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The experiences of prosecutorial diversions in relation to perpetrators of domestic violence in the Republic of Serbia - questionnaire research in social welfare centers.

ABSTRACT

Violent behaviour in general, and domestic violence in particular, represents a great threat to the contemporary, democratic society. Given the high degree of danger it poses to society as a whole, one of the demands placed on states is to find effective instruments to respond to this form of crime. One of the most efficient instruments for implementing criminal policy on milder forms of domestic violence is certainly the principle of opportunity of criminal prosecution, i.e. its key form called conditional deferring criminal prosecution with imposition of an obligation on the suspect to undergo psychosocial treatment to eliminate the causes of violent behaviour. The social welfare center is one of the key subjects in the practical realization of this obligation of the suspect. In view of this, a research was conducted in seven social welfare centers in the Republic of Serbia on the efficiency of the implementation of this obligation, and the results of the research were presented. The research involved 35 social workers with previous work experience in cases of domestic violence. For the purpose of collecting data valid for analysis, a specially designed instrument was used - a questionnaire consisting of 4 questions, and for statistical processing of collected data, a statistical method at the level of descriptive statistics was applied, and for that purpose the SPSS software package was used.

Keywords: principle of opportunity ■ psychosocial treatment ■ social welfare center
■ suspects ■ violent behaviour

I. INTRODUCTION

The “principle of opportunity” is a concept related to criminal procedure diversions. In addition to the necessity of diversions, there are several arguments: on the one hand, certain human behaviours that are relevant from a criminal law point of view, as well as the witnesses of these

behaviours, do not reach the degree of danger to society that would justify the application of a criminal law disadvantage or a criminal law consequence. It is thus sufficient to hold the perpetrators of the crimes liable for other – milder or alternative – legal consequences. On the other hand, with these solutions, the process of establishing responsibility can be shortened and simplified, so time and energy can be saved on the part of the authorities, and capacity can be freed up.^[1] The dispositive regulation and the subjective attitude of law enforcement hinder the extent of the greater expansion of the opportunity, as it does not tie their application to cogent rules in criminal law. The permanent advocacy of tightening may strengthen legality and, consequently, the suppression of opportunity, which may be a circumstance that acts against diversion from the judicial path.^[2] In our country, there are specific possibilities for applying the institution of diversion only in a few cases, one of which is the range of criminal offenses related to drug possession. “The perpetrator is exempt from prosecution, so he cannot be punished if he “grows, produces, acquires or keeps a small amount of drugs for his use, or who consumes drugs, if he admits to committing the crime and proves with a document that at least six-months received continuous drug addiction treatment, other care for drug abuse, or participated in a preventive and educational service.”^[3] The prosecutor’s office decided for all of this, which included that the suspect had to complete a preventive education and drug addiction treatment program within a year.^[4] During this time, the prosecutor can suspend the criminal proceedings for one year. The procedure will be terminated if the medical treatment for drug possession is successful..^[5] There are several legal and political reasons that justify the application of the principle of opportunity of criminal prosecution, i.e. its key type (conditional deferring of criminal prosecution) in criminal acts of domestic violence.^[6] Unfortunately, the Hungarian criminal procedure does not explicitly apply the form of diversion aimed at domestic violence. In fact, domestic violence itself was declared a criminal offense not too long ago. Domestic violence has been considered a crime in Hungary since Act C of 2012 on the Penal Code (hereinafter: Btk.) on July 1, 2013.^[7] According to the ministerial justification of this law, the facts are a means of more effective action against domestic violence according to the criminological concept. However, the new crime cannot manage and reduce “phenomenon” if it is not accompanied by appropriate procedural regulations and law enforcement action. Nothing shows how inefficiently this Hungarian legal institution operates, that between 2013 and 2016, only 68 convictions were made

[1] Vári, 2019, 54.

[2] Láng, 2010.

[3] Btk. 180. §.

[4] 488.§. (2). Act XC of 2017 on Criminal Procedure (Be.).

[5] Baráth, 2020, 19.

[6] Kiurski, 2019.

[7] László, 2020.

in addition to 505 prosecutions for all forms of domestic violence.^[8] This result can be traced back to the fact that the crime was enacted in a non-dogmatically worked-out manner. So conviction is primarily due to another crime if the violence manifested in the act can be established. The legislature in Hungary has not given an actual response to effective action against domestic violence, even in terms of criminal law, not that it has introduced an effective system of tools for this, which will be analysed in this study in the criminal justice practice of the Republic of Serbia. Its essence is reflected in the resolution of criminal matters without initiating and conducting criminal proceedings with the imposition, in this case, of the obligation of the suspect to undergo psychosocial treatment in order to eliminate the causes of violent behaviour. Adequate application of this criminal procedural institute is both in the function of future prevention of this type of criminal activities and in the function of the best way of repairing harmful consequences for injured parties caused by committing these crimes and establishing future normal relations between perpetrators and injured parties, preventing the injured parties to be victimized again and ensuring the effectiveness of the legal response to this type of criminal activity. Of course, all this is conditioned by the adequate functioning of the social welfare centers as key subjects of the practical realization of the obligation imposed on the suspect, which is an international legal standard when it comes to the injured party as a victim^[9] of domestic violence. In view of all this, an adequate analysis of this aspect of the subject matter, in addition to deeper theoretical considerations, requires research that will indicate shortcomings in the practical conduct of social welfare centers and improvement measures, which should contribute both to the preventive aspect of criminal policy and to the prevention of secondary victimization, which is extremely important from the aspect of the position of the injured party i.e. the victim of the crime. Also, the research conducted in the social welfare centers will indicate the efficiency of the implementation of this obligation, and the proposals *de lege ferenda* are in the function of the need to improve the normative framework of Serbia on the efficiency of the social welfare center in eliminating the causes of violent behaviour when it comes to this form of crime but also other forms of crime.

[8] Garai, 2018, 79.

[9] Unlike many other national criminal procedure legislations (for example, the Croatian Criminal Procedure Code, which recognizes the terms: victim, injured party and private prosecutor - Articles 43-63 of this legal text. See: Burić, 2020). The Criminal Procedure Code of Serbia knows only the term injured party and not the term victim of a crime. According to the majority position of the professional public of Serbia, there is no need in the Criminal Procedure Code to provide for the term victim of a criminal offense in addition to the injured party as a special subject of criminal procedure. The basis for the justification of this attitude is the fact that the notion of the injured party given in Article 2, paragraph 1, point 11 of the RS Criminal Procedure Code not only extends beyond the notion of victim given in Art. 2 of the EU Directive 2012/29 but is more specifically defined. According to Art. 2 of the EU Directive 2012/29, the term victim means only a natural person, while according to the RS Criminal Procedure Code in addition to the natural person, the term injured party includes the legal person, which is why it is considered that the RS Criminal Procedure Code is fully compliant with the standards provided in Art. 2 of the EU Directive 2012/29 (See: Škulić, 2020).

II. THE PRINCIPLE OF OPPORTUNITY OF PROSECUTION AND PSYCHOSOCIAL TREATMENT TO ELIMINATE THE CAUSES OF VIOLENT BEHAVIOUR

According to the current text of the Criminal Procedure Code of the Republic of Serbia (2011, 2012, 2013, 2014, 2019, 2021) (hereinafter: RS CPC) and the situation is similar in a large number of other countries' criminal procedure legislations (case, for example, with the Criminal Procedure Code of the Republic of Croatia, 2008, 2009, 2011, 2012, 2013, 2014, 2017, 2019 and the Criminal Procedure Code of Montenegro, 2009, 2010, 2014, 2015, 2018, 2020)^[10] the public prosecutor may, by applying the principle of opportunity, postpone the criminal prosecution in the pre-investigation procedure,^[11] for criminal offenses punishable by a fine or imprisonment for up to five years, if the suspect accepts one or more obligations provided for in Article 283, paragraph 1 of the RS CPC. The public prosecutor may use this legal option in two of the five possible forms of the criminal offense of domestic violence from Article 194 of the Criminal Code of the Republic of Serbia (2005, 2009, 2012, 2013, 2014, 2016, 2019) (hereinafter: RS CC). These are milder forms of this crime, which is in line with the legal and political reasons for justifying the possibility of applying the principle of opportunity of criminal prosecution in general.^[12]

One of the seven possible obligations that can be imposed on a suspect in case of conditional deferring of criminal prosecution as a key form of the principle of opportunity under the RS CPC is to "subject the suspect to psychosocial treatment to eliminate the causes of violent behaviour". The similar legal solution exists in the Criminal Procedure Code of the Republic of Croatia (Article 206d, paragraph 1, item 6), while the Criminal Procedure Code of Montenegro does not envisage this obligation as a possible condition for postponing criminal prosecution. According to the legislator, imposing this obligation on the suspect is justified primarily in the criminal offense of domestic violence, but this may also apply to other criminal offenses with elements of violence (case, for example, with the basic form of criminal offense of violent behaviour under Article 344, paragraph 1 of the RS CC. However, when it comes to this aspect of the subject matter i.e. the choice of obligation/obligations, because the public prosecutor can impose not only one but also several obligations on the suspect, the public prosecutor takes into account both the circumstances of the crime and the previous life of the suspect, personal circumstances of the suspect, his behaviour after the crime, and when it comes to determining psychosocial treatment to

[10] Radulović, 2015.

[11] There are two possible forms of the principle of opportunity for criminal prosecution of adult perpetrators of criminal offenses according to this legal text. These are: conditional postponement of criminal prosecution and unconditional rejection of criminal charges for reasons of fairness. These two forms of the principle of opportunity for criminal prosecution are also known in the Criminal Procedure Code of the Republic of Croatia and the Criminal Procedure Code of Montenegro. (See: Čvorović, D., 2015).

[12] Bejatović, 2014; Škulić, 2014a; Čvorović, 2009.

eliminate the causes of violent behaviour, the assessment of the readiness of the suspect to undergo psychosocial treatment. Accordingly, the public prosecutor takes into account the suspect's readiness to actively participate in the psychosocial treatment programme in order to prevent secondary victimization of the injured party – the victim of the crime to ensure a change in the suspect's behaviour towards recognizing deviant behaviour and deviation from such behaviour in the future. Also, the public prosecutor, when it comes to this obligation, will take into account the fact whether the suspect has previously committed the crime of domestic violence, what is his attitude towards the injured party i.e. the victim of the crime in general, what is his family, marital status, relationship with children, etc. A number of registers may contain relevant data, which form the national database of the given state.^[13] The need to check whether the suspect has previously committed the said criminal offense or other criminal offenses, terms not only from the fact that this is a circumstance that indicates the suspect's propensity to commit criminal offenses, which must be especially taken into consideration when deciding whether to apply in a particular criminal case or not the principle of opportunity for criminal prosecution^[14] but also due to the fact that, according to the instructions of the Republic Public Prosecutor for the Prosecutor's Office (A. No. 246/08/01 of 28 March 2019), public prosecutor's offices are obliged to, independently and directly, using the database of the Judicial Information System, before making a decision on the application of the principle of opportunity of criminal prosecution, check whether the reported act has already been entered in the electronic records of delayed prosecution and rejection of criminal charges against the suspect. In accordance with this binding instruction, the public prosecutor may not apply the principle of opportunity more than twice for the same offense. The almost unanimous position of the professional public is that such a restriction in the application of the principle of opportunity is fully justified, that it is both in the function of preventing the possibility of its abuse and in the function of special prevention and reintegration of the suspect into society, which would obviously not give satisfactory results if the institute of opportunity of criminal prosecution was applied more than twice for committing the same crime - in this case the crime of domestic violence.

In addition to the above, one of the following preconditions for the possibility of the public prosecutor to postpone criminal prosecution of the suspect,^[15] not only in the case of committing this but also any other criminal offences for which there is a legal possibility of applying the principle of opportunity is that the suspect agrees with the proposed obligation/obligations. Also, his consent must be unconditional, voluntary, given without any pressure and with the existence of awareness of the consequences of fulfilment, i.e. non-fulfilment of the imposed

[13] Nyitrai, 2022.

[14] Čvorović, 2020.

[15] Čvorović, 2019.

obligation/obligations. The consent of the suspect, when it comes to the obligation to undergo psychosocial treatment in order to eliminate the causes of violent behaviour, is necessary because it is also a proof of his readiness to undergo psychosocial treatment. Only the readiness of the suspect to undergo psychosocial treatment and to actively participate in it is a precondition for success in treatment – a precondition for achieving the goals of applying the measure in general. Furthermore, when it comes to imposing this obligation on the suspect, there is also the fact that the public prosecutor has the initiative and the main role when it comes to applying the principle and imposing the obligation/obligations on the suspect. However, this does not mean that the initiative on these issues cannot come from the suspect and his defence counsel, if there is one. On the contrary, the application of the institute of postponement of criminal prosecution may be proposed by both the public prosecutor and the suspect and his defence counsel orally during the interrogation of the suspect or in writing – by a special submission. Having fulfilled the stated conditions, the public prosecutor issues an order to postpone the criminal prosecution, and one of its elements, when it comes to the subject matter, is the statement of acceptance of the suspect's obligation to undergo psychosocial treatment, in the manner and within the time limit specified in the order and which cannot be longer than a year. When it comes to this, as well as other obligations of medical nature (undergoing treatments related to alcohol and drug addiction), the obligation is considered fulfilled if the suspect undergoes treatment, but that does not mean that it is enough to just apply for treatment in an appropriate institution.^[16] On the contrary, in order to reject criminal charges, it is necessary for the public prosecutor, before making a decision, to obtain a report from the commissioner from the administrative body responsible for the execution of criminal sanctions, which shows that the suspect started fulfilling his obligation by going to treatments regularly, with the proviso that the legislator does not prescribe the condition that the decision on the rejection of the criminal charges depends on the condition that the treatment is successfully completed, i.e. carried out. All that is needed is the assessment of the public prosecutor that the suspect will continue to undergo treatment even after the possible decision to reject the criminal charges until the final realization of the goal. Given this, during the implementation of this obligation, active communication and cooperation of the public prosecutor, representatives of the social welfare center and appropriate institutions in which the obligation is implemented is necessary.^[17]

One of the most current issues of the professional public of Serbia when it comes to this obligation is the issue of the deadline within which the suspect should undergo and begin in the above manner with psychosocial treatment in order to eliminate the causes of violent behaviour. Namely, in one part of the professional public there is a question: Is the statutory deadline of a maximum of

[16] Sivadó, 2017; Sivadó, 2020.

[17] Ivičević-Karas, 2020.

one year, which is also the case with the Criminal Procedure Code of the Republic of Croatia (Article 206d, paragraph 2), sufficient to achieve results envisaged by the program? Having in mind the fact that the stated deadline implies only the beginning of the application of the obligation and not the successful completion of the started treatment process, it seems quite justified to predict the maximum duration of treatment determined in this way. In addition, setting a longer deadline would be contrary to one of the key goals of justifying the possibility of applying the principle, and that is an efficient solution to the criminal matter.^[18] In addition, one of the following issues present in the professional public of Serbia when it comes to this and not only this obligation imposed on the suspect is the question of the justification of the solution which does not require the consent of the injured party to postpone criminal prosecution nor is it necessary to obtain any opinion of the injured party on the possible application of the opportunity principle in a particular criminal matter, including their inability to take any measures to control the justification of the public prosecutor's decision on the opportunity principle. According to the views of one part of the professional public, the imposition of an obligation/s on the suspect should also depend on the consent of the injured party, which depends on the type of obligation. The case is primarily with the obligation to subject the suspect to psychosocial treatment in order to eliminate the causes of violent behaviour, subject him to treatments to deal with alcohol or narcotics addiction, compensation for damage caused by the commission of a criminal offense and fulfilment of due maintenance obligations. In addition, the fact of complete neglect of the position of the injured party in the process of making the decision of the public prosecutor on the application of the principle of opportunity is emphasized. The CPC of the RS only envisages the obligation of the public prosecutor to inform the injured party about the rejection of criminal charges by applying the said to institute, provided that the injured party does not have any instruments to initiate the procedure of possible review of such a decision of the public prosecutor.^[19]

Moreover, no consequences are foreseen for the public prosecutor, even if he does not inform the injured party about the rejection of the criminal charges. However, a more serious expert and critical analysis of this aspect of the subject matter shows that the current text of the CPC of RS not only worsens the procedural position of the injured party in relation to the previous CPC, but that it is more than marginalized and needs to be regulated in a different way. It seems quite justified to advocate for standardizing the position of the injured party in such a way that when deciding on the application of principles and imposing obligation/s on the suspect, the position of the injured party must be taken into account, as is the case, e.g. with the Criminal Procedure Code of the Republic of

[18] Turanjanin – Čvorović, 2021.

[19] Škulić, 2014b.

Croatia^[20], with the proviso that the application of the principle must not depend on his will. It is also considered quite justified to strive to provide instruments through which the injured party can influence the review of the justification of the decision of the public prosecutor to reject the criminal charges on this basis. For example, this can be achieved by giving the injured party the right to file an objection directly to the higher public prosecutor against the decision to reject the criminal charges, which is currently not the case. In addition, when it comes to the procedural status of the injured party i.e. the victim of a crime during their standardization in the national criminal procedure legislation in general and thus in the RS CPC, it is necessary to take into account generally accepted international legal standards on this issue contained in relevant international legal acts which are numerous. Among them, the Directive 2012/29 of the European Parliament and of the Council of 25 October 2012 (2012) has a special significance. It establishes minimum legal standards in the rights, support and protection of victims of crime, within which as particularly vulnerable categories stand out the categories of children^[21], victims of partner or domestic violence, victims of terrorism and victims of gender-based violence. Despite the fact that Directive 2012/29 applies to EU member states, it is unavoidable for states that want to become member states, and not only for them but also the legislation of each and every state because it contains generally accepted standards, standards of a universal nature when it comes to the injured party/victim of crime as a highly specific subject of criminal proceedings. In view of this, the number of activities in the field of criminal law that have been undertaken in the last few years with the aim of harmonizing the criminal legislation of the Republic of Serbia with the standards of the Directive is to be welcomed. However, despite a number of activities already undertaken, and despite the material prepared for the proposed amendments to the CPC of the RS with the aim of harmonizing it with the standards of the Directive, the proposed law has not yet entered into force. However, judging by what has been done so far, it can be stated that when the proposed law enters into force, the criminal procedure legislation of Serbia will be fully harmonized with the standards of the Directive and thus the position of the victim of crime in general will be far more favourable than it is now. For example, we list only some of the novelties that have been proposed and are in the function of improving the criminal status of the victim of a crime. These are, for example, the new rights of a victim (the right to be informed about the course of the proceedings and the status of the case; the right to a legal remedy and available protection and support mechanisms); new measures aimed

[20] According to Article 206d, paragraph 2, item 6 of the Criminal Procedure Code of the Republic of Croatia, the consent of the victim or injured party is a condition for the suspect to undergo psychosocial therapy in order to eliminate violent behavior without leaving the family community or with the consent of the suspect to leave the family community during therapy. See more about the position of the victim in the criminal proceedings of the Republic of Croatia in: Ivičević- Karas – Burić – Filipović, 2019.

[21] See more on the protection of children as victims of domestic violence in Croatia and the role of the social welfare center (Stanić, 2021).

at preventing secondary victimization; individual assessment of the victim in order to determine the need to determine special protection measures, etc. Add to this the fact that we already have implemented the standards of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2013), adopted in Istanbul in 2011 (Istanbul Convention)^[22] not only in the CPC of RS but also in the specially enacted Law on Prevention of Domestic Violence (2016) which, similarly to the Croatian Law on Protection from Domestic Violence (2017, 2019) applies in both criminal and misdemeanour proceedings, then we can state that in the Republic of Serbia, a normative basis will soon be created for more efficient protection of victims of crimes in general and thus victims of crimes of domestic violence.

Finally, when it comes to this aspect of the subject matter, there are the following two facts:

First, the outcome of the postponed criminal prosecution under the above conditions depends on the behaviour of the suspect, i.e. on the fact whether or not he has fulfilled the imposed obligation(s). In cases when the suspect does not start fulfilling the obligation within the set deadline and in the manner provided in the order for postponement of criminal prosecution, the proceedings continue. Otherwise, i.e. when the suspect has acted in accordance with the obligations stated in the order on postponement of criminal prosecution, the public prosecutor shall issue a decision rejecting the criminal charges against the suspect and the criminal matter shall be considered definitively resolved. The principle of *ne bis in idem* has an absolute effect. No appeal or objection is allowed against the decision of the public prosecutor on the rejection of the criminal charges, it acquires formal and material finality (*res judicata*).^[23] The injured party is only informed about the decision made, but there are no possibilities for initiating the procedure of its possible review.

Secondly, the practical realization of the imposed obligation to undergo psychosocial treatment in order to eliminate the causes of violent behaviour includes a number of measures that are concretized in the rehabilitation program, and one of them is the possibility of including family members in the treatment process with full respect for victims in such situations. The ultimate goal of the psychosocial treatment program is to eliminate the causes of violent behaviour, normalize the relationship between the suspect and the victim and prevent secondary victimization of the injured party, which is especially important given the fact that in many such cases violence is a continuous process and not an individual case.^[24]

In view of the above, there is a full legal and political justification of the legal possibility of imposing on the suspect the obligation to “undergo psychosocial treatment to eliminate the causes of violent behaviour” in cases of application of

[22] Serbia signed this Convention on April 14, 2012, and entered into force on August 1, 2014.

[23] Judgment of the Supreme Court of Cassation Przz. No. 18/2016. of 22.12.2016.

[24] Ristivojević, 2017; Škulić, 2012.

the principle of opportunity of criminal prosecution when the legally prescribed conditions for its imposition are met which above all, should be the case with the crime of domestic violence. However, despite the existence of legal possibilities for such a thing, and despite the full legal and political justification of the practical realization of such a legal possibility in practice, its application is only symbolic. According to the almost unanimous position of the professional public, such a public prosecutor's practice has no justification and needs to be changed. This is especially considering the fact that in the Republic of Serbia in the last ten years, on average, about 25% of all criminal cases are resolved through the principle of opportunity of criminal prosecution, primarily by conditional deferring of criminal prosecution.^[25]

III. SOCIAL WELFARE CENTER AS A SUBJECT OF EFFICIENCY IN THE APPLICATION OF MEASURE OF SUBJECTING THE SUSPECT TO PSYCHOSOCIAL TREATMENT IN ORDER TO ELIMINATE THE CAUSES OF VIOLENT BEHAVIOUR

One of the indispensable subjects of the practical realization of the measure of subjecting the suspect to psychosocial treatment in order to eliminate the causes of violent behaviour is the social welfare center. There are several facts that speak of such a high degree of importance of this body both when the public prosecutor is deciding on imposing the obligation, and in his role in the practical realization of the obligation and then in making the final decision of the public prosecutor on the outcome of deferred prosecution under this condition. This is especially the case considering the fact that the final decision of the public prosecutor on the outcome of the postponed criminal prosecution should depend on the report of this body. Namely, as it has already been said, in order to make a decision on rejecting criminal charges, among other things, the public prosecutor's assessment is needed that the suspect will continue with psychosocial treatment even after rejecting the criminal charges, and one of the facts that should be taken into account is the assessment of the social welfare center on the achieved result and on the future behaviour of the suspect to whom this obligation was imposed. In a word, the social welfare centers are active participants in the created program in the procedure of deferring criminal prosecution under this condition. If the role of this body according to the Law on Prevention of Domestic Violence is added to this, then such a statement additionally gains in importance. This is especially due to the fact that the aforementioned Guidelines for the prosecution stipulate that the opportunity cannot be applied more than twice for the same crime, which means that there are no obstacles to the op-

[25] See: Report of the Republic Public Prosecutor's Office of Serbia for 2019 and 2020.

portunity to apply to the suspect if he was ordered urgent measures in the pre-crime concept according to the Law on Prevention of Domestic Violence^[26], which additionally speaks of the importance of this body in the decision of the public prosecutor on the application of the postponement of criminal prosecution in a specific criminal matter.

Given the stated importance of the social welfare centers in the practical application of measures to subject the suspect to psychosocial treatment to eliminate the causes of violent behaviour and their role in the practical implementation of many other issues in the function of preventing domestic violence, research was conducted on efficiency of actions of the social welfare centers in the application of the obligation of psychosocial treatment in order to eliminate the causes of violent behaviour.

IV. AIM OF THE PAPER AND RESEARCH QUESTIONS

The goals of the research are as follow:

1. Recognizing the positive effects of applying psychosocial treatment in order to eliminate the causes of violent behaviour in terms of the implementation of criminal policy of criminal acts of domestic violence, resocialization of the suspect and prevention of secondary victimization.

2. Gaining insight into the adequacy of the mutual relationship between the social welfare center and other entities important for the prevention of domestic violence, as an important instrument for the effectiveness of psychosocial treatment in order to eliminate the causes of violent treatment.

3. Noticing problems in the application of psychosocial treatment in order to eliminate the causes of violent behaviour and giving proposals *de lege ferenda* with the aim of improving the normative framework.

In accordance with the set goals, the following questions were asked in the research:

1. In your opinion, does undergoing psychosocial treatment in order to eliminate the causes of violent behaviour of the perpetrator, in accordance with Article 283 of the CPC (principle of opportunity of criminal prosecution), have positive effects in cases of domestic violence?

2. In your opinion, is the period of up to one year long enough to eliminate the causes of violent behaviour (domestic violence) by undergoing psychosocial treatment?

3. According to your work experience, has there been a recurrence of domestic violence after undergoing psychosocial treatment?

[26] Urgent measures according to the Law on Prevention of Domestic Violence are: a measure of temporary removal of the perpetrator from the apartment and a measure of temporary prohibition of the perpetrator to contact the victim of violence and approach her. See more about it: Mijalković – Čvorović – Vranešević, 2020.

4. Do you inform the public prosecutor if the perpetrator of domestic violence does not come to treatment regularly or does not meet the minimum requirements for participation in treatment?

V. METHODOLOGY OF RESEARCH

1. Sample

The research included 35 employees in the social welfare centers in the area of the Srem administrative district. Considering that all employees who act in the application of psychosocial treatment were surveyed, within all seven social welfare centers (Sremska Mitrovica, Ruma, Irig, Indija, Stara Pazova, Šid and Pećinci), as many as there are in the area of Srem administrative district, we can say that this is a complete scope of research.

The respondents ranged in age from 25 to 65, and the average age was 43. Also, the range of their work experience in cases of psychosocial treatment is from one to 20 years. Of the total number of respondents, 24 had over five years of work experience, while the most represented were those with 10 years (eight respondents), which is a relevant sample for all issues covered by the survey. The pattern is intentional.

2. Data collection and processing procedure

Since the research is of an empirical nature, the basic method used in data collection was the test method with the survey technique using a survey questionnaire as an instrument. The questionnaire, in addition to three demographic questions (age, organizational unit and work experience in cases of domestic violence), had 4 questions on the basis of which respondents were able to give answers to four closed-ended questions. The primary sources of data were used in the research, because the attitudes of employees regarding the application of psychosocial treatment, recurrence, mutual relations of subjects responsible for the application of the principle of opportunity, etc. were investigated. In accordance with the schedule, the data collection procedure lasted during January 2022. After data collection, a statistical method at the level of descriptive statistics was applied and the SPSS software package (ver. 20) was used for this purpose.^[27] This method is used to organize, classify and process the data collected by the test method.

[27] IBM SPSS ID: 729327.

VI. RESULTS

In accordance with the objectives and research questions, the following results were obtained after the research:

	Yes		No		Did not respond
	N	%	N	%	N
Respondents	23	65.7	9	25.7	3

*Table 1. The attitude of the social welfare center regarding the efficiency of the implementation of the obligation of psychosocial treatment in order to eliminate the causes of violent behaviour in cases of domestic violence (Question 1)
(Source: made by the Author)*

According to the data from Table 1, we can conclude that the largest number of respondents believe that undergoing psychosocial treatment to eliminate the causes of violent behaviour of the perpetrator, in accordance with Article 283 of the CPC (principle of opportunity of criminal prosecution), has positive effects in cases of domestic violence. However, a number of respondents (more precisely, 9 of them) stated that this obligation does not have a positive effect when it comes to the implementation of criminal policy of domestic violence, which leaves room for analysis of the reasons for this statement, i.e. whether it is a legal norm that is not adequately regulated by the CPC or the practice has shown that after the implementation of psychosocial treatment in most cases there was recidivism.

	Yes, fully		Mostly yes		I am not sure		Mostly no		Not at all
	N	%	N	%	N	%	N	%	N
Respondents	2	5.7	9	25.7	18	51.4	6	17.1	0

*Table 2. The attitude of social welfare centers regarding the period of one year of undertaking psychosocial treatment (Question 2)
(Source: Made by the Author)*

According to the data from Table 2, we can conclude that the majority of respondents answered that they are not sure whether the period of up to one year is long enough to eliminate the causes of violent behaviour (domestic violence) by undergoing psychosocial treatment. A small number of respondents answered that they mostly think that this period of time is long enough, while 6 of them think that it is mostly not enough, and only two respondents are sure that a period of up to a year is long enough. In accordance with that, we can see

a certain degree of uncertainty when it comes to fulfilling the obligation of up to one year, i.e. the necessity of reforming the legal text when it comes to the stated time determinant.

	Never		Rarely		Occasionally		Often		Always
	N	%	N	%	N	%	N	%	N
Respondents	0	0	3	8.6	23	65.7	7	20.0	0
	Did not respond								
	N	%							
Respondents	2	5.7							

Table 3. Respondents' attitude towards the recidivism of domestic violence after undergoing psychosocial treatment (Question 3)
(Source: Made by the Author)

According to the data from Table 3, the largest number of respondents answered that there were occasional cases of recidivism of domestic violence after undergoing psychosocial treatment. A smaller number of respondents answered that recidivism occurred frequently, while only three respondents answered rarely. Accordingly, we can see that there was an occasional or frequent relapse after undergoing psychosocial treatment, which is an appropriate alarm for the state to reform this obligation and achieve the key goal of psychosocial treatment, which is the successful reintegration of the suspect into society.

	Never		Rarely		Occasionally		Often		Always
	N	%	N	%	N	%	N	%	N
Respondents	6	17.1	3	8.6	5	14.3	2	5.7	12
	Did not respond								
	N	%							
Respondents	7	20.0							

Table 4. The relationship between social welfare center and public prosecutor (Question 4)
(Source: Made by the Author)

According to the data from Table 4, we see that most respondents have an effective relationship with the public prosecutor, i.e. that they inform him if the perpetrator of domestic violence does not come regularly for treatment or does not meet other treatment requirements. A smaller number of respondents answered that they never do it, as well as almost the same number of respondents who do it occasionally, while only three respondents rarely do it. We can

conclude that most respondents have an adequate relationship with the public prosecutor and regularly inform him about the success of psychosocial treatment, but not a negligible number who never do so or occasionally and rarely, which is one of the indicators of the need to reform the normative framework when it comes to instructions of public prosecutors given to the social welfare centers on the obligation to inform the public prosecutor on the fulfilment of the conditions of psychosocial treatment, considering that only in such a way can adequate results of successful resocialization of the suspect and realization of criminal policy of domestic violence be expected.

VII. DISCUSSION AND CONCLUDING REMARKS

The principle of opportunity of criminal prosecution, i.e. deferral of criminal prosecution as its key type, is an important instrument of adequacy of state response to crime in general and to violent crime as well, including the crime of domestic violence, which unfortunately occupies an increasingly important place in the total number of criminal offences. However, not unconditionally. In order for the principle of opportunity, i.e. postponement of criminal prosecution as its key form, to be in the function of the desired degree of adequacy of the state reaction to this type of crime, it should be characterized by a large number of features in normative and practical terms. One of them is the legal provision of the possibility of imposing on the suspect the obligation to undergo psychosocial treatment in order to eliminate the causes of violent behaviour. Without imposing this obligation on the suspect and its adequate practical realization in many cases of criminal acts of violence, there is almost no possibility of achieving the key goal of the principle of opportunity, which is to effectively repair the consequences of the crime and prevent its future commission. The conducted analysis of the positive criminal procedure legislation when it comes to the application of the principle of opportunity and the obligation of psychosocial treatment of the suspect to eliminate the causes of violent behaviour indicates that, in principle, there are a number of solutions which function in line with that efficiency and in line with the tendencies of contemporary science of criminal procedure law. However, viewed from the aspect of concrete elaboration of a certain number of solutions, it seems that this is not the case, which especially refers to the procedural status of a person damaged by the crime which, unlike the Criminal Procedure Code of the Republic of Croatia, is completely marginalized in the CPC of the RS. In addition, there is the fact that the legal possibilities of imposing on the suspect the obligation to undergo psychosocial treatment in order to eliminate the causes of violent behaviour are almost never used in practice. The public prosecutor's practice of the Republic of Serbia on this issue is not in line with the intentions of the legislator. Also, the results of the research indicate an insufficient degree of cooperation between the public prosecutor and the social wel-

fare centers in the practical application of the measure of subjecting the suspect to psychosocial treatment in order to eliminate the causes of violent behaviour. Having in mind the fact that the basis of the decision of the public prosecutor on the final outcome of the postponed criminal prosecution should be the report of the social welfare center on the achieved results of treatment as well as the fact that, depending on the achieved results, the duration of the imposed obligation may be extended to the suspect in situations when the duration is in the order to postpone the criminal prosecution shorter than the maximum possible period of one year, it seems quite justified when it comes to the postponement of criminal prosecution, to propose the obligation of the social welfare center to explicitly stipulate in its report submitted to the public prosecutor within the set deadline the data on the suspect's behaviour during psychosocial treatment, their view on the expected treatment results and their position on extending the treatment period if there are legal possibilities for that. Such prescribing of the obligation of the social welfare center is in the function of the desired degree of adequacy of its cooperation with the public prosecutor in the procedure of application of this type of principle of opportunity of criminal prosecution, which is currently not the case

In view of this, it is necessary to bridge the current gap between norms and practices on this issue and at the same time ensure a greater degree of cooperation between the public prosecutor as a key entity deciding on the principle of opportunity and entities in charge of practical implementation of obligations imposed on suspects. The key subjects are the social welfare centers. The experiences of the research on the diversion of domestic violence analyzed in this study clearly show that without the close cooperation of the bodies responsible for the implementation of individual criminal procedure tasks, the advantages of criminal policy inherent in this type of legal institution cannot be well exploited by the authorities.

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