

FEMICIDE PREVENTION IN THE LIGHT OF NEW LEGAL SOLUTIONS APPLICATION IN THE CRIMINAL LAW OF REPUBLIC OF SERBIA

ABSTRACT: In the modern society, domestic violence is a socially unacceptable phenomenon. The most common form of domestic violence is the violence against women, while as the most severe form of violence against women singles out femicide - a gender-based murder. One of the measures taken by Republic of Serbia in order to reduce domestic violence is the adoption of the Law on Prevention of Domestic Violence. In order to prevent femicide, the most important innovations provided by law are urgent measures imposed by the competent police officer; a mandatory risk assessment of recurrence violence; a mandatory coordination and cooperation between the competent services and case records violence. This paper analyzes not just criminal and family law measures providing protection from domestic violence, but also the results of the application of these measures in the context of femicide prevention.

Keywords: *domestic violence, femicide, the Law on Prevention of Domestic Violence, emergency measures.*

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1. Introductory considerations

Violence against women is a widespread social phenomenon. Although violence against women and domestic violence has long been viewed as a private matter relying to tradition and deep-rooted patriarchal conceptions, and that they are, as such, not dangerous to society and in which the state should not take part (O'Donovan, 1993, p. 107), the modern approach to this problem is based on the view that they are not just an individual problem, but a problem of the whole society. Just like mentioned, traditional perceptions have been a major obstacle to recognizing violence against women and domestic violence as a way of violating human rights, the most important of which are the right to liberty, the right on the inviolability of physical integrity and the right to life (Nikolić Ristanović, 2006, p. 82). The need to sanction violence against women first arose internationally. Over the past few decades, several international documents have been passed that address violence against women as a form of crime, pointing to its specifics, manifestations and measures that need to be taken in order to prevent and as a prevention. Among the documents adopted at the level of the Council of Europe, and in addition to the recommendations, the most important is the Convention on Prevention and the fight against violence against women and domestic violence (Istanbul Convention), adopted in 2011 which was ratified by the Republic of Serbia in 2013.

Although victims of domestic violence can be female or male, as the most common form of domestic violence is violence against women. Understanding the phenomenon of violence against women, femicide, as its most severe form, and the reaction of the whole society to mentioned phenomenon are of great importance in order to find adequate preventive protection mechanisms. Femicide is a murder of woman done by man, motivated by hatred towards women, misogyny, contempt, as well as by feeling of ownership and supremacy. It is important to note that femicide, as a rule, is not an isolated phenomenon, something which happens suddenly, ad hoc, as a consequence of affect. Femicide is the last stage of a continuous violence to which women are exposed by men, but indirectly, through passivity from the wider social community and society as a whole (Ignjatović, 2011. p. 25).

Due to the multidimensionality of the concept of violence against women, the consequences of the same do not have to bear only the victims of the violent act, but also family members who have been exposed to violence as witnesses. Although official, accurate and publicly available records of all forms of femicide are still not available, the data available to some NGOs shows that the total number of murders of women in the family-partner

context in previous years has remained unchanged. The seriousness and complexity of this problem, the incalculable consequences that it has both for the victim, and to family members, as well to society as a whole, has pointed out the need for a comprehensive perceiving and understanding of the problem of violence against women. By analyzing of legal regulations in The Republic of Serbia, we will try to determine whether, and to what extent, the legislative framework is ready to adequately respond to all forms of violence against women, and particularly to the prevention of femicide as the most severe form of gender-based violence.

2. The concept of femicide, risk factors and the situation in the Republic of Serbia

Violence against women is a global phenomenon present in all cultures and social systems. The most severe form of it is femicide – “gender-based violence or violence directed at women based on their gender identity, gender roles and unequal power relations within the social context” (Konstantinović Vilić, Petrušić & Beker, 2019, p. 67).

The term “femicide” was first defined by Diana Russell as “killing women by men out of hatred, contempt, pleasure or a sense of ownership over women, that is, sexism” (Caputi & Russell, 1990, pp. 34–37). In the book *Femicide in the Global perspective*, Russell and Roberta Harnes extended this term. They pointed out that it refers to “the culmination of violence against women that covers a wide range of verbal and physical abuse such as rape, torture, sexual slavery, incestuous and non – domestic sexual abuse of children, physical and emotional abuse, sexual harassment, genital mutilation, unnecessary gynecological surgeries, forced heterosexuality, forced sterilization, forced motherhood etc.,” done not only by current or former partners, but also by other men.

In order to achieve the best possible prevention of intimate partner’s femicide, it is necessary to find out what are the risk factors for its occurrence. The primary factor is frequency and severity of physical violence before the murder (79% of femicide victims had been abused before death by her partner). In addition, stalking, possession and threats of weapons are important, as well as a coercion to sexual intercourse, abuse of psychoactive substances, unpleasant experiences during childhood, perpetrator suicidal tendencies and history of partner violence (Konstantinović Vilić, 2013, p. 45). Particularly at risk are those women who decide to end their relationship and get separated from a violent intimate partner. A special term is used for this pattern of violence

- attack during separation (“separation assault”) which refers to all forms of abuse of women who have decided to leave the partnership (Konstantinović Vilić, Petrušić & Beker, 2019, p. 88). Therefore, the predictability of femicide in intimate partnerships can be viewed as a consequence of many years of unreported and unprocessed domestic violence.

Research shows that in the past few years, there has been a noticeable increase in the number, in the world, of women murders done by a current or former partner or other family member.¹ Nevertheless, most countries do not prescribe femicide as a separate crime, but assume that women and men are equal before the law and that it is unnecessary to separate victims by gender and criminalize the murder of a woman as a special form of murder. The Republic of Serbia also belongs to this group of countries. Criminal legislation based on a different approach treats the female gender of the victim and the gender motivated murder as an obligatory aggravating circumstance when sentencing (Argentina and Venezuela treat femicide as a special form of aggravated murder). In large numbers Latin American countries criminalize gender-based murder of women as independent criminal offense, that is, as a femicide or feminicide (Batrićević, 2016, pp. 436–438).

A big obstacle in understanding the scale of this problem in Serbia represents the non-existence of clear records of all cases of femicide, whether it is or is not a consequence of violence towards women in family, partnership and / or non-partnership relations (Pavlović, 2019, p. 97). Under the auspices of the Autonomous Women’s Center from Belgrade, monitoring the number of people killed in terms of femicide has been done/ followed by the Women against Violence Network since 2010. According to the Report on Femicide in 2019, there were 26 cases of murder of women, (Femicide: murders of women in Serbia: Report for 2019), while in 2020, the media reported 26 cases of femicide, and the murder of 5 women was suspected as a femicide. In previous reporting years, every third woman applied for the assistance to one of the competent institutions before she was killed (police, center for social work, prosecution or several institutions at the same time), while this is now the case with every seventh. The constant downward trend in the number of reports of violence that preceded femicide suggests that it is possible that trust in the work of institutions is declining, that violence is not recognized and reported, or on the other hand the violence is recognized, but it is kept silent

¹ UNODC (2018). Downloaded 2020, September 29 from https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf

(Femicide: murders of women in Serbia: Quantitative-Narrative Report for 2020).

An additional problem in our country represents the media, which in cases of femicide mostly reports sensationally and often violate moral and professional codes in reporting, while a complete interpretation of this problem, which society is still silent about, does not exist. Focus is put mostly on the perpetrator and his reasons for the murder, not mentioning the perennials of the violence to which the victim was mostly exposed. Femicide is thus presented as an incident, not as a predictable sequel and a tragic finale to a long-running male violence over women, which as such exists as part of traditional gender roles and relationships (Mršević, 2015, p. 18).

In addition to recognizing risk factors, for the prevention of femicide, it is necessary to determine and to analyze the gender, social and economic marginalization of women, the existence of the former domestic violence and its sanctioning. However, the most significant is the intervention of the state authorities, adequate application of the law, as well as urgency in the response of all entities that need to provide assistance to victims of violence. One of the most important measures that the Republic of Serbia has taken as the aim of reducing domestic violence is to enact the Law on Prevention of Domestic Violence.

Therefore, in further work, along with the analysis of criminal and family law protection against domestic violence, an analysis of the application of the mentioned law in the context of femicide prevention will be performed.

3. Femicide prevention in the Republic of Serbia - legislative framework

Legal protection against domestic violence began in 2002, when the Assembly of the Republic of Serbia passed the Law on Amendments to the Criminal Code of the Republic of Serbia, which in Art. 118a envisaged domestic violence as a new criminal offense. Adopting the Criminal Code (hereinafter: the Criminal Code) in 2005, which entered into force in 2006, the same act was incriminated in Art. 194 in Chapter XIX, in the group of criminal offenses against marriage and family. Also, the current Criminal Code provides five forms of this criminal offense, unlike the earlier legal text which provided four forms. As a special form of murders during domestic violence, the mentioned CC recognizes aggravated murder provided by Art. 114, § 10, as the murder of a family member who had previously been abused. As in the above CC of the Republic of Serbia there is no special incrimination

of the criminal offense of femicide, it can be treated as aggravated murder committed from other low motives, from Art. 114, para 1, item 5. According to Article 54a of the Criminal Code: "If the criminal offense is committed out of hatred due to race and religion, national or ethnic affiliation, gender, sexual orientation or gender identity of another persons, that circumstance will be assessed by the court as an aggravating circumstance, unless it is prescribed as a characteristic of the crime." The fact that gender was introduced as one of the reasons for the manifestation of hatred towards the victim creates conditions for obligatory stricter sanctioning of the perpetrators managed by misogynistic and sexist motives (Batrićević, 2016, p. 443). Femicide would, like a separate crime, cover any gender-motivated deprivation of a woman's life, done it intentionally or negligently by the perpetrator, provided that it occurred as a consequence of gender motivated violence (Konstantinović Vilić, Petrušić, Becker, 2019, pp. 97–98). In that case the life of a woman would be the object of protection, and the act of execution would be the same as in the crime of murder. Of the subjective elements, on the part of the perpetrator would be pointed out as a motive the existence of the hatred of women. In the case of femicides, it is very important to determine the motive of the execution, because that would prove that at the moment of undertaking the act of execution, the perpetrator acted guided solely by hatred towards the group to which the victim belongs, and not by personal motives (Ibid., p. 98). Misunderstanding the emerging of femicide as the most extreme form of gender-based violence towards women and murder motivated by hatred, by sense of ownership and superiority of men towards women, may be the reason why femicide is not seen as a specific form of murders. Such attitudes can be a brake on future work to improve incrimination femicide as a special crime against life and body or as a special form of grave murder, which would significantly improve the possibilities for its suppression (Petrušić, Žunić & Vilić, 2019, p. 57).

In addition to criminal law, family law protection from violence is also very important, within which a special place is occupied by the Family Law (hereinafter: FL), passed in 2005. Prohibition of domestic violence and the right to protection from domestic violence are regulated by Art. 10 of the said FL, while the concept and characteristics of domestic violence and its perpetrators are regulated by Art. 197 of the said FL. The connection between family law and criminal law protection against domestic violence was achieved by the provision of paragraph 5, Art. 194 of the said CC, where by violating some of the protection measures from domestic violence, prescribed by Art. 198, paragraph 2 of the said FL, the perpetrator is responsible for a special

form of domestic violence. However, in terms of the term “family member”, there is a visible difference between the criminal and the family law. The interpretation of criminal law is much narrower (Art. 112, para. 28 of the said CC) from the family law interpretation (Article 197, paragraph 3 of the said FL). Therefore, if there is a violation of a certain measure of protection against domestic violence, which is according to specified FL determined for the protection of a person who according to the mentioned CC is not considered as a family member, persons who are not family members according to Art. 112, para. 28 will nevertheless become so (Jovanović, 2014, p. 251). The provisions of the said FL assigned the public prosecutor’s office a preventive role, while the police has not been assigned any role in protecting against domestic violence.

In the Republic of Serbia, in 2016, the Law on Prevention of Domestic Violence was passed (hereinafter: LPDV), and entered into force on June 1st, 2017. The ratification of the Istanbul Convention preceded it. The Istanbul Convention overarching goal was to protect the rights of victims of violence, primarily women, but also other victims of domestic violence. LPDV represents a *lex specialis* in relation to the regulations that regulated this matter so far. The new LPDV regulates the organization and actions of state bodies for the purpose of better prevention and urgent, timely and effective protection and support for victims of domestic violence. In order to prevent femicide, the most significant novelties envisaged by the LPDV are urgent measures (a measure of temporary removal of the perpetrator from the apartment and the measure of temporary prohibition to the perpetrator to contact the victim of violence and approach her) which are being pronounced by the competent police officer; mandatory risk assessment of recurrence of violence; mandatory coordination and cooperation between competent services and records of cases of violence. Also, the disciplinary responsibility of judges, public prosecutors and deputy public prosecutors has been established for failure to act within the deadlines specified in this law.

The novelties introduced by the LPDV are aimed at preventing possible domestic violence in its initial stages and prevention. “From the aspect of a family member – “possible victims”, LPDV is emphatically preventive, and from the aspect of a family member – a “possible perpetrator of violence” emphatically repressive” (Kolarić & Marković, 2018, p. 50). Because there is no definition of the possible perpetrator given, “it logically follows from the notion of a possible perpetrator that its perpetrator can commit domestic violence, but not necessarily. It would certainly be logical to use the term “possible victim” for the domestic violence victim as well. Otherwise, it is

concluded that the perpetrator may commit the act, but also may not, but in both cases the victim is victimized” (Ristivojević, 2017, p. 10). Art. 3 para 2 of the LPDV defines the immediate danger of domestic violence. This legal solution is imprecise, because the provisions on the imminent danger of domestic violence are “based on intent that the perpetrator commits violence, and it is generally known that intent in law is the most difficult to prove”(Jugović, 2017, p. 421).

Art. 4, paragraph 1 of the LPDV lists the criminal offenses to which the provisions of this law applies, where the point 18 refers to other criminal offenses, if the criminal offense is a consequence of domestic violence. Paragraph 2 of the same article prescribes that the Law also applies to the provision of protection and support of victims of crimes under paragraph 1. Bearing in mind that the goal of emergency measures is to provide victims of domestic violence with prompt and effective protection, according to the above provisions “it turns out to be provided protection for all victims of these crimes, although the courts refuse to extend the emergency measures in case there are listed criminal offenses, when the perpetrator and the injured party cannot be considered family members according to LPDV” (Kolarić & Marković, 2018, p. 53).

In the context of femicide prevention, particularly important provisions of the LPDV are those that regulate the procedure for preventing domestic violence: reporting and recognizing of domestic violence (Art. 13), the conduct of the competent police officer (Art. 15), risk assessment (Art. 16), emergency measures (Art. 17), the conduct of the public prosecutor (Art. 18) and the conduct of the court (Art. 19). Although LPDV prescribed that everyone must report domestic violence or the imminent danger of it, there is nowhere a sanction specified in case it is not reported. Risk assessment is performed by the competent police officer who, if he/she establishes an imminent danger of domestic violence, issues an order by which the urgent measures on the perpetrator are issued/imposed (Article 17). However, the same Law in Art. 15 said that urgent measures should be imposed to “possible perpetrator”. Thus results, “bringing, retaining and assessing the risk refers to the possible perpetrator of domestic violence, and urgent measures are imposed on the perpetrator”(Ibid., p. 58). By order both emergency measures can be imposed. The emergency measure lasts for 48 hours from the delivery of the order and the court can extend it for another 30 days. Risk assessment for relevant police officers will be easier, if the person appears as a perpetrator of the crime of domestic violence. However, this question is much more sensitive in cases where the crime was not committed but a misdemeanor, or

when perhaps no criminal offense has been committed, but the risk must be assessed on the basis of certain circumstances and perhaps impose an emergency measure on a person from whom there is a danger of being in the immediate vicinity of the domestic violence that is to be committed for the first time (Bošković & Puhača, 2019, p. 36). Because the competent police officer has the legal authority to bring the possible perpetrator into the competent organizational unit of the police, "the question arises as how to restrict freedom of movements of a person for whom there is no suspicion that he has committed a criminal offense, but is detained from preventive reasons during the assessment of the risk of domestic violence" (Kolarić & Marković, 2018, p. 55).

Another novelty introduced by the LPDV is cooperation in preventing domestic violence (Articles 24-27), by introducing the following two institutes: Liaison Officers and Coordination and Cooperation Groups. The persons designated for the connection, exchange information and data that are important for the prevention of domestic violence, detection, prosecution and trial for certain crimes determined by this law, on a daily basis, as well as data important for providing protection and support to victims of domestic violence and victims of criminal offenses determined by this law. The Coordination and Cooperation Group considers each case of domestic violence that has not ended with a final court decision, also cases when protection and support for victims of domestic violence and victims of crime determined by this law should be provided with, develops an individual plan for protection and support of victims and proposes to the competent public prosecution measures to end court proceedings. The LPDV also envisages that records regarding the cases of domestic violence should be kept (Art. 32), while the Council for the Suppression of Domestic Violence, formed by the Government, monitors the implementation of this law, improves coordination and effectiveness of prevention of domestic violence and protection from domestic violence.

Although it seems that the powers of the competent police officers to impose urgent measures increased the effectiveness of protection against domestic violence, the analysis of the same speaks differently. Just a month since the entry into force of the LPDV, two cases of femicide have been reported in Serbia, in which two women and one minor child were killed. The first case took place in front of the social work center's premises, and other in the premises of the center for social work. Both cases of violence were reported to the competent institutions, and their non-response is justified by the poor position within the system. After the control carried out by the competent Ministry of

Labor, Employment and social issues, it was concluded that in the first case of femicide, omissions were made in the work of the center for social work, which is why the director was replaced, and against seven employees were initiated disciplinary proceedings (Lacmanović, 2019, pp. 49–50). By analyzing the application of LPDV in just one year, a total of 24,996 emergency measures were imposed, of which 17,119 were temporary prohibitions on the perpetrator to contact and approach the victim of violence, and 7,877 cases were temporary removals of the perpetrator from the apartment (Bošković & Puhača, 2019, p. 37). Emergency pronounced measures were extended in 14,126 cases, meaning that they were, on average, extended in every second case (Ibid., p. 41). Especially interesting is the provision of LPDV, where the person who violates an emergency measure imposed or extended on him shall be punished by imprisonment for a term not exceeding 60 days. However, the practice has shown that “misdemeanor courts resort to imposing fines (about 5% of convictions), applying Art. 43, para 1, item 2 of the Law on Misdemeanors” (Kolarić & Marković, 2018, p. 64).

Although from official statistics it can be seen that the number of reported cases of violence in Serbia is growing, that number is just the tip of the iceberg. In most cases, the victim still does not report violence, which makes it impossible to react preventively and provide adequate protection. That is why it is necessary to educate the public about the importance of reacting to all types of violence, and especially to gender-based violence against women (Lubura, 2017, p. 127).

Council of Europe Expert Group on Violence against Women and Domestic Violence (GREVIO) published in January 2020 its first evaluation report on implementation of the Istanbul Convention in Serbia. The Report highlights the positive impact of the LPDV had on processing the cases of domestic violence in Serbia, as well as the fact that the LPDV and additional documents and policies have led to an increase in the scope of training and specialization in all legal professions and competent bodies of internal affairs. The CC is also amended in recent years to be more in line with the requirements of the Istanbul Convention, and forms of violence such as persecution/stalking (138a), forced marriage (art. 187a) and female genital mutilation (art. 121a) now are also incriminated. However, there are still difficulties in ensuring their implementation in practice, largely due to a lack of understanding of the seriousness of these forms of violence, their trivialization in media and public discourse. According to the report, condemnation rates for most forms of violence against women are extremely low, and the reasons for this range from a low level of reporting to lack of instructions on

how to prepare a case for court and insufficient training for recently introduced crimes (Ibid.).

Article 26 of the Istanbul Convention (2011) obliges the parties to take the necessary legislative or other measures and ensure that while protection and support services are provided for the victims one should take into account the rights and needs of child witnesses of all forms of violence involved and stated in the mentioned convention, with due respect for the principle of the best interests of the child. And despite the fact that the children are often witness to the violence that their mothers survive, even femicide, in Serbia still there is no systemic protection and support for children witnessing all forms of violence silent (Femicide: murders of women in Serbia: Quantitative-Narrative Report for 2020). This indicates the need to always treat child witnesses of femicide as victims of violence and therefore their need to be provided with specialized support services. GREVIO appeals to the urgent need to provide that all cases of violence committed by a violent parent be taken into account in determining rights on guardianship and visits.

Although femicide, as such, is not recognized in the legislation of the Republic of Serbia, for the first time, concrete prevention measures that can prevent its occurrence are prescribed by the LPDV, and time will tell whether and to what extent they will be applied and give the desired effects (Lubura, 2017, p. 128).

4. Concluding remarks

Based on all the above, we can conclude that the phenomenon of femicide is a very complex social problem, the solution of which requires a comprehensive approach. With the aim of its prevention and resolution, it is necessary to take into account the wider social context in which it occurs, with special reference to the causes. By analyzing the legislative framework of Serbia in the field of prevention of violence against women and femicide as its most severe form, as well as the research results in this area, it can be concluded that in previous years, efforts have been made in order to prevent this phenomenon. Numerous amendments to the laws governing the state have been passed tried to harmonize its regulations with the provisions of the Istanbul Convention. Still, data on the number of women killed on an annual basis shows that gender-based violence is still present in a large percentage and that there is still no adequate response from the state in terms of femicide prevention.

The starting point for monitoring femicide in Serbia is the establishing of an official, precise and publicly available records of all forms of femicide

(with data collection and comparison from all existing sources) in order to adequately shape the legislative framework as well based on locating the scale of this problem. In order to prevent femicide, but also all other forms of gender-based violence, more work is needed aiming to empower victims to report any form of violence and educating the whole society on this topic, both children through the education system and employees who encounter this issue within their work (police officers, health workers, workers of social work centers, judges, prosecutors, media, etc.). Only timely response to all types of violence enables preventive action and provision of the adequate protection. In order to oblige state and other bodies, organizations and institutions to immediately report any knowledge of violence, as well as to prevent the inaction of judges, public prosecutors and deputy public prosecutors within the deadlines set by law, the LPDV listed the foresaw omissions as the misdemeanors, i.e. the disciplinary offenses.

Existing criminal and civil law norms have sanctioned the act of domestic violence after its execution, while the adoption of the LPDV in the Republic of Serbia enabled preventive action of state bodies in cases when an act of violence has not been committed yet, but the imminent danger that it will be carried out exists.

The LPDV of the Republic of Serbia does not mention children who witness violence in the context of indirect victims of violence. Recognizing a child who witnesses domestic violence as an indirect victim of violence is very important, because that is the only way to adequately react to psychological violence child suffers, to help him/her overcome the trauma, but also to see the true dimensions of domestic violence.

The influence of strong, deeply-rooted customs and cultural models that justify different types of violence, and even the murder of women, is one more of a reason to criminalize femicide as well as a separate criminal offense in the legislation of the Republic of Serbia. Femicide incrimination as a separate criminal offense in the criminal law of the Republic of Serbia is particularly important as the aim of sending a message about the social unacceptability of this behaviour. Data on the decline in the number of violence that preceded femicide registration, to the competent institutions certainly indicate that it is necessary to determine the causes for non-reporting of violence and strengthen trust in institutions besides the improving of the legislative framework and education at all levels.

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PREVENCIJA FEMICIDA U SVETLU PRIMENE NOVIH ZAKONSKIH REŠENJA U KRIVIČNOM PRAVU REPUBLIKE SRBIJE

REZIME: U savremenom društvu nasilje u porodici je društveno neprihvatljiva pojava. Najčešći oblik nasilja u porodici je nasilje nad ženama, dok se kao najteži oblik nasilja nad ženama izdvaja femicid – rodno zasnovano ubistvo. Jedna od mera koju je Republika Srbija preduzela u cilju smanjenja nasilja u porodici jeste donošenje Zakona o sprečavanju nasilja u porodici. U cilju prevencije femicida, najznačajnije novine predviđene zakonom su hitne mere koje izriče nadležni policijski službenik, obavezna procena rizika od ponavljanja nasilja, obavezna koordinacija i saradnja između nadležnih službi i evidencija slučajeva nasilja. U ovom radu se osim krivičnopравnih i porodičnopравnih mera kojima se pruža zaštita od nasilja u porodici, analiziraju i rezultati primene tih mera u kontekstu prevencije femicida.

Ključne reči: *nasilje u porodici, femicid, Zakon o sprečavanju nasilja u porodici, hitne mere.*

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