

*Rebeka KOTLO**

Faculty of Law, Džemal Bijedić University of Mostar

*Ivana MIJIĆ VULINOVIĆ***

University of Dubrovnik

GENDER DISCRIMINATION AND DOMESTIC VIOLENCE IN THE REPUBLIC OF CROATIA AND BOSNIA AND HERZEGOVINA

Gender discrimination and domestic violence against women are critical points of the human rights system in the Republic of Croatia and Bosnia and Herzegovina, and due to the crisis caused by the Covid 19 pandemic, the situation has worsened. The legal framework and the envisaged institutional mechanisms in both countries are at a satisfactory level, so the question arises as to what are the key causes of the discrepancy between the normative and the actual state of affairs as well as the aforementioned deterioration. This work starts from the assumption that the root of the problem rests in: traditional heritage, economic dependence of women on men, and inadequate institutional protection of victims of gender discrimination and domestic violence.

Keywords: Republic of Croatia, Bosnia and Herzegovina, gender discrimination, domestic violence, Covid 19.

1. INTRODUCTION

Prohibition of discrimination based on gender is one of the elements of the principle of prohibition of discrimination or, as Barić Punda points out (2005, p. 28) principles of non – discrimination, freedom from discrimination, principles of equality, and harmony in differences. Discrimination based on gender is the root cause of gender-based violence. In the Republic of Croatia and Bosnia and Herzegovina, both phenomena are widespread, and the Covid 19 virus pandemic has further worsened the situation.

* PhD, Associate Professor, ORCID: 0000-0003-4030-8088, e-mail: rebeka.kotlo@unmo.ba.

** PhD, Expert associate, ORCID: 0000-0002-4878-0400 e-mail: ivana.mijic@yahoo.com.

The Croatian and Bosnian – Herzegovinian legal and strategic framework, standards and practice in the areas of non – discrimination and gender equality are presented. The actual state of affairs in both countries is presented through authoritative reports and analyses.

Given that protection against discrimination based on gender and gender-based violence in both countries is not at a satisfactory level, despite the satisfactory normative framework, the causes of this discrepancy are detected and basic guidelines for solving the problem are proposed. The starting point is certainly raising awareness of gender equality through the fight against prejudices and stereotypes, which, as Stantić and Bilbija point out (2014, p. 449), is much more difficult in this part of Europe than in the more developed ones, and is a prerequisite for other types of fight against gender discrimination.

2. INTERNATIONAL HUMAN RIGHTS LAW – PROHIBITION OF DISCRIMINATION, GENDER EQUALITY AND PROTECTION FROM GENDER-BASED VIOLENCE

Making a distinction between men and women does not always constitute discrimination in itself. Only those distinctions that have no reasonable justification with regard to the goal and consequences of the procedure or where there is no proportion between the means used and the goal to be achieved (principle of proportionality) are considered discriminatory. Zorić et al. deal with this in detail (2018, p. 14 and 15).

The existing international European and United Nations instruments, which form the international and European legal framework for the implementation of the prohibition of discrimination and gender equality, are generally accepted by almost all modern countries that, through their constitutions and other legal acts, legally regulate this issue.¹

¹ The most important documents that make up the international and European legal framework for achieving the prohibition of discrimination and gender equality are: Universal Declaration of Human Right (1948), International Covenant on Civil and Political Right (1966), International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW (1979) with Optional Protocol, General Recommendation 19 of the UN Committee on the Eliminations of All Forms of Discrimination Against Women (1992), International Convention on the Elimination of All Forms of Racial Discrimination (1969), Convention on the Rights of the Child (1989), United Nation Declaration on Elimination of Violence against Women – DEVAW (1993), Beijing Declaration with Platform for Action (1995), Millennium Development Goal (1990 – 2015)/UN Millennium Declaration (2000), Agenda for sustainable Development until 2030 (Sustainable Development Goals – SDG), Convention on the Rights of Persons with Disabilities (UN, 2006), UN Resolution 1325 Women, Peace and security (2000), European Convention for the Protection of Human Rights and Fundamental Freedom (1950) and additional protocols, European Social Charter (1961, 1966), Council of Europe Convention on Preventing and Combating Violence against women and domestic violence (CAHVIO, Istanbul, 2011), Declaration on the Equality of Women and Men of the Council of Europe (1988), EU Council Directive 75/117/EC on February 10, 1975. on the harmonization of the laws of member states with regard to the principle of equal pay for women and men, Social Security Directive (on the progressive application of the principle of equal treatment of men and women in matters of social security) – 1997 (79/7/EEC – OJ L 6), Recommendation R(856), no.4, of the Committee of Ministers to member states on domestic violence, Recommendation R(98), no.14, of the Committee of Ministers to member states on integrating the gender aspect into public policy, Recommendation R(2003), no. 3, of the Committee of Ministers to member states on the balanced participation of women and men in political and public decision – making, Recommendation R(2007), no. 17, Committee of Ministers to member states on standards and mechanisms for gender equality, the EU Charter of Fundamental Rights, from 2000, which confirms the prohibition of discrimination and the obligation to ensure the equality of men and women in all areas, the Conventions of the International Labor Organization of the UN (ILO): Convention 100 on the equal

Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.²

As expressed in Article 3b of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (otherwise known as the Istanbul Convention) - domestic violence (family violence) means any act of physical, sexual, psychological or economic violence that occurs in the family or household, or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the same household with the victim.

3. CROATIAN LEGAL AND STRATEGIC FRAMEWORK, STANDARDS, AND PRACTICE IN THE AREAS OF NON – DISCRIMINATION AND GENDER EQUALITY

Gender equality, based on Article 3. of the Constitution, is one of the highest values of the constitutional order of the Republic of Croatia and at the same time the basis for the interpretation of all constitutional provisions. The general bases for promotion and protection and fundamental values are determined by the Law on Gender Equality. It also determines the way to protect against gender discrimination, but also to create equal opportunities for men and women. It is very significant that, based on Article 14, Paragraph 4 of the Act on Suppression of Discrimination, the Ombudsman and special Ombudsman are required to report all records of cases of discrimination under their jurisdiction by gender.

The Law on Gender Equality was adopted in 2008, and the Law on Amendments to the Law on Gender Equality in 2017. Nothing significant has been changed by it; the only significant addition is Article 1.a. which expressly states that the entire law is harmonized with the relevant acts of the European Union. Regarding the compliance of the Law of Gender Equality with international democratic standards, its Article 4 is of exceptional importance, as it determines that the provisions of the said law „must not be interpreted or applied in a way that would limit or diminish the content of guarantees on gender equality that stem from the general rules of international law, the acquis of the European Community, the United Nations Covenant on Civil and Political Rights, i.e. economic, social and cultural rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.“

The Law on Gender Equality determines the positive obligations of state authorities whose purpose is to promote gender equality and combat discrimination and, in accordance

remuneration of men and women for work of equal value (1951), Convention 103 on maternity protection (revised in 1952), Convention 111 on discrimination in employment and occupation (1958), Convention 156 on equal opportunities and treatment for male and female workers – worker with family responsibilities (1981).

² United Nations. 1993. United nations on the elimination of violence against women – Devaw. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaration%20elimination%20vaw.pdf. (14. 7. 2022).

with the international democratic standard that encourages unequal treatment of unequals precisely for the purpose of achieving equality and abolishing discrimination, approves the establishment of special measures. The law defines special measures as „specific benefits that enable people of a certain gender to participate equally in public life, eliminate existing inequalities or ensure rights that were previously denied to them“ (Art. 9, paragraph 1). They are temporary in nature, they must be determined by law or other legal regulation and as such are not considered discrimination. These are, for example, the special rights of pregnant women and mothers. Numerous positive obligations (Art. 11) with the aim of achieving gender equality, precisely with regard to these special measures, are prescribed for state administration bodies and legal entities predominantly owned by the state. They are obligated not only to apply special measures, but also to adopt action plans for the promotion and establishment of gender equality. Special measures also aim to achieve equal participation of women and men in bodies of legislative, executive and judicial power, including public services (Art. 12).

Among the fundamental principles in the Family Law are the principle of equality between men and women, and the principle of prohibition of discrimination based on gender. (Art. 3) The prohibition of discrimination on the basis of gender is normatively fully and consistently respected and developed in all forms and elements of family relations by the Family Law.

The Law on Protection from Domestic Violence and the Criminal Code are still not aligned with the Istanbul Convention, because they do not provide adequate protection from the violence that occurs between current and former intimate partners.³ The ombudsman went on to point out that violence against women does not only take place in married and extramarital unions, but to a large extent includes violence against women who are (or were) in an intimate partnership. The ombudsman recommends that Croatian legislation be harmonized with the Istanbul Convention as soon as possible in order to create a comprehensive framework, policies and measures for the protection and assistance of all victims of violence against women, including women who are in intimate current or former partner relationships. Pursuant to Article 16 of the Law on Gender Equality, the media are obligated to promote awareness of gender equality. Article 16, paragraph 2 explicitly prohibits the public display and presentation of women and men“ in an offensive, belittling or humiliating manner, with regard to gender and sexual orientation.”

With the new Law on protection against domestic violence, which entered into force on January 1, 2020, and with the accompanying implementing documents,⁴ in the Republic

³ Definition of domestic violence as a criminal offence under Art. 179a of the Penal Code reads: anyone who seriously violates the regulations on protection against domestic violence and thus causes a family member or close person to fear for his or her safety or the safety of those close to him or her or puts them in a degrading position or state of prolonged suffering, and thus no serious crime has been committed, will be punished with a prison sentence of 1 to 2 years.

⁴ Protocol on handling in the case of sexual violence, Rulebook on the implementation of protective measures of mandatory psychosocial treatment, Rulebook on the method of implementation of protective measures prohibiting the approach, harassment or talking of a victim of domestic violence and removal from the joint household, Rulebook on the method of implementation of the protective measure of mandatory addiction treatment, Rulebook on the method of collection, processing and delivery of statistical data and reports from the area of application of the Act on protection against domestic violence, Rulebook on the implementation of the protective measure of mandatory psychosocial treatment.

of Croatia, this area is regulated in accordance with international democratic standards.

A comprehensive set of documents were adopted for the implementation of positive anti-discrimination legislation in practice. However, they were only partially implemented.⁵

4. BOSNIA AND HERZEGOVINA'S LEGAL AND STRATEGIC FRAMEWORK, STANDARD AND PRACTICE IN THE AREA OF NON – DISCRIMINATION AND GENDER EQUALITY

Law on Gender Equality in Bosnia and Herzegovina (hereinafter: BiH) (in addition to entity constitutions, the Law on Prohibition of Discrimination and international documents and relevant entity laws and the generally applicable legal framework of the Federation of Bosnia and Herzegovina, the Republic of Srpska and Brčko District of Bosnia and Herzegovina) regulates, promotes and protects gender equality, guarantees equal opportunities and equal treatment of all persons regardless of gender, in the public and private sphere of society, and regulates protection against discrimination based on gender.

According to Article 6, paragraph 4, competent authorities are obligated to take appropriate measures to eliminate and prevent gender-based violence in the public and private spheres of life, and to provide instruments for providing protection, assistance and compensation to victims. The law provides definitions of direct and indirect discrimination, and allows the establishment of special measures with the aim of promoting gender equality and eliminating existing practices of discrimination. It is particularly important to point out that in the field of combating gender-based violence and changing traditional gender roles in society, the Law in Article 6, Paragraph 5, recognizes the obligation of educational activities and raising the awareness of the population in order to eliminate prejudices, customs and all other practices based on the idea of the inferiority or the superiority of any gender, as well as the stereotypical roles of men and women. Further, Articles 10 to 24 of the Law prohibit discrimination on the basis of gender and establish rights and obligations in accessing and enjoying all rights and services established by valid laws within BiH in all forms of social life (education, employment, work and access to all types of resources, social protection, health care, sport and culture, public life, media, statistical records, judicial protection, and obligations of competent authorities).

It is specifically stipulated that competent authorities take special measures to protect and improve women's reproductive health (Article 18, Paragraph 3). The law also prescribes the obligation for competent authorities at all levels of government in BiH to take all

⁵ Namely, the Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia adopted the National Plan for the fight against discrimination for the period from 2017 to 2022. He adopted the Action Plan for the implementation of the National Plan for Combating Discrimination 2017-2019. The same office initiated the process of drafting the National Plan for the Protection and Promotion of Human Rights and Suppression of Discrimination for the period from 2021 to 2027 and two accompanying implementation documents: Protection Action Plan and the promotion of human rights for the period from 2021 to 2023 and the Action Plan for combating discrimination for the period from 2021 to 2023. The Ministry of Demography, Family, Youth and Social Policy adopted the National Strategy for Protection from Domestic Violence for the period from 2017 to 2022. The ministry, which has since been renamed the Ministry of Labour, Pension System, Family and Social Policy, monitors the implementation and measures from this strategy, and cities are required to submit annual reports to it.

appropriate and necessary measures to implement the provisions of the Law on Gender Equality, as well as measures and activities from the Gender Action Plan of Bosnia and Herzegovina (Article 24).

Gender Action Plan of Bosnia and Herzegovina is an important strategic document in BiH for the realization of gender equality in all areas of social life and work, in the public and private sphere, the adoption of which is envisaged in the Law on Gender Equality in Bosnia and Herzegovina. This strategic document covers all areas of social life; however, it determines priority and transferal („cross-cutting“) areas, as well as areas related to strengthening systems, mechanisms and instruments for achieving gender equality, and strengthening cooperation and partnership. Prevention and suppression of gender-based violence, including domestic violence as well as human trafficking is defined as a special program. In accordance with the constitutional division of jurisdiction in BiH, legislation in this area of protection against domestic violence is adopted at the entity level.⁶

The principle of non – discrimination, equal treatment and equal opportunities for women and men and gender equality are particularly important for BiH’s accession to the European Union. In the Declaration of the Council of Europe on the equality of women and men, gender equality is defined as one of the basic principles of democracy. There

⁶ Significant legal acts and the strategic framework include: Criminal Code of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/216, 75/17, Criminal Code of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 64/17, 104/2018 – Decision US, 15/2021 (Domestic violence is regulated as a criminal offence. In 2019, the National Assembly of RS adopted the Law on Amendments to the Law on Protection from Domestic Violence “in order to improve protection, assistance and support for victims of domestic violence as well as to harmonise this special law with the Istanbul Convention. This confirms the seriousness and responsibility when it comes to fighting and preventing domestic violence in such a manner that it is no longer classified as a misdemeanour but rather a criminal offence, by insisting on the application of provisions of the Criminal Code of RS that define domestic violence as a criminal offence. The Law on Amendments to the Law on Protection from Domestic Violence of RS was adopted during a meeting of the National Assembly of RS on 27 September 2019. The key change relates to the abolition of the definition of domestic violence as a misdemeanour and application of provisions of the Criminal Code of RS that define domestic violence as a criminal offence.” See: Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Report submitted by Bosnia and Herzegovina pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 6 February 2020 GREVIO/Inf(2020)12, Published on 3 July 2020), Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 22/05, 51/06, 20/2013, 75/2021 Family Law on the Federation of Bosnia and Herzegovina, *Official Gazette of The Federation of Bosnia and Herzegovina*, no. 33/05, 41/05, 31/14, Law on Protection from Domestic Violence, *Official Gazette of the Republic of Srpska*, no. 102/12, 108/13, 82/15, 84/2019, Family Law of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 54/02, 41/08, 63/14, Strategic plan for the prevention and fight against domestic violence in the Federation of Bosnia and Herzegovina – 2009 – 2010, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 77/08, Law on Criminal Procedure, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13, 59/14, 74/20, Strategy for preventing and combating domestic violence (2013 – 2017), *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 95/13, Strategy for Suppression of Domestic Violence of the Republic of Srpska (2014 – 2019), *Official Gazette of the Republic of Srpska*, no. 63/14, Strategy for Suppression of Domestic Violence of the Republic of Srpska (2020 – 2024), Banja Luka, June 2020, Republic of Srpska, Ministry of Family, Youth and Sports, *Official Gazette of Bosnia and Herzegovina*, no. 89/14, Action plan for the implementation of UNSCR 1325 in Bosnia and Herzegovina for the period 2018 – 2022, and legal and strategic documents in the field of access to justice – in particular, the right to free legal aid.

are numerous European Union (hereinafter: EU) directives that treat the field of gender equality, most notably those in the field of employment and social protection. The EU Charter of Fundamental Rights, from 2000, confirms the prohibition of discrimination and the obligation to ensure the equality of men and women in all areas. In 2006, the EU adopted a Roadmap for equality between women and men. For Bosnia and Herzegovina, it is the following assertion, included in its last chapter, is of particular importance:

„... countries entering the European Union must accept the basic principles of equality between women and men. They are obligated to provide and consistently arrange legislation with appropriate administrative measures and the legal system. Monitoring the transition, implementation and introduction of European Union legislation related to gender equality is a priority in future inclusion processes.“

The BiH Gender action plan for the period 2018 – 2022 contains measures that will be implemented in order to realize three strategic goals aimed at creating, implementing and monitoring a program of measures. The purpose is to improve gender equality in government institutions in priority areas (in particular: prevention and suppression of violence based on gender, including domestic violence and human trafficking, work, employment and access to economic resources, public life and decision – making and further strengthening of cooperation at the regional and international level), building and strengthening systems, mechanisms and instruments for achieving gender equality, as well as establishing and strengthening cooperation and partnership. In 2013, a new Law on protection from domestic violence was adopted, introducing certain novelties, such as specifying the concept of domestic violence, prescribing an emergency procedure in the imposition of protective measures bearing in mind their purpose of protecting the victim of violence, prescribing other forms of protection for the victim of violence, such as:

1. determining the source of funding for the safe houses
2. adopting a program of measures at the federal and cantonal levels for the prevention
3. protection and fight against domestic violence
4. the obligation to establish referral mechanisms for dealing with the procedure of protecting victims of violence in each local community
5. the obligation of a multidisciplinary approach in providing protection to victims of violence including the obligation to keep statistical data on reported cases of violence.

The basis of the sustainability of work on the implementation of international and domestic legal acts, and the prevention and fight against violence against women with an emphasis on domestic violence is guaranteed through Article 36 of the Law on Protection from Domestic violence, which stipulates the obligation to adopt a strategic document in this area. In this regard, the Government of the Federation of Bosnia and Herzegovina adopted the Strategy for the prevention and fight against domestic violence (2013 – 2017), implementing also the obligations from international. Chapter 8 of the Strategy defines the method of developing annual action plans and reports to the government, thus enabling continuous planning, implementation of activities and reporting to the Government of the Federation of Bosnia and Herzegovina. The activities foreseen in the Strategy become integral parts of the work plans of the relevant ministries, and in this way, the funds for the implementation of the document are secured. Due to new regulations on strategic planning

at the level of the Federation of Bosnia and Herzegovina) the validity of the document was extended by a special Decision of the Government of the Federation of Bosnia and Herzegovina, and it was to be implemented until 2021. The Government of the Federation of BiH prepares Action Plans for the implementation and monitoring of the Strategy.

5. VICTIMS OF DOMESTIC VIOLENCE, PREVENTION, SUPPRESSION AND SANCTIONING OF GENDER – BASED VIOLENCE

As written in the manual „Proceedings in cases of domestic violence“ (2017, p. 8) domestic violence exists in all countries in the world, regardless of their democratic tradition, economic strength, level of education or culture. It is „... a global phenomenon that is present in all societies of the world and represents any form of physical, sexual, psychological or economic violence or the threat of such violence to which one of the family members is exposed. Violence is not an isolated, single event, but a pattern of repetitive behaviours.“

In Recommendation no. 19 United Nations Committee for the Elimination of All Forms of Discrimination against Women (1992) it is emphasized that „... gender-based violence is a form of discrimination that seriously threatens women’s ability to enjoy rights and freedoms on the basis of equality with men“. In addition, women victims of domestic violence are a doubly threatened group, because they are more prone to falling into poverty. This is observed when poverty indicators are monitored, as, for example, the Croatian Statistical Office did from 2002 to 2004 and issued a report (2005). Gender – based violence limits opportunities in society and increases the risk of social inclusion, as can be seen from the examples in the World Bank Economic Vulnerability and Welfare Study.⁷

“The cause of domestic violence lies in the learned pattern of behaviour, and the educational continuity to which educational, sociological, economic, health and other factors contribute. As there are no significant differences in the occurrence of domestic violence based on living standards, financial status and educational status, it can be concluded that domestic violence is a learned pattern of behaviour integrated into the construction of both individual identities and, ultimately, the social collective that considers this behaviour acceptable with direct connection with the patriarchal society.“ This was also written in the manual „Proceedings in cases of domestic violence“ (2017, p. 8).

The social context, as pointed out in the manual created as a part of the development program of the United Nation in Croatia, also has a considerable influence on the position of women within the family.⁸

„...one of the risk elements that contribute to violence against women in the family: the consequences of the war, the increased threshold of tolerance for violence, men who returned from war with a diagnosis of PTSD, the transition that hit women particularly hard and the re-traditionalisation of society. For structural changes at the political level,

⁷ World bank. 2000. Economic vulnerability and welfare study. Available at: <http://web.worldbank.org/archive/website00978/WEB/PDF/ECONOMIC.PDF> (25. 7. 2022).

⁸ *Unconnected: Faces of social exclusion in Croatia*. 2006. Zagreb: United nations development program (UNDP) in Croatia. Available at: https://planipolis.iiep.unesco.org/sites/default/files/ressources/croatia_nhdr-2006-eng.pdf (19.8.2022), pp. 98-99.

cooperation between NGOs and relevant governmental and other institutions (centres for social welfare, police, judiciary) is necessary, as well as work on clearly and precisely defining the obligations of individual institutions and sanctions for non – compliance.“

Research on the well-being and safety of women in BiH conducted by the Organization for Security and Cooperation in Europe shows that three out of five women believe that violence against women is a common occurrence in their communities. Likewise, four out of ten women in BiH stated that they experienced psychological, physical or sexual violence after the age of 15, by their partner or other persons. Almost half of the surveyed women believe that domestic violence is a private matter, and over 40% of them do not know what to do if they experience violence. Unfortunately, most women do not report the violence they experience, citing shame, material dependence/problems, lack of information, mistrust of services and ultimately, fear, as reasons for not reporting violence to the relevant institutions.⁹

Also, the conclusions of the aforementioned research indicate that social norms and attitudes are changing, but the number of reports of violence is at a low level, there is no proper implementation of the law, and most women are directly affected by gender-based violence.

The case law is still dominated by the practice of pronouncing conditional sentences, milder qualifications for the crime of domestic violence, reluctance to prosecute domestic violence together with other crimes, and sentencing at or below the limit prescribed by law (Petrić & Radončić, 2014, p. 52. Ćehajić – Čampara, Veljan, 2018, pp. 12).

Previous research shows that we cannot evaluate the sanctioning of the criminal act of domestic violence as satisfactory, and the question arises as to whether such punishment achieves the purpose of general and special prevention. The above is most authentically presented in the analysis and recommendation of the OSCE mission in Sarajevo and in the report and analysis of Petrić and Radončić.

The judicial response is very important for both the victim and the perpetrator, because it represents social condemnation or social tolerance of certain behaviours. The verdict, its content, sanction, and explanation play a key role for the victim who wants to obtain legal satisfaction for the violence suffered through the verdict. This is proven in the Atlantic Initiative Report.¹⁰

„Considering that the most frequent violence occurs between partners, and it is perpetrated by men against women, violence against women and girls (Violence Against Women & Girls – VAWG) is a universal issue both in times of peace and in times of conflict, but also in all other emergency situations. The crisis caused by the Covid – 19 pandemic contributed to the worsening of the situation when it comes to violence. Key instruments of the fight against the spread of the pandemic, such as social isolation, movement restrictions and curfews, have created an ideal environment for the increase and escalation of violent behaviour against women (and children) due to increased and

⁹ OSCE. 2018. Research on the well – being and safety of women. Available at: <https://www.osce.org/files/f/ documents/8/6/445501.pdf> (1. 8. 2022).

¹⁰ *Re – reading and analysis of judgements on family violence in Bosnia and Herzegovina*. 2019. Sarajevo: Atlantic initiative. Available at: <https://atlantskainicijativa.org/wp-content/uploads/Ponovno-citanje-i-analiza-presudanasilja-u-porodici-u-Bosni-i-Hercegovini-web.pdf> (15. 8. 2022), p.23.

constant 24 – hour control over the victim. In addition, changes in the way mechanisms for protection against domestic violence are organized (reduced human/professional capacities, shortened working hours, lack of basic protective equipment for professional workers in the field) favoured the abusers, as the victim's access to protection subjects was made even more difficult and limited primarily to the police and centres for social work. Considering the presented data and statements, both from the governmental and non – governmental sectors, it can be concluded that in Bosnia and Herzegovina there has been a certain increase in events that may represent domestic violence during the Covid – 19 pandemic. The most significant reasons for the increase in domestic violence are stress about the financial future, limited movement, loss of employment and similar.” (Grbić Pavlović, N. 2020, pp. 3, 18)

In relation to the crisis caused by the COVID – 19 pandemic, the Ombudsman of the Republic of Croatia warns in her report for 2020 (2021), that it „must not become an excuse for ignoring or marginalizing social problems related to gender equality, primarily gender-based violence, because the crisis period could be fertile ground for their deepening or expansion.“ Unfortunately, when comparing the Ombudsman's report to the period before the pandemic with those for 2019 and 2020, one comes to the conclusion that this is exactly what happened.

During the pandemic, there was a significant increase in domestic violence of a criminal nature, and women are still, in the vast majority, victims of domestic violence. According to the data of the Ministry of Internal Affairs, which are harmonized with the data of the Ombudsman, a total of 36 murders were recorded in 2020: in 14 of these cases the victims were women, and in 9 of those cases, women were killed by their intimate partners. The number of murdered women is increasing again. Compared to 2018, there is a more than 50% increase in of murdered women, almost in both key parameters – in the total number of murdered women and in the number of women murdered by former or current intimate partners (current/former spouse, current/former extramarital partner, current/former partner). On the other hand, comparing the number of murders of women from the reporting year with the monitored period from 2016, shows that for the fifth year in a row, a high percentage of over 50 % of women killed by men with whom they were in an intimate relationship has been maintained. There is a multi-year trend of decreasing the number of reported perpetrators and the number of victims of domestic violence in the field of misdemeanour legal protection, with a multi-year and continuous increase in cases in the field of criminal legal protection. The above leads to the conclusion that the Croatian system of combating violence against women and in the family in the long term deters victims of violence from reporting milder forms of violence until the situation escalates and passes into the sphere of criminal legislation, which is when the violence is no longer tolerated or hidden because the consequences are usually tragic. Therefore, the misdemeanour legal system is ineffective in this segment.

As for the criminal offences “Domestic violence” from Art. 179a of the Criminal Code, the police recorded a total of 1,578 of them in 2020, which is 39.2 % more than in 2019, when a total of 1,134 such crimes were recorded. In relation to gender, 1,330 female victims were recorded.

In 2020, the Ombudsman continued to receive the most complaints in the field of work, employment and social security – which accounts for a share of 48.3%. Women complained most often because they account for: the majority of the unemployed, the majority in underpaid sectors, the majority as a victim of sexual harassment at the workplace, those underrepresented in high business decision-making positions and those who encounter the “glass ceiling” (12.6% in management and 22,3% in supervisory boards), do not have equal opportunities for promotion (there are still no adequate measures to effectively encourage the participation of women in economic decision – making positions) and have lower salaries and pensions – a salary gap of around 13.3% and a pensions gap of 22.3%. According to the complaints of female citizens, age and motherhood continue to be the main challenges of gender discrimination of women in the labour market. In addition to the trend of an increasing number of complaints, this year also saw a trend of anonymous reporting of sexual harassment. A large number of victims still do not trust the system of protection and the effectiveness of prosecution and the justice of the quick conviction of the perpetrator, so they submit complaints anonymously or do not submit them at all, or, in some cases, complaints are submitted by third parties on their behalf, anonymously reporting this type of crime, but without information about applicants and victims. (p.242)

Failure to report to competent judicial institutions due to gender discrimination and/or violence against women also has roots in the non- -functioning system of free legal aid. Victims of violence often do not have the financial means to pay court costs and lawyers, and the system of free legal aid, it is evident from Ombudsman’s Report, does not work.

In the Summary of the Report of the Ombudsman for 2020 it is pointed out that there are positive developments in the reporting of gender-based violence, but sensationalist terms are still used for the perpetrator, in order to shock the readership and thus induce them to read.¹¹ Often, according to the report, the perpetrators of violence or femicide are indirectly justified by shifting the focus from their responsibility to the decisions or behaviour of the victim as the reason and trigger for the violence committed against her; the identity of the victims and their children is indirectly revealed by reporting on the location where the femicide was committed, the personal impressions of neighbours are quoted, which often reflect an idyllic description of the relationship between the perpetrator and the victim, although facts such as, for example, a court restraining order, a report due to domestic violence and the confiscation of a firearm speak of a completely different situation that preceded the fatal outcome.

The most persistent media trend is still the objectification of the female body and the evaluation of women based on their physical appearance, regardless of whether appear in advertisements or are figures from the media, entertainment, business, politics or sports. While some media strive to improve their way of reporting in accordance with their legal obligations to respect the principle of equality between women and men, a number of media, including the public broadcasting service, often in their responses to the Ombudsman show a lack of understanding of what gender stereotypes are, as well as the lack of will to in terms of educating, that is, changing their media practice.

¹¹ Summary of the Report of the Ombudsman of the Republic of Croatia for 2020. Available at: https://sabor.hr/sites/default/files/uploads/sabor/2022-04-01/153503/IZVJ_PUCKA_PRAVOBRANITELJICA_2021_SAZETAK.pdf (17. 6. 2022), p. 17.

6. INSTEAD OF A CONCLUSION: GENDER (IN)EQUALITY – CHALLENGES AND PERSPECTIVES?

According to research findings and available data, as written in UN Women research about gender equality profile in BiH (2021, pp. 11-13), “despite the carefully designed legal, strategic and institutional mechanism for strengthening gender equality in Bosnia and Herzegovina, women are still faced with many challenges and obstacles on the way to full equality in all areas of life. The main challenges for realizing gender equality in political participation and –decision-making in BiH are based on the perception of traditional gender roles, i.e. cultural factors based on the conviction of acceptable gender roles when it comes to participation in politics and decision–making. Although in the Croatian public space there is no question of the unacceptability of women participating in political life and decision–making, there is still a significantly lower number of women than men in high political positions, indicating the presence of the belief that these are not gender – acceptable roles for women.”¹²

When it comes to achieving gender equality in the economic environment in the Republic of Croatia and Bosnia and Herzegovina, the main challenge stems from gender-based discrimination in employment and the labour market, as well as sexual harassment and mobbing in the workplace.

Women in rural and remote areas are at greater risk of poverty as they suffer most from lack of access and control over productive resources such as land, property, financial resources, education, profitable skills and access to information and modern technologies.

Achieving gender equality in social and health care entails characteristic challenges, which are mostly related to insufficiently funded specialized services for victims of gender-based and domestic violence, specifically, shelters for women who have survived domestic violence. There are not enough shelters for victims of violence either in the Republic of Croatia or in Bosnia and Herzegovina. The fact that crisis centers for rape victims have not yet been established in Bosnia and Herzegovina. A unique method of collecting data on violence against women, including cases of domestic violence and violence perpetrated by an intimate partner, is still being developed. Additional training is needed to sensitize police officers to dealing with survivors.

The main challenges for achieving gender equality in education relate to gender stereotypes, i.e., the strengthening of stereotypes about gender roles in all layers of society, which normalizes gender-based violence and further supports gender inequality. Gender segregation by occupation continues to be a significant challenge.

Some of the measures aimed at protecting victims of domestic violence, as one of the marginalized – socially excluded categories of the population, can be the following:

initiating educational programs for civil servants who in their work encounter women who are victims of domestic and their children; establishing/fostering cooperation between

¹² A significant step forward was observed in the local elections held in May 2017. Namely, in those elections, the quota of 40 percent of women on the lists prescribed by the Law on Gender Equality was fully respected for the first time. The number of female candidates thus doubled compared to the previous local elections. Although the number of councillors in the city councils and county assemblies has increased, still no woman has been elected to the position of county councillor, and only 10 per cent of them have been elected mayors.

the governmental and non-governmental sectors; promoting greater engagement of all social stakeholders; providing continuous funding for scientific research work on the problem of domestic violence; conducting systematic work to eliminate gender stereotypes; illuminating the problem of violence against women, its recognition in wider circles, and ensuring proper presentation.¹³ At the same time, a synergistic approach is needed at all levels of health care in order to minimize the risk of reducing the availability and quality of health care. Numerous international organizations within the EU and beyond have warned about the above. In this sense, it is particularly necessary to deal with ensuring the guaranteed right to termination of pregnancy through the positive legislation of both countries. Conclusions of the ombudsman of the Republic of Croatia regarding the media, as written in Summary of his Report for 2020 (2021, p.18), are equally applicable to both countries: devise a systematic education of media workers in accordance with national legislation and standards elaborated in European documents related to combating sexism and gender stereotypes in media content, increase the number of content that, instead of stereotypical gender roles, promotes various results and successes of women in different areas of life, increase the representation of topic related to issues of the principle of gender equality (e.g. related to multiple discrimination of women with disabilities, women in rural areas, members of national and ethnic minorities, women victims of violence in the Homeland War as and issues related to sexual harassment in the workplace, female veterans, victims of prostitution and human trafficking, raped women, etc.), do not base advertisements and advertising campaigns on the objectification of the female body.

LIST OF REFERENCES

Literature

- Re – reading and analysis of judgements on family violence in Bosnia and Herzegovina*. 2019. Sarajevo: Atlantic initiative. Available at: <https://atlantskainicijativa.org/wp-content/uploads/Ponovno-citanje-i-analiza-presuda-nasilja-u-porodici-u-Bosni-i-Hercegovini-web.pdf> (15. 8. 2022).
- Barić Punda, V. 2005. The principle of non – discrimination – one of the fundamental principles of the protection of human rights and freedoms. *Proceedings of the Faculty of Law in Split*, 42(1-2), pp. 27-42.
- Grbić Pavlović, N. 2020. *Democracy and human rights: The impact of preventive measures for the corona virus on domestic violence in Bosnia and Herzegovina*. Sarajevo: Friedrich – ebert - StiFtung.
- Petrić, A. & Radončić, Dž. 2014. *Report and analysis of the monitoring of criminal proceeding in areas of gender based violence in the Federation of Bosnia and Herzegovina and the Republic of Srpska*. Banja luka: Centar for legal assistance to women and Fondation of United Women.

¹³ More details about this can be found in the research on the face of social exclusion in Croatia conducted within the United Nations program (2006, p.100).

- Poverty indicators from 2002 to 2004*. 2005. Zagreb: State statistical office of the Republic of Croatia.
- Proceedings in cases of domestic violence*. 2017. Sarajevo: Gender center of the Federation of Bosnia and Herzegovina.
- Stantić, J. & Bilbija, V. 2014. The fight against discrimination based on gender in the Republic of Croatia and the Republic of Serbia. *Pravni vjesnik*, 30(2), pp. 449-466.
- Unconnected: Faces of social exclusion in Croatia*. 2006. Zagreb: United nations development program (UNDP) in Croatia. Available at: https://planipolis.iiep.unesco.org/sites/default/files/ressources/croatia_nhdr-2006-eng.pdf (19.8.2022).
- Zorić, J. Dičić, N. & Petković, N. 2018. *Labor rights of women in Serbia*. Beograd: Belgrade Center for Human Right.

Internet sources

- UN women (2021) Country Gender Equality Profile of Bosnia and Herzegovina*. Sarajevo. Bosnia and Herzegovina, 2011. Available at: <https://eca.unwomen.org/sites/default/files/Field%20Office%20ECA/Attachments/Publications/2021/7/UNW%20Country%20Gender%20Equality%20Profile%20BiH.pdf> (14.8.2022).
- OSCE. 2018. Research on the well – being and safety of women. Available at: <https://www.osce.org/files/f/documents/8/6/445501.pdf> (1. 8. 2022).
- Summary of the Report of the Ombudsman of the Republic of Croatia for 2020. Available at: https://sabor.hr/sites/default/files/uploads/sabor/2022-04-01/153503/IZVJ_PUC-KA_PRAVOBRANITELJICA_2021_SAZETAK.pdf (17. 6. 2022).
- United Nations. 1993. United Nations on the elimination of violence against women – Devaw. Available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21_declaration%20elimination%20vaw.pdf (14. 7. 2022).
- World bank. 2000. Economic vulnerability and welfare study. Available at: <http://web.worldbank.org/archive/website00978/WEB/PDF/ECONOMIC.PDF> (25. 7. 2022).

Legal sources

- Criminal Code, *Official gazette of Republic of Croatia*, No. 125/11, 144/12, 56/15, 101/17, 118/18, 126/19, 84/21.
- Gender action plan of Bosnia and Herzegovina for the period 2018 – 2022. Available at: <https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina-2018-2022/> (20. 8. 2022).
- Law on gender equality, *Official gazette of Republic of Croatia*, no. 82/08, 69/17.
- Law on gender quality in Bosnia and Herzegovina, *Official gazette of Bosnia and Herzegovina*, no. 32/10.
- Law on protection against domestic violence, *Official gazette of Republic of Croatia*, No. 70/17, 126/19, 84/21.
- Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 22/05, 51/06, 20/2013, 75/2021.

- Law on Protection from Domestic Violence, *Official Gazette of the Republic of Srpska*, no. 102/12, 108/13, 82/15, 84/2019.
- Republic of Croatia Action plan for the implementation of the National plan for combating discrimination 2017-2019. Available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Akcijски%20plan%20za%20provedbu%20Nacionalnog%20plana%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202019.%20godine.pdf> (26. 6. 2022).
- Republic of Croatia Action plan for the implementation of the National plan for combating discrimination 2017-2019. Available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Akcijски%20plan%20za%20provedbu%20Nacionalnog%20plana%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202019.%20godine.pdf> (26. 6. 2022).
- Republic of Croatia National plan for combating discrimination for the period from 2017 to 2022. Available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf> (12. 7. 2022).
- Republic of Croatia National strategy for protection against domestic violence for the period from 2017 to 2022. Available at: <https://mrosp.gov.hr/UserDocsImages/dokumenti/MDOMSP%20dokumenti/Nacionalna%20strategija%20zastite%20od%20nasilja%20u%20obitelji%20za%20razdoblje%20do%202017.%20do%202022.%20godine.pdf> (1. 7. 2022).
- Roadmap for equality between women and men. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/roadmap-for-equality-between-women-and-men-2006-2010.html> (1. 7. 2022).
- Strategy for Suppression of Domestic Violence of the Republika Srpska (2020 – 2024), Banja Luka, June 2020, Republika Srpska, Ministry of Family, Youth and Sports, *Official Gazette of Bosnia and Herzegovina*, no. 89/14.
- Strategy for Suppression of Domestic Violence of the Republic of Srpska (2014 – 2019), *Official Gazette of the Republic of Srpska*, no. 63/14.