

Chapter 7

Domestic Violence and Criminal Legal Instruments of the State Response: Reality or Not?

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ABSTRACT

One of the current issues of criminal law in general and thus the criminal law of the Republic of Serbia in the last 20 years is the issue of domestic violence and criminal legal instruments of the state reaction to it. There are two reasons for such a high degree of topicality of this extremely negative social phenomenon. The first is contained in a high degree of its social danger not only for the family as the basic cell of society but also for the state/society as a whole. The second is the scope of its practical presence. Having in mind these two facts, and in the desire to counteract this negative social phenomenon in the RS as successfully and efficiently as possible, a number of normative and practical activities have been undertaken in the last 20 years with the aim of combating and preventing domestic violence.

INTRODUCTORY CONSIDERATIONS

One of the most current issues of criminal law in general and thus the criminal law of the Republic of Serbia in the last twenty years is the issue of domestic violence as a special form of violent crime as an extremely negative social phenomenon. Given such a high degree of its relevance, it has quite justifiably been more and more the subject of interest not only of the professional public of the Republic of Serbia but also of the public in general. There are two key reasons for such a high degree of relevance of this extremely negative social phenomenon. The first is based in a high degree of social danger it poses not only to the family as the basic unit of society but also to the state i.e. society as a whole (Marković, 2021). The second reason is the scope of its practical presence. Having in mind these two facts, and in order to counter this negative social phenomenon in the Republic of Serbia as successfully and efficiently as

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possible, a number of normative and practical activities have been undertaken in the last twenty years with the aim of combating and preventing domestic violence. The goal of the undertaken activities is to oppose this negative social phenomenon of universal character as efficiently as possible. From the point of view of the normative aspect, significant interventions were made in the existing criminal legislation (primarily in the Criminal Code) and new legal texts were adopted whose subject is to regulate the issue of domestic violence, which in itself speaks to the degree of importance the state attaches to the criminal legal issue of domestic violence. The case is, for example, with the adoption of the Family Law, which dedicates an entire chapter to the issue of protection from domestic violence, providing for special protection measures. Also, there is the Law on Prevention of Domestic Violence as a *lex specialis* when it comes to this issue, which is primarily based on the prevention of domestic violence, protection and support for victims of this category of crimes. Then, the National Strategy for the Prevention and Suppression of Domestic Violence against Women in Family and Partnership Relationships and the National Strategy for the Prevention and Protection of Children from Domestic Violence were adopted, as well as a number of protocols on cooperation between local and state institutions on these issues. The analysis of these and other acts that regulate this issue shows that in the last twenty years, the state strategy on this issue has changed in the Republic of Serbia. First, the focus was on repression, and now prevention has become the main strategic instrument of the state's reaction to this negative social phenomenon. The overriding goal is to prevent violence and protect the victim, and only after that to punish the perpetrator. To this end, new powers have been given to the police and the public prosecutor's office. Now the central figure in the prevention of domestic violence and protection of victims in the first moments when it became known that there is a danger of violence is the competent police officer who must protect the victim and prevent violence. His obligation is to take all legal measures to prevent violence in the near future and to this end he has at his disposal new powers, including the possibility of emergency measures of protection including temporary removal of the perpetrator from the apartment and temporary prohibition of the perpetrator to contact the victim of violence and approach him or her. Considering the goal set in this way, a new subject (possible perpetrator of domestic violence) is being introduced in the criminal legal system of the Republic of Serbia. It is a term that is broader than the perpetrator of the criminal offence of domestic violence and includes a person who is in danger of committing violence for the first time, but also a person who has already committed violence and there is a danger of recurrence of domestic violence. However, in cases when preventive measures do not achieve results, a criminal legal intervention occurs, which now, when compared to previous normative solutions, is characterized by an increase in criminal legal repression by expanding the form of the criminal offence of domestic violence and making the legislative penal policy stricter.

Domestic Violence and Substantive Criminal Legislation of the Republic of Serbia (Norm and Practice)

As already pointed out in the introductory consideration, there are several legal texts that (directly or indirectly) regulate the criminal legal issue of domestic violence in the Republic of Serbia, which speaks for itself of the importance attached to this issue, i.e. the state's determination to prevent the commission of this group of criminal offences, primarily by taking measures to prevent it (Kolarić & Marković, 2018). Among numerous legal texts of this character in the first place is the Criminal Code of the Republic of Serbia (CC of the RS)¹. Namely, in addition to the fact that, quite justifiably, preference is given to preventive measures, there are also repressive measures. They find their basis in the Criminal Code, which

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