

**„MONITORING AND ANALYSIS OF JUDICIAL PRACTICE IN THE FIELD OF SEXUAL AND GENDER BASED VIOLENCE IN FBiH“**

Analysis is based upon most important aspects of criminal proceedings that were in the focus of the trial monitoring: application of substantive law; treatment of the victim within the proceedings; penal policy pursued in criminal offences; trial within a reasonable time; analysis of the conditions under which the trial took place juveniles as victims in criminal; problems encountered in proving criminal offences.

Monitoring of the judiciary was conducted by four monitors during the period between February and October 2011 in the territory of the FBiH on 8 courts: Cantonal courts in Zenica Tuzla, Sarajevo and Novi Travnik and Municipal courts in Zenica, Tuzla, Sarajevo and Travnik. Monitoring included 145 cases. Trial monitoring included presence on the trial, access to court files and archived court files.

**CATEGORIES OF MONITORED CRIMINAL OFFENCES:** Criminal offences against life and limb (murder; aggravated bodily injury; slight bodily injury); Criminal offences against sexual freedom and morality (rape; sexual intercourse with a helpless person; sexual intercourse by abuse of position; sexual intercourse with a child; lechery (concupiscence); satisfying lust in the presence of a child or juvenile; pandering; incest); Criminal offences against marriage, family and youth (domestic violence; common-law marriage with a junior juvenile).

**CRIMINAL OFFENCES AGAINST MARRIAGE, FAMILY AND YOUTH**

Analysed 81 cases, of which 78 cases of domestic violence; 3 cases of common-law marriage with a junior Juvenile.

**DOMESTIC VIOLENCE:** During trial monitoring 58 cases ended.

- In most of the cases excessively long duration of the proceedings did not occur.
- In 4 cases, there is a concern that the cases have not been completed without delay, which is aggravated by the fact that the injured party and the accused continue to live together. In 6 cases, the victim/injured party was still subjected to violence by the accused.
- In 69 (out of 78) cases violence was committed against family members with whom the perpetrator lives in a common household (wife and children). The FBiH Criminal Code in these cases provides for imprisonment from 3 (three) months to 3 years.
- In 71% of ended cases a suspended sentence was imposed. In most cases the deadline for checking is one year which represents the legal minimum.
- None of the cases in which the protective measure was imposed were recorded. In only one case, a security measure was imposed.
- The prison sentence was imposed in 9% of cases - only in case of serious bodily injury, prolonged criminal offense or acquiescence.
- In more than 24% of cases, the Domestic Violence was committed against several family members, which was not taken as an aggravating circumstance.

**CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM AND MORALITY**

Of the total of 47 cases, 20 were monitored on the cantonal and 27 in municipal courts. All cases were finished without delay. The Criminal act (CA) Lechery was monitored in 17, Rape in 14 cases, 7 cases were CA Sexual intercourse with the child and Pandering, and one case each related to coercion on Sexual intercourse with a helpless person and Forced sexual intercourse.

- In 10 out of 47 (or over 21%) cases, a criminal sanction was imposed **below the legal minimum**. All sanctions imposed under the legal minimum are in the cases of CA Lechery and Pandering.
- The imposed sanctions for Lechery range from 2 months to 1 year and 6 months.
- In relation to the anticipated 3 months to 3 years, or 6 months to 5 years for the offense committed against a minor, it can be concluded that the imposed sanctions are mild and unsuitable for the circumstances of the case.

**CRIMINAL OFFENCES AGAINST LIFE AND LIMB**

Of the total of 17 cases monitored, 14 were Murder cases and 3 were Violent behavior.

- In 9 out of 14 cases (or over 64%) of murder cases the **victims were wives**.
- In 3 of 9 cases (33.33%) of the murder of a spouse, the accused was previously convicted of CA Domestic Violence and Violent Behavior committed against a woman.
- Most sentences are closer to the legal maximum.

**PROCEDURAL MATTERS**

**The status of the victim of sexual and gender-based violence in criminal proceeding**

- Analyzing all monitored cases, regardless of CA type, only in 7 cases protection measures were applied to a vulnerable witness. An example of a violation of the provision of Article 100 of the FBiH Criminal Procedure Code is the criminal offense of Pandering. On the injured party's side there were also minor girls who had the same treatment during the proceeding as same for adult victims, they were not interrogated in the presence of an expert, nor they received the status of protected witnesses or witnesses under threat.
- A special problem is the compensation of victims of the crime. In no case during the criminal proceedings, no decision was made on the damage compensation request - the injured parties were referred to the litigation procedure.

**Conditions under which the trial took place**

- The number of courtrooms is not satisfactory.
- Often it happens that trials take place in the judges' offices, which are usually tightened, so in these situations the accused and the injured are placed in the immediate vicinity.
- There are no separate departments to support witnesses within the courts. An exception is the Sarajevo Cantonal Court, within which the Witness Support Section operates, which provides psychological and other types of support to witnesses during and after the trial.

**LEGAL QUALIFICATION**

It is noted that essentially the same factual basis received different legal qualifications.

The problem of issuance of unadequate criminal sanctions is partly due to the fact that the correct legal qualification is not carried out.

**RECOMMENDATIONS FOR AUTHORIZED INSTITUTIONS****Municipal and Cantonal Courts in the FBiH, Cantonal Prosecutor's Offices:**

- To comply with the principle of urgency in accordance with the Law on the Protection against Domestic Violence.
- To ensure more rigorous application of criminal sanctions available.
- To place under protective guardianship of offenders who have received a suspended sentence.
- To facilitate a timely provision of physical evidence for the crimes of domestic violence and crimes against sexual freedom and morality.
- To ensure the conduct of an in-depth investigation by the prosecutor.
- To issue foreseen protection and security measures, and ensure their implementation.
- To establish special witness support departments/units/offices within the courts.
- To improve the technical conditions in the courts, including with satisfactory audio and video equipment for the protection of witnesses.
- To make arrangements to provide a waiting room — a special room in the courts designed for placement and accommodation of witnesses and protected witnesses.
- To establish a framework for cooperation between the prosecutors and mental health centres during the investigation stage in order to provide support for psychological and social problems experienced by the potential vulnerable witnesses.
- To improve coordination between the prosecutor's offices and courts in terms of psychological support for witnesses in order to reduce the risk of their retraumatisation.

**The Ministry of Security of Bosnia and Herzegovina, the Ministry of Justice of BiH, the Federal Ministry of Justice:**

- To harmonise national legislation governing the area of violence against women with the international standards of sexual and genderbased violence, particularly in terms of the anticipated sanctions and measures designed for the purpose of victim protection.
- To harmonize legislation in order make more severe the penalties for perpetrators of domestic violence.
- To take more attention on length of investigative and judicial proceedings.
- To provide optimal conditions for the operation of courts, including a sufficient number of courtrooms and special areas designated for protected witnesses and injured persons.

**The Gender Equality Agency of Bosnia and Herzegovina, the Gender Centre of the Federation of Bosnia and Herzegovina:**

- To develop a strategy in order to undertake concrete measures with a view to encouraging women to report cases of domestic violence.
- To develop a strategy for the prevention of domestic violence, genderbased violence, sexual harassment and harassment, through the work with the potential abusers/violence perpetrators, or persons prone to violent behaviour, especially with children from the families with an abusive member.

**The Centre for Judicial and Prosecutorial Training of the Federation of Bosnia and Herzegovina:**

- To train judges, prosecutors, healthcare professionals, educators, teaching staff, school counsellors, social workers, psychologists and the police, on legislation, laws, bylaws and procedures relating to sexual and gender-based violence in order to ensure sensibilisation of all stakeholders and parties concerned.
- To organize training sessions in connection with the methodology of sentencing (meting out and fashioning sentences) and establishing the aggravating circumstances and other factors that have influence on sentencing, on the proper implementation of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, on the imposition of protective measures as a means to an end of protecting the victim rather than punishing the accused.

**Legislative authorities at all levels, the Federation Ministry of Internal Affairs:**

- To prepare all necessary subsidiary legislation, particularly bylaws, rulebooks and regulations in the field of domestic violence, genderbased violence, harassment and sexual harassment, and to establish relevant structures and institutions required for their implementation.
- To ensure capacities within the institutions (personal, technical, space) and develop and improve multisectoral cooperation.

**WHY IS THE CONTINUATION OF MONITORING IMPORTANT?**

The focus of monitoring was not to determine the cause-and-effect relationship between the CA of the Murder and Domestic Violence.

- Alarming is the fact that of the 14 cases monitored of CA Murder, in 9 cases (over 64%) the victim is a spouse or extra-marital partner (women).
- In 3 out of 9 cases (33.33%) of the murders of wives, the accused was previously convicted of CA Domestic Violence and Violent Behavior committed against a woman.
- An analysis of the imposed criminal sanctions has revealed that, along with the act of violence, another criminal offense was committed at the same time.
- The above data are indicative of the cause-and-effect relationship between the CA of the Murder and Domestic Violence.
- Investigating the cause-and-effect relationship between the CA Murder and CA Domestic Violence will create a basis for the institutions to improve legislation in evaluating special prevention that relates to domestic violence.