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## **Statutory Regulations Governing Domestic Violence in the Czech Republic**

**Seminar of the Judicial Academy – “Domestic Violence and Rights of Victims in Criminal Proceedings”  
2–3 November 2015**

### **1. Introduction**

Domestic violence is a socially undesirable and burdening phenomenon posing a general, very severe issue relevant for all European countries, as also stressed by the European Court for Human Rights in its judgment in the *Opuz vs. Turkey* case.<sup>2</sup> Recently published surveys suggest that every sixth woman and every twentieth man fell victim of domestic violence in the Czech Republic<sup>3</sup>. Nevertheless, the Czech Republic is no exception in this regard, as an EU-wide survey points out that 22 % of women in the EU suffered physical violence by their partner and 43 % women suffered psychic violence.<sup>4</sup> At the same time, domestic violence is a phenomenon that very often remains hidden, as it occurs within a narrow circle of persons, typically in families or in similar forms of shared living. Domestic violence has long not been associated with violence against women only; it may generally be described as violent action manifested as a dangerous attack against life, health, freedom or human dignity, occurring in an apartment or house occupied jointly by the violent person and the person against which the attack is directed.<sup>5</sup> It is violence of a repetitive, long-lasting and escalating nature, with a clearly identifiable attacker and victim, or person

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<sup>1</sup> The author wishes to express his acknowledgment to Mgr. Bc. Alžběta Králová and Mgr. Katarína Deáková for preparation of supporting documents and for literature searches on the issue of domestic violence and protection of its victims.

<sup>2</sup> ECHR judgment in the case of *Opuz vs. Turkey* dated 9 June 2009, application no. 33401/02, para. 132.

<sup>3</sup> Research performed by Sociofactor agency in terms of a project of Asociace pracovníků intervenčních center ČR (Association of Czech Intervention Center Employees) titled *Mlčení bolí* (Silence Hurts). Detailed results of the project will be published in February 2016. For results published to date, please refer for instance to the research finding that each sixth woman in the Czech Republic is a domestic violence victim. *Ihned* [online]. Pub. 13. 10. 2015 [quote 13. 10. 2015]. Available at: <http://domaci.ihned.cz/c1-64741150-obeti-domaciho-nasili-je-kazda-sesta-zena-v-cesku-ukazal-pruzkum>

<sup>4</sup> European Union Agency for Fundamental Rights. *Violence on Women: A EU-Wide Survey. Brief on the Results.* [online]. Luxembourg: Office for Publications of the European Union, 2014 [quote 13. 10. 2015]. Available at: [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14\\_cs.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_cs.pdf)

<sup>5</sup> Explanatory Memorandum to Act no. 135/2006 Coll.

at risk, as applicable. Domestic violence may come in a number of forms, and besides physical violence, emphasis has recently been put on other forms, including sexual, psychic and financial violence, with a growing proportion of psychic violence in domestic violence cases, as recent surveys suggest.<sup>6</sup>

*As domestic violence victims are particularly vulnerable* and often unable or not allowed to report domestic violence to competent authorities (as also suggested by the ECHR judgment in the T. M. and C. M. vs. Moldova case<sup>7</sup>), setting up a legal framework ensuring comprehensive protection is a critical and at the same time a difficult task. In the Czech Republic, the legal anchoring of domestic violence is still a relatively new statutory regulation, as the first major step of the legislator towards protection against domestic violence was the *adoption of Act no. 91/2004 Coll., that supplemented the Criminal Code* (Act no. 140/1961 Coll.) with a new body of crime of abuse of a person sharing a common home. Notwithstanding the fact that some domestic violence aspects could also be punished with reference to other provisions of the Criminal Code (e.g. as crimes against life and health, crime of violence against a group of inhabitants or against an individual, crime of restriction of personal freedom, extortion, violation of house freedom), the new body of crime reflected the specifics of domestic violence, which usually is of a long-lasting and systematic nature and in a particular moment it did not necessarily reach sufficient intensity to institute prosecution for the crime of bodily harm. It also reflected the specifics concerning the perpetrator, who abuses their position against persons who are dependent on the perpetrator materially or emotionally.<sup>8</sup>

The next important step of the legislator was the *adoption of Act no. 135/2006 Coll.* that amended some laws governing protection against domestic violence and that strengthened the protection of children. The Act anchored three basic pillars of protection against domestic violence: (1) police intervention allowing immediate police action against the violent perpetrator via the institute of police expulsion; (2) social assistance via opening of intervention centres and (3) court protection ensured by the decision on a preliminary injunction allowing the “court expulsion”. Where the application of the above institutes is not sufficient, it is possible, in line with the „ultima ratio“ principle, to also

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<sup>6</sup> Sociofactor research, quote.

<sup>7</sup> ECHR judgment in the case of T. M. and C. M. vs. Moldova dated 28 January 2014, application no. 26608/11.

<sup>8</sup> Explanatory Memorandum to Act no. 91/2004 Coll., amending Act no. 140/1961 Coll., Criminal Code, as amended.

proceed in compliance with criminal-law provisions, where the conceptually novel approach was manifested in the *adoption of the Criminal Code* (Act no. 40/2009 Coll.), which applied a balanced approach to criminal-law protection against domestic violence via precision of wordings particularly of the bodies of crimes of abuse of person entrusted to the custody pursuant to Section 198 of the Criminal Code and abuse of a person sharing a common home pursuant to Section 199 of the Criminal Code (the term „home“, aligning of succession of these bodies of crime and new wording of particularly aggravating circumstances). Thus, following up on all the aforementioned laws, the Criminal Code helped to enhance protection of crime victims and established a comprehensive system of protection of domestic violence victims resting upon private-law, administrative-law and criminal-law protection against domestic violence. Recently, attention has rather been turned to amendments in the area of private law, associated with legal effect of the new Civil Code, which restricts the right of the spouse to share a common home in the case of domestic violence. However, the area of criminal law has also undergone interesting development in relation to domestic violence victims. In terms of protection against domestic violence under criminal law, I will first of all focus on the statutory regulation of crimes whose body relates to domestic violence cases, i.e. crimes of abuse of a person sharing a common home, crimes of abuse of a person entrusted to the custody and crimes of hindering the enforcement of an official decision and expulsion. In turn, I will focus on procedural changes enhancing protection of victims under criminal law in this regard.

## **2. Crimes of abuse of a person sharing a common home and abuse of a person entrusted to the custody**

Without aiming at precisely defining the *term of domestic violence*, this social phenomenon can be explained more clearly in particular by reference to heterogeneity of the violent perpetrator's attacks on the domestic violence victim. Even in the period of intensive discussions on a comprehensive criminal-law treatment of this issue, the legal system featured partial means penalising various manifestations of domestic violence. These involved, for instance, bodies of crime such as neglect of mandatory maintenance, defamation, compromising of moral education of youth, murder, bodily harm, restriction or

deprivation of personal freedom, rape or blackmail, and these bodies of crime are also applicable to date, if their statutory elements are accomplished. Despite the existence of many means punishing the various manifestations of domestic violence, the provisions mentioned therein did not reflect the essence of the situation in what is referred to as relationship crimes, which encompass a major part of crimes connected with domestic violence. As a matter of fact, their purpose has a different aim, and thus protection of the public interest proved to be inconsistent.<sup>9</sup> Thus, in order to evaluate the benefits of the specific regulation governing domestic violence, which was widely discussed, the specifics of this regulation need to be pointed out. The premise may be assumed that specific regulation of domestic violence brought a different quality of protection to victims of such kind of violence compared to protection provided by isolated punishment of the individual manifestations of domestic violence. The essential elements of this specific protection include, in particular, the violent person and the victim sharing a common home, with increased dependence in their relationship as an accompanying phenomenon, and the term of abuse of the victim, which is comprehensive in its content. As already stated above, society's interest in preventing the so much undesirable phenomenon of domestic violence was reflected on the legislative level, besides others, also in the *formulation of two bodies of crime* making violent behaviour in the family a criminal offence. *The criminal offence of abuse of a person sharing a common home*, with criminal sanction of imprisonment for six months up to four years in the basic body of crime, or *abuse of a person entrusted to the custody*, with criminal sanction of imprisonment for one year up to five years can be found in the Criminal Code, Chapter Three, Part Two, i.e. among criminal offences against the family and against children. *The object of the criminal offence of abuse of a person sharing a common home* pursuant to Section 199 of the Criminal Code, which is committed by a perpetrator who abuses a close person or another person sharing a common home with the perpetrator, is the interest of the society in *protecting persons against what is referred to as domestic violence*, i.e. both close persons as well as other persons sharing the common home (e.g. ex-spouse or tenant), however, except for persons entrusted to the perpetrator's custody or upbringing

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<sup>9</sup> RŮŽIČKA, M. Domáci násilí – impulsy ze zahraničních trestněprocesních úprav, návrhy de lege ferenda pro trestní právo [Domestic Violence – Impulses from Foreign Criminal-Procedure Regulations, De Lege Ferenda Proposals for Criminal Law]. Trestněprávní revue no. 8/2003, p. 223.

(protection of these persons is governed by Section 198 of the Criminal Code). In the case of the *criminal offence of abuse of a person entrusted to the custody* pursuant to Section 198 of the Criminal Code, which is committed by a perpetrator who abuses a person entrusted to their the custody or upbringing, the object of protection is the society's interest in *protecting such persons, who, with regard to their age (children) or due to other reasons, are entrusted to other persons' the custody or upbringing*, due to any reason (e.g. also due to their illness, physical or mental disability, etc.).

The fundamental term in the case of abuse of a person sharing a common home is the term *home*. This term replaced the original term of a jointly occupied flat or house. Thus, the spatial aspect of this criminal offence broadened, and in addition to residential houses and flats, it now also encompasses residential chalets, lodging houses or university dormitories, i.e. all kinds of housing spaces. The statutory element „in a common home“ is an expression of the specific relationship between the perpetrator and the abused person, however, it does not refer to identification of the crime scene, as abuse can also be committed anywhere else.<sup>10</sup> What is of essence for accomplishment of the element of a common home is the factual state of shared living and staying in a common home of the perpetrator and the victim. Keeping a common household is not necessary in this context. The nature of the legal relationship to the home is also irrelevant.<sup>11</sup> If, for instance, the perpetrator was the owner of the house and the victim, being the perpetrator's partner, shared this house with the perpetrator, without having a formal legal entitlement to living in that house beyond the scope of the perpetrator's implied consent (e.g. as a co-owner of the house, tenancy, easement, etc.), such situation is not a reason to conclude that it was not a "common home" pursuant to Section 199(1) of the Criminal Code.<sup>12</sup> The common home may be perceived as a specific element of such criminal offence. Thus, a specific form of interdependence resulting from the fact of a common home is established between the perpetrator and the abused person, and at the same time, the abused persons have limited possibility to leave such home. Thus, the existence

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<sup>10</sup> ŠÁMAL, Pavel et al. *Trestní právo hmotné [Substantive Criminal Law]*. 7<sup>th</sup> edition. Praha: Wolters Kluwer, a. s., 2014, p. 638.

<sup>11</sup> ŠÁMAL, Pavel et al. *Trestní zákoník II., § 140 až 421. Komentář [Criminal Code II., Sections 140 to 421. Commentary]*. 2<sup>nd</sup> edition. Praha: C. H. Beck. 2012, p. 1941.

<sup>12</sup> Supreme Court judgment dated 19 September 2012, file no. 7 Tdo 1072/2012.

of a common home is a condition *sine qua non* in order to accomplish the elements of this criminal offence. As a matter of fact, if an abused person terminates their shared living with the perpetrator, nevertheless they continue to be exposed to attacks by the perpetrator, Section 199 of the Criminal Code can no longer be applied. What can then be applied are bodies of crime of bodily harm pursuant to Section 146 of the Criminal Code, extortion pursuant to Section 175 of the Criminal Code, oppression pursuant to Section 177 of the Criminal Code or stalking pursuant to Section 354 of the Criminal Code. However, when the condition of a common home is met, the victim of the attack can include both a close person as well as another person. The reason for such sharing a common home is irrelevant here; it can include both co-ownership as well as estate by the entirety of spouses, or also tenancy of a flat,<sup>13</sup> however, what is of essence is the actual state of shared living of the perpetrator and the victim, not the legal relationship of the victim to the object of housing.

What is necessary in defining the individual elements of the body of crime of abuse of a person sharing a common home is above all to define the term of abuse. The definition provided by the Supreme Court, in its resolution dated 14 September 2005, file no.3 Tdo 1160/2005, identifies abuse with the perpetrator's conduct characterised by ill-treatment and at the same time a certain degree of permanence and achieving an intensity capable of eliciting a state perceived by the person as grave wrongdoing or as psychic or physical suffering. It shall be added to the above that the permanence of the perpetrator's conduct shall be assessed depending on the intensity of the ill-treatment. It is not required that the conduct is uninterrupted or long-lasting [*cf.* Section 198 (2)(d) and Section 199 (2)(d) of the Criminal Code]. It may be inferred depending on the circumstances of the crime that abuse of a person entrusted to the custody within the meaning of the elements of the crime pursuant to Section 198 of the Criminal Code can also become a neglect of mandatory care that the perpetrator was obliged to ensure, if the person entrusted to their custody was not able to take care of themselves on their own due to their age, e.g. as a result of neglect of personal hygiene of a child, failure to provide adequate nutrition (*cf.* no. 11/1984, p. 83 Coll. of Criminal-

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<sup>13</sup> ŠÁMAL, Pavel et al. Trestní zákoník II., § 140 až 421. Komentář [Criminal Code II., Sections 140 to 421. Commentary]. 2<sup>nd</sup> edition. Praha: C. H. Beck. 2012, p. 1941.

Law Rulings). As a matter of fact, the law does require in either of the bodies of crime that the abuse have a nature of physical violence or that it be associated with health consequences of the abused person. Thus, abuse may also include causing of psychic suffering, it can also be manifested on the level of sexual violence, financial violence, eliciting a state of social isolation or manifest as diverse combinations of these forms. A higher degree of roughness and hardheartedness can also be deemed to be distinctive elements of abuse, however, these elements have to be associated with the perpetrator's conduct as a whole, as the individual partial acts of such conduct, evaluated in isolation, are not necessarily too severe.<sup>14</sup> The examples of abuse can include hitting with an open hand or fist or also with various objects (rubber hoses, belt, wooden stick, etc.), kicking, burning with a cigarette, cigar or other burning objects, electric current impact, painful pulling on hair, binding to central heating radiators or to other fixed objects lasting over a long time, keeping the abused person in cold environment without proper clothing, forcing to do hard work inappropriate to the age and physical constitution of the abused person, denying sufficient food lasting over a long time, frequent waking up of the abused person at night, etc. A criminal offence pursuant to Section 198 of the Criminal Code would be given also in the case when the perpetrator made the child entrusted to their custody often get on their knees and stay like that for a long time, with arms lifted forward, beat them up harshly and did not have them eat properly and sufficiently (*cf.* no. 18/1963 Coll. of Criminal-Law Rulings).<sup>15</sup>

The term of "domestic violence" may encompass various manifestations of imbalance of powers between two persons or within a small social group in terms of both bodies of crime considered, these various persons may find themselves in the victim position. This can include abuse of children by parents, abuse of parents by their adolescent children, attacking persons with mental or physical disabilities or senior citizens, i.e. persons of higher or very old age. In connection with the focus of the perpetrator's attack, there is sometimes differentiation between direct and indirect victims. One of the most frequent instances of an indirect victim is a child, as a victim of an attack against their

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<sup>14</sup> DRAŠTÍK, Antonín et al. *Trestní zákoník. Komentář. I. díl* [Criminal Code. Commentary. Part I]. Praha: Wolters Kluwer, a. s., 2015, p. 1097; In: ASPI, § 199 tr. zákoníku [Section 199 of the Criminal Code].

<sup>15</sup> *Cf.* ŠÁMAL, Pavel et al. *Trestní zákoník II., § 140 až 421. Komentář* [Criminal Code II., Sections 140 to 421. Commentary]. 2<sup>nd</sup> edition. Praha: C. H. Beck. 2012, p. 1935.

mother.<sup>16</sup> The body of crime of *abuse of a person entrusted to the custody* strives to ensure protection of children exposed to domestic violence. The protection here, however, does not only extend to children, it has a much broader scope, also including persons of age necessitating the care of other persons due to illness, old age, physical or mental disability. Similarly as with the abuse of a person sharing a common home, the *actual state of affairs is of essence* here as well. The relationship between the perpetrator of the crime and their victim is defined as the custody or upbringing, thus it can only be established as a matter of fact, i.e. informally, though on the basis of an implied agreement. The specific manner of entrusting a person to the perpetrator is not a statutory element of the crime, therefore there is no requirement either that a certain specific act be executed under which the abused person was entrusted to the perpetrator's the custody or upbringing.<sup>17</sup> On these grounds, the terms *the custody or upbringing* shall not only refer to the parents' the custody or upbringing in relation to their children under age, but also to any other the custody or upbringing, may its reason be a permanent or temporary relationship, and regardless of the fact how such relationship was established. The basis for the the custody or upbringing may rest upon a valid statutory regulation (the child is entrusted to their parents' custody and upbringing), upon an official decision (a person with restricted legal capacity pursuant to Section 55 et seq. of the new Civil Code, deprived of or restricted in their capacity to execute legal acts earlier is in the custody of their guardian on the basis of a court decision), upon an employment contract (a child is in the custody of their teacher during school hours or on a school skiing trip or in a boarding school), upon another agreement (children are in the custody of their relatives during a foreign holiday of their parents) or also upon implied acts (a cousin actually takes care of their sick cousin), etc.

*Both aforementioned criminal offences, having a lasting nature (cf. no. 17/2015 Coll. of Criminal-Law Rulings), can only be committed by an individual; not by a legal entity (cf. Section 7 of the Act on Criminal Liability of Legal Entities and Proceedings Against Them). A direct perpetrator of the criminal offence of*

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<sup>16</sup> FENYK, Jaroslav. Některé úvahy o postižitelnosti „domácího násilí“ z hlediska současného trestního práva a záměrů de lege ferenda [Some Considerations on Punishability of “Domestic Violence” from the Viewpoint of Current Criminal Law and De Lege Ferenda Intentions]. Právní rozhledy no. 12/2002, p. 630.

<sup>17</sup> Cf. no. 23/2007 Coll. of Criminal-Law Decisions, identically also Supreme Court resolution dated 10 August 2006, file no. 7 Tdo 870/2006, published under no. T 920-1. in publication no. 28/2006 of the Collection of Criminal-Law Rulings of the Supreme Court.

*abuse of a person entrusted to the custody* who is a victim of such criminal offence can only be the person who performs the custody or upbringing in relation to the abused person. Thus, such persons can include parents, or any one of them, as applicable, as well as relatives, teachers, caretakers, nurses, sports coaches, friends and acquaintances of the parents of the abused person, as well as other persons whose relationship to the abused person is established by a thoroughly accidental act (e.g. actual assumption of custody). It can also be the mother's husband who is not the parent of the child, or the mother's partner, if tasked with assisting in the child's custody (if they were tasked with such custody, they would commit the criminal offence of abuse of a person entrusted to the custody pursuant to Section 198). A *party* (Section 24 of the Criminal Code) to such criminal offence can then involve any individual.

A *perpetrator* of the criminal offence of *abuse of a person sharing a common home* can only be a *person sharing a common home with the abused person*. Thus, such persons can involve not only relatives or other close persons, but also other persons whose relationship to the abused person is only based on sharing a common home. It can also be the mother's husband who is not the parent of the child, or the mother's partner, if tasked with assisting in the child's custody (if they were tasked with such custody, they would commit the criminal offence of abuse of a person entrusted to the custody pursuant to Section 198). Then, a *party* to such criminal offence may include any individual, i.e. also an individual not sharing the flat or house with the perpetrator.

*Aggravating circumstances conditioning the application of a higher criminal sanction* in both aforementioned criminal offences with prison sentence of two to eight years include committing the criminal offence in an extremely rough or tormenting manner, if committing the crime results in a grievous bodily harm, if the crime is committed on at least two persons, if the crime is committed for a longer time, and moreover with the prison sentence of five to twelve years if a grievous bodily harm was suffered by at least two persons or death was a result of such crime.

### **3. Criminal offence of hindering the enforcement of an official decision and expulsion**

The criminal offence of hindering the enforcement of an official decision and expulsion pursuant to Section 337 (2) of the Criminal Code is committed by a

perpetrator who commits severe or repeated conduct to hinder an expulsion executed pursuant to another statutory regulation or pursuant to a court decision on a preliminary injunction imposing a duty to leave the common home and its immediate vicinity and refrain from entering the same for a temporary period or a duty to refrain from getting in touch with the petitioner and initiating contact with the petitioner. The aforementioned criminal offence is punished with a prison sentence of up to two years.

The institute of *expulsion* can be considered one of the most important means of protection of domestic violence victims. A central role is played here by the Police of the Czech Republic that may intervene against the conduct of the perpetrator on request of the victim or other persons. Expulsion is enforced if it may be reasonably assumed, based on the established facts, in particular with regard to previous attacks, that a person will commit a dangerous attack against life, health or freedom or an extremely grave attack against human dignity.<sup>18</sup> Expulsion also includes a prohibition of return into the home and into other defined premises. Thus, protection of children is ensured in particular by imposing a duty upon the violent perpetrator to immediately leave the premises delineated by the policeman, to refrain from entering such premises and also refrain from getting in touch or initiating contact with the person at risk. Then, the perpetrator is expelled both from the common home as well as from its immediate vicinity for a period of at least ten days. The territorial scope to which expulsion applies is determined by the policeman, depending on the degree of the requirement for effective preventative protection of the person at risk of being attacked. In order to ensure efficiency of this institute, the person shall also hand in all keys from the common home to the policeman. During the expulsion, the expelled person may take their personal belongings and things necessary for the performance of their profession, however, with respect to the person at risk, they may only do so once, in the presence of a policeman and provided that preliminary information on the planned exercise of this right has been provided to the victim at risk. A person may even be expelled in their absence. In such case the decision shall become effective in the moment when such person learns about it. If the person breaches the expulsion, they commit a criminal offence of hindering the enforcement of an official decision and expulsion pursuant to Section 337 (2) of the Criminal Code.

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<sup>18</sup> § 44(1) of Act no. 273/2008 Coll., on the Police of the Czech Republic, as amended.

The decision on *a preliminary injunction of the court in the matter of protection against domestic violence* was originally regulated in Section 76b of the Code of Civil Procedure, until the effective date of Act no. 292/2013 Coll., on Special Court Proceedings (hereinafter abbreviated as SCP). Currently the said court decision on preliminary injunction is regulated in Section 400 et seq. SCP, provided that it can only be issued based on a petition (*cf.* Section 402 SCP on the petition requisites). The parties include the petitioner and the respondent, or possibly the person against whom the violence is directed (Section 403 SCP). Pursuant to Section 404 SCP the court shall decide on the petition within 48 hours without a trial. If the court accommodates the petition pursuant to Section 405 SCP, the court shall impose a duty upon the respondent in the preliminary injunction to

a) leave the common home as well as its immediate vicinity, not to stay in the common home or not to enter the same;

b) not to enter the immediate vicinity of the common home or of the petitioner and not to stay there;

c) refrain from meeting with the petitioner; or

d) refrain from undesired stalking and harassing the petitioner in any manner.

In the decision, the court shall brief the respondent on their right to take their belongings listed in Section 493 SCP from the common home. The court shall brief the petitioner on other suitable measures aimed at their protection, in particular on their right to file a petition for instituting proceedings on the merits. The court shall also brief the petitioner on the option to file a petition for prolongation of the period of force of the preliminary injunction pursuant to Section 410 SCP. Exceptions following from observing the duties imposed by the preliminary injunction upon the respondent shall be stipulated by the court, with regard to the respondent's legitimate interests.

*The preliminary injunction pursuant to Section 405 SCP shall last 1 month from its enforceability.* If the decision on the petition for a preliminary injunction was preceded by expulsion pursuant to another statutory regulation, and unless the period stipulated in another statutory regulation for duration of the expulsion expired prior to the effective date for enforceability of the preliminary injunction, the period of force of the preliminary injunction shall be prolonged

by the period that has not yet expired until enforceability of the preliminary injunction (*cf.* Section 408 SCP).

Prior to expiration of the period set forth in Section 408 SCP, the petitioner may file a petition for prolongation of the period of force of the preliminary injunction in the matter of protection against domestic violence. Filing the petition prolongs the period of force of such preliminary injunction until the time when the court decides on the petition for prolongation. In deciding on the petition for prolongation of the period of force of the preliminary injunction, the court shall particularly consider the duration of the state of danger for the petitioner, the property or other relations of the parties, including ownership and other relationships to the common home, to which the preliminary injunction applies, and other circumstances of essence, including other proceedings pending between the parties. The court shall decide on the petition for prolongation of the period of force within 2 months from the date of filing the same, provided that the court can only prolong the period of force of the preliminary injunction for an absolutely necessary period. Unless the petitioner proves their property or other relations, including ownership and other relations to the common home, the court may prolong the period of force of the preliminary injunction only on grounds worth special regard. A preliminary injunction pursuant to Section 405 SCP shall expire no later than after 6 months from its enforceability (*cf.* Section 410 – 414 SCP). The Act also regulates, in Section 414 SCP, the decision on revocation of the preliminary injunction pursuant to Section 405 SCP.

*The perpetrator of the criminal offence pursuant to Section 337(2) of the Criminal Code has to commit deliberate grave or repeated conduct aimed at hindering the expulsion or the preliminary injunction in the matter of protection against domestic violence for their conduct to accomplish the elements of this criminal offence. Thus, the perpetrator's conduct has to be either more intensive, capable of eliciting fear of the endangered person for their life, health or freedom, or repeated conduct has to be the case. Meeting of this repetitiveness criterion, however, does neither require repetition of identical conduct nor the severity of the attack.*<sup>19</sup> The expelled person commits

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<sup>19</sup> ŠÁMAL, Pavel et al. Trestní zákoník II., § 140 až 421. Komentář [Criminal Code II., Sections 140 to 421. Commentary]. 2<sup>nd</sup> edition. Praha: C. H. Beck. 2012, pp 3194-3195.

a criminal offence even in the case that the person affected, i.e. the victim, agrees with the breach of the expulsion.<sup>20</sup>

In relation to the domestic violence victim and operation of the Czech Police or the court, it is also necessary at this point to refer to the moment of commencement of criminal prosecution. Whereas in a number of criminal offences involving close persons Section 163(1) of the Code of Criminal Procedure requires consent with institution of prosecution, such consent is not required in cases of abuse of persons sharing a common home. This step may also be justified by the attempt at efficient protection of the victim, as the victim is often in a dependent position and has an intimate relationship with the violent perpetrator, provided that these circumstances could significantly compromise granting of the consent.

#### **4. Protection of domestic violence victims in criminal proceedings**

An additional moment that significantly enhanced protection of victims in criminal proceedings, including domestic violence victims, was the adoption of the act on crime victims (Act no. 45/2013 Coll., on Crime Victims and on Amendments to Some Acts), which is an essential law addressing the issue of crime victims, which at the same time amended several other laws also governing the victim protection issue. The adoption of the said act eliminated the situation when a comprehensive regulation of the rights of the victim as the subject of special care was missing, and transposed several EU directives aimed at strengthening the rights of victims. At the same time, victim protection plays a key role also according to majority reactions of the public and shall be the first reaction also in domestic violence cases.<sup>21</sup> Although the said act is not specifically aimed at domestic violence victims, it introduces several institutes enhancing their protection. What is particularly relevant for domestic violence victims is the regulation of preliminary injunctions in criminal proceedings and the procedure of their imposition in Section 88b – 88o of the Code of Criminal Procedure, which, besides others, also led to establishment of new procedural institutes also aimed at protecting the victim, their close persons, preventing the accused from committing crime and ensuring an effective execution of criminal proceedings. As a matter of fact, the urgent need for a preliminary

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<sup>20</sup> KRÁLIČKOVÁ, Zdeňka et al. Právo proti domácímu násilí. Skripta [Law Against Domestic Violence. University Textbook]. 1<sup>st</sup> edition. Praha: C. H. Beck, 2011, p. 85.

<sup>21</sup> Sociofactor research, quote

regulation of relations or relationships between the accused and the victim is also intensively manifested in connection with domestic violence, in particular with the criminal offence of abuse of a person sharing a common home pursuant to Section 199 of the Criminal Code and with other aforementioned criminal offences, but also in connection with, for instance, dangerous threats or stalking.

What can serve as major protective institutes or preventative measures against domestic violence are in particular the preliminary injunctions of prohibition of contact with certain persons (Section 88d of the Code of Criminal Procedure) and prohibition of entry into the home (Section 88e of the Code of Criminal Procedure), which are follow-up on the associated aforementioned civil-law regulation in the act on special court proceedings and on the institute of expulsion. The measure of prohibition of contact with certain persons pursuant to Section 88d of the Code of Criminal Procedure rests upon inadmissibility of any contacting or seeking the presence of the victim, their close persons or other persons (particularly witnesses), also applicable to doing so via a network of electronic communications or via other equivalent means. It therefore refers to prohibition of any contacts, be it seeking the presence, stalking, or persistent contacts, direct or mediated.<sup>22</sup> What is then even more significantly applicable in the context of protection against domestic violence is the preliminary injunction of prohibition of entry into the home regulated in Section 88e of the Code of Criminal Procedure, which is immediately associated with other “non-criminal” protective institutes. It may either be a follow-up on expulsion or a preliminary injunction in the matter of protection against domestic violence, or it can be applied completely independently from other measures. It rests upon inadmissibility of entry of the accused into the common home shared with the victim and into its immediate vicinity and upon inadmissibility of stay of the accused in such home. Thus, preliminary injunctions in criminal proceedings set legislative preconditions for even more effective protection of victims of criminal offences characterised as domestic violence.

## 5. Conclusion

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<sup>22</sup> GŘIVNA, Tomáš., ŠÁMAL, Pavel, VÁLKOVÁ, Helena et al. Zákon o obětech trestných činů. Komentář [Act on Crime Victims. Commentary]. 1<sup>st</sup> edition. Praha: C. H. Beck, 2014, pp 334–339.

In conclusion, I would like to point out that the aforementioned overview of criminal-law legislation governing the issue of domestic violence shows that the law at present contains several institutes aimed at protecting domestic violence victims and repressing perpetrators. Thus, in the last 10 years, a legislative framework was successfully created that helps victims to get appropriate protection and to defend themselves effectively against the perpetrators. However, setting up an appropriate legal framework does not automatically mean its actual application, and the work in the fight against domestic violence does not end there. As a matter of fact, the peculiarities of this phenomenon often lead to a situation when the victim fears their tormentor and as a result the victim is not able to take advantage of the institutes guaranteed by the law, and at the same time the hidden nature of domestic violence prevents the competent authorities from uncovering psychic, physical, financial or other abuse. Therefore, I would like to appreciate that the discussion on protection of domestic violence victims continues, also via today's seminar, and I trust we will be able to contribute to the ongoing fight against this negative phenomenon of the present time and to enhancing protection of its victims.