



THE AIRE CENTRE

Advice on Individual Rights in Europe



GENDER AND THE JUDICIARY

in the Western Balkans



FemPlatz

UDRUŽENJE GRAĐANKI

Judicial Response to Femicide in the Western Balkans

Legal Framework and Judicial Practice

Judicial Response to Femicide in the Western Balkans – Legal framework and judicial practice

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» PREFACE

I am pleased and honoured to introduce this important publication on the judicial response to femicide in the Western Balkans. This work has been undertaken by the Gender Champions in the Judiciary Network and comes from a shared commitment to combat gender-based violence (GBV) and femicide across the Western Balkans region.

I am grateful to all who have contributed to this valuable resource. It is a testament to the collaborative spirit of the judiciary, government bodies, and civil society - all united by a common purpose – to stand as champions against GBV and femicide.

GBV often lurks behind closed doors, within personal relationships, and its impact can be profound. It takes many forms, from physical violence to psychological torment, even reaching into the digital sphere. Women represent the vast majority of victims of GBV. It plainly represents a form of discrimination against women – a direct violation of their fundamental rights. It transcends borders – across the Western Balkans and beyond.

Femicide, the killing of a woman on the grounds of her sex, gender, and/or gender roles, is the most extreme and tragic manifestation of GBV. It is characterised by hate of, or contempt for, women. It must be fought at all costs.

The courts, prosecutors and the police authorities are at the front line of this fight. Most often, victims turn first to them for help. Their duty is not only corrective, but also preventive – they bear the duty to protect women from domestic violence. For the judiciary, its response to femicide extends well beyond the courtroom. The decisions of judges carry the power to not only bring wrongdoers to justice, but also to shape societal norms and protect the fundamental rights of women.

The mission of this report is clear: to provide judges, practitioners and institutions with a comprehensive tool in the fight against femicide. It is an extensive source of knowledge, insights, precedents and best practices.

The report presents the current position on the judicial response to femicide in the Western Balkans region. It is a compilation and analysis of extensive national

research conducted by dedicated organisations and individuals. It contains valuable, albeit devastating, data and statistics on femicide and the judicial response; a clear overview of the respective national criminal legislation; and case studies illustrating the approach taken in different states. It not only considers the current position, but it is forward-looking – considering what needs to change and what we can all learn as we work to confine femicide to history.

I hope it will be used as a tool by the judiciary, prosecutors, and others to increase their understanding and awareness of femicide; to align the jurisprudence within the Western Balkans with the European Convention on Human Rights and international standards and, most crucially, to play a pivotal role in combatting femicide.

We all have the responsibility to advocate for gender equality, uphold and protect women's rights, and challenge discrimination and violence. Together, we must work tirelessly to eradicate femicide. I invite you all to make full use of this publication.

With respect,

Róbert Spanó

Former President of the European Court of Human Rights
President of the Board of Patrons

» ABOUT THE REGIONAL REPORT

The regional report on judicial response to femicide in the Western Balkans is shortened and adapted version of the national researches on femicide conducted in all Western Balkans states during the last three years.

In the period from 2018 to 2021, Women's rights organisation FemPlatz and the Women's Research Centre for Education and Communication from Serbia began developing a framework for understanding the characteristics, patterns and causes of femicide in Serbia, as the most extreme manifestation of violence against women.^[1] The process involved developing a research methodology, desk research, data collection, analysis of collected quantitative and qualitative data and resulted in the first interdisciplinary research on societal and institutional response to femicide in Serbia.^[2]

Having in mind similar social and geopolitical context, as well as the widespread violence against women, the same research was replicated in Montenegro and Albania.^[3] The methodology used in Serbia was adapted to the national contexts

- [1] With the support of the UN Women Regional Office for Europe and Central Asia within the "Eradicating and Preventing Femicide in Serbia" project.
- [2] Konstantinović Vilić Slobodanka, Petrušić Nevena, Beker Kosana, Društveni i institucionalni odgovor na femicid u Srbiji I, Udruženje građanki FemPlatz, Pančevo, 2019, available at: http://femplatz.org/library/publications/2019-11_Femicid_monografija_Prva_publikacija_E_primerak.pdf; Petrušić Nevena, Žunić Natalija, Vilić Vida, Društveni i institucionalni odgovor na femicid u Srbiji II, Udruženje građanki FemPlatz, Pančevo, 2019, available at: http://femplatz.org/library/publications/2019-11_Femicid_monografija_Druga_publikacija_E_primerak.pdf and Konstantinović Vilić Slobodanka, Petrušić Nevena, Pokušaji femicida i femicid u Srbiji: Sprečavanje i procesuiranje, Udruženje građanki FemPlatz, Pančevo & Niš, 2021, available at: http://femplatz.org/library/publications/2021-04_Femicid_-_Pokusaj_femicida_i_femicid_u_Srbiji.pdf
- [3] Women's rights organisation FemPlatz implemented the "Replicating the Femicide Watch Model Developed in Serbia in Albania and Montenegro, and Laying the Grounds for the Establishment of a Regional Femicide Watch" project in partnership with the Helpline for Women and Children Victims of Violence from Nikšić, Montenegro and the Center for Legal Civic Initiatives, Tirana, Albania, with the support of the UN Women Regional Office for Europe and Central Asia and funded by the European Union in the period from September 2021 to

and included: a desk research on the legal framework related to violence against women, including femicide; collecting data on final court decisions in cases of femicides and attempted femicides (regardless of the criminal act's qualification) for the 2017-2020 period; quantitative analysis of the court proceedings; an in-depth analysis of selected court case files in form of case-studies; capacity assessments of institutions and professionals relevant for the prevention of, and protection from, violence against women; interviews with convicted perpetrators of femicide, who are currently serving prison sentences. The researches for Albania^[4] and Montenegro^[5] are available in local languages, while executive summaries are also available in English.^[6] The use of the same research methodology allows comparison between the three states.

The researches conducted in Serbia, Montenegro and Albania were collected, shortened and compared, which resulted in a regional report on societal and institutional responses to femicide in Albania, Montenegro and Serbia.^[7]

Parallel to the research on femicide conducted by FemPlatz and partner organisations in abovementioned three WB counties, the AIRE Centre,^[8] within the project on "Judicial Capacity Building in Bosnia and Herzegovina for Harmonization with a View to Harmonise Domestic Case-law and to Comply with European Legal Standards", recognised the importance of the topic and supported similar research in Bosnia and Herzegovina. The research on judicial response to femicide in Bosnia and Herzegovina was conducted by the AIRE Centre and FemPlatz, as

November 2022.

- [4] Hysi Vasilika, *et.al*, Vrasjet e grave (femicidi) dhe tentativa për femicid në Shqipëri (2017-2020), Center for Legal Civic Initiatives (CLCI), Tirana, 2023, available at: <https://www.qag-al.org/publikime/femicidi.pdf>
- [5] Beker Kosana (ed.), Društveni i institucionalni odgovor na femicid u Crnoj Gori, SOS Nikšić, 2023, available at: <https://sosnk.org/wp-content/uploads/2023/04/Drustveni-i-institucionalni-odgovor-na-femicid-u-Crnoj-Gori-1.pdf>
- [6] Executive summary for Albania, available at: <https://eca.unwomen.org/sites/default/files/2023-04/Social-and-Institutional-Response-to-Femicide-in-Albania.pdf>; Executive summary for Montenegro, available at: <https://eca.unwomen.org/sites/default/files/2023-04/Social-and-institutional-response-to-femicide-in-Montenegro1.pdf>
- [7] Beker Kosana, Regional report: Social and institutional responses to femicide in Albania, Montenegro and Serbia, UN Women & FemPlatz, March 2023, available at: https://eca.unwomen.org/sites/default/files/2023-04/Regional-Report_Social-and-Institutional-Response-to-Femicide.pdf
- [8] More information are available at: <https://www.airecentre.org/the-aire-centre>

part of broader activities of the AIRE Centre in Bosnia and Herzegovina, aimed at strengthening the implementation of the European Convention on Human Rights and its standards. The activities also included cooperation with the highest courts and centres for the education of judges and prosecutors, and participation in developing regular and periodic publications and reports.

The research on judicial practice of courts in Bosnia and Herzegovina in cases of femicides is the result of intensive cooperation with judges of the Supreme Court of the Federation of Bosnia and Herzegovina, the Supreme Court of Republika Srpska, and the Court of Appeal of the Brčko District. This research included an analysis of the legal framework regulating the crime of murder in Bosnia and Herzegovina and a case-law analysis covering the legal qualification of criminal offences, the phenomenological characteristics of the committed crimes, the perpetrators' profiles, the victims' profiles, criminal sanctions, duration of court proceedings, as well as how civil claims for damages are handled. As for the qualitative part of the research, there is a number of case studies presented in detail.^[9] In the research for Bosnia and Herzegovina, the same methodology developed by FemPlatz was used in relation to the judicial practice. However, due to the focus exclusively on the judiciary, this research does not contain part with the capacity assessment of the institutions and professionals mandated with prevention of, and protection from, violence against women. Nonetheless, the same methodology for the research of judicial response ensures comparability with other researches conducted on femicide in the region.

During 2022 and 2023, the remaining two researches on judicial response to femicide were conducted, in North Macedonia with the support of the Academy for Judges and Public Prosecutors, and in Kosovo, with the support of the Constitutional Court. Both researches were conducted within the AIRE Centre's project "Gender Equality and Fight against Gender-Based Violence and Femicides in the Western Balkans", funded by the UK Government. The project aims to increase access to justice for victims and survivors of gender-based violence through increased understanding of gender issues amongst the judiciary of the Western Balkans, through analytical work aimed to establish gaps in compliance with good practice and international standards; increasing the alignment of the case law in WB6 on gender-based violence and femicides with the good practice of the European Court of Human Rights and international standards; increasing

[9] Beker Kosana, Tanović Dalida (eds.), *Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021*, AIRE Centre, 2022, available at: <https://www.airecentre.org/Handlers/Download.ashx?IDMF=77975c73-9c31-4552-9a68-3013255c0d5f>

knowledge and awareness of gender issues amongst judges and other court practitioners, and mainstreaming gender equality across the judicial practices in all 6 Western Balkans jurisdictions. The researches for North Macedonia^[10] and Kosovo^[11] include analysis of the national legal framework concerning homicides, analysis of the judicial practice of the cases of femicides and attempted femicides for the period from 2018 to 2022, as well as several cases of femicides that are presented in detail, in the form of case studies.

This regional report is focused solely on femicide, while national reports also include legal framework related to violence against women, domestic violence and gender-based violence. Having in mind that, at the time of conducting the researches, the Western Balkans states had not criminalised the femicide as a separate criminal offence, the researchers collected all cases of murders of women by men and then they analysed if the murders were gender related. The report is divided in six parts, each part for one state, and the states are presented in alphabetical order. First, there is a national legal framework related to different types of murders, and afterwards the judicial practice is analysed, followed by a few cases from each country, presented more in depth, as case studies. At the end, several recommendations are given, that are important, relevant and applicable in every Western Balkans state, while more national specific recommendations are part of the national reports.

The main aim of this report is to present, very briefly, the current state of affairs regarding the judicial response to femicide in the Western Balkans states. A short legal overview enables readers to get familiar with the respective national criminal legislation concerning different types of murders, because that legislation is available to prosecutors and judges when it comes to qualifying the criminal offences. In addition, two selected case studies per country give a glimpse of the court proceedings and sanctions imposed on perpetrators of femicide, while provided comments are reminders on what should be done differently in order to ensure proper judicial response to femicide. This report, although not

[10] Габер-Дамјановска Наташа and Гајдова Габриела, *Фемицидот во Република Северна Македонија – состојба, правна рамка и судска пракса (2018-2022)*, AIRE Centre, 2023, available at: http://femplatz.org/library/publications/2023-09_femicide-report-nmk-2023-nmk.pdf [Gaber-Damjanovska Natasha and Gajdova Gabriela, *Femicide in the Republic of North Macedonia – The state of affairs, the legal framework and the judicial practice (2018-2022)*, AIRE Centre, 2023, available at: <https://gcjnetwork.org/femicide-report-nmk-2023-eng-4/>].

[11] To be published in winter 2023, and will be available online on the AIRE Centre and FemPlatz websites.

analytically comparative, could be used for comparison between the Western Balkans countries, and could contribute to harmonisation of proceedings and improvement of judicial responses to femicide.

» PREVALENCE OF FEMICIDE

Women represent the vast majority of victims of domestic violence and other forms of gender-based violence, and the perpetrators of violence are mostly men.^[12]

Femicide – killing of a woman on the grounds of her sex, gender, gender roles – is the most extreme manifestation of violence against women and it is characterised by a hate of, or contempt for, women, the desire to dominate a woman and control her life.^[13] Femicide in family-partner relations constitutes a substantial share of all homicides of women in the world^[14] and most killings of women and girls are gender motivated.

Globally, in 2021, around 45,000 women and girls were killed by their intimate partners or other family members, which is more than five women or girls killed every hour. Women and girls are disproportionately affected by homicidal violence in the private sphere, namely 56% of all female homicides are committed by intimate partners or other family members.^[15]

Having in mind that femicide is not criminalised as a separate criminal offence in the Western Balkans countries, except for North Macedonia very recently, it is very challenging, if not impossible, to properly monitor and analyse cases of femicide. Official national statistics do not provide data on femicides separately; therefore, there is no publicly available data regarding this widespread social phenomenon.

As for the international statistics, for example, the UNODC data on victims of intentional homicides for the period 2019-2021 showed the following rates of killed women (per 100.000):

[12] Beker Kosana, 2023, *op. cit.*, p. 35.

[13] Konstantinović Vilić Slobodanka, Petrušić Nevena, Beker Kosana, 2019, *op. cit.*, p. 7.

[14] *Ibid.*, p. 412.

[15] United Nations Office on Drugs and Crime, UN Women, Gender-related killings of women and girls (femicide/feminicide), 2022, available at: <https://www.unwomen.org/sites/default/files/2022-11/Gender-related-killings-of-women-and-girls-improving-data-to-improve-responses-to-femicide-feminicide-en.pdf>

UNODC – Rates of killed women 2019-2021^[16]

	2019	2020	2021
Albania	0.91	0.63	0.84
Bosnia and Herzegovina	0.59	0.30	0.42
Kosovo	0.35	0.96	0.36
Montenegro	1.55	0.93	0.62
North Macedonia	0.38	n/a	n/a
Serbia	0.73	0.57	0.71

On the other hand, data from the World Population Review on femicide rates per country for 2023 shows that Albania has the highest rate among the Western Balkans countries (1.1), followed by North Macedonia (0.9), Serbia and Montenegro have the same femicide rate (0.6), Bosnia and Herzegovina (0.5), while data for Kosovo is not available.^[17]

For the purpose of national researches on femicide, partner organisations^[18] collected available data on killed women from media reporting (press clipping), and from the other available sources. In the table below, data for the period from 2020 to 2022 are shown, together with estimated population as of the end of 2021.

[16] UNODC data on victims of intentional homicides for the period 2019-2021, available at: <https://dataunodc.un.org/dp-intentional-homicide-victims>

[17] World Population Review published Femicide Rates per Country for 2023, available at: <https://worldpopulationreview.com/country-rankings/femicide-rates-by-country>

[18] The CLCI for Albania, the Center of Women's Rights Zenica for Bosnia and Herzegovina, the Constitutional Court officials for Kosovo, SOS Nikšić for Montenegro, professionals from the Academy for Judges and Prosecutors for North Macedonia and FemPlatz Pančevo for Serbia. Data was collected from the media reports and other available sources.

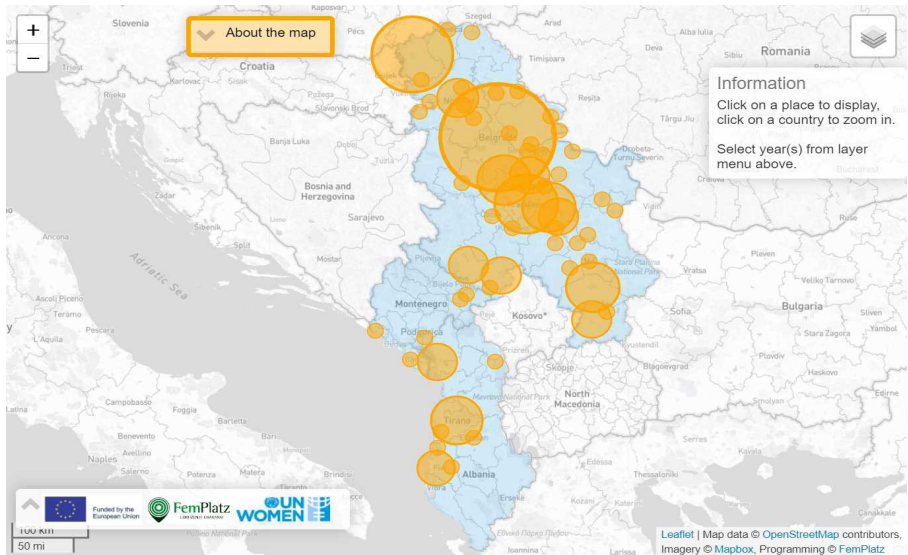
Number of femicides in the Western Balkans countries and estimated population 2021

	2020	2021	2022
Albania (2.8 million)	9	7	7
Bosnia and Herzegovina (3.3 million)	12	9	11
Kosovo (1.8 million)	4	3	3
Montenegro (620.000)	1	2	2
North Macedonia (2.1 million)	4	7	1
Serbia (6.8 million)	27	26	27

Finally, due to the lack of official data, while having in mind the fact that femicide is widely spread in the Western Balkans region, FemPlatz developed **interactive femicide map**.^[19] Currently, data is available for three WB countries, but it will be soon expanded to include all six WB states. This interactive map displays and describes femicides committed since 2020 in Albania, Montenegro and Serbia. In addition, as of beginning of October 2023, the data on femicides in the Republic of Croatia is available.

The map aims to track data on femicide, as well as to serve as a model of a public, transparent map that may be developed through prospective femicide watches – mechanisms to monitor femicide – in the region. The information about femicide displayed in the map is collected from the media and does not represent an official source of information. It is addressed to state authorities and other actors as a model of public data presentation for future femicide watch initiatives.

[19] Interactive femicide map, FemPlatz, available at: <http://femplatz.org/index.php?t16>



» PRESENTATION OF THE SITUATION AND THE MAIN FINDINGS

ALBANIA

Legal framework

Femicide is not criminalised as a separate criminal offence in Albania. The criminal legislation comprises criminal acts of violence, some of which are related to family relations or intimate relationships that are not necessarily family-related, under a particular section of the Criminal Code, as well as murder/homicide, and it provides sanctions for different types of murders/homicides.^[20] The other important law is the Criminal Procedure Code (CPC) of the Republic of Albania.^[21]

The Criminal Code (CC) provides for several criminal offences which, under certain circumstances, might qualify as femicide.^[22]

- » intentional murder (Article 76);
- » premeditated murder (Article 78);
- » murder in other circumstances, like intentional murder committed against:
 - › a minor;
 - › a person with physical or psychological disabilities, seriously sick person, or a pregnant woman, when the victim's attributes are evident or known (Article 79);
- » domestic violence with fatal outcome (Article 79/c);
- » homicide committed in a state of profound psychological distress (Article 82);
- » intentional serious injury resulting in death (Article 88, paragraph 2).

Domestic violence with fatal outcome (Article 79/c of the CC) is defined as an intentional murder of a person who is the spouse, ex-spouse, cohabitant or

[20] Law no. 7895 of 27 January 1995 – Criminal Code of the Republic of Albania.

[21] Law no. 7905 of 21 March 1995 – Criminal Procedure Code of the Republic of Albania.

[22] Violent criminal acts are included in Chapter II of the Criminal Code, Sections I, II, III, IV, V and VI, some of which are closely linked with acts committed due to family relationships.

ex-cohabitant, close kin or close kin of the spouse of the offender. The offender shall be punished by imprisonment of not less than 20 years or life imprisonment. The Criminal Code, in its Article 50/j, provides also for acts of murder due to the gender of the person as an aggravating circumstance.

Article 88 of the Criminal Code provides for the criminal offence of intentional serious injury under aggravating circumstances when such criminal offence is committed against several persons, against a person who is the spouse, ex-spouse, cohabitant or ex-cohabitant, close kin, or close kin of the spouse of the offender, or when such injury has resulted in death. In terms of violent criminal offences, the Criminal Code contains a number of provisions related to sexual crimes, including sexual violence, rape and sexual harassment. In the period between 2012 and 2021, a substantial number of amendments were instituted in the civil, administrative, and criminal legislation in Albania. Providing protection for victims, women, and minors under the criminal justice system was part of the criminal justice reform, in the wider framework of the justice system reform in Albania (2015–2020). An overview of the criminal law on acts related to femicide reveals that Albania's procedural criminal legislation has improved over the past decade. Some of these improvements came as a result of the growing number of crimes, others resulted from the need to align the Albanian criminal laws with the international standards.^[23] The main changes and improvements are as follows:

- » Sexual harassment and violent sexual relations between spouses or co-habitants were criminalised, and a distinction is drawn between sexual violence, sexual relations, indecent acts and sexual harassment;^[24]
- » Sexual intercourse between spouses or co-habitants without the consent of one of them was criminalised;^[25]
- » Penalties were increased in cases of trafficking of women and girls for various purposes, including exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or forms similar to slavery,

[23] Hysi, Vasilika, Criminal acts against women and children and anti-crime policies in Albania, Reflections on changes to the Criminal Code (2012-2013), "Studime Juridike" Review no. 2, 2014, Law Department, University of Tirana.

[24] The amendments sought to harmonise the Albanian criminal law with the Istanbul Convention and the CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Articles 3 and 18). Albania ratified the latter Convention by the Law no. 10071, of 9 February 2009.

[25] Article 102 of the CC. Law no. 144/2013 on Supplements and Amendments to the Law no. 7895 of 27 January 1995 – Criminal Code of the Republic of Albania, as amended.

- use or transplantation of organs, as well as other forms of exploitation, inside and outside the territory of Albania.^[26] The list of criminal offences which are considered by the amended law as being committed under aggravating circumstances includes cases involving minors, close kins, close kins of the spouse, guardians or people availing themselves of their official relationship, or when the offence was committed in complicity, or more than once, or by persons vested with exercising state and public functions;
- » Stalking was added as a new criminal offence.^[27] The Criminal Code stipulates that there are aggravating circumstances when stalking was committed by a former spouse, a former cohabitant, or a person who was in an intimate relationship with the injured party; when it was committed against a minor, a pregnant woman, or a person unable to defend himself or herself, and when it was committed by a disguised person or a person carrying or using a weapon;
 - » A new criminal offence of domestic violence was introduced.^[28] The new provisions include battering and any other act of violence against family members; serious threat to kill or cause serious bodily injury to a family member; intentional light injury and intentional injury resulting in temporary inability to work for more than nine days;
 - » Domestic violence with fatal outcome was added, stipulating a prison term of no less than 20 years or life imprisonment;^[29]
 - » The criminal offence of aggravated bodily assault was amended to increase sentencing for an act committed against a spouse, former spouse, cohabitant or former cohabitant or a kin of the offender, or when it results in death;^[30]
 - » Aggravating circumstances in cases when acts are committed in violation of restraining orders, by using family relations, by motivation of gender, gender identity and/or sexual preference were added.^[31]

[26] Article 110/a of the CC.

[27] Article 121/a of the CC. Amended by the Law no. 23/2012 of 1 March 2012.

[28] Article 130/a of the CC. Amended by the Law no. 23/2012 Supplementing and Amending the Law no. 7895 of 27 January 1995 – Criminal Code of the Republic of Albania, as amended.

[29] Article 79/c of the CC.

[30] Article 88/2 of the CC. Supplemented by the Law no. 144/2013, Article 18.

[31] Law no. 144/2013 Supplementing and Amending the Law no. 7895 of 27 January 1995 – Criminal Code of the Republic of Albania, as amended.

In addition, mitigating circumstances^[32] were clarified in 2013, including the circumstance of *the offence being committed for motives of positive moral and social values*, but committing an offence does not mitigate the sentence if the offence was committed due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, health status, genetic predisposition or disability. Likewise, the mitigating circumstance of *normalisation of the relationship between the perpetrator of the criminal offence and the victim* does not mitigate the sentence for a person who commits a criminal offence against children, or a criminal offence related to domestic violence. The provision on aggravating circumstances was amended in 2013,^[33] adding the new aggravating circumstance of *committing a criminal offence after being placed under electronic monitoring*.^[34] Two other paragraphs were amended in order to clarify and harmonise the legislation with the Istanbul Convention, specifically when the offence is committed by taking advantage of family, cohabitation, friendship and host relationships,^[35] and when the offence is committed for motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, health status, genetic predisposition or disability.^[36]

Judicial research on femicide

The Center for Legal Civic Initiatives conducted research on the court decisions related to femicide in Albania during the 2017-2020 period, through monitoring, analysing, and evaluating the decisions of the Albanian courts.^[37] The analysis of judicial practice is based on the study of final court decisions during the monitoring period. The criminal offences of femicide and attempted femicide were studied, including the profile of the perpetrator, the victim and the perpetrator-victim relationship, the factors that have influenced violence against women, the criminal offence committed, the way it was committed, aspects of the judicial procedure

[32] Article 48 of the CC. The last two paragraphs are supplemented by the Law no. 144, of 05.02.2013, Article 5.

[33] Article 50 of the CC. The points "ç/1" and "e/1" were added, and the points "g" and "j" were amended by the Law no. 144 of 2 May 2013, Article 6.

[34] Article 50 e/1 of the CC.

[35] Article 50/g of the CC.

[36] Article 50/j of the CC.

[37] Hysi Vasilika, Anastasi Aurela, Bozo Aurela and Vora Erisa, *Vrasjet e grave (femicidi) dhe tentativa për femicid në Shqipëri (2017-2020)*, Center for Legal Civic Initiatives, Tirana, 2023, available at: <https://www.qag-al.org/publikime/femicidi.pdf>

and decisions in criminal proceedings. It should be noted that the anonymisation of decisions and data due to the personal data protection created ambiguity and lack of transparency, and some judgments were significantly anonymised, which made them incomprehensible due to the almost complete lack of content.

Quantitative data

From the collected case-law, 23 final decisions were analysed as femicide and attempted femicide. In the 2017-2020 period, most of the judgments were issued by the Serious Crimes Court (70%), while the rest of the judgments were issued by District Courts. Among the cases analysed, there were total of 33 criminal offences, out of which 25 were main criminal offences, including one case of domestic violence. The vast majority of cases were qualified as homicide due to family relations (75%), followed by homicide in other qualifying circumstances, premeditated homicide and intentional serious injury, each represented by 8.3%.

The majority of offences were committed in the joint home of the victim and of the perpetrator. Different methods and weapons were used for the commission of the criminal offence, such as: sharp tools accessible in the dwelling (axes, sledgehammers, iron bars, knives), automatic firearms, etc. Three fourths of perpetrators had no criminal history and the majority of perpetrators were legally capable and mentally sane at the moment of commission of the offence. About one third pleaded not guilty and in some cases (21%) expressed remorse during the trial. Women are more often victims of femicide by their husbands, but also by other family members, especially when they live together. The majority of the victims had experienced physical and psychological violence prior to the femicide.

The analysed case-law did not contain comprehensive data about the profiles of victims and the perpetrator-victim relationship, while the same refers to the mitigating and aggravating circumstances. Investigation and adjudication were focused on the analysis of the elements of the offence and strictly on proving the perpetrator's guilt. Along with the uneven understanding and implementation of the law, perpetrators have benefited of considerable reduction of sentences due to the admission of requests for abbreviated trial.^[38] The sentences for the criminal offences of femicide vary for several reasons, depending on the type of procedure that was carried out. In general, **the courts have imposed long-term**

[38] According to Article 403 of CPC, the request for abbreviated trial could be submitted during the preliminary hearing, including for the most serious crimes. As of 2017, this is no longer possible for the criminal offences that could be punished by life imprisonment.

imprisonment or life imprisonment in most of the cases. The findings of the research showed that prosecutors and judges have held different positions in qualifying the main offence.

Profile of perpetrators

Out of the total number of cases, 23 men committed a criminal offence that was classified in the research as a femicide and/or attempted femicide. Most of them committed the criminal offence alone and only in two cases they cooperated with another person. In terms of age, the majority of the perpetrators of the crime at the time of committing the crime were over 57 years old (50%), followed by the 49-56 age group (17%), the 41-48 age group (13%), the 25-32 age group (13%) and by 4% of the 18-25 and 33-40 age groups.

Data on the educational level of the perpetrators are missing in many decisions due to omission to include it in the decision or due to anonymisation of the data (33%). Available data showed that the perpetrators' educational level is average or below the average. Most of the defendants have secondary education (33%), followed by those with completed 8 years of education (17%) and those with unfinished 8 years of education (17%).

Three fourths of perpetrators were previously non-convicted, 21% of them were convicted of various criminal offences, while 17% of them were convicted of domestic violence. Also, the case-law showed that 86% of the defendants had not consumed alcohol or drugs at the time of committing the criminal offence.

Profile of victims

In the case-law sample, there were 27 victims, most of them women (89%). However, it was possible to collect general information for only about 37% of the victims. The scarce information about the victims does not allow to realise their status in the family, the economic position and the information regarding their rights and protection mechanisms, whether there was support from their family members and relatives, the attitude of the family of origin, etc. Most of the victims were married (78%), some were divorced (11%) and one was a child (4%).

Not all decisions address the fact whether the victim was previously a victim of violence (33%). However, femicides were preceded by the use of systematic physical and psychological violence. Most of the victims have been physically and psychologically abused for a long period (44%); have been psychologically abused

(11%) and only a few victims have not suffered violence before (15%). Some of the victims were under a protection order or had benefited of a protection order before (19%).

Although it turns out that many of the victims were systematically mistreated by the perpetrators, for most of the victims (70%), the court judgments did not contain data as to whether the victims of violence sought help from the Police or any other institution. There is also no data as to whether the victim turned to any civil society organisation that provides support services for abused women and girls. However, in many cases, judgements highlight the violence that the victim had experienced by the perpetrator and/or his family members.

Motives

Some of the perpetrators have acknowledged the charge(s) and have given explanations for the motives of committing the criminal offence or the acknowledgment had become clear from the testimonies. Base motives are one of the causes of crimes in the family, however, scarce details are provided. Some of the underlying motives are: jealousy; a perpetrator's suspicion that children were not his own children; mental health problems; economic problems; issuance of a protection order or of conviction for domestic violence, or filing for divorce; alcohol abuse combined with economic problems; suspicion of adultery; refusal to have an intimate relationship; revenge after the victim had accused her brother-in-law of killing her sister,^[39] etc.

Mitigating and aggravating circumstances

Some of the mitigating circumstances referred to in the reasoning of the court judgements are: age of the perpetrator of the crime (young age or older age); family status; confession to the crime; expressed remorse; etc. As for the aggravating circumstances, the courts referred to: the social danger posed by the criminal offence and/or perpetrator of the crime; the serious consequences of the crime (e.g. causing a death of three persons, including one minor and one pregnant woman); committing the offence out of base motives (such as jealousy; suspicion of adultery; revenge); denial of the crime; previous convictions; manner of committing the offence (e.g. shooting several times with a weapon at defenceless persons; using firearms; shooting several times with firearms towards

[39] For this particular case, on the day of the incident, the Court was holding a custody hearing for the murdered sister's children.

the whole family; using combat weapons; brutal commission of the crime, leaving the victim to suffer; the intensity of the attacks; poisoning and later suffocating the victim); offence motivated by revenge for the actions of the physically abused former wife; offence committed by taking advantage of family relationships with the victims; crime committed in front of the children; crime committed during the application of a protection order measure; previous conviction for domestic violence; failure to express remorse; the fact that, after the crime, the perpetrator forced the victim to pretend her serious injury as self-inflicted, in order to exempt him from legal responsibility; and the fact that the perpetrator left the scene and did not care about the consequences or the health condition of the victims.

Case studies

In the Albanian research study, five case studies are presented. Information about two analysed cases are briefly presented here.

Case no. 1

The defendant F.R. and the victim L.R. were married and had two minor children. The defendant exerted physical and psychological violence against his wife. A protection order was issued by the court on 11 November 2016 and F.R. was banned to approach the victim L.R. at a distance of two metres, while she was staying in the matrimonial apartment with the children. Although a protection order was issued, the perpetrator and the victim lived in the same apartment. On 3 December 2016, the Police received a call asking for an ambulance after a woman had jumped from the fourth floor of the building. Then, the Police recorded a call from F.R. (the defendant) who reported that he had committed a crime. It was qualified as a domestic violence with fatal outcome.

The judgment contains little information about the defendant and his behaviour. He was 52 years old, with no previous convictions, unemployed, while there is no information about his educational level or profession. Also, there is no information about his relationship with his family of origin, his behaviour, his childhood, etc., whether he behaved violently. The forensic expert opinion shows that the defendant has previously demonstrated violent behaviour towards the victim. Also, the judgment does not contain information about the victim, her age, education, profession and employment and the relationship with her spouse. The only fact regarding the perpetrator-victim relationship comes from the testimony of the defendant's brother, who stated that the relations between the defendant and the victim were not good. According to the defence, the cause of the crime

were the actions of the victim, insults, verbal violence and physical actions against the defendant, such as grabbing his face and scratching him. The neighbours testified that the victim was thrown from the fourth floor of the building where they lived and that the person who threw her was inside the house.

According to the court's assessment, the criminal offence bears a significant societal risk. The defendant has not adhered to the protection order and has not fulfilled the obligations set out by the court. The criminal offence was committed with direct intent and the defendant continued until he killed the victim. The court didn't accept the defence, stating that *the countermeasure such as severe physical violence, causing the bleeding of the victim, leaving her in a state of unconsciousness and then throwing her out of the fourth floor window is beyond any human logic.*

The court didn't find any mitigating circumstance, while the perpetrator's failure to obey to the protection order, as well as presence of minor children were considered as aggravating circumstances. In the outset, the perpetrator was sentenced to life imprisonment, but after accepting his request for abbreviated trial, he was finally sentenced to 35 years of imprisonment. In addition, the court didn't accept the request for compensatory damages filed by the victim's brother and referred him to file a civil claim.

Comment

The qualification of the criminal act was correct. First, the court imposed the maximum sentence (life imprisonment) which was reversed to 35 years of imprisonment due to the acceptance of the application for abbreviated trial. Before the amendments of 2017, from the legal point of view, the approval of the request for abbreviated trial was not related to the dangerousness of the criminal offence, but to the possibility of judging the case, given the state of the acts. In the present case, the perpetrator benefited from the fact that the amendments had not yet entered into force and the case was adjudicated on the basis of the previous legislation.

Although the judgment is justified from the point of view of substantive law and proving of the defendant's guilt, the victim and her rights are not addressed sufficiently. The judgment does not contain an analysis of the defendant's behaviour before he entered into a second marriage

with the victim (e.g. his childhood; the first marriage).^[40] In addition, this judgment shows wrong decision-making by the court in cases of issuing protection orders – leaving the victim and the perpetrator to reside in the same apartment, in spite of issuing a protection order, is not aligned with the international standards. Also, the court didn't consider whether the victim, who was supposed to benefit of a protection order and her two minor children, were supported by social services at the local level and the protection mechanism against domestic violence. There is no information about the victim in the judgment, whether the victim sought assistance to prevent violence, why the defendant was left in the same apartment with the victim, etc.

Finally, it should be noted that this case is the only one in the analysed case law sample in which compensation of damage was requested, by the victim's brother who was appointed as a guardian of her children. The failure to decide upon the request due to procedural reasons and the difficulties of investigation highlight the lack of effectiveness of the criminal justice system. The argument that deciding upon the claim for damages complicates the criminal proceeding is a barrier to the enjoyment of the victim's rights and/or the rights of the victim's heirs.

Case no. 2

On 15 July 2017, M.B. (D.), while she was going to work, was hit by A.D., her former husband, in vicinity of the institution where she used to work. She was first hit in the head and then in other parts of the body, several times with a strong tool (a lever). According to the witnesses, the victim shouted loudly and was heard by the two guards of an institution located nearby. If it were not for the two guards who saw the incident from a distance and called on the defendant to stop the violent actions, the victim would have died. The inflicted injuries were classified as injuries that have caused a temporary disability to work for more than nine days.

The defendant A.D. was 55 years old; he had secondary education and was occasionally employed. He was divorced, with two children, and he was previously convicted for domestic violence. At the time of the crime, the victim was under a

[40] From the research carried out by civil society organisations, it turns out that the defendant during his first marriage behaved violently, so much that his first wife left the house at night wearing pajamas and never returned back.

protection order. The judgment shows that A.D. and M.B. (D.) have been married for 31 years and had two adult children, while their relations is depicted as initially normal, except for the last few years, which resulted in divorce. A.D. was previously violent, and was convicted for domestic violence in October 2016 to four months of imprisonment. In May 2017 the court imposed on A.D. a protection order, thereby banning him to approach the victim (fewer than 100 meters) and to leave the joint home.

As for the victim, she was 49 years old, she had finished a high school and had two grown children, she was divorced and employed. She testified that the relationship with the defendant A.D. was bad since the beginning of their marriage. Her former husband has always been a violent person, but since she had married him for love against the wishes of her parents, the victim had accepted him with all his baggage. The cause of their fights was jealousy. According to the victim, she was also beaten collectively by her former husband's family. They also beat her sons, tried to stab her sons with a knife and inflicted psychological violence on the children. They divorced in May 2017. She was under the protection order to which A.D. did not adhere, therefore she reported him to the authorities. At the time of the attempted murder, she was under a protection order, thereby aiming to protect her from all members of her former husband's family.

The witness E.D., the son of the defendant and the victim, stated that the relationship between his parents involved a systematic verbal and psychological violence against his mother and against them as children. The children were present in cases of systematic violence by the father, and the reason was the father's jealousy. According to the defendant, the victim had bad relations with his family and he accused her of destroying the lives of his brothers and their families.

Initially, the criminal proceedings against the defendant A.D. were registered as domestic violence. For two years, the case was referred from one court to another due to the different qualification of the act – domestic violence and attempted murder due to family relation. The prosecution insisted on domestic violence, while the court didn't accept that qualification. The court has argued that qualifying the criminal offence as an attempted murder is fair, due to the fact that the defendant had told the victim "I will kill you", while the two witnesses asked him to let her go because he was strangling her. The court additionally stated other facts such as: preparation for committing the crime, hitting the victim after he received a court judgment the day before sentencing him to two years of imprisonment for domestic violence; the place and time chosen to commit the

crime; the manner of committing the crime, etc. show that the defendant had planned to murder his former wife.

The court did not find any mitigating circumstances, while aggravating circumstances included the fact that the perpetrator has committed the criminal offence after having been sentenced for domestic violence, and after the court had issued a protection order to prevent domestic violence. He was found guilty for attempted murder due to family relations and was sentenced to 22 years of imprisonment. The Court of Appeal reversed the sentence from 22 years to 20 years of imprisonment.

Comment

For about two years there has been uncertainty regarding the legal qualification of the offence and the competent court. The transfer of the case between the courts emphasises the misunderstanding of the law at the time when it was amended. The change of the qualification of the offence shows challenges in the practice related to understanding of different types of criminal offences committed within the family. A lack of understanding of the difference between the criminal offence of domestic violence and attempted murder due to family relations highlights the importance of analysing the defendant's behaviour, the perpetrator-victim relationship, the circumstances of the event and the actions of the defendant before, during and after the criminal offence was committed.

The punishment is relatively proportional to the danger imposed by the offence and the person, having in mind his previous conviction for domestic violence and violation of protection order.

This case shows that it is not sufficient to remove the perpetrator from home and that this measure does not guarantee the safety of the victim, if it is not accompanied by other measures that are provided by law, such as special programs for offenders and protective measures for victims. The fact that the victim's apartment was close to that of the defendant's family put her life at risk. The judgment does not provide information about support programs for the victim.

BOSNIA AND HERZEGOVINA

Due to the complex state and legal system of Bosnia and Herzegovina, the research included final court judgments from all levels – the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District. Therefore, three legal frameworks are briefly presented below.

Legal framework

Federation of Bosnia and Herzegovina

Femicide is not criminalised as a separate criminal offence in the Federation of Bosnia and Herzegovina (FBiH). The basic form of the criminal offence of homicide is defined under the Criminal Code of the FBiH's Article 166, paragraph 1 as an act of depriving another person of life. The act of commission is determined by the consequence it causes, meaning that this criminal offence may be committed by any act that causes a death of another person.

The basic form of this criminal offence stipulates a punishment of imprisonment for a minimum term of five years. Given the general provision on imprisonment, whereby a sentence of imprisonment may not be less than 30 days or more than twenty years, the perpetrator of this criminal offence may be sentenced to imprisonment lasting between five and twenty years. If the perpetrator started the act of commission, but did not finish it, or if he finished it, but the consequence (death of another person) did not occur, this will be treated as an attempted criminal offence of homicide, if the perpetrator had direct or non-premeditated intent in relation to the death of the victim. It will constitute attempted homicide not only when the victim sustains severe or non-severe bodily injuries, but also when the victim does not sustain any injury. It is precisely the intent of the perpetrator that is used as the criterion to distinguish an attempted criminal offence of homicide.

The qualified (aggravated) form of the criminal offence of homicide applies to whoever:

- » deprives another person of his or her life in a cruel or insidious manner (point a);
- » deprives another person of his or her life while acting with reckless violence (point b);
- » deprives another person of his or her life out of hatred (point c);

- » deprives another person of his or her life out of greed, for the perpetration of another criminal offence, out of callous revenge or other base motives (point d); or
- » takes the life of a judge or prosecutor in connection with the exercise of their judicial or prosecutorial duties, the life of an official or serviceman in the exercise of duties of safeguarding the security, public peace and order, or apprehending the perpetrator of a criminal offence, or guarding a person deprived of liberty (point e).

In order to establish whether the homicide was committed in a cruel manner, the court examines all the circumstances of a specific case and attaches particular significance to the findings and opinions of expert witnesses about the type and scope of injuries sustained by the victim and the intensity and duration of the inflicted pain or the suffering that they caused.

The criminal offence of manslaughter under Article 167 refers to the act of whoever deprives another person of his or her life in a heat of passion, having been provoked without fault of his or her own into a state of intense irritation or fright caused by assault, abuse or serious insult. Manslaughter is a privileged form of homicide which is why this criminal offence is punishable by a milder sentence, imprisonment for a term between one and ten years. What gives this criminal offence the character of a privileged form of the criminal offence of homicide is, primarily, the special emotional state of the perpetrator at the time of commission – a state of intense irritation or fright, making the perpetrator unable to think or act reasonably.^[41]

Qualified (aggravated) forms of the criminal offence of domestic violence, as set out under the Criminal Code of the FBiH's Article 222, paragraphs 5 and 6, incriminate causing a death (paragraph 5) and killing a family member (paragraph 6) in the context of domestic violence. Namely, the qualified (aggravated) form of the criminal offence of domestic violence, stipulating imprisonment for a term between two and fifteen years, exists if the criminal offences referred to in paragraphs 1 to 4 of the same Article cause the death of a family member. The qualified (aggravated) form under paragraph 6, stipulating imprisonment for a term of not less than ten years or long-term imprisonment, exists when the perpetrator takes the life of a family member whom he had been previously abusing.

[41] In its decision Kž. 1410/64, the Supreme Court of BiH noted that for a manslaughter to exist, the mental state of the perpetrator has to have such a negative effect that he makes the decision to kill uncritically.

Under the Criminal Code of the FBiH, a family member is a spouse or common-law spouse, former spouse or former common-law spouse, lineal relative, adoptive parent and adopted child, relative in a collateral line to the third degree and in-law to the second degree.

Although these are two qualified (aggravated) forms of the same criminal offence, they differ significantly. The qualified (aggravated) form of the criminal offence of domestic violence under the Criminal Code of the FBiH's Article 222, paragraph 5 requires that the death of the family member was caused by a criminal offence referred to in paragraphs 1 to 4 of that Article, as well as the aggravating circumstance of negligence on the part of the perpetrator in relation to the death of the victim. The aggravated form pursuant to Article 222, paragraph 6 does not require that the death of a family member was caused by a criminal offence referred to in paragraphs 1 to 4 of the Article. This criminal offence is committed when the perpetrator kills a family member whom he had previously been abusing. The killing need not be committed at the same time as the abuse, but the victim must be a family member whom the perpetrator had been previously abusing. In that case, this would actually constitute an aggravated form of homicide where the qualifying circumstance is the passive subject – the family member whom the perpetrator had previously been abusing. This criminal offence requires intent.

Republika Srpska

The general concept of the criminal offence of homicide is defined by law as depriving another person of life. It can be perpetrated in various ways, by various means and under various concurrent circumstances that distinguish the manifest forms of this criminal offence as the basic form of homicide, the qualified (aggravated) form of homicide (murder) or the privileged form of homicide (manslaughter).

The basic form of the criminal offence of homicide is stipulated under the Criminal Code of Republika Srpska (the Republic of Srpska, RS) in Article 124, paragraph 1 and it stipulates a punishment of imprisonment for a term between five and twenty years. Homicide under this provision is any intended and unlawful deprivation of another person of his or her life that is not concurrent with additional, special circumstances that give it a mitigating or aggravated form, and where the life of a person appears as the basic and exclusive protected object. The basic form of homicide appears as subsidiary to its qualified (aggravated) or privileged forms and is found only when, in a specific case, it does not have any characteristics of another (qualified or privileged) form of this criminal offence.

Qualified (aggravated) homicide has various forms, stipulating the punishment of imprisonment for a term of at least ten years or long-term imprisonment. In terms of the manner of perpetration, aggravated homicide takes the following forms:

- » murder committed in a cruel manner (Article 125, paragraph 1, point 1);
- » murder committed in an insidious manner (Article 125, paragraph 1, point 1);
- » murder committed by an organised group, or when contract killing is at stake (Article 125, paragraph 2).

Killing a family member who has been previously abused by the perpetrator is an aggravated homicide and it is determined by two aggravating circumstances. The first circumstance is that the perpetrator and the victim belong to the same family or household, and the second is that the perpetrator had previously abused the victim over a shorter or longer period of time.

Article 190 of the Criminal Code of RS regulates the criminal offence of domestic violence. This criminal offence has one basic and three aggravated forms.

The basic form is defined under paragraph 1 (stipulating a fine or imprisonment for a maximum term of three years) and it exists when the perpetrator harms the tranquillity, physical integrity or mental health of a member of his/her family or household by violence or threat of violence against life and limb, or by insolent or reckless behaviour. The aggravated form of this offence, defined under paragraph 2 (stipulating a punishment of imprisonment for a term between six months and five years), exists when, in the perpetration of the basic offence, the perpetrator uses a weapon, dangerous implement or other dangerous means capable of inflicting severe bodily injury or harm to health, while the aggravated form stipulated under paragraph 3 (stipulating a punishment of imprisonment for a term between two and ten years) exists when the criminal offence referred to in paragraphs 1 or 2 results in severe bodily injury or harm to health, or when it is perpetrated against a child or in the presence of a child. The most serious aggravated form of this criminal offence, stipulated under paragraph 4, is when the criminal offence referred to in paragraphs 1, 2, or 3 results in the death of the member of the family or household. This form of the criminal offence stipulates a punishment of imprisonment for a term between three and fifteen years.

Brčko District

Article 163, paragraph 1 of the Criminal Code of the BiH's Brčko District (BD) defines the basic form of the criminal offence of homicide as depriving another person of life and it stipulates the punishment of imprisonment for at least five years. The basic criminal offence of homicide means intentional deprivation of life of another person without additional, special circumstances that would change the seriousness and form of the offence into one of the aggravated or privileged forms of homicide. The basic form of the criminal offence of homicide may be punished by imprisonment for a term between five and twenty years.

Qualified (aggravated) forms of the criminal offence of homicide exist when the perpetrator:

- » deprives another person of life in a cruel or insidious manner;
- » deprives another person of life while acting with reckless violence;
- » deprives another person of life out of hatred;
- » deprives another person of life out of greed, in order to commit or conceal another criminal offence, out of callous revenge or other base motives;
- » takes the life of an official or a member of the military in the exercise of their duties related to security or preserving public order, apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty.

Article 163, paragraph 2, point 4 provides for several aggravating circumstances related to the perpetrator's motives (greed, to commit or conceal another criminal offence, callous revenge or other base motives).

The criminal offence of domestic violence under Article 218, paragraph 1 is committed by whoever endangers the tranquillity, bodily integrity or mental health of a member of his or her family by violence, insolent or reckless behaviour. The basic form of this criminal offence stipulates a fine or imprisonment for a maximum term of three years. Whoever causes the death of a family member whom he had previously been abusing shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment.

Judicial research on femicide

The subject of research was the case-law of courts in Bosnia and Herzegovina on prosecuting cases of femicides and attempted femicides.^[42] Given that femicide is not criminalised as a separate criminal offence in Bosnia and Herzegovina, the research sample consists of criminal cases finally adjudicated in the period from 1 January 2017 to 30 June 2021 that relate to prosecuted crimes where the perpetrators were male and the victims female, and where the offences were qualified as:

- » homicide, attempted homicide, and domestic violence resulting in death under Article 166, paragraph 1 and paragraph 2, points a) and d); Article 166, paragraph 1 in conjunction with Article 28; and Article 222, paragraph 5 in conjunction with paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina;^[43]
- » homicide, attempted homicide, aggravated homicide under Article 124, paragraph 1; Article 124, paragraph 1 in conjunction with Article 22; Article 125, paragraph 1, point 6; Article 125, paragraph 1, point 5 of the 2017 Criminal Code of Republika Srpska,^[44] and attempted homicide, aggravated homicide and attempted aggravated homicide under Article 148, paragraph 1 in conjunction with Article 20; Article 149, paragraph 1, point 5; and Article 149, paragraph 1, point 1 of the 2003 Criminal Code of Republika Srpska;^[45]
- » attempted homicide under Article 163, paragraph 1 in conjunction with Article 28 of the Criminal Code of the Brčko District of BiH.^[46]

[42] Beker Kosana, Tanović Dalida (eds.), *Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021*, AIRE Centre and FemPlatz, 2022, available at: <https://www.airecentre.org/Handlers/Download.ashx?IDMF=77975c73-9c31-4552-9a68-3013255c0d5f>

[43] *Official Gazette of FBiH*, nos. 36/2003, 21/2004-corr., 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017 (hereinafter: CC FBiH).

[44] *Official Gazette of Republika Srpska*, nos. 64/2017, 104/2018 - decision of the Constitutional Court, 15/2021, and 89/2021 (hereinafter: 2017 CC RS).

[45] *Official Gazette of Republika Srpska*, nos. 49/2003, 108/2004, 37/2006, 70/2006, 73/2010, 1/12, and 37/2013 (hereinafter: 2003 CC RS).

[46] *Official Gazette of the Brčko District of BiH*, no. 19/20 – consolidated version (hereinafter: CC BD BiH).

The analysis included a total of 34 court cases (26 cases from courts of the Federation of BiH, seven cases from courts of Republika Srpska and one case from courts of the Brčko District).^[47]

Quantitative data

In terms of the number of criminal offences that were committed, 35 perpetrators committed a total of 51 criminal offences.

The largest number of all criminal offences was committed at the flat/house/yard of the victim (35.3%), which is consistent with previous research findings on violence against women, indicating that **the least safe place for a woman is her own home**. It is interesting that as many as 20.6% of the criminal offences were committed at the victim's place of work, which indicates a high degree of insolence and recklessness on the part of perpetrators, as well as a higher degree of social threat posed by the committed offences. A large number of offences were committed in the flat/house/yard which the perpetrator and victim shared (17.6%), which is to be expected given the nature of the relationship between the victim and perpetrator (marriage, cohabitation, emotional relationship, kinship) and their living in a shared household.

The perpetrators more often used firearms (hand grenade, pistol, automatic rifle – 35.3%) than other weapons (knife, spring knife, scalpel, hammer, metal rod, blunt object – 29.3%) or physical force (8.8%), which could be explained by widespread unauthorised possession of firearms, mostly left over from the war. The highest percentage of criminal offences – 23.5% were committed by using multiple means of perpetration to overcome the victim's resistance, which discloses a particular brutality and cruelty of the perpetrators towards their victims.

Profile of the perpetrators

The research sample included a total of 35 perpetrators. The majority of perpetrators belonged to the 33-40 age group (20%) and 49-59 age group (20%), the youngest perpetrator was a young adult of 18, while the oldest was 72 years old.

[47] Total of 94 first instance and second instance decisions: 78 first- and second instance decisions of FBiH courts, 14 first- and second instance decisions of RS courts, and one first- and one second instance decision of Brčko District of BiH courts.

In terms of the marital status of perpetrators, the highest percentage was married (40%), followed by unmarried (31.4%) and divorced (17.1%). Within the group of unmarried perpetrators, a certain number of them had been in an emotional relationship or a partner relationship without cohabitation. The highest percentage of perpetrators (45.7%) had a secondary school level of education.

In terms of prior criminal record, the majority of perpetrators did not have prior criminal convictions – 21 (60%). Among the perpetrators, 14 (40%) had previously committed criminal offences. Most of the perpetrators were not under the influence of alcohol at the time of perpetration – 27 (77.1%). In no cases did the court find that the perpetrator was under the influence of drugs at the time of perpetration.

Ten perpetrators pleaded guilty to all the charges as set out in the indictment (28.5%). Another group of perpetrators (7 – 20%) did not plead guilty to the criminal offence that was stated in the indictment, but to a less serious criminal offence. The third group of perpetrators (17 – 48.6%) did not admit to having committed the criminal offence of which they were charged in the indictment. It is interesting that among these perpetrators that did not admit to having committed the criminal offence, there were some who expressed remorse, not out of their own guilty conscience, but over the tragic event itself.

Profile of the victims

The research sample contained 37 female victims. The analysed court judgments offer almost no information about the victims. It is not possible to determine the predominant age of the victims from the judgments, because for 35 victims no information about their age is given. In a few cases, the victims were characterised as elderly, but without specifying their age.

As many as 24 judgments (64.9%) contain no information about what the relationship between the perpetrator and the victim was like for a shorter or longer period leading up to the perpetration of the criminal offence. **In only three judgments (8.1%), the court found that the victim had been previously subjected to various forms of violence by the perpetrator**, and in one case the perpetrator had been convicted of the criminal offence of domestic violence resulting in death. Although it can be concluded from the court cases that the relations between the victim and the perpetrator had been bad, in only one case there is information about a previous report to relevant institutions.

The most frequent relationship between the perpetrator and victim is an emotional relationship, cohabitation, or family relationship. The victim and perpetrator knew each other earlier (the perpetrator was the victim's acquaintance, co-worker, neighbour), they were married or cohabited, had an emotional relationship or a relationship of kinship (94.3%). Only two victims did not know the perpetrators.

Motives

Only four court judgments explained the motive of the perpetrator for committing the crime. Based on the analysed judgments, the motives for the perpetration of the crimes included: greed, revenge due to severing an emotional/marital/cohabiting relationship, unrequited love, disciplinary proceedings against the perpetrator, dissatisfaction of the perpetrator regarding retirement benefits, long-lasting intolerance within family relations and jealousy.

Mitigating and aggravating circumstances

The analysed judgments lead to a conclusion that, in their reasoning, the courts were mainly citing the mitigating and aggravating circumstances which were, for example, referred to in the law, with no detailed analyses of their significance.

For example, the courts considered the following mitigating circumstances: confession; expressed remorse; family situation (married, a family man, the number of children – father of two or more (eight) children); family situation related to the nuclear family (growing up without a mother and without parental love, care and tenderness); property situation; unemployment; age of the perpetrator (young person, elderly person); health status (poor health, mental problems and several stays for treatment at a psychiatric clinic with a confirmed diagnosis, disability, surgery); diminished capacity, though not significantly; proper conduct before a judge during the proceedings; previous clean record; the actions were a consequence of an affective impulsive moment caused by alcohol rather than planning; mental immaturity, insufficiently developed understanding of the act and its consequences; mental consequences of war trauma, and the injured party is not joining the criminal prosecution.

When sentencing, the courts took into account the following aggravating circumstances: previous convictions; previous convictions for crimes of domestic violence; reckless infliction of bodily harm, persistence, determination; the crime was committed in relation to an elderly female who was his neighbour and his

parents' friend; the injured party had six children, of whom only one was of a legal age, the children remain with no provision of care; insensitivity after the commission of the crime; particularly harsh method of perpetration, with numerous injuries sustained by the victims (28 stab wounds); throughout the proceedings, the perpetrator showed no remorse or sympathy towards the victim; the perpetrator faked a mental illness, solely to avoid criminal liability and to stall the proceedings; the crime was committed in a restaurant that was filled with numerous guests during a religious holiday; and the persistence of the accused person in the attempt to commit the crime.

In one judgment, the perpetrator was found to lack legal capacity, while other cases ended with convictions, that is to say, prison sentences, standing alone or together with imposition of security measures. In 34 cases the dominant criminal sanction was prison sentence, including two long-term sentences, which is understandable in view of the fact that these were the most serious criminal offences. In most cases, the time between the indictment and the first instance judgment was short, between one and two years elapsed between the indictment and the second instance judgment (17), whereas in nine cases less than a year elapsed between the indictment and second instance judgment, thus showing that criminal proceedings were quite efficient.

Criminal courts, as a rule, do not decide on the damages claims of the injured parties, i.e. they do not decide on the damages claim even in part, but rather refer them to civil proceedings.

Case studies

In the national report for Bosnia and Herzegovina, five case studies are presented. Here, we are briefly presenting two case studies.

Case no. 1

In the first instance proceedings, the court found the perpetrator guilty for an aggravated murder because he jumped over the fence and entered into a house where his ex-wife was with her new intimate partner, and inflicted on both of them several blows to the head and the body with an axe and knife, thus H.A. sustained injuries (...) which led to her instantaneous death, and H.E. suffered injuries (...) which led to rapid death; afterwards the perpetrator left the scene. His ex-wife H.A. sustained 22 injuries, while H.E. sustained more than 30 injuries.

At the time of the crime, the perpetrator was 48 years old, an unskilled labourer by occupation, with completed primary education, without employment record and with no previous convictions. The judgment contains no information on relations within the nuclear family. The perpetrator was married to the victim H.A. for 18 years, but they were separated, since his wife had left him in late March 2017. At the time of commission of the crime, they had two minor children. During the marriage, the perpetrator demonstrated jealousy, he suspected his wife of having a lover, which is why she left him, taking the children and starting a new life. On the basis of the perpetrator's statement, the findings of the expert witnesses and witness statements, the court found that *the relationship between the victim A. and the accused person was not characterised by harmony and trust, but rather that the relationship was wrought with arguments, suspicion and physical assaults by the accused person on the victim and their minor children. After the factual termination of the marriage, the accused person had information that his ex-wife was in a relationship with H.E., so such actions by the accused person were directed towards verifying his own suspicions.*

As for the perpetrator's mental capacity, the court found that, at the time of the crime, the perpetrator was fully mentally competent, i.e. his ability to comprehend the significance of his actions was preserved. The court established that the perpetrator was fully aware of what he was doing, just as he was aware after the commission of crime.

According to witness' statements and the autopsy report, at the time of the crime the victim was 35 years old. There is no information on her education, occupation or employment. As for her relationship with the perpetrator, it can be inferred from the testimonies by the perpetrator and their children. According to the children's statements, their relationship was unhealthy and violence happened from time to time, and one incident was reported to the police. The witness K.A., who was a duty officer on the day in question, stated that the perpetrator himself reported the crime, stating that he had killed his wife and her lover. As a police officer, the witness was familiar with the spouses' relations, because the victim had previously reported the perpetrator for driving a minor child while being under the influence of alcohol, and there was an earlier report against the accused person concerning domestic violence, committed against his own child. The perpetrator's mother was heard as a witness and she stated that she knew that her son's and the victim's relationship was bad, which led to termination of their marriage and she also stated that her son was drinking heavily and constantly.

The first instance court found the accused guilty and delivered a sentence of 35 years in prison. Deciding on the type and length of the sanction, the court took

into account the following mitigating circumstances in relation to the perpetrator: no previous criminal sanctions, a father of two minor children, the fact that he himself reported to the police following the crime, thus contributing to efficient identification of the perpetrator. As for the aggravating circumstances, the court assessed the gravity of the act, the high degree of the perpetrator's criminal liability, the manner of committing the murders; the type and nature of the lethal injuries, the motivation for the crime, etc.

However, the second instance court stated, *inter alia*, that the sanction was too harsh and that, with an adequate assessment of all mitigating and aggravating circumstances, a sanction of long-term imprisonment of 30 years for the accused person is the right measure that will achieve the purpose of the criminal sanctions and punishment as prescribed by law. The rest of the first instance judgment remained unchanged.

Comment

In view of the motive of the murder and the circumstances of its commission, this case illustrates a typical case of femicide, and it was adequately qualified by the court as a qualified (aggravated) murder. The court stated that the perpetrator was brought to the state of affect due to his own personal traits, psychopathic personality features, such as sensitivity to insult, lack of self-confidence and a sense of vindictiveness, as well as his inability to accept that his wife had left him for another man. However, we hold that these are not 'personal traits' of the perpetrator, but rather base motives, because the perpetrator treated the victim as his own property, denying her right to freedom of choice.

In essence, this case illustrates clearly the behaviour patterns of men in a patriarchal context and the cultural concept of manhood, which means that the man has power and control over his ex-wife and her sexuality, seeing her as his 'possession'. The established facts show clearly that even after the divorce, the perpetrator controlled the victim, her movement and behaviour and reasons for murder were his long-standing suspicion regarding the wife's faithfulness, the fact that she left him and entered an emotional/sexual relationship with another man. These gender aspects of the murder of his ex-wife and her emotional partner, who was killed out of callous revenge, were not assessed adequately during the proceedings.

In this case, the murder was preceded by years of violence by the perpetrator against his family members that was known to their extended family. The relevant authorities obviously failed to respond adequately and to recognise the risks of murder. When deciding on the sanction, the court took into account the fact that the perpetrator had no previous convictions and that he was the father of two minor children. However, it was not appropriate to take these facts into account, in view of the fact that prior to the murder the perpetrator had been violent towards his children and that he had been violent to their mother in front of the children.

In the second instance proceedings, the court changed the sentence by reducing it from 35 to 30 years in prison. It stated that the first instance court erroneously assessed the gravity of the consequences as aggravating, because the usual consequences of a crime which are an essential part of the crime itself, as it is case here, cannot be assessed as aggravating, unless they exceed significantly the gravity prescribed by law for this crime as a special or specific object of protection. However, the second instance court was not right in its decisions since, in view of the circumstances of this particular case, the consequences of the crime are far beyond the usual ones caused by the crime of murder of two or more persons, specifically in view of its gender basis.

Case no. 2

The perpetrator killed his ex-partner in front of her business, in a way that he activated a hand-held grenade which led to an explosion, which killed the victim M.M. The other offence was possession of firearms and ammunition which are not allowed to be possessed by citizens.

At the time of commission of the crime, the perpetrator was 42 years old, divorced and a father of three children. He had two children with his former wife, with whom he had been married for 18 years, and one son born in 2012 in cohabitation with the victim M.M. He was an unemployed shoemaker, with completed secondary vocational education. Since 2010, he had owned a café where the injured party worked as a waitress. He had a previous conviction for the crime of injury to rights of other parties. They lived together abroad for three years, when she decided to return home with their son. *After that, he started receiving all kinds of information that she had changed, that she had been out to bars a lot, that she had been drinking and the child had to sleep in bars, that she had another man...* When he arrived, he

spoke to her boyfriend and he said he would no longer 'meddle' in his life. However, he did notice *that the two of them kept correspondence*.

The perpetrator stated that on the day in question he came to the bar, but the victim verbally assaulted him, asking why he had come and telling him to leave. He returned home and collected the hand grenade and first went to a bar in town, and then to the café where the victim was. He took the hand grenade *because he intended to kill himself and wanted her to see it*, and he insisted that he didn't intend to kill her.

Assessing the statements made by the defence, the court did not accept that the perpetrator intended to commit suicide in front of the victim, since the circumstances of the event, earlier threats directed at the victim, the very method of commission of the crime while they argued in front of the establishment, in the opinion of the court, excludes any doubt as to whether the perpetrator intended to kill her.

The court held that problems between the accused person and the victim started when she informed him that she was ending their emotional relationship and he continued to send her serious threats and the threats ended fatally. Perseverance, followed by callousness in 'forcing' the injured party not to terminate their relationship, ended exactly as the accused had intended, with the death of the injured party. At the time of commission, the perpetrator was at a state of significantly diminished capacity to understand the significance of his actions or to control them and he was entirely unable to control his impulsive urges. However, the court found that the perpetrator had committed the crime with direct intent.

The judgment does not include even the basic information on the victim – age, education, occupation, family status. We learn about the victim's age from a statement made by a friend, who said that the victim was born in 1992 and that the perpetrator was *quite jealous because of the age difference*. The victim first worked at the bar owned by the perpetrator, until she opened her own bar. She lived in cohabitation with the perpetrator for several years and in 2016 she decided to terminate it, but even after the termination they continued to have verbal confrontations. It arises from the statement by the witness K.N. and the findings by the expert witness that the perpetrator had a restraining order, prohibiting him from approaching the injured party at less than 500 metres.

The court did not accept the defence's claims that the accused had activated the hand grenade in order to commit suicide, because if he had wanted to, he would have done that much earlier, without bringing the victim outside the bar.

The first instance court found the accused person guilty of two crimes – homicide and unlawful manufacturing and trade in weapons and explosive materials, and sentenced him to a single prison sentence of 7 years and 6 months.

Deciding on the type and length of sanction, the court considered the following mitigating circumstances in relation to the perpetrator: his family situation, that he was a father of three children, was unemployed and had diminished mental capacity at the time of commission of the crime. As relevant aggravating circumstances, the court considered the high degree of liability, that the perpetrator had planned and prepared the act in advance, that he committed it in front of the bar where the victim had worked, in front of numerous citizens, i.e. in a public place, that he committed the act in a brutal and callous fashion, by activating a hand grenade, thereby destroying a young life of the mother of a minor child, all because of unverified and false information related to the private life of the injured party. Both the prosecutor and the defence counsel appealed against the first instance judgment. The Supreme Court dismissed both appeals as unfounded and upheld the first instance judgment.

Comment

The main comment is that the sanction in relation to the crime was very mild. The court failed to consider a host of aggravating circumstances, and failed to establish some others, such as the fact that there was a restraining order prohibiting the perpetrator to approach the victim. The prosecutor qualified the crime as an 'ordinary' murder, but the question is whether in this crime there are elements of murder accompanied by intentional endangering of the life of another person, in view of the fact that the perpetrator activated a hand grenade in a public place, and that the individuals who were present at the spot saved themselves by fleeing, as confirmed by witnesses.

For the crime of unlawful manufacturing and trade in weapons and explosive materials, the sentence was one year, although the law provides for a sentence of two to five years. The fact that a large quantity of illegal firearms was found in the perpetrator's possession and was confiscated illustrates the considerable availability and presence of illegal firearms after the armed conflict. This is an immense threat and it is one of the indicators of high risk of femicide.

The court failed to analyse the gender aspect of the murder, although the circumstances of this case indicate that this was a gender-based murder of the former common-law wife, whom the perpetrator murdered because she left the cohabitation. In this case, the perpetrator lost control over the behaviour of his partner, which caused in him a sense of rejection and humiliation, as well as a desire to punish her. This mental state and behaviour of the perpetrator is the result of a patriarchal system of values and stereotypical gender roles. By her decision to terminate her cohabitation with the perpetrator, the victim expressed her right to decide about her own life, which is not acceptable in a patriarchal culture. The price of freedom in this particular case was the loss of life.

It is interesting that the court in its reasoning noted that the perpetrator committed the crime because of *unverified and false information regarding the private life of the victim*. It is neither clear why the court felt the need to include this statement in its rationale, nor is it clear on what basis the court established that the information about the private life of the victim after she had left the perpetrator was unverified and false. Instead of linking suspicions regarding the perpetrator's common-law spouse with his jealousy and interpreting it as his possessiveness and the desire to control his former common-law partner's sexuality, the court assessed the information about her private life as unverified and false, and it seems that, in the case of verified and accurate information about her relationship with another man, the ruling would have been different.

It is indicative that the court did not find it necessary to collect information about the restraining order that had prohibited the perpetrator from accessing the victim, although it did learn from witnesses and court experts that such a measure had been delivered. If the court had gathered these facts from the relevant authority, it could have discovered a pattern of the perpetrator's violent behaviour towards the victim and could have analysed in greater depth their relationship prior to the murder. This omission by the court is one of the reasons for delivering such a mild sentence to the perpetrator.

KOSOVO

Legal framework

Femicide is not a term used in the Kosovo legislation. However, there are several criminal offences which could be used in cases of femicide. The Criminal Code of the Republic of Kosovo no. 06/L-074,^[48] in a chapter dedicated to the criminal offences against life and limb, stipulates the following crimes:

- » murder;
- » qualified (aggravated) murder;
- » murder committed in a state of severe mental distress;
- » negligent murder;
- » murder of an infant during birth.

The basic form of murder is defined as follows: “Whoever deprives another person of his or her life, shall be punished by imprisonment of not less than five (5) years”.^[49] The punishment for the qualified (aggravated) murder is prescribed as an imprisonment of not less than ten years or of life long imprisonment. There are several forms of qualified (aggravated) murder, i.e. deprivation of a life:

- » of a child;
- » of a pregnant woman;
- » of a family member;
- » in a cruel or deceitful way;
- » with intentional endangerment of the life of one or more other persons;
- » for the purpose of obtaining a material benefit;
- » for the purpose of committing or concealing another criminal offence, or preventing the person from testifying or otherwise providing information to police or in criminal proceedings;
- » because of callous revenge or other base motives, including retaliation for testifying or otherwise providing any information to police or in criminal proceedings;
- » when such person is discharging his or her official or related duties;
- » because of a motivation based on nationality, language, religious belief or lack of religious belief, colour, gender, gender identity, sexual orientation or because of their affiliation with persons who have one of the aforementioned

[48] Criminal Code of the Republic of Kosovo no. 06/L-074.

[49] Criminal Code, Article 172.

protected characteristics;

- » intentional commitment of two or more murders, except for the offences provided for in Articles 174 and 176 of this Code;
- » by the perpetrator who was previously convicted of murder, except for the offences provided for in Articles 174 and 176 of this Code.^[50]

A murder committed in the state of severe mental distress is punishable with imprisonment of one to 10 years, while for the negligent murder the punishment is imprisonment between six months and five years.^[51]

Amendments to the Criminal Code from 2019 introduced a new form of a qualified (aggravated) murder, i.e., deprivation of a person's life motivated on the basis of nationality, language, religious belief or lack of religious belief, colour, *gender, gender identity*, sexual orientation or because of his or her affiliation with persons who have one of the aforementioned protected characteristics. Therefore, the criminal offence of gender-motivated murder is prescribed as a qualified (aggravated) murder and is punishable by no less than 10 years of imprisonment or with life imprisonment.^[52] However, it appears from the definition that a gender-motivated murder can be committed by men or women against men or women, thus not specifically defining the crime of femicide. Nevertheless, it is clear that this definition includes gender-motivated murder of women, which is a femicide according to the generally recognised definitions.

Since the gender-motivated murder is a qualified (aggravated) murder or a serious crime,^[53] the Serious Crimes Department of the Basic Courts has jurisdiction to rule over the matter, and those cases are judged by the panel of three judges.^[54]

In the amendments to the Criminal Code from 2019, domestic violence is included,^[55] and defined as physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person in the context of a domestic relationship. The prescribed punishment is a fine and imprisonment of up to three years. It is very important that the Criminal Code prescribes that when any criminal act is committed in the context of a domestic relationship, it

[50] Criminal Code, Article 173.

[51] Criminal Code, Articles 174 and 175.

[52] Criminal Code, Article 173, paragraph 1, point 1.10.

[53] Criminal Procedure Code, no. 08/L-032, Article 21.

[54] Law no. 06/L-054 on Courts.

[55] Criminal Code, Article 248.

will be considered an aggravating circumstance. Domestic relationship is between persons who are or were engaged, are or were married, or are or were in an extramarital union, are or were co-habiting in a common economy; use the same common house and are related by blood, marriage, adoption, in-law or are in a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, cousins; or who are the parents of a child-in-common.^[56] It should be noted that the Law on the Protection against Domestic Violence^[57] regulates the issuance of protection measures and provides sanctions for their breach, whereas the Criminal Code provides the sanctions for the domestic violence itself.

The recently adopted National Strategy on the Protection against Domestic Violence and Violence against Women 2022-2026^[58] recognises that domestic violence and violence against women are among the most widespread forms of violence and a violation of human rights, and that domestic violence remains one of the most serious problems the society faces in Kosovo. According to the Strategy, the priority is combating domestic violence and gender-based violence through the following strategic objectives: taking responsibility in treating with priority all cases of domestic violence and violence against women; ensuring sufficient human, financial and infrastructure resources in combating such violence; ensuring access to integrated qualitative services; guaranteeing justice for the victims and survivors; ensuring reintegration and empowerment of victims/survivors of domestic violence and violence against women; punishment, resocialisation and rehabilitation of perpetrators, and raising awareness of the society against domestic violence and violence against women.

Judicial research on femicide

Quantitative data

There is no official statistics which keeps records and publish data on femicides, especially having in mind that a femicide is not criminalised as a separate criminal offence. Based on the request, the public institutions, such as the Kosovo Police

[56] Criminal Code, Article 113, para. 25.

[57] Law no. 03/L-182 on the Protection against Domestic Violence.

[58] Strategy on the Protection against Domestic Violence and Violence against Women 2022-2026, available at: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/ALB-Strategjia-Kombe%CC%88tare-pe%CC%88r-Mbrojtje-nga-Dhuna-ne%CC%88-Familje-dhe-Dhuna-ndaj-Grave-2022-%E2%80%93-2026.pdf>

and the Kosovo Judicial Council, can provide some official data. However, these data (will) often fail to include all the necessary information, and sometimes the data do not match, so it is not reliable source of information. The lack of official statistics on gender-based violence, domestic violence and femicide presents an obstacle in raising awareness and in the fight against this phenomenon. The statistical gap in Kosovo is also reflected by the GREVIO Secretariat's recommendations, according to which, among other things, (i) the authorities in Kosovo should expand the scope of the data collected by the law-enforcement agencies and the judiciary to cover all forms of violence against women and to ensure that such data is disaggregated by sex, age and relationship between the victim and the perpetrator; and (ii) the authorities in Kosovo should ensure the scope of data collected by social services and shelters to ensure that it addresses all forms of violence pursuant to the Istanbul Convention, by disaggregating the data by sex, age and victim-perpetrator relationship, as well as other relevant categories such as disability status.

Having all aforementioned constraints in mind, according to the available data, during the 2018–2022 period, twenty (20) femicides and four (4) attempted femicides occurred in the Republic of Kosovo. However, as of July 2023, only five (5) final and enforceable judgments were available for the research. The research study^[59] conducted in 2023 showed that:

- » all murders of women were committed by men in the context of the family relationship;
- » three out of five cases were qualified as a qualified (aggravated) murder, deprivation of life of a family member, one case was qualified as a qualified (aggravated) murder with intent of committing two or more murders, and one case was qualified as severe bodily injury resulting in death;
- » none of the murders were qualified as a qualified (aggravated) murder, motivated on the basis of gender;
- » on average, the perpetrators were sanctioned by imposing a punishment of twenty-four (24) years of imprisonment;
- » in some cases, mitigating circumstances were not assessed well;
- » no gender discriminatory language was used, the victims were neither blamed, nor was the crime in any way justified in the rationale of the judgments.

[59] To be published in winter 2023.

Case studies

Brief description of the selected case law gives information on two cases, while a full national report provides a detailed analysis of five cases.

Case no. 1

The perpetrator shot and killed his wife and daughter, by opening the door of the house and immediately shooting burst-fire towards them, with an AK-47 assault rifle. Earlier that day, the perpetrator with his family members visited the victim who was staying at her cousin's house with her children. He wanted to reconcile with her, but she refused. Later that day, the perpetrator sent a number of threatening text messages, and she reported him to the police. He was violent towards her many times before, including the last incident that happened in public, during a wedding, regarding which he was detained for 30 days. He was a war veteran.

During the court proceedings, he admitted the crime, but claimed that he had murdered them unintentionally, that is to say, he wanted to kill his wife's brother, considering him responsible for the whole situation. Also, it was stated that he suffers from a post-traumatic stress disorder (PTSD), due to the fact that he was a war veteran, imprisoned in Serbia. His family members described him as often aggressive, impatient and sensitive, after serving the prison. However, psychiatric examination showed that he neither had any temporary or permanent mental disorders, nor did he have a diminished capacity to control his actions at the time of committing the crime.

Data on the victim is scarce in the judgment – she was married through the resort to the old tradition of matchmaking, she had five children with the perpetrator, and she was abused physically many times by the perpetrator.

He was charged and convicted for a qualified (aggravated) murder (intentional murder of two or more persons) and for unauthorised ownership, control and possession of weapons. The first instance court in its first judgment sentenced him to 24 years of imprisonment. The mitigating circumstances were the admission of guilt and feeling of remorse, while the aggravating circumstances were the high level of involvement in the criminal offence and the level of intent. The Court of Appeal reversed the judgment and sentenced the perpetrator to a life imprisonment. *Inter alia*, it stated that the aggravating circumstances were not properly assessed, especially the perpetrator's persistence in committing

the crime, the manner of committing the crime (burst-fire shooting from the automatic weapon), endangerment of other persons who were present in the house, as well as the previous violence against the victim. The Supreme Court ordered a retrial due to the partial admission of guilt.

At the retrial, the Basic Court basically stated the same as in the first judgment and again sentenced the perpetrator to 24 years of imprisonment. This time, the mitigating circumstances included his economic situation, his age, the proper behaviour before the court and the expressed remorse. The aggravating circumstances included his previous convictions for violence against the victim and the manner of the commission of the crime. In the second judgment of the Court of Appeal, he was found guilty for the qualified (aggravated) murder of two or more persons and unauthorised ownership, control and possession of weapons and was sentenced to a unique sentence of thirty (30) years of imprisonment. Again, the Court of Appeal stated that the mitigating and aggravating circumstances were not assessed well by the Basic Court, especially the fact that the perpetrator was violent towards the victim previously, that the crime was committed in the house of the victim's family where she was hiding with her children, that the crime was committed in the presence of the victim's family members, that he also murdered his minor daughter, as well as that the perpetrator demonstrated his strong determination and persistence to commit the crime.

Comment

At the time of the commitment of the femicides (2018), a qualified (aggravated) murder motivated on the basis of gender has not yet been introduced as a crime in the Criminal Code. Therefore, the courts qualified this crime as a qualified (aggravated murder), i.e. an intentional murder of two or more persons. It took 2.5 years from the moment of filing the indictment to the final judgment, a period which meets the criteria concerning the right to a trial within a reasonable time. In the rationale of all judgments, no sexist or degrading language towards the victims was used. However, the handling of the procedure by the Basic Court deserves special attention. This was one of the typical forms of femicides, the case in which a long-lasting domestic violence resulted in a femicide. The Basic Court didn't properly consider that fact. Also, after the first decision of the Court of Appeal, in which this second instance court gave several comments related to the reasoning in the first instance judgment, it seems

that the Basic Court, during the retrial, didn't pay attention to the Court of Appeal's guidance and reasoning. In addition, the Basic Court assessed as mitigating the following circumstances: the economic situation of the perpetrator, his age, and his proper behaviour before the court. Neither of the cited circumstances should be considered as mitigating in this case. The economic status is not relevant for the femicide. A similar conclusion may be inferred in relation to the perpetrator's age, which is completely irrelevant. Finally, the proper behaviour before the court is something that should be a standard feature in any trial, and in cases when a perpetrator does not behave properly before the court, the judge has various procedural possibilities (e.g. to punish the perpetrator, etc.).

It should be noted that the Court of Appeal accepted the Basic Court's assessment concerning the mitigating circumstances, although it had possibility to correct it. On the other hand, the aggravating circumstances were not assessed well, too. Therefore, the Court of Appeal assessed the following aggravating circumstances, which were not included in the Basic Court's judgment: the perpetrator's previous domestic violence towards the victim; the fact that the crime was committed in the victim's family house in front of her mother, brothers and children; the fact that the perpetrator had murdered his minor daughter; the fact that the victims did not contribute to the criminal offence with any action; and the determination of the perpetrator to commit the crime. However, it is not clear why the Court of Appeal in the second judgment decided to punish the perpetrator with imprisonment of 30 years, having in mind that he was sentenced to a life imprisonment by means of the first judgment of the Court of Appeal.

Case no. 2

The perpetrator, after a previous fight with his wife, killed her with a Beretta gun when she was leaving the house, firing 15 bullets at her. One witness testified that after the shooting the perpetrator went closer to the victim and said "*mother's whore*". Also, the perpetrator called the victim's sister and told her coldly "*I killed her, she died*". According to the victim's daughters, the relationship between the couple was good until two weeks before the murder, when she noticed that the perpetrator had changed his behaviour, i.e. he behaved in a controlling manner and became aggressive. At the day of the murder, the victim had told her daughters that the perpetrator had beaten her and had threatened her with a weapon. The

perpetrator was a taxi driver of a middle economic class, previously divorced, and a father of three children. A medical examination showed that at the time of the murder he was mentally capable and sane. The victim was a widow, raising her daughters alone. Then she married the perpetrator and they moved to Switzerland, but she wasn't happy there and wanted to go back to Kosovo. During the trial, the perpetrator argued that he didn't kill her intentionally, that they lived in harmony and without violence and that her unreasonable behaviour in the critical night provoked in his mind "immeasurable feelings of anger and anxiety."

The crime was qualified as a qualified (aggravated) murder, murder of a family member in conjunction with unauthorised ownership, control and possession of weapons, and the Basic Court sentenced the perpetrator to life imprisonment. The Basic Court did not find any mitigating circumstance, while there were a lot of aggravating circumstances, which were very well-elaborated. Some of the aggravating circumstances were: the societal risk posed by the perpetrator (15 shots fired by him); the degree of criminal responsibility (premeditation, insults); the consequences of the criminal offence; the insidious way of committing the crime; his behaviour after the act (cool-headed attitude; calling the victim's family); no remorse during the trial for the act against the victim, and instead expressing his feeling of self-pity; his improper attitude towards the victim's daughters and the intensity of the emotional pain of the victim's daughters. The Court of Appeal partially changed this decision and sentenced the perpetrator to 25 years of imprisonment. The Court of Appeal found that there were mitigating circumstances that the first instance court did not take into consideration. For example, that he is the father of three children, that he is relatively old, that he expressed his regret and apologised to the victim's two daughters, he publicly apologised (during the court session) and he was not convicted before. Regarding the aggravating circumstances, the Court of Appeal stated that some of the aggravating circumstances were in fact mitigating, especially, the behaviour of the accused person after the commission of the crime (he took a scarf from the victim and covered the corpse). Also, it stated that the murder was not committed in an insidious manner and that the fact that he called the victim's family is not to be considered as an aggravating circumstance, but rather as a simple fact of informing her family.

Comment

This femicide was qualified as a qualified (aggravated) murder of a family member, but it could have been qualified also as a qualified (aggravated) murder motivated by gender, and then the fact that the victim was a family member would have been considered as an aggravating circumstance, as per the Criminal Code. The sanction imposed by the Court of Appeal is very mild, and the mitigating and aggravating circumstances were not elaborated well. The Court of Appeal assessed the fact that he is a father of three children as a mitigating circumstance, which, in our opinion, could only be assessed as an aggravating circumstance, having in mind the fact that he killed his wife, i.e. committed a murder in the family context. Furthermore, his relatively old age is completely irrelevant in assessing his guilt. The fact that he was not convicted before, although usually used as a mitigating circumstance, in our opinion is not to be considered as mitigating, because majority of the population is not previously convicted. Therefore, previous convictions could be assessed as an aggravating circumstance, while the absence of previous convictions is not a mitigating circumstance. Also, his remorse and the public apology during the court's session could be considered as his effort to diminish the level of his own responsibility and his attempt to portray himself as a good person. Finally, the Court of Appeal did not explain the reason laying behind its decision not to treat this femicide as being committed in an insidious manner, having in mind that he shot the victim 15 times by using an illegal rifle-gun.

MONTENEGRO

Legal framework

The Criminal Code of Montenegro does not criminalise femicide. However, as in other states, several types of murders are criminalised. The basic form is murder, an offence against life as an object of protection (in addition, the physical integrity of a human being is threatened). These are the following crimes against life:

- » Murder (Art. 143 CC);
- » Qualified (aggravated) murder (Art. 144 CC);
- » Murder in an instant (in a heat of passion) (Art. 145 CC);

- » Murder of a child during childbirth (Art. 146 CC);
- » Deprivation of life out of compassion (mercy killing) (Art. 147 CC);
- » Negligent deprivation of life (Art. 148 CC).

The basic form of murder consists of unlawful deprivation of life of another person, where there are no special circumstances that make it aggravated or privileged. The object of protection in this criminal offence is the human life or the right to life, as one of the basic human rights.

The perpetrator of this criminal act can be any person, and, in terms of guilt, intent is required. A criminal act is committed with intent when the perpetrator was aware of his act and wanted to perpetrate it, or when the perpetrator was aware that he could commit the act and consented to its occurrence (Art. 15 CC). For this criminal offence, the Criminal Code prescribes a prison sentence of 5 to 15 years.

A qualified (aggravated) murder exists when murder is committed in such a way, under such circumstances or against such a person that give it a greater degree of severity and danger for which the law prescribes a harsher punishment. Qualified (aggravated) murders are premeditated murders (committed with malice aforethought). The intent of the perpetrator should include both the deprivation of another person's life and the aggravating circumstance that makes the murder aggravate (qualified). There are several forms of qualified (aggravated) murder, which differ according to: the method of perpetration, the motive of the perpetrator, the circumstances of the perpetration and the consequences and characteristics of the passive subject. Any person can be the perpetrator of this criminal act.

For the criminal offence of qualified (aggravated) murder, it is prescribed that imprisonment for at least 10 years or long-term imprisonment should be imposed on a person:

- » who deprives another person of life in a cruel or insidious manner;
- » who deprives another person of life through reckless violent behaviour;
- » who deprives another person of life and at the same time intentionally endangers the life of another person;
- » who takes the life of another person out of greed, for the purpose of committing or concealing another criminal act, out of reckless revenge, or out of other base motives;

- » who takes the life of an official or serviceman while he/she was discharging an official duty or in connection with the discharge of an official duty;
- » who takes the life of a child or a pregnant woman;
- » who takes the life of a member of his family or family community whom he/she previously abused;
- » who deliberately takes the life of several people, providing that manslaughter in a heat of passion, killing a child during childbirth or taking life out of compassion (mercy killing) is not at stake.

The sentence of long-term imprisonment cannot be shorter than 30 years or longer than 40 years.

In addition, the Criminal Code of Montenegro prescribes the criminal offence of domestic violence resulting in death of a family member or member of a family community (Art. 220, paragraph 4), as a special aggravated form of the criminal offence of domestic violence.

According to the Law on the Protection against Domestic Violence,^[60] domestic violence is the act or omission of a family member that endangers the physical, psychological, sexual or economic integrity, mental health and tranquillity of another family member, regardless of the place where it was committed. This Law does not define violence against women, but it only provides a general definition of the concept of domestic violence. The Law prescribes several types of protective measures that could be applied against the perpetrator of violence.

There is a problem of a legal qualification of an act of domestic violence, that is to say, in making a decision on whether acts of domestic violence should be prosecuted as misdemeanours, in accordance with the Law on the Protection against Domestic Violence, or as criminal offences in accordance with the Criminal Code. In this way, legal certainty is violated because it is impossible to predict with certainty the consequences of an act based on the law. It is very important that the Montenegrin legal framework clearly distinguishes between misdemeanour and criminal responsibility in case of domestic violence.

[60] Law on the Protection against Domestic Violence, *Official Gazette of Montenegro*, nos. 046/10 of 06.08.2010 and 040/11 of 08.08.2011.

Judicial research on femicide

The research on social and institutional response to femicide in Montenegro was conducted by SOS Nikšić.^[61] The in-depth analysis is available in the national report.

Quantitative data

In the period from January 2015 to December 2019, there were 10 final court cases in the High Court in Podgorica and the High Court in Bijelo Polje. Six of them are considered a femicide – a murder or attempted murder of a woman by a man. In all cases of femicides and attempted femicides, the perpetrator and the victim were in marital, emotional or family relationship (spouse/ex-spouse, intimate partner, son, nephew).

Profile of the perpetrators

Most of the perpetrators had no prior criminal convictions. The perpetrators generally did not admit to committing the crime. Some similarities are found in all analysed court cases, however data on the family and personal anamnesis of the perpetrators are mostly missing and it is not known whether the perpetrators had alcohol or drug addictions in the period before committing the femicide, because these facts are not stated in the judgments.

The perpetrators showed substantial level of brutality in committing the crimes against women, while they remained cold-blooded, behaved normally or fled the scene after the murder. They used physical force (hitting, suffocation, and strangulation), various tools (hammer, metal ladle, etc.), cold weapons (knife), as well as firearms (handgun, rifle, bomb, and explosive device).

Profile of the victims

There were seven victims of femicide/attempted femicides in six cases. **The judgments contain very little or no information about the victims.** In most cases, there is no information about the victim's education, place of birth, number of children, employment or other important information. According to

[61] Beker Kosana (ed.), Društveni i institucionalni odgovor na femicid u Crnoj Gori, SOS Nikšić, Nikšić, 2023, available at: <https://sosnk.org/wp-content/uploads/2023/04/Drustveni-i-institucionalni-odgovor-na-femicid-u-Crnoj-Gori-1.pdf>

the available data, half of the victims were of elderly age (three victims were older than 65 years), two victims were aged 40-65 years and one was aged 18-30 years.

The relationship between the perpetrators and victims before the femicide was generally very difficult and problematic. Among the victims, there are only few who reported the violence and they had not received effective protection, which would have prevented further violence and (attempt to) murder.

The motive of the offence in one case was specifically stated by the court, that the perpetrator put his emotions before her life, was guided by his selfishness and the desire to have the victim *belonging only to him, and since she refused, he took her life*. In two cases in which the perpetrators killed the wives with whom they were in the process of divorce, the immediate cause of the crime is, according to the perpetrators' statements, their desire to see their children. Common in both cases is the multi-year period of brutal violence that the perpetrators had carried out against the victims and the children. The perpetrators showed anger because they lost control over the victims and children.

Mitigating and aggravating circumstances

When assessing the type and severity of the criminal sanction, the competent court had not always assessed the mitigating and aggravating circumstances in an adequate manner. In addition, they are listed very generally and broadly. As mitigating circumstances, the court considered: the fact that the perpetrator had not had previous convictions; he had personal health issues, namely, the fact that during the court proceedings while he was detained on remand, the perpetrator had *a stroke that led to a psycho-organic syndrome*; the fact that he had committed the act in a state of significantly diminished mental capacity.

As aggravating circumstances, the judgments listed: the blood relation between the perpetrator and the victim; the fact that the victim was the only one who had taken care of the perpetrator and financially supported him; that the victim was an elderly person (78 years old), and the perpetrator's earlier convictions, among other things, for violent crimes.

Regarding the sanctions, in two cases the court sentenced the perpetrators to the measure of mandatory psychiatric treatment and custody in a health institution. In one case, the perpetrator was sentenced to 20 years of imprisonment and to a measure of mandatory psychiatric treatment. In one case, the perpetrator was sentenced to 19 years in prison, while in another case the perpetrator was

sentenced to 20 years of imprisonment. In the last case, a prison sentence of 2 years and 10 months was imposed according to the plea agreement.

It was noticed that the court rarely explained the gender dimension of cases, previous violence and reports thereof. In one of the cases, the court did not state anywhere that the victim had been a victim of domestic violence for many years before the crime was committed, and even immediately before the crime of murder was committed. The existence of domestic violence is inferred from the testimony of witnesses, but the court did not delve into the relationship between the perpetrator and the victim, which means that the gender dimension of the committed criminal offence was not considered.

Case studies

Brief description of selected cases gives some important information on two cases, while full state report provides detailed analysis of five cases.

Case no. 1

In 2018, S.E. was charged with the crime of qualified (aggravated) murder. The court stated in the judgment that the perpetrator intentionally and in a cruel way deprived P.D. of her life, even though he was aware of the prohibition of his actions. He committed the crime by coming to her apartment, repeatedly hitting her with a blunt object and his hands, following which he held her nose and mouth closed, and pressured his knees on her chest, which resulted in the suffocation.

The court sentenced the perpetrator to imprisonment of 20 years and imposed on him a measure of mandatory psychiatric treatment and custody in a health institution.

The perpetrator S.E. lived in the same city as the victim; he graduated from a high school of economics, he was unemployed, unmarried, childless, of a medium wealth, not convicted. At least five years before the crime was committed, he had bad relations with most of his family members. He rarely contacted his parents. He did not want to have any contact with his mother for years. He often asked for money on loan from members of his immediate and extended family, so most of them distanced themselves from him. The only family member who stayed with him all the time was his aunt, whom he killed. She felt sorry for him, often gave him money, advocated for his employment and on several occasions asked his primary family "to do something and help him, but her advocacy was not met by their understanding". The expert opinion stated that he is a person of intellectual capacity below the average level. The

perpetrator did not give his defence during the proceedings. He did not admit to the commission of a criminal offence and stated that “in this particular case, it is a staged trial, so [he does] not want to say anything.”

The victim was the perpetrator's aunt. She was 78 years old, living alone in the city in her own apartment. She was a pensioner with a pension that was high for the Montenegrin standards, and was additionally helped financially by her daughter who lived abroad. She was in a good health for her age. She had good family and social connections. She was the only person who constantly provided help and support to the perpetrator. She once reported the perpetrator to the police, but when the police officers asked her if she wanted to maintain the report on account of violence against her, she answered in the negative because she “felt sorry” for the perpetrator. For a certain period of time before she was killed, she told people who came to visit her that her family had problems with S.E.

The court considered the perpetrator's previous lack of conviction, the personal circumstances, i.e. the fact that during the court proceedings, while he was in a health institution, he had a “stroke that led to the psycho-organic syndrome”, as well as that he had committed the act in a state of significantly diminished sanity caused by a borderline personality disorder “which constitutes a more severe mental disorder”. As aggravating circumstances, the court considered the blood relationship of the perpetrator with the victim, the fact that she was the only one who took care of him and helped him financially and that she was an elderly person.

Comment

The court generally neither engaged in detailed examination and analysis of the previous relationship between the perpetrator and the victim, and the violence he had previously committed against the victim, nor did the court consider the clearly expressed gender dimensions of the committed crime.

The fact that the victim refused to file reports concerning the domestic violence can be explained by her fear of the perpetrator, but also by the patriarchal understanding that the perpetrator is her relative and that any problem, even the obvious psychological violence, should remain within the family. Distrust in the institutions can also be a reason for revoking the already filed report concerning violence. It is obvious that the competent authorities did not react adequately and failed to recognise the risks of murder.

Case no. 2

In another analysed case of attempted murder, in which the State prosecutor and the perpetrator concluded a plea agreement, the court accepted it and punished the perpetrator with a prison sentence of two years and 10 months.

According to the data of the case, R.E. stabbed A.E. behind one restaurant. She received severe physical injuries. There is no information available about the relationship between the perpetrator and the victim. It is evident from the case file that R.E. planned and committed the crime with intent (malice aforethought).

R.E. graduated from an elementary school and worked as a market seller, he was married, without children and, as he himself stated, was of a medium wealth. Five years before the attempted murder, the perpetrator was convicted for criminal offence of threatening with a dangerous weapon and fined in the amount of EUR 400. There is no information in the case files about the victim, except that she is a female.

Comment

In this case, the institution of plea agreement was applied. This institution puts victims of violence in an unenviable position, given that their consent is not required to conclude such an agreement. We believe that such a legal solution is not adequate and that, according to the solutions in the comparative law, for certain categories of criminal acts – such as crimes against life and limb, and those concerning sexual freedom, but also other acts of gender-based violence, it would be necessary to prescribe an obligation of the prosecutor to obtain the consent of the victim, if applicable. In cases of femicide, consent to the conclusion of an agreement should be given by the injured parties, as this respects the legitimate interest of the victim of the criminal offence that the proceedings have a fair outcome. We also believe that it is necessary to prescribe the possibility for the victim, that is, the injured person to file an appeal if the judgment was made on the basis of an agreement which was not approved by the victim/injured party or if the judgment is not in accordance with the concluded agreement.

The research considered this case as a femicide, although due to the insanity of the perpetrator it was not possible to establish the motive for committing the crime, while information was not provided in the judgment because the judgment based on the plea agreement does not contain detailed information about the circumstances related to the way the crime was committed, the defendant's previous life and his relationship with the victim. A prison sentence of two years and 10 months is clearly inadequate for the committed criminal offence of attempted murder. According to the provision in the Criminal Code, the perpetrator could have been punished from five to 15 years of imprisonment or a milder sentence. Such a lenient punishment, as one of the elements of plea agreement, does not correspond to the purpose of imposing criminal sanctions, and for that reason the court should have rejected the plea agreement.

NORTH MACEDONIA

Legal framework

North Macedonia is the only country in the Western Balkans region that criminalised a femicide by way of amending the Criminal Code^[62] in March 2023, which will be presented later in the text. The basic text of the Criminal Code, which has so far undergone numerous amendments, in Article 122 defines the meaning of the expressions and terms that are used in it.

For example, *domestic violence* means harassment, insult, threat to safety, physical injury, sexual or other psychological, physical or economic violence that causes a feeling of insecurity, threat or fear, including threats of such actions against a spouse, parents or the children or other persons living in a marital or extramarital union (cohabitation) or joint household, as well as against a current and former spouse, extramarital partner (cohabitant) or persons who have a child-in-common or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence

[62] Criminal Code, *Official Gazette of the Republic of Macedonia* no. 37/96; Law amending and supplementing the Criminal Code, *Official Gazette of the Republic of Macedonia* nos. 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017, 248/2018 and *Official Gazette of the Republic of North Macedonia* no. 36/2023.

with the victim or not;^[63] *victim of a crime* is: any person who has suffered damage, including physical or mental injury, emotional suffering, material loss or other injury or threat to his or her basic freedoms and rights as a result of a committed crime; a child as a victim of a crime is; minor under the age of 18; *victim of gender-based violence* means any woman and girl under the age of 18 against whom the crime was committed under those circumstances;^[64] *family* means the spouse, the common-law partner (cohabitant), children, parents, brothers and sisters and other relatives with whom the person lives in a family community;^[65] *gender-based violence against women* is violence directed against women because of their gender that leads or may lead to physical, sexual, psychological or economic injury to, or suffering of, women, including direct and indirect threats and intimidation of such acts, coercion or arbitrary deprivation of liberty, regardless of whether they occur in a public or private life.^[66]

The crime of murder^[67] is defined by using the expression *whosoever deprives another person of life*, and the prescribed sentence is imprisonment of at least five years. Even though the definition of the basic form of murder appears to be simple, it nevertheless shows its complexity when addressing the different forms of qualified (aggravated) and privileged murders. When the court delivers a judgment by which it convicts the defendant for the crime of murder, the special elements that make up the essence of the criminal act are inevitably determined and weighed, apart from considering the general elements of the crime. Those special elements can refer to the method of committing the crime, the characteristics of the victim, the subjective and other circumstances provided for by law, and they govern the determination of individual responsibility.

An aggravated form of murder is a deliberate deprivation of another person of his/her life that was committed under particularly aggravating circumstances that are defined by law, which raise the degree of wrongdoing and the degree of guilt of the perpetrator, so the law stipulates a harsher punishment for such offences. This type of murder differs from an ordinary murder by certain aggravating circumstances of an objective or subjective nature, such as the method of committing the crime, the characteristics of the victim, the perpetrator's motives, etc.

[63] Point 21.

[64] Point 22.

[65] Point 23.

[66] Point 43.

[67] Article 123, paragraph 1 of the Criminal Code.

Aggravated forms of murder^[68] are punishable with imprisonment of at least 10 years or life imprisonment and are defined as:

- » deprivation of another person of his/her life, in a cruel or insidious manner;
- » deprivation of another person of his/her life, while performing domestic violence;
- » **deprivation of the life of a woman or a girl up to 18 years of age, while committing gender-based violence;**
- » deprivation of another person of his/her life while intentionally endangering the life of another person;
- » deprivation of another person of his/her life out of greed, for the purpose of committing or concealing another crime, out of callous revenge, out of hatred or out of other base motives;
- » deprivation of another person of his/her life by way of order [contract killing];
- » deprivation of a person of his/her life for the purpose of removal of an organ, tissue or cells for transplantation;
- » deprivation of life of a woman whom is known to be pregnant, or of a child;
- » deprivation of life of a judge or public prosecutor, during the performance of their function, i.e. activity, a lawyer, medicine doctor or other health worker, journalist or other media worker or another person performing a work of public interest in the exercise of professional tasks or in connection with the exercise of professional tasks undertaken within the scope of their powers or by an official or serviceman in the course of his/her discharge of duties of public or state security or the duty of maintaining public order, apprehending a perpetrator of a crime or guarding a person deprived of liberty.

According to paragraph 3 of the same Article, anyone who intentionally deprives of life two or more people, and has not been tried earlier concerning these crimes, will be punished with imprisonment of at least 10 years or life imprisonment.

In order for the crime of murder to qualify as a **murder committed while performing domestic violence**, two conditions must be met:

- » there must be an objective relationship between the offender and the victim that fulfils the elements of domestic violence;
- » there must be awareness that it is being carried out in conditions of violence and the subjective will to take life must be an expression of the violent attitude towards the victim.

[68] Article 123, paragraph 2 of the Criminal Code.

The March 2023 Amendments to the Criminal Code introduced a criminal offence which is defined as a femicide (although not named as a femicide), and it is defined as follows: **deprivation of the life of a woman or a girl up to 18 years of age, while committing gender-based violence**. Having in mind that the Amendments were introduced recently, it is still not known how the case-law would develop. However, this is a great progress in terms of unification of the judicial response to femicide.

Privileged murders are:

- » murder out of noble motives;^[69]
- » murder in a heat of passion (the 2023 Amendments added murder as a consequence of domestic violence and gender-based violence that has been committed by the murdered person);^[70]
- » murder by negligence;^[71]
- » murder of a child during a childbirth;^[72]
- » inducing suicide and assisting in suicide;^[73]
- » unlawful termination of pregnancy and forced sterilisation.^[74]

In addition, some criminal offences which are prescribed in the Criminal Code are considered aggravated and are punishable with harsher sanctions in an event of being committed in cases of gender-based violence, violence against women, domestic violence or out of hatred. Such offences are: bodily injury;^[75] severe bodily injury;^[76] unlawful deprivation of liberty;^[77] and threatening the security.^[78]

The new (2023) amendments to the Criminal Code also include the criminal offence of stalking, for which a fine or a prison sentence of up to three years is envisaged. The criminal offence of sexual harassment has also been regulated, for whose aggravated form a prison sentence of six months to three years is

[69] Article 124 of the Criminal Code.

[70] Article 125 of the Criminal Code.

[71] Article 126 of the Criminal Code.

[72] Article 127 of the Criminal Code.

[73] Article 128 of the Criminal Code.

[74] Article 129 of the Criminal Code.

[75] Article 130 of the Criminal Code.

[76] Article 131 of the Criminal Code.

[77] Article 140 of the Criminal Code.

[78] Article 144 of the Criminal Code.

provided.^[79] In addition, the criminal offence of sexual assault and rape^[80] has also been amended and defined as follows: A person who, contrary to the clearly expressed will of another person, assessed in the context of the circumstances of the case, performs sexual intercourse or some other sexual act equivalent to it, which consists of vaginal, anal or oral penetration with any part of the body or object, or who induces another person without his or her consent to perform sexual intercourse or other sexual act with a third person, or to perform sexual act on themselves, shall be sentenced to imprisonment of one to eight years.

In order to analyse the application of the aforementioned provisions of the Criminal Code to cases of femicide in the Republic of North Macedonia, it would be instructive to provide a summarised overview of the most frequent types of sentences issued by the courts in the past four years, considering the overall context of the criminal incidents. It should be noted whether, in practice, the court decisions tend to impose lighter punishments, such as suspended sentences or fines, more lenient in comparison to the severity of the committed act in cases of femicide; whether and how much the procedure itself is delayed; if there are property claims for damages, whether they are resolved in a single procedure or the victim or the injured party/parties are referred to a civil litigation procedure, etc. Such statistical monitoring of the situation in the practice is of particular importance in order to achieve a more efficient systemic response to cases of femicide, with the aim of increasing the trust in the judicial institutions.

Judicial research on femicide

The national research was conducted at the beginning of 2023 and contains an in-depth analysis of the case law in North Macedonia relating to femicide.^[81] The research was conducted by the Academy for Judges and Public Prosecutors “Pavel Shatev”, with the support of the AIRE Centre.

Quantitative data

In the period from 2018 to 2022 there were 17 criminal proceedings concerning femicide in North Macedonia, resulting in final judgments. At the Court of Appeal's instance, out of a total of 17 completed proceedings, 14 were in the area of the

[79] Article 190a of the Criminal Code.

[80] Article 186 of the Criminal Code.

[81] Габер-Дамјановска Наташа and Гајдова Габриела, Фемицидот во Република Северна Македонија – состојба, правна рамка и судска пракса (2018-2022), AIRE Centre, 2023.

Skopje Court of Appeal and three in the area of the Bitola Court of Appeal.

In terms of the legal qualification of a total of 19 criminal acts, 8 proceedings were conducted for the murder committed while performing domestic violence as a completed crime; 8 proceedings were conducted for the attempt to murder, committed while performing domestic violence; and one proceeding was for murder in its basic form. In one proceedings for attempted murder committed while performing domestic violence, the legal qualification was changed in the course of the proceedings to severe bodily injury while performing domestic violence, while in another proceeding for the murder in a cruel manner, the legal qualification was changed to the basic form of murder.

All 19 crimes were committed in an apartment, house or yard where the victim lived. In eight cases the accused person possessed a firearm, in three cases he did not possess a firearm, and in the remaining eight cases it was not established and thus it is not known whether the perpetrator possessed a firearm. In six cases, the perpetrator misused the firearm.

Profile of the perpetrators

Out of a total of 17 perpetrators of femicide, three perpetrators were aged 18-25 years, two aged 25-32 years, four aged 33-40 years, three aged 41-48 years, two aged 49-56 years, two aged 57-65 years and one aged over 65 years. Seven perpetrators were previously convicted.

The attitude of the perpetrators towards the crime was such that 10 admitted to the crime, one shifted the blame to the victim, one did not give an explanation, three did not confess and for two perpetrators this fact is not known because they did not give a statement during the criminal proceedings. All 10 perpetrators who confessed to the crime expressed remorse. Of the remaining seven, four did not repent and for three perpetrators this fact remained unknown.

Of the 17 perpetrators, two were abusing alcohol, while another two were users of narcotic drugs. During the commission of the crime 10 were accountable, four had significantly diminished capacity and three could not be held accountable.

Profile of the victims

In the sample, there were 19 female victims. One was aged 18-25 years, two were aged 25-32 years, four were aged 33-40 years, three aged 41-48 years, six

aged 57-65 years and three aged over 65 years. Majority of the victims were in current or former intimate partner relationship with the perpetrators (five were the perpetrator's wives, three were cohabitants, four were ex-wives), while the rest were family related (two mothers, three grandmothers), as well as in in-law relationship (i.e. mother in law, brother's wife, etc.).

From the judgments, it was established that four victims were exposed to different forms of violence before the femicide or attempted femicide. Previous violence was not established in other cases. Five of the victims did not seek assistance or support from relevant institutions, while this fact is not known for the remaining 14 victims. Before the incident, one of the victims reported to the police that she was abused by the perpetrator, but no further actions were taken on the basis of her report.

Sentences

In 14 proceedings, the court found perpetrators guilty and sentenced them to imprisonment. In three proceedings, a security measure was ordered (compulsory treatment in a health facility), given the fact that the perpetrators lacked mental capacity at the time of the crime.

Out of the total of 14 convictions, eight were up to 10 years of imprisonment, five sentences were over 10 years in prison, and one sentence was life imprisonment. In 12 cases, appeals were lodged. Six judgments were upheld, two were upheld after the retrial, while four were overturned after the retrial.

Case studies

The national study for North Macedonia provides more detailed description of cases of femicides and attempted femicides, including five in-depth case studies. Two case studies are briefly presented here.

Case No. 1

The perpetrator Z.K. was found guilty by the first instance court for the criminal offence of attempted murder, committed while performing domestic violence.

The first instance court declared the accused Z.K. guilty of the crime of "Murder" under Article 123, paragraph 2(2) in conjunction with Article 19, paragraph 1 of the Criminal Code. The said court established that on 4.11.2020,

in the time period from 5:30 p.m. to 7:30 p.m., Z.K. during an act of domestic violence against his wife S.K., in their family house, intentionally tried to deprive S.K. of her life, harshly battering her, using different means (psychical force, cable with a 70 cm length), and threatening that he would kill her. This lasted for two hours, until their daughter A.K. arrived and called the police.

The Court of Appeal accepted his appeal, and in the new trial, based on the instruction given by the higher court, the qualification of the criminal offence was changed from the attempted murder to severe bodily injury. The perpetrator was found guilty for causing severe bodily injuries to his wife. No appeal has been lodged against the judgment.

At the time of the attempted femicide, the perpetrator lived in a house with the victim, and they had two adult children. They were both unemployed and they maintained a hygiene in buildings. He was 57 years old with a neat and unremarkable appearance, and, according to the expert opinion, he is a person with intellectual capabilities below the average level, with a passive-aggressive personality structure and features of emotional immaturity, instability, infantilism, egocentrism, impulsiveness, insufficient capacity to delay impulses, accompanied by anger and irritation at small obstacles and frustrations. He was constantly in a bad relationship with his wife, accusing her of adultery and he was very angry with her because in the proceedings against him for the rape of her sister, she did not take his side, but supported, according to him, the defamation of her sister, for which he spent six months in prison. The defence argued that there was no evidence that the injuries sustained by the victim were caused by a blow to the head, as well that he did not have the intention to kill the victim.

The victim was a 57-year-old woman, meticulous and of modest demeanour. She was a person with average intellectual capacities, but experts noted disappointment, lack of self-confidence, pessimism regarding the future and sensitiveness. She was employed in three companies, but after their collapse she was unemployed and earned by maintaining a hygiene in buildings. She was married to the perpetrator for more than 38 years. Their relationship was conflicted and without mutual understanding and empathy. The perpetrator's behaviour towards the victim was similar even before serving the prison sentence for the crime he had committed against her sister. His behaviour towards the victim after the said life situation became more hostile and aggressive. She neither sought damages, nor did she join the criminal prosecution, while their daughter didn't want to testify. By way of the first judgment, he was sentenced to 10 years

of imprisonment for an attempted murder. During the retrial, the same evidence was presented. The legal qualification was changed to severe bodily injury and the accused person confessed to that crime. He was sentenced to three years of imprisonment.

In the first judgment, the mitigating circumstances included the proper attitude of the accused person during the proceedings, the facts that he is unemployed and of a poor wealth, that no proceedings for another criminal offence are conducted and that he is not currently registered as an offender, the facts concerning his age, that the crime remained an attempt, that the victim neither joined the criminal prosecution, nor did she claim damages. As aggravating circumstances, the court considered the following circumstances: the type and gravity of the crime, the way of committing the crime, the degree of the defendant's criminal responsibility, his previous conviction, the protected interest and the fact that the victim divorced the defendant after the incident and lives at another address. The same aggravating circumstances also featured in the second judgment, while in terms of the mitigating circumstances, besides already stated circumstances, his confession and remorse were considered.

Comment

The perpetrator and the victim had very disturbed marriage for more than 38 years. His behaviour was aggressive towards the victim, even before serving the prison sentence for the rape of her sister, and it was worsened afterwards. He was accusing her for having an affair and was really angry because she supported her sister instead of him. However, the court did not deal with the relationship between the accused person and the victim that preceded the crime. Also, the court considered as a mitigating circumstance the fact that the victim neither claimed damages, nor did she join the criminal prosecution. That is an obvious lack of gender sensitivity and the first sentence was the minimal one that is provided for that crime of murder (prison sentence of at least 10 years to life imprisonment). The perpetrator was previously convicted of raping the victim's sister, but the court only stated this fact as an aggravating circumstance, without evaluating the fact that it was the victim's sister.

The Court of Appeal stated that the victim's injuries to the head were not confirmed by the experts, without considering that the medical examination of the victim by the forensic experts was carried out one month after the incident. In addition, the court disregarded the victim's testimony. She testified that the accused person hit her on the head saying that she should lie down instead of her mother, who was dead, which indicates the possibility that his intention was to murder her.

During the retrial, the court again did not consider their relations that preceded the crime. Imprisonment of three years was based on the defendant's guilty plea and the court considered as a mitigating circumstance the expression of the defendant's remorse, which, however, does not emerge from the evidence in the proceedings. Similarly, as in the first judgment, mitigating circumstances were, *inter alia*, the fact that the victim neither claimed damages, nor did she join the criminal prosecution. The Public Prosecutor did not show gender sensitivity either, especially having in mind that no appeal was lodged against the decision concerning the duration of the criminal sanction.

Case no. 2

The perpetrator J.R. was found guilty for the crime of murder, because he, due to previously disturbed family relations, deprived his wife S.R. of her life, while performing domestic violence, by stabbing her to death in the neighbour's apartment.

The perpetrator was married, and was the father of five minor children. He had completed the second grade of education and was previously convicted for property related crimes (theft and aggravated theft). Before the incident, he was working and providing a living for his family with whom he lived in a rented apartment. He was married to the victim for 15 years. The relationship with the victim was disturbed. In a neuropsychiatric expert report, it was stated that at the time of crime he was aware of his actions, but due to the disturbed marital relations with his wife, his mental tension increased during the argument with her, which somewhat reduced his ability to manage his own actions, but not to a significant degree. At the main hearing, the defendant admitted to a crime.

There is no much information about the victim in the case files. She was married to the perpetrator for 15 years, and had five minor children. She was unemployed and lived in a rented apartment with the perpetrator and children. Their relations were previously disturbed.

Having in mind that the perpetrator pleaded guilty, he was found guilty and sentenced to twelve years of imprisonment. No appeal was lodged against the judgment. As stated by the court, the following mitigating circumstances were taken into account: the personal circumstances of the accused, that he is a young man who before the criminal act worked and provided livelihood for his family and enabled his family to live in a rented apartment, the fact that he is the father of five minor children, the defendant's conduct at the main hearing before the court, that he admitted his guilt and expressed sincere remorse, that he contributed to the efficient completion of the criminal proceedings, as well as the fact that the defendant on the critical day was aware of his actions, but, due to the disturbed marital relations with his wife, his mental tension increased during the argument with the now deceased person, which somewhat reduced his ability to manage his own actions, but not to a degree that would call into question his ability to reason and make decisions. As aggravating, the court considered the following circumstances: the accused person acted with direct intent when committing the crime; the degree of endangerment of the protected interest was high, bearing in mind that, by committing the specific crime, he jeopardised the victim's right to life that enjoys protection of an absolute character; in the specific case, a crime committed while performing domestic violence is at stake, which indicates a higher degree of violation of the protected object; the former life of the accused, i.e. his previous convictions and the prison environment did not help him to be more careful about his behaviour in the future.

Comment

Before the commission of the crime, there was a disturbed relationship between the perpetrator and the victim, who were married for 15 years. He had previous criminal convictions and had already served a prison sentence.

When determining the sentence, the court did not deal with the relationship between the perpetrator and the victim which preceded the event, and which resulted in the commission of the crime. Also, the court did not take into account the perpetrator's recklessness, i.e. the fact that the incident took place in the presence of the neighbour, in his apartment. In addition, the court considered the defendant's guilty plea, defining it as his contribution to the efficient completion of the proceedings. The court considered as a mitigating circumstance that the accused was the father of five children, not considering that, by committing a femicide, he left those five children without their mother.

On the other hand, the court stated as an aggravating circumstance that the life, as one of the legally most protected goods, was violated and that the act was committed while performing domestic violence, which indicates a higher degree of violation of the protected object. However, the sentence imposed by the court is around the legal minimum for the specific aggravated form of the crime of murder (regarding which a prison sentence of at least 10 years to life imprisonment is foreseen).

SERBIA

Legal framework

In the Criminal Code of the Republic of Serbia,^[82] murders are regulated as a basic form of murder, qualified (aggravated) murders and privileged murders.

The simple murder is defined as follows: Whoever causes death of another person, shall be punished with imprisonment from five to fifteen years.^[83]

Qualified (aggravated) murders^[84] shall be punished with imprisonment of at least 10 years or a life sentence, that is to say, the above sentence is prescribed for whoever:

[82] Criminal Code of RS, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.

[83] Article 113 of the CC.

[84] Article 114, para. 1 of the CC.

- » causes death of another person in a cruel or insidious manner;
- » causes death of another person by reckless violent behaviour;
- » causes death of another person and with premeditation endangers the life of yet another person;
- » causes death of another person during commission of robbery or compound larceny;
- » causes death of another person in order to acquire gain, to commit or conceal another offence, due to callous revenge or other base motives;
- » causes death of an official or serviceman during discharge of their duty;
- » causes death of a judge, public prosecutor, deputy public prosecutor or policemen related to discharge of their duty;
- » causes death of a person who performs duty in a public interest related to discharge of his or her duty;
- » causes death of a child or a pregnant woman;
- » causes death of a member of his family whom he previously had abused;
- » with premeditation causes death of several persons, and this not being a case of manslaughter in an instant (in a heat of passion), infanticide, or causing a death out of compassion (mercy killing), he/she shall be punished with imprisonment of minimum ten years or imprisonment of thirty to forty years.

Privileged murders are:

- » manslaughter in an instant (in a heat of passion), defined as follows:^[85] Whoever causes death of another person while being brought into a sudden situation of strong irritation (heat of passion) through no fault of his own, by assault, abuse or serious insult by the killed person, shall be punished with imprisonment from one to eight years;
- » infanticide:^[86] A mother who causes death of her child at childbirth or immediately after delivery, while being in a state of disorder caused by the delivery, shall be punished with imprisonment from six months to five years;
- » manslaughter out of compassion (mercy killing):^[87] Whoever causes death of an adult person out of compassion due to serious illness of such a person and at such a person's serious and explicit request, shall be punished with imprisonment from six months to five years;

[85] Article 115 of the CC.

[86] Article 116 of the CC.

[87] Article 117 of the CC.

- » negligent homicide:^[88] Whoever causes death of another person by negligence, shall be punished with imprisonment from six months to five years.

The Criminal Code also prohibits domestic violence,^[89] which is defined as follows: Whoever by use of violence, threat of attacks against life or limb, insolent or reckless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his family, shall be punished with imprisonment of three months to three years. If in committing the domestic violence, an offender used weapons, dangerous implements or other means suitable to inflict serious injury to body or to seriously impair the health, the offender shall be punished with imprisonment of six months to five years. If the domestic violence results in death of a family member, the offender shall be punished with imprisonment of five to fifteen years, and if a family member is a minor, the offender shall be punished by imprisonment of at least ten years.

As in most of the countries in the region, **there is no specific criminalisation of the criminal offence of femicide in the Criminal Code of the Republic of Serbia**. Femicide may be qualified as:

- » simple murder;^[90]
- » killing of a woman committed out of hatred towards women, that may be treated as a qualified (aggravated) murder committed out of other base motives;^[91]
- » a special qualified (aggravated) form of the criminal offence of domestic violence where death of a family member was caused;^[92]
- » a form of qualified (aggravated) murder:
 - › causing death of a pregnant woman;^[93]
 - › causing death of a family member who was previously abused.^[94]

Article 54 of the Criminal Code, that lays down general principles on sentencing, states that the court when sentencing is to consider also the motives for committing the offence.

[88] Article 118 of the CC.

[89] Article 194 of the CC.

[90] Article 113 of the CC.

[91] Article 114, para. 1, point 5 of the CC.

[92] Article 194 of the CC.

[93] Article 114, para. 1, point 9 of the CC.

[94] Article 114, para. 1, point 10 of the CC.

In addition, pursuant to Article 54a of the Criminal Code, the court is to consider, as a special aggravating circumstance in sentencing, the circumstance that the crime was committed out of hatred, which, among other things, may be due to the victim's sex, sexual orientation, gender identity, unless that circumstance is already prescribed as an element of a specific crime. This means that, in an event of not applying the provision on a qualified (aggravated) murder committed out of base motives, for which a stricter punishment is provided for by law, the court may, when sentencing the perpetrator, treat hatred based on misogynistic and sexist motives as hatred out of base motives.

By applying the above provisions in the current conditions, it is certainly possible to prosecute femicide, but on the basis of the current legislation this form of criminality cannot be precisely monitored and suppressed; in addition, it does not make it possible to assess the effectiveness and efficiency of the State's response.

Judicial research on femicide

The research conducted in Serbia included the characteristics and sanctions of femicide and attempted femicide, based on analysing the case-law in processing the cases of femicide and attempted femicide in the period from 2015 to 2019. The research was conducted in two phases, and the research results are available in three studies.^[95]

Quantitative data

In the period covered by the research (2015-2019), 124 cases were processed completely and finalised; out of that number there were 30 attempted femicide cases (attempted murder and aggravated attempted murder) and 94 cases of femicide (murder, qualified/aggravated murder, manslaughter in a heat of passion, domestic violence resulting in death of a family member).

Femicide was classified in court judgments as: murder (45%), various forms of qualified (aggravated) murder (47%), manslaughter in a heat of passion (2%), serious bodily injury resulting in death (3%), and domestic violence resulting in death (3%). Most of the committed criminal offences are qualified (aggravated) murders – 47, independently or concurrently with other criminal offences. The total number of murders referred to in Article 113 of the Criminal Code, committed

[95] Available at: <http://femplat.org/index.php?t16>

either independently or concurrently with other criminal offences, was 45. In addition, there were two manslaughters committed in a heat of passion, three serious bodily injuries resulting in death and three criminal offences of domestic violence resulting in death. Most of the attempted murders were committed independently – 23, two were committed concurrently with other criminal offences and eight offences were qualified as an aggravated attempted murder.

Femicides and attempted femicides are more common in towns than in villages. **Both femicides and attempted femicides are most often committed in the victim's flat/house/yard and in the flat/house/yard that the victim had shared with the perpetrator**, which confirms that the least safe and secure place for a woman to stay is actually her home.

Most of the murders were committed by using cold weapons (35.1%) and physical force (21.2%), followed by using several instruments (20.2%) and firearms (14.8%). The most frequent means used in attempted femicides was cold weapons (45.4%), followed by firearms (21.2%), and several instruments used in committing the offence (18.2%). The analysis of the description of methods of committing attempted femicides and femicides shows that different methods of committing the act were used: hitting with a pole, a stick, a hammer, an axe, a hydraulic car jack, a rod, a spade; shooting from a hunting rifle, a pistol, throwing a bomb; stabbing with a knife; punching, kicking, hitting the head and body with fists; suffocating with a pillow, strangling; pouring gasoline over the victim and igniting. In one case, the perpetrator used a physical force to make the victim drink muriatic acid, while in another case the perpetrator first injured the victim (a baby girl) using his hands, then put her in the refrigerator for a few minutes, and then threw her out of the window of the building where they lived. All these methods of committing the offences show that in most of the cases the perpetrators showed great brutality and cruelty towards the victims.

Sanctions

The predominant sanction for perpetrators of femicide was imprisonment (63.2%), while in 20.4% of the cases the court imposed imprisonment and a security measure, namely, compulsory psychiatric treatment and confinement in a medical institution, confiscation of objects (instrumentalities), confiscation of weapons, and compulsory drug addiction treatment. A security measure only was imposed on 15.04% of the perpetrators who had a "mental illness" at the time when the criminal offence was committed and therefore lacked mental capacity. The lengths of the imposed imprisonment sentences were different, depending on the type of the

committed criminal offence and on the mitigating and aggravating circumstances. Generally speaking, most of the imposed prison sentences were long-term. The sentences ranged from three to 40 years in prison. **Imprisonment for 40 years and imprisonment for 15 years were imposed in the largest number of cases (15.4% each)**, followed by imprisonment for 20 years (14.08%). In several femicide cases, the second instance courts, deciding upon the appeal, imposed sentences that were milder when compared to the ones in the first instance proceedings; this was due to the change in the legal qualification of the criminal offence.

As for the sentences imposed for attempted femicide, 78.8% is the rate of imposition of imprisonment sentences, either as a stand-alone imprisonment sentence or imprisonment along with security measures and fines. The mildest sentence was three years in prison and a security measure of confiscation of objects (instrumentalities), and only in one case the imposed sentence was 20-year imprisonment with two security measures – confiscation of objects (instrumentalities) and compulsory treatment of an alcoholic. **The largest number of sentences was for five years (19.2%), four years (15.4%), and three years (11.5%) in prison.**

Profile of the perpetrators

The data on the age of the perpetrators of femicide and attempted femicide have largely remained unknown because they were anonymised, so valid conclusions cannot be drawn as to which age category dominates. However, the available data suggest that the age groups of 49-56 and 33-40 years (11.2% each) are the most common with regard to the perpetrators of femicide, and the age category of 25-56 years (39.4%) dominates for the perpetrators of attempted femicide, which is understandable given the nature of the committed criminal offences (violent criminal offences, intimate partnerships).

Most of the perpetrators of femicide, at the time of the crime, were in a union, either marital or extramarital (cohabitation). According to the available data, most of perpetrators of femicide and attempted femicide have completed secondary school or Gymnasium, as well as primary education. Many judgments lack data on the occupation of perpetrators, because they were either anonymised or the court did not state the occupation. Moreover, the data on employment are missing; however, according to the available information, more perpetrators of femicide and attempted femicide were unemployed than employed.

About one third of the perpetrators were previously convicted of various criminal offences: murder, light bodily injury, serious bodily injury, theft, aggravated theft, illegal production, possession, carrying and circulation of weapons and explosive substances, unauthorised use of another person's vehicle, domestic violence, forging a document, acting as accessory after the fact. Three femicide perpetrators had previously been convicted of several criminal offences of domestic violence, sentenced to prison terms and, after serving their sentences, they continued to commit domestic violence against the same victim.

In 48.9% of the cases the perpetrators of femicide had not consumed alcohol excessively before committing the act; excessive alcohol use was noted in 28.5% of the cases, while abuse of psychoactive substances or addiction was identified in 4.08% of the cases. One third of the perpetrators of attempted femicide suffered from alcoholism and 15.2% were addicted to psychoactive substances.

The data on the mental capacity of perpetrators of femicide show that the largest number of perpetrators (36.7%) was found to have had diminished capacity at the time of committing the criminal offence, but not to a significant degree, which means that they were capable of reasoning and decision-making and that they were aware that the act they were committing was not in accordance with the law; 14% of the perpetrators had mental capacity and 12.2% had no such capacity. The situation is similar with the perpetrators of attempted femicide, 36.4% had diminished capacity, but not significantly, about a third of them had mental capacity, and 15.2% did not.

In terms of the perpetrators' attitude towards responsibility for the event, the largest number of perpetrators of femicide did not admit to a criminal offence (22.4%), somewhat fewer perpetrators expressed regret and remorse (14.2%) and the same number of perpetrators failed to give an explanation for the committed criminal offence or had no explanation. The responsibility for the committed offence was accepted by 13.2% of the perpetrators, while 7.1% of the perpetrators shifted the responsibility to the victim.

Profile of the victims

There were 99 victims of femicide and 35 victims of attempted femicide in the research sample. Since the entire criminal proceeding is focused on the perpetrator, from court case files very little can be determined about the victims. In 44.4% of femicide cases there was no information on the age of the victim and the available data show a significant share of women over the age of 65 (19.1%).

Among the victims of femicide there were seven girls, including two babies. Victims of attempted femicides are predominantly younger, up to the age of 49 years, while the share of older victims is significantly smaller. Victims of femicide and attempted femicide were mostly married or lived in an extramarital union (cohabitation); however, the information on the victims' education, occupation and employment status could not be collected and analysed because it was not present in the court judgments.

In femicide cases there is even less information about the victim because the victims could not be heard in the proceedings. The information about the victim provided by the perpetrator is usually not objective, because they try to describe the victim and her behaviour as the main factor in committing the femicide. Even where victims' family members were heard as witnesses, the court did not get familiar enough about the victim and her life before she was murdered.

In most cases the victims had not turned to the competent state authorities and institutions for help and protection against violence that was present before the femicide or attempted femicide. Only a small number of victims had reported violence, but the way the institutions of the system responded testifies to their inefficiency and is an indicator of the ineffectiveness of the system for protecting women against partner and domestic violence.

Previous relationships and motives

The most common relationship between the perpetrator and the victim in cases of both femicide and attempted femicides was an intimate partnership and family relationship. In 40.7% of the femicides there was a marital/extramarital/emotional union of the perpetrator and the victim and in 8.1% of the cases the victims were former spouses or cohabitants. With regard to attempted femicides, this number is even higher – in 69.7% of the cases there was an intimate partnership (marital, extramarital, emotional).

Attempted femicides and femicides are characterised by the fact that the relationship between the perpetrators and the victims before the criminal offence was committed had been mostly bad, the relations were disturbed, the criminal offence was preceded by disagreements and quarrels, with or without physical violence, especially if it was an intimate partnership. It should be noted that in the examined sample there was a high percentage of femicides committed by sons against mothers (18.3%), that the relationship between them before committing a femicide had been good in most of the cases and that there were no conflicts.

The most frequent motive for committing femicide was jealousy, arising from the desire for exclusive possession of the partner, inability to control her behaviour and manage her life. The perpetrators stated that they would never have committed the criminal offence had their partner been “faithful” to them, had she not “found another man”, had she not “broken up the relationship”, had she not left them, had she agreed to be reconciled with them, had she agreed to what they had wanted from her. As for attempted femicides, the predominant motives were jealousy, revenge for the breakup of an emotional relationship and marital/extramarital union, as well as hatred and aversion due to unrequited love.

Mitigating and aggravating circumstances

When deciding on sentences for femicide, the courts in their judgments mentioned different mitigating circumstances concerning the marital or familial status of the perpetrator (number of children, the fact that the perpetrator had no children, that he was unmarried, but also that he was married, that the perpetrator’s “marital union” was terminated), his age (young person, “advanced in age”, “person of mature age”), health status (“has a number of serious physical illnesses with complications noted on physical, neurological and mental levels”; “psychotic decompensation if he does not have adequate therapy, which is why he receives medical treatment from time to time”), no prior convictions, admitting to the criminal offence, even a partial confession, remorse, unemployment status, and so on.

When sentencing the perpetrators of femicide, the courts stated the following aggravating circumstances: previous convictions, recklessness in committing the criminal offence, perpetrator’s behaviour after committing the criminal offence (concealing the lifeless body of the victim and the instrument used in committing the criminal offence; being in hiding after committing the act), degree of culpability (“the perpetrator’s strong desire for the consequence to occur, intense persistence and premeditation”), the perpetrator had committed criminal offences even when he was a minor, presence of children when the criminal offence was committed, absence of real remorse, treatment of the victim at the time of committing the criminal offence, children losing their mother, and so on. It should be noted that in several cases the reasoning of the judgments failed to state any mitigating or aggravating circumstances at all, and there were several judgments only mentioning that the court found no aggravating circumstances.

As in the cases of femicide, the court in attempted femicide cases most often

considered the aforementioned mitigating and aggravating circumstances. In addition, the following mitigating circumstances were stated: attempted suicide after committing the criminal offence, the victim decided not to participate in the criminal proceedings and join the criminal prosecution, the victim reconciled with the perpetrator and asked the court not to be strict with him. It should be noted that in several cases the court saw as a mitigating circumstance the fact that the criminal offence was attempted and not carried out. Attempt is one of the stages in committing a criminal offence and it may be taken as a ground for reducing the punishment and treated as a mitigating circumstance if the perpetrator's behaviour after his committing the criminal offence removed the consequence. However, if the criminal offence was attempted and not committed solely "because the completion of the criminal offence was thwarted by the actions of the victim" or due to some other circumstances (timely provision of medical help), then the fact that there were no consequences cannot be treated as a mitigating circumstance.

Case studies

Case no. 1

The perpetrator R.D. attempted to deprive of life his spouse R.T. by approaching the vehicle where she was sitting in the front passenger seat and firing four projectiles at his spouse from a pistol, which he illegally possessed. The projectiles were fired one after the other in a short time interval. The inflicted injuries constituted a grave and life-threatening bodily injury, but the fatal outcome was prevented by timely and adequate medical treatment. After attempting femicide, the perpetrator tried to kill himself. The judgment anonymised the data on the perpetrator's age, educational background, occupation and employment status. The perpetrator is the father of an underage child.

The perpetrator R.D. first defended himself by keeping silent and later stated that he was *"under very strong therapy, which is why he could not completely reconstruct the events from the past, and that he did not remember the events of that day"*. The perpetrator's lawyer, among other things, also suggested concluding a plea agreement, but the Prosecutor's Office did not accept it. The findings and opinions of the expert witnesses stated that the perpetrator was a person of very good intellectual abilities and that his ability to comprehend the significance of the criminal offence, as well as his capacity to control his acts at the time when the criminal offence was committed, were diminished, but not significantly.

The information on the age, education and family relations in the primary family of the victim of the attempted femicide is missing. When heard as a witness, the victim stated, among other things, that problems in their marriage started 10 years ago, that R.D. threatened her with a weapon, which she reported to the police. She was then told that the pistol had been confiscated. When he later threatened her, on one occasion he said that he would kill her with that pistol and that she would “pay dearly” for reporting him. The violence continued when she filed for divorce, and he constantly threatened her that he had nothing to lose and that he would kill her. The victim described in detail the event when the perpetrator shot at her, which was admitted by the court, as well as a part of her statement regarding the facts preceding the committed criminal offence and the mutual relationship in the marriage with the perpetrator.

The perpetrator was found guilty of two criminal offences, the attempted murder (five years and six months) and the illegal production, possession, carrying and circulation of weapons and explosive substances (one year). He was sentenced to a single sentence of imprisonment for a term of 6 (six) years, a monetary fine, and a security measure of confiscation of the pistol.

When deciding on the sentence for the perpetrator, the court had in mind the following mitigating circumstances: that he had no prior convictions, that he was a father to an underage child, that in the specific case there was no consequence of the criminal offence, i.e. that the criminal offence remained an attempted offence, that he shot himself in the head with the same pistol, so that he was also injured and his life was threatened as well. Among the aggravating circumstances, the court took into account the defendant's relationship with the victim, i.e. that the defendant committed the criminal offence of attempted murder against his wife and that the purpose of punishment in this particular case would not be achieved by means of a more lenient sentence.

Comment

The crime was qualified as the so-called simple murder, but based on the description of how the offence was committed and taking into account all the circumstances, it can be concluded that the objective and subjective elements for the qualification of the criminal offence as a qualified (aggravated) murder committed in an insidious manner were present (secret and covert planning; actions carried out with malicious intent (malice aforethought), use of a relationship of trust, helplessness of the victim, and absence of her resistance).

The sentence of five years and six months of imprisonment for a criminal offence that remained an attempt to murder only due to the fact that the intended death of the victim was prevented by timely and adequate treatment is too mild to achieve general and special prevention. Such mild punishment is a consequence of the fact that the court misjudged the mitigating circumstances, assigning too much importance to them. The court found that the defendant's confessing to the criminal offences, which made it easier for the court to carry out the proceedings, as mentioned in the judgment, was a mitigating circumstance. Bearing in mind that the criminal offence was committed in a public space, in the presence of numerous witnesses, that all the evidence inherent to prosecuting this type of criminal offence was presented, it is unclear how the perpetrator's confession facilitated the proceedings. On the other hand, although it was learned from the victim's testimony that the perpetrator had not paid parental attention to his daughter, that his behaviour created a bad family atmosphere for the daughter to grow up, and that he had attempted to take her mother's life, the court considered it a mitigating circumstance that the perpetrator is a father to an underage child. In addition, when sentencing, the court assessed as a mitigating circumstance the fact that the offence remained an attempt and that the consequences of the offence did not happen, although the perpetrator had not voluntarily refrained from committing the offence, or indeed undertaken anything to prevent the consequences to occur.

In this case, the court did not address in detail the gender-related motive of the criminal offence, which remained unexplained. The court did not seek to learn the reasons for the perpetrator's constantly threatening the victim, and it did not look into identifying the methods that the perpetrator had used to control the victim and manage her life before finally attempting to murder her. The court focused all its attention on the event itself, failing to recognise the perpetrator's violent pattern of behaviour towards the victim and the instrumental nature of violence he had applied during the marriage, exercising power and control over the victim. According to the victim's testimony, she had been exposed to various forms of violence since 2010, especially death threats, as a form of psychological violence. The first death threat resulted in a referral to marriage counselling. No measures were taken regarding the perpetrator's absence from marriage counselling, which obviously encouraged the perpetrator, so he again conveyed death

threats to the victim on account of reporting his threats. In addition, upon later reports of death threats, the perpetrator was not prosecuted. The pistol was not confiscated from the perpetrator, because, according to the victim's statement, he "had connections in the police", to which the perpetrator himself referred as well. Failure by the competent authorities to take measures to protect the victim from intimate partner violence is an indicator of the degree of inefficiency of the institutions of the system that are responsible for the prevention and protection against domestic violence. In this particular case, the failure to take measures to protect against violence contributed to the victim's loss of all hopes of obtaining institutional protection, so she stayed on and lived with the perpetrator, fearing for her life and the life of her child, mistakenly believing that it lessened the risk of being murdered, which she was constantly threatened with.

Case no. 2

After a verbal argument, the perpetrator J.M., with a severe level of alcohol intoxication, took the life of the victim V.S. with whom he had lived in an extramarital union (cohabitation). The perpetrator committed the murder in the room of the house where they had lived, by punching and kicking the victim, which resulted in at least 16 blows to the head and body, so the victim died on the spot, which was qualified as murder. In the first trial, J.M. was found guilty of the criminal offence of murder. By the decision of the Court of Appeal, this judgment was overturned and the case was remanded to be re-tried. The second first instance judgment found the perpetrator to be guilty of the criminal offence of manslaughter in a heat of passion, which was upheld by the Court of Appeal.

The perpetrator J.M. was 54 years old at the time of the criminal offence, he finished secondary school of civil engineering; he was unemployed, worked under part-time hiring contracts, he earned his living by raising and selling pigs on the farm; was divorced, had two adult children with whom he did not contact; he had consumed alcohol on a daily basis for the last 20 years, but he had not been treated for alcoholism. He had no prior convictions. At the time of the incident, he had an alcohol level of 2.73 mg/ml, which clinically corresponds to a severe level of alcohol intoxication. He had been in an extramarital relationship with the victim V.S. between two and two and a half years.

The perpetrator stated that they were at the celebration of the baptism of a mutual friend's grandchild. The victim was in a good mood and behaved pleasantly towards him, addressing him with the words "*where are you, my love*", but he noticed that she had started drinking even before the celebration began. He calmed her down by asking her to "*put the brakes on*", and she responded with "*blow me*". She danced with a man whom he did not know, she grabbed him by the back and front parts of his body, she dragged him, tried to sit on his lap. He had an impression that everyone was watching him and expecting him to do something, some even laughed, which was "*especially difficult*" for him. Their friend and her daughter tried to calm down the victim, and he also did that, warning her to stop drinking alcohol and behaving that way. However, she did not listen to him, so he withdrew to the side of the room, sitting alone "*in the corner*" because he felt extremely uncomfortable. It was especially difficult for him when the victim "*kissed a priest*" in the room, during the celebration. According to his statement, they left the celebration by taxi and did not talk at all during the drive. When they got home, they continued to drink brandy and started talking about her behaviour at the celebration. When he told her that he did not want to live with her, the victim cursed him and tried to hit him.

The perpetrator stated that he was not aware that he could kill the victim by hitting her, that he did not know what he wanted, but that he was sorry that it had happened. However, the court did not accept this. As seen by the court, the perpetrator had mental capacity at the time the criminal offence was committed, and his ability to understand the significance of his actions and control his actions was significantly diminished. He committed the criminal offence with non-premeditated intent, because the fact that he was in a state of affective excitement, which assumed the form of intense irritation, does not exclude his intent.

The judgment lacks basic data on the victim V.S., her year of birth, education, occupation, employment status, information on her primary family, her previous life, and relationship with the perpetrator. Some information was provided by the perpetrator, i.e. she had two sons and two daughters.

The judgment states as an indisputable fact that the victim "*at the celebration, through her actions and behaviour (she came on to other men, sat on their lap, hugged them, grabbed their genitals, pulled them by the hand to dance with her), caused the defendant to have subjective feeling of humiliation and affective state of anger and rage, in which state the defendant remained even after they left the celebration, so also when they returned home, where the defendant took the life of the victim*".

The disputed issue in this case was the issue of legal qualification of the criminal offence committed by the perpetrator, which was first qualified as murder, and in the reopening of the proceedings as manslaughter in an instant (in a heat of passion). During the proceedings, the higher public prosecutor claimed that the perpetrator committed the criminal offence of murder and that the presented evidence did not establish that the perpetrator was in a state of strong irritation into which he was brought without his guilt and due to the victim's behaviour, i.e. her attacking, abusing and heavily insulting him. However, in the reopening of the proceedings, the court determined that the perpetrator took the life of V.S. and that it was manslaughter in a heat of passion. Among other things, in the reasoning of this judgment, it was stated that it was unquestionable *"that the defendant J.M., at the moment of taking the victim's life, was in a state of affective excitement of such intensity and quality that it assumed the form of strong irritation, in which state he reacted in a heat of passion, without further thinking, suddenly – uncontrollably and explosively"*. The court also concluded that in this concrete case, given that the perpetrator and the victim were in an emotional relationship, *"insults by the victim were of such intensity and significance that even by objective criteria they were grave insults"*. Moreover, the judgment reads: *"namely, it is the logic of life that someone whose wife – a common law partner behaves like the victim behaved on that occasion would himself feel humiliated and ashamed, and, precisely because of his subjective feeling of humiliation and discomfort, he would have the impression and feeling, although actually it may not be so, that everyone was looking only at him and making fun of him"*. The Court of Appeal upheld this judgment.

The first instance court sentenced the perpetrator to 12 years in prison for the criminal offence of murder. The second first-instance judgment changed the legal qualification of the criminal offence and the perpetrator was sentenced to seven years in prison for the criminal offence of manslaughter in an instant (in a heat of passion). When sentencing him to 12 years in prison by means of the first instance judgment, the court concluded that there were no aggravating circumstances, and as far as mitigating circumstances are concerned, the court considered the fact that the perpetrator had no prior convictions, that he said that he felt remorse, that he had confessed to the criminal offence in terms of time, place and method of committing it, but also that the victim in a certain way *"contributed to the actions of the defendant"*, so in addition to alcohol intoxication, *"the victim's behaviour was a direct affective cause for committing the criminal offence"*. When sentencing the perpetrator to seven years of imprisonment, the first instance court and the second instance court found no aggravating circumstances, and the mitigating circumstances included the perpetrator's confession to the criminal offence, that he had expressed remorse, and the fact that he had no previous convictions.

Comment

In this case, a typical instance of intimate partner femicide was processed – the killing of a common-law wife which is based on the stereotypical gender role of a woman, from whom “nice and modest” behaviour is expected in the patriarchal community. The views explicitly expressed by the court in the judgment, finding that “the victim’s bad behaviour was also objectively gravely insulting”, are an expression of the sexist attitudes held by the court towards women, and clearly manifest gender stereotypes about social roles and expected behaviour attributed to women and men. The court was explicit in its position: “it is the logic of life that someone whose wife – common-law partner behaves like the victim behaved on that occasion would himself feel humiliated and ashamed, and, precisely because of his subjective feeling of humiliation and discomfort, he would have the impression and feeling, although actually it may not be so, that everyone was looking only at him and making fun of him”. Such “logic of life” as a ground for the legal qualification by the court illustrates the full depth of institutional sexism and is an indicator that the existing gender hierarchy, detrimental to women, has a strong foothold in the institutions of the system.

It would be difficult to imagine the opposite situation. The same “bad” behaviour of a man would not be considered a “grave insult” of a common law wife, but would be tolerated and possibly justified by his drunkenness. For a woman’s drunkenness, which undoubtedly influenced her behaviour during the party, there is no justification; in a patriarchal society with a gender divide, it is, in itself, socially unacceptable. There is no doubt that in any traditional environment, the behaviour of a woman that deviates from patriarchal social norms is condemned by the general public, where stereotypical gender patterns of behaviour of women and men are reproduced. The court’s conclusion that the victim’s behaviour objectively represents a “grave insult” to the perpetrator is symptomatic, given that in this way the court essentially supports and promotes gender stereotypical attitudes.

On the other hand, the court did not establish at all what the perpetrator's behaviour towards the victim had been before the killing, and from the entire reasoning of the judgment it stems that the offence was committed by a non-violent man who "snapped" because of his partner's behaviour, which caused in him subjective feelings of humiliation, anger, and rage. It should be borne in mind that this is yet another expression of stereotypical notions about "male rage" and "female provocation" which justify femicide. The research shows that violence, including attempted murder, is not spontaneous, and that allegations made by abusers about losing control, provocation, emotional self-defence, and their accusations that the partner was (or wanted to be) sexually unfaithful, are excuses and justifications for acts of violence, including attempted femicide and femicide.

The case analysis shows that gender stereotypes and prejudices of the court were of paramount importance in its interpretation of the victim's behaviour and the feelings that her behaviour caused in the perpetrator's mind. Such gender-discriminatory attitudes influenced the court to qualify the act as a manslaughter in an instant (in a heat of passion), although there was no immediate continuity between the victim's "grave insults" to the perpetrator at the celebration and the killing, which, according to the established judicial practice, is necessary to be present for qualifying a manslaughter in an instant (in a heat of passion) as a lesser form of murder, for which a milder punishment is laid down.^[96] Bearing in mind that the criminalisation of murder protects life as the highest social value, a seven-year prison sentence for manslaughter achieves neither general, nor special prevention. The very qualification of the crime indicates that in cases of murder of female partners due to their "free" behaviour in public, the killers can count on the understanding not only of the general public, but also of professional judges.

[96] According to the generally accepted position of the judicial practice with regard to a manslaughter in a heat of passion, the offence is to be committed immediately after grave insults. Moreover, what is also required is a "direct and explosive reaction" of the perpetrator (Supreme Court of Serbia, ref. Kž. 1377/71), i.e. "a certain time continuity between the grave insult and the act of killing" (Supreme Court of Serbia, ref. Kž. 2727/65).

Overview of sentences for murder and qualified (aggravated) murder in Western Balkans countries

In the parts of the report related to national criminal legislation, different criminal offences (different types of murders and some other criminal offences which could result in death) are presented. Here is a brief overview of the differences in the prescribed sentences for the basic form of the crime of murder and the qualified (aggravated) murder within each jurisdiction. The qualified (aggravated) murder is punishable with much harsher sentences, and we think that every femicide should be treated as a qualified (aggravated) murder, having in mind its social danger and the fact that it is, as presented before, a specific form of murder.

This could be supported by Article 46 of the Istanbul Convention, which deals with aggravating circumstances. According to this provision: state "Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with [the Istanbul] Convention:

- a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b) the offence, or related offences, were committed repeatedly;
- c) the offence was committed against a person made vulnerable by particular circumstances;
- d) the offence was committed against or in the presence of a child;
- e) the offence was committed by two or more people acting together;
- f) the offence was preceded or accompanied by extreme levels of violence;
- g) the offence was committed with the use or threat of a weapon;
- h) the offence resulted in severe physical or psychological harm for the victim;
- i) the perpetrator had previously been convicted of offences of a similar nature."

Albania	Murder	10-20 years
	Qualified (aggravated) murder	Minimum 20 years or life imprisonment
Federation of BiH	Murder	5-20 years
	Qualified (aggravated) murder	Minimum 10 years or long-term imprisonment (21-45 years)
BiH – Republika Srpska	Murder	5-20 years
	Qualified (aggravated) murder	Minimum 10 years or life imprisonment
BiH – Brčko District	Murder	Minimum 5 years
	Qualified (aggravated) murder	Minimum 10 years or long-term imprisonment (21-45 years)
Montenegro	Murder	5-15 years
	Qualified (aggravated) murder	Minimum 10 years or long-term imprisonment (30-40 years)
Kosovo	Murder	Minimum 5 years
	Qualified (aggravated) murder	Minimum 10 years or life imprisonment
North Macedonia	Murder	Minimum 5 years
	Qualified (aggravated) murder	Minimum 10 years or life imprisonment
Serbia	Murder	5-15 years
	Qualified (aggravated) murder	Minimum 10 years or life imprisonment

» RECOMMENDATIONS

This regional report shows some differences between the Western Balkans countries in respect of judicial response to femicides, but it also shows a lot of similarities. In the national reports, all relevant and country specific information could be found, while here we briefly present the main results that are derived from the national reports. Therefore, the recommendations are created so to be appropriate and relevant for every country, but also for the whole region.

Having in mind the causes of femicide and that this crime is gender related, it is not possible to successfully prevent femicide without overcoming the culture of violence against women and establishing zero tolerance for violence against women, regardless of its form and context in which it occurs. It is evident that every country needs changes in the social and cultural patterns of behaviour of women and men with the aim of eradicating prejudices, customs, traditions and other practices that are based on the idea of inferiority of women, i.e. on stereotypical roles of women and men.

Hence, in order to ensure elimination of systemic and structural causes of gender inequality and create conditions for integrating the gender perspective in a coherent, comprehensive and systematic way, a holistic approach needs to be applied, and the judiciary has its own place within the system. Effective prevention of femicide is not possible without sufficient resources to enforce and implement laws, policies, and procedures to prevent and prosecute femicide and other acts of gender-based violence. As for the human resources, the research showed that all sectors mandated with prevention of, and protection against, violence need additional trainings, including for members of the judiciary, in order to overcome existing challenges and gaps and to provide adequate response to femicides and other forms and manifestation of violence against women.

One of the reasons for inadequate addressing the cases of femicide in the region is considered to be the weak, ineffective implementation of the laws. Despite the fact that the femicide was not criminalised as a separate crime, except for very recent legal changes in North Macedonia, there was a normative possibility for the court to address gender-based killings of women. The judiciary should demonstrate more thoroughness in analysis and understanding of this type of crime, which will result in more just proceedings and, ultimately, more appropriate punishments for the perpetrators. Lenient and/or inadequate punishment of all

forms of gender-based violence, especially femicide as its most severe form, further affects the increase of mistrust in the institutions and non-reporting by victims, which, on the other hand, encourages the repetition of violence and its culmination in femicide.

Criminalisation of femicide

Providing for femicide as a specific criminal offence in national criminal laws is quite justified and necessary, in order to classify all cases of femicide and thus reduce legal uncertainty and possible errors in classification of the criminal offence and punishment of the perpetrators, but also to statistically monitor the number of persons reported, accused and convicted of femicide. As a separate, specific crime against life and limb, femicide would include any gender-motivated killing of a woman.

If femicides were incriminated as a separate and independent crime, the object of protection would be a woman's life, and the object of the act or the object of assault would be a woman. Committing the act would be the same as in the criminal offence of murder, meaning the act or omission to act which may cause the death of another person. Since in practice death may be caused not only by physical abuse, it would be necessary to provide also for an act of committing that would consist of psychological abuse (creating agitation, fear, dread), resulting in death. Of the subjective elements, in addition to direct or indirect intent and negligence as forms of culpability, there should be a gender-based motive. Although the motive is not a mandatory element of the nature of the criminal offence in general, and thus of the criminal offence of murder as well, in the case of femicide it would be important to determine the motive for committing the murder (such as misogyny, hatred towards women, discrimination and disrespect for a woman's life and bodily integrity).

Newly developed statistical framework for measuring gender-related killings of women, published by UNODC and UN Women in 2022, should be consulted, as a foundation for the new criminalisation of such acts in the national criminal legislation.

Establishment of a national data collection system and improvement of judicial databases

As for the judiciary, the national research showed that the whole criminal proceedings are oriented to the perpetrator in cases of femicides and attempted femicides, with very little data about victims. In addition, there were many

obstacles in collecting final judgments from the courts, since femicide does not exist as a separate criminal offence, while, on the other hand, judicial databases do not contain data on the sex of victims, i.e., the respective databases cannot be searched by that criterion.

Although each country has a system of data collection on violence against women (usually not centralised), it should be noted that in absence of a separate criminal offence of femicide, it is not possible to collect data on femicide properly.

Systematic collection of data on the extent, structure and characteristics of cases of violence against women and domestic violence, including femicide, should be established through national data system in each country. This would enable monitoring trends of rise or decline in certain periods of time and in certain areas it is a key prerequisite for successful prevention of femicide. These data ensure that creation and evaluation of effects of public policies in prevention and control of femicide are data-based, as well as that the relevant authorities make well-informed decisions. In addition, judicial data on femicides (i.e. at least sex-disaggregated data on perpetrators and victims) would enable analysing the judicial response to gender-related murders of women and sentencing practices.

Development of guidelines for processing cases of femicide

The national research showed certain inconsistencies in proceedings in cases of femicides, especially in terms of qualification of a criminal offence, and determination whether it is a gender-based crime. Also, mitigating and aggravating circumstances very often were not elaborated well. There were also cases of plea agreements with the prosecution, leaving the victim's family "voiceless" regarding the said bargain and without proper legal satisfaction (redress).

In order to ensure efficient, just and appropriate judicial proceedings, especially in classification of femicide, and deeper understanding of this specific type of crime, guidelines for the judiciary should be developed, specifically for cases of femicides.

Guidelines should explain femicide as an act of gender-related killing of women and provide tailor-made guide for legal qualification of the act (in absence of a separate criminal act) with a goal to reduce legal uncertainty and possible errors in classification of this criminal offence. Mitigating and aggravating circumstances should be carefully analysed and explained from the gender perspective, using

already existing examples from court case files of finally completed cases. Guidelines should highlight the implementation of standards of due diligence, as well as contribute to victim-centred approach. The investigation of femicide cases, including the determination of facts during criminal proceedings, should be conducted diligently and go beyond a mere establishment of the facts of the case, taking into account the possible presence of misogynistic attitudes of the perpetrator, the physical superiority and dominance, the inequality of physical strength and power, as well as the previous history of violence and other relevant facts. Also, guidelines should include detailed explanation of the standards of the Istanbul Convention regarding aggravating circumstances, as prescribed in Article 46 of the Convention.

In addition, guidelines should contain a part about proper weighing the penalty in cases of femicides and attempted femicides, and should elaborate the need for harsher punishments in those cases.

Continuous training for the judiciary

It is necessary to strengthen the capacity of the judiciary through implementing appropriate and relevant training and gender awareness programs. This is of particular importance in cases of femicides, having in mind that the research showed existence of gender stereotypes and prejudices among the judiciary.

Thus, in order to overcome gender stereotypes and institutional sexism, to understand phenomenon of femicide, and eradicate sexist prejudices and patriarchal values and practices based on stereotypical gender roles of women and men, continuous training should be provided.

It would be beneficial to organise this process in several phases. Firstly, judges and prosecutors in charge of violence against women, including femicides, should have basic gender awareness training. This training should be tailor-made for the judiciary, and should include topics related to the position of women and men in the society, uneven distribution of power, gender stereotypes and prejudices, and, more specifically, the impact of gender stereotypes and prejudices on delivering the justice. This should be done in close cooperation with judicial academies in each jurisdiction. Also, this basic training could be organised online or in person, and should be granted with the certificate or other appropriate incentives for judges and prosecutors. The AIRE Centre provided online gender training for the judiciary during 2021, and it could be a good starting point for the judiciary, with a view of raising the judicial professionals' awareness.

The next phase should be more advanced training on the very phenomenon of violence against women, with focus on femicide. This training should enable members of the judiciary to understand the interconnectedness between different concepts related to gender (in)equality from the basic training and phenomenon of violence against women that might result in femicide. It could be also provided online, but it would be better to organise it in person, with knowledgeable and eminent trainers who have a good reputation throughout the region. Furthermore, the training should include presentation of the guidelines for the judiciary in femicide cases, which will be developed by the AIRE Centre.

Establishment of a Femicide Watch in each country and establishment of a Regional Femicide Watch

A mechanism (Femicide Watch / Observatory for Prevention of Femicide) should be established in accordance with the recommendations of the UN Special Rapporteur on Violence against Women, addressed to all countries and requiring collection and analysis of data on violence against women, and detection of omissions leading to gender-related killings of women.

After establishing national Femicide Watch mechanisms and having in mind similarities between the Western Balkans countries, a Regional Femicide Watch should be established. A Regional Femicide Watch, as a result of cooperation between national Femicide Watches, would enable to compare the situation in each country and to analyse the factors of success, to exchange best practices, as well as to learn from other countries' experiences. This could contribute to the multi-sectoral cooperation among competent institutions in the field of prevention and combating all forms of gender-based violence against women and femicide, based on an integrated approach and understanding.

Final judgments in cases of femicides and attempted femicides should be essential part of femicide watch data collection, and later analyses.

Judicial regional exchange of knowledge and practice

As stated previously, there are a lot of similarities among the Western Balkans (WB) countries, related not only to the legal framework, but also to mentality, prevailing social norms, position of men and women within societies, together with international standards that the WB countries have to reach and ensure implementation. Therefore, it would be very beneficial for the members of judiciary in the region to have chance to meet their peers and to exchange knowledge and experience regularly.

This implies different forms of events. For example, judges and prosecutors in charge of violence against women, including femicides, should meet regularly, each time in a different country to share their practices. Meetings could take place once or twice a year. Before the meeting, a specific topic should be proposed, related to their practice in cases of violence against women and femicides, such as qualification of the criminal offence, mitigating and aggravating circumstances, position of victim (or her family in cases of femicides) in the proceedings, sentencing, decision on damages within the criminal proceedings, etc.

Furthermore, various conferences and round tables could be organised, paying attention to inviting the judges and prosecutors from the same judicial tier. Those events could be used for informal needs assessment processes, in order to provide content for the next meetings they are interested to discuss about.

Proposed activities could impact the implementation of standards regarding response to gender-based violence, including femicides, strengthen judicial work and contribute to positive change through regional dialogue, networking, and collaborative problem-solving, empower judiciaries with the ability to take proactive measures to develop a more effective and efficient, gender-sensitive judicial practice.

» LITERATURE

- » Beker Kosana (ed.), Društveni i institucionalni odgovor na femicid u Crnoj Gori, SOS Nikšić, 2023, available at: <https://sosnk.org/wp-content/uploads/2023/04/Drustveni-i-institucionalni-odgovor-na-femicid-u-Crnoj-Gori-1.pdf>
- » Beker Kosana, Regional report: Social and institutional responses to femicide in Albania, Montenegro and Serbia, UN Women & FemPlatz, March 2023, available at: https://eca.unwomen.org/sites/default/files/2023-04/Regional-Report_Social-and-Institutional-Response-to-Femicide.pdf
- » Beker Kosana, Tanović Dalida (eds.), Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021, AIRE Centre, 2022, available at: <https://www.airecentre.org/Handlers/Download.ashx?IDMF=77975c73-9c31-4552-9a68-3013255c0d5f>
- » Executive summary for Albania, available at: <https://eca.unwomen.org/sites/default/files/2023-04/Social-and-Institutional-Response-to-Femicide-in-Albania.pdf>
- » Executive summary for Montenegro, available at: <https://eca.unwomen.org/sites/default/files/2023-04/Social-and-institutional-response-to-femicide-in-Montenegro1.pdf>
- » Hysi Vasilika, *et al.*, Vrasjet e grave (femicidi) dhe tentativa për femicid në Shqipëri (2017-2020), Center for Legal Civic Initiatives, Tirana, 2023, available at: <https://www.qag-al.org/publikime/femicidi.pdf>
- » Hysi, Vasilika, Criminal acts against women and children and anti-crime policies in Albania, Reflections on changes to the Criminal Code (2012-2013), "Studime Juridike" Review No. 2, 2014, Law Department, University of Tirana
- » Hysi Vasilika, Anastasi Aurela, Bozo Aurela and Vora Erisa, Vrasjet e grave (femicidi) dhe tentativa për femicid në Shqipëri (2017-2020), Center for Legal Civic Initiatives, Tirana, 2023

- » Interactive femicide map, FemPlatz, available at: <http://femplatz.org/index.php?t16>

- » Konstantinović Vilić Slobodanka, Petrušić Nevena, Beker Kosana, Društveni i institucionalni odgovor na femicid u Srbiji I, Udruženje građanki FemPlatz, Pančevo, 2019, available at: http://femplatz.org/library/publications/2019-11_Femicid_monografija_Prva_publikacija_E_primerak.pdf

- » Konstantinović Vilić Slobodanka, Petrušić Nevena, Pokušaji femicida i femicid u Srbiji: Sprečavanje i procesuiranje, Udruženje građanki FemPlatz, Pančevo & Niš, 2021, available at: http://femplatz.org/library/publications/2021-04_Femicid_-_Pokusaj_femicida_i_femicid_u_Srbiji.pdf

- » Petrušić Nevena, Žunić Natalija, Vilić Vida, Društveni i institucionalni odgovor na femicid u Srbiji II, Udruženje građanki FemPlatz, Pančevo, 2019, available at: http://femplatz.org/library/publications/2019-11_Femicid_monografija_Druga_publikacija_E_primerak.pdf

- » United Nations Office on Drugs and Crime, UN Women, Gender-related killings of women and girls (femicide/feminicide), 2022, available at: <https://www.unwomen.org/sites/default/files/2022-11/Gender-related-killings-of-women-and-girls-improving-data-to-improve-responses-to-femicide-feminicide-en.pdf>

- » UNODC data on victims of intentional homicides for the period 2019-2021, available at: <https://dataunodc.un.org/dp-intentional-homicide-victims>

- » World Population Review, Femicide Rates per Country for 2023, available at: <https://worldpopulationreview.com/country-rankings/femicide-rates-by-country>

- » Габер-Дамјановска Наташа and Гајдова Габриела, Фемицидот во Република Северна Македонија – состојба, правна рамка и судска пракса (2018-2022), AIRE Centre, 2023, available at: http://femplatz.org/library/publications/2023-09_femicide-report-nmk-2023-nmk.pdf [Gaber-Damjanovska Natasha and Gajdova Gabriela, Femicide in the Republic of North Macedonia – The state of affairs, the legal framework and the judicial practice (2018-2022), AIRE Centre, 2023, available at: <https://gcjnetwork.org/femicide-report-nmk-2023-eng-4/>]
