

Autonomous Women's Center

COMMENTS TO THE CONCEPT OF THE *MODEL* *OF THE LAW ON PREVENTING FAMILY VIOLENCE*

The non-governmental organization Center for Peace and Democracy Development in cooperation with the Antitrafficking Center has prepared a *Law Model on Prevention of Family Violence* (hereinafter: *Model Law*) whose authors are Saša Gajin, Violeta Kočić – Mitaček and Tanja Drobnjak.

Considering that family violence is a very serious social problem, the Autonomous Women's Center from Belgrade, relying on its many years of experience in providing legal and other aspects of aid and support to women victims of violence, as well as on relevant insight in the work of the judicial and other institutions, wishes hereby to draw the attention to the crucial conceptual omission on which the *Model Law* is based.

Members of the Autonomous Women's Center have expressed their hope that the presented comments will be useful in the future work on upgrading the legislation and establishing an effective and efficient system for the protection of victims of family violence.

1. The analysis of the solutions provided in the wording of the *Model Law* indicates that it fails to provide the realization of the goals which its authors had stipulated in the preamble: harmonization of the national legislation with the international standards, introduction of quick intervention and efficient protection of family members, prescribing a simplified court procedure and coordinated system of action by all relevant institutions.

2. Insufficient argumentation has been provided for the authors' assumption that „full protection from family violence can be realized **just** by passing of an integral law”.

It is not disputable that there is a need to improve the normative framework of protection from family violence. This is also corroborated by the fact that this goal has been defined by the *National strategy for improvement of position of women and upgrading the gender equality*¹.

The response to the question whether the normative framework of protection from violence needs to be upgraded by respective amendments and supplements to the laws in

¹ As an individual objective within Item 4.5.2. „*Specific goal Prevention and suppression of all forms of violence over women and providing an al-inclusive system of protection for women victims of violence*“

This important strategic document, which was not even mentioned in the *Model Law* was adopted by the Government of the Republic of Serbia on February 13, 2009. It is a result of joint work on mechanism for gender equality, by state authorities, international organizations and non-government sector. Ref.: Report on the work of the Council for Equality of Sexes of the Government of the Republic of Serbia in the mandate from 2004 to 2007, Report on Gender Equality Department Activities for January-June 2008, <http://www.minrzs.gov.rs>, access on 19. 04. 2009.

force, together with establishing efficient mechanisms for coordinated action of institutions of the system, or passing of a new (integral) law, requires a serious comprehensive analysis, considering the characteristics of the national legal system and problems recorded in the legal practice to date. **Consideration of the need** to pass an integral law for protection from family violence is recommended in the Final Comments of the UN Committee for Elimination of all Forms of Discrimination of Women, provided to Serbia based on its Initial Report². A similar conclusion was adopted also at the First National Conference on Struggle against Violence over Women held in Belgrade on October 25, 2007.³

3. In the introductory reasoning of the *Model Law* the authors refer to the Austrian model of protection from violence, indicating it as an example of good legislation in this area. The offered legal solutions aimed at preventing family violence **do not reflect the intention** of the Austrian model. As is known the Austrian model foresees a quick and efficient police intervention, as well as interim short-term solution and judicial protective measure, as an interim long-term solution. Instead of such a concept, the authors propose in this model “parallel” protective measures in offence proceedings and civil judicial proceedings with unequal effects⁴.

4. The proposed *Model Law* contains a list of key issues of the domestic legal practice. The former researches of legal practice⁵ have shown that the existing regulations are implemented wrongly and unequally, that the existing legal instruments are not sufficient to provide a comprehensive protection and help and support to the victims, and that the protection of the victims of family violence should be based on an **integral (holistic) approach**. However, the legal protection system as proposed in the *Model Law* **does not achieve this task**. Integral and efficient protection from family violence, which, in addition to other things, implies simplified judicial proceedings and coordination in the activities of the institutions of the system, cannot be achieved by **introduction of “parallel” systems of protection for the same forms of acts** (through litigation, offence and criminal proceedings), that do not have the same protective power and sanction of same significance and weight.

5. There is an obvious **lack of “a dividing line”** between an offence and a criminal act of family violence, which opens the issue of **who and based on what**

² CEDAW/C/SCG/CO/1, para 2, http://www.psrzrp.vojvodina.sr.gov.yu/uploads/contpics/cedaw_latinica.pdf

³ Conclusions from the national conference on struggle against violence over women, held on October 25, 2007 in Belgrade, within the European Council Campaign for struggle against violence over women (para 2).

⁴ Logar 1998., Logar 2003.

⁵ Ref.: Brkić, S., (2004) *Istraživanje prekršaja sa elementima nasilja u porodici za područje Republike Srbije (Research of offences with elements of family violence for the territory of the Republic of Serbia)*, Udruženje sudija za prekršaje (Association of Justices of Peace), Belgrade, 2004; Konstatinović-Vilić, S., Petrušić, N. (2007): *Krivično delo nasilje u porodici – aktuelna pravosudna praksa u Beogradu i Nišu (Criminal act of family violence- current judicial practice in Belgrade and Nis)* Autonomni ženski centar iz Beograda i Ženski istraživački centar iz Niša (Autonomous Women’s Center from Belgrade and Women Research Center from Nis), Petrušić, N., Konstatinović-Vilić, S. (2008) *Porodičnopravna zaštita od nasilja u porodici u praksi sudova u Beogradu (Legal family protection from family violence in the court practice in Belgrade)*. http://www.womenngo.org.rs/images/publikacije-dp/istrazivanje_istrazivanje.pdf

criteria will decide whether an offence or criminal proceedings will be instituted. It is not difficult to assume⁶, that the offered solution will lead to **reducing family violence to an offence**, which is not in line with the social significance and social danger of such form of violence.

If one assumes the generally accepted position that no one can be held responsible twice for the **same** act, the determination of the authors is not acceptable, either politically or legally, to foresee for these grave forms of family violence, such as inflicting or attempt to inflict bodily injury, forcing to a sexual relation, namely, sexual abuse and harassment (Art. 3, para 2 of the *Model Law*) an offence sanction in the form of pecuniary fine from 10,000.00 to 50,000.00 dinars or imprisonment lasting minimum 10 days.

6. The solutions proposed in the *Model Law* are **mutually inconsistent**, particularly in the sphere of protective measures, their supervision and penal policy for violation, because it does not represent a meaningful combination of measures that could be applied successively and purposefully, in accordance with the situation.

There is no doubt that the different and incompatible systems would create **problems in the implementation and great differences in actions regarding the same acts of violence and violation of the same protective measures**. It is necessary to take into consideration that warnings issued by official persons do not yield results and the pecuniary fines always affect more the victims than the perpetrators of family violence. The example of the Republic of Croatia confirms that the fines are passed within a short time period (30% up to 30 days), but in 80% of the procedures both the perpetrator and the victim are penalized.

7. The offered *Model Law* **cannot resolve the problem of inefficiency of the courts, nor can it provide coordinated work** of institutions in an integral process of rendering protection, as the authors claim. According to the proposed solutions, proceedings would be conducted in parallel before different courts, which does not guarantee that anyone will have insight in the entire procedure and undertaken measures and provide through its own action a quick and efficient protection of the victim of violence.

8. For reasons stated above, we are of the opinion that the *Model Law* is conceptually unacceptable and further activities on upgrading the normative framework should be aimed at **improving the existing system of legal protection, with the introduction of extended powers of police officers, whereas it is necessary to consider all positive and negative experience in the domestic comparative legal practice**.

⁶ This is indicated by the current practice in Serbia (see the referred to research conducted by the Association of the Justices of Peace), as well as practice of the countries with similar legal solutions (Croatia and Bosnia & Herzegovina).