

**DOMESTIC VIOLENCE AGAINST CHILDREN
IN THE CIRCUMSTANCES OF THE COVID-19 PANDEMIC:
Analysis of the Judicial Practice of the Basic Court in Niš**

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Abstract. *The subject matter of analysis in this paper is domestic violence against children, and abuse and neglect of children during the COVID-19 pandemic, which is observed through the judicial practice of the Basic Court in Niš in the period from 15 March 2020 to 1 March 2023. The paper aims to determine the number of criminal proceedings dealing with the criminal offense of domestic violence committed against a minor and the criminal offense of child abuse and neglect in the family, which were conducted and legally concluded in front of the Basic Court in Niš in the specified period, and to determine whether the scope of domestic violence against children, expressed through conducted and completed procedures in the specified period is higher than in the three-year period before the outbreak of the pandemic. Criminal proceedings in domestic violence cases instigated before the Basic Court in Niš during the COVID-19 pandemic were conducted and largely completed in the specified period. Domestic violence against children was manifested through different forms of physical or psychological violence, or a combination of both in some cases. When it comes to the criminal offense of child abuse and neglect, two criminal proceedings were conducted and completed in the specified period. Data from the civil society organizations and media reports account for an increase in domestic violence in general and violence against children in particular during the pandemic, but their data do not match the data from the judicial practice of the Basic Court in Niš.*

Key words: *domestic violence against children, child abuse and neglect, COVID-19 pandemic, criminal proceedings, judicial practice, Basic Court in Niš*

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1. INTRODUCTION

Domestic violence against children, including abuse and neglect of children in the family, is a social phenomenon that has been drawing attention of the professional and scientific public for the last twenty years. For a long time, domestic violence against children was perceived as a matter of private family relationship in which state institutions did not intervene. In the Republic of Serbia, this situation has significantly changed with the improvement of the system of legal protection of children against violence, abuse and neglect. Children's rights and their criminal and civil protection are regulated by numerous legislative acts. With the aim of recognizing, preventing and protecting children from violence, abuse and neglect, the legislator has adopted numerous protocols which contain guidelines for the actions of professionals from judicial authorities, educational institutions, social welfare institutions, the police, and the health care system.

The outbreak of the COVID-19 pandemic and the measures taken to protect the population and prevent further spread of the Corona-virus increased the risk of violence against children in the family. Prohibition and restriction of movement, introduction of curfew, fear of contagion, constant tension and uncertainty that accompanied the emergence and development of the epidemic are factors that contributed to parents' violent behavior towards children, or the increase of violence against children living in families where disrupted and violent and family relations had been recorded earlier.

The paper first presents the legislative framework on the legal protection of domestic violence against children, abuse and neglect of children in the Republic of Serbia. The next two parts of the paper outlines the response of state institutions to the declared COVID-19 epidemic, and the impact of the Corona-virus pandemic on the society as a whole and the living circumstances in the family. Then, the author presents the methodological framework of the conducted research on the judicial practice of the Basic Court in Niš in adjudicating the criminal offenses of domestic violence against children, including child abuse and neglect. After presenting and analyzing the research results, the author provides concluding remarks and considerations for further action.

2. LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE AGAINST CHILDREN IN SERBIA

In the Republic of Serbia, children's rights are regulated in numerous legislative acts, containing provisions on their legal position, prevention and protection measures and procedures applied in cases of domestic violence against children, child abuse and neglect.

The crime of domestic violence is criminalized in the positive criminal legislation in Art. 194 of the Criminal Code,¹ which prescribes five forms of this criminal offense: one basic form, three more serious forms, and one less serious form. The legal incrimination of this criminal offense provides protection to children from physical and psychological violence, threats of attack against life and limb, insolent or ruthless conduct that endangers physical integrity or mental condition of a family member (child), which is punishable by a term of imprisonment ranging from three months to 3 years (Art. 194. para.1 CC). A more serious form of domestic violence exists in the following circumstances: 1) the crime was committed with the use of weapons, dangerous tools or other means suitable for

¹ The Criminal Code of the Republic of Serbia, *Official Gazette RS*, no. 85/2005, 88/2005–corr., 107/2005–corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

inflicting a serious bodily injury or seriously impairing one's health (Art. 194. para. 2 CC), which is punishable by imprisonment ranging from six months to 5 years; or 2) the committed violence resulted in grievous bodily injury or serious health impairment of a family member, or is committed against a child (Art. 194 para.3 CC), in which case it is punishable by a term of imprisonment ranging from 2 to 10 years; or 3) the passive subject of the committed act of family violence is a minor (child) (Art. 194 para.4 CC). In case the offence committed against a minor results in child's death, the offender shall be punished by imprisonment of at least 10 years (Art. 194 para.4 CC). Moreover, any violation of a measure imposed on the perpetrator of domestic violence is punishable by imprisonment ranging from three months to 3 years and a fine (Art. 194 para. 4 CC).

The criminal act of neglecting and abusing a minor is prescribed in Article 193 of the Criminal Code. The passive subject of this offense is a minor who is entitled to adequate family care and upbringing. The criminal offense exists in two situations: a) when a parent, an adoptive parent, a guardian or another person neglects the duty of care and upbringing by grossly neglecting a minor whom he/she is obliged to take care of, which is punishable by imprisonment of up to 3 years (Art.193, para.1 CC); and b) when the aforementioned persons abuse the minor, or force him/her to perform excessive physical labour, to beg or to do work that does not correspond to the minor's age, or for personal gain induce a minor to engage in other activities that are detrimental to his/her development, which is punishable by a term of imprisonment ranging from three months to 5 years (Art.193, para.2 CC).

The protection of children from family violence is also provided within the framework of civil legislation. Thus, Article 197 of the Family Act² stipulates that domestic violence is defined as inflicting physical injuries, psychological violence, forcing and inducing sexual relations with a person under the age of 14, restricting freedom of movement and communication with third parties, insults and other forms of reckless, insolent and malicious behavior. The Family Act also prescribes protection measures which are determined by the court for a family member who commits an act of violence against a family member.

In the national legislation, the victims of domestic violence are further protected through the implementation of the Domestic Violence Prevention Act (DVP Act).³ Under this Act, domestic violence entails acts of physical, sexual, psychological or economic violence. The DVP Act regulates the actions of competent state bodies, social welfare centers, institutions for children's social protection, education, upbringing and health care, with the aim of preventing domestic violence and providing protection and support to victims of violence. The Act also prescribes a series of measures aimed at detecting the immediate danger of domestic violence and protection measures that are applied when the danger is detected. In the event of domestic violence, the Act prescribes the application of emergency measures against the offender, which are enforced by a police officer for 48 hours, and if necessary, extended by the court to a period of 30 days. By a court order, the perpetrator of domestic violence is temporarily removed from the family house/apartment and prohibited from contacting and approaching the victim. The DVP Act is also a valuable instrument for the prevention of domestic violence in criminal proceedings, in cases related to the criminal acts of neglect and abuse of minors (Article 193 CC) and domestic violence (Article 194 CC).

² The Family Act of the RS, *Official Gazette RS*, no. 18/2005, 72/2011 and 6/2015.

³ The Act on Prevention of Domestic Violence, *Official Gazette RS*, no. 64/2016.

3. THE RESPONSE OF STATE INSTITUTIONS IN SERBIA TO THE DECLARED COVID-19 PANDEMIC

The World Health Organization declared a pandemic caused by the emergence of the Coronavirus (COVID-19) on 11 March 2020, as a result of which countries around the world introduced a number of measures to combat the pandemic and protect their population.

In Serbia, the first positive Coronavirus case was detected on 6 March 2020. Due to the constant spread of the pandemic and the increase in the number of infected people, on 15 March 2020, the Republic of Serbia adopted the Decision declaring a State of Emergency on the territory of the entire country.⁴ In order to suppress and prevent the spread of the infectious disease COVID-19 and to protect the population from this disease, the Government of the Republic of Serbia, with the co-signature of the President of the Republic, adopted the Regulation on Measures during the State of Emergency⁵. The Regulation prescribes the protection measures which prohibited public gatherings and restricted the freedom of movement during the state of emergency. The bans and restrictions were reflected in introducing curfew hours and a quarantine for people over the age of 65.

On 17 March 2020, the Ministry of Justice issued Recommendations for the operation of courts and public prosecutors' offices during the state of emergency.⁶ *Inter alia*, competent courts and public prosecutors' offices were recommended to act in criminal cases related to domestic violence during the state of emergency. In connection with the implementation of the Recommendation of the Ministry of Justice, the High Council of the Judiciary issued a Conclusion of 18 March 2020,⁷ which stipulated that, during the state of emergency, courts should adjudicate only those (urgent) cases which could not be delayed. In the Conclusion, the High Council of the Judiciary explicitly stated that trials in domestic violence cases were considered to be those that could not be delayed.

4. SERBIAN SOCIETY AT THE TIME OF THE CORONAVIRUS EPIDEMIC

In Serbia and other countries worldwide, the COVID-19 pandemic exerted huge pressure on national health system and caused significant changes in the social, political, cultural and social aspects of human life. In order to prevent the spread of the Coronavirus, many countries introduced a range of preventive, protective and security measures: quarantines, lock-downs, curfew hours, home isolation, bans and restrictions on movement, bans on public gatherings, bans on leaving the state or city, closing borders, closing institutions, etc.

After declaring the state of emergency and adopting the Regulation on measures during the state of emergency, the Government of the Republic of Serbia introduced a wide range

⁴ Decision on declaring a state of emergency, *Official Gazette of the RS*, no. 29, dated 15 March 2020; <https://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/predsednik/odluka/2020/29/1/reg>

⁵ Regulation on measures during the state of emergency, *Official Gazette RS*, no. 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20, 60/20, 126/20, see: <https://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/vlada/uredba/2020/31/1/reg> (accessed 10 May 2023).

⁶ Recommendations of the Ministry of Justice for the operation of courts and public prosecution offices during the State of Emergency declared on 15 March 2020, dated 17 March 2020, <https://www.mpravde.gov.rs/files/PREPORUKE%20ZA%20RAD%20SUDOVA%20I%20JAVNIH%20TU%20C5%BDILA%20C5%A0TAVA%20Z%20VREME%20VANREDNOG%20STANJA.pdf> (accessed May 10 2023).

⁷ Conclusion of the High Council of the Judiciary no. 119-05-132/2020-01, dated 18 March 2020, <https://vss.sud.rs/sites/default/files/attachments/%D0%97%D0%B0%D0%BA%D1%99%D1%83%D1%87%D0%B0%D0%BA.pdf> (accessed 10 May 2023).

of measures to suppress and prevent the spread of infectious diseases. Thus, face-to-face instruction in pre-school institutions, primary and secondary schools, and higher education institutions was suspended, and institutions had to organize online/remote teaching modes. Employers were recommended to organize work from home. All sports facilities were closed down; the working hours of cafes and restaurants were limited, etc.

Due to the introduced curfew hours, bans and restrictions on movement, family members were bound to spend a lot of time at home. In the circumstances of ongoing frustration and fear of infection, when the entire educational process was organized online, when most parents worked from home, and when they had to share the same confined space for a prolonged period of time, there was a significant change in the family dynamics. The health crisis that occurred due to the pandemic, the loss of loved ones, the difficult economic situation in the country, parents' unemployment, general frustration and uncertainty (etc.) were risks that led to an increase in intolerance, family tensions, conflict and aggression in the family (Mahmutović, Škuletić, Malagić, 2021:71). In particular, all these factors contributed to further deterioration of the living conditions and mutual relations in broken or dysfunctional families whose members had previously been exposed to family violence. The children of such families generally spend most of their time at school and in extracurricular activities, thus avoiding violent parents. However, in the newly created conditions, they could not take shelter in the school environment which could recognize and provide support to children who had experienced violence and abuse by their parents or family members. In effect, the measures aimed at fighting the spread of the COVID-19 pandemic created an ideal environment for the increase in violent behavior due to the constant presence and control of the abuser over the victim (Grbić, Pavlović, 2020:3). The victims' position was further aggravated by changes in the operation of public institutions, social welfare centers, the police, public prosecution offices, and health care institutions which the victims could address for assistance. The circumstances of social isolation significantly reduced the possibility that a child would report violence and/or seek assistance, and the likelihood that competent services would urgently provide adequate child protection, support and assistance.

During the state of emergency, media reported on numerous cases of violence against children, abuse and neglect.⁸ The data from civil society organizations and the National SOS telephone indicate that the risk of domestic violence increased during the pandemic.⁹

5. METHODOLOGICAL FRAMEWORK OF RESEARCH

The subject matter of research in this paper is the analysis of the judicial practice of the Basic Court in Niš concerning the criminal proceedings on the issue of domestic violence

⁸ Radio Slobodna Evropa (2020): *Žrtve porodičnog nasilja dodatno ugrožene tokom pandemije* (Victims of domestic violence additionally endangered during the pandemic), 29. mart 2020, <https://www.slobodnaevropa.org/a/%C5%BErtve-porodi%C4%8Dnog-nasilja-dodatno-ugro%C5%BEne-tokom-pandemije/30515964.html>; BBC News na srpskom (2020): *Korona virus i nasilje u porodici: Šta da radite ako ste u izolaciji sa nasilnikom posle policijskog časa* (Corona virus and Domestic violence: What should you do if you are in self-isolation with an abuser during curfew hours), M. Janković, 14 april 2020, <https://www.bbc.com/serbian/lat/srbija-52109681> (accessed 14 May 2023)

⁹ Fenomena (2021): *Postupanje nadležnih institucija i službi za suzbijanje nasilja u porodici tokom epidemije* (Action of competent institutions and services for suppression of domestic violence during the COVID-19 epidemic), 26. avgust 2021; <https://www.fenomena.org/vesti/postupanje-nadlenih-institucija-i-slubi-za-suzbijanje-nasilja-u-porodici-tokom-epidemije-dr-sanja-opi-istraivaica-i-predsednica-upravnog-odbora-viktimolog-druva-srbije> (14 May 2023).

which were conducted and completed during the COVID-19 pandemic, in the period from 15 March 2020 to 1 March 2023. The empirical part of the research included data collection and analysis of cases on domestic violence against minors and neglect and abuse of a minor which were adjudicated at the Basic Court in Niš in the specified period.

The aim of the empirical part of the research was to collect relevant data from the case databases kept by the Basic Court in Niš and analyze the judicial practice (selected cases, judgments and proceedings) in cases involving the criminal offense of domestic violence against minors (Article 194 para.4 CC) and the criminal offense of neglect and abuse of a minor (Article 193 CC). The research included a review and analysis of the phenomenological and etiological characteristics of both perpetrators and victims of these criminal acts.

The research methodology included the method of indirect observation (examination of court databases, case selection and data collection), and the case-analysis method applied in assessing the case content and final judgments in cases involving domestic violence against minors and the criminal offense of neglect and abuse of a minor.

In order to achieve the research objectives, the starting hypothesis was that the number of criminal proceedings conducted and completed in the period from 15 March 2020 to 1 March 2023 for the commission of the criminal offense of domestic violence against minors (Art. 194 para. 4 CC) and the criminal offense of neglect and abuse of a minor (Art. 193 CC) increased in comparison to the three-year period preceding the COVID-19 pandemic.

6. RESEARCH RESULTS

In the period from 15 March 2020 to 1 March 2023, a total of 199 criminal proceedings were conducted in the Basic Court in Niš for the crime of domestic violence (Art. 194 CC). Out of this number, 11 criminal proceedings were conducted for the commission of the criminal offense of domestic violence involving a serious bodily injury or health impairment of a minor (under Article 194 para.3 CC). Out of these 11 criminal proceedings, a total of 8 proceedings (conducted against eight defendants) were legally concluded, ending in a final judgment; thus, these cases were included in the research sample and analyzed in this paper. The remaining three proceedings were not legally completed at the time of data analysis; thus, they were not included in the research sample. As for the criminal offense of neglect and abuse of a minor (Art. 193 CC), only two criminal proceedings were legally terminated in the specified period; thus, they were included in the research sample and analyzed in this paper.

6.1. Criminal offence of domestic violence (Article 194 CC)

In terms of different forms of domestic violence prescribed in Article 194 CC, the research sample shows that the largest numbers of criminal acts of domestic violence against children (5 offences) were a combination of the offence envisaged in Art. 194 para.1 CC (physical and psychological violence) and the offence envisaged in Article 194 para.2 CC (a inflicting serious bodily injury or serious impairment of child's health). In one case, the criminal offense of domestic violence (Art. 194 CC) was committed in conjunction with the criminal offense of extramarital union with a minor (Art. 190 para.1 CC). In two cases, the offense was committed independently, without concurrence with any other criminal offence.

The data from the research sample show that all offenders committed the crime independently; there was no form of complicity. The data also indicate that, in the largest

number of cases (7 cases), the criminal offense was committed in the city, at the perpetrator and victim's place of residence. In only case, the crime was committed in a village.

In terms of the *modus operandi*, this criminal offence entails different forms of physical and psychological violence, which are commonly used together. Thus, in four cases, violence against the child was carried out by using physical and physical violence, cursing and insulting the child/victim. In two cases, the offender used only physical violence (a blow to the face with an open fist and a blow to the back of the head with a slipper). In two cases, violence against the child entailed insolent and ruthless behavior, threats, insults by using derogatory names, and harassment via text messages. Further analysis of *the modus operandi* demonstrates diverse forms of perpetrators' violent, rough and callous conduct, which may be illustrated by some examples from the judicial practice of the Basic Court in Niš.

- 1) "The defendant (mother) beat the victim (daughter), cursed, pulled her hair, kicked her in the face, locked her on the terrace of the family apartment." (BC case 5K.no.458/21).¹⁰
- 2) "The defendant (mother) came to her parents' house, where the minor (injured party) previously took refuge when he ran away from her (in a torn t-shirt and tracksuit). She started shouting and asking for the child; in the meantime, the victim hid in the basement out of fear. As she could not find him, she took his keys to their family apartment from the table and told her mother that the minor victim could no longer return to her place. After that, she did not want to hand over his belongings when her parents called on her. Thus, the minor victim went to school in his grandfather's pants." (BC case 9K.no. 517/22).¹¹
- 3) "The defendant (father) asked the minor victim (daughter) how it was at school, and she replied that there was no grading that day; as the defendant persisted, she said that she still has mark four (B); the defendant got angry, grabbed his slipper and hit the victim in the back part of the head" (occipital lobes *in the posterior cerebrum*). (BC case 7K.no. 962/20).¹²
- 4) "In a visibly intoxicated state, the defendant (extramarital partner) first started insulting the minor victim (girlfriend): "You wanna have sex with my father!"; he punched her in the head several times with closed fists, and then kept punching her in the head and body, kicked her in the area of her thighs and pulled her hair" (BC case 3K.no. 869/20).¹³
- 5) "On 29 December 2019, the defendant (father, a drug addict) called the minor victim (daughter) from his mobile phone and threatened her: "I'll blow you all up if you do not bring me the money in 5 days! You will be no more! " When they saw each other in person, he grabbed the money from the minor victim, and shoved it in her face. Then, on 30 December 2019, he sent her a text message from his phone: " I'll hurt you all! This won't be the last you hear from this drug addict! You'll regret it all!". Then, on 3 January 2020, she received two text messages: "Just do it, keep driving me crazy! It will be your fault!"; "No idea what I'll do, call whoever you want, let them arrest me. We are through! (BC case 5K.no.1014/21).¹⁴

¹⁰ Judgment of the Basic Court in Niš 5K.no.458/21 of 24 March 2023, E-database of the Basic Court in Niš

¹¹ Judgment of the Basic Court in Niš 9K.no. 517/22 of 23 December 2022

¹² Judgment of the Basic Court in Niš 7K.no. 962/20 of 23 April 2021

¹³ Judgment of the Basic Court in Niš 3K.no. 869/20 of 20 November 2020.

¹⁴ Judgment of the Basic Court in Niš 5K.no.1014/21 of 27 October 2022

- 6) "On an unspecified day in April 2017, he (father) started yelling at the victim (son), saying that he is the same as his mother, that he is incapable just like her, that he is to blame for everything, that he does not have his own brain, that he is the same sort as his uncle; then, using his right hand, he took a swing at the victim in an attempt to hit him" (BC case 2K.no. 593/20).¹⁵

These examples show various family relationship between the offender and the minor victim: 5 offenders were the fathers of minor victims, 1 offender was the victim's mother, 1 offender was the victim's brother, and 1 offender was the victim's extramarital partner.

In the largest number of case, the domestic violence against minors was committed by male offenders (7 cases), while the offender was female in only one case. The age structure of offenders is diverse: young people up to the age of 30 (1 offender, aged 19 at the time); middle-aged people aged 30 to 60 (7 offenders); and elderly persons over the age of 60.

The research data also provide insight into the *marital status* of the perpetrators of this criminal offence: 4 offenders were married; 2 offenders lived in cohabitation; one offender was a widow, and one offender was a widower at the time the crime was committed.

When it comes to offenders' *property*, 4 defendants had no assets, 2 defendants owned an apartment/house, while there was no information on property for 2 offenders.

In terms of *education*, the largest number of offenders (5) had secondary education, 2 offenders had a university degree, and one offender had only primary school education.

In terms of *occupation*, the research data show that the perpetrators are people of different occupations: a food technician, an iron/metal turner, a worker, a doctor, a pediatrician, a carpenter, a merchant, a military person, and one person without occupation. As for the offenders' employment status, 4 persons were unemployed, 2 were employed, and one person was retired (a pensioner) at the time when the crime was committed.

On the basis of extracts from the criminal records on *prior convictions* provided, the research sample shows that there was a larger number of previously unconvicted persons (6 offenders) than those who had been previously convicted (2 offenders).

The data on the *perpetrator's sanity* at the time of committing the crime indicate that the largest number of offenders (6) were sane, without demonstrating any mental illness, temporary mental disorder, delayed mental development or some other serious mental disorder, nor did they suffer from any addiction disease. The data show that 2 offenders demonstrated a slightly reduced capacity to understand the significance of their act and manage their actions at the time of the commission of the criminal act. Thus, one of these two offenders committed the crime while intoxicated, which reduced his ability to be fully aware of the committed act and manage his actions, but not significantly. In this case, the Commission of Experts concluded (in its opinion) that this offender did not suffer from a mental illness, temporary mental disorder, mental impairment or serious mental retardation, nor addiction, and that the observed pattern of alcohol consumption in his case corresponded to harmful abuse of alcohol rather than to addiction. In case of the second offender with reduced capacity, it was established that the act of violence was committed as a consequence of his addiction to psychoactive substances rather than any mental disease, disorder or retardation. Namely, in the period before the crime was committed, the Social Welfare Center Niš was engaged in the procedure of establishing temporary guardianship over a minor child, due to a report of domestic violence against a minor child by the father, who used psychoactive

¹⁵ Judgment of the Basic Court in Nis, 2K.no. 593/20 of 17 November 2020

substances, demonstrated unpredictable behavior, and was assessed as having a medium-degree risk of reoffending. i.e. repeating the act of domestic violence.

Considering the *causes of domestic violence* against minors, the analyzed research sample shows that disrupted family relations between the perpetrator and the victim were present even before the crime was committed (in 4 cases); disrupted family relations were reflected in various forms of physical and psychological violence. The presence of unacceptable conduct is commonly observed in dysfunctional families; for these reasons, according to earlier reports, the Social Welfare Center Niš had been working with these families.

In terms of *gender* of the victims of domestic violence against minors, the research data (from 8 cases) indicate that 5 victims were male children, and 3 were female children.

When it comes to the *victim-perpetrator family relations*, the data show that the victims of violence were male children/sons (in 4 cases), female children/daughters (in 2 cases), a minor extramarital partner (in 1 case) and the offender's minor brother (in 1 case).

The analysis of data on the *health status* of children-victims indicate that 7 children were physically and mentally healthy, and that one child had a congenital heart defect.

In terms of convictions, from the total of 8 criminal proceedings which were conducted and completed (by rendering the final judicial decision), the offenders were convicted for the commission of the criminal offense of domestic violence against a minor in 4 cases; in two cases, the offenders were acquitted; in the remaining 2 cases, the criminal charges were dismissed on the basis of the public prosecutor's withdrawal from the prosecution (in compliance with Article 422 para.1, item 1 of the Criminal Procedure Code of the RS).

In terms of imposed *sanctions*, in the four criminal cases where the court convicted the offenders, they were sentenced to a term of imprisonment in prison. In one case, the offender was sentenced to one year in prison, which would be served at the offender's home (house arrest), without the use of electronic-monitoring device (electronic bracelet).

6.2. The Criminal offence of neglect and abuse of a minor (Article 193 CC)

As for the criminal offense of neglect and abuse of a minor prescribed in Art. 193 CC, only two criminal proceedings were legally terminated in front of the Basic Court in Niš in the specified period. These two cases were included in the research sample and analyzed.

The research data show that both criminal offences of neglect and abuse of a minor were committed in the city. They were committed without concurrence with any other criminal act. The perpetrators committed these acts independently; there was no form of complicity.

In terms of the *modus operandi*, the data related to the first case show that the offender (mother) committed the crime of neglecting and abusing a minor "by forcing her minor child (son) to do work that did not correspond to his age for a period of 8 days, waking him up every morning and telling him that he had to get up and earn his bread, and sending him to a street intersection where the minor spent all day wiping the windshields of vehicles that stopped at the traffic lights; in the evening, the minor had to hand over the money to the defendant" (BC case 2K.no. 265/20).¹⁶

In the second case, the research data show that the defendant (mother) "for a long period of time, grossly neglected her duties of care, upbringing and education, and abandoned her minor child, whom she is obliged to take care of", which was not in compliance with the provision of Article 68 of the Family Act. The Court concluded that the defendant committed

¹⁶ Judgment of the Basic Court in Niš 2K.no. 265/20 of 2 July 2020.

the offence: “by neglecting the educational needs of a minor child, who did not attend classes in the first grade of elementary school; by neglecting her basic nutritional needs because she did not provide her with adequate food, for which reason the minor child was malnourished, pale, emaciated, exhausted and drained; by neglecting the child’s hygienic needs because she did not take care of the regular hygiene of the child, did not maintain adequate hygiene in the apartment where she lived with the child, because the apartment where they lived was messy, dark, dirty and cluttered with personal belongings and dusty furniture; by neglecting the child’s needs regarding clothes and shoes because she did not buy clothing and footwear adequate to the child’s age, so that the child mostly wore pajamas and a hoodie which was not the right size, and shoes which were two sizes smaller, for which reason she had difficulty walking. For all these reasons, there is a high degree of risk to the life, safety, health and further development of a minor child” (BC case 5K.no.512/20).¹⁷

In terms of *gender*, both offenders are female. In terms of *age*, they fall into the group of middle-aged offenders (30-50 years old). In terms of *victim-offender relationships*, both offenders are mothers of the minor children who were the victims of this criminal offence.

The data on the offenders’ *marital status* show that one offender was married, while the other one was single at the time the crime was committed. Regarding their level of *education*, one defendant was illiterate (as she never attended school), and the other one had a secondary school diploma. Both offenders had no property and income.

In terms of *previous convictions*, the extracts from the criminal records show that one offender was an unconvicted person (without a previous criminal record), while the other one had been previously convicted multiple times for various criminal acts.

As for the offenders’ *sanity* at the time of committing the criminal offense, the data show that one offender was sane (without any mental illness, disorder or retardation), while the other one was considered incompetent because she had the mental illness of schizophrenia and was unable to understand the consequences of her act and manage her conduct.

When it comes to the *gender* structure of the victims of these criminal offences, in both case the victims were minors (children): a girl aged 11, and a boy aged 16. At the time of the commission of crime, both children were physically and mentally healthy persons.

As for the criminal *sanctions* imposed on the offenders, one offender was sentenced to two months in prison (as she pleaded guilty and agreed to serve the proposed sentence). In the second case, where the offender was established to be mentally incompetent (insanity) due to the mental illness of schizophrenia, she was not found guilty and sentenced for the commission of the criminal act of gross neglect and abandonment of a minor. Instead, in accordance with Article 81 of the Criminal Code and Article 526, para.4 of the CPC, the court imposed the security measure of mandatory psychiatric treatment and custody in a health care facility, which will last as long as there is a need for such treatment.

In the three-year period that preceded the outbreak of the COVID-19 pandemic (in the period from 15 March 2017 to 15 March 2020), a total of 277 criminal proceedings for the crime of domestic violence (Article 194 CC) were conducted and legally concluded (by rendering a final judgment) in front of the Basic Court in Niš. Out of that number, there was a total of 22 criminal proceedings for the commission of the crime of domestic violence against a minor (Art. 194, para.3 CC), which were legally terminated (by a final judgment).

¹⁷ Decision of the Basic Court in Nis 5K.no.512/20 of 12 December 2022

The statistical data show that 6 criminal proceedings were concluded in 2017, 7 criminal proceedings in 2018, and 9 criminal proceedings in 2019 (BC Niš database, 2023).¹⁸

Regarding the criminal offense of neglect and abuse of a minor (Art. 193 CC), the statistical data covering the 2017-2020 period show that 3 criminal proceedings were legally terminated: 2 criminal proceedings were concluded in 2018 and one in 2020. (BC Niš database, 2023).

Comparing this data with the data from the research sample, it can be concluded that the total number of criminal proceedings that have been legally terminated for the commission of the crime of domestic violence against a minor (Art. 194 para. 3 CC) in the period from 15 March 2020 to 15 March 2023 proves to be by 36.4% lower than the total number of criminal proceedings on this crime in the three-year period before the COVID-19 pandemic. The total number of legally terminated criminal proceedings on the criminal offence of neglect and abuse of a minor (Art. 193 CC) also proves to be by 6.67% lower during the pandemic than in the three-year period before the outbreak of the pandemic.

The above data point to the conclusion that the starting hypothesis (on the increase of legally terminated criminal proceedings on these crimes during the COVID-19 pandemic) was not confirmed. The collected and analyzed data from the research sample show the exact opposite: the number of criminal proceedings that were legally terminated in the period from 15 March 2020 to 1 March 2023 significantly decreased when compared to the three-year period (2017-2020) preceding the outbreak of the COVID-19 pandemic.

7. CONCLUSION

The outbreak of the COVID-19 pandemic in March 2020, followed by the introduction of a state of emergency, quarantine, self-isolation, restrictions on movement, and limited access to institutions in charge of ensuring protection to victims of violence are factors that had a negative impact on reporting violence, abuse and neglect of children in the family.

The research results presented in this paper show that the number of criminal proceedings involving the commission of the criminal offenses of domestic violence against children (Article 194 CC) and abuse and neglect of a minor in the family (Article 193 CC) which were legally terminated (by issuing final judgments) in front of the Basic Court in Niš during the COVID-19 pandemic, in the period from 15 March 2020 to 1 March 2023, considerably decreased when compared to the three-year period (2017-2020) before the outbreak of the pandemic. On the other hand, data from non-governmental women's organizations and civil society organizations speak of an increase in the number of women-victims of domestic violence who sought assistance during the state of emergency and throughout the pandemic. In the three-year pandemic period, the media also reported on numerous cases of domestic violence, violence against children, and various cases of child abuse and neglect. Although the collected research data presented in this paper cannot be the basis for a comprehensive analysis of the spread of violence against children after the outbreak of the COVID-19 pandemic, they indicate that there is a discrepancy between the data from judicial practice and the data presented by the civil society organizations and the media. In terms of domestic violence against minors, it seems that the judicial practice does not reflect the reality.

Faced with a large-scale medical, social and economic crisis, competent institutions apparently failed to provide relevant information to citizens (in a clear, timely and transparent manner) about the competent services that could provide protection and assistance to victims of

¹⁸ Electronic database of the Basic Court in Niš (accessed May 2023)

domestic violence in the circumstances of a state of emergency and ongoing pandemic (Nikolić, Ristanović, 2021:168). There was also a lack of information and support for victims of violence through public announcements, media, web-portals (etc.), which would enable them to report violence, regardless of the extraordinary pandemic circumstances.

As a final conclusion from the above, it follows that the existing legal solutions, protocols, strategies and measures still do not ensure an effective and timely prevention of domestic violence against children, nor adequate response of competent institutions in providing assistance and support to victims of violence. In extraordinary circumstances, such as the Coronavirus pandemic, the problems come to the fore. This indicates that there is a need for specialized state institutions and organizations which would take action in emergency situations, aimed at preventing violence, providing assistance and support to victims of violence, informing the public about the services, and informing the victims about available forms of assistance and how to attain them (Viktimološko društvo Srbije, 2021:47). The media, social networks and web-platforms play a special role in emergency situations as they may be used as an instrument for a rapid and massive dissemination of valuable information about the impact of the pandemic on the increased risk of domestic violence, abuse and neglect of children in the family.

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NASILJE NAD DECOM U PORODICI U USLOVIMA ŽIVOTA U PANDEMIJI COVID-19: Analiza prakse Osnovnog suda u Nišu

Predmet rada je analiza nasilja nad decom i zlostavljanje i zanemarivanje dece u porodici u uslovima života u pandemiji Covid 19 kroz sudsku praksu Osnovnog suda u Nišu, u vremenskom periodu od 15.03.2020.godine do 01.03.2023.godine. Cilj rada je da se utvrdi broj krivičnih postupka koji su u naznačenom vremenskom periodu vođeni i pravnosnažno okončani pred Osnovnim sudom u Nišu za krivično delo nasilje u porodici izvršeno nad maloletnim licem i krivično delo zlostavljanje i zanemarivanje dece u porodici, te utvrditi da li je obim nasilja nad decom izražen kroz vođene i okončane postupke za navedena dela u periodu od 15.03.2020.godine do 01.03.2023.godine veći u odnosu na trogodišnji period pre izbivanja pandemije. Za vreme pandemije koronavirusa, pred Osnovnim sudom u Nišu najčešće su vođeni i okončani krivični postupci za krivično delo nasilje u porodici kod kojih se nasilje ispoljavalo kroz oblike fizičkog ili psihičkog nasilja, a u nekim postupcima su se javljala udruženo oba oblika nasilja. Kada je reč o krivičnom delu zlostavljanje i zanemarivanje dece, u pomenutom periodu okončana su dva krivična postupka. O porastu nasilja u porodici i nad decom u vreme pandemije Covid-19 govore podaci organizacija civilnog društva i medija, ali se oni ne poklapaju sa podacima iz sudske prakse Osnovnog suda u Nišu.

Ključne reči: *nasilje nad decom, zlostavljanje i zanemarivanje dece, pandemija Covid-19, krivični postupci, sudska praksa, Osnovni sud u Nišu.*