

**SUBMISSIONS TO THE SPECIAL RAPPORTEUR ON VIOLENCE
AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES
ON PROTECTION ORDERS**

Bosnia and Herzegovina

Croatia

Montenegro

Serbia

Slovenia

BOSNIA AND HERZEGOVINA

United Women, Banja Luka

Emergency barring orders and protective measures

In Bosnia and Herzegovina, Entity Laws on protection from domestic violence regulate possibility of ordering emergency barring orders and protective measures¹. *Law on Protection from Domestic Violence in the Republic of Srpska* provides possibility of ordering two different emergency barring orders: Removal of perpetrator of domestic violence from the apartment, house or other residential dwellings and/or Issuing a restraining order and prohibiting the perpetrator from contacting the victim of domestic violence². Law specifies that these measures may be imposed to the perpetrator of domestic violence in order to avoid imminent danger to physical and mental integrity, to prevent recurrence of violence, and to guarantee the safety of victim. A misdemeanour department of the competent municipal court shall impose emergency protective measures, and they may be ordered before starting the procedure or during the proceedings conducted on the occasion of domestic violence. The police, authorized body³ or injured party shall submit a proposal for imposing emergency protective measures, and these shall be imposed no later than 24 hours from the receipt of the proposal, i.e. from bringing the perpetrator of domestic violence to trial. Emergency protective measures shall be imposed within a period that shall not be longer than 30 days. An appeal against the court decision on imposed emergency protective measure shall not delay its implementation. The council of the competent municipal court that issued decision shall decide about an appeal within 48 hours from the receipt of appeal. When leaving the apartment, house or other residential dwelling, the perpetrator of domestic violence shall have rights to take his belongings necessary for everyday life and shall hand over the keys to the apartment, house or other residential dwellings. The court that imposed the measure shall submit the decision for its imposing to the competent organizational unit of the Ministry of Interior on implementation and shall examine its implementation and justification within the period for which it is imposed.⁴ Anyone who violates the emergency protective measures and protective measures ordered by regulating this Law shall be punished in accordance with the provisions of the law that prescribes offences⁵. In addition to the emergency barring orders, the Law provided also a protective measures – removal from the apartment, house or any other dwelling space and prohibition of approaching the victims of domestic violence which are stipulated by law as sanctions that court impose on the perpetrator of violence that committed violence on the member of their family with whom they live in the apartment, house or any other dwelling space, and which is imposed in the regular minor offense proceeding⁶.

On the other side, *Law on Protection from Domestic Violence in FBiH*, provides protective measures as measures of protection of victims that are imposed against the perpetrator of

¹ This difference is caused by different approach of prosecution for acts of domestic violence: In the Federation of Bosnia and Herzegovina domestic violence is prosecuted in the criminal proceedings by the application of the Criminal Code, while in the Republic of Srpska the responsibility of the perpetrator of domestic violence shall be determined, depending on the occurrence of violations of the criminal proceeding (if during the act of violence, the injuries have occurred) by the application of the Criminal Code, or in offense proceedings (if despite the act of omission, there is a lack of injury) under the Law on Protection from Domestic Violence. Domestic violence, as an minor offense, amounts to endangering the tranquillity, psychological, physical, sexual or economic integrity of a family member or family unit, while all other acts of violence leading to a violation of those values of a family member or a family community, constitute a criminal act..

² Article 13. Law on Protection from Domestic Violence of the Republic of Srpska

³ Law on Protection from Domestic Violence of the Republic of Srpska does not specify who represents the *authorized body*. The meaning of the term "authorized body" is provided by the law which defines the minor offenses, to which reference is made, among other things, in this context, also the Article 12 of the Law on Protection from Domestic Violence. Law on Minor Offences of the Republic of Srpska ("Official Gazette of the Republic of Srpska", number 63/14), Article 11, paragraph 2 stipulates that the authorized bodies are : 1. competent ministries and other bodies of Bosnia and Herzegovina, 2. Ministry of Interior, other ministries and inspection authorities of the Republic of Srpska, 3. the competent authorities of local governments, 4 companies and other legal entities that have public authority, in charge of direct enforcement or supervision of the execution of laws or regulations that define offenses.

⁴ Article 14. Law on Protection from Domestic Violence of the Republic of Srpska

⁵ Article 43. Law on Protection from Domestic Violence of the Republic of Srpska

⁶ Article 23. Law on Protection from Domestic Violence of the Republic of Srpska

violence in the framework of proceeding pending before the competent court for offenses. The Law contains protective measure – removal from the apartment, house or other dwelling space and prohibition of return to the apartment, house or other dwelling space⁷. These measures are imposed on an individual that has committed domestic violence on a family member with whom they live in an apartment, house or other dwelling space, if the competent court finds that there is a risk that without the implementation of these measures, the violence individual can perpetrate the acts of violence again. The request for the imposition of the measure is submitted by the police, and in exceptional cases there are legitimate reasons, the prosecution as well. The law stipulates the urgency in action of competent bodies. Police has an obligation for every reported case of domestic violence to apply for the imposition of protective measure to the competent court within 12 hours from finding out for the acts of violence.⁸ The court is then obliged within 12 hours of acceptance of the request for the imposition of the protective measure, to act according to the request and make a decision. The law clarifies the criteria by which court should be guided during the imposition of protective measures, under which the court is not limited to a special evidentiary procedural rules in order to determine facts on the perpetration of acts of violence and consequences that have occurred.⁹ The perpetrator has a right to appeal to an imposed protective measure, which does not delay the enforcement of decision¹⁰. The individual that was ordered a protective measure is obliged to immediately leave the dwelling space, if necessary with the presence of police officer¹¹. Failure of perpetrator to comply with the sentenced protective measure represents a basis for imposing fines to the latter¹². As regards to the length of imposed measure, in FBiH, the subjected measure lasts minimum from one month to maximum two years¹³.

The implementation of the emergency barring orders and protective measures, in both entities, is in the responsibility of the police. The manner of preparation, planning and implementation of the emergency barring orders and protective measures which are in the jurisdiction of the Ministry of Interior, as well as keeping records on the actions taken and reporting on them, is regulated by regulations¹⁴.

Data on imposed emergency barring orders and protective measures, in the RS and in the FBiH, shows that these measures of protection of victims are rarely imposed. Court in the RS in 2015, has imposed only 13 emergency barring orders, while during the year of 2014, a total of 15 has been ordered, and in the year of 2016, in the first six months, 6 emergency barring orders has been imposed¹⁵. In the FBiH, Courts have imposed during the year of 2015, total of 213 measures of protection by applying the Law (12 protective measures of removal from the apartment, house or other dwelling space and prohibition of return to the same) while in the year of 2014, the total of 293 measures of protection (23 protective measures of removal from the apartment, house or other dwelling space and prohibition of return to the same, and the data for the year 2016 are still not available¹⁶.

⁷ Article 11. Law on Protection from Domestic Violence of the Federation of BiH

⁸ Article 17. and 18. Law on Protection from Domestic Violence of the Federation of BiH

⁹ Article 19. Law on Protection from Domestic Violence of the Federation of BiH

¹⁰ Article 24. and 25. Law on Protection from Domestic Violence of the Federation of BiH

¹¹ Article 11. paragraph 2. Law on Protection from Domestic Violence of the Federation of BiH

¹² Article 45. Law on Protection from Domestic Violence of the Federation of BiH

¹³ Article 11. paragraph 3. Law on Protection from Domestic Violence of the Federation of BiH

¹⁴ Regulation on conducting emergency and protective measures under the jurisdiction of the Ministry of Interior („Official Gazette of the Republic of Srpska“, number 73/14); Regulation on conducting protective measures under the jurisdiction of police („Official Gazette of the Federation of BiH“, number 19/14)

¹⁵ Remark: For the Republic of Srpska, data has only been provided on imposed emergency barring orders but not on the imposed protective measures, having in mind that the latter do not have the same character, neither they are in the function of current protection of the victim, but they present sanction for the perpetrated violence. All data are available on the internet page: <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>

¹⁶ Data submitted by Gender Center of Federation of BiH

CROATIA

Center for Women War Victims – ROSA

Protection orders

The misdemeanour and criminal proceedings contain measures that perpetrator can be removed from the apartment, house or other dwelling (art. 11, paragraph. 2, p. 4 of the Law on the Prevention of Domestic Violence) or away from home (Art. 98 par. 1, item. 10 of the criminal procedure) as well as measures of restraining order (Art. 11, paragraph. 2, p. 2 of the Law on protection from domestic violence and Art. 98 par. 1 item. 4 of Criminal Procedure Code).

However, it is crucial for these measures that they can eliminate an immediate threat; that authorities can immediately order the perpetrator to leave place of residence of victim and to prohibit contact with her. This is secured in misdemeanour proceedings but not in criminal. The Misdemeanour Act has allowed that in the case of possibility that a misdemeanour prescribed by law has occurred, one or more precautionary measures may be temporarily ordered, but no longer than eight days, by police and inspection bodies of state administration to person for whom there is reasonable doubt that made offence (Article . 130, para. 6). In addition, some protective measures, including removal from the apartment, house or other place can also, according to Art. 19 of the Law on the Protection of Domestic Violence, applied before starting a misdemeanour procedure, with proposal of a person exposed to violence or authorized prosecutor with the prior consent of the victim in order to eliminate direct threat to life to that person or other family members. The decision according to the same law is made by the court immediately, without delay, and no later than twenty-four hours after filing petition, and shall be terminated if prosecutor does not file a motion to indict within eight days of decision.

Article 19 of the Law on Protection from Domestic Violence is unenforceable in practice because a precondition for the imposition of measures is a state of the direct threat to life of the victim, which because of intensity of endangering falls within the scope of criminal law. Because no other danger (fear, strong agitation) for the victim was a precondition for the imposition of measures there was case A. against Croatia presented before the European Court of Human Rights. Therefore, in the draft proposal of the Law on Protection from Domestic Violence prerequisite for the measure is mitigated so it is not „state of direct threat to life" but "a direct threat to the safety of the victim".

This urgent action is not possible in criminal proceedings. It precautions are closely related to the assumptions of the remand prison. Therefore, in case of doubt in commission of a crime it is possible to arrest perpetrator, inform state attorney who can determine detention, after which the investigating judge may order a remand prison or a precautionary measure. However, if there are no preconditions for arrest, and there is a possibility that offense violence against women was committed it is not possible to determine measure of removal of the perpetrator. So when it comes to offenders, the law does not provide imposition of emergency orders for removal.

In criminal proceedings it is necessary to incorporate measure of removal of the perpetrator in cases when there are no prerequisites for arrest, and it is likely that the offense violence against women was committed.

In criminal proceedings it should be incorporated more precautions in cases where there are no preconditions for the arrest, and there is a possibility that the acts of violence occurred, those precautions should be: prohibition of approach to a certain person or establishment and maintaining contact with a certain person, prohibition of stalking or harassment of the victim or other persons and removal from the home.

In criminal proceedings it should be incorporated deadlines for the imposition of such precautions that must have a purpose of emergency protection of victims.

Croatian misdemeanour and criminal legislation includes restraining orders and orders of protection of victims. However, it should be noted that the orders that can be interpreted as the protection of victims reduced to a restraining order, harassment or stalking. Thus, under the Law on Protection from Domestic Violence, the court may against the perpetrator of domestic violence, besides protective measures prescribed by the Misdemeanour law, apply the following protective measures: restraining order to victim of domestic violence, prohibition of harassment or stalking of the victim of violence (art. 11, paragraph. 2). According to the Misdemeanour Act and Criminal Procedure Code, court may impose a precautionary restraining order to a certain person; or establishment and maintaining contact with a certain person (Art. 130 par.2 no.3 of the Misdemeanour Act and Art.98 par.2nd t.4. and 5 CPA). According to Criminal Procedure Code, court may impose measure to prohibit stalking or harassment of the victim or other persons (Art. 98 par. 2, p. 9th CPC).

In Croatia, there is no possibility for the victim to request court that task in criminal proceedings, and not even in ex parte proceedings outside misdemeanour and criminal proceedings. Therefore, it is necessary to provide civil protection measures for victims, legal remedy for the victim to seek emergency ex parte protective measure, outside of misdemeanour and criminal proceedings.

It is also necessary to point out that in Croatian legal practice there is a concept of provocative behaviour and that research shows that there is a widespread practice of ordering the offender and the victim, which is disastrous for combating domestic violence and protection of victims. Results of research published in the publication Implementation Croatian legislation relating to partner violence from 2012 showed that practice of dual arrests, in which victim is arrested together with offender is widespread in Croatia. It is necessary to take measures to abolish the widespread practice of dual arrests in which victim was arrested together with offender.

In relation to protective measures provided under the Law on Protection from Domestic Violence, the appeal retracts execution of measures. This means that each time perpetrator appeals on decision of court, woman must wait appeal period to pass and sometimes this lasts for months. This means that emergency protection measures in practice are not urgent. Also, offenders very rarely end up in jail for violating measures and this also reduce efficiency of those measures.

Recommendation:

1. It is necessary to introduce article in Law on Protection from Domestic Violence, which provides that an appeal does not retract execution of protective measures.

MONTENEGRO

Women's Safe House, Podgorica

Protection measures

In accordance with *the Law on Protection from Domestic Violence*¹⁷, police officer can, in order to eliminate the threat to the integrity of the victim, order the perpetrator to leave the apartment or other living space, or issue a ban on returning to the apartment, which cannot last longer than three days. Furthermore, the same law provides protective measures, including to prohibit the perpetrator from entering the residence, regardless of who is the owner of the same, restraining measure, then the measure of prohibition of harassment and stalking victims. A misdemeanour court shall impose emergency protective measures, and they may be ordered before starting the procedure or during the proceedings conducted on the occasion of domestic violence. The implementation of the emergency barring orders and protective measures is in the responsibility of the police.

Amendments to the *Criminal Law* in July 2013 introduced new security measures: restraining (Article 77a) and prohibit the perpetrator from entering the residence (Article 77b). However, contrary to regulations misdemeanor, criminal legislature did not regulate emergency protection measures in the case of the crime of domestic violence. Breach of measures for protection against domestic violence is sanctioned by the Criminal Law as a criminal act of domestic violence, with a fine or imprisonment not exceeding six months.¹⁸

Our experience and data at the national level indicate that there is a *large gap between the number of reported cases of violence in relation to the number and types of protective measures*, that it is necessary to ensure more efficient and more effective protection of victims of domestic violence. In 2013, the police issued a total of 40 emergency barring orders, which represents 3.3% of total reported cases of violence to the police. In 2014, the number of emergency barring orders is almost twice lower than in the previous year - 22, which represents 1.7% of the total number of reported cases. Emergency barring orders in 2015 police handed 24 times which is 1.9% of total reported cases. Furthermore, according to data of Misdemeanour Court in 2013 it issued a total of 6.3% of protective measures in relation to the number of cases which were held before the Misdemeanour Court, in 2014, handed down by 6.5% compared to the total number, in 2015 the percentage of protective measures is significantly increased compared to the previous year and amounted to 14.8%.¹⁹ Data on imposed emergency barring orders and protective measures, shows that these measures of protection of victims are rarely imposed.

Experience of women victims of violence who approached Women's Safe House in order to seek help shows that after the pronouncement of protective measures: removal from an apartment or other living premises, restraining order and prohibition of harassment and stalking of the victim, the police, which is responsible for the implementation thereof, fails to supervise the compliance of protective measures and in the event of non-compliance on their own initiative inform the prosecution about it.

¹⁷ Article 28. emergency barring orders, Law on Protection from Domestic Violence available on <http://media.cgo-ccc.org/2013/06/18-Zakon-o-zastiti-od-nasilja-u-porodici.pdf>

¹⁸ Article 220. Criminal Law available on <http://www.pravda.gov.me/biblioteka/zakoni>

¹⁹ Data on the number of cases of violence are available in report of Ministry of Justice related to the implementation Law on Protection from Domestic Violence, Podgorica 2016. available on goo.gl/QGnBrk

SERBIA

Autonomous Women's Center, Belgrade

Emergency barring orders

After the extensive advocacy activities, which the Autonomous Women's Center (AWC) conducted in 2015²⁰, and the refusal to introduce emergency barring orders as an independent police power, the *Law on the Prevention of Domestic Violence* was adopted at the end of 2016, which prescribes those measures (art. 17). The procedure for the issuance and extension of emergency measures includes three competent institutions (police, public prosecutor and basic court) and includes the four assessments. This makes it more complicated than it is usual for this type of preventive measures. The implementation of the Law begins on 1st of June 2017, and the effects of these measures cannot be commented. The Law envisages the specialization of the competent officers. Through the AWC efforts, the Ministry of Justice adopted an article which prescribes a disciplinary responsibility of prosecutors and judges for noncompliance deadlines provided by the Law, which is of particular importance, given the inefficiency of the judicial system in Serbia.

Law prescribes that after the intervention of the police, the specialised police officer will have 8 hours to detain perpetrator to conduct risk assessment and collect relevant evidence, in order to issue *an order* of an emergency protection measure. These measures are: (a) eviction order and (b) restraining and no contact order, and they last 48 hours (art. 21. par. 1). If the perpetrator refuses to be served, police officer will make a note on that, and the order will be considered served. There is no possibility to appeal. Specialised police officer sends the order immediately to specialised prosecutor whose jurisdiction is on the territory of the victim, to social service and to the Group for the coordination and cooperation, established by this law. Victim will receive written notification on the type of emergency measure that was issued.

Within these 48 hours, prosecutor have 24 hours to reassess the risk and collected evidences, and to decide whether there is immediate danger from violence (independently from the fact that there are evidences of criminal act of domestic violence, or other act, or not). If determines that there is immediate danger from violence, prosecutor is obliged, within these 24 hours, to initiate court proceeding for the prolongation of the emergency measures (art. 18).

Basic court, whose jurisdiction is on the territory where victim lives, is authorised for the prolongation of the emergency measures. It is *ex parte* proceeding initiated by the prosecutor. Single judge is obliged to issue decision on the prolongation of the emergency measures within *24 hours* from the receipt of the prosecutor's initiative. If issued, prolonged emergency protection orders last *30 days*. The Law does not specify to whom this court decision is to be delivered, and it remains unclear whether the victim will be notified. Perpetrator has 3 days to file an appeal (art. 20), and the judicial council consisted of 3 judges is authorised to decide on the appeal. The appeal does not derogate the execution of the prolonged emergency protection measures.

²⁰ In *Concluding observations on the combined second and third periodic reports of Serbia*, the state has prepared a comment "Ensure that the relevant authorities are aware of the importance of issuing emergency protection orders for women at risk and maintaining such orders until they are no longer at risk" (par. 23, point (e)); available at: http://www.womenngo.org.rs/images/CEDAW/2013/Concluding_Comments.pdf; Furthermore, in 2013 Serbia ratified the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Official Gazette of the RS – International Agreements, No. 12/2013)* which defines this obligation in art 52.

Protection measures

*The Family Law*²¹ prescribes protection measures which may be imposed in court (civil) proceedings for the protection from domestic violence or other family disputes²². The proceedings for the issuance of protection measures may be taken as a standalone and as an adhesive procedure in other family proceedings. A protection measure against domestic violence may last for one year at the longest, but may be prolonged until the reasons for which it had been pronounced cease to exist. Those measures may be terminated before the expiry of its duration if the reasons for which it had been pronounced cease to exist. The complaint for the termination of a protection measure may be submitted by a family member who was subject to domestic violence, but also by the center for social work (CSW) and the public prosecutor (the consent of the victim is not necessary). The court may order one or more protection measures which have not been demanded if it finds that by such a measure the protection is best achieved. The court itself has the ability to present evidence, and is not bound by the limits of the claim for protection from domestic violence. Violation of the protection measures is the criminal offence. The law prescribes short deadlines for scheduling the first hearing and deciding on the appeal. It also prescribes that the suit doesn't have to be sent to respondent for the replay before scheduling court hearing and the first instance court decision must be made in no more than two hearings. The first hearing is to be scheduled to take place within 8 days from the day the action was filed in court, and the second instance court decision must be made within 15 days from the day the appeal was delivered to the court. The court may decide on the temporary protection measures which are valid until the proceedings are concluded. The plaintiff can be obliged to pay for the court fee in case of lost proceedings. The judgment can be issued if the respondent was not present at the hearing, under the conditions provided by the law²³. The appeal does not withhold the enforcement of a judgment on ordering a protection measure against domestic violence.

CSW keep records on the issued protection measures against domestic violence. In the Annual Report on their work in 2015²⁴ there is no data on the implementation of those measures²⁵. In the Report for 2014²⁶ it is stated: "Data on the effects of the imposed measures and changes in quality of life of the victims of violence is missing, as well as the appropriateness of these measures in our conditions and possibilities of their actual implementation. Measures for the eviction of the perpetrator from an apartment or house, certainly, are insufficiently used". There is a noticeable small number of measures of eviction of the perpetrator from the house (about 70 per year) compared to the number of women and children who have been accommodated in the shelter (about 1200 per year). The research data of judicial practice²⁷ shows that 88% of the court proceedings were initiated by women, and that minor children witnessed violence in 48% of cases. The lawsuit was withdrawn, or deemed to be withdrawn in even 33% of cases, and rejected in less than 6% of cases. The proceedings are usually initiated by the victims (90%), and the CSW submitted about 4% of complaints and public prosecutor about 1.5% of complaints. The postponements of the hearing are frequently used. Analysis of the number of

²¹ *Official Gazette of the RS*, No. 18/2005, 72/2011

²² Those measures are: the issuance of an order for eviction from or moving into a family apartment or house, regardless of ownership or leasehold; prohibition of approach to a family member at a certain distance; prohibition of access to the area around the residence or workplace of a family member; prohibition of further harassment of the family member.

²³ *Official Gazette of the RS*, No. 72/2011, 49/2013 – Decision of the CC, 74/2013 – Decision of the CC 55/2014

²⁴ *Synthesized report on the work of centers for social work in Serbia in 2015*, Chapter 4.5, str. 28-30; available at:

<http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>

²⁵ Contrary to the Recommendation of the CEDAW Committee, par. 23 point (f), available at:

http://www.womenngo.org.rs/images/CEDAW/2013/Concluding_Comments.pdf;

²⁶ Page 43; available at: <http://www.zavodsz.gov.rs/PDF/izvestaj2015/CENTRI%20ZA%20SOCIJALNI%20RAD.pdf>

²⁷ N. Petrušić and S. Konstatinović-Vilić, (2010). *Family law protection from domestic violence in judicial practice in Serbia*, AWC, Belgrade, ŽICEK, Niš, available at: <http://www.womenngo.org.rs/publikacije/razvoj-dobrih-praksi/201-porodicnopravna-zastita-od-nasilja-u-porodici-u-pravosudnoj-praksi-srbije-2010>

proceedings in the basic courts in Serbia²⁸ has confirmed that the victims do not enjoy equal level of legal protection on the territory of the entire state.

*The Criminal Procedure Code*²⁹ prescribes a measure of prohibition of approaching, meeting or communicating with a certain person, which is not limited to domestic violence³⁰. This measure may be requested by the public prosecutor at any stage of the proceedings, and the court decides on ordering the measure. The measure can last until the end of the criminal proceeding and the appeal does not withhold the enforcement. The judge can prescribe the obligation of the defendant to report to the police, the body responsible for enforcement of criminal sanctions or other state body, in which case the control of the measure is performed by the police. The law prescribes the imposition of severe measures if this measure is violated. *There are no* publicly available data on the application of these measures.

According to the provisions of the *Criminal Code*³¹, the court may prohibit an offender from approaching and communication with the injured party (art. 89a), for the period of 6 months to 3 years from the day when the judgement becomes final. There are no specific deadlines which would indicate the obligation that these proceedings, in which this measure is requested, are urgent. The law *did not prescribe* a basis for sanctioning violations of safety measures³², which was changed with the latest amendments of the Criminal Code³³.

*The Law on Misdemeanors*³⁴ provides the basis for the imposition of prohibition of approaching the victim, object or the place of perpetrated misdemeanour, within *precautionary measures*. These measures shall be imposed further to a written petition of the petitioner of the motion to institute the misdemeanour proceedings or to a request of the injured party (victim). The measures may be imposed for any duration of up to one year, reckoning from the date of the execution of judgment. The injured party, the interior affairs authority in charge of enforcement of the measure, and the CSW shall be notified of the decision of the court imposing prohibition of access if the measure is related to the prohibition of access to children or spouse by the offender. The Law prescribes higher penalties for violation of these measures. *There are no* publicly available data on the application of these measures.

Recommendations:

1. It is essential to ensure regular monitoring of the implementation of emergency orders, given the tendency of the representatives of institutions (police and prosecutors) to interpret the legal norm in accordance with the “tradition” and “customary law”.
2. It is necessary to ensure consistent application of official authority (CSW and prosecutors) in connection with the initiation of proceedings for protection measures against domestic violence, as well as more claims and judgments for eviction of the perpetrator from house.
3. In criminal proceedings, all protection measures available to the competent authorities should be used to ensure the safety of victims and reduce their abandonment of procedure

²⁸ V. Macanović, (2012). Right to Achieve Equal Family Law Protection of all Victims of Domestic Violence in Serbia – Analysis of the Proceedings for the Issuance of Protection Measures from Domestic violence, *Annual Report of the Independent Observatory on VAW in Serbia*, p. 73-88, Women against Violence Network and Network for European Women’s Lobby, available at: http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

²⁹ *Official Gazette of the RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014.

³⁰ The primary aim of the imposition of this measure is to secure unobstructed conduct of criminal proceedings or presence of the defendant, rather than ensuring the safety and security of the victim.

³¹ *Official Gazette of the RS*, No. 85/2005, 88/2005 – amend, 107/2005 – amend, 72/2009, 111/2009, 121/2012 and 104/2013.

³² Autonomous Women’s Center *suggested additions* to the existing safety measures related to the way of monitoring of their implementation and regulation of conduct in case of their violation. It was also proposed to adopt *new safety measures*: the eviction from house and the prohibition of the Internet access (when the offense is committed via the Internet), as well as a *new article*. There was no response of the competent Ministry to these proposals.

³³ *Official Gazette of the RS*, No 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016 that will come into force on June 1st, 2017

³⁴ *Official Gazette of the RS*, No 65/2013 and 13/2016

SLOVENIA

Association SOS Help-line for women and children – victims of violence, Ljubljana

Prohibition of approaching the victim

Slovenian legislation recognizes several forms of restraining the perpetrator of violence, which don't differ by substance, but are imposed by different authorities in different proceedings. We present brief summary of the characteristics of these prohibitions and their legal bases.

Court Ban according to the Criminal Procedure Act (ZKP)

The amendment to the Criminal Procedure Act (ZKP) of 1999 introduced alternatives to detention, including the prohibition of approaching a specific place or person (ZKP, Article 195 a). This measure is not related only to certain crimes or to cases where the offender and the victim are in a given relationship. It is in practice often used in domestic violence cases, where the court considers that due to the hazard of reiteration the conditions for detention are met, but that it is possible to achieve the same purpose with less repressive measure, this is a ban on approaching the victim. In case of violation of the ban, the court may pronounce detention of perpetrators of violence³⁵.

Police ban according to the Police Act the Police Tasks and Powers Act (ZNPPol)

In 2003, the amendment of the Police Act introduced the possibility that police officers order a ban on approaching a specified place or person in cases of domestic violence, which constitute an infringement. Police officers imposed restraining orders for 48 hours, the investigating judge could extend ban to a total of 10 days. That measure started on 26. 9. 2004, when the Rules on the prohibition of approaching a particular place or person entered into force. Since the amendment of the Police Act from 2006 it has been possible to impose a restraining order not only for offenses with elements of violence, but also for violent criminal acts. The ban is also declared in the Police Tasks and Powers Act (ZNPPol), which replaced the Police Act in 2013.

In 2005, the police imposed 152 bans on approaching, in 2009 already 1120 bans. After that year, the number of measures imposed is in decline – in 2012 there were 894 measures imposed. It should be noted that in frequent cases the perpetrator cause violence against several family members (e.g. against his partner and children), and therefore the police by the order (i.e. one measure) prohibits a perpetrator from being at a certain distance of more victims – they are named in the order handed down. Therefore the number of victims protected by the police with the imposed protective measure is much greater than the number of imposed measures. If the perpetrator of violence breaches the prohibition imposed, it is punishable by a fine and if the ban is breached again, then follows the police detention within 12 hours³⁶.

The basic purpose of the restraining order is to provide security of victims during the term of this measure. The restraining order is the most frequently imposed by the police.

A measure which is in competence of the police has in addition another important goal, which is to enable centers for social work and NGOs the "entry into the family" with an aim to provide assistance to a victim. The Police Tasks and Powers Act (ZNPPol) in Article 60 states: "The police shall immediately inform the locally competent social work centre of the measure issued

³⁵ Summarised from Katja Filipčič: Legislation on the prevention of domestic violence in Slovenia, in: Špela Veselič, Dalida Horvat, Maja Plaz (ed.): *Manual for work with women and children victims of violence*. Ljubljana: Association SOS Help-line, September 2014.

³⁶ Ibid.

and this centre shall provide the injured party with details of the organizations available for material and non-material assistance, and assist that person in contacting such an if he so requests."

This means legalization of proactive counseling to victims of violence. The victim is the one that calls the police for help, usually because of fear of the perpetrator of violence at a specific event, because the requirement of physical security. Social services are not waiting for these victims to make another step and search for help on their own, but they present and offer help to the victims themselves.³⁷

Court Ban according to the Family violence Prevention Act

The ban on approaching is also set in the Family Violence Prevention Act (ZPND, Article 19 – Prohibition of violent offenses). With the amendment in 2016 also Article 19 was changed. Under this Act, the prohibition is imposed by court in a non-litigation procedure on the proposal of the victim (while the victim has the right to free legal aid). In case of breach of ban ordered the offender may be constrained to its compliance with the Police Tasks and Powers Act.

Court ban according to the Criminal Code (KZ-1)

With the amendment to Criminal Code in 2016 also new measure were added in Article 71a - Ban on approaching or communication with the victim of the criminal act. Duration of the ban is from one month to three years.

Statistical data

Data on protection orders are only available for the ban in The Police Tasks and Powers Act (ZNPPol). In 2005, under the Police Act and The Police Tasks and Powers Act (ZNPPol)³⁸ number of imposed restraining orders was 152, in 2006 281, in 2007 504, in 2008 556, in 2009 1.121, in 2010 1.080, in 2011 1031 and in 2012 894.³⁹ In 2014 number of imposed restraining orders under ZNPPol was 1046 and in 2015 822, in first half of year the 2016 411⁴⁰.

Recommendations:

1. The State should provide a comprehensive and coordinated collection and processing of the data on violence against women on the basis of uniform classification of violence and to make the data public – this include data on all protection orders.
2. The State should protect women victims of violence and change the practices of Police that Police stops with writing bills that victims must paid for breach of public peace and order and thus their reports of violence are fined.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Data from Police, 25. 11. 2016.