade was used, a category "A" firearm, which includes mines and explosives, automatic short and long firearms, weapons hidden in other objects, and firearms with a silencer, weapons which natural persons cannot legally procure, hold, or carry.

- In a large number of court judgments, there was no data on the possession of a license to carry a firearm. 11 perpetrators were documented as not having a permit to carry a weapon (24.0%), and 14.3% of perpetrators as having a permit. The higher percentage of perpetrators who misused firearms for which they did not have a possession permit, as well as those who threatened or used an explosive device, whose possession is by definition illegal, is an indication of the large amount of weapons still in illegal possession of citizens and available on the black market; all types of firearms appear to be relatively easy to obtain and that their misuse is common in cases of gender-based violence.

- In accordance with the valid legal regulations on the confiscation of objects with which a criminal offense was committed, in 57.1% of the cases the perpetrators were deprived of their weapons after the initiation of criminal proceedings. There was no data on confiscated weapons for nine perpetrators, and in three cases the weapons were not confiscated.

- The number of victims (44) is higher than the number of perpetrators. One third of the victims were male, while two thirds of the victims were female, which confirms the gender specific nature of violence committed through the use and abuse of firearms. Among the victims were seven children, six of whom were aged 14-18. The age of the adult victims (37) is not known because this information was anonymized in the verdicts.

- At the time of committing the crime, the largest percentage of victims were married (43.2%), while 9.1% of victims were living in a non-marital union. In a large number of verdicts, the data on the marital status of the victims were anonymized, so this information was gained from the examination of the testimonies; of the defendant, of the victim heard as a witness, and of other witnesses. It was also difficult to ascertain how many victims had children because this very important circumstance was often left undocumented by the courts and other related procedures, despite children being the most frequent indirect victims of domestic violence. Data on how many children the victim had went unreported in 56.2% of cases. For the 19 victims about which this information was recorded, 12 victims were known to have one, two, or three children, while seven victims had no children.

- The greatest percentage of victims were documented as living in rural areas (36.4%), while the number of those recorded as living in the city was slightly lower (31.8%). In almost a third of cases, there was no data on the victim's area of residence (29.5%). The place of birth of the victims differed from the place of residence, with most vic-

tims born in the suburbs (45.4%). For only one victim in the sample was there data on occupation, education, and employment (in a case of attempted murder), while these data were not found for all other victims.

- The dominant form of the crime of domestic violence committed with the misuse of firearms, was violence against a married spouse or non-marital partner. The perpetrator and the victim were most commonly married or once-married to each other and divorced. In 13.7% of cases, the father was the perpetrator and his child/children the victim of violence. The same percentage (13.7%) also applied to perpetrators of violence in which the child was the perpetrator and his parents the victims.

- In 56.8% of cases, there was no data on the existence of previous violence, which is a consequence of the failure of the system and the courts to review the history of the relationship between the perpetrator and the victim. In 38.6% of cases, victims of violence were documented to have been previously exposed to violence by the perpetrator, which corresponds closely to the data that in 35.7% of cases the perpetrator had been previously convicted. Only two verdicts stated that the perpetrator had not mistreated the victim prior to the crime for which they were prosecuted in the sample of cases.

- In a large number of verdicts, there was no data on whether the perpetrator previously threatened to use a firearm (63.6%), while 15 verdicts contain information that the perpetrator had not previously threatened to use a weapon. These data need to be taken with caution, because some victims do not disclose this information for fear of the perpetrator.

- Only 9.1% of the victims were reported to have turned to institutions for help due to previous incidents of domestic violence, while in 56.8% of cases there was no such data recorded.

- Half of the perpetrators were remanded in custody (50%), custody was not ordered for three perpetrators, and for as many as 11 perpetrators (39.3%) there was no information on detention in the verdicts.

- In 81.1% of cases a conviction was passed; in four cases, the public prosecutor and the defendant reached a plea agreement; while in only one case was the charge dismissed, due to the withdrawal of the public prosecutor from the indictment.

- The most dominant form of criminal sanction was imprisonment, which was imposed on 11 perpetrators (39.3%). Two perpetrators were sentenced only to imprisonment, while the other nine also had security, or other penal measures imposed on them, namely: the confiscation of the object with which the crime was committed (three perpetrators); mandatory treatment of alcoholism/drug addiction (three perpetrators); fined (two perpetrators); one was banned from approaching and communicating with the injured party(ies).

- A suspended sentence was imposed on eight perpetrators (28.7%). The length of imprisonment was generally less than one year (75%), while the probation period was almost always longer than two years (87.5%). Among these eight perpetrators, five were imposed with the security measure of the confiscation of the weapons, two with a security measure of compulsory treatment for alcoholism, and two perpetrators with a security measure prohibiting further communication with or harassment of the injured party.

- From amongst the total sample of cases, in 12 the security measure of the confiscation of the object with which the crime was committed (weapons and ammunition) was imposed, while in only four cases was a security measure imposed prohibiting the approaching of and communicating with the victim, and in only one case prohibitin further harassment of the victim.

- "House arrest" was imposed on six perpetrators, four with electronic surveillance and two without. Three of these six perpetrators were also issued a security measure of the confiscation of the weapons used, one of them was fined, and one was imposed with a security measure banning him from approaching and communicating with the injured party.

- The length of imprisonment and "house arrest", in 35.4% of cases was shorter than one year, while in other cases it was longer. From amongst the total sample, the shortest prison sentence imposed was five months, and the longest 40 years, for aggravated murder committed with a firearm.

- In assessing the penalties for criminal acts of domestic violence in which the perpetrator threatened to use or misused a firearm, the penalties are too lenient, especially considering their significant social danger. The threat and misuse of firearms during the committing of these acts did not appear to affect the severity of the penalty. In no such cases was a maximum sentence of five years imprisonment imposed, while most sentences were one year in confinement or less.

- In the courts' determining the type and measure of the sentence, automatism was noticed in consideration of the aggravating and mitigating circumstances. The mitigating and aggravating circumstances are generally cited by the courts in a very general way, without much indication of the court having delved into the real effect of their action. The fact that these are violent relationships in the family that have a higher degree of danger compared to other forms of violent behaviour, was seemingly not taken into account. Examples from among the mitigating circumstances cited included the circumstance that the "injured party is not interested in joining the criminal prosecution or in filing a property claim," as well as the circumstance that the perpetrator "served their duty as an authorized official of the Ministry of the Interior in the period from March 24 to June 26, 1999, during the aggression of NATO forces."

- Aggravating circumstances were cited in only a small number of the dispositions of the verdicts. As many as 14 judgments did not state aggravating circumstances. The

most common aggravating circumstances were: previous conviction; the act was committed against family members; persistence in committing the act; the perpetrator had previously been violent towards the injured party.

- Participants in focus group discussions, who were members of coordination and cooperation groups, mostly exhibited great interest in the research topic and stated that their participation in the focus group led them to think more deeply about these topics. They generally expressed satisfaction with the work of coordination and cooperation groups and the belief that cooperation between sectors had improved since the adoption of the Law on the Prevention of Domestic Violence. On the other hand, there were conflicting opinions on the efficiency and quality of cooperation between different sectors, and some suggestions were been made for its improvement.

- Although the legal framework related to the prevention of and protection against violence and domestic violence for women, as well as the legal framework related to the acquisition, possession, and carrying of weapons, was assessed positively, i.e., it was indicated that it had improved, there remain certain legal gaps and opportunities for improving certain legal solutions. Also, the participants mostly believed that better connection/harmonization of these two legal frameworks is needed, in order to ensure more adequate and effective prevention of and protection from domestic violence committed through the misuse of firearms or the threat that firearms will be used.

- A number of problems that need to be worked on in collaboration between various relevant parties were indicated - increasing victims' trust in institutions, providing better protection mechanisms, creating a safer environment, providing adequate support services, more detailed examination of the circumstances of each individual case of violence, and paying more attention to perpetrators' previous participation in armed conflicts, as well as to those who have easier access to weapons, and the like.

- Representatives from all sectors asserted that they had a lack of human resources, especially in the centers for social work. It was pointed out that there is an overload of work and cases on the employees from all sectors, who are also those who serve in the groups for coordination and cooperation, and that it is necessary to increase the number of persons dealing with domestic violence and violence against women and provide more precise specializations.

- The results of the validation interviews mostly confirmed the findings obtained during the focus group discussions. However, the interviews revealed that there is ample room for improving cross-sectoral cooperation and for more efficient work of the coordination and cooperation groups, particularly in the field of enhancing information on the competencies of other sectors, but also in involving other actors (health care system, education, non-governmental organizations), while especially in the greater involvement of victims in the work of groups. In addition, the validation interview indicated the disadvantage of all such cases being prosecuted only criminally, whereby the possibilities of Family Law protection against violence are neglected. All this reinforces the need for further education and sensitization of the members of the groups for coordination and cooperation.

RECOMMENDATIONS

- In order to effectively prevent domestic violence, it is necessary to intensify work on improving the position of women in all areas of social life, deconstructing gender stereotypes and prejudices, and changing patriarchal gender patterns, while integrating a gender perspective into all public policies.

- It is necessary to provide a holistic, integrated response to violence against women in partner and family relationships and to place the needs of women at the center of all relevant measures and activities.

- The criminalization of domestic violence needs to be harmonized with the definition prescribed in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, especially with regard to the circle of entities considered to be family members.

- The safety and protection of women from a fatal outcome of violence should be increased and fatal risks reduced by introducing simple, efficient, and expedient methods for institutional response and by providing accessible and adequate assistance and support, regardless of whether criminal charges have been filed and/or prior criminal proceedings have been instituted.

- Ensure the implementation of adequate programs for work with perpetrators of violence against women in a partnership/family context, as well as of appropriate treatment, reintegration, and rehabilitation programs in penitentiary institutions.

- Strengthen the capacity of the bodies responsible for the coordination, implementation, monitoring, and evaluation of policies and measures aimed at preventing and combatting violence against women in order to ensure coordinated action between bodies and institutions of the system in the prevention of violence against women and in their protection from it.

- Improve the multisectoral cooperation of competent bodies and institutions and ensure sustainable funding of women's organizations that provide specialized services to victims.

- Take measures to raise women's awareness of their rights and ensure that women have equal protection in accordance with the law and equal access to justice, including access to legal aid and language support services.

- Evaluate the effectiveness of the system of coordination and cooperation regulated by the Law on the Prevention of Domestic Violence and, based on the evaluation results, make the necessary changes to the law, as well as harmonize the general and special protocols on the cooperation and actions of competent authorities and institutions with new legal solutions.

- Strengthen the capacity of the competent judicial authorities, as well as of social, health, and educational institutions, to identify and assess specific risks of domestic violence in connection with the possession and carrying of firearms.

- Improve the work of victim and witness support services and ensure that support is available on equal terms to all direct and indirect victims and witnesses.

- Provide special protection to children who have witnessed domestic violence by developing specialized psychological help and support services, adapted to the age and needs of children. It is especially important to improve the position of victims/injured parties in criminal proceedings and to ensure their exercising of the right to compensation in criminal proceedings.

- Amend the provisions of the Law on the Weapons and Ammunition regarding the conditions for the acquisition, possession, and carrying of firearms by prescribing stricter conditions and by making it obligatory that detailed eligibility checks based on medical examinations, mental health and psychological state, alcohol and/or drug testing, and testing previous aggressive or violent behavior are all thoroughly conducted prior to the issuing of a permit.

- Introduce the obligation of the competent authority to inform family members living in a joint household of any person submitting a request for a permit for the acquisition, possession, or carrying of firearms, as well as about the return of any weapons that have previously been confiscated.

- Introduce the practice of mandatory interviews with adult family members before issuing a permit to acquire, posses, or carry a firearm in order to find out whether they perceive the existence of weapons in the household as a risk to their own safety.

- Prescribe by law that among the reasons for the mandatory rejection of a request for the issuance of a permit for the acquisition, possession, and carrying of firearms are included: previously reported/processed domestic violence and pronounced measures of protection against domestic violence as prescribed by the Law on the Prevention of Domestic Violence and by the Family Law.

- Persons convicted of domestic violence should be completely and permanently denied the right to acquire, keep, and carry weapons, even when rehabilitation (legal or judicial) occurs.

- When assessing the risk of domestic violence, it is mandatory that relevant institutions check for the possession of illegal weapons, which should obligatorily include interviews with family members of the person reported for violence, as well as with neighbors, relatives, and other close persons..

- Prescribe by law that being reported for domestic violence is a reason for the termination of the fulfillment of conditions for the possession of firearms and for the the mandatory confiscation of any firearms, weapons, and ammunition.

- Introduce detailed, routine controls and checks on the condition and behavior of persons who have a permit to hold and carry weapons once a year, as the five-year term for control through medical examinations as prescribed by Art. 12 of the Law on Weapons and Ammunition is too infrequent .

- Establish the obligation of the competent authority, after their receiving of a report of domestic violence, to consult with the family members to determine if the person accused as a perpetrator possesses a weapon and whether he has threatened them with a weapon so that, if necessary, an order may be issued to search the apartment and confiscate weapons. This should also be done when the victim has reported the violence to a non-governmental organizations or is located at a "safe house."

- Possession of legal and illegal weapons should be treated as a particularly significant risk factor for domestic violence.

- Amend the criminal policy of courts towards perpetrators of domestic violence committed with firearms to impose stricter penalties.

- Prescribe the legal obligation of the public prosecutor in cases of domestic violence to obtain the consent of the victim before concluding a plea agreement with the defendant, as well as the possibility for the victim to file an appeal against the court decision on the acceptance of the agreement.

- When imposing a prison sentence of house arrest, which the perpetrator is to serve at the premises where he/she lives, it is necessary that Art. 45. para. 5 of CC be applied, which explicitly prescribes that a person convicted for a criminal offense against marriage and family who lives with the injured party in the same family household cannot be ordered to serve a prison sentence at the premises where he lives with the injured party.

- Establish comprehensive, unified statistical records of cases of domestic violence committed with firearms, which include data on gender, age, victim-perpetrator relationship, type and origin of firearms used, descriptions of events, and other relevant information. This information should be made publicly available so that the general public can be informed about the link between domestic violence and firearms misuse.

- Establish coordinated cooperation between state bodies in order to more effectively protect and empower victims to report domestic violence and the possession of firearms.

- Enable access to databases on the possession of weapons for all police officers, and not only those who work on issuing permits for the acquisition, possession, and carrying of firearms, so that all police officers who act on reports of violence can obtain this information expediently, so as to enable faster and more adequate response to relevant situations.

- Organize trainings for members of the security system on domestic violence and its connection with the misuse of firearms and the risks of owning a firearm, as well as on their responsibility for professional, sensitive conduct during official interventions in cases of domestic violence committed with firearms, or the threat that they will be used.

- Implement measures to raise public awareness on the dangers of the misuse of firearms in cases of domestic violence in order to make this phenomenon socially and morally unacceptable.

- Increase efforts to encourage the media to properly (in a relevant, comprehensive, and sensitive manner) report on domestic violence and firearms misuse.

- Create specific support programs for direct and indirect victims of domestic violence committed with firearms, especially if the victims are minors, and collect data on these cases from civil society organizations that provide assistance and support to victims of domestic violence.

- Provide financial and institutional support for data collection and research on the prevalence and consequences of firearms misuse in the context of domestic violence, and on the effectiveness of policies and measures to combat this phenomenon.

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ROADMAP
FOR A SUSTAINABLE SOLUTION TO THE ILLEGAL POSSESSION, MISUSE AND TRAFFICKING OF SALW AND THEIR AMMUNITION
IN THE WESTERN BALKANS BY 2024

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