
**CRIMINAL JUSTICE RESPONSE TO VIOLENCE AGAINST WOMEN
AND FAMILY VIOLENCE IN MONTENEGRO
2019 - 2022**



WOMEN'S RIGHTS CENTER
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Criminal justice response to violence against women and domestic violence in Montenegro

Women's Rights Center Report on the application of the Council of Europe Convention on preventing and combating violence against women and domestic violence in the field of criminal-legal protection against violence against women and domestic violence.

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Introduction

Violence against women represents one of the most serious forms of human rights violations and a form of discrimination against women that stems from the historical inequality between women and men and is one of the key mechanisms by which women are forced to be in a subordinate position. Unfortunately, it is also very widespread in Montenegro, as shown by the data from the research conducted by UNDP in 2017, when 42% of female respondents in Montenegro stated that they had experienced violence, mostly in the family environment.¹

The Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter referred to as the "Istanbul Convention")² requires the signatory states to "exercise due diligence" in preventing, investigating and prosecuting any form of violence covered by the Convention, as well as to impose an effective, proportionate punishment on the perpetrator. However, the state must also provide compensation for damage to all victims.

This Analysis deals precisely with the application of the standards of the Istanbul Convention in the criminal law response, with a focus on the penal policy of Montenegrin courts in relation to all forms of gender-based violence covered by the Istanbul Convention. This analysis was created for the purposes of reporting to the expert body GREVIO, which in 2018 published an initial report on the application of the Istanbul Convention in Montenegro.

Courts are obliged, as required by international human rights protection standards, to ensure that criminal acts of violence against women, taking into account their seriousness, are punishable by sanctions that are effective, proportionate, and deter from committing further criminal acts.

The goal of this research is to review the state of criminal policy, in order to obtain a fact-based conclusion about the types of criminal sanctions, as well as a clearer picture of trends and challenges in the field of solving criminal and

¹ UNDP study on domestic violence and violence against women, 2017

² Law on Confirmation of the Council of Europe Convention on the Prevention and Suppression of Violence against Women and Domestic Violence "Official Gazette of Montenegro - International Treaties", no. 4/2013 from 20.3.2013. Opened for signature at the conference of ministers of the Council of Europe, on May 11, 2011 in Istanbul

misdemeanor cases of domestic violence, as well as other forms of violence against women incriminated in the criminal legislation of Montenegro, including an analytical presentation of criminal sanctions from court practice, with a special focus on the application of security measures, as well as protective measures in misdemeanor proceedings.

The work does not intend to answer all questions, but aims to identify key shortcomings when it comes to the policy of sanctioning perpetrators of criminal acts, which problems are indicated by previous research, as well as reports of international bodies responsible for monitoring the application of international treaties, primarily GREVIO. Also, it can serve as a basis for further in-depth research and monitoring of the situation in this area. This report is all the more significant because it is the only one of its kind to cover for the aforementioned three-year period, since the state does not publicly publish this type of analysis and the Ministry of Human and Minority Rights published the last information on the number of reports/cases of domestic violence in 2019.

For the purposes of this research, a request was sent to the Supreme Court of Montenegro, which obtained quantitative data through the Judicial Information System of the courts, as well as from the High Court for Misdemeanors of Montenegro, on the basis of which the various forms of criminal acts of violence against women covered by the Istanbul Convention were further analyzed.

The analysis therefore deals with gender-based violence, which affects women disproportionately more than men.

The Istanbul Convention recognizes several forms of violence against women, one part of which has been transposed into national legislation. According to the Convention, these are: psychological and physical violence, persecution, sexual violence that includes rape as a particularly serious form, forced marriage, mutilation of female genital organs, forced abortion and forced sterilization, as well as sexual harassment (which is not yet criminalized).

After reviewing the international standards in the area of violence against women and presenting the work methodology, the Analysis shows the results of the research according to the type of criminal offenses that were the subject of the research. At the very end, conclusions and recommendations are given, which identify shortcomings in judicial practice and offer recommendations for improvement of the conditions in this area and alignment with international standards.

1. Methodology of Work

Predmet istraživanja predstavljaju podaci iz sudske prakse za period od 2019-2021. godine, u odnosu na krivične i prekršajne predmete nasilja u porodici, kao i druge vrste krivičnih djela kojima se vrši nasilje nad ženama.

Key research questions:

Analysis of court practice for acts of gender-based violence

The extent of gender-based violence in the practice of Montenegrin courts

Duration of court proceedings for criminal and misdemeanor acts of domestic violence

What is the judicial practice regarding the sanctioning of perpetrators of criminal acts of violence against women and misdemeanor acts of domestic violence and what problems have been identified? Is the national judicial practice of sanctioning in accordance with the standards of the Istanbul Convention?

Application of security measures

Protective measures during misdemeanor proceedings

2. Initial GREVIO Report for Montenegro Conclusion

In order to effectively monitor the implementation of the Istanbul Convention by member states, a monitoring mechanism was established, namely the Expert Group for Combating Violence against Women and Domestic Violence (hereinafter GREVIO).

On October 15, 2018, the GREVIO Committee published the first Report for

Montenegro, after the completion of the first (basic) round of evaluation of the implementation of the Istanbul Convention. This report evaluates the Convention as a whole, assessing the level of compliance of Montenegrin legislation and practice in all areas covered by the Convention. The report also contains recommendations for strengthening the implementation of the Convention.

The report highlights the overall progress made by the authorities in Montenegro in building a legislative, political and institutional framework for the prevention and suppression of violence against women. The adoption of important laws, action plans and strategies dealing with certain forms of violence against women, especially domestic violence, was accepted as very affirmative. The most prominent example is the Law on Protection from Domestic Violence³ (hereinafter - LPDV), which is the central document in the Montenegrin approach to the fight against domestic violence. The law introduces the misdemeanor offense of domestic violence with the main goal of enabling legislative bodies to respond more effectively to domestic violence. It is very important that this law introduces for the first time emergency protective measures and emergency restraining orders as well as other important rights for victims of domestic violence, such as the right to legal aid. New amendments to the Criminal Code of Montenegro provide for the criminalization of other forms of violence against women provided for by the Convention, primarily persecution, female genital mutilation and forced sterilization⁴.

Despite assessed progress, the GREVIO Committee believes **that it is still necessary to work on improving the legal framework, better prevention and raising awareness of the various forms of violence suffered by women in Montenegro, strengthening the protection of victims' rights, better intersectoral cooperation in providing an adequate response to the violence that occurs . The need for systematic and mandatory initial training for judges on various phenomena of violence against women, their detection and causes, as well as prevention of secondary victimization is also emphasized.**

³ 3 Zakon o zaštiti od nasilja u porodici, ("Službeni list CG", br. 46/2010, 40/2011-1)

⁴ (Basic) Report of the GREVIO committee on the assessment of legislative and other measures applying the provisions of the Council of Europe convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

In relation to the definitions of key terms, GREVIO states that the Montenegrin legislation does not define the term "violence against women", but the definition of "violence based on gender" is given in the Law on Gender Equality (Article 7 paragraph 7). This definition includes any "act that causes or may cause physical, mental, sexual or economic harm or suffering, as well as the threat of such an act that seriously hinders a person from enjoying his rights and freedoms in public or private life, including domestic violence , incest, rape and human trafficking...;" . It does not stipulate that the violence was committed because of the gender of the victim as required by the Istanbul Convention. GREVIO believes that the current definition of gender-based violence provided by the Law on Gender Equality is not in accordance with the definitions of "violence against women" and "gender-based violence", as stated in Article 3 of the Istanbul Convention.

GREVIO strongly encourages Montenegrin authorities to step up efforts against violence against women by ensuring that measures taken in accordance with the Istanbul Convention address all forms of violence against women in a comprehensive sense, with due respect for their gender nature.

The assessment of the GREVIO Committee is that the majority of cases of domestic violence are resolved in misdemeanor proceedings, which leads to milder punishment in the form of fines and prison sentences of up to 60 days in prison. It is also emphasized that Montenegrin courts have a mild penal policy in criminal proceedings, that suspended sentences occupy a significant place in the structure of convictions, so such sanctions do not satisfy the condition of deterring the perpetrator from further violence.

The progress report for Montenegro for 2021 assesses that gender-based violence, especially domestic violence, remains a serious and persistent criminal and social issue, as well as a public health issue. It is further stated that: "During 2020, 265 cases of domestic violence (in 2019 this number was 281) were registered as criminal offenses, and 2,133 (in 2019 there were 819) were before the courts , while specialized non-governmental organizations registered an increase of about 30% of cases during 2020 compared to the previous year. It is estimated that most cases of gender-based violence remain unreported. The authorities continued to cooperate with civil society organizations, showed

commitment and took concrete measures to resolve the situation. The definitions of gender-based violence and domestic violence in legislation should be further harmonized with the Istanbul Convention and GREVIO recommendations. Sexual harassment is not yet qualified as a criminal offense. The operational team for combating domestic violence and violence against women continues to meet regularly. Its impact assessment in accordance with GREVIO recommendations is currently underway. Challenges remain related to the implementation and monitoring of the existing legal and strategic framework and policies, victim-focused support, access to justice for victims, the lack of a systematic approach regarding the physical protection of victims, the legal qualification of acts of domestic violence and mild sanctions. Although cooperation between the authorities and specialized non-governmental organizations that run shelters and offer support to victims is improving, non-governmental organizations face limited capacities to receive victims and limited means of financing. The institutional working protocol was amended to better define the scope of shelter services during the pandemic, and recommendations were written for the implementation of the protocol on the treatment, prevention and protection of women from violence and domestic violence. Draft guidelines for the police and prosecutors for interventions in cases of all forms of violence against women have also been prepared. For the Roma and Egyptian communities, trainings and awareness-raising campaigns on protection against domestic violence, violence against children and forced marriages of minors were organized. Campaigns were implemented to promote SOS lines to help victims of human trafficking. "

4. Family Violence

4.1 National legal framework for combating domestic violence

In the legal system of Montenegro, domestic violence is criminalized as a criminal offense in Article 220 of the Criminal Code of Montenegro⁵, as "gross violence that violates the physical or mental integrity of family members", and in 2010 the national legislative framework was strengthened by the adoption of

⁵ Criminal Code of Montenegro ("Official Gazette of Montenegro", no. 70/2003, 13/2004 - amended and 47/2006 and "Official Gazette of Montenegro", no. 40/2008, 25/2010, 32/2011 , 64/2011 - Dr. Law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - dr. law, 44/2017 and 49/2018)

the Law on Protection from Violence in the family (hereinafter – ZZNP)⁶, which foresees the misdemeanor liability of family members for domestic violence. ZZNP gives a broader definition of domestic violence, including under it "action or omission of a family member that threatens the physical, psychological, sexual or economic integrity, mental health and tranquility of another family member, regardless of the place where it was committed".

The dual criminalization of domestic violence in criminal and misdemeanor legislation has led to the GREVIO Committee's concern over the lack of clear, unique criteria that are consistently applied to the difference between a misdemeanor and a criminal act of domestic violence.

Violence in a Family or a Family Community

Article 220 of the Criminal Code of Montenegro

(1) Anyone who by use of gross violence violates the physical or mental integrity of a member of his/her family or family community shall be punished by a fine or imprisonment not exceeding one year.

(2) Where in the commission of an act referred to in paragraph 1 of this Article

any weapons, dangerous tools or other means suitable for inflicting grievous bodily injuries or for seriously impairing health were used, the offender shall be sentenced to imprisonment of three months to three years.

(3) Where due to acts referred to in paras. 1 and 2 of this Article, a grievous bodily injury is inflicted or health is seriously impaired or if such acts have been committed against a juvenile, the offender shall be sentenced to imprisonment of one to five years.

(4) Where due to acts referred to in paras. 1, 2 and 3 of this Article, death of a

1. Results of the Research

The criminal offense has a basic form (paragraph 1), three more serious forms (paragraphs 2 to 4), as well as a special form prescribed in paragraph 5. The

⁶ The law was published in the "Official Gazette of Montenegro", no. 46/2010. See: Art. 152 of the Law - 40/2011-1.

special form from the last paragraph exists due to the provision of sanctions for violation of protection measures against domestic violence, which are foreseen by the Law on protection against domestic violence, where several such measures are prescribed.

For the existence of a criminal offense, it is necessary that the act of execution is such that it is objectively liable to lead to a violation of the physical or mental integrity of a family member. In order to determine what constitutes the application of gross violence, it is also important to distinguish between this criminal offense and the misdemeanor from Article 36 of the Law on Protection from Domestic Violence. Namely, what represents the act of committing that misdemeanor cannot, as a rule, be the act of committing a criminal act of violence in the family or family community.⁷

The act is completed when the consequence occurs, i.e. when the physical or mental integrity of a family member is violated, otherwise it would be an unpunished attempt. It is not entirely clear when someone's physical or mental integrity is violated. On the one hand, it is more than endangering physical or mental integrity, and less than serious physical injury and severe impairment of health (otherwise it would be a qualified form from paragraph 3). The consequence is the most important criterion for distinguishing between this criminal and the misdemeanor domestic violence offence, (the second one lacking the consequence) It is disputed whether the violation should be assessed only from an objective point of view, or from an objective-subjective point of view. In other words, it is debatable whether for a completed criminal offense it is necessary to establish that the passive subject felt threatened due to violation of physical or mental integrity. However, this is not necessary (although this will most often be the case), and it is sufficient to establish that the physical or mental integrity of the passive subject has been violated.⁸

When it comes to the misdemeanor from Article 36 of the ZZNP, the misdemeanor offense of domestic violence covers a more broadly defined range of prohibited behaviors with a focus on control, the use of threats and coercion, rather than physical violence. Article 36 implies the use of physical force, regardless of whether it actually involves inflicting bodily harm, verbal assault and insult, rude behavior, damage to property, control and the use of coercion such as the prohibition of communication with third parties, stalking

⁷ Commentary on the Criminal Code, Podgorica, 2010, Professor Dr. Zoran Stojanović

⁸ Ibid.

and denial of means of livelihood:

1. use of physical force, regardless of whether another family member was physically injured;
2. threats to attack or cause danger that may cause a feeling of personal insecurity or mental pain of another family member;
3. verbal attacks, curses, calling derogatory names and other] insults another family member;
4. restricting another family member's freedom of communication with third parties;
5. exhausting him with work, deprives him of sleep and other rest, threatens to throw him out of the apartment and take away his children;
6. sexual harassment of another family member;
7. stalking and otherwise gross harassment of another family member;
8. damaging and destroying joint property or the property of another family member or attempting to do so;
9. depriving another family member of basic means of subsistence;
10. endangering the family peace of a family member with whom he does not live in a family union by insolent behavior (Article 8 paragraph 1).

The legislator has provided fines amounting from 150 to 1000 euros or imprisonment from 10 to a maximum of 60 days depending on the qualification of the offence regarding the misdemeanor liability of a family member.

The intention of the legislator was to include a number of prohibited behaviors that constitute domestic violence in the domain of misdemeanors, but, as it was also pointed out in the report of the GREVIO committee, the existence of the provision that classifies sexual abuse as misdemeanors created the possibility for the prosecution to systematically refer cases of rape and sexual violence in marriage or intimate relationships to the misdemeanor courts.

ZZNP also prescribes protective measures whose goal is to prevent and suppress violence, eliminate the consequences of violence and take effective measures to re-educate the perpetrators of violence and eliminate circumstances that favor or encourage new acts of violence. (Article 20)

The law provides for the following types of protective measures, and one or more protective measures may be imposed on the perpetrator of violence:

1) removal from an apartment or other residential space (hereinafter: removal from an apartment); 2) restraining measure; 3) prohibition of harassment and stalking; 4) mandatory addiction treatment and 5) mandatory psychosocial treatment.

A protective measure can be imposed along with a fine or as an independent sanction. The authority for misdemeanors can impose one or more protective measures on the perpetrator of violence when there are conditions for imposing them prescribed by this law.

Applicants for the determination of a protective measure can be: the victim or his representative, the center for social work, another social and child protection institution, the police or the state prosecutor. The protective measure can be determined ex officio by the misdemeanor authority.

4.2 Analysis of court practice in criminal and misdemeanor cases of domestic violence

- **Total number of criminal and misdemeanor domestic violence cases**

At the very beginning of this part, data is provided on the total number of criminal and misdemeanor cases of domestic violence during the analyzed

three-year period, in order to obtain a conclusion to what extent cases of domestic violence are more qualified as misdemeanors compared to criminal acts.

When it comes to criminal cases of violence in the family or family community, during 2019, before the competent courts, there were a total of 252 cases pending, of which 163 cases were finally concluded.

In 2020, a total of 252 cases were pending before the competent courts, of which 140 cases were finally concluded.

In 2021, the courts had a total of 282 criminal cases of violence in the family or family community, while 132 of them were resolved by a final verdict.

Based on the obtained data, it can be seen that in the largest number of cases this criminal offense occurs in the forms prescribed in paragraphs 1 and 2 of Article 220 of the Criminal Code of Montenegro, while in a smaller number of cases it was established that the perpetrator committed a criminal offense from paragraph 5 of the Criminal Code of Montenegro. For example, in 2021, out of a total of 132 final cases, in 8 cases it was a question of incrimination from paragraph 5, while in other cases the perpetrator committed a criminal offense from paragraphs 1 and 2 of this criminal offense.

Table on the total number of misdemeanor cases⁹

⁹ Misdemeanor courts reports

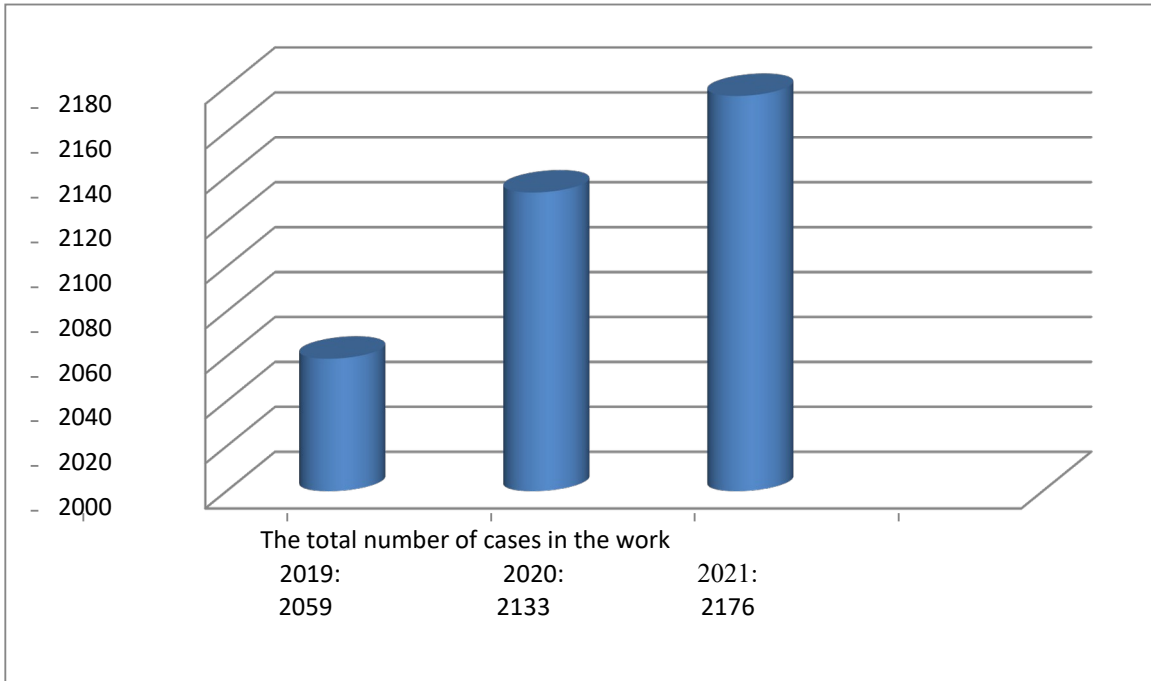
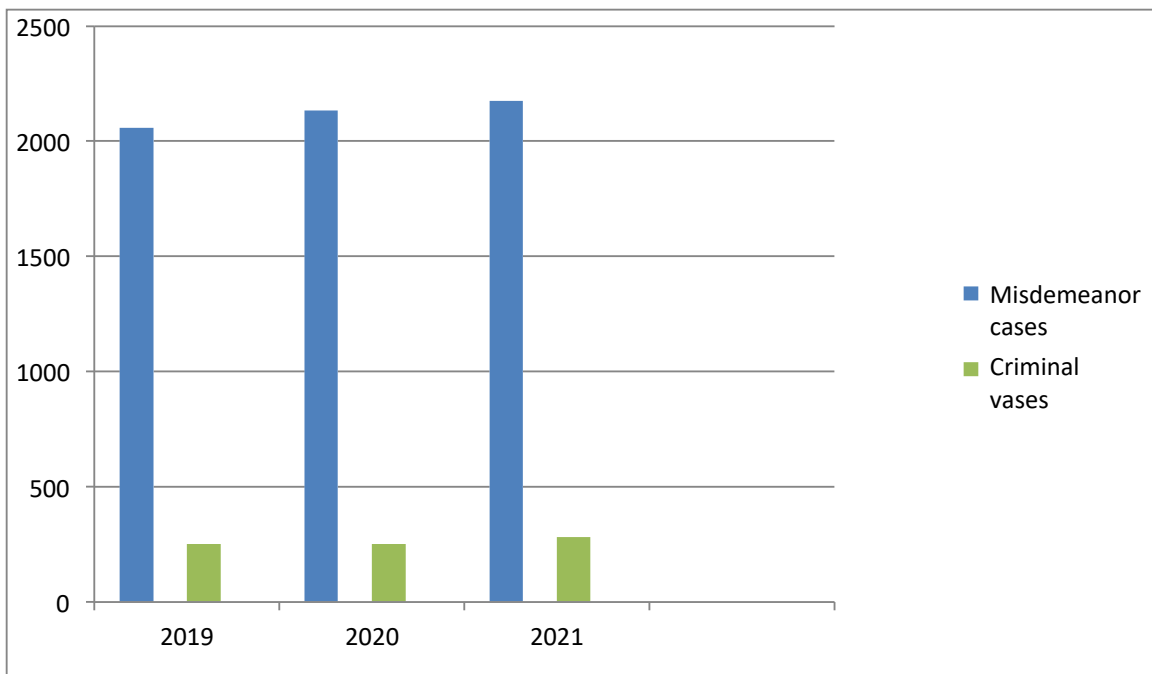


Image of a comparative view of the total number of cases in criminal and misdemeanor proceedings



From the above graphic it is easy to see that in the overall structure of cases of domestic violence, much more space in court practice is occupied by misdemeanor cases of domestic violence.

The data show that in the course of 2021, the misdemeanor courts had a very large number of domestic violence cases, as many as 2,176, which means that state prosecutors much more often decide on a milder qualification of the offense, that is, misdemeanor proceedings are mostly conducted. There are incomparably fewer criminal proceedings - in the past 10 years, they have not exceeded 15% of the total number of reported cases. When we look at the total number of criminal and misdemeanor cases pending in 2021 (2,458, misdemeanors 2,176, criminal offenses - 282), we come to the conclusion that there were far fewer criminal cases than misdemeanor cases, and they make up 11.4% of the total number of cases.

It was similar in 2017, as shown by the results of earlier research, when in 2017 there were 90.7% more completed cases in misdemeanor courts than in criminal ones. Namely, in 2017, misdemeanor courts had a total of 88.5% more cases than criminal courts, which means that only every tenth case of domestic violence is considered a criminal case.¹⁰

The problem of the lack of unique criteria for distinguishing between criminal and misdemeanor domestic violence was pointed out by GREVIO in its first Report for Montenegro, pointing out that often even serious cases of physical violence are treated as misdemeanors, leaving only cases of extreme injuries and brutality for criminal prosecution. according to the Criminal Code. Furthermore, this Report states that the problem of qualification of the criminal offense is also recognized in the very process of cooperation between the prosecution and the police, where decisions on indictment are made by the prosecution without direct access to police records, and they can also be made over the phone, which very often results in unjustified decisions.

Although this paper did not deal with the question of the legal qualification of a criminal or misdemeanor act of domestic violence, we remind you of the results of the research given in the Analysis of penal policy in criminal and misdemeanor cases in the field of domestic violence in Montenegro for the year

¹⁰ Analysis of criminal policy in criminal and misdemeanor cases in the field of domestic violence in Montenegro for 2017

2017¹¹, which was carried out by the Council of Europe in cooperation with the NGO "Center for Women's Rights".

Namely, this Analysis points out that in investigative and judicial practice there are cases of domestic violence that qualify as misdemeanors, even if they contain elements of a criminal offense, in accordance with Article 220 of the Criminal Code of Montenegro. Such practice is not in line with international standards, and above all with the practice of the European Court of Human Rights, which foresees the obligation of state authorities to conduct a valid investigation in the case of domestic violence and to take measures for appropriate criminal prosecution.¹²

Likewise, the monitoring of criminal proceedings in the field of violence against women, which Women's Rights Center conducted in cooperation with the Women's Safe House and SOS Telephone Nikšić during 2013/2014. showed that there is no uniform practice when it comes to the qualification of the crime, but that the decision largely depends on the sensibility and training of the competent police officer and prosecutor. Monitoring showed that prosecutors often qualified acts of domestic violence as a lighter offense than the facts in the given case dictated. It was noticed that the continuity and consequences of violence, as well as the convergence with other acts such as neglect and abuse of children, are rarely taken into account. Thus, none of the monitored cases contained accusations of violence against children, although some of them included physical violence, severe forms of verbal and emotional abuse, deprivation of sleep, deprivation of livelihood, and in one case suspicion of sexual abuse. The failure to take into account these facts during the legal assessment resulted in a milder qualification of the act as a misdemeanor, and thus a milder sanction. In this way, legal certainty is also violated because it is impossible to predict the consequences of the act based on the provisions of the law. It is necessary to supplement the Montenegrin legal framework in order to clearly demarcate when domestic violence will be treated as a misdemeanor and when as a criminal offense.¹³

Also, the experiences that the Protector of Human Rights and Freedoms gained

¹¹ Ibid.

¹² Ibid.

¹³ Analysis of the compliance of the legislative and strategic framework of Montenegro with the Council of Europe Convention on the prevention and suppression of violence against women and domestic violence - basic study

in his work are close to the information received by the GREVIO mission, which is that even serious cases of physical violence are often prosecuted as a misdemeanor, and that some cases of psychological violence also lead to convictions according Criminal Code. In practice, the decision on the type of prosecution of the perpetrators of these offenses is made during the investigative procedure, when law enforcement officers who act on the report during the incident consult the prosecutor on duty by telephone regarding the qualification of the act as a misdemeanor or a criminal offense. Depending on the seriousness of the incident, prosecutors do not always evaluate the available evidence independently, nor ask for additional evidence to be collected before classifying the offense as a misdemeanor or a felony. Often, decisions on indictment are made without previously obtained police reports or information about the previous convictions of the perpetrator in question. Inconsistent and manual data collection at the law enforcement level on measures taken in response to domestic violence victims' complaints makes useful information unavailable. In GREVIO's opinion, this practice is not suitable for assessing the actual level of seriousness of the case and its impact on the victim, for example, whether it adversely affected her "mental integrity" (which would make it a criminal offense).¹⁴

- **Duration of criminal and misdemeanor proceedings**

] The Law on Criminal Procedure establishes as a basic principle the right of the accused to a trial in the shortest possible time, as well as the obligation of the courts to conduct the proceedings without unnecessary delays and to prevent any abuse of the rights of the parties in the proceedings.

When it comes to criminal cases of domestic violence, the duration of the procedure is estimated based on the period when the indictment was filed until the day when the verdict or decision was announced.

Graphic: Duration of criminal proceedings



Longest in 2021:

757 days

¹⁴ Analysis of the decisions of the courts in Montenegro for offenses in the field of family violence and gender-based violence with reference to the practice of the institution of the protector and the ECHR in this field

Shortest in 2021:

11 days

Based on data obtained from the Judicial Information System of Courts (PRIS), criminal proceedings lasted the longest 757 days in 2021, while the shortest recorded duration of the proceedings was 11 days. The average duration of all criminal proceedings for criminal cases of domestic violence was 137 days (4 months and 15 days).

When we compare these data with earlier analyses,¹⁵ which state that criminal proceedings in 2017 lasted an average of 5 months and 20 days, it can be said that the average duration of the proceedings has been shortened.

Table of length of proceedings before first-instance courts for misdemeanors in reporting years

Court	% od cases whose proceedings lasted up to 6 months	% od cases whose proceedings lasted longer than 1 year
Misdemeanor Court in Podgorica	91,05%	8,95%
Misdemeanor Court in Budva	92%	2%
Misdemeanor Court in Bijelo Polje	83,34%	7,53%

- **Analysis of the types of court decisions in criminal and misdemeanor cases of domestic violence**

This part provides an analytical overview of the types of court decisions made in criminal and misdemeanor proceedings, as well as the types of criminal and misdemeanor sanctions imposed, with a special focus on the length of the prison sentence as the most severe criminal sanction that can be imposed on

¹⁵ Analysis of criminal policy in criminal and misdemeanor cases in the field of domestic violence in Montenegro for 2017

the perpetrator of the criminal act of violence in the family or family community from Article 220 of the Criminal Code of Montenegro.

Criminal proceedings

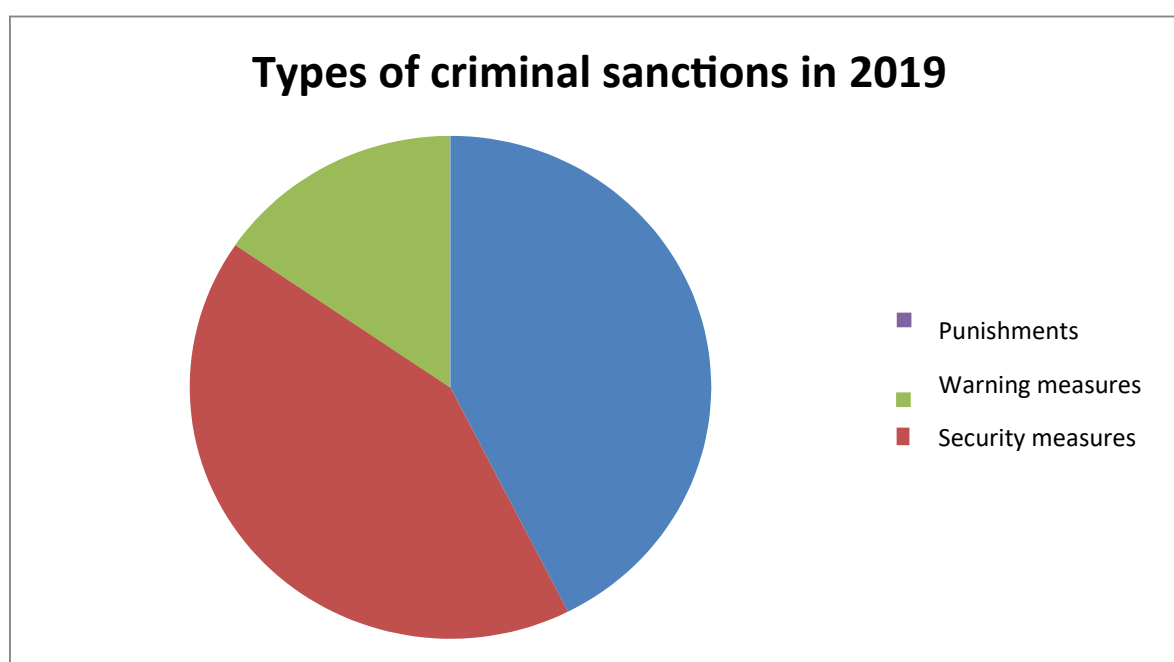
Type of court decision	2019	2020	2021
Comdemning verdict	162	139	138
Liberating verdict	4	3	3
Refusing - the charge is dismissed	0	3	2

- **Analysis of the type of criminal sanctions imposed in criminal cases**

From the overall review of the imposed criminal sanctions, it appears that the courts impose the following criminal sanctions for this criminal offense: fines, warning measures, security measures and educational measures. When it comes to punishments, they are: prison sentence, community service and fine.

The following is an overview of the imposed criminal sanctions in the analyzed period, which is presented on an annual basis, observed for three years.

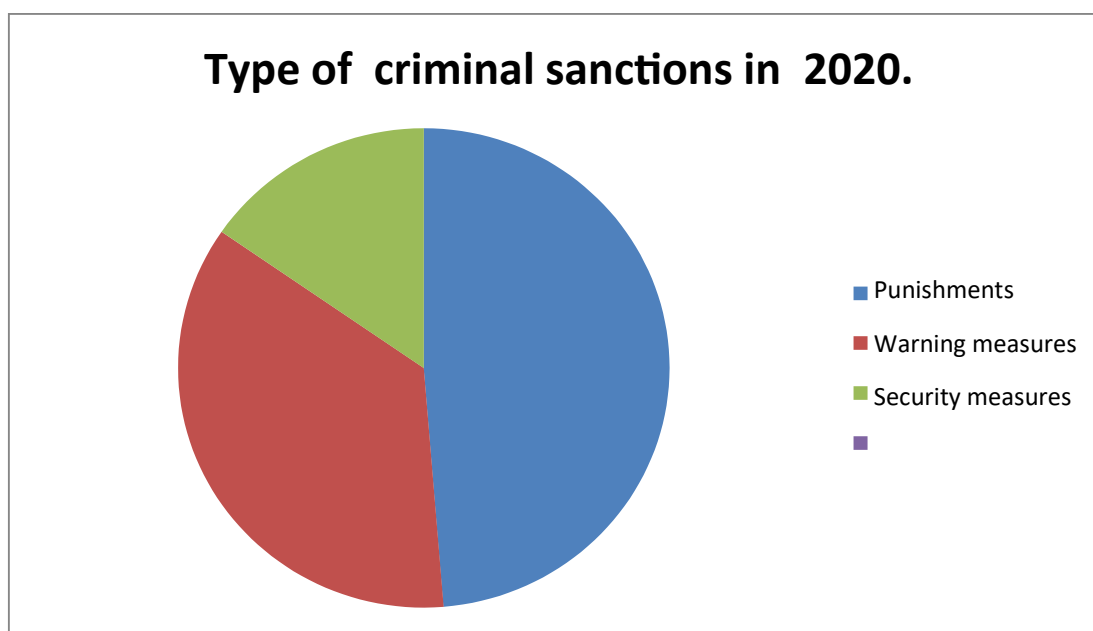
Image of types of criminal sanctions in 2019



Based on the processing of the obtained data, the conclusion is reached that in 2019 the courts for this criminal offense imposed sentences for 80 defendants (42.5%), warning measures for 79 defendants (42.02%), while security measures were imposed in 29 cases. (15.43%). These data tell us that in the structure of convictions, cautionary measures take an important place - conditional sentences, which were pronounced for as many as 79 defendants, which is an almost identical number when compared to the sentences.

When we talk about the punishment as a criminal sanction, based on the analysis, it follows that they were pronounced for a total of 80 defendants, namely: prison sentence (63), fine (2), and the punishment of public interest work, which was pronounced in 15 cases.

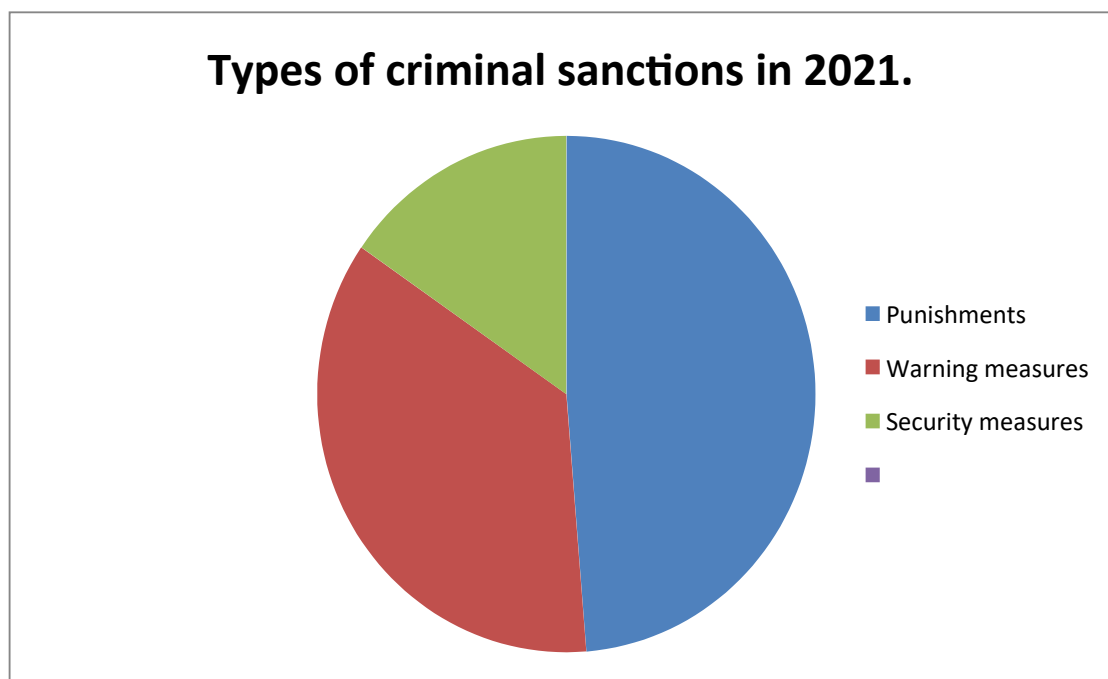
Image of types of criminal sanctions in 2020



As part of the criminal law sanctions from 2020, sentences were pronounced for 75 defendants (48.7%), warning measures for 56 defendants (35.9%), while security measures were applied in 24 cases (15.38%). These data indicate that similar to 2019, warning measures play an important role, but their share is somewhat smaller compared to 2019.

In the overall structure of punishments (79), prison sentences prevail, which were imposed on 63 defendants (63), community service (8) and fines (8).

Image of types of criminal sanctions in 2021



Based on data from court practice for the year 2021, it can be seen that the courts imposed sentences on 60 defendants (38.7%), warning measures on 65 persons (41.9%), while security measures were imposed on 30 defendants (19.3%).

In the overall structure of punishment as a type of criminal sanction (60), a prison sentence was pronounced for 51 defendants, a fine in one case, and a sentence of community service for 8 defendants.

The above data indicate that in court decisions in 2021 a significant place is occupied by suspended sentences, even (41.9%), which statistical picture leads to the conclusion that the mild punishment policy for the criminal offense of violence in the family or family community from Article 220 of the Criminal Code of Montenegro, and that may leave the public with the impression that it is a milder type of crime.

Application of the plea agreement

When it comes to the application of the institution of plea agreements in the three-year period, it was also observed that in a total of 18 cases, the courts issued verdicts declaring the defendants guilty in accordance with the

concluded plea agreements. Of that number, a significantly larger number of agreements were concluded in 2021 (9), in 2020 (8), while the smallest number (1) refers to data from 2019. These data indicate an increasing trend in the number of subjects in which this institute is applied.

However, these data should be taken with a grain of salt, because there is a possibility that complete data regarding the application of the plea agreement at the overall level have not been entered into the Judicial Information System.

In relation to this issue, it is recommended that the courts should reject the plea agreement, which proposes to impose a sentence below the legally defined minimum prison sentence for the crime of domestic violence in cases where it is a basic or qualified form of the crime that is accompanied by particularly aggravating circumstances. in connection with the manner of execution of the act or in connection with the personality of the perpetrator.¹⁶

Reasoning: In addition to the standard facts that the court checks when considering the plea agreement, it is especially important that the court pay attention to the proposed criminal sanction and the justification of its imposition in reciprocity with the gravity of the committed crime, and with regard to the general and special purpose of punishment. If the proposed prison sentence is below the legally determined minimum for the basic or qualified forms of the crime, and the crime is accompanied by particularly aggravating circumstances, it would not be justified for the court to accept the criminal sanction proposed by the agreement. Although the assessment of all the circumstances falls within the discretion of the court, it is recommended that a plea agreement that proposes a prison sentence below the statutory minimum be rejected in all of the following cases:

- the accused is a repeated perpetrator of domestic violence;
- there is evidence that domestic violence lasts for a long period of time;
- the presence of strangulation as an act of committing the crime;
- presence of extreme dominance of the accused over the victim;
- the victim is placed in a safe house;

¹⁶ Judicial review of cases of domestic violence in Bosnia and Herzegovina, Sarajevo, 2014

- the victim is particularly vulnerable, or when children witness violence.¹⁷

Safety Measures

Analyses show that the courts impose the following security measures for this criminal offense: mandatory treatment of drug addicts, confiscation of weapons, mandatory psychiatric treatment at liberty and mandatory psychiatric treatment and custody in a health facility, mandatory treatment of alcoholics and mandatory treatment of drug addicts.

Bearing in mind the nature of the criminal offense of violence in the family or family community, a special review is given to two security measures, which were introduced by amendments to the Criminal Code from July 2013, namely: prohibition of approaching (Article 77a) and removal from the apartment or other living space (Article 77b). The aim of introducing these measures is to eliminate the risk of re-committing certain criminal acts, by prohibiting the perpetrator from accessing the victim of the criminal act, or the place where the victim lives, or by removing him from the apartment.

Table view of safety measures

PROHIBITION OF APPROACHING ARTICLE 77A CC MNE	
Year	Total number of imposed measures
2019	5
2020	7
2021	9
Total	21

As can be seen from the above table, in the period from 2019 to 2021, the courts imposed a total of 21 security measures of restraining orders from Article 77 a of the Criminal Code of Montenegro. Based on the statistical picture from year to year, one can observe the trend of increasing the number of these measures.

When it comes to the duration of the imposed measure, based on an insight into the final judgments, it can be seen that the courts determined that this measure will last from one to three years after the judgment becomes final. Also, as stated in the analyzed decisions, the time spent in prison is not included

¹⁷ Ibid.

in the duration of this measure.

Analyzing the court decisions that imposed a security measure on the defendant - a ban on approaching the injured party, it is concluded that in the opinion of the courts, this measure was necessary, bearing in mind the statements of the injured parties who stated before the court that they fear the defendant, who used violence against the injured persons even before the critical event, and in some cases even after the critical event, continuing to send threats. In all of these cases, the injured parties stated before the court that they were afraid of the defendant and asked the court to impose a restraining order on the defendant. It was this fact, that is, the conclusion that there is a danger that the defendant could commit the same criminal offense against the injured party again, that determined the courts to impose this measure, as stated in the explanations of the judgments.

Furthermore, according to the court's assessment, the stated security measures will remove the conditions that may influence the defendant to commit criminal acts in the future, as well as that the purpose of the security measures from Art. 66 of the Criminal Code of Montenegro, and within the general purpose of prescribing and imposing criminal sanctions from Art. 4 st. 2 of the Criminal Code of Montenegro.

When imposing these measures, the courts took into account that the defendant and the injured party have minor children, which in their opinion will not affect the maintenance of the defendant's personal contact with the children, because that contact can be achieved even without the defendant approaching the injured party. Sometimes it is possible to make that contact, e.g. directly, when it comes to older children, and if the need arises, with the help of other members of the extended family or possibly with the involvement of experts from the Center for Social Work. Therefore, the stated fact does not represent an obstacle to the imposition of these security measures, the sole purpose of which is to remove the conditions that could lead to the defendants committing the same criminal offense in the future.

REMOVAL FROM THE APPARTMENT OR OTHER AREA OF RESIDENCE ARTICLE.77B	
YEAR	Total number of imposed measures
2019	1
2020	1

2021	2
Total	4

When it comes to the security measure of removal from an apartment or other living space from Article 77 b of the Criminal Code of Montenegro, the presented table tells us that in a three-year period the courts imposed this measure in only 4 cases. It follows from the analyzed decisions that the courts imposed these measures because of the danger that the defendant could commit the crime of violence in the family or in the family union again.

- **Duration of prison sentence imposed in criminal proceedings**

Table representing the duration of the prison sentence by years

Year:	The highest prison sentence	The lowest prison sentence	Average duration of prison sentence
2019	2 years	30 days	4 months
2020	1 year and 4 months	30 days	4 months
2021	2 years	30 days	5 months

On the basis of the table shown above, we can see the range of imposed prison sentences at the level of all courts for the crime of violence in the family or family union. It follows that the most severe sentence was imprisonment for a duration of 2 years, while the mildest sentence was for a duration of 30 days.

In the end, at the level of all courts, the average sentence was 4 months in 2019 and 2020, while a slight tightening occurred in 2021, when the average duration of all sentences was 5 months.

Comparing the amount of prescribed prison sentences with the amount of sentences imposed on defendants for this criminal offense, it can be concluded that courts generally impose prison sentences that are closer to the legal minimum.

Prison sentences duration in 2021

Duration of prison sentences in 2021

up to 3 months	14
from 3 to 6 months	26
from 6 to 12 months	9
from 1 to 2 years	2

Regarding prison sentences, which were imposed on a total of 51 defendants in 2021, duration of most of the sentences imposed was from 3 to 6 months (50.9%), prison sentences of up to 3 months were imposed in 27.4% of cases, those in the category from 6 to 12 months in 17.6% cases, while the number of prison sentences imposed for a duration of one to two years was the lowest recorded.

Therefore, on the basis of the analyzed data, it can be concluded that, for this criminal offense, the courts generally impose prison sentences not synchronized those prescribed by law, and that the dominant place in the structure of prison sentences is imposing prison sentences lasting from 3 to 6 months.

Penal policy for the criminal offense of violence in the family or family community

In order to assess the situation in the penal policy of Montenegrin courts for criminal acts of violence in the family or family union, it was necessary to analyze a certain number of final judgments. For the purposes of the research, final verdicts were obtained and different forms of criminality of this type were further analyzed.

The subject of the research is a total of 60 randomly selected verdicts from the three-year period, from 2019 to 2021.

Determination of the sentence

The basic criterion for regular sentencing, i.e. sentencing that is within the scope of the prescribed punishment for a specific criminal offense is the prescribed punishment, the purpose of the punishment and mitigating and aggravating circumstances. When determining the punishment, the court must first of all take into account the prescribed punishment for the committed criminal act. The third criterion, mitigating and aggravating circumstances, serves to ensure that within the framework of the prescribed punishment, and taking into account the purpose of the punishment, a precisely determined

punishment is reached, i.e. those circumstances are the immediate basis for determination of the sentence.¹⁸

In this part, it can be seen how the courts, applying the general rules on sentencing the perpetrator, appreciated the mitigating and aggravating circumstances found, which of them appear most often in the analyzed court decisions, as well as to what extent the institute of mitigation of punishment is applied when sentencing. The following is a description of all the circumstances that were evaluated in the observed cases.

When it comes to the application of **mitigating circumstances**, in the analyzed court decisions, it was observed that the courts state the following facts as mitigating circumstances when sentencing a convicted person: personal circumstances of the perpetrator, by which they mean: family circumstances of the accused (marriage, parentage), state of health, age (youth or older age), unemployment, poor financial condition; the fact that the victim did not join the criminal prosecution, the attitude towards the committed crime (admission of guilt and the circumstances under which the crime was committed), the fact that the accused was not previously convicted, as well as the demeanor of the perpetrator after the crime was committed (correct demeanor before the court).

When it comes to the application of **aggravating circumstances**, the Analysis shows that the previous convictions of the accused for the same or other criminal acts, or the degree and persistence of violence that was manifested during the commission of the criminal act, were most often taken as an aggravating circumstance when sentencing. Also, the absence of aggravating circumstances in the analyzed decisions is often observed.

On the basis of the analyzed verdicts, it follows that the courts, when determining the punishment, take into consideration mitigating circumstances rather than aggravating circumstances on the part of the convicted, and that in the corpus of mitigating circumstances, the personal circumstances of the perpetrator occupy a central place.

What is observed and represents a negative practice is that in several

¹⁸ Commentary on the Criminal Code of Montenegro, Prof. Dr. Zoran Stojanović, Podgorica, 2010

judgments, as a mitigating circumstance, it is stated that the defendant is a "father", a "family man", or a "parent". Bearing in mind that the defendants in almost all situations are married men or parents, the courts unfoundedly assume that marital status or parenthood implies greater responsibility in society or indicate a certain personality trait, as stated in the GREVIO report, "judges are guided by stereotypes in regarding gender roles and respecting the family as the basic cell of society".

On the other hand, there are also several examples where the court states: "that he could not appreciate as a mitigating circumstance the defendant's family background, i.e. the fact that he is the father of four children, which the defense attorney pointed out, because it was undoubtedly proven in the proceedings that the defendant did the criminal offense of violence in the family or family community, where object of protection is the family itself."

Nevertheless, there are many more examples in which the courts, on the defendant's side, valued his personal circumstances as a mitigating circumstance, and within them "family ties".

An example was recorded where the court referred to the Istanbul Convention and considered as a mandatory aggravating circumstance the fact that the criminal offense was committed in the presence of a child, which represents a positive example from court practice.

The following are examples from the analyzed court practice, which indicate that the penal policy is not always adequate to the gravity of the crime committed, that the sentences that are imposed are very mild, they are very often suspended sentences, and that the sentences that are imposed are often not in accordance with the severity of the act done.

Example 1

The defendant violated the physical and mental integrity of a member of his family, his wife - the victim D. M, by using brutal violence, in such a way that, after an argument, he threw the victim against the wall, during which she hit the indicator on the wall of the bathroom with her back and suffered a minor injury in the form of a bruise in the subscapular region. After the incident he left the apartment, and upon his return he addressed the victim with the words "I

was thinking about whether to kill you or myself o, so I decided to kill you, because there will only be one orphan left, and if I killed myself there would be two left"., Tomorrow, on 01.01.2020 in the morning, he pulled her ear and congratulated her the New Year, and then he took off his wedding ring and addressed her with the words "Now you're going to swallow the wedding ring". On 02.01.2020. around 9:30 a.m. after an argument, he threatened the victim who was holding a child with the words "Now I'm going to drown you, I'm going to break everything", and then he grabbed her by the neck with both hands and squeezed her so hard that the victim was suffocating, after which he snatched the child from her arms and pushed her onto the couch. When the victim told him that she would report him to the police, before leaving the apartment, he replied with threatening words "If you report me, your only place will be the grave, it will look like an accident. Call your family and I'll throw a bomb at them or I'll kill them with an automatic rifle, and if I don't do it, someone else will do it for me, you don't know who I'm hanging out with".The victim suffered a slight physical injury in the form of a bruise and redness in the area of the neck, and the threats he made caused the victim to feel fear and anxiety. The defendant is charged with the offense under Art. 220 st. 1 of the Criminal Code of Montenegro with a sentence of 120 hours of work in the public interest, which will be carried out over a period of 6 months.

Example 2

In circumstances of gross violence, the defendant violated the physical and mental integrity of a member of his family- his former wife, the victim R. R., in such a way that, after addressing her with the following words: "Are you going numb? Your body will feel numb all over when I get hold of you... Since I'm planning to bury you by the end of next week", he started shouting at her and hit slammed his fist on the table, then he grabbed from the table a glass full of beer and threw it at the victim hitting her nose, then he stood up and grabbed her by her upper arms and knocked her to the floor, squeezing her neck, and while the victim was opposing him, he slammed her head against the floor several times, with his hand over her face, and while his father O. R. and his tenant S. S. were trying to pull them apart, he grabbed the victim by her shoulder and threw her away, which made her hit the floor with the back of her head and suffer light injuries, such as an extradural hematoma in the nasal root, an extradural hematoma, redness and swelling at the external side of her

left upper arm, subcutaneous hematoma on the right half of the parietal bone, a hematoma in the palm part of the left thumb, a hematoma on the front side of her right knee, redness on her neck, two red patches on her right upper arm, and redness on both shoulder blades. The defendant was charged with the criminal offence referred to in Article 220 para 1 of the CC of Montenegro, and was imposed a suspended sentence, with a prison sentence of 60 days determined and a testing period lasting 1 year.

Example 3

In circumstances of gross violence, the defendant violated the physical and mental integrity of a member of his family – the victim R. N. J., his wife, in such a way that after attacking the victim verbally, he approached her while she was lying in the bedroom and hit her hip with his fist, then drew her closer, and while holding her both arms, he headbutted her, whereupon the victim managed to get to the living room, where the defendant pulled her onto the bed and slapped her face several times, he pulled her hair and squeezed her neck while threatening that he would kill her, on which occasion the victim sustained light bodily injuries, such as an abrasion on the left cheekbone part, an abrasion behind her left ear, and two abrasions on the left side at the back of her neck. The defendant was charged with the criminal offence referred to in Article 220 para 1 of the CC of Montenegro, and was imposed a suspended sentence, whereby a prison sentence of 30 days was determined and with a testing period lasting 1 year.

Example 4

In circumstances of gross violence, the defendant violated the physical and mental integrity of a member of his family – the victim X. X., his wife, in such a way that while they were sitting in the garden in front of their house, he approached her and slapped her across the left side of her face, and when she entered the house, he followed her, and approached her from behind while she was standing in the alcove, he then grabbed her by her upper arms and dragged her to the bedroom, where he was hitting her in the left temple repeatedly, so in consequence she fell down, whereupon the defendant was

picking her up and hitting her repeatedly, while telling her: "You're a bitch, just as your mother, you're sick, you monster, I'll kill you, no matter if I serve time because of you, I'll rip you apart, I don't mind sitting in jail because of you, even ten years if necessary ", and on XX (date) while the victim was sitting in the garden, he grabbed her by her left leg and made her go back to the house hopping on one leg, and when she sat on the sofa in the living room he told her: "If you want to live under my roof, you'll do what I say", whereupon he came closer to her, grabbed her by her hair and while pulling her hair he scratched her behind the left ear, and then he hit her with his fist on the left side of his face, and then went on to pull her hair telling her: "You will sit as I say, you cow, I'll break your nose, and will let your mother see what you look like, you're sick, you should seek treatment at the hospital, I wish cancer could kill you", thus inflicting upon her light bodily injuries such as a hematoma around her left temple, a hematoma around her left cheekbone, several abrasions along her left earlobe, several hematomas on the inside of her upper arms, and strain of soft neck tissues. The defendant was charged with a continued criminal offence of domestic violence or violence within a family community referred to in Article 220 para 1 in conjunction with Article 49 of the Criminal Code of Montenegro, and was imposed a community service sentence with the duration of 100 hours, whereby the period within which the service must be completed may not exceed six months. The defendant is a person with previous convictions.

Example 5

In circumstances of gross violence, the defendant violated the physical and mental integrity of a member of his family – the victim X. X., his brother's daughter, in such a way that after having an argument with the victim – he used a belt- a dog collar, a tool suitable for inflicting serious bodily injuries or seriously impairing health, and was hitting her repeatedly across her body, thus inflicting upon her light bodily injuries, such as two scratches on the palm side of her left forearm, an abrasion on the front part of her left shoulder and a scratch on her left cheek. The defendant was charged with a criminal offence of domestic violence or violence within a family community referred to in Article 220 para 1 in conjunction with Article 1 of the Criminal Code of Montenegro, and was imposed a suspended sentence, by means of which a 30 (thirty) day prison sentence is determined, though it will not be carried out provided that the convicted person does not commit another criminal offence for a period of 1 (one) year from the date when the final judgment is rendered.

Example 6

In circumstances of gross violence, the defendant violated the physical and mental integrity of a member of his family – the victim X. X., his wife, by punching her head several times, biting her thighs, and striking her lower leg with the door of his car, on which occasion he inflicted upon her light bodily injuries such as two hematomas - contusions of soft tissues on her forehead, with a diameter of 15mm and 20 mm, hematomas at the front of her upper legs, with a diameter of 5 cm x 7 cm and 5 cm x 5 cm, and hematomas at the front part of her left lower leg with a diameter of 2 cm x 3 cm, and thus committed the criminal offence of domestic violence, i.e. violence within a family community, referred to in Article 220 para 1 of the Criminal Code of Montenegro. The defendant was imposed a suspended sentence, by means of which a 30 (thirty) day prison sentence is determined, though it will not be carried out provided that the convicted person does not commit another criminal offence for a period of 1 (one) year from the date when the final judgment is rendered.

The research carried out so far points to inadequacy of the criminal sanctions regularly pronounced for this type of offence. Namely, in the Analysis of Penal Policy Applied to Criminal and Misdemeanour Proceedings related to Domestic Violence¹⁹ it is stated as follows:

"The cumulative data obtained for the purposes of this report, based on the analysis of domestic violence cases prosecuted by means of criminal and misdemeanour proceedings, indicate the following findings: lenient penal policy, not proportionate to the seriousness of criminal offences, inconsistent punishment policy, sentences pronounced based on the decisions that are manifestly ill-founded, sentencing principles disproportionate to the seriousness of offences. The fact that the punishments imposed do not fit the crimes committed indicates that judges do not fully understand the nature and categories of domestic violence."

MISDEMEANOR OFFENCE OF DOMESTIC VIOLENCE

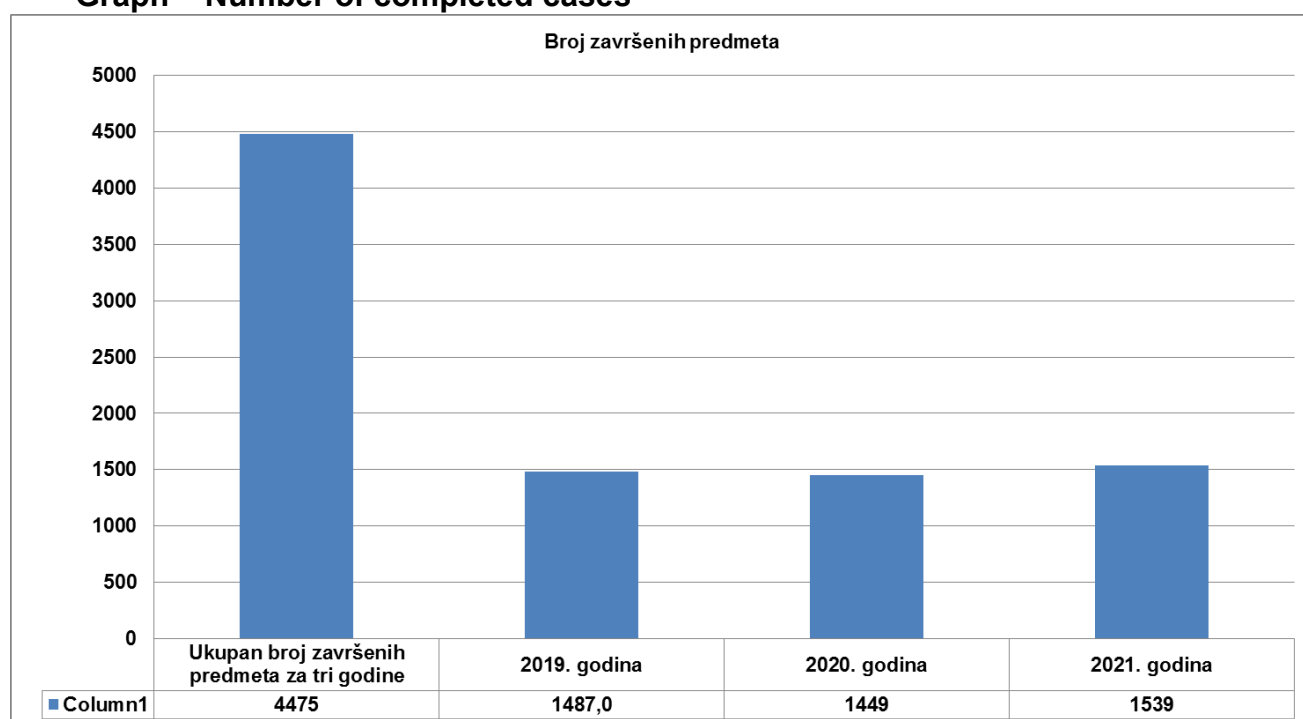
As previously noted, since there is no clear line between criminal offences and misdemeanor crimes committed within the family environment, it is highly likely that even those cases that could be qualified as criminal offences will be

resolved through misdemeanor proceedings. This part aims to point to the total number of cases that are qualified as misdemeanor offence of domestic violence, a method used for resolving these cases, and types of sanctions pronounced in the event of a convicting judgment.

This part of the paper includes also graphs and charts taken from the Report on the Work of Misdemeanor Courts.

- **Cumulative data on the number of cases and case resolution methods**

Graph – Number of completed cases

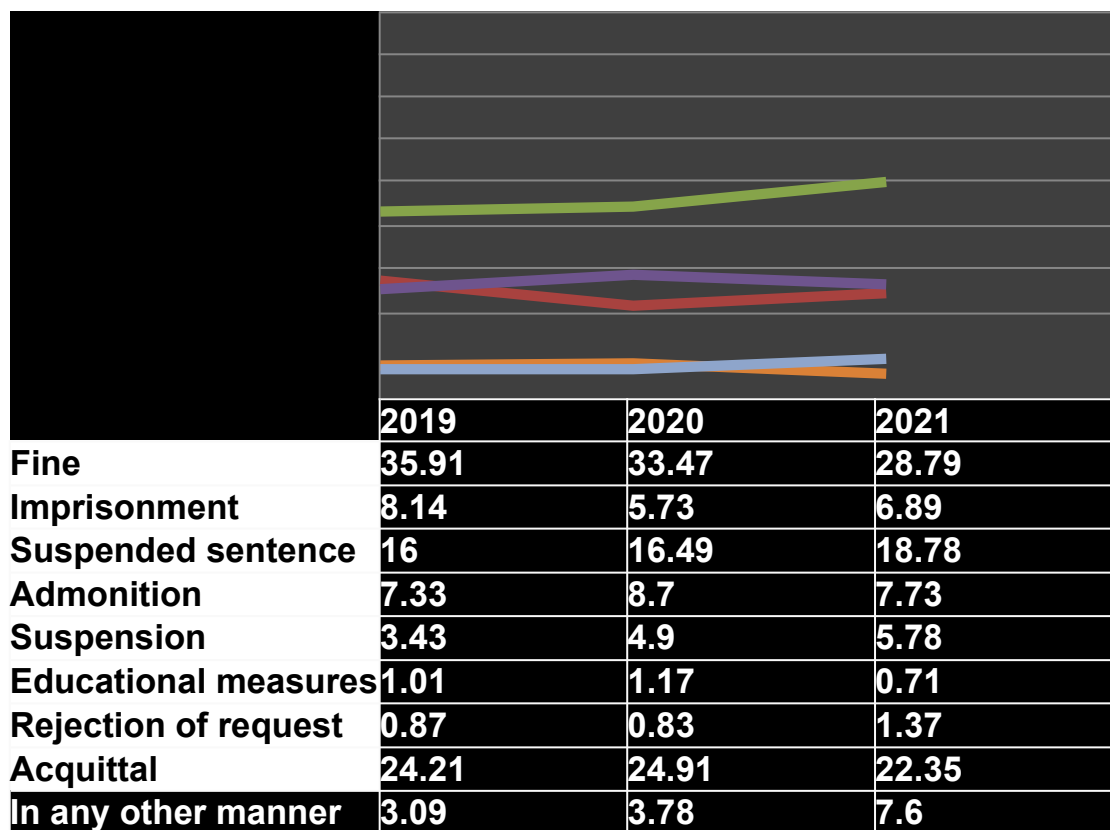


As indicated in the graph, over the three-year period (2019-2021), misdemeanor courts completed 4475 cases in total, though it has also been observed that there was a similar number of completed cases over these years.

¹⁹ Analiza kaznene politike u krivičnim i prekršajnim predmetima u oblasti porodičnog nasilja u Crnoj Gori za 2017. godinu (*The Analysis of Penal Policy Applied to Criminal and Misdemeanour Proceedings related to Domestic Violence for the year of 2017*)

Table Management of completed cases by the year and in total

Graph 6 Types of decisions in percentages (by the year)



As shown in the chart, when rendering convicting judgments, misdemeanor courts mostly resort to the following criminal sanctions: punishments, warning measures and educational measures.

When it comes to types of punishments, in the greatest number of cases offenders are sentenced to pay fines, so their total share in the structure of court decisions (per year) ranges between 30% and 36%.

As for the prison sentences, they made up 5,73 %-8,14 % of the overall number of court decisions within the three-year period, so it is concluded that misdemeanor courts impose prison sentences in a very small number of cases.

Upon the analysis of data from 2021, it has been noted that prison sentences were imposed only in 6.8% of the completed cases that were conducted before misdemeanor courts.

Fines account for the majority of punishments imposed- 28.7 %, suspended sentence- 18.7 %, warnings -7.7%, rejected requests -1.37%.

Almost one quarter of cases ended in acquittal, or more precisely 22,3%, 1.4% of cases were rejected, the proceedings were suspended in 5.8% of cases, while 8% of cases were resolved in some other manner.

Similar results have already been recorded in some previous research papers¹⁹, indicating that prison sentences account for 8.2 % of the total number of sentences imposed within misdemeanor proceedings, while fines are the most common sentence given by courts (33% in total), and suspended sentences make up 14% of the all sentences imposed.

Analysis of the data from the table above shows that in the reported three-year period the method for solving the cases remains at the same level, though the number of fines has been reduced, and it has also been noted that the number of prison sentences imposed has decreased, while the number of judgements of acquittal has also been slightly reduced in 2021. In conclusion, it cannot be concluded that misdemeanor courts have adopted a more severe penal policy.

Table – The average length of prison sentences pronounced over the past three years (per year and measured in days)

¹⁹²⁰ The Analysis of Penal Policy Applied to Criminal and Misdemeanour Proceedings related to Domestic Violence for the year of 2017

Court	The average length of prison sentences pronounced (per year)			Shortest prison sentence	Longest prison sentence
	2019	2020	2021		
Misdemeanour Court in Podgorica	17,62	19,47	18,29	10	60
Misdemeanour Court in Budva	18,60	16,60	14,20	10	45
Misdemeanour Court in Bijelo Polje	25,23	18,75	23,03	15	60

As shown in the table, misdemeanour courts impose prison sentences ranging from 10 to 60 days, while the vast majority of prison sentences imposed are closer to the statutory minimum, with their average duration days in the reporting period being 16 to 23, which is considered as a low average.

Table 6. – The average amount of fines pronounced over the past three years (per year and stated in euros)

Court	The average amount of fines per year			Minimum fine	Maximum fine
	2019	2020	2021		

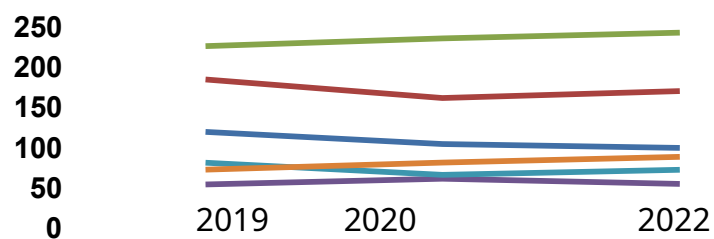
Misdemeanour Court in Podgorica	150	150	150	100	750
Misdemeanour Court in Budva	185,50	186,50	196,80	90	1.000
Misdemeanour Court in Bijelo Polje	164,67	171,29	160,48	150	500

When it comes to fines, the minimum fine imposed amounted to 90 euros, while the maximum one was 1.000 euros, and their average amount within the three-year reporting period ranged between 150 to 196 euros.

**Table – Number of security measures pronounced by each court
(per year and in total)**

Security measure	2019	2020	2021	Total
Removing a perpetrator from their apartment or other place of living	69	54	49	172 13,52%
Order prohibiting approach to the victim	134	111	120	365 28,69%
Prohibition of disturbing or stalking the victim	175	185	192	552 43,40%
Mandatory psychosocial treatment	4	11	5	20 1,57%
Treatments for addiction	31	16	22	69 5,43%
Psychiatric treatment	22	31	38	91 7,15%
Referral to an educational institution of a non-insitutional type	3	-	-	3 0,24%
Total	438	408	426	1.272

Graph 8 Number of security measures pronounced (per year)



Removing a perpetrator from their apartment or other place of living	69	54	49
Prohibition of approach to the victim	134	111	120
Prohibition of disturbing or stalking the victim	175	185	192
Mandatory psychosocial treatment	4	11	5
Treatments for addiction	31	16	22
Psychiatric treatment	22	31	38

The data shown above point to the level of courts' effectiveness in pronouncing protection measures over the three year period. Thus 438 protection measures were imposed in 2019, 408 in 2020, and 426 in 2021. So the total number of protection measures pronounced over the three-year period was 1.272.

When comparing the total number of cases resolved with the number of protection measures imposed, it is concluded that these measures are applied in respect to 28% to 30% of all the cases resolved.

For example, in 2021 the protection measure entailing removal from a joint household was pronounced only in 3% of cases, the order that bans approaching a joint household was issued in 7.7% of cases, while a measure prohibiting disturbing or stalking a victim was pronounced in 12,5% of cases. These data indicate that the courts do not take sufficient account of the prevention of violence or of the physical protection of victims.

5. Criminal offence of stalking – Article 168 a of the Criminal Code of Montenegro

5.1. National framework

In the process of aligning national legislation with the Istanbul Convention and the Law on Amendments to the Criminal Code of Montenegro from 2017²¹, some new incriminations have been introduced into the criminal legislation of Montenegro, among others, the criminal offence of stalking.

Stalking Article 168a

- (1) Anyone who persistently stalks a person in a manner that could considerably endanger their life, health, body or their lifestyle shall be sentenced to a fine or imprisonment not exceeding three years.
- (2) If the offence referred to in paragraph 1 hereof is committed against a former spouse or a former extramarital partner, the perpetrator shall be sentenced to imprisonment from three months to five years.
- (3) The punishment referred to in paragraph 2 hereof shall be imposed upon a perpetrator who committed the offence against a minor, a pregnant woman or a disabled person.
- (4) If the commission of the criminal offence referred to in paragraph 1 hereof has endangered life, health or body of a person or someone close to them, the perpetrator shall be sentenced to imprisonment from three months to five years.
- (5) If due to the act referred to in para 1 a person or someone close to them died, the perpetrator shall be sentenced to imprisonment from one to ten years.
- (6) Within the meaning of this Article, the act of persistent stalking another person shall be deemed to have been committed if within a certain period of time:
 - 1) they follow a person without authorization or undertake other activities in order to gain physical proximity to that person;
 - 2) they make an effort to establish contact with that person against their own will, either directly or through a third party or certain means of communication;
 - 3) they abuse personal data of that person in order to procure goods or services;
 - 4) they threaten to attack someone's life, their body or to endanger the freedom of a person or someone close to them;
 - 5) they undertake other similar activities against a person.

5.2. Results achieved through court practice:

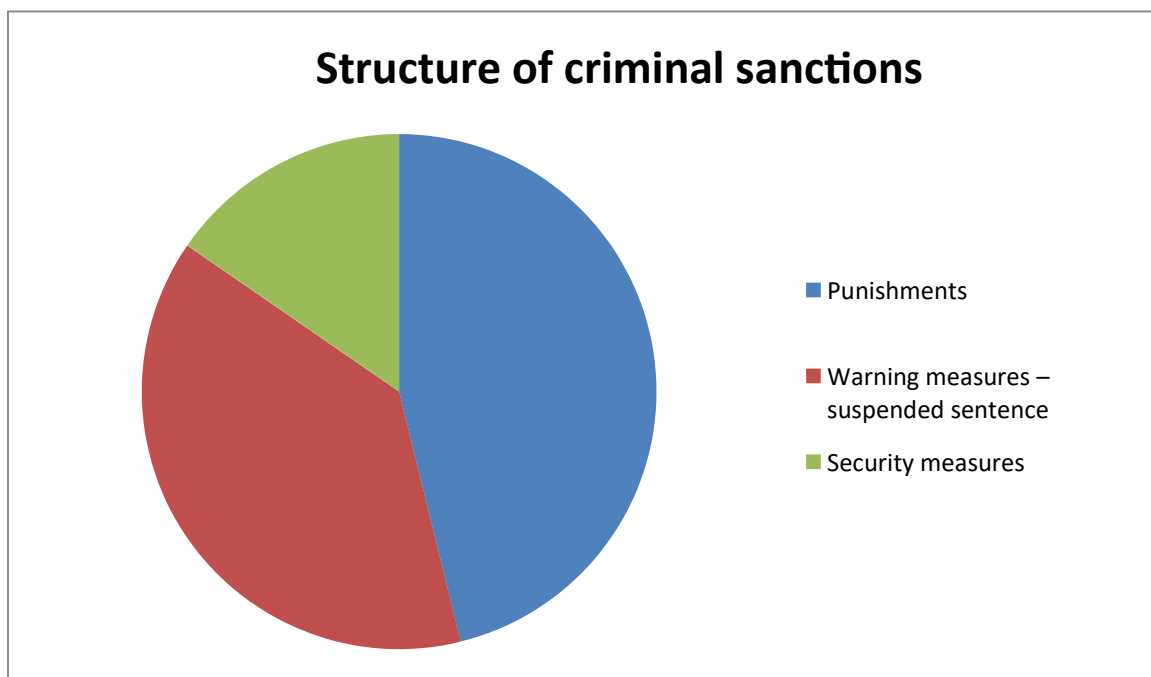
Over the three-year reporting period, the courts handled 37 cases for the criminal offence referred to in Article 168a of the Criminal Code of Montenegro: 9 cases in 2019, 10 cases in 2020, while in 2021 there were 18 cases dealing with this criminal offence.

If we make a comparison between the number of cases established each year for this criminal offence, it is possible to observe an upward trend.

²¹ The law was published within the "Official Gazette of MNE", no. 44/2017 of 6/7/2017, and entered into force on 14/7/2017.

As for the cases already resolved, out of the total number of cases initiated before these courts, final judgments were rendered in 13 of them, out of which number 12 cases ended in acquitting judgments, while in one case an acquitting decision was delivered.

Types of criminal sanctions



As the analysis show, the courts impose punishments (6 cases) in the vast majority of cases established due to this criminal offence, the most prevalent punishment being prison sentence (5 cases), whereas the fine was imposed only in one case.

When it comes to security measures, these were imposed upon 2 persons in total, one of these was a mandatory psychiatric treatment at liberty, while the security measure imposed in the other case was the order prohibiting approach to the victim referred to in Article 77 of the CC of MNE.

Suspended sentence as a security measure was imposed upon 5 convicts in total.

Length of prison sentences imposed

As already mentioned, the courts imposed prison sentences on 6 convicted persons in total. As for the duration of sentences, it ranged from 45 days, which was the shortest imprisonment pronounced, to 4 months, as the most severe punishment.

When it comes to the legal framework, a discrepancy can be observed between the penal policy prescribed by law and the one applied to court decisions.

6. CRIMINAL ACTS AGAINST SEXUAL FREEDOM

6.1. Legislative framework

Chapter XVIII of the Criminal Code of Montenegro sets forth the criminal acts against sexual freedom, so the following text contains legal definitions of the analyzed criminal offences referred under this Chapter.

Rape – Article 204

(1) Anyone who forces another person to sexual intercourse or an act equal to it without the person's consent, shall be punished by an imprisonment penalty of one to eight years.

(2) Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by an imprisonment penalty of two to ten years.

(3) If a person commits an act referred to in Paragraph 1 or 2 of this Article against somebody under threats of doing something that would harm his/her honour or reputation or by serious threat of some other severe evil, s/he shall be punished by an imprisonment sentence of one to eight years.

(4) If due to acts referred to in Paragraphs 1, 2 or 3 of this Article a severe bodily injury is inflicted on a person, or if the act is made by more persons in an especially cruel manner or in an especially humiliating manner, or to a juvenile, or the consequence of the act is pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(5) If due to acts referred to in Paragraphs 1, 2 or 3 of this Article a person died or the act is done to a child, the perpetrator shall be punished by an imprisonment sentence of at least ten years.

Sexual intercourse with a helpless person – Article 205

(1) Anyone who performs sexual intercourse or an equal act taking advantage of a person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which s/he is not capable of resistance, shall be punished by an imprisonment sentence of two to ten years.

(2) If due to acts referred to in Paragraph 1 of this Article a severe bodily injury is inflicted on a disabled person or if the act is committed by more persons or in an especially cruel or humiliating manner or it is done to a juvenile or the act resulted in a pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(3) If due to an act referred to in Paragraphs 1 and 2 of this Article a person suffering the act died or it is done to a child, the perpetrator shall be punished by an imprisonment sentence of at least ten years or by a long term imprisonment sentence.

Sexual intercourse with a child – Article 206

(4) *Anyone who performs sexual intercourse or an equal act child shall be punished by an imprisonment sentence of three to twelve years.*

(5) *If due to acts referred to in Paragraph 1 of this Article a severe bodily injury is inflicted on a child or if the act is committed by more persons or the act resulted in a pregnancy, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.*

(6) *If due to acts referred to in Paragraphs 1 and 2 of this Article a child died, the perpetrator shall be punished by an imprisonment sentence of not less than ten years.*

(7) *The perpetrator of an act referred to in Paragraph 1 f this Article shall not be punished provided that there exists no larger difference between the perpetrator and the child in respect to their mental and physical development.*

Sexual intercourse by abuse of position – Article 207

(1) *Anyone who by abuse of his/her position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position to him, shall be punished by an imprisonment sentence of three months to three years.*

(2) *A teacher, instructor, guardian, adoptive parent, stepfather, stepmother or some other person who by abuse of his/her position or authorities performs sexual intercourse or an equal act with a minor entrusted to him for teaching, education, custody and taking care, shall be punished by an imprisonment sentence of three to twelve years.*

(3) *If an act referred to in Paragraph 2 of this Article is performed over a child, the perpetrator shall be punished by an imprisonment sentence of at least ten years.*

(4) *If an act referred to in Paragraphs 1 to 3 of this Article resulted in pregnancy, the perpetrator shall be punished for an act referred to in Paragraph 1 by an imprisonment sentence of six months to five years, for an act referred to in Paragraph 2 by an imprisonment sentence of five to fifteen years, and for an act as of Paragraph 3 by an imprisonment sentence of at least fifteen years.*

(5) *If due to an act as of Paragraph 3 of this Article a child died, the perpetrator shall be punished by an imprisonment sentence of at least ten years or a long term prison sentence.*

Prohibited sexual acts – Article 208

(1) *Anyone who on conditions referred to in Article 204, Paragraphs 1, 2 and 3, Article 205, Paragraphs 1 and 2, Article 206 Paragraph 1 and Article 207, Paragraphs 1 to 3 of the present Code, performs some other sexual act, shall be punished by a fine or an imprisonment sentence not exceeding two years.*

(2) *If due to acts as of Paragraph 1 of this Article a severe bodily injury is inflicted to a person, or if the act is performed by more persons or in an extremely cruel or humiliating way or to a child, the perpetrator shall be punished by an imprisonment sentence of two to ten years.*

(3) If due to an act as of Paragraph 1 of this Article a person died, the perpetrator shall be punished by an imprisonment sentence of three to fifteen years.

Mediation in prostitution – Article 210

1) Anyone who leads or incites another person to prostitution or participates in transferring of some person to other for the purpose of prostitution or who by means of public communication or other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence of three months to two years.

(2) If an act as of Paragraph 1 of this Article is committed against a minor, or is committed by several persons in an organized manner, the perpetrator shall be punished by an imprisonment sentence of two to fifteen years.

(3) An imprisonment sentence referred to in Paragraph 2 hereof shall be imposed on a person using sexual services of a minor.

(4) Within the meaning of this Article, prostitution mediation involves provision of sexual services in return for money, either given or promised, or any other form of consideration or a reward, as a payment provided for hiring a person for sexual activities, regardless if this payment, promise or consideration is given to that particular person or a third party.

Changes in legislation

There has been a trend towards changes in the legislation of Montenegro, and when this chapter of criminal offences is concerned, these changes entailed the increase of minimum limit for the fines prescribed (from 2013) and introduction of new criminal offences (since 2011). Namely, for the criminal offence of sexual intercourse with a child referred to in Art.206, the prison sentence from 1 year to 10 years was prescribed for the basic form of this criminal offence up to 2013, whereas after 2013 the statutory minimum and maximum length of the imprisonment prescribed was raised to 3 to 12 years. The same was also done for the qualified forms of this criminal offence, where the imprisonment duration ranging from 2 to 12 years was raised to 5 to 15 years, and for the cases when the offences resulted in a death of a child, the imprisonment duration ranging from 5 to 18 years was raised to ten years as the statutory minimum prescribed, meaning that the perpetrator of such an offence may be imposed a prison sentence ranging from 10 to 20 years.

For a criminal offence such as sexual intercourse by abuse of position referred to in Art.207 of the CC MNE, the statutory minimum duration of a punishment prescribed for a qualified form of criminal offence was raised from 2 years to 3 years of imprisonment, due to the capacity of a victim- a child.

Likewise, for the criminal offence of pimping and enabling having a sexual intercourse referred to in Art.209 of CC MNE, the statutory minimum of the sentence prescribed was raised from 3 to 5 years.

Specific criminal offences such as inciting a minor to witness the commission of criminal offences against sexual freedom referred to in Art.211a of the CC MNE (causing moral corruption of a child) and enticing a child for the purposes of committing criminal offences against sexual freedom referred to in 211b of CC of MNE, were introduced into the criminal legislation in 2011, i.e. in 2013. The offence referred to in Art. 211b was introduced into the criminal legislation under the obligation stemming from the Council of Europe Convention on Protecting Children Against Sexual Exploitation and Sexual Abuse (Article 23 of the Convention – Solicitation of children for sexual purposes).

The Criminal Code stipulates a prison sentence for all the offences pertaining to sexual abuse and sexual exploitation of children, in accordance with the Convention.

A new form of criminal offence, mediation in prostitution (Article 210) was introduced into the Criminal Code, through its amendments. The use of sexual services provided by a minor has been incriminated (paragraph 3)

This new form of criminal offence relates mainly to the situations when perpetrators use sexual services of minors (fourteen to eighteen years), and if the involved underage person was a child (a person under 14, also belonging to the category of "minors"), it would, by rule, constitute a more serious criminal offence referred to in Articles 206 and 208 of the CC.

In addition, the definition of criminal offence governing exhibiting pornographic materials before a child and production and possession of child pornography (Article 211) was also amended in 2011, in accordance with the relevant international standards, all with a view to ensuring additional protection of children. More precisely, paragraph 6 which reads as follows: "No person possessing pornographic materials shall be punished for the offence referred to in paragraph 3 hereof if an older minor was depicted in the pornographic materials upon their own consent, and the person intends to use objects of pornographic content for their own exclusive use", was deleted from the text.

Furthermore, through the amendments made to the Criminal Code of Montenegro in 2017, the criminal offence of prostitution mediation referred to in Article 210 was aligned with GRETA recommendations and the obligations arising from the Lanzarote Convention. Namely, the criminal offence of prostitution mediation was supplemented to include the possibility for imposing punishments if the act was committed by more than one person in an organized manner, and the definition of prostitution is included as well. Mediation in prostitution means the fact of using a person for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to that particular person or to a third person.

In addition, through the amendments made to the Criminal Code of Montenegro in 2017, the criminal offence of child pornography referred to in Article 211 was aligned with the CoE Convention on Cyber Crime and the definition of child pornography was included as well. In this context, the term "child pornography" means any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes. This way the definition of child pornography introduced into CC was aligned with Article 20 para 2 of the Convention.

The Law on Amendments of the Criminal Code of Montenegro, adopted in

December 2021²², includes also an additional article prescribing that special records are kept of all the persons convicted for criminal offences referred to in Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of the present Code, though the records are kept only for those cases when these offences are committed to the detriment of minors and include the following information on convicts:

- 1) full name;
- 2) unique citizen number;
- 3) address of their permanent and temporary residence;
- 4) information on their employment;
- 5) information on any special characteristics;
- 6) information on criminal offence and the criminal sanctions pronounced;
- 7) information on legal effects of conviction.

Likewise, the amendments also include the new articles on special surveillance measures. The following measures of special surveillance are imposed upon offenders of criminal offences referred to in Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of the present Code, after they have served a prison sentence or a long term prison sentence, though only in cases when the offences were committed to the detriment of minors:

- 1) mandatory reporting to a competent organizational unit of police;
- 2) prohibition from visiting any places where minors commonly gather, in particular kindergartens, schools or outdoor gardens of these institutions, playgrounds, and the like;
- 3) obligation to visit professional wards and institutions;
- 4) obligation to report any changes of permanent and temporary residence and working place;
- 5) obligation to report any plans for travelling abroad.

6.2. Research results:

The research paper was focused on nine (9) final judgments that the competent courts rendered in the cases established for any of the criminal offences against sexual freedoms, including 10 judgments rendered in criminal cases dealing with rape referred to in Article 204 of the CC of MNE, two judgments in criminal cases involving sexual intercourse with a child referred to in Article 206 of CC MNE, while one of the judgments subject to analysis involved the criminal offence of prohibited sexual acts referred to in Art.208 of CC MNE.

²² The law was published in "The Official Gazzete of MNE", no. 144/2021 of 31/12/2021, and entered into force on 8/1/2022

Table: Structuring research subject according to the category of a criminal offence

Criminal offence	Total number of final judgments
Rape (Article 204 of CC MNE)	10
Sexual intercourse with a child (Article 206 of CC MNE)	3
Sexual intercourse by abuse of position (Article 207)	2
Prohibited sexual acts (Article 208 of CC MNE)	20
Mediation in prostitution (Article 210)	2
Child pornography (Article 211)	6
Total	43

- **Criminal offence of rape**

Within the period 2019-2021, competent courts prosecuted 28 criminal cases of rape under Article 204 of the Criminal Code of Montenegro, and the final judgment was rendered in 10 of these cases.

As for the types of decisions delivered, in nine (9) cases established upon criminal offence of rape under Article 204 of the CC of MNE, the courts rendered eight (8) convicting judgments and one acquittal.

The convicting judgements imposed prison sentences for 9 convicts, and an educational measure- referral to an educational institution on two of the convicts.

As for the duration of the prison sentences imposed, it ranged from 6-month imprisonment, as the most lenient sentence, to the imprisonment lasting for 9 years and 6 months, as the most severe sentence, that was pronounced in one case.

Furthermore, a positive example of court practice that is particularly worthy of attention is a final judgment rendered in 2019 and by means of which two persons were sentenced to prison sentences of 17 and 15 years, respectively, due to their commission of criminal offences of trafficking in human beings and rape, and their punishment was determined adequately so as to deter any potential

perpetrators from committing this criminal offence. It should be noted however that these were single sentences.

- **Criminal offence of sexual intercourse with a child**

As for the cases established for the commission of criminal offence of sexual intercourse with a child, which is within the competence of higher courts, over the three year period the courts rendered three (3) final convicting judgments. When it comes to types of criminal sanctions, in one of the cases the convict was imposed a prison sentence with the duration of one (1) year and six (6) months, whereas in other cases two educational measures were imposed upon two minor offenders: strict supervision performed by a tutelary authority, with the duration of at least 6(six) months, but not exceeding 2(two) years.

- **Criminal offence of sexual intercourse with a helpless person**

Over the reporting period, the courts established only 4 cases involving the criminal offence of sexual intercourse with a helpless person, all of them still pending, which is why there are still no final judgments that could have been made the subject of this Analysis.

- **Criminal offence of sexual intercourse by abuse of position**

Over the three-year period, the courts established 5 criminal cases involving sexual intercourse by abuse of position, two (2) of which already ended in final judgments: a convicting judgement imposing a 9-month prison sentence, whereas in the other case a judgement of acquittal was rendered.

- **Criminal offence of prohibited sexual act**

Within the reporting period, the courts established 53 criminal cases for the commission of prohibited sexual acts, out of this number 20 cases were already issued a final judgement, with 17 convicting judgments and three (3) judgments of acquittal.

When it comes to types of criminal sanctions pronounced for these cases, prison sentences remain prevalent within the structure of convicting judgements – with 14 cases in total, however, two (2) minor perpetrators were imposed educational measures – strict supervision performed by an authorised representative and an

educational measure of a special obligation – community service and humanitarian

The duration of imprisonment	Years	Months
Imprisonment	1	6
Imprisonment	1	2
Imprisonment	2	6
Imprisonment	1	2
Imprisonment	0	6
Imprisonment	1	4
Imprisonment	0	4
Imprisonment	1	5
Imprisonment	2	0
Imprisonment	0	9
Imprisonment	0	6
Imprisonment	1	4
Imprisonment	0	2
Imprisonment	1	4

work. Additionally, in one of the cases, the convict was imposed a suspended sentence, four (4) months of prison, conditionally for two (2) years.

The chart points to the duration of prison sentences imposed for this criminal offence, ranging from 4-month imprisonment, as the most lenient sentence, to the imprisonment lasting for 2 years and 6 months, as the most severe sentence that was imposed in one case only.

It is worth noting that the analysis of these judgements indicate that in the majority of these criminal case, the offence of prohibited sexual acts referred to in Art. 208

para 1 is committed along with the criminal offence of sexual intercourse with a child referred to in Art. 206 para 1 CC of MNE.

- **Criminal offence of mediation in prostitution**

During the reporting period, the courts established two criminal cases involving the commission of prostitution mediation, both of which already ended with convicting judgements, with two convicts being imposed the prison sentence of three months, or one (1) year and two (2) months, respectively.

- **Criminal offence of child pornography**

During the reporting period the courts established 10 criminal cases involving the commission of this offence, 6 cases already closed with final convicting judgements, 5 of which were imposed a prison sentence, whereas one case was imposed a suspended sentence.

The table showing time range of imprisonment

Duration of imprisonment	Years	Months
Imprisonment	0	11
Imprisonment	1	6
Imprisonment	1	6
Imprisonment	0	8
Imprisonment	2	6

As for the category of specially vulnerable persons who were victims of these offences, a reference document containing these data is the Analysis of Penal Policy for Criminal Offences against Sexual Freedom Committed against Minors, that can be found at the website of the Supreme Court of Montenegro:

<https://sudovi.me/static/vrhs/doc/9568.pdf>.

This Analysis is the first analytical document dealing with the penal policy for criminal offences against sexual freedom. The Analysis presents the results of research on the case law of Montenegrin courts, that was conducted based on the available final judgments concerning criminal offences against sexual freedom committed to the detriment of minors, for the period from 1/1/2013 to 1/3/2018.

Conclusions:

- Taking into consideration the gender structure of victims – underage persons, it is concluded that girls are at a high risk of being exposed to criminal offences against sexual freedom – since 90,9% of victims are females.
- National criminal legislation is not fully aligned with the UN Convention on the Rights of the Child and the Lanzarote Convention of the Council of Europe when it comes to the definition of the term "child".
- Upon the results of a mini comparative analysis of legislative solutions across the region, it is concluded that the punishments imposed for criminal offences against sexual freedom are similar to the structure of punishments imposed in the Republic of Croatia or the Republic of Serbia. However, the punishments prescribed for the criminal offence of prohibited sexual acts referred to in Art. 208 para 1 in conjunction with Art.206 para 1 of the CC of MNE should be further aligned with the comparative solutions. It should be reconsidered whether the punishments currently prescribed for this criminal offence, which remains prevalent (61,1%) within the general structure of criminal offences against sexual freedom, may serve the purpose of punishment.
- Within the period 2013–2018, the court penal policy adhered to the limits stipulated by the Criminal Code of Montenegro, which is confirmed by the data on the structure of criminal sanctions, showing that punishments (prison sentences) account for 94% of these sanctions, while the warning measures (suspended sentence) make up only 6%. On the other hand, it is observed that in the criminal cases involving offences against sexual freedom, basic courts commonly impose prison sentences that are close to the statutory minimum.

7. Criminal offence of the extramarital community with a minor– Article 216 of the Criminal Code of Montenegro

7.1. Legislative framework

Living in an extramarital community with a child is a criminal offence belonging to the category of criminal acts against marriage and family. However, this incrimination is not aimed at protecting marriage, since the extramarital community is recognized and regulated by law. It is aimed at providing protection for minors, since it is commonly considered that they have not reached a necessary level of bodily and spiritual maturity and for this reason, life in an extramarital community is a detrimental experience that impedes their proper development, education, etc.²³

Legal definition

1) An adult person who lives in an extramarital community with a minor, shall be punished by an imprisonment sentence of three months to three years.

(2) A parent, adoptive parent or a guardian who enables a minor to live in an extramarital community with another person or incites him/her into it shall be punished by a penalty referred to in Paragraph 1 of this Article.

(3) If an act as of Paragraph 2 of this Article is done under duress, under threat or for gain, the perpetrator shall be punished by an imprisonment sentence of six months to five years.

(4) If a marriage is concluded, prosecution shall not be undertaken, and if it is undertaken it shall be stopped.

7.2. Results of research:

During the reporting period, courts handled 30 pending cases, 24 of which were closed with final judgements. As for the structure of court decisions, convicting judgments were rendered in 20 cases, in 2 cases the court decided to dismiss charges, whereas in 2 cases courts delivered judgments of acquittal.

It should be noted that in the majority of cases that were finally determined (22 cases), criminal proceedings were conducted due to the incrimination referred to in Article 216 para 1 of CC MNE, while the other two cases were grounded on

the incrimination of Article 216 para 2 of CC MNE.

²³ Comments to the Criminal Code, Podgorica 2010, prof.dr Zoran Stojanović

4. Femicide

4.1. Legislative framework

The right to life is inviolable. As specified in the Constitution of Montenegro (Article 25 paragraph 3 of the Constitution of Montenegro) this is an absolute right that can not be restricted under any circumstances.

Within the category of criminal offences against life and body, the Criminal Code of Montenegro (Chapter XVI) prescribes the criminal justice protection of life through the criminal offence of murder, which is manifested in several different forms.

The European Court of Human Rights in Strasbourg has developed the considerable case law concerning the right to life guaranteed in Article 2, which is of particular relevance when domestic violence reaches the level when it poses a threat to life.

In the important case of *Opuz v. Turkey*²⁴ the Court determined that the complaints submitted by the applicant and her mother in that particular case were handled in an "apparently inadequate" manner. The authorities made a mistake by suspending the proceedings initiated against the perpetrator, and treating the case as a "family affair" they should not interfere with, so they ignored the reasons why the complaints were withdrawn.

The Court found that there was a violation of Article 2 of the Convention (the authorities' failure to safeguard the right to life of the applicant's mother) and Article 3 of the Convention.

The table showing categories of criminal sanctions

TYPE	NUMBER
Imprisonment	1

Home confinement	1
Suspended sentence	14
Community service	6

As shown in the chart, the courts impose warning measures (suspended sentence) in the vast majority of criminal cases established upon this offence, therefore they were pronounced for 14 convicts in total, the second most common punishment is community service that was imposed upon 6 persons, while the prison sentence was imposed in two criminal cases, with the length of 45 days and 3 months, respectively.

²⁴ Case of Opuz v. Turkey (Application no.33401/02)

Scope of application of Article 2²⁵

Article 2 is applicable to the situations of an unlawful deprivation of life (or when there is a danger that such a deprivation might happen), which is caused either by acts or omission of the persons who act on behalf of a state. As for the danger posed to someone's life, it needs to be established that the authorities knew or should have known that life of any identifiable physical entity was at a real and imminent risk due to criminal activities of a third party, though the authorities did not undertake measures within their competence which could reasonably be expected to avoid such a risk. In order to establish that a state has violated Article 2 of the Convention in the context of domestic violence, it needs to be proved that the authorities did not adequately protect a physical entity against the actions undertaken by any other physical entity.

Obligation to prevent domestic violence so as to protect victims

The case law of ECHR has confirmed that in order to meet the material positive obligation concerning the prevention of violence, and thereby provide protection under Articles 2, 3 and 8, a country needs to do much more than to merely adopt laws that provide protection for the personal integrity of vulnerable persons. Under appropriate circumstances, this obligation entails also the positive obligation of the authorities to undertake reasonable preventive operational measures in order to protect a person whose life and physical integrity have been put at risk due to criminal activities of another physical entity.

The expression 'under appropriate circumstances' means that not every type of risk requires that authorities must undertake operational measures under the Convention in order to prevent materialization of such a risk. In order for a positive obligation to be established, it is necessary to determine the existence of 'constructive knowledge', meaning that the authorities must have known or should have known at a relevant time that the life of an identified person was at a real or imminent risk due to criminal activities of a third party. The authorities will not be deemed to have fulfilled their positive obligation if they have not undertaken necessary measures within their competence which could have been reasonably expected to ensure avoidance of such a risk to life.

Results of research:

Unfortunately, femicide as the gravest and most brutal form of hate crime committed over females, is present in Montenegro as well. Over just four last months, it has been recorded that three young women have died as victims of intimate partner violence. When it comes to court practice, within the three-year period high courts established two criminal cases for the offence of murder where the victims were female persons, both of which were resolved with convicting judgments, though at the time when this Analysis was being drafted none of these judgments became final.

²⁵ Overview of international standards and jurisprudence of the European Court of Human Rights, AIRE Centre, the Supreme Court of Montenegro, British Embassy Podgorica

Conclusions:

Based on the research results, and in light of the GREVIO Committee Report for Montenegro, it is possible to draw the following conclusions:

Domestic violence

- Domestic violence is a serious, persistent and complex problem in Montenegro, though the sanctioning policy used for perpetrators of this criminal offence is still inadequate, as indicated in the previous research, in reports of the relevant international bodies, and this research paper;
- There are still certain challenges at the level of legislation. The lack of uniform criteria used for delineation between criminal and misdemeanor violent acts in family, may cause problems even from the aspect of protection of victims' rights and responsibility of relevant institutions;
- Definitions of gender-based violence and domestic violence that are currently used in legislation are not aligned with the Istanbul Convention and recommendations of the GREVIO Committee;
- Within the overall structure of domestic violence cases, misdemeanor cases account for the major part of the case law body. Upon the analysis of the total number of pending criminal and misdemeanor cases since 2021 (2458), it is concluded that there was a much smaller number of criminal cases, which account for 11.4 % of the overall number;
- These data lead to a conclusion that more cases of domestic violence qualify as misdemeanor, which may cause a problem in practice, not only from the aspect of the victims' protection, but from the aspect of responsibility vested in competent institutions.
- According to the results of previous research, the similar situation was

recorded in 2017 as well, when in comparison to criminal courts, misdemeanor courts had 90,7% more resolved cases.

- When pronouncing sanctions for the perpetrators of the criminal offence of domestic violence or violence in the family community the courts tend to use more lenient punishments. Namely, this conclusion is based on the following findings:
 1. Within the structure of convicting judgements, suspended sentence, as a warning measure and a more lenient type of criminal sanction, is most commonly used. Therefore in 2021, suspended sentence was imposed upon 65 persons (41.9%) in total, and the punishment as a criminal sanction was imposed upon 60 persons (38.7%), meaning that there were more suspended sentences than punishments. This leads to a conclusion that courts most often resort to a suspended sentence, which as a sanction is more lenient than a prison sentence.
 2. As for prison sentences used by courts, 51 of them were pronounced in 2021, most of these were the punishments with the duration of 3 to 6 months (50.9 %), prison sentences not exceeding 3 months were imposed in 27.4 % of cases, sentences with the length from 6 to 12 months were pronounced in 17.6 % of cases, while the prison sentences with the duration from one to two years was pronounced in the smallest number of cases.
 3. In other words, for this criminal offence the courts most often pronounce prison sentences which do not suit the punishments prescribed by law, so the prison sentences which are closer to the statutory minimum account for the greatest number of prison sentences.
 4. The average length of punishments at the level of all courts amounted to 4 months in 2019 and 2020, while in 2021 the punishments imposed were slightly more severe, so the average length of all the punishments imposed was 5 months.
- In 2021, the average duration of all criminal proceedings initiated upon criminal cases of domestic violence was 137 days (4 months and 15 days);
- When it comes to misdemeanor proceedings, in the majority of cases they end within 6 months, so in 2021, 91.05 % of proceedings were completed within that timeframe, and the lower percent of cases lasted more than 6 months (8.95%);
- Upon the analysis of judicial decisions rendered in misdemeanor proceedings conducted for domestic violence, it is concluded that misdemeanor courts most often impose fines, which account for 30 %- 36

% of the overall number of judicial decisions made over the three-year period (2019-2021).

- As for prison sentences, they account for 5,73 %- 8,14 % of the overall number of judicial decisions made over the three-year period, which leads to a conclusion that misdemeanor courts rarely impose prison sentences;
- Similar results were recorded within the research previously conducted²⁶, where it was noted that prison sentences account for 8.2 % of the total number of punishments imposed within misdemeanor proceedings, while the fines are most common form of punishment (33% in total), and the suspended sentence accounted for 14%.
- The analysis of 2021 data shows that out of the total number of the cases completed, prison sentences were imposed only in 6. 8 % of cases conducted before misdemeanor courts. Fines account for the vast majority of sanctions imposed - 28.7 %, suspended sentence- 18.7 %, admonition-7.7%, dismissal of a request - 1.37%. Almost one quarter of cases ended in the judgment of acquittal (22,3%), 1.4% of cases were dismissed, the procedure was suspended in 5.8% of cases, and 8% of cases were resolved in some other manner.
- The total number of protection measures remains almost the same over the years. So in 2019 – 438 protection measures were imposed, in 2020- 408, whereas in 2021 – 426. Over the three-year period, the total number of protection measures imposed was 1.272. When comparing the total number of the cases resolved with the number of protection measures pronounced, it can be concluded that these measures are used in 28 %- 30% of all the cases resolved.

²⁶ *The Analysis of Penal Policy Applied to Criminal and Misdemeanour Proceedings related to Domestic Violence for the year of 2017*

Recommendations

Considering the fact that the recommendations of the GREVIO Committee are binding upon Montenegro, the following is a list of those recommendations that according to our analysis **have not been fulfilled to date**.

1. Domestic violence

GREVIO urges the Montenegrin authorities to ensure, through all available means such as protocols, training of professionals and legislative change, more operational clarity between the misdemeanour offence of domestic violence and that of a criminal law nature. In addition, GREVIO urges the Montenegrin authorities to ensure more dissuasive sanctions for the misdemeanour offence of domestic violence. (principle 178)

2. Sexual violence, including rape (Article 36)

GREVIO invites the Montenegrin authorities to introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1 c of the Istanbul Convention. (principle 181)

3. Forced marriage (Article 37)

GREVIO encourages the Montenegrin authorities to:

- a.** remove procedural obstacles and limitations to the criminal prosecution of acts of forced marriage (in particular the requirement to first seek the annulment of a forced marriage under Article 214 and the time limit placed on the possibility of having a forced marriage annulled under Article 216);
- b.** criminalise the intentional conduct of forcing an adult to enter into a customary union;
- c.** criminalise the intentional conduct of luring an adult or a child to the territory of another state with the purpose of forcing this person into a marriage as required by Article 37, paragraph 2. (principle 192)

4. Sexual harassment (Article 40)

33. GREVIO encourages the Montenegrin authorities to ensure that sexual harassment experienced in all areas of life is subject to a legal sanction. GREVIO further encourages the Montenegrin authorities to increase their efforts in ensuring higher levels of awareness of sexual harassment as opposed to sexual violence among the general public and professionals concerned. (principle 197)

5. Sanctions and measures (Article 45)

GREVIO strongly encourages the Montenegrin authorities to ensure – through legislative measures and the effective training of members of the judiciary and prosecution services - that sentences and measures imposed for domestic violence offences are effective, proportionate and dissuasive and that they do not harm victims and their children. (Article 201)

6. Emergency barring and protection orders (Articles 52 i 53)

GREVIO urges the Montenegrin authorities to make protection orders available for immediate protection to all victims of domestic violence, irrespective of charging decisions by prosecution services or the institution of misdemeanour proceedings by victims. (principle 233)

GREVIO strongly encourages the Montenegrin authorities to ensure that emergency barring and protection orders are effectively applied by all relevant authorities. (Principle 233)