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PRE - CRIME CONCEPT AS AN EFFECTIVE INSTRUMENT OF PENALTY POLICY FOR THE CRIME OF DOMESTIC VIOLENCE – NEW CHALLENGES FOR SERBIA

Abstract

Contemporary tendencies of criminal procedure legislation in general, including criminal procedure legislation of Serbia, have been increasingly emphasizing the importance of the implementation of the preventive aspect of criminal policy. One such general trend has also been applied in Serbia when it comes to the crime of domestic violence. Namely, the phenomenon of domestic violence is not only recognized in underdeveloped countries, but is also widespread in the most developed countries whose legal systems are based on the principles of democracy, the rule of law and the prohibition of discrimination. The aforementioned trend of recognizing the existence of domestic violence in almost all countries indicates the increasing importance of establishing adequate instruments to combat this form of crime even more effectively, especially bearing in mind the close relationship between the abuser and the victim and the temporal determinant of the continued torture of the victim. Accordingly, following the European path and based on the contemporary pre-crime concept, Serbia adopted the Law on the Prevention of Domestic Violence setting up the police as the key subject for a more effective fight in the field of the prevention of domestic violence. The key determinants used by the authors in analysing the subject matter are the essential explanations of the new rules and the criminal and political reasons for which they were established as well as their purpose. The authors analysed them from the following aspects: first, Serbia and harmonization with European standards for combating domestic violence (introductory considerations); second, the police as the key subject of the penalty policy for domestic violence offenses; third, a conducted survey of police officers and their views on the implementation of the Law on the Prevention of Domestic Violence, fourth, conclusion.

Keywords: domestic violence, police, pre-crime concept, European standards.

1. SERBIA AND HARMONIZATION WITH EUROPEAN STANDARDS FOR COMBATING DOMESTIC VIOLENCE (INTRODUCTORY CONSIDERATIONS)

Domestic violence is a socio-pathological phenomenon that has existed since the development of the first human communities (Ponjavić, 2012: 147). Although it is an extremely negative social phenomenon faced by all societies of contemporary times, it is only in the last 20 years that it has emerged from the sphere of the private and has become an object of public interest (Turanjanin, Ćorović & Čvorović, 2017: 75). Namely, the development of human rights has gone a long way in order for domestic violence to become a socially visible problem for which legal protection was established in the framework of national legislation, (Lazić and Nenadić, 2017: 491) and the European framework as well.

When it comes to the harmonization with the European framework, significant steps have been taken to prevent and combat domestic violence. Accordingly, a major step forward in the fight against domestic violence was made by the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (hereinafter referred to as the EC) on 3 March 2004. This ratification represented a significant step in the harmonization of the domestic legislation of the Republic of Serbia with European standards in this field. Namely, despite the fact that within the rights and freedoms guaranteed by the EC, the right to protection from domestic violence is not explicitly foreseen,² therefore, there is no obligation for contracting states to guarantee respect for this right, the practice has shown just the opposite, thus paving the way to the need to provide for and refine legal intervention when it comes to this form of crime. More specifically, it is the practice of the European Court of Human Rights (hereinafter: the Court), which has jurisdiction over the interpretation and application of the Convention and whose decisions are the source of law and underpin reforms of national legal systems. It is well known that, when raising petitions to the Court concerning domestic violence, citizens invoked the violation of the rights guaranteed by Article 2 (right to life), Article 3 (prohibition of torture), and Article 8 (right to respect for private and family life) (Ponjavić, 2012: 150–152). Initially, the Court did not recognize the violations of those Articles as forms of domestic violence. However, the judgment in the case of *Opuz against Turkey* (2009),³ represents a turning point. Then, for the first time, the Court recognized domestic violence as gender-based violence, i.e. violence against women (Čvorović, 2018; according to Bejatović, 2008; Milenković, 2017: 244), and thus, a violation of any of the rights provided for by the EC, in the case of domestic violence, is a violation of Article 14 of the EC, i.e. prohibition of discrimination.

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms), available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed on September, 2019.

² See Part I of the European Convention for Human Rights.

³ *Opuz against Turkey* (Court judgement from June 9, 2009, petition No. 33401/02).

It is also important to recall that the Court advocates a dualistic concept, that is, it distinguishes between negative and positive obligations of the State, which arise as a result of respect for the rights protected by the EC. Viewed in relation to Article 8 of the EC, negative obligations prescribe that the State should refrain from any kind of tampering or interference with the right to respect for private and family life, unless this is in accordance with Article 8 (2) of the EC, while its positive obligations imply that it should take an active role in the exercise and protection of the aforementioned rights (Popović, et.al., 2017: 199). Given that positive obligations produce a horizontal effect of the EC, a violation of rights by an individual resulting from a failure of the state, within the meaning of not taking preventive measures to prevent or protect the victim or if the state tolerated violence, that is, failed to investigate, prosecute and punish the perpetrator, the consequence is the responsibility of the state for the violation of rights by individual to individual (Lazić and Nenadić, 2017: 492–493). In this way, the state bears responsibility because its bodies do not comply with the international standard of due diligence, which is also explicitly stated in Article 5 of the Istanbul Convention (Branković, 2013: 38), which has obliged Serbia to adopt the Law on Prevention of Domestic Violence in Serbia (hereinafter: LPDV).

It is known that the Istanbul Convention is the first international legal document, which, when ratified, obliges the states⁴ to respect international standards in the field of prevention and combating domestic violence (Delibašić and Nikolić, 2017: 207). Aiming to harmonize national legislation with the Istanbul Convention, the Republic of Serbia amended the Criminal Code in 2016, and subsequently adopted the LPDV (Delibašić and Nikolić, 2017: 216).⁵

By adopting the aforementioned law, the normative framework for the purpose of preventive action of the competent authorities was extended for the first time. Bearing in mind that such a law gives priority to the prevention of domestic violence, that is, detection and elimination of danger from it, we can conclude that the Republic of Serbia has opted for the pre-crime concept rather than the traditional post-crime concept of criminal law. The pre-crime concept implies that the state reacts before violence occurs, that is, its bodies act on assumptions rather than established facts. The pre-crime concept is used in criminology and represents a reflection of contemporary criminal legal systems that focus on the prevention of crime, i.e. arresting the perpetrator before committing the crime and taking all other actions necessary for the implementation of the preventive aspect as regards criminal policy in general, including criminal offenses of domestic violence. In criminology, the term of prime-crime concept was taken from literature. Namely, it was first introduced in Philip Dick's short story "The Minority Report." The story describes a

⁴ The Republic of Serbia ratified the Istanbul Convention on 31 October 2013 Law on ratification of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence, (RS Official Gazette- International Treaties, no. 012/13).

⁵ Criminal Code, 'Official Gazette of the RS', No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

futuristic society in which mutants anticipate crime and future events using supernatural powers and invite special police forces to act preventively (Nenadić, 2017). In accordance with the above and according to the LPDV, the pre-crime concept broadens the scope of competences of traditionally repressive state bodies (Lazić and Nenadić, 2017: 493-494) and prescribes that the police, public prosecutor's offices, courts of general jurisdiction and misdemeanor courts, as competent state bodies as well as centers for social work – as institutions, prevent domestic violence and provide protection and support to victims (Article 7 (1) of LPDV). The above indicates that the attitude of the Republic of Serbia towards domestic violence is the embodiment of zero tolerance.

In order to prevent domestic violence more effectively, Serbia's LPDV provided competent state bodies and institutions with the opportunity to act even before the commission of the criminal offense, which is significant from the preventive aspect of the criminal policy of the said criminal offenses. With the aforementioned law, emphasis is placed on multisectoral cooperation and for the first time institutes such as risk assessment (Article 16 of the LPDV) and the imposition of emergency measures (Article 17 of the LPDV) are introduced. Considering that the implementation of LPDV is present in practice, and the police are one of the subjects of the implementation of this law, there is a need to look at the experience so far by observing the survey of competent police officers. The above indicates that the presumption of a more effective and efficient prevention of domestic violence is the proper implementation of LPDV, i.e. the promotion of multisectoral cooperation between the police and other competent authorities and institutions. Therefore, the aim of this research was to analyze the implementation of new legal solutions, with particular reference to examining the views of police officers on the effect of imposing emergency measures on the prevention of domestic violence. Namely, by conducting this research, we wanted to propose a possible framework for improving the actions of the competent authorities and institutions, as well as normative legal regulations, all with the aim of reducing the rate of domestic violence.

2. POLICE AS A KEY SUBJECT OF CRIMINAL POLICY ON DOMESTIC VIOLENCE OFFENSES

In the spirit of the pre-crime concept of the LPDV, for the first time, there is a clear definition of multisectoral cooperation between the police, the public prosecutor's office, the court and the social welfare centre through 'liaison officers' (Article 24 of the LPDV).

This concept presupposes the reaction of the competent authorities with the aim of punishing, obstructing and disabling all persons considered to be a threat to commit a criminal offense. Although criminal law rests on the logic of acting after the crime was committed (*ex post* logic), the pre-crime concept rests on the logic of preventive action of the competent authorities based on assumptions, not facts (*ex ante* logic). Accordingly, according to the LPDV, the pre-crime concept is focused on acting to detect and eliminate the threat of domestic violence and it pays particular attention to the concepts of "imminent danger of domestic violence and risk assessment", "potential perpetrator" and

bringing a potential perpetrator to the police station to assess the risk of an imminent danger of domestic violence. Also, the law significantly expands the powers of the repressive authorities – the prosecution and the police, but despite the fact that these entities have been granted new powers, the impression is that the police have a more significant role than others.

This view is supported by the fact that any procedure conducted under LPDV begins with a report filed with the police. The Law also provides for the possibility for a report to be filed with the public prosecutor (Article 13, paragraph 1 of LPDV), but in that case, it must be immediately forwarded to the police and notified to the “competent police officer”⁶ (Article 13 (5) of LPDV). If the applicant is a victim, that first contact between the police and the victim may be crucial for the further course of the proceedings. The way a police officer acts will influence whether a trusting relationship is established and the victim is supported to report violence. Otherwise, unprofessionalism, underdeveloped awareness and prejudice can lead to secondary victimization of the victim, that is, to discouraging the victim from reporting.

Upon being informed of domestic violence, police officers are empowered to, “alone or at the request of a competent police officer, bring a possible perpetrator to the competent organizational unit of the police” (Article 14 (1) of the LPDV) and keep him there for a maximum of eight hours (Article 14 (2) of the LPDV).

During detention, the police assess the existence of a risk of imminent danger of domestic violence (Article 16 of the LPDV), which is a novelty in the LPDV, and it is carried out exclusively by a competent police officer (Article 15 of the LPDV). As pointed out, the pre-crime concept introduces the notions of the potential perpetrator and the assessment of the risk of imminent danger in the process of preventing the crime of domestic violence. The term of potential perpetrator is not precisely defined by the legal text, which leaves wide discretionary powers to the police, security services and prosecution in the application of emergency measures against the said person. Considering that the legislator did not precisely specify the “potential perpetrator”, we can conclude that it can be any human being who can commit a crime. Indirectly, the notion of a potential perpetrator can be more closely defined using the notion of imminent danger, which is related to the notion of the potential perpetrator according to the legislator. Namely, the legislator stipulates that the immediate danger of domestic violence arises when it appears from the behavior of a potential perpetrator and other circumstances that he or she is ready to commit domestic violence for the first time or to repeat domestic violence (Article 3 of the LPDV). Accordingly, we can conclude that there is no imminent danger without a potential perpetrator. The potential perpetrator is suspected to present imminent danger due to his or her behavior. The possibility of misuse of a legal standard stems from such

⁶ According to Article 8 of LPDV, the competent police officer is a police officer who has completed specialized training and is designated by the head of the regional police department to act in cases of domestic violence.

an imprecisely defined notion of a potential perpetrator and, accordingly, it is necessary for the legislator to carry out adequate interventions and to concretize the key concepts of the pre-crime concept, which will contribute to the more efficient application of the legal standard.

In line with the above notion of imminent danger, we can observe that, in defining the term, the legislator has taken into account the following conditions: the behavior of a potential perpetrator that could cause an imminent danger, the existence of other circumstances, and in accordance with the pre-crime concept – the fact that the crime is about to take place in the immediate future. The police, when assessing the risk of imminent danger, shall take into account the above conditions, all available notices and carry out a risk assessment as soon as possible. We can observe that the legislator does not specify what kind of notices these are or in what form they are collected. Also, during the risk assessment, particular attention is paid to whether a potential perpetrator committed domestic violence before or immediately before the risk assessment and whether he or she is ready to do it again, whether he or she threatened with murder or suicide, whether he or she possesses a weapon, whether he or she is mentally ill or abusing psychoactive substances, whether there is a conflict over the custody of the child or about the manner in which the child and the parents could maintain personal relationships, whether a possible perpetrator has been issued an emergency measure or a specific measure of protection against domestic violence, whether the victim experiences fear and how he or she assesses the risk of violence (Article 16 of the LPDV). In line with the above, the legislator does not specify how the police officer should assess these circumstances and what significance they have, and thus a justifiable question arises as to how the police officer can conclude if there is a risk of imminent danger without the degree of suspicion. Namely, without specifying the key concepts of the pre-crime concept, such as the potential perpetrator and the assessment of the risk of imminent danger, there is a wide range of discretionary assessment of the competent authorities in the pre-crime concept, which calls into question the adequacy of the implementation of the legal standard in preventing domestic violence.

In the event that the police do not assess that there is a risk of imminent danger, further proceedings are terminated. On the other hand, if, after a risk assessment, imminent danger is identified, only the competent police officer can impose one or both “emergency measures to prevent domestic violence”⁷ (Article 15 (1) of LPDV). From the moment of handing the order by the police, the emergency measure lasts for 48 hours, with the possibility of being extended by the court for another 30 days (Article 21, paragraphs 1 and 2 of LPDV). Should a person violate a pronounced or prolonged emergency measure, the police shall file a misdemeanour charge (Article 36 of LPDV).

⁷ According to Article 17 (2) of LPDV, emergency measures are: a measure of temporary removal of the perpetrator from the apartment and a measure of temporary prohibition of the perpetrator to contact and approach the victim of violence.

Finally, it should be emphasized that the police are also bound by the Law on Police⁸, which stipulates the following: “If violence or threat of domestic violence are reported, police officers are obliged, in cooperation with other competent bodies, to immediately take necessary measures and actions in accordance with the Law, the execution of which prevents or stops the violence that can result in bodily harm or loss of life” (Article 28 (1) of the Law on Police).

The necessity of the police to act in accordance with the provisions of the Law on Prevention of Domestic Violence and the Law on Police indicates the importance of the adequacy of the legal standard, as well as the adequate implementation of the legal standard that will contribute to the more efficient prevention, detection and proving of criminal acts of domestic violence, which has been confirmed by the research we conducted.

3. MATERIAL AND METHODS

During December 2019, a survey was conducted among police officers of the Police Department in Sremska Mitrovica. For the purpose of primary data collection, a specially designed tool was used – a questionnaire consisting of 14 questions (four open-ended questions, nine closed-ended questions and one combined-form question). All police officers of the Police Department in Sremska Mitrovica were interviewed (Police Stations Šid, Ruma, Pećinci, Stara Pazova, Inđija, Irig and Sremska Mitrovica). Namely, 41 police officers, who at the time of conducting the survey possessed the certificate provided by LPDV, were interviewed. Respondents ranged in age from 25 to 53 years and the average age was 37. Out of the total number of respondents, 6 had up to 5 years of work experience, 15 respondents from 5 to 15 and 20 respondents over 15 years of work experience. Also, 22 police officers are members of general police, while 19 of them are employed by criminal police.

According to the conducted research, it is necessary to emphasize that one of the key instruments of efficiency in preventing, detecting and proving criminal acts of domestic violence is the adequate implementation of the legal standard, especially by the police and social welfare center, which are considered to be of primary importance by the Law on Prevention of Domestic Violence. The question arises as to whether the mentioned authorities adequately apply the legal standard and to what extent, as well as whether it is necessary to reform the legal text in accordance with the results of the research, in order to create an even more effective normative basis in the field of combating this form of crime.

For the purpose of statistical processing of the collected data, the statistical method at the level of descriptive statistics was applied, and for this purpose the SPSS software package was used (ver. 20).⁹

⁸ Law on Police, “Official Gazette of the RS”, No. 6/2016, 24/2018 and 87/2018.

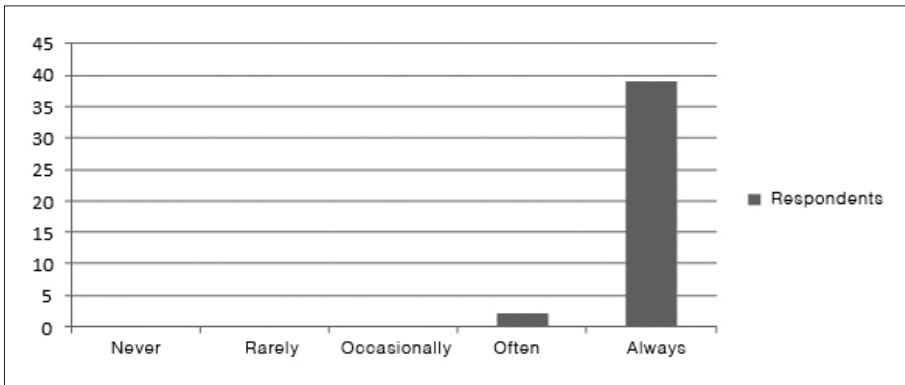
⁹ IBM SPSS ID: 729327.

4. RESULTS AND DISCUSSION

When asked, “Do you give a potential perpetrator brought to the relevant organizational unit of the police the opportunity to state all the relevant facts?” the respondents replied as follows:

Table 1. Attitude of police officers towards potential offender

	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Respondents	0	0	0	0	0	0	2	4.9	39	95.1



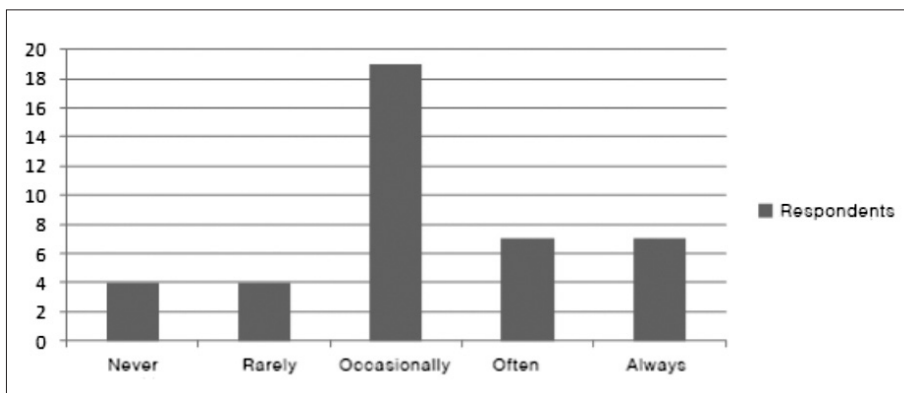
Graph 1. Attitude of police officers towards potential offender

According to the data in Table 1, we can conclude that almost all (the exception is two police officers who have stated that they do this often) respondents always comply with Article 15 (1) of LPDV, that is, the potential perpetrator is given the opportunity to state relevant facts related to a specific domestic violence case.

When asked, “How often, before completing a risk assessment, do you request the opinion of a social welfare centre?” the respondents replied as follows:

Table 2. Request for opinion from the social welfare centre

	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Respondents	4	9.8	4	9.8	19	46.3	7	17.1	7	17.1



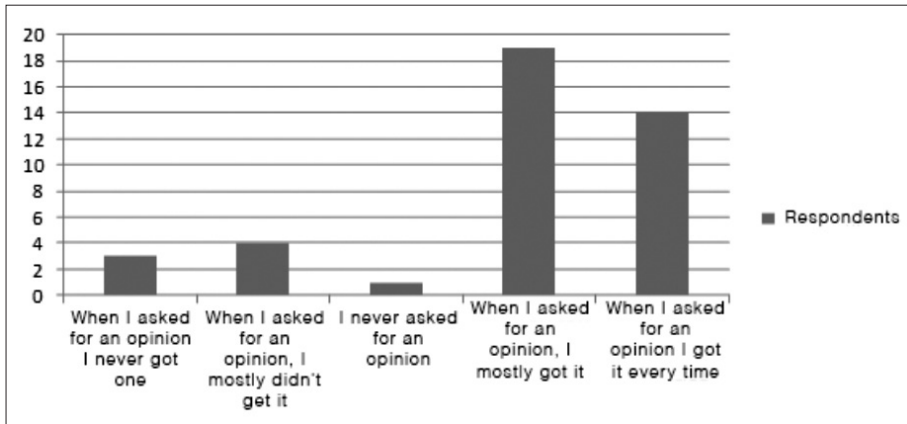
Graph 2. Request for opinion from the social welfare centre

According to the data in Table 2, we can conclude that the majority of respondents occasionally exercise their legal right, that is, pursuant to Article 15 (3) of the LPDV, before completing the risk assessment, they address the social welfare centre and ask for their opinion on a specific case. We could say that such a result was expected, since the said Article of the Law states that: “the competent police officer may, if necessary, request the opinion of the social welfare centre”. On the other hand, a question for further research may be: Why do a certain number of respondents always ask the opinion of a social welfare centre?

When asked, “Did the social welfare centre provide the requested opinion?”, the respondents replied as follows:

Table 3. Response of the social welfare centre to the request of the police

	When I asked for an opinion I never got one		When I asked for an opinion, I mostly didn't get it		I never asked for an opinion		When I asked for an opinion, I mostly got it		When I asked for an opinion I got it every time	
	N	%	N	%	N	%	N	%	N	%
Respondents	3	7.3	4	9.8	1	2.4	19	46.3	14	34.1



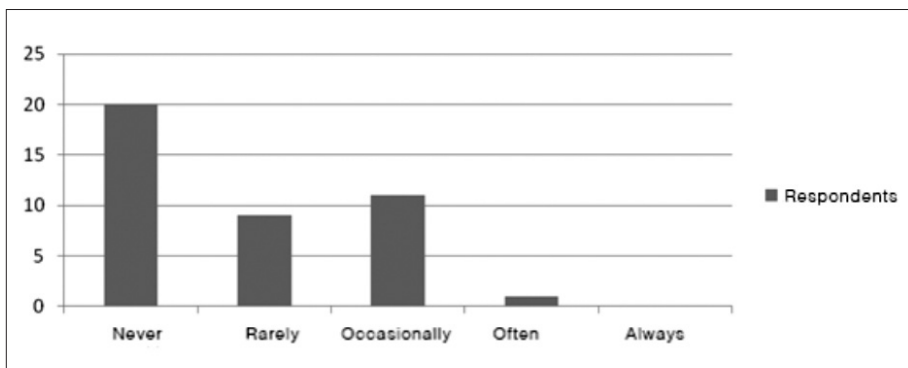
Graph 3. Response of the social welfare centre to the request of the police

Based on the data in Table 3, we can see that many respondents, in accordance with Article 15 (3) of LPDV, cooperate with the social welfare centre. However, a number of police officers have stated that they have never, or mainly, not received the requested opinion. According to our respondents, some of the reasons for not addressing the social welfare centre are the fact that their officer on call was not in the official premises at the moment of the requested consultation (during the night or on weekends) and therefore was not able to perform access to official records or, after the facts have been transmitted by police officers, he would have stated that he had not dealt with specific persons in the previous period and could not give an opinion.

When asked, “After completing the risk assessment form, were you in doubt as to whether or not there was an imminent risk of domestic violence?”, the respondents replied as follows:

Table 4. Result of completing the Risk Assessment form

	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Respondents	20	48.8	9	22	11	26.8	1	2.4	0	0



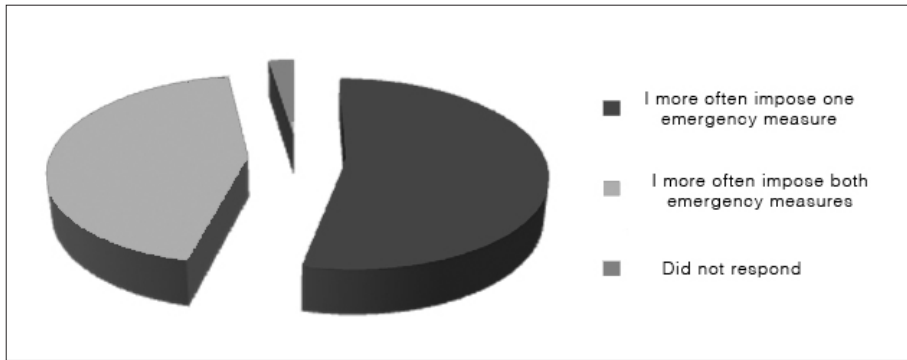
Graph 4. Result of completing the Risk Assessment form

According to the data in Table 4, we can see that the mentioned form which they are obliged to fill out in accordance with LPDV really helps in the work of the half of the respondents. However, the other half stated that, after filling it, they rarely, occasionally, and even often stay in doubt as to whether there is or is not imminent danger of domestic violence. Considering the number of respondents who gave such answers, we can conclude that in the coming period it is almost necessary to improve the form, since the purpose of filling it out is precisely to eliminate any dilemma.

When asked: “When issuing an order: a) you more often impose one emergency measure, if so, which one? b) you are more likely to impose both emergency measures?”, the respondents replied as follows:

Table 5. Imposition of emergency measures

	I more often impose one emergency measure		I more often impose both emergency measures		Did not respond	
	N	%	N	%	N	%
Respondents	22	53.7	18	43.9	1	2.4



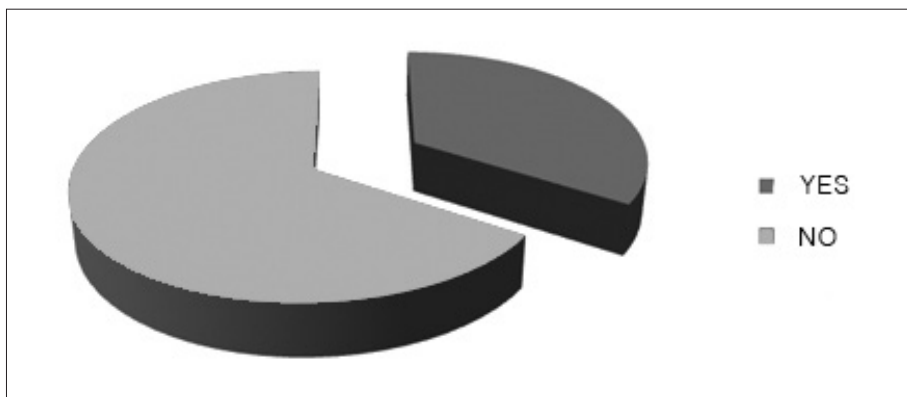
Graph 5. Imposition of emergency measures

Based on the data in Table 5, we have the impression that our respondents are equally divided in the mode of action when it comes to the imposition of emergency measures, since almost half of them say that they more often impose one emergency measure, while the others impose both measures. However, on the basis of their reasoning, which they were able to state in the continuation of the questionnaire, we can see that this result is a consequence of the practice encountered by police officers. Namely, those who stated that they more often impose one emergency measure had more cases where the victim and the possible perpetrator did not live in the same place. In support of this, it is also clear to us why all the respondents indicated that they more often pronounced a “measure of temporary restraining order for the perpetrator to contact the victim and approach him or her” (Article 16 (2) of the LPDV). On the other hand, those who declared themselves more likely to impose both emergency measures, in their reasoning, stated that they acted more in situations where the victim and the possible perpetrator live in the same household.

When asked: “Did you find yourself in a situation where, when handing over the order, the person refused to receive it,” the respondents replied as follows:

Table 6. Handing over the order to the potential offender

	Yes		No	
	N	%	N	%
Respondents	14	34.1	27	65.9



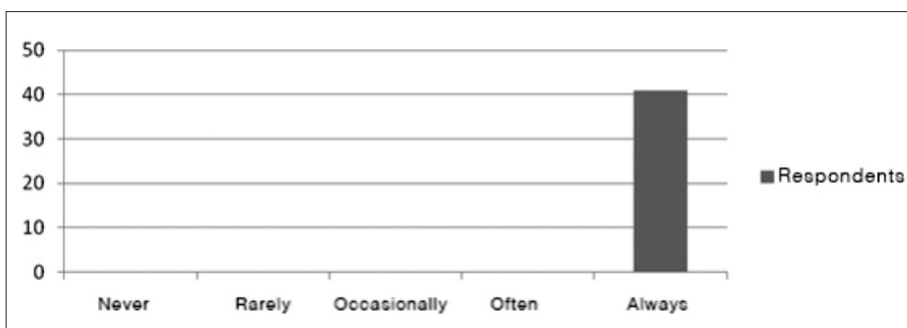
Graph 6. Handing over the order to the potential offender

According to the data in Table 6, we can see that about one third of the respondents had difficulty in handing over the order to the person to whom the emergency measure was imposed. At this point, we can assume that the legislator had in mind that such situations could occur and thus prescribed that in such a case, “the competent police officer shall draw up a note on it, meaning that the order had been delivered” (Article 17 (5) of the LPDV).

When asked: “Do you submit the order to the public prosecutor, the social welfare centre and the coordination and cooperation group?”, the respondents answered as follows:

Table 7. Submitting the order to the competent authorities

	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Respondents	0	0	0	0	0	0	0	0	41	100



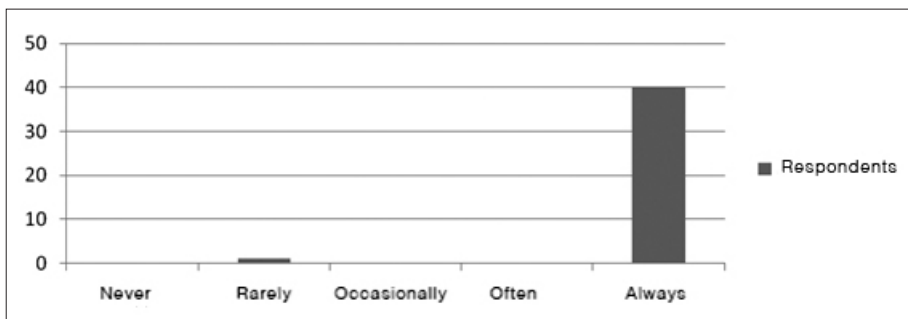
Graph 7. Submitting the order to the competent authorities

Based on the data in Table 7, we can conclude that all respondents act in accordance with the provision of the Law stating that: “the competent police officer shall submit the order immediately after its delivery to the public prosecutor in the territory of the victim’s residence or domicile, the social welfare centre and the coordination and cooperation group ...”(Article 17 (6) of the LPDV).

When asked, “Do you notify the victim of violence in writing about the type of emergency measure that was pronounced?”, the respondents answered as follows:

Table 8. Notifying the victim of the type of emergency measure that was imposed

	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Respondents	0	0	1	2.4	0	0	0	0	40	97.6



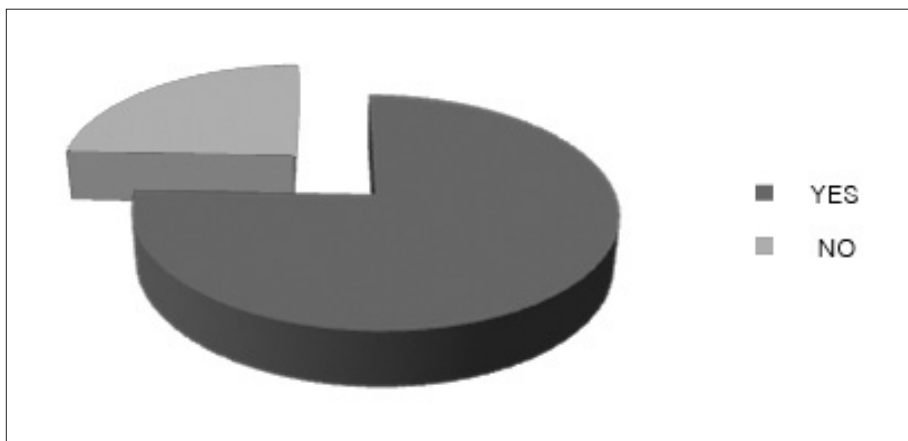
Graph 8. Notifying the victim of the type of emergency measure that was imposed

We see that almost all respondents, with the exception of one police officer who rarely does so (Table 8), comply with a provision of the law stating that: “...the victim of violence is informed in writing of the type of emergency measure that has been pronounced” (Article 17 (6) of the LPDV).

When asked, “Did you have a case that a person violated an emergency measure that was imposed or prolonged,” the respondents replied as follows:

Table 9. Violation of a pronounced or prolonged emergency measure

	Yes		No	
	N	%	N	%
Respondents	31	75.6	10	24.4



Graph 9. Violation of a pronounced or prolonged emergency measure

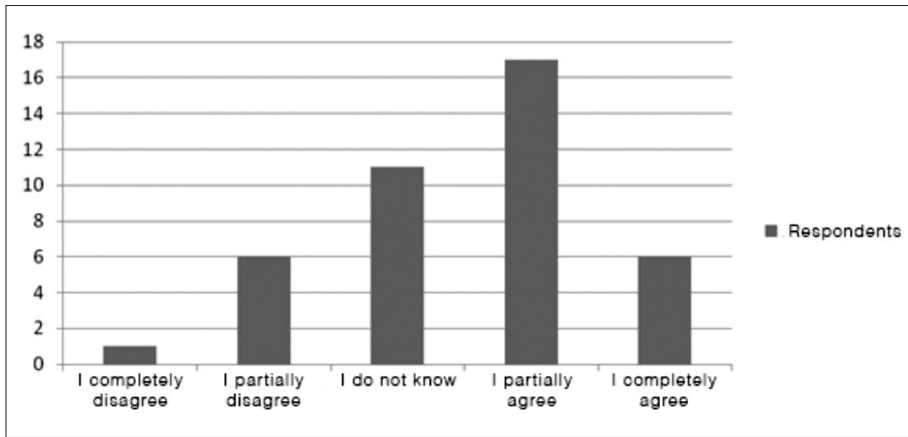
According to the data in Table 9, a violation of a pronounced or prolonged emergency measure is not a situation that police officers rarely encounter in practice. Bearing in mind that, from the moment of delivery of the order to the person against whom an emergency measure was imposed, he/she is aware of the prescribed punishment of up to 60 days in case he/she violates it, the question arises: Is the prescribed punishment sufficiently severe, i.e. does it achieve its preventive effect?

As a part of the last part of the questionnaire, the respondents were able to state whether they agree and to what extent with the statement that the imposition of emergency measures prevents domestic violence¹⁰. The results obtained are presented in Table 10.

Table 10. The imposition of emergency measures prevents domestic violence

	I completely disagree		I partially disagree		I do not know		I partially agree		I completely agree	
	N	%	N	%	N	%	N	%	N	%
Respondents	1	2.4	6	14.6	11	26.8	17	41.5	6	14.6

¹⁰ A five-point scale was set with the following values: 1 – I completely disagree, 2 – I partially disagree, 3 – I do not know, 4 – I partially agree, 5 – I completely agree, on the basis of which the respondents expressed their agreement as regards the view: “The imposition of emergency measures prevents domestic violence.”



Graph 10. The imposition of emergency measures prevents domestic violence

According to the data in Table 10, we see that the fewest respondents are exclusive, in the sense that they believe that emergency measures completely prevent or not prevent domestic violence at all. In the largest percentage, there were respondents who stated that they partially agree with the stated position because they encountered violations of the imposed emergency measures in practice. In addition, some of them believe that any sanction or in this case an emergency measure cannot prevent a person from committing a crime, if he or she has firmly decided to do so, and even that it can further encourage a possible perpetrator. Also, a number of respondents estimate that domestic violence is prevented only while emergency measures last.

5. RESEARCH LIMITATIONS

Based on the empirical findings obtained by the Police Department in Sremska Mitrovica, we can conclude that some characteristics of domestic violence cases and the application of LPDV in the jurisdiction of the mentioned police administration have been successfully investigated. However, the limitation of this research is precisely in its sample, as there are 27 police departments within the Ministry of Internal Affairs of the Republic of Serbia, and the survey was conducted within one police department. More broadly, in addition to the police, it is necessary to examine the views of other competent state bodies and institutions, because in accordance with the goal of LPDV, the police is not the only body in the fight against domestic violence.

Another limitation is related to the way the questionnaire is completed. It was anonymous, that is, the only data that pertained solely to the sample concerned the age, years of service and affiliation with the criminal police or police of general jurisdiction, assuming that better quality data would be collected in this way. However, the questionnaire completion was not conducted in a researcher-controlled setting, so we must take into

account that the respondents were able to discuss issues with one another and thus influence one another.

6. CONCLUSION

With the adoption of the new Law on Prevention of Domestic Violence, Serbia has shown its willingness to combat this form of crime more effectively and to successfully respond to contemporary challenges in the process of accession to the European Union and in the field of ratified international documents. Timely prevention of domestic violence requires serious, continuous, thorough work and a multisectoral approach, which has been recognized as a goal in the LPDV. Therefore, the assumption of a more effective fight against this type of violence is in the proper implementation of the LPDV. New powers in accordance with this law, above all, risk assessment and the imposition of emergency measures by competent police officers, have certainly contributed to the efficiency plan. However, this is only one of the preconditions for the adequacy of the state response to this form of crime. In addition to the standard, there are other assumptions regarding adequacy of the state response to this form of criminal activity. These are, inter alia: efficiency in detecting, proving and adjudicating this category of criminal offenses, adequate implementation of the legal standard, the prerequisite of which is, among other things, adequate cooperation between the entities of detecting, prosecuting and proving these offenses and exclusion of abuse of legal standard by them. Considering the importance of these factors, it can be concluded that the positive criminal legislation of Serbia represents a good normative basis for the desired degree of their practical realization when it comes to the implementation of the criminal policy of domestic violence offenses, but also there is a need for further reform in view of the results of the conducted research. Viewed in this context, the conducted research has shown that the factors of police conduct in the pre-crime concept are the same as the factors of the effectiveness of the actions of other entities to combat the said form of crime (court, prosecutor) in the post-crime concept. These are: the complexity and gravity of a particular criminal case; police organization; mutual relations and cooperation both within police structures and with the public prosecutor; abuse of law and legal standard. We can observe that the mutual cooperation of the entities of the pre-crime concept is one of the key instruments for the realization of more effective prevention of domestic violence. The conducted research (Table 2 and Table 3) showed that the mutual relationship between the police and the social welfare center was not adequate and that a more effective implementation of the legal norm by the entities responsible for its implementation is required (before the police and social welfare centers). Also, when it comes to the adequacy of the legal text, the conducted research indicates insufficient normative elaboration regarding the concepts of imminent danger of domestic violence (Table 4), and accordingly, of adequate risk assessments, which to a significant degree prevents more effective combating domestic violence. Accordingly, despite the introduction of the pre-crime concept into Serbian criminal law legislation, we have an increasing number of criminal charges for domestic violence, which

is another indicator of the need for reform of the Law on Prevention of Domestic Violence, as confirmed by the conducted research.

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