

**Addendum to the Alternative Report of Nongovernmental Organizations from Bosnia and Herzegovina  
to GREVIO Group**

**Submitted by the Foundation “United Women”**

**Banja Luka, Bosnia and Herzegovina**

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**Introductory Note**

In December 2019, a coalition of women’s non-governmental organizations from Bosnia and Herzegovina (NGO Foundation “United Women” from Banja Luka, BiH and Citizens’ Association “Medica” from Zenica, BiH, with contribution of additional 21 women’s CSOs from BiH) have submitted the first alternative report titled *“Response to Violence against Women – Unprotected Survivors”*, which provides comprehensive overview of the situation related to different forms of violence against women from the perspective of women’s organizations that are providing specialized services of assistance and support to women and children survivors, and are conducting continuous public advocacy activities aimed for improving systemic response of the authorities at all levels of governance as well as public institutions that are recognized as subjects of protection from violence throughout Bosnia and Herzegovina.

This Addendum to the Alternative Report provides new information collected during 2019 by the Foundation “United Women” from Banja Luka, BiH through the monitoring two hundred and three (203) criminal offence proceedings on various forms of gender-based violence, including domestic violence and hundred and forty-five (145) minor offence proceedings for domestic violence at the eight (8) basic courts in the Republika Srpska – in Banja Luka, Prijedor, Doboj, Višegrad, Foča, Trebinje, Sokolac and Bijeljina, and two sub-departments of the basic courts – the Minor Offence Department of the Basic Court Banja Luka in Laktaši, and the Department of the Basic Court Sokolac in the East Sarajevo, as well as the Basic Court of Brčko District of BiH. The monitoring was conducted within the project *“Prevention and Combating Gender Based Violence in Bosnia and Herzegovina”*<sup>1</sup>, with the support of Kvinna till Kvinna Foundation from Sweden.

Additionally, the Addendum to the Alternative Report refers to the information collected during 2020 through conducting baseline research on satisfaction of women service users with services provided by

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<sup>1</sup> In partnership with the NGO Foundation “Lara” from Bijeljina, Citizens’ Association “Budućnost” from Modriča, and Women’s Association “Most” from Višegrad

the centers for social work, as a part of the regional project “*Institutionalizing Quality Rehabilitation and Integration Services for Violence Survivors*”<sup>2</sup>, with support of the Austrian Development Agency. The Foundation United Women interviewed eighty-four (84) women beneficiaries of the specialized services of free legal counseling and safe house/shelter for women and children victims of violence provided by the Foundation, focusing on their experiences with the services provided by the centers for social work in fourteen local communities (Banja Luka, Laktaši, Prnjavor, Gradiška, Prijedor, Knežev, Kotor Varoš, Mrkonjić Grad, Doboj Čelinac, Zvornik, East Sarajevo, Srbac, and Modriča).

The data presented in this Addendum are referring to the specific articles of the *CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, namely **Article 30 – Compensation, Article 34 – Stalking, Article 40 – Sexual Harassment, Article 45 ‘ Sanctions and Measures, Article 46 – Aggravating Circumstances, and Article 56 – Measures of Protection.**

### **Article 30 – Compensation**

*The Criminal Procedure Code of Republika Srpska and the Criminal Procedure Code of the Brčko District of BiH*<sup>3</sup> are integrating general provisions related to rights of the victims of criminal offences as the injured parties to claim compensation, as well as procedures to be followed by the prosecutor’s offices and the courts to enable victims to claim and receive compensation during the criminal proceedings against the offenders. These provisions apply also to women survivors of gender-based violence which participate in the criminal proceedings against the perpetrators of violence in a status of witnesses/injured parties. The criminal procedure codes are also defining the obligation of the prosecutor to determine the facts and collect evidence needed for the court decision about request for compensation<sup>4</sup>. When considering the plea agreement made between the authorized public prosecutor’s office and the perpetrator of violence and/or his defense attorney, the court is obliged to check if the injured party/victim of violence or her legal guardian were given the opportunity to plead on the compensation in front of the prosecutor’s office.<sup>5</sup>

Findings of the monitoring of criminal proceedings for gender-based violence in front of the targeted courts in Republika Srpska and Brčko District BiH during 2019 show that women victims of violence requested compensation in thirteen (13) criminal proceedings out of total two hundred and three (203) criminal proceedings (6.4%), including the criminal proceedings in which they had support of the attorney which submitted the compensation request on their behalf.

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<sup>2</sup> The regional project implementing partners are the Autonomous Women’s Center from Serbia, Center for Women’s Rights from Montenegro, AWEN and GADC from Albania, Kosovo Women’s Network, and Foundation United Women from Bosnia and Herzegovina

<sup>3</sup> Article 108, Paragraphs 3-4 of the Criminal Procedure Code of the Republika Srpska, and the Article 195 of the Criminal Procedure Code of the Brčko District of BiH

<sup>4</sup> Article 43, Paragraph 2, Point e, and the Article 107 of the Criminal Procedure Code of the Republika Srpska, and Article 35, Paragraph 2, Point g, and the Article 197 of the Criminal Procedure Code of the Brčko District of BiH

<sup>5</sup> Article 246, Paragraph d) of the Criminal Procedure Code of Republika Srpska and the Article 231, Paragraph e) of the Criminal Procedure Code of Brčko District BiH

The monitoring identified only one criminal proceeding, in front of the Basic Court of Bijeljina, for the criminal offence of *Abusing Children for Pornography*<sup>6</sup> in which the court awarded the compensation to the victims of violence in amount of 4000 BAM for each victim, to compensate for material and non-material damage, with the obligation of the perpetrator to pay it within one year of the verdict becoming final.

In rest of the monitored criminal proceedings, including all observed criminal proceedings for the offence of Domestic Violence (118 monitored cases), the courts used verdicts to refer victims of violence to civil proceedings, justifying these decisions with lack of presented evidence that would enable complete or partial judgment on the requests for compensation. For the criminal proceedings that ended with plea agreement, which is over 70% of the observed proceedings for the criminal offence of Domestic Violence, it is not visible from the verdicts if the courts checked that the victims of violence had the opportunity to state if they want to claim compensation in front of the public prosecutor's office.

The monitoring findings from 2019 are indicating that the practice of courts and prosecutor's offices in relation to providing possibilities for victims of criminal offences of gender-based violence to initiate and claim compensation within criminal proceedings against perpetrators of violence remains unchanged since 2011.<sup>7</sup>

#### Article 34 – Stalking

With adoption of a new Criminal Code of Republika Srpska in 2017, *Stalking* has been recognized as the criminal offence, in line with the provisions of the Article 34 of the Istanbul Convention. The Criminal Code of Republika Srpska<sup>8</sup> recognizes the basic form of the criminal offence of *Stalking* when someone „persistently and over a long period monitors or stalks another person or tries to establish or establish unwanted contact with him/her directly or through another person or otherwise causes changes in that person's life habits, anxiety or fear for his/hers own safety or the safety of persons close to him/her”, with threatened fine or imprisonment up to two years. A more serious form of the criminal offence exists if it is „committed in relation to a current or former spouse, a person with whom the perpetrator was in an intimate relationship, or against a child “, with threatened prison sentence of six months to three years.<sup>9</sup>

The currently effective *Criminal Code of the Brčko District of BiH*<sup>10</sup> does not recognize Stalking as the criminal offence.

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<sup>6</sup> Article 175, Paragraph 1 of the Criminal Code of Republika Srpska

<sup>7</sup> Foundation United Women from Banja Luka, BiH is conducting monitoring of the criminal proceedings on gender-based violence in the Republika Srpska since 2011, and the monitoring initiative conducted throughout 2019 was 4<sup>th</sup> monitoring cycle.

<sup>8</sup> The Criminal Code of Republika Srpska, Official Gazette of the Republika Srpska, no. 64/17, on 13 July 2017.

<sup>9</sup> Article 144 of the Criminal Code of Republika Srpska.

<sup>10</sup> The Criminal Code of Brčko District BiH, Official Gazette of the Brčko District BiH, no. 19/2020, - consolidated text

Through the monitoring of criminal proceedings on gender-based violence at the targeted basic courts of the Republika Srpska during 2019, the Foundation “United Women” collected data related to three (3) criminal offences of *Stalking*, and prepared a detailed qualitative analysis of the verdicts adopted by the courts in these cases. In overall, the analysis indicates continuation of the practice of perceiving criminal offences of gender-based violence against women as offences of a lower social danger, for which the court impose lighter punishments to the perpetrators.

The analysis indicate good practice in one criminal proceeding for the offence of *Stalking*, in which the acting judge who, in the reasoning of the verdict, paid significant attention to the testimony of the victim, and enabled her to provide all the details not only regarding the actions of the alleged perpetrator related to *Stalking*, but also the nature of the intimate relationship of the victim and the perpetrator. Detailed testimony of the victim (as the injured party) is not common or often visible in the verdicts for criminal offences of gender-based violence, although it represents the key segment of argumentation of the existence of characteristics of acts of violence, not only in cases of this criminal offence, but also other offences in this field.

However, in the second monitored criminal proceeding for the criminal offence of *Stalking*, the analysis of the verdict indicates imposed minimum sentence of six (6) months of imprisonment for a continuous and persistent act of *Stalking* against a former partner of the perpetrator, for which the perpetrator previously received restraining order and was taken into custody for a month, and despite that, repeatedly stalked the victim. The minimum imposed sentence also indicates that the court did not consider that the perpetrator continuously repeated the offence (in line with the Article 46 of the Istanbul Convention).

The analysis of the third monitored criminal proceeding for the offence of *Stalking* indicates lack of recognizing of a more severe (qualified) form of the criminal offence committed against a former intimate partner of the perpetrator, for which the court imposed a fine of 600 BAM<sup>11</sup>, although the Criminal Code of Republika Srpska prescribes prison sentence for a qualified form of this criminal offence.

#### **Article 40 – Sexual Harassment**

With adoption of a new Criminal Code of Republika Srpska in 2017, *Sexual Harassment* has been recognized as the criminal offence, in line with the provisions of the Article 40 of the Istanbul Convention.

The Criminal Code of Republika Srpska regulates that *the Sexual Harassment*<sup>12</sup> represents “any verbal, non-verbal or physical unwanted conduct of a sexual nature aimed at violating the dignity of a person in the sphere of sexual life, and which causes fear or creates a hostile, degrading or offensive environment.” (Paragraph 2). The Law also regulates that this criminal offence exists when someone “sexually harasses another person who is in relationship of subordination or dependence or who is particularly vulnerable

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<sup>11</sup> The abbreviation BAM refers to the Bosnian Convertible Mark, currency effective in the Bosnia and Herzegovina.

<sup>12</sup> Article 170 of the Criminal Code of Republika Srpska

*due to age, illness, disability, addiction, pregnancy, severe physical or mental disability” and prescribes sentence of imprisonment up to two years (Paragraph 1).*

The currently effective Criminal Code of the Brčko District of BiH does not recognize Sexual Harassment as the criminal offence.

Through the monitoring of criminal proceedings on gender-based violence at the targeted basic courts of the Republika Srpska during 2019, the Foundation “United Women” collected data related to two (2) criminal offences of *Sexual Harassment*, and prepared a detailed qualitative analysis of the verdicts adopted by the courts in these cases. In both observed criminal proceedings, the court adopted verdicts based on plea agreements made between the authorized prosecutor’s offices and the offenders/their defense attorneys, which led to imposed sentences below minimum prescribed sentence for this criminal offence.

In the first criminal proceeding for the offence of Sexual Harassment, the analysis of description of the committed acts provided in the verdict indicates possible intention of the offender to sexually abuse 11-years old girl for which the RS Criminal Code prescribes much more serious sentence.<sup>13</sup> In this case, the perpetrator was sentenced with a fine of 5000 BAM. When imposing the sentence, the court considered only mitigating circumstances – the perpetrator pleaded guilty and therefore contributed to the faster and more economical end of the criminal proceeding, as well as that he expressed remorse and promised that he would not do criminal offences in the future. No aggravating circumstances were considered by the court.

In the second criminal proceeding for the offence of Sexual Harassment, the analysis of the verdict indicates that, based on plea agreement, the court imposed suspended sentence (as a warning sanction) of three (3) months of imprisonment, with probation period of two (2) years, against the perpetrator who was a driving test instructor and sexually harassed a young woman that took driving test classes. When imposing the sentence, the court did not state any mitigating or aggravating circumstances.

## **Article 45 – Sanctions and Measures**

Results of the monitoring of criminal proceedings for criminal offences of gender-based violence conducted during 2019 in front of the targeted courts in Republika Srpska and Brčko District BiH indicate that **in majority of cases for the criminal offence of Domestic Violence the courts are still imposing suspended sentences as the warning sanctions**. Out of 118 analyzed cases for this criminal offence, eighty-two (82) cases ended with conviction, and suspended sentence has been imposed in fifty-three (53) cases, which makes 65% of total number of completed cases. The courts typically imposed suspended sentences in range from three (3) to eight (8) months, with probational period from one (1) to two (2) years, and exceptionally three (3) years. The courts were imposing the suspended sentences

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<sup>13</sup> Intercourse with a Child under 15 Years of Age, Article 172 of the Criminal Code of Republika Srpska. For the basic form of this criminal offence the Law prescribes imprisonment from two to ten years and recognizes several qualified forms for which imprisonment is also prescribed, in range from 6 months to a long-term imprisonment.

also against perpetrators of the criminal offence of Domestic Violence that are returnees in committing crimes, multiple returnees, and special returnees in committing the offence of Domestic Violence.

The courts have imposed prison sentences in fifteen (15) cases (18% of the total number of completed cases), in range from thirty (30) days to two (2) years. In these cases, the perpetrators of violence were multiple returnees in committing criminal offences, the special returnees in committing the criminal offence of Domestic Violence, as well as the perpetrators of concurrent offences of Domestic Violence and other criminal offences, most commonly *Endangering Safety*<sup>14</sup>, and *Illicit Production and Trafficking of Weapons or Explosive Materials*<sup>15</sup>, or *Illicit Possession of Weapons and Explosives*<sup>16</sup> which indicates that, when committing violence, perpetrators of violence also threatened, or attacked other persons, and illegally possessed weapons. Monitoring of criminal proceedings for the offence of Domestic Violence **identified practice of milder punishment of the perpetrators of domestic violence who also committed a criminal offence related to illegal possession of weapons, even in extremely severe cases of domestic violence.**

For example, in the criminal proceeding at the Basic Court in Trebinje a judge sentenced N.N. for three concurrent criminal offences, as follows: two criminal offences of *Domestic Violence* (in aggravated form for which the RS Criminal Code prescribed sanction of imprisonment in range from 2 to 10 years) as well as *Illicit Production and Trafficking of Weapons or Explosive Materials* (in basic form for which the RS Criminal Code prescribed sanction of imprisonment in range from 6 months to 5 years). N.N. was previously convicted multiple times, mostly on suspended prison sentences, for various criminal offences, including two convictions on suspended prison sentences for the criminal offence of Domestic Violence. From the factual description presented in the judgment, it is evident that N.N. committed several serious acts of violence against his wife in a presence of a minor child, as well as against underage children by direct threats with an explosive device. A judge accepted the plea agreement that N.N. concluded with the prosecutor and imposed single term of imprisonment of 5 years, as well as security measure of confiscating weapons. Pursuant to the plea agreement, a judge sentenced N.N. to 2 years and 5 months in prison for each individual criminal offence of Domestic Violence, and to 5 months in prison for the criminal offence of Illicit Production and Trafficking of Weapons or Explosive Materials and determined a single sentence of 5 years in prison, by applying the rules of the Criminal Code of Republika Srpska on general sentencing<sup>17</sup>, on concurrent criminal offences<sup>18</sup>, and imprisonment<sup>19</sup>. When imposing sanction, a judge, assessed as mitigating circumstances that N.N. is a family man, a father of three children, although he committed two serious criminal offences directly against family members, including minor children.

### Withdrawal of Parental Rights for Abusive Fathers

<sup>14</sup> Article 150 of the Criminal Code of Republika Srpska

<sup>15</sup> Article 361 of the Criminal Code of Republika Srpska

<sup>16</sup> Article 365 of the Criminal Code of Brčko District BiH

<sup>17</sup> Article 52 of the Criminal Code of Republika Srpska

<sup>18</sup> Article 56 of the Criminal Code of Republika Srpska

<sup>19</sup> Article 46 of the Criminal Code of Republika Srpska

Results of the survey conducted during 2020 among women beneficiaries of specialized services for victims of gender-based violence provided by the Foundation “United Women” Banja Luka show that **women victims of domestic violence are lacking access to information on measures that can be taken against perpetrators of domestic violence, namely withdrawal of parental rights.** Additionally, survey indicate that this measure is **rarely used against perpetrators of violence by the authorized public institutions that are subjects of protection from violence.** Out of eighty-four (84) surveyed women beneficiaries, sixty-one (61) women have minor/dependent children. Among these women beneficiaries, nineteen (19) women (31%) stated the center for social work informed them about the possibility of terminating the abuser’s parental rights, thirty-nine (39) (64%) said they did not receive such information in the center, while three (3) women were not sure if they received this information in the center.

Eight (8) surveyed women beneficiaries (13%) stated the center for social work initiated proceedings to partially terminate the abuser’s parental rights, four (4) women (7%) stated the center for social work initiated proceedings to completely terminate the abuser’s parental rights, while forty-nine (49) women service users with underage/dependent children (80%) stated the center for social work did not initiate such procedure against their husbands/partners who were perpetrators of violence.

#### **Article 46 – Aggravating Circumstances**

Results of the monitoring of criminal proceedings during 2019 conducted by the Foundation “United Women” indicate that in 32% of analyzed cases of Domestic Violence that ended with verdict the targeted courts did not specify neither mitigating nor aggravating circumstances that contributed to lighter or stricter sanctions against the perpetrators. **Monitoring results also indicate that aggravating circumstances are rarely accessed by the courts in relation to cases of Domestic Violence and other criminal offences that could be recognized as gender-based violence** - mostly previous conviction or previous multiple convictions of the perpetrators. However, in the cases in which the courts assessed aggravating circumstances of previous conviction or previous multiple convictions, the imposed sentences were, as a rule, suspended sentences or imprisonment within or slightly above legal minimum for a form of the criminal offence determined within the indictment. **Only in one (1) observed case of the criminal offence of Domestic Violence the court assessed dependency from alcohol as the aggravating circumstance,** although in more observed cases it was visible from the factual descriptions of the offence presented in the indictments that the perpetrators were under influence of alcohol, or the acts of violence were repeated several times, and that perpetrators of violence were prone to abuse of alcohol. In three (3) observed cases of Domestic Violence in which there were trials, and which did not end with the plea agreement, it was visible from the statement of the expert witness stated in the verdicts that abuse of alcohol by the perpetrators led to their reduced sanity, which was assessed as a mitigating circumstance by the courts when imposing sanctions.

In 40% of the observed criminal proceedings for the offence of Domestic Violence, the courts assessed as mitigating circumstance that the perpetrator is a family man, father of one or more underage or adult

children, although he committed the criminal offence against family members. In four (4) verdicts for the criminal offence of Domestic Violence, the court assessed the failure of the victim to file a claim for compensation of damage or giving up from testifying as the mitigating circumstances, which points that the court are considering omission of victims as injured parties to use their rights to impose less severe sanctions against the perpetrators of violence.

#### Article 56 – Measures of Protection

Laws of the Republika Srpska<sup>20</sup> and the Brčko District of BiH<sup>21</sup> contain provisions related to rights and protection of witnesses that participate in criminal proceedings, which also apply to women survivors of violence that participate in the criminal proceedings against perpetrators of violence in the status of witnesses/injured parties. Their provisions regulate conditions under which women survivors of violence can refuse to testify and receive assistance of legal representative/attorney, obligation of the court to protect them as witnesses from insults, threats, attacks, as well as the questions related to sexual activities prior and after they were exposed to violence/criminal offence was committed against them<sup>22</sup>. Internal legislation of Republika Srpska and Brčko District BiH also prescribe **measures of protection of witnesses under threat and endangered witnesses** in the context of providing psychological, social, and other forms of professional support as well as special procedure and conditions of their testifying. Children and minors that are victims and witnesses of criminal offences, including acts of gender-based violence are recognized as endangered witnesses within laws on protection and procedures with children and minors in the criminal proceedings, and they are entitled to special protection and testifying procedure.

The Criminal Code of Republika Srpska and the Criminal Code of Brčko District of BiH are also regulating **safety measures that can be imposed by the courts against the perpetrators of criminal offences with the elements of violence**. Their purpose is to remove situations or conditions for the perpetrator of violence to repeat the criminal offence in the future as well as to provide additional protection of victims. One of the safety measures is *Restraining from Approaching and Communication with a Certain Person*<sup>23</sup> which can be imposed by the court for the period from six (6) months up to two (2) years. Its purpose is to prohibit to the perpetrator of violence to approach victim to a certain distance, prohibit access to the area around living or work premises of victim, and prohibit further harassment and communication with victim, if there is a reasonable doubt that these actions of perpetrator could be dangerous for the victim. The court can also prohibit to the perpetrator of violence to approach and

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<sup>20</sup> The Criminal Procedure Code of the Republika Srpska, Official Gazette of the Republika Srpska, no. 53/12, 91/2017 and 66/2018, the Law on Witness Protection in the Criminal Proceedings of the Republika Srpska, Official Gazette of the Republika Srpska, no. 48/03, the Law on Protection and Procedures with Children and Minors in the Criminal Proceedings of the Republika Srpska, Official Gazette of the Republika Srpska, no. 13/10.

<sup>21</sup> The Criminal Procedure Code of the Brčko District BiH, Official Gazette of BDBiH no. 34/2013 – consolidated text, 27/2014 and 3/2019, the Law on Protection of Witnesses Under Threat and Endangered Witnesses of Brčko District BiH, Official Gazette of BDBiH, no. 10/2003, the Law on Protection and Procedures with Children and Minors in Criminal Proceedings of Brčko District BiH, Official Gazette of BDBiH, no. 44/2011.

<sup>22</sup>Article 20 of the Law on Changes and Amendments of the Criminal Procedure Code of Republika Srpska, Official Gazette of Republika Srpska, no. 15/21 from 03/03/2021

<sup>23</sup> Article 79 of the Criminal Code of Republika Srpska and Article 77b of the Criminal Code of Brčko District BiH

communicate with other person if such behavior of perpetrator would represent psychological harassment of victim. Duration of the imposed safety measures is counted from the period of finality of the verdict, and time spent serving the sentence of imprisonment or in the closed type of health facility for medical treatment is not counted in duration of this measure. Both laws are also regulating other measures that can be imposed against the perpetrators of criminal offences with elements of violence – *Mandatory Psychosocial Treatment*<sup>24</sup> and *Removing the Perpetrator of Violence from a Common Household*<sup>25</sup>.

### **Situation in the Practice – Monitoring Findings**

**Imposing of safety measures for the purpose of protecting victims of violence has been identified by the Foundation “United Women” as a good practice during monitoring of the targeted courts in Republika Srpska during 2019.** This practice has not been identified during previous years of monitoring criminal proceedings on gender-based violence, which points at progress toward changes of attitudes of the prosecutors and judges toward understanding of criminal offences of gender-based violence as offences of increased social danger.

In eighty-two (82) criminal proceedings for the offence of Domestic Violence that ended with verdicts during the monitoring period, the targeted courts imposed eleven (11) safety measures, as follows:

**Five (5) safety measures of *Seizure of Items***<sup>26</sup> related to seizure of weapons (rifles, bombs, guns, knives, etc.) possessed by the perpetrators of violence at the time they committed acts of violence and used for the purpose of threats and intimidations of the victims of violence or used directly when committing the violence with the purpose of inflicting injuries of injured parties that are victims of violence.

**Three (3) safety measures of *Mandatory Psychiatric Treatment Outside Institution***<sup>27</sup> – in one case the measure was imposed by the court for the period of minimum eight (8) months and maximum up to two (2) years, which is also the probational period for suspended sentence imposed by the court together with the measure. In other two cases, the court imposed the security measure for the period during which the reasons for which they were imposed last, and at the latest until the expiration of the probation period with suspended sentence (1 year, 3 years).

**Two (2) safety measures of *Mandatory Treatment of Addiction***<sup>28</sup> – one security measure on the period of two (2) months, together with the prison sentence on the same period, and one security measure together with the suspended sentence and another security measure (Mandatory Psychiatric Treatment Outside Institution), on the period up to two (2) years, which matches the probation period.

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<sup>24</sup> Article 80 of the Criminal Code of Republika Srpska and Article 77c of the Criminal Code of Brčko District BiH

<sup>25</sup> Article 81 of the Criminal Code of Republika Srpska and Article 77d of the Criminal Code of Brčko District BiH

<sup>26</sup> Article 82 of the Criminal Code of Republika Srpska and Article 78 of the Criminal Code of Brčko District BiH

<sup>27</sup> Article 75 of the Criminal Code of Republika Srpska

<sup>28</sup> Article 76 of the Criminal Code of Republika Srpska and Article 75 of the Criminal Code of Brčko District BiH

Only in one analyzed case for the criminal offence of **Domestic Violence**, the Basic Court in Bijeljina imposed **safety measure of Restraining from Approaching and Communicating with a Particular Person** (injured party which is the victim of violence) on the period of 6 months (the lowest possible period prescribed by the Law) with the suspended prison sentence of 10 months, with 2 years of probation period. From the factual description of the acts of violence provided in the verdict, it is visible that the perpetrator committed the more serious, qualified form of the criminal offence because he threatened with weapons to attack the life and body of the victim. The safety measure has been imposed by the court based on the plea agreement, within which the District Public Prosecutor's Office in Bijeljina and the perpetrator made the agreement about the type and amount of the sanctions, including this safety measure. It is also visible from the verdict that the perpetrator is returnee in committing criminal offences, however it is unknown for which criminal offences he has been previously convicted.

Monitoring findings also indicate that **adult women that survived some of the forms of gender-based violence are not recognized as injured parties that are entitled to right on special forms of protection and support during testifying – receiving status of a witness under threat and protected witness**. Monitoring did not identify cases in which adult women survivors of violence had support of a psychologist or social worker during testifying, or they were granted the possibility to testify without presence of a perpetrator of violence in the courtroom and/or from separate room using telecommunication equipment. In that sense, court practice remains unchanged in comparison to the findings of the previously conducted monitoring initiatives since 2011. Monitoring results also indicate **absence of cases in which women survivors of violence had psychological assistance during providing testimony**.

Only in one criminal proceeding in front of the Basic Court of Banja Luka for the criminal offence of *Domestic Violence*, monitors had the opportunity to directly observe the testimony of an underage girl victim of violence (17 years of age) without support of the expert professionals (e.g., psychologist), which is regulated as mandatory by the internal law.

Monitoring enabled to the Foundation "United Women" to **identify examples of good practice in work of prosecutor's offices and courts with the purpose of protecting interests of women survivors of violence as injured parties**.

Following are the examples from the practice:

**Extending detention and imposing safety measure against the perpetrator of violence to protect victim of violence from further violence and pressure**

On 8 August 2019, the District Prosecutor's Office in Doboj raised the indictment against N.N. for the criminal offence of *Rape*<sup>29</sup> and the criminal offence of *Theft*<sup>30</sup>. Acting prosecutor requested extension of detention against N.N., upon hearing of a woman survivor of violence and another witness and

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<sup>29</sup> Article 165, Paragraph 1 of the Criminal Code of Republika Srpska

<sup>30</sup> Article 224, Paragraph 1 of the Criminal Code of Republika Srpska

collecting other material evidence. As the reasons for extension of detention the prosecutor stated *that exceptional circumstances are indicating that if released from detention the alleged perpetrator would obstruct criminal proceedings through influencing witnesses, specifically the woman survivor of rape and her brother.*

The prosecutor also pointed that in her statement provided in front of the prosecutor's office a woman victim said that she is afraid of a female cousin of N.N. which came to her house and threatened to her. A cousin of the perpetrator was trying to force the victim to withdraw report against N.N. or the victim and her brother would end in prison and would have to pay compensation of damage to her. She also said she would expel the victim and her brother from their house and seize their entire property. A woman victim of violence also stated in front of the prosecutor that she is afraid this woman would return, and N.N. would come again and do the same things to her that he did before and for which she reported him. Brother of the victim confirmed her statement and said that she was waking up in fear the whole night after these threats.

*In the indictment, the prosecutor stated that these circumstances clearly indicate there is reasonable doubt that release of N.N. would enable him to interfere with the criminal proceeding and make pressure on witnesses.* The prosecutor also stated that there are exceptional circumstances that indicate reasonable doubt that N.N. would repeat criminal offence if released from detention as he previously verbally tried several times to force a victim to a sexual intercourse, which she refused, and that N.N. knows that the victim has mental development disabilities. N.N. often visited the house where a victim lives with her brother and was using the opportunity, knowing that her brother is not in the house all the time, and coming to their house when the victim was alone, they live in the same village. By reviewing the criminal offence records of N.N., the prosecutor also identified he is a person prone to committing criminal offences and stated that all these circumstances justify the doubt that N.N. could repeat criminal offence of rape.

On 6 December 2019, upon completing the first instance procedure, the Basic Court in Doboj imposed the joint sentence of imprisonment against N.N. in duration of four (4) years and one (1) month for both criminal offences. The Court also adopted decision to release N.N. from the detention and change it with restraining order of prohibiting N.N. to meet and approach near the victim in a distance not less than 100 meters, and mandatory reporting to the authorized person in the police department in Doboj every first day in the month, to supervise restraining order and informing the court in the case of its violation. The judge warned N.N. that the court can order detention if he violates the restraining order, that this measure will be effective as long as needed and will end when N.N. begin to serve his imprisonment sentence. The judge also explained that the court will assess necessity of restraining order every two (2) months.

## Case 2

On 27 March 2019, the District Prosecutor's Office in Doboj raised the indictment against N.N. for the criminal offence of *Domestic Violence*<sup>31</sup>. On 2 March 2019, the Basic Court in Doboj ordered detention of N.N. and there is another criminal proceeding for the same criminal offence against the perpetrator. Factual description presented in the verdict indicates that N.N. was physically and psychologically abusing his wife over longer period, starting with October 2018, and on 2 March 2019 he repeated violence and inflicted severe bodily injuries to his wife.

The prosecutor's office proposed to the court to extend detention of N.N. based on numerous material evidence, statement of the woman victim and other witnesses, *as the exceptional circumstances were identified in the concrete case which provide reasonable doubt that N.N. might repeat the criminal offence while at large*. Provided justification also points that prescribed sentence for the qualified form of the offence of Domestic Violence is from two (2) to ten (10) years of imprisonment, and that there is objective condition for detention as for this criminal offence the court can impose the sentence of three (3) years of imprisonment. Justification also points that N.N. is obviously a person prone to violence as on 23 October 2018 the prosecutor's office also raised an indictment against N.N. for the criminal offences of *Domestic Violence*, *Endangering Security*, and *Illicit Production and Trafficking of Weapons or Explosive Materials*, that N.N. committed against the same victim, and the indictment for these offences has been confirmed by the Basic Court in Doboj on 29 October, 2018.

Based on the proposal of the prosecutor's office, the Basic Court in Doboj extended the detention of N.N. on 1 April 2019 on the court session for deciding on extension of detention. At the same court session, the defense attorney requested replacement of the detention with the safety measure of restraining from communication and meeting with a certain person (victim) or a prohibition of leaving the place of residence, considering that the purpose can be achieved by these measures which are more economical, easily enforceable and justified.

The prosecutor objected to this request and pointed that another criminal proceeding has been initiated against N.N. for the same criminal offence that he committed in October 2018.

The prosecutor additionally stated that the victim ended common life with N.N. after this period, and she moved to Doboj (the victim and the perpetrator lived together in surroundings of Doboj), and that there is ongoing divorce procedure. Despite all of this, on 2 March 2019, N.N. took the keys of her apartment in Doboj from children without the knowledge of the victim, and entered the apartment while it was empty, locked the entrance doors, and waited for the victim. When she entered the apartment, N.N. attacked her and inflicted grave bodily injuries. Due to that, the victim has been hospitalized and N.N. was taken into custody. The prosecutor emphasized that based on these facts it is not certain that safety measures would prevent N.N. to repeat the criminal offence. The prosecutor also reminded the court that N.N. used cold weapons when attacking the victim and inflicted her grave bodily injuries. Since committing the first criminal offence of Domestic Violence in 2018, N.N. has been

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<sup>31</sup>Article 190, Paragraph 3 in relation to Paragraph 1 of the Criminal Code of Republika Srpska

continuously threatening to kill the victim, which also happened in front of their children. Due to all these facts, the prosecutor argued that if released from the custody there is reasonable danger that N.N. may repeat the criminal offence with which he threatens, and he might kill the victim.

On the plea hearing held on 10 April 2019, N.N. stated not guilty. On the main trial held on 29 September 2019, which was observed by monitors of a partner organization, a daughter of N.N. and the victim testified (just after she turned 18 years of age) without presence of the persons that could provide her with psychological support. As a witness, she was warned by the court that she can use her right not to testify since N.N. is her father, and she stated that she will testify. She was interrogated by the prosecutor and by N.N. In their trial report, the monitors noted that *the court recognized and prevented intention of N.N. to influence the witness through his hostile body language while she was providing the statement and imposing his side of the story through suggestive questions and statements such as „we would agree that... “when stating the details which the witness did not provide in her testimony. The court reacted several times during interrogation of the witness by N.N. and stopped his attempts to influence her statement.*

#### **Recommendation:**

-To ensure that measures of protection regulated by internal laws are consistently applied in relation to victims of violence that are participating in criminal proceedings against perpetrators of violence as witnesses/injured parties and ensuring they can provide testimony free from intimidation and pressure of the perpetrator, using the available supporting mechanisms within the courts and through cooperation with other subjects of protection from violence, namely support of psychologists prior, during, and after testifying.

This should include consistent safety risk assessment and recognizing the status of witnesses under threat/endangered witnesses for women victims of all forms of violence recognized by the Convention and enabling victims to testify without presence of the alleged perpetrators of violence, and with use of communication technologies.