

# **IS DOMESTIC VIOLENCE SANCTIONED?**

**Do perpetrators of domestic violence receive the sanction deserved?**



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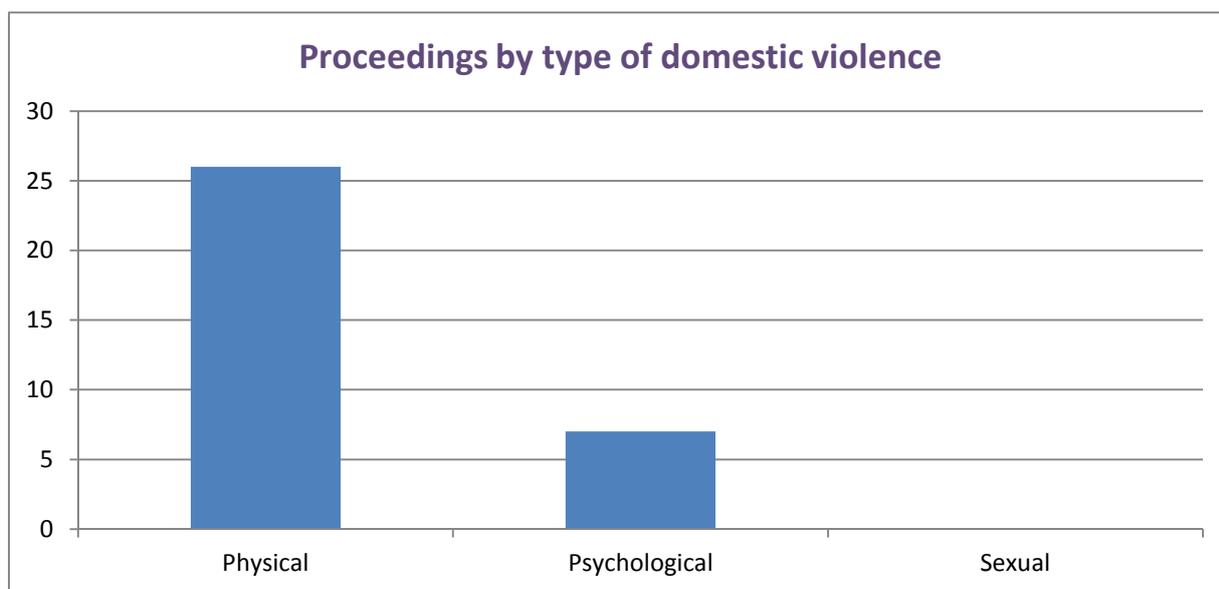
*All forms of domestic violence – physical, psychological, and sexual – have been punishable in our country since 2014. After as much as 15 years of application of the legally stipulated protection, the case law indicates inappropriate and untimely social response to this type of violence.*

### **THE CASE LAW POINTS OUT THAT:**

- Although punishable, the acts of psychological and sexual domestic violence are still not being punished...
- Domestic violence is not sanctioned all the way due to withdrawal from criminal proceedings for criminal acts done as part of domestic violence...
- Domestic violence perpetrators do not receive the sanction deserved, such that corresponds to the severity of such acts and the circumstances under which they take place...
- Justice is slow in cases of domestic violence...
- Women who have suffered domestic violence relive it and give testimony about the violence for the needs of the criminal proceedings...

## **ALTHOUGH PUNISHABLE, PSYCHOLOGICAL AND SEXUAL DOMESTIC VIOLENCE IS STILL NOT BEING PUNISHED...**

What gives rise to concern is the fact that no case has been made in front of the courts and no criminal proceedings have taken place aimed at protection of the victims of sexual domestic violence; also, no case has been made and no criminal proceedings have taken place to protect the victims of psychological domestic violence against the criminal acts Coercion of Article 139 paragraph 2 of the Penal Code and Illegal Deprivation of Freedom of Article 140 paragraph 2 of the same law. Out of the 33 criminal proceedings run on grounds of criminal acts perpetrated as an act of domestic violence, the majority involve criminal acts against the life and body, with the criminal act of Corporal Injury of Article 130 paragraph 2 of the Penal Code being the dominant one – a total of 16 procedures; six (6) procedures involved the criminal act of Murder of Article 123 paragraph 2 item 2 of the Penal Code, of which three (3) were cases of an attempted murder; finally, four (4) of those procedures involved the criminal act of Severe Corporal Injury of Article 131 paragraph 2 of the Penal Code. The second most frequent are proceedings involving the criminal act of Endangering Safety of Article 144 paragraph 2 of the Penal Code – a total of seven (7) proceedings.



This is also confirmed by the data obtained from the Basic Court Skopje 1 – Skopje for a period of four years (2015-2018). Out of 54 finished cases involving criminal acts done as a result of domestic violence, only one was related to the criminal act Coercion of Article 139 paragraph 2 of the Penal Code, with no received or ruled on cases involving criminal acts in the area of sexual violence.

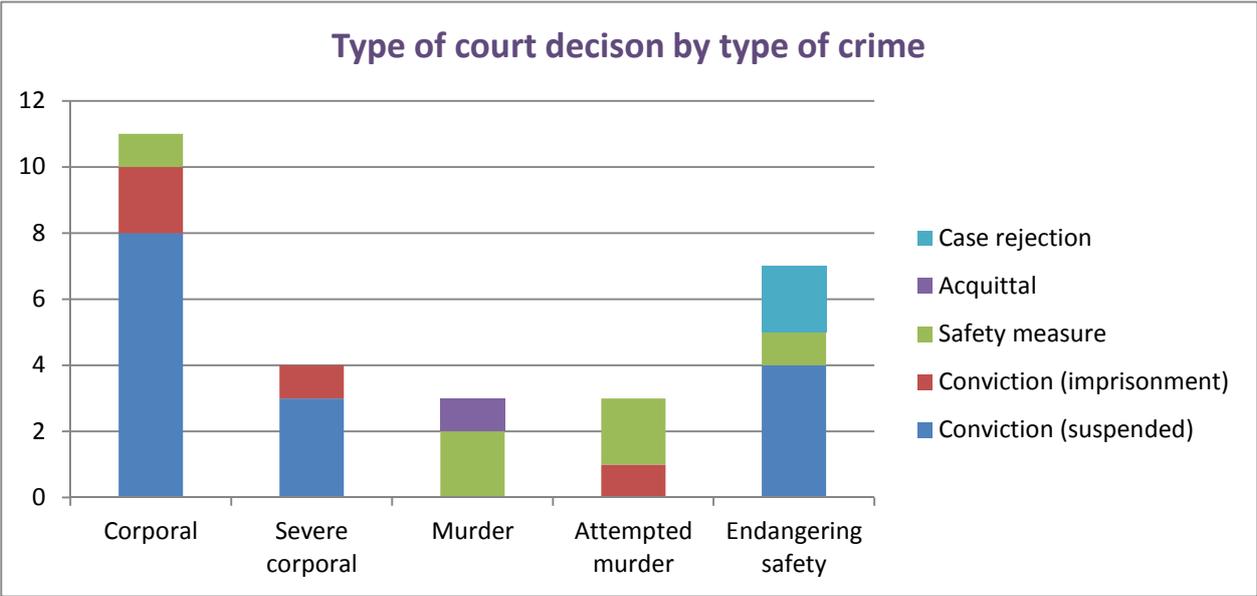
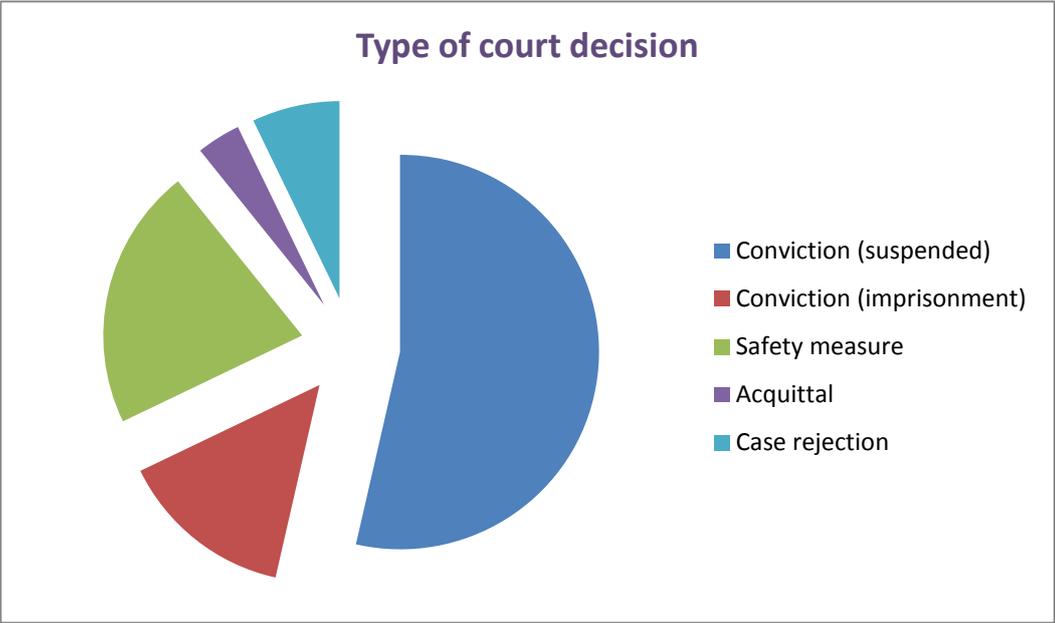
## **DOMESTIC VIOLENCE IS NOT SANCTIONED ALL THE WAY DUE TO WITHDRAWAL FROM CRIMINAL PROCEEDINGS FOR CRIMINAL ACTS DONE AS A RESULT OF DOMESTIC VIOLENCE...**

Withdrawals of prosecution proposals by the victims and withdrawals of the indictment by the Public Prosecutor's Office in domestic violence cases result in cessation of the proceedings and no sanctions for the perpetrators of violence. The judicial practice shows that such withdrawals are most frequent in proceedings involving the criminal act Corporal Injury of Article 130 paragraph 2 of the Penal Code. This criminal act is criminally prosecuted ex officio, however a previous proposal of the victim of domestic violence is required. Out of the sixteen (16) proceedings initiated on the grounds of this criminal act, the criminal proceedings against the perpetrators of this act of crime were ceased in five cases (30%) as a result of the petition having been withdrawn by the victim prior to the start of the main hearing. This means that the perpetrators remained unpunished. In addition to the practice of withdrawal of the victims, cases have also been observed in which the Basic Public Prosecution Office has withdrawn its indictment in the course of the main hearing in cases involving criminal acts prosecuted ex officio, as a result of lack of evidence.

## **DOMESTIC VIOLENCE PERPETRATORS DO NOT RECEIVE THE SANCTION DESERVED, SUCH THAT CORRESPONDS TO THE SEVERITY OF SUCH ACTS AND THE CIRCUMSTANCES UNDER WHICH THEY TAKE PLACE...**

The criminal sanctions for the domestic violence perpetrators are not proportional to the severity and circumstances under which the act has occurred. The penal policy practiced by the courts for this type of violence falls largely short of contributing to the reduction and elimination of the severe forms of domestic violence and of leading to ensuring protection against this type of violence. With such a penal policy, it is impossible to achieve justice or to prevent domestic violence perpetrators from conducting such criminal acts in the future or to rehabilitate them or to deter others from perpetrating such criminal acts. In most of the cases, the conviction decisions issued are conditional, even in cases of severe corporal injury. Of all of the 28 cases analyzed, the perpetrators were sanctioned by prison in only four (4) of them. In 15 cases, an alternative measure (a suspended sentence) was issued for the criminal acts of severe corporal injury, corporal injury, and endangering safety, whereas in six (6) other cases the courts imposed the safety measure of mandatory psychiatric treatment and hospitalization. One accused was acquitted and in two other instances the courts rejected the cases as a result of the indictment having been withdrawn in the course of the main hearing. Data from the analysis conducted show that the competent Public Prosecutor's Office appeals only a small portion of the court sentences, thus directly affirming and approving the mild penal policy of the court with regard to the criminal acts done as part of domestic violence. This is also the case with the second instance courts,

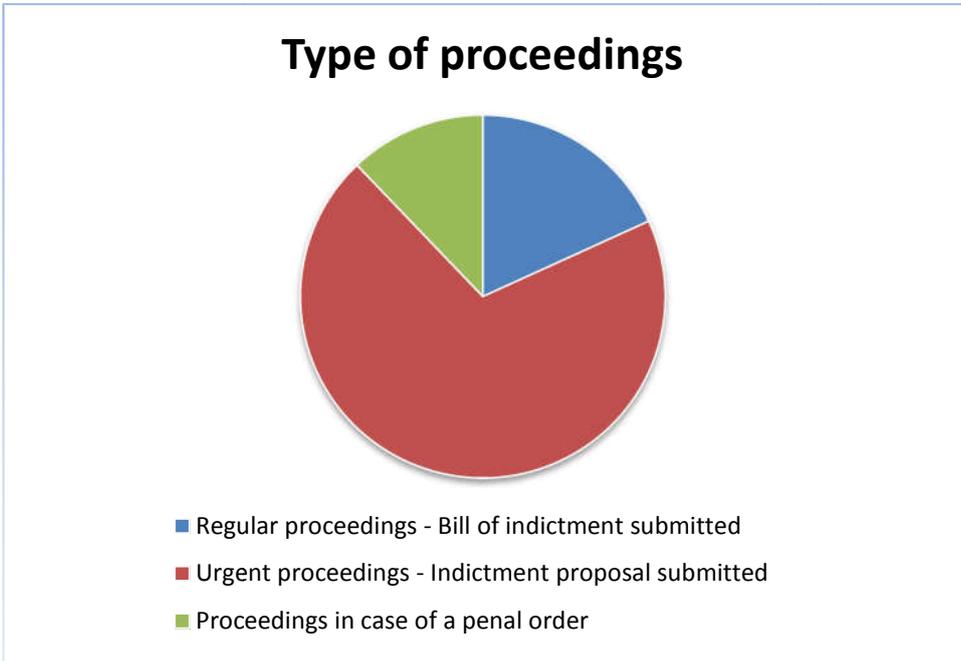
which also do not correct the mild penal policy of the basic courts, merely confirming the first-instance rulings in most of the cases.



It is worth noting that, despite the fact that the defendants never pleaded guilty and there were no special alleviating circumstances for the defendant regarding the conduct of the criminal act, the court mitigated the sanction, instead of imposing at least the minimum one. This was the practice in all courts analyzed. In addition, there is a court practice in which the majority of the cases no evidence is presented regarding the aggravating circumstances. Based on the analysis, it is evident that no evidence is presented related to any previous records of the defendant and everything comes down to the deposition of the defendant when his personal data are taken, particularly in cases dealt with in urgent

criminal proceedings. At the same time, no evidence is presented on the degree of criminal culpability of the defendant (planning the act of crime, considerable persistence in committing the criminal act), his motives (without any cause and reason, including ruthless behavior on part of the defendant in committing the act, insidiously, out of jealousy or envy), the circumstances under which the criminal act was committed (abusing the victim's frailty, multiple victims), whether the victim was vulnerable due to certain circumstances, whether the criminal act was committed over or in the presence of a child, whether the act was committed by one or more persons, whether the act was preceded or accompanied by extreme level of violence, or whether the act resulted in severe consequences for the victim.

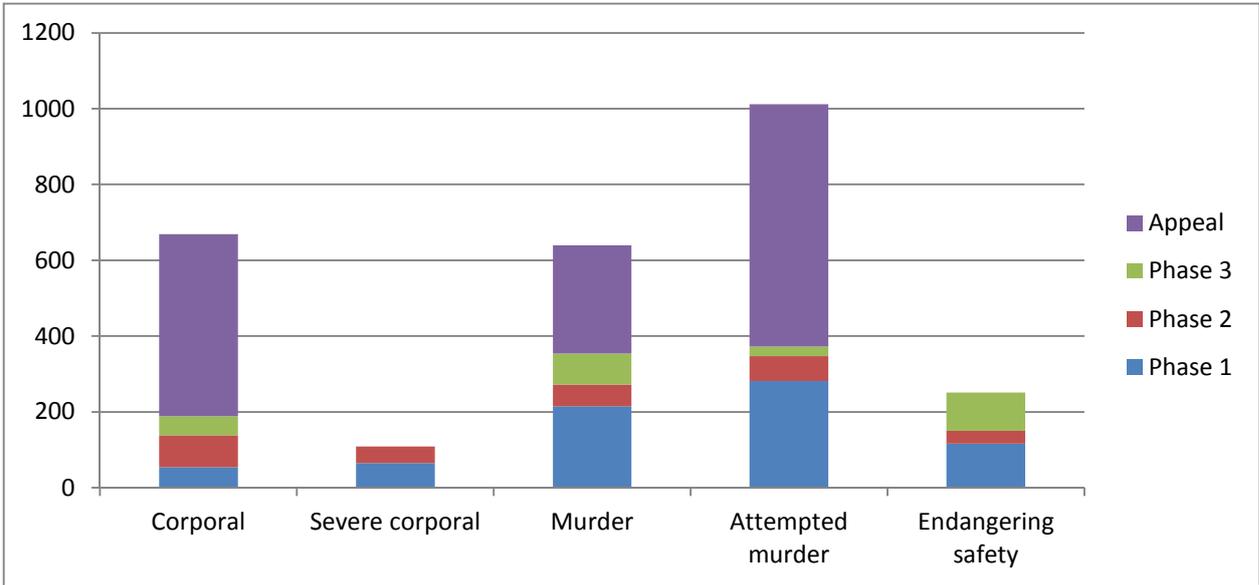
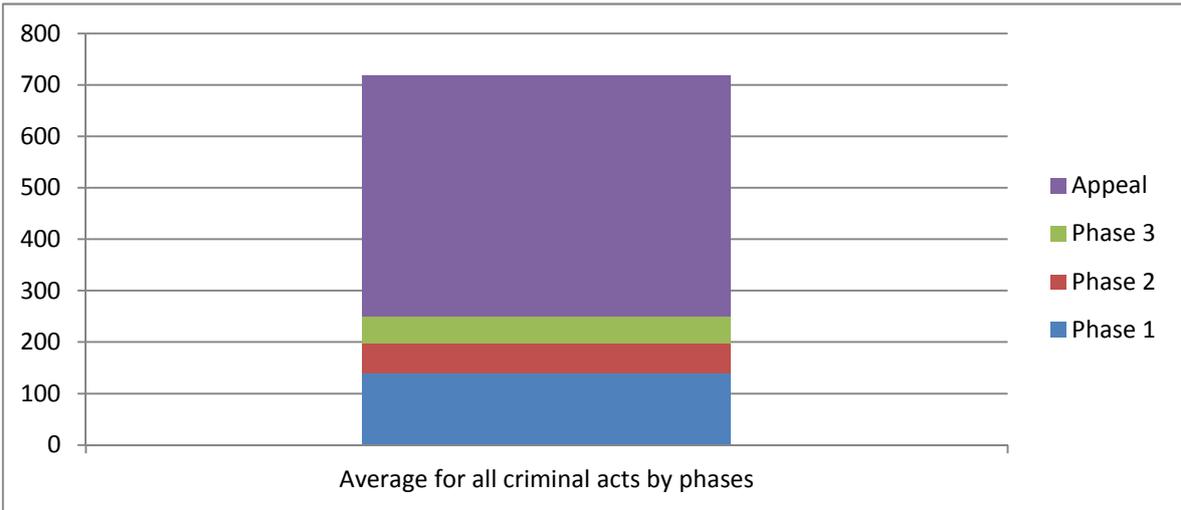
**In part, the mild penal policy is also due to the practice in some courts of reaching decisions based on a proposal for imposing a sanction submitted by the Public Prosecutor's Office in domestic violence cases; in such proceedings, the court is not authorized to impose the sanction of effective imprisonment.** The analysis showed that four out of 33 domestic violence proceedings involve the imposition of a sanction. In addition, the court monitoring data show that, out of the 556 court hearings observed, 28 involved proceedings ending in the issuance of penalty orders in cases of domestic violence. In these proceedings, the most frequently imposed criminal sanction against the perpetrator is that of a suspended imprisonment of up to three months. The application of the procedure of imposing a penalty order is not recommendable in ruling on criminal acts committed as an act of domestic violence, despite the fact that such procedures do not expose the victim of domestic violence to re-victimization, since the criminal acts of domestic violence pose a particular and enhanced social hazard and the imposition of pecuniary fines must not be proposed in cases of such criminal acts without hearing out the victim of domestic violence regarding the violence done unto her. This, at the very least, sends a bad message to the perpetrators.



***In addition, the mild penal policy is also contributed to by the existing practice in some courts of issuing rulings on the grounds of a confession of guilt by the domestic violence perpetrator (ruling based on a settlement between the public prosecutor and the defendant).*** The procedure of reaching a decision based on a settlement between the public prosecutor and the defendant is actually a mutual agreement in which both parties make some concessions from their initial position. This type of settlement is a form of active negotiations in which the defendant, in turn for the confession of committing the criminal act, waives the right to a trial against some concessions in the indictment or in the severity of the criminal sanction. In such proceedings, the victim's interests are represented by the public prosecutor, with the victim's role being a passive one. Thence, this type of proceedings is not appropriate in cases involving criminal acts such as domestic violence, as the victim of such violence is not given the legal possibility of agreeing or disagreeing with the type and severity of the sanction agreed upon.

# JUSTICE IS SLOW IN CRIMINAL PROCEEDINGS INVOLVING DOMESTIC VIOLENCE...

On average, the part of the proceedings following the occurrence of the act and until an indictment is filed – the first stage of the criminal proceedings – is the longest one. This stage takes 140 days on average, which is 56% of the duration of the first-instance proceedings; this is an indication that it is a period with a significant impact on the legal protection of the women who have suffered violence. The second stage (the period between the indictment and the main hearing) and the third one (the period between the main hearing and the final ruling), on the other hand, take 57 and 52 days on average, respectively, thus taking 44% of the overall duration of the first-instance criminal proceedings. Having in mind that both stages depend on the operation of the courts, this means that almost half of the duration of the first-instance proceedings depends on it. The most frequent reasons behind postponements – and thus delay – in the proceedings include the absence of the defendant, the absence of the defendant’s representative, preparations for or other proceedings in which the defendant is a party, etc. On average, the appeal procedure lasts twice as long as the first-instance proceedings.



## **WOMEN WHO HAVE SUFFERED DOMESTIC VIOLENCE RELIVE IT AND GIVE TESTIMONY ABOUT THE VIOLENCE FOR THE NEEDS OF THE CRIMINAL PROCEEDINGS...**

In nine (9) cases out of the total of 26 proceedings , i.e. in more than a third of the proceedings, the victim of domestic violence was heard during the presentation of evidence at the main hearing. This clearly points to the fact that of the victims of domestic violence are re-victimized during the main hearing in a significant portion of the cases. This is also confirmed by the data obtained during the review of court cases: in as much as in 176 out of the total of 186 hearings, the victim's deposition was not read out and she had to repeat their statement.

In addition to the presentation of the victim's statement as evidence, the inappropriate application of cross—examinations also contributes to the re-victimization of the victim. According to the data obtained during the monitoring of the courts, the victim was cross-examined by the defendant and his defense in 65% of the cases observed. The opinion of the judges with whom ESE cooperates indicate that the current practice of cross-examining the victim may contribute to re-victimization, which may in turn result in withdrawal of the criminal charges or in the victim refusing to make or changing the statement on the domestic violence committed. This is also partially due to the dilemmas surrounding the purpose of and lack of appropriate practice when it comes to cross-examination, with the role of the judge brought down to that of a passive arbiter.

## NEXT STEPS...

**Having in mind the needs established to ensure appropriate and timely legal protection of women who have suffered domestic violence, there is a need of intensifying the efforts to improve the punitive substantive and procedural law and particularly of consistently implementing such efforts.**

### **More specifically:**

- To ensure the sanctioning of all types of domestic violence, measures need to be undertaken to have the victims recognize and report any psychological and sexual violence, along with activities aimed at educating and sensitizing the police and public prosecution regarding these types of violence, with the only objective of having them detect the criminal acts committed and prosecuting the perpetrators of such acts.
- To ensure complete sanctioning of domestic violence criminal acts and no possibility for the victim to withdraw the criminal charges, Article 130 paragraph 4 of the law need to be changed in such a way that the wording “and for paragraph 2 at the proposal” are to be deleted, thus allowing for the criminal prosecution for the criminal act of corporal injury to be carried out ex officio, without requiring a previous petition by the victim of domestic violence. This will discourage the perpetrators and others from putting pressure on the victim of domestic violence to drop the criminal charges. This is to say that, on one hand, the victim would not have a legal possibility of doing so, and, on the other, every perpetrator of such a criminal act will be brought in front of a court, tried and convicted.
- To ensure that the perpetrators of domestic violence receive the sanction that is deserved, appropriate to the severity of and the circumstances under which the domestic violence has taken place, measures need to be taken aimed at imposing proper sanctions and considering all circumstances under which the violence has been committed. It is also recommendable that the procedure of issuing sanction orders is not applied at all in cases of domestic violence, as should not be the practice of ruling based on the confession of guilt by the perpetrator of domestic violence (a ruling based on a plea bargain between the public prosecutor and the accused).
- To achieve timely justice in cases of domestic violence, there is a need of specialization of judges who would decide on criminal acts as part of domestic violence and continuous education of such judges in this area.
- In order to avoid re-victimization, it is recommendable that the competent general Public Prosecutor’s Office, provided that it has sufficient evidence regarding the criminal act conducted, avoids proposing the examination of the victim as part of the presentation of evidence at the main hearing; in case the defendant requires that the victim be examined at the main hearing as part of the presentation of evidence, the court ought to specially assess the need of that in terms of the evidence presented and

to reject such proposals in most of the cases. To prevent the victimization of the victim prior to the commencement of the main hearing as ordered by the acting judge, the court police should prevent any contacts of the defendant with the victim by placing the latter in a separate room; in case no such technical conditions exist, the defendant should not be allowed to approach the victim at a distance of less than 5 meters.

## **ABOUT THE ANALYSIS...**

This brief overview of conclusions, findings and next steps is part of a wider analysis entitled Protection of Women Victims of Domestic Violence under the Criminal Law, conducted by the Association ESE under the USAID project for civil participation entitled Pathways to Justice for Women Victims of Domestic Violence. The conclusions and findings presented were established based on the data obtained during the review of 33 effectively completed cases in 2016 and 2017 involving criminal acts of domestic violence in the Basic Court Skopje 1 – Skopje (a court of extended competence), the Basic Court Veles (a court of extended competence), the Basic Court Radovish (a court of basic competence), and the Basic Court Gostivar (a court of extended competence). In addition to the data from the review of cases, the formulation of the key findings also involved an analysis of the data obtained during the monitoring of criminal and civil cases of domestic violence, conducted in ten basic courts in the country. The legal protection of women who have suffered domestic violence is one of the strategic commitments of ESE.

