Early Intervention in Special Education and Rehabilitation

Beograd 2016.

Early Intervention in Special Education and Rehabilitation

THEMATIC COLLECTION OF INTERNATIONAL IMPORTANCE

Belgrade, 2016

Early Intervention in Special Education and Rehabilitation
Thematic Collection of International Importance

Publisher
University of Belgrade – Faculty of Special Education and Rehabilitation
Publishing Center of the Faculty

For publisher
PhD Snežana Nikolić, Dean

Processing and printing
Planeta print, Belgrade

Cover design
Boris Petrović, MA

Technical Editor
Biljana Krasić

Circulation 150

ISBN 978-86-6203-086-3

By decision no. 3/9 from March, 8th 2008. The Teaching and Research Council of the University of Belgrade – Faculty of Special Education and Rehabilitation initiated Edition: Monographs and papers.

By decision no. 3/122 from August, 30th 2016. The Teaching and Research Council of the University of Belgrade – Faculty of Special Education and Rehabilitation has given approval for the printing of Thematic Collection "Early Intervention in Special Education and Rehabilitation".

CONTENT

Theme 2

Functional Abilities of Children with Developmental Disabilities

Theme 3

Individual Treatment of Developmental Difficulties and Disabilities

Theme 4

Social Inclusion and Quality of Life in Persons with Disabilities

PREFACE

Since the 60's of the twentieth century, the conceptions of early intervention and the implications of programming are being changed. Different programs are started to be applied under the assumption that it can have an impact on the ability and motivation to learn, and social competency of users. The international conference proceedings, presented to the readers, are entirely dedicated to the complex issue and problems of early intervention in children's age. It was conceived as a kind of response to the challenge of the social model of disability set in front of the special education and rehabilitation, and its related sciences, apropos the systematization of the current situation in the area of early intervention.

Early intervention in the area of special education and rehabilitation consists of multidisciplinary services, provided to children with medical risk for the correct development of outcomes, or with the developmental delay and disabilities, with the aim to improve child's health and well-being, strengthen of development capabilities, to reduce the impact of difficulties and developmental delay, prevent functional deterioration and to improve an adequately parenting and overall functionality of family. These goals are achieved through the individualized developmental and educational programs for children and through the various forms of family support.

One of the first practical steps in providing better environment of the early development of children is to support and educate parents to be safer and more effective in their role as parents, and to be able to encourage optimal development of the child.

In this publication, the studies which use a multidisciplinary approach in the early intervention and the latest instruments in its methodology and research were selected.

Early intervention is not limited to the first three years of life, when exist the aspirations of the child to overcome the basic and typical sensomotor skills; but expands on the age of 3-6 years old through exposure of the preschool programs cognitively oriented, together with intervention on the psychomotor development, also through the support of educational activities of the child at home and school it is extended to the 7-12 years old kids.

According to this approach, authors' articles which at the highest level of review present previous and new studies are grouped into four thematic areas:

1. EARLY INTERVENTION IN SPECIAL EDUCATION AND REHABILITATION
2. FUNCTIONAL ABILITIES OF CHILDREN WITH DEVELOPMENTAL DISABILITIES
3. INDIVIDUAL TREATMENT OF DEVELOPMENTAL DIFFICULTIES AND DISABILITIES
4. SOCIAL INCLUSION AND QUALITY OF LIFE IN PERSONS WITH DISABILITIES

The first thematic unit, consists of 11 papers, is to introduce the readers with the theoretical discourse of early intervention, and also with the practical implementation in work with children with motor, visual, auditory, speech disorders and autistic spectrum disorders. The results of these studies strongly suggest that a 'good foundations' of overall development is set during the first years, and that cannot be established without the provision of high-quality physical and social environment for the early development and learning of children.

Evaluation of functional abilities of children with developmental disorders shows significant interest of the professional experts in the field of special education and rehabilitation, and is a part of this thematic area with seventeen presented papers.

The third thematic area, presented with the fewest number of papers, shows multidisciplinary approach and wide prism of defectology work in the treatment of developmental disabilities and disorders.

The current problem of social inclusion and quality of life of people with disabilities is the most common in these conference proceedings. Fourteen original scientific papers deal with this problem.

Large number of original articles processed the most important aspects of early detection, functional diagnostics and interventions in different areas of special education and rehabilitation. Results of new research, presented by some authors, provide a significant improvement in terms of the methodology of work in early intervention.

EDITORS

ROLE OF CRIMINAL LAW OF SERBIA IN PREVENTION OF FAMILY VIOLENCE

Dragana Kolarić[1] & Saša Marković[2]

[1]Academy of Criminalistic and Police Studies, Serbia
[2]Police Department of Valjevo, Ministry of Interior of the Republic of Serbia

SUMMARY

The question is asked what the possibilities of criminal law in prevention and suppression of family violence are. Article 42 of the Criminal Code starts from relative theory and determines the purpose of punishment as special and general prevention. Special prevention is underlined also within security measures as a type of criminal sanctions which can be ordered for family violence as well. Analysing the penal policy of the legislator and courts, we have made an attempt to determine if the purpose has been achieved of prescribing a criminal offence of family violence. As pointed out in a part of theory ratio legis of this incrimination was to provide complex criminal law protection. However, taking into account the reaction and response of the competent authorities to family violence, and after the analysis of primarily court penal policy, we express a certain degree of scepsis regarding the reasons set forth as the reasons the legislator was guided by when incriminating family violence. It is therefore clear that general and special prevention goals that the penalty implies are not accomplished either, and this clearly and undoubtedly results from the legal text. The fact that this phenomenon draws the attention of the public increasingly suggests that the legislator was mostly guided by certain populist-political reasons rather than the true analysis which determines the need to incriminate family violence as a separate criminal offence.

Key words: criminal law, family violence, special and general prevention, court determination of penalty, legal determination of penalty

INTRODUCTORY REMARKS

Criminal law as a branch of positive legislation is based on fundamental principles which represent the achievements of contemporary legal systems. Under the conditions in which rule of law functions implying fully achieved principles of legality, in other words that law is binding not only upon an individual but upon the state as well, this means legal safety, limitations and control of state coercion by law. Therefore, the principle of rule of law is the foundation on which the "house" is built in which its members put trust. What are the requirements that principle of rule of law sets before the criminal legislation? In regard to the principle of legality, the requirement to determine criminal law norms is of special significance for achieving the rule of law, as well as the basic rule that criminal legal intervention should be reduced to necessary minimum in order to protect the most important goods which cannot otherwise be protected (Стојановић, 1991: 28). This means that criminal law and its provisions, although very useful in fighting against contemporary forms of crime, have limited character, which after all results from the basic characteristics of criminal law suggesting that it is of accessory,

fragmentary and subsidiary character. It protects legal goods which have already been constituted and determined by other branches of law and only from certain forms of attacks on them. When it concerns family violence, in our country it is classified in the group of offences relating to marriage and family. The object of protection of this group are marital and family relations.[a]

Normative regulations of marital and family relations primarily mean the application of corresponding constitutional-law, family-law, civil-law and administrative relations. Subsidiary, marriage and family are protected by criminal law (Стојановић и Делић, 2013:94). Therefore, criminal-law intervention should be the last resort, *ultima ratio*and should not be used until there exist other means and manners to protect some good. When it concerns the legal protection from family violence, Family law is *prima ratio*. Marital and family relations belong to the sphere of interpersonal relations and criminal-law protection is used with "ultimate restraint" (Стојановић, 2012: 559). Thus, for instance, for some criminal offences it is prescribed that certain individuals will not be punished although the important specific elements of crime have been accomplished because the criminal offence does not exist. Criminal law has always very carefully regulated criminal-law protection in the sphere of family relations (Вуковић, 2012:127). However, in some cases it is necessary to respond with criminal-law provisions, since it is the question of the most important social values. When protection from family violence is concerned, the logical question is if it concerns the most important good since there exists parallel protection of family law and criminal law. This is why in theory it is stated with good reason that in this way the idea of the need for protection from family violence is compromised (Шкулић, 2012:79).

The theory puts forward the standpoint that penal-law protection from violence is more or less fragmentary and that it mostly boils down to the protection from unlawful assaults on life and bodily integrity, serious assaults on psychic integrity and violation of basic human freedoms by applying coercion (Симеуновић-Патић, 2015:18). When it concerns criminal-law protection, we point out that one of the main characteristics of criminal law is its fragmentary character, that criminal law regulates heterogeneous social relations but only partially and fragmentary. Criminal law offers protection

---

a This would meand that family violence also protects family relations, but the question is if it protects only the family relations or the family members as well. Milan Škulić claims that when we analyze a little bit closer the elements of a concrete criminal offence, it can be observed that its object of protection, in other words the *protected object*, is not family as such, but a *family member*. See: М. Шкулић, "Основни елементи нормативне конструкције кривичног дела насиља у породици – нека спорна питања и дилеме", текст у зборнику "Насиље у породици" (ур. М. Шкулић), Удружење јавних тужилаца и заменика јавних тужилаца Србије, Београд, 2009, стр.11.When the defendant undertook in relation to every family member the acts each of which separately contain the elements of criminal offence of family violence, at the same time and at the same place under the same circumstances and with the same purpose due to which they make one natural unity and entity, then all separate acts the defendant undertook against the injured parties are just physical parts of one behavior of the defendant as a factual complex whose criminal-law content is exhausted in the legal qualification of criminal offence of family violence, taking into account that the object of criminal-law protection in this concrete case is primarily family as a social good and then indirectly its members as well (Judgment of District Court in Užice, Kž. *143/2007 dated March 26, 2007).*

only to certain values, in other words the most valuable ones, and not to all the good and just from the most dangerous forms of attack on them. This is why the remark referring to fragmentary character of criminal-law protection, as a form of penal-law protection, is unacceptable since criminal law protects only in those segments where the protection offered by other branches of law, for instance civil and family law, is not sufficient. Excessive aggressiveness expressed through the wish to intervene in every sphere of social life and with detailed criminal-law regulations would essentially violate partiality of criminal-law protection.

We would not go in further details here regarding legal-dogmatic analysis of the Criminal Code provision which refers to family violence. We will point out that it was introduced in the criminal-law system of Serbia as a separate criminal offence in March 2002.[b] Had the family members been unprotected before that? Of course they were not. There exists even now, as it existed then, the entire series of criminal offences that "cover" very nicely every element of incrimination of family violence. Also, the manner in which criminal offence of family violence found its place in the Criminal Code tells us a lot about the quality of the incrimination and the need for its existence within the Criminal Code. It entered as an "amendment", and not according to "regular", i.e. "normal" procedure, which as a rule still implies considerably higher level of quality when formulating concrete incrimination (Вуковић, 2012:128). Exceptional lexical vagueness of the term violence and its imaginative character suggest that from the criminal-law standpoint it is almost impossible to precisely determine this concept. After all, this is not a criminal-law but criminological, and in a wider sense, sociological concept. Despite the fact that it is used in several places within the Criminal Code of Serbia, it is clear that its precise criminal-law definition is not possible to get. This is why in all criminal offences where it is used this term is dubious from the aspect of the principle of legality and its *lex certa* segment. However, we can only briefly point out that here the tendency to spread criminal-law repression has also come to the fore. It is true that many legislators are inclined to criminal-law interventionism. But in the nearest future this could lead to the legitimacy crisis of criminal legislation.

It is justified then to ask the question if *ratio legis* has been fulfilled for incrimination of family violence. As pointed out in theory, this is protection of family and family relations, but also reinforced protection of certain categories of persons, primarily women and children from another family member who exerts to violence, i.e. the protection of special relation of trust among the family members, since it is emotionality that characterizes daily family relations, and therefore violence represents deviation from that condition characteristic for family and family relations.

If this has really been accomplished will be seen after the analysis of legislative and court penal policy.

b Закон о изменама и допунама Кривичног закона РС, Службени гласник РС, бр. 10/2002.

Legislator's penal policy and prevention of family violence

We shall pay special attention to two questions related to penal policy. First, what the penal policy of courts is concerning criminal offence of family violence in our criminal legislation, and second, if the scopes of penalties existing in our criminal legislation leave enough possibilities for the proportionate and justified criminal sanction to be determined in the procedure of individualization, taking into account the concrete criminal offence committed and the personality of offender. It is clear that in addition to the legislator penal policy is led by the courts. Namely, the legislator is the one who determines the basic general solutions: what actions are considered criminal offences, determines criminal sanctions to be applied, maximum and minimum measures of certain sanction, i.e. determines the types of punishment and their lowest and highest extents. On the other hand, there is the penal policy of courts which have a wide space for free decision-making, both regarding the selection of the type of criminal sanction and determination of penalty (Стојановић, 1991:74). When it regards legislator's penal policy, our country belongs to the group of countries that have separate incrimination of family violence.

Criminal-law approaches to solving the problem of family violence, observed from comparative law point of view, are various. There are several possible manners to punish family violence. The **first** one includes the countries that offer protection with the existing incriminations that are part of the entire criminal legislation in the concrete country. Thus, for instance, the *German Criminal Code* does not contain special provisions on family violence, which does not mean that there is no family violence in Germany. According to the governing opinion in Germany, family violence is covered by the rules of other criminal offences so that it is not necessary for it to be separated as a special incrimination (offences against life and limb, freedom and rights, sexual freedom, and so on). When admeasuring the penalty, the fact that an offence has been committed against a family member can be taken into account particularly. Pursuant to § 46 when sentencing the court shall weigh the motives and aims of the offender and the degree of force of will involved in committing a crime.[c] The *Criminal Code of the Russian Federation* (Papor, 2013: 253-263), also does not recognize family violence as a separate criminal offence. Each act with elements of violence committed against a family member is qualified according to the existing provisions of the Criminal Code, for instance Article 111 of the Criminal Code of the Russian Federation (Intentional Infliction of a Grave Injury). In the Criminal Code of the Russian Federation, within the Section titled "Crimes against the Person", it is possible to find the appropriate incrimination and qualify the acts directed, for instance, against women in a family, elderly people, and children. Thus, Article 117 of the Criminal Code of Russian Federation (Torture) covers also the responsibility for family violence which consists of "the infliction of physical or mental suffering by means of systematic beating or by any other violent actions, unless this has involved the consequences referred to in Article 111 – Intentional Infliction of a Grave Injuryand Article 112 – Intentional Infliction of Injury to Health of Average Gravity.

---

c Кривични законик Савезне Републике Немачке, Центар маркетинг, Београд, 1998, стр. 25.

The second possible manner to suppress family violence implies introduction of special indictable offences within some criminal offences, which, as a rule, are typical crimes with elements of violence. This manner is the most acceptable from the standpoint of the principle of legality, since all crimes containing the term violence can be criticized regarding the *lex certa* segment. Such a solution, for instance, is in the *Criminal Code of Macedonia*,[d] the *Criminal Code of the Kingdom of Spain*[e] and the *Criminal Code of the Swiss Federation*,[f] and until recently the *Criminal Code of Croatia*. The *Criminal Code of the Swiss Federation*[g] does not prescribe a separate offence of family violence, but incrimination of family violence is made through various offences (for instance Article 123 – Common Assault, Article 126 – Acts of Aggression, Article 180 – Threatening Behaviour), where prosecution *ex officio* is prescribed, which in a way makes the position of the victim easier. In Article 147 of the *Criminal Code of the Kingdom of Spain*, there is a crime that consist of causing injury, and in Article 148 it is pointed out that the injuries foreseen in Section 1 of the preceding Article may be punished with a sentence of imprisonment of two to five years, if, among other things, the victim is under twelve years old or is incapacitated (Section 3), if the victim is or has been the wife, or woman bound to the offender by a similar emotional relation, even when not cohabitating (Section 4), or if the victim is an especially vulnerable person who lives with the offender.

The **third** manner to regulate family violence implies introduction of separate incrimination into criminal legislation, which is the case with our country as well (*the Criminal Code of the Republic of Croatia, The Criminal Code of Republika Srpska, The Criminal Code of the Republic of Montenegro, The Criminal Code of the Republic of Slovenia, The Criminal Code of the Kingdom of Norway, The Criminal Code of the Kingdom of Sweden).* In the countries where such a solution exists it is mostly criticized because it causes great difficulties in practice due to its ambiguity. This is the result of rashness, unprofessional translations and the method of direct transfer of certain provisions of international agreements, which has done a lot of harm to the coherency of legal system. It can very often be found in other countries in the region that specific elements of new criminal acts are not adapted to national terminology and general institutes or that they often contain unclear and wide formulations. Further, what is more important, wide and unprecise formulations can compromise one of the basic principles of criminal law – *nullum crimen nulla poena sine lege* (Коларић, 2015:18).

In order to better understand the table that follows, we shall say once again that family violence as a separate crime was introduced in the criminal-law system of our country in 2002,[h] by the amendments and additions to the Criminal Code of the Republic

d Кривичниот законик, *Службен весник на Република Македонија*, бр. 37/96, Закон за изменување и дополнување на Кривичниот законик, *Службен весник на Република Македонија*, бр. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7 /08, 139/08, 114/09 година, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013.

e Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (Vigente hasta el 28 de Octubre de 2015), http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html 10.10.2015.

f http://www.admin.ch, 05.10.2015.

g Code pénal suisse http://www.admin.ch, 05.10.2015.

h Законо изменама и допунама Кривичног закона РС, Службени гласник РС, бр. 10/2002.

of Serbia.[i] Article 118a – Family violence – was added in the group of criminal offences against marriage and family. This does not mean that until then the violence against family members was not punished by our legislation. It was possible to apply many other classic incriminations to the perpetrators of such crimes, and the fact that violence was committed against a family member could be taken as aggravating circumstance. Entry into force of the Criminal Code[j] on January 01, 2006, brought changes both of the specific elements of crime and the penalties prescribed.

Table 1 *Prescribed penalties for criminal offence of family violence*

Article 194. FORM	Criminal Code (of September 2009)	Criminal Code (of January 01, 2006)	Criminal Code (of March 2002)
Paragraph1	From 3 months to 3 years	Fine or imprisonment up to 1 year	Fine or imprisonment up to 3 years
Paragraph 2	From 6 months to 5 years	From 3 months to 3 years	From 6 months to 5 years
Paragraph 3	From 2 to 10 years	From 1 to 8 years	From 2 to 10 years
Paragraph 4	From 3 to 15 years	From 3 to 12 years	Imprisonment of at least 10 years
Paragraph 5	From 3 months to 3 years and fine	Fine or imprisonment up to 6 months	

Although it can be seen from the above table that the legislator has twice amended the penal policy for this criminal offence in a short period of time (first the mild approach comes to the fore and then increased repression), it seems that satisfactory solutions have not been found. Namely, as it can be seen from Table 1, for grievous bodily harm inflicted negligently to a family member the offender shall be punished by imprisonment from two to ten years, and if the serious bodily harm during family violence is inflicted intentionally to a family member the offender shall be punished for the crime of "Serious bodily harm" pursuant to Article 121, paragraph 1, of the Criminal Code, where the penalty ranges from six months to five years, or paragraph 2, where the imprisonment is from one to eight years. To tell the truth, by the analysis of court practice we have determined that courts very often resort to qualification pursuant to Article 194, paragraph 3, not embarking upon the content of the offender's guilt. It remains unknown if they do this because of the lack of familiarity with substantive criminal law or because they want to impose a heftier sentence. One of the possible solutions to this problem *de lege ferenda* is prescribing more serious forms within the already existing incriminations, even for serious bodily injury from Article 121, if the offence was committed against a family member, whereas the penalty of imprisonment could stay the same as for Article 194, paragraph 3 of the Criminal Code, from two to ten years.

i Кривични закон РС, *Службени гласник СРС*, бр. 26/77, 28/77 – испр., 43/77 – испр., 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 и 21/90 и*Службени гласник РС*, бр. 16/90, 26/91-одлука УС Ј бр. 197/87, 75/91 – одлука УС РС бр. 58/91, 9/92, 49/92, 51/92, 23/93, &7/93, 47/94, 17/95, 44/98, 10/2002, 11/2002- испр, 80/2002-др закон, 39/2003 и 67/2003.

j Кривични законик РС – КЗ, Службени гласник РС, бр.85/2005.

Penal policy of courts and prevention of family violence

It was Seneca who in the appellate procedure to Plato expressed the classic lesson on prevention: "No sensible person punishes because a wrong has been done, but in order that a wrong may not be done" ("*nemo prudens punit, quia peccatum est, sed ne peccetur*..."). At that time, this thesis was at the forefront of forming independent theory on special prevention, which was later suppressed by theory of retribution (absolute theory on purpose of punishment – according to which the penalty is retribution, retaliation for the action done), but it was revived at the end of 19th century by sociological school which still has a huge influence (Roxin, 2006: 73-74).

Taking into account the system of criminal sanctions in our country, the manner in which the purpose of penalty and security measures has been determined clearly shows that our legislator puts prevention at the fore since he starts from the relative theory. It is important to determine at this place the successfulness of court penal policy when it concerns special, but also general prevention.

In the period from 2007 to 2014, the Public Prosecutor's office of Serbia acted upon 26,645 criminal complaints due to well-founded suspicion that the criminal offence of family violence had been committed, whereas in 14,270 cases it pressed charges, and in 11,925 cases (45% of all complaints) the decision was made not to prosecute.[k] In one research carried out at the territory of five respective Public Prosecutor's Offices (Vranje, Kraljevo, Smederevo, Sombor, Valjevo) in the period from 2010 to 2014, out of the total number of dismissed criminal complaints the Public Prosecutor's Office dismissed 26% after cancelling prosecution, i.e. due to application of the principle of opportunity (Марковић, 2015:480).

Within the same period (2007-2014) in Serbia the total of 273,139 persons were sentenced. Out of this number 22,518 persons were sentenced for criminal offences against marriage and family, and 12,234 persons for the criminal offence of family violence, i.e. 46% out of the number of criminal complaints. This means that within the total crime in the observed period family violence makes 4.5%, and in comparison with criminal offences against marriage and family it makes 54%.[l] It is an interesting fact also that the procedure ended without conviction in 17% cases after the charges were pressed for family violence. We must say that regarding punishment our attention was drawn by a relatively high rate of probations. This criminal sanction was imposed in 8,128 cases, which makes 67%. In the last three years of the observed period we have noticed that the number of suspended sentences was increasing. Thus in 2012, 970 suspended sentences were imposed, in 2013 there were 977, and in 2014 there were 1,041 suspended sentences.

When concerning criminal sanctions imposed for criminal offence of family violence (Table 2), the courts in our country imposed 3,110 custodial sentences in the period from 2007 to 2014. Out of this number the majority belongs to imprisonment up to 6 months, 1,996 or 64% out of the total number of sentences of imprisonment. The least represented were the sentences of 3 year of imprisonment and stricter (40 in total).

k The data ofthe Statistical Office of the Republic of Serbia.

l The data ofthe Statistical Office of the Republic of Serbia.

In further analysis of this Table we see that fine was imposed 689 times, whereas it is interesting that the trend of imposing this penalty is decreasing. For the first three years of the analysed period (2007-2009), 505 were imposed, and for the last three years of the analysed period (2012-2014) only 54, in other words ten times less.

Table 2 *Adults sentenced for family violence in Serbia according to sanctions imposed in the period from 2007-2014*

		2007.	2008.	2009.	2010.	2011.	2012.	2013.	2014.	Total
Family violence – total		1312	1681	1850	1059	1616	1472	1532	1712	12234
Attempt		11	8	2	/	3	2	4	1	31
IMPRISONMENT	Total	239	300	372	236	360	436	533	634	3110
	Up to 2 months	26	33	39	22	16	26	17	28	207
	From 2 to 3 months	57	58	85	44	77	79	75	109	584
	From 3 to 6 months	89	106	134	82	123	166	243	262	1205
	From 6 to 12 months	49	71	80	59	97	116	139	166	777
	From 1 year to 2 years	12	20	22	21	31	31	30	44	211
	From 2 to 3 years	5	5	1	7	10	15	22	21	86
	From 3 to 5 years	/	1	4	/	5	3	5	3	21
	From 5 to 10 years	/	4	7	1	1	/	2	1	16
	From 10 to 15 years	1	2	/	/	/	/	/	/	3
Fine		148	186	171	55	75	33	8	13	689
Suspended sentence (imprisonment)		887	1162	1265	745	1135	970	977	1041	8182
Community service		1	/	3	4	23	15	7	14	67
Judicial admonition		19	20	26	8	10	9	1	4	97
Security measure of restraint order to approach and communicate with injured party		/	/	/	170	90	14	24	25	323
Rehabilitation measures		4	4	4	2	3	6	3	4	30
Convicted but not sentenced		14	9	9	9	10	3	3	2	59

From the total number of persons convicted for family violence 95% are males and only 5% females, whereas even 38% are repeat offenders (see Table No. 3).

Table 3 *Adults convicted for family violence in Serbia according to sex and previous convictions in the period 2007-2014*

Year		Total		
		Total	Female	Male
2007	Total	1312	58	1254
	Previous convictions	497	7	490
2008	Total	1681	75	1606
	Previous convictions	666	15	651
2009	Total	1850	111	1739
	Previous convictions	753	15	738
2010	Total	1059	55	1004
	Previous convictions	385	6	379
2011	Total	1616	81	1535
	Previous convictions	584	7	577
2012	Total	1472	76	1396
	Previous convictions	556	11	545
2013	Total	1532	81	1451
	Previous convictions	594	16	578
2014	Total	1712	98	1614
	Previous convictions	638	15	623
Total		12234	635	11599
Total previous convictions		4673	92	4581

Using the official statistics can be deceiving when doing scientific research. Namely, the dark figure of violence in family is high. In one of the studies it has been determined that the Ministry of Interior (MoI) of the Republic of Serbia in the first six months of 2015 had 12,147 reports referring to some form or type of family violence (it would amount to 24,000 reported incidents annually, which is equivalent to the number of criminal complaints processed by the Public Prosecutor's Office for family violence for a period of seven years). The MoI brought 2,174 criminal charges and 3,825 reports to Public Prosecutor's Office, as well as 1830 misdemeanour charges to the competent misdemeanour court for disturbing public peace and order (Марковић, 2015:459). These indicators tell us that a small number of reported incidents with elements of family violence in Serbia end with initiation of criminal procedure. Naturally, when doing the research it should take into account those criminal offences against family members which are not qualified as criminal offence of family violence but as some other offence (serious bodily injury according to Article 121 or murder according to Article 113, or aggravated murder according to Article 114 of the Criminal Code), but also these incidents where a family member was murdered and after that the offender committed suicide since these incidents cannot be seen in the official statistics.

Observing the penalty ranges for certain forms of family violence, taking into account that the system of relatively determined penalties is adopted in contemporary criminal legislations, it is difficult to say that the legislator makes some provisional determination of penalty *in abstracto*. The ranges are set wide so that we can claim, despite the fact that theory recognizes both court and legal determination of penalty, that only court determination of penalty is determination of penalty in the true sense of the word. However, our legislator has succumbed to the false belief that court practice can be influenced regarding stricter penal policy by prescribing stricter punishments.

Thus in 2009 by the amendments to the Criminal Code the punishments for all forms of family violence were tightened.[m] However, this has resulted in even deeper gap between prescribed and imposed punishments. The fact is that the courts, and not only for this type of crime, taking into account the penal ranges impose the punishments closer to the lower limit. The reasons can be numerous, but in theory one is pointed out to which special attention is given. This is the claim that the law prescribes Draconic penalties (Стојановић, 2015:302).

The European Court of Human Rights supports the view that the state is not only obliged to provide corresponding legal framework for the fight against family violence but should ensure its effective implementation and that international practice strongly suggests that criminal prosecution of family violence offenders should be carried out if there is sufficient evidence and even when the victim of violence withdraws criminal complaint or waives it. Thus in the case *Tomašić vs. Croatia*[n] and *Opuz vs. Turkey*[o] the court first of all unequivocally confirmed the positive obligations of the state referring to the protection of all persons under its government, those who suffer or could suffer violence or some other form or inhumane and humiliating treatment. The right to protection of the right to life and protection from torture belongs to peremptory legal norms, *ius cogens* and requires adequate state activities regarding investigation and criminal prosecution of such acts. It is the responsibility of the state to provide for efficiently conducted investigation and criminal prosecution of the offender. The court also clearly and unequivocally expressed the opinion that in the cases referring to death under the circumstances from which the responsibility of the state could result, the authorities must act on their own initiative as soon as they learn about the specific case. The court stated that incapability of the state to efficiently prevent gender-based violence represents a form of discrimination of women. The states are responsible if they fail with due attention to prevent violence against women, as well as to investigate, prosecute and punish such violence.

In addition to problems of imposing relatively mild penalties and suspended sentences, the duration of criminal procedure is also identified as a problem influencing both special and general prevention. In the research conducted at the territory of the town of Valjevo, we have come to the data that duration of a criminal procedure for family violence from the moment of reporting the incident to the moment when finally binding sentence is reached ranges between one year and six months to four years (Марковић, 2015:462). Many studies have shown that the victims of family violence find it difficult to decide to report violence and that they are discouraged when the charges are dismissed, in other words the longer the criminal procedure lasts the greater chance is that the victim would change the originally given statement and that they would give up criminal prosecution. One aspect of prevention is also an efficient criminal procedure.

---

m Закон о изменама и допунама Кривичног закона РС, *Службени гласник РС*, бр. 72/2009.

n *Предмет Томашић против Хрватске*, Апликација бр. 46598/06, Пресуда од 25.01. 2009

o *Предмет Опуз против Турске*, Апликација бр. 33401/02, Пресуда од 09.06. 2009.

Significance of safety measure of restraint to approach and communicate with the injured party in special prevention of family violence

The amendments and additions to the Criminal Code from August 2009, a new security measure was introduced into Article 89a, which can be used to prohibit an offender from approaching and communicating with the injured party. It is *Restraint to approach and communicate with the injured party.* Not disputing the good intention of the legislator in the course of its introduction, the question was asked if due to its significance it deserved to be separate criminal sanction and how its efficient application was to be provided.

The situation somewhat resembles problematic situation with protective measures from the Family Law where we have got an upside down solution, and that is that their application is provided by the Criminal Code. To be fair, the efficient application of this security measure, as well as of some others, has not still been provided. What shall we do in a situation when the convicted person who has been imposed this measure violates its prohibition. Theory immediately pointed out that it would be better if the security measure was provided as one of the obligations within protective surveillance under which the offender can be put who has been imposed suspended sentence, in which case there would exist a possibility to revoke suspended sentence if he does not fulfil this obligation (Стојановић, 2012: 331).

The purpose of this security measure is to eliminate conditions for repeated commission of a criminal offence of family violence in that way that the offender is prevented to further harass a concrete person, an injured party. Imposing some other criminal sanction, in addition to security measures, will underline negative assessment of his behaviour by the court and influence other persons to follow after his example (Ковачевић, 2014: 50).This means that the security measures by their nature represent criminal sanctions which first of all serve special-preventive function, all the more that social-ethical reproach to offender here is in the background, while eliminating danger of repeated criminal offence is priority (Стојановић, 2015: 335-336). Punishment must never be imposed (or not imposed) for special prevention only, while this is the rule for security measures. The reason why security measures exist even today is the same as at the time they originated, and that is not to overburden punishment by special-preventive tasks and that the basis for imposing punishment must not be the danger of the offender.

This security measure, as we have seen, takes a significant place among the imposed criminal sanctions for the criminal offence of family violence. However, the fact remains that in its defining the terms are used which should at least be roughly determined, and these are: "specified distance", "area surrounding the injured party's residence or place of work", "further harassment of the injured party, in other words further communication with the injured party".

At this point it is important to underline that work on new amendments and additions to the Criminal Code is in progress. The current version of the preliminary draft Law on Amendments and Additions to the Criminal Code introduces a new criminal offence (Article 340a of the Criminal Code), the goal of which is to provide sanction for violation

of prohibition contained in certain security measures. According to the Code currently in force, there are no sanctions for violation of certain prohibitions contained in some security measures (if the convicted person keeps approaching the injured party at a certain distance). When violating other prohibitions, certain sanction reflects in that the court, when imposing suspended sentence, can determine that it will be revoked if the convicted person violates the prohibition ordered by the security measure (Articles 85 and 86 of the Criminal Code). However, even with these security measures there is a need for one such criminal offence in case the sanction with which the security measure is imposed is not suspended sentence.

Special Protocol for Judicial Bodies in Cases of Domestic and Intimate Partner Violence against Women[p] stipulates that courts would pay special attention when imposing security measures for criminal offences in which the victim is a female. Thus taking care of special protection of the victim, most often a woman, the court will take care that the appropriate security measure is imposed on the offender taking into account the need to protect the victim so that the offender would not commit criminal offences against a female person in the future. When imposing a security measure of restraint to approach and communicate with the injured party, the court would particularly take into account social, economic, psychological and other factors in order for this measure to be implemented to protect the jeopardized, i.e. injured party.

According to the data of the Statistical Office of the Republic of Serbia, at the territory of the Republic of Serbia in the period from 2010-2014, final judgments imposed the total of 323 security measures of "restraint to approach and communciate with the injured party". In Table 2, we have presented the measure imposed by the courts per years. We can see that in the first two years from its adoption the courts used this measure 260 times, and after that in the following three years only 63 times. The reasons why we shall rarely find it in court practice is that no sanction for its violation is provided, but also that the court must take account whether the convicted person has means to support himselft and if this measure could influence his existence. Thus, in the ruling of the Higher Court in Belgrade Kž1.No. 132/14 dated March 21, 2014, it says that "When deciding if to impose the measure of restraint to approach and communicate with the injured party (the defender's wife), which includes prohibition to approach the area surrounding the place of residence, the court must take into account if the defendant has means of support and if the imposition of such measure could affect his existence. After finding VS in B., the court of first instance has acted properly when in the concrete case it has not accepted the request of the Public Prosecutor to impose on the defendent within the meaning assigned by Article 89a of the Criminal Procedure Code the security measure of restraint to approach to the injured party, or the area surrounding the place of residence and further harassment for the duration of 6 months, rightly taking into account that the defendant is unemployed and that he has not means of support, so that the imposition of such a security measure could influence his existence, and that the imposed penalty of a year and a long period of checking in this concrete case the purpose of punishment is achieved, therefore the opposite particulars of the Public

p Посебни протокол за правосуђе у случајевима насиља над женама у породици и партнерским односима, Република Србија, Министарство правде и државне управе, Број: 119-01-00130/2013-05, датум: 14. јануар 2014. године, Београд.

Prosecutor have been assessed as unsupported."[q] In addition to this measure, the following measures are also significant that could be imposed by criminal judgment, and more than one can be imposed at the same time: *compulsory psychiatric treatment and confinement in a medical institution, compulsory psychiatric treatment at liberty, compulsory alcohol addiction treatment* and *compulsory drug addiction treatment*. We must point out that this is a specific criminal offence and that family members often suffer violence for years and do not report it because their relationship with the offender is emotional and they feel love towards the offender (father, son, daughter, etc.), and in many cases they also feel fear, compassion, but are also financially dependent. They decide to report family violence because they wish to help that family member (offender). In a large number of cases the injured parties request to talk to police officers or public prosecutor asking for advice what to do since they suffer family violence and do not want to harm that family member (the violent person). They ask the state organs to help them and find the way to treat the violent person (for instance, an alcoholic father abusing the family when he is under the influence of alcohol, whereas he refuses to be treated, or a drug-addicted son who is selling things from home in order to buy drugs and after that is violent against the family members in order to extort money to buy drugs, and similar). For such victims of family violence the primary goal is to put a stop to violence and the secondary is punishment which should be imposed on the offender, it is even undesirable, they just seek a way how to provide treatment to the offender to which he would not agree voluntarily. The victims rather decide to report violence in the family with the knowledge that there is possibility for imposition of these security measures. It is in the victim's mind that security measures are far better option than imprisonment, or suspended sentence or fine (as the worst option, since the violent persion is still free and can continue acting violently, and also must pay fine and judicial costs, which again are born by the family budget).

It is clear, therefore, that when deciding on the penalty for the criminal offence of family violence the court should take into account with due dilligence the fact that the defendant was previously convicted and that he commited a crime in the state of severe acute alcoholic intoxication, which suggests that it is a specific personality and that previously imposed criminal sanctions obviously did not achieve their purpose and had effect on him to stop commiting crime. Therefore, the court rightly decided when determining that there is no room for a suspended sentence, but imposed the imprisonment and the measure of mandatory treatment of an alcoholic since the crime was committed due to alcohol addiction and there was serious danger for the defendant that due to this addiction he would continue committing crimes.[r]

---

q Билтен Вишег суда у Београду, број 85, Интермех, Београд, Приредили: мрА лександар Трешњев, судија Бојана Станковић, виши судијски сарадник. Пресуда Вишег суда у Београду Кж1.бр. 132/14 од 21. марта 2014. и пресуда Првог основног суда у Београду К.бр. 4337/13 од 10. фебруара 2014. године

r Judgment of Appelate Court (AS) in Kragujevac, Kž1. 1545/2010 date February 12, 2010.

***Case study* – method of analysis of certain cases of family violence**

At the end of this part of the paper, and before the concluding considerations, in order to show what an unwanted outcome for the family members can happen due to an inadequate state organs' response to reported family violence, we shall do a case study which will show the speed and manners of response of state organs to reported family violence and penal policy of the court.

For easier monitoring of a case study the family members will be marked as follows: father AA (1946), mother BB (1945), son CC (1965) and daughter-in-law DD (1970). AA and BB lived in matrimony from 1964 to 2010, after which they divorced and continued to live in two separate houses within the same farmstead in the vicinity of Valjevo. Also, we shall use short marks for Appelate Court in Belgrade – AC, The Basic Court in Valjevo – OS, Police Department in Valjevo – PU, Basic Public Prosecutor's Office in Valjevo – OJT, Higher Public Prosecutor's Office in Valjevo – VJT, Emergency Room of the Valjevo Hospital – UC, Clinical Center in Belgrade – KC.

On September 23, 2015, emergency unit notified PU that responding to the call for urgent medical assistance they came to a farmstead near Valjevo and found a dead body (corpse of a man) in the house and an elderly male in front of the house with injuries on the head (scull) dangerous for life. The injured person was transported to the UC, and after that to the emergency department of the KC. The police secured the scene and the crime scene investigation was performed. It was determined that in front of the family house the son CC phisycally inflicted serious bodily injuries to his father AA by repeatedly hitting his head to the ground. When he thought that he had killed him, the son CC entered the house, wrote a suicide letter in which he confesed to commiting a crime and stated the reasons which can be described by the following words – he commited a crime because the whole family suffered violence by the father in the previous period. He then drank a poison (Kreozan – very toxic pesticide) and commited suicide. The autopsy confirmed that death was violent due to the poison he drank. There were no witnesses present. Father AA died on September 29, 2015, at the KC ward. VJT did not request autopsy because the offender committed suicide (Case No. Pu-2959/15 dated September 30, 2015).

Mother BB said that she was not present during the incident because she was shopping in Valjevo and that her former husband was violent against all family members for a number of years and that all such incidents had been reported to the police after which the criminal procedures were held in which AA was sentenced by the court.

In order to determine what preceded such a family tragedy when one family member – son, killed another family member – father, and if the crime was committed in the heat of passion or the long-term conflict between family members resulted in homocide, we shall have an insight into the court documents of final judgments.

On June 21, 2006, police filed a criminal complaint under no. KU-320/06 against a person AA because of grounded suspicion that he commited a criminal offence of family violence since in the first half of 2006, he used violence and threatened to attack on life and body in a family household, he endangered bodily integrity and peace of the members of his family in such a manner that he evicted and maltreated his wife – the injured party BB, and he did the same to his son CC and his daughter-in-law DD. In addition to this, he beat his son and attacked him with a knife, and on June 14, 2006, he approached the victim BB while

she was doing house chores and used 1 meter long thumb-thick stick as a thing suitable to inflict serious injuries or impair health, to hit her on the head 4-5 times, on the occasion of which she got light bodily injuries such as contusions with surface abrasions. The victim BB came into the UC where on June 15, 2006, slight bodily injures were ascertained and on that day the incident was reported to the police. Crime scene investigation was not done. On December 27, 2006, the OJT submitted a motion to indict AA, and on January 26, 2007, the first-instance judgment was reached by the OS (K.No.. 1074/06), in which AA was found guilty for the crime he was accused of. He was imposed a 7-month suspended prison sentence, and the penalty would not be implemented if the defendant in the period of 2 (two) years upon the final judgment does not commit a new crime. In the explanation of the judgment the court stated: "When deciding on sentencing the court took into account both the purpose of punishment pursuant to Article 42 of the Criminal Code, and all circumstances that could have bearing on severity of the punishment contained in Article 54 of the same Code. Thus the court found certain extenuating circumstances on the part of the defendant in the facts that he is a family man, the father of two children. The court also evaluated as extenuating circumstance his sincere remorse which was unquestionably expressed during the main hearing, as well as his public promise that something like this would never be repeated... When determining the severity of the punishment and the period of checking the court assessed the degree of wrongfullness of the crime committed and the degree of culpability of the defendant, so according to the court's appraisal the determined sanction is adequate to the severity of crime commited by the defendant." Neither the Public Prosecutor's Office nor the defendant filed an appeal on the judgment.

It is interesting also that prior to reaching first-instance judgment, and after indictment, regardless of remorse and promises of AA stated in the explanation of the previous judgment, son CC filed criminal complaint on transcript against his father AA on January 03, 2007, on the basis of grounded suspicion that he commited the criminal offence of family violence. Namely, AA in a clear state of alcoholic intoxication, physically assaulted his wife BB, and when the son tried to protect her the offender took a piece of wood (split log) and used it to hit the son CC on the head inflicting him visible injuries. In the UC, the physician on call stated that the victim had light bodily injuries. On January 10, 2007, the police forwarded criminal complaint KU-21/07 to the Public Prosecutor's Office, which deferred criminal prosecution based on this criminal complaint, and after that dismissed it applying the principle of opportunity (Kt. No.. 70/07 dated July 26, 2007).

On May 29, 2007, the son CC reported by the telephone his father AA that he threatened to physically get even with him. The police acted upon the report, interviewed both persons, where AA negated threats because there were no witnesses to the incident or other evidence that there were threats of physical encounter, the police used their powers and based on the Law on Police gave AA a caution (Pu – 4388/07).

On April 25, 2009, the daughter-in-law DD filed a new criminal complaint against her fahter-in-law AA for family violence committed on April 24, 2009. On April 29, 2009, criminal complaint with collected evidence was forwarded to the OJT Valjevo (KУ-269/09). This criminal complaint included the information (Pu-2954/09 of April 24, 2009) that BB personally filed against AA to the on-call office of Police Department Valjevo (around 15:05 hours). She reported that the mentioned person maltreated all family members. On this occasion BB refused to file criminal complaint on transcript against her husband AA. Also,

criminal complaint (KU-269/09) included the information of the same day (April 24, 2009) which BB communicated by telephone. Namely, when she returned home from the on-call service of Police Department Valjevo, around 19:05, and while she was chopping wood she heard AA insulting DD and he threatened to kill everyone in the house. The police arrived at the scene and collected necessary information from all family members, while DD was invited to file criminal complaint in writing to the on-call police service, which she did on April 25, 2009. On July 08, 2009, after conducted investigation upon this complaint, the OJT filed a motion to indict Kt.No.407/09 AA on grounded suspicion that he committed the criminal offence of family violence. In the meantime the victim DD died of natural causes in November 2009. The OS reached first instance judgment K.No..2458/10 on October 07, 2010, and convicted the defendant AA for the crime pursuant to Article 194, paragraph 2, in relation to paragraph 1 of the Criminal Code, and imposed 1-(one)-year suspended sentence, and the punishment would not been implemented if the defendant in the period of 2(two) years following the final judgment does not commit another crime. Also, the court also imposed the security measure of mandatory alcoholic treatment at freedom, which cannot last longer than 2 (two) years.

As for the extenuating circumstances on the part of the defendant the court assessed the fact that the legal heir of the late injured party DD, witness CC, did not join criminal prosecution, and did not set property-law request, as well as the fact that the defendant was the father of two children, while as the aggravating circumstance the court assessed the fact that the defendant had already been sentenced twice before, one for the same criminal offence.

Appeals to the first-instance judgement were lodged by both the defendant and the JT and the AS rejected both as ungrounded confirming the first-instance decision by the judgment Kž1 1998/11 dated April 29, 2011.

On March 29, 2011, the person CC on his own initiative approached the OJT and filed criminal complaint on transcript (Kt. No. 511/11) against AA because of new family violence. Namely, he said in the complaint that on March 26, 2011, around 19:00 hours, while he was in the chimney room of the house he saw through the window his fahter AA entering common yard clearly drunk and shouting words "bitch, thief, whore", to his mother BB, who was in the kitchen at the time, and after that the threatening words "I am going to kill you, I will strangle you with my bear hands here in front of the fountain". When he heard that, and knowing the violent character of his father AA, CC ran out to the terrace and shouted to his mother to lock herself in the summer kitchen and not to go out. AA then turned to his son CC saying "I will kill you from behind, I will kill you bastard, thief". He continued threatening verbally saying "if I don't manage to kill you from behind I shall sell a hectare of land and pay some people to kill both you and BB". For fear he then felt for his own life and the life of his mother, CC ran into the house and locked himself in. AA continued insulting and threatening for the next couple of hours. Criminal complaint was submitted to the police the very same day, who collected information and other evidence and made a report as an addition to criminal complaint forwarded to the OJT on April 05, 2011 (Pu-2480/11).

On April 29, 2011, the OJT summoned the victims BB and CC to give statements regarding the motion according to Article 236 of the Criminal Procedure Law to defer the criminal prosecution against AA, that he pays 15,000 dinars for humanitarian purposes, so that the criminal complaint will be dismissed due to application of the principle opportunity. Both

victims BB and CC refused the OJT's proposal. On May 19, 2011, the proposal was made to undertake investigation, which was done by the investigating judge, where the case was returned to the OJT on June 17, 2011. On July 07, 2011, the OJT filed motion to indict AA for commiting crime according to Article 194, paragraph 1 of the Criminal Code. The first-instance judgment was brought on April 05, 2012, and the defendant AA was convicted for the stated crime (K.No.798/11). He was imposed a 5-(five)-month suspended sentence, which will not be executed unless the defendant within 1 (one) year from the final judgment does not comit another crime. In the explanation of the decision the court stated as aggravating circumstance previous conviction of the defendant, and on the other hand did not find any extenuating circumstance. It was the Court's attitude that such crimial sancation was adequate to the committed crime and the degree of culpability of the defendant, and in this respect when deciding on criminal sanction the court among other things was guided by the fact that there was possiblity for some kind of improval of mutual relations between the defendant and the victims, whereas the victim AA was the party who was to contribute crucially to that imrpovement by his behaviour. ***The opinion of the court was that in that way the goals would be accomplished of both special and general prevention.***

The appeal to this judgment was lodged by both the defendant and the OJT. The AS rejected the appeals as ungrounded and confirmed the first-instance ruling by the judgement Kž1-3021/12 dated June 20, 2012. In the explanation of the judgment among other things the following is stated: "The AS finds that the appeals are ungrounded. This is because the criminal sanction determined for the defendant by the attacked judgment for committing subject criminal offence according to the assessment of this court is in all according to the severity of the committed criminal offence and the degree of culpability of the defendant as the offender, as well as according to all other relevant circumstances pursuant to Article 54 of the Criminal Code, which the court of first instance properly determined and stated in the explanation of the attacked judgment, by the same and contrary to the presented points of appeal, gave adequate significance. This is why such imposed criminal sanction, according to the AS fully achieves the purpose of punishment prescribed by the provisions of Article 42 of the Criminal Code, as well as the purpose of imposing suspended sentence, so we find unfounded both the proposal from the Prosecutor's appeal for stricter punishment and imposing of imprisonment (since the Prosecutor stated as aggravating circumstances the elements of criminal offence which according to the assessment of this court cannot be assessed as aggravating), and the defendant's appeal that the imposed criminal sanction is rather rigorous, and due to the previously stated reasons, and in these appeals there is none circumstance stated that the court of first instance has not already assessed when imposing the criminal sanction to the defendant, and which could be significant for it."

This case study picturesquely shows the actions taken by the state organs on the reported family violence. The police reacts immediately and intervenes upon reported family violence, they process and complete the case within a few days and forward criminal complaint to the Public Prosecutor's Office. Public Prosecutor's Office tries to apply the principle of opportunity, inviting the victims to give their statements in this regards, which leads to secondary victimization of the victim. Unless criminal charge is dismissed for these reasons, criminal procedures last for a relatively long time, particularly when deciding upon the appeals of the parties. Punishing policy is mild,

suspended sentence is the most frequent criminal sanction imposed, and the appeals to such rulings do not achieve appropriate results.

CONCLUDING CONSIDERATIONS

The question is where do suddenly all those "laws, initiatives, recommendations, strategies" for suppression of family violence come from. Long ago it was said that "too many laws spoil the state" or as the saying goes "too many cooks spoil the broth". Has the reason been for introducing this incrimination to leave impression in the public that the state fights against family violence, a populist-political action sending the message to prohibit punishing children or has the goal really been to increase protection from family violence? The fact is that very small number of criminal procedures ends with a sentence and imprisonment which is within the limits between special legal minimum and maximum. This means that the court in the majority cases, even when convinced that the defendant is guilty of the criminal offence of family violence, considers that suspended sentence will accomplish the purpose of punishment. We must take into account that Criminal Code prescribes that the court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender.[s] Within the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of a suspended sentence and judicial admonition is not to impose a sentence for lesser criminal offences to the offender who is guilty when it may be expected that an admonition with the threat of punishment (suspended sentence) or a caution alone (judicial admonition) will have sufficient effect on the offender to deter him from further commission of criminal offences.[t] *In determining whether to pronounce a suspended sentence the court shall, having regard to the purpose of suspended sentence, particularly take into consideration the personality of the offender, his previous conduct, his conduct after committing the criminal offence, degree of culpability and other circumstances relevant to the commission of crime.*[u]

If we take a look at the number of pronounced suspended sentences and take into account previously stated provisions of the Criminal Code, we come to the conclusion that the offenders of family violence are correct personalities with spotless previous conduct (prior to conviction), good behaviour after the committing the criminal offence, low level of culpability in doing crime of family violence, and similar. Is it really

s КЗ, члан 54. став 1

t КЗ, члан 64.

u КЗ, члан 66.

sothe statistical data on the number of repeat offenders, as well as the case study show differently.

We are of the opinion that the court of first instance should particularly pay attention of the purpose of suspended sentence and punishment in general, that courts of second instance should seriously consider in their decisions reached regarding the appeals of the Public Prosecutor's Office on the first-instance ruling the possibility to pronounce stricter punishment. One of the ways is for the second-instance judgments to order the courts of first instance to explain especially and particularly the extenuating circumstances as grounds for the court to alleviate penalty.[v]

In the end it should point out that the specific element of crime itself creates confusion both in theory and practice. Public Prosecutor's Office often makes no difference between criminal offence of family violence and misdemeanour from the field of the Law on Public Order and Peace, and various court councils of the same court reach contradictory judgments regarding the same legal issue, often interpreting differently the act and consequence of the commitment of the basic form of crime of family violence.

The advocates of this incrimination point out that it was necessary to introduce family violence into our criminal-law system so that all socially-negative phenomena characterizing violence among the family members (mostly behind the closed doors, far from the public eye), and mainly of the strong ones against the weak ones (men against women, the adults against children, the young against the elderly), will be punished more strictly. However, the results of the study suggest that our legal system, with strict scientific reasoning and objective approach, has not responded to the subject of doctrinaire analysis, and that is the problem of family violence. Amending the existing and adopting new regulations, the state is attempting to find the corresponding "recipe" to suppress these extremely harmful social phenomena, however, as we have seen based on the results of the study of our court practice, this does not give corresponding results in the field of preventing and suppressing family violence.

---

v Decision of the Appelate Court in Belgrade, Kž 3792/2012 dated September 24, 2012. The explanation says: "Namely, from the operative part of the attacked judgment it results that the court of first instance, applying the provisions of Articles 45, 54, 56 and 57 of the Criminal Code, sentenced the defendant to six-monthimprisonment for the criminal offence of family violence pursuant to Article 194, paragraph 3, and in connection with paragraph 1 of the Criminal Code, for which the prescribed punishment is imprisonment from two to eight years, while it failed to state in the explanation of the judgment what the governing reasons were to mitigate the defendant's sentence. When deciding on the type and length of punishment the court of first instance stated in the explanation only the extenuating circumstances, not finding the aggravating ones, whereas it did not state which of the extenuating circumstances have the character of particularly extenuating ones (and if they do) due to which it mitigated the defendant's punishment. Therefore, the court of first instance has only determined extenuating circumstances on the part of the defendant, listed them, but failed to state their significance in other words did not state the reasons it was governed by when it pronounced the punishment of imprisonment below the legally set miniumum, i.e. punishment more lenient than the one legally prescribed."

REFERENCES

1. Вуковић, И. (2012). Насиље у породици као кривично дело-поједини проблеми у примени права, текст у зборнику *Насиље у породици* (ур. С. Панов, М. Јањић-Комар, М. Шкулић), Правни факултет Универзитета у Београду, Београд, 128-143.
2. Билтен Вишег суда у Београду, број 85, Интермех, Београд, Приредили: мр Александар Трешњев, судија и Бојана Станковић, виши судијски сарадник. Пресуда Вишег суда у Београду Кж1.бр. 132/14 од 21. марта 2014. и пресуда Првог основног суда у Београду К.бр. 4337/13 од 10. фебруара 2014. годинеКривични законик Савезне Републике Немачке, Центар маркетинг, Београд, 1998,
3. Кривичниот законик, *Службен весник на Република Македонија*, бр. 37/96, Закон за изменување и дополнување на Кривичниот законик, *Службен весник на Република Македонија*, бр. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09 година, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013.
4. Кривични закон РС, *Службени гласник СРС*, бр. 26/77, 28/77 – испр., 43/77 – испр., 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 и 21/90 и *Службени гласник РС*, бр. 16/90, 26/91- одлука УСЈ бр. 197/87, 75/91 – одлука УСРС бр. 58/91, 9/92, 49/92, 51/92, 23/93, &7/93, 47/94, 17/95, 44/98, 10/2002, 11/2002- испр, 80/2002-др закон, 39/2003 и 67/2003.
5. Кривични законик, *Сл. гласник РС*, бр. 85/2005, 88/2005 – испр., 107/2005 – испр., 72/2009, 111/2009, 121/2012, 104/2013 и 108/2014.
6. Коларић, Д. (2015). Концепцијске новине у Кривичном законику Србије и адекватност државне реакције на криминалитет, текст у зборнику *Суђење у разумном року и други кривичноправни инструменти адекватности државне реакције на криминалитет* (ур. Станко Бејатовић), Српско удружење за кривичноправну теорију и праксу, Златибор, стр. 11-41.
7. Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (Vigente hasta el 28 de Octubre de 2015), http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html 10.10.2015.
8. Code pénal suisse http://www.admin.ch 05.10.2015.
9. Марковић, С. (2015). Улога полиције у откривању и доказивању насиља у породици, Докторска дисертација, Правни факултет, Универзитет у Београду.
10. *Предмет Томашић против Хрватске*, Апликација бр. 46598/06, Пресуда од 25.01. 2009.
11. *Предмет Опуз против Турске*, Апликација бр. 33401/02, Пресуда од 09.06. 2009.
12. Ковачевић, М. (2014). Прогањање и средства реаговања, *Civitas*, 7, стр. 50.
13. Посебни протокол за правосуђе у случајевима насиља над женама у породици и партнерским односима, Република Србија, Министарство правде и државне управе, Број: 119-01-00130/2013-05, датум: 14. јануар 2014. године, Београд.
14. Пресуда Апелационог суда (АС) у Крагујевцу, Кж1. 1545/2010 од 12.2.2010. године.
15. Рарог, А. И. (2013). *Комментарий к Уголовному кодексу Российской Федерации*, Проспект, Москва.
16. Roxin, C. (2006). Strafrecht- allgemeiner teil, Verlag C.H.Beck, München.
17. Решење Апелационог суда у Београду, Кж1 3792/2012 од 24.9.2012. године.
18. Симеуновић-Патић, Б. (2015). О насиљу и теоријским приступима његовом објашњењу, текст у зборнику: *Насиље у Србији – облици, чиниоци, контрола* (ур. Б. Симеуновић-Патић), Први део, Криминалистичко-полицијска академија, Београд, стр. 18.
19. Стојановић, З. (1991). Политика сузбијања криминалитета, Нови Сад, страна 28.
20. Стојановић, З. (2012). *Коментар Кривичног законика*, Службени гласник, Београд.
21. Стојановић, З., Делић, Н. (2013). *Кривично право – посебни део*, Београд.
22. Стојановић, З. (2015). *Кривично право – општи део*, Београд.
23. Шкулић, М. (2012). Кривично дело насиља у породици, текст у зборнику *Насиље у породици* (ур. С. Панов, М. Јањић-Комар, М. Шкулић), Правни факултет Универзитета у Београду, Београд, стр. 71-87.