

Visoka škola socijalnog rada,  
Beograd, Republika Srbija  
MEĐUNARODNA NAUČNA KONFERENCIJA

**AKTUELNOSTI U LOGOPEDIJI,  
OKUPACIONOJ TERAPIJI,  
PSIHOLOGIJI I SOCIJALNOM RADU**

***ALOPS22***

POGLED U BUDUĆNOST: HUMANISTIČKE NAUKE I PRAKSA

Zbornik radova sa međunarodne  
naučne konferencije

Beograd, Srbija  
01 - 02. decembar 2022. godine

**Izdavač: / Publisher:**  
Visoka škola socijalnog rada, Beograd, Srbija

**Za izdavača: / For publisher:**  
prof. dr Vladimir Ilić

**Glavni urednik**  
prof. dr Vladimir Ilić

**Odgovorni urednik:**  
prof. dr Milorad Đurić

**Urednici: / Editors:**  
prof. dr Veselin Medenica  
prof. dr Sanja Đurđević

**Urednik asistent: / Assistant editor:**  
ass. Aleksandar Stevanović

**Lektor za srpski jezik: / Proofreader for the Serbian language:**  
Nataša Nikolić

**Lektor za engleski jezik: / Proofreader for the English language**  
doc. dr Aleksandra Pavić Panić

**Tehnički urednik: / Technical editor**  
Petar Matić

ISBN: 978-86-81394-51-9

*Napomena: Knjiga apstrakata je objavljena kao zasebna publikacija pod ISBN brojem: 978-86-81394-46-5*

*Note: The book of abstracts is published as a separate publication under ISBN: 978-86-81394-46-5*

Beograd, 2023. godine

ORGANIZA

Visoka škola  
na škola IC  
kom logope  
The College  
the College  
cial Protecti  
ciation

MESTO I D  
Belgrade, 01

NAUČNI O

Prof. Vladim  
bia, Presiden  
Assist. Prof.  
Serbia  
Prof. Mirosl  
grade, Serbi  
Prof. Suada  
Sarajevo, Bo  
Prof. Andre  
govina, Bosn  
Prof. Katarin  
bljana, the R  
Assist. Prof.  
Singidunum  
Prof. Vesna  
Prof. Sanja  
Prof. Vladim  
of Philosoph  
North Mace  
Prof. Uglješ  
Montenegro  
Prof. Svetlan  
Prof. Ljiljana  
Prof. Christi  
tement of H

## POGLED NA NACIONALNU PRAVNU REGULATIVU VEZANU ZA NASILJE NAD STARIMA

Marta Sjeničić, Sanja Stojković Zlatanović, Ranko Sovilj

Centar za pravna istraživanja, Institut društvenih nauka, Beograd, Srbija

### Apstrakt

Izazvan ozbiljnošću problema i nedostatkom posebne regulative i zvanične pažnje, članak stavlja akcenat na pitanja zlostavljanja starijih i razmatra aktuelno nacionalno zakonodavstvo i soft-law zakonska rešenja za prevenciju i skrining, tretman zlostavljanih starijih osoba, kao i mere koje treba preduzeti u slučajevima zlostavljanja starijih. Nacionalni propisi u oblasti starenja nisu brojni, a nema onih koji regulišu isključivo pitanja prevencije nasilja nad starijima i reakcije države na njega. U regulatornom smislu u Srbiji je pitanje starenja u fokusu poslednjih nekoliko decenija i propis se uglavnom odnosi na zdravo starenje i unapređenje životne sredine koja na njega utiče. Kada je u pitanju kategorija starih lica, sudska praksa, bilo krivična, bilo građanska, ne prepoznaje slučajeve nasilja po godinama. U članku se ukazuje na neophodnost izdvajanja zakonskog akta, kao i jačanja multisektorske saradnje kako bi se starim licima i njihovim starateljima pružila podrška u svakodnevnom životu.

*Ključne reči:* stari, zlostavljanje, zanemarivanje, srpska regulativa, međusektorska saradnja

### UVOD

Nasilje je veliki društveni i javnozdravstveni problem. U svetu postoji sve veća zabrinutost zbog zlostavljanja starijih osoba. Svetska zdravstvena organizacija definiše nasilje nad starijom odraslom osobom kao „jedan ili ponovljen čin, ili nedostatak odgovarajuće akcije, koji se dešava u bilo kojoj vezi u kojoj postoji očekivanje poverenja, što nanosi



štetu ili uznemiravanje starijoj osobi" (WHO, Elder abuse, 2021). Prema klasifikaciji Nacionalnog centra u oblasti zlostavljanja starijih osoba u SAD (*National Center on Elder Abuse*) obično se prepoznaje šest vrsta nasilja nad starijim odraslim osobama: fizičko nasilje, psihološko – emocionalno nasilje, finansijsko i materijalno nasilje, seksualno nasilje, zanemarivanje i kršenje prava starijih osoba. Zlostavljanje starijih osoba ima višestruke posledice (Centre for Disease Control and Prevention, 2016, 97-98). Jedno istraživanje (Wong et al., 2016) ističe da zlostavljani ljudi pokazuju značajno pogoršanje zdravlja u poređenju sa starijim odraslim osobama koje nisu žrtve nasilja. Starije odrasle osobe koje su bile zlostavljane imaju 300% povećan rizik od smrti, pokazujući veći nivo psihičkog stresa i manju efektivnost. Do sada se o posledicama zlostavljanja govorilo na različitim nivoima – na nivou prava starijih osoba i mehanizma njihove zaštite. (Deutsches Institut für Menschenrechte, 2017).

Kada su u pitanju počinioci zlostavljanja ili zanemarivanja, oni se mogu naći u ambijentima sistemski i institucionalno generisanog nasilja, ali i u društvenom i porodičnom okruženju u kojem žive starije odrasle osobe. U nekim sistemima akcenat je više na institucionalnom, u drugim na nasilju u porodici, ali je, bez sumnje, potrebno imati u vidu nasilje koje se generiše na svim nivoima.

Zlostavljanje starijih donedavno je smatrano privatnom stvari, a tek u poslednjih nekoliko decenija razvijeni su odgovori javnog zdravlja i krivičnog pravosuđa da se tome suprotstave (European report on preventing elder maltreatment, 2011). Jedan broj evropskih zemalja bavi se zlostavljanjem starijih osoba na nivou smernica i aktivnosti u zajednici uz podršku državnih organa. Neke zemlje, kao što su Holandija i Nemačka, donele su propise nižeg nivoa ili smernice koje regulišu neke aspekte prevencije ili zaštite od zlostavljanja. Većina evropskih zemalja preduzima korake u praksi u okviru postojećeg opšteg pravnog okvira i vrlo često kao projektne aktivnosti, što ukazuje na nedostatak održivosti (Sjenčić, 2020).

Sudeći po usvojenom zakonodavstvu i sudskoj praksi, anglosaksonske zemlje su se mnogo ranije bavile pitanjima zlostavljanja starijih (Older Americans Act - OAA, 1965; Elder Justice Act, 2010; Elder Abuse Victims Act, 2009; Protection of the Abused, Neglected, or Exploited Disabled Adult Act, North Carolina, 1973; The Elder Abuse and Neglect Act, Illinois, 2005; Adult Support and Protection (Scotland) Act, 2007; Adult Care Amendment (Residential Care) Act, Australia, 1997/2007).

## **METODE**

Izazvani ozbiljnošću problema i nedostatkom posebne regulative i zvanične pažnje, autori stavljaju akcenat na pitanja zlostavljanja



starijih, razmatraju aktuelno međunarodno i domaće pravo i soft-law rešenja, nacionalnu sudsku praksu i terenska istraživanja, te ukazuju na neophodnost izdvajanja preventivnih i krivičnih propisa koji se odnose na zlostavljanje starijih u poseban deo srpskog zakonodavstva.

## REZULTATI

Nasilje nad starijima nije lako otkriti. Zlostavljanje i zanemarivanje starijih osoba obično se dešava u odnosima poverenja, iskorišćavanja fizičke ili emocionalne zavisnosti ili podređenog položaja. Zbog toga je potrebno više raditi na sofisticiranim metodama skrininga nasilja nad starijim osobama, koje treba sprovoditi organizovano, na različitim nivoima i u različitim sektorima, sa fokusom na isti cilj, odnosno zaštiti starijih od zlostavljanja i zanemarivanja. Nacionalni akti uglavnom se bave pitanjima nasilja u porodici i partnerskim odnosima, ali ne isključivo uzrocima, prevencijom i posledicama nasilja nad starijim osobama. Ustav, strateški dokumenti i sistemski zakoni prepoznaju osetljive grupe stanovništva i kroz ove krovne propise država nastoji da za njih obezbedi sprovođenje afirmativnih mera, na nivou principa i propisivanjem opštih obaveza vlasti. Mehanizmi za sprovođenje ovakvih zakonskih i strateških odredbi u velikom broju slučajeva, međutim, ili ne postoje, ili nisu dovoljno funkcionalni ili konkretizovani kroz podzakonske akte i u praksi.

## DISKUSIJA

### *Međunarodni dokumenti relevantni za prevenciju i zabranu nasilja nad starijim osobama*

Međunarodni pravni okvir u oblasti ljudskih prava važan je za Srbiju, jer je većina relevantnih međunarodnih dokumenata ratifikovana. Dokumenti koji se mogu koristiti za prevenciju i zabranu zlostavljanja starijih potpadaju, pre svega, pod opšti pravni okvir koji propisuje da se sva ljudska bića rađaju slobodna i jednaka u dostojanstvu i pravima (UN Universal Declaration of Human Rights, Član 1). Prava svakog lica na zaštitu svog psihičkog i fizičkog integriteta i zaštitu od nečovečnog i ponižavajućeg postupanja proizilaze iz različitih međunarodnih akata, iz kojih su transponovana u nacionalne propise. Član 7 Međunarodnog pakta o građanskim i političkim pravima (Transponovan kroz Zakon u srpsku regulativu - *Službeni list SFRJ*, 7/71) propisuje da niko ne može biti podvrgnut mučenju ili okrutnom, nehumanom ili ponižavajućem postupanju ili kažnjavanju. Konvencija UN protiv torture i drugih surovih, nehumanih ili ponižavajućih postupaka ili kažnjavanja (Transponovana



kroz Zakon - *Službeni list SFRJ*, 9/91) u članu 1 definiše torturu (Tortura je svaki akt kojim se jednom licu namerno nanose bol ili teške fizičke ili mentalne patnje u cilju dobijanja od njega ili nekog trećeg lica obaveštenja ili priznanja ili njegovog kažnjavanja za delo koje je to ili neko treće lice izvršilo ili za čije izvršenje je osumnjičeno, zastrašivanja tog lica ili vršenja pritiska na njega ili zastrašivanja ili vršenja pritiska na neko treće lice ili na bilo kojeg drugog razloga zasnovanog na bilo kom obliku diskriminacije ako taj bol ili te patnje nanosi službeno lice ili bilo koje drugo lice koje deluje u službenom svojstvu ili na njegov podsticaj ili sa njegovim izričitim ili prećutnim pristankom.), dok Konvencija o pravima osoba sa invaliditetom (Transponovana kroz Zakon - *Službeni glasnik RS*, 42/09) reguliše licnu slobodu i bezbednost osoba sa invaliditetom, na ravnopravnoj osnovi sa drugima. Član 15 Konvencije garantuje odsustvo torture ili okrutnog, nehumanog ili ponižavajućeg postupanja ili kažnjavanja osoba sa invaliditetom, dok član 16 obavezuje države ugovornice da preduzmu sve odgovarajuće zakonodavne, administrativne, socijalne, obrazovne i druge mere za zaštitu osoba sa invaliditetom, kako unutar, tako i van kuće, od svih oblika eksploatacije, nasilja i zlostavljanja, uključujući njihove radne zasnovane aspekte, pružanjem, između ostalog, odgovarajućih oblika rodno i starosno osetljive pomoći i podrške osobama sa invaliditetom i njihovim porodicama i starateljima, uključujući pružanje informacija i edukacija o tome kako izbeći, prepoznati i prijaviti slučajeve eksploatacije, nasilja i zlostavljanja. Države ugovornice će obezbediti da službe zaštite budu osetljive na uzrast, pol i invaliditet. Član 17 Konvencije propisuje da svaka osoba sa invaliditetom ima pravo na poštovanje svog fizičkog i psihičkog integriteta na ravnopravnoj osnovi sa drugima. Na regionalnom nivou usvojena je Konvencija za zaštitu ljudskih prava i osnovnih sloboda (Council of Europe, 1950), koja u čl. 3 predviđa zabranu torture.

Pored prava na zaštitu psihičkog i fizičkog integriteta i zaštitu od nečovečnog i ponižavajućeg postupanja, svako ima pravo na slobodu i bezbednost, kao i na zaštitu od samovoljnog lišenja slobode. Ova prava su sadržana u članu 9. Međunarodnog pakta o građanskim i političkim pravima, kao i članu 5. Konvencije Saveta Evrope o ljudskim pravima.

Pored toga, usvojeno je nekoliko dokumenata koji se posebno fokusiraju na pitanje starenja: Madridski međunarodni akcioni plan o starenju (United Nations Political Declaration and Madrid International Plan of Action on Aging, 2002), Globalna strategija i akcioni plan o starenju i zdravlju 2016-2030 (World Health Organization, Global Strategy and Action Plan on Aging and Health, 2017). Madridski međunarodni akcioni plan o starenju pruža prve globalne smernice o potrebi međugeneracijske solidarnosti i prilagođavanja novim demografskim, socijalnim, zdravstvenim i drugim izazovima. Globalna strategija i akcioni plan o



starenju i zdravlju 2016–2030. daju politički mandat za aktivnosti koje treba da omoguće svima da dožive dug i zdrav život.

Usvojeni akti predstavljaju okvir za kreiranje nacionalne politike o starijim osobama, zasnovane na ljudskim pravima, koja su u stvari zahtev svakog pojedinca državi: zahtev za brigom, zaštitom i garancijom da će njegova sloboda biti zaštićena (Deutsches Institut für Menschenrechte, 2017).

### *Pravni mehanizmi za zaštitu prava starijih osoba u Srbiji*

Nacionalni propisi u oblasti starenja nisu brojni, a onih koji regulišu isključivo pitanja prevencije nasilja nad starijim osobama i reagovanja države na njega nema. U regulatornom smislu pitanje starenja je u fokusu poslednjih nekoliko decenija (kao i u mnogim evropskim zemljama), a ovi propisi se uglavnom odnose na zdravo starenje i unapređenje životne sredine koja na njega utiče.

Ustav Srbije garantuje osnovna ljudska prava i slobode. Ustav ne pominje starije punoletne osobe kao posebnu društvenu grupu, osim što je članom 21 zabranjena diskriminacija, direktna ili indirektna, po bilo kom osnovu, uključujući starost kao jedan od posebnih osnova za diskriminaciju.

Postoji i niz zakonskih i podzakonskih akata koji se posredno odnose na starije punoletno stanovništvo, na primer: Zakon o socijalnoj zaštiti, Porodični zakon, Krivični zakonik, Zakon o prekršajima, Zakon o zdravstvenoj zaštiti, Zakon o sprečavanju diskriminacije osoba sa invaliditetom, Zakon o sprečavanju nasilja u porodici, Zakon o potvrđivanju Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici itd.

Pored Ustava, zakona i podzakonskih akata, za ovu temu su, u većoj ili manjoj meri, relevantni sledeći propisi: Nacionalna strategija o starenju, Strategija socijalne zaštite, Nacionalna strategija za prevenciju i suzbijanje nasilja nad ženama u porodici i u partnerskim odnosima, Opšti protokol o postupanju i saradnji ustanova, organa i organizacija u situacijama nasilja nad ženama u porodici i u partnerskim odnosima.

Iako svi stvaraju okruženje relevantno za prevenciju zlostavljanja starijih, samo nekoliko njih moglo bi se posebno primeniti na takve situacije. Član 3 Zakona o sprečavanju nasilja u porodici definiše nasilje u porodici kao „akt fizičkog, seksualnog, psihičkog ili ekonomskog nasilja učinioca prema licu sa kojim se učinilac nalazi u sadašnjem ili ranijem bračnom ili vanbračnom ili partnerskom odnosu ili prema licu sa kojim je krvni srodnik u pravoj liniji, a u pobočnoj liniji do drugog stepena ili sa kojim je srodnik po tazbini do drugog stepena ili kome je usvojitelj, usvojenik, hranjenik ili hranitelj ili prema drugom licu sa kojim živi ili je



živeo u zajedničkom domaćinstvu". Zakon reguliše postupak u slučaju utvrđivanja porodičnog zlostavljanja, uključujući i postupanje svih nadležnih organa: policije, javnog tužioca, suda, centra za socijalni rad i dr. Kada je reč o merama zaštite koje se mogu izreći, zakon upućuje na Porodični zakon.

Iako Porodični zakon (član 197) opštije definiše nasilje u porodici, on propisuje mere zaštite od nasilja u porodici (član 198).

Krivični zakonik ne sankcioniše posebno nasilje nad starijim licima, ali se i na ovu situaciju mogu primeniti odredbe koje regulišu određena krivična dela. Ova krivična dela su nasilje u porodici (član 194), nepravilno izdržavanje (član 195) i povreda porodičnih obaveza (član 196), koje se najčešće primenjuju u krivično-sudskoj praksi. Odredbe kojima se uređuju sledeća krivična dela mogu se primeniti i na slučajeve nasilja: zanemarivanja starijih punoletnih lica: napuštanje nemoćnog lica (član 126), seksualni napad na nemoćno lice (član 179) i zloupotreba poverenosti (član 216) - sve u zavisnosti od oblika zlostavljanja ili zanemarivanja.

Nacionalna strategija o starenju (u daljem tekstu: Strategija) doneta je za period 2006–2015. godine. Nova strategija za kasniji period još nije usvojena. Strategije donosi Vlada Srbije i predstavljaju planove za celu godinu. Dakle, one nisu direktno implementirane, već su svojevrsne smernice za delovanje u određenom periodu i u određenoj životnoj oblasti. Strategija se bavila pitanjem prilagođavanja sistema socijalne zaštite socijalnim i ekonomskim posledicama starenja stanovništva. Jedan od opštih ciljeva bilo je razvijanje oblika socijalne podrške porodici i pomoći starijim osobama u njihovom prirodnom životnom okruženju. Predviđeno se daje razvoju onih vidova podrške i oblika usluga koji omogućavaju starijim licima, ugroženim nepovoljnim životnim okolnostima, da ostanu u svom domaćinstvu i poznatom okruženju, po mogućnosti do kraja života. Strategija se indirektno bavi sistemom otkrivanja zanemarivanja starije osoba, a direktno se odnosi i na razvoj usluga pomoći starijim osobama u njihovim porodicama u zajednici, takođe u cilju sprečavanja zlostavljanja i zanemarivanja. Posebno se bavi promocijom rodne ravnopravnosti, naglašavajući važnost promovisanja i negovanja rodne ravnopravnosti u starosti. Jedna od aktivnosti u cilju ostvarivanja cilja rodne ravnopravnosti jeste prevencija pojave zanemarivanja, zlostavljanja i nasilja nad starijim odraslim osobama, posebno ženama, ublažavanje i otklanjanje posledica donošenjem i primenom protokola o saradnji svih učesnika u zaštiti starijih, od nacionalnog do nivoa lokalne zajednice, kao i organizovanje kampanja protiv različitih vidova diskriminacije i nasilja, stvaranjem lokalnih sistema podrške žrtvama zanemarivanja, zlostavljanja i nasilja.

Sledeći relevantan fokus Strategije jeste promovisanje solidarnosti između članova porodice u porodicama, uključujući starije osobe.



osobe. Domaćinstva koja imaju starije odrasle članove postaju ranjiva, pa im je potrebno više pažnje u kreiranju programa podrške porodici, uz istovremeno uvažavanje ekonomskih, kulturnih, etničkih i drugih specifičnosti. Duži životni vek dovodi do pojave višegeneracijskih porodica. Društvena previranja u proteklim decenijama dovela su do toga da pripadnici različitih generacija imaju potpuno različita životna iskustva i različite vrednosti, što je često izvor sukoba i netolerancije. Iz tih razloga tolerancija prema različitim društvenim iskustvima generacija i međugeneracijska solidarnost moraju se mnogo aktivnije negovati.

Strategijom je predviđeno da društvena zajednica, u okviru postojećih resursa i prakse, treba da se uključi u podršku porodici indirektno - kroz različite oblike usluga starijim odraslim osobama.

Nosioci svih navedenih aktivnosti su: Vlada, Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja, Ministarstvo zdravlja, područni organi i organi jedinica lokalne samouprave, ustanove socijalne i zdravstvene zaštite, u saradnji sa privatnim sektorom i nevladinim, humanitarnim organizacijama i udruženjima građana. Rok za realizaciju velikog broja aktivnosti bio je od 2006. do 2010. godine, pa nadalje.

Strategija, dakle, uopšteno reguliše podršku zajednice starijim osobama kroz planiranje usluga u zajednici, kao i podršku neformalnim negovateljima. Ne bavi se eksplicitno uzrocima i posledicama zanemarivanja i zlostavljanja starijih osoba, ali svakako stvara uslove za prevenciju takvog ponašanja, pružajući osnovu za razvoj usluga koje omogućavaju veću samostalnost starijih osoba. Takođe, obezbeđuje plan promene zakonske regulative u cilju postizanja zacrtanih ciljeva. Iako dobar plan, Strategija je realizovana samo u fragmentima. Razvoj usluga i izmena zakonske regulative još uvek nisu preduzeti. Same aktivnosti nisu pretočene u konkretne regulatorne mere. Nosioci aktivnosti su određeni generalno, gotovo jednoobrazno za sve mere, a rokovi u praksi nisu ispoštovani.

Uopšteno govoreći, navedeni nacionalni akti uglavnom se bave nasiljem u porodici i partnerskim odnosima. Ne bave se isključivo uzrocima, prevencijom i posledicama nasilja nad starijim osobama. S druge strane, Nacionalna strategija o starenju bavi se starenjem uopšte, pa i pitanjem nasilja, ali na opšti način, što je zajednička karakteristika opštih akata kao što su strategije.

Nacionalni zdravstveni i socijalno pravni sistem, dakle, prepoznaje osetljive društvene grupe uopšte kroz Ustav, strateške dokumente i sistemske zakone. Ovom krovnom uredbom država nastoji da obezbedi sprovođenje afirmativnih mera za ugrožene grupe na nivou principa i propisivanjem opštih obaveza organa vlasti, odnosno prava pripadnika ovih grupa. Mehanizmi za sprovođenje ovakvih zakonskih i strateških



odredbi, međutim, u velikom broju slučajeva ili ne postoje, ili nisu dovoljno funkcionalni ili konkretizovani kroz podzakonske akte i u praksi.

### *Srpska sudska praksa vezana za slučajeve zlostavljanja starijih*

Sudska praksa Vrhovnog kasacionog suda Srbije (VKS), kako krivična, tako i građanska, ne razlikuje slučajeve nasilja prema uzrastu, odnosno ne priznaje nasilje nad starijim punoletnim licima. U sudskoj praksi o nasilju, nasilje u porodici izdvaja se kao posebna kategorija. Odluke u građanskim stvarima VKS daju široka objašnjenja, iz kojih se može zaključiti o kojoj vrsti nasilja se radi, odnosno ko je žrtva, a ko počinitelj. Presude se uglavnom pozivaju na već pomenute članove 197 i 198 Porodičnog zakona, kao i na Zakon o sprečavanju nasilja u porodici, koji se smatra relevantnim u celini (Odluka Vrhovnog kasacionog suda Srbije, Rev 2201/2017, 1. novembar 2017, na odluku Apelacionog suda u Beogradu Gž2 271/17, 27. april 2017, na odluku Trećeg osnovnog suda u Beogradu P2 260/14, 22. septembar 2014. <https://www.vk.sud.rs/sr-lat/rev-22012017-za%C5%A1tita-od-nasilja-u-porodici>, poslednji put pristupljeno 4. septembra 2021; Odluka Vrhovnog kasacionog suda Rev 3564/2018, 21. jun 2018, na odluku Apelacionog suda u Novom Sadu Gž2 112/18, 7. mart 2018, na odluku Osnovnog suda u Staroj Pazovi, P2 200/17, 21. decembar 2017. <https://www.vk.sud.rs/sr-lat/rev-35642018-za%C5%A1tita-od-nasilja-u-porodici>, poslednji put pristupljeno 4. septembra, 2021; Odluka Vrhovnog kasacionog suda, Rev. 3629/2018, 21. jun 2018, <https://www.vk.sud.rs/sr-lat/rev-36292018-porodi%C4%8Dno-pravo-za%C5%A1tita-od-nasilja-u-porodici>, poslednji put pristupljeno 4. septembra 2021; Odluka Vrhovnog kasacionog suda Rev. 4775/2019, 28. novembra 2019, na odluku Apelacionog suda u Novom Sadu, Gž2 328/19, 27. jun 2019, na odluku P2n 325/18 i odluku na troškove postupka Osnovnog suda u Somboru P2n 325/18, 10. aprila 2019, <https://www.vk.sud.rs/sr-lat/rev-47752019-314181-314182>, poslednji put pristupljeno 5. septembra 2021).

Kada je reč o krivičnim stvarima, VKS se obično poziva na članove 193 i 194 Krivičnog zakonika koji sankcionišu zanemarivanje, zlostavljanje i nasilje u porodici, a dotiču se i uzrasta, ali samo ako je žrtva maloletna, u kom je slučaju inkriminacija teža. Starije osobe nisu posebno izdvojene kao žrtve (Krivični zakonik RS, član 194: „(1) Ko primenom nasilja, pretnjom da će napasti na život ili telo, drskim ili bezobzirnim ponašanjem ugrožava spokojstvo, telesni integritet ili duševno stanje člana svoje porodice, kazniće se zatvorom od tri meseca do tri godine. (2) Ako je pri izvršenju dela iz stava 1. ovog člana korišćeno oružje, opasno oruđe ili drugo sredstvo podobno da telo teško povredi ili zdravlje teško naruši, učinilac će se kazniti zatvorom od šest meseci do pet godina. (3) Ako je



usled dela iz st. 1. i 2. ovog člana nastupila teška telesna povreda ili teško narušavanje zdravlja ili su učinjena prema maloletnom licu, učinilac će se kazniti zatvorom od dve do deset godina. (4) Ako je usled dela iz st. 1. i 2. ovog člana nastupila smrt člana porodice, učinilac će se kazniti zatvorom od pet do petnaest godina, a ako je član porodice maloletno lice učinilac će se kazniti zatvorom najmanje deset godina. (5) Ko prekrši mere zaštite od nasilja u porodici koje mu je sud odredio na osnovu zakona kojim se uređuju porodični odnosi, kazniće se zatvorom od tri meseca do tri godine i novčanom kaznom.”).

Jasno je, dakle, da je u vreme pisanja zakona zakonodavac osetljivost pripisivao prvenstveno maloletnicima.

### ZAKLJUČCI I OGRANIČENJA

Srpsko zakonodavstvo je uglavnom ujednačeno kada su u pitanju slučajevi zlostavljanja, kako za opštu populaciju, tako i za specifične osetljive grupe. Razlikuje se po osnovu osetljivosti samo u slučaju maloletnih žrtava, pa su krivična dela strože sankcionisana kada su žrtve osobe mlađe od 18 godina. Nacionalna strategija o starenju upućuje na neophodnost izmene zakonodavstva u cilju zaštite starijih punoletnih lica od zlostavljanja i zanemarivanja. Međutim, još uvek nisu preduzete nikakve konkretne aktivnosti.

Da bi se pažnja skrenula na stariju odraslu populaciju, neophodno je doneti podzakonske i *soft-law* propise kojima bi se propisale konkretne mere državnih organa, organizacija civilnog društva i drugih društvenih aktera, u cilju skrininga nasilja, prevencije nasilja nad starijim osobama, tretman starijih odraslih žrtava, uključujući forenziku, te mere prema počiniocima. Nacionalni pravni sistem već sadrži protokole za prevenciju nasilja nad ženama i decom. Pošto starije osobe čine osetljivu grupu sa svojim specifičnostima, i njima je potreban poseban protokol.

Kada su u pitanju slučajevi zlostavljanja starijih osoba, važno je da sistemski odgovor bude multidisciplinarnan i koordinisan. Stoga bi bilo korisno razvijati partnerstva između aktera iz različitih oblasti: pravosuđa (tužilaštvo, građanski i krivični sudovi, advokatske komore, sudski veštaci), socijalne zaštite (centri za socijalni rad, rezidencijalne ustanove) i zdravstvene zaštite. Pre ili istovremeno sa međusektorskom saradnjom svaki od ovih sektora treba unaprediti kada je u pitanju procesuiranje slučajeva zlostavljanja starijih odraslih osoba. U oblasti prevencije i skrininga zlostavljanja starijih osoba neophodno je uvesti instrumente za organizovani skrining zlostavljanja u svim sektorima, pre svega u socijalnoj i zdravstvenoj zaštiti.



Mera koja se može uvesti bez ikakvih organizacionih i zakonskih promena je kontinuirana edukacija zaposlenih u sistemu pravosudnih aktivnostima koje treba preduzeti u slučajevima zlostavljanja starijih odraslih osoba. Edukacija je neophodna i za zaposlene u zdravstvenom i sistemu socijalne zaštite u vezi sa skriningom na zloupotrebe i drugim postupcima.

Konačno, trebalo bi primeniti već postojeće odredbe Nacionalne strategije o starenju koje se odnose na razvoj različitih aktivnosti podrške mera i međugeneracijsku solidarnost.

*Rad je napisan u okviru Programa istraživanja Instituta društvenih nauka za 2022. Godinu, koji podržava Ministarstvo nauke, tehnološkog razvoja i inovacija.*

## LITERATURA

- Adult Support and Protection (Scotland) Act. (2007). Dostupno na: [http://www.legislation.gov.uk/asp/2007/10/pdfs/asp\\_20070010\\_en.pdf](http://www.legislation.gov.uk/asp/2007/10/pdfs/asp_20070010_en.pdf). Poslednji put pristupljeno 29. avgusta 2021.
- Aged Care Amendment (Residential Care) Act. (1997(2007)). Dostupno na: <https://www.legislation.gov.au/Details/C2007A00109>. Poslednji put pristupljeno 28. avgusta 2021.
- CoE.(1950). Convention for the Protection of Human Rights and Fundamental Freedoms. Dostupno na: [https://www.echr.coe.int/document/convention\\_eng.pdf](https://www.echr.coe.int/document/convention_eng.pdf). Last accessed 29. avgusta 2021
- Ustav RS, *Službeni glasnik RS*, br. 98/2006.
- Krivični zakonik Srbije, *Službeni glasnik RS*, br. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016. i 35/2019.
- Odluka o programu za zaštitu žena od nasilja u porodici i u partnerskim odnosima i drugih oblika rodno zasnovanog nasilja u AP Vojvodini za period od 2015. do 2020. godine, *Službeni list AP Vojvodine*, br. 54/2014.
- Deutsches Institut für Menschenrechte. (2017). *Alterdiskriminierung und die Rolle der Aelterer auf Freiheit von Gewalt, Misshandlung und Vernachlässigung*. Dostupno na: [https://www.institut-fuer-menschenrechte.de/files/2017/07/Redaktion/Publikationen/Dokumentation\\_Fachgespraech\\_Berlin\\_Aelterer.pdf](https://www.institut-fuer-menschenrechte.de/files/2017/07/Redaktion/Publikationen/Dokumentation_Fachgespraech_Berlin_Aelterer.pdf). Poslednji put pristupljeno 7. septembra 2021.
- Elder Abuse and Neglect Act, Illinois. (2005). Dostupno na: <https://law.justia.com/codes/illinois/2005/chapter31/1452.html>, Poslednji put pristupljeno 7. septembra 2021.
- Elder Justice Act, USA. (2010). Dostupno na: <https://acl.gov/about-acl/elder-justice-act>; &[https://www.ssa.gov/OP\\_Home/ssact/title20/2010.htm](https://www.ssa.gov/OP_Home/ssact/title20/2010.htm). Poslednji put pristupljeno 5. septembra 2021.
- Porodični zakon RS, *Službeni glasnik RS*, br. 18/2005, 72/2011. i 6/2015.



- Opšti protokol za zaštitu dece od zlostavljanja i zanemarivanja (2009). Ministarstvo za rad, zapošljavanje i socijalna pitanja.
- Opšti protokol o postupanju i saradnji ustanova, organa i organizacija u situacijama nasilja nad ženama u porodici i u partnerskim odnosima (2011). Vlada RS.
- Zakon o zdravstvenoj zaštiti, *Službeni glasnik RS*, br. 25/2019.
- Zakon o prekršajima RS, *Službeni glasnik RS*, br. 65/2013, 13/2016, 98/2016, 91/2019. i 91/2019.
- Zakon o vanparničnom postupku RS, *Službeni glasnik SRS*, br. 25/82. i 44/88, *Službeni glasnik RS*, br. 46/95, 18/2005, 85/2012, 45/2013, 55/2014, 6/2015, 106/2015.
- Zakon o sprečavanju diskriminacija osoba sa invaliditetom, *Službeni glasnik RS*, br. 33/06. i 13/16.
- Zakon o sprečavanju nasilja u porodici, *Službeni glasnik RS*, br. 94/16.
- Zakon o potvrđivanju konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici, *Službeni glasnik RS*, br. 12/13.
- Zakon o socijalnoj zaštiti RS, *Službeni glasnik RS*, br. 24/2011.
- Nacionalna strategija za sprečavanje i suzbijanje nasilja nad ženama u porodici i u partnerskim odnosima, *Službeni glasnik RS*, br. 27/11.
- National Strategy on Aging of RS, Official Gazette of RS, no. 76/06
- Older Americans Act - OAA (1965). Dostupno na: <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>, Poslednji put pristupljeno 6. septembra 2021.
- Protection of the Abused, Neglected or Exploited Disabled Adult Act, North Carolina (1973). Dostupno na: [https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_108A/Article\\_6.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_108A/Article_6.html), Poslednji put pristupljeno 5. septembra 2021.
- Rulebook on Detailed Conditions and Standards for the Provision of SOS Telephone Services for the Women that Experienced Violence, Official Gazette of RS, no. 93/15.
- Pravilnik o organizaciji, normativima i standardima rada centra za socijalni rad, *Službeni glasnik RS*, br. 59/2008, 37/2010, 39/2011, 1/2012, 51/2019, 12/2020. i 83/2022.
- Sjeničić, M. 2020. *Pravni aspekti nasilja nad starijim osobama*. ISBN 978-86-7093-239-5, 1-143.
- Posebni protokol za zaštitu dece i učenika od nasilja, zlostavljanja i zanemarivanja u obrazovno-vaspitnim ustanovama (2010). Ministarstvo prosvete.
- Posebni protokol za zaštitu dece od zlostavljanja i zanemarivanja u ustanovama socijalne zaštite (2012). Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja.

- Posebni protokol sistema zdravstvene zaštite za zaštitu dece od zlostavljanja i zanemarivanja (2014). Ministarstvo zdravlja.
- Strategija socijalne zaštite, *Službeni glasnik RS*, br. 108/ 05.
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Dostupno na: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>. Poslednji put pristupljeno 2. septembra 2021.
- UN Convention on the Rights of Persons with Disabilities. (2006). Dostupno na: [https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf). Poslednji put pristupljeno 3. septembra 2021.
- UN Political Declaration and Madrid International Plan of Action on Ageing. (2002). Second World Assembly on Ageing, Madrid, Spain. Dostupno na: <https://www.un.org/esa/socdev/documents/ageing/MIPAA/political-declaration-en.pdf>. Poslednji put pristupljeno 3. septembra 2021.
- UN Universal Declaration of Human Rights (1948). Dostupno na: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Poslednji put pristupljeno 2. septembra 2021.
- WHO, Regional Office for Europe. (2011). European report on preventing elder maltreatment. Dostupno na: [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0010/144676/e95110.pdf](https://www.euro.who.int/__data/assets/pdf_file/0010/144676/e95110.pdf). Poslednji put pristupljeno 30. avgusta 2021.
- WHO (2017). Global Strategy and Action Plan on Aging and Health. Dostupno na: <https://www.who.int/ageing/WHO-GSAP-2017.pdf>. Poslednji put pristupljeno 9. septembra 2021.
- WHO (2021). Elder Abuse. Dostupno na: <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>. Poslednji put pristupljeno 9. septembra 2021.
- Wong, J. S., Waite, L. J. (2016). Elder Mistreatment Predicts Later Physical and Psychological Health: Results from a National Longitudinal Study. *Journal of Elder Abuse & Neglect*. 29(1). 15-42. doi: 10.1080/08946566.2016.1235520.



## OUTLOOK ON LEGAL REGULATION OF ELDER ABUSE IN SERBIA

Marta Sjeničić, Sanja Zlatanović, Ranko Sovilj

Centre for Legal Researches, Institute of Social Sciences, Belgrade, Serbia

### Abstract

*Provoked by the seriousness of the problem and lack of specific regulation and official attention, the article puts emphasis on the elder abuse issues and discusses current national law and soft-law solutions for the prevention and screening, treatment of the abused elderly, as well as measures that should be undertaken in the elder abuse cases. National regulations in the field of ageing are not numerous, and there are none that regulate exclusively the issues of prevention of violence against the elderly and the state's reaction to it. In regulatory terms, in Serbia, the issue of ageing has been in focus for the last few decades and the regulation mainly refers to healthy ageing and the improvement of the environment that affects it. When it comes to the category of the elderly, jurisprudence, either criminal or civil, does not recognize cases of violence by age. The article points out the necessity to extract the preventive and criminal regulations relating to elder abuse, as a separate piece of legislation, as well as to strengthen multisectoral cooperation in order to provide the elderly and their caregivers with support in everyday life.*

**Keywords:** *elderly, abuse, neglect, Serbian legislation, multisectoral cooperation*

## INTRODUCTION

Violence is a major social, societal and public health problem. There is an increasing concern globally about the maltreatment of older adults. World Health Organization defines violence against the older adult as "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person." (WHO, Elder abuse, 2021). According to the classification of the National Centre for Elder Abuse in the USA (National Centre on Elder Abuse), six types of violence against the older adult are usually recognized: Physical violence; Psychological - emotional violence; Financial and material violence; Sexual violence; Neglect; and, Violation of the rights of older adults. Abuse of older adults has multiple consequences (Centres for Disease Control and Prevention, 2016, 97-98). A piece of research (by Wong et al., 2016) points out that abused people show a significant deterioration in health compared to older adults who are not victims of violence. Older adults who have been abused are at a 300% increased risk of death, showing higher levels of psychological stress and less efficiency. So far, the consequences of abuse have been discussed at various levels, including the level of rights of older adults and the mechanism for their protection (Deutsches Institut für Menschenrechte, 2017).

When it comes to perpetrators of abuse or neglect, they can be found in settings of systemically and institutionally generated violence, but also in the social and family environment in which older adults live. In some systems, the emphasis is more on institutional, in others on domestic violence, but, without a doubt, it is necessary to keep in mind the violence generated at all levels.

Elder maltreatment was regarded as a private matter until recently, and only in the last few decades have public health and criminal justice responses been developed to counter it (European report on preventing elder maltreatment, 2011). A number of European countries deal with the abuse of older adults at the level of guidelines and activities in the community, with the support of state bodies. Some countries, such as the Netherlands and Germany, have enacted lower-level regulations or guidelines governing some aspects of prevention or protection against abuse. Most European countries take steps in practice, within the existing general legal framework and very often as project activities, which indicates a lack of sustainability (Sjeničić, 2020).

Judging upon the adopted legislation and jurisprudence, the Anglosphere countries addressed elder maltreatment much earlier (Older



Americans Act - OAA, 1965; Elder Justice Act, 2010; Elder Abuse Victims Act, 2009; Protection of the Abused, Neglected, or Exploited Disabled Adult Act, North Carolina, 1973; The Elder Abuse and Neglect Act, Illinois, 2005; Adult Support and Protection (Scotland) Act, 2007; Aged Care Amendment (Residential Care) Act, Australia, 1997/2007).

## **METHODS**

Provoked by the seriousness of the problem and the lack of specific regulation and official attention, the article puts emphasis on elder abuse issues, discusses current international and national law and soft-law solutions, national jurisprudence and field research, and points out the necessity to extract the preventive and criminal regulations relating to elder abuse into a separate piece of Serbian legislation.

## **RESULTS**

The abuse of the elderly is not easy to discover. Violence against and neglect of older adults usually occur in relationships of trust, exploiting physical or emotional dependence, or subordinate position. That is why it is necessary to work more on sophisticated methods of screening violence against older adults, which should be undertaken in an organized manner, at different levels and in different sectors, with the focus on the same goal, i.e. to protect the older adults from abuse and neglect. The national acts deal mainly with violence in the family and partner relationships, and not exclusively with the causes, prevention and consequences of violence against older adults. Constitution, strategic documents and systemic laws recognize vulnerable population groups and through this umbrella regulation, the state strives to ensure the implementation of affirmative measures for them, at the level of principles and by prescribing general obligations of the authorities. Mechanisms for the implementation of such legal and strategic provisions, in a large number of cases, however, either do not exist or are not sufficiently functional or concretized through bylaws and in practice.

## **DISCUSSION**

### *International documents relevant to the prevention and prohibition of elder abuse*

The international legal framework in the area of human rights is important for the Serbian situation since most of the relevant international documents have been ratified. Documents that might be used for the



## INTRODUCTION

Violence is a major social, societal and public health problem. There is an increasing concern globally about the maltreatment of older adults. World Health Organization defines violence against the older adult as "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person." (WHO, Elder abuse, 2021). According to the classification of the National Centre for Elder Abuse in the USA (National Centre on Elder Abuse), six types of violence against the older adult are usually recognized: Physical violence; Psychological - emotional violence; Financial and material violence; Sexual violence; Neglect; and, Violation of the rights of older adults. Abuse of older adults has multiple consequences (Centres for Disease Control and Prevention, 2016, 97-98). A piece of research (by Wong et al., 2016) points out that abused people show a significant deterioration in health compared to older adults who are not victims of violence. Older adults who have been abused are at a 300% increased risk of death, showing higher levels of psychological stress and less efficiency. So far, the consequences of abuse have been discussed at various levels, including the level of rights of older adults and the mechanism for their protection (Deutsches Institut für Menschenrechte, 2017).

When it comes to perpetrators of abuse or neglect, they can be found in settings of systemically and institutionally generated violence, but also in the social and family environment in which older adults live. In some systems, the emphasis is more on institutional, in others on domestic violence, but, without a doubt, it is necessary to keep in mind the violence generated at all levels.

Elder maltreatment was regarded as a private matter until recently, and only in the last few decades have public health and criminal justice responses been developed to counter it (European report on preventing elder maltreatment, 2011). A number of European countries deal with the abuse of older adults at the level of guidelines and activities in the community, with the support of state bodies. Some countries, such as the Netherlands and Germany, have enacted lower-level regulations or guidelines governing some aspects of prevention or protection against abuse. Most European countries take steps in practice, within the existing general legal framework and very often as project activities, which indicates a lack of sustainability (Sjeničić, 2020).

Judging upon the adopted legislation and jurisprudence, the Anglosphere countries addressed elder maltreatment much earlier (Older



Americans Act - OAA, 1965; Elder Justice Act, 2010; Elder Abuse Victims Act, 2009; Protection of the Abused, Neglected, or Exploited Disabled Adult Act, North Carolina, 1973; The Elder Abuse and Neglect Act, Illinois, 2005; Adult Support and Protection (Scotland) Act, 2007; Aged Care Amendment (Residential Care) Act, Australia, 1997/2007).

## **METHODS**

Provoked by the seriousness of the problem and the lack of specific regulation and official attention, the article puts emphasis on elder abuse issues, discusses current international and national law and soft-law solutions, national jurisprudence and field research, and points out the necessity to extract the preventive and criminal regulations relating to elder abuse into a separate piece of Serbian legislation.

## **RESULTS**

The abuse of the elderly is not easy to discover. Violence against and neglect of older adults usually occur in relationships of trust, exploiting physical or emotional dependence, or subordinate position. That is why it is necessary to work more on sophisticated methods of screening violence against older adults, which should be undertaken in an organized manner, at different levels and in different sectors, with the focus on the same goal, i.e. to protect the older adults from abuse and neglect. The national acts deal mainly with violence in the family and partner relationships, and not exclusively with the causes, prevention and consequences of violence against older adults. Constitution, strategic documents and systemic laws recognize vulnerable population groups and through this umbrella regulation, the state strives to ensure the implementation of affirmative measures for them, at the level of principles and by prescribing general obligations of the authorities. Mechanisms for the implementation of such legal and strategic provisions, in a large number of cases, however, either do not exist or are not sufficiently functional or concretized through bylaws and in practice.

## **DISCUSSION**

### *International documents relevant to the prevention and prohibition of elder abuse*

The international legal framework in the area of human rights is important for the Serbian situation since most of the relevant international documents have been ratified. Documents that might be used for the



prevention and prohibition of elder abuse belong, in the first place, to the general legal framework that prescribes that all human beings are born free and equal in dignity and rights (UN Universal Declaration of Human Rights, Article 1). The rights of every person to protection of his/her mental and physical integrity and protection from inhuman and degrading treatment derive from various international acts, from which they have been transposed into national regulations. Article 7 of the International Covenant on Civil and Political Rights (Transposed through the Law into Serbian regulation - Official Gazette of the SFRY, 7/71) stipulates that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Transposed through the Law - Official Gazette of the SFRY, 9/91) in Article 1 defines the torture (Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.), whilst the Convention on the Rights of Persons with Disabilities (Transposed through the Law - Official Gazette of the RS, 42/09) regulates the personal freedom and security of persons with disabilities, on an equal footing with others. Article 15 of the Convention guarantees the absence of torture or cruel, inhuman or degrading treatment or punishment of persons with disabilities, while Article 16 obliges States Parties to undertake all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects, by providing, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive. Article 17 of the Convention stipulates that every person with disabilities has a right to respect his or her physical and mental integrity on an equal basis with others. At the regional level, the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950) was adopted, which provides for the prohibition of torture in Article 3.



Besides the right to protection of mental and physical integrity and protection from inhuman and degrading treatment, everyone has the right to liberty and security, as well as protection against arbitrary deprivation of liberty. These rights are enshrined in Article 9 of the International Covenant on Civil and Political Rights, as well as Article 5 of the Council of Europe Convention on Human Rights.

In addition, several documents focusing specifically on the issue of ageing have been adopted: Madrid International Action Plan on Aging (United Nations Political Declaration and Madrid International Plan of Action on Aging, 2002), Global Strategy and Action Plan on Aging and Health 2016-2030 (World Health Organization, Global Strategy and Action Plan on Aging and Health, 2017). Madrid International Action Plan on Aging provides the first global guidelines on the need for intergenerational solidarity and adaptation to new demographic, social, health and other challenges. Global Strategy and Action Plan on Aging and Health 2016-2030 provide a political mandate for activities that should enable everyone to experience both a long and healthy life.

The adopted acts represent a framework for creating national policies on older adults, based on human rights, which are in fact a request of every individual to the state: a request for care, protection and a guarantee that his/her freedom will be protected (Deutsches Institut für Menschenrechte, 2017).

#### *Legal mechanisms for the protection of the rights of older adults in Serbia*

National regulations in the field of ageing are not numerous, and there are none that regulate exclusively the issues of the prevention of violence against older adults and the state's reaction to it. In regulatory terms, the issue of ageing has been in focus for the last few decades (just like in many European countries), and these regulations mainly refer to healthy ageing and the improvement of the environment that affects it.

The Serbian Constitution guarantees basic human rights and freedoms. Constitution does not mention older adults as a special social group, except that Article 21 prohibits discrimination, direct or indirect, on any grounds, including age as one of the separate grounds for discrimination.

There are also a number of laws and bylaws that indirectly apply to the older adult population, for example, Laws on Social Protection, Family Law, Criminal Code, Laws on Misdemeanors, Laws on Health Care, Laws on the Prevention of Discrimination against Persons with Disabilities, Law on Prevention of Domestic Violence, Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, etc.



In addition to the Constitution, laws and bylaws, the following regulations are, to a greater or lesser extent, relevant to this topic: National Strategy on Aging, Strategy of Social Protection, National Strategy on Prevention and Suppression of Violence against Women in Domestic and Partnership Relations, General Protocol on the Conduct and Cooperation of Institutions, Bodies and Organizations in Situations of Violence against Women in Domestic and Partnership Relations, Decision on the Program for Protection of Women from Domestic and Partner Violence and Other Forms of Gender-Based Violence in AP Vojvodina for the Period from 2015 to 2020.

Although they all create a surrounding relevant to the prevention of elder abuse, only a few of them could be specifically applied to such situations.

Article 3 of the *Law on Prevention of Domestic Violence* defines domestic violence as "an act of physical, sexual, psychological or economic violence of a perpetrator against a person with whom the perpetrator has been in a current or previous marital or extramarital or partnership relationship, or against a person with whom the perpetrator is a blood relative in the straight line, and in the collateral line to the second degree, or with whom he is an in-law relative up to the second degree or to whom he/she is an adoptive parent, adoptee, foster parent or foster child, or another person with whom he/she lives or has lived in a joint household". The law regulates the procedure in the case of recognizing family abuse, including the actions of all relevant bodies: police, public prosecutor, court, centre for social work, etc. When it comes to the protection measures that can be imposed, the law makes reference to Family Law.

Although *Family Law* (Article 197) defines domestic violence in a more general way, it prescribes measures of protection against domestic violence (Article 198).

*The Criminal Code* does not sanction specifically violence against older adults, but provisions regulating certain criminal acts can be applied to this situation as well. These criminal offences are domestic violence (Article 194), failure to provide support (Article 195), and violation of family obligations (Article 196), which is most often applied in criminal court practice. The provisions regulating the following criminal offences may also be applied to the cases of violence and neglect of older adults: abandonment of a helpless person (Article 126), sexual assault against a helpless person (Article 179), and abuse of trust (Article 216) - all depending on the form of abuse or neglect.

*National Strategy on Aging* (hereinafter: Strategy) was adopted for the period 2006-2015. The new strategy for the later period has not been adopted yet. Strategies are enacted by the Serbian Government and



represent plans for several years. Thus, they are not directly implementable but are a kind of guideline for acting during a certain period and in certain life spheres. Strategy addressed the issue of adjusting the social care system to the social and economic consequences of the ageing population. One of the general goals was to *develop forms of social support for the family and help older adults in their natural living environment*. Preference is given to the development of those types of support and forms of services that enable older adults, endangered by unfavourable living circumstances, to stay in their households and familiar environments, preferably for the rest of their lives. The Strategy indirectly addresses the system of detecting neglect of older adults, and directly refers to the development of services to help the older adults and their families in the community, also, in order to prevent abuse and neglect. It specifically addresses the *promotion of gender equality*, emphasizing the importance of promoting and nurturing gender equality in old age. One of the activities aimed at achieving the goal of gender equality involves the prevention of occurrence of neglect, abuse and violence against older adults, especially women, mitigation and elimination of the consequences thereof by adopting and implementing protocols on the cooperation of all participants in the protection of victims, from the national to the local community level, as well as organizing campaigns against different types of discrimination and violence, by creating local support systems for the victims of neglect, abuse and violence.

The next relevant focus of the Strategy is *promoting solidarity between family members in the families including older adults*. Households having older adult members become vulnerable, thus requiring more attention in creating family support programs, simultaneously respecting economic, cultural, ethnic and other specificities. Longer life expectancy leads to the appearance of multigenerational families. The social turmoil in the past decades has made members of different generations have completely different life experiences and different values, which is often a source of conflict and intolerance. For these reasons, tolerance for different social experiences of generations and intergenerational solidarity must be much more actively nurtured.

The Strategy envisages that the social community should, to the extent of the existing resources and practices, *engage in supporting the family indirectly - through various forms of services to the older adults*. The bearers of all the above activities are Government, the Ministry of Social Policy, the Ministry of Health, regional bodies and bodies of local self-government units, social protection and healthcare institutions, in cooperation with the private sector and non-governmental, humanitarian organizations and citizens' associations. The deadline for implementation for a large number of activities was from 2006 to 2010, and onwards.



The strategy, therefore, regulates in general, community support for older adults through community service planning, as well as support for informal caregivers. It does not explicitly address the causes and consequences of neglect and abuse of older adults, but it certainly creates conditions for the prevention of such behaviour, by providing a basis for the development of services that enable greater independence of older adults. It also provides a plan for changing legal regulations in order to achieve the intended goals. Although a good plan, the Strategy has been implemented only in fragments. The development of the services and changes in legal regulations have not been undertaken, as yet. The activities themselves have not been translated into concrete regulatory measures. Bearers of the activities are determined in a general way, almost uniformly for all measures, and deadlines have not been met in practice.

Generally speaking, the aforementioned national acts deal mainly with violence in the family and in partner relationships. They do not deal exclusively with the causes, prevention and consequences of violence against older adults. On the other hand, the National Strategy on Aging deals with ageing in general, so it also tackles the issue of violence, but in a general way, which is a common feature of general acts such as strategies.

The national health and social legal system, therefore, recognizes vulnerable social groups in general through the Constitution, strategic documents and systemic laws. Through this umbrella regulation, the state strives to ensure the implementation of affirmative measures for vulnerable groups, at the level of principles and by prescribing general obligations of the authorities, i.e. the rights of members of these groups. Mechanisms for the implementation of such legal and strategic provisions, in a large number of cases, however, either do not exist or are not sufficiently functional or concretized through bylaws and in practice.

### *Serbian jurisprudence related to elder abuse cases*

The jurisprudence of the Supreme Cassation Court of Serbia (SCC), both criminal and civil, does not differentiate cases of violence by age, i.e. does not recognize violence against older adults. In the case of law concerning violence, domestic violence stands out as a specific category. Decisions in civil matters of the SCC give a broad explanation from which it can be concluded what kind of violence it refers to, i.e. who is the victim of such violence and who the perpetrator is. The judgments generally make references to the already mentioned Articles 197 and 198 of the Family Law, as well as to the Law on Prevention of Domestic Violence, which is deemed relevant in its entirety (Decision of the Supreme Cassation Court of Serbia, Rev 2201/2017., 01st November 2017, to the decision of



the Appellation Court in Belgrade Gž2 271/17, 27th April 2017., upon the decision of the Third Basic Court in Belgrade, P2 260/14, 22nd September 2014. <https://www.vk.sud.rs/sr-lat/rev-22012017-za%C5%A1tita-od-nasilja-u-porodici>, Last accessed September 4th, 2021; Decision of the Supreme Cassation Court Rev 3564/2018, 21st June 2018, to the decision of the Appellation Court in Novi Sad Gž2 112/18, 07th March 2018, upon the decision of the Basic Court in Stara Pazova, P2 200/17, 21st December 2017. <https://www.vk.sud.rs/sr-lat/rev-35642018-za%C5%A1tita-od-nasilja-u-porodici>, Last accessed September 4th, 2021; Decision of the Supreme Cassation Court, Rev. 3629/2018, 21st June 2018 <https://www.vk.sud.rs/sr-lat/rev-36292018-porodi%C4%8Dno-pravo-za%C5%A1tita-od-nasilja-u-porodici>, Last accessed on September 4th, 2021; Decision of the Supreme Cassation Court Rev. 4775/2019, 28th November 2019, to the decision of the Appellation Court in Novi Sad Gž2 328/19, 27th June 2019, upon the decision P2n 325/18 and decision on the procedure expenses of the Basic Court in Sombor P2n 325/18, 10th April 2019. <https://www.vk.sud.rs/sr-lat/rev-47752019-314181-314182>, last accessed on September 5th, 2021.).

When it comes to criminal matters, the SCC usually makes reference to Articles 193 and 194 of the Criminal Code, which sanction neglect, abuse and domestic violence and addresses the issue of age, but only if the victim is minor, in which case the incrimination is more severe (Criminal Code of RS, Article 194: "(1) Whoever, by using violence, makes an assault on the life or body, or endanger the tranquillity, physical integrity or mental state of a member of his/her family by insolent or reckless behaviour, shall be punished by imprisonment for a term between three months and three years. (2) If a weapon, dangerous tool or other means suitable for seriously injuring the body or seriously damaging health is used in the commission of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between six months and five years. (3) If due to the act referred to in para. 1 and 2 of this Article, a serious bodily injury or serious impairment of health has occurred, or such act has been committed against a minor, the perpetrator shall be punished by imprisonment for a term between two and ten years (4) If due to the act referred to in para. 1 and 2 of this Article, the death of a family member occurred, the perpetrator shall be punished by imprisonment for a term between five and fifteen years, and if the family member is a minor, the perpetrator shall be punished by imprisonment for a term not shorter than ten years. (5) Whoever violates the measures of protection against domestic violence determined by the court on the basis of the law governing family relations, shall be punished by imprisonment for a term between three months and three years and by a fine."). Older adults are not specifically singled out as victims. It is clear, therefore, that, at the time of writing the



law, the legislator attributed vulnerability primarily to minors.

### **CONCLUSIONS AND LIMITATIONS**

Serbian legislation is mostly uniform when it comes to abuse cases, for the general population, as well as for specific vulnerable groups. It makes a distinction on the basis of vulnerability only in the case of minor victims, so criminal deeds are more severely sanctioned when the victims are persons younger than 18. The National Strategy on Aging refers to the necessity of amending legislation in order to protect older adults from abuse and neglect. However, no concrete activities have been undertaken yet.

In order to shift attention to the older adult population, it is necessary to adopt by-law and soft-law regulations which would prescribe concrete measures of the state bodies, civil society organizations and other societal actors, for the purpose of screening violence, prevention of violence against the older adults, treatment of older adult victims, including forensics, and measures towards the perpetrators. The national legal system already contains protocols for the prevention of violence against women and children. Since older adults comprise a vulnerable group with its specificities, they also require their separate protocol.

When it comes to older adult abuse cases, it is important that the system response is multidisciplinary and coordinated. Therefore, it would be useful to develop partnerships between actors from different fields: justice (prosecution, civil and criminal courts, barrister chambers, court experts), social care (centres for social work, residential institutions) and health care. Prior to, or simultaneously with intersectoral cooperation, each of these sectors should be improved when it comes to processing older adult abuse cases. In the area of prevention of and screening for older adult abuse, it is necessary to introduce instruments for the organized screening for abuse in all sectors, primarily in social and health care.

A measure that can be introduced without any organizational and legal changes is the continuous education of employees working in the system of justice pertaining to the activities that should be undertaken in older adult abuse cases. Education is also necessary for the employees in health and social care systems, pertaining to screening for abuse and further procedures.

Finally, the already existing provisions of the National Strategy on Aging should be implemented where they refer to the development of different support activities and measures, and intergenerational solidarity.



*This work was supported by the 2022 Research Program of the Institute of Social Sciences with the support of the Ministry of Education, Science and Technological Development of the Republic of Serbia*

## REFERENCES

- Adult Support and Protection (Scotland) Act. (2007). Available at: [http://www.legislation.gov.uk/asp/2007/10/pdfs/asp\\_20070010\\_en.pdf](http://www.legislation.gov.uk/asp/2007/10/pdfs/asp_20070010_en.pdf). Last accessed August 29th, 2021
- Aged Care Amendment (Residential Care) Act. (1997(2007)). Available at: <https://www.legislation.gov.au/Details/C2007A00109>. Last accessed August 28th, 2021
- CoE.(1950). Convention for the Protection of Human Rights and Fundamental Freedoms. Available at: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf). Last accessed August 29th, 2021
- Constitution of RS, Official Gazette of the RS, no. 98/2006
- Criminal Code of Serbia, Official Gazette of RS, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019
- Decision on the Program for Protection of Women from Domestic and Partner Violence and other Forms of Gender-based Violence in AP Vojvodina for the period from 2015 to 2020, Official Gazette of Autonomous Region Vojvodina, no. 54/14
- Deutsches Institut für Menschenrechte. (2017). *Alterdiskriminierung und das Recht Älterer auf Freiheit von Gewalt, Misshandlung und Vernachlässigung*. 1-28. Available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Dokumentation\\_Fachgesprach\\_Rechte\\_Aelterer.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Dokumentation_Fachgesprach_Rechte_Aelterer.pdf). Last accessed September 7th, 2021
- Elder Abuse and Neglect Act, Illinois. (2005). Available at: <https://law.justia.com/codes/illinois/2005/chapter31/1452.html>, Last accessed September 6th, 2021
- Elder Justice Act, USA. (2010). Available at: <https://acl.gov/about-acl/elder-justice-act>; & [https://www.ssa.gov/OP\\_Home/ssact/title20/2000.htm](https://www.ssa.gov/OP_Home/ssact/title20/2000.htm). Last accessed September 5th, 2021
- Family Law of RS, Official Gazette of RS, no. 18/2005, 72/2011 and 6/2015
- General Protocol for the Protection of Children from Abuse and Neglect. (2009). Ministry of Labor, Employment and Social Affairs. (Opšti protokol za zaštitu dece od zlostavljanja i zanemarivanja, 2009.)



- General Protocol on Proceeding and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women in the Family and Partner relations. (2014). Ministry of Labor, Employment, Veteran and Social Affairs. (Opšti protokol o posutpanju i saradnji ustanova, organa i organizacija u situacijama nasilja nad ženama u porodici i u partnerskim odnosima, 2014)
- General Protocol on the Conduct and Cooperation of Institutions, Bodies and Organizations in Situations of Violence against Women in Domestic and Partnership Relations. (2011). Government of RS
- Law on Health Care of RS, Official Gazette of RS, no. 25/2019
- Law on Misdemeanors of RS, Official Gazette of RS, no. 65/2013, 13/2016, 98/2016, 91/2019 and 91/2019
- Law on Non-Litigious Procedure of RS, Official Gazette of the SRS, no. 25/82 and 44/88, Official Gazette of the RS, no. 46/95, 18/2005, 85/2012, 45/2013, 55/2014, 6/2015, 106/2015
- Law on Prevention of Discrimination against Persons with Disabilities, Official Gazette of RS, no. 33/06 and 13/16
- Law on Prevention of Domestic Violence of RS, Official Gazette of RS, no. 94/16
- Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Official Gazette of RS, no. 12/13
- Law on Social Protection of RS, Official Gazette of RS, no. 24/2011
- National Strategy for Prevention and Suppression of Violence against Women in Domestic and Partnership Relations of RS, Official Gazette of RS, no. 27/11
- National Strategy on Aging of RS, Official Gazette of RS, no. 76/06
- Older Americans Act - OAA. (1965). Available at: <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>, Last accessed September 6th 2021
- Protection of the Abused, Neglected or Exploited Disabled Adult Act, North Carolina. (1973). Available at: [https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_108A/Article\\_6.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_108A/Article_6.html), Last accessed September 5th, 2021
- Rulebook on Detailed Conditions and Standards for the Provision of SOS Telephone Services for the Women that Experienced Violence, Official Gazette of RS, no. 93/15
- Rulebook on Organization, Norms and Standards of Operation of the Center for Social Work, Official Gazette of RS, no. 59/2008, 37/2010, 39/2011, 1/2012, 51/2019 and 12/2020
- Sjeničić, M. 2020. *Legal Aspects of Violence against the Older adult (Pravni aspekti*



*nasilja nad starijim osobama*). ISBN 978-86-7093-239-5, 1-143

- Special Protocol for the Protection of Children and Pupils from Violence, Abuse and Neglect in Educational Institutions (2010). Ministry of Education (Posebni protokol za zaštitu dece i učenika od nasilja, zlostavljanja i zanemarivanja u obrazovno-vaspitnim ustanovama, 2010.)
- Special Protocol for the Protection of Children from Abuse and Neglect in the Social Care Institutions. (2012). Ministry of Labour, Employment and Social Affairs. (Posebni protokol za zaštitu dece od zlostavljanja i zanemarivanja u ustanovama socijalne zaštite, 2012.)
- Special Protocol of the Health Care System for the Protection of Children from Abuse and Neglect. (2014). Ministry of Health RS (Posebni protokol sistema zdravstvene zaštite za zaštitu dece od zlostavljanja i zanemarivanja, 2014)
- Strategy of Social Protection of RS, Official Gazette of RS, no. 108/ 05
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1984). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>. Last accessed September 1st, 2021
- UN Convention on the Rights of Persons with Disabilities. (2006). Available at: [https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf). Last accessed September 3rd, 2021
- UN Political Declaration and Madrid International Plan of Action on Ageing. (2002). Second World Assembly on Ageing, Madrid, Spain. Available at: <https://www.un.org/esa/socdev/documents/ageing/MIPAA/political-declaration-en.pdf>. Last accessed September 3rd, 2021
- UN Universal Declaration of Human Rights. (1948). Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Last accessed September 2nd, 2021
- WHO, Regional Office for Europe. (2011). European report on preventing elder maltreatment. Available at: [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0010/144676/e95110.pdf](https://www.euro.who.int/__data/assets/pdf_file/0010/144676/e95110.pdf). Last accessed August 30th, 2021
- WHO. (2017). Global Strategy and Action Plan on Aging and Health. Available at: <https://www.who.int/ageing/WHO-GSAP-2017.pdf>. Last accessed September 9th, 2021
- WHO. (2021). Elder Abuse. Available at: <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>. Last accessed September 9th, 2021



Wong, JS., Waite, LJ. (2016). Elder Mistreatment Predicts Later Physical and Psychological Health: Results from a National Longitudinal Study. *Journal of Elder Abuse & Neglect*. 29(1):. 15-42. doi: 10.1080/08946566.2016.1235521