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## Analysis of professionals' attitudes to effectiveness of the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska

PhD Ivanka Marković

Olga Lola Ninković

MSc Željka Mileusnić

Sara Brković Marić



## **Analysis of professionals' attitudes to effectiveness of the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska**

Authors:

*Olga Lola Ninković, PhD Ivanka Marković, MSc Željka Mileusnić, Sara Brković Marić*

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This research arose from the need to point out to the professional public of the Republic of Srpska on the effects of the application of the new Law on Protection from Domestic Violence in the Republic of Srpska, which entered into force in May 2020. Our objective is to point out the need to harmonize other laws and certain internal acts of the subjects of protection in order for the law to be fully applicable and effective. For twenty years the Zenski Centar Trebinje Foundation has been working directly with victims of domestic violence and on advocacy activities to change the policies in the direction of more adequate protection of victims of domestic violence. In this regard, we decided to use this research to point out to the relevant institutions/organizations the need to monitor the effects of existing laws in order to see their contribution to reducing this phenomenon. Therefore, on behalf of the Zenski Centar Trebinje Foundation, I would like to thank the researchers: PhD Ivanka Markovic, Zeljka Mileusnic, MSc Sara Brkovic, Olga Lola Ninkovic, who fully met our expectations.

I would also like to thank Canada for making this research possible through the Canada Fund for Local Initiatives!

Ljiljana Čičković

Director

The Zenski Centar Trebinje Foundation

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## PREFACE

The research, which presents an analysis of the professionals', subjects of protection, efficacy of the Law on Protection from Domestic Violence and the Criminal Code of the Republic Srpska, was created within the project "Network Platform of Actors from Institutions of Protection, Women's Organizations and Individuals to Combat and Prevent Domestic Violence in the Republic of Srpska" in BiH, supported by the Canada Fund for Local Initiatives. The project was implemented by the Foundation "Zenski Centar Trebinje" from Trebinje.

The aim of our research is to examine the views of experts on the efficacy of the Law on Protection from Domestic or Family Violence and the Criminal Code in the Republic of Srpska, observed from the aspect of preventing and combating domestic violence. In order to understand the subject aspect, the current criminal law regulations are included, with a focus on the actions and roles of the subjects of protection, as well as the measures and activities they undertake in order to act more efficiently.

The criminal regulation of violence in the family or family community in the Republic of Srpska began in 2000, when the criminal offense of "domestic violence" was included in the Criminal Code of the Republika Srpska, within the criminal offenses against marriage and family. Today, in addition to the Criminal Code, the Law on Protection from Domestic or Family Violence in the Republic of Srpska is in force, as a *lex specialis* that treats this area. In previous years, certain research was conducted in accordance with the available data and certain corrections of legal regulations in order to raise the situation in this area to a higher level. Accordingly, the roles of subjects of protection through legislation have changed, as well as the complexity and specificity of preventive and repressive methods used by subjects of protection in preventing and combating violence in the family or family community.

Having in mind that the changes in the legal regulations related to domestic violence occurred in 2020 (Law on Protection from Domestic Violence), i.e. in 2021 (The Criminal Code of RS), we thought that enough time had passed to examine the views of professionals on efficacy of these novelties, as well as to check through the statistics of the RS Ministry of Interior whether the existing changes have affected the scope of domestic violence cases. Namely, the time period that we observe largely includes the state of emergency<sup>1</sup> caused by the Covid-19 pandemic, during which governmental and non-governmental organizations report an increase in cases of domestic violence.

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<sup>1</sup> The corona virus was first detected in BiH on 5th March 2020nin Banja Luka. On 17th March the Council of Minsters declared a state of natural and other disaster, followed by preventive measures in both entities including curfew, as well. luci.



According to the data of the analysis "Domestic Violence during the Pandemic"<sup>2</sup>, the RS Ministry of the Interior recorded an increase in criminal acts of domestic violence in 2020 compared to 2019. Namely, in the period from January to May 2020, 192 criminal offenses were recorded, while in the same period in 2019, 145 criminal offenses were recorded. The increase in the number of cases of domestic violence in RS was also reported by non-governmental organizations in RS.

In April 2020, a total of 116 calls were received on the SOS hotline<sup>3</sup>, which is by 10% more than in the previous month. SOS counselors recorded an increase in violence, especially in the second half of the month. Compared to April previous year, there was an increase of 20%, which may be related to the COVID-19 pandemic, according to the publication "SOS Hotline - the Importance of Supporting Remote Monitoring of Cases in Crisis Situations."<sup>4</sup>

The Annual Report of the Zenski Centar Trebinje Foundation for 2020<sup>5</sup> states that the pandemic of the COVID-19 virus affected the drastic increase in domestic violence during 2020, both in the whole BiH and in the Republic of Srpska. It is stated that the official data of the Police Administration Trebinje, which covers the entire East Herzegovina, testify to that, where the total number of reports received in 2019 was 29, and in 2020 53 reports, which is an increase of about 80 percent. In addition, according to the data of this organization, the total number of interventions during 2019 was 183, whereas in 2020 it increased by about 13%, i.e. 208 interventions.

This phenomenon is not unique only to our region, but is recorded by almost all countries in the world. Thus, the World Health Organization has expressed deep concern over reports from many countries, including Belgium, France, Ireland, the Russian Federation, Spain, the United Kingdom and others, of increasing interpersonal violence - including violence against women and men and violence against children due to introduction of preventive measures to combat corona virus.<sup>6</sup>

For the purposes of the analysis, questionnaires were created to examine the attitudes of police officers of the Ministry of Interior of the Republic of Srpska on the application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska, and on the effectiveness of the Rulebook on Risk Assessment of Domestic

<sup>2</sup> Grbic Pavlovic, N. (2020). Domestic violence during pandemic. Friedrich Ebert Stiftung, Sarajevo

<sup>3</sup> The SOS hotline covers all RS municipalities with three Safe Houses: Banja Luka, Bijeljina and Modrica. The telephone number to call the SOS hotline free of charge and receive support in the acute phase of violence or at any other time when the need arises is 1264.

<sup>4</sup> Publication: "SOS hotline - the importance of supporting remote monitoring of cases in crisis situations" (2021), "Udružene žene /United Women/ Banja Luka", Banja Luka

<sup>5</sup> <https://zenskicentar.org/obavjestenja/godisnji-izvjestaj-za-2020-godinu/>, accessed on 3/12/2021

<sup>6</sup> <https://unric.org/en/who-warns-of-surge-of-domestic-violence-as-covid-19-cases-decrease-in-europe/>, accessed on 23/11/2021





Violence Victims. The questionnaire on the effectiveness of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska examined the views of both representatives of the judiciary (judges and prosecutors) and social welfare bodies.

The research, which is of a qualitative-quantitative type, was done in the period from November to December 2021.

The analysis contains Chapter I "Amendments to the Legal Regulations of Violence in RS" which provides an overview of key amendments to the Law on Protection from Domestic Violence, which entered into force on 1<sup>st</sup> May 2020, and amendments to the Criminal Code that entered into force on 23<sup>rd</sup> February 2021, according to which the basic form of the criminal offense of domestic violence was changed. Chapter II "Research" lists the methodology and objectives of the research, presents the analysis of statistical data of the Ministry of Interior of the Republic of Srpska and the results of the research, as a result of which the findings and conclusions of the research and recommendations were made. In Chapter III "Appendices", the questionnaires used in the research are presented.

We hope that this research will be useful to all subjects of protection, because it provides the first impression of the effects of legal changes related to combating domestic violence and will contribute to improving existing and creating new policies to more effectively protect victims. We also hope that our Analysis will soon encourage other research, as we are aware that the adequate response of protection subjects is limited by a number of factors of which we have examined only those that have imposed themselves on us in this short period of application.

**We thank the RS Ministry of Interior and police officers, judges, prosecutors and representatives of social work centers in the Republic of Srpska who took part in the research.**

*Authors*





## **I. AMENDMENTS TO THE LEGAL REGULATIONS OF DOMESTIC VIOLENCE IN THE REPUBLIC OF SRPSKA**

*PhD Ivanka Marković*

### **Introduction**

Although domestic violence in Republika Srpska was incriminated 20 years ago, we have not yet reached the expected zero tolerance rate for this negative social phenomenon. During this time, various legal solutions were adopted, followed by appropriate bylaws, but some subjects of protection always found reasons for non-application or inadequate application of the same. The final consequence of this practice was the decline in the confidence of victims of domestic violence in the existing protection system and the strengthening of the belief that, despite the existence of an adequate legal framework, they are unprotected in the Republic of Srpska.

In order to eliminate the different treatment of courts, as well as the different treatment of judges within the same court, in 2019 amendments to the Law on Protection from Domestic Violence were made, which entered into force in 2020, and in 2021 the Criminal Code was amended, thus, the process of amending the legal regulations on domestic violence should have been completed.

### **Amendments to the Law on Protection from Domestic Violence**

The Law on Amendments to the Law on Protection from Domestic Violence<sup>7</sup> (entered into force on 1st May, 2020) introduced certain novelties into the existing system of protection of victims of domestic violence aimed at harmonizing this protection with the provisions of the Council of Europe Convention on Prevention and combating violence against women and domestic violence. Accordingly, Article 1 of this Law emphasizes that the main purpose of the Law on Protection from Domestic Violence is to provide adequate protection to victims of domestic violence and prevent the recurrence of acts of violence, through a system of protection measures applied to perpetrators of domestic violence<sup>8</sup>. It follows from the above that the

<sup>7</sup> Text of the Law was published in the Official Gazette of the Republic of Srpska, no. 84/19 of 16/10/2019.

<sup>8</sup> Article 1 of The Law on Amendments to the Law on Protection from Domestic Violence reads:

“This Law regulates protection against violence in the family or family community (hereinafter: domestic violence), persons who are considered members of the family or family community in terms of this law, subjects



essence of this law is the provision of assistance and protection to victims of domestic violence, and not retribution, i.e. punishment of perpetrators. In this regard, the notion of domestic violence has been amended so that “domestic violence, within the meaning of this law, exists if there is a basis for suspicion that a family member or family community has committed acts of physical, sexual, psychological and/or economic violence, as well as threats causing fear of physical, sexual, psychological and /or economic harm to another member of family or family community.”<sup>9</sup> Acts of domestic violence include:

- a) the use of force against the physical or mental integrity of a member of family or family community,
- b) conduct that may cause or threaten to cause physical or mental pain or suffering to a member of family or family community,
- c) causing fear or personal threat or violation of the dignity of a member of family or family community by blackmail or other coercion,
- d) verbal assault, insulting, swearing, calling derogatory names, and other ways of grossly harassing a member of family or family community,
- e) sexual violence,
- f) denying access to health care and nursing,
- g) monitoring and all other similar forms of harassment of a member of family or family community,
- h) intentionally damaging or destroying the property of a member of family or family community, joint property, or property in possession,
- i) denial or deprivation of the right to economic independence by prohibiting work or keeping a member of family or family community in a relationship of dependence or subordination,
- j) educating children in a manner of degrading treatment,
- k) taking away children or evicting them from the apartment of a member of family or family community,
- l) exhaustion by work, starvation, denial of sleep or necessary rest to a member of family or family community,
- m) non-compliance with the decision of the competent body establishing personal contact of children with their parents,

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of protection and the procedure for protection of victims of domestic violence, the establishment of the Council for the fight against domestic violence, **measures to protect the victim from domestic violence and other issues of importance for protection from domestic violence.**"

<sup>9</sup> See Article 3 of the Law on Amendments to the Law on Protection from Violence



- n) retention of a travel document or other document of a member of family or family community,
- o) forcible isolation or restriction of freedom of movement of a member of family or family community and
- p) any other act that constitutes violence in the family or family community.

Threats of these acts are also considered acts of domestic violence.<sup>10</sup>

When defining domestic violence, the legislator exhaustively listed only some actions that may be acts of domestic violence, but left the possibility of applying this law to all other acts that represent domestic violence, as well as threats to such acts. Enabling the application of the definition of domestic violence to cases in which an individual threatens to commit any of the above-mentioned actions was necessary because in such cases it is psychological violence that very often remained out of response of the competent institutions, and which, as practice shows, often precedes taking concrete action.

The term a member of family or family community has been expanded to include, in addition to pre-existing persons covered by this term, persons who were or still are emotionally or intimately related to each other, regardless of whether the perpetrator divides or has divided the household with the victim.<sup>11</sup> This harmonized with Article 3, point b of the Istanbul Convention according to which "domestic violence" means any act of physical, sexual, psychological or economic violence that occurs in the family or household, or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the household with the victim". The explanation of this convention states that the authors of the convention recognized that violence often continues after the severance of a relationship and therefore agreed that a common place of residence of the victim and the perpetrator is not necessary.<sup>12</sup>

<sup>10</sup> Ibidem.

<sup>11</sup> Article 7 is now worded as follows:

"A member of a family or family community, within the meaning of this law, is considered to be:

- a) spouses or ex-spouses and their children and the children of each of them,
- b) extramarital partners or former extramarital partners, their children or the children of each of them,
- c) in-law relatives up to and including the second degree, regardless of the fact that the marital union has ended,
- d) parents of current and former marital and extramarital partners,
- e) relatives from full adoption in the direct line without restrictions, and in the collateral line up to the fourth degree, as well as relatives from incomplete adoption,
- f) the person who binds the guardianship relationship,
- g) persons living or having lived in the same family household, regardless of kinship,
- h) persons who have a joint child or a child conceived, even though they have never lived in the same family household,
- i) persons who have been or still are in an emotional or intimate relationship with each other, regardless of whether the perpetrator shares or has shared the household with the victim".

<sup>12</sup> See the Istanbul Convention Explanation - point 42.



### Liabilities of the subjects of protection

The Law on Amendments to the Law on Protection from Domestic Violence stipulates the obligation for all subjects of protection to inform the victim in the first contact about all his rights and about institutions, bodies, legal entities and organizations that provide help, support and protection.<sup>13</sup> The obligation to provide victims with timely and adequate information on available support services and legal measures in a language they understand is also provided for in Article 19 of the Istanbul Convention.<sup>14</sup> The explanation must be given in a way that is understandable to the victim, which means that he is a representative of the subject of protection, e.g. a worker in the center for social work, is obliged to not only state the provisions of legal acts which prescribe certain rights of the victim, but he is obliged to do so that the victim understands what the right she/he has means and the way of its implementation. The manner of giving information must be adjusted to the psychophysical condition of the victim, and if it is a victim who has e.g. difficulties in communication (e.g. the victim does not hear well) a means of communication acceptable to the victim must be provided (sign language interpreter). Information on organizations (governmental or non-governmental sector),

<sup>13</sup> Article 5 of the Law on Amendments to Law on Protection from Domestic Violence:

In Article 10 paragraph 2 is amended and worded:

**"(2) The subjects of protection shall inform the victim in the first contact, in an understandable way, about all rights he has in accordance with these and other regulations and about institutions, bodies, legal entities and organizations that provide assistance, support and protection."**

**After paragraph 2, a new paragraph 3 is added, which reads:**

**"(3) In the procedures of exercising their rights and protection, victims have the right to free legal aid in accordance with the regulations governing the field of free legal aid."**

<sup>14</sup> In the explanation of this article of the Istanbul Convention, point 124 states: "Immediately after violence, victims are not always in a situation where they are fully informed and empowered to make decisions, and many lack support in the environment. This provision places special emphasis on the need to provide victims with information on the different types of support services available and legal measures. This requires information on where they can get what kind of help, if necessary in a language other than the official language and in a timely manner, which means at a time when it is useful for victims. The term "relevant information" refers to information that sufficiently meets the victim's need for information. This may include, for example, not only giving the name of the organization that provides support services, but also giving a leaflet containing information about the address and telephone number, working hours and precise information about the services that the organization offers.

Directive 2012/29/ EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime in Article 4 also provides for the right to receive information from first contact with the competent authority, which obliges Member States to provide information to victims, without undue delay, from their first contact with the competent authority, in order to give them access to the rights set out in this Directive, and in particular states that additional details may also be provided at later stages of the procedure, depending on the needs of the victim and the importance of such details for each of the stages of the proceedings.

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institutions or legal entities that provide assistance and support to victims of domestic violence can also be given through leaflets containing information about the specific organization, contact method, type of service it provides, etc. It is important that the victim, during the first contact with the representative of the subject of protection, receives complete information about all the possibilities related to his future position, i.e. about her rights, support, protection and assistance services offered to her. It is believed that in such a situation, the victim can more fully comprehend her position and decide on further steps regarding her future. According to Article 9 of the Law on Protection from Domestic Violence, protection, assistance and support to victims of domestic violence are provided by members of the Ministry of Interior, the Prosecutor's Office, social work centers, social services, health and educational institutions and the competent court i.e. subjects of protection. The implementation of this obligation requires that all representatives of the subjects of protection have an appropriate level of knowledge not only about the rights of victims of domestic violence but also about all institutions, bodies, organizations and legal entities that provide assistance, support and protection to victims of domestic violence.

Based on the experience from the previous period, it could be concluded that the best results in the protection of victims of domestic violence are given by the multisectoral approach and cooperation of all subjects of protection at the local level. Accordingly, the Law on Amendments to the Law on Protection from Domestic Violence (Article 6 of this Law) emphasizes that "*subjects of protection in the process of protection, assistance and support to victims of domestic violence cooperate in the best interests of the victim,*" and introduces an obligation to conclude a protocol on actions in the area of the local self-government unit and to form a group for coordination and cooperation.<sup>15</sup> Coordination and cooperation groups are formed by representatives of all institutions, bodies and organizations that provide protection, assistance and support to victims of domestic violence, and the deadline for their formation is 30 days from the date of entry into force of this law.<sup>16</sup>

<sup>15</sup> The obligation to establish a coordinating body is also prescribed by the Istanbul Convention (Article 10), and the explanation of this article emphasizes that this body (or bodies) should be given four specific tasks: coordination, implementation, monitoring and evaluation of policies and measures implemented at national and / or regional and local level.

<sup>16</sup> The provision of Article 6 of the Law on Amendments to the Law on Protection from Domestic Violence amends Article 11 of the Law on Protection from Domestic Violence, which reads as follows:

(1) The subjects of protection shall provide without delay the urgent resolution of cases of domestic violence, taking into account that the interest and well-being of the victim are a priority in these proceedings, especially if the victim is a child, elderly person, disabled person and guardian.

(2) The subjects of protection in the process of protection, assistance and support to victims of domestic violence shall cooperate in the best interest of the victim.

(3) A protocol on actions shall be concluded in the area of the local self-government unit and a group for coordination and cooperation shall be formed of representatives of all institutions, bodies and organizations that provide protection, assistance and support to victims of domestic violence.



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## Risk assessment

A significant novelty in the legislation is the obligation of the competent police officer to perform a risk assessment after each report of domestic violence. In doing so, special consideration shall be given to information on: whether the perpetrator committed domestic violence or some other form of violence before or immediately before the risk assessment and whether he is prepared to repeat it; whether he threatened murder or suicide; whether he possesses a weapon; whether he is mentally ill or abusing psychoactive substances; whether there is a conflict over custody of the child or about the manner of maintaining personal contact between the child and the parent who is the perpetrator; whether the perpetrator has been ordered an urgent measure or a measure of protection against domestic violence; whether the victim experiences fear and how she assesses the risk of recurrence of violence as well as other facts and circumstances relevant to the risk assessment.<sup>17</sup>

Risk assessment and risk management is an obligation under Article 51 of the Istanbul Convention.<sup>18</sup> However, it should be mentioned that the explanatory memorandum to this

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(4) On the basis of annual reports, the Ministry shall monitor and analyze the application of the protocol referred to in paragraph 3 of this Article.

(5) The group for coordination and cooperation referred to in paragraph 3 of this Article shall be formed within 30 days from the day this Law enters into force. "

<sup>17</sup> Article 8 of the Law on Amendments to the Law on Protection from Violence provides for a new Article 12a, which reads: Article 12a

(1) A risk assessment shall be performed after each report of domestic violence.

(2) The competent police officer shall perform a risk assessment on the basis of collected information on: a) whether the perpetrator committed domestic violence or some other form of violence before or immediately before the risk assessment and whether he is ready to repeat it,

b) whether he threatened to kill or commit suicide,

c) whether he possesses a weapon,

d) whether he is mentally ill or abuses psychoactive substances,

e) whether there is a conflict over custody of the child or about the manner of maintaining personal contact between the child and the parent who is the perpetrator

f) whether the perpetrator has been imposed an emergency measure or a measure of protection against domestic violence,

g) whether the victim experiences fear and how she assesses the risk of recurrence of violence and

h) other facts and circumstances relevant to the risk assessment.

(3) The Minister of the Interior shall issue the Rulebook on the procedure and manner of conducting the assessment risk.

<sup>18</sup> Article 51 of the Istanbul Convention requires members to take the necessary legislative and other measures to ensure that the competent authorities assess the risk of mortality, seriousness and risk of recurrence of violence in order to manage risk and, if necessary, coordinated insurance and support. The need to take into account the fact that perpetrators of violence possess firearms, ie to have access to firearms, was especially emphasized when





article of the convention emphasizes that it is of the utmost importance that measures taken to assess and manage risk do not worsen the condition of victims and that investigations and trials do not lead to secondary victimization. By prescribing the obligation to perform risk assessment in every report of domestic violence, the aim is to ensure optimal protection of victims of domestic violence. In practice, it happens that the perpetrator of violence threatens the victim with serious violence or death, sometimes in the presence of officials, as well as cases in which the perpetrator used a weapon as a means of intimidation and etc. In such a situation, it is necessary to make a proper assessment of the seriousness of the specific situation and the possibility of recurrence of violence, i.e. it is necessary to make a proper risk assessment. Based on that, a risk management plan should be made in terms of ensuring coordinated safety and support for victims of violence. When assessing the risk, special attention should be paid to the fact whether the perpetrator of violence possesses a weapon, whether he has used it, or whether he has access to a weapon.

The Law on Amendments to the Law on Protection from Domestic Violence amended Article 12 by deleting paragraph 6, which provides for the initiation of minor offense proceedings against perpetrators of domestic violence, and other paragraphs were more or less changed. The amendment to the provision of paragraph 5 stipulates that the competent public prosecutor, after the investigation, informs the competent police officer in writing about the indictment against the suspect or the suspension of the investigation, as well as the reasons for suspending the investigation. Therefore, there is an obligation for the public prosecutor to inform the competent police officer about the stated facts, all in order to enable that information to be available to the victim. The practice so far has shown that the victim is often unfamiliar with the course of proceedings against the perpetrator of violence, and also that the Center for Social Work does not have information about that. Precisely because of that, the legislator provided for the obligation for the competent police officer to submit all notifications together with the risk assessment to the center for social work<sup>19</sup>

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assessing the risk. This obligation is also provided by Directive 2012/29/ EU on the establishment of minimum standards on the rights, support and protection of victims of crime.

<sup>19</sup> Article 7 of the Law on Amendments to the Law on Protection from Domestic Violence reads:

Article 12 is amended to read as follows:

- (1) Family members, subjects of protection, as well as employees in educational, social and health institutions, as well as every other citizen, shall immediately after learning that domestic violence has been committed or that there are grounds for suspicion that domestic violence has been committed, report it to the police.
- (2) After receiving the report that domestic violence was committed, the competent police officer shall immediately inform the Center for Social Work, which shall immediately provide social protection and psychosocial assistance to the victim, take other measures within its competence, and make an official report.
- (3) The health institution shall provide the victim with a free medical examination in order to determine the existence of violations of physical or mental integrity.
- (4) The competent police officer shall immediately inform the competent public prosecutor about the committed domestic violence and, together with the report, submit the collected evidence and risk assessment.



The Law on Amendments to the Law on Protection from Domestic Violence did not change the essence of emergency protection measures, but expanded the circle of persons who can submit a proposal for imposing an emergency protection measure because the law explicitly states that it can be done by a competent police officer, center for social work or a victim of domestic or family violence.<sup>20</sup>

### Introduction of a “person of trust”

A significant novelty in the regulation of domestic or family violence is the introduction of a "person of trust". The legislature provides that the victim may choose, before or during the proceedings, a trustee to be present during one or more proceedings or actions related to protection from domestic violence. It is provided for that a "person of trust" can be any adult except the perpetrator. Thus, it can be another member of the family or family community, friend, relative, etc., regardless of his education or some other status. This does not affect the right of the victim of violence to have a proxy in the proceedings who will take care of the protection of his rights and interests. The legislator explicitly emphasized that a person of trust cannot be a perpetrator of domestic violence, which prevents the abuse of this legal solution. The competent authorities are obliged to enable the presence of a person of trust in all procedures and actions in which the victim is involved, in accordance with the regulations within their competence.<sup>21</sup>

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(5) The competent public prosecutor, after the end of the investigation, shall inform the competent police officer in writing about the indictment against the suspect or the suspension of the investigation, as well as the reasons for the suspension of the investigation.

(6) In addition to the competent public prosecutor, the competent police officer shall also submit notifications and risk assessments to the center for social work."

<sup>20</sup> Article 9 of the Law on Amendments to the Law on Protection from Domestic Violence reads:

In Article 13, paragraph 2, the words: "misdemeanor department of the competent basic court" shall be replaced by the words: "competent court in misdemeanor proceedings".

Paragraph 3 is amended to read as follows:

"A proposal for imposing an urgent protection measure shall be submitted by a competent police officer, social work center or victim of domestic or family violence, and shall be issued no later than within 24 hours of receiving the proposal, i.e. bringing the perpetrator of domestic violence to court."

<sup>21</sup> Article 10 of the Law on Amendments to the Law on Protection from Domestic Violence reads:

After Article 21, a new Article 21a is added, which reads:

(1) The victim may choose, before or during the proceedings, a **person of trust** who will be present during one or more proceedings or actions related to protection from domestic violence.

(2) A person of trust may be any adult person other than the perpetrator of violence.

(3) The competent authorities shall enable the presence of a person of trust in all procedures and actions in which the victim is involved, in accordance with the regulations within their competence.



In practice, the question has been asked whether these persons can actively participate in the proceedings or whether their role is to provide moral and emotional support to the victim. According to the experience of other countries in this area, it can be said that a person of trust has the right to be present when taking actions, but he does not have the right to actively participate in those actions. The role of this person in the process of providing assistance and protection to the victim of domestic violence is reflected in the passive support, the very presence, gesture, movement or look that strengthens the victim morally.<sup>22</sup>

### **Abolition of minor offense punishment**

The most important novelty in the field of legal regulation of domestic violence is the abolition of minor offense punishment for domestic violence, which practically means that, from the moment this law enters into force, domestic violence cannot be treated as a minor offense, but only as a criminal act. The title of Chapter IV is changed so that instead of the previous name "SANCTIONS" this chapter is called "PROTECTIVE MEASURES", and instead of the provisions of Article 22 which lists minor offense sanctions for protection from domestic violence, this article sets forth: "Protection measures for victims of domestic violence are protective measures. The purpose of protective measures is to ensure the necessary protection and safety of the victim, and to eliminate conditions or conditions that may be influential or may affect or encourage the perpetrator to commit acts of domestic violence in the future."<sup>23</sup> A Type of protective measures and deadline for their pronouncement have not been amended.<sup>24</sup> A new Article 23a is added in line with this amendment which provides for:

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(4) The victim of violence has the right to a proxy in the proceedings."

<sup>22</sup> The Republic of Croatia has significant experience in the application of provisions on the participation of "persons of trust" in procedures for providing protection to victims of domestic violence. It has introduced similar solutions into its legal system Article 3 - "provided that this is not contrary to the interests of the victim or if the course of the proceedings is not jeopardized, Member States shall allow victims to be accompanied at first contact with the competent authority by a person of their choice if due to the influence of the criminal act they need assistance to understand or to be understood "; Article 20, paragraph 3 -" that the victims be accompanied by their legal representatives and the person they choose, unless a different reasoned decision is made "). According to the Law on Protection from Domestic Violence of the Republic of Croatia, Article 8 para. 8. "a person of trust is a legal representative or other adult of the victim's choice, unless proposed or called as a witness".

<sup>23</sup> New paragraph 1 and 2 of the Article 22 of the Law on Protection from Domestic Violence.

<sup>24</sup> Article 22:

"(3) Protective measures are the following:

- a) removal from an apartment, house or other living space
- b) ban on approaching the victim of domestic or family violence (hereinafter: ban on approaching the victim),
- c) Prohibition of harassment or stalking of a victim of domestic or family violence (hereinafter: prohibition of harassment or stalking of a victim),
- d) mandatory psychosocial treatment and



"Protective measures referred to in Article 23, paragraph 3 of this Law shall be imposed independently and are subject to direct enforcement by the authorities responsible for their implementation, in accordance with the provisions of this Law," and Article 23b of the Law on Protection from Domestic Violence is deleted.<sup>25</sup>

The legislator also amended the penal provisions (Article 42) by deleting the provisions on minor offense liability of perpetrators of violence. The provisions on minor offense liability for non-compliance with the provisions of this law have remained, but the framework of fines has been changed. The new provisions stipulate that an employee in an educational, social and health institution, who does not report domestic violence, will be fined for a minor offense from 1,000 BAM to 3,000 BAM. A fine of 300 BAM to 900 BAM will be imposed on a citizen who does not report domestic violence, as well as a member of family or family community who does not report domestic violence committed against a child, unless he is a victim of domestic violence. Having in mind the importance of records on actions taken under this law, as well as the importance of data on the number of initiated and completed procedures and other measures and reports submitted to the competent ministry, the legislator foresaw that subjects of protection and other bodies authorized to act under this law who do not act in accordance with Article 34, paragraph 1 of this law shall be fined from 3,000 BAM to 5,000 BAM.<sup>26</sup> The text of the Law also includes a provision emphasizing that a police officer who does not act in accordance with the obligations from this law after reporting domestic violence will bear responsibility in accordance with the law.<sup>27</sup>

### **Amendments to the Criminal Code of the Republic of Srpska**

The Law on Amendments to the Criminal Code of the Republic of Srpska<sup>28</sup> (Official Gazette, No. 15/21 of 23 February 2021) amended the basic form of the criminal offense of

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e) mandatory treatment for addiction.

(4) Protective measures shall be imposed by the competent court in minor offense proceedings, at the proposal of the competent police officer, center for social work or victims of domestic violence.

(5) The court shall impose protective measures within 30 days from the day of submitting the Proposal for imposing a protective measure. "

<sup>25</sup> Article 23b reads: "Minor offense proceedings against juvenile perpetrators of domestic violence and the imposition of educational measures shall be conducted in accordance with the provisions of the law prescribing minor offenses."

<sup>26</sup> See Article 14 of the Law on Amendments to the Law on Protection from Domestic Violence.

<sup>27</sup> See Article 15 of the Law on Amendments to the Law on Protection from Domestic Violence.

The Law on Amendments to the Law on Police and Interior provides for a new paragraph in Article 55, which reads: "(3) If violence or threat of domestic violence is reported, police officers shall, in cooperation with other competent authorities, immediately take the necessary measures and actions in accordance with the law, the implementation of which prevents or stops violence that may result in grievous bodily harm or deprivation of life. "The Official Gazette of RS", no. 58/19 of 16/07/2019.

<sup>28</sup>Article 40 reads:



Violence in the Family or Family Community by deleting the objective condition of incrimination introduced in the legal description of this criminal offense with the aim of distinguishing the basic form of the criminal offense of domestic or family violence from domestic violence as a minor offense.

Following the changes, the criminal offense of Violence in the Family or Family Community (Article 190) reads:

(1) Whoever, by using violence, threatening to attack life or body, by insolent or reckless behavior endangers the peace, physical integrity or mental health of a member of his family or family community, shall be punishable by a fine or imprisonment for a term not exceeding three years.

(2) If weapons, dangerous tools or other means suitable for seriously injuring the body or impairing health have been used in the commission of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between six months to five years.

(3) If due to the act referred to in paragraphs 1 and 2 of this Article, a serious bodily injury or serious impairment of health or acts committed against a child or in the presence of a child, the perpetrator shall be punished by imprisonment for a term between two and ten years.

(4) If due to the act referred to in paragraphs 1, 2 and 3 of this Article, the death of a member of family or family community occurred, the perpetrator shall be punished by imprisonment for a term between three and fifteen years.

(5) Whoever violates protective measures or emergency measures of protection against domestic violence determined by the court on the basis of law, shall be punished by a fine and by imprisonment for a term not exceeding three years.

(6) A member of family or family community, in terms of this criminal offense, shall be considered spouses or ex-spouses and their children and children of each of them,

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In Article 190, paragraph 1, the words: "and thereby leads to a violation of his physical or mental integrity" shall be deleted.

Paragraph 2 is amended to read as follows:

"(2) If weapons, dangerous tools or other means suitable for seriously injuring the body or impairing health have been used in the commission of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for six months to five years."

In paragraph 5, the words: "from three months" are deleted.

In paragraph 6, after the word: "kinship" the word: "you" is deleted, and after the word: "household" a comma is added and the words: "those persons who were or are still in an emotional or intimate relationship, regardless whether the perpetrator shares or has shared the household with the victim."





extramarital partners or ex-extramarital partners, their children or children of each of them, second degree in-laws regardless of the fact that the marital union has ended, parents of current and former marital and extramarital partners, relatives from full adoption in the direct line without restrictions, and in the lateral up to the fourth degree, as well as relatives from incomplete adoption, guardian, persons living or having lived in the same family household, regardless of kinship, persons having a joint child or having conceived a child even though they have never lived in the same family household, and persons who have been or are still in an emotional or intimate relationship, regardless of whether the perpetrator shares or has shared the household with the victim."

The essence of these changes is the fact that for the existence of the basic form of crime it is enough to establish that the perpetrator by violent, insolent or reckless behavior, threatening to attack the life or body of a passive subject endangered peace, physical integrity or mental health of a family member. Thus, this is a tort of endangerment, and it is not necessary to violate the physical or mental integrity of the passive subject in order for this incrimination to be applied (as was the case before the amendment of the Criminal Code). It could be said that the changes made the legal essence of the basic form of this crime returned to its original form (which was provided by the Criminal Code of 2000), which had its application immediately after the entry into force of the Criminal Code of 2000 which introduced this incrimination into our legal system. Therefore, this is a legal solution that has already been applied in our judicial system, which leads to the conclusion that there should be no problems in its practical application. On the other hand, this decision enables the application of the basic form of the criminal offense of Domestic Violence or Family Community to all those situations that have been treated as a minor offense since 2006 in accordance with the Law on Protection from Domestic Violence.

In accordance with the requirements of the Istanbul Convention, the term family member or family community has been expanded to include persons who have been or are still in an emotional or intimate relationship with each other, regardless of whether the perpetrator shares or has shared a household with the victim.



## II. RESEARCH

### Methodology and research objectives

The research we conducted in the period from November to December 2021 is of a qualitative-quantitative type and contains two parts:

*The first part* of the research is the analysis of statistical data of the Ministry of the Interior of the Republic of Srpska for the period from 1<sup>st</sup> May 2019 to 30<sup>th</sup> April 2020 and the period from 1<sup>st</sup> May 2020 to 30<sup>th</sup> April 2021, which aims to compare the period before and after the entry into force of the Law on Protection from Domestic Violence in terms of the scope of these crimes.

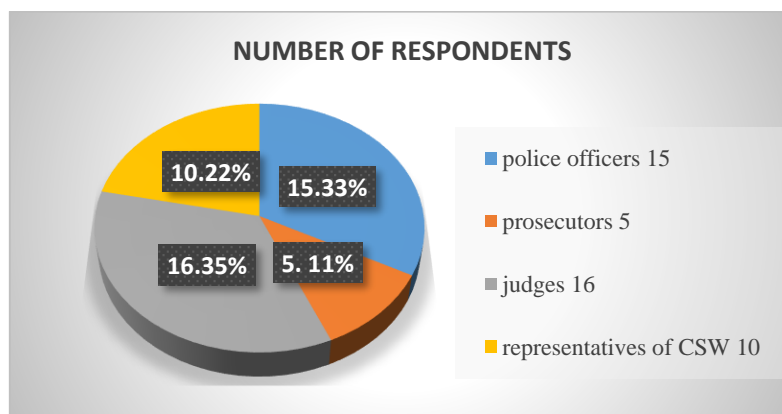
The second part presents a qualitative-quantitative analysis of questionnaires used to examine the attitudes of professionals.

For the purposes of the research, two types of semi-structured questionnaires were created, which examined attitudes of:

a.) police officers of the Ministry of Interior of the Republic of Srpska on the application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska, and on the effectiveness of the Rulebook on Risk Assessment of Victims of Domestic Violence.

b.) representatives of the judiciary (judges and prosecutors) and social welfare bodies on the effectiveness of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republika Srpska.

The total number of respondents was 46 (N = 46) according to the following structure presented in the graph:



Graph 1



Based on the results obtained from semi-structured questionnaires of professionals of the subjects of protection and analysis of statistical data on the extent of domestic violence in the Republic of Srpska, the main objectives of the research were to obtain results, i.e. answers to the following:

Did the amendments to the relevant laws affect the scope of cases of domestic violence in the period 01.05.2019/30.04.2020 and 01.05.2020/30.04.2021, according to the data available to the Ministry of Interior of the Republic of Srpska?

Do the amendments to the relevant laws affect the efficacy of the work of the subjects of protection and the improvement of the protection of victims observed through the attitudes of the professionals of the relevant subjects of protection?

Given the above, the analysis of the situation in the observed period provides insight into the current situation regarding domestic violence, i.e. gaining knowledge about the effectiveness of the methods used by competent entities in preventing and combating domestic violence and indicates certain shortcomings that need to be overcome and eliminated in order for the problem to be treated adequately.

The research hypotheses are adjusted to the research objectives. Accordingly, we commenced with the following hypotheses:

**Basic hypothesis:** After the entry into force of new legal solutions in the field of domestic violence, the scope and intensity of protection of victims of domestic violence has increased, as well as the efficiency of procedures carried out in practice.

**Hypothesis 1:** Novelties in the criminal law regulation of domestic or family violence in the Republic of Srpska lead to more effective protection of victims.

**Hypothesis 2:** Novelties in the criminal law regulation of domestic or family violence in the Republic of Srpska are applied in practice.

### **Analysis of statistical data of the Ministry of the Interior of the Republic of Srpska**

Analysis of statistical data of the Ministry of the Interior of the Republic of Srpska for the period from 01.05.2019 to 30.04.2020 and the period from 01.05.2020 to 30.04.2021, aims to compare the period before and after the entry into force amendments to the Law on Protection from Domestic Violence regarding the scope of these criminal offenses.

According to the RS Ministry of the Interior, the number of reported cases of domestic violence decreased by 11.78% after changes in legislation (See Table 1), but the number of criminal offenses increased by 63.82%, which reduced the number of minor offenses by



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87.59%. In this regard, it can be concluded that the amendments to the law are effectively implemented in the first year of application. The decrease in the number of reported cases of domestic violence cannot be interpreted as a decrease in the number of cases of domestic violence, if we take into account the reports of the NGO sector on the number of SOS hotlines and the fact that epidemiological measures are still in force which sometimes makes it difficult for victims or other applicants to report violence.

*Table 1. Statistical data of RS Ministry of the Interior on reported cases, criminal acts and minor offenses*

| Statistical data   | Period prior to amendment to the law <sup>29</sup> | Period after amendment to the law <sup>30</sup> | Changed expressed percentages |
|--|--|---|-------------------------------|
| Reported cases of domestic violence  | <b>1197</b>  | <b>1056</b>                                     | <b>-11.78 %</b>               |
| Number of criminal acts  | <b>481</b>   | <b>788</b>                                      | <b>+63.82%</b>                |
| Reports submitted to Public Prosecutor's Office about committed criminal act     | <b>471</b>   | <b>769</b>                                      | <b>+63.27%</b>                |
| Number of minor offenses   | <b>532</b>   | <b>66</b>                                       | <b>-87.59</b>                 |
| Reports delivered to Public Prosecutor's Office about taken measures and actions | <b>184</b>   | <b>205</b>                                      | <b>+11.41%</b>                |

Table 2 shows the statistics of proposed and imposed protective and emergency protection measures, and when comparing the results before and after the amendment to the law, the difference between statistical indicators related to proposed/imposed protection measures and emergency protection measures is very interesting. Namely, as it can be seen in the table above, in the comparative period, the proposal and imposition of protective measures was rapidly reduced, while the proposal and imposition of emergency protection measures increased by 204.76%. Therefore, it is indisputable to raise the level of efficiency in the application of legal solutions related to emergency protection measures, but the negative trend of proposed and pronounced, i.e. implemented protection measures is an element that should be analytically observed in the coming period, and in case of finding the same dynamics of movement, take adequate measures to improve the situation in the field of proposing and imposing, i.e. implementing protective measures. In this regard, it is necessary to continue to observe the relationship between the proposed and pronounced protective measures, because the connection and mutual conditionality of both measures cannot be ruled out.

<sup>29</sup> Period from 01.05.2019 until 30.04.2020.

<sup>30</sup> Period from 01.05.2020 until 30.04.2021.



*Table 2. Statistical data of RS Ministry of the Interior on protective measures and emergency protection measures*

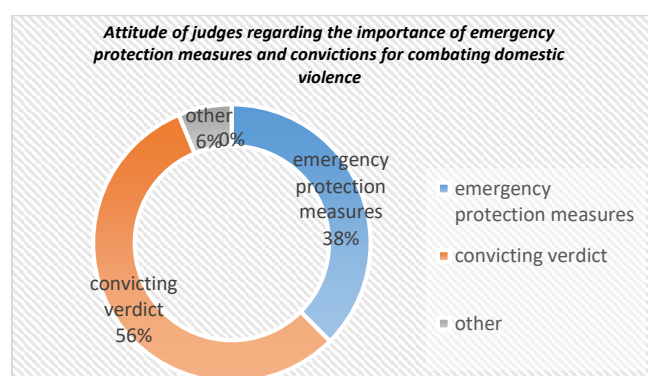
| Statistical data                                    | Period prior to amendment to the law <sup>31</sup> | Period after amendment to the law <sup>32</sup> | Change expressed in percentages |
|---|--|---|---------------------------------|
| Proposed protective measures                        | 76   | 39  | -48.68%                         |
| Imposed (implemented) protection measures           | 64   | 32  | -50%                            |
| Proposed emergency protection measures              | 25   | 65  | +160%                           |
| Proposed emergency protection measures by police    | 25   | 60  | +140%                           |
| Imposed (implemented) emergency protective measures | 21   | 64  | +204.76%                        |

## Research results

The results of the research obtained from the analysis of the questionnaire will be presented through the most relevant topics that were the subject of the research, given that the analysis includes different profiles of experts for whom different questionnaire instruments were created (See instruments in the Annex).

### *Emergency protection measures*

The findings of the research indicate that only 12.5 percent of judges in practice imposed emergency protection measures.



*Graph 2.*

<sup>31</sup> Period from 01.05.2019 until 30.04.2020.

<sup>32</sup> Period from 01.05.2020 until 30.04.2021.



Graph 2 shows that as many as 38% of the surveyed judges believe that emergency protection measures contribute more to the prevention and suppression of domestic violence, although only 12.5% of them imposed emergency protection measures in practice. It is indisputable that 56 percent of judges appreciate that convictions contribute to general prevention, which is the purpose of punishment, but the judges' position on the importance of emergency protection measures should be transferred to practical applicability.

*Table 3. Evaluation of changes relevant to police work in the Law on Protection from Domestic Violence and the RS Criminal Code*

| <b>Application</b>  | <b>Absolutely important</b> | <b>Moderately important</b> | <b>Moderately unimportant</b> | <b>Absolutely unimportant</b> |
|---|-----------------------------|-----------------------------|-------------------------------|-------------------------------|
| Abolition of minor offense liability for domestic violence  | <b>50%</b>                  | <b>/</b>                    | <b>35.71%</b>                 | <b>14.29%</b>                 |
| Implementation of risk assessment   | <b>14.29%</b>               | <b>28.57%</b>               | <b>50%</b>                    | <b>7.14%</b>                  |
| Possibility of submission of proposals for the imposition of protective and emergency protection measures by victims and social welfare | <b>35.71%</b>               | <b>64.29%</b>               | <b>/</b>                      | <b>/</b>                      |
| Introduction of a person of trust   | <b>/</b>                    | <b>7.14%</b>                | <b>14.29%</b>                 | <b>78.57%</b>                 |

Unlike judges, police officers value the change in the possibility of submitting proposals for emergency protection measures by the victim and social welfare authorities the most, compared to the other changes mentioned (see Table 3). In addition to this, the proposed changes are the abolition of minor offense liability, which is ranked second in importance, then the implementation of risk assessment as third ranked and the introduction of a person of trust for which they declared as the least important change. The analysis of these attitudes of police officers should keep in mind that the change related to the submission of proposals for the imposition of protective and emergency protection measures by victims and social welfare bodies largely provides support to police officers in dealing with cases of domestic violence, and therefore it is understandable that this change is first ranked, while it is indisputable that only half of the police officers still believe that minor offense liability for certain acts of domestic violence should be abolished. The low ranking of change in relation to the introduction of a person of trust can be observed in the context of existing problems related to the application of this institute in practice, and not only through the attitude of police officers towards it.

Submission of proposals for imposing emergency protection measures by the victim and social welfare bodies is the highest ranking change when it comes to representatives of centers for social work who state that in every case (100%) they inform the victim about the initiation of emergency protection measures and other rights and opportunities.

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Regarding emergency protection measures, it was examined whether they contribute to the improvement of the protection of victims, and 93 percent of police officers, i.e. 100 percent of representatives of guardianship bodies, stated that they contribute.

It is disputable that 60 percent of police officers did not receive requests from the representatives of the centers for social work on the submitted information necessary for submitting proposals for imposing emergency protection measures. Namely, 33 percent of them said they were, and there were other answers from which it stands out that the proposal for imposing an emergency measure came from the police. This information indicates the need of permanent training of the representatives of the centers for social work in order to gain knowledge and skills necessary for the collection of information and quality drafting of proposals for the imposition of emergency protection measures, in order to increase the number of decisions of the acting judges by which the measure is imposed.

The finding that 47% of police officers stated that they were aware of cases where an emergency protection measure was imposed/implemented, and the investigation ended with an order to suspend the investigation, should certainly provide guidelines for further, deeper analysis in the context of comparative observation of suspension measures and suspension orders and failure to conduct investigations. Namely, the pronounced and implemented emergency protection measure indicates the fact that violence occurred and/or there is a danger of violence, which justifies the question of whether all available measures and actions in the investigation have been taken to result in indictments and convictions. On the other hand, prosecutors stated that they did not have such a case in their practice, nor are they aware of such a case, while in a small sample of judges (6%) it is still known that this happened. Such indicators also open space for analyzing whether prosecutors have or are collecting information on submitted proposals and explicit measures during the investigation.

In the answers regarding the emergency protection measures in terms of improving the existing practice, there were different attitudes from the police officers, of which we single out the two most important:

1.) to regulate by law that the Ministry of the Interior is competent to propose emergency protection measures, and the centers for social work/social welfare bodies to propose other protective measures;

2.) that urgent protective measures are not imposed by the minor offense court but by the pre-trial judge, i.e. that the Department for Minor Offense of Basic Courts cannot be included in criminal proceedings.<sup>33</sup>

<sup>33</sup> These views show that there is a lack of understanding of the essence of new legal solutions and that it is necessary to intensify activities on education of all subjects of protection.



In the part of the analysis of the obtained results related to protective measures, the measure of removing the perpetrator from an apartment, house or other living space is singled out as a measure that police officers consider to be unenforceable in practice. In addition to this, they pointed out that in practice it happens that the victim opposes the imposition of protective or emergency protection measures.

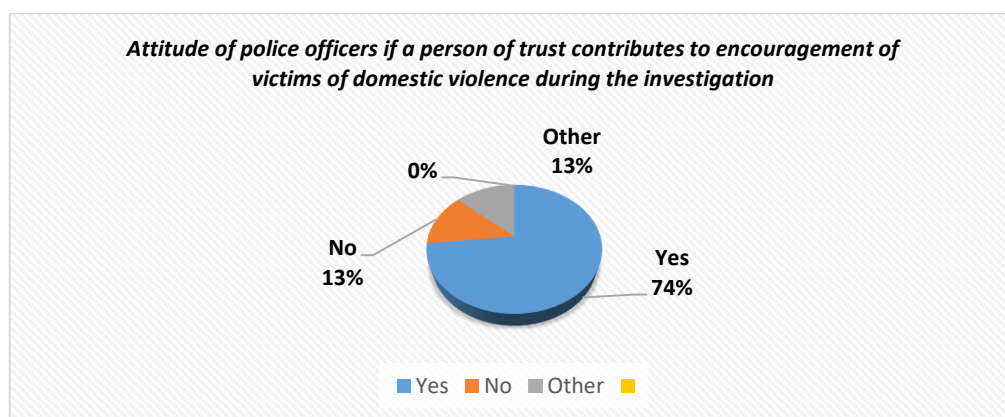
*"Protective measures to remove the perpetrator from the apartment are counter-productive and impractical in practice. It is necessary to clarify if the perpetrator committed criminal act and there is a danger of recurrence and for the same it is necessary to request a measure of detention. According to this law, if there is a justified threat to the victim, it is necessary to move the victim from the joint household."*

The attitude of the police officer

Since the subject of this research is the examination of the attitudes of professionals, the effectiveness and feasibility of protection measures, including emergency protection measures, should certainly be examined in another way. In any case, it is expedient to consider the views and proposals of professionals in order to consider the adoption of defined procedures and guidelines that would facilitate action in practice, but also to define additional needs for professional development of professionals.

### ***A person of trust***

Compared to other proposed changes as noted, police officers ranked the introduction of a person of trust the least significant. Namely, only 7.14 percent think that this novelty is moderately important (See Table 3) in relation to the other mentioned changes. On the other hand, 73% of them stated that such a measure could contribute to the encouragement of victims of domestic violence during the investigation (See Graph 3).



*Graph 3*



The explanation of Table No. 3 partly explained the differences in the attitudes of police officers when ranking the significance of changes in the Law on Protection from Domestic Violence and the extremely high percentage of 74% that a person of trust will contribute to supporting victims of domestic violence. Therefore, the stated percentage unequivocally indicates support for this change, but with uncertainty in the adequate implementation in practice. Therefore, the findings on the importance and assessment of the impact of a person of trust should be taken with caution, i.e. only as an attitude, and not experience from police practice, because in response to the question whether they interviewed the injured party in the presence of a person of trust 100 percent stated that they did not.

Furthermore, the percentage of respondents who spoke negatively and those who had a different opinion is equal, of which we single out that a person of trust could suggestively act on the victim.

Representatives of centers for social work have similar views. Namely, everyone agrees that a person of trust could contribute to encouraging the victim, but only 10% of them interviewed in the presence of that person, while the same percentage stated that victims did not use this opportunity.

The role of a person of trust as a contribution to encouraging the victim to testify or to submit a proposal for an emergency protection measure is positively assessed by representatives of the judicial community (judges and prosecutors) in over 90 percent, but none of them stated that he had experience questioning the victim in the presence of these persons, either in the investigation or in court, which clearly indicates that this novelty did not come to life in practice.

### ***Abolition of minor offense liability***

When it comes to the abolition of minor offense liability in terms of simplifying police action, 87 percent of them said that this novelty did not simplify their work, or 13 percent believe that it is. In this regard, some police officers assess the abolition of minor offense liability as very negative, stating that there are numerous consequences in this regard, the most difficult of which is that the perpetrator eventually passes without a sanction.

*"I think that the biggest problem is that the offense in the field of domestic violence has been eliminated, because most acts of domestic violence do not have the "legal weight" to be a crime, and in most cases, after the prosecutor's decision, the perpetrator passes without sanction."*

The attitude of the police officer



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In this regard, police officers also question the responsibility of prosecutors and their handling of these changes in regulations, estimating that the return of minor offenses would solve the problems that are now present in practice.

*"Prosecutors do not manage to apply the current regulations, they find it difficult to accept that now the acts of minor offense are a criminal offense, so when they are informed by a police officer that domestic violence has been reported, they are not immediately able to qualify the offense."*

The attitude of the police officer

Similar views were expressed by some prosecutors as recommendations for improving this legislation.

*"Restore minor offense liability. The changes that are currently in force do not contribute to a better processing of criminal act domestic violence."*

Prosecutor's attitude

In relation to these findings, we can observe the attitudes of judges in ranking novelties in the law, with minor offense liability being cited as the most significant, but we have not examined the effects of this change on their work (See Table 4).

*Table 4. Judges' views on the evaluation of changes of importance in the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska*

|   | Absolutely important | Moderately important | Moderately unimportant | Absolutely unimportant |
|---|----------------------|----------------------|------------------------|------------------------|
| Abolition of minor offense liability for domestic violence  | 42.86%               | 28.57%               | /                      | 28.57%                 |
| Implementation of risk assessment   | 28.57%               | 7.14%                | 42.86%                 | 21.43%                 |
| Possibility of submission of proposals for the imposition of protective and emergency protection measures by victims and social welfare | 7.15%                | 35.71%               | 28.57%                 | 28.57%                 |
| Introduction of a person of trust   | 21.43%               | 28.57%               | 28.57%                 | 21.43%                 |



It is clear from the presented table that almost half of the respondents respond positively to the change in the abolition of minor offense liability, but it is also indisputable that some judges do not consider this change important or important enough. The position of the surveyed judges regarding the change "conducting risk assessment" is very interesting, which is not significantly ranked, i.e. assessed as important enough, while the other two changes are obviously differently assessed as important.

### ***Risk assessment***

The vast majority of police officers, 80 percent of them, believe that the risk assessment provided for in the Rulebook on the Procedure and Manner of Conducting Risk Assessment will contribute to improving the protection of victims. Most of them, 67 percent, believe that the Rulebook is enforceable in practice, i.e. 33 percent of them believe that it is not.

Although it seems that risk assessment could be a good mechanism for protecting victims in practice, police officers cite problems that accompany this activity, of which:

#### *1) Deadlines and data on the basis of which the assessment is performed*

They point out that the data are often incomplete, as well as that the social anamnesis of the centers for social work is long overdue, and that it often does not contain adequate and relevant data. In general, they state that the deadlines for the assessment are of good quality. In this regard, 53 percent of police officers state that the facts and circumstances established during the risk assessment were useful in taking measures and actions in the investigation, while 33 percent say they are not, while the remaining percentage of respondents are undecided.

#### *2) Police competence for risk assessment*

Police officers state that it is impossible to predict the future behavior of a person whether he will repeat the crime or not. We should not ignore the finding that 73 percent of respondents stated that they do not have a certificate of completed training for risk assessment provided by the Rulebook, i.e. that only 27 percent of them do. In connection with that, the expected finding is that 64% of them stated that they do not feel competent and expert in assessment.

*"In order to assess the risk, it is very difficult (impossible) to predict the future behavior of a person, whether he will repeat the crime or not. Unavailable data on whether a person is mentally ill, his health problems, ungrateful risk assessment (assessment that it will not happen again and it will happen again, etc.)."*

The attitude of the police officer



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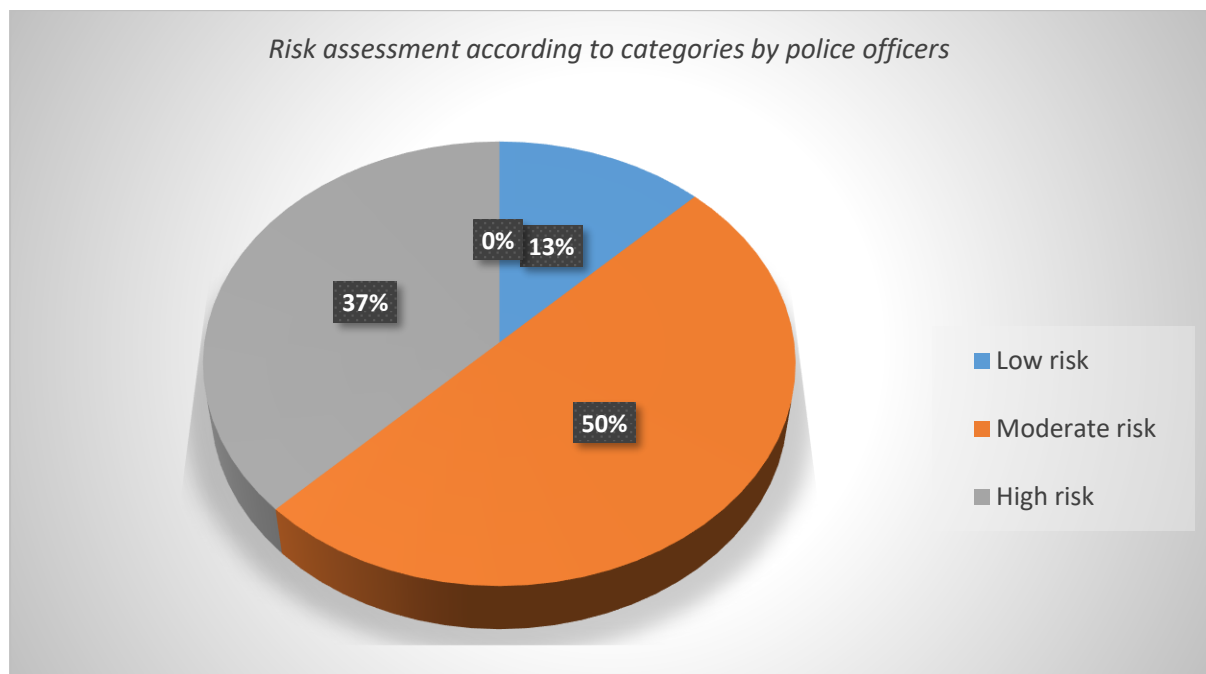
In the answers to the questions related to the improvement of this area, the thoughts of the police officers stand out that the risk assessment work should be done as a team.

*"Police officers do not have enough expertise in all areas required in the assessment itself, and I believe that it should consist of a multisectoral team: the police, the prosecutor's office, the center for social work and medical institutions."*

The attitude of the police officer

Unlike the novelty related to the introduction of a person trust who, according to the results of this analysis, has not come to life in practice, risk assessment is carried out in practice. Namely, 80 percent of police officers answered in the affirmative that they conducted a risk assessment after reporting domestic violence.

Without losing sight of the already mentioned data on the problems that accompany this activity, the findings we received regarding the risk assessment by categories (See Table 3) should be viewed as a finding of questionable relevance. Given that the findings indicate that based on current practice, the risk is mostly assessed as moderate to high, we can conclude that the assessments by the police are more guided by caution and efforts to reduce liability in case of error.



Graph 4



Table 5 provides an overview of relevant risk assessment questions and answers where it can be seen that in each case the police submit each risk assessment to the competent center for social work and the prosecutor's office, and that the prosecutor's office never requested an amendment after the risk assessment, verification of additional facts and circumstances.

*Table 5. Questions and answers related to risk assessment of police officers*

| Question  | YES<br>%     | NO<br>%      |
|---|--------------|--------------|
| Have you carried out a risk assessment for the same victim more than once or subsequently supplemented the assessment?  | <b>16.67</b> | <b>83.33</b> |
| After the risk assessment, did you submit a proposal for an emergency protection measure?   | <b>50</b>    | <b>50</b>    |
| Are the questions from the annex to the Rulebook on the procedure and manner of conducting the risk assessment adequate and satisfactory for conducting the assessment? | <b>83.33</b> | <b>16.67</b> |
| Have you provided any risk assessment to centers for social work / social welfare authorities?  | <b>100</b>   | <b>0</b>     |
| Have you provided any risk assessment to the competent prosecutor's office?   | <b>100</b>   | <b>0</b>     |
| Has the competent prosecutor's office requested that you supplement or verify additional facts and circumstances after the risk assessment was submitted?               | <b>0</b>     | <b>100</b>   |

The novelty that introduces risk assessment is positively assessed by other entities, so about 88 percent of judges believe that the risk assessment of victims of domestic violence contributes to making a court decision to impose emergency protection measures, while all prosecutors in the sample believe that risk assessment can contribute to better criminal investigation. In the following analyses and monitoring of the issue, it is necessary to examine whether such attitudes of prosecutors are applied in practice or more precisely during the undertaking of measures and actions in prosecutorial investigations.

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### ***Other relevant findings***

Other relevant findings were obtained through the form of open questions, of which the following findings stand out, i.e. the attitudes of individual subjects of protection.

- Objections to the work of the prosecutor's office, where the attitudes of other respondents prevail that their role is passive, that they did not cope with the new legal solutions.

*"The prosecution should be more involved in the above-mentioned because it is conducting an investigation and not just an observer who decides."*

The attitude of the police officer

- Objections to the work of the judiciary regarding urgent action

*"It is necessary to influence the judicial authorities to end cases more urgently and in a timely manner, because in practice it happens that professionals are called to testify, for example 5 years later, when all sense of action is lost."*

Attitude of the representative of the centre for social work

*"Appeal to the prosecutor's office and the court to resolve domestic violence proceedings as soon as possible, to make these cases a priority. According to the law, they are, but in practice they are not, unfortunately."*

Attitude of the representative of the centre for social work

- Problems that accompany victims/injured parties

The analysis showed that almost all subjects are aware of the problems in practice that are on the side of the victims, and as the biggest problem they state their refusal to testify using the right of a privileged witness. Most of the respondents believe that this is due to the passage of time from the submission of the report on the committed crime and the measures and actions taken by the police to the hearing in the prosecutor's office, i.e. before the court.

There are also frequent cases of victims/injured parties opposing the imposition of emergency protection measures, and sometimes refusing to receive medical assistance. Although, as stated, victims are informed about the possibility of using persons of trust, they do not use the same possibility.

- Problems of coordination, education and empowerment of victims / injured parties

Most respondents, especially representatives of centers for social work, emphasize the need to improve protocols on action at the local community level, and one of the ideas is the uniqueness of these protocols in terms of bylaws.

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*"Individual adoption of protocols in the local community leads to uneven treatment of subjects of protection at the level of the Republic of Srpska."*

*Attitude of the representative of the centre for social work*

Most respondents see room for improvement in the field of better coordination of protection entities.

*"In order to act more efficiently and faster after reporting domestic violence, direct communication and coordination by telephone between representatives of the police and centers for social work is needed."*

*Attitude of the representative of the centre for social work*

*"Form a group for coordination and cooperation of all representatives of all institutions that provide protection, assistance and support to victims of domestic violence in accordance with the Law at the local community level."*

*Attitude of the representative of the centre for social work*

The results previously stated on the problems of training of police officers, proved to be significant in other subjects of protection, which state the lack of adequate and continuous training of all.

*"It is necessary to conduct trainings related to the application of the Law for all sectors, but also professional trainings for workers who work directly with victims in order to provide more adequate psychosocial support and protection of victims in general (bearing in mind that professionals who work on domestic violence often change and arrival of "new" workers, etc.)"*

*Attitude of the representative of the centre for social work*

*"I think it is very important to conduct constant education of police officers at the level of individual police stations, because a significant number of them are still either unaware or do not act in accordance with the current law concerning the imposition of emergency measures in terms of removing perpetrators from apartments and etc." I propose the same education for the professional workers of the guardianship authorities, who also do not know about the introduced novelties. "*

*Attitude of the representative of the centre for social work*



The results of this research unequivocally indicate that more comprehensive activities are needed when it comes to empowering and informing victims of violence by all subjects of protection.

It should also be noted that the representatives of the police and the centers for social work, in relation to the judicial community (prosecutors and judges) were in the lead in answering questions asking for opinions and views, ideas for improvement and the like, therefore this research was denied to their views, which can only be partly attributed to the methodological limitations of the research.

### **Findings and key observations**

The general conclusion of this analysis is that the problem of domestic violence in the Republic of Srpska has gained in importance since the adoption of certain amendments to the laws that treat this area in terms of greater protection of victims and more efficient solutions in practice.

In all four dimensions that were the subject of the analysis, we confirmed Hypothesis 1, according to which amendments to the law contribute to effective protection of victims. Hypothesis 2, which refers to the implementation of amendments in practice, was not confirmed in the dimension in imposing emergency measures, abolition of minor offense liability and risk assessment.

In this regard, **emergency protection measures**, according to experts, contribute to the improvement of victim protection and represent a legal solution that is effectively implemented in practice, which, in addition to the analysis of attitudes, is indicated by the statistics of the RS Ministry of the Interior. The information we received about the existence of a certain number of cases of domestic violence in which, despite the imposition of emergency protection measures, the investigation ended with an order to suspend the investigation is worrying.

The views of police officers, representatives of the centers for social work and the judicial community unequivocally indicate that more efficient application of the institute of a **person of trust** would contribute to encouraging victims of domestic violence, but according to the data we received, this novelty did not come to life. Apart from a small number of experts who stated that the victims did not use this possibility even though they were aware of it, we have no other data that would point to a conclusion on the reasons why it is not implemented.

**The abolition of minor offense liability** can be seen as the most significant change in the amendments to the legislation when it comes to domestic violence, which is evidently implemented in practice according to the data of the Ministry of the Interior of the Republic of Srpska. The analysis of the attitudes of professionals showed that domestic violence is



prosecuted as a criminal offense, but that there are certain procedural problems in this field. As the conclusion is that this is the most significant change, perhaps the examination of this dimension only a few months after the entry into force of the new legal solutions is a limitation in terms of presenting more relevant findings.

**Risk assessment** as a novelty in all subjects from our sample was assessed as positive in improving the protection of victims, which are the views of police officers and the Center for Social Work, and judges as an aid in imposing emergency protection measures, and by prosecutors as a contribution to better investigation. The findings indicate that the risk assessment is feasible in practice and carried out at a satisfactory level. However, it should not be overlooked that this activity is accompanied by problems delegated by police officers, which are primarily related to poor cooperation between protection entities, which calls into question the deadlines and relevant data for conducting a risk assessment.

Among **other relevant findings**, we single out problems in practice related to non-compliance with urgent action by the judiciary, the need for better coordination of protection entities and the improvement of protocols on action at the local community level. We should not ignore the findings on the resistance and non-cooperation of victims, which tell us about the existence of ingrained prejudices about domestic violence.

Given the methodological limitations of the questionnaire, the sample size and the time lag of only a few months of implementing the new legal solutions, we can be satisfied with the findings that clearly show controversial points that should be improved in the future.

## **Recommendations**

The conducted analysis is narrowly focused on examining the attitudes of professionals of the subjects of protection, and then on the applicability and ways of applying the amendments to the Law on Protection from Domestic Violence of the Republic of Srpska, undoubtedly showed positive reactions to the changes. On the other hand, the answers to the targeted and concrete application of changes in practice show a strong need of professionals for more precise and clearly defined instructions and procedures in order to more adequately take measures and actions. Moreover, the presented proposals of the respondents additionally emphasize the commitment and engagement of individuals in the subjects of protection for the improvement of the fight against domestic violence.

Taking into account the above, recommendations have been made and proposed as follows:



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- The Law on Criminal Procedure of the Republic of Srpska should regulate the institute of “person of trust”, and adopt instructions/procedures for the implementation of the institute of “person of trust” in all subjects of protection;
- Take measures and actions to determine and improve the implementation of the obligation to act urgently in cases of domestic violence, with an emphasis on timeliness in prosecutorial investigations;
- Continuously develop and implement trainings in the field of prevention and suppression of domestic violence in all subjects of protection, including the judiciary;
- Consider the possibility of introducing additional control mechanisms for monitoring the fulfillment of obligations and the adequacy of actions in cases of domestic violence, in all subjects of protection;
- Continue to monitor and analyze the effectiveness and applicability of the Rulebook on conducting risk assessment, and propose amendments or the adoption of a new Rulebook;
- Organize round tables or other similar forms of cooperation of protection entities in order to develop a multisectoral approach to conducting risk assessment;
- Consider improving activities to empower and inform victims of domestic violence.



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### **III. ANALYSIS OF EFFECTIVENESS OF THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE AND THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA**

- QUESTIONNAIRES FOR POLICE OFFICERS, PROSECUTORS, JUDGES,  
REPRESENTATIVES OF CENTRES FOR SOCIAL WORK -**

*MSc Željka Mileusnić*



## ANALYSIS OF EFFECTIVENESS OF THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE AND THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA

-questionnaire for police officers-

The questionnaire was created within the project "Network Platform of Actors from Institutions of Protection Entities, Women's Organizations and Individuals for Combating and Preventing Domestic Violence in the Republic of Srpska" in BiH, which was supported by the Canada Fund for Local Initiatives. The project is being implemented by the Zenski Centar Trebinje Foundation from Trebinje, and part of the project activities is examining police officers of the Ministry of the Interior of the Republic of Srpska on the attitudes, actions and application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska.

Your participation in the research is anonymous and your honest answers can contribute to the improvement of legal regulations and more efficient protection of victims.

Thanks

|           |   |  |
|-----------|---|--|
| <b>1.</b> | <b>Working place of respondent:</b>                           |  |
| <b>2.</b> | <b>Gender of respondent:</b>                                  |  |
| <b>3.</b> | <b>Age of respondent:</b>                                     |  |
| <b>4.</b> | <b>Years of experience in the position of police officer:</b> |  |
| <b>5.</b> | <b>Occupation:</b>  |  |
| <b>6.</b> | <b>Police administration:</b>                                 |  |

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| S/N ATTITUDES OF POLICE OFFICERS |   |   |    |                |
|----------------------------------|---|---|----|----------------|
| 1.                               | Do you act in cases of domestic violence through your regular jobs and tasks?   | YES   | NO |                |
| 2.                               | Which of the listed changes, important for the work of the police, in the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska do you consider the most important? Rank them by importance! | <div>- Abolition of minor offense liability for domestic violence _____</div> <div>- Conducting a risk assessment ____</div> <div>- Possibility of submitting a proposal for imposing emergency protection measures by the victim and centre for social work_____</div> <div>- Introduction of a person of trust_____</div> |    |                |
| 3.                               | In terms of police work / taking measures and actions, has the abolition of minor offense liability for domestic violence simplified the work of the police?  | YES   | NO | SOMETHING ELSE |
| 4.                               | From your professional experience so far, do you think that risk assessment will contribute to improving the protection of the injured party?   | YES   | NO | SOMETHING ELSE |
| 5.                               | Do you think that a person of trust contributes to encouraging the victim of domestic violence in the course of taking measures and actions within the competence of the police?  | YES   | NO | SOMETHING ELSE |

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### S/N MEASURES AND ACTIVITIES OF POLICE OFFICERS IN INVESTIGATION

|    |  |     |    |                |
|----|--|-----|----|----------------|
| 1. | Do you inform the victims about the initiation of emergency protection measures and other rights and opportunities they have as a victim of domestic violence? | YES | NO | SOMETHING ELSE |
| 2. | Have you, since the amendments, conducted an interview with the injured party in the presence of a person of trust?  | YES | NO | SOMETHING ELSE |
| 3. | If the answer to the previous question is "YES", did you inform the competent prosecutor about it?   |     |    |                |

### S/N IMPROVEMENT OF VICTIM PROTECTION

|    |   |  |
|----|---|--|
| 1. | Based on your experience so far, please provide suggestions and recommendations for improving the application of laws and bylaws in the field of domestic violence! |  |
|----|---|--|

Thank you for your time and successful cooperation!

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## **ANALYSIS OF THE EFFECTIVENESS OF THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE AND THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA**

- questionnaire for representatives of centers of social work -

The questionnaire was created within the project "Network Platform of Actors from Institutions of Protection Entities, Women's Organizations and Individuals for Combating and Preventing Domestic Violence in the Republic of Srpska" in BiH, which was supported by the Canada Fund for Local Initiatives. The project is being implemented by the Zenski Centar Trebinje Foundation from Trebinje, and part of the project activities is examining representatives of social protection authorities on the attitudes, actions and application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska.

Your participation in the research is anonymous and your honest answers can contribute to the improvement of legal regulations and more efficient protection of victims.

Thanks

|           |   |  |
|-----------|---|--|
| <b>1.</b> | <b>Working place of respondent:</b>                   |  |
| <b>2.</b> | <b>Gender of respondent:</b>                          |  |
| <b>3.</b> | <b>Age of respondent:</b>                             |  |
| <b>4.</b> | <b>Years of experience in the social welfare body</b> |  |
| <b>5.</b> | <b>Occupation:</b>                                    |  |
| <b>6.</b> | <b>City/municipality:</b>                             |  |



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| S/N ATTITUDES OF REPRESENTATIVES OF CENTRES FOR SOCIAL WORK |   |  |    |                |
|---|---|--|----|----------------|
| 1.  | Do you act in cases of domestic violence through your regular jobs and tasks?   | YES  | NO |                |
| 2.  | Which of the listed changes, important for the work of the police, in the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska do you consider the most important? Rank them by importance! | Abolition of minor offense liability for domestic violence _____<br>Conducting a risk assessment_____ Possibility of submitting a proposal for imposing emergency protection measures by the victim and center for social work_____ Introduction of a person of trust_____ |    |                |
| 3.  | Do you find useful the risk assessment of a victim submitted by the police in your provision of support to a victim?  | YES  | NO | SOMETHING ELSE |
| 4.  | From your professional experience so far, do you think that initiation of proposal for emergency protection measures by centers for social work/social welfare bodies will improve protection of victims?                       | YES  | NO | SOMETHING ELSE |
| 5.  | Do you think that a person of trust contributes to encouraging the victim of domestic violence in the course of providing support by centers for social work/social welfare bodies?   | YES  | NO | SOMETHING ELSE |

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**S/N PROCEDURE AND SUPPORT OF REPRESENTATIVES OF CENTRES FOR  
SOCIAL WORK / SOCIAL PROTECTION BODIES FOR VICTIMS OF  
DOMESTIC VIOLENCE**

|           |  |     |    |                |
|-----------|--|-----|----|----------------|
| <b>1.</b> | Do you inform the victim about the initiation of emergency protection measures and other rights and opportunities he / she has as a victim of domestic violence? | YES | NO | SOMETHING ELSE |
| <b>2.</b> | Have you, since your amendments, conducted an interview with the victim in the presence of a person of trust?  | YES | NO | SOMETHING ELSE |
| <b>3.</b> | If the answer to the previous question is "YES", did you make a report / official note?  | YES | NO | SOMETHING ELSE |

**S/N IMROVEMENT OF VICTIM PROTECTION**

|           |   |  |
|-----------|---|--|
| <b>1.</b> | Based on your experience so far, please provide suggestions and recommendations for improving the application of laws and bylaws in the field of domestic violence! |  |
|-----------|---|--|

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## **ANALYSIS OF THE EFFECTIVENESS OF THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE AND THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA**

- questionnaire for prosecutors -

The questionnaire was created within the project "Network Platform of Actors from Institutions of Protection Entities, Women's Organizations and Individuals for Combating and Preventing Domestic Violence in the Republic of Srpska" in BiH, which was supported by the Canada Fund for Local Initiatives. The project is being implemented by the Zenski Centar Trebinje Foundation from Trebinje, and part of the project activities is examining prosecutors on the attitudes, actions and application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska.

Your participation in the research is anonymous and your honest answers can contribute to the improvement of legal regulations and more efficient protection of victims.

Thanks

|           |  |  |
|-----------|--|--|
| <b>1.</b> | <b>Working place of respondent:</b>                                      |  |
| <b>2.</b> | <b>Gender of respondent:</b>   |  |
| <b>3.</b> | <b>Age of respondent:</b>  |  |
| <b>4.</b> | <b>Years of experience on a position of prosecutor/expert associate:</b> |  |
| <b>5.</b> | <b>City/municipality:</b>  |  |

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| S/N | ATTITUDES OF PROSECUTORS   |   |    |                |
|-----|--|---|----|----------------|
| 1.  | Do you have experience in conducting investigations into cases of domestic violence?   | YES   | NO | SOMETHING ELSE |
| 2.  | Which of the listed changes, important for the work of prosecutor's offices, i.e. conducting investigations, in the Law on Protection from Domestic Violence of the Republic of Srpska do you consider the most important? Rank them by importance!  | - Abolition of minor offense liability for domestic violence _____<br>- Conducting a risk assessment _____<br>- Introduction of a person of trust _____ |    |                |
| 3.  | From your professional experience so far, do you think that the risk assessment of the victim's vulnerability conducted by the police can contribute to a better investigation of criminal acts of domestic violence?  | YES   | NO | SOMETHING ELSE |
| 4.  | Do you think that a person of trust contributes to encouraging the victim of domestic violence to testify against the suspect/accused?   | YES   | NO | SOMETHING ELSE |
| 5.  | Do you consider that the passage of time from the submission of the report on the commission of the criminal offense/measures and actions taken by the police to the hearing of the injured witness affects the injured party, i.e. the witness refuses to testify in accordance with Article 148 of RS Law on Criminal Procedure? | YES   | NO | SOMETHING ELSE |

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| S/N | MEASURES AND ACTIONS OF PROSECUTORS IN INVESTIGATION   |     |    |                |
|-----|--|-----|----|----------------|
| 1.  | Did you have a situation or are you aware of other investigations, that the police provided an assessment of the vulnerability of the victim "high risk", and that you issued an order to suspend the investigation / order not to conduct an investigation? | YES | NO | SOMETHING ELSE |
| 2.  | Have you examined the injured party in the presence of a person of trust so far?   | YES | NO | SOMETHING ELSE |
| 3.  | If the answer to the previous question is "YES", have you registered a person of trust?  | YES | NO | SOMETHING ELSE |

| R/B | IMPROVING VICTIM PROTECTION   |  |
|-----|---|--|
| 1.  | Based on your experience so far, please provide suggestions and recommendations for improving the application of laws and bylaws in the field of domestic violence! |  |

Thank you for your time and successful cooperation!

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## ANALYSIS OF THE EFFECTIVENESS OF THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE AND THE CRIMINAL CODE OF THE REPUBLIC OF SRPSKA

- questionnaire for judges -

The questionnaire was created within the project "Network Platform of Actors from Institutions of Protection Entities, Women's Organizations and Individuals for Combating and Preventing Domestic Violence in the Republic of Srpska" in BiH, which was supported by the Canada Fund for Local Initiatives. The project is being implemented by the Zenski Centar Trebinje Foundation from Trebinje, and part of the project activities is examining judges on the attitudes, actions and application of amendments to the Law on Protection from Domestic Violence and the Criminal Code of the Republic of Srpska.

Your participation in the research is anonymous and your honest answers can contribute to the improvement of legal regulations and more efficient protection of victims.

Thanks

|           |   |  |
|-----------|---|--|
| <b>1.</b> | <b>Working place of respondent:</b>                                 |  |
| <b>2.</b> | <b>Gender of respondent:</b>  |  |
| <b>3.</b> | <b>Age of respondent:</b>   |  |
| <b>4.</b> | <b>Years of experience on a position of judge/expert associate:</b> |  |
| <b>5.</b> | <b>City/municipality/territorial jurisdiction of the court:</b>     |  |



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| S/N | ATTITUDES OF JUDGES  |  |             |                |
|-----|--|--|-------------|----------------|
| 1.  | During your case law, did you impose emergency protection measures?  | YES  | NO          | SOMETHING ELSE |
| 2.  | Which of the listed changes, important for the work of the courts, in the Law on Protection from Domestic Violence of the Republic of Srpska do you consider the most important? Rank them by importance!                              | - Abolition of minor offense liability for domestic violence _____<br>- Conducting a risk assessment _____<br>- Introduction of a person of trust _____<br>- Submission of proposals for imposing emergency protection measures by the victim and centre for social work / social welfare bodies _____ |             |                |
| 3.  | From the previous professional experience and judges' attitudes, do you think that the pronounced and implemented emergency protection measures or convictions contribute more to the prevention and suppression of domestic violence? | Emergency protection measures  | Convictions | SOMETHING ELSE |
| 4.  | Do you think that a person of trust contributes to encouraging a victim of domestic violence to submit a proposal for an emergency protection measure?   | YES  | NO          | SOMETHING ELSE |
| 5.  | Do you think that the conducted risk assessment of the victim of domestic violence could contribute to making a judge's decision to impose an emergency measure of protection?   | YES  | NO          | SOMETHING ELSE |

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| R/B | MEASURES AND ACTIONS OF JUDGES IN MINOR OFFENSE<br>PRODECURE  |     |    |                |
|-----|---|-----|----|----------------|
| 1.  | Did you conduct the procedure or do you know from the procedures of other judges, in which the police submitted an assessment of the vulnerability of the victim to "high risk", and you did not/an emergency protection measure was not imposed? | YES | NO | SOMETHING ELSE |
| 2.  | Have you examined the injured party in the presence of a person of trust so far?  | YES | NO | SOMETHING ELSE |
| 3.  | If the answer to the previous question is "YES", is the record of the person of trust recorded?   | YES | NO | SOMETHING ELSE |

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#### IV. RISK ASSESSMENT OF VICTIMS OF DOMESTIC VIOLENCE

##### - QUESTIONNAIRE FOR POLICE OFFICERS -

*Željka Mileusnić*



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## **RULEBOOK ON PROCEDURE AND MANNER OF CONDUCTING RISK ASSESSMENT**

- questionnaire for police officers -

The questionnaire was created within the project "Network Platform of Actors from Institutions of Protection Entities, Women's Organizations and Individuals for Combating and Preventing Domestic Violence in the Republic of Srpska" in BiH, which was supported by the Canada Fund for Local Initiatives. The project is being implemented by the Zenski Centar Trebinje Foundation from Trebinje, and part of the project activities is examining police officers of the Ministry of Interior of the Republic of Srpska on the attitudes, actions and manner of conducting risk assessment.

Your participation in the research is anonymous and your honest answers can contribute to the improvement of legal regulations and more efficient protection of victims.

Thanks

**Working place of respondent:**

**Gender of respondent:**

**Age of respondent:**

**Years of experience in the position of police officer:**

**Occupation:**

**Police administration:**

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| S/N | ATTITUDES OF POLICE OFFICERS  |     |    |
|-----|---|-----|----|
| 1.  | Do you act in cases of domestic violence through your regular jobs and tasks?   | YES | NO |
| 2.  | Are you familiar with the content of the bylaw - Rulebook on the procedure and manner of conducting risk assessment?                                | YES | NO |
| 3.  | Have your managers informed you and given you guidelines for following the Rulebook on the procedure and manner of conducting risk assessment?      | YES | NO |
| 4.  | Do you consider the Rulebook on the procedure and manner of conducting risk assessment to be applicable in practice?                                | YES | NO |
| 5.  | If your answer to the previous question is NO, please explain why not!  |     |    |
| 6.  | Do you have a certificate of completed risk assessment training provided by the Rulebook on the procedure and manner of conducting risk assessment? | YES | NO |
| 7.  | Do you rate yourself as a competent and professional person to conduct a risk assessment?   | YES | NO |



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| S/N | PROCEDURE AND MANNER OF CONDUCTING RISK ASSESSMENT  |                 |                      |  |
|-----|---|-----------------|----------------------|--|
| 1.  | So far, have you conducted a risk assessment after reporting domestic violence?   | YES             | NO                   | I helped my colleague to conduct risk assessment |
| 2.  | If you answered "YES" to the previous question, state the category with which you assessed the risk and the number of assessments by category!                          | <u>LOW RISK</u> | <u>MODERATE RISK</u> | <u>HIGH RISK</u>                                 |
| 3.  | Have you carried out a risk assessment for the same victim more than once or subsequently supplemented the assessment?  | YES             | NO                   | SPECIFY OTHER                                    |
| 4.  | After the risk assessment, did you submit a proposal for an emergency protection measure?   | YES             | NO                   | SPECIFY OTHER                                    |
| 5.  | Are the questions from the annex to the Rulebook on the procedure and manner of conducting the risk assessment adequate and satisfactory for conducting the assessment? | YES             | NO                   | SPECIFY OTHER                                    |
| 6.  | Have you provided any risk assessment to centre for social work / social welfare authorities?   | YES             | NO                   | SPECIFY OTHER                                    |

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|    |   |                               |   |                  |
|----|---|-------------------------------|---|------------------|
| 7. | With what type of letter did you inform the centre for social work / social welfare authority about the risk assessment?                                | Short written notice / report | Report with all attachments as well as to the competent prosecutor's office | SPECIFY<br>OTHER |
| 8. | Did you submit any risk assessment to the competent prosecutor's office?  | YES                           | NO  | SPECIFY<br>OTHER |
| 9. | Did the competent prosecutor's office request that you supplement or verify additional facts and circumstances after the risk assessment was submitted? | YES                           | NO  | SPECIFY<br>OTHER |

| S/N | RECOMMENDATIONS  |  |
|-----|--|--|
| 1.  | Please mention the aggravating circumstances that you have mapped in your work so far during the conduction of risk assessment!      |  |
| 2.  | Based on your experience so far, please provide suggestions and recommendations for improving the implementation of risk assessment! |  |

Thank you for your time and successful cooperation!

Foundation “Ženski centar Trebinje!”

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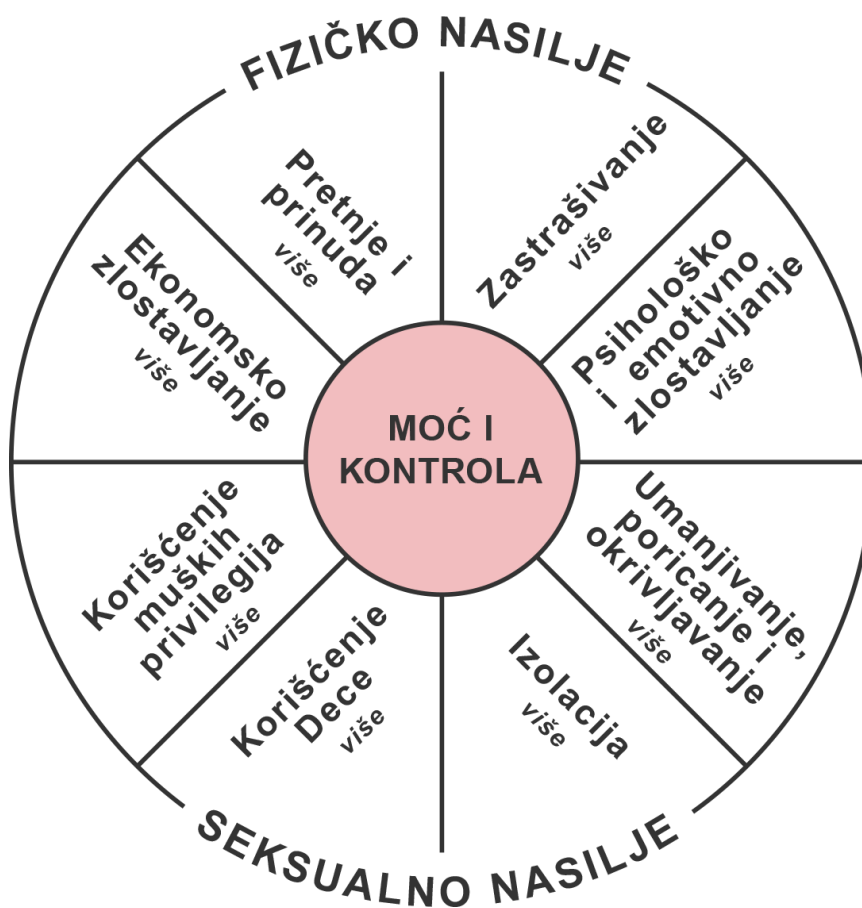
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## V. APPLICABILITY IN PRACTICE OF THE LEGAL AMENDMENTS IN CASES OF DOMESTIC VIOLENCE

*Policy document*





## Foreword

*The Policy* document "Applicability in practice of legal amendments in cases of domestic violence" which we will deal with is based on the need for a simpler view of domestic violence, in order to more adequately implement amendments to the Law on Protection from Domestic Violence and the Criminal Code of Republic of Srpska, by the subjects of protection.

Although domestic violence in the Republic of Srpska was incriminated 20 years ago, we have not yet reached the expected zero tolerance rate for this negative social phenomenon. During this time, various legal solutions were adopted, followed by appropriate bylaws, but some subjects of protection always found reasons for non-application or inadequate application of the same. The final consequence of this practice was the decline in the confidence of victims of domestic violence in the existing protection system and the strengthening of the belief that, despite the existence of an adequate legal framework, they are unprotected in the Republic of Srpska.

In order to eliminate the different treatment of courts, as well as the different treatment of judges within the same court, in 2019 amendments to the Law on Protection from Domestic Violence were made, which entered into force in 2020, and in 2021 the Criminal Code was amended, thus, the process of amending the legal regulations on domestic violence should have been completed.

The Law on Amendments to the Law on Protection from Domestic Violence<sup>34</sup> (entered into force on 1<sup>st</sup> May, 2020) introduced certain novelties into the existing system of protection of victims of domestic violence, which aimed to harmonize this protection with the provisions of the Council of Europe Convention on combating violence against women and domestic violence. Accordingly, Article 1 of this Law emphasizes that the main purpose of the Law on Protection from Domestic Violence is to provide adequate protection to victims of domestic violence and prevent the recurrence of acts of violence, through a system of protection measures applied to perpetrators of domestic violence. It follows from the above that the essence of this law is the provision of assistance and protection to victims of domestic violence, and not retribution, i.e. punishment of perpetrators.

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<sup>34</sup> The text of the Law was published in the "Official Gazette of the Republic of Srpska", No. 84/19 of 16<sup>th</sup> October, 2019.



### **Reflection On Application Of Legal Changes In Practice**

According to statistical indicators of government institutions in the Republic of Srpska, after the amendments to the legislation, the number of reports of cases of domestic violence is lower. However, the decrease in the number of reported cases of domestic violence cannot be interpreted as a decrease in the number of cases of domestic violence, if we take into account the reports of the NGO sector on the number of SOS hotlines and the fact that this is still a period of epidemiological measures that sometimes make it difficult for victims or other applicants to report. Immediately after the entry into force of the amendments, there was no doubt that the number of minor offenses "fell", which is a logical consequence of the abolition of minor offense liability. Currently, the views of many individuals dealing with cases of domestic violence are that minor offense liability should not be abolished. Whether there will be a change in attitudes in the future to these circumstances will be observed through some new monitoring of the issue of domestic violence.

On the other hand, the level of efficiency in the application of legal solutions related to emergency protection measures has been raised. This primarily refers to the legal possibility of submitting a proposal for the imposition of emergency protection measures by the representatives of the social welfare authorities and the victim herself. Therefore, this change inevitably results in an increase in the number of submitted proposals, as well as a larger number of decisions on the imposition of measures. The negative trend is confusing, i.e. declining trend of proposed and pronounced, i.e. implemented protective measures. This element should be analytically observed in the coming period, and in case of finding the same dynamics of movement, take adequate measures to improve the situation in the field of proposing and imposing, i.e. implementing protective measures. In this regard, the process of observing the interrelation of proposed and pronounced emergency protection measures should be continued, because the connection and mutual conditionality of both measures cannot be ruled out. In any case, it is evident that emergency protection measures contribute to the improvement of victim protection, but efforts should be made in this area to work with victims, as it is often the case that victims/injured parties oppose emergency protection measures, and sometimes refuse to be given the medical help.

Comparative, available indicators continue to show a large gap between emergency protection measures imposed and implemented and indictments and convictions filed. Namely, the pronounced and implemented emergency protection measure indicates the fact that violence occurred and/or there is a danger of violence, which is why it is justified to ask whether all available measures and actions have been taken in the investigation that should result in indictment and convictions. Such indicators also open space for analyzing the actions of



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prosecutors regarding the question of whether prosecutors have or are collecting information on submitted proposals and explicit measures during the investigation. Namely, the goal of emergency protection measures, according to the law, is the protection and safety of the victim and the reduction of the risk of recurrence of violence, and the criminal procedure is the indictment and punishment of the perpetrator. Therefore, it is justified to ask why in cases in which an emergency protection measure was imposed, no criminal indictment was filed and what measures and actions need to be taken in order to reduce the described difference.

Almost all subjects are aware of the problems in practice that are on the side of the victims, and as the biggest problem they state their refusal to testify using the right of a privileged witness. It can be stated that such a situation is largely due to the passage of time from the submission of the report on the committed crime and the measures and actions taken by the police to the hearing in the prosecutor's office, i.e. before the court.

The law stipulates that victims are informed about the possibility of using persons of trust, but they do not use the same possibility. Changes related to the introduction of a person of trust can be observed in the context of existing problems related to the application of this institute in practice, and not only through the relationship of subjects of protection to it because the representatives of subjects of protection are mostly positive about this change. Namely, a number of professionals estimate that a person of trust could have a suggestive effect on the victim in the investigation. More precisely, although the attitudes of the representatives of the subjects of protection are positive, there is no visible application in practice.

With regard to the application of the legal novelty related to risk assessment, it can be stated that since the entry into force of the Law, police officers have been performing full risk assessment, i.e. risk assessment is performed for each report of domestic violence. The Rulebook on the procedure and manner of conducting risk assessment has been adopted within the legal deadline and has been applied since its entry into force. Although the legal obligation of police officers is to conduct a risk assessment, this obligation is performed by police officers through cooperation with other subjects of protection. In this segment, the practice still notes certain doubts and difficulties that need to be reconciled in the future. Among other things, short deadlines for performing the assessment, a long period of submitting a social anamnesis, difficulties in determining the level of risk and the like were recorded. What can be added is a subjective assessment of the competence of police officers, as well as the lack of reaction of prosecutors to risk assessment.

Therefore, it may be considered necessary to adopt defined procedures and guidelines that would facilitate action in practice, but also to define additional needs for professional development of professionals.



### Key Observations With Recommendations

The general conclusion is that the problem of domestic violence in the Republic of Srpska, since the adoption of certain amendments to the laws that treat this area, has become more important in terms of greater protection of victims and more efficient solutions in practice.

According to experts, emergency protection measures contribute to the improvement of the protection of victims and represent a legal solution that is effectively implemented in practice. The existence of a number of cases of domestic violence in which, despite the imposition of emergency protection measures, the investigation ended with an order to suspend the investigation is an area that should be monitored and analyzed in the future.

The views of the surveyed representatives of the subjects of protection unequivocally indicate that more efficient application of the institute of a person of trust would contribute to the encouragement of victims of domestic violence, although this novelty has not come to life in practice.

The abolition of minor offense liability can be seen as the most significant change in legislation when it comes to domestic violence, which is evidently implemented in practice. The analysis of the attitudes of professionals showed that domestic violence is prosecuted as a criminal offense, but that there are certain procedural problems in this field. As the conclusion is that this is the most significant change, perhaps the examination of this dimension only a few months after the entry into force of the new legal solutions<sup>35</sup> is a limitation in terms of presenting more relevant findings.

Risk assessment as a novelty is assessed as positive both in improving the protection of victims, which are the views of police officers and centers for social work, and judges as an aid in imposing emergency protection measures, and by prosecutors as a contribution to better investigation. The findings indicate that the risk assessment is feasible in practice and carried out at a satisfactory level.

Furthermore, in practice there are currently obvious problems related to non-compliance with emergency action by the judiciary, the need for better coordination of subjects of protection and the improvement of protocols on action at the local community level. The resistance and non-cooperation of the victims, who speak about the existence of ingrained prejudices about domestic violence, should not be neglected either. This leads to the conclusion

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<sup>35</sup>Amendments to the RS Criminal Code entered into force on 23<sup>rd</sup> February, 2021, and the research began in November 2021.



that the problem of domestic violence is still not seen as a multidimensional social problem, but still as a problem of individual families.

Observing the concrete application of changes in practice shows the pronounced need of acting professionals for more precise and clearly defined instructions and procedures in order to more adequately take measures and actions. Taking into account the above, recommendations have been made and proposed as follows:

- The Law on Criminal Procedure of the Republic of Srpska should regulate the institute of “person of trust”, and adopt instructions/procedures for the implementation of the institute of “person of trust” in all subjects of protection.
- Take measures and actions to determine and improve the implementation of the obligation to act urgently in cases of domestic violence, with an emphasis on timeliness in prosecutorial investigations;
- Continuously develop and implement trainings in the field of prevention and suppression of domestic violence in all subjects of protection, including the judiciary;
- Consider the possibility of introducing additional control mechanisms for monitoring the fulfillment of obligations and the adequacy of actions in cases of domestic violence, in all subjects of protection;
- Continue to monitor and analyze the effectiveness and applicability of the Rulebook on conducting risk assessment, and propose amendments or the adoption of a new Rulebook;
- Organize round tables or other similar forms of cooperation of protection entities in order to develop a multisectoral approach to conducting risk assessment;
- Consider improving activities to empower and inform victims of domestic violence.

The aim of the *Policy Document* "Applicability in practice of legal amendments in cases of domestic violence" is to bring together the current situation and practical application of amendments to the legislation dealing with the prevention and suppression of domestic violence in the Republic of Srpska. Moreover, through this document, the intention is to find opportunities and methods in the coming period that will comprehensively monitor the further implementation of legal changes, and then take adequate measures and actions to strengthen the implementation and, in general, measures and actions that effectively affect prevention and suppression of domestic violence.