



FINDINGS

REGARDING THE COURT
MONITORING CONDUCTED
IN TERMS OF CASES
OF VIOLENCE
AGAINST WOMEN

FINDINGS REGARDING THE COURT MONITORING CONDUCTED IN TERMS OF CASES OF VIOLENCE AGAINST WOMEN

Publisher

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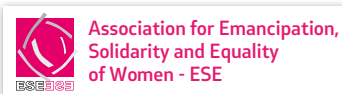
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INTRODUCTION

In 2013, ESE Association started implementing court monitoring in its work as part of its strategic goals aimed at improving access to justice for women who have suffered violence. There are multiple benefits from the application of the court monitoring process as a tool for diagnosing drawbacks in the judicial system. Namely, through the implementation of court monitoring in cases of violence against women, ESE promotes the right of access to justice and legal protection for women who have suffered violence, and also contributes to increasing the level of sensitivity, transparency and fairness in proceedings on cases of this type. In addition to data collection, the court monitoring process also includes the establishment of closer cooperation and communication with basic (trial) courts, strengthening of their capacities, as well as direct consultation and empowerment of women who have suffered violence.

Having consideration of the Association's strategic goals and aiming at the upgrade of activities already ongoing in this area, within the USAID Women's Legal Protection Project, from 2015 to 2017, we organized comprehensive court monitoring of cases of violence against women, i.e. civil and criminal cases related to domestic violence, trafficking in women and violence against sex workers. It is important to note that the implementation of this thematic court monitoring regarding violence against women is part of the wider efforts undertaken within this Project in order to improve the system of legal protection for women who have suffered violence.

Close cooperation was established with trial courts as part of this initiative, and training for judges was organized to strengthen the application of national legislation and existing international and regional standards in the field of protection of women who have suffered violence. The analysis findings were regularly discussed at forums with judges, who got actively involved in defining the recommendations for improving certain aspects of proceedings in cases related to violence against women¹.

Within this Project, efforts have been made to empower women who have suffered violence and encourage them to initiate court proceedings for their protection. Guides for women survivors of domestic violence, women victims of trafficking and sex workers victims of violence were developed through their direct involvement. These Guides promote court procedures for violence prevention and they shall contribute to increasing the awareness among women who have suffered violence.

In parallel with the court monitoring process implementation, an Analysis of Legal Framework and Institutional Response to Violence against Women was also drafted in relation to the actions of all institutions involved in the protection system. In this way, a balance has been established between court case monitoring and general justice system monitoring. This combined approach enables to observe court monitoring data in a broader context or be used and analyzed cumulatively with the shortcomings identified in the legal system for protection of women who have suffered violence.

¹ In addition to judges, the last national forum was also attended by representatives from other ministries and institutions such as the Centers for Social Work and the Ministry of Justice.

Court monitoring findings are objective indicators that can be used as a basis for training of judges in their practical application of international standards in this area, in order to improve the effective judicial protection in violence-against-women cases². Also, findings obtained from court monitoring will contribute to raising public awareness about violence against women, i.e. raising the level of public support for women who have suffered violence.

Considering the potential for changes by using this approach, in the following period, ESE Association will continue with its application in trial courts, aiming to transform it into a continuous process of monitoring of both qualitative and quantitative indicators established in terms of access to justice and effective judicial protection for women who have suffered various forms of violence.

The Report prepared and the initial data obtained with regard to formal and procedural aspects of court proceedings related to violence against women will constitute the basis for the implementation of a further continuous process of monitoring court cases of this type, and the preparation of in-depth analyses, whose aim will be to contribute to substantial judicial reform in terms of treatment and protection provided to women who have suffered violence.

The approach promoted by ESE Association does not end with the publication of the Report containing the main findings on court monitoring, but goes a step further, by taking on advocacy activities for overcoming the shortcomings in the provision of legal protection for women who have suffered violence.

² Trial Monitoring, A Reference Manual for Practitioners, OSCE, 2012, available on: <http://www.osce.org/odihr/94216>

METHODOLOGY FOR COURT MONITORING PROCESS IMPLEMENTATION

The implementation of court monitoring was intended to:

- Provide data on judges' action and assess the legal protection provided to women who have suffered violence;
- Improve the work of judges in cases related to violence against women.

For the realization of these objectives, the court monitoring process was conducted in cooperation with, and involvement of, trial courts at all stages of the process, starting from the preparatory activities up to discussing the monitoring findings and defining recommendations for improvement of certain aspects of judges' action.

Before the start of the court monitoring process, a preliminary assessment of the situation was made. In this regard, courts provided their basic information on cases related to violence against women for the period from 2012 to 2014.

All methodological tools (questionnaires) for data collection were drafted in a participatory process involving representatives of civil society organizations, judges, public prosecutors, lawyers, and women who have suffered various forms of violence. After organizing a series of meetings and consultations, the following methodological tools were prepared: Questionnaire for Data on Criminal Cases Related to Domestic Violence; Questionnaire for Data on Civil Cases Related to Domestic Violence; Questionnaire for Data on Criminal Cases Related to Human Trafficking; Questionnaire for Misdemeanor Proceedings Related to Violence against Women; Questionnaire for Indemnification Litigation. The lack of technical possibility to search for court records regarding cases of violence against women on which infringement and indemnification procedures were conducted was a barrier to their monitoring and therefore, these data are not part of this Report.

The monitoring of domestic violence criminal cases included the following offenses: bodily harm (injury), grievous bodily harm (injury), unlawful deprivation of liberty, threatening the safety, and murder, while the monitoring of trafficking cases covered the offences: human trafficking and child trafficking. Besides the above mentioned criminal proceedings, civil proceedings for imposition of temporary measures for protection against domestic violence were also subject to monitoring.

For the purposes of court monitoring and in order to ensure court monitors, ESE Association contracted the Coalition "All for a Fair Trial". Based on an open competition, 30 young lawyers were selected as court monitors. To strengthen their capacity in terms of the subject of monitoring, two-day training was organized, focusing on the nature and specifics of different forms of violence against women, and legal mechanisms and court possibilities for their protection. These monitors were familiarized in detail with the content of court monitoring questionnaires, and with the manner of recording the data required.

The process of court monitoring was conducted in the period from March 2015 to February 2017 at 10 trial courts in the country, including: Skopje 1, Skopje 2, Bitola, Shtip, Veles, Radovish, Tetovo, Gostivar, Prilep and Kumanovo. Through court monitoring, data was collected on 344 cases and 780 court hearings. Based on the information obtained from

trial courts with regard to their scheduled hearings, court monitors attended court hearings and completed the data in the relevant questionnaires. For some proceedings which could not be monitored on an ongoing basis (234), data were provided by inspecting the court procedures completed. After collecting the data, they were entered into a computer database and technically processed.

Court Monitoring Limitations

Some limitations were identified in the process of court monitoring, both in terms of the process of collecting data on scheduled court hearings and the scope of data which monitors could collect. Namely, the first limitation is due to the inability to obtain timely information from the court regarding scheduled court hearings relating to civil proceedings for imposition of temporary measures of protection against domestic violence. These civil proceedings' hearings are scheduled and held within very urgent timelines, so therefore, mostly for objective reasons (lack of a court spokesperson, impossibility to contact monitors on a weekend or holiday, inability to provide an immediate replacement for a monitor who is unable to attend, etc.), it was not possible to promptly notify monitors so that they could attend the scheduled hearing accordingly. Because of this situation, some of the civil cases for imposing temporary protection measures were not currently monitored, but a method of inspecting closed cases was used thereon. Hence, there is a need to further define the manner of communication between the court and the monitor in the future, so that immediate, fast and efficient transfer of information on scheduled hearings is secured.

In addition, some limitations relate to the inability of the monitor, mostly because of objective reasons (excluding the public, lack of court transparency, starting the monitoring of an already initiated case etc.), to collect all the data required in the questionnaire. Namely, the court was not always able or did not agree to provide all the information requested by the monitor, if his/her monitoring did not start at the first hearing but in some of the subsequent hearings.

Although the questionnaire included the provision of monitor's subjective opinion by using a short narrative overview of the case, still, in most cases, monitors did not present their positions due to a number of reasons (not having a defined view, uncertainty about giving one's personal evaluation, lack of opportunity to establish a certain position if the monitor had not attended all hearings). Having in mind these aspects, a need to undertake more comprehensive education and sensitization of monitors who follow cases of violence against women was identified. In addition, there is a possibility of structuring the possible answers while giving a subjective remark by the monitor.

FINDINGS OF THE COURT MONITORING CONDUCTED REGARDING CASES OF VIOLENCE AGAINST WOMEN

The court monitoring process included 780 court hearings, of which 744 court hearings were related to domestic violence and 36 hearings were pertaining to trafficking in women. During the court monitoring conducted at the courts involved, there was no case on violence against sex workers identified and for this reason, the report prepared contains no data on this type of cases.

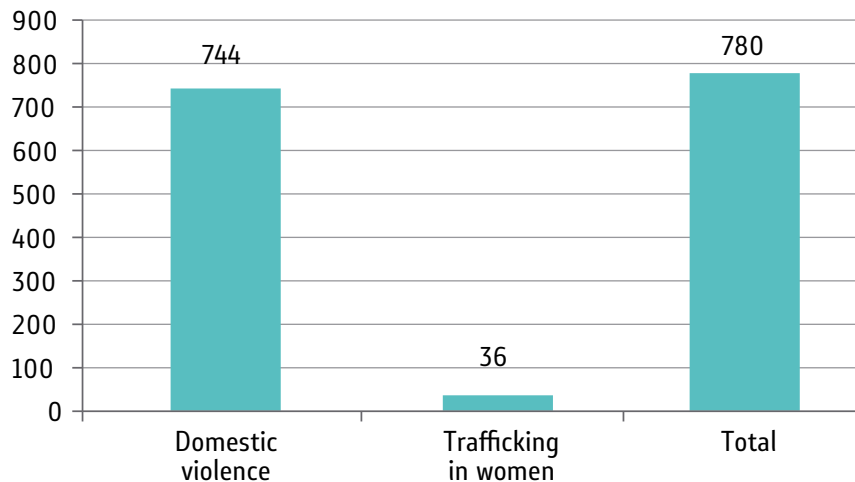


Chart 1. Number of hearings pertaining to violence against women, by type of violence

The findings of the court monitoring conducted are divided into two thematic sections corresponding to the types of violence. Accordingly, this Report ends with conclusions and recommendations regarding each of these types of violence.

I. DOMESTIC VIOLENCE

Of the total number of court hearings monitored (780), even 95.4% are related to hearings pertaining to domestic violence, or a total of 744 hearings. The high share of cases, i.e. hearings on domestic violence in the total number of hearings monitored regarding violence against women corresponds with the actual high incidence of domestic violence compared to other forms of violence against women. Of these 744 hearings, criminal procedures on domestic violence account for 74.7%, or a total of 556 criminal hearings. The remaining 188 hearings, i.e. 25.3% are civil proceedings for the imposition of temporary measures for protection against domestic violence.

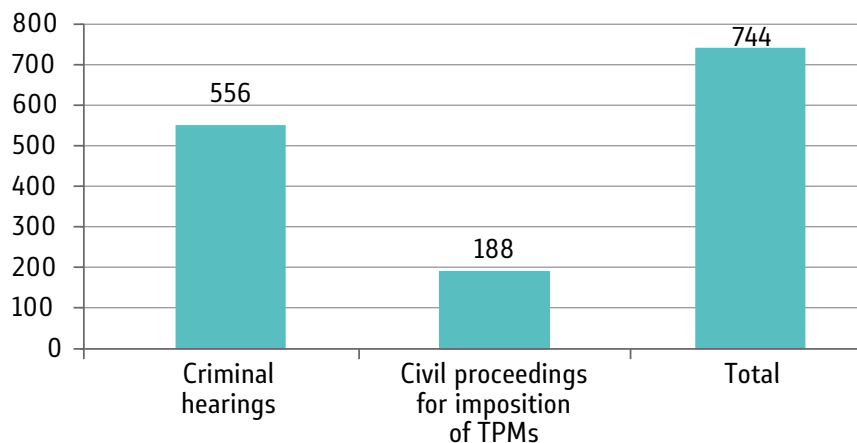


Chart 2. Number of hearings pertaining to domestic violence, by type

A. CRIMINAL PROCEEDINGS PERTAINING TO DOMESTIC VIOLENCE, BY BASIC COURTS WHERE THEY WERE MONITORED

Of the total number of criminal proceedings relating to domestic violence (Chart 3), it can be noted that for the most part, i.e. 373 hearings (67%) were conducted before the Basic Court Skopje 1 - Skopje. It is followed by the court of Kumanovo, where 92 hearings were conducted, i.e. 16.5% of the total number of criminal proceedings pertaining to domestic violence. At the other ten courts involved, the number of criminal proceedings conducted on domestic violence is insignificant and it ranges from one hearing monitored at Basic Courts of Tetovo and Prilep each, to 23 hearings monitored in the Basic Court of Bitola. It is important to note that the high concentration of criminal hearings at the Basic Court Skopje 1 - Skopje is primarily due to the fact that this court has the highest volume of pending criminal cases, unlike other courts. On the other hand, the extremely low number of criminal proceedings for domestic violence in other courts is worrying. Hence, there is a need to explore the reasons for this situation in more detail and take into account the action of institutions in initiating criminal proceedings for offenses related to domestic violence.

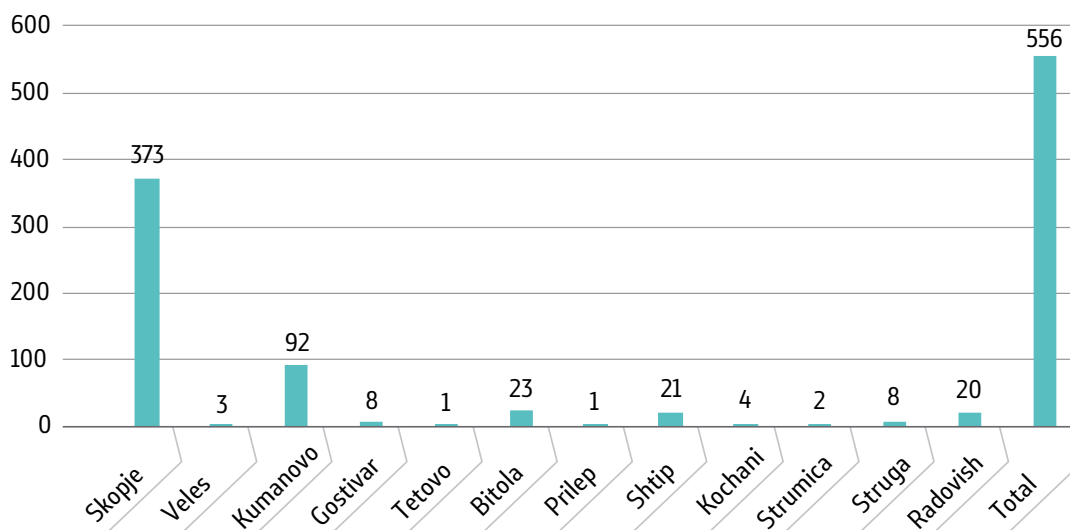


Chart 3. Number of criminal proceedings pertaining to domestic violence, by Basic Courts

Number of Criminal Hearings, by Type of Crime

Of the total number of criminal proceedings related to domestic violence, the most common crime is bodily injury (59.6%) with 328 hearings, followed by the offence of endangering safety with 110 hearings (20%) and the offence of grievous bodily harm with 62 hearings (11.2%). Although the crime of murder in domestic violence is the least represented in the total number of hearings (7%), it is important to note that this is the hardest crime resulting in death due to commission of domestic violence. Hearings on murder during domestic violence were held for a total of 19 cases for this crime.

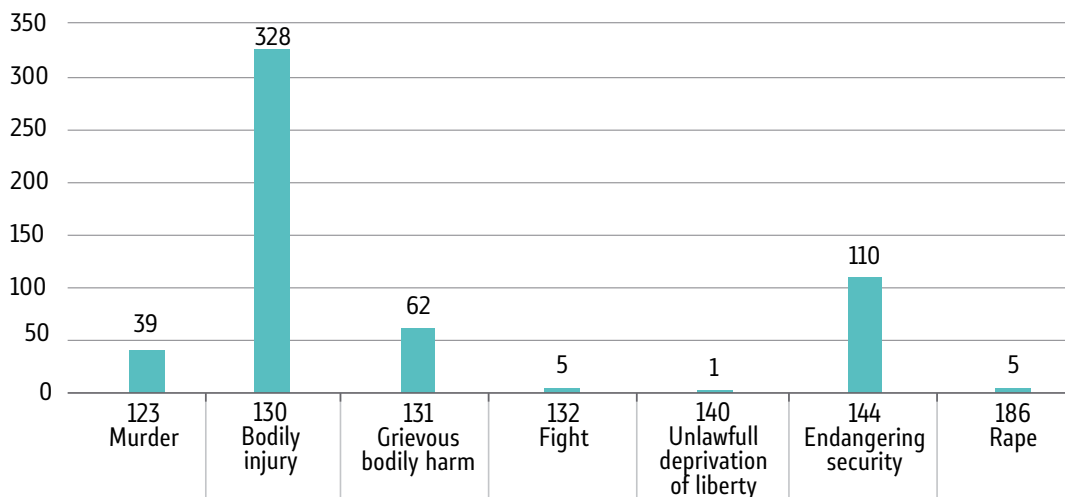


Chart 4. Number of criminal hearings by type of crime

Criminal Hearings by Type of Procedure

Of 556 hearings monitored, 233 were carried out in regular procedures, 241 hearings in summary procedures, while 28 hearings were held in procedures for issuing a penal order. There are no data on 54 hearings. We can conclude that the number of hearings on domestic violence conducted in either regular or summary proceedings is nearly the same. Namely, crimes for which a fine or imprisonment of up to 5 years is prescribed entail summary procedures, while those crimes for which a sentence of over 5 years or life imprisonment is envisaged entail regular procedures. Hence, we can conclude that hearings for conditionally speaking “minor offenses” and “more severe crimes” in relation to domestic violence were present in almost equal numbers. Although the number is insignificant, i.e. 28 hearings held in the procedure for issuing a penal order related to domestic violence, these data are still worrying. Such action by judges, i.e. the acceptance of the proposal by the public prosecutor and the issuance of a penal order by a single judge results in milder punishment as opposed to the stricter penal policy of the State regarding offenses related to domestic violence. Namely, in these proceedings, the Court of First Instance has no power to impose an effective prison sentence for domestic violence perpetrators (Chart 5).

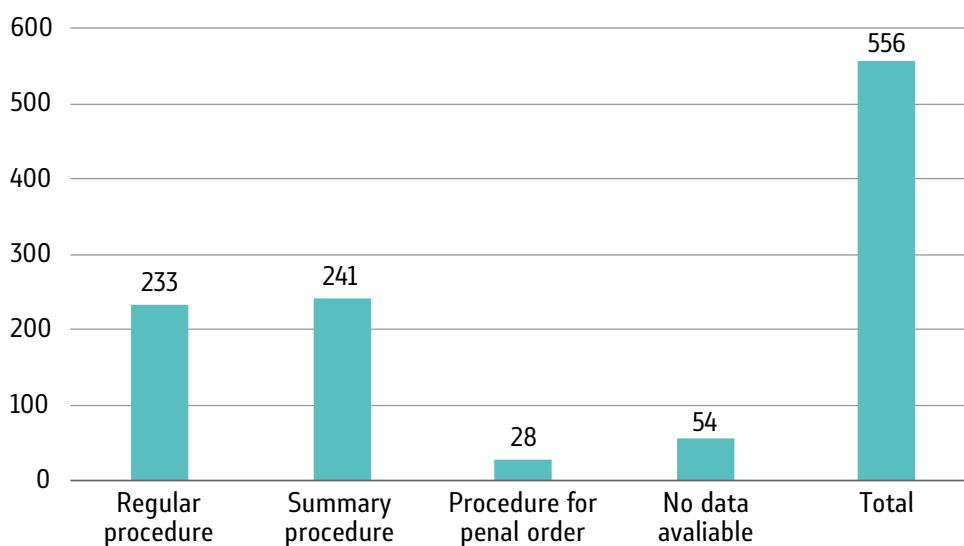


Chart 5. Number of hearings by type of procedure

Reasons for Postponement of Court Hearings

One third (30.4%) of the total number of criminal hearings were not postponed. In the remaining 387 hearings, the trial was postponed for multiple reasons (Chart 6). The most common reason for postponement of court hearings was the absence of the defendant. The absence of the defendant is followed by the absence of the injured party (17%), and the absence of the public prosecutor (14.5%). We believe that for the most part, the absence of the defendant at court hearings, and thus, the postponement of the trial, is due to the attempts of the accused to prolong the procedure and be unavailable for judicial authorities, thus avoiding his criminal liability. The second most common reason for

postponement of hearings is the absence of the injured party, which is mostly due to her fear and possibility of her re-victimization at the hearing. Also, there are other reasons that may give rise to the absence of the injured party, such as improper service of process or loss of interest in further criminal procedure. The fact that court hearings were adjourned due to the public prosecutor's absence in equal proportion as the injured party's absence is worrying. We believe that such conduct or "failure" of the public prosecution is inadmissible and it can be justified only if it is due to the low number of public prosecutors in certain prosecution offices or because they can not be replaced by their colleagues at the main hearing.

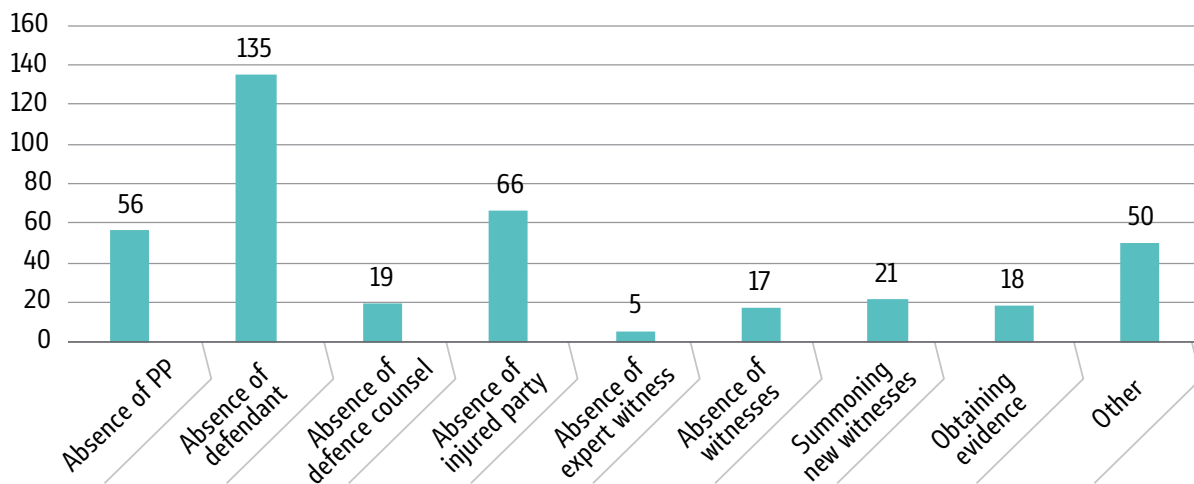


Chart 6. Reasons for postponement of court hearings

Absence from a Criminal Hearing

According to Chart 7, it can be concluded that of the total number of hearings (556), in 36.6%, or 204 hearings, all parties were present, while the remaining 352 hearings were not attended by either one or more parties in the procedure. Most often, the defendant was absent, i.e. in 46.6% of the cases, followed by the absence of the victim in 28.1%, and the absence of the public prosecutor in 18.1%. Witnesses were the least absent, in 10.8% of the hearings, followed by the defense counsel in 6.25%, expert witness in 2.5% and attorney in 1.9%. These data largely correlate with the previous data on the reasons for postponement of hearings (Chart 6), where the fact that the hearing is not attended mainly by the defendant is once again confirmed.

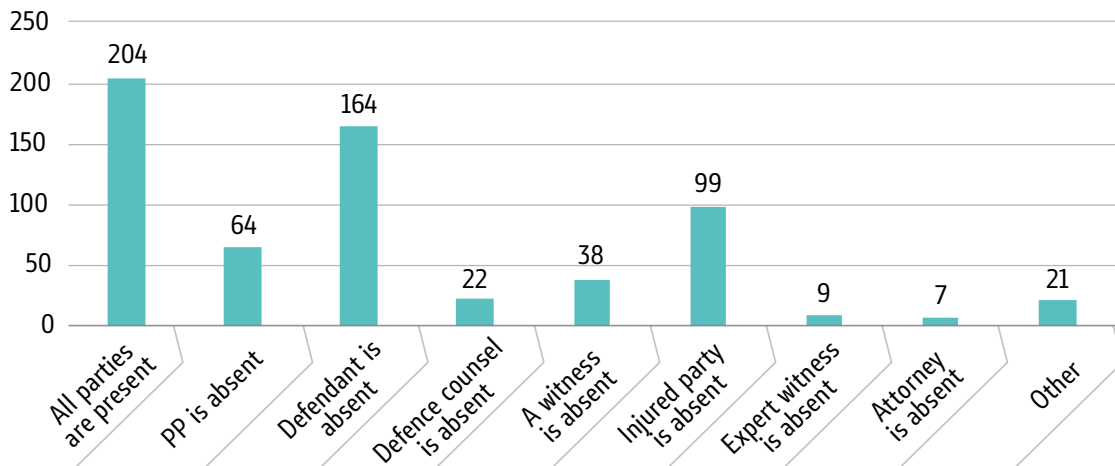


Chart 7. Persons not attending the hearing

Reading the Statement of the Injured Party at the Main Hearing

From the data obtained on 186 hearings, it can be concluded that cases where the testimony previously given by the victim was read out at the main hearing are extremely rare. Namely, during 176 hearings, victim's statement was not read out and the victim had to repeat her statement at the main hearing. Victims giving the statement at the main hearing stem from the substantially modified principle of establishing the truth from a substantive into a procedural one, under the new Criminal Procedure Law. Thus, the previous principle of material truth, which implied the duty of the court to present evidence, has now changed and the new principle of procedural truth involves proposing and presenting the evidence that parties (i.e. the prosecutor and injured party or the woman who has suffered domestic violence) shall prove during the main hearing. In the other ten hearings, victim's statement was read out at the main hearing, but not to prevent her further re-victimization, but because the victim was unapproachable due to her bad health condition or because she was deceased.

Evidence Presented at the Main Hearing

During the hearings on which we have data, the most frequently presented evidence was material evidence (207). This is followed by statements given by the parties involved in the proceedings, i.e. a statement of the injured party (115 times), followed by witness testimony (105 times) and the defendant's statement (77 times).

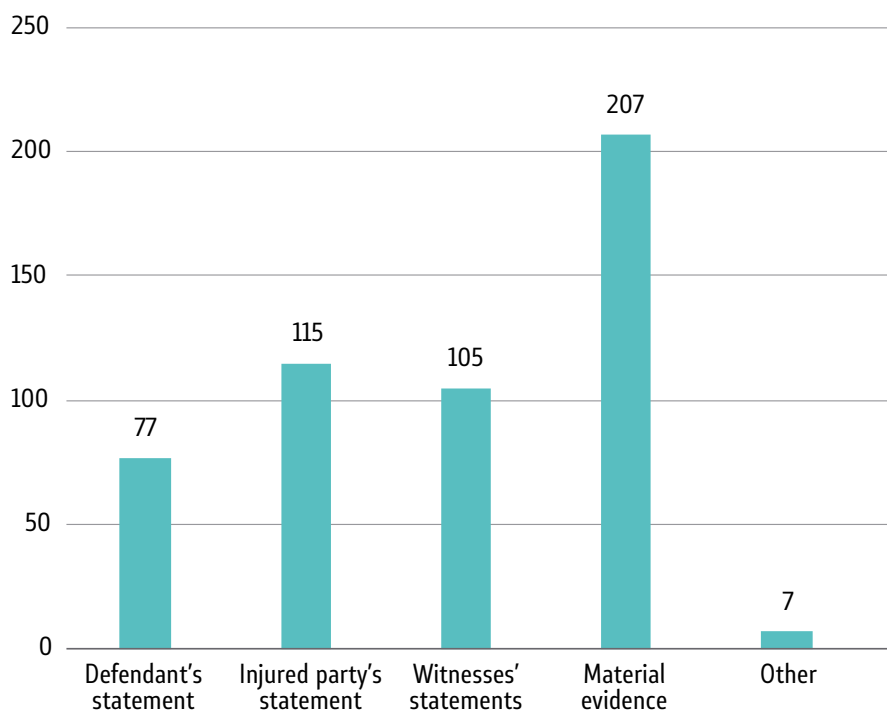


Chart 8. Evidence presented at the main hearing

Types of Material Evidence Presented at the Main Hearing

From the data obtained, it can be concluded that several types of evidence were presented at the main hearing, including: a report on the admission of criminal charges, reports from specialists, medical certificates/documentation, photo documentation, a certificate of temporary seizure of items, a report from the Inter-municipal Center for Social Work, tests performed for alcoholism, discharge letters, an excerpt from criminal records regarding the perpetrator, an extract from forensic records, statements of the damaged party, complaints to Sectors of Internal Affairs, warnings to the defendant, a civil court judgment, a first instance court judgment, an appellate court judgement, statements of other witnesses, a gun, a bullet, cartridge cases, a death certificate, etc. From the data obtained on 88 hearings, the most frequently presented physical evidence or documentation includes evidence obtained from the Ministry of Interior (71), and evidence relating to medical documents (45). Material evidence provided by the Center for Social Work was presented to a lesser extent, that is 23 times, excerpts from penal records were presented 14 times and excerpts from criminal records 8 times. These data also show the existence of serious acts of domestic violence resulting in consequences to the physical and mental health of women who have suffered domestic violence, and the key role of the police in the proper qualification and further processing of domestic violence cases.

Cross-examination of the Injured Party-Victim

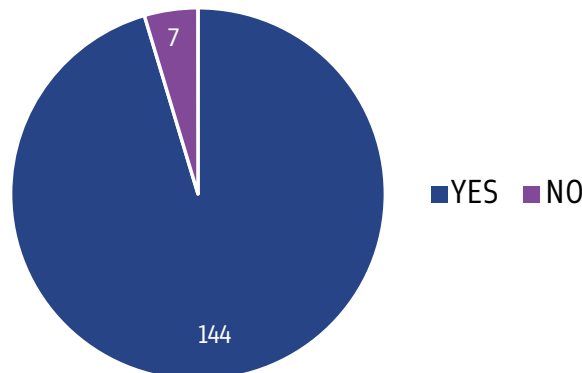
With regard to the question if the defendant and his counsel cross-examined the violence victim, monitors provided data on 155 hearings. In 64.6% of these hearings, the victim was cross-examined by the accused and his counsel. Victim's cross-examination may cause secondary victimization, which in turn may result in a withdrawal of the proposal for criminal prosecution when it comes to the crime of bodily injury or a refusal to give/change the statement given by the victim of the domestic violence committed. Part of the dilemmas related to the suitability of cross-examination are due to the fact that in our country, adequate case-law is still missing in terms of cross-examination, so therefore, the defined role of the judge comes down only to a passive arbitrator in the proceedings. Cross-examination and its proper application by the public prosecutor and the defense should be further analyzed in the future.

Plea Bargaining in Procedures for Making a Judgment Based on Settlement between the Public Prosecutor and the Suspect

One of the aspects monitored was the existence of proceedings in which the public prosecutor can propose a settlement by plea bargaining, where the perpetrator admits to having committed domestic violence, as well as based on the elements of informed and voluntary decision by the suspect when admitting to the offence. Namely, the data obtained from 42 hearings show that in 39 of them, the judge checked the plea or all of criminal offense qualifications and the factual description of the event. In 31 of the hearings, the judge asked questions to assess the voluntariness of the confession given, and checked the awareness and understanding of the consequences from the confession of guilt given. The possibility of mitigating the punishment as a result of such plea bargaining justifies the need for continuous monitoring and analysis.

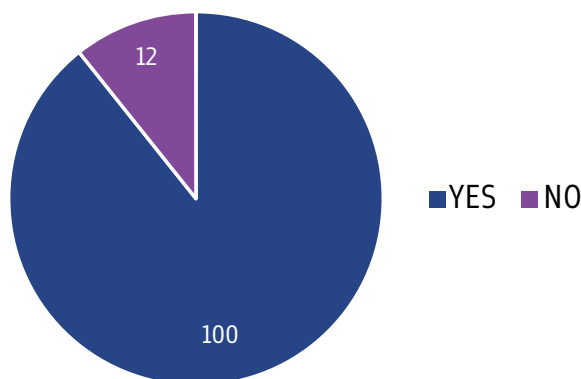
Rights of the Injured Party - Victim in Criminal Proceedings

One of the more important aspects in protecting the injured party in domestic violence procedures is her awareness of her rights in the proceedings. Of the data obtained on 151 hearings, in 95.3%, i.e. in 144 of them, the injured party was advised of her right not to answer certain questions in the criminal proceedings, as opposed to 7 hearings where she was not advised of this right (Graph 1).



Graph 1. Advising the victim not to answer certain questions

Also, of the data obtained on 112 hearings, in 100 of them, i.e. 89.3%, the victim was informed and legally advised of her right to ask questions, propose evidence, present objections and view writs (Graph 2).



Graph 2. The injured party - victim was advised of her right to ask questions, propose evidence etc.

The Criminal Procedure Law provides that any victim in the capacity of an endangered witness can refrain from giving testimony under the conditions for protection of certain witnesses, if there is a likelihood that in that way she would expose herself or a close person to a serious threat to their life, health or physical integrity.

For this purpose, judges' actions were analyzed, i.e. their actions taken to protect the victim in such case. Of the total number of data available on when such action was taken (24 hearings), in 21 hearings, no protection action was taken. Such behavior does not contribute to encouraging the injured party to testify and give a quality statement, especially knowing that in domestic violence cases her testimony is the only evidence of the violence. Unfortunately, according to previous case-law, only in exceptional cases has the court applied actions to protect the victim if she has denied giving her account for justified reasons.

When talking about the victim's right to refuse to give testimony in the presence of the accused, in 12 of the total of 13 hearings in which she refused to give a statement, the defendant was not temporarily removed from the courtroom. Although this is a small number of hearings, it still indicates that judges are insensitive when they should act and protect the victim's rights during the procedure. Not allowing the victim to testify without the presence of the accused directly contributes to her re-victimization in the proceedings.

In terms of her **right to indemnification**, of the available data on 173 hearings, proposals for such claim were submitted by 28 damaged parties. Regarding this right, there is generally a greater awareness by the injured party, i.e. in 112 out of 113 hearings she was informed thereon by the public prosecutor. This legal obligation to inform the injured party - victim is envisaged for all participants in the criminal proceedings, especially for the public prosecutor, who shall specifically inform the victim of this legal possibility.

Length of Domestic Violence Criminal Proceedings

Regarding the aspects of conducting an efficient criminal procedure, it is important to note the facts about the time spent from the beginning of the procedure until the adoption of the first instance judgment. Namely, Chart 11 lists some of the closed cases and their duration. So, of the data provided on 36 procedures ending with sentences, 17 procedures were completed within 60 days, 9 procedures were completed within 61 to 90 days, while the other 10 proceedings ended within a period longer than 90 days. Although the length of these proceedings is largely determined by the severity of the crime, still the data obtained suggest that court proceedings were not lengthy and unnecessarily postponed, thus confirming the consistent application of the right to a trial within a reasonable time.

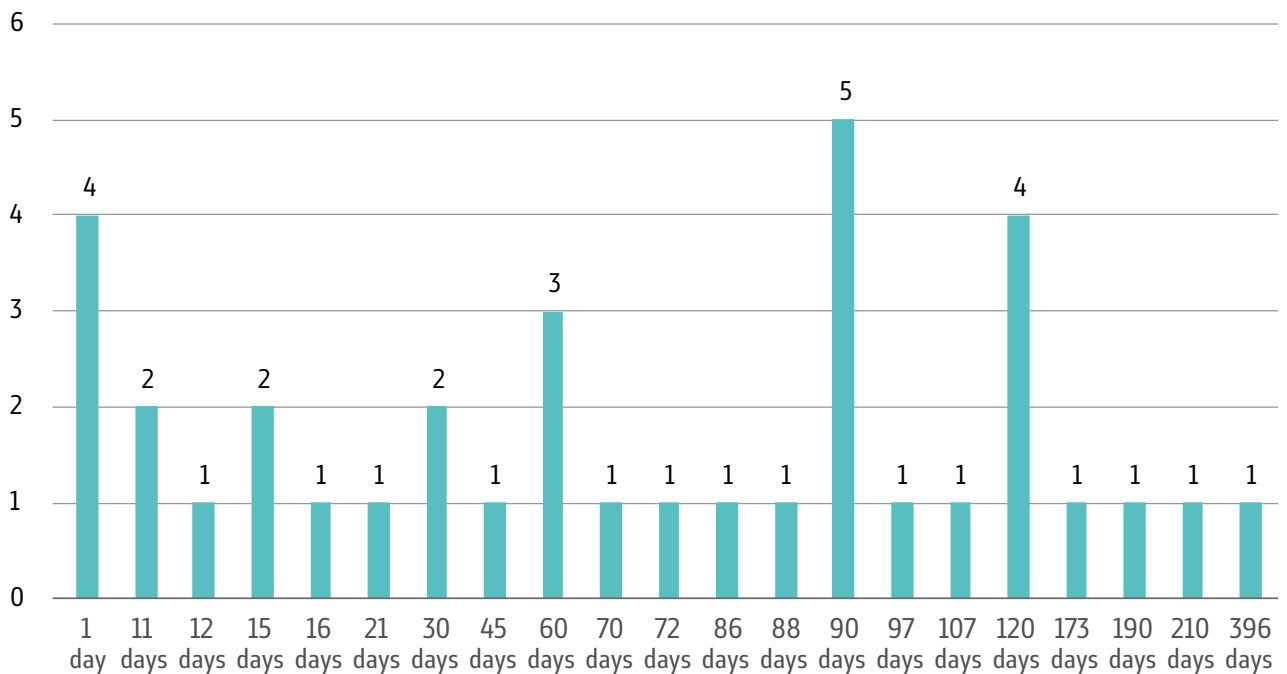


Chart 9. Length of domestic violence criminal proceedings

Sentences Issued

Of the total number of domestic violence criminal cases (234), 104 cases ended with court sentences.

CRIME	NUMBER OF CASES	NUMBER OF CASES IN WHICH A JUDGMENT WAS MADE
Murder	19	6
Bodily injury	134	54
Grievous bodily harm	13	7
Unlawful deprivation of liberty	1	0
Endangering safety	63	37
TOTAL	234	104

Table 1. Number of cases in which a judgment was rendered as opposed to the number of domestic violence cases, by types of crimes

For the crime of murder committed while committing domestic violence, in out of 19 criminal cases, the court decided in 6 cases, where in four of them it issued an imprisonment sentence, while two lack data on the type of sentence.

For the crime of bodily injury committed as a result of domestic violence, altogether 54 decisions were rendered. Of these, 46 are convictions; in two cases, a court reprimand was issued, while six cases lack data on the type of judgement. Although convictions were pronounced and the domestic violence perpetrator was found guilty as charged, especially disturbing is the type of conviction made. Of a total of 46 convictions, even in 35 cases, probation was issued, in one case a fine was issued, while only in 10 cases, prison sentences envisaged for domestic violence perpetrators were pronounced.

Regarding the crime of grievous bodily harm, 7 verdicts were passed, out of which 6 convictions. The situation is alarming in terms of the type of sentence, if we take into account that for this serious form of domestic violence, even 5 suspended sentences were issued, i.e. only in one case a prison sentence was pronounced. Moreover, in one case an acquittal was rendered.

For the crime of endangering safety committed as a result of domestic violence, 37 decisions were made. The trend of minimizing domestic violence and mild punishment of perpetrators is present in these verdicts. Namely, of a total of 32 convictions where perpetrators were found guilty of domestic violence, even 25 are suspended sentences, one perpetrator is fined, while only in six cases prison sentences were imposed. Additionally, there were one dismissal and two acquittals rendered.

By the imposition of lenient sentences for domestic violence perpetrators, judges minimize this problem and do not contribute to reducing the rate of domestic violence in our society. In a situation where the legislator distinguishes domestic violence as a separate crime and provides for stricter sentences for offenders, judges impose far more lenient sentences than the prison sentences envisaged for criminal cases of this kind. With this practice judges do not contribute to achieving the goals of domestic violence perpetrators' punishment, i.e. they do not sanction abusers adequately nor exert influence on the general public regarding the seriousness of crimes related to domestic violence. Ultimately, this directly discourages domestic violence victims to report the violence and seek help and support.

B. CIVIL LITIGATION FOR THE IMPOSITION OF TEMPORARY MEASURES OF PROTECTION AGAINST DOMESTIC VIOLENCE

Through the process of court monitoring, data were collected on 104 civil court cases, or 188 court hearings for imposition of temporary measures of protection against domestic violence.

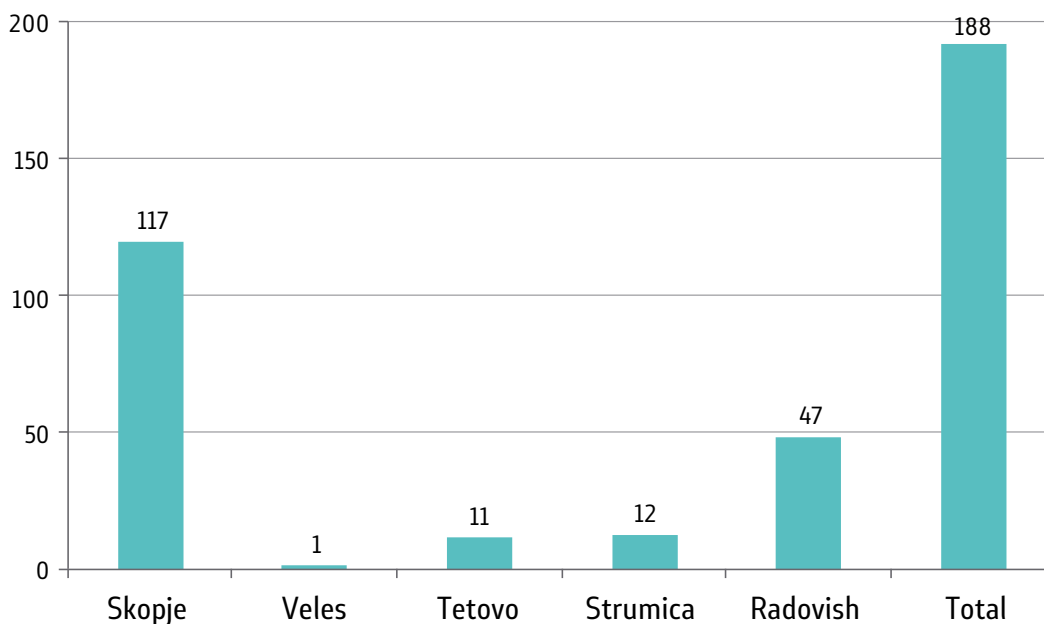


Chart 10. Number of civil hearings on domestic violence, per Basic Court

Through the process of court monitoring, data were collected on 104 civil court cases, or 188 court hearings for imposition of temporary measures of protection against domestic violence.

Most court hearings were held before the Basic Court Skopje 2, i.e. 117 court hearings to impose temporary measures of protection against domestic violence. They are followed by the Basic Courts of Radovish (47), Strumica (12), Tetovo (11) and Veles (1). As has been previously stated in Methodological Limitations, due to short deadlines for scheduling of these proceedings, monitors were not duly informed about the hearings scheduled in all courts covered by the process. However, compared to the criminal proceedings for criminal offenses resulting from domestic violence, the number of civil procedures for protection against domestic violence is significantly lower. Hence, there is a need for greater promotion of these procedures as preventive mechanisms in terms of domestic violence among courts and other institutions involved in the preparation of proposals, and in the monitoring and implementation of temporary protection measures imposed.

When initiating proceedings, the proposal to impose temporary protection measures was duly delivered to civil courts in most of the cases (104).

Proposing Party before the Court

Most proposals for imposition of temporary protection measures were prepared by the Center for Social Work, or almost two-thirds of the proposals. In ten cases, the police submitted a proposal for an urgent measure of “removal from the home and restraining order to approach the home.” The low number of proposals submitted by the police was noted by the judges during the forums, which emphasized the need for education of police officers on the manner of preparation of proposals in cases of domestic violence.

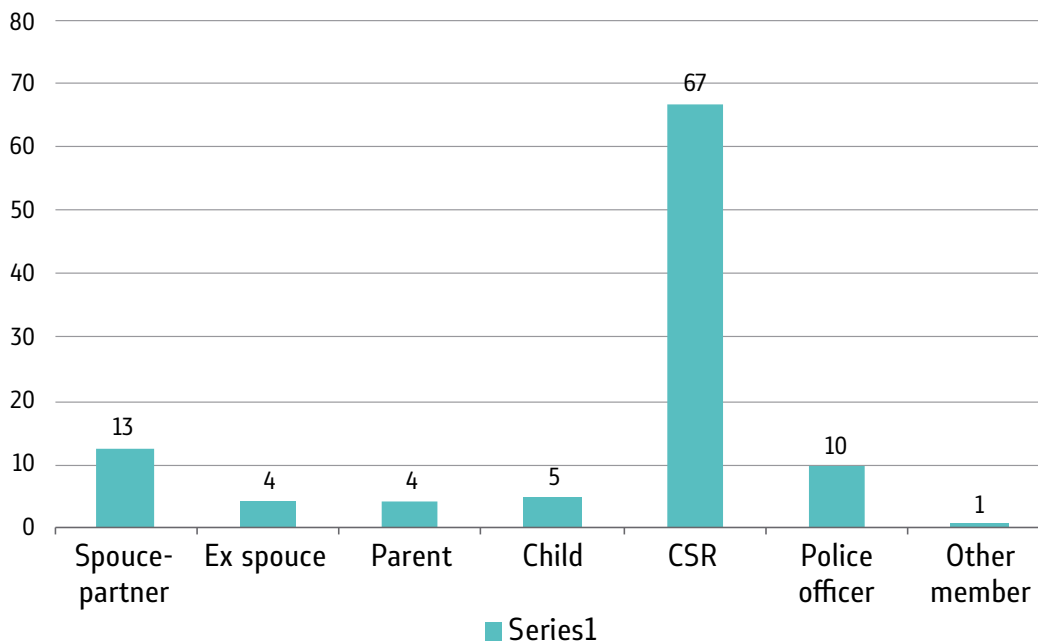


Chart 11. Proposing Party

The proposal to impose temporary protection measures was submitted personally by the person who has suffered domestic violence in every fourth case, i.e. in 27 cases. In 17 cases, the proposal was submitted by the spouse, partner or former spouse; in four cases the proposal was submitted by a parent, in five cases by a child and in one case the proposal was submitted by another family member. The most disadvantaged are the women who have suffered domestic violence and initiated procedures of this kind themselves, given that they need funds for court fees and presentation of evidence (expert testimonies), which they are not able to provide and may result in their withdrawal from the court proceedings. This conclusion was confirmed during forum discussions, where judges emphasized that proposals submitted personally are inadequately prepared in most cases.

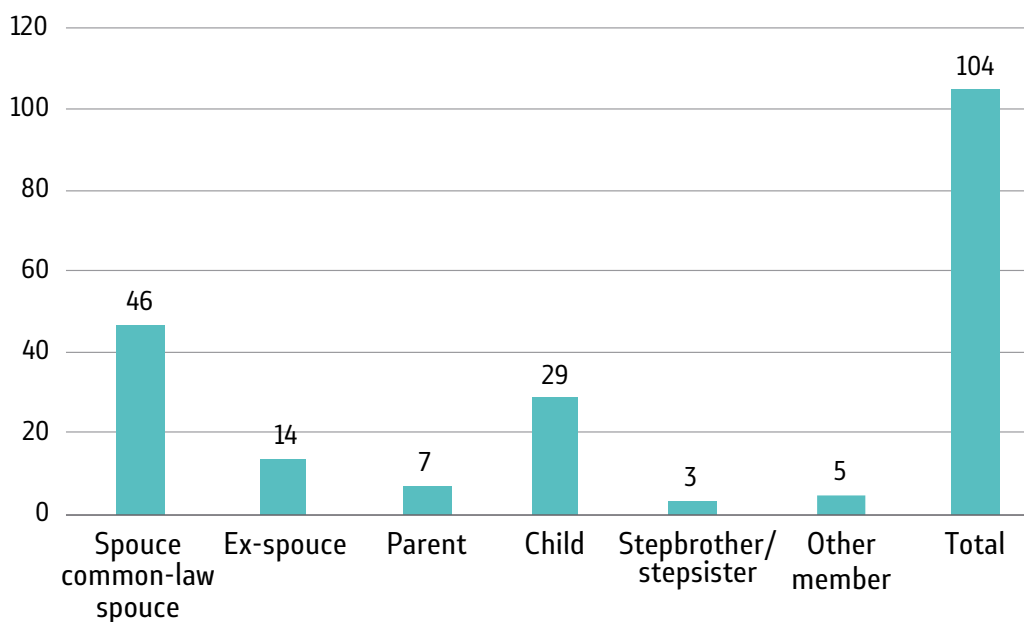


Chart 12. Against Whom the Proposal was Submitted

As to against whom the proposal was submitted, in the largest number of cases, the proposal was made against a married or unmarried or former spouse. The increase in the number of proposals submitted against children by parents is evident, i.e. even in 29 of the cases the court was asked to impose a temporary protection measure on children.

Type of Domestic Violence

Data on the type of violence suggest that women often request imposition of temporary measures for protection against combined physical and psychological violence suffered. There were no cases where court proceedings for issuing temporary protection measures were initiated due to sexual violence suffered.

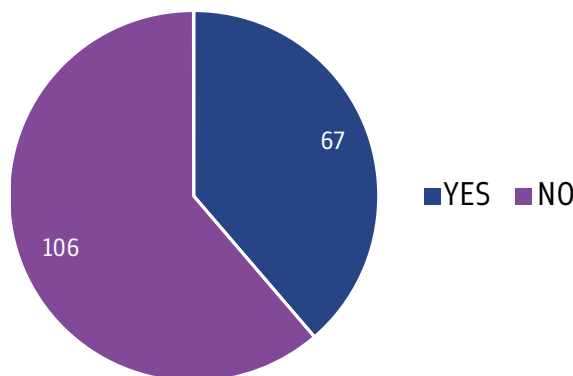
Duration of Procedure

Civil proceedings for the imposition of temporary protection measures are urgent procedures with short legal deadlines for their execution, so the expedience, i.e. the duration of such procedure is crucial for the effective protection of women who have suffered domestic violence. In this context, the procedure duration was analyzed through several criteria: whether the legal deadline for scheduling the first hearing was observed; how many court hearings were held on average in each of the cases; whether there were postponements of court hearings.

In terms of the first criterion, it was determined that although it was an urgent procedure for which a hearing shall be scheduled within seven days after the proposal, in practice, courts observed this legal deadline in 57.7% of the cases.

Regarding the number of court hearings, in every fourth case of this type, courts held three or more hearings before making a decision.

Regarding the postponement of court hearings, it was established that there was postponement of hearings and scheduling an additional hearing in 39% of the cases. See Chart 3.

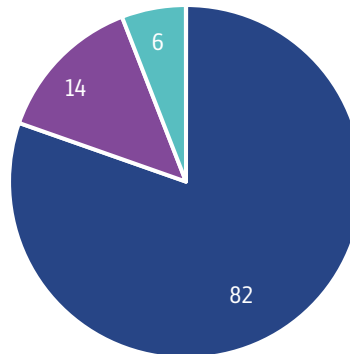


Graph 3. Postponement of Hearings

The reason for postponement of most cases was improper service of process, i.e. absence of the abuser or victim from the proceedings. Other reasons for delays in proceedings were the presentation of evidence and the lack of feedback from competent institutions, such as health institutions, social work centers and the police. It is important to note that the delay in court proceedings results in inefficient legal protection of domestic violence victims, i.e. increased likelihood for women's withdrawal from court proceedings and repeated violence.

Were Temporary Protection Measures Imposed?

In most cases the proposal was adopted in its entirety, i.e. the court issued the temporary protection measures proposed. It is concerning that in six cases, the proposal was entirely rejected by the court.



■ The proposal was fully adopted ■ The proposal was partially adopted
 ■ The proposal was fully rejected

Graph 4. Adoption of the TPM proposal by the court

In most cases, courts have issued temporary protection measures of prohibitive character, such as: a ban on threatening to commit domestic violence (70) and a prohibition to harass, disturb, telephone or otherwise communicate with a family member (65). They are followed by mandatory treatment for abusers who were using alcohol and other psychotropic substances and those with mental illnesses (34), and the prohibition of approaching the home, school, workplace or other designated place (restraining order) (28). See Chart 13.

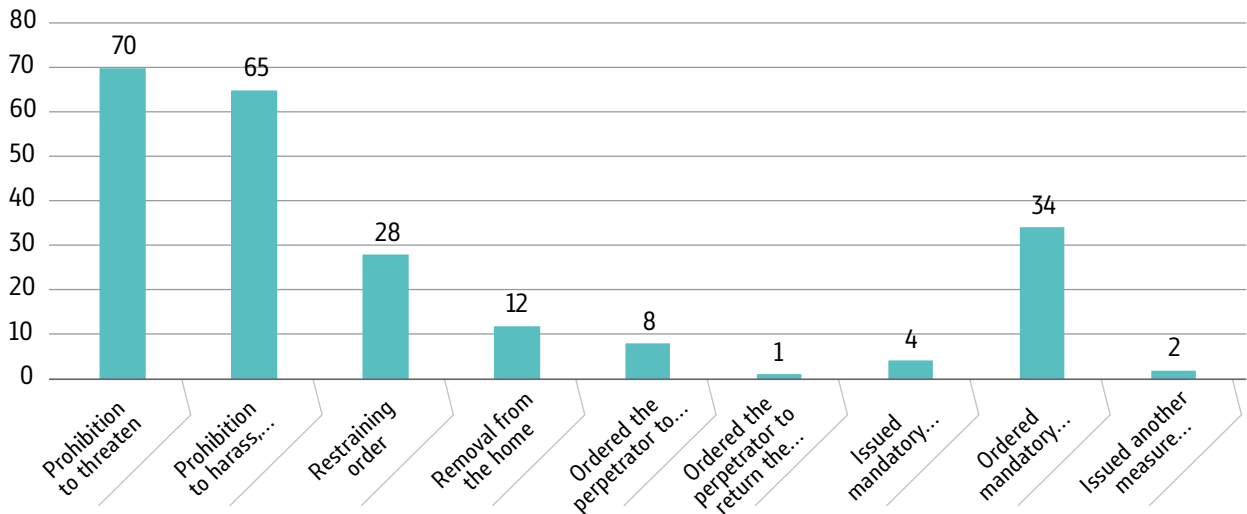


Chart 13. For What Period Were the Temporary Protection Measures Imposed

Basic civil courts most often impose temporary protection measures for a period of 12 months (36 cases) or six months (32 cases). In ten of the cases, measures were imposed for a period of 30 days. Moreover, there were no court proceedings where there was a change or continuation or reversal of temporary protection measures imposed.

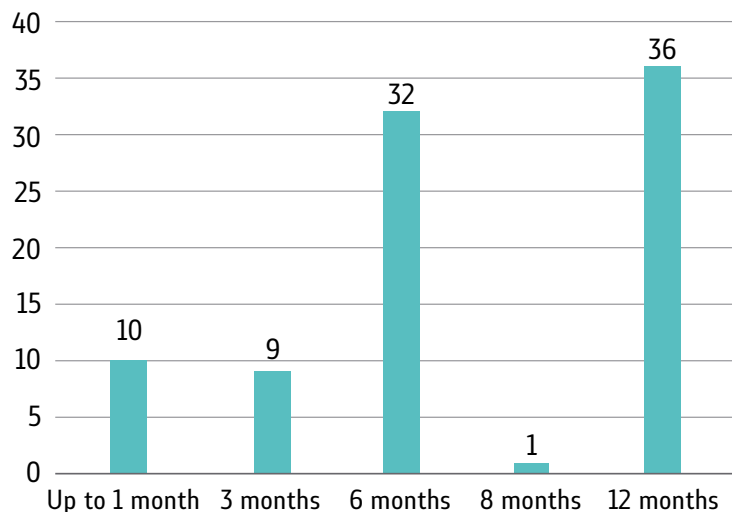
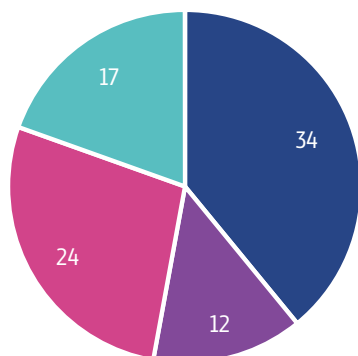


Chart 14. Time period for which TPMs were imposed

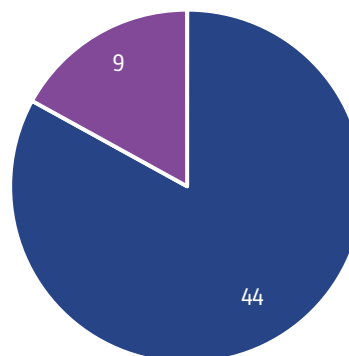
Implementation of Temporary Protection Measures Imposed

After the imposition of temporary protection measures, their implementation is crucial to ensure effective protection of women who have suffered domestic violence. In this regard, it is particularly concerning that basic civil courts receive no feedback from competent authorities in charge of monitoring and implementing the temporary protection measures imposed. Provided that the effective protection of women who have suffered domestic violence is determined by the manner of implementation of temporary protection measures imposed, it is required to establish a mechanism for adequate monitoring of measures and coordination of activities of courts and other competent institutions.



■ NO ■ YES, from CSR ■ YES, from Mol ■ YES, from health facilities

Graph 5. Feedback requested on TPM implementation



■ YES ■ NO

Graph 6. Notification sent to the court regarding the implementation of TPMs

II. TRAFFICKING IN WOMEN

Cases of trafficking in human beings were monitored at the Organized Crime Division within Basic Court Skopje 1, which is a special department for cases related to organized crime. The process of court monitoring included altogether eight cases of human trafficking, or 36 hearings. Of these 8 cases, one related to the offense of child trafficking (Article 418-d of the Criminal Code), while the other seven cases related to the criminal act of human trafficking (Article 418-a). It is important to note that in these eight human trafficking cases, the injured party or victim was a female. 13 persons were charged in these eight cases, where one person in five cases each, two persons were charged in two cases each, while in one case, there were 4 persons charged. The accused persons are equally of Albanian and Roma nationality, and mostly persons convicted previously.

During the monitoring of these court cases, monitors observed two cases with one hearing each, two cases with four hearings each, one with two hearings and three cases with eight hearings each. All parties were present at fifteen human trafficking case hearings. The other 21 hearings were not attended by either one or more parties in the procedure. Most common was the absence of defendants, who did not appear in ten hearings, followed by the absence of public prosecutors, who missed 6 hearings. They are followed by the absence of injured parties - victims, who did not appear in five hearings, defense counsels absent from three hearings and a witness who missed one hearing. From the data obtained on proceedings postponement in 18 hearings, the most common reason for such continuance was the absence of the defendant, i.e. in nine hearings, followed by the absence of the public prosecutor (three hearings), then the defense counsel and the injured party (in two hearings each). In order to ensure the presence of the accused, detention was issued in 18 hearings.

Of the data obtained on 11 hearings, only at one of them the statement of the victim was read out loud because she was not available. This indicates inadequate judicial practice in human trafficking cases. Namely, instead of allowing to read out the statement given by the trafficked victim during the preliminary procedure, the court required that she repeated her statement again during the main hearing while facing the defendants and their associates.

Of the eight cases of trafficking in women monitored, the court completed four cases, while the other four were still in progress. Four convictions were issued in the four completed proceedings, of which three for human trafficking and one conviction for the offense of child trafficking. Three convictions entailed prison sentences, while in one case, probation was sentenced. In the case of trafficking in women, where suspended sentences were issued, 4 people were charged. In fact, it was a specific form of human trafficking or mediation in a Roma family's arranged marriage. Given the fact that it was about traditional harmful practices among Roma, i.e. mediation in arranged marriages of their children, and bearing in mind the difficult socio-economic situation of the family, the judge decided that the four defendants should be sentenced to probation. Furthermore, the parties in the procedure, including the prosecutor, agreed with such judgement.

In none of the cases entailing convictions, the court decided to seize the proceeds of the offender, or imposed any measures on extended confiscation of property. In only two of the cases there are data that confirm that a proposal for indemnification was submitted by the beginning of the main hearing.

RECOMMENDATIONS FOR PROMOTING COURT MONITORING AND JUDICIAL PROTECTION IN CASES OF VIOLENCE AGAINST WOMEN

(Domestic Violence)

- > There is a need to improve the record-keeping system in courts, as well as the technical capacity of the ACCMIS system for searching cases of violence against women.
- > The reasons for the low number of criminal proceedings initiated in different courts should be analyzed in conjunction with the actions of the police and public prosecution in the detection and initiation of criminal proceedings relating to offenses committed during domestic violence.
- > Urgent action should be taken to prevent domestic violence, including the promotion of civil proceedings for imposition of temporary measures as preventive mechanisms of protection against domestic violence among professionals in institutions. Prevention is especially needed bearing in mind the high number of murders committed during domestic violence.
- > There is a need for continuous monitoring of court proceedings for penal order issuance, their appropriateness and feasibility, especially having in mind that in these proceedings, the judge can not impose an effective imprisonment for domestic violence perpetrators.
- > There is a need for continuous monitoring of public prosecutors' proposals for plea bargaining procedures between the public prosecutor and the suspect, especially for the fact that in such settlements on criminal sanctions, the key role is played by the public prosecutor and suspect, but not by the injured party-victim.
- > It is necessary to consider all options for avoiding victim's re-victimization in court proceedings. Court monitoring identified a number of aspects that contribute to victim's re-victimization, including: previous statement of the victim taken again at the main hearing; impossibility for the victim to testify without the presence of the accused; the court does not take actions to protect the victim as a witness if she refrains from giving a statement; and application of cross-examination.
- > Training of judges is required in terms of their sensitization to improve the treatment and protection of victims' rights during the procedure.

- > The reasons for victim's absence from court hearings should be examined, because they lead to delayed proceedings. Furthermore, the reasons why the public prosecutor did not attend court hearings in an equal measure as the injured party should be investigated.
- > It is required to impose sentences envisaged for crimes committed as a result of domestic violence. Penal policy should be implemented in a way that criminal justice sanctions should be proportionate to the gravity and circumstances of domestic violence committed, taking into account both the special and general prevention. In most convictions, the penalties imposed are suspended sentences even in cases of severe bodily injury during domestic violence.
- > Legal deadlines for imposition of temporary measures proposed for protection against domestic violence should be consistently respected by judges.
- > Women initiating proceedings for imposition of temporary measures of protection against domestic violence themselves should be exempted from payment of court fees and costs of evidence presentation in order to prevent their withdrawal from the procedure due to the lack of funds.
- > An adequate mechanism should be established in courts to monitor the implementation of temporary protection measures and coordinate activities with other competent institutions.

(Trafficking in Human Beings)

- > Victims of trafficking should be enabled effective access to legal assistance in order to realize their rights including the right to compensation of damages.
- > Strict adherence to the provisions of the Criminal Procedure Law in respect of vulnerable victims such as victims of trafficking should be ensured in order to avoid their re-victimization.
- > Adoption of a Law on State Fund for Indemnification of Human Trafficking Victims that would provide the right to compensation in cases where such compensation can not be collected from the perpetrator. Namely, according to court monitoring data, in any of the cases entailing convictions, the court has not decided seizure of criminal proceeds or imposed measures for confiscation of perpetrator's property.

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