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Report  
and Analysis of the Criminal Proceedings  
Monitoring in the Area of Gender Based Violence in  
Federation of Bosnia and Herzegovina and  
Republika Srpska Project „Monitoring  
Justice Towards Sexual and Gender  
Equality in Bosnia and Herzegovina“

Aleksandra Petrić and Dženana Radončić Project  
„Monitoring Justice Towards Sexual and  
Gender Equality in Bosnia and Herzegovina“

Report and Analysis of the Criminal  
Proceedings Monitoring in the Area of  
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**JOINT RECOMMENDATIONS FOR THE FEDERATION BIH AND REPUBLIKA SRPSKA IN  
THE CASES OF SEXUAL AND GENDER BASED VIOLENCE STRUCTURAL OVERVIEW OF  
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## INTRODUCTION

Gender based violence in Bosnia and Herzegovina persists as a widespread form of violation of the basic human rights. It has long term and immeasurable consequences for not only women and children that are recognized as a primary and the most common victims, but also influences sustainable social development, status of public health, and security. In 2013, the first comprehensive Study on Prevalence and Characteristics of Violence Against Women in Bosnia and Herzegovina, which confirms that women are exposed to high risk from violence, both in their immediate environment within a family, and in their wider community. Results of the Study also point that almost half of women above 15 years of age were exposed to various forms of violence at least once in their life, and especially psychological violence combined with physical violence.<sup>1</sup>

During the past decade, governmental institutions at all levels in Bosnia and Herzegovina conducted all encompassing interventions directed toward establishing institutional framework for prevention and fighting gender based violence. These necessary changes were conducted through adoption and changes of the Law on Gender Equality of Bosnia and Herzegovina, Criminal Codes of Federation BiH and Republika Srpska, and the Laws on Protection from Domestic Violence. Besides changes of the national legislation, Bosnia and Herzegovina has accepted relevant international documents, and the most recently ratified the Council of Europe Convention on Preve-

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<sup>1</sup> The Study also points that during a year of field research 11.9% of women in Bosnia and Herzegovina were subjected to some form of violence. Even 41.9% of women emphasized they were victims of psychological violence in some period of their life, and 10.8% of women said they were victims of violence during the past year. 24.3% of women were subjected to physical violence in some period of their life, while 2.4% of women said they were subjected to this form of violence during the last year. The Study on Prevalence and Characteristics of Violence Against Women in Bosnia and Herzegovina, Agency for Gender Equality of BiH, June 2013. Available at the official web presentation of the Agency, direct link: [http://arsbih.w1.daj.ba/wp-content/uploads/2014/01/studija\\_prevalenca.pdf](http://arsbih.w1.daj.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf) (last access on 27 May 2014)

ntion and Combating Violence Against Women and Domestic Violence<sup>2</sup>.

As a part of the public policies, strategies and action plans have been adopted in the area of prevention and combating domestic violence, trafficking of people, protection of children from violence, and other important problems that are related directly or indirectly to gender based violence. Within education, numerous women's nongovernmental organizations cooperated and they still cooperate with governmental institutions with objective of raising awareness on various forms of gender-based violence, prevention, and support through direct work with children and youth people of both sexes, as well as teachers and other education professionals. Numerous protocols have been initiated and signed with objective to establish procedures for action, protection, and support for persons that survived some of the forms of gender based violence, and improved cooperation of key subjects of protection (police, centers for social work, courts, prosecutors, health, and educational institutions). It is important to mention participation of women's nongovernmental organization that are providing long term direct support and assistance to women and children survivors of violence through various types of services (SOS help lines, free legal and psychosocial assistance, safe houses, etc.)

Gender based violence in Bosnia and Herzegovina is persisting despite comprehensive approach and cooperation of the governmental and nongovernmental sectors in this area. Reasons for that are deep rooted patriarchal stereotypes on a social roles of women and men in BiH society, and widely accepted attitudes that gender based violence represents the act of a lower social danger and private problem of women and children exposed to violence.

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<sup>2</sup> House of Peoples (31<sup>st</sup> Session held on 23 July 2013), and House of Representatives (50<sup>th</sup> Session held on 18 July 2013) of the Parliamentary Assembly of Bosnia and Herzegovina ratified the **Council of Europe Convention on Prevention and Fighting Violence Against Women and Domestic Violence (CAHvio)**. On 7 November 2013, Bosnia and Herzegovina became the 6<sup>th</sup> country member of the Council of Europe that ratified the Convention.

Economic dependence of women in a family, as well as continuous feminization of poverty also represent important factors that are influencing vulnerability of women and children, and in many cases, their long term exposure to gender based violence both within a family and in other social contexts.

The project „Monitoring Justice Towards Sexual and Gender Equality in Bosnia and Herzegovina“ focuses on independent monitoring of one of the key segments of support for women to protect their human right on life without violence. It also focuses on proceedings of criminal cases in this field by targeted basic and district courts in Republika Srpska and municipal and cantonal courts in Federation of Bosnia and Herzegovina, as well as the role and work of other subjects involved in these proceedings, especially prosecutors' offices and centers for social work, and their work on providing support and assistance to women and children survivors of violence that are participating in these proceedings as injured parties.

This publication presents findings of the criminal proceedings monitoring for Republika Srpska and Federation of Bosnia and Herzegovina with recommendations, as well as the joint recommendations directed toward empowering work of all interested subjects in the field of protecting women and children from gender based violence within criminal proceedings through implementing necessary measures.



# REPORT AND ANALYSIS OF THE CRIMINAL PROCEEDINGS MONITORING IN THE FIELD OF GENDER BASED VIOLENCE – FEDERATION OF BOSNIA AND HERZEGOVINA

## I Introduction

The term *sexual and gender based violence* has been internationally accepted for marking the violence based on sex and/or gender and directed against a person (in a further text: SGBV). It does not refer to some concrete form of violence, it is rather used as an umbrella concept to mark any form of violence directed against specific person based on socially prescribed (gender) differences between men and women. Although forms of SGBV vary based on their scope and nature, an inexhaustible list includes sexual violence (along with sexual exploitation and forced prostitution), domestic violence, trafficking of people, forced marriages, rape, harmful traditional practices, such are genital mutilation of women, honor killings, etc.<sup>3</sup> In accordance with the relevant international instruments<sup>4</sup>, namely the Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence<sup>5</sup> and the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>6</sup>, SGBV refers to violence directed against women, because they are women (in a form of a motive, or an impulse for execution of violence), or violence that disproportionately affects women.

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<sup>3</sup> „Prevention of and Response to Gender Based Violence“, Camp Management Toolkit, Available online: [https://www.nrc.no/arch/\\_img/9293565.pdf](https://www.nrc.no/arch/_img/9293565.pdf).

<sup>4</sup> Also: CEDAW Committee General Recommendation No. 19 on Violence Against Women (1992), the United Nations General Assembly Declaration on the Elimination of Violence Against Women (1993), and Recommendation Rec (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the Protection of Women Against Violence (2002).

<sup>5</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Istanbul, 11.V.2011.

<sup>6</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted at 1979 by the United Nations General Assembly.

Having that in mind, SGBV includes any harm or injury against a woman, which also represents the reason but also the result of unequal power distribution between women and men based on socially rooted differences between women and men. All of this leads to subordinate position of women in both private and public sphere.<sup>7</sup> Because of these roots in social and cultural structures of a society, the issue of violence against women is regenerated and perpetuated with unchanged ferocity, due to denial and silence of majority in a society, but also due to unsystematic and inconsistent approach to this issue by relevant state institutions.

Considering such characteristics and elements of violence, violence by its nature represents violation of the basic human rights to a life, freedom, security, dignity, equality between women and men, prohibition of discrimination, and protection of physical and mental integrity guaranteed by the constitution and the international documents.<sup>8</sup> Because of that, SGBV reflects and intensifies inequalities between women and men. According to the international human rights law, states have positive and negative obligations in relation to protection of the mentioned human rights, which means that state bodies should undertake necessary measures to ensure implementation of the laws, and prevent internationally recognized prohibited acts. They should also take measures to protect women and men individuals from unlawful acts of any non-state actor.

Efforts to point at complexity of SGBV in the postmodern society are especially important because of the prevalence and various forms of this type of violence, despite existence and promotion of the numerous international standards that are

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<sup>7</sup> Indicated as one of the decisive factors that contribute to the high rate of sex and gender based violence in the Explanatory Report of the Convention on Prevention and Fighting Violence Against Women and Domestic Violence (Explanatory Report CETS No.210).

<sup>8</sup> You can find more on this issue and gender based violence at the web page of the European Institute for Gender Equality: <http://eige.europa.eu/>.

targeting elimination of this issue. As with any other type of violence, proper recovery from SGBV consequences is requiring synchronized and timely reactions of entire society. Above all, this includes saving a woman victim, bringing perpetrator of violence to justice, assisting to a victim to recover physically, emotionally, socially and economically from violence, and taking all necessary measures to strengthen judicial system to function properly. This analysis will examine institutional reaction of judiciary, especially courts, and point at court practices and (un)used possibilities for reaching contemporary standards in protection of women's human rights.

The terms SGBV and violence against women are often used simultaneously, due to the circumstances that majority of sexual and gender based violence acts are committed by men against women and girls. According to the assessments and data available at web page of the European Institute for Gender Equality, 20% - 25% of women in Europe experienced some form of physical violence, while number of women that were victims of some form of gender based violence is much higher. According to the reports of member states of the Council of Europe that vary in methodology of data collection and the analysis, but equally point at disturbing statistics on violence against women, between 1/5 and 1/4 of all women experienced some form of psychological violence - at least once during their adult life - while percentage of women that experienced any form of violence reaches 45%.<sup>9</sup>

This certainly does not mean that men cannot appear as the victims of gender based violence. However, since this type of violence is based on continuous misbalance of power between women and men, the United Nations data reports indicate that women and girls are incomparably more affected with SGBV, and in any case suffer more harmful consequences from violence than men. Due to the gender based discrimination and lower social and economic status in general; women have less options and available

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<sup>9</sup> Explanatory report of CETS, available at: <http://goo.gl/h4tuWm>.

resources to avoid or leave abusing environment/family and seek justice.<sup>10</sup>

Despite signed international documents and accepted human rights standards, SGBV in Bosnia and Herzegovina still represents pervasive social issue influenced by the several factors.

Patriarchal mentality that is still dominant in BiH society makes the public more tolerant toward various forms of violence against women, and makes more difficult for victims to step out and report violence. Due to that, dark number of violence against women cases is still drastically higher in relation to a number of reported and processed cases. One of the key issues is also lack of systematically collected and accessible data on number of violence against women cases that would be used for raising awareness of the public and state institutions, and public advocacy for urgent processing of the cases of violence.

As some of the reports emphasize<sup>11</sup> legacy of war and issues of a transitional society in combination with the difficult economic situation in BiH and worldwide are just some of the frequently used excuses for lack of continuous, systemic, and efficient approach to solving the issue of violence against women. Regardless of relatively satisfying legal framework, lack of adequate implementation in the practice is preventing efficient protection, and does not offer security to the victims. This also causes lack of trust in work of the authorized official institutions, and prevents many women to report acts of violence. Those women who report violence they suffer predominantly use their right not to testify against an abuser, which creates vicious circle of violence.

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<sup>10</sup> „Gender-based Violence, Methodological Protocol: Harmonized Methodology and Concepts to Conduct GBV Surveys“, Euromed Gender Equality Program, Enhancing Equality Between Men and Women in the Euromed Region (2008-2011).

<sup>11</sup> „Alternative Report on Implementation of CEDAW Convention in Bosnia and Herzegovina“, October 2011, available online: <http://goo.gl/9Kx55B>.

Previous formal contacts with women and men prosecutors and judges (including their professional work) reflect their fair sensibility toward victims, and taking into consideration economic dependence of women on men especially in rural areas. It is noticeable that women and men judges, as a rule, are avoiding issuing criminal sanctions and various protection measures that presuppose removing abusers from a family, since they usually appear as the only direct breadwinners.

Although it looks justifiable, this practice is not sustainable, because the issue of economic dependence of women should not be promptly solved with lighter criminal law policies, but securing other sources of income through available state mechanisms.<sup>12</sup>

Above presented overview of the situation, as well analyses of the findings that follow are justifying need for implementation of monitoring judicial system initiatives on a permanent basis. Therefore, this Report should be considered as the contribution in that direction. It will provide the analytical overview of the court practice in several courts of Federation of BiH in processing cases of SGBV, based on the data collected through monitoring of criminal cases and court proceedings, as well as examining archived documents of finalized criminal cases related to SGBV. First part of the Report focuses on the methodology used during collecting of necessary data, following with the overview of the international and national legal framework. The analysis will focus on procedural law and material law aspects of criminal cases of SGBV, elaborate identified issues, and examples of good practices. The analysis and conclusions should create a good base for justifiable and feasible

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<sup>12</sup> In this sense, we should praise the initiative of the Federation BiH Government for establishing long awaited Alimony Fund. We are reminding that in February 2014, Federation BiH Government requested from the FBiH Ministry of Finances to coordinate with the FBiH Ministry of Justice and FBiH Ministry for Labor and Social Policy, and examine possibilities for establishing the alimony fund, and to submit to the FBiH Government the concrete proposal for implementation of that plan.

recommendations, point at need for systemic approach in solving the issues of SGBV, and influence improvements of current situation.

In order to avoid categorical evaluation of work of the official institutions as good or bad, one of the key objectives of the analysis that follows is to provide wider picture of existing situation in order to point at the issues, and create preconditions for taking concrete measures to improve existing situation.

Findings and conclusions are pointing at numerous issues that go beyond framework of judicial institutions, but inevitably influence their work in the practice. Although we identified high level of professionalism and sensibility of the judges, as well as their openness for cooperation and providing support to the projects of this type, it is clear that numerous socio-economic factors are obstructing consistent implementation of laws and protection of human rights.

Because of aggravating socio-economic circumstances, and taking into account mentality of the population that is traditionally perceiving violence against women as an educational measure and a private matter, as well as inadequately allocated financial resources for supporting progressive legal solutions, this project and the findings that follow are striving to support judicial institutions in Bosnia and Herzegovina through identifying court practices in processing cases of SGBV in the context of current legislation and implementation of the international standards.

This analysis has been prepared as the result of the Project ***„Monitoring Justice Towards Sexual and Gender Equality in Bosnia and Herzegovina“***, supported by the **Kvinna till Kvinna Foundation from Sweden**. Monitoring activities of criminal proceedings were implemented within the period of 12 months, from 1 March 2013 to 28 February 2014. The Project was implemented by the Citizens' Association „Center for Legal Assistance for Women“

Zenica (for the Federation of Bosnia and Herzegovina) and the Foundation „United Women“ Banja Luka (for Republika Srpska), in the partnership with the Citizens' Association „Budućnost“ Modriča, Women's Association „Most“ Višegrad, and Foundation „Lara“ Bijeljina.

## I.1 Methodology

The issue of the efficient monitoring of women's rights that are also human rights, or the overview of the human rights situation in a certain country, should be based on the set of verifiable, accessible, centralized, and in detail elaborated data, with objective of the efficient protection and promotion of human rights.<sup>13</sup> Because of that, the monitoring process presupposed collecting, verification, and placing collected data into the function - all of this with following the principles:

- Non-interference in the judicial process,
- Impartiality,
- Professionalism,
- Confidentiality.

For this analysis and needs of the Project, six (6) women monitors/observers were collecting the data through active monitoring of the court proceedings – through the presence during proceedings, as well as through the passive monitoring, through examining and collecting archived materials related to the criminal acts regulated by the Criminal Code of the Federation of Bosnia and Herzegovina, as follows:

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<sup>13</sup> Human Rights and Justice in Bosnia and Herzegovina, the Report on Implementation of the Recommendations in the Justice Sector in Bosnia and Herzegovina from the Universal Periodical Review of the United Nations Human Rights Council, Justice Network in Bosnia and Herzegovina, 2011- 2012

- Criminal Acts Against Life and Body (Murder; Serious Bodily Injury; Light Bodily Injury);
- Criminal Acts Against Sexual Freedom and Morality (Rape; Sexual Intercourse with a Helpless Person; Sexual Intercourse with a Child; Lewd Acts; Satisfying Lust in Front of a Child or a Minor; Inciting Prostitution; Abusing a Child or a Minor for Pornography; Incest);
- Criminal Acts Against Marriage, Family, and Youth (Domestic Violence; Avoiding Alimony; Cohabitation with a Younger Minor).

Having in mind the project objectives, as well as providing support to the judicial reform, following aspects are considered as relevant for the analysis of current situation: numerical structure of criminal acts; average duration of a criminal proceeding for certain types of criminal acts; treatment of a victim during proceeding; penal policy in criminal acts (including assessment of mitigating and aggravating circumstances, as well as creating possibilities for accomplishing special and general prevention); the issues of weighting criminal law sanctions; and ordering the protection measures and security measures.

The Center for Legal Assistance for Women Zenica conducted monitoring of the targeted criminal acts in ten (10) courts of BiH Federation, as follows: the Cantonal and the Municipal Court in Zenica, the Cantonal and the Municipal Court in Sarajevo, the Cantonal and the Municipal Court in Tuzla, the Cantonal Court in Novi Travnik, the Cantonal Court in Odžak, the Municipal Court in Visoko, and the Municipal Court in Orašje. The monitoring was conducted in the period from 1 March 2013 to 28 February 2014.

During the preparatory phase, the Center received support from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which sent the recommendation to the courts to support the project activities and enable to the partnership



nongovernmental organizations to monitor adequately proceedings in criminal law cases of gender based violence, in accordance with the procedural laws. This recommendation has been developed based on good cooperation with the Council. During the period 2012/2013, in the cooperation with the Project “Strengthening Capacities of Prosecutors in the Criminal Justice System” implemented by the Council, the Center for Legal Assistance for Women Zenica successfully implemented the Project “Homogenization of Community Actors for Reaching More Efficient, Transparent, and Responsible Prosecutorial System.” Cooperation with the Council was initiated in 2010, during UNDP/UNFPA Project “Prevention and Fighting Sexual and Gender Based Violence in Bosnia and Herzegovina, “during which the Center for Legal Assistance for Women Zenica implemented the Project „Monitoring Justice Towards Sexual and Gender Equality“ in the area of Federation BiH.

During the first phase of the project, the Center signed the Protocol of Cooperation with some of the targeted courts, while in some courts women and men court presidents expressed opinion that this is not necessary due to the already established grounds for a good cooperation with the Center in a previous period. Targeted groups per criminal cases were specified in accordance with the type of criminal acts, as follows:

- Monitoring of the criminal cases based on the criminal acts against life and body: women murdered by men, women that suffered serious and minor bodily injuries;
- Monitoring of the criminal cases based on the criminal acts against sexual freedom and morality: women victims of rape, women victims of lewd acts, women victims of forced prostitution;
- Monitoring of the criminal cases based on the criminal acts against marriage ,family and youth: women and girls victims of domestic violence, minor girls victims of unlawful extramarital

cohabitation, as well as women victims of avoiding alimony payments determined by the final court decision.

## I.2 Legal Framework

Bosnia and Herzegovina ratified numerous international documents with the objective of diminishing sexual and gender based violence. In accordance with the international commitments, Bosnia and Herzegovina adopted and changed numerous laws that are targeting prevention of SGBV and punishing the perpetrators.

As stated in the previous Report of the Center for Legal Assistance for Women Zenica<sup>14</sup>, with ratification of the numerous international documents, Bosnia and Herzegovina committed to respect the international standards, such are prohibition of the gender based discrimination<sup>15</sup>, ensuring equality of all persons before the law, and implementation of the right on equal and efficient protection, with prohibition of discrimination on any ground, including gender<sup>16</sup>, removing discrimination of women in all areas using all available means<sup>17</sup>, undertaking all necessary measures with objective of protecting women in a family and a society<sup>18</sup>, guarantying of the fundamental civil and political rights (right to life, freedom, and security, right to a fair trial, efficient legal remedy, punishment only based on law, respect of a private and family life, prohibition of abuse of rights, and other rights and freedoms)<sup>19</sup>, as

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<sup>14</sup> Center for Legal Assistance for Women „Monitoring and Analysis of the Criminal Proceedings and Court Practice in the Area of Sexual and Gender Based Violence in the Federation of Bosnia and Herzegovina“, Zenica, 2011

<sup>15</sup> The Universal Declaration on Human Rights and Freedoms

<sup>16</sup> The International Covenant on Civil and Political Rights

<sup>17</sup> The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), while the Committee for Elimination of Discrimination Against Women has the authority to monitor implementation of the Convention.

<sup>18</sup> The Declaration on Elimination of Violence Against Women (DEVAW).

<sup>19</sup> The European Convention on Human Rights and Fundamental Freedoms (in the further text: ECHR), and its Protocols.

well as ensuring non-discrimination of children and protection of their best interests.<sup>20</sup>

The international standards for protection of human rights clearly require that the state is responsible for prevention, investigation, and criminal prosecution of all forms of human rights violations, as follows from the basic human rights concept that establishes primary responsibility of the state to use active and preventive measures to ensure implementation of human rights in the practice. Although obligations from the human rights treaties are applicable solely at the states members, as well as in relation to the acts committed by the state institutions, the state is responsible according to the international law principles for acts committed by the individuals, if the state does not prevent violation of rights, does not conduct investigation, fails to punish acts of violence, and fails to ensure access to justice, including material compensation for victims, which is recognized as the standard of due diligence. It is clear that this standard is directly applicable to the issue of domestic violence, but also on the issue of sexual and gender based violence in a wider context.<sup>21</sup>

Sexual and gender based violence represents one of the most humiliating, degrading, and harmful violations of human rights, and surpass national and cultural boundaries. Because of that, the United Nations recognized gender based violence against women as the global health and development issue, and supported numerous public educations, policies, and action programs aimed to reduce sexual and gender based violence worldwide.<sup>22</sup>

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<sup>20</sup> The Convention on the Rights of a Child, with the Optional Protocol on the Convention on the Rights of a Child, the Sale of Children, Child Prostitution and Child Pornography.

<sup>21</sup> On the international standards, namely in relation to the criminal law sanctions, see: "The Criminal Law Responsibility and Sanctioning of Domestic Violence Abusers, the Analysis and Recommendations on Criminal Law Sanctions in Domestic Violence Cases in Bosnia and Herzegovina", OSCE, December 2011

<sup>22</sup> N. F. Russo/A. Pirlot, „Gender-Based Violence. Concepts, Methods, and Findings“, Annals of the New York Academy of Sciences, Vol. 1087, Violence and Exploitation Against Women and Girls, pages 178–205, November 2006

Despite nature and long term harmful consequences of gender-based violence, the international law and the international organizations were relatively late in recognizing this type of violence as the special form of human rights violation, which therefore requires special legislation and systematic reaction of the international community targeting specifically this type of violence against women.<sup>23</sup> Numerous additional international instruments are also applicable on this topic, if we start from the position that gender based violence represents violation of the numerous human rights<sup>24</sup> recognized at the international level, and accepted as the achievement of civilization.

It is essential here to present another regional instrument for protection of women's human rights – the Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence that is complementary to the other international instruments adopted by the Council of Europe<sup>25</sup>, but also beyond that, and additionally expands standards of the protection in this field.<sup>26</sup>

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<sup>23</sup> „Gender-based Violence, Methodological Protocol: Harmonized Methodology and Concepts to conduct GBV Surveys“, Euromed Gender Equality Program, Enhancing Equality between Men and Women in the Euromed Region (2008-2011).

<sup>24</sup> Such as the right to life, right to freedom of movement, right to security of person, right to freedom of expression, right to protection from torture and degrading treatment, etc. More on women's human rights available at: <http://www.unfpa.org/gender/index.htm>

<sup>25</sup> Resolution 1247 (2001) on Female Genital Mutilation, Resolution 1582 (2002) on Domestic Violence, Resolution 1327 (2003) on So-called “Honor Crimes”, Recommendation 1723 (2005) on Forced Marriages and Child Marriages, Recommendation 1777 (2007) on Sexual Assaults Linked to “Date-rape Drugs” and, more recently, Resolution 1654 (2009) on Feminicides, and Resolution 1691 (2009) on Rape of Women, Including Marital Rape.

<sup>26</sup> You can find more on this Convention that will be mentioned and used in this Analysis in the Explanatory Report of the Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence (originally: Explanatory Report CETS No.210).

## I.3 National Framework

The legal framework at the level of Federation of BiH as the base for assessment and analysis of collected data includes the Criminal Code of FBiH,<sup>27</sup> in relation to the description of the specific criminal acts in focus of the monitoring, and general institutes of the criminal law, as well as the prescribed criminal law sanctions. Additional laws in the focus are the Criminal Procedure Code of FBiH,<sup>28</sup> in relation to the prescribed standards and procedures used by the courts in the process of deciding on specific criminal law cases, and the Law on Protection from Domestic Violence of FBiH from 2013<sup>29</sup>, which regulates protection from the domestic violence, defines concept of a family, types and purpose of protection measures against perpetrators of domestic violence, as well as the procedure for ordering protection measures, and protection of domestic violence victims.

Beside these laws that are directly related to the prosecuting perpetrators of violence, and possible preventive and repressive measures directed on protection of the victims, the Law on Gender Equality of Bosnia and Herzegovina<sup>30</sup> promotes and protects gender equality, guarantees equal possibilities and treatment of all persons regardless of their sex and gender, and regulates protection from gender based discrimination in a private and public sphere. In accordance with the Anti-Discrimination Law of BiH<sup>31</sup> and the international standards related to human rights and fundamental freedoms, and especially the obligation of ensuring individual and collective human rights, legislative, judicial, and executive autho-

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<sup>27</sup> Official Gazette of the FBiH 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11.

<sup>28</sup> Integral text «Official Gazette of the FBiH», No. 35/03 from 28 July 2003; Corrections, Changes, and Amendments: OG FBiH: No. 37/03; OG FBiH: No. 56/03; OG FBiH: No. 78/04; OG FBiH: No. 28/05; OG FBiH: No. 55/06; OG FBiH: No. 27/07; OG FBiH: No. 53/07; OG FBiH: No. 9/09, OG FBiH: No. 12/10, OG FBiH 8/13 from 30 January 2013

<sup>29</sup> «Official Gazette of the Federation BiH», No. 20/13

<sup>30</sup> „Official Gazette of the Federation BiH“, No. 16/03, 102/09, and 32/10

<sup>31</sup> „Official Gazette of Bosnia and Herzegovina“ No. 59/09

rities in Bosnia and Herzegovina, as well as the legal entities with public authorities have the obligation and responsibility to provide protection, promote, and work continuously to create conditions for implementation of the promoted human rights.

## II THE ANALYSIS

### II.1 Numerical Structure of Monitored Cases

In the situation when we lack the common system of collecting and analysis of the statistical data on cases of sexual and gender based violence, and with incomplete and contradictory data available from the relevant governmental institutions, which also reflect different views and approaches in addressing the problem, numerical overview of the monitoring cases does not pretend to be the complete source of information on number of SGBV cases. However, with respect to the framework of courts where the monitoring activities were conducted, the overviews can serve as a solid starting point for establishing continuous system of monitoring and recording of the statistical data.

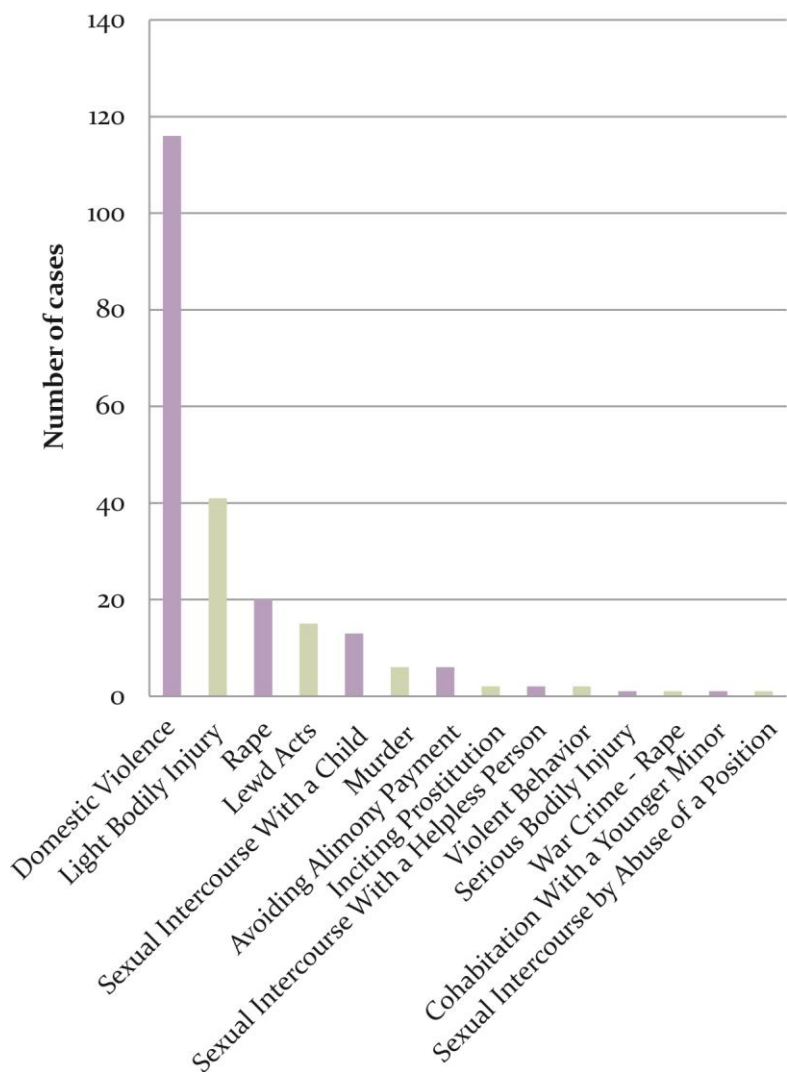
Using the qualitative parameters of cases that were in the focus of monitoring, we can confirm that out of the total number of the analyzed cases - 227 – the largest percentage of processed cases are related to the criminal act of **Domestic Violence** (Article 222 of the Criminal Code of FBiH) – in total 116 cases, or 51,1%. Next quantitatively represented criminal act is **Light Bodily Injury** with total of 41 monitored cases, or 18,06% analyzed cases. Beside that, criminal act of **Rape** was monitored through 20 cases (8,8%), criminal act of **Lewd Acts** through 15 cases (6,6%), as well as the criminal act of **Sexual Intercourse with a Child** through 13 cases (5,7%). Criminal acts of **Murder** and **Avoiding Alimony Payments** were monitored through 6 cases, or 2,6%. For the criminal acts of **Sexual Intercourse with a Helpless Person**, **Violent Behavior**, and **Inciting Prostitution** were analyzed through 2 monitored cases, or 0,8%. One case each, or 0,4%, was monitored in relation to the criminal acts of **Cohabitation With a Younger Minor**, **War Crime – Rape**, **Sexual Intercourse by Abuse of a Position**, and **Serious Bodily Injury** through active and passive monitoring. Following charts are presenting the overview data.

**Chart 1: Number of Analyzed Cases and Structure Per Criminal Acts**

No.	Criminal Act	Way of Monitoring		Total
		Active	Passive	
1.	Murder	4	2	6
2.	Serious Bodily Injury	0	1	1
3.	Light Bodily Injury	3	38	41
4.	Rape	5	15	20
5.	War Crime - Rape	1	0	1
6.	Lewd Acts	3	12	15
7.	Inciting Prostitution	0	2	2
8.	Domestic Violence	38	78	116
9.	Avoiding Alimony Payment	6	0	6
10.	Cohabitation With a Younger Minor	0	1	1
11.	Sexual Intercourse With a Child	5	8	13
12.	Sexual Intercourse With a Helpless Person	2	0	2
13.	Violent Behavior	0	2	2
14.	Sexual Intercourse by Abuse of a Position	1	0	1
<b>Total</b>		<b>68</b>	<b>159</b>	<b>227</b>



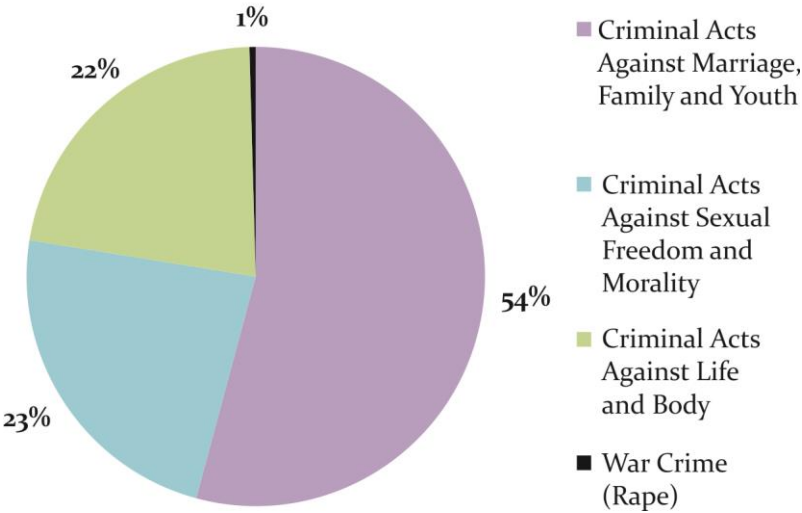
**Graph 1: Structure Per Criminal Act**



**Chart 1.1 : Number of Cases Per Category of the Criminal Acts**

No.	Category Of The Criminal Acts (CA)	Number of cases
1.	Criminal Acts Against Marriage, Family, and Youth	123
2.	Criminal Acts Against Sexual Freedom and Morality	53
3.	Criminal Acts Against Life and Body	50
4.	War Crime (Rape)	1
Total		227

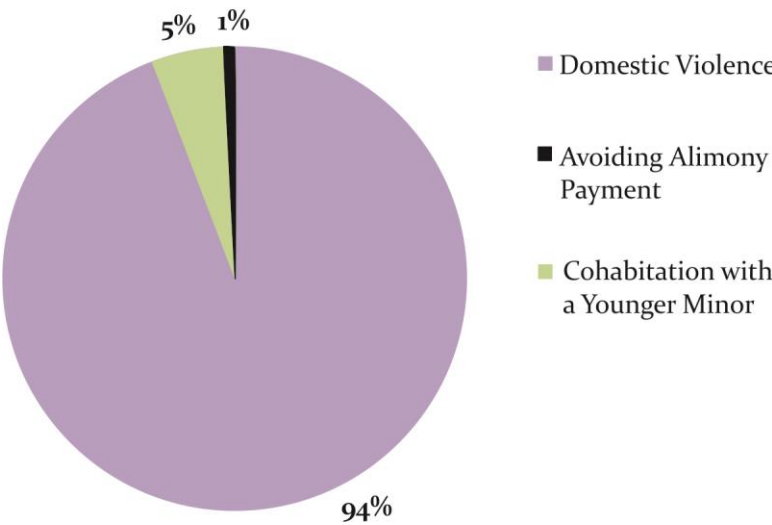
**Graph 1.1. Category of the criminal acts**



**Chart 1.2: Structure of the Criminal Acts Against Marriage, Family, and Youth**

No.	Criminal Acts Against Marriage, Family, And Youth	Number of cases
1.	Domestic Violence	116
2.	Avoiding Alimony Payment	6
3.	Cohabitation with a Younger Minor	1
Total		123

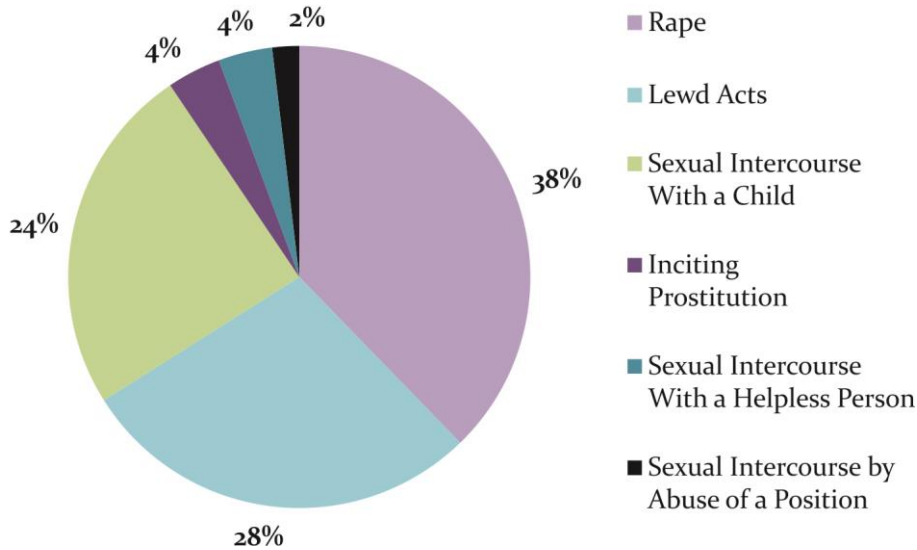
**Graph 1.2. Criminal Acts Against Marriage, Family, and Youth**



**Chart 1.3 Structure of the Criminal Acts Against Sexual Freedom and Morality**

No.	Criminal Acts Against Sexual Freedom And Morality	Number of cases
1.	Rape	20
2.	Lewd Acts	15
3.	Sexual Intercourse With a Child	13
4.	Inciting Prostitution	2
5.	Sexual Intercourse With a Helpless Person	2
6.	Sexual Intercourse by Abuse of a Position	1
<b>Total</b>		<b>53</b>

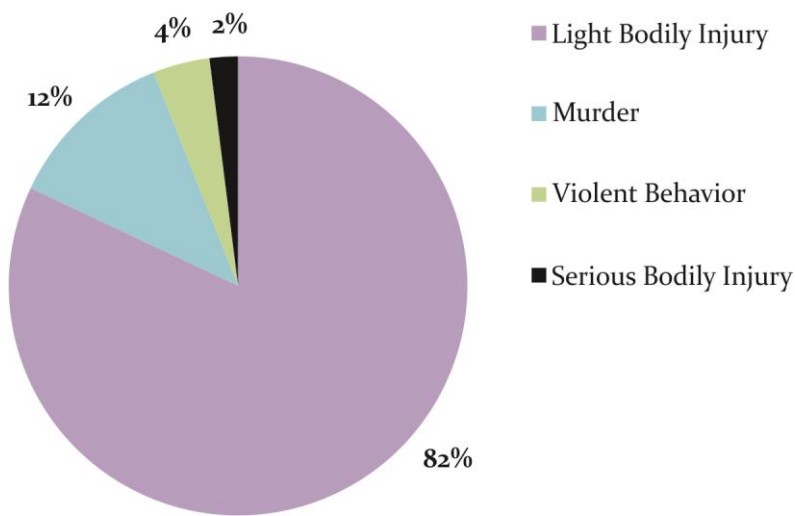
**Graph 1.3 Criminal Acts Against Sexual Freedom And Morality**



**Chart 1.4 Structure of the Criminal Acts Against Life and Body**

No.	Criminal Acts Against Life And Body	Number of cases
1.	Light Bodily Injury	41
2.	Murder	6
3.	Violent Behavior	2
4.	Serious Bodily Injury	1
Total		50

**Graph 1.4 Criminal Acts Against Life And Body**



## II.2 Material Law Aspects

### a) Legal Qualification

Through the analysis of available data, we identified alarming general practice of a lighter qualification of specific criminal acts, namely Domestic Violence, and as a rule avoiding processing the domestic violence cases in the qualified form, or in concurrence with other criminal acts (mostly with the criminal act of the Light Bodily Injury).

This conclusion primarily relates to the problematic practice of the municipal courts that are often avoiding recognizing the criminal act of Domestic Violence in its qualified form when the act has been committed against a person that lives in the same household with an offender. This issue was identified in 10 cases, when courts recognized the criminal act of Domestic Violence in its basic form (as described in the Paragraph 1 of the Article 222 of the Criminal Code of FBiH), although legal conditions were met for qualifying it in a form that recognizes the fact of more difficult consequences (as described in the Paragraph 2 of the same Article).<sup>32</sup>

*However, we should point at the example of the case that was initially qualified as the criminal act of Domestic Violence (Article 222, Paragraph's) in concurrence with the criminal act of the Light Bodily Injury. When assessing the legal qualification of the criminal act, the court changed it with the note that a perpetrator committed the criminal act described in the Article 222, Paragraph 2, and not the one described in the Paragraph 1 in concurrence with the criminal act of the Light Bodily Injury. This is especially important since a victim that*

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<sup>32</sup> The Article 222 of the Criminal Code of FBiH regulates the criminal act of Domestic Violence, as follows: Paragraph (1): Whoever by violence, insolent or arrogant behavior violates peace, physical integrity or mental health of a family member, shall be punished by a fine or imprisonment for a term not exceeding year. Paragraph (2): Whoever perpetrates the criminal act referred to in the Paragraph 1 of this Article shall be punished by a fine or imprisonment for a term not exceeding three years.

*lives in the common law marriage with a perpetrator testified that she had previous problems with him, as “he used to slap her two to three times every week.” She thought this was normal behavior in the marriage, and that was the reason why she did not report him sooner.*

Unfortunately, there are also examples of the criminal proceedings in which the courts clearly failed to determine suitable legal qualifications of the criminal acts committed in concurrence, which would result with more strict punishments against the perpetrators.

*In the case related to the Lewd Act (Article 208, Paragraph 2, in relation to the Paragraph 1 of the Criminal Code of FBiH) in concurrence with the criminal act of Rape (Article 203, Paragraph 1 of the Criminal Code of FBiH), the court neglected the fact that a victim was **underage daughter of a perpetrator**, failed to identify elements of the criminal act of Incest (as described in the Article 213 of the Criminal Code of Federation BiH),<sup>33</sup> and sentenced a perpetrator with relatively light sentence – three years of imprisonment.*

There were no significant issues that were identified in the Municipal Court of Orašje in relation to the qualification of criminal acts. Concurrence was recognized in all cases, namely the case of the criminal act of Light Bodily Injury in concurrence with the criminal act of Malicious Mischief, as well as in the case of the criminal act of Endangering Security in concurrence with the criminal acts of Light Bodily Injury and Malicious Mischief.

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<sup>33</sup> Article 213 of the Criminal Code of FBiH: (1) Whoever performs sexual intercourse or equivalent sexual act with a relative by blood in a direct line or a sibling, shall be punished by a fine or imprisonment for a term between six months and two years. (2) Whoever perpetrates the criminal offence referred to in Paragraph 1 of this Article with a juvenile shall be punished by imprisonment for a term between one and five years. (3) Whoever perpetrates the criminal offence referred to in Paragraph 1 of this Article with a child shall be punished with imprisonment for a term between two to ten years.

## b) Penalty Policy

Adoption and consistent implementation of the policies and legislative solutions with the appropriate gender perspective represents one of the ways to meet the international standards related to prevention and combating of the sexual and gender based violence. Development and implementation of these policies is neither simple nor limited to one-time actions. It rather presupposes an active engagement of all authorized official institutions in order to ensure usage of all available measures, and holistic approach in solving the issue of violence against women. Unfortunately, when the measures aimed for prevention of violence against women do not bring desired results, it is necessary to ensure sentencing and implementation of the efficient, proportional, and suitable criminal law sanction against a person whose criminal responsibility is properly determined in the criminal proceeding in which process guarantees were respected.

As regulated by the criminal laws within the legal system of Bosnia and Herzegovina, there is a threefold purpose of the penalties. This includes general prevention – influencing others to respect the legal order and refrain from the criminal acts, special prevention – influencing an offender to refrain from committing the criminal acts in a future and encouraging his/her rehabilitation, as well as a social condemnation for committed criminal act. In 2010, the Criminal Code of Federation BiH, as well as the Criminal Code of Republika Srpska recognized additional element of the purpose of criminal law sanctions – protection and satisfaction of victims of the criminal acts.<sup>34</sup>

The analysis shows that monitored courts issued in total 101 suspended sentences, 29 prison sentences, and 19 fines. Beside that,

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<sup>34</sup> „Criminal Responsibility and Sanctioning of the Domestic Violence Abusers: the Analysis and Recommendations on Criminal Law Sanctions in Cases of Domestic Violence in Bosnia and Herzegovina“, OSCE, December 2011



the courts issued 4 correctional measures (Referral to a Juvenile Detention, Intensified Supervision of the Center for Social Work), 2 juvenile prison sentences (in the terms of 2 and 8 years), and 1 judicial admonition (in a case related to the criminal act of Domestic Violence).

**Chart 2: The Overview of Types of Criminal Law Sanctions**

No.	Type Of The Sanction	Number of cases
1.	Suspended Sentences	101
2.	Prison Sentences	29
3.	Fines	19
4.	Correctional Measures	4
5.	Juvenile Prison Sentences	2
6.	Judicial Admonition	1
<b>Total Cases With Issued Sentences and Completed Documentation</b>		<b>156</b>

Seven cases did not ended with the sentence during active monitoring, while perpetrators were released from the responsibility in 11 monitored cases. In five monitored cases, the charges were dismissed mostly because the prosecutor dropped the case because key witnesses that were victims in the case refused to testify against a perpetrator, while in two monitored cases the courts suspended the process. Until the end of monitoring period in focus of the analysis, in 46 monitored cases, the court proceedings did not end or the case documentation was not complete.

The analysis of issued criminal law sanctions shows that in 87,5% of monitored cases of the criminal act of Domestic Violence the court issued suspended sentences, based on the penal order requested by the prosecutors. This point at the regular practice of the courts, motivated predominantly with the attempt to avoid worsening the position of a victim and entire family, since in a large

number of cases victims are economically dependant from the perpetrators, therefore a fine or a prison sentence would mostly affect women and children victims of violence. Although such motivation of the courts is understandable, it also points at key importance of measures aimed for economic empowerment of women victims of the sexual and gender based violence, and ensuring their safety through legislative, institutional, and financial measures, in order to implement the international standards in the practice and enable them to access justice. Presented structure of the criminal law sanctions and absolute domination of suspended sentences is problematic in relation to the special returnee offenders. The analysis identified several cases where the courts issued suspended sentences to this category of offenders. The Criminal Code of Federation BiH includes the possibility to put an offender that received suspended sentence under protective guardianship (considering circumstances of the criminal act he committed, his personality, previous life, and behavior after he committed the criminal act) if the court finds that it would contribute to achieving more efficient purpose of the suspended sentence and social rehabilitation. Despite this possibility, through the analysis of collected data, we did not identify cases where the courts used this possibility.

Majority of the issued sanctions in the monitored cases were suspended sentences (in 101 cases, out of 156 total cases where criminal law sanctions were issued and documentation was completed), which points at very soft penalty policy in relation to SGBV cases. Moreover, majority of suspended sentences include a short-term prison sentences. In majority of cases (45), the court issued suspended prison sentences in a term between 2 and 5 months, while in 23 monitored cases, the court issued suspended prison sentences in a term between 6 and 12 months, in 6 monitored cases in a term between 12 and 24 months, and in only one monitored case the court issued suspended prison sentence in the term of 36 months.

The trend of more severe penalties is noticeable in the cases that are active since 2012 onwards, which can be linked to the more intensive work of the organizations focusing on prevention of gender based violence, and their continuous pressures on the public to recognize domestic violence as any other criminal act.

The courts were also issuing suspended sentences in the cases related to the Lewd Acts – in 6 cases that ended during the monitoring period the courts issued suspended prison sentences in a term between 1 and 3 years.

Probation period determined as a part of the suspended sentences varies depending on a weight of a criminal act. The Criminal Code of Federation BiH regulates that the duration of probation period can be set between 1 to five years. However, in the largest number of monitored cases (52), the probation period was issued in a term up to 12 months, which leads us to the conclusion that the courts were issuing the minimum possible period of probation. The analysis also identified that in 15 monitored cases, the courts issued probation period in a term up to 18 months and in 15 cases in a term up to 24 months.

In one monitored case, the court issued 30 months probation period, in 5 monitored cases 36 months, in 1 monitored case 42 months, and the longest probation period was identified in 1 monitored case in a term up to 48 months (4 years).

**Chart 3: The Overview of Probation Periods Issued as a Part of Suspended Sentences**

No.	Probation Period	Number of cases
1.	12 months	52
2.	18 months	15
3.	24 months	15
4.	30 months	1
5.	36 months	5
6.	42 months	1
7.	12 months	1
<b>Total cases</b>		<b>90</b>

Out of total 227 monitored cases, the courts issued prison sentences in 29 cases, and majority of them are relatively short-term sentences. In 7 monitored cases, the courts issued prison sentences in a term up to 6 months, in 4 cases in a term between 6 and 12 months, in 6 cases in a term between 1 and 3 years, and 6 cases in a term between 3 and 5 years. In 4 monitored cases, the courts issued prison sentence in a term between 5 and 10 years and in 2 cases in a term between 10 and 20 years. The courts issued the highest prison sentences in a maximum prison term of 20 years for the criminal act of Murder.

**Chart 4: The Overview of Issued Prison Sentences in the Monitored Cases**

No.	The Term Of Issued Prison Sentence	Number of cases
1.	Up to 6 months	7
2.	6-12 months	4
3.	1-3 years	6
4.	3-5 years	6
5.	5-10 years	4
6.	10-20 years	2
<b>Total cases</b>		<b>29</b>

In 19 monitored cases, out of total 227 monitored cases, the courts issued a fine. The courts issued majority of fines in a range between 500,00 BAM and 1000,00 BAM (total 17 cases). In 1 case, the court issued a fine in the amount 1.500,00 BAM, and in 1 case in the amount of 12.000,00 BAM (substituting the prison sentence in a term of 6 months into a fine, based on proposal of a defense attorney, and accepted by the court, in relation to the case of the Lewd Acts).

**Chart 5: The Overview of Issued Fines in the Monitored Cases**

No.	The Amount Of Fine	Number of cases
1.	500 BAM to 1.000 BAM	17
2.	1.000 BAM to 1.500 BAM	1
3.	1.500 BAM to 12.000 BAM	1
Total cases		19

**II.3 Aggravating and Mitigating Factors**

The analysis was also focusing on the aggravating and mitigating factors, as well as recidivism. The Criminal Code of Federation BiH regulates that the court shall determine the punishment for a perpetrator within the limits prescribed by the Law for that criminal act, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (mitigating and aggravating factors), and in particular: the degree of criminal responsibility, the motives for committing the criminal act, the degree of a danger or injury to the protected object, the circumstances in which the criminal act was committed, the personal history of a perpetrator prior to the committing the criminal act, his personal situation, and his conduct after he committed the criminal act, as well as other factors related to the personality of a perpetrator.

The analysis identified that the most frequent mitigating factors used by the courts were expressing remorse of a perpetrator, his exemplary behavior in a courtroom, and status of a perpetrator as a family man. In significant number of the monitored cases, the courts accepted confession of a guilt by a perpetrator.

In relation to the recidivism, the Criminal Code of Federation BiH regulates that when determining the sentence for a perpetrator of a criminal act committed in recidivism, the court shall take into special consideration whether the most recent criminal act is of the same type as the previous one, whether both acts were committed from the same motive, and the period of time which has passed since the previous conviction or served or pardoned sentence.

*The analysis identified disturbing assessment of the court in the monitored case related to the criminal act of Rape, when the court determined that the perpetrator was recidivist. However, since he was not the special recidivist in committing the same or similar criminal act, the court assessed this factor as the mitigating factor. There is inconsistent court practice in recognizing recidivism as the aggravating factor, although the analysis identified the cases where the courts issued the more severe sentences with taking into consideration previous convictions. We can illustrate this with comparing the monitored cases related to the criminal acts of Domestic Violence. In one monitored case, the court assessed special recidivism of the perpetrator as the aggravating factor, and issued prison sentence in a term of 6 months. In another monitored case, the court neglected the same aggravating factor, and issued suspended sentence, using a bad financial situation of a family, and the fact that the perpetrator is the only breadwinner of the family as the mitigating factors.*

This example does not fully justify issued sanctions, since the legislator regulated that the court has the right to consider financial situation of a perpetrator, taking into account the size of his salary,

other incomes, property, and family obligations, when deciding on the amount of the fine.

Especially disturbing is the court practice of assessing family circumstances as the mitigating factor, and the fact that a perpetrator has a family that usually includes underage children, and this was identified in the significant number of the monitored cases. By its nature and the fact that female family members are the most common victims, the criminal acts of sexual and gender based violence largely reflect lack of affection of a perpetrator for his family, and his devotion to the protection of a family harmony. In these cases, it is evident that a perpetrator directs the acts of aggression against the closest family members. Unfortunately, this paradox is the most visible in relation to the monitored cases related to the criminal act of Domestic Violence.

## II.4 Protective and Security Measures

Since the focus of the monitoring and analysis was on the cases of sexual and gender based violence, all perpetrators were male, while victims were female. In majority of the cases, the victims were spouses, or common law partners of the perpetrators, mostly in relation to the criminal acts of Domestic Violence and Murder. In smaller number of cases, victims of criminal acts were other family members (mother, daughter, sister), as well as a female acquaintance/neighbor. In several isolated cases, there were no links between a perpetrator and a victim. Presented data point that, in majority of cases, a perpetrator previously knew his victim, and there is a growing need for consistent determining of the protective measures by the courts.

It is especially disturbing that the analysis of collected data shows there were no protective measures ordered by the courts in monitored cases related to the criminal acts of Domestic Violence, as regulated by the Law on Protection from Domestic Violence of Federation BiH. However, the analysis identified only 5 monitored

cases in which the courts ordered sheltering of a victim exposed to violence in the safe house on very short periods of several days. If we consider the fact that all protective measures regulated by the Law (Removal from the Apartment, House, or Other Dwelling, and being Banned from Returning to that Apartment, House, or other Dwelling, Restraining Order, Prohibition from Harassment and Stalking of a Victim, Mandatory Psychosocial Treatment, Obligatory Treatment of Addiction, Temporary Arrest and Detention), it is visible that the courts ordered only protective measures aimed to remove a victim from her environment, and not a perpetrator as a person that caused the need for ordering the protective measures. This contributes to the additional trauma of a victim, and even intensifies it with an extremely short period of sheltering her in the safe house.<sup>35</sup>

Although the Law on Protection from Domestic Violence of Federation BiH does not recognize the obligatory financing of the safe houses for women and children victims of violence from the public budgets, they are surviving almost exclusively on donations of the international organizations, one-time donations from the entity budgets, with limited support of the local communities. This speaks in favor of the claim that the Government of Federation of BiH and the Government of Republika Srpska do not recognize the obligation of financing implementation of laws and public policies in the practice.<sup>36</sup> Nevertheless, the advantage of the Law on Protection from Domestic Violence of Federation BiH from 2013, whose implementation in the practice is eagerly expected, regulates that a victim of domestic violence has the right to secure the basic life necessities

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<sup>35</sup> Safe houses/shelters for women and children victims of violence exist in Zenica (run by NGO Medica), Sarajevo (run by NGO Foundation of Local Democracy), Banja Luka (run by NGO Foundation United Women), Mostar (Mirjam – run by Caritas Mostar and Margeruite – run by NGO Woman BiH), Prijedor (run by NGO Foundation for Education and Social Protection of Children), Bihać (run by NGO Women from Una), Modriča (run by NGO Future), and Tuzla (run by NGO Vive Žene).

<sup>36</sup> „Alternative Report on Implementation of CEDAW Convention and Women’s Human Rights in Bosnia and Herzegovina, “ October 2011. Available online at: <http://www.fondacijacure.org/cms/books/img4do5ee548f99c.pdf>.



in relation to health, social, and financial care, and the right to secure legal assistance for solving social, economic, and other status.

Contrary to the previous legal provision when the request for protective measures could be filled in by a victim, her authorized representative, police, prosecutor's office, guardianship authority, governmental and nongovernmental organizations, as well as ex officio, the revised solution explicitly states that the request can be filled in by the police department, as well as the prosecutor's office only in the case of a justified circumstances. It is completely understandable that police would need to request the protective measures, as they should be able to act quickly and collect needed documentation. However, it is not clear why the legislator restricted the circle of legitimized persons, as the previous provision was increasing chances for usage of protective measures in the practice, and providing security for a victim.

Since the punishment is not sufficient to meet the needs of a society for protection from a dangerous perpetrators, such persons should be subjected to the appropriate medical and socio-pedagogical treatments. Contrary to the punishments that are reactions on committed criminal acts, security measures are predominantly focusing on a future, and aim to remove dangerous situations.

**Analysis of the collected data identified that monitored courts ordered 4 security measures – 3 measures of Mandatory Psychiatric Treatment (in cases related to the criminal acts of Attempted Murder, Murder, and Domestic Violence), and 1 safety measure of Forfeiture of the Object – Weapon, also in the case related to the criminal act of Murder.**

The issue of guilt of a perpetrator should be observed separately from his threat for himself and a society, and this is the reason why ordering of the security measures aims for reaching security of a society. In this context, the more frequent requesting

and ordering of the security measures deserves support, naturally if the legal conditions are met.

## II.5 Procedural Aspects

### a) Duration of the Criminal Proceedings in a Context of the Right to a Trial Within a Reasonable Time

Lawful and efficient justice is expected from the courts – lawful in a sense of proper assessment of the facts, and proper implementation of process and material law, and efficient in a sense to reach these objectives in a shortest time, in order to enable subjects that are seeking rights (and have rights), and justice (legal protection) to reach them as soon as possible.<sup>37</sup>

Respect of the right to a trial within a reasonable time requires efficient judicial system that solved the issue of a backlog cases, and capable not to produce new backlogs. In a meantime, it is necessary to ensure the system of efficient legal remedies for protection of this right that would prevent violation of an endangered right, and provide suitable reparation in a situation when a right has been violated. The theory recognizes proposals of formulas on average duration of a trial. The formulas include those that are more realistic - “3+2+1” (maximum three years for the first-degree trial, maximum two years for the second-degree trial, and one year for deciding on an extraordinary legal remedy).<sup>38</sup> Yet, these are just theories on interpretation of the Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, since the Convention does not answer this dilemma.

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<sup>37</sup> See: A. Radolović, „Protection of the Right on Trial Within a Reasonable Time,“ *Analogy of the Law School, the University of Rijeka* (1991) v. 29, no. 1

<sup>38</sup> See more: T. Gorjanc – Prelević, „The Right on Trial Within a Reasonable Time – Collection of Selected Judgments of the European Human Rights Court in the cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, and Serbia,“ *Sarajevo*, 2009

Analyzed cases of sex and gender based violence are the criminal acts of a high social danger, and therefore they require social attention and urgent action by the judicial authorities, but also the systemic response from the entire society. Number of these acts continuously increases in the practice, which is publicly visible, but unfortunately not followed with the increase in number of processed cases within the criminal law procedure. Due to that, it is of key importance to strengthen confidence in the judicial institutions, and ensure timely reaction of all authorized subjects.

The analysis of the monitored cases included assessment of the average time of a criminal law procedure, including all circumstances (report – order for conducting investigation – indictment – confirmation of the indictment – verdict). In the monitored cases of the criminal act of Domestic Violence, this procedure was averagely conducted within 4 months, although the Law on Protection from Domestic Violence in Federation BiH requires urgent procedure from all relevant subjects (police, guardianship authority, court), in order to prevent continuation of violence and new harmful consequences against a victim.

In the monitored cases related to the Lewd Acts, the analysis identified 2 months as the average duration of the procedure, criminal acts of Rape – 14 months, criminal act of Murder – 5 months, criminal act of the Light Bodily Injury - 5,5 months, and criminal act of Sexual Intercourse with a Child - 8,8 months.

*In two cases (criminal acts of Murder and Domestic Violence), the analysis identified exceeding the 15 days time limit for confirmation of indictment. In the first case, the indictment was confirmed after 2,3 months, and in the second case after 4,1 months.*

*In the case related to the criminal act of Sexual Intercourse by Abuse of a Position, the procedure has already lasted for 6 months in the period of completed active monitoring. However, since the perpet-*

*rator was avoiding coming to the proceedings, the court ordered re-initiation of the procedure, and repetition of presentation of evidences, so it was uncertain that the proceeding would end soon. A perpetrator initially did not have a defense lawyer, and hired him subsequently. A defense lawyer requested re-initiation of the proceeding.*

In the cases related to the criminal act of the Sexual Intercourse with a Child, the average duration of the proceedings was 10 months.

The analysis revealed that absence of an expert witness or a prosecutor from the scheduled hearing often leads to postponement of hearing. It happened several times that the hearing was postponed in the same case, which obviously endangered the objective of timely and efficient ending of the criminal proceeding, as well as quality of protection of a victim, and her right to have appropriate access to justice.

#### b) Treatment of the Victim

By their nature, the largest number of the analyzed criminal acts reflects the issues of lack of evidence for sexual and gender based violence, as well as the purpose and efficiency of the sentences issued for these criminal acts. Specifics of these cases are derived from the fact that a victim has the status of the privileged witness; therefore, she can refuse to testify or withdraw her testimony in any phase of the criminal proceeding. This could have a decisive influence on possibility for conviction and sentencing of the perpetrator. It is clear that a victim has to be stimulated to take the active role in the criminal proceedings, which we could expect only if she feels safe environment. Positive step in relation to the rights of a victim of criminal act has been taken with the Law on Protection of Witnesses under Threat and Endangered Witnesses of Federation BiH. This Law provides possibility of personal security protection for the victims of criminal acts, and granting them status of a protected or

endangered witness, in order to ensure their testimony in the criminal proceedings.

Presented issues related to the protection of a victim are important because in majority of cases the victims are wives or common law partners and still live in a common household with a perpetrator. The analysis identified only two cases where the victims were able to use possibilities for protection provided by this Law. In the case related to the criminal act of Rape, in concurrence with the Lewd Acts, the victim received status of the endangered witness, while in the case related to the Domestic Violence (Article 222, Paragraph 4); the victim received the protected victim's status due to her poor mental condition.

*In one case related to the criminal act of Sexual Intercourse with a Child, an attorney of a perpetrator insisted for victim to be reexamined in the court as a witness. However, the prosecutor called upon the Convention on Protection of the Child, with justification that repeated examination of a child victim would expose it to repeated trauma. The court accepted this objection of the prosecutor, and refused proposal of an attorney of the perpetrator.*

Role of the centers for social work and psychologists is to submit findings and opinions on circumstances of the criminal case, based on the requests of the courts. In the case related to the criminal act of Sexual Intercourse by Abuse of a Position, the examination of the center for social work representative in the courtroom was important, in terms of providing opinion on life circumstances of the victim from earliest childhood that largely explains her current situation. In the cases related to the criminal act of Sexual Intercourse with a Child, either social worker or psychologist was present during examination of the children victims in the courtroom.

*In relation to that, we are pointing on the example of good practice example in the criminal proceeding related to Lewd Acts. At*

*the hearing scheduled for the examination of an underage victim, a psychologist counselor was present to provide protection and support, and she was sitting right next to the victim.*

In relation to the possibility of acquiring material compensation, victims received the information on their rights to submit requests for compensation within the criminal law procedure. If the victims did not submit requests until confirmation of the indictment, they received information they can submit it until the end of the main hearing, or until the end of the hearing for announcement of the criminal law sanction. In majority of cases, the court does not decide on the request for compensation within the criminal law procedure, with intention to avoid delays of the proceeding, so the victims were, as a rule, referred to request material compensation in the civil proceeding.

Although the analysis of the monitored cases and archived documentation did not identify if the victims had needed legal support or counseling, it should be noted that in cases related to some types of the criminal acts of sexual and gender based violence, the victim often needs to leave the house/apartment, her personal belongings, sometimes even to quit her job. Because of that, timely and adequate legal assistance is extremely important for the victim to implement her rights in the practice.

### c) The Particularities

The issue of significant numbers of the orders for non-implementation of the investigation, and decisions to suspend the investigation requires our attention. Analysis of the reasons for such termination of the investigations indicates that in the largest percentage (almost 85%) investigations ended due to refusal of a victim to testify. Reasons for such decision of a victim vary from her effort to continue with her life, her abuser ended stalking and violent

behavior, she fears that attacks would continue, to the feeling of shame due to reactions of the environment.

The analysis identified extreme prolongation of the hearings that caused the criminal proceeding to last significantly longer than usual, which brings into question meeting the process guaranties, and enables repeated trauma of the victim. *In the case related to the criminal act of the Sexual Intercourse with a Child, the court prolonged hearing due to absence of the attorney of the perpetrator, which happened several times. In addition, the court delayed hearings up to ten times due to absence of various subjects, including expert witnesses, as well as the perpetrator.*

During the active monitoring of the court proceedings, various procedural and technical irregularities have been identified, for example: *In the case related to the Lewd Acts, the court typist announced the first-degree convicting verdict in the court hallway. The attorney of the perpetrator filled complaint, among other things, because of substantial violation of the criminal proceeding, emphasizing that the verdict was unlawful as it was not announced by the court, as stated in its preamble, but it was only read by the typist of the judge in the hallway. The court council accepted the complaint, revoked the first-degree verdict, and requested the procedure in front of the cantonal court.*

*Another similar case was related to the mixing packages with evidence material by the prosecutor, which happened at the main hearing, which seriously endangered success of the prosecution in terms of the outcome of the criminal proceeding.*

## **II.6 Examples of Good Practice in Establishing Cooperation with the Courts**

Prior to the successful monitoring initiative, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina recommended to the courts to enable undisturbed monitoring of the criminal

proceedings. This recommendation confirms trust of this institution, and contributes to the strengthening of good cooperation of civil society organizations and official authorities, as well as regaining trust of the public in the judicial system.

We believe it is necessary to emphasize several typical examples of good practice identified by the monitoring team of the Center for Legal Assistance for Women Zenica during monitoring period. These examples reflect higher level of organization, communication, and cooperation with the specific courts.

- Although passive monitoring of the Municipal Court of Orašje was not planned in the project, due to great cooperation established with this court as a part of active monitoring, we also conducted passive monitoring of the cases that ended in the period 2008 – 2012.
- At the Municipal Court of Sarajevo, the active monitoring was conducted without difficulties, and women and men judges were allowing access to the hearings for monitors. In one case, the attorney of the defendant objected on presence of the monitor in the courtroom, but the judge allowed the monitor to stay.
- In relation to the passive monitoring at the Cantonal Court of Sarajevo, we experienced technical difficulties due to changes of the court president. We sent the official letter, and scheduled the meeting where we agreed on a future cooperation. In January 2014, the contact person appointed by the Court prepared a cleared list of cases in focus of the monitoring, and enabled us to access and review the archive of cases.
- We continued good cooperation with the Municipal Court of Zenica, and it formally started with signing of the Protocol on Cooperation. IT Technician of the Court was appointed as the contact person at the meeting. Every two weeks, he was sending



us the list of scheduled hearings. Although it was not clearly visible from the schedule if a victim was female, monitors were contacting IT Technician to acquire this information. In other aspects, both active and passive monitoring was conducted without problems.

- We did not sign the Protocol on Cooperation with the Cantonal Court of Zenica, since the acting President of the Court sent a letter to the Center for Legal Assistance for Women Zenica, stating that we can directly contact judges of the Court for all needed information. The fact that we did not sign the Protocol on Cooperation did not affect implementation of the monitoring; neither had it caused any technical problems.
- The monitoring team established excellent cooperation with the Cantonal Court of Novi Travnik. The Protocol on Cooperation was signed on 17 April 2013, when we also had the meeting with the Court President, and agreed on cooperation. The Court Administrator was appointed for the contact person. Each Friday, she was sending e-mails with the schedules of the hearings for the upcoming week. We also did not experience difficulties during the passive monitoring at this Court.

## III CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

### III.1 Concluding Observations

Purpose of the presented analysis is to point at the current situation related to implementation of the laws that make legal framework and a base for actions of the authorized courts in prosecuting the perpetrators that committed sexual and gender based violence, as well as providing recommendations that would serve to more efficient and adequate protection of the victims. Therefore, the analytical report is namely targeting police officers, prosecutors, social workers, institutional mechanisms for gender equality at all levels, as well as the nongovernmental organizations that are working on promotion and protection of women's human rights.

Long-term objective in the area of prevention of the domestic violence is to ensure harmonized, adequate, and efficient preventive activities of the official authorities at all levels and actions of non-governmental organizations in prevention of the sexual and gender based violence in Bosnia and Herzegovina.

Phrase „sexual and gender based violence“ can be used in at least two contexts, which was already emphasized in the similar studies.<sup>39</sup> Sexual and gender based violence has been motivated and rooted in unequal power positions between women and men. In such context, the violence represents expression of male dominance and subordination of women. Due to that, the term sexual and gender based violence represents the framework for observing and identifying links between gender conditioned behavior, and using

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<sup>39</sup> Eliminating Gender Based Violence, Ensuring Equality, ECLAC/UNIFEM Regional Assessment of Actions to End Violence Against Women in the Caribbean, 2003.

violence as a form of expressing accepted gender roles and identities, namely the male identity.

In a such context, we should also examine the conclusions identified through the analysis of the data collected in the process of passive and active monitoring of the sexual and gender based violence cases.

Based on the structure of presented findings and results of the analysis, it is noticeable that, when preparing the indictments, the prosecutors **legally qualify the criminal act in its basic form, although the conditions were met for its qualified form**, and the courts usually accept this. This tendency is the most visible in relation to the criminal act of the Domestic Violence. Beside that, the concurrence of the several criminal acts has been rarely recognized although there were the cases where conditions were met, and that recognizing the concurrence would lead to more severe penalties. One of the possible explanations for this practice can be lack of understanding for complexity and consequences of the criminal acts of sexual and gender based violence, and this could reflect lack of gender sensibility, and stereotypical social perception of violence against women.

**When determining the type and the amount of the criminal law sanctions, the judges frequently use mitigating factors without any explanation.** In this process, they are listing mitigating factors often mechanically and stereotypically, without explanations why some relevant circumstances were considered as the mitigating or aggravating factors, and to what extent these factors were examined when determining the criminal law sanctions. Here we should mention the factor of age, and perception of a perpetrator as “a family man.” The monitoring analysis identified several cases where the courts accepted the age of the perpetrator as the mitigating circumstance, in some cases older age, in some younger age, and it was not clear how the court assessed mitigating factors, and reached conclusion that the perpetrators should receive

lighter punishment. It was not clear how different age of the perpetrators have been used as the mitigating factors, which leads us to the absurd conclusion that practically any age of the perpetrator can be considered as the mitigating factor. Family status, and understanding of the perpetrators as the family man is problematic in the cases when victims of their violent behavior are family members, which happens often, and due to that, recognizing this factor as the mitigating circumstance should be used with caution. In several cases, the monitoring analysis identified that the court do not recognize as the aggravating circumstance the fact that act of violence was committed at the same time against several family members, for example, against a wife and a daughter. Such qualification leads to the lighter punishments, and does not sent appropriate message to the perpetrator, as he is not confronted with the seriousness and consequences of his behavior.

**Criminal law sanctions for the acts of sexual and gender based violence are light in general, at the lower line, and sometimes below the minimum limit regulated by the law.**

Suspended sentences are dominant in the structure of the criminal law sanctions for the acts of the Domestic Violence, as the most processed criminal act in focus of the monitoring initiative. Purpose of the criminal law sanctions in terms of special and general prevention requires from the sentence to correspond to the gravity of the criminal act. This further presupposes that lighter sentence for the perpetrator should be justified with existence of the mitigating circumstances that should not be only listed but explained in details; including explanation how the court reached the conclusion that lighter punishment can meet the objective and purpose of the punishment.

**The monitoring analysis indicates that courts do not use the protective and security measures. We did not identify cases where the courts issued the protective measures, although there were cases with conditions that suggested these measures would be**

justifiable, as the perpetrator committed violence under influence of alcohol, the perpetrator had specific mental problems, or the perpetrator was returnee offender in relation to the criminal act of Domestic Violence, etc. Although the courts issued large number of suspended sentences, there were no orders for protective supervision of a perpetrator. The courts issued several security measures, however it happened less than it was needed. The analysis identified five cases in which the courts issued measures of sheltering victims of violence in the safe house, but duration of these measures was too short, which challenges their efficiency in terms of protecting victims of violence.

**Analysis of the average duration of the criminal law proceedings cautiously points that they are generally ending within a reasonable deadline.** Such practice is in line with the criminal laws, but also the Law on Protection from Domestic Violence of Federation BiH that requires urgent actions of all relevant subjects (police, centers for social work, court) in order to prevent continuous violence and new harmful consequences against a victim. However, having in mind that victims of sexual and gender based violence are often members of the close family of a perpetrator, and if we assume that a perpetrator would be defending himself outside of the custody, it is necessary to **ensure adequate protection of a victim, and to enable her safe participation and testifying in the proceeding through granting her the status of endangered or protected witness**, which currently is not widely used by the courts.

During the analysis of the ended proceedings that included requests for compensation, we identified no cases where the courts decided on these requests during the criminal law proceedings. As a rule, the monitored courts were referring victims to claim this right in the civil law proceeding.

## III.2 Recommendations

### III.2.1 Recommendations for the Municipal and Cantonal Courts, and Cantonal Prosecutor's Offices:

- To consistently respect the principle of urgent proceedings for the criminal acts of the sexual and gender based violence, in line with the legal standard of the so called “trial within a reasonable time”;
- To recognize timely and adequately qualified forms of the criminal acts of the sexual and gender based violence, including qualification of concurrence of the criminal acts;
- To met out the criminal law sanctions proportionately to the weight and circumstances of the committed criminal acts, which means more strict punishment in the practice, within regulated legal frameworks;
- Milder punishment of the perpetrators should be practiced as an exception, in the cases when high mitigating factors are identified, with providing detailed explanation of such factors;
- To avoid mechanic listing of the mitigating and aggravating factors, and to practice detailed and clear justifications of these factors and ways they influenced lighter punishment of the perpetrators, with careful assessment of ensuring special and general prevention;
- To place under protective supervision some perpetrators that received suspended sentences;
- To revoke suspended sentences in the case when perpetrators commit new criminal acts during a probation period;

- To timely ensure material evidences for the criminal acts of the Domestic Violence and the Criminal Acts Against Sexual Freedom and Morality;
- To ensure implementation of thorough investigation by a prosecutor;
- To establish the framework for cooperation between prosecutors and the centers for mental health, or other appropriate institutions during investigation phase with objective to address psychological and social problems of a potential endangered witnesses;
- To grant the status of endangered or protected witness to the victims in cases where circumstances are requesting it, and to improve technical conditions in the courts with introducing appropriate audio and video equipment aimed to protect witnesses;
- To improve coordination between prosecutor's offices and courts in terms of psychological support to the victims and witnesses in order to diminish risk of repeated trauma.

### **III.2.2. Recommendations for the Ministry of Security of Bosnia and Herzegovina, the Ministry of Justice of Bosnia and Herzegovina, and the Ministry of Justice of Federation BiH:**

- To ensure material conditions for appropriate implementation of the legislation in the area of violence against women, especially in terms of sanctions and measures of protection of a victim;
- To improve institutional cooperation of all sectors working in this area in order to enhance adequate exchange of information with objective of fighting domestic violence;

- To monitor international legislation and instruments, and work on harmonization of the domestic legislation with the appropriate international instruments, and to ensure adequate gender mainstreaming when adopting new and revising existing legislation, with objective of the prevention and fighting sexual and gender based violence;
- To ensure optimal conditions for work of the courts, including sufficient number of courtrooms and separate premises for protected witnesses and victims;
- To enable simple and efficient access to justice, including programs for promotion of educations and trainings for all subjects involved in functioning of the judicial system;
- To establish specialized services for assistance to women victims of violence, including counseling, sheltering in the safe houses, legal counseling, and social protection services;
- To implement continuous researches, statistical calculation of causes, consequences, and prevalence of the sexual and gender based violence;
- To ensure capacities and develop readiness of all authorized institutions for establishing and improving multidisciplinary cooperation with other sectors.

### **III.2.3. Recommendations for the Agency for Gender Equality of Bosnia and Herzegovina, the Gender Center of Federation BiH Government, and the Center for Education of Judges and Prosecutors of Federation BiH:**

- To develop appropriate and feasible strategy with the objective of strengthening public awareness on prevalence and destructive effects of sexual and gender based violence, as well as necessity of



the education for women and men citizens on identifying, reporting, and fighting against perpetrators of violence, with emphasis on encouraging women to report cases of violence;

- To plan programs and trained professional personnel for the work with a potential perpetrators of violence (men and women), or persons prone to a violent behavior, and especially with the children from families with a violent member;
- To promote and implement policies aimed for ensuring equality between women and men, and empowering women with objective of diminishing and eliminating of all forms of sexual and gender based violence;
- To establish mechanisms for permanent and continuous education, additional training, and professional development of personnel for providing first and direct assistance to women victims of sexual and gender based violence, including but not limited to psychological counseling and therapy;
- To adopt measures aimed for changes of a legal and cultural practices of tolerance or enabling existence of sexual and gender based violence;
- To develop programs for promoting awareness on existence and need for respecting women's human rights as the integral part of universal human rights;
- To continuously educate women and men judges, prosecutors, health and education professionals, social workers, pedagogues, psychologists, and police officers on the legislation, bylaws, and procedures related to sexual and gender based violence, in order to ensure sensibility of all involved subjects.

### III.2.4 Recommendations for Legislative Bodies at all Levels, and the Ministry of Interior Affairs of Federation BiH:

- To adopt new and revise existing legislation in order to **ensure** multi-disciplinary and multi-sectoral response of all authorized institutions (including executive governance bodies, courts, prosecutor's offices, centers for social work) on all forms of sexual and gender based violence, and to establish efficient cooperation at the regional and international level.
- To accept nongovernmental sector as a partner in development and implementation of the state policies and programs directed to elimination of sexual and gender based violence;
- To prepare and adopt rulebooks and protocols on procedures of authorized bodies in the area of domestic violence, gender based violence, harassment, and sexual harassment, and to establish relevant structures needed for implementation of these documents in the practice.

# THE REPORT AND ANALYSIS OF THE MONITORING OF CRIMINAL PROCEEDINGS IN THE AREA OF GENDER BASED VIOLENCE – REPUBLIKA SRPSKA

## 1. Introduction

Although violence in a family and family community has been recognized as the most prevalent form of this type of violence in all of its forms (physical, psychological, sexual, economic violence), and continuously increases, available statistics of governmental institutions also point at the increase of other forms of criminal acts that are recognized as the gender based violence<sup>40</sup>.

Republika Srpska still does not have the joint database on this type of violence, and there is no harmonized methodology for collecting and periodical analysis of the data from the governmental bodies and institutions with the mandate in the area of prevention and fighting violence. This situation largely affects limitation of successful activities implemented by the institutions toward influencing decrease of violence against women.

Cooperation of the judicial institutions – prosecutor's offices and courts – but also the police, centers for social work, and health institutions, and their support for women survivors of violence that are participating in criminal proceedings as witnesses is of crucial

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<sup>40</sup> In the period January – December 2013, the Ministry of Interior Affairs of Republika Srpska registered 37 criminal acts against sexual integrity, in comparison to the 2012, when there were 29 registered criminal acts in this field. Out of 37 criminal acts, there were 15 criminal acts of the Rape, 12 criminal acts of the Sexual Violence Against a Child, 1 criminal act of the Incest, 3 criminal acts of the Sexual Intercourse with a Helpless Person, 1 criminal act of the Abusing Children and Minors for Pornography, and 5 criminal acts of the Attempted Rape. In the same period, the Ministry registered 453 criminal acts of the Violence in a Family or Family Community, which represents the increase of 70% in relation to 2012. *The Information on Status of Security in Republika Srpska for the Period January – December 2013*, Banja Luka, January 2014, the Ministry of Interior Affairs of RS Government, Available at the official web presentation of the Ministry, direct link: <http://go.gl/ruKPfS> (last access on 27 May 2014).

importance, not only for protecting the basic human rights of these women, but also creating safe environment for women that suffer from long term violence to safely report it, and receive protection during and after judicial procedure.

Monitoring of the criminal proceedings in the area of gender based violence by nongovernmental organizations is therefore important not only for women that are seeking legal, psychological, social, and other type of help from these organizations for a long time, but also for women and men representatives of the prosecutor's offices, courts, centers for social work, health institutions, and other subjects that are participating in the criminal proceedings in this area.

## **1.1 Changes of the Public Policies and Legislative Framework in the Area of Gender Based Violence**

In the period 2013–2014, Republika Srpska made significant efforts toward creating conditions for prevention and combating domestic violence, and other forms of gender based violence. Activities at the entity level include strengthening of the coordination mechanisms within governmental institutions, and establishing clear principles and rules of procedures of the subjects of protection, preparing public policy documents for prevention and combating domestic violence, strengthening criminal laws in relation to the criminal acts of gender based violence, and participating in the initiatives of developing and adoption of the public policies at the state level.

At 25 November 2013, the International Day of Fighting Against Violence Against Women, women and men representatives of the Ministry of Family, Youth, and Sport, the Ministry of Justice, the Ministry of Interior Affairs, the Ministry of Health and Social Protection and the Ministry of Education and Culture in the Government of Republika Srpska signed *The General Protocol on Procedures in Cases of Domestic Violence of Republika Srpska* with objective of

providing immediate help, support, and protection of domestic violence victims, combating, and prevention of repeated violence. This Protocol regulates clear obligations for procedures of judicial institutions (courts and prosecutor's offices) in the cases of domestic violence.

Obligations of the courts are, as follows: to efficiently use all legal possibilities regulated by the current laws of Republika Srpska with objective to protect victims of domestic violence, to enable victims to access judicial protection of their physical and psychological integrity and the basic right on life without violence, to conduct fast and efficient procedure of determining minor offence or criminal responsibility of a perpetrator, to mark with urgent and act urgently in all cases related to the domestic violence. During the proceedings related to the domestic violence, to pay attention to inform legally illiterate victims of violence about their rights, to inform victims of violence on outcomes of the proceedings, based on their request, or the request of their legal representative and/or guardian, and to provide them with transcripts of final decisions, to organize duty shifts to enable to the victims undisturbed access to the courts, in accordance with the law, with objective of protecting victims of violence.

Obligations of the prosecutor's offices are, as follows: to act urgently in communication between authorized official representatives (police officers) and prosecutor's officers, with objective of conducting necessary actions for prosecution and protection of a victim from repeated violence of a perpetrator, to collect evidences and initiate judicial procedure against a perpetrator, as well as to establish cooperation with other subjects for protection, assistance, and support to a victim<sup>41</sup>.

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<sup>41</sup> The General Protocol on Procedures in the Cases of Domestic Violence in Republika Srpska, the Official Gazette of Republika Srpska, No. 104/13, from 5 December 2013, pages 17—21

The Ministry of Family, Youth, and Sport of Republika Srpska is leading the preparation of *the Strategy for Combating Domestic Violence for the Period 2014–2019*. As one of the key strategic objectives, the Strategy includes recognizing domestic violence as any other criminal act and minor offence, in terms of re-examining penalty policy. Planned measures within this objective are including improving actions of police, judicial institutions, and centers of social work through education of the officials about causes and consequences of domestic violence, ways of support and protection for victims of violence, exchange of information, experiences, and good practices, as well as the monitoring of actions of the subjects of protection from domestic violence<sup>42</sup>.

*Changes of the Criminal Code of Republika Srpska adopted in 2013*<sup>43</sup> introduced important innovations in the field of criminal acts in focus of the monitoring. These changes introduced new security measures – prohibition of access and communication with a specific person (Article 62a), obligatory psychosocial treatment (Article 62b), removal of a common household (Article 62v) – which the court can impose against perpetrators of criminal acts with the elements of violence. Obsolesce of criminal prosecution for the criminal acts against sexual integrity and the criminal acts against marriage and family committed against persons below 18 years of age begin to run from the legal adulthood of a victim (Article 112, Paragraph 7). Changes of the Criminal Code of Republika Srpska also defined that felony of the hate crime is an act committed in whole or in part because of racial, national, or ethnic origin, language, religious beliefs, color, gender, or sexual orientation, health status or gender identity (Article 144, Paragraph 25).

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<sup>42</sup> The Strategy for Combating Domestic Violence in Republika Srpska, Proposal (2014–2019), the Ministry of Family, Youth, and Sport of Republika Srpska Government, May 2014, page 28

<sup>43</sup> The Law on Changes and Amendments of the Criminal Code of Republika Srpska, the Official Gazette of Republika Srpska, No. 67/13

The new Law stipulates stricter criminal sanctions for the criminal acts against sexual integrity. In relation to the criminal acts against marriage and family, stricter criminal sanction was imposed for the criminal act of the Deprivation of a Minor (Article 205). The Article that regulates the criminal act of the Violence in a Family or Family Community was changed in terms of précising and qualifying acts of violence, introducing stricter sanctions for various forms of the violence in a family or family community (Article 208, Paragraphs 1—5), incriminating violation of the protection measures from domestic violence imposed by the court based on the law (Article 208, Paragraph 6), and defining persons that should be observed as members of a family or family community (Article 208, Paragraph 7). Beside that, the latest changes of the Criminal Code of Republika Srpska introduced changes of title of the criminal act Trafficking of People for Prostitution into the Incitement into Prostitution (Article 198), and introduced new criminal acts of the Trafficking of People (Article 198a), Trafficking of Minors (Article 198b), as well as the Organizing a Group or Criminal Association for Perpetration of the Criminal Acts of Trafficking of People and the Trafficking of Minors (Article 198v).

## **1.2 The Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence – New International Obligation**

In 2011, the Council of Europe adopted *the Convention on Prevention and Combating Violence Against Women and Domestic Violence*<sup>44</sup>, as the legally binding document that includes all forms of violence against women, including domestic violence that affects women disproportionately in relation to men (Article 2, Paragraph 1). The Convention includes measures of the judicial protection of women survivors of violence, related to investigation, judicial

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<sup>44</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 12 April 2011. Available on English language at the official web presentation of the Council of Europe. Direct link <http://goo.gl/zBwGvF> (the last access on 17 May 2014).

proceeding, procedural law, and protection measures. States signatories of the Convention are obliging themselves to undertake whole range of measures to ensure efficient investigation of all suspected acts of violence against women and domestic violence through responses on reports of violence, collecting evidences and assessment of risk from repeated violence in order to protect adequately a woman victim of violence. Beside that, the Convention requires from the states signatories to conduct judicial proceedings on a way that respects the rights of victims of violence in all phases of the proceedings, and avoids re-victimization of a woman victim of violence.

States signatories are also obliging themselves to undertake necessary legislative and other measures, in accordance with the basic human rights principles, and taking into consideration understanding of violence from the gender perspective, in order to ensure efficient investigation and judicial proceedings for the criminal acts regulated by the Convention (Article 49, Paragraph 2).

Bosnia and Herzegovina ratified this Convention on 7 November 2013<sup>45</sup>, as the sixth country member of the Council of Europe, and took over responsibility to implement it through enabling legislative and institutional conditions for prevention and combating violence against women, and punishing perpetrators of violence.

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<sup>45</sup> The Council of Europe Convention on Prevention and Fighting Violence Against Women and Domestic Violence, Official Gazette of Bosnia and Herzegovina – the International Contracts, No. 19/13. In the period of preparing this report, 23 countries signed and 11 countries members of the Council of Europe ratified the Convention, as follows: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Island, Lithuania, Italy, Luxembourg, Malta, Monaco, Montenegro, Netherland, Norway, Poland, Portugal, San Marino, Serbia, Slovakia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, and Great Britain. The data presented from the official web presentation of the Council of Europe, Direct Link: [http://www.coe.int/t/dghl/standardsetting/convention-violence/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/default_en.asp) (the last access on 30 May 2014)



## 2. MONITORING OF THE CRIMINAL PROCEEDINGS IN THE AREA OF GENDER BASED VIOLENCE

### 2.1 Short Overview of the Initiative and its Objectives

Monitoring of the criminal proceedings in the area of gender based violence was conducted in the period of twelve months, from 1 March 2013 to 28 February 2014, as the part of the Project *Monitoring Justice for Sexual and Gender Equality in Bosnia and Herzegovina*. Key objective of the monitoring was to influence establishing coordinated and efficient system of judicial protection focused on support for women victims of violence that are participating in the criminal proceedings for criminal acts of gender based violence. The monitoring enabled capacity building of women members of non-governmental organizations in Bosnia and Herzegovina for independent monitoring of judicial institutions in this area, and improving communication with judicial institutions, with objective of strengthening support for women survivors of gender based violence.

This was the second monitoring initiative of criminal proceedings in the area of gender based violence,<sup>46</sup> and contrary to the previous one, it was implemented in a relatively longer period, included more courts in active and passive monitoring, and involved more women's nongovernmental organizations in Bosnia and Herzegovina in the process of preparing and implementation of monitoring, as well as the public advocacy for changes of policies and practices in the area of improving judicial protection of women survivors of violence.

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<sup>46</sup> During 2011, the Foundation „United Women“ (Banja Luka) in cooperation with the Foundation „Lara“ (Bijeljina), and with the assistance of UNDP BiH Program, implemented eight-month monitoring of 87 hearings in the criminal proceedings for acts of gender based violence in front of the Basic and District Court Banja Luka, the Basic and District Court in Bijeljina, the Basic and District Court in Doboј, as well as passive monitoring, based on the verdicts received from the Basic Court in Sokolac, and the Basic Court in Trebinje.

Monitoring was implemented by the Foundation „United Women“ (Banja Luka) and „the Center for Legal Assistance for Women“ (Zenica), in partnership with the Citizens' Association „Budućnost“ (Modriča), Women's Association „Most“ (Višegrad) and the Foundation „Lara“ (Bijeljina). Women representatives of these organizations monitored hearings in the cases of criminal acts in focus of monitoring, prepared concise reports after each hearing based on unified methodology, and collected additional data related to the monitored cases, with objective of ensuring good quality mapping of findings of the current practices of judicial institutions, the analysis, and developing recommendations for improving protection of women victims that are participating in the criminal proceedings for gender based violence in Bosnia and Herzegovina. During the monitoring period, teams of women monitors and analysts engaged by the Foundation „United Women“ (Banja Luka) and „the Center for Legal Assistance for Women“ (Zenica) had periodical coordination meetings to exchange experiences on monitoring processes, and to agree on the form of the monitoring reports and the final analysis for Republika Srpska and Federation of BiH, which contributed to the improving process of independent monitoring of criminal proceedings in this area, and improving capacities of women monitors.

## **2.2 Methodology of Monitoring of the Criminal Proceedings in the Area of Gender Based Violence**

Monitoring of the criminal proceedings in the area of gender based violence included *the Criminal Acts Against Life and Body* (Murder, Aggravated Murder, Manslaughter, Manslaughter Through Negligence, Unlawful Termination of Pregnancy, Bodily Injury, Serious Bodily Injury, Threatening with a Dangerous Tool in a Fight and Quarrel, Abandonment of a Helpless Person, Abuse, Endangering Safety), *Criminal Acts Against Sexual Integrity* (Rape, Sexual Intercourse with a Helpless Person, Sexual Violence Against a Child, Sexual Intercourse with Abuse of a Position, Satisfaction of Sexual Desire in Front of Other, Trafficking of People for Prostitution,

Abuse of Children and Minors for Pornography, Production and Presentation of Child Pornography, Incest), and the *Criminal Acts Against Marriage and Family* (Violence in a Family or Family Community, Violation of Family Obligations, Avoiding Alimony Payment) regulated by the Criminal Code of Republika Srpska, as well as the other criminal acts that could be observed as gender based violence, and where victims were women.

In accordance with the Criminal Procedure Code of Republika Srpska, eight (8) women monitors of the Foundation „United Women“ (Banja Luka), Citizens' Association „Budućnost“ Modriča, Women's Association „Most“ (Višegrad), and Foundation „Lara“ (Bijeljina) were conducting active monitoring of the cases in focus in all phases of the proceedings – *plea hearings, main trials, hearings for consideration of plea agreements, and hearings for sentencing/announcement of a verdict*.

Active monitoring was conducted in the *Basic and District Courts of Banja Luka, the Basic and District Courts of Doboj, the Basic Court of Sokolac, and the District Court of East Sarajevo*. Upon completing each hearing/trial, monitors were filling in individual monitoring reports providing information on a case, summary of indictment, short overview of a hearing/trial, analysis of the relevant standards, and other items of importance, as well as examples of good practices. Beside active monitoring of the hearings in front of the targeted courts, in communication with the contact persons designated by the courts, the monitors were collecting additional information that were available in the files for specific cases (indictments, transcripts from hearings, reports of the authorized centers for social work, verdicts, etc.), with objective of ensuring comprehensive information on monitored cases. It is important to emphasize that women monitors had the opportunity to monitor larger number of hearings per individual criminal cases, which enabled us to identify good practices and difficulties in protection of

women victims of violence that are participating in the criminal proceedings.

Passive monitoring was conducted through collecting and analysis of the verdicts for criminal acts in focus that were issued during the monitoring period in the *Basic and District Courts of Trebinje*. The analysis also includes verdicts sent by the *Basic Court of Sokolac* to the Foundation “United Women” Banja Luka in period 2012—2013. This Court continued to send us the verdicts after the first monitoring initiative formally ended in mid September 2011.

### **2.3 Good Practices and Challenges in Communication with the Courts During Monitoring of the Criminal Proceedings in the Area of Gender Based Violence**

At the beginning of the Project *Monitoring Justice Towards Sexual and Gender Equality in Bosnia and Herzegovina*, the Foundation „United Women“ (Banja Luka) prepared the draft Protocol on Cooperation with the Courts targeted by the monitoring, which defined the basic principles, as well as mutual rights and obligations, with objective of ensuring implementation of the monitoring. Meetings were organized with the representatives of the targeted courts in Republika Srpska, during which women representatives of the Foundation and partner organizations presented the key objectives, process, and expected support from the courts during the monitoring process. Targeted courts designated contact persons that were responsible to send us continuously the schedules of hearings for the cases that were in focus of the monitoring, ensuring support to the monitors to access the hearings and files of the cases without difficulties. The courts in which we conducted the passive monitoring also signed the protocol, and sent us the verdicts accordingly.

The courts targeted for active monitoring of the criminal proceedings generally ensured fair support for the monitors. Contact persons were timely informing the monitors on schedules of the

hearings. In all courts, the monitors had free access to the hearings closed for the public, which means they were recognized as the expert public, and were able to monitor the proceedings of importance for comprehensive assessment and analysis of the position of a victim, and support she receives in the proceedings for the criminal acts of gender based violence. Only in one case for the criminal act of Trafficking of People for Prostitution in front of the District Court of East Sarajevo, the prosecutor objected to the presence of monitors at the hearing of minor victims, and requested from the court to ensure the hearing closed for the public.

In all targeted courts, the monitors had undisturbed access to the case files per request, and access to the indictments, transcripts from the hearings, verdicts, reports of the social workers, and other documents of importance for objective and comprehensive analysis of the cases and proceedings that were active during the monitoring period.

In the Basic Court of Banja Luka, we encountered significant delays in signing the Protocol and it was signed on 4 July 2013, four months after the beginning of the monitoring. After several requests from the monitors, the contact person designated by the Court stated there are difficulties in submitting the schedule of hearings per cases in which women are indicated as victims in the cases per criminal acts that were in focus of monitoring. These circumstances influenced on reduced number of cases that the monitors could monitor effectively in front of this Court.

We identified good practices by the Basic Court of Sokolac that continuously sent the verdicts per criminal cases in focus of the monitoring during the period between the first and the second monitoring initiative (2012–2013). This reflects significant support of the Court in the process of independent monitoring, and openness for cooperation with women's nongovernmental organizations, in terms of common action toward improving support and assistance

for women victims in the criminal proceedings for acts of gender based violence.

Based on the request of monitors, the District Court in East Sarajevo enabled continuation of monitoring for the criminal proceedings that were initiated during the monitoring period, and other targeted courts also showed openness for continuing co-operation. This undoubtedly points at the interest of the courts for results of monitoring, and improving protection of women victims within the criminal proceedings.

### 3. STRUCTURAL OVERVIEW OF THE CRIMINAL ACTS – ACTIVE AND PASSIVE MONITORING

The monitors actively monitored the criminal proceedings in front of the targeted courts for **37 criminal cases**, as follows:

No.	Criminal Acts Against Life and Body	Number of Criminal Acts
1.	Murder	3
2.	Aggravated Murder	2
3.	Bodily Injury	1
4.	Endangering Security	3
5.	Failure to Provide Aid	1
	<b>TOTAL:</b>	<b>10</b>

No.	Criminal Acts Against Citizens' Rights and Freedoms	Number of Criminal Acts
1.	Coercion	1
	<b>TOTAL:</b>	<b>1</b>

No.	Criminal Acts Against Sexual Integrity	Number of Criminal Acts
1.	Rape	4
2.	Sexual Intercourse With a Helpless Person	2
3.	Sexual Violence Against a Child	1
4.	Trafficking of People for Prostitution	1
	<b>TOTAL:</b>	<b>8</b>

No.	Criminal Acts Against Marriage and Family	Number of Criminal Acts
1.	Violence in a Family and Family Community	12
2.	Negligence and Abuse of a Minor	1
3.	Avoiding Alimony Payment	2
4.	Deprivation of a Minor	1
	<b>TOTAL:</b>	<b>16</b>

No.	Criminal Acts Against Public Order and Peace	Number of Criminal Acts
1.	Violent Behavior	1
2.	Unlawful Production and Trade of Weapons and Explosive Materials	1
	<b>TOTAL:</b>	<b>2</b>

During **active monitoring**, monitors directly monitored **94 hearings/trials** – 2 plea hearings, 3 pre-hearings, 67 main trials, 2 hearings for consideration of plea agreement, and 19 hearings for sentencing/announcement of a verdict. After each hearing/trial they monitored, the monitors were preparing individual monitoring reports. The monitors also prepared 2 reports based on the review of files for specific criminal cases monitored in front of the District Court of Dobo.

Within the **passive monitoring**, we received **28 verdicts** – 2 verdicts from the District Court of Trebinje (Murder and Unlawful Production and Trade of Weapons and Explosive Materials), 10 verdicts from the Basic Court of Trebinje (Violence in a Family or Family Community), and 16 verdicts from the Basic Court of Sokolac (Violence in a Family or Family Community, Bodily Injury, Endangering Safety, Malicious Mischief, Aggravated Theft, and Theft).

## 4. ANALYSIS

### 4.1 Fair Trial from the Perspective of Protecting Rights of a Victim – The Right to Trial Within Reasonable Time

Criminal Procedure Code of Republika Srpska<sup>47</sup> as well as the international standards<sup>48</sup> are regulating rights of perpetrators and victims in terms of protecting their human rights and fundamental freedoms related to a fair trial.

Implementation of these principles in the criminal proceedings for acts that are recognized as the gender based violence is important, not only for protecting rights of a perpetrator as a defendant within criminal procedure that is primarily entitled for these rights, but also for protection of rights of a victim, especially in the part related to the *right to trial within reasonable time*. Women that were subjected to gender based violence often suffer its extended conse-

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<sup>47</sup> The Law requires from the court to conduct the proceeding without delay, and prevent any abuse of the rights of any participant in the criminal proceedings, and limiting duration of custody for the shortest necessary time (Article 13). Custody can be determined in precisely defined situations, (Article 197) and can last or be extended under conditions and within periods defined by the Law (Articles 198, 200, and 202). The Law also regulates deadlines for confirmation of charges by a pre-hearing judge – 8 days from confirmation of indictment, and 15 days from confirmation of indictment in a more complex cases (Article 243, Paragraph 2), as well as deadline of 30 days for scheduling the main trial after plea statement of a defendant (Article 244, Paragraph 4). In a course of proceedings, the court may impose upon the prosecutor, defense attorney, attorney-in-fact, or legal representative, or an injured party if their actions are obviously aimed at prolonging the criminal proceedings (Article 218, Paragraph 1). The Criminal Procedure Code of Republika Srpska, Official Gazette of Republika Srpska, No. 53/12 from 11 November 2012.

<sup>48</sup> Here we primarily refer to the Article 6 of the European Convention on Human Rights and Fundamental Freedoms that directly regulates fair trial from the aspect of protecting rights of a defendant in the proceedings. However, the aspect of a fair trial is also the integral part of protecting the rights of a woman victim of gender based violence, which is clearly visible from the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011) that requires from the states parties take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings (Article 49, Paragraph 1).



quences. In the period after reporting violence and police intervention, until indictment of a perpetrator and completing the judicial procedure, women victims are exposed to security risks in terms of communication with a perpetrator when he is not into custody, as well as repetition of violence and pressures in relation to their testimonies in the court that could have decisive influence on statements of women victims as witnesses during investigation and criminal proceedings. In cases of domestic violence, women victims often continue to live in a common household with a perpetrator, and slowness of initiating and leading of criminal proceedings can discourage them and force them not to seek protection of their rights at the court. Beside real danger from repetition of physical violence, women victims are exposed to economic violence and deprivation of livelihood especially if they decide to leave common life with perpetrators. Public prosecutors and judges, as well as other participants in the criminal proceedings are obliged to provide support to the victims during the proceedings, and due to that, they need to ensure initiation and conduct of proceedings as soon as possible.

#### **4.1.1 Review of the Current Situation with Cases from the Practice**

Through active monitoring of the criminal proceedings and analysis of received verdicts, we identified that the criminal proceedings in general were not lengthy, and there were no delays. Out of total **49 cases** that ended during the monitoring period (including passive monitoring through received verdicts), **30 criminal proceedings** ended in the period **up to six months**, while **19 criminal proceedings** ended in the period **up to a year** since confirmation of indictment.

In one case related to the criminal act of Violence in a Family or Family Community (Article 208, Paragraph 3, in relation to the Paragraph 1) in front of the Basic Court of Bijeljina, the indictment was confirmed on 10 February 2012 (three and a half months after the

criminal act of violence was committed), and the first main trial was held on 5 September 2013 (18 months after confirmation of indictment). From the case file, we identified that a victim was a minor person that continued to live in a common household with a perpetrator after he committed the act. She used her right not to testify at the main trial.

*In one case related to the criminal act of Violence in a Family and Family Community (Article 208, Paragraph 6, in relation to the Paragraph 1 of the Criminal Code of Republika Srpska), a perpetrator remains at large, and he did not show up at the three main trials scheduled in the period October – November 2012. In this period, the court requested his arrest, as the police provided information that a perpetrator has been hiding and avoiding to come to the trial. At the next main trial, the police informed the court that a perpetrator is on the run out of the country, and the court again postponed the trial for an indefinite period, approximately for middle December 2012. Upon ending of this deadline, the defendant attorney informed the court that his client is out of the country, and asked the court not to issue a warrant, as he would, on his own will, come to the court upon returning to Bosnia and Herzegovina in February 2013. This did not happen – a perpetrator did not show up at the main trial scheduled at the beginning of May 2013, and the main trial was postponed again for indefinite time. The court explained to the monitors that a perpetrator is still on the run, and the main trial would be held as soon as he becomes available to the court. In this case, the court used legal means for ensuring presence of a perpetrator on the main trial. However, the court could also use additional measures to ensure his presence in the period when he was in BiH<sup>49</sup> and avoiding coming to the court, which did not happen.*

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<sup>49</sup> The Criminal Procedure Code of Republika Srpska provides possibility to the court to use a reasoned decision to prohibit to a suspect or accused to leave his place of residence if there are circumstances indicating that he might flee, hide, to go to an unknown place or abroad. In these cases, the court can order withdrawal of travel documents together with the prohibition of issuance of new travel documents. (Article 184).

*The indictment was confirmed with a note urgent only in one case in front of the Basic Court of Sokolac for the criminal act of Violence in a Family or Family Community (Article 208, Paragraph 2 in relation to the Paragraph 1 of the Criminal Code of Republika Srpska). In this case, a perpetrator was conducting continuous violence against his parents over a long time, in a state of mental illness with substance abuse. After the last act of violence, he was forcibly placed in the psychiatric clinic.*

Taking into account **the period from carrying out of the criminal act until confirmation of indictment**, based on the analysis of collected monitoring data, we identified that for majority of the cases the indictment was confirmed in the period up to 12 months from the carrying out the criminal act. In two cases for the criminal act of Violence in a Family or Family Community in front of the Basic Court of Sokolac, the indictment was confirmed in the period of 14 months after carrying out of the criminal act, and in one case for the criminal act of Avoiding Alimony Payment in front of the Basic Court of Bijeljina, the indictment was confirmed in the period of 16 months after carrying out the criminal act. Since majority of the monitoring cases were related to the criminal act of Violence in a Family or Family Community, the fact of prompt reaction of the court does not prevent perpetrators to continue with endangering security of victims, as the monitoring identified cases of intimidation, threats, and pressuring victims by the perpetrators.

*In the case related to the criminal act of Violence in a Family or Family Community in front of the Basic Court of Sokolac, in one month period between two hearings, a perpetrator who was at large was coming to the address of a victim and crushed the door of her house. After this incident, a prosecutor requested and the court ordered the prohibition measure.<sup>50</sup> This was one of two prohibition*

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<sup>50</sup> When the circumstances of the case indicate so, the court may order one or more the following prohibiting measures: prohibition from performing certain activities or official activities, prohibition from visiting certain places or areas, prohibition from meeting with

*measures ordered by the monitored courts for protecting security of a victim outside courtroom identified during active monitoring of the criminal proceedings.*

*In two cases in front of the Basic Court of Sokolac, for the criminal acts of Sexual Intercourse with a Helpless Person and Endangering Security, the monitors identified delays of hearings due to failure of an expert witness and a perpetrator to attend hearings. However, these delays did not affect the course of the criminal proceedings, as the hearings were not delayed for a longer period.*

It is disturbing that in the three cases for **the Criminal Acts Against Sexual Integrity** many years have passed from carrying out the criminal act until initiating/confirming of indictment – in one case for the criminal act of Sexual Intercourse with a Helpless Person (Article 194, Paragraph 2, in relation to the Paragraph 1 of the Criminal Code of Republika Srpska) in front of the District Court of Banja Luka, the indictment was confirmed six years after the criminal act was committed, in one case for the criminal act of Sexual Intercourse with a Helpless Person (Article 194, Paragraph 1 of the Criminal Code of Republika Srpska) in front of the Basic Court of Sokolac, the indictment was confirmed eight years and three months after the criminal act was committed, and in one case for the criminal act of Sexual Violence Against a Child (Article 195, Paragraph 2 of the Criminal Code of Republika Srpska) in front of the District Court of Bijeljina, the indictment was confirmed after eight years. In this case, a victim was 13 years old in the time when the criminal act was committed.<sup>51</sup>

From a review of available documentation in the case files, we did not identify objective reasons for delays with initiating and

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certain persons, order to report occasionally to a specified body, and temporary withdrawal of the driver's license (Article 185, Paragraph 1 of the Criminal Procedure Code of Republika Srpska).

<sup>51</sup> The Law on Protection of Minors in the Criminal Proceeding of Republika Srpska regulates that the criminal proceeding, among other, for the act of Sexual Violence Against a Child is of urgent nature. (Article 190 in relation to the Article 184).

confirming the indictments, since in all three cases investigation was conducted in a relatively short period after the criminal acts were committed, including taking statements from the victims and the perpetrators, and collecting a number of other physical evidence.

## **4.2 Position of a Victim in the Criminal Proceedings for Acts of Gender Based Violence**

The international standards and domestic legislation envisages a numerous measures aimed to protect a victim of gender-based violence that appears in the criminal proceedings as an injured party. Beside recommendations,<sup>52</sup> recently adopted the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence includes a numerous legally binding measures aimed to ensure assistance and safe environment for women victims of violence, taking into consideration special circumstances in which they participate as witnesses in the criminal proceedings<sup>53</sup>. These international standards are largely integrated

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<sup>52</sup> Recommendation of the Committee of Ministers of the Council of Europe to the Member States R (2002) on Protection of Women Against Violence, Recommendation of the Committee of Ministers of the Council of Europe to the Member States R (85) 11 on Position of the in the Framework of Criminal Law and Procedure (1985)

<sup>53</sup> Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by: providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimization, ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively; informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case, enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered, providing victims with appropriate support services so that their rights and interests are duly presented and taken into account, ensuring that measures may be adopted to protect the privacy and the image of the victim, ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible, providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence, enabling victims to testify, according to the rules provided by

into the laws of Republika Srpska<sup>54</sup> that are regulating procedures in terms of testimonies of women victims, the conditions under which they can refuse to testify and receive legal assistance of a legal representative/attorney, obligation of the court to protect a witness from insults, threats, and attacks, as well as the questions about previous sexual life of a victim, ordering prohibiting measures for the purpose of protecting a victim, obligation of the court to inform a victim with her right to claim compensation for damages and all actions and decisions of prosecutor's office and court that could influence her rights in the proceedings (withdrawing indictment by a prosecutor, making plea agreement between a prosecutor and a perpetrator). The law regulates measures of protection of witnesses under threat or endangered witnesses, and they include ensuring psychological, social, and other type of assistance, as well as the special procedure and conditions of their testimony. Children and minors as victims of violence are legally recognized as endangered witnesses, and they have the right on special protection and testimony procedure.

#### **4.2.1 Ratio Between Protection of Rights of a Perpetrator and the Rights of a Victim in the Criminal Proceedings for Gender Based Violence**

Judicial practice points that adult women victims of gender based violence in general, are not recognized as witnesses with the right on special protection and support in the testimony procedure. Contrary to that, the monitors identified that the courts are paying

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their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child. (Article 56).

<sup>54</sup> Criminal Procedure Code of Republika Srpska (Official Gazette of Republika Srpska, No. 53/12), the Law on Protection of Witnesses in the Criminal Proceedings of Republika Srpska (Official Gazette of Republika Srpska, No. 48/03), the Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of Republika Srpska (Official Gazette of Republika Srpska, No. 13/10).

attention that perpetrators of violence as defendants in the criminal proceedings enjoy legally guaranteed rights on legal assistance and representation in the courtroom, whether they have attorneys of their choice or ex officio in cases when this type of assistance is legally guaranteed<sup>55</sup>. This misbalance between the rights of a perpetrator/defendant and the rights of a victim of violence/injured party in the criminal proceedings is disturbing, having in mind that both concepts are based on ensuring access to justice and protection of fair treatment.

In the period of active monitoring, the monitors observed 11 criminal proceedings in which a perpetrator had a defense attorney of their own choice (for the criminal acts of Sexual Intercourse with a Helpless Person, War Crime Against Civilian Population — Rape, Murder, Rape, Endangering Security, Violence in a Family or Family Community, Deprivation of a Minor, Failure to Provide Assistance, and Bodily Injury). In 10 criminal proceedings, perpetrators were granted ex officio attorney (for the criminal acts of Trafficking of People for Prostitution, Rape, Neglect and Abuse of a Minor, Sexual Violence Against a Child, Violence in a Family or Family Community (Article 208, Paragraph 2), Avoiding Alimony Payment), while in 7 criminal proceedings, a perpetrator represented himself alone. For 5 monitored criminal proceedings, we do not have information on the

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<sup>55</sup> The Criminal Procedure Code of Republika Srpska regulates cases of mandatory defense rights application for a perpetrator – at the first questioning if he is mute or deaf or if he is suspected of a criminal offense for which a penalty of long-term imprisonment may be pronounced, when responding to the proposal for ordering custody, throughout the custody, after an indictment has been brought for a criminal offense for which a prison sentence of ten years or more may be pronounced, the accused must have a defense attorney at the time of the delivery of the indictment, and if the court finds it necessary in the interest of justice, due to the complexity of the case, the mental condition of the suspect or the accused or other circumstances, it shall appoint an attorney to defend him (Article 53). Beside that, when requirements for the mandatory defense are not met, and the proceedings are conducted for an offense for which a prison sentence of three (3) years or longer may be pronounced or when the interest of justice so requires, regardless of the prescribed punishment, a defense attorney shall be assigned to the accused at his request if, due to an adverse financial situation, he is not able to pay the expenses of the defense. (Article 54, Paragraph.1).

nature of legal assistance provided by the court to a perpetrator. In one criminal proceeding for the criminal act of Violence in a Family or Family Community, the court rejected request of a perpetrator for appointing ex officio attorney.

Monitors did not identify the criminal proceedings in which adult victims of gender-based violence that appeared in front of the court in a status of witness had support of a professional. Also, there were no cases in which the victims had status of a witness under pressure, which would enable them to testify under special measures, although there were situations in which these measures were needed.

*In the criminal proceeding for the criminal act of Rape in front of the Basic Court of Dobo, adult victim provided testimony on the main trial, without assistance of an attorney, a professional, and without protection measures. In the criminal proceeding for the criminal act of Violence in a Family or Family Community, also in front of the Basic Court of Dobo, adult victim provided statement during investigation. She did not change it, and it was not presented at the trial. As the monitors pointed out, the victim attended the main trial, and she was sitting in the same row as a perpetrator (four chairs distance). The court prevented a perpetrator to ask her questions when he tried to do that.*

*In the criminal proceeding for the criminal act of Sexual Intercourse with a Helpless Person in front of the Basic Court of Sokolac, adult victim was a woman with intellectual disabilities. According to the expert witness opinion, she has damaged abilities of reasoning, due to which in the time when a perpetrator committed sexual violence against her, she could not understand acts she was subjected to. She was questioned three times: by the police, during investigation procedure by the Witness Support Department of the District Prosecutor's Office of East Sarajevo, and at the main trial. During the first two times, she had assistance of a professional, while*



*at the main trial, she was questioned on the initiative of the prosecutor, and did not have professional assistance of the authorized center for social work, although the prosecutor requested it. Professionals from the authorized center for social work did not come to the main trial, and they sent the notice to the court, in which they stated that they already submitted social anamnesis data for the victim.*

*At the next main trial, on which a neuropsychiatrist was present as the expert witness, the judge asked her about validity of the testimony of the victim at the previous main trial session. A neuropsychiatrist emphasized this testimony could be considered valid, since it does not differ from the statement of the victim provided immediately upon she was subjected to violence, given more than eight years ago.*

*In the criminal proceeding for the criminal act of Violence in a Family or Family Community in front of the Basic Court of Sokolac, adult victim of violence was questioned as a witness at the main trial without presence of an attorney, support in the courtroom, and with no special protection measures. During her testimony, a perpetrator was verbally harassing her continuously, saying she was lying, and was acting insolently toward the judge that warned him several times. At the end, the judge ordered a warning for disturbing procedural discipline.*

#### **4.2.2. Protection of Rights of a Minor Victim of Gender Based Violence as an Injured Party in the Criminal Proceedings**

During the active monitoring, the monitors identified examples of good practice of the targeted courts in providing support and ensuring protection measures during testimonies of minor victims of gender based violence, attitude of the courts toward need for protecting minors in a courtroom that are not parties in the proceedings, as well as protecting minor male and female witnesses in the criminal proceedings. This leads us to the conclusion that the

courts have general sensibility for needs of providing support and security for children and minors in the proceedings.

*In the criminal proceeding for the criminal act of Sexual Violence Against a Child in front of the District Court of Dobo, a minor victim was questioned in the police station immediately upon reporting the criminal act. A female clinical psychologist facilitated questioning, based on the request of a district prosecutor. Questioning was conducted individually, and by the team. Statement of a victim was audio recorded, and conducted in a separate premise where only a victim and a clinical psychologist were present, and police officers questioned a victim from a separate premise, using IT technology. A victim and her mother refused to testify at the main trial, and they did not change their statements provided during investigation procedure. The judicial council applied the Law on Protection and Treatment of Children and Minors in the Criminal Proceedings, and a perpetrator was removed from the court hall while a victim and her mother were escorted to the special room for questioning of a victim where a victim received support from a psychologist and a social worker. The same procedure was used for questioning of other minor witnesses in the case that are friends of a victim. This hearing was audio recorded.*

*In the criminal proceeding for the criminal act of Rape in front of the District Court of Dobo, a minor male witness was questioned with using measures of support of a professional, and with using protective measures. A psychologist was present during the testimony, and witness provided a statement from a separate premise. Also, in the criminal proceeding for the criminal act of Murder in front of the District Court of Dobo, a judge at the main trial that was announced public ordered removal of a minor escorted by a temporary guardian, stating that minors should not be present in the courtroom, and there is no need for them to listen circumstances under which the criminal act was committed.*

*In the criminal proceeding for the criminal act of Aggravated Murder in front of the District Court of East Sarajevo, a minor witness was questioned with a presence of her mother that agreed for a victim to testify. The court warned a victim that the hearing could be postponed in order to secure presence of a social worker, which she refused, stating there is no need for that.*

However, during active monitoring, the monitors identified disturbing practice when a minor victim was encouraged to testify, although there were no professionals that could provide adequate support in the courtroom, which represents the open violation of her rights, as the court failed to apply the Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of Republika Srpska. A victim was brought directly in the situation of uneasiness, insecurity, and pressure, with no recognition of her status of endangered witness and a person under threat.

This case shows it is necessary, without exception, to ensure comprehensive cooperation of the courts, prosecutor's offices, and professionals that are authorized to provide support and protection to the children and minors in the criminal proceedings. This is important especially in the situations when minor victims do not have adequate parental care, or any other community support, which points at their extreme vulnerability.

*In the criminal proceeding for the criminal act of Violence in a Family or Family Community (Article 208, Paragraph. 3 of the Criminal Code of Republika Srpska) in front of the Basic Court in Bijeljina, the monitors noticed that a minor daughter of a perpetrator came to the first hearing, and she was invited to testify. The court did not secure presence of a social worker, psychologist, or any other professional that could provide support for a minor victim during her statement. The judge concluded that a witness is a minor, and that there are no technical conditions for taking her testimony. Upon consultations with a prosecutor, the court decided that she could*

*testify if she wants to because one of her parents is present in the courtroom (he attended the hearing as an indicted person). A victim refused to testify after such decision of the court. There were two minor victims identified in this case, and they both provided statement in the police station during investigation process. Monitors could not find out if the police or a prosecutor provided the measures of support and assistance to the victims when taking their statements. A social worker came to the third hearing, and presented the report of a psychologist that a minor victims in the case are socially neglected and without adequate parental case, and that one of the minor victims did not appear in the courtroom as he is incapable to testify due to his health condition.*

*A prosecutor did not provide other evidences, he withdrew the indictment with explanation that the minor victims in the case did not testify, and they did not requested material compensation, so the court adopted the decision to reject the indictment.*

#### **4.2.3. Position of Prosecutors and the Courts Toward Protection of Victims of Gender Based Violence that are Participating in the Criminal Proceedings as Injured Parties**

Through the active monitoring of criminal proceedings, the monitors identified the practice that the prosecutors fail to protect rights of victims with favoring shorter procedures. When the victim refuses to testify at the main trial, the prosecutors lack readiness to continue with the criminal proceedings through proposing other evidences and expert testimonies.

In 8 criminal cases in which the monitors conducted active monitoring, the perpetrators made plea agreements with the prosecutors (for the criminal acts of Violence in a Family and Violent Behavior) in front of the Basic Court of Sokolac, and (for the criminal acts of Endangering Security, Negligence and Abuse of a Minor, and Failure to Provide Aid) in front of the Basic Court of Bijeljina. Beside

that, out of 28 verdicts received as a part of passive monitoring, 10 verdicts for the criminal act of Violence in a Family or Family Community in front of the Basic Court of Trebinje, and 10 verdicts for the criminal act of Violence in a Family or Family Community, Bodily Injury, Endangering Security, Malicious Mischief, Aggravated Theft, and Theft were issued based on plea agreement of the perpetrator with the authorized prosecutors. Scope of the criminal proceedings that ended this way reflects the widespread practice, especially in relation to the criminal cases of Violence in a Family or Family Community. In majority of these criminal cases, a victim stated she is not joining the prosecution, refused to testify, and did not request the material compensation, while in only 4 criminal cases it was not the case.

During active monitoring, the monitors identified 2 criminal cases – for the criminal act of Sexual Violence Against a Child in front of the District Court of Doboje, and the criminal act of Violence in a Family or Family Community in front of the Basic Court of Bijeljina – where the prosecutors gave up from the criminal prosecution as the minor victims refused to testify in the criminal proceedings.

The monitors identifies examples of good practice in 2 criminal cases – for the criminal act of Sexual Violence Against a Child in front of the District Court in Doboje, and the criminal act of Violence in a Family or Family Community in front of the Basic Court of Sokolac – in which the court ordered prohibition for perpetrators to contact with the victims<sup>56</sup>, which was justified with the circumstances of these criminal cases as both victims were exposed to the direct intimidation and threats conducted by the perpetrators.

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<sup>56</sup> When circumstances of the case require it, the court may order one or more prohibiting measures, among other, prohibition from meeting with certain persons (Article 185v). In a decision prohibiting the suspect or accused from meeting with certain persons, the court shall specify the distance within which the suspect or accused may not approach a certain person (Article 187, Paragraph 4). The police body is enforcing this measure according to the Criminal Procedure Code of Republika Srpska (Article 189, Paragraph 3).

These measures enabled victims of gender-based violence to feel safe and free from attacks of the perpetrators during the criminal proceedings. Their implementation shows that the courts have to use available legal mechanisms to enable the victims to testify safely in the criminal proceedings without fear from repetition of violence. It is especially important to use these measures in the criminal proceedings for the criminal acts of Violence in a Family or Family Community, in the situations when a victim or other family members frequently use their legal right not to testify, and the court could, through observing behavior of a perpetrator in the courtroom, to assess that a perpetrator is pressuring a victim. Testimony of a victim is additionally important in a great number of criminal cases for the criminal act of Violence in a Family or Family Community due to absence of other material evidences. Due to that, judges, prosecutors, centers for social work must make additional efforts to ensure that victims of gender based violence, as injured parties in the criminal proceedings, use all legal possibilities for support and protection.

#### **4.2.4. Position of Prosecutors and Courts Toward Protection of Victims from Minority Groups in the Criminal Proceedings**

The monitors actively monitored 2 criminal cases in which minor victims of violence belong to the minority Roma population. Through active monitoring and review of the case files, it was not possible for us to identify irregularities in the court procedures, actions of the prosecutors, and centers for social work in relation to the protection of minor victims of violence. Based on 2 monitored criminal cases, it is also not possible for us to make conclusions about existence of the court practice in relation to the minority groups that are exposed to the multiple levels of social discrimination and stigma. However, it is important to emphasize that the monitors identified misbalance in relation to protecting rights of minor victims and protecting rights of perpetrators of violence that are also from the minority Roma population. It was visible that the

courts and prosecutors considered difficult life conditions of the perpetrators, while in the same time they overlooked seriousness of consequences of the criminal acts on minor victims, as well as the fact that in the time when the criminal acts were committed, both minor victims were without adequate parental care, and without social support, care, and supervision of a social community.

*In the first criminal proceeding against two perpetrators for the criminal acts of Neglect and Abuse of a Minor, and Failure to Provide Aid, in front of the Basic Court of Bijeljina, the criminal procedure has been implemented within relatively short period (the indictment was confirmed three months upon the criminal act was committed, and the proceeding ended with plea agreement of the perpetrators with prosecutors made six months after confirmation of the indictment). For one of the perpetrators, the court appointed ex officio defense attorney, and included several mitigating circumstances in the verdict, all related to the economic and social life circumstances of the perpetrators. As the additional mitigating circumstances, the court mentioned attitude of the center for social work that provided positive opinion on the current attitude of the perpetrators toward a victim, as well as the circumstance that representative of a victim (prosecutor) did not express categorical attitude for stricter punishment of perpetrators. The victim in this case is three years old boy that suffered severe bodily injuries that were healed during hospital treatment. He had temporary guardian during the criminal proceeding.*

*In the second criminal procedure for the criminal act of Sexual Violence Against a Child in front of the District Court of Bijeljina, the indictment was confirmed eight years after the criminal act was committed. With examining the case file, the monitors did not identify any objective circumstances or reasons that would lead prosecutor to wait with the indictment. The victim was questioned with presence of a social worker in the police station within a short time after the criminal act was committed. The court granted ex officio defense attorney to the perpetrator. At the main trial, the social worker stated*

*that a victim has light mental disability. Report of a gynecologist that examined the victim two months after the crime was committed is in the case file. The victim in this case is a girl without parental care that was 13 years old in the time she was subjected to violence.*

#### **4.2.5. Influence of Change of the Prosecutors at Protection of a Victim in the Criminal Proceedings**

The monitors identified and pointed at the practice of frequent change of the prosecutors in the criminal cases that were actively monitored at the targeted courts, which influenced the victims to feel endangered and insecure, and request protection from the court. Reports of the monitors show that frequent changes of the prosecutors make impression that they are coming unprepared to the hearings/trials, and they are not familiar with the details of the cases and proceedings. This provokes strong feelings of vulnerability and insecurity of a victim.

*In the criminal case for the criminal act of Endangering Security, in which the monitors directly monitored six main trials in front of the Basic Court of Bijeljina, they identified that different prosecutors were at the four main trials. One prosecutor was at the first two main trials, another prosecutor was at the third main trial, while the prosecutor from the first two main trials was again at the fourth main trial. The monitors saw that the victim was visibly upset. She cried and begged the court to question her again, as she had impression that prosecutors are changing frequently, and they are not familiar enough with the case. She also said she has the need to add to her testimony, as she could not remember all the details during the first testimony. The judge advised her to talk with the prosecutor, which she did. She was not questioned at the next main trial, as it was postponed due to failure of the perpetrator to attend. Following main trial was also postponed, as the perpetrator requested it in order to hire a defense attorney, which was approved by the court. The victim was not questioned again, and she undoubtedly does not have adequate*



*support and assistance from the prosecutor in order to protect her rights. Although the monitors did not have the opportunity to monitor this criminal proceeding until the end due to ending of the active monitoring period, it points at the problems in attitude of the prosecutors toward victims in the criminal proceedings with the elements of gender based violence. Monitors that actively monitored criminal proceedings in front of the other courts also emphasized the problem of changing prosecutors during the proceedings, and negative effects it has on protecting rights of the victims.*

#### **4.2.6. Support to the Victim in Obtaining Material Compensation Through Submitting the Request**

During the active monitoring of the criminal proceedings, the monitors noticed that judges are using the main trials on which the victims were invited to testify to inform them with their rights, and possibilities to request material compensation,<sup>57</sup> and there were no proceedings in which the judges failed to do that. The monitors identified that in 4 criminal cases the courts were deciding on the material compensation request as a part of the criminal proceedings. In these cases, the verdicts also included details on the amount and deadline for paying the compensation. Out of these 4 decisions on material compensation, 2 decisions were related to the criminal act of Avoiding Alimony Payment in front of the Basic Court of Bijeljina,

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<sup>57</sup> A victim can submit the material compensation request to the prosecutor and the court at latest until the end of the main trial, or sentencing hearing. A victim is obliged to specify the request and submit evidence. If she fails to submit the request until the confirmation of indictment, the court shall inform her that she may submit it until the end of the main trial, or sentencing hearing (Article 105). In a verdict pronouncing the accused guilty, the court may award a victim the entire material compensation request, or may award her a part of the request, and refer her to civil proceeding. If the data in the criminal proceeding does not provide reliable basis for either a complete or partial award of the compensation, the court shall instruct the victim that she may take a civil proceeding action to request her entire material compensation. If the court adopts the verdict either sentencing the perpetrator or rejecting the indictment, or when the court adopts the decision to dismiss the criminal proceeding, it shall refer a victim that she may claim the material compensation in the civil proceeding. The Criminal Procedure Code of Republika Srpska, Official Gazette of Republika Srpska, No. 53/12, (Article, Paragraphs 3—4).

1 decision was related to the criminal act of Malicious Mischief, and 1 decision was related to the criminal act of Theft, both in front of the Basic Court of Sokolac. In 10 criminal cases (for the criminal acts of Rape, Sexual Intercourse with as Helpless Person, Bodily Injury in concurrence with the Malicious Mischief, and Violence in a Family or Family Community, including the above listed criminal acts), a victim submitted the request for material compensation during the criminal proceedings.

Beside already mentioned 4 criminal cases, the courts did not decide on material compensation as a part of the criminal proceedings, but used the verdicts to refer a victim to claim material compensation in the civil proceeding. In 1 criminal case for the criminal act of Rape, in front of the District Court of Bijeljina, the Supreme Court of Republika Srpska, as a part of the second-instance procedure, rejected the material compensation claim of the victim. In 18 criminal cases, including both active and passive monitoring, the monitors identified that courts used the verdicts to refer victims to claim material compensation in the civil proceeding – 13 criminal cases were related to the criminal act of Violence in a Family or Family Community. This points at the practice of the courts not to decide in the criminal proceedings on the right of a victim to acquire material compensation for a damage caused by domestic violence, and this predominantly relates to non-material damage compensation.

In 16 criminal cases for the criminal acts of Violence in a Family or Family Community, Rape, and Endangering Security, in front of the District Court of Doboj, the Basic Court of Sokolac, and the Basic Court of Bijeljina, as well as the Basic Court of Trebinje, as a part of the passive monitoring, a victim stated in front of the court that she is not interested for submitting the request for material compensation – this happened in 14 criminal cases related to the domestic violence. In 8 criminal proceedings for the criminal act of Violence in a Family or Family Community, the fact that a victim did

not submit the request for material compensation was considered by the courts as the mitigating factor when determining the sanction. In 1 criminal case for the criminal act of Violence in a Family or Family Community, in front of the Basic Court of Bijeljina, the prosecutor withdrew the indictment with explanation that victims did not testify and did not request the material compensation.<sup>58</sup>

Practice of judges and prosecutors in relation to initiating and realizing the request for material compensation of a victim in the criminal proceedings identified during monitoring points that victims of gender based violence are, to a great extent, in unfavorable position in relation to a perpetrator, especially in relation to the criminal acts of Violence in a Family or Family Community. It is important to have in mind that available researches<sup>59</sup> show that majority of women survivors of domestic violence are unemployed, without personal and regular income that would enable them to sustain themselves and their children, and due to that they are

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<sup>58</sup> This attitude of the prosecutor is disturbing, having in mind that two minors (a sister and a brother) were victims in this criminal proceeding, and they did not receive adequate support of the center for social work. During the monitoring of this proceeding, the monitors also identified other irregularities in procedure toward victims. See example of the criminal proceeding in front of the Basic Court of Bijeljina under 4.2.2. - Protection of the Rights of a Minor Victim of Gender Based Violence as an Injured Party in the Criminal Proceedings.

<sup>59</sup> Research implemented in 2012 by the Foundation „United Women“ Banja Luka, in cooperation with the „Rights for All“ Sarajevo, Foundation „Lara“ Bijeljina and „Mirjam“ Caritas Mostar points that unemployment and poverty are the frequent reasons why women hesitate to leave violent relationships. Due to the pressure of a partner, large number of women left school and job, they were forced to do household work and farming, to take care about a family for many years. With long absence from the job market, they are not competitive, as they lack education, skills, and working experience. Women over 40 years of age are especially discriminated in the employment process, as well as women belonging to the especially vulnerable groups; such are Roma women, and women with invalidity. Largest number of women that ended violent relationship has difficulties to acquire alimony, have no permanent job, and is dependant from their extended families (brothers, sisters, and parents), child supplement, or some other social payment, if they belong to some of the categories recognized by the law. *Analysis of the Social Inclusion Policies of Women Victims of Domestic Violence –Study of Bosnia and Herzegovina*, July 2012. Publisher: United Women Banja Luka. Available at the direct link: <http://goo.gl/vyLYs9> (last access 27 May 2014)

economically endangered, in a situation of economic dependence from the perpetrators, members of their wider family, or limited social assistance payments. Referring victims to request material compensation in the civil proceedings for the domestic violence they survived could lead to postponement in acquiring this right, and placing burden on victims to have unnecessary costs.

#### **4.3 Implementation of the Material Law in the Criminal Proceedings for the Criminal Acts Related to Gender Based Violence**

The Criminal Code of Republika Srpska regulates several criminal acts that are directly recognized as the gender based violence, as a part of the Criminal Acts Against Sexual Integrity (Chapter 19), and the Criminal Acts Against a Marriage and Family (Chapter 20), as well as the acts that could have characteristics of this type of violence, as a part of the Criminal Acts Against Life and Body (Chapter 16). Recent changes of this Law from 2013<sup>60</sup>, increased sanctions for majority of the criminal acts in this area, and introduced new criminal acts and measures that the courts may use with objective to protect women survivors of violence that are participating in the criminal proceedings as injured parties. New international standards are drawing attention on adequate recognition of various forms of violence against women, and require strengthening of assistance and support for victims<sup>61</sup>. Criminal prosecution of the acts of gender-based violence largely depends from sensibility of the prosecutors that could significantly influence

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<sup>60</sup> See under 1.1. – Changes of the Public Policies and Legislative Framework in the Area of Gender Based Violence

<sup>61</sup> The Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, among other things, requires from the members states to ensure that adequate state compensation is awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude state parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety (Article 30).

adequate implementation of laws in terms of protecting a victim and her rights in the practice.

During active monitoring of the criminal proceedings, and reviewing the available indictments, the monitors identified the cases in which prosecutors were sensitive for cases of gender-based violence, especially in the criminal proceedings with minor victims of sexual violence, abuse, and neglect, or domestic violence. In 2 criminal cases in front of the District Court of Doboj, the prosecutor decided to qualify the criminal act as Rape qualified with a more severe consequence (Article 193, Paragraph 2 of the Criminal Code of RS) because victims were minors, and prescribed punishment for this form of criminal act is three to fifteen years of imprisonment. If the prosecutor recognized this criminal act as the Sexual Violence Against a Child, the lower punishment is prescribed for the basic form and the same for the qualified form (one to eight years of imprisonment, or three to fifteen years of imprisonment).

However, in 1 criminal case for the criminal act of Violence in a Family or Family Community, in front of the Basic Court of Sokolac, the monitors believe that, when preparing and issuing of the indictment, the prosecutor misjudged elements of the criminal act, and failed to qualify it in the more severe form, for which the stricter punishment has been prescribed. It is important to point at the problem, although it is not possible for us to make objective conclusion based on one case that there is a widespread practice of such conduct of the prosecutors<sup>62</sup>.

*In the criminal case for the criminal act of Violence in a Family or Family Community, in front of the Basic Court of Sokolac, a victim*

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<sup>62</sup> The Criminal Procedure Code of Republika Srpska is regulating the principle of free assessment of evidence, which includes the right of the court, prosecutor, and other bodies that are participating in the criminal proceedings to assess existence or non-existence of the facts, and they are not bound or limited to the special evidence rules (Article 15). However, the Law also regulates the principle of equality of treatment (Article 14) that is important in terms of ensuring the principle of justice, and protecting the rights of a victim.

*testified at the main trial that she was exposed to continuous violence committed by a perpetrator over longer period. She also stated that she was reporting violence to the police on several occasions, but he was punished just once in a minor offence procedure. According to her testimony, during the last event of violence, they were together in a vehicle, returning from a department store where he bought a birthday present for their two years old child. After a quarrel in a vehicle, he punched her head with a beer bottle several times, while she was holding a child on her lap. When she went unconsciousness, he purred beer on her, and attacked her with a wheel security key. He continued to hit her, and when she regained her sense, she took a child, run out from a vehicle, and hid near. After some time, a perpetrator left in a vehicle, she stopped another man in a car, and he drove her and a child to the house of her friend.*

*An expert witness, a general surgeon confirmed that injuries she suffered match her statement.*

*In part of the indictment where he describes the facts of the criminal act, the prosecutor states that a perpetrator was punching a victim with his fists and open hand over her body and head, which caused injuries he described, without stating that injuries were caused with a tool that could cause injuries of more severe nature. He also did not indicate that a victim was holding a two years old child on her lap during violence, and that a child was exposed to direct trauma. By opinion of the monitors, these were justified reasons for qualifying this criminal act of Violence in a Family or Family Community in its qualified and more severe form, for which the stricter punishment is prescribed by the Law (Article 208, Paragraphs 2 and 3). The prosecutor qualified this criminal act in its basic form (Article 208, Paragraph 1), and with the indictment requested from the court to issue a warrant and suspended sentence, justifying it with the investigation results, and suggesting as the mitigating factors that the perpetrator has no previous convictions, also stating that he is a family man, and a father of one underage child. The court did not accept the proposal of*

*the prosecutor for issuing suspended sentence, and a victim stated that she is joining the persecution.*

It is important to emphasize that the latest changes of the Criminal Code of Republika Srpska from 2013, introduced more strict penalties for the criminal act of Violence in a Family or Family Community, as well as the other criminal acts that are recognized as the gender based violence. In the upcoming period, this would necessary have the positive effects, in terms of judges and prosecutors recognizing social risks of the criminal acts of gender based violence against women, and ensuring consistent implementation of the laws in order to enable protection of a victim, and implementation of her legally guaranteed rights.

#### **4.4 Penalty Policy for the Criminal Acts of Gender Based Violence**

The Criminal Code of Republika Srpska regulates the type and scope of sanctions for the criminal acts of gender based violence in focus of the active and passive monitoring. The Law requires from the courts to pay attention on purpose of the punishment and circumstances that influence sanctions to be lighter or stricter (mitigating and aggravating factors) when determining the criminal sanctions within the limits regulated for each criminal act.<sup>63</sup> These rules are also supported by the international standards in the area of prevention and combating of violence against women<sup>64</sup>.

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<sup>63</sup> Circumstances that are assessed by the courts when determining the criminal sanctions are especially related to the level of criminal responsibility, the degree of danger or injury of the protected good, circumstances under which the perpetrator committed the criminal act, his previous life, personal circumstances, and his behavior after the committed criminal act, as well as other circumstances related to his personality. When determining the criminal sanction for the criminal act committed in recidivism, the court is obliged to assess if the previously committed criminal act is of the same type as the new criminal act, if the motives of the perpetrator match, and the lapse of time since the previous conviction. The court especially considers the financial situation of the perpetrator when determining the fine.

<sup>64</sup> The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011) requires from the courts take into consideration if the

#### 4.4.1 Penalty Policy for the Criminal Act of Violence in a Family or Family Community

Findings of the active and passive monitoring of the criminal proceedings in the area of gender based violence show minor changes in relation to the period of the previous monitoring initiative conducted during 2011, especially in terms of the criminal sanctions for the criminal act of Violence in a Family or Family Community, that was the most monitored criminal act also in this period.<sup>65</sup> During 2013, majority sanctions for this criminal act determined by the targeted courts were suspended prison sentences from 30 days up to 8 months, with probation from one to two years. The court issued fines in range from 500 BAM up to 5.000 BAM, and the highest fine was issued as the suspended sentence for the criminal act of Violence in a Family or Family Community qualified with a severe consequence. Only in 2 criminal proceedings, in front of the Basic Court of Trebinje, and the Basic Court of Sokolac, the courts issued prison sentences – 30 days, and 2 months. In both cases, the perpetrators are returnees in commission of the same type criminal acts, and the court considered it as the aggravating circumstance, which is clearly visible from the explanation of the verdicts. Both cases are related to a long term and repeated violence

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criminal act has been committed against former or current spouse or a partner, and if the same or similar criminal act has been repeated, when determining the sanctions in the criminal proceedings for violence against women and domestic violence (Article 46). The court must also pay attention if the criminal sanctions are effective, proportionate and dissuasive, and can determine other measures, such as monitoring and supervision of a perpetrator, and withdrawal of parental rights, if in the best interest of the child, which may include safety of a victim, if cannot be guaranteed in any other way (Article 45).

<sup>65</sup> Results of the active and passive monitoring of the courts for the criminal acts of gender based violence in 2011 show that in majority of the criminal proceedings for the criminal act of Violence in a Family or Family Community, the courts were issuing fines in range from 500 BAM up to 1500 BAM, as well as the suspended sentences in range from one up to four months. *Monitoring and Analysis of the Criminal Proceedings and Judicial Practice in the Area of Sexual and Gender Based Violence in Republika Srpska. The Final Report and Analysis, 2011.* Available at the direct link: <http://goo.gl/oAkMVg> (last access on 27 May 2014).



in a family, not only against women, but also against underage children.

In almost half of the monitored criminal proceedings for the criminal act of Violence in a Family or Family Community, a perpetrator was exempt from paying the costs of criminal proceedings<sup>66</sup>, with considering poor financial situation as the mitigating circumstance. However, the monitors identified inconsistency in opinion of the courts in terms of applying this possibility, as they identified several verdicts in which the court considered poor financial situation of a perpetrator as the mitigating circumstance, but in the same time, he was obliged to pay costs of the criminal proceeding.

The monitors identified that, in majority of cases when considering mitigating and aggravating factors in determining the sentence for the criminal act of Violence in a Family or Family Community, the courts considered a perpetrator as a family man, and took his obligation to take care and support his underage children as the mitigating circumstances. This practice points at the lack of sensibility of the judges for consequences and effects of violence not only against a woman as the primary victim of violence, but also underage children that are also in majority of cases identified as the direct or indirect victims of violence. The monitors believe that circumstances of the family status and care for children could not be observed and used as the mitigating factors and reasons for lighter punishment of perpetrators of the criminal act of Violence in a Family or Family Community.

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<sup>66</sup> The Criminal Procedure Code of Republika Srpska regulates that in the decision that settles the issue of costs the court may relieve a perpetrator of the duty to reimburse all or part of the costs of criminal proceeding, if their payment would jeopardize subsistence of a perpetrator or persons whom he is obliged to support. (Article 99, Paragraph 4).

The monitors also noticed that the courts in general did not issue security measures<sup>67</sup> with the criminal sanctions for the criminal act of Violence in a Family or Family Community, except in 1 criminal case, when the court issued the security measure of Forfeiture of Items (a knife) (Article 62 of the Criminal Code of Republika Srpska). It is important to emphasize that in 3 criminal proceedings for the criminal acts of Aggravated Murder, Murder, and Attempted Murder, in which a victim is member of a family or family community, the court also issued the security measure of Forfeiture of Items (a gun), and in 1 criminal proceeding for the criminal act of Violence in a Family or Family Community, the court issued the security measure of Mandatory Psychiatric Treatment (Article 58 of the Criminal Code of RS) in duration of 3 months, for a perpetrator that committed the criminal act in a state of mental incompetence.

#### **4.4.2 Penalty Policy for the Other Criminal Acts in the Area of Gender Based Violence**

Findings of the active monitoring of the criminal proceedings point that for the other criminal acts in the area of gender-based violence the courts were issuing sentences within a legal minimum. In the criminal proceeding for the criminal act of Sexual Intercourse with a Helpless Person, in front of the District Court of Banja Luka, committed by two perpetrators, among which one perpetrator committed the act in an attempt, the court issued the sentence of three and two years (for an attempt) of imprisonment, which is the legal minimum for this criminal act qualified with a severe consequence (Article 194, Paragraph 2).

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<sup>67</sup> The court can issue security measures together with the criminal sanction, and their purpose is to remove conditions or situations that might influence a perpetrator to commit the criminal acts in a future (Article 55 of the Criminal Code of RS). These measures include mandatory psychiatric treatment, mandatory medical addiction treatment, ban on carrying out a certain occupation, activity, or duty, ban on driving a motor vehicle, and forfeiture of items (Article 56 of the Criminal Code of RS).

In the criminal proceeding for the same criminal act in front of the Basic Court of Sokolac, the court issued the sentence of 2 months of imprisonment, with applying the Article 194, Paragraph 1, as well as the Articles 4,28,32,37 and 39, Paragraph 4 of the Criminal Code of Republika Srpska. During the criminal procedure, the court determined that the criminal act was committed with the direct intent, which was not considered by the court as the aggravated circumstance. Contrary to that, the court considered several circumstances as especially mitigating factors – family circumstances, poor financial status, time distance since the criminal act was committed, as well as no previous convictions. It is disturbing that the court considered time distance since the criminal act was committed as the mitigating circumstance, having in mind that the indictment has been confirmed eight years and three months after the perpetrators committed the criminal act, and the monitors did not identify objective circumstances that would lead the prosecutor to postpone the indictment.

We could objectively observe these examples as the isolated cases, considering limited period of the active monitoring of the criminal proceedings as a part of this initiative. However, they are undoubtedly important in terms of pointing at lack of sensibility of the judges and prosecutors for protection of the victims in the criminal proceedings for severe forms of gender based violence against women, and need for the verdicts to fulfill the role of both special and general prevention of these criminal acts.

## **5. CONCLUDING OBSERVATIONS**

**In relation to respecting the principle of fair trial from the perspective of protecting rights of a woman victim of gender based violence that participates in the criminal proceedings as the injured party, and the right to a trial within reasonable time, the analysis identified that criminal proceedings in general**

were not durable, and there were no unjustified delays. Out of 49 criminal cases that ended during the monitoring period (including the passive monitoring), 30 criminal cases ended in the period up to six months, while 19 criminal cases ended in the period up to a year since confirmation of the indictment.

However, it is disturbing that monitoring pointed at the criminal proceedings for the criminal acts against sexual integrity, in which several years passed before the indictment has been confirmed. The review of the available case files did not indicate objective reasons for delays, as the investigation was conducted in relatively short period after the criminal acts were committed, including taking statements from a victim and a perpetrator, and collecting a number of other evidences.

In relation to the issue of **ratio between protection of rights of the perpetrator and the victim in the criminal proceedings for criminal acts of gender based violence**, judicial practice shows that adult women victims of violence are generally not recognized as the witnesses with the right on special protection and support in the process of testifying. Contrary to that, the monitors noted that the courts are paying attention to ensure for the perpetrators to enjoy their legally guaranteed rights on legal assistance and representation in the courtroom, with enabling them to choose their defense attorneys, or appointing ex officio defense attorneys in the cases when the law guarantees this. This misbalance between rights of a perpetrator and rights of a victim in the criminal proceedings is disturbing, considering that both concepts are based on ensuring access to justice and protection of fair treatment.

In relation to the **protection of rights of minor victims of gender based violence that are participating in the criminal proceedings as the injured parties**, the analysis identified good practice of the courts in providing support and ensuring measures of protection during testifying process of a minor victims of violence,

attitude toward need for protecting minor persons in the courtroom that are not parties in the criminal proceedings, as well as protecting minor boys and girls witnesses. However, it is disturbing that the analysis identified cases in which a minor victim of violence was encouraged by the court to testify although the court failed to secure presence of professionals that could provide adequate support in this process. This represents the open violation of the rights of minor witnesses, as the court failed to apply the Law on Protection and Treatment of Children and Minors in the Criminal Proceedings of Republika Srpska, and placing them into the situation of uneasiness, insecurity, and pressure, with no recognition of her status of endangered witness and a person under threat.

In relation to **attitude of the prosecutors and judges toward protecting the rights of victims of gender based violence that are participating in the criminal proceedings as the injured parties**, the analysis pointed at examples of good practice in the individual cases in which the courts ordered prohibition measures for perpetrators to contact with the victims, which was justified with circumstances identified during the criminal proceedings, where the victims were exposed to direct intimidation and threats by the perpetrators. Ordering these measures by the courts enabled victims to feel safe and free from attacks of the prosecutors during the criminal proceedings in which they participated. Usage of these measures shows that the courts should use available legal mechanisms to enable to the injured parties to feel safe to testify, and participate in the proceedings without fear from repetition of violence.

In relation to the **attitude of prosecutors and judges toward protecting rights of minority groups in the criminal proceedings**, the analysis identified misbalance in relation to protection of rights of a minor victims and the perpetrators that are also belonging to the minority Roma population, considering difficult life circumstances of the perpetrators, and in the same time

neglecting seriousness of consequences of the criminal act on a minor victims, and the fact that in a time when the perpetrators committed the criminal acts, both minor victims were without adequate parental care and social support, but also without care and supervision of a social community.

In relation to the influence of **changing the prosecutors during the criminal proceedings on protection of a victim**, the analysis revealed that frequent change of prosecutors provokes feelings of insecurity and fear of a victim, as she is forced to seek for protection of the court. Frequent change of the prosecutors in the criminal proceedings gives impression they are coming to the hearings unprepared and without sufficient knowledge on details of a case and process, and this causes strong sense of insecurity of a victim.

In relation to the question of **supporting a victim to request and acquire material compensation in the criminal proceedings**, the monitors identified that the courts were informing victims on their rights and possibilities to request material compensation, and they generally did it at the main trials where victims were invited to testify. However, having in mind that in only 4 criminal cases, the victims acquired material compensation during the criminal proceedings, and that in majority of cases, the courts referred victims to claim it in the civil proceedings, we can conclude that the victims of violence were, to a large extent, in unfavorable position in relation to the perpetrators, especially in the criminal proceedings related to the criminal act of Violence in a Family or Family Community.

In relation to the **implementation of the material law in the criminal proceedings for the gender based violence**, the analysis pointed out at the sensibility of prosecutors for the cases of gender-based violence, especially in the criminal proceedings with a minor victim of sexual violence, abuse, neglect, and violence in a

family or family community. However, the monitors also identified the case of wrong judgment of elements of the criminal act, and failure of the prosecutor to recognize its qualified form, for which a more severe penalty is requested by the law.

In relation to the **penalty policy for the criminal acts of Violence in a Family or Family Community**, the analysis indicate that during the monitoring period, the courts mostly ordered suspended sentences and the fines, and in exceptional cases imprisonment of a minimum duration. This represents slight deviation in relation to the practice identified during the monitoring initiative in 2011. The monitors also identified the court practice of exempting the perpetrators from covering the costs of criminal proceedings, together with considering poor financial status as the mitigating circumstance. The courts were frequently using a family status and obligation of care and support for minor children as the mitigating circumstances, which points at lack of sensibility of the judges for consequences of violence that affect not only women as the primary victims, but also minor children that are either direct or indirect victims of violence in majority of the cases. Security measures ordered by the courts together with the sanctions were not used for protecting victims from repeated violence, but solely in the cases of severe forms of gender-based violence (aggravated murders, murder, or attempted murder, with a woman victim identified as the member of a family or family community of a perpetrator).

**In relation to the penalty policy for other criminal acts of gender based violence**, the monitors identified that the courts in general were ordering criminal sanctions within the legal minimum, which points at the lack of sensibility among judges and prosecutors for protection of victims in the criminal proceedings for the most in the criminal proceedings for severe forms of gender based violence against women, and need for the verdicts to fulfill the role of both special and general prevention of these criminal acts.

## 6. RECOMMENDATIONS

### 6.1. General Recommendations

In the criminal proceedings for the criminal acts of gender based violence, it is necessary without exceptions to ensure comprehensive cooperation of the judges, prosecutors, and authorized professionals that are legally obliged to ensure support and protection of women victims of violence that are participating in the criminal proceedings as injured parties, regardless if they are adult or minors.

In relation to ensuring special assistance and support for children and minors, which represents the obligation of all subjects that are participating in the criminal proceedings, both according to the domestic laws and the international standards, it is especially important to consider the cases where minor victims do not have adequate parental care, or any other support in the community, which points at their extreme vulnerability. It is important that minor victims of gender-based violence have continuous, adequate, and consistent support based on coordinated actions of the prosecutors, judges, and centers for social work that are systemically supported and ensured in all courts.

Prosecutors, judges, and centers for social work must have continuous access to the training on procedures in work with women victims of gender based violence, in order to ensure systemic, efficient, and sensible support and assistance in situations where they participate in the criminal proceedings as injured parties. This training should be available to all mentioned subjects continuously, and to include segments of work with minor victims and victims from minority groups, and to include introduction to the work of services for assistance and support for victims of violence, and possibilities of using them for protecting victims in the criminal proceedings.



## 6.2 Recommendations for Prosecutors

In relation to the authorities of the prosecutors to initiate criminal proceedings in the cases of gender based violence, it is necessary to ensure that indictments are initiated within a short time after the criminal act was committed or reported, especially considering situations in which minors and women from minority groups were identified as the victims, and need to protect safety of both adult and minor victims in the period after the criminal act was committed. This is especially important, having in mind that during this period victims of gender-based violence are frequently exposed to pressures and intimidation by the perpetrators and this could significantly influence their possibility and readiness to testify in the criminal proceedings.

In relation to the role of the prosecutors in protecting the victims of gender-based violence in the criminal proceedings, and possibility for the victims to acquire their rights, it is necessary to ensure consistency of leading the criminal proceedings, and preventing situations in which prosecutors change within the same proceeding.

In relation to the request for issuing a warrant as a part of the indictment, and plea agreements with the perpetrators, which is the frequent practice in relation to the criminal acts of Violence in a Family and Family Community, it is necessary for prosecutors to consider influence of these procedures at protection of rights of the victims of gender based violence, since these are shortened procedures without trials in which the victims of gender based violence cannot adequately use their rights.

In relation to the right and possibilities for victims of gender based violence to claim, specify, and acquire material compensation as a part of the criminal proceeding, it is necessary for judges and prosecutors to enable women survivors of gender based violence in

early phases of the criminal proceedings to learn about possibilities to acquire their right on material compensation, in order for victims to follow the adequate procedures timely. In this process, prosecutors and judges should ensure adequate and consistent support and assistance to the victims, regardless if they are adults or minors.

### **6.3 Recommendations for the Courts**

In relation to the support of the courts for women victims of gender based violence in the criminal proceedings, it is necessary for courts to recognize and ensure the status of a witness under threat for all victims, regardless of their age, and whenever possible in the concrete cases, and to ensure to the victims to enjoy all rights from this status. This would enable to the victims that are participating in the criminal proceedings as injured parties to feel safe and encouraged to testify, and therefore provide good quality evidence for the criminal proceedings of gender based violence, in which testimonies of victims are often the only relevant evidences.

In relation to the penalty policy of the courts for the criminal acts of gender based violence, especially in relation to the criminal acts of Violence in a Family and Family Community, as the most common forms of violence in this field, it is necessary for the courts to recognize that the circumstances of a family life and care for children cannot be observed and applied as the mitigating factors and reasons for reducing the criminal sanctions against the perpetrators.

### **6.4 Recommendations for the Institutions of the Social Care that are Participating in the Criminal Proceedings for the Criminal Acts of Gender Based Violence**

In relation to the role of the institutions of social care (the centers for social work) that are participating in the criminal proceedings for the criminal acts of gender based violence, it is necessary for women and men professionals working in these

institutions, including social workers and psychologists, to recognize the social risk of all forms of gender based violence against women, and ensure consisted, coordinated, and adequate support and assistance to the victims, both outside the courtroom and inside the courtroom during their testimonies. This would contribute for victims to feel safe, not only during her testimony, but also during the whole duration of the criminal proceeding, and after it ends.

It is necessary for this assistance and support to be provided to the children and minor victims that are extremely vulnerable and endangered, during the criminal proceedings, especially in the cases when children and minors are without adequate parental care or belong to the minority groups.

In relation to the comprehensive support for women survivors of gender based violence that are participating in the criminal proceedings as injured parties, it is necessary for the centers for social work to ensure them continuous access to information on their rights in the field of social care and protection, and possibilities to access these rights, as well as available services of support, regardless if these services are provided by governmental/public institutions or nongovernmental organizations, including free legal assistance, SOS telephones, psychosocial counseling, and the safe houses for women and children survivors of gender based violence.

## JOINT RECOMMENDATIONS FOR THE FEDERATION BIH AND REPUBLIKA SRPSKA IN THE CASES OF SEXUAL AND GENDER BASED VIOLENCE STRUCTURAL OVERVIEW OF THE CRIMINAL CASES – ACTIVE AND PASSIVE MONITORING

Presented situation in Bosnia and Herzegovina in relation to gender-based violence clearly suggests **necessity of cooperation and joint work of all relevant state institutions and nongovernmental sector**. Adequate and timely protection of the victims of gender-based violence has been recognized as the imperative of the international standards that are incorporated in the domestic legislation. The only sustainable and socially acceptable response of the state and entire society requires comprehensive cooperation of legislative, executive, and judicial governance, but also cooperation with the nongovernmental organizations that should be recognized and accepted as the key partners in the process of preventing and combating gender based violence.

Despite numerous previous initiatives and implemented actions, prevalence of gender-based violence is pointing at necessity of **multi-sectoral approach** to this social problem, as only with the joint message of decisive and uncompromising condemnation of all forms of violence, we can reach the objective of preventing and combating violence. **Continuous trainings and professional education** of women and men prosecutors, judges, and professionals within institutions for social care should provide a solid base for systemic and sensitive approach to the cases of gender based violence.

As the first step, it is necessary to ensure optimal environment in which the victims (minor and adult) would feel safe to report violence, which is possible only through **urgent actions of the authorized prosecutors, as well as the authorized courts upon receiving an indictment, through ordering appropriate**

**protection measures, and implementation of the efficient penalty policy.** In that sense, concentration of the actions and urgent criminal proceedings presupposes also **avoiding the practice of changing prosecutors** within the same criminal procedure. Short forms of the criminal proceedings (warrant request, or plea agreement of the perpetrator and the prosecutor) that are the most frequent practice in relation to the criminal act of Violence in a Family should not be favored over the efficient protection of rights of the victim.

Due to unabated number of gender based violence cases, penalty policy should be implemented in a way to ensure that criminal law sanctions are proportionate to the gravity and circumstances of the committed criminal acts, with careful and detailed justification of the mitigating circumstances, and cautious assessment of opportunism of a lighter punishment of the perpetrator, taking into account the special and general prevention. This procedure is especially important in relation to the criminal act of Violence in a Family, where in principle circumstances of preserving family and care for children should be avoided as the mitigating factors, as it has been often unjustifiably considered by the courts in order to apply lighter punishments for the perpetrators. This is visible from the high rate of recidivism among the perpetrators that received lighter punishments.

During the criminal proceedings for the criminal acts of gender-based violence, it is necessary in the appropriate situations to **ensure status of endangered witness/witness under threat** for the victims of violence. Such judicial practice is especially important in the situations when testimony of the victim is the only relevant evidence, it would stimulate the victims to use their rights to testify, and lead to the faster and more efficient ending of the criminal proceedings for gender based violence. Timely informing the victims on possibilities of **acquiring material compensation through the request**, regardless if the court would decide on it within criminal or

civil proceedings, represents another form of support for the victims that should be used more in the judicial practice.

Authorized centers for social work are obliged to provide **timely and professional assistance in rehabilitation from consequences of violence and providing support in empowering victims of violence** before, during, and after ending of the criminal proceedings. Comprehensive support to the victims should be ensured through establishing specialized services for assisting women victims of violence, including counseling, sheltering in the safe houses, legal advices, and other services of social support.

Finally, **coordinated and systemic cooperation of all relevant subjects** should set up the objective of continuous and sensitive support to the victims **in order to preserve their trust in the work of judicial institutions**, and end the vicious circle of gender based violence.