
Inadequacy of Application of Sentencing Policy for Perpetrators of Domestic Violence

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Article Information*

Review Article • UDC: 343.8:343.62

Volume: 20, Issue: 3, pages: 107–127

Received: September 13, 2023 • Accepted: October 12, 2023

<https://doi.org/10.51738/Kpolisa2023.20.3r.107ppsd>

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We have no known conflict of interest to disclose.

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* Cite (APA):

Prelević Plavšić, S., Spasojević, Đ., & Dragojlović, J. (2023). Inadequacy of Application of Sentencing Policy for Perpetrators of Domestic Violence. *Kultura polisa*, 20(3), 107-127, <https://doi.org/10.51738/Kpolisa2023.20.3r.107ppsd>



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Abstract

The paper addresses the issue of domestic violence in Serbia, with a focus on the judicial treatment of perpetrators of this criminal offense and the position of women as the most common victims. The aim of the paper is to examine whether the judicial treatment is lenient and inadequate, thus violating the principle of equality before the law and jeopardizing the protection of victims and children. The paper relies on quantitative analysis of official statistical data on domestic violence in Serbia over a period of 18 years (2002-2020), obtained from reports of relevant institutions. Additionally, the authors analyze verdicts of the basic courts of the Republic of Serbia using a random sampling method, investigating aspects related to circumstances considered as mitigating factors. The paper demonstrates that a significant number of reports of domestic violence are dismissed or the proceedings are halted, and the sentences imposed are mostly conditional and lenient. The authors conclude that the judicial treatment of domestic violence perpetrators in Serbia is inefficient and discriminatory, leading to inadequate protection of victims and children and the perpetuation of violent patterns. The paper also highlights the urgent need for comprehensive intervention by the state and society to prevent and combat domestic violence. The authors propose possible measures to improve the situation, such as strengthening the legal framework, providing support to victims and perpetrators, and conducting qualitative research on the motivations, attitudes, and experiences of both perpetrators and victims of domestic violence.

Keywords: domestic violence, legal framework, prescribed penalties, sentencing policy.

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"We know the solutions; what we need is political will."
(Obaid, 2005)

Introduction

"Looking at the family as a primary sociological category, it is evident that social crises (social, economic, political, etc.) significantly affect relationships and processes within this community in a fundamental sense" (Počuča, 2014). Due to the widespread alienation of people from each other in the era of scientific and technological development and globalization (Bjelajac, 2014), the number of dysfunctional families has increased, and the family environment, which traditionally implies a place of "closeness, warmth, and harmony," has become a modern threat for many individuals (Bjelajac, 2017). Violence in the family as a phenomenon at first glance "is very clear, specific, extremely obvious and recognizable. However, one must not lose sight of the fact that phenomena, at first glance simple, are in reality very complex. Accordingly, domestic violence is a far more complex phenomenon. There is no unified view of the range of behaviors that are considered violent" (Matijašević Obradović & Stefanović, 2017). In Serbia, 52% of women are exposed to violence within the family home, where they should feel the safest: one woman is physically abused every 3 minutes, one woman is raped every 5 minutes, and one girl is abused every 10 minutes (Petrušić, 2006).

In Serbia, 90% of women attempt to resolve the issue of domestic violence on their own without institutional support (Babović et al., 2010, p. 82), so the number of reported cases represents only the tip of the iceberg. Low trust in state institutions reflects both the past handling of domestic violence cases and the overall state of society regarding the principles of equal treatment under the law, the rule of law, and the independent functioning of state bodies.

A legal system that fails to provide adequate protection to victims of violence and fosters an environment in which violence is tolerated leads to silence on the matter.

The aim of this paper is to investigate whether the sentencing policy towards perpetrators of the crime of domestic violence in Serbia is lenient and if it violates the principle of equality before the law, particularly concerning women as the most common victims of family violence. The paper analyzes the legal framework regulating this criminal offense, along with statistical data on the number of reports, charges, and judgments related to domestic violence in Serbia from 2002 to 2020. It also explores possible causes and consequences of lenient sentencing policies and the need for their strengthening and alignment with international standards for the protection of women from violence.

The methodology employed in this paper is quantitative, as it relies on the analysis of numerical data on domestic violence in Serbia. The data are sourced from reports of the Republic Statistical Office and the organization Women Against Violence, which are accessible on their respective websites. Additionally, the authors analyze verdicts of the basic courts of the Republic of Serbia using a random sampling method, investigating aspects related to circumstances considered as mitigating factors.

Following the introduction, the paper examines the legal framework regulating the crime of domestic violence in Serbia, with a specific focus on its historical evolution and alignment with international documents. Subsequently, it presents a statistical analysis of data on domestic violence in Serbia from 2002 to 2020, illustrating trends and distributions of reports, charges, and judgments related to this crime. Possible causes and consequences of lenient sentencing policies towards perpetrators of domestic violence are then discussed, along with their relationship with societal and cultural factors. The paper emphasizes the need for stricter sentencing policies and alignment with international standards for the protection of women from violence, concluding with recommendations for improving practices in the field of combating domestic violence. In the final section, the main findings and implications of the paper are summarized.

Criminal Legal Framework of the Republic of Serbia

Some criminal acts exist in all societies and times; what differs is the response to them – from retaliation to resocialization. Thoughts

on the manner and purpose of punishment are as old as human communities (Prelević, 2012, p. 104, 101).

In domestic literature, one of the most comprehensive criminological definitions was provided by Konstantinović-Vilić and Petrušić, who state that family violence represents the continuous use of physical and psychological force against family members, endangering and injuring the domains of safety and trust relationships, and expressing control and power over family members, regardless of whether it is defined as a criminal offense in current legislation and whether the perpetrator of violence is reported to law enforcement authorities (according to Matijašević, Dragojlović, 2022, p. 94).

The legal system of the Republic of Serbia first recognized domestic violence as a criminal offense in 2002. Under the influence, primarily of non-governmental organizations, amendments to the Criminal Code in 2009 led to a tightening of sentencing policies. Interestingly, in 2009, the range of prison sentences for the crime of murder still varied from 5 to 15 years, while if a death occurred due to domestic violence within the family, the perpetrator could be sentenced to imprisonment ranging from 3 to 15 years. Moreover, within the context of the crime of family violence, no distinction was made regarding the victim, whether it was a child, as was the case with the crime of murder, which stipulates a minimum of ten years in prison for the killing of a child. After ten years, the legislator recognized this inconsistency. We will see in a later analysis whether the courts, out of inertia, retained the lenient sentencing policy towards perpetrators of domestic violence.

The last amendment to Article 194 of the Criminal Code was made in 2019 in paragraph 4, aiming to increase penalties for offenses resulting in death.

The prescribed penalties for the crime of domestic violence in our legislation are presented in Table 1.

Sentencing Policy for the Crime of Domestic Violence

Since the introduction of the criminal offense of domestic violence in 2002, there has been a trend of increasing reports, as depicted in Graph 1. Thus, from 192 reports in 2002, sixteen years later, in 2018,

there were forty-one times more reports, totaling 7,916 filed reports of the criminal offense of domestic violence across the territory of the Republic of Serbia. These data do not indicate an increase in gender-based violence but rather a shift in awareness and cultural patterns, recognizing that violence against women occurring within the family home is not a private matter but socially unacceptable and punishable behavior by law. We can observe that the sharp increase begins in 2015, and the trend continues with the enactment and implementation of the Law on the Prevention of Domestic Violence (National Assembly of the Republic of Serbia, 2016). However, data for 2020, as the year the pandemic began, show a decrease which, in line with global and European data and the findings of domestic non-governmental organizations, does not reflect the true picture but rather the lack of institutional response to the new circumstances in terms of adapting and facilitating access to protection systems for victims of domestic violence (UN Women, 2020; Ignjatović, 2021).

Graph 1 illustrates the number of reports of the criminal offense of domestic violence from 2002 to 2020. In addition to the number of reports, another important indicator of the sentencing policy towards perpetrators of the criminal offense of domestic violence is the number of charges and judgments issued for this crime, as well as the type and severity of sanctions imposed, which are presented in Table 2. Graphs 2 and 3 depict the relationship between the number of reports of the criminal offense of domestic violence and convicted adult individuals from 2002 to 2020. Over the 18-year period following the introduction of the criminal offense of domestic violence into the legal system of the Republic of Serbia, on average, more than half of the filed reports result in case dismissals, acquittals, or charges being rejected. In cases where adult individuals are found guilty, the distribution of imposed sanctions is shown in Graph 4.

In the observed period of fifteen years, courts, in most cases, impose conditional sentences for the criminal offense of domestic violence. The mentioned structure of imposed criminal sanctions aligns with the structure of sanctions in judgments obtained through the random sampling system from basic courts in the Republic of Serbia in 2015, 2018, and 2020.

Perpetrators of domestic violence are predominantly men, often in an intoxicated state. However, the number of safety measures requiring mandatory treatment for alcohol addiction is disproportionate to the number of offenders of the crime of domestic violence committed under the influence of alcohol. In some cases, the fact that the act was committed in a state of significantly reduced sanity is considered a basis for mitigating the sentence, even though the perpetrator's use of alcohol led to a condition in which their ability to comprehend the significance of their actions and manage their behavior was substantially impaired. Cases of sentence mitigation, considering various mitigating circumstances, are common in practice. Phrases like "family man" or "father of two children" are valued as mitigating factors, as well as "appropriate behavior during the criminal proceedings, as he did not contribute to any delays," "a critical attitude towards the committed crime," "expressed remorse," and the fact "that, according to the Social Welfare Center, the defendant's return to the family could lead to positive changes for all family members." We believe that the fact that the perpetrator lives in a household with children (especially minors) should be considered an aggravating factor due to the secondary victimization of children and the risk of them becoming victims themselves, as well as the enduring trauma and the possibility of generational transmission of violence, which, it seems, is often not taken into account when imposing sanctions. There is an opinion that prison sentences are imposed less frequently due to the lack of sufficient prison capacity in accordance with international standards (Pravni skener).

The most attention, however, is drawn to the prosecutor's withdrawal from prosecution when the victim refuses to testify or when witnesses exercise their right to be released from the duty to testify as guaranteed by Article 94 of the Criminal Code, which, in the author's opinion, is a flaw and is not in line with the opinions and recommendations of international institutions that prioritize the safety of the victim and take into account the specific circumstances in which victims find themselves (state of fear), trying in every way to ease their position in the proceedings. It is considered unacceptable for the prosecutor to withdraw from prosecution in cases where the victim refuses to testify, as domestic violence is not a private matter but

behavior that is harmful to the broader community (Istanbul Convention, 2011). In eleven and a half years, from January 2010 to June 2021, in Serbia, 503 children were left without mothers as a result of domestic violence, of which approximately 200 children had not yet reached the age of eighteen (Žene protiv nasilja, 2010-2021). Children who witness violence, or those who are effectively exposed to indirect violence (Dabic, et al., 2023, p. 114), are not recognized as victims, even though growing up in a family where the father abuses the mother in 30% of cases leads to the transgenerational transmission of violent patterns (according to Nikolić-Ristanović, 2002). Exposure to family violence during early childhood also increases the likelihood of violent criminal behavior in later life (Stevković, 2013). The Istanbul Convention obliges states to take all necessary measures to ensure that the criminal prosecution and punishment of perpetrators of violence against women and domestic violence is not based solely on the statement or consent of the victim but is based on an adequate risk assessment and the need for victim protection. Furthermore, the Istanbul Convention prescribes that states should ensure that effective, proportionate, and deterrent penalties are imposed on perpetrators of domestic violence, taking into account the seriousness of the situation and the possible repetition of the offense. Therefore, we believe that it is necessary to limit the prosecutor's ability to withdraw from prosecution when the injured party or witnesses do not wish to testify against the accused for the criminal offense of domestic violence and to strengthen the punitive policy against the perpetrators of this offense.

The European Court of Human Rights has taken the position that the more serious the offenses or the greater the risk of recurring violence, the more necessary it is to continue with criminal prosecution in the public interest, even when the victim withdraws the complaint. Therefore, law enforcement authorities should not rely on the victim's stance if they assess that failure to take adequate measures could lead to threats to the physical integrity of the victim, especially considering that victims of domestic violence often remain in contact with the perpetrators after filing a report, which is accompanied by pressure to withdraw the report (Logar, 2005, p. 29). As Edward Gondolf emphasizes, the most important instrument in assessing danger is

careful listening to and believing the victim (Gondolf, 2012). In this context, we find it unacceptable that a small percentage of victims participate in the development of individual protection and support plans.

Conclusion

In our research, we analyzed the criminal policy for domestic violence in Serbia. We concluded that the current criminal policy is not stringent enough, leading to insufficient protection for victims and potentially contributing to the transmission of violent patterns to future generations. We examined three hypotheses: (1) that prosecution is often dropped in cases where victims or witnesses refuse to testify, (2) that lenient and conditional sentences are imposed, and (3) that there is discrimination against women in the judicial system.

We utilized data on reports, charges, and verdicts for domestic violence in Serbia, obtained from the reports of the Republic Statistical Office and case analyses, as well as reports from the Women against Violence network. Our analysis confirmed all three hypotheses, indicating the need for amendments to legal regulations to ensure better protection for victims and stricter penalties for perpetrators of domestic violence.

This research has also highlighted the need for qualitative studies to gain a deeper understanding of the perspectives of victims, offenders, and justice actors. Future studies should employ various methods and data sources to provide a more comprehensive picture of the issue of domestic violence in Serbia.

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Table 1. *Prescribed Penalties for the Crime of Domestic Violence*

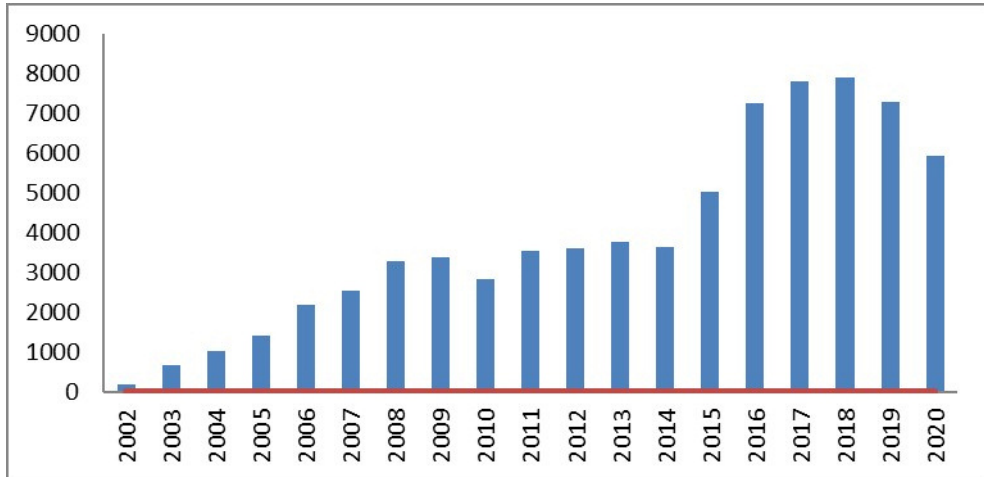
	Criminal Code, 2002, Article 118a	Criminal Code, 2005, Article 194
Basic form of the criminal offense	Fine or imprisonment for up to 3 years	Fine or imprisonment for up to 1 year
If a weapon or dangerous tool was employed	Imprisonment from 6 months to 5 years	Imprisonment from 3 months to 3 years
If severe bodily harm or the victim is a minor occurred	Imprisonment from 2 to 10 years	Imprisonment from 1 to 8 years
If death occurred	Imprisonment for a minimum of 10 years	Imprisonment from 3 to 12 years
Violation of protective measures		Fine or imprisonment for up to six months
	Amendments to the Criminal Code, 2009, Article 194	Amendments to the Criminal Code, 2019, Article 194
Basic form of the criminal offense	Imprisonment from 3 months to 3 years	Imprisonment from 3 months to 3 years
If a weapon or dangerous tool was employed.	Imprisonment from 6 months to 5 years	Imprisonment from 6 months to 5 years
If severe bodily harm or the victim is a minor occurred	Imprisonment from 2 to 10 years	Imprisonment from 2 to 10 years
If death occurred, and the victim is a minor	Imprisonment from 3 to 15 years /	Imprisonment from 5 to 15 years Imprisonment for a minimum of 10 years
Violation of protective measures	Imprisonment from 3 months to 3 years and a fine	Imprisonment from 3 months to 3 years and a fine

Table 2. *Adults convicted of the crime of domestic violence and imposed sanctions from 2003 to 2020.*

Year	Total convicted	Prison sentence	Monetary fine	Conditional sentence	Community Service	Judicial Warning	Rehab. Measures	Found guilty, released from punishment
2003	157	37	25	95				
2004	374		57	211				
2005	574			339				
2006	1059	303	102	627				
2007	1312	239	148	887	1	19	4	14
2008	1681	310	186	1162	-	14	4	5
2009	1850	372	171	1265	3	26	4	9
2010	1059	236	55	745	4	8	2	9
2011	1616	360	75	1135	23	10	3	10
2012	1472	436	33	970	15	9	6	3
2013	1532	533	8	977	7	1	3	3
2014	1712	634	13	1041	14	4	4	2
2015	1778	483 59*	8	1193	27	2	2	4
2016	2065	620 102*	17	1301	15	2	-	8
2017	2713	808 145*	6	1736	12	2	-	4
2018	2974	768 166*	8	1998	19	4	4	7
2019	2627	628 146*	12	1827	12	-	-	2
2020	2337	669 138*	6	1508	12	1	3	-

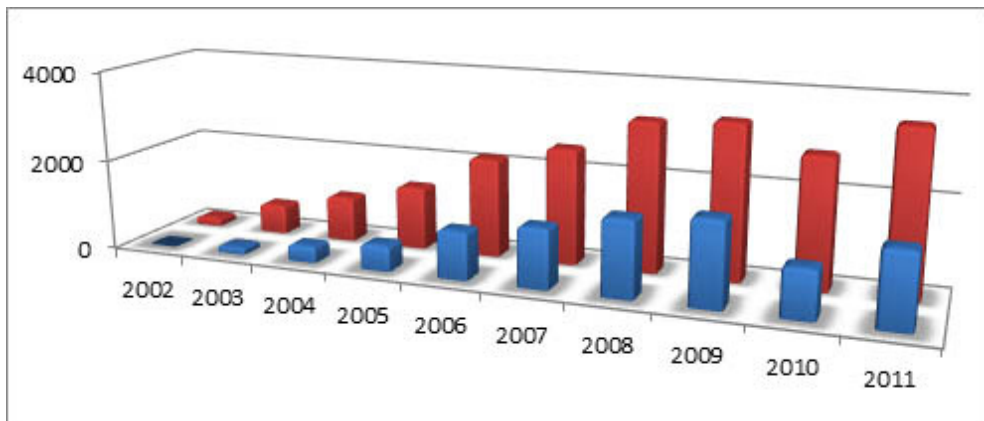
Note. The table was created based on data from the report of the Republic Statistical Office. Data for the period from 2003 to 2006 were not processed using the same system as from 2007 onwards. *house arrest

Graph 1. Reports of the Crime of Domestic Violence from 2002 to 2020

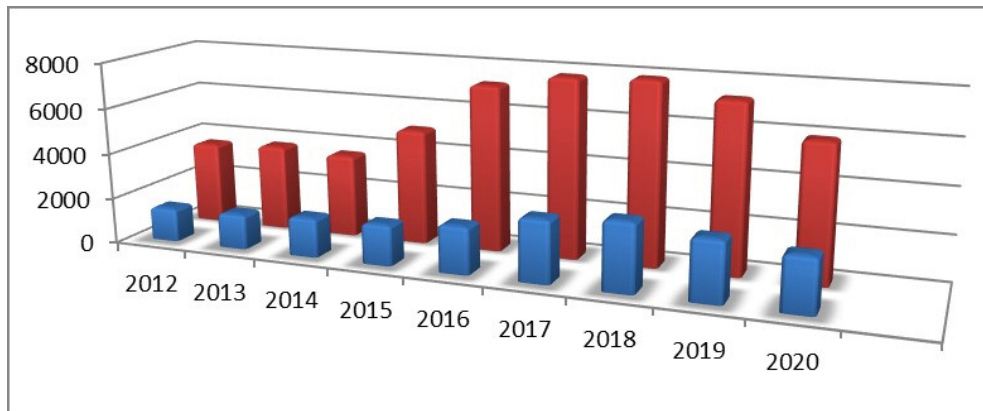


Note. The graph was created based on data from the report of the Republic Statistical Office from 2002 to 2020.

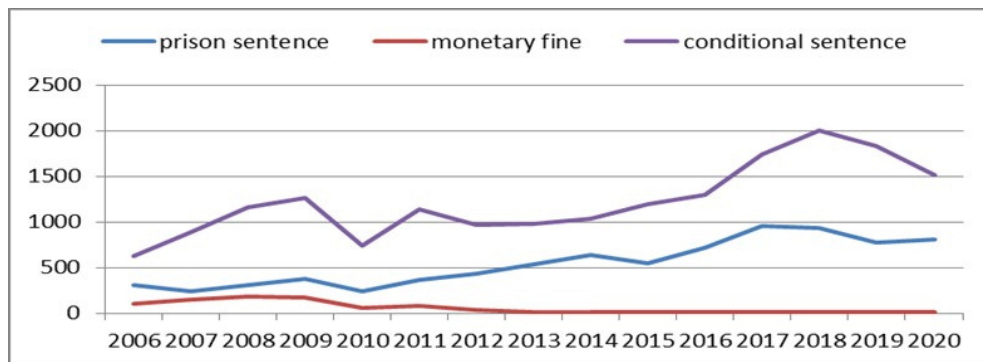
Graph 2. Relationship between the number of reported cases of domestic violence and convicted adults from 2002 to 2011.



Graph 3. Relationship between the number of reported cases of domestic violence and convicted adults from 2012 to 2020.



Graph 4. Relationship between imposed sanctions: imprisonment, fines, and conditional sentences from 2006 to 2020.



Neadekvatnost u primeni kaznene politike prema učinocima krivičnog dela porodičnog nasilja

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Sažetak

Rad se bavi problemom nasilja u porodici u Srbiji, sa fokusom na pravosudni tretman učinilaca ovog krivičnog dela i položaj žena kao najčešćih žrtava. Cilj rada je da ispita da li je pravosudni tretman blag i neadekvatan, te da li se time krši načelo jednakosti pred zakonom i ugrožava zaštita žrtava i dece. Rad se oslanja na kvantitativnu analizu zvaničnih statističkih podataka o nasilju u porodici u Srbiji u periodu od 18 godina (2002-2020), koji su dobijeni iz izveštaja nadležnih institucija. Autori, takođe, metodom slučajnog uzorka analiziraju presude osnovnih sudova Republike Srbije istražujući aspekte koji se tiču okolnosti koje su uzimane u obzir kao olakšavajuće. Rad pokazuje da je značajan broj prijava za nasilje u porodici odbačen ili je, pak, postupak obustavljen, a da su izrečene kazne uglavnom uslovne i niske. Autori zaključuju da je pravosudni tretman učinilaca nasilja u porodici u Srbiji neefikasan i diskriminatoran, što dovodi do nedovoljne zaštite žrtava i dece, kao i do reprodukcije nasilnih obrazaca. Rad takođe ukazuje na potrebu hitne i sveobuhvatne intervencije države i društva kako bi se sprečilo i suzbilo nasilje u porodici. Autori predlažu moguće mere koje bi mogle da poboljšaju situaciju, kao što su jačanje zakonskog okvira, podrška žrtvama i učinocima i sprovođenje kvalitativnih istraživanja o motivima, stavovima i iskustvima učinilaca i žrtava nasilja u porodici.

Ključne reči: porodično nasilje, zakonski okvir, predviđene kazne, kaznena politika