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To the Ministry of Family, Youth and Sports of the Republika Srpska
To the Ministry of Justice of the Republika Srpska

**Summary of conclusions and recommendations from the working meeting held on
22 August 2024 in Banja Luka, concerning the improvement of normative rules and procedures for
imposing urgent measures of protection and protective measures stipulated by the Law on
Protection from Domestic Violence of the Republika Srpska**

A working meeting organised by the United Women Foundation was held on the premises of Jelena Hotel in Banja Luka on 22 August 2024. In attendance were representatives of courts (Basic Court of Sokolac, Basic Court of Doboj, District Court of Banja Luka), prosecutor's office (District Prosecutor's Office of Banja Luka), Ministry of Justice of the Republika Srpska, Gender Centre of the Republika Srpska, police officers of the Ministry of Internal Affairs of the Republika Srpska working on cases of domestic violence, and representatives of the United Women Foundation from Banja Luka and Lara Foundation from Bijeljina, and representatives of the OSCE in Bosnia and Herzegovina. They discussed challenges faced in the application of the Law on Protection from Domestic Violence (Official Gazette RS, 102/2012, 108/2013, 82/2015 and 84/2019, hereinafter: LPDV) in order to define recommendations for the improvement of normative rules and procedures for imposing urgent measures of protection and protective measures stipulated by the LPDV and delivery of those recommendations to the competent Ministry of Family, Youth and Sports of the Republika Srpska.

Following a comprehensive discussion among representatives of various institutions/organisations, which highlighted the priority of adopting a new LPDV, the participants reached the following conclusions, after identifying the problems regarding the application of the current LPDV:

- The new LPDV has to regulate in more detail the procedure for imposing urgent protection measures and protective measures, given that the provisions of Articles 13 and 23 of the valid LPDV do not thoroughly regulate what the proposal for imposing an urgent protection measure/protective measure must contain (what would be purposeful to encompass by the provisions of the new law), nor does it thoroughly regulate actions of courts or the procedures upon motions for imposing an urgent protection measure/protective measure, apart from stating that said measures are imposed by a competent court in a misdemeanour procedure, and regulating the issue of who is authorised to file a motion for imposing an urgent measure of protection/protective measure, what urgent measures of protection/protective measures are, and when they can be imposed and what the deadlines for a court to rule upon motions for imposing and urgent measure of protection/protective measure are. If, for instance, the legislator decides to postpone the passing of the new LPDV, participants of the discussion agreed that the currently valid LPDV should also regulate in detail the procedure for imposing an urgent measure of protection/protective measure by explicitly prescribing a special procedure that would regulate the procedure for imposing an urgent measure of protection/protective measure, given that this procedure has a number of specificities that may not be adequately overcome in a regular misdemeanour procedure – time frame for procedure, hearing for imposing the measure, manner of execution, legal remedies and other procedure-related issues, since the application of the Law on Misdemeanours does not ensure adequate protection of victims of domestic violence

in every single case, as underlined by the participants of the discussion, who act upon the provisions of the currently valid LPDV and Law on Misdemeanours;

- When determining urgent measures of protection, it would be purposeful to improve the current legal solution according to which these measures are imposed only by a court at the proposal of authorised persons/bodies, by stipulating that these urgent measures may be ordered in writing by a competent police authority based on an order, prescribing a maximum duration of the measure ordered this way, and by stipulating the duty of the competent police authority to file a motion within the shortest period possible to the competent court for an extension of the urgent protection measure, which legal solution would undoubtedly be in the best interest of the victim of domestic violence, and for the purpose of removing immediate danger to the victim's physical or psychological integrity, as well as for the purpose of preventing the repetition of violence and guaranteeing the victim's safety, but also in line with the provision of Article 52 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: the Istanbul Convention);

- It is necessary to improve the provision of Article 12a of the existing LPDV, stipulating a risk assessment for every report of domestic violence, by ensuring measures for continuous risk assessment, especially in a situation when urgent measures of protection/protective measures are applied, and in a situation when said measures are no longer applied, which is in line with the provision of Article 51 of the Istanbul Convention;

- It is necessary to amend the current legal solution according to which urgent measures of protection/protective measures are imposed by a competent court in a misdemeanour procedure, given that said legal solution has produced great uncertainties in practice, and certain courts in the Republika Srpska (e.g. District Court in Bijeljina) believe that this legal determination is not applicable at all, so they suspended procedures upon such motions after complaints were filed, explaining that neither LPDV provisions nor the provisions of the Law on Misdemeanours of the Republika Srpska (Official Gazette RS, 63/2014, 36/2015, 110/2016, 100/2017, 19/2021 and 90/2023, hereinafter: LM RS) stipulate how a misdemeanour procedure is to be launched and conducted or how protective measures are to be carried out against someone for an offence not stipulated as a misdemeanour, and that, even though LPDV does not stipulate protective measures as sanctions, that they have repressive character, which is why according to some courts' views there are circumstances that rule out a misdemeanour procedure in terms of the provision of Article 181, point 8 of LM RS;

- Urgent measures of protection and protective measures should be defined by a court in a special sui generis procedure, which should be incorporated through the provisions of LPDV, because the goal of the procedure of imposing urgent measures of protection/protective measures is not to establish guilt of the perpetrator of violence, which cannot be established in this procedure anyway, but this procedure only has to determine the merits of the motion for imposing an urgent measure of protection/protective measure, which are measures for protection of the victim, not misdemeanour measures or criminal sanctions. Participants of the working meeting noted that provisions of LM RS, according to which misdemeanour procedures are carried out, does not regulate procedures by motions for imposing urgent measures of protection/protective measures, but a procedure by motions from authorised bodies for initiating a misdemeanour procedure, that is, by motions for court deliberation, with respect to misdemeanour warrants from authorised bodies, implying the establishment of liability for misdemeanour in a misdemeanour procedure, and produces further uncertainties in application in terms of protection services. In case the legislator still believes it is necessary for these measures to be determined in a misdemeanour procedure in the manner prescribed at present, it would be more purposeful to precisely state, that is, enumerate the provisions

of LM RS that would be applied in such a procedure, but the meeting participants did not find such a solution a good one, particularly because the provision of Article 105, paragraph 3 of the LM RS stipulates that if this law does not regulate individual issues of misdemeanour procedure, provisions of the Criminal Procedure Code of the Republika Srpska and its certain chapters should apply to those issues accordingly, which further complicates the legal solution referring to the misdemeanour procedure.

- If the procedure under motions for imposing urgent measures of protection/protective measures is encompassed by the LPDV as a special sui generis procedure, which was characterised by the meeting participants as the most purposeful solution, it would be necessary to regulate by law whether it would be necessary to hold a court hearing in such a situation, which would be attended by the perpetrator of domestic violence, apart from the person who filed the motion. Especially so keeping in mind that due to the vagueness of LPDV provisions (the provision of Article 13, paragraph 3 of the currently valid LPDV only stipulates that urgent measures of protection are to be imposed no later than 24 hours from the receipt of the motion, that is, upon taking the perpetrator of domestic violence to court, which may imply that the court is obliged to hold a hearing), there has been unequal judicial practice in that regard, so some courts only acted upon written motions for imposing an urgent measure of protection/protective measure, while other courts scheduled hearings in order to issue a decision upon such motions, ensuring the presence of the perpetrator of domestic violence. If one takes a stance that it is necessary to hold a hearing upon motions of authorised persons filing the motion for imposing urgent measures of protection/protective measures, it would be advisable to regulate that it is not necessary to have the perpetrator of domestic violence present at such hearing, that is, that the hearing may be held in the absence of the duly notified perpetrator of violence, who received a summons for the hearing with a motion for imposing an urgent measure of protection/protective measure, because it is certainly a sui generis procedure, that is, it is not a situation of a trial in absentia, which would be forbidden if it were a criminal procedure, because the procedure for imposing an urgent measure of protection/protective measure is not a criminal procedure and does not imply criminal liability.

- Provisions of the LPDV must regulate all the mandatory elements of the motion for imposing an urgent measure of protection/protective measure, and must also regulate the mandatory elements of the decision imposing an urgent measure of protection/protective measure, in order to develop a standardised response in practice regarding reports of domestic violence and in order to avoid differing procedures in practice, which occurred due to the absence of such provisions in the LPDV.

- Provisions of the valid LPDV make it possible for a victim of domestic violence to file a motion for imposing an urgent measure of protection/protective measure, which was recognised by all meeting participants as a positive legal solution that is in line with the Istanbul Convention. However, what is recognised in practice as a problem is the practice of the court upon such a motion - whether the victim of violence should submit evidence along with the motion, indicating reasonable doubt that domestic violence was perpetrated, that is, the evidence implying the merits of such motion, and the manner in which the victim of domestic violence should obtain such evidence. Therefore, in such situations, it would be advisable to regulate by law, if a victim of domestic violence files a motion for imposing an urgent measure of protection/protective measure, that the court is authorised to seek an opinion from the competent internal affairs authority or the competent social work centre about the circumstances relevant for the decision, and regulate the time frames in which those authorities are obliged to file the requested opinion, upon which time the court may start making the decision, because a ruling that the victim of domestic violence, as the person who filed the motion, is obliged to obtain such evidence would place a disproportionately bigger burden on the victim and be contrary to the provision of Article 56 of the Istanbul Convention.

- Given that provisions of the currently valid LPDV do not stipulate notifying the victim of domestic violence about the motion for imposing urgent measures of protection/protective measures, nor does the law stipulate that the decision on imposing an urgent measure of protection/protective measure is to be delivered to the victim, it would be purposeful to stipulate this by law, for the purpose of effective exercise of the right of the victim of domestic violence to access all protection services (which is currently stipulated by the provision of Article 10, paragraph 1 of LPDV), which is in line with provision of Article 56 of the Istanbul Convention, as is stipulating the right of the victim of domestic violence to file a complaint against the decision imposing an urgent measure of protection/protective measure. Participants of the working meeting stated that, for the purpose of a more efficient exercise of rights of a victim of domestic violence, it would be purposeful to regulate by law the duty of competent protection services (the best institution for this is the court) to notify the victim of domestic violence about the expiration of the application of an urgent measure of protection/protective measure.

- A challenge in the application of the currently valid LPDV is the absence of data that would be available to all protection services, at the local level, who would make possible the monitoring of individual and whole cases of domestic violence through all stages of the procedure. Monitoring in terms of not only the reported cases of violence, proposed urgent measures of protection/protective measures, number of decisions by competent courts ordering urgent measures of protection/protective measures, data about the execution of imposed urgent measures of protection/protective measures, but also data as to the percentage – out of the reported cases of domestic violence in which the perpetrators were ordered urgent measures of protection/protective measures – the competent district public prosecutor's office issued an order not to conduct an investigation/order to suspend an investigation, the percentage of cases of domestic violence with ordered urgent measures of protection/protective measures in which indictments were issued, the number of confirmed indictments in such cases, and final and binding decisions of courts issued in a criminal procedure under confirmed indictments, and it would be advisable to regulate by law in more detail (in connection with Article 11 of the currently valid LPDV) an introduction, at the level of coordination bodies, the duty to collect and exchange the above mentioned data for information purposes, which would ultimately ensure a comprehensive monitoring of cases of domestic violence, all for the purpose of achieving cooperation in the best interest of the victim.

- It is necessary to stipulate by the LPDV a duty of continuous education of authorised persons in all protection services, particularly the duty of conducting continuous training at the competent Centre for Judicial and Prosecutorial Training of the Republika Srpska for judges and prosecutors in this field (for instance, modules in domestic violence, the attendance of which would be mandatory for judges/prosecutors working on these cases), and stipulate by law the duty of regular specialised training and provision of guidelines for authorised officers of the competent ministries of internal affairs, judges and prosecutors in the field of domestic violence, with the special emphasis on procedures of treatment, for the purpose of developing standardised assessment tools in all cases of domestic violence and developing a plan for protection, assistance and support to the victim.

Consequently, keeping in mind the conclusions presented herein, participants of the working meeting formulated the following key recommendations, representing a summary of the above stated conclusions, which are submitted to the Ministry of Family, Youth and Sports of the Republika Srpska, for the purpose of developing a new LPDV, which would give a better response to the problems identified in practice, particularly when it comes to the improvement of normative rules and procedures for imposing urgent measures of protection and protective measures stipulated by the LPDV:

- The new LPDV should regulate in more detail the procedure for imposing urgent measures of protection and protective measures as a sui generis procedure, relying neither on the provisions of LM RS nor on the provisions of the Criminal Procedure Code of the Republika Srpska;
- Make it possible for a competent police authority to order urgent measures of protection for the duration prescribed by law, and improve the provision of Article 12a of the existing LPDV, which stipulates a risk assessment for every report of domestic violence, by stipulating a continuous risk assessment, particularly in case of the expiration of application of urgent measures of protection/protective measures;
- Provisions of the new LPDV should stipulate in detail what the motion for imposing an urgent measure of protection/protective measure must contain, and stipulate in more detail actions of the court upon such motions, as well as the contents of the court decision ordering urgent measures of protection/protective measures, and elaborate in more detail the procedure upon motions by authorised persons filing them (specifically regulate by law whether it is necessary to hold a hearing for acting upon the motions, and whether the perpetrator of domestic violence should be present at the hearing, or if hearings may be held in the absence of the duly notified perpetrator, if the proposed concept is adopted that it is a special sui generis procedure);
- It is necessary to further develop a legal solution giving an opportunity to the victim of domestic violence to file a motion for imposing an urgent measure of protection/protective measure, as described above, by introducing a duty of the court to seek an opinion of the competent internal affairs authority, that is, a competent social work centre about the circumstances significant for the decision, and regulate the time frames in which those authorities are obliged to submit the requested opinion;
- Introduce by law the duty to set up a single information database, that would be kept by a competent authority, containing all the consolidated data submitted by all protection services in terms of reported cases of violence, proposed urgent measures of protection/protective measures, number of decisions by competent courts ordering urgent measures of protection/protective measures and data on the application of imposed urgent measures of protection/protective measures, which database could be accessed by authorised persons from all protection services;
- Introduce by law the duty to notify victims of domestic violence about the motion on imposing an urgent measure of protection/protective measure, and a duty to deliver the decision on imposing an urgent measure of protection/protective measure, introduce the victim's right to complain to the court's decision, and stipulate by law the duty to notify the victim in case of expiration of application of previously imposed measures;
- Introduce by law the duty of holding and attending specialised and continuous training for judges and prosecutors within the Centre for Judicial and Prosecutorial Training of the Republika Srpska working on cases of domestic violence, as well as mandatory and continuous training in this field for all other protection services too.

In Banja Luka, 29 August 2024

Minutes taken by:

Sanja Salčić-Sabljica,
Chairwoman of Criminal Department of the Basic Court in Sokolac –
Department in Istočno Novo Sarajevo
in collaboration with the United Women Foundation Banja Luka team