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**KAZNENOPRAVNA ZAŠTITA OD NASILJA U OBITELJI**  
**Sažetak**

Obitelj je prirodni i osnovni temelj ljudskog društva, koja ima značajnu ulogu u društvu i ima pravo na zaštitu države i društva. Zaštita od nasilja je zaštita jednog od osnovnih ljudskih prava, da nitko u obitelji ne može biti podvrgnut bilo kojem obliku diskriminacije ili nasilja (fizičkom, psihičkom, seksualnom ili ekonomskom). Nasilje u obitelji s kazneno-pravnog stajališta je kompleksan problem zbog čega je potrebna sustavna razrada koja je učinjena u ovom istraživanju. Prikazana su teorijska i zakonodavna rješenja i razlike u shvaćanjima na čijem temelju su ponuđena rješenja koja bi na zakonodavnom planu bila bolja i svrsishodnija, a samim time i učinkovitija u borbi protiv nasilja u obitelji.

Na osnovu raspoložive literature ovo istraživanje pokazuje ontološku i pravnu problematiku nasilja u obitelji. Iako se kaznena zaštita odnosi prije svega na pojedince koji su članovi obitelji u najširem smislu, koji su ujedno i objekti radnje i zaštitni objekt, rad istražuje sa znanstvenog aspekta i zaštitu obitelji kao zaštitnog objekta. U cilju sveobuhvatnog pristupa temi sagledana je povijest nasilja u razvoju braka i obitelji i razne vrste zaštite od nasilja. Analizirani su zakonski okviri na području razvijenih zemalja, poput Austrije i Njemačke. Posebno je analiziran i zakonski okvir Republike Hrvatske i drugih zemalja regije. Zakoni pak Bosne i Hercegovine, gdje postoje četiri kaznenopravna sustava, uz brojne odredbe koje se odnose na prekršaje, te četiri Obiteljska zakona i četiri Zakona o zaštiti od nasilja u obitelji, unose velike znanstveno-stručne probleme. Naime u svim zakonima nije ujednačeno koje osobe se smatraju članovima obitelji ili obiteljske zajednice, odnosno članovima obiteljskog domaćinstva. Neusklađenost propisa koji su osnova za zaštitu od nasilja u obitelji zahtijeva hitno usklađivanje odredbi Obiteljskih zakona koje se odnose na nasilje u obitelji, zatim Zakona o zaštiti od nasilja i odredbi Kaznenog zakona, koje se odnose na zaštitu braka i obitelji. Naročito je bitno u svim zakonima odrediti i usuglasiti krug osoba koje spadaju pod zaštitu.

U sustavu kaznenog prava odnosno Kaznenog zakona Bosne i Hercegovine analizirana su pojedina kaznena djela s aspekta strukture svakog pojedinačnog kaznenog djela gdje se posebno obradilo u okviru konkretnog kaznenog djela, svaki element općeg pojma djela

(radnja, predviđenost u zakonu, protupravnost i krivnja), a uz to i posebni elementi koji se nalaze u okviru određenog kaznenog djela.

U statističkoj analizi prikazani su podaci Gender Centra, kantonalnih ministarstava unutarnjih poslova i sigurnih kuća Federacije Bosne i Hercegovine za desetogodišnje razdoblje (2006.-2015.) koji su analizirani metodama deskriptivne statistike. Podaci ukazuju da su se prijave za nasilje u obitelji značajno povećale od donošenja Zakona o zaštiti od nasilja (2007.), pa do 2015. godine. Nasilju u obitelji su bile izložene uglavnom žene (94%, nasuprot muškarcima, 3% i djeci, oko 3%). Sve više se žene obraćaju nadležnim institucijama za pomoć i zaštitu. Zaštitne mjere su izrečene u većem broju u odnosu na vrijeme prije donošenja zakona.

Zaključno, ovim istraživanjem nalazi se ogroman napredak u kaznenom pravu glede preventivnog i represivnog djelovanja na suzbijanju svih oblika nasilja u obitelji. Rad bi mogao biti i od iznimne važnosti za jačanje edukacije svih subjekata koji rade na prevenciji i zaštiti žrtve od nasilja u obitelji. Ta edukacija predstavlja veći značaj i izazov za sve institucije u sustavu (policiju, tužiteljstvo, sud, centar za socijalni skrb i nevladin sektor). Ovo istraživanje ima i aplikativnu vrijednost za pravnu praksu. Rezultati provedenog istraživanja ukazuju na nužnu prilagodbu bosansko-hercegovačkog kaznenog prava točnim definiranjem pojmova podjele nasilja u obitelji i ujednačavanjem svih važećih propisa u jedinstveni zakonski okvir nedvojbene i sigurne zaštite žrtava obiteljskog nasilja.

# **CRIMINAL PROTECTION AGAINST DOMESTIC VIOLENCE**

## **Abstract**

Family is the basic and natural foundation of human society. It has an important social role and it has to be protected by society and state. Protection from violence is the protection of basic human rights. It means that no-one in a family is to be discriminated or exposed to violence (physical, psychological, sexual or economic). From the criminal and legal point of view, domestic violence presents a complex issue. Therefore, a systematic analysis, such as the one implemented in this research, is to be performed. Theoretical and legal solutions and differences in opinions, which presented a base for better and more relevant legal solutions, were presented. Consequently, such solutions shall be more efficient in fighting domestic violence.

Pursuant to the available literature, this research indicates ontological and legal issues of domestic violence. Although legal protection refers primarily to individuals who are family members in a broad sense and who can be both actors or protection subjects, this paper scientifically deals with the protection of family as a protection subject. In order to approach the topic in a comprehensive manner, we looked at the history of violence in marriage and family as well as different types of protection from violence. Furthermore, we analysed legal frameworks of well-developed countries such as Austria and Germany. Special attention was paid to the legal framework of the Republic of Croatia and other regional countries. Laws of Bosnia and Herzegovina with four criminal and legal systems result in many scientific and professional issues although there are numerous provisions referring to misdemeanours, four Family Acts and four Acts on the Protection from Domestic Violence. The existing acts do not define family members, families or household members in the same manner. Inconsistency between these regulations, which present the base for the protection against domestic violence, requires urgent adjustments of the provisions of the Family Act referring to domestic violence, Act on the Protection from Violence and provisions of the Criminal Act referring to marriage and family protection. It is especially important to define the persons which need protection in all acts.

Certain criminal acts within the criminal law system or Criminal Act of Bosnia and Herzegovina were analysed by taking the structure of each individual criminal act into consideration. Within the context of each criminal act, each general term (activity, legal framework, illegality and guilt) was especially analysed together with special elements which can be found in the context of a certain criminal act.

Data provided by the Gender Centre, Canton Ministries of Interior and safe houses in Bosnia and Herzegovina referring to ten-year period (2006-2015) were collected in order to implement statistical analysis. The above defined data were analysed in accordance with the methods of descriptive statistics. The data indicate that the number of domestic violence reports significantly increased from the date when the Act on the Protection from Violence (2007) was brought to 2015. year. Mostly women were exposed to domestic violence (94% as opposed to 3% of man and around 3% of children). More and more women turn to competent institutions for help and protection. There is an increase in the number of applied protection measures in relation to the period before the Act entered into force.

In conclusion, this research found an extreme progress in the field of criminal law and in the field of preventive and repressive activities aiming to prevent all forms of domestic violence. The paper could be of extreme importance when educating persons working on prevention and protection of victims from domestic violence. Such education is even more important, and it presents a challenge for all institutions (police, prosecutor's office, court, social service and non-governmental organizations). This paper can also be applied in the field of law. The results of the research indicate that it is necessary to adjust Bosnian and Herzegovinian criminal law by precisely defining the terms in the field of domestic violence and by consistent implementation of all valid regulations into one legal framework which shall provide unambiguous and safe protection of all domestic violence victims.