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# Protection Measures Against Domestic Violence in the Law of Bosnia and Herzegovina and Serbia

**Abstract:** With the aim of eliminating the harmful consequences of domestic violence, i.e. its prevention, and thus effective suppression, in addition to criminal or misdemeanor sanctions, the society has at its disposal various measures of special preventive nature, often called protection measures (measures to protect against violence). In Bosnia and Herzegovina, as well as in other countries in the region, the provisions of family legislation should also contribute to the suppression of various forms or manifestations of domestic violence. To this end, several special laws of preventive nature have been adopted, which have been named as laws on the prevention of domestic violence.

**Key words:** violence, family, prevention, protection measures, court.

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### 1. INTRODUCTION

In addition to domestic violence, in terms of provisions of criminal or misdemeanor law, the countries of the region of Southeast Europe in the field of family law<sup>1</sup> in a specific way determine the concept, content and characteristics of domestic violence, the circle of persons entering the concept of family (and thereby, can be perpetrators of victims of violence), and protection measures applied to perpetrators of violence in order to prevent or forestall the recurrence of such violence among members of the same family or family community.

Due to the exceptional importance of the application of protection measures in the prevention or suppression of domestic violence, we will point out some regional solutions in order to determine the similarities and differences between the states that emerged from the disintegration of the SFRY. This way we can perceive the possibility of application of some of the existing legal solutions in this field, conditions and manner of application, i.e. duration, so that it could be implemented in some of the other legislations in the region, especially since they are today largely related to the same legal sources from the earlier period.

<sup>1</sup> Traljić, N., Bubić, S. (2001). *Porodično pravo*. Sarajevo: Magistrat, 156-179.

In that sense, we will look at the system of protection measures with the aim of preventing domestic violence in the family law of the following countries in the region: Bosnia and Herzegovina, Croatia and Serbia.

## 2. BOSNIA AND HERZEGOVINA

There are three laws in force in Bosnia and Herzegovina, in the field of prevention and suppression of domestic violence, in addition to criminal legislation. These are: a) The Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina<sup>2</sup> from 2013, b) The Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina<sup>3</sup> from 2018, and c) The Law on Protection from Domestic Violence of the Republika Srpska<sup>4</sup> from 2012, so we will point out the similarities or differences between these legal solutions.

### 2.1. Federation of Bosnia and Herzegovina

The Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina regulates: protection from domestic violence, the concept of family and the concept of domestic violence, the type and purpose of protection measures for persons who committed acts of domestic violence, manner and procedure of imposing protection measures, protection of victims of domestic violence, as well as the mutual connection between all entities that are in the function of protection from domestic violence. Article 7 of the Law defines domestic violence. Thus, according to this legal solution, domestic violence<sup>5</sup> is determined if there are grounds for suspicion that actions committed by a family member cause physical, mental or sexual pain or suffering and/or economic damage, as well as threats that cause fear of physical, mental or sexual violence and/or economic damage to another family member.

The following activities<sup>6</sup> are considered to be acts or threats of domestic violence (in terms of their announcement, appearance): a) any use of physical force to the physical or psychological integrity of a family member, b) any behavior of a family member which may cause or threaten to cause physical or psychological pain or suffering, c) intimidation or personal endangerment or violation of the dignity of a family member by blackmail or other form of coercion, d) physical attack of a family member by another family member, irrespective of the fact of whether there was physical injury or not, e) verbal assault, insult, swearing, calling derogatory names, and other ways of violent harassment of one family member by another, f) sexual harassment, d) stalking (monitoring) and other related forms of harassment of another family member, h) damage to or destruction of joint property or possessions (state), i) use of physical violence or causing fear with the aim of deprivation of the right to economic independence by banning work or keeping a family member in a relationship of dependence or subordination, j) use of physical and psychological violence against children and neglect in their upbringing (education), k) physical and psychological violence against elderly and exhausted persons and neglect in their care

<sup>2</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Number 20/2013.

<sup>3</sup> *Official Gazette of Brčko District of Bosnia and Herzegovina* Number 7/18.

<sup>4</sup> *Official Gazette of the Republika Srpska* Nos. 102/12, 108/13, 82/15 and 84/19.

<sup>5</sup> Babić, I. (2007). *Porodično pravo*. Bijeljina: Univerzitet Sinergija, 38-54.

<sup>6</sup> Sesar, K. et al. (2021). *Studije slučaja nasilja u porodici sa standardizacijom kvaliteta rada međusektorskih timova*. Sarajevo: Gender centar, 129-151.

and treatment, l) forcible isolation or restriction of freedom of movement of a family member, and m) failure to pay due attention and failure to provide assistance and protection to a family member despite the obligation under the law.

Only certain persons (*delicta propria*) can be the perpetrator of this offense or its victim (damaged person). These can only be family member or family communities. The family<sup>7</sup>, in terms of Article 6, consists of: a) marital and extramarital partners and their children (joint or from previous communities), b) relatives: blood relatives and relatives from the relationship of full adoption in the direct line without restrictions, and in the collateral kin line up to the fourth degree; stepfather, stepmother; adoptee and adoptive parent from the relationship of incomplete adoption; relatives by in-laws up to and including the second degree, c) guardian and ward, breadwinner and foster parent, and e) former spouses and extramarital partners and their children (joint or from former communities) and their parents, including stepfather and stepmother.

This law further emphasizes that relations between family members are based on humane principles that include mutual respect, assistance, commitment, maintaining harmonious relationships, while developing and expressing the best qualities, bearing in mind the obligation to protect children, respect gender equality and voluntary entering into marriage and extramarital community. In mutual relations, family members are obliged to respect the rights, freedoms and security of other family members in a way that will not restrict, impede or prevent them from exercising the rights and freedoms that family members have under existing regulations. Finally, a family member is obliged to refrain from all forms of violation of physical or mental integrity of another family member, injury and discrimination based on sex and age, and to be placed in a state of subordination on any grounds.

One or more protection measures may be imposed on perpetrators of domestic violence in any form or kind of manifestation. These are<sup>8</sup>: a) removal from the apartment, house or other dwelling and being barred from returning to that apartment, house or other dwelling, b) a restraining order, c) prohibition from harassment and stalking of a person exposed to violence, d) mandatory psychosocial treatment, e) mandatory rehabilitation, and f) temporary deprivation of liberty and detention.

The purpose of these protection measures (Article 10 of the Law) is to ensure the necessary protection of the health and safety of persons exposed to violence, prevention of domestic violence, and taking effective measures for re-education and treatment of violent persons<sup>9</sup>.

A protection measure of removal from the apartment, house or other dwelling and barring their return to that apartment, house or other dwelling (Article 11) may be ordered for a person who has abused a family member with whom he/she resides in an apartment, house or other dwelling, if the competent court, based on the presented personal and material evidence, finds that there is a risk that the abusive person might repeat an act of violence if this measure is not employed. The person for whom this measure has been prescribed is obliged to leave the apartment, house or some other dwelling immediately, in the presence of a police officer, when necessary. When imposing a measure, the court also determines its duration, which ranges from one month to two years.

<sup>7</sup> Medić, D., Tajić, H. (2013). *Porodično pravo u praksi*. Sarajevo: Privredna štampa, 139-152.

<sup>8</sup> Jovašević, D. (2017). *Nasilje u porodici*. Beograd: Institut za kriminološka i sociološka istraživanja, 67-74.

<sup>9</sup> Zirojević, M. (2022). *Nasilje i deca*. Beograd: Institut za uporedno pravo, 49-57.

A protection measure of restraining order (Article 12) may be prescribed to a person who has committed domestic violence for a period of one month to two years, unless the court decides that a longer period of application of this measure is in the victim's interest. In the decision by which the court prescribes restraining order, the competent court determines the places or areas, and the distance below which the abusive person may not approach the victim of domestic violence.

A protection measure prohibiting harassment and stalking of persons exposed to violence (Article 13) may be placed upon a person who harasses or stalks a family member, if there is a risk that he/she might repeat such behavior. When prescribing this measure, the court determines its duration, which ranges from one month to two years, unless the court decides that a longer period would be in the interest of the victim of violence.

A protection measure of mandatory psychosocial treatment (Article 14) may be granted to an abusive person in order to remove his/her abusive behavior or if there is a risk that he/she might repeat the violence already committed. This measure of a special preventive nature is prescribed for a period of six months to two years.

The next protection measure of medical nature is provided in Article 15 of the Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina. It is a measure of mandatory rehabilitation. This measure is imposed by the competent court to an abusive person who has committed an act of domestic violence under the influence of alcohol, drugs or other psychotropic substances, if there is a risk that the abusive person might repeat that act of violence. In any case, the measure is prescribed with a duration ranging from one month to two years.

Finally, Article 16 of the Law provides for a protection measure of temporary deprivation of liberty and detention of an abusive person. Thus, a police officer from the competent police department is obliged to go on the spot for each reported case of domestic violence immediately upon receiving the report. In that case, the police department is obliged to deprive a person of liberty and detain him/her if there are grounds for suspicion that he/she may have committed domestic violence and if the requirements of Article 153 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina<sup>10</sup> entitled "Deprivation of liberty and detention" have been met.

According to this legal solution, a police body<sup>11</sup> may deprive a person of his/her liberty if there are grounds for suspicion of having committed a criminal offense if there are any of the reasons provided for under Article 146 of the Law ("Grounds for Detention"), as follows: a) if he hides or if other circumstances exist that suggest a possibility of flight, b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accomplices or cover-ups, c) if particular circumstances justify the fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a sentence of imprisonment for a term of three years or more may be pronounced, and d) in exceptional circumstances, related to criminal offense for which a sentence of imprisonment of ten years or more severe punishment may be pronounced, and which is of particu-

<sup>10</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13, 54/14 and 74/20.

<sup>11</sup> Zahiragić, A. et al. (2021). *Priručnik za provođenje obuke policijskih službenika za postupanje u slučajevima nasilja u porodici i nasilja nad ženama*. Sarajevo: Lucid Linx, 119-131.

lar gravity, taking into account the manner of perpetration or consequences of the criminal offense, if the release would result in an actual threat to disturbance of public order.

If an abusive person as a perpetrator of domestic violence is deprived of liberty and detained, the police authority is obliged to bring him to the prosecutor immediately, at latest within 24 hours. When bringing a person into custody, the police authority informs the prosecutor of the reasons and time of deprivation of liberty. The prosecutor is obliged to interrogate the person who was deprived of liberty immediately, at latest within 24 hours. Within this period, the prosecutor is obliged to decide whether this person will be released or will submit a reasoned proposal for detention - ensuring that the person is brought before a pre-trial judge. The request to the competent court for imposing a protection measure, according to the place of residence or stay of the victim of violence, in terms of Article 17, is submitted by the police department within 12 hours of finding out about the violence, and in exceptional cases by the prosecutor's office - when there are justified reasons for that. The request shall be accompanied by all collected evidence and an excerpt from the official records - if that person has previously been reported for cases of domestic violence.

The competent court is obliged (Article 19) to issue an appropriate decision imposing a protection measure and its duration within 12 hours from the receipt the request, except in the case of mandatory psychosocial treatment and mandatory rehabilitation, when the court is obliged to provide an expert opinion within seven days from the receipt of the request - if necessary. When imposing a protection measure, the competent court is not limited by special formal evidentiary rules for establishing the facts about the commission of domestic violence actions, as well as caused consequences. In justified cases (Article 20), the court may impose several protection measures on the perpetrator of domestic violence (cumulation of measures). However, after receiving the report on the execution of the protection measure, the court may replace the imposed measure with another protection measure, revoke the decision imposing the protection measure or determine a fine in case of failure to act on the imposed protection measure.

## **2.2. Brčko District of Bosnia and Herzegovina**

The Law on Protection from Domestic Violence of Brčko District of Bosnia and Herzegovina prescribes, in the same way, the field of prevention and misdemeanor suppression of domestic violence. The main goal of this law (Article 3) is to protect victims of domestic violence by preventing and combating domestic violence breaching the Constitution of Bosnia and Herzegovina, the Statute of the Brčko District of Bosnia and Herzegovina and basic human rights and freedoms guaranteed by the laws. According to Article 2c), domestic violence<sup>12</sup> is any act of violence of a family member or family community, which endangers the peace, mental, physical, sexual or economic integrity of another family member or member of family community. Within the meaning of this legal solution (Article 2, item 2), the family is living community of parents and children and other relatives.

According to this law of the Brčko District of BiH, the following persons are considered as members of the family or family community (i.e., as perpetrators of this offense, i.e. the victims): a) spouses or ex-spouses and their children and children of each of them, b) extramarital partners or former extramarital partners, their children or the children of

<sup>12</sup> Ikanović, J. (2020). *Prevenција i suzbijanje nasilja u porodici*. Sarajevo: Dobra knjiga, 68-101.

each of them, c) in-laws, up to and including the second degree of kinship, regardless of whether the marital union has ended, parents of current and former marital and extra-marital partners, d) relatives from full adoption in the direct line without restrictions, and in the collateral kin line up to and including the fourth degree of kinship, as well as relatives from incomplete adoption, e) persons with guardianship relationship, persons who live or have lived in the same family household, regardless of kinship, and f) persons who have a child together or the child was conceived, even though they have never lived in the same family household.

Domestic violence as a misdemeanor, in terms of Article 5 of the Law, includes the following actions<sup>13</sup>: a) threat of bodily injury to a family member or a person close to him, b) threat of taking children or evicting a family member, c) exhaustion by work, starvation, denial of sleep or necessary rest for a family member, d) upbringing of children in a degrading manner, e) denying a family member of means of subsistence, f) denying the right to economic independence by banning work or keeping a family member dependent or subordinate, by threat or not providing a means of subsistence or other forms of economic domination, g) verbal assault, swearing, calling derogatory names or insulting a family member in any other way, h) restricting the freedom of communication of a family member with family members or other persons, i) damaging, destroying or trading of joint property or property in possession (state), as well as damage or destruction of property owned or in the possession of another family member, i.e. attempt to do so, j) stalking a family member, k) causing fear, humiliation, feelings of inferiority, and l) other act of domestic violence that do not contain features of the criminal offense of domestic or family violence. The existence of a misdemeanor requires that the act of domestic violence is committed one or more times.

The Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina, in the second part entitled “Domestic Violence” in Article 5, defines the concept, elements, characteristics and forms of manifestation of offenses entitled “Domestic Violence”<sup>14</sup>. According to this legal solution, the act of domestic violence, which does not have the characteristics of a criminal offense, is a misdemeanor. The third chapter of the Law, entitled “Sanctions for Protection from Domestic Violence”, in Article 17, prescribes the following sanctions such as: a) fine, b) suspended sentence, c) reprimand and d) protection measures. Misdemeanor sanctions are prescribed by a court in misdemeanor proceedings initiated and conducted in accordance with the provisions of the law prescribing misdemeanors.

Protection measures in the Brčko District of Bosnia and Herzegovina that may be imposed on perpetrators of domestic violence<sup>15</sup> are: a) removal from the apartment, house or other dwelling of the perpetrator of domestic violence, b) restraining order, c) prohibition from harassment, stalking and monitoring of victims of domestic or family violence, d) mandatory psychosocial treatment of perpetrators of domestic violence, and e) mandatory rehabilitation of perpetrators of domestic violence.

<sup>13</sup> Hrnčić, Z., Bećirović, F. (2018). *Postupanje u slučajevima nasilja u porodici – multisektorski odgovor*. Sarajevo: Gender centar, 38-51.

<sup>14</sup> Čehajić Čampara, M., Veljan, N. (2018). *Analiza sudske prakse u predmetima nasilja u porodici u Bosni i Hercegovini*. Sarajevo: Atlanska inicijativa, 44-79.

<sup>15</sup> Hadžimešić, L., Džonlagić, S. (2019). *Pregled multisektorskog odgovora na nasilje u porodici na lokalnom nivou u Bosni i Hercegovini*. Sarajevo: UN Women kancelarija, 109-131.



The purpose of such protection measures is to ensure the necessary protection of the health and safety of persons exposed to domestic violence, prevention of domestic violence, and taking effective measures for re-education and treatment of abusive persons. Purpose of protection measures thus determined is included in the general purpose of all misdemeanor sanctions (paragraph 5), which is to influence the perpetrator of domestic violence not to commit domestic violence in the future, to ensure the necessary protection of health and safety of victims of domestic violence, and eliminate circumstances that affect or encourage the commission of domestic violence.

A protection measure of removal from the apartment, house or other dwelling (Article 20) is imposed on the perpetrator of domestic violence under the following conditions: a) if he abused a family member with whom he resides in the apartment, house or other dwelling, and b) if the court finds that there is a risk that the abusive person might repeat an act of violence if this measure is not employed. The person to whom this measure was imposed is obliged to vacate the apartment, house or other dwelling immediately, in the presence of the police. When imposing a measure, the court determines the duration of the measure, which ranges from 30 days to six months.

A protection measure of restraining order (Article 21) is imposed on the perpetrator of domestic violence if there is a risk that he might repeat the violence or if the presence of the perpetrator of domestic violence near the victim would create a high level of mental suffering disabling his normal mental activities. In the decision imposing this protection measure, the Basic Court defines: a) places or areas and the minimum distance which the perpetrator of domestic violence must not come near a victim of domestic violence, and b) its duration ranging from 30 days to one year.

The protection measure prohibiting harassment, stalking and monitoring of a victim of domestic violence (Article 22) is imposed on a perpetrator of domestic violence who committed violence by harassment, stalking and monitoring, if there is a danger that he could repeat harassment, stalking or monitoring of a victim of domestic violence. This measure is prescribed for a duration between 30 days and one year.

Protection measure of mandatory psychosocial treatment (Article 23) is granted to the perpetrator of domestic violence in order to remove abusive behavior and re-education, i.e. with the aim of reducing and eliminating the risk of repeating committed domestic violence until there no longer exists a reason for which the measure was assigned in the first place, but it shall not exceed one year.

The protection measure of compulsory rehabilitation is imposed to the perpetrator of domestic violence (Article 24) who has committed violence under the influence of alcohol, drugs and other psychotropic substances, if there is a risk that the abusive person might repeat that act of violence. This measure is prescribed for a period required for treatment, based on the opinion of specialized experts in charge of treating such addictions, but not longer than one year.

The Basic Court may impose one or more protection measures on the perpetrator of domestic violence (in the sense of Article 25 of the Law) when there are conditions for their imposition prescribed by this Law<sup>16</sup>. These measures can be prescribed independently. Before prescribing a measure, the court may ask the Department of Social Welfare: a) to assist him in obtaining the necessary evidence, and b) to submit its opinion on the appro-

<sup>16</sup> Ganija, H. (2016). *Pravni aspekti braka i nasilja u porodici*. Travnik: Pravni fakultet, 48-62.

priateness of the requested protection measure. In any case, when prescribing protection measures, the purpose, gravity, duration of the imposed measure and its efficiency shall be taken into account. The bodies responsible for the enforcement of protection measures shall be obliged to monitor their enforcement and to inform the court about it. This body may also request from the court: a) suspension, b) extension, and c) replacement of the prescribed protection measure with another measure. The body responsible for the enforcement of the protection measure shall be obliged to submit to the court a report on the enforcement of the prescribed protection measures (their effectiveness, efficiency) no later than six months from the date of imposition of the protection measure or sooner, if necessary<sup>17</sup>.

### 2.3. Republika Srpska

The Law on Protection from Domestic Violence of the Republika Srpska, after defining the concept, characteristics and forms of domestic violence (Article 6), in the fourth part entitled “protection measures”, prescribes in Article 23 measures to protect victims of domestic violence<sup>18</sup>. The purpose of the protection measures envisaged is as follows: a) to ensure the necessary protection and safety of the victim, and b) to eliminate states or conditions that may be influential or may affect or encourage the perpetrator to commit acts of domestic violence in the future. Protection measures are imposed by the competent court in misdemeanor proceedings, at the proposal of the competent police officer, Social Welfare Center or victim of domestic violence. The court shall be obliged to impose protection measures within 30 days from the day of submitting the proposal for imposing a protection measure. These measures are imposed independently and are subject to direct execution by the bodies responsible for their enforcement.

The following protection measures are envisaged in the Republika Srpska: a) removal from an apartment, house or other dwelling, b) restraining order, c) prohibition of harassment or stalking a victim of domestic or family violence, d) mandatory psychosocial treatment, and e) mandatory rehabilitation.

A protection measure of removal from an apartment, house or other dwelling (Article 24) shall be imposed on the perpetrator of violence if he committed violence against a family member with whom he lives in an apartment, house or other dwelling, if the competent court finds that there is a possibility that without the implementation of this measure the perpetrator of domestic violence may again commit such violence. Without delay, the person to whom this measure was imposed shall be obliged to leave the apartment, house or other dwelling in the presence of a police officer. The measure shall be prescribed for a period of time that may not be less than 30 days and not longer than six months.

A protection measure restraining order (Article 25) is imposed on the perpetrator of violence if there is a risk that he might repeat the violence or if the presence of the perpetrator of domestic violence near the victim may create a high degree of emotional suffering of the victim which prevents his normal mental activity. In its decision imposing this protection measure, the court determines the places or areas, and the distance of at least 200 meters in which the perpetrator of domestic violence may not approach the victim. When

<sup>17</sup> Alidžanović, V. et al. (2017). *Priručnik za tužioce za procesuiranje predmeta nasilja u porodici*. Sarajevo: Atlantska inicijativa, 87-104.

<sup>18</sup> Mann, L. (2019). *Dobre prakse u odgovoru na nasilje u porodici – komparativna studija*. Sarajevo: UN Women kancelarija, 34-59.



imposing this measure, the court determines its duration, which may not be less than 30 days and not longer than one year.

The protection measure prohibiting harassment or stalking a victim (Article 26) shall be imposed on the perpetrator of violence who committed the violence by harassment or stalking, and there is a risk that he might repeat harassment or stalking of victim. This measure is imposed for a period of not less than 30 days and not longer than one.

Protection measure mandatory psychosocial treatment (Article 27) shall be imposed on the perpetrator of violence in order to remove the cause of abusive behavior and re-education, i.e. to reduce and remove the risk of repeating violence. This measure may last until there no longer exists a reason for which it was assigned in the first place, but it shall not be longer than one year.

Finally, the protection measure of mandatory rehabilitation (Article 28) shall be imposed on a perpetrator of violence who has committed an act of domestic violence under the influence of alcohol, drugs or other psychotropic substances, if there is a risk that the perpetrator might repeat the act of violence due to such addiction. When imposing this medical protection measure, the court determines its duration depending on the time necessary for treatment, based on the opinion of specialized experts for treatment, but it may not last longer than one year.

The competent court, in terms of Article 29 of the Law, may impose one or more protection measures on the perpetrator of violence when there are conditions for their imposing<sup>19</sup>. The competent court may request the Social Welfare Center: a) to assist it in collecting the necessary evidence, and b) to provide its opinion on the appropriateness of the requested protection measure. When imposing protection measures (Article 33), the purpose, weight, duration of the imposed measure and its effectiveness shall be taken into account. The bodies responsible for the enforcement of protection measures shall be obliged to monitor their enforcement and report to the court about it, and shall propose their termination, extension or replacement by another measure. Also, the body responsible for the enforcement of the protection measure shall submit to the court a report on the execution of protection measures no later than six months from the date of imposition of protection measure, or sooner if necessary.

### 3. SERBIA

Article 197 of the Family Law of Serbia determines the concept and characteristics of domestic violence. According to this legal solution, domestic violence is any behavior by which one family member endangers the physical integrity, mental health or tranquility of another family member. Thus, domestic violence in the Republic of Serbia particularly consists of the following acts: a) inflicting or attempting to inflict bodily injury, b) causing fear by threatening to kill or inflict bodily injury on a family member or a person close to him, c) forcing sexual intercourse, d) inciting to sexual intercourse or sexual intercourse with a person under the age of 14 or incapacitated person, e) limitation of freedom of movement or communication with third parties, and f) insult, as well as any other insolent, reckless or malicious behavior.

The following Article 198 of the Family Law provides for special measures that temporarily prohibit or limit the maintenance of personal contacts with other family mem-

<sup>19</sup> Grupa autora, (2010). *Vodič za borbu protiv nasilja u porodici*. Sarajevo: Prava za sve, 81-104.

ber<sup>20</sup>. These are measures of a preventive nature that should prevent domestic violence as criminal offense, and they can last for a maximum of one year. By violating these measures, a member of a family household may commit a special form of the criminal offense of domestic violence under Article 194 of the Criminal Code. For this criminal offense, a prison sentence for a term between three months and three years and a cumulative fine are prescribed since September 2009 (whereby the Criminal Code<sup>21</sup> prescribed a milder sentence for this offense in the period from January 2006 to September 2009, a fine or imprisonment for up to six months).

Pursuant to the provisions of Article 198 of the Family Law, the following protection measures against domestic violence<sup>22</sup> are envisaged in the Republic of Serbia: a) issuing a warrant for eviction from family apartment or house, regardless of the right of property or lease of immovable property, b) issuing a warrant for moving in the family apartment or house, regardless of the right of property or lease of immovable property, c) restraining order, d) prohibition of access in the vicinity of place of residence or work of a family member, and e) prohibition of harassment of a family member.

Family Law of Serbia, in addition to determining: a) the concept and characteristics of domestic violence, and b) persons considered to be family members (in capacity of perpetrators or victims of this criminal offense), in the Tenth Part entitled “Proceedings regarding to family relations”, in item 7, in provisions of Articles 283-289, regulates the procedure in disputes for protection against domestic violence. According to these legal solutions (Article 283), in a dispute for protection against domestic violence, in addition to the court of general territorial jurisdiction, the court in whose territory the family member against whom the violence was committed has residence (injured party or victim), has territorial jurisdiction. Before the generally competent court (basic court) and territorially competent court, the procedure in the dispute for protection against domestic violence shall be initiated by a lawsuit within the meaning of Article 284<sup>23</sup>.

This lawsuit for determining protection measures against domestic violence, as well as for extending already pronounced protection measures against domestic violence, may be filed by: a) a family member against whom violence was committed (victim), b) legal representative of the victim, c) public prosecutor, and d) the guardianship authority. However, a family member against whom this measure was imposed (perpetrator of domestic violence) may file a lawsuit to the same court for termination of the imposed protection measure against domestic violence, if he considers that its purpose has already been achieved or that its further application would be unjustified.

At the same time, Article 285 of the Law explicitly stipulates that the procedure in a dispute for protection against domestic violence<sup>24</sup> is of “special urgency”. Therefore, it is logical that the first hearing before the competent court shall have to be scheduled within

<sup>20</sup> Jovanović, S. (2010). *Pravna zaštita od nasilja u porodici*. Beograd: Institut za kriminološka i sociološka istraživanja, 109-128.

<sup>21</sup> *Official Gazette of the Republic of Serbia* Nos. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

<sup>22</sup> Lukić, M., Jovanović, S. (2003). *Nasilje u porodici – nova inkriminacija*. Beograd: Autonomni ženski centar, 78-89.

<sup>23</sup> Stepanov, B. (2022). *Nasilje u porodici – šta govore podaci*. Beograd: Program UN za razvoj, 78-97.

<sup>24</sup> Golubović, Z. (2018). *Nasilje u porodici i policijska reakcija*. Beograd: Partenon, 87-108.

eight days from the day the lawsuit was received in the court. The “second instance court” shall also act with “special urgency”. Namely, it shall be under obliged to pass a decision on the appeal against the decision of the first instance court within 15 days from the day the appeal was served to it.

In these proceedings, as well as in the criminal proceedings, i.e. in the proceedings conducted according to the provisions of the Law on Prevention of Domestic Violence<sup>25</sup>, the role of the guardianship authority is particularly expressed. Namely, according to Article 286, in case the proceedings for protection against domestic violence was not initiated by the lawsuit of the competent guardianship authority, then the court is authorized to request assistance from the guardianship authority in collecting necessary evidence, but also to express its opinion on the expediency of requested protection measure. Although the proceedings for protection against domestic violence is conducted in accordance with the provisions of the Civil Procedure Code, it still contains certain specifically expressed features. One of them is defined in Article 287 entitled “Departure from disposition principle”. Namely, the court in this type of proceedings is not obliged by the limits of the claim for protection from domestic violence. This means that it can determine the protection measure against domestic violence even when its imposition is not requested, provided that based on personal and material evidence it assesses that such a measure can best achieve the required protection for a victim of domestic violence.

Another specificity of the proceedings for protection against domestic violence is the principle provided for in Article 288. According to this legal solution, the appeal does not stay the execution of the judgment determining or extending the pronounced protection measure against domestic violence.

Finally, the Family Law stipulates the obligation to keep the prescribed records and documentation on committed domestic violence (Article 289). Thus, the court shall be obliged to serve the decision reached in dispute for the protection against domestic violence “immediately” to: a) residence, i.e. dwelling of a family member against whom the violence was committed (victim), and b) guardianship authority on the territory of which a family member against whom protection measure has been determined (perpetrator of violence) has residence, i.e. dwelling. These guardianship authorities are obliged to keep the prescribed records and documentation, both on persons against whom domestic violence was committed, and on persons against whom a protection measure has been imposed, i.e. persons who have committed such domestic violence.

#### 4. CONCLUSION

Laws of this kind IN Bosnia and Herzegovina and Serbia provide for a number of protection measures aimed at, *inter alia*, ensuring the protection of health and safety of persons who have already been exposed to violence (victims), preventing further domestic violence, with taking effective measures to rehabilitate and treat abusive persons (Federation of BiH). Only the Federation of BiH recognizes the protection measure “temporary deprivation of liberty and detention”.

All state bodies, other bodies, health, educational and other institutions are obliged to report to the police committed domestic or family violence which they find out about in the performance of duties within their competence, i.e. activity. The report on the committed

<sup>25</sup> *Official Gazette of the Republic of Serbia* No. 94/16.

violence must be submitted to the police by the responsible person in the body or institution, as well as health and social worker, teacher, educator and other person who finds out about the committed violence in the performance of their duties. The misdemeanor authority and the police are also obliged to inform the Social Welfare Center about the reported violence.

Upon learning of the violence, the competent authorities (police or court) shall, immediately, take necessary actions and measures to protect the victims of violence, as well as to protect witnesses. The Social Welfare Center, i.e. other institutions of social and child protection, health institutions, as well as other bodies and institutions dealing with protection are obliged to provide, without delay, protection and assistance to a victim in accordance with their competencies. These bodies and institutions are also obliged to take care of all the needs of the victim and provide her access to all forms of assistance and protection.

Family members, as well as any citizen who learns about committed domestic violence are also required to submit this report to the competent police department. A victim of domestic violence can also submit a report on committed violence, its perpetrator or victim, while family members are obliged to submit it, as well as any citizen who finds out about domestic violence, especially if the victim is a child. A person who knows about domestic violence and does not report it to the competent state authorities commits a misdemeanor, except in the case when the victim of domestic violence reports violence.

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## Mjere zaštite od nasilja u porodici u pravu Bosne i Hercegovine i Srbije

**Rezime:** U cilju otklanjanja štetnih posledica izvršenog nasilja u porodici, odnosno njegovog sprječavanja, pa time i efikasnog suzbijanja, pored krivičnih ili prekršajnih sankcija, društvu stoje na raspolaganju i različite mjere specijalno-preventivnog karaktera koje se često nazivaju zaštitne mjere (mjere zaštite od nasilja). U Bosni i Hercegovini, kao i u drugim državama u regionu, suzbijanju različitih oblika ili vidova ispoljavanja nasilja u porodici treba da doprinesu i odredbe porodičnog zakonodavstva. U tom cilju, donijeto je i više specijalnih zakona preventivnog karaktera koji su imenovani kao zakoni o sprječavanju nasilja u porodici.

**Ključne riječi:** nasilje, porodica, prevencija, zaštitne mjere, sud.

