

Protection of Victims of Psychological Abuse as Type of Domestic Violence in Criminal Procedure

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Abstract

Nowadays, domestic violence is a generally recognized and widespread phenomenon in every society. In this paper, the authors analyze psychological abuse as a type of domestic violence. Available statistical data in the Republic of Serbia for 2019. show a high frequency of psychological violence by partners. Emotional abuse is reported equally by women and men. Thus, out of 62% of different forms of violence against women, even 44% is psychological violence by an intimate partner. In 2019., 48% of women aged between 26-64 suffered some form of psychological violence, compared to 50% of men in the same age category. In terms of the consequences that a person experiences, psychological abuse can be as harmful as physical violence or even more. Recognizable forms of physical violence are hitting, pushing, arm twisting, etc., while psychological violence uses other methods and is often difficult to recognize as it is challenging to prove its manifestation.

As one of the goals of criminal law is to provide legal protection to the victim of a criminal act, that goal can be adequately achieved only when psychological abuse is determined and proven as such within criminal proceedings, and the perpetrator convicted. Proving psychological abuse in practice is quite a challenge, as there is an issue with what type of evidence can be used in criminal procedure to determine that the victim suffered psychological abuse. Psychological abuse is an act that, from objective point of view, involves the willful infliction of mental or emotional harm. A victim's subjective notion of their emotional distress is not a sufficient indicator of domestic violence, therefore the victim's statement before court does not suffice as evidence of emotional abuse.

In this paper, the authors will attempt to answer the question of how and with what evidence can it be demonstrated within criminal procedure that the victim suffered psychological abuse, as this is one of the prerequisites in providing adequate legal protection to the victims of this form of domestic violence.

Keywords: *victim, domestic violence, psychological abuse, evidence, criminal procedure*

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I. Introduction

The cohabitation of two persons is two-way street in every intimate relationship. The popular saying “*All's fair in love and war*”, does not obliged when it comes to violence between partners. Protecting victims of domestic violence is an important goal in criminal policies that must be achieved to ending domestic violence as widespread behavior pattern and the major public health problem. Violent behavior is most often explained by the psychopathology of the abuser or as a consequence of a learned pattern of behavior in the family¹. According to social learning theory, violent behavior is learned by observing the aggressive behavior patterns of individuals who serve as role models².

In all victimization, domestic violence takes a high place when it comes to participation in all crimes rate. *National Crime Survey for 2021* showed that from 2017 to 2021 there were no statistically significant changes in rates of domestic violence and intimate partner violence, with stranger violence and violence including injury and weapon³. In estimated period, the rate is from 4,5 to 3,3 per 1,000 persons age 12 and older. Thus, a similarity between victimization in number and rate in domestic violence and stranger violence (for exp., rate was from 7,5 to 7,4 per 1,000 persons age 12 and older) showed great importance to answer how we can protect victims of domestic violence. Furthermore, with the Explanatory Report to the Istanbul Convention it was estimated that between 12% and 15% of women across Europe have been in a relationship involving domestic violence after the age of 16⁴. Children are most often victimized psychologically – in 29% of cases, physically in 22%, and 4% are forced to work.

This data indicates high frequency of reported victimization, even there is a high dark rate in reported crimes such as domestic violence, because victims may be too frightened or too ashamed to report.

Violence can manifest in many forms, but one thing that is specific are consequences that victim suffer. In terms of consequences, domestic violence has its own distinctive character of generally violence behavior, because it affects family as unity, although consequences in narrow sense person experiences as an individual. In theory, domestic violence has its own definition, recognizable forms of manifestation, subjects of violence as its victims and perpetrator and its legal frame. But when it comes to criminal proceedings and the protection of the victim in criminal court, the first question is which forms of behavior are considered under criminal act of domestic violence and the second is which evidences are strong enough to proven that violence has occurred. This is particularly when domestic violence appears in form of psychological abuse, which is often difficult to recognize as it is challenging to prove its manifestation.

¹ I. Igracki, *The police as a subject in the prevention of child abuse*, in Journal of the Institute of Criminological and Sociological Research, Belgrade, 2012/1, pp. 264-265.

² *Ibidem*.

³ The Bureau of Justice Statistics of the U.S. Department of Justice, *Criminal Victimization 2021*, September 2022, <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf> (accessed on 04.12.2022).

⁴ *Explanatory Report to Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> (accessed on 04.12.2022).

Proving psychological abuse in practice is quite a challenge, as there is an issue with what type of evidence can be used in criminal procedure to determine that the victim suffered psychological abuse. Before answering at this question, it is important previous to understand how does the legislation define psychological abuse as criminal act as a type of domestic violence, how does it manifests, what are consequences on victims mental health and is there some connection between harmful consequences that occur and liability of victims testimony in criminal court.

As one of the goals of criminal law is to provide legal protection to the victim of a criminal act, that goal can be adequately achieved only when psychological abuse is determined and proven as such within criminal proceedings and the perpetrator convicted.

II. Domestic Violence

1. Definition

As it was written above, domestic violence has its own definition, recognizable forms of manifestation, subjects of violence as its victims, perpetrator and its legal content.

It is not easy to define domestic violence. The current focus on a criminal justice response, relies on legal definitions to determine what actually is considered to be an act of domestic violence. In order to prove psychological abuse as domestic violence in criminal proceedings, it is primary to determine which violent behaviors are considered domestic violence. There is different theoretical approaches about domestic violence. Some of these approaches are based on the terms that domestic violence is violence between intimate partners⁵. This mean that domestic violence is every violent act that conduct among intimate partners who are or who were in some type of emotional, sexual or intimate relationship. The point is that one partner uses threats and violence to control the other partner. Some authors use the term *intimate partner violence* and it is becoming increasingly common and does seem more successful in at least alluding to the fact that this type of abuse is inflicted by an intimate, not a stranger⁶.

In another sense, domestic violence is every violent act between partners with one more component. The specific context in which violence occur is domestic relations. Domestic violence is defined as a process of coercion and control that occurs in a specific context⁷. These definitions also include coercive and control as one of the main characteristics of domestic violence. Controlling behavior consists in: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior⁸. Coercive behavior is: an act or a pattern of acts of assault,

⁵ P.B. Bishop, *The Limitations of the Legal Response to Domestic Violence in England and Wales: A critical Analysis*, Submitted to the University of Exeter, as a thesis for the degree of Doctor of Philosophy in Law, 2013, p. 23.

⁶ *Ibidem*.

⁷ J.P. Jenkis, P.B Davidson, *Stopping Domestic Violence- How A Community Can Prevent Spousal Abuse*, Springer Science+Business Media, New York, 2001, p. 56.

⁸ Information for Local Areas on the change to the Definition of Domestic Violence and Abuse, Home Office, 2013, p. 2.

threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim⁹.

Domestic violence is also defined as “any incident or pattern of incidents of controlling, coercive, threatening behavior, violence or abuse between those aged 16 or over who are, or have been intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to psychological, physical, sexual, financial, or emotional”¹⁰. Typically, people think of domestic violence simply as assaults between intimate or prior intimate partners. However, current legal definitions usually cover a broad range of relationships. These often include assaults involving siblings, parents, and adult children; parents and teenagers; grandparents and grandchildren; teenaged and adult daters and ex-daters; among others¹¹.

For example, in the Great Britain, in the substantive criminal law predominantly was focused on isolated incidents of physical violence or criminal damage up until 2015., when an offence of ‘controlling or coercive behavior’ was introduced under the Serious Crime Act, criminalizing for the first time the non-physical abuse which so often occurs in the domestic context¹². Regardless of diversity in legislative rules, important is that nowadays there is unique normative approach that recognize that domestic violence isn’t just physical injury.

2. The Istanbul Convention

Domestic violence as criminal act is governed by definition set by the Istanbul Convention. Definition of domestic violence that is adopted by the Istanbul Convention can be found in Article 3 (b) which defines domestic violence as encompassing “all acts of physical, sexual, psychological or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”¹³. It is obviously that Convention identifies physical and psychological violence, and other forms of violence, as etc. sexual and economic violence. The Council of Europe adopted Istanbul Convention as a Convention on preventing and combating violence against women and economic violence that occur within the family or domestic unit or between former or domestic violence which entry in force 01.08.2014¹⁴. The purposes of this Convention are defined in Article (1) and one of the main goals is to “protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence”.

The domestic violence in the sense of the term takes the places at home. In narrow sense domestic means home and family. Thus, the Convention clearly departs from the

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/142701/guide-on-definition-of-dv.pdf (accessed on 05.10.2022.)

⁹ *Ibidem*.

¹⁰ *Ibidem*.

¹¹ E. Buzawa, C. Buzawa, *Global Response to Domestic Violence*–Springer International Publishing, 2017, p. 63.

¹² C. Bishop, V. Bettinson, *Evidencing Domestic Violence, including behaviour that falls under the new offence of ‘controlling or coercive behaviour’*, in: International Journal of Evidence and Proof, 2017, Sage Publications, pp. 1-27.

¹³ Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210> (accessed on 05.10.2022).

¹⁴ *Ibidem*.

ordinary usage of the term, while uses terms as it does not require that partners ever lived together, or that the violent act in question was at the victim's home. If the offender assaults his partner at her workplace or stalks her, this, in the terminology of the Istanbul Convention, constitutes domestic violence. In any case, any form of partner violence is domestic violence in the meaning of the convention¹⁵. Therefore, some researchers advocates are far more accurate when they conceptualize domestic violence as a range of behaviors, some obviously criminal in nature, others more manipulative, which in total are intended to exercise coercive control including physical, sexual, psychological, and verbal behaviors used to dominate another person¹⁶.

Additionally, The Council of the European Union establishing minimum standards on the rights, support and protection of victims of crime adopted Victims' Rights Directive (25.10.2012) and under Paragraph 18 prescribe: "Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss"¹⁷.

3. Definition in the Republic of Serbia

Beside theoretical approach and the similarity between definition of domestic violence, many states today have adopted legal definitions of domestic violence, among them the Republic of Serbia. These are some of the important issue when it comes to defining domestic violence from the aspect of the Criminal Code in Serbia.

The Criminal Code of the Republic of Serbia in its Article 112 (28) prescribes who is family member in the terms of domestic violence¹⁸. The following are considered family members: spouses, their children, spouses' ancestors in the direct line of blood kinship, extramarital partners and their children, adoptive parents and adopted children, breadwinners and breadwinners. The family members are also considered brothers and sisters, their spouses and children, ex-spouses and their children and parents of ex-spouses, if they live in a joint household, as well as persons who have a child together or a child is about to be born, even though they have never lived together in the same family household¹⁹. In the context of domestic violence offence the circle of family members is extended to those persons who were partners or who had lived in the same household. The importance of widely considered circle of the family members in the terms of legislation rules is in favor of adequate protection of victims and the right to family life, according to the Article 8 European Convention on Human Rights²⁰.

¹⁵ European Union Agency for fundamental rights, *Women as victims of partner violence* – Justice for victims of violent crime – Part IV, p. 29.

¹⁶ *Idem.*, p. 63.

¹⁷ Minimum standards on the rights, support and protection of victims of crime 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029> (accessed 01.10.2022).

¹⁸ *The Criminal Code of Republic of Serbia: "Official Gazette of RS" no. 5/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.*

¹⁹ *Ibidem.*

²⁰ Guide on Article 8 of the European Convention on Human Rights, *Right to respect for private and family life*, home and correspondence, 2022, https://www.echr.coe.int/documents/guide_art_8_eng.pdf. (accessed on 05.10.2022).

The domestic violence as criminal offence is prescribed by Article 194 of the Criminal Code. As a criminal act, exists when the perpetrator endangers the peace, physical integrity or psychological state of a member of his family by using violence, threatening to assault life or body, insolent and reckless behavior. Therefore, Article 194. Paragraph 1²¹ provides the act of committing a criminal offense and the consequences that must occur in order for the perpetrator to be conduct for the crime he committed. Unlike other legislative rules, for example, in England and Wales until very recently there was no specific criminal offence relating to domestic abuse, since the adoption of the current Criminal Code (in 2005), the Republic of Serbia has considered domestic violence as a separate criminal offense. From perspective of The Criminal Code of the Republic of Serbia domestic violence is every coercive and violent act in narrow sense which results in physical and psychological consequences on victim. In that part, the Criminal Code of the Republic of Serbia relies on the Istanbul Convention which has created a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.

Therefore, from the legislative rules, there is no doubt that existing normative framework, recognize domestic violence as physical act and psychological abuse between partners in specific context which will be discussed further as a types of domestic violence. Of particularly importance is to distinguish physical and psychological form of violence on the ground of the existence of domestic violence as a criminal act under Article 194 Criminal Code of Republic Serbia. In this context, to prove that physical violence has occurred it is sufficiently that violent act and its consequences happened only once. On the contrary, in order to prove that psychological abuse as a crime of domestic violence exists under Article 194, it is necessary to repeat episodes of criminal behavior over a period of time. The way this can be proven will be discuss in following, but it is based on the consequences that victim experienced.

4. Types of domestic violence

Violent behavior has many forms. When there are visible physical consequences on victim's body, it is easily to conclude that someone has been victimized. Typically, when one person has body injury we are talking about physical violence. Recognizable forms of physical violence are hitting, pushing, arm twisting or choking, while psychological violence uses other methods and is often difficult to recognize as it is challenging to prove its manifestation. Psychological abuse is an act that, from an objective point of view, involve the willful infliction of mental or emotional harm.

5. Psychological abuse

Acknowledge psychological abuse as type of domestic violence means protection of victims when there are no visible physical consequences on the victim's body. For adequate protection this is very important for every victim of domestic violence. The main reason is in its nature of psychological abuse and its consequences. In terms of consequences that a person experiences, psychological abuse can be as harmful as

²¹ *The Criminal Code of Republic of Serbia: "Official Gazette of RS" no. 5/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.*

physical violence or even more. Psychological abuse involves trauma to the victim caused by verbal abuse, acts, threats of acts or coercive tactics. Perpetrators use psychological abuse to control, terrorize and denigrate their victims. It frequently occurs prior to or concurrently with physical or sexual abuse. Behaviors that are common in abusive situations including emotional abuse, isolation, abuse and use of children, economic abuse, use of coercion and threats, intimidation, and blaming the victim. The combination of abusive behaviors and the severity of abuse varies with each relationship. At the center of any abusive situation is the necessity for coercion and control²².

Coercive behavior is constituted by an act or pattern of acts of assault, threats, humiliation, intimidation or other abuse that is used to harm, punish, or frighten their victim. This includes so called "honour" based violence, female genital mutilation and forced marriage²³. The authors explain that controlling behavior is defined as: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behavior²⁴.

Unlike separated terms of physical violence and psychological abuse, some authors define both behaviors as a battering. Battering describes the most devastating context of social partner assault, in which repeated episodes of physical abuse, usually by a spouse, ex-spouse, lover, or dating partner, are accompanied by sexual assault, threats, verbal abuse, the destruction of property, child abuse, stalking, degradation, isolation from friends and family, and a pattern of coercive control over key aspects of the victim's life, including money, food, sexuality, physical appearance, social life, transportation, work, religion, and access to help²⁵. It is clear that the offence includes behaviors that do not threaten or cause physical injury, in clear recognition of the emotional and psychological harm that results from controlling or coercive behavior²⁶.

Psychological research on trauma makes it clear that severe and enduring traumatic reactions can occur even in the absence of physical violence, and thus there need not be bodily injury. Such psychological trauma is coupled with physiological upheaval and changes in the brain, which arise in the same way whether the threat is verbal, emotional, psychological or physical²⁷. What is common is a perception of psychological violence which necessarily implies solid evidence in court that victim suffer consequences which, as before said, they are not visible at first glance.

The OSCE Survey conducted in 2018. in the Republic of Serbia among a representative sample of women between 18 to 74 aged, and a total of 2,023 interviews, showed high prevalence of different forms of violence against women, 44% of interviewees were victims of intimate partner psychological violence while 22% of

²² J.P. Jenkis, P.B. Davidson, *Stopping Domestic Violence, How A Community Can Prevent Spousal Abuse*, Springer ScienceBusiness Media, New York; 2001, p. 54.

²³ J.A.R. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*, by Routledge, Oxon, 2017.

²⁴ *Ibidem*.

²⁵ D.E. Stark, A. Flitcraft, *Women at Risk, Domestic Vilece and Womens Health*, London, Sage Publications, 1996, p. 203.

²⁶ C. Bishop, V. Bettinson, *Evidencing Domestic Violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in: *International Journal of Evidence and Proof*, 2017, Sage Publications, pp. 1-27.

²⁷ *Ibidem*.

them experience physical or sexual violence from intimate partner. The survey showed that intimate partner psychological violence is the most widespread form, in particular controlling behavior (35%), abusive behavior (29%), economic violence (12%), blackmail with/abuse of children (8%)²⁸. The numbers show how important is to recognize psychological abuse as a severe form of violence, especially in the terms of consequences that victims experience.

6. Who can be a victim?

Anyone can be a victim of domestic violence. If we accept that domestic violence is the process of coercion and control that occurs in a specific context among intimate partner, family member or former intimate, emotional or sexual partner, there is a wide circle of persons who may become a victim. Regarding to the psychological abuse, as a type of domestic violence, men as same as women can be a victim. For the purpose of protecting victims of the domestic violence an important question that arises is does The Istanbul Convention applies in situations where victim is male. Although Article 2(2) asserts that 'parties are encouraged to apply this Convention to all victims of domestic violence', this provision also emphasizes that 'parties shall pay particular attention to women victims of gender-based violence implementing the provisions of this Convention'.

In addition, it is stated in Article 2(1): 'This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.' Therefore, although states are 'encouraged' to apply the provisions of the Convention to male victims of domestic abuse, the focus remains primarily on the prevention of violence against women, encompassing *inter alia* such violence that takes place in the home²⁹. Feminist approach that the majority of domestic violence is commissioned by heterosexual males as a result of conforming to cultural norms that support male dominance³⁰, in that way linking domestic violence to male power and control, has no support in statistical data. Some data showed that 48.4% of women and 48.8% of men have experienced at least one psychologically aggressive behavior by an intimate partner³¹. The paramount problem is the dark rate particularly when it comes to report psychological abuse by male victims.

Furthermore, intimate partner violence is not just a problem for heterosexuals, homosexual partners may also experience violence in dating or cohabiting relationships although homosexuality became of a great importance as a topic at the end of the 19th century³². It is likely that the true incidence of lesbian or gay partner violence is masked by the reluctance of victims to seek outside help³³. Social status or incomes does not prevent women to become a victim of some form of domestic violence. Public hearing that domestic violence is reserved only for lower status victims it isn't a well-founded.

²⁸ OSCE–Led Survey on Violence against Women, Well-Being and Safety of Women, Serbia Results Report, Belgrade, OSCE 2019, p. 10.

²⁹ J.A.R. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*, by Routledge, Oxon, 2017, p. 75.

³⁰ C. Bishop, V. Bettinson, *cited*.

³¹ OSCE – Led Survey on Violence against Women, *Well-Being and Safety of Women*, Serbia Results Report, Belgrade, OSCE 2019, p. 10.

³² L. Cimburovic, Z. Stevanovic, E. Saljić, J. Igracki, *Victimology*, Belgrade, 2013, pp. 146-147.

³³ J. P. Jenkins, P.B. Davidson, *cited*, p. 56.

Women with higher incomes may have access to resources that allow them to keep their victimization private: private attorneys, private physicians, private therapists, or resources to afford an alternate housing situation. Often, abuse of women with these resources is not documented by law enforcement, hospital emergency rooms, social service agencies, or battered women's shelters³⁴. Also, there are no age limits for women victimization. Adolescent girls are at high risk for battering; so are women over 60. Between 50% and 75% of battered women in the hospital are single, separated, or divorced. Pregnancy is a high-risk period during which violence may begin or escalate, harming the fetus as well as the mother³⁵.

Children are a particularly sensitive category of victims. The consequences of child abuse are multiple, permanent and threaten the normal quality of life, while at the same time leaving serious consequences for psychophysical development³⁶. According to research, around eight million children in the world are in some form of abuse and slavery³⁷.

III. Victim in Criminal Proceedings

As noted above, anyone can be a victim of domestic violence, especially psychological abuse as a form of coercive and controlling behavior. Therefore, someone who is victimized can become a participant in criminal procedure only when report the criminal act or initiate charges. Without statement of the victims abuse there is unlikely that criminal procedure and criminal law could provide protection from domestic violence.

1. Reporting psychological abuse

Reporting psychological abuse by victim is the first step. In this stage, there is an obstacle which is connected with the nature of emotional abuse as controlling and coercive behavior. The first problem is that victims often feel responsible, guilty or ashamed to report abuse. Victims may perceive the criminal proceedings as a further serious interpersonal conflict with the perpetrator³⁸. The long delay between reporting a crime to the police and the beginning of the trial represents a further source of psychological stress for crime victims³⁹. One factor that makes it more difficult for women who are victims of partner violence to report it is their own emotional responses to their victimization.

Of women who had experienced physical violence by a partner, 21 % said that the most serious incident left them feeling shame over what had happened, while the percentage goes up to 47 % among women victims of sexual violence. Furthermore, 32 % of victims of sexual violence said that they experienced feelings of guilt, 34 % felt

³⁴ *Ibidem*, p. 60.

³⁵ D.E. Stark, A. Flitcraft, *cited*, p. 203.

³⁶ Z. Stevanovic, J. Igracki, *Child trafficking as a form of organized crime*, in: Combating organized crime, legal framework, international standards and procedures, *Criminal Police Academy & Hans Seidel Foundation, Scientific expert meeting with international participation*, Tara, 2013, p. 33.

³⁷ *Ibidem*.

³⁸ U. Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, in *Social Justice Research*, Vol. 15, No. 4, 2002, p. 316.

³⁹ *Ibidem*.

embarrassed and close to two in three (64 %) were fearful following the incident. These points to the very real threat of repeat victimization that women face⁴⁰. Also, previous it is mention that men equally as women can be a victim of abuse. When it comes to reporting violent incident, men are less likely to call the police and report the abuse unless medical attention is needed. Since men are expected to be able to defend themselves, especially against women, they are embarrassed to report and fear that they will not be believed⁴¹.

It is well known that the victim, because of fear of perpetrator revenge, often denies that abuse happened in order to protect the abuser at court. This is especially the case of psychological violence that has been going on for many years. Consequences for the victim are such that he/she is often unable to be the witness in the proceedings. For example, if victim suffered high levels of fear and anxiety result is that this person is avoiding people, places or circumstances that he/she relates to past abusive incidents. If visiting her friends was the trigger for her husband's violence, she may decide not to visit her friends again. For this reason, their friends and family may have no awareness of the batterer's abusive behavior, so additionally they could not be the witness at court⁴².

Second, a perpetrator often actively restricts communications between the victim and those formerly close to her, in effect commanding her total attention and allegiance. In that way, power and control over the victim's behavior is gained in order to prevent victim to report abusive behavior. Also, isolating the victim makes it more difficult for her to leave, and all the less likely that the abuse will be discovered. Enforced isolation may be the cause of her failure to seek needed help, her lack of any apparent familial support, or her unexplained absence from scheduled meetings and appointments⁴³. Victim's non-complaints of repeated abuse some authors explain with psychological theory that specifically addresses violence against women – Walker's cycle theory of violence and the concept of "Battered Women's Syndrome".

This theory describes how violence against women occurs in three stages: tension-building, trigger and violent incidents, and the honeymoon phase⁴⁴. The victim's expectations that abusive behavior will never happen again disables victim from reacting and reporting the perpetrator opportunely. The reason for such victim's non-reaction, authors see in nature of psychological abuse. Although the abusive behavior is recurring, it rarely happens every day. There may be periods in the relationship that are relatively calm and even loving. Abusers can be charming, funny, intelligent, successful, kind and caring between violent incidents. These nonviolent periods reinforce the abused woman's hope that the abuse has ended and increase her ambivalence about leaving the relationship⁴⁵. Additionally, victims refuse to live the perpetrator leads to recidivism of abusive behavior. From the point when the abusive behavior is repeated, the consequences on the emotional and psychological state of the victim are severe and directly affect the victim's ability and the possibility to report violence. In addition, the credibility of the victim's testimony depends on the emotional and mental health of the victim.

⁴⁰ European Union Agency for Fundamental Rights, *Women as Victims of partner Violence*, Justice for victims of violence crimes Part IV, 2019, p. 34.

⁴¹ A.N. Jackson, *Encyclopedia of Domestic Violence*, Routledge, Oxon, 2007, p. 88.

⁴² J.P. Jenkins, P.B. Davidson, *cited*, p. 61.

⁴³ *Ibidem*, p. 54.

⁴⁴ *Ibidem*, p. 47.

⁴⁵ *Ibidem*.

2. The consequences of psychological abuse

The consequences victims of psychological abuse suffer are important for defining what is actually the psychological abuse and how does it manifest, second in criminal procedure for proving that violence has occurred. As mentioned above, continues and repeated abuse of the victim makes significant changes on her emotional and mental health in way that causes trauma and fear of recurring violent behavior. Therefore, the constant fear of the perpetrator revenge might enable the victim to give a testimony in front of the court. Many authors advocated that victim's trauma is responsible for victims withdraw their support⁴⁶.

The trauma can be as much harmful as every physical injury and frequently have consequences on victim's memory. Such psychological trauma is coupled with physiological upheaval and changes in the brain, which arise in the same way whether the threat is verbal, emotional, psychological or physical⁴⁷. Other authors suggest that the greatest proportion of medical visits by battered women involves general medical, behavioral, and psychiatric problems that follow from the isolation, fear, and stress of a violent relationship, evidence that coercion and control are the most salient features⁴⁸.

3. Victim's statement

In light of the evidence in the criminal proceedings, mental state of mind of the victim is increasingly important for credibility of victim's statement. Without victim's statement of her emotional distress in lack of any other evidence, there is little chance for public prosecution to prove allegations that psychological abuse has occurred. This is especially in situation of victim reluctances to testify in court. If there is not any other evidence that victim has suffered abuse, it may outcome in an acquittal. In situation when victims withdraw their support for the prosecution for domestic-violence cases public prosecutors should respond in a way that constitutes the effective prosecution of domestic violence. Additionally, the public prosecutor must consider another evidence to present before the court.

The question is what evidence is solid enough to prove that psychological abuse happened. The point is that prosecution of domestic violence is generally difficult in codified legal systems on the European continent because (a) criminal codes are not well able to handle course-of-conduct offenses in which the harm is cumulative, and the single acts for which there may be evidence often draw a low penalty; (b) the evidentiary basis is often weak or is considered not strong enough to stand up to critical questioning; (c) procedural law often requires the testimony of the victim in court, and many victims decide not to make a statement; and (d) there is little confidence that sanctions will have a salutary effect⁴⁹.

In criminal procedure of the Republic of Serbia, according to Criminal Procedure Code⁵⁰, usually both participants in the proceedings can propose that the judge

⁴⁶ M.M. Dempsey, *Prosecuting Domestic Violence*, Oxford University Press, New York, 2009, p. 208.

⁴⁷ C. Bishop, V. Bettinson, *Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in *The International Journal of Evidence and Proof*, Sage Publications UK, p. 9.

⁴⁸ D.E. Stark, A. Flitcraft, *cited*, p. 204.

⁴⁹ S.E. Buzawa, G.C. Buzawa, D.E. Stark, *Responding to Domestic Violence*, Sage Publications, London, 2017, p. 95.

⁵⁰ *The Criminal Procedure Code of the Republic of Serbia: "Official Gazette of RS" no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.*

examine the victim. From that point there is two different obstacles from which depends final verdict. First, victim could refuse to testify in court. In practice, this is not so rare situation. In criminal procedure in the Republic of Serbia, police, public prosecutor and the judge can examine victim. This means that in every phase of criminal proceeding state authority (police, prosecutor and judge) has jurisdiction to question victim. Beside negative aspect of the secondary victimization that victim experiences, there is the significance of the length of time between the event and the making of the statement, and thus making of the statement in another phase of procedure. In the case of a traumatized victim of perpetuate coercion and control, the time interval is significant factor that may cause victim to withdraw her testimony or to change her statement.

This is especially with threats, as an extremely effective form of control. The abuser is often able to threaten the victim with a look, tone of voice, or gesture that evokes fear and compliance. Threats can be signaled by the abuser in presence of family members, advocates, or even the police⁵¹. In this way, the perpetrator continues to control the victim even during the testimony, which may also affect the validity of the statement.

Therefore, if victim's statement is only a prove in the case, public prosecutor could only dismiss charges, or the case could end up with acquittal. The reason for this is in situation where perpetrator doesn't confess the accusation. To overcome this, the prosecution may alternatively submit another evidence.

4. What is the alternative to statement of the victims?

As previously noted, there is no doubt that every violent act is a traumatic experience for the victims. Also, repeated testimony of the victim in front of the police, prosecutor and the judge, undoubtable could deteriorate impact of trauma upon witness credibility to testify. There are authors who suggests that as the witness can suffer a traumatic response before and during a court appearance, it may in fact be less traumatic for them to recount evidence and be questioned about their story prior to trial⁵². It considered that this would reduce the prospect of details coming out at trial for the first time, which, given the ways in which trauma impacts upon memory and recall, seems likely, and with the witness ill-prepared for how to respond to cross-examination⁵³. Regardless, questioning the witness before trial can't prevent the witness from requested dismissal or to recanted her prior statements.

Specifically, this is the often case in the terms of Criminal Procedure Code in the Republic of Serbia, where for example, the spouse of perpetrator, who is most often a victim of domestic violence can use her right not to testify according to the privilege which give her the legislative rule. Therefore, the public prosecutor has a difficult task, if victim withdraw her support for prosecution, or refuses to testify in the trial, there must be other evidence to prove that psychological abuse had occurred. Some authors advocate that it is possible for public prosecutor to enable a statement made by a

⁵¹ J.P. Jenkis, P.B. Davidson, *Stopping Domestic Violence, How A Community Can Prevent Spousal Abuse*, Springer Science Business Media, New York, 2001, p. 54.

⁵² C. Bishop, V. Bettinson, *Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in *The International Journal of Evidence and Proof*, Sage Publications UK, pp. 1-27.

⁵³ *Ibidem*.

witness who is so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded⁵⁴.

Additionally, this solution could overcome the obstacle where witness appears at trial and took the witness stand, but her statement is different from previous. In addition, some authors explain this through consequences of psychological abuse that victims typically remember that the traumatic event happened but describe blanks or periods during which their memory for the details of the event is vague and unclear⁵⁵. These factors make a traumatized witness the antithesis of a 'good witness', who has been described as a person who gives a clear and sufficiently detailed account of events which they repeat in court and under cross-examination⁵⁶. The general literature suggests that attacks on the victim's credibility are a key part of defense strategies, so it should not be overlooked that the defense usually invokes the effects of the victim's trauma in order to avoid testifying or to deny the validity of the statement⁵⁷.

Finding other means to protect the victim as a witness in a criminal proceeding, such as using a written statement, some prosecutors rightly disapprove. Prosecutors would not seek to rely on the complainant's written statement because of the difficulties of proving that the reason she refused to testify were fear, and the defendant's due process rights. Compulsion was almost always rejected because pragmatically prosecutors felt the chances of a conviction were low given that a hostile witness was very likely to be a 'worthless' witness⁵⁸.

This explains how a victim may be able to describe an event with little evidence of distress or emotion and may have trouble explaining how she felt at the time of the attack; the emotions may be stored separately from the details, with no thoughts or cognitions attached to them⁵⁹. In building a case, victim's subjective notion of their emotional distress is not a sufficient indicator of psychological abuse. The victim's statement before court does not suffice as evidence of emotional trauma.

Statement of traumatized victim can be tricky and unstable, specially where there is testimony given repeated. Procedure rules allow the number of victim's testimony to be limited in order to protect witnesses in the proceedings. Also, the European Court of Human Rights, in order to protect particularly sensitive categories of a witnesses, such as women and children as victims of domestic violence or rape, consider that it is enough to question the victim once, and that the previously given testimony can also be used at the trial⁶⁰. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the victim's private life⁶¹.

The rule that a witness should not be re-examined applies in terms of the consenting defense. But, in order to prove the perpetrator's innocence, the defense usually requests that the victims be called for questioning in the trial.

⁵⁴ *Ibidem*.

⁵⁵ *Ibidem*.

⁵⁶ *Ibidem*.

⁵⁷ M. Burton, *Legal Responses to Domestic Violence*, by Routledge, Oxon, 2008, p. 106.

⁵⁸ M. M. Dempsey, *Prosecuting Domestic Violence*, Oxford University Press, New York, 2009, p. 208.

⁵⁹ C. Bishop, V. Bettinson, *cited*.

⁶⁰ *Case of Baegan v. The Netherlands*, Application No 16696/90, Judgement date 27.10.1995.

⁶¹ *Case of Finkensieper v. The Netherlands*, Application No 19525/92, Judgement date 17.05.1995.

In order to prove allegation, there is also a rule which obtain possibility to use another evidence in the trial. It is known as rules on the admission of hearsay evidence and it can be conducted under the Criminal Justice Act 2003 in UK. Hearsay evidence can be admitted where the victim is unable to attend for physical or psychological reasons, where there is a previous inconsistent statement and where the incident has been reported to a third party. As with the earlier hearsay evidence provisions, decisions as to whether the court is likely to admit evidence under these provisions will remain a matter of discretion for the prosecutor⁶².

Therefore, if there is no other evidence in the case and the prosecutor has not proved beyond a reasonable doubt that the perpetrator committed a crime, the prosecutors had to drop the charges against alleged abusers or the trial could end in an acquittal.

Although this doesn't mean abusing behavior didn't happen, as a consequence criminal procedure didn't give support and didn't protect the victim. Consequently, another evidence that could support victim's subjective notion that the psychological abuse has occurred, or otherwise in the absence of her statement, it remains for the expert opinion of a neuropsychiatrist and psychologist to give opinion about emotional and mental health of victims. Victims of psychological abuse often experience depression, post-traumatic stress disorder, suicidal thoughts, low self-esteem and difficulty trusting others. Therefore, these are one of the many consequences as stated before that must be considered as evidence that victims suffer emotional abuse. Medical report about body injury is solid evidence when there is a physical act of violence. In case of emotional trauma, this must be proven with medical expertise about victim's mental, emotional and psychological condition. Despite the possibility that victim could withdraw her support for prosecution or not to recall her previous statement in order to continue with prosecution, without victim's statement, the expert opinion is sufficient evidence to prove allegations that abused has occurred.

Psychologists have traced the profile observed among battered women to the violent nature of the relationship. In addition to eliciting some of the more dramatic behavioral problems identified in the medical records (such as addiction and suicidality), the trauma of repeated assault can cause severe psychological distress or dysfunction, including major depression; sexual and dissociative disorders; cognitive changes in how one views oneself, the world, and the occurrence of violence; and relational disturbances⁶³. This prove that in the victimless trial, or where victims take a stand as a witness, but her mental state is disrupted due to constant repeated domestic violence, there is a strong evidence which contains the picture of the consequences that victim experiences⁶⁴.

Thus, the opinion that the traumatization model has been applied mainly to cases, such as stranger rape or war trauma, in which the traumatic episode and the posttraumatic reaction can be clearly demarcated. This is often impossible in domestic violence situations, in which intimidation and control over material resources and social supports may be ongoing even with court orders in place. As a result, in traumatic fears, feelings, and behaviors appropriate to current entrapment can easily be mistaken for posttraumatic paranoia, depression, or powerlessness⁶⁵. Therefore, expertise of

⁶² M. Burton, *cited*, p. 101.

⁶³ E. Stark, A. Flitcraft, *cited*, p. 168.

⁶⁴ *Ibidem*.

⁶⁵ *Ibidem*.

victim's conditions can be done before the critical event, when victim self-initiated to seek help, which is rare, or more often after the critical event, to obtain expert opinion as evidence for the purposes of the procedure. The expertise can be performed on the basis of an examination or compulsory medical treatment.

Authors suggest that expert opinion introduced in accordance with the rules of science and profession can to a certain extent support the victim's testimony about her emotional distress or even replace witness statement. This is very important. Regardless of unsolid statement or unless the defendant pleads guilty, there is strong supporting evidence to prove that domestic violence happened.

Unlike the other suggested solution which relies on victims repeated testimony, or hearsay evidence of the third parties as etc. family member, friend or neighbor, expert opinion has its own privileges. First, it must be given in accordance with the rules of neuropsychiatry and psychology science. Therefore, it is difficult for the defense to challenge its validity in the trial. Second, when it comes to negative consequences of the secondary victimization their effect is less severe when victims are questioned by the doctor and in circumstances outside the court room. For example, psychological stress by criminal proceedings is another crucial variable of the procedure.

The testimony situation, the confrontation with the perpetrator and the presence of spectators are often cited as being especially stressful⁶⁶. Therefore, the statement in front of a specialist in psychology is undoubtedly less stressful. Third, if a victim withdraws her support for the prosecution, or does not recall her previous statement, the expert opinion about victim's condition as a witness and her liability to testify, can avail prosecutor to continue the trial and not to dismiss the prosecution. The advantage of expert opinion about the victim's traumatic condition is undoubtedly strong evidence in the proceedings, which can significantly help in proving that psychological violence occurred. Especially in order to prove the harmful consequences of psychological abuse.

IV. Conclusion

Domestic violence is a serious and often hidden social problem which causes systematic psychological and physical trauma with severe consequences on victims emotional, mental and physical health. There is no doubt that economic or social status, skin color or religion, gender or sexual diversity do not exclude domestic violence. Anyone can be a victim of psychological abuse. The offender is a person whom the victim should be able to trust. In that surrounding, coercion and controlling behavior appear to be an extremely effective form of violence. Thus, this can be a problem when reporting abuser, because the victims often feel frightened, or even responsible, guilty and ashamed to report abuse. This is especially the case of psychological violence that has been going on for many years. Some victims feel or actually are blamed by the perpetrator or defense attorney for being partially or fully responsible for the criminal offense. When it comes to court and criminal procedure, often it is not easy to prove public prosecution, as there is an issue with what type of evidence can be used in criminal proceedings to determine that the victim suffered psychological abuse.

Consequences for the victim are such that he/she is often unable to be the witness in the proceedings. Still, when victims decide to take a stand and give a testimony there

⁶⁶ U. Orth, *cited*, p. 4.

is no doubt that her statement is crucial evidence. Regardless, victim's subjective notion of her emotional distress is not enough to prove that violence has occurred. There must be some other evidence which will support the victim's statement or at least to replace the victim's testimony in situation when she or him withdraw their support for prosecution or refuse to testify. Accordingly, in order to allow the prosecutor not to dismiss the charges, public prosecution will most often propose questioning the victim. Victim's subjective notion of their emotional distress is not a sufficient indicator of domestic violence. Therefore, victim's statement before court does not suffice as evidence of emotional abuse. Victims of psychological abuse often experience depression, post-traumatic stress disorder, suicidal thoughts, low self-esteem and difficulty trusting others.

Therefore, expertise of victim's conditions can be done before the critical event, when victim self-initiated to seek help, which is rare, or more often after the critical event, to obtain expert opinion as evidence for the purposes of the procedure. It is of great importance to all participants in criminal procedure to help the victim in a way that at the appropriate moment acknowledges such behavior as psychological violence. Moreover, in order to obtain strong and solid evidence, which will undoubtedly confirm that abuse has happened. Additionally, it will lead to conviction of the abuser and as a consequence to help protect the victim, and to stop such behavior in the future.

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Varia

