



THE AIRE CENTRE
Advice on Individual Rights in Europe



**GENDER AND
THE JUDICIARY**
in the Western Balkans

Femicide in the Republic of Kosovo: Legal framework and judicial practice

2018–2022



In cooperation with



FemPlatz
UDRUŽENJE GRAĐANKI

**Femicide in the
Republic of Kosovo:
Legal framework and
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Editor: Kosana Beker, PhD

Authors: Selvete Gërzhaliu-Krasniqi
Gresa Caka-Nimani

Project manager: Sabina Đapo

Proofreading: Zoran Gavriloski

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» I. ABOUT FEMICIDE

The Canadian novelist Margaret Atwood once asked a male friend why men feel threatened by women. He replied: "They are afraid women will laugh at them." She then asked a group of women why they felt threatened by men. They answered: "We're afraid of being killed."

Excerpt from the article "*Femicide: Sexist Terrorism against Women*", by Jane Caputi and Diana Russell^[1]

The introductory part of "*Femicide: Sexist Terrorism against Women*", reveals an unsettling reality, in a very simple yet striking manner. While men might feel threatened by women's ridicule towards them – on the other side of the crooked scale – women are afraid of being killed by men. Gender inequality, discrimination and the patriarchal belief that men are superior and women inferior, are the root cause of violence against women, and also the root cause of the most extreme form of such violence: Femicide. Men have always used violence to control women, namely, to preserve the gender status quo, i.e. the dominance of men over women.^[2] Although significant achievements have been made from the time when wives were widely considered the husband's property, it is a sad reality that patriarchy and misogyny are still deeply rooted in our cultures, and continue to serve as motivation behind the violation and murder of women around the world.

The term "femicide" has many definitions, but based on the most commonly used one, in essence, reflects "*the murder of women based on their gender*". The word "*femicide*" was initially chosen to raise awareness against the phenomenon of gender-related killings of women, the severity and proportion of which was less visible under the gender-neutral term "*homicide*". For instance, the United Nations Entity for Gender Equality and Empowerment of Women (UN Women), uses the definition "*intentional killing with a gender-related motivation [that] may be driven by stereotyped gender roles, discrimination against women and girls, unequal power relations between women and men, or harmful social norms.*"^[3]

[1] Jill Radford, Diana E. H. Russell (eds.), *Femicide – The Politics of Woman Killing*, Twayne Publishers, New York, 1992, available at [https://www.dianarussell.com/f/femicide\(small\).pdf](https://www.dianarussell.com/f/femicide(small).pdf).

[2] *Ibid.*, pp. 14-15.

[3] UN Women, *Five essential facts to know about femicide*, 22 November 2023, available at:

Whereas, the United Nations Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 19, has defined gender-based violence against women as “*violence that is directed against a woman because she is a woman or that affects women disproportionately*”^[4], which also includes femicide. Further and according to the United Nations Office on Drugs and Crime, the “*gender-related motivation*”, indicates the underlying causes of femicide, such as “*stereotyped gender roles, discrimination towards women and girls, inequality and unequal power relations between women and men in society – that characterise the specific context in which such killings take place. These factors can trigger violence by perpetrators when a woman’s behaviour is perceived not to be in line with social norms or stereotyped gender roles. In this context, the term ‘gender-related motivation’ does not refer to the subjective intent of the perpetrator to commit the homicide, but to its underlying root causes. The subjective motive of the perpetrator to commit the crime – such as a specific bias against or hatred of women – may be present in some cases alongside the ‘gender-related motivation’.*”^[5]

On the other hand, Diana Russell, one of the pioneers of the movement on recognising and fighting this phenomenon, described femicide as “*the killing of women by men because they are women*”.^[6] In the seminal anthology “*Femicide – The Politics of Woman Killing*” published in 1992, Ms Russell pointed out that there was a dire need for the use of the term “*femicide*”, as an alternative form of the gender-neutral term “*homicide*”, since it presented an important step in making it recognised as a phenomenon, which in turn paves the way for a movement against it to rise.^[7] In describing the aim of the ground-breaking anthology, Jill Radford and Diana Russell, among others, state that “*while the concept of femicide is new, the phenomenon it describes is as old as patriarchy itself*”.^[8] Two amongst many noteworthy descriptions of femicide within their anthology are reflected below:

<https://bit.ly/3V3HZnM>.

- [4] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19, adopted at the Eleventh Session (contained in Document A/47/38)*, 1992, para. 6, available at: <https://www.refworld.org/docid/453882a422.html>.
- [5] UNODC, UN Women, *Statistical framework for measuring the gender-related killing of women and girls (also referred to as “femicide/feminicide”)*, 2022, p. 3, available at: https://www.unodc.org/documents/data-and-analysis/statistics/Statistical_framework_femicide_2022.pdf.
- [6] Radford, Russell, *supra* note 1, p. xiv.
- [7] *Ibid.*, p. xiv.
- [8] *Ibid.*, p. 25.

"Like rape, most murders of women by husbands, lovers, fathers, acquaintances, and strangers are not the products of some inexplicable deviance. They are femicides, the most extreme form of sexist terrorism, motivated by hatred, contempt, pleasure, or a sense of ownership of women. Femicide includes mutilation murder, rape murder, battery that escalates into murder, the immolation of witches in Western Europe and of brides and widows in India, and 'crimes of honor...'. "[9]

"Femicide is on the extreme end of a continuum of anti-female terror that includes a wide variety of verbal and physical abuse, such as rape, torture, sexual slavery (particularly in prostitution), incestuous and extrafamilial child sexual abuse, physical and emotional battery, sexual harassment (on the phone, in the streets, at the office, and in the classroom), genital mutilation (clitoridectomies, excision, infibulations), unnecessary gynecological operations (gratuitous hysterectomies), forced heterosexuality, forced sterilisation, forced motherhood (by criminalizing contraception and abortion), psychosurgery, denial of food to women in some cultures, cosmetic surgery, and other mutilations in the name of beautification. Whenever these forms of terrorism result in death, they become femicides. "[10]

According to the existing literature, there are also several forms of femicide: (i) marital or intimate femicide; (ii) infanticide; (iii) racist femicide; (iv) mass femicide; (v) femicides because of unnecessary surgeries, such as hysterectomies and clitorectomies; (vi) homophobic femicides; (vii) serial femicides; and (viii) deaths due to neglect and starvation in cultures which prefer and take more care of boys.^[11] Some authors have tried to deny the existence of femicide through, among others, (i) the process of individualisation, where femicides were viewed as isolated incidents by psychopaths and sociopaths, rather than being viewed as a recurring expression of male sexual violence; as well as through (ii) the process of victim-blaming, where the victim's life style, clothing, behaviour and personality were scrutinised by, including but not limited to, the judiciary and the media.^[12]

Since the first use of the term femicide, much work has been done in order to raise awareness about this phenomenon by activists, CSOs, international

[9] Ibid., p. 15.

[10] Ibid., p. 15.

[11] Ibid., p. 7.

[12] Ibid., p. 352.

organisations and a number of governments. The thematic reports of the UN Special Rapporteur on Violence against Women are amongst the most notable. The UN Special Rapporteur on Violence against Women, its causes and consequences, in the Academic Council on the United Nations System, among others, stated the following observations:

“The concept of gender-motivated killings of women and girls is linked to the existence of a system of structural discrimination against women.

- » *However, to end this practice, it is necessary to adopt a holistic approach, including legal, administrative, policy, and other measures to address the social political, economic, cultural and other factors that perpetuate discrimination and violence.*
- » *This approach also includes the following actions:*
 - › *The promotion of a social transformation, including the eradication of harmful stereotypes;*
 - › *To develop information systems and good quality data on gender-motivated killings;*
 - › *To ensure adequate enforcement by police and the judiciary of preventive measures like issuance of protection or barring orders and criminal sanctions;*
 - › *To ensure an adequate provision of services for women victims of violence.”^[13]*

[13] Statement by Dr. Dubravka Šimonović, UN Special Rapporteur on Violence against Women, its causes and consequences, in the Academic Council on the United Nations System (ACUNS), Vienna Liaison Office, *Femicide, Volume V – A Global Issue that Demands Action* (available at: <https://femicide-watch.org/node/920608>) 2016, p. 6.

Further and according to the framework prepared by the UNODC and UN Women, the gender-related killing of women and girls (femicide/feminicide), includes the following characteristics: (i) the killing of a woman by another person (objective criterion); (ii) the intent of the perpetrator to kill or seriously injure the victim (subjective criterion); (iii) the unlawfulness of the killing (legal criterion); and (iv) the gender-related motivation of the killing.^[14] Additionally, according to the respective framework “...*the gender-related motivation is the one that specifically identifies gender-related killings of women and girls. In general terms this relates to killings committed on the grounds of ‘gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour’.*”^[15] According to the same report, the specific relationship or type of perpetrator, does not always define the gender-related killing in principle, but rather the fact that one or more gender-related motivations, that directly or indirectly have triggered the homicide of the women or girls, does.^[16]

In terms of potential preventive measures, Caren D. Stout conducted a study on intimate femicide and its correlation with the rate of services provided to the victims and the existence of domestic violence-related legislation in the United States. According to the study, it was, among others, concluded that (i) the states which offered a greater number of services such as shelters for battered women or rape crisis services, had a lower rate of intimate femicide; and that (ii) the states which had individual pieces of domestic violence legislation had a lower average of women killed, compared to the average of the states without such legislation.^[17] Hence, according to the empirical evidence provided by Ms Stout, (i) there is a “*negative association between rape crisis and shelter services in a state and the rate of intimate femicide in a state*”; as well as (ii) “*states that passed civil-injunction-relief legislation had fewer women killed on average ... states that have enacted other forms of domestic violence legislation (funding for shelters, temporary injunction relief, arrest without warrants based on probable cause, and the required reporting and collection of data on family violence) had a lower average number of women killed by male partners that did states that did not have such legislation enacted...*”^[18]

[14] UNODC, UN Women, supra note 5, p. 7.

[15] Ibid., p. 7.

[16] Ibid., p. 7.

[17] Radford, Russell, supra note 1, pp. 136, 138.

[18] Radford, Russell, supra note 1, pp. 138, 139.

On the other hand, from a sociological point of view, five approaches have been used by researchers in the study of femicide since the publication of the seminal anthology by Radford and Russell and the paper authored by Stout in 1992:^[19]

- 1) the feminist approach, namely, where patriarchal domination is confronted at the same time as the killing of women is investigated. The basis for this approach is patriarchy as a notion, a society dominated by men which is oppressive and deadly to women, namely "*the fundamental tenet of patriarchy is power; where power is distributed unequally between men and women, violence is the tool men use to keep women under their control.*" Due to, among others, lack of available data, there is a difficulty in capturing the misogynist motivation, i.e. the murder of a woman because she is a woman, which, according to literature, is considered to be a weakness of the feminist approach;
- 2) the sociological approach, namely, where the situations and contexts which shape the acts of the violent individuals are investigated. The basis of this approach is the fact that the murder of women and men occurs in different circumstances by different perpetrators, namely "*the fact that a high rate of women are killed by their intimate partners, or in a family setting, while a high rate of men are killed in a non-intimate or family setting, makes femicide a social phenomenon per se.*";
- 3) the criminological approach, namely, where a group of authors apply the term femicide broadly to mean the killing of a woman, whereas another group refers to '*intimate partner homicide*' as a special sub-set of homicide studies. In this approach, researchers study the details of the cases, including age, race and gender equality level, and they also focus on the relationship of the victim with the perpetrator;
- 4) the human rights approach, namely, where femicide is described by the Academic Council of the United Nations System (ACUNS) and other organisations, as a broad phenomenon which includes "*murder, as well as torture, honor killing, dowry-related killing, infanticide and gender-based pre-natal selection, genital mutilation and human trafficking*"; and

[19] Consuelo Corradi, Chaime Marcuello-Servos, Santiago Boira, Shalva Weil, *Theories of femicide and their significance for social research*, Sage Publications, Vol. 64, 2016, p. 979.

- 5) the decolonial approach, namely, where femicide is examined in the context of colonial domination, based on the idea that "*the discourse of colonial domination by the West has turned some practices, such as 'honor killings', into a symbol of resistance to the colonizers*".^[20]

After thoroughly explaining the existing approaches to researching femicide, the authors proposed a multidisciplinary approach in explaining femicide, as it is a complex social phenomenon.^[21] Nevertheless, whichever definition of femicide is used, the phenomenon can no longer be denied, as it has been proven countless times by global statistics and is now an undeniable truth. In this regard, according to the UNODC and UN Women global research brief on gender-related killings of women and girls in year 2022, it was reported, among others, that (i) 89,000 women and girls were intentionally killed in 2022 around the world; out of which (ii) 48,800 women and girls were killed by their family members or intimate partners; (iii) most of the killings of women and girls were gender-motivated; and (iv) every day, more than 133 women or girls were killed by someone in their family on average.^[22] The research noted in its preface that "*it is with deep concern and outrage that we report that the number of women and girls killed intentionally in 2022 – nearly 89,000 – is the highest yearly number recorded in the past 20 years.*"^[23]

The UNODC and UN Women brief also pointed out that, "*while most homicides worldwide are committed against men and boys (80% in 2022), women and girls are disproportionately affected by homicidal violence in the home: they represent approximately 53% of all victims of killings in the home and 66% of all victims of intimate partner killings*".^[24] According to the statistics presented, for women and girls, the most dangerous place is their own home.^[25] The number of gender-motivated murders of women and girls can be even higher than the ones presented, since for four (4) out of ten (10) female homicides around the world, there is no contextual data in order to classify them as femicides.^[26]

[20] Ibid., pp. 979-982.

[21] Ibid., p. 988.

[22] UNODC, UN Women, *Gender-related killings of women and girls (femicide/feminicide), Global estimates of female intimate partner/family-related homicides in 2022*, p. 3, available at: <https://www.unwomen.org/sites/default/files/2023-11/gender-related-killings-of-women-and-girls-femicide-feminicide-global-estimates-2022-en.pdf>.

[23] Ibid., p. 1.

[24] Ibid., p. 3.

[25] Ibid., p. 6.

[26] Ibid., p. 7.

The Republic of Kosovo is no exception to these phenomena, as also noted by the National Strategy on Protection against Domestic Violence and Violence against Women 2022–2026 (hereinafter: the National Strategy). According to the available data, albeit not completely reliable for reasons that will be explained below, during the 2018–2022 period, there appear to have occurred twenty (20) femicides and four (4) attempted femicides in Kosovo. In almost all of these cases, the women were murdered by their husbands. A woman and her minor daughter were murdered by the husband/father with an automatic rifle. A pregnant woman waiting to give birth was murdered by her husband in the hospital garden, while she begged for her life and the life of her unborn child. A teacher was murdered by her husband with an axe while she was sleeping. An 18-year-old woman was tortured, beaten and raped for two days, and after suffering from severe injuries, was ultimately murdered by her 30-year-old partner, who was aided by his friend. The stories above reflect just a few examples of the gender-motivated murders that have recently occurred in the Republic of Kosovo. The same have sparked public outcry, ignited widespread outrage and several protests during the years.

Further, as in all countries around the world, gender inequality, discrimination, gender-based violence and violence against women are widespread in Kosovo's society, where according to the "*Survey on Well-being and Safety of Women in Kosovo*", conducted by the OSCE, (i) 54% of all women in Kosovo state that they have experienced psychological, physical or sexual violence by a partner since the age of fifteen (15); whereas (ii) 29% state that they have experienced sexual harassment.^[27] Sadly, "*nearly half of the women surveyed (48%) believe that domestic violence is a private matter that should be kept within the family*".^[28]

While, as it will be elaborated below, the precision of available statistics leaves significant room for improvement, the data available between 2018 and 2022 shows a continuous increase on the numbers of domestic violence cases. On the other hand, while femicide as such is not qualified as a criminal offence in the Kosovo legislation, the Criminal Code provides the mechanism through which a murder and/or attempted murder can be qualified as one motivated on the basis of gender. Nevertheless, while the available case studies reflect that the courts have reasonably quickly managed the proceedings and the punishments for the perpetrators are significant, none of the court judgments have qualified

[27] Organization for Security and Cooperation in Europe Mission in Kosovo, *Survey on Well-being and Safety of Women in Kosovo*, 2019, p. 8, available at: <https://www.osce.org/files/f/documents/d/c/439781.pdf>.

[28] *Ibid.*, p. 9.

the respective murders and/or attempted murders to be motivated on the basis of gender, despite the fact that the circumstances of the cases clearly fall under the generally accepted definitions of femicide.

In order to elaborate on the abovementioned trends and/or challenges, the following part of the report will begin with an elaboration of the legal framework in the Republic of Kosovo, including (i) the international instruments directly applicable; (ii) the domestic legal framework; and (iii) the legal framework specifically relating to violence against women and domestic violence. Furthermore, the report will focus on the (i) available statistics and data collection in cases of domestic violence; and (ii) statistics and data collection in cases of femicide and/or attempted femicide. Subsequently, the report will present four (4) case studies reflected by the only available final court judgments in this respect, and finally, it will conclude with a few observations and corresponding recommendations.^[29]

[29] The case studies chosen to be analysed for the purpose of this report are only ones related to final court judgments pertaining to the murder of women by the respective perpetrators and the circumstances of which fall under the generally accepted definitions of femicide. The finality of the judgments means that the deadlines for further appeals, including to the Constitutional Court, have expired. There are certainly a number of cases currently under trial at the Basic Court level or undergoing appeal procedures, including the one before the Constitutional Court. Due to the pending court procedures, these cases have not been included in this analysis.

» II. LEGAL FRAMEWORK IN THE REPUBLIC OF KOSOVO

1. International Instruments Directly Applicable in Kosovo

To begin with, nine (9) international instruments are directly applicable in the Republic of Kosovo and have priority over domestic law and other acts in case of legal conflict. According to article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, the human rights and fundamental freedoms guaranteed by these instruments are guaranteed by the Constitution and they include the following:

- i) Universal Declaration of Human Rights;
- ii) European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;
- iii) International Covenant on Civil and Political Rights and the Protocols thereto;
- iv) Council of Europe Framework Convention for the Protection of National Minorities;
- v) Convention on the Elimination of All Forms of Racial Discrimination;
- vi) Convention on the Elimination of All Forms of Discrimination against Women;
- vii) Convention on the Rights of the Child;
- viii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- ix) Council of Europe Convention on preventing and combating violence against women and domestic violence.^[30]

In addition and to the extent relevant for this report, it should be noted that, according to the Constitution, (i) human rights and fundamental freedoms are the basis of the legal order of the Republic of Kosovo; (ii) the Republic ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both men and women; (iii) all are equal

[30] Constitution of the Republic of Kosovo, article 22 [Direct Applicability of International Agreements and Instruments] and Amendment no. 26 thereto, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>.

before the law; and (iv) no one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.^[31] Furthermore, article 53 [Interpretation of Human Rights Provisions] of the Constitution, provides that all public institutions are obliged to interpret human rights and fundamental freedoms guaranteed by the Constitution on the basis of the case-law of the European Court of Human Rights (hereinafter: the ECtHR).

With the exception of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which is directly applicable in Kosovo since the adoption of Amendment No. 26 of the Constitution on 25 September 2020, all the other international instruments, as listed in article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, have been directly applicable since 2001, when the Constitutional Framework for Provisional Self-Government in Kosovo was adopted and applicable during the interim international administration of Kosovo.^[32]

However, as Kosovo is not yet a member of the Council of Europe and, therefore, not a signatory party to the aforementioned international instruments, while most of them have been directly applicable for more than two decades, Kosovo does not directly benefit of the corresponding monitoring mechanisms related to the above-mentioned international instruments. Hence, for example, Kosovo does not submit or receive regular reports as other signatory states do by the Committee on the Elimination of Discrimination against Women (CEDAW).

Nevertheless and pertaining to the Istanbul Convention, in 2022 the Secretariat of GREVIO published the "*Assessment of the alignment of Kosovo*'s laws, policies and other measures with the standards of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*".^[33] This Assessment was published as part of the project "*Reinforcing*

[31] Constitution of the Republic of Kosovo, articles 7 [Values] and 21 [General Principles].

[32] Constitutional Framework for Provisional Self-Government in Kosovo, Chapter 3 (Human Rights), available at: http://old.kuvendikosoves.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf.

[33] Virginia Gil Portoles, Eileen Skinnider, Valentine Josenhans, *Assessment of the alignment of Kosovo's laws, policies and other measures with the standards of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*

the fight against violence against women and domestic violence Phase III" (hereinafter: the GREVIO Assessment Report) and although it states that the opinions expressed therein are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe, the Assessment applies the methodology of GREVIO and is based on the information provided by the public authorities and the civil society in the Republic of Kosovo. It is a very important/informative document in assessing the application of the Istanbul Convention.^[34]

The GREVIO Assessment Report noted, among others, positive developments and found that Kosovo *"has made commendable efforts to devise comprehensive laws and policies to tackle violence against women and domestic violence"*^[35]. Nevertheless, according to the Assessment Report, Kosovo needs to take further steps to align its domestic law with the Istanbul Convention. In order to illustrate the position of Kosovo domestic law to the extent relevant to this report, the following are some of the recommendations provided by the Assessment Report: (i) the authorities should pursue their efforts to harmonise all legal and policy definitions of violence against women and domestic violence based on those set out in the Istanbul Convention and ensure their effective implementation; (ii) the authorities should pursue their efforts to implement comprehensive and coordinated laws, policies and mechanisms for achieving gender equality, while taking further actions to remedy existing gaps in women's access to their socio-economic rights and measure their progress, such as their rights to property, inheritance and alimony; (iii) the authorities should increase their efforts to mainstream gender-sensitive response to violence against women in all relevant policies through development and implementation of relevant guidelines for public institutions; (iv) the authorities should fully institutionalise the Office of the National Coordinator against Domestic Violence by allocating necessary human and financial resources to its work; (v) the authorities should expand the scope of the data collected by 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; (vi) to ensure the scope of data collected by social services and shelters to ensure that it addresses all forms of violence covered by the Istanbul Convention, which are disaggregated by sex, age and relationship of the perpetrator to the victim and other relevant categories such as disability status; (vii) to carry out regular prevalence surveys on all forms of violence against women covered by the Istanbul Convention; (viii)

(*Istanbul Convention*), 2022, available at: [*1680a9203e \(coe.int\)](https://www.coe.int/t/treaties/ConventionAgainstViolenceAgainstWomen/ConventionAgainstViolenceAgainstWomen.aspx).

[34] Ibid., p. 7.

[35] Ibid.

to step up efforts to support research into manifestations of violence against women that remain unexplored and continue evaluating existing legislation and their implementation; (ix) to foster measures aimed at eradicating stereotypes, prejudices and all practices based on the idea of women's inferiority to men, which contribute to justifying and perpetuating violence against women; (x) to diversify and sustain awareness-raising efforts to address all forms of violence covered by the Istanbul Convention; (xi) to incorporate teaching materials on equality of women and men, all forms of gender-based violence against women and girls, non-stereotyped gender roles, mutual respect etc., as well as to ensure systematic and mandatory trainings on prevention, detection and prosecution of all forms of violence against women; (xii) to expand the number of shelters and provide sufficient stable funding; (xiii) to address any barriers to the use of civil law measures available to hold public authorities accountable for failure to comply with the obligation to diligently prevent, investigate and punish acts of violence, and to protect victims and to ensure provision of adequate information to victims; (xiv) to facilitate and guarantee access to compensation for victims of all kinds of violence against women; (xv) to take measures to effectively investigate, prosecute and punish acts of psychological, physical and sexual violence; (xvi) to enhance capacity and knowledge of all law enforcement officers regarding strong case building; and (xvii) to ensure that victims of all forms of violence covered by the Istanbul Convention have *de jure* and *de facto* access to legal aid at an early stage of the procedure.^[36]

As illustrated by the recommendations listed above, most of which were classified as urgent by the GREVIO Assessment Report, Kosovo must strengthen its efforts in order to fully align its domestic law with the Istanbul Convention and other international instruments that are directly applicable in Kosovo. Nevertheless, as it will be elaborated below, while there is room for improvement in terms of quality of legislation, the primary challenge remains the enforcement of the existing legal framework and the applicable international standards.

2. Domestic Legal Framework

As many countries around the world, the Republic of Kosovo is also plagued by the occurrence of domestic violence, gender-based violence and femicide, crimes which are not always properly investigated and punished, and, in some instances, reflect crimes which could have been prevented, had the responsible state authorities acted promptly and diligently.

[36] Ibid., pp. 88-100.

A recent Constitutional Court Judgment, namely, the Judgment K1129/21, noted this phenomenon, providing, among others, that the respective State authorities, primarily the State Prosecution Office and the Police, had failed to take the necessary actions to prevent the death of the applicant's mother.^[37]

The term "*femicide*" is not used in the Kosovo legal framework, namely, it is not used as a stand-alone or separate crime. However, since the adoption of the new Criminal Code in 2019, namely, the Code No. 06/L-074 – Criminal Code of the Republic of Kosovo (hereinafter: the 2019 Criminal Code)^[38], (i) a murder gets qualified as an aggravated murder if, among others, the murder has been found to have been motivated based on gender and, if the crime of grievous bodily harm is found to have been motivated based on gender, among others, a harsher punishment is foreseen for the perpetrator; and (ii) "*domestic violence*" is also foreseen as a separate and stand-alone crime. This is different from the previous Criminal Code – Code No. 04/L-082 Criminal Code of the Republic of Kosovo (hereinafter: the 2012 Criminal Code)^[39], which did not foresee gender and/or gender identity as one of the grounds based on which a murder could be qualified as an aggravated one, and did not provide for domestic violence as a stand-alone and/or separate crime.

Having said this, and while "*femicide*" as a stand-alone term is not specifically used in the applicable legislation, the legal framework in Kosovo, which is essentially applicable in cases falling within the category of the generally accepted definition of femicide and gender-based violence and domestic violence, includes but is not limited to the following:

[37] Case K1129/21, Applicant V.S., Constitutional Court Judgment of 7 March 2023, available at: <https://gjk-ks.org/en/decision/leresim-i-kushtetutshmerise-se-veprimeve-dhe-mosveprimeve-te-gjykates-themelore-ne-gjilan-prokurorise-themelore-ne-gjilan-stacionit-policor-ne-gracanice-dhe-prokurorise-themelore-n/>

[38] Code No. 06/L-074 – Criminal Code of the Republic of Kosovo, Official Gazette of the Republic of Kosovo No. 2/2019, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=435>.

[39] Code No. 04/L-082 – Criminal Code of the Republic of Kosovo, Official Gazette of the Republic of Kosovo No. 19/2012, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=147>.

- i) Criminal Code of the Republic of Kosovo no. 06/L-074;^[40]
- ii) Law No. 08/L-188 on Amending and Supplementing the Criminal Code No. 06/L-074 of the Republic of Kosovo;^[41]
- iii) Code No. 08/L-032 – Criminal Procedure Code;^[42]
- iv) Law No. 08/L-187 on Amending and Supplementing the Criminal Procedure Code No. 08/L-032;^[43]
- v) Law No. 03/L-182 on Protection against Domestic Violence (abolished in October 2023 with the adoption of the new Law);^[44]
- vi) Law No. 08/L-185 on Prevention and Protection from Domestic Violence, Violence Against Women and Gender-based violence;^[45]
- vii) Law No. 05/L-003 on the Electronic Supervision of Persons whose Movement is Limited by the Decision of the Court;^[46]
- viii) Law No. 05/L-020 on Gender Equality;^[47]
- ix) Law No. 05/L-021 on the Protection from Discrimination;^[48]

[40] Code No. 06/L-074 – Criminal Code of the Republic of Kosovo, supra note 38.

[41] Law No. 08/L-188 on Amending and Supplementing the Criminal Code No. 06/L-074 of the Republic of Kosovo, Official Gazette of the Republic of Kosovo No. 23/2023, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=551>.

[42] Code No. 08/L-032 – Criminal Procedure Code, Official Gazette of the Republic of Kosovo No. 24/2022, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=507>.

[43] Law No. 08/L-187 on Amending and Supplementing the Criminal Procedure Code No. 08/L-032, Official Gazette of the Republic of Kosovo No. 23/2023, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=551>.

[44] Law No. 03/L-182 on Protection against Domestic Violence, Official Gazette of the Republic of Kosovo No. 76/2010, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=82>.

[45] Law No. 08/L-185 on Prevention and Protection from Domestic Violence, Violence Against Women and Gender-based Violence, Official Gazette of the Republic of Kosovo no. 22/2023, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=550>.

[46] Law No. 05/L-003 on the Electronic Supervision of Persons whose Movement is Limited by the Decision of the Court, Official Gazette of the Republic of Kosovo No. 12/2015, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=295>.

[47] Law No. 05/L-020 on Gender Equality, Official Gazette of the Republic of Kosovo No. 16/2015, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=299>.

[48] Law No. 05/L-021 on the Protection from Discrimination, Official Gazette of the Republic of Kosovo No. 16/2015, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=299>.

- x) Law No. 05/L-036 on Crime Victim Compensation (repealed in November 2022 with the adoption of the new Law);^[49]
- xi) Law No. 08/L-109 on Crime Victim Compensation;^[50]
- xii) Standard Operating Procedures for Victim Protection and Assistance Office (Prosecution);^[51]
- xiii) Standard Operation Procedures for Protection from Domestic Violence in Kosovo (Agency for Gender Equality);^[52] and,
- xiv) State Protocol for Treatment of Sexual Violence Cases in Kosovo.^[53]

In the light of the above, it must be initially noted that the Law No. 05/L-036 on Crime Victim Compensation (hereinafter: the 2015 Victim Compensation Law), was replaced by the Law No. 08/L-109 on Crime Victim Compensation of 2 November 2022 (hereinafter: the 2022 Victim Compensation Law).

More importantly, the end of 2023 saw significant changes in the applicable legislation that is relevant for the cases of femicide and/or attempted femicide. First, in October 2023, the Law No. 03/L-182 on Protection against Domestic Violence was replaced by the new Law in this respect, namely, the Law No. 08/L-185 on Prevention and Protection from Domestic Violence, Violence against Women and Gender-based Violence. Secondly, in November 2023, enactment of two important amendments to the Criminal Code and the Criminal Procedure Code took place, namely: (i) the Law No. 08/L-188 on Amending and Supplementing the Criminal Code No. 06/L-074 of the Republic of Kosovo (hereinafter: the 2023 Criminal Code); and (ii) the Law No. 08/L-187 on Amending and Supplementing the Criminal Procedure Code No. 08/L-032 (hereinafter: the 2023 Criminal Procedure Code) were enacted by the Assembly of Kosovo. Both these Amendments pertaining to the criminal law legislation are relevant in terms

[49] Law No. 05/L-036 on Crime Victim Compensation, Official Gazette of the Republic of Kosovo No. 17/2015, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=300>.

[50] Law No. 08/L-109 on Crime Victim Compensation, Official Gazette of the Republic of Kosovo No. 33/2022, available at: <https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=516>.

[51] Standard Operating Procedures for Victim Protection and Assistance Office, issued by the State Prosecutor on 2013, available at: [ZMNV_28022014.pdf \(prokuroria-rks.org\)](https://www.prokuroria-rks.org/ZMNV_28022014.pdf).

[52] Standard Operation Procedures for Protection from Domestic Violence in Kosovo, issued by the Agency for Gender Equality, Office of the Prime Minister of Kosovo, on 2013, available at: [Agjencia Për Barazi Gjinore \(rks-gov.net\)](https://www.rks-gov.net/AgjenciaPerBaraziGjinore).

[53] State Protocol for Treatment of Sexual Violence Cases in Kosovo, issued by the Government of Kosovo on 23 November 2022, available at: <https://md.rks-gov.net/desk/inc/media/8C3ACF03-4387-453D-942A-AC5B38B00838.pdf>.

of advancements in the area of fight against domestic and/or gender-based violence.

More specifically, the 2019 Criminal Code,^[54] was, among others, amended to: (i) provide new and expand the definitions of criminal offences, including in the area of domestic and/or gender-based violence; and (ii) provide for harsher respective punishments. The most significant amendments can be summarised into the six (6) categories below:

First, the new Law amending the 2019 Criminal Code, supplements the list of accessory (complementary) punishments as provided for by article 59 (Accessory punishments) of the above-mentioned Criminal Code, for the criminal offences of rape and/or domestic violence, by including" (i) the prohibition of the purchase at auctions of sale of public properties, public assets or licences granted by a public authority in any service in a period of three (3) to ten (10) years; and (ii) the prohibition of applying as a strategic investor and any other form of benefiting from the privileges granted by the applicable legislation in a period of three (3) to ten (10) years.

Second, article 60 (Deprivation of the right to be elected) of the 2019 Criminal Code, is also specifically amended in order to expand the punishment of deprivation of the right to be elected, in circumstances of having been found guilty of the criminal offence of rape and/or domestic violence, thereby granting the power to the courts to prohibit the right to run for any public office in a period of three (3) to ten (10) years to a person who is found guilty of the criminal offence of rape and domestic violence.

Third, the new Law amending the 2019 Criminal Code, expands the scope of article 62 (Prohibition on exercising public administration or public service offices) of the above-mentioned Code, by granting the power to the courts to prohibit: (i) the employment in the public sector at all levels, in a period of one (1) to five (5) years, to a person who is found guilty of the criminal offence of rape; and (ii) the right to drive a vehicle of any category, in a period of one (1) to five (5) years, to the person who has been found guilty of the criminal offence of rape at the time when he/she was practicing the driving profession.

Fourth, article 183 (Sexual Harassment) of the 2019 Criminal Code, is supplemented and expanded, in two primary aspects. It increases the sentence: (i) from the earlier range of six (6) months to three (3) years of imprisonment up to

[54] Law No. 08/L-188 on Amending and Supplementing the Criminal Code No. 06/L-074 of the Republic of Kosovo, supra note 41.

the range of one (1) to five (5) years of imprisonment in cases when the criminal offence of sexual harassment is committed by a perpetrator who is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care, or is otherwise in a position of having authority over the person; and (ii) from the range of one (1) to five (5) years of imprisonment to the range of five (5) to ten (10) years of imprisonment, when the respective criminal offence is committed with a weapon, a dangerous instrument or another object capable of causing grievous bodily injury or serious impairment to mental or physical health. More importantly, it specifically provides that whoever sexually harasses a person under the age of ten (10) or a vulnerable person under the age of fifteen (15), shall be punished by imprisonment of three (3) to eight (8) years and that the perpetrator of such offence against a child shall be prohibited by the court to exercise the profession or activity relating to working with children.

Fifth, the new Law amending the 2019 Criminal Code, provides for the new criminal offence of virginity testing, criminalising: (i) the induction and obligation of another person to perform an examination for the purpose of virginity testing and making it punishable by a fine and imprisonment of up to one (1) year; and (ii) the performance of medical testing or examination for the purpose of virginity testing and making it punishable by a fine and imprisonment from one (1) to three (3) years, including providing for the respective aggravating circumstances and also criminalising the actual attempt to commit this criminal offence.

Finally, the new Law amending the 2019 Criminal Code, adds the criminal offence of violence against women in public life, stipulating that whoever exerts deliberately to intimidate or force them to act against their will, by making resort to physical, psychological, sexual, or economic violence, in a direct or indirect form, against women exercising public offices or candidates for the exercise of public offices, shall be punished by fine and imprisonment from six (6) months to three (3) years.

On the other hand, the 2022 Criminal Procedure Code was, among other things, amended to shorten the deadlines for investigation and completion of the main trial pertaining to the criminal offences of rape and domestic violence. The most significant amendments can be summarised into two (2) categories, namely: (i) the Amendment of article 157 (Time Limits of Investigation) of the 2022 Criminal Procedure Code, to provide for a derogation from the general deadlines of investigation, and limit these deadlines to one (1) year, and exceptionally for additional six (6) months; and (ii) the amendment of article 310 (Time to Complete Main Trial) of the 2022 Criminal Procedure Code, to provide for a derogation from the generally applicable deadlines and limit these deadlines to sixty (60) or up

to ninety (90) days to complete the main trial, depending on whether it is held before a single trial judge or a trial panel.

Furthermore, but prior to the above-mentioned Amendments that are related to the new Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-based Violence and the respective amendments of the Criminal Code and the Criminal Procedure Code, in January 2022 the Government of Kosovo adopted the National Strategy on Protection against Domestic Violence and Violence against Women 2022–2026,^[55] which, among others, recognises that domestic violence and violence against women are amongst 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. The National Strategy also, among other things, recognises that (i) *“violence against women is a manifestation of historically unequal relations of power between men and women, which have led to the domination and discrimination of women by men and have hindered the full advancement of women”*; (ii) *“women and girls are often exposed to violence such as domestic violence, sexual harassment, rape, forced marriage, trafficking, crimes committed in the so-called ‘honour’, genital organs mutilations, which consists a criminal offence, turning thus into the main obstacle in achieving equality between men and women”*; (iii) *“women and girls are more exposed than men [and boys] to a higher risk of gender-based violence”*; and (iv) *“domestic violence affects women disproportionately”*.^[56]

According to this National Strategy, the Government’s priority is combating domestic violence and gender-based violence through the following strategic objectives until 2026, namely: (i) taking responsibility in treating with priority all cases of domestic violence and violence against women; (ii) ensuring sufficient human, financial and infrastructure resources in combating such violence; (iii) ensuring access to integrated qualitative services; (iv) guaranteeing justice for the victims and the survivors; (v) ensuring reintegration and empowerment of victims/survivors of domestic violence and violence against women; (vi) punishment, resocialisation and rehabilitation of perpetrators; and (vii) raising awareness of the society against domestic violence and violence against women.^[57]

[55] National Strategy on Protection against Domestic Violence and Violence against Women 2022–2026, issued by the Government in 2022, available at: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/08/ENG-Strategjia-Kombetare-per-Mbrojtje-nga-Dhuna-ne-Familje-dhe-Dhuna-ndaj-Grave-2022-2026.pdf>.

[56] Ibid., pp. 4-5.

[57] Ibid., p. 9.

Furthermore, the National Strategy, among other things, makes reference to the survey conducted by the OSCE in 2018, according to which, and as noted above: (i) 57% of women had been subjected to physical, psychological and sexual violence from the age of fifteen (15); while (ii) 48% of the respondents still consider that such violence is a private family matter.^[58] Importantly, the National Strategy notes that the studies conducted by civil society record that in the last years there is an increased attention towards femicide in the context of domestic violence in Kosovo.^[59]

3. The Respective Legal Framework Pertaining to Murders and/or Attempted Murders

Chapter XVI [Criminal Offences against Life and Body] of the 2019 Criminal Code, provides the criminal offences against the life and body (limb) of the person. With respect to murder, it foresees the following crimes: (i) murder; (ii) aggravated murder; (iii) homicide committed in a state of severe mental distress; (iv) negligent homicide ; and (v) homicide of infants during birth.

The crime 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*".^[60] The crime of "aggravated murder" is defined by stating that "*a punishment of imprisonment of not less than ten (10) years or of life long imprisonment shall be imposed on any person who:*

1.1. *deprives a child of his or her life;*

1.2. *deprives a pregnant woman of her life;*

1.3. *deprives a family member of his or her life;*

1.4. *deprives another person of his or her life in a cruel or deceitful way;*

1.5. *deprives another person of his or her life and in doing so intentionally endangers the life of one or more other persons;*

1.6. *deprives another person of his or her life for the purpose of obtaining a material benefit;*

[58] Ibid., p. 6.

[59] Ibid.

[60] Criminal Code of the Republic of Kosovo No. 06/L-074, supra note 38, article 172 (Murder).

1.7. *deprives another person of his or her life for the purpose of committing or concealing another criminal offence, or preventing the person from testifying or otherwise providing information to police or in a criminal proceeding;*

1.8. *deprives another person of his or her life because of unscrupulous revenge or other base motives, including retaliation for testifying or otherwise providing any information to police or in a criminal proceeding;*

1.9. *deprives an official of his or her life when such a person is executing his or her official or related duties;*

1.10. ***deprives another person of his or her life because of a motivation, based upon the nationality, language, religious belief or lack of religious belief, colour of skin, gender, gender identity, sexual orientation, or because of their affiliation with persons who have one the aforementioned protected characteristics;***

1.11. *intentionally commits two or more murders except for the offences provided for in Article 174 and 176 of this Code; or*

1.12. *deprives another person of his or her life and has previously been convicted of murder, except for the offences provided for in Articles 174 and 176 of this Code;*

1.13. *preparatory actions for whichever sub-paragraph of paragraph 1 of this Article shall be punishable.*^[61]

On the other hand, “homicide committed in the state of severe mental distress” is defined as follows: “Whoever deprives another person of his or her life while being in a state of severe mental distress, caused through no fault of his or her own, by an attack, maltreatment or grave insult by the killed person, shall be punished by imprisonment of one (1) to ten (10) years.” “Negligent homicide” is defined as follows: “Whoever by negligence deprives another person of his or her life shall be punished by imprisonment of six (6) months up to five (5) years”^[62], while the “homicide of infants during birth” is defined as follows: “A mother who deprives her infant of his or her life during or immediately after birth while being affected by a disorder caused by birth shall be punished by imprisonment of three (3) months up to three (3) years.”^[63]

[61] Ibid., article 173 (Aggravated murder).

[62] Ibid., article 175 (Negligent homicide).

[63] Ibid., article 176 (Homicide of infants during birth).

As noted above, femicide is not a term used in the Kosovo legislation to describe gender-motivated murder of women. Having said this and as noted above, differently from the 2012 Criminal Code, the one adopted in 2019 foresees, among other things, a new addition to the crime of "*aggravated murder*". Namely, article 173 (Aggravated murder) of the 2019 Criminal Code includes, in subparagraph 10 of paragraph 1, the criminal offence of *aggravated murder, deprivation of life of another person motivated on the basis of gender or gender identity*. Hence, the Criminal Code foresees the crime of gender-motivated murder as a form of aggravated murder, a criminal offence punishable by no less than ten (10) years of imprisonment up to life imprisonment.^[64] However, as noted above, "*gender-motivated murder*" can be committed by men or women against men or women. Nevertheless, although the wording of article 173 (Aggravated murder) of the 2019 Criminal Code, provides the option of men being the victims as well, it is clear that it includes the "*gender-motivated murder of women*", which, according to the aforementioned generally recognised definitions, implies femicide. It must be noted, nevertheless, that while the 2019 Criminal Code and the corresponding amendments of 2023, significantly advanced the criminal offences and/or the respective punishments, including in the area of domestic violence, they did not go as far as to include the term "*femicide*" in their respective contents.

Further and in terms of implementation of the above-mentioned legal framework, according to the available final court judgments, since the adoption of the new Criminal Code in 2019, which includes gender-motivated murders, there have been no convictions for aggravated murder motivated on the basis of gender. While, there are four (4) final judgments that have found the perpetrators guilty for having killed their partners, the respective murders were not qualified as aggravated murders motivated on the basis of gender, but rather as aggravated murders for (i) "*deprivation of the life of a family member*"; and/or (ii) "*with intent to commit two or more murders*". Even in instances when, according to the available final court judgments, it can be concluded that the murder of the woman resulted directly or indirectly from, for example, the man's feeling of possessiveness or dominance towards the woman, or the belief that the woman has a certain role in the relationship which was breached, still, as per the respective court judgments and as it will be elaborated in more details below, the courts have only qualified these murders as "*aggravated murder against a family member*", not including the gender related motivation in qualifying the respective murder as an aggravated one.

[64] Ibid., article 173 (Aggravated murder), paragraph 1, subparagraph 1.10.

4. The Respective Legal Framework Pertaining to Violence against Women/Domestic Violence

The 2019 Criminal Code provides, among others, the following criminal offences relating to the use of violence against women: (i) assault; (ii) light bodily injury; (iii) grievous bodily injury; (iv) female genital mutilation; (v) threat; (vi) harassment; (vii) sexual harassment; (viii) participation in a brawl; (ix) forced sterilisation; (x) unlawful termination of pregnancy; (xi) rape; (xii) sexual assault; (xiii) degradation of sexual integrity; (xiv) forced marriage; and (xv) domestic violence. The crimes added through the adoption of the 2019 Criminal Code and which were not part of the previous, namely the 2012 Criminal Code include: (i) domestic violence; (ii) sexual harassment; and (iii) female genital mutilation. The 2023 Amendments to the Criminal Code also added the new criminal offence of virginity testing.

In relation to femicide, the 2019 Criminal Code, among other things, provides that (i) when grievous bodily harm is inflicted upon another person that results in the death of the person, then the perpetrator shall be punished by imprisonment of five (5) to fifteen (15) years; and that (ii) when the grievous bodily harm is committed against a vulnerable victim, or is motivated by, among other things, gender, then based on the extent of the harm done, he or she will be sentenced from one (1) to ten (10) years of imprisonment.^[65] According to the Criminal Code, a vulnerable victim is, among others, a pregnant woman or a person whose relationship to, and dependence on, the offender make them particularly vulnerable to repeat victimisation, intimidation or retaliation.^[66]

The offence of “*grievous bodily harm*” is described as follows:

“1. Whoever inflicts grievous bodily injury upon another person or impairs the health of another person to such extent that it may result in:

1.1. temporarily and substantially weakening a vital part of the body of the other person;

1.2. temporarily destroying, temporarily and substantially diminishing, or permanently diminishing the capacity of the other person to work; or

[65] Ibid., article 186 (Grievous bodily injury).

[66] Ibid., article 113 (Definitions), paragraph 39.

1.3. temporarily and seriously impairing the health of the other person, shall be punished by imprisonment of six (6) months to five (5) years.

2. Whoever inflicts bodily harm or impairs the health of another person that results in:

2.1. endangering the life of the person;

2.2. permanently destroying or weakening a vital part of the body of the other person;

2.3. permanently destroying the capacity of the other person for any kind of work;

2.4. permanently disfiguring the other person; or

2.5. permanently and seriously impairing the health of the other person, shall be punished by imprisonment of one (1) to ten (10) years.

3. When the offence provided for in paragraph 1. or 2. of this Article is committed with a weapon, a dangerous instrument or another object capable of causing grievous bodily injury or a serious impairment to health, the perpetrator shall be punished by:

3.1. imprisonment from one (1) to eight (8) years, in the case of the offence provided for in paragraph 1. of this Article;

3.2. imprisonment from three (3) to ten (10) years, in the case of the offence provided for in paragraph 2. of this Article.

4. When the offence provided for in paragraph 1., 2. or 3. of this Article is committed against a vulnerable victim or is motivated upon the nationality, language, religious belief or lack of religious belief, colour of skin, gender, gender identity, sexual orientation, or because of their affinity with persons who have one the aforementioned protected characteristics, the perpetrator shall be punished by:

4.1. imprisonment from one (1) to five (5) years, in the case of the offence provided for in paragraph 1. of this Article;

4.2. imprisonment from two (2) to ten (10) years, in the case of the offence provided for in paragraph 2. of this Article; or

4.3. imprisonment from five (5) to ten (10) years, in the case of the offence provided for in paragraph 3. of this Article.

5. When the offence provided for in paragraph 1., 2., 3. or 4. of this Article results in the death of the other person, the perpetrator shall be punished by imprisonment of five (5) to fifteen (15) years [...]"

On the other hand, as noted above, the 2019 Criminal Code provided an additional crime, namely, the one outlined in article 248 (Domestic Violence) of the Criminal Code, which qualifies domestic violence as follows:

"1. Whoever commits physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years.

2. When any act in the Criminal Code is committed within a domestic relationship, it will be considered an aggravating circumstance.

3. Every member of the family who exerts physical, psychological, sexual or economic violence or mistreatment against another member of his/her family, shall be punished by a fine and imprisonment of up to three (3) years."

Furthermore, the Criminal Code provides that a "domestic relationship" is established between persons who (i) are or were engaged, are or were married, or are or were in an extramarital union, are or were co-habiting in a common household; (ii) 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 (iii) who are the parents of a common child.^[67] A member of the family is a parent, adoptive parent, child, adopted child, sibling, spouse, blood relative living in the same home or a person with whom the perpetrator lives in an extramarital union.^[68] The major issue with these definitions is that they exclude partners who did not live together or co-habited in a common household. Hence, one of the recommendations by the GREVIO Assessment Report was to include these kinds of partnerships as well in the definition of domestic violence.

Article 248 (Domestic Violence) of the Criminal Code also provides that domestic violence, physical, psychological, sexual or economic violence for the purposes of the Criminal Code, shall be the same as the one defined in the Law No. 03/L-182 – the Law on Protection against Domestic Violence, which was adopted in 2010. The

[67] Ibid., article 113 (Definitions), paragraph 25.

[68] Ibid., article 113 (Definitions), paragraph 26.

latter, as noted above, was replaced by the new Law, namely, the Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-based Violence, enacted in 2023. The Supreme Court of the Republic of Kosovo adopted the Guidance on the Legal Qualifications of Domestic Violence Acts,^[69] with an intention to guide the respective official authorities in the interpretation of the domestic violence crime as provided by article 248 (Domestic Violence) of the Criminal Code. According to this Guidance, the aim of article 248 (Domestic Violence) is to also include milder forms of domestic violence, particularly actions that cannot be categorised as other crimes, either when all but some elements of the crime are met, or when there is a lack of evidence.

In light of the above, and while noting that the Kosovo legal framework is generally advanced and in compliance with the requirements of the Istanbul Convention, in particular, after the adoption of (i) the new Law on Crime Victim Compensation; (ii) the new Law on Prevention and Protection from Domestic Violence, Violence Against Women and Gender-based Violence; and (iii) the Amendments of the Criminal Code and of the Criminal Procedure Code in 2023, the GREVIO Assessment Report, as noted above, has identified significant obstacles and provided the corresponding recommendations, particularly in terms of the efforts necessary to implement the respective applicable legal framework.

Further and according to numerous local and international civil society organisations, including the Kosovo Women's Network, several issues must be urgently addressed by the State administration, including the following: (i) although there is improvement in the way how institutions handle domestic violence cases since year 2017, the culture of victim-blaming still persists; (ii) efforts to 'reconcile' the couple and to 'preserve the family' are still prevalent; (iii) the National Strategy 2022–2026, was only partially implemented and insufficient funding hindered such implementation; (iv) some officers still removed victims from their homes and not the perpetrators; (v) staff shortages and lack of funding negatively affect the work of the Victims Advocates Office, Centers for Social Work and Shelters; and (vi) court sentencing is not always effective, proportionate and dissuasive, as required by the Istanbul Convention.^[70]

[69] Guidance on the legal qualification and treatment of domestic violence cases according to the Criminal Code of the Republic of Kosovo, issued by the Supreme Court of Kosovo in 2020, available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/75340-Supreme%20Court%20DV%20Guidance_June%202020.pdf.

[70] Kosovo Women's Network, *From Laws to Action – Monitoring the Institutional Response to Gender-based Violence in Kosovo*, 2021, pp. 7-8, available at: <https://womensnetwork.org/>

In addition to the above, the National Audit Office of Kosovo recently published the Report “*The effectiveness of institutions in handling cases of domestic violence*”, which found, among other things, that: (i) although institutions have undertaken a number of actions in handling domestic violence cases, satisfactory results have not been reached for the protection and rehabilitation of victims; (ii) there are deficiencies in engaging primary investigators, inclusion of the victim’s advocates, timely review of cases by the judiciary as well as in the registration of the reported cases; (iii) victims do not have social support, especially in the economic aspect; (iv) programs for treating perpetrators are missing; (v) there are deficiencies in the adequate engagement of human resources in monitoring and supporting victims during rehabilitation; (vi) although the police intervenes in an optimal time, the system is deficient in the procedures for monitoring the execution of protection orders, for conveying information to the victim’s advocate and for registering cases; (vii) courts take a long time to decide on cases of domestic violence; and (viii) there is a lack of institutional commitment in registering data in the National Database for Domestic Violence.^[71]

Further, according to a study conducted by Amnesty International, the issues present in Kosovo continue to include the following: (i) the survivors are not duly informed about the State support services and protections available to them; (ii) the police failed to protect some victims through prejudice, disbelief and mistreatment, especially of survivors from marginalised groups; (iii) protection orders are difficult to enforce, since there is no effective monitoring and enforcement of such orders; (iv) shelters are underfunded and understaffed; (v) the Victims Advocates Office is overburdened and understaffed; (vi) inadequate penalties are imposed, where perpetrators do not receive sentences proportionate to their offence; and (vii) survivors face many barriers in accessing reparations.^[72]

[wp-content/uploads/2021/05/KWN-GBV-Report-ENG-Final-2.pdf](#).

[71] National Audit Office of the Republic of Kosovo, *The effectiveness of institutions in handling cases of domestic violence*, August 2023, pp. 1-2, available at: <https://zka-rks.org/Reports/ReportDetails?reportId=508>.

[72] Amnesty International, *From paper to practice – Kosovo must keep its commitments to domestic violence survivors*, August 2023, pp. 6-8, available at: <https://www.amnesty.org/en/documents/eur73/7125/2023/en/#:~:text=73%2F7125%2F2023-,Kosovo%3A%20From%20paper%20to%20practice%3A%20Kosovo%20must%20keep%20its%20commitments,trying%20to%20leave%20abusive%20situations.>

The above-mentioned reports and many others show that the central issue Kosovo is faced with is the lack of proper implementation of the existing legal framework, which is currently more significant than the need to adopt new laws. Hence, one of the primary focuses of the public authorities should be to create proper implementation and monitoring mechanisms, which would ensure the implementation of the existing laws and those to be adopted in the future. Also, it should be noted that one of the most pressing issues with the deficient implementation of the existing legal framework is the fact that the Law on the Electronic Supervision of Persons whose Movement is Limited by the Decision of the Court, has not been implemented, although it was adopted eight (8) years ago. Had this law been implemented properly, femicides could have been prevented, since it would ensure that the court protection orders are obeyed and that the policemen are immediately notified when the perpetrator approaches the victim.

Apart from these issues, as also noted through the GREVIO Assessment Report and as it will be elaborated in more details in what follows, the lack of reliable statistics, including the lack of institutional commitment in registering data in the National Database for Domestic Violence, significantly hinders any efforts to establish and implement any proper policy in effectively addressing the phenomena of femicide in the Republic of Kosovo.

» III. STATISTICS AND DATA COLLECTION – DOMESTIC VIOLENCE/FEMICIDE

1. Statistics and Data Collection in Cases of Domestic Violence and Murders of Women

In 2018, the Ministry of Justice, the Ministry of Work and Social Well-being, the Kosovo Judicial Council, the Kosovo Prosecutorial Council and the Kosovo Police, signed a Memorandum of Cooperation, thereby agreeing to create a database for registering cases of domestic violence. The system was designed to function as an integrated database of a number of institutions maintaining data and offering services in domestic violence cases. Six (6) institutions were authorised to update the database with data, namely the Police, the Center for Social Work, the Victim Advocates Office, the Shelters, the Prosecution Office, and the Courts.

According to the information received from the Ministry of Justice, the following statistics can be generated from the National Database: (i) statistics on the number of cases of domestic violence; (ii) statistics on the number of perpetrators and victims of domestic violence; (iii) statistics on the services offered by the institutions in cases of domestic violence (Police, Prosecution Office, Courts, Victims Advocates Office, Centers for Social Work, and Shelters); (iv) statistics on the criminal offences reported by the institutions (Police, Prosecution Office and Courts); (v) statistics on the measures and decisions of the Courts; and (vi) statistics on the days of victim's stay in shelters.^[73]

In addition, the respective National Database offers the option to classify cases according to the respective criminal offence, with forty-eight (48) classifications in total, including but not limited to the crimes of (i) murder; (ii) attempted murder; (iii) grievous or light bodily injury; (iv) domestic violence; (v) rape; (vi) sexual assault; and (v) forced marriage. Nevertheless, it turns out that not all the features of the Database are consistently used and most cases remain unclassified and are registered by the Police only under the category of

[73] Communication with the Ministry of Justice.

domestic violence.^[74] Furthermore and according to the National Audit Office Report, not all the responsible authorities fill-in or update the data in the National Database.^[75] The institution which registers data in a more regular and concise manner is the Kosovo Police. According to the National Audit Office, the other responsible institutions do not fully register their data, with the courts providing the least amount of information in the database.

In this respect, it should also be noted that, as per the findings of the Kosovo Women's Network and the National Audit Office, the National Database: (i) is a database which is not public and only the authorised institutions have access to it; (ii) does not contain the full data because of the institution's reluctance and/or lack of commitment/training to register them, and subsequently, the statistical information derived through it is not entirely accurate and reliable; and (iii) only includes cases of violence within the family/partnership, excluding violence against women outside the family/partnership. Furthermore, the statistics contained in the National Database can only be obtained through a request for information. This is also one of the weaknesses which was identified by the GREVIO Assessment Report. In this regard, although the Kosovo Police is usually prompt in replying to requests for statistical information, they can only provide general statistics based on the data that is available to them.

In drafting this report, the Kosovo Police was asked to provide the available information, namely, to answer the question on *How many cases of domestic violence were recorded during the period 2018–2022 period in Kosovo*. The following information was provided by the Kosovo Police:

Domestic Violence in Kosovo	
2018	
Total number of domestic violence cases	1541
Number of female victims	1227
Number of male victims	340
2019	
Total number of domestic violence cases	1915
Number of female victims	1593
Number of male victims	385

[74] National Audit Office of the Republic of Kosovo, supra note 71, p. 41.

[75] Ibid., p. 39.

Domestic Violence in Kosovo	
2020	
Total number of domestic violence cases	2069
Number of female victims	1632
Number of male victims	469
2021	
Total number of domestic violence cases	2456
Number of female victims	1986
Number of male victims	500
2022	
Total number of domestic violence cases	2674
Number of female victims	2289
Number of male victims	519

In addition to the information provided upon request, the Kosovo Police provides the number of crimes that were reported every year in their Annual Work Report, which includes the number of murders and domestic violence that had occurred during the respective year. However, the data is not disaggregated by gender and does not contain any other information apart from the number of committed crimes.^[76] On the other hand, the Kosovo Agency of Statistics also publishes the “*Jurisprudence Statistics for Adult Persons*”, which includes, among other data, the number of persons that were sentenced on account of committing a crime during the respective year. However, only the information on the legal qualification of the crime, the gender of the perpetrator and the nationality of the perpetrator are provided.^[77] Therefore, despite the existence of at least three systems, namely, the National Database, the Annual Report of the Kosovo Police and the Annual Report of the Kosovo Agency of Statistics, in addition to various reports prepared by the civil society organisations, there is no single and/or comprehensive system from which exact and reliable statistical information on violence against women, domestic violence and/or femicide can be derived.

[76] Website of the Police of the Republic of Kosovo, available at: <https://www.kosovopolice.com/dokumente/dokumentet-strategjike/>.

[77] Website of the Agency of Statistics of the Republic of Kosovo, available at: <https://askapi.rks-gov.net/Custom/02d4d612-1d43-4755-90c9-0e1d6f44c977.pdf>.

Further and upon asking the more specific question to the Kosovo Police, namely, *How many women were murdered or attempted to be murdered during the 2018–2022 period in Kosovo*, the following information was provided by the Kosovo Police:

MURDER OF WOMEN IN KOSOVO		
No.	Victim's relationship with the defendant	The qualification of the criminal offence by the Prosecution Office or the Police
Year 2018		
1	The husband – his wife and daughter (wife)	Aggravated murder
2	The husband – his wife (wife)	Negligent homicide
3	The mother – her baby (daughter)	Aggravated murder
4	The husband – his wife (wife)	Aggravated murder
5	The husband – his wife (wife)	Aggravated murder
6	The husband – his wife (wife)	Aggravated murder
7	The husband – his wife (wife)	Attempted murder
Year 2019		
1	The husband – his wife (wife)	Murder (during celebrations he killed his wife)
2	The husband – his wife and his son's wife (wife & daughter-in-law)	Aggravated murder
3	The husband – his wife (wife)	Grievous bodily injury, the case then turned into aggravated murder.
4	The husband – his wife (wife)	Aggravated murder
Year 2020		
1	The son – his father and mother (father & mother)	Aggravated murder ^[78]
2	The daughter – her mother, father and brothers (mother, father & brothers)	Aggravated murder
3	The husband – his wife (wife)	Aggravated murder
4	The father – his daughter (daughter)	Homicide (Accidental murder)

[78] According to media reports, the son allegedly murdered his parents out of greed.

MURDER OF WOMEN IN KOSOVO

5	The boy – his uncle's wife (aunt)	Homicide (during celebrations accidentally killed the victim)
6	The husband – his wife and two sons (wife & sons)	Aggravated murder
7	The son – his mother (mother)	Aggravated murder
8	The husband – his wife (wife)	Murder in attempt
Year 2021		
1	The husband – his wife (wife)	Aggravated murder
2	The husband – his wife (wife)	Aggravated murder
3	Man – woman (cohabitating partners)	Aggravated murder
4	Sister – her sister (sister)	Aggravated murder
5	Man – woman (living together)	Attempted murder
Year 2022		
1	The husband – his wife (wife)	Aggravated murder
2	The husband – his wife (wife)	Aggravated murder
3	Man – woman (living together)	Aggravated murder
4	Sister-in-law – sister-in-law (sister-in-law)	Murder
5	Man – woman (living together)	Attempted murder

According to the table above, the only measurable indicators are (i) the relationship of the perpetrator with the victim; and (ii) the qualification of the criminal offence. The lack of specific character of data makes it difficult to derive the number of femicides and/or attempted femicides for the respective years, namely 2018–2022. Nevertheless, in an attempt to determine the number of femicides and/or attempted femicides, based on the data provided by the Kosovo Police, the following respective definitions were used: (i) femicide – *all forms of willful murder of women committed by men*; and (ii) attempted femicide – *all forms of attempted willful murder of women committed by men*.^[79]

[79] This broad definition of femicide and attempted femicide has been used to determine the number of suspected femicides and attempted femicides in Kosovo for the period 2018–2022 period, as provided in the tables below. If other definitions of femicide have been used, then the numbers provided herein would have been different. However, it should be noted that, due to the lack of available data in most cases – especially with respect to the “*motive*” of the perpetrators for murdering the women – it was impossible to deduce accurate statistics using the other recognised definitions.

In applying these definitions, the following cases from the table above were not counted/qualified as femicides, namely: (i) negligent murders; (ii) murders of women by women; and (iii) murders where, according to information obtained by the Kosovo Police, civil society reports and media outlets, the crime of the perpetrator did not appear to be gender-motivated.

Therefore, (i) in applying the definitions of femicide and/or attempted femicide as outlined above; and (ii) excluding the categories as per the explanations above, it can be carefully concluded that the approximate number of suspected femicides and attempted femicides in Kosovo for the 2018–2022 period is as follows:

Femicides in the Republic of Kosovo					
Year	2018	2019	2020	2021	2022
Number of suspected femicides	6	4	4	3	3
Total	20				

Attempted Femicides in Republic of Kosovo					
Year	2018	2019	2020	2021	2022
Number of suspected attempted femicides	1	0	1	1	1
Total	4				

In addition to the data above which reflects a period of five (5) years, according to the statistics provided by the Kosovo Women's Network and the Kosovo Police, fifty (50) women were murdered in Kosovo during the 2010–2022 period. Furthermore, and even though there are no official statistics on this issue, it appears that infanticide is also present in Kosovo, since according to a Report published by the United Nations Population Fund (UNFPA) in 2016, families favour the birth of boys and hence women tend to abort when the child is a girl, especially if it is the third child in the family.^[80]

Notwithstanding the above, a number of organisations in Kosovo have made an incredible impact in addressing the absence of inclusive and public statistics,

[80] Statement from the feminist activist Ms. Luljeta Demolli, "Demolli: Duke e mbajtur të fshehtë femicidin në Kosovë, s'mund ta luftojmë atë - Klan Kosova", available at: <https://klankosova.tv/demolli-duke-e-mbajtur-te-fshehte-femicidin-ne-kosove-smund-ta-luftojme-ate/>

such as the Kosovo Women's Network,^[81] the Kosovar Gender Studies Center and the Center for Information, Critique and Action – QIKA. These organisations have published numerous reports which have not only recorded gender-based violence, domestic violence and femicides, but they have also raised awareness and educated the public about these occurrences and the need to make changes. The NGO QIKA recently launched a digital platform which uses data from public institutions on cases of domestic violence and with a focus on violence against women.^[82] This platform provides detailed information on, among other data, cases of domestic violence disaggregated by gender, municipality, ethnicity, the manner in which cases were resolved, and the corresponding steps taken by the responsible institutions. Other organisations such as the Women's Network and the Kosovar Gender Studies Center also monitor cases of gender-based violence and domestic violence, and publish reports on these topics regularly.

2. Data on Processed Femicide and Attempted Femicide 2018–2022

As noted above, the National Database does not include all the necessary information needed in order to build exact and conclusive statistics on domestic violence and, particularly, femicide and/or attempted femicides cases in Kosovo. The lack of official statistics on gender-based violence, domestic violence and particularly, femicide, presents an obstacle in raising awareness and in the fight against this phenomenon in Kosovo. The statistical gap is also reflected by the recommendations in the GREVIO Assessment Report, according to which, among other things, the authorities in Kosovo should (i) expand the scope of the data collected by 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) ensure the scope of data collected by social services and shelters to ensure that it addresses all forms of violence by the Istanbul Convention, which are disaggregated by sex, age and victim – perpetrator relationship, as well as other relevant categories such as disability status.

[81] Website of the NGO Kosovo Women's Network, available at: [Ballina - Kosovo Women's Network \(womensnetwork.org\)](http://Ballina - Kosovo Women's Network (womensnetwork.org)); and website of the NGO Center for Information, Critique and Action – QIKA, available at: QIKA - 1≠1.

[82] Ibid.

Despite the challenges in collecting reliable data on domestic violence, but particularly on femicide and/or attempted femicide, the number of available final court judgments is also limited. In this respect, it should be initially noted that, according to the information provided by the media and civil society reports, in at least four (4) cases contained in the table above the perpetrators committed suicide, and hence criminal proceedings were not initiated towards the perpetrators. Secondly, it should also be noted that while twenty (20) femicides and four (4) attempted femicides have occurred in the Republic of Kosovo during the 2018–2022 period, only four (4) final court judgments concerning these crimes are currently available to be studied.

While the available final court judgments and/or case studies will be elaborated in details below, with the main purpose of identifying common features, trends and challenges, it can be noted in a preliminary manner that the essential common denominator deriving from the above-mentioned case studies shows, among others, that (i) all murders of women were committed by men within the family relationship; (ii) in the final judgments, three (3) out of four (4) cases were qualified as “*aggravated murder, deprivation of the life of a family member*” and one (1) case was qualified as “*aggravated murder, with intent to commit two or more murders*”; (iii) none of the murders were qualified as “*aggravated murder, motivated on the basis of gender*”, as foreseen by subparagraph 1.10 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code; (iv) on average, the perpetrators were sanctioned with twenty-six (26) years of imprisonment; and (v) no gender discriminatory language was expressed in the reasoning of the respective court judgments, the victims were neither blamed, nor was there any tone which would appear to justify the respective crimes.

» IV. CASE STUDIES

The following case studies reflect short descriptions of the facts and findings provided by the respective court judgments. Only the information deemed relevant for the purpose of this study has been summarised in the following sections of this part. In this respect, pertaining to each of the case studies, information deriving from the respective court judgments will be organised into the following categories, namely: (i) a brief description of the case; (ii) the perpetrator's personality and behaviour as it derives per the description of the final court judgments; (iii) data on the victim as it derives per the description of the final court judgments; (iv) the respective criminal proceedings; (v) the criminal sanction; and (v) a brief commentary about the respective case.

1. Femicide I: perpetrator P.N., victims V.N. and K.N.

1.1 Brief Description of the Case

On 7 August 2018, at around 9:20 p.m., the perpetrator P.N., fatally shot his wife V.N., and his minor daughter K.N., with an AK-47 rifle that he illegally possessed. The victim V.N. and her children had been staying in her brother's house, after V.N. had decided to leave P.N. due to his continuous violence, with one of the latest abuses being committed at a wedding and thus in the presence of many people. V.N. had reported P.N.'s latest assault to the Police, as a result of which he was held for a 1-month in detention on remand, and was subsequently released.

According to the information provided in the court judgments, on the day when the crime was committed, P.N. went to the house of his brother-in-law together with some men from his family and attempted to reconcile with V.N. and to *"take her to his house, to continue their life together"*. When V.N. refused and expressed a strong aversion to returning with him, stating, based on the data derived from the Court judgments, that *"even if she was dead she would not go back to him"*, P.N. got up and ordered the men to leave, threatening that *"you will hear the blast of this matter"*. Later during the day, P.N. sent threatening messages to V.N., of which she informed the Police within the same day, noting, among other things, the concern she had about him being a dangerous person and never staying without a gun. The Police told her that they would deal with it, however, they did not take any immediate action to protect her.

Furthermore, and according to the information provided in the respective court judgments, later during the day P.N. went to his house and took the AK-47 rifle. He subsequently went to the house of his brother-in-law around 9:20 p.m., opened the door and immediately shot burst-fire towards his wife and daughter, resulting in V.N. being shot in her face, neck and shoulders, while K.N. was hit in her head, behind the ear and her hand. The family of the victim V.N., namely, her mother, brothers, her other children as well as other family members, were present when the shooting occurred. V.N. died at the scene, whereas K.N., their daughter, died at the hospital.

1.2 Perpetrator's Personality and Behaviour

According to the data available in the court judgments, P.N. was a war veteran. He was described by family members, who referred to his problems after coming back from prisons in Serbia, stating that he often demonstrated aggressive behaviour, was impatient and sensitive to every reaction or situation. He was of middle economic class. P.N. had committed violence against V.N. several times. As noted above, one of the occurrences of abusing her was during a wedding, for which he served a 30-day detention on remand. He had promised to stop the abuse, however, the situation continued the same way.

During the first instance court proceedings, P.N. admitted to the crime entirely and said that he regretted committing the crime. However, after the Supreme Court remanded the case for a retrial in the first instance, he maintained that he had committed the criminal offence of murdering the victims without intent, and that his purpose was to kill his wife's brother, considering him as the main cause of this tragedy. On the other hand, his defence lawyer maintained that the case at hand concerns extreme negligence in the moment of firing the weapon and that the perpetrator P.N. did not intend to kill his family members but someone else. His defence lawyer also noted that the family members of P.N. referred to his imprisonment in Serbia and his problems after his release, also referring to a report issued by a hospital in 2016, from which it results that he was diagnosed with PTSD.

Subsequently, the Court issued an order to the Forensic Psychiatric Institute to make a psychiatric examination in relation to the perpetrator's mental health at the time of the commission of the criminal offence. After the examination, the experts, among other things, found that he had no temporary or permanent mental disorders; that he did not have a diminished capacity to control his actions at the time of committing the criminal offence; and that he was conscious and fit to stand trial.

1.3 Data on the Victim

According to the data available in the court judgments, the victim V.N. was in her mid-thirties when she was murdered. She was married young through matchmaking, and she had five (5) children with the perpetrator, four (4) daughters and one (1) son. She had been abused physically many times by her husband, an abuse that she kept secret from her family for many years. The victim K.N. was eight (8) years old when murdered.

1.4 The Criminal Proceedings

(i) the first trial

The perpetrator committed the murder on 7 August 2018. The Prosecution Office filed the Indictment [PP/I.nr.47/18] against P.N. on 26 September 2018, on account of (i) the criminal offence of aggravated murder pursuant to subparagraphs 1.1, 1.3 and 1.11 of paragraph 1 of article 179 (Aggravated murder) of the 2012 Criminal Code, namely, for "*depriving a child of his or her life*", "*depriving a family member of his or her life*" and "*intentionally committing two or more murders...*", respectively; and (ii) the criminal offence pursuant to paragraph 1 of article 374 of the 2012 Criminal Code, namely, the "*unauthorised ownership, control or possession of weapons*".

The Basic Court announced the Judgment [PKR.nr.48/18] on 2 November 2018 and made it public on 19 November 2018. According to the above-mentioned Judgment, P.N. was found guilty of (i) the criminal offence of aggravated murder pursuant to subparagraphs 1.1, 1.3 and 1.11 of paragraph 1 of article 179 (Aggravated murder) of the 2012 Criminal Code; and (ii) the criminal offence of unauthorised ownership, control or possession of weapons pursuant to paragraph 1 of article 374 (Unauthorised ownership, control or possession of weapons) of the 2012 Criminal Code. The Basic Court imposed the sentence of twenty-three (23) years of imprisonment for aggravated murder and two (2) years of imprisonment for unauthorised ownership, control or possession of weapons. Finally, the Basic Court sentenced the perpetrator P.N. to an aggregate sentence of twenty-four (24) years of imprisonment, also ordering P.N. (i) to pay the court procedural expenses, as well as (ii) to pay fifty (50) Euros for compensation of the victims of the crime, referring to article 39 (Financing of Crime Victim Compensation) of the 2015 Law on the Compensation of Victims of Crime, while at the same time advising the injured party, namely, the family of the victims, to pursue the claim for damages in a civil dispute.

In the course of rendering the Judgment, the Basic Court, among other things, assessed (i) the mitigating circumstances, namely, the fact that the perpetrator had *"admitted the guilt for the criminal offences as specified in the Indictment and this, according to the assessment of the Court, represents his sincere remorse and the beginning of the process of his rehabilitation, thus the Court was assessing these circumstances as especially mitigating as per article 73"*; and (ii) the aggravating circumstances, namely *"the high level of participation in the criminal offence and the level of intent"*.

The Judgment of the Basic Court was appealed by the Prosecution Office, the injured party and the perpetrator P.N.

The Appellate Court issued the Judgment [PAKR nr.629/2018] on 31 January 2019, by which it upheld the appeals of the Prosecution Office and the injured party, and altered the Judgment of the Basic Court with respect to the legal qualification and the respective sentence, thereby finding P.N. (i) guilty of an aggravated murder pursuant to subparagraph 1.11 of paragraph 1 of article 179 (Aggravated murder) of the 2012 Criminal Code, namely, for *"intentionally committing two or more murders..."*, for which it imposed the sentence of life imprisonment; and (ii) guilty of an unauthorised ownership, control or possession of weapons, for which it imposed the sentence of five (5) years of imprisonment; and (iii) thereby sentenced him to an aggregate sentence of life imprisonment.

In the respective Judgment, the Appellate Court, among other things, stated that *"despite the fact that the existence of the criminal offences is established, with uncontested evidence being present in the case files, even without the admission of guilt by the accused, the Appellate Court finds that the first instance court properly assessed the admission of guilt as a mitigating circumstance"*. However, according to the Appellate Court, the aggravating circumstances were not properly assessed by the Basic Court. The Appellate Court, among other things, found that (i) *"the sentence of twenty-four (24) years of imprisonment was not adequate to the gravity (weight) of the criminal offences and of the level of criminal accountability, and this was so because there are especially aggravating circumstances, very serious consequences have been caused by deprivation of life of his wife and daughter, and even more grievous consequences could have been caused"*; and (ii) *"as it transpires from the case files, in the case of deprivation of life of his wife and daughter, the defendant, because of bad marital relations, and considering [his] personal circumstances, has demonstrated strong persistence in depriving them of their lives..."*. In addition to the above, the Appellate Court also noted that (i) *"the accused, also before, in a permanent manner, has demonstrated bad behaviour"*.

towards his wife and family, by means of committing violence, and [the Court also] considered the manner of the commission of the offence, that it was committed in the presence of the children and the brothers of the deceased V. and other family members where the consequences could have been even more grievous, because of the manner of the commission of the criminal offence with burst-fire shooting with an automatic weapon, and that there has been great concern among the citizens as well.”; and (ii) “the imposed life imprisonment sentence corresponds to the gravity (weight) of the criminal offences because the accused has demonstrated a high degree of [participation] in the commission of the criminal offence; that always, for a long time he has committed violence towards his wife, and taking into consideration that we have grievous consequences, two victims, mother and daughter deprived of life by the husband and parent...”.

The Appellate Court Judgment was appealed to the Supreme Court by the perpetrator P.N. claiming, among other things, that the criminal procedure's provisions on the admission of guilt were breached.

The Supreme Court issued the Judgment [PA.-II.nr.2/2019] on 16 May 2019, thereby remanding the case for a retrial because, according to the Supreme Court, from the analysis of the admission of guilt it clearly transpired that the accused admitted the guilt only partially, with respect to the murder of his wife, however, he did not admit the guilt pertaining to the murder of his daughter. Hence, the Supreme Court found that the first instance court, namely, the Basic Court, should not have accepted the admission of guilt and the case should have been examined by further judicial instances.

(ii) the retrial

After the case was remanded for retrial, the Basic Court announced the Judgment [PKR.nr.43/19] on 14 September 2020, which was made public on 6 November 2020, thereby finding the perpetrator P.N. guilty of (i) the criminal offence of aggravated murder pursuant to subparagraphs 1.1, 1.3 and 1.11 of paragraph 1 of article 179 (Aggravated murder) of the 2012 Criminal Code; and (ii) the criminal offence of unauthorised ownership, control or possession of weapons pursuant to paragraph 1 of article 374 (Unauthorised ownership, control or possession of weapons) of the 2012 Criminal Code. For these crimes, it imposed an aggregate sentence of twenty-four (24) years and six (6) months of imprisonment.

In the course of rendering the above-mentioned Judgment, the Basic Court noted the following circumstances as mitigating: (i) *"the court took into consideration the economic and family state of the defendant, his age, the correct behaviour before the court, the remorse for the criminal offence he had committed"*; while, as aggravating circumstances, (ii) *"the court took into consideration that he was previously convicted for violence against the victim V.N., and the manner of the commission of the criminal offence"*.

Furthermore and according to the Judgment of the Basic Court: (i) the perpetrator P.N. declared himself not guilty of aggravated murder and guilty of illegally possessing a fire arm; while (ii) the injured party, i.e. the brothers of the victim V.N., among other things, stated during the hearings that *"with intent, in a well-planned manner and out of base motives, [P.N.] executed his wife V.N. and daughter K.N. who were shot multiple times and from the wounds V.N. died on the site, whereas K.N. died in the hospital of Gjakova, and, at the same time, the accused has put at risk all members of the M. family, by shooting with an automatic rifle in all directions inside the house"*, and that, according to the statement of the perpetrator P.N., he admits that *"even before the critical date, many times before and in continuance, he had committed violence against the deceased V.N., [due to which] the [accused] was tried and sentenced several times by this court, had promised several times that he would not commit violence in the future, a promise given to the brothers of the deceased – Sh. and K.M. and their uncle and other family members ... however this promised reconciliation by the defendant did not last, so to say [more than a number of] hours, and again the same situation continued..."*. In addition, according to two other witnesses (i) after P.N. was leaving with the men from the house of V.N.'s brothers, he said to her brother *"If you do not bring V. to my house, you owe me"*; and (ii) after P.N. had committed the murders, he went to a relative's house and told them *"I shot V."*, and when asked why, he said *"because I had no other way out"*. The forensic psychiatric report concerning P.N., that was made in 2018, stated that *"1. it is not established that the examined person had any mental illness or disorder of a temporary or permanent character, and no existence of any retardation in the mental development is established. 2. At the time of the commission of the criminal offence for which he is accused, his mental capacity [sanity] was preserved. 3. he can take part in the court hearing, he is fit to stand trial, and to understand and answer the posed questions"*. The same conclusion was drawn from the forensic report that was made in 2020, namely, that *"P.N. does not suffer from retardation or any temporary or permanent mental disorder. At the time of commission of the criminal offence for which he is accused, no psychopathological elements were found which could have affected the reduction of his ability to control his actions"*.

According to the Judgment, the Basic Court established, among others, the following facts: (i) the victim V.N. did not want to return to her husband's house because of the continuous violence, the latest being committed at a wedding and in front of others, which V.N. had reported to the police and the defendant was given a 30-day detention on remand, as well as an effective prison sentence of one (1) year and eight (8) months; (ii) during the critical day, P.N. sent three messages to V. *"Now a beautiful gift awaits you, your and [names'] heart will be hurt", "Now you will see soon how your gift and someone else's gift will come, that [names'] heart will be hurt", "I [would] love you if you go to the moon... it is not late, come back, please do not listen to your brothers, mother and sisters because you have a husband and children"*; (iii) from all the testimonies, it has been established beyond doubt that P.N. premeditatedly murdered his wife [with malice aforethought], and he killed his daughter intentionally, but without malice; and (iv) the victims were in the room and *"the accused P. saw them very well"*.

The Judgment of the Basic Court was appealed by the Prosecution Office, the injured party and the perpetrator P.N.

The Appellate Court issued the Judgment [PAKR.nr.457/20] on 29 January 2021, thereby upholding the appeals of the Prosecution Office and the injured parties, and dismissing the appeal of the perpetrator P.N. as unfounded. The Appellate Court altered the Judgment of the Basic Court only with respect to the legal qualification and the respective sentence, finding the perpetrator P.N. guilty of: (i) the criminal offence of aggravated murder pursuant to subparagraph 1.11 of paragraph 1 of article 173 (Aggravated murder) of the new, namely, the 2019 Criminal Code, for the aggravated murder that sanctions a person who *"with intent commits two or more murders"*; and (ii) the criminal offence of Unauthorised ownership, control or possession of weapons. The Appellate Court sentenced the perpetrator to an aggregate sentence of thirty (30) years of imprisonment.

With respect to the mitigating and aggravating circumstances that were listed by the Basic Court, the Appellate Court, among other things, noted that *"although [the Basic Court] ascertained the mitigating and the aggravating circumstances that it had found to exist on part of the accused, it did not assess them truly, then, there are other aggravating circumstances which it did not take into consideration, and especially the fact that the accused has acted violently against his wife, now the deceased V.N., that the crime was committed in the house of the family of the deceased V., who had gone there to seek protection from her family, that the criminal offence was committed in the presence of the mother of the deceased V., but also in the presence of the brothers and children of the now deceased V., and*

considering also the circumstances that the accused, besides depriving of life his wife, namely, the member of the family, he also deprived of life his child, namely, his minor daughter; that not a single action of the respective victims had contributed to the commission of the criminal offence, but also, that the accused demonstrated determination for committing the criminal offence...”.

1.5 The Criminal Sanction

By virtue of the final decision, namely, the Judgment of the Appellate Court [PAKR.nr.457/20] of 29 January 2021, the perpetrator P.N. was convicted to thirty (30) years of imprisonment.



Brief Commentary:

As noted above, the crime was committed in 2018, when the Criminal Code of 2012 was applicable. As noted in the respective section of this report, differently from the Criminal Code of 2019, which in its article 173 (Aggravated murder), foresees murder based on a motivation related to gender, this was not the case with the Criminal Code of 2012. Therefore, in essence, albeit with some modifications at the second instance level, the murder was qualified based on article 179 (Aggravated murder) of the 2012 Criminal Code, namely (i), due to *“depriving a child of his or her life”*, *“depriving a family member of his or her life”* and *“intentionally committing two or more murders...”*, based on the determination of the Basic Court; while (ii) only due to *“intentionally committing two or more murders...”* based on the determination of the Appellate Court. The latter Court did not provide sufficient reasoning as to why it opted only for one of the grounds of aggravated murder while eliminating the two formerly mentioned grounds, namely, *“depriving a child of his or her life”* and *“depriving a family member of his or her life”*.

Having said this, and given that the 2012 Criminal Code did not provide a basis to qualify the crime as an aggravated murder whose motivation is based on gender, this case in view of the motive of the murder and the circumstances of its commission illustrates a typical case which falls under the generally accepted definition of

femicide. The murder was preceded by years of violence by the perpetrator against his wife. This was known to their extended family, including the State authorities. In context of the latter, it is to be noted that (i) the perpetrator had already served a 30-day detention on remand for domestic violence; and (ii) the police was informed about the events, threats, including messages that were sent to the victim on the day she was murdered. Further, the events preceding the murder clearly show that the perpetrator had lost control over his wife, who refused to resume the marital community, resulting into a sense of rejection and humiliation, as well as a desire to punish her, as he clearly stated, including on the day she was murdered. This mental state and behaviour of the perpetrator is, among others, a result of the patriarchal system of values and stereotypical gender roles.

These circumstances could have been taken into account by the courts in making the assessment of the mitigating and aggravating circumstances and, consequently, in determining and weighing the sentence. In fact, while the Supreme Court primarily remanded the case to retrial due to the manner of the judicial interpretation of the admission of guilt during the first trial at the Basic Court level, the primary issue between the Basic Court and Appellate Court decisions was related to the determination and weighing of the sentence in the light of evaluation of the mitigating and aggravating circumstances. Both courts failed to make proper balance between these circumstances.

In this context, it should be initially noted that, according to article 73 (General rules on weighing the punishments) of the 2012 Criminal Code, the "*sentence should be proportionate to the gravity (weight) of the offence and with the behaviour and circumstances of the perpetrator*".^[83] In this respect, the Guidelines for the Sentencing Policy of the Supreme Court of the Republic of Kosovo, published on 15 February of 2018 (hereinafter: the Guidelines for Sentencing), recognise that one of the problems that is present

[83] Criminal Code of the Republic of Kosovo No. 04/L-082, supra note 39, article 73 (General rules on calculating [weighing the] punishments).

"concerns the failure of the courts to adequately describe the reasons for imposing a particular sentence", which, among others, is described as a systematic deficiency and that "[t]he problem is even more compounded when unreasonable mitigating circumstances are used to justify a sentence below the minimum sentence for that offence".^[84] In addition, the Guidelines for Sentencing provide, among others, that "finding of any aggravating or mitigating circumstance which is not supported by any facts in the case files is also a violation of the law... Consequently, the failure of the Court to present the factual basis for proving any particular circumstance can be seen as a judgment based on facts outside the case file or not based on facts at all. This results in decisions that seem arbitrary."^[85] While the Criminal Code provides the courts with a wide discretion to assess the respective mitigating and aggravating circumstances, given that the respective norms are not entirely precise but also of a guiding character, the Commentary of the Criminal Code explains that this does not mean that the courts are allowed to be arbitrary in weighing and/or determining the sentence, but that reasons for this should be provided, based on the substantive provisions of the applicable law.^[86]

In light of the above, it should be noted that at the retrial, the Basic Court found that the mitigating circumstances included (i) "the economic and family state of the accused"; (ii) "age"; (iii) "the correct behaviour before the court"; and (iv) "the remorse for the criminal offence he had committed". While partially altering the decision of the Basic Court, the Appellate Court, among other things, noted that "even though the first instance court had ascertained the mitigating and aggravating circumstances, it did not assess them truly, then there are also other aggravating

[84] Supreme Court of the Republic of Kosovo, *Kosovo Guidelines for Sentencing*, issued on 15 February 2018, p. 10, available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Sentencing%20Guidelines_February%202018.pdf.

[85] *Ibid.*, p. 11.

[86] Ismet Salihu, Hilmi Zhitija and Fejzullah Hasani, *Commentary of the Criminal Code of the Republic of Kosovo*, (Publishing 1), p. 255, available at: <http://jus.igjk.rks-gov.net/485/1/Komentari%20-%20Kodi%20Penal%20i%20Kosoves.pdf>.

circumstances which the first instance court did not take into consideration, and especially...", it did not elaborate further on the mitigating circumstances, focusing on the aggravating circumstances only. This language creates room for interpretation, because it is not clear whether the Appellate Court agreed/partially disagreed or disagreed entirely with the findings of the Basic Court pertaining to the mitigating circumstances. However, the four mitigating circumstances taken into consideration by the Basic Court and not further elaborated by the Appellate Court, deserve attention, for the following reasons:

- (i) the "*economic and family state of the accused*", namely the perpetrator, based on the Guidelines for Sentencing, should not have been considered as mitigating circumstances in this case. This is so because, according to the Guidelines for Sentencing, the courts usually take into consideration the "*family state*" of the accused and the influence that the imprisonment can have towards others, especially when there are small children involved and the accused is the only parent.^[87] However, according to the Guidelines, "*if any family member is a victim of the perpetrator's act, then there should be no mitigation for family circumstances which relate to the victim or which put other family members at risk.*"^[88] In assessing the "*family state*" and whether it should be qualified as a mitigating circumstance, according to the Guidelines for Sentencing, the questions that are relevant for the courts include "*How serious is the criminal offence and what are the injuries, if there are any?*" and "*Is any member of the family included as a victim?*"^[89] The answer to both of these questions in the circumstances of the case and in light of the explanations provided in the Guidelines for Sentencing, clarifies that the "*family state*" could not have been used as a mitigating factor. On the other hand and concerning the "*economic state*" of the perpetrator,

[87] *Kosovo Guidelines for Sentencing*, supra note 84, p. 113.

[88] *Ibid.*, p. 114.

[89] *Ibid.*, p. 115.

the Guidelines for Sentencing, among other things, provide that (a) in some instances, the stable or good work in the past may have a positive influence in an event of offences which are less grievous, because the future economic perspective of the defendant may be ruined, if he is sent to jail for a short period of time; however (b) courts may consider this as an unimportant circumstance, arguing that *“especially when there is a sufficient degree of guilt, the perpetrator was fully aware of the possible punishment that could result from committing the crime, including loss of his job, and he still decided to ignore the consequences.”*^[90]; and (c) *“with the increase of the seriousness of the offence, the courts should give less weight to this circumstance. This especially applies for violent crimes.”*^[91] Namely, the *“economic state”* of the perpetrator is usually taken into consideration when imposing fines, namely, according to article 73 (General rules on calculating [weighing the] punishments) of the 2012 Criminal Code, *“[w]hen imposing a fine, the court also takes into account the financial situation of the perpetrator and especially takes into account the amount of personal income, other income, property and his liabilities. The court does not impose a fine that is beyond the capabilities of the perpetrator.”*^[92] Therefore, on the basis of the above, due to the gravity of the criminal offence in this case and the severity of the consequences caused – where the perpetrator P.N. murdered his wife and minor daughter, endangered the lives of other family members in the house, as well as created a heavy trauma for many involved, especially the remaining children who have to live with this for the rest of their lives – the *“family and economic state”* of the perpetrator should not have been considered as a mitigating circumstances based on the Guidelines for Sentencing themselves;

[90] Ibid., p. 112.

[91] Ibid., p. 113.

[92] Criminal Code of the Republic of Kosovo no. 04/L-082, supra note 39, article 73 (General rules on calculating weighing the punishments).

- (ii) the “*age of the accused*” should not have been considered as a mitigating circumstance in this case either. This is so because, according to the Guidelines for Sentencing, (a) “*in order to properly assess the situation of the ‘young age’, elements such as the fragile, inexperienced, immature or naive personality must be taken into account; similarly, the circumstance of ‘old age’ must be assessed in relation to health, lack of strength, illness and so on.*”^[93]; and (b) when assessing whether age should be considered as a mitigating circumstance, it should be determined whether the “*perpetrator was under 18 years old or above 65 years old*”. Therefore, in order for the circumstance to be applicable, the perpetrator must have been unable to adequately understand the nature of his behaviour due to young age, or, because of the perpetrator’s bad health and old age there is little chance that he/she can go back to the society.^[94] The perpetrator was in his forties when he had committed the crime, and the circumstances clearly do not fall under any of the categories described by the Guidelines for Sentencing in terms of using the age of the accused as a mitigating circumstance;
- (iii) the same applies to the “*correct behaviour before the court*” and “*the remorse for the criminal offence he had committed*”, which should not have been assessed as mitigating circumstances in this case and/or their application should have been carefully reasoned. This is so because, according to the Guidelines for Sentencing, (a) “*attention is required in cases of domestic violence, keeping in mind the general dynamics of the violent relationship. As a rule, the behaviour of the perpetrator of these criminal offences should not have any weight for mitigating the sentence;*”^[95] (b) the effect of “*voluntary surrender is substantially diminished when the proceedings are of a family nature*”; and (c) “*in general, statements or apologies from the defendant should be viewed with skepticism since false remorse can be an integral part*

[93] Kosovo Guidelines for Sentencing, supra note 84, p. 118.

[94] Ibid., p. 118.

[95] Ibid., p. 151.

of the cycle of violence that is present in domestic violence relationships."^[96] The Basic and Appellate Court apparently failed to consider these Guidelines when referring to the two above-mentioned grounds as mitigating circumstances. The issue of remorse and its consideration as a mitigating factor deserves attention. While the Guidelines for Sentencing note that remorse can be a significant mitigating factor, it must be analysed in the light of the respective person's efforts to minimise the impact of his crime and the overall circumstances of the case. The first question that must be answered in determining the weight of remorse in terms of mitigating factors, according to the Guidelines for Sentencing, is whether the "*victim survived*". Once the answer to this question is negative, the other questions listed in the respective checklist are losing the necessary weight, requiring specific reasoning in order to be used in support of this particular mitigating factor;

- (iv) the lack of evaluation of the presence of the children in the crime scene as a specific aggravating factor deserves attention as well. The Guidelines for Sentencing specifically maintain that the court should strongly consider this aggravating factor in cases when (a) a child (or other) witnesses were physically present when the violence was taking place; (b) a child (or other) witnesses were not physically present, but able to hear the violence/abuse; and (c) a child (or other) witnesses were not physically present and could not have heard the violence/abuse, but could have seen the consequences thereof afterwards. Furthermore, the Guidelines for Sentencing specifically note that if there is a child present in the home during the criminal offence, the Court must once again look at the history of events involved and the impact thereof on the child, also noting that even if the crime of which the accused is charged does not include an offence for actions directly against the child, the presence of the child can be

[96] Ibid., p. 132.

considered an aggravating factor, as the child will be an additional victim. Once the presence is established, the Court will need to determine the extent of the injury and consider the degree of appropriate aggravation, similarly to considerations against the primary victim. It is to be noted that, in the circumstances of the case, the victim was killed in the house of her brother together with her eight (8)-year-old daughter, including in the presence of her other children and family members. While the Court judgments refer to the fact that other children and family member were present, this circumstance was not sufficiently considered and/or emphasised by any of the courts. Additionally, it must be noted that the Istanbul Convention requires the recognition that children are victims of domestic violence, including as witnesses of violence in the family. Furthermore, and as per its article 26 (Protection and support for child witnesses), parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of the Convention.

Another issue that deserves attention is the application of the 2015 Law on Crime Victim Compensation. This is so, among other things, because, the Court (i) ordered the defendant P.N. to pay the 50 Euro tax according to article 39 (Financing of Crime Victim Compensation) of the 2015 Law on Crime Victim Compensation; and (ii) stated that, "*based on Article 463, par.2 of CPCK, the injured party is instructed to pursue the claim for damages in a civil dispute*". Nevertheless, there was no information provided in the judgments pertaining to the Law on Crime Victim Compensation, namely article 9 (Immediate Access to Victim Compensation) and article 10 (Obligation to Request Restitution Initially from the Defendant), based on which the victims may request access to compensation, under the conditions and procedures as established by the above-mentioned law. It is also to be noted that the challenges in implementing the applicable laws on Crime Victim Compensation

have been addressed, among others, through various reports of the civil society, including but not limited to ones published by the Kosovo Law Institute, particularly on (i) the Failure of Courts to support the Fund for Compensations of Victims of Crime, published in 2020; (ii) the Challenges in implementing the Law on Compensation of Victims of Crime, published in 2021; and (iii) the Compensations of Victims of Domestic Violence, published in 2023.^[97] In this respect, it must also be further noted that civil lawsuits and remedies, and compensation issues are duties of the State under articles 29 (Civil lawsuits and remedies) and 30 (Compensation) of the Istanbul Convention.

Finally, the Constitution of Kosovo, namely its article 53 [Interpretation of Human Rights Provisions], obliges all public authorities in Kosovo to interpret human rights in compliance with the case-law of the ECtHR. The standards established through the latter, including the positive obligations of the State that derive from the right to life as established by article 25 (Right to Life) of the Constitution and article 2 (Right to life) of the European Convention on Human Rights (hereinafter: the ECHR), were also referred to, through the Constitutional Court Judgement in the case KI41/12, published on 26 February 2013, pertaining to the murder of D.K. The respective Court judgments in the case neither made any reference to the case-law of the ECtHR, nor did they refer to the case law of the Kosovo Constitutional Court in this respect.

[97] See (i) the Failure of Courts to support the Fund for Compensations of Victims of Crime, published in 2020; (ii) the Challenges in implementing the Law on Compensation of Victims of Crime, published in 2021; and (iii) the Compensations of Victims of Domestic Violence, published in 2023, by the Kosovo Law Institute and available at: (i) <https://kli-ks.org/deshtimi-i-gjykatave-ne-mbushjen-e-programit-per-kompensimin-e-viktimize-te-krimite/>; (ii) <https://kli-ks.org/sfidat-e-zbatimit-te-ligjit-per-kompensimin-e-viktimize-te-krimite/>; and (iii) <https://kli-ks.org/kompensimi-i-viktimize-te-dhunes-ne-familje/>.

Having said the above, two other features of the respective case, must be noted in a positive context. First, the case was resolved within a period of two and a half (2.5) years, also noting that the case was tried twice at the level of Basic Court, twice at the level of the Appellate Court and once by the Supreme Court, which remanded the case to retrial, primarily due to the process in which the admission of guilt was administrated. It must also be noted that the shortened deadlines for investigation and completion of the main trial, as provided by the 2023 Amendments of the Criminal Procedure Code, were not applicable during the proceedings of this case. Secondly, the reasoning of the courts, in all of the judgments, did not contain any degrading language towards the victims.

2. Femicide II: perpetrator B.V., victim A.V.

2.1 Brief Description of the Case

On 6 August 2019, at around 23:18, the perpetrator B.V., murdered his wife A.V. in the street, with a handgun of Pietro Beretta Gardone type which he illegally possessed. According to the information provided in the respective Court judgments, they had been fighting during the day and he had been physically violent against her. Due to this violence, she decided to leave. When B.V. woke up and saw that his wife was not in the house, he took the handgun and went out of the house looking for her. The victim A.V. was close to the house, waiting for a taxi that her daughter had called. When the perpetrator B.V. saw her, he approached her and shot fifteen (15) times, fourteen (14) of which hit her body in different parts, including her head, neck, chest and legs, resulting in her immediate death. One witness testified that the perpetrator after the shooting approached closer to the victim and called her “*mother’s whore*”. After the murder, the perpetrator B.V. covered the victim with a cloth and proceeded to call his wife’s sister telling her “*good evening N., this is B. on the phone... I killed your sister, I am sorry but I couldn’t any more, it was enough, I couldn’t anymore*”. He also called his brother and his son, telling them he had killed the victim A.V.

2.2 Perpetrator's Personality and Behaviour

According to the data available in the respective Court judgments, the perpetrator B.V. was a taxi driver of middle economic class, who was divorced from his first wife, with whom he had three (3) children. He did not have good relations with his children since the divorce, with the exception of the oldest son. According to the victim's daughters, the relationship between the couple was good until two weeks before the murder, when they "*noticed a change in the behaviour of the perpetrator towards the victim, he exercised a control over her and was aggressive*". According to the testimonies, on the day of the murder, the perpetrator B.V. had beaten the victim A.V. and threatened her with a weapon, due to which she had told her daughters and asked them to call her a taxi.

The perpetrator B.V. denied to have committed the murder with intent, stating among other things that, due to a very nervous state and affect, "*a darkness and black square*" fell in his eyesight, so he lost temper. However, during the judicial proceedings, mental health examination of B.V. was conducted, from which it transpired that he neither had any mental disorder or mental illness of psychotic quality, mental retardation, organic mental disorders or abuse of narcotic substances, nor did a disorder of a short-lasting nature or a state of deep mental shock was found to exist, and it was concluded that, even in a state of affect, his mental capacity to control his own actions and understand the meaning thereof was preserved.

2.3 Data on the Victim

According to the data available in the Court judgments, the victim A.V. was a widow, whose first husband had died in an accident, and she was raising her two daughters alone. After some years, she met the perpetrator B.V., they got married and moved to Switzerland. She did not have a job, and according to the testimonies, she was unhappy with the life in Switzerland and had expressed her desire to go back to Kosovo.

2.4 The Criminal Proceedings

The perpetrator B.V. committed the murder on 6 August 2019. The Prosecution Office filed the Indictment [PP/I.nr.134/19] on 28 February 2020 against the perpetrator B.V., on account of (i) committing the criminal offence of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, "*depriving a family member of his or*

her life"; and on account of (ii) committing the criminal offence of unauthorised ownership, control or possession of weapons pursuant to article 366 of the 2019 Criminal Code.

The Basic Court issued a Judgment [P.nr.13/20] on 1 October 2021, thereby finding the perpetrator B.V. guilty of (i) the criminal offence of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, "*depriving a family member of his or her life*"; and (ii) the criminal offence of unauthorised ownership, control or possession of weapons pursuant to article 366 of the 2019 Criminal Code. He was sentenced to life imprisonment.

Based on the information deriving from the Basic Court Judgment, according to the testimonies of the daughters of the victim, on the critical night the mother had called one of the daughters, asking for help and stating that "*I will not stay here anymore, my neck hurts and blood is coming out of my ear and a taxi should come to pick me up*". Also, according to the testimonies, she had told the other daughter that "*yes, he beat me like that, blood is coming out of my ear, he grabbed me by the throat and threatened me with a gun*". In addition, during the proceedings, the lawyer of the daughters stated that, among others, "*the pain caused to the injured parties is a very important fact that must be taken into consideration concerning the two daughters of the deceased A.V. who, while wishing their mother's happiness, have agreed to live separately from her since the age of 15. Now they have no parent to offer them parental support and family warmth and they are left without any parent. Also, pain was caused to the sister of the deceased victim after the murder in a cruel manner by the perpetrator who cold-bloodedly called her and said "I killed her, she died"*".

The defence lawyer of the perpetrator B.V. stated, among other things, that (i) "*the will is missing, but the event happened for other reasons, and was motivated by verbal conflicts between [the defendant and the victim], who did not see the legal and fatal consequences coming, which resulted into the accused person's arrival into a state of extreme nervousness and affect. A darkness and black square appeared in the eyesight of B.V. who lost his temper, so he considers that the element of will was missing in his actions, because he always expressed his great love for the deceased [A.V.], but he could not accept her unreasonable behaviour, even though he regrets his mistakes*"; (ii) the victim A.V. "*never worked in Switzerland, she acquired funds for living from the income of the accused B.*"; and (iii) "*on the critical night, by means of unreasonable behaviour and provocations by A. with the phone in his [the accused's] face and her refusal to let him take her to Pristina with his car, and her use*

of quarrelsome words, [the victim] created unmeasurable feelings of nervousness and anxiety in the mind of the accused B., which have influenced him to undertake the dangerous act that ended in the deprivation of his wife's life".

The Basic Court sentenced the perpetrator to life imprisonment and, in elaborating the aggravating circumstances, among other things, it paid attention to: (i) *"the social risk, observed through the prism of the circumstance which is an element of the criminal offence, which is expressed to a greater extent than it is necessary for the existence of the criminal offence and for its more aggravated qualification, namely, he had shot the victims 15 times until spending the last bullet in the handgun;"* (ii) *"the degree of criminal responsibility of the perpetrator... taking into account the premeditated deliberation about the commission of the act arising from the will, in the specific case after the expression of dissatisfaction of marital life, after a dispute on the critical day and after she had left the house, the accused noticed her absence from the house, and, having two revolvers at home, one for which he possessed a permit by the competent body, and another one for which he did not possess such a permit, he took the revolver for which he did not possess a permit, and, being determined to carry out his actions, he pursued the victim and after finding and insulting her by uttering the words "mother's whore", he carried out the intent";* (iii) *"the degree of criminal responsibility of the perpetrator, which can be seen from the view point of the extent of putting the protected value at risk";* (iv) *"the consequences of committing the criminal offence; the circumstances under which the crime was committed, which is assessed by the way the criminal offence was committed, taking into account the time of the night when the victim was defenseless and did not expect that something like this could happen to her";* (v) *"the insidious way of committing the crime, when he first shot the victim in the back and after the victim fell down, he continued even further with 14 more shots to the head and to the upper part of the body";* (vi) *"the behaviour of the perpetrator after committing the criminal offence, expressed by his cold-blooded action of taking a scarf out of her bag and covering her, and then without wasting time he called the victim's brother, son and sister just to inform them that he has killed his wife";* (vii) *"his behaviour throughout the proceedings, without showing pity for the victim, on the contrary, he expressed pity for himself, explaining that at some point something inexplicable happened to him when he lost his temper, following which he started to shoot, so he was pleading before the Court to have a milder punishment imposed on him, also relying on his illness, age and the fact that his nephews and nieces of relatively young age are waiting for him, whom he did not want to leave alone";* (viii) *"his incorrect attitude towards the victim's daughters, who after the accidental death of their father are now without their mother who got axed from their lives by his insidious action, and yet he comforted them by stating that they are not left without*

a parent, thus offering the love that he had, has and will have for them”; (ix) “finally, the intensity of the emotional pain of the victim’s daughters, who, after the mother had cried for help, tried in every way to save her ... but, instead saving her, they have learnt of the news of the loss of the most beloved person, their only parent, who got killed by the person whom they trusted and considered as a parent.” The Basic Court did not find any mitigating circumstances.

The decision of the Basic Court was appealed by the perpetrator B.V.

The Appellate Court issued a Judgment [PAKR.nr.16/22] on 25 February, 2022, thereby partially altering the Judgment of the Basic Court, and sentencing the perpetrator to an aggregate sentence of twenty-five (25) years of imprisonment for both criminal offences. The Appellate Court, in the course of elaborating on the balance between the mitigating and aggravating circumstances, among other things, found that (i) in this case “there are also mitigating circumstances which the first instance court did not take into consideration”; (ii) “some of the aggravating circumstances, despite of the first instance court’s failure to consider them as aggravating circumstances, are related to the constituent elements of the criminal offence for which the accused was found guilty, while some of the other aggravating circumstances that were found by the first instance court are, in fact, mitigating and not aggravating circumstances, especially, the behaviour of the accused after the commission of the criminal offence, when the same person took a scarf from the victim and covered the corpse, this is a circumstance which cannot be considered as an aggravating one, then, the insidious - deceitful way of committing the criminal offence was also wrongly taken as an aggravating circumstance, because, based on the proven way of committing the criminal offence of murder, it does not transpire that the murder was committed in a deceitful - insidious manner, as the court of first instance found. The fact that the accused after committing the criminal offence had awaited the arrival of the police and in the meantime had informed his family members cannot be considered as an aggravating circumstance. The accused defended by stating that, at the critical moment, a darkness and black square appeared in his eyesight, owing to which he no longer knew how did he act, therefore he wishes to eliminate the intent as an element of the criminal offence of murder, so the Court does not dare to consider it an aggravating circumstance”; and (iii) “there are also mitigating circumstances which were not taken into account by the court of first instance, as he is the father of 3 children, relatively old, he expressed remorse, he apologised to the two daughters of the now deceased victim, but, at the same time, he also made public apology, that is, at a public session of the collegium of this Court, he was not convicted before, his behaviour after committing the crime, especially the moment when he took a scarf from the now deceased person’s bag and covered

her corpse, and while waiting for the arrival of the police at the scene of the incident in the meantime he informed the family members about the case in question". On this basis, the Appellate Court found that the sentence of life imprisonment was not appropriate, thus it sentenced the perpetrator to twenty-five (25) years of imprisonment.

The Prosecution Office filed a request for protection of legality (legality review) against the Judgment of the Appellate Court, which was dismissed as unfounded by the Supreme Court by virtue of a Judgment [PML.nr.268/2022] dated 7 July 2022.

2.5 The Criminal Sanction

By virtue of a Judgment [PAKR.nr.16/22] of 25 February 2022, the Appellate Court sentenced the perpetrator to twenty-five (25) years of imprisonment.



Brief Commentary:

As noted above, the crime was committed in 2019, when the Criminal Code of 2019 was applicable. As noted in the respective section of this report, differently from the Criminal Code of 2012, which in its article 179 (Aggravated murder) did not foresee motivation resulting into murder based on gender to constitute an aggravated murder, the Criminal Code of 2019, in its article 173 (Aggravated murder), foresees murder based on a motivation related to gender. The criminal offence, in the circumstances of this case, was qualified as an "*aggravated murder, murder of a family member*", as provided by subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code.

Having said this, in view of the motive of the murder and the circumstances of its commission, this case illustrates a typical case which falls under the generally accepted definition of femicide. The murder was preceded by domestic violence; the events preceding the murder clearly show that the perpetrator had lost control over his wife, which, among other things, caused him a sense of rejection and humiliation, a state of behaviour which, among other things, is also the result of a patriarchal system of

values and stereotypical gender roles. These circumstances could have been taken into account by the respective courts in qualifying the criminal offence in the light of the changes introduced into the 2019 Criminal Code. The courts failed to take into account the novelty introduced in subparagraph 1.10 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, deprivation of another person of his/her life because of a motivation based on gender. Furthermore, the primary issue of disagreement between the Basic and Appellate Court decisions was related to the determination and weighing of the sentence in the light of evaluating the respective mitigating and aggravating circumstances. While the Basic Court sentenced the perpetrator to life imprisonment after failing to identify any mitigating circumstances, the Appellate Court reduced the sentence to twenty-five (25) years of imprisonment, noting a number of mitigating circumstances which deserve attention.

Although the Appellate Court noted that some of the aggravating circumstances found by the Basic Court *“are related to the constituent elements of the criminal offence for which the accused was found guilty”*, it did not clarify to which circumstances it referred to. Furthermore, it found that, *“concerning the way of defending, the accused with regard to the commission of the criminal offence declared that at the critical moment a darkness and black square appeared in his eyesight and he no longer knew how did he act, therefore he wishes to eliminate the intent as an element of the criminal offence of murder, so the Court does not dare to consider it an aggravating circumstance”*. Despite this statement in the Appellate Court Judgment, it should be noted that, according to (i) the Commentary on the Criminal Code, among other things, *“the objective element is expressed through the infliction of great suffering and pain to the victim, while the subjective element is expressed through the awareness and desire, respectively, the pleasure of the perpetrator to cause such a pain and suffering.”*; and (ii) the Guidelines on Sentencing advise that *“the especially cruel manner will exist when the offence involves unreasonable infliction of pain and cruelty significantly beyond that which is usually applied*

in the course of commission of such an offence." Despite the above, the Appellate Court found that *"it does not transpire that the murder was committed in a deceitful – insidious manner, as the court of first instance found"*. It did not further elaborate the reason why it established that the murder was not committed in an insidious manner.

Furthermore, in terms of the mitigating circumstances, the Appellate Court, among other things, noted (i) the *"economic and family state of the accused"*; (ii) the *"age of the accused"*; and (iii) the *"correct behaviour before the Court"* and *"the remorse for the criminal offence he had committed"*. The reasoning of the Appellate Court Judgment does not justify the use of the above mentioned circumstances as mitigating, primarily because, based on the Guidelines for Sentencing:

- (i) in assessing the *"family state"* and whether it should be qualified as a mitigating circumstance, the questions that are relevant for the courts, include *"How serious is the criminal offence and what are the injuries, if there is any?"* and *"Is any member of the family included as a victim?"*^[98]. The answer to both of these questions in the circumstances of the case and in the light of the explanations provided in the Guidelines for Sentencing is that a *"family state"* could not have been used as a mitigating factor, particularly due to the gravity of the criminal offence in this case and the severity of the consequences caused – where the perpetrator murdered his wife, as well as created a heavy trauma for many persons involved, especially the children who have to live with this for the rest of their lives;
- (ii) the *"age of the accused"* should not have been considered as a mitigating circumstance in this case either. This is so because, according to the Guidelines for Sentencing and as noted above, (a) *"in order to properly assess the situation of the 'young age', elements such as the fragile, inexperienced,*

[98] *Kosovo Guidelines for Sentencing*, supra note 84, p. 115.

immature or naive personality must be taken into account; similarly, the circumstance of 'old age' must be assessed in relation to health, lack of strength, illness and so on."^[99]; and (b) when assessing whether the age should be considered a mitigating circumstance, it should be determined whether the *"perpetrator was under 18 years old or above 65 years old"*. Therefore, in order for the circumstance to be applicable, the perpetrator must have been unable to adequately understand the nature of his behaviour due to the young age, or, because due to the perpetrator's bad health and old age there is little chance that he/she can go back to the society.^[100] The perpetrator, according to the information available in the respective Courts judgments, did not fall within the above-mentioned age ambit when he had committed the crime, while other circumstances clearly do not fall under any of the categories described by the Guidelines for Sentencing in terms of using the age of the accused as a mitigating circumstance;

- (iii) the same applies to the *"correct behaviour before the court"* and *"the remorse for the criminal offence he had committed"*, which should not have been evaluated as mitigating circumstances, according to the Guidelines for Sentencing, because (a) *"attention is required in cases of domestic violence, keeping in mind the general dynamics of the violent relationship. As a rule, the behaviour of the perpetrator of these criminal offences should not have any weight for mitigating the sentence;"*^[101] (b) the effect of *"voluntary surrender is substantially diminished when the proceedings are of a family nature"*; and (c) *"in general, statements or apologies from the defendant should be viewed with skepticism since false remorse can be an integral part of the cycle of violence that is present in domestic violence relationships."*^[102] These

[99] Ibid., p. 118.

[100] Ibid., p. 118.

[101] Ibid., p. 151.

[102] Ibid., p. 132.

Guidelines were not considered by the Appellate Court when using the two above-mentioned grounds as mitigating circumstances. The justification of the Appellate Court that, among other things, the perpetrator (i) apologised to the victim's daughters; (ii) covered the corpse of the victim with the scarf after the murder; and (iii) called the family members to inform them about the murder, do not meet the criteria established by the Guidelines for Sentencing. The issue of remorse and its consideration as a mitigating factor, as in the previous case, deserves attention. While the Guidelines for Sentencing note that it can be a significant mitigating factor, the same circumstance must be analysed in light of the respective person's efforts to minimise the impact and the overall circumstances of the case. The first question that must be answered in determining the weight of remorse in terms of whether it is a mitigating factor, according to the Guidelines for Sentencing, is whether the "*victim survived*". Once the answer to this question is negative, the other questions listed in the respective checklist are losing the necessary weight, and specific reasoning is required order to use the remorse as a mitigating factor .

Finally, the lack of reference to the 2015 Law on Crime Victim Compensation and the lack of reference to the positive obligations of the State to protect the right to life based on the Constitution and the ECHR, as elaborated by the case-law of the ECtHR and that of the Constitutional Court, remain valid as in the previous case study that is elaborated above. Having said the above, two other features of the respective case must be noted. First, the case was resolved within a period of two and a half (2.5) years. It must also be noted that the shortened deadlines for investigation and completion of the main trial, as provided by the 2023 amendments of the Criminal Procedure Code, were not applicable during the proceedings of this case. Secondly, the reasoning of the courts in all of the judgments did not contain any degrading language towards the victim.

3. Femicide III: perpetrator S.Q., victim L.Q.

3.1 Brief Description of the Case

On 1 July 2021, at around hour 5:00, the perpetrator S.Q. caused light bodily injury to his wife L.Q. in a manner that, after continuous misunderstandings between them, the perpetrator took a sheet and squeezed the neck of his wife with it, as a result of which, light bodily injuries to the victim were caused. On 1 January 2022, the perpetrator S.Q. committed the crime of domestic violence pursuant to paragraph 1 of article 248 (Domestic Violence) of the 2019 Criminal Code. According to the data contained in the respective Court judgments, he insulted her, saying "*get out of the house, because you are cheating on me*" in front of their son, who had reported it to the police. On 5 January 2022, at around 1:30, the perpetrator S.Q. murdered the victim L.Q. in their house. The perpetrator had asked his minor daughter to bring him a glass of water, and after she went to get it, he shot six (6) times and killed his wife L.Q. with a gun of Zoraki model, shooting her in the neck, under armpit, in the left and right side of the chest, the thigh and hand.

3.2 Perpetrator's Personality and Behaviour

During the first instance court proceedings, according to the Basic Court Judgment, the perpetrator, among other things, declared that he "*had committed all the criminal offences of which he was charged by the Indictment*" and he subsequently "*apologised to both families, especially to his children and expressed a hope that such a case would not be repeated ever again*". According to the legal representative of the victim, "*the accused had beaten and mistreated the victim before and, as a result of this, their joint children suffered consequences*". The court also found that the perpetrator "*had been sane at the time of committing the criminal offence, namely, that he was capable of understanding the significance of his act and to manage his actions, because in the course of the criminal proceedings so far not a single circumstance has been highlighted that would cast doubt in the mental capability of the accused*". The abovementioned conclusion was based on the Report of the Institute of Forensic Psychiatry, which, pertaining to the mental health of the perpetrator stated, among other things, that "*the [he] does not suffer of a psychotic disorder; that it is not determined that the accused had mental retardation; that, at the time of the commission of the criminal offence, the ability of the accused to understand and control his own actions was preserved; that he is able to consult with other persons and that he is fit to stand trial, because no elements of a psychological nature were found that would affect the validity of his statements*".

3.3 Data on the Victim

There is no data on the victim in the Court Judgments.

3.4 Criminal Proceedings

The Prosecution filed the Indictment [KT.I.No.2/22] on 12 May 2022, against the defendant S.Q. for the criminal offences of (i) light bodily injury pursuant to paragraph 3 in connection with paragraph 2 and 1 point 1.4 of article 185 (Light bodily injury) of the 2019 Criminal Code; (ii) domestic violence pursuant to paragraph 1 of article 248 (Domestic Violence) of 2019 Criminal Code; (iii) aggravated murder pursuant to subparagraph 1.3. of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code; and (iv) unauthorised ownership, control or possession of weapons pursuant to article 366 of the 2019 Criminal Code.

By virtue of the Judgment of the Basic Court [K.nr. 127/22] that was issued on 12 September 2022, the perpetrator was found guilty of (i) the criminal offence of light bodily injury pursuant to paragraph 3 in connection with paragraph 2 and paragraph 1 point 1.4 of article 185 (Light bodily injury) of the 2019 the Criminal Code, because of the physical violence committed on 1 July 2021; (ii) the criminal offence of domestic violence pursuant to paragraph 1 of article 248 (Domestic Violence) of the 2019 Criminal Code, for the psychological violence committed on 1 January 2022; (iii) the criminal offence of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, for murdering of his wife on 5 January 2022; and (iv) the criminal offence of unauthorised ownership, control or possession of weapons pursuant to article 366 of the 2019 Criminal Code. The Basic Court imposed on the perpetrator an aggregate sentence of twenty-four (24) years of imprisonment.

According to the Judgment of the Basic Court, in respect of balancing the mitigating and aggravating circumstances in determining and weighing the respective sentence in terms of evaluation of the aggravating circumstances, the Court noted: (i) that it *"considered the previous behaviour of the accused towards the victim, who was his wife, where the victim was mistreated physically and psychologically for a long time"*; (ii) *"that the criminal offence "Aggravated murder" pursuant to article 173 paragraph 1 subparagraph 1.3 of the Criminal Code, besides being committed towards a family member, which is a constitutive element of the aforementioned criminal offence, was also committed in an insidious manner, because the victim was shot 6 (six) times with gunshots in front of their minor daughter"*; as

well as (iii) “*the fact that the accused committed all of the criminal offences with premeditation [malice aforethought], as the highest level of psychological relation of the perpetrator of the criminal offence to his offence*”. In terms of the mitigating circumstances, the Court noted: (i) “*the general cooperation of the accused with the court and criminal prosecution bodies, where the aforementioned person, immediately after he had committed the criminal offence ... had surrendered to the police*”; (ii) “*the sincere remorse that the accused had shown during the judicial review*”; (iii) “*the fact that the accused has not been sentenced before until now*”; and (iv) “*that he had admitted the commission of the criminal offences of which he was charged by the Indictment*”.

Although the Prosecution Office and the perpetrator's defence appealed the Judgment, the Appellate Court, by virtue of its Judgment [PAKR.nr.595/22], dismissed the appeals and upheld the Judgment of the Basic Court.

3.5 The Criminal Sanction

In the Judgment of the Basic Court [K.nr. 127/22] of 12 September 2022, the perpetrator was imposed to an aggregate sentence of twenty-four (24) years of imprisonment.



Brief Commentary:

As noted above, the crime was committed in 2022, when the Criminal Code of 2019 was applicable. As noted in the respective section of this report, differently from the Criminal Code of 2012, the Criminal Code of 2019, in its article 173 (Aggravated murder), foresees murder based on a motivation related to gender. The respective criminal offence, in the circumstances of this case, was qualified as an “*aggravated murder, murder of a family member*”, pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code.

Having said this, in view of the motive of the murder and the circumstances of its commission, this is a typical case which falls under the generally accepted definition of femicide. The murder was preceded by domestic violence, at least in two events that are

known and reported, namely (i) on 1 July 2021; and (ii) 1 January 2022, during which the perpetrator accused his wife of "*cheating him*", reflecting among others, a behaviour that is a result of a patriarchal system of values and stereotypical gender roles. Four days later, she was killed in her home. These circumstances could have been taken into account by the respective courts in qualifying the criminal offence in the light of the changes introduced into the 2019 Criminal Code. The courts failed to take into account the novelty introduced in subparagraph 1.10 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, deprivation of another person of his/her life because of a motivation based on gender.

Furthermore, in balancing the mitigating and aggravating circumstances for the purpose of determining and weighing the sentence, there are two features that are worth noting, namely, (i) the contradicting mitigating and aggravating circumstances in terms of previous behaviour and convictions of the perpetrator; and (ii) the lack of evaluation of the presence of the children as an aggravating factor. Pertaining to the first feature, it should be noted that the courts found, as an aggravating circumstance, "*the previous behaviour of the accused towards the victim, who was his wife, where the victim was mistreated physically and psychologically for a long time*", while at the same time they also found, as a mitigating circumstance, "*the fact that the accused has not been sentenced before until now*". First, the Guidelines for Sentencing specifically provide that the previous criminal record, unless recidivism is at stake, is a minor consideration in determining the sentence. Secondly, in terms of prior criminal convictions, the Guidelines for Sentencing note, among other things, that the significance of the previous conduct of the accused is a complex factor that has enormous implications on social influences, wealth etc. If the court assesses that a lack of prior criminal convictions as a mitigation factor may be warranted, this will require finding of facts capable of supporting a conclusion of adherent behaviour and pre-disposition to rehabilitation. This was not the case in the reasoning of the Court judgments. On the other hand, and pertaining to the second feature, the Guidelines for Sentencing

specifically maintain that the court should strongly consider the perpetrator's behaviour as an aggravating factor in cases when, among other things, child witnesses were physically present when the violence was taking place. Further, the Guidelines for Sentencing specifically note that if a child was present in the home during the offence, the Court must once again look at the history of events and the crime's impact on the child, also noting that even if the crime of which the accused was charged does not include an offence for actions directly against the child, the presence of the child can be considered an aggravating factor, as the child will be an additional victim. Once presence is established, the Court will need to determine the extent of harm and to consider the degree of appropriate aggravation, similarly to considerations against the primary victim. It is to be noted that, in the circumstances of the case, the victim was killed in the house, in the presence of the minor daughter, who was asked to bring a glass of water, just before her father shot her mother six (6) times. This circumstance was not specifically and sufficiently considered by any of the courts.

In addition, as in the other case studies, the issue of remorse and its consideration as a mitigating factor deserves attention. While the Guidelines for Sentencing note that it can be a significant mitigating factor, the same circumstance must be analysed in the light of the respective person's efforts to minimise the impact and the overall circumstances of the case. The first question that must be answered in determining the weight of remorse in terms of it being a mitigating factor, according to the Guidelines for Sentencing, is whether the "*victim survived*". Once the answer to this question is negative, the other questions listed in the respective checklist are losing the necessary weight, and specific reasoning is required in order to use the remorse as a mitigating factor. Furthermore, according to the Guidelines for Sentencing, the statements or apologies from the defendant should be viewed with skepticism, as a false remorse can be an integral part of the cycle of violence that is present in domestic violence relationships.

Finally, the lack of reference to the 2015 Law on Crime Victim Compensation and the lack of reference to the positive obligations of the State to protect the right to life based on the Constitution and the ECHR, as elaborated by the case-law of the ECtHR and the Constitutional Court, remain valid as in the previous two case studies above. Having said the above, two other features of the respective case must be noted. First, the case was resolved within a period of seven (7) months. It must also be noted that the shortened deadlines for investigation and completion of the main trial, as provided by the 2023 Amendments of the Criminal Procedure Code, were not applicable during the proceedings of this case, which was nevertheless handled within the limits established by the said legal act. Secondly, the reasoning of the courts, in all of the judgments, did not contain any degrading language towards the victims.

4. Femicide IV: perpetrator N.M., victim S.M.

4.1 Brief Description of the Case

On 25 July 2020, at around 12:00, the perpetrator N.M. murdered his wife S.M. in their house. According to the details provided in the Court judgments, the perpetrator and the victim first argued verbally, and then, by using a metallic rod with a height of 73 cm and a width 2.2 cm, the perpetrator hit his wife at her hand and her head, as a result of which she fell onto the ground. The perpetrator N.M. subsequently proceeded to hit his wife several times in the head, and in other parts of the body, which caused severe injuries and massive bleeding of the victim, who then died as a result of her wounds. The minor children of the perpetrator and the victim were present in the house when the murder occurred. According to the details provided by the Judgment of the Basic Court, the perpetrator appears to have been (i) found guilty and imprisoned to forty (40) days for the criminal offence of "*causing of general danger...*", by virtue of a Judgment of 31 October 2014; and (ii) found guilty of the criminal offence of a light bodily injury against the victim, namely, his wife, by virtue of a Judgment of 3 January 2019.

4.2 Perpetrator's Personality and Behaviour

According to the information available in the Court judgments, the perpetrator was in his early forties when he had committed the murder; he was of low

economic class and had attended primary school only up to the fourth grade. He had been violent towards his wife before, and one of such cases was reported to the Police. One of the witnesses also testified that he was violent towards his children many times. Although he maintained that he did not commit the murder with intent, according to the psychiatric examination "*no disorder or mental illness of psychotic quality, mental retardation or mental disorder due to the abuse of psychoactive substances has been found, there is no history of psychiatric treatment, so, at the time of committing the offence for which he is accused, there is no data that he has been hindered by psychological elements which damage the mental capacity to understand the importance of the act, as well as the ability to control his actions.*" During the hearings, he declared that the victim had hit him before the murder, however the Court found this allegation unsubstantiated by evidence.

4.3 Data on the Victim

The victim and the perpetrator had been married for five (5) years and had three (3) children together, a four (4) years old, a two (2) years old and a six (6) months old. They were married through a matchmaker.

4.4 The Criminal Proceedings

The indictment [PP.I.nr.91/2020] was filed on 24 September 2020 against the perpetrator for the criminal offence of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code.

(i) the first trial

In the Judgment of the Basic Court [PKR.nr.105/2020], issued on 4 December 2020, the Court found the defendant N.M. guilty of the criminal offence of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, and sentenced him to life imprisonment. This decision was appealed by the defendant and subsequently was annulled by the Decision [PAKR.nr.42/2021] of the Appellate Court of 24 February 2021. According to the Appellate Court, the Judgment of the Basic Court was contrary to the substantive provisions because the defendant's statement should not have been considered as an admission of guilt, since the defendant stated that he had committed the offence in a state of mental shock. The Appellate Court further noted that, considering the above, the Basic Court should

have requested an opinion of a psychiatric expert to evaluate the defendant's mental state at the time of the commission of the crime.

(ii) the retrial

Bu virtue of the Basic Court Judgment [PKR.nr.74/2021], which was announced on 5 October 2021 and made public on 1 November 2021, the perpetrator was found guilty of aggravated murder pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, for "*depriving a family member of his or her life*". According to the Judgment, the mitigating circumstances were (i) "*his correct behaviour in the court, the apology, that he had notified the police*"; whereas aggravating circumstances were (ii) "*the high degree of intent on part of the accused since he, based on the evidence adduced before in the courts, appears to had undertaken his actions intentionally as explained above, also he has not attempted at all to offer aid after committing the criminal offence, or to call the health services, which is an aggravating circumstance for the accused, and such are also his personal characteristics, as well as his previous behaviour, given that the accused by virtue of the Judgment [...] final on 03.01.2019, was found guilty ... for a light bodily injury ... where the victim was the deceased S.M., as well as by virtue of the Judgment ... final on 31.10.2014, by which the aforementioned accused was found guilty and sentenced to imprisonment of 40 days, because of the criminal offence of causing a general danger... also the Court considered as an aggravating circumstance the fact that, as a result of his actions, consequence was also caused by depriving the minor children of their mother, and they will grow in the absence of a parental love, respectively, by the mother who is now deceased, as a result of the actions of the accused.*"

Although the perpetrator N.M. had appealed the Judgment of the Basic Court, the Appellate Court dismissed the appeal and upheld the Judgment of the Basic Court by virtue of its own Judgment [PAKR.nr.534/21] of 21 January 2022. The perpetrator also filed a request for protection of legality (legality review) against the Appellate Court Judgment, which was dismissed by the Supreme Court, by virtue of the Judgment [Pml.nr. 112/2022] of 31 March 2022.

4.5 The Criminal Sanction

By virtue of the Judgment of the Basic Court [PKR.nr.74/2021] of 5 October 2021, the perpetrator N.M. was sentenced to twenty-five (25) years of imprisonment.



Brief Commentary:

As noted above, the crime was committed in 2020, when the Criminal Code of 2019 was applicable. As noted in the respective section of this report, differently from the Criminal Code of 2012, the Criminal Code of 2019, in its article 173 (Aggravated murder), foresees murder based on a motivation related to gender. The respective criminal offence, in the circumstances of this case, was qualified as an “*aggravated murder, murder of a family member*”, pursuant to subparagraph 1.3 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code.

Having said this, in view of the motive of the murder and the circumstances of its commission, this is a typical case which falls under the generally accepted definition of femicide. The murder was preceded by domestic violence, at least in two events that are known to the authorities, namely (i) the Judgment of 31 October 2014; and (ii) the Judgment of 3 January 2019. These circumstances could have been taken into account by the courts in qualifying the criminal offence in light of the changes introduced into the 2019 Criminal Code. The courts, however, failed to take into account the novelty introduced in subparagraph 1.10 of paragraph 1 of article 173 (Aggravated murder) of the 2019 Criminal Code, namely, deprivation of another person of his/her life because of a motivation based on gender.

Furthermore, in balancing the mitigating and aggravating circumstances for the purpose of weighing the sentence, there are two features that are worth noting: (i) the use of remorse as a mitigating factor; and (ii) the lack of evaluation of the presence of the child as an aggravating factor. Pertaining to the first factor, as noted in the previous cases as well, the issue of remorse and its consideration as a mitigating factor deserves attention. While the Guidelines for Sentencing note that it can be a significant mitigating factor, the same circumstance must be analysed in light of the respective person's efforts to minimise the impact and the overall circumstances of the case. The first question that must be answered in determining the weight of remorse in terms

of mitigating factor, according to the Guidelines for Sentencing, is whether the "*victim survived*". Once the answer to this question is negative, the other questions listed in the respective checklist are losing the necessary weight, and specific reasoning is required in order to use remorse as a mitigating factor. Furthermore, as noted above, according to the Guidelines for Sentencing, the statements or apologies from the defendant should be viewed with skepticism, as false remorse can be an integral part of the cycle of violence that is present in domestic violence relationships. While pertaining to the second factor, namely, the presence of a child, the Guidelines for Sentencing specifically maintain that the courts should strongly consider this aggravating factor in cases involving child witnesses' physical presence on the place of violence and that, in such circumstances, the court must, once again, look at the history of events and the impact thereof on the child, also noting that even if the crime of which the accused was charged does not include an offence for actions directly against the child, the presence of the child can be considered an aggravating factor, as the child will be an additional victim, similarly to the considerations concerning the primary victim. It is to be noted that, in the circumstances of the case, the victim was killed brutally in the house, in which her children were present. This circumstance was not specifically or substantially considered by any of the courts.

Finally, the lack of reference to the 2015 Law on Crime Victim Compensation and the lack of reference to the positive obligations of the State to protect the right to life, based on the Constitution and the ECHR, as elaborated by the case-law of the ECtHR and the Constitutional Court, remain valid as in the previous three case studies that are analysed above. Having said the above, two other features of the respective case must be noted. First, the case was resolved within a period of one and half year. It must also be noted that the shortened deadlines for investigation and completion of the main trial, as provided by the 2023 Amendments of the Criminal Procedure Code, were not applicable during the proceedings of this case. Secondly, the reasoning of the courts, in all of the judgments, did not contain any degrading language towards the victim.

» V. KEY FINDINGS AND RECOMMENDATIONS

1. Key Findings

The primary object of this research/report was to analyse the available case-law in the Republic of Kosovo pertaining to the violent deprivation of life of women that was committed by men, namely, femicide. As noted in the report, the existing legislation in Kosovo does not criminalise femicide as a stand-alone and/or separate crime. Nevertheless, the Criminal Code adopted in 2019, advanced in this respect, by providing for, among others, a new circumstance which qualifies murder into an aggravated murder, based on gender and/or gender identity. Therefore, (i) for the purpose of identification of cases of femicide and/or attempted femicide, the generally recognised definitions of femicide were applied; while (ii) for the purpose of identifying the respective case studies we used the legal qualification of murder and/or attempted murder based on a gender-related motivation, thus elevating the respective murders into aggravated ones.

Furthermore and in terms of the available statistics, taking into account that the National Database continues to lack reliable statistics on gender-based violence, domestic violence, and particularly femicide and/or attempted femicide, for the purpose of this report the official data/information provided by the Kosovo Police were used. By applying the definitions of femicide to the data/information provided by the Police, it transpires that, during the 2018–2022 period, twenty (20) femicides and four (4) attempted femicides had occurred in the Republic of Kosovo. On the other hand, and in terms of the available final judgments pertaining to the above-mentioned period, only four (4) final court judgments were available for study. While Kosovo institutions and particularly local and international civil society organisations have specifically analysed, published and recommended areas of improvements pertaining to domestic violence and gender-based violence, including femicide, the intention of this particular report is primarily to analyse the implementation of the applicable legislation in this field by the courts. While the number of the available final judgments is rather limited, the analysis thereof sheds light into a few common denominators, thus reflecting the positive and negative trends pertaining to the femicide-related cases' administration by the courts. In the following sections, some of these features will be summarised, primarily focusing on (i) the applicable legislation

at the time of the commission of the criminal offence and the respective legal qualification of the criminal offence; (ii) weighing of the sentence, namely the evaluation of the mitigating and aggravating circumstances of the respective cases and the respective application of the Guidelines for Sentencing, adopted by the Supreme Court of the Republic of Kosovo; (iii) the duration of the respective court proceedings; and (iv) issues pertaining to the compensation of (award of damages to) the injured parties.

Initially and in terms of the applicable legislation, one (1) of the cases was administered under the provisions of the 2012 Criminal Code, while three (3) others, were administered under the provisions of the 2019 Criminal Code. In none of the cases were the amendments made to the Criminal Code and Criminal Procedures Codes, in 2022 and 2023, respectively, applicable.

In terms of the qualification of the criminal offences, all four (4) cases, were classified as aggravated murders, either pursuant to article 179 (Aggravated murder) of the 2012 Criminal Code or pursuant to article 173 (Aggravated murder) of the 2019 Criminal Code, depending on which one was applicable under the circumstances of the respective cases. In determining the category based on which the respective murder was qualified as an aggravated one, in three (3) cases the ground of "*deprivation of a family member of his or her life*" was used, while in one (1) of them, the ground of "*intentionally committing two or more murders*" was used. While in one case, which was administered pursuant to the provisions of the 2012 Criminal Code, the ground of deprivation of another person of his or her life because of a motivation based on gender was not available, despite the fact that the 2019 Criminal Code provides this possibility, none of the three (3) cases which were administered pursuant to the provisions of the abovementioned Code were qualified as aggravated murders because of a motivation based on gender, despite of the fact that all three (3) cases fall under the category of the generally accepted definition of femicide. As noted specifically in the elaboration of each respective case study, they all share some of the following common features: (i) the victims were killed by their husbands; (ii) while the judgments of the courts do not specifically address and/or provide reason on the details of motive, all of the cases appear to reflect loss of control over the wife due to their leaving the marriage and/or house, and/or jealousy, causing feelings of rejection and/or humiliation associated with the patriarchal system of values and stereotypical gender roles, and one of the cases involved a specific warning/threat that the wife will be killed if she doesn't return home; and (iii) while only two (2) cases include prior history of conviction for domestic violence, all of the cases were characterised by domestic violence prior to the murder. It must also be noted that

in only one (1) of the cases, children were not present when the crime occurred, while in the other three (3) cases the children were present, with one of the cases resulting into the murder of an eight (8) years old girl as well.

Taking into account the limited number of final court judgments pertaining to cases falling under the generally accepted definition of femicide that have occurred between 2018 and 2022, it is difficult to draw a conclusion on a specific common denominator and/or features that would serve to establish trends, necessary to also design specific measures to address the respective phenomena. Nevertheless, to the extent information can be derived from the final court judgments, it also transpires that (i) in terms of the marital status, in the circumstances of all four (4) cases, the victim and the perpetrator were married, in three (3) cases had their joint children, while in one (1) case they had children from previous marriages; (ii) in terms of the occupation/employment status of the perpetrator, cases reflect families of low to medium income, with the perpetrators being self-employed or employed, and the victims not employed, while also noting that the court judgments provide very little information on the victims; (iii) in terms of previous convictions, two (2) of the cases reflect previous convictions pertaining to domestic violence, while in the other two (2) cases there was no formal prior conviction despite of the fact that the circumstances of the cases show that domestic violence had occurred; (iv) in terms of the method of the commission of the crime, three (3) of the cases involve shooting by armed perpetrators, thus also the criminal offence of unauthorised ownership, control or possession of weapons, while in one (1) case the murder was committed with a metallic rod; and (v) in terms of the mental capacity of the perpetrators, despite the fact that respective defence claimed to the contrary, the respective institutions and consequently the courts found that the perpetrators in all cases had full mental capacity when committing the crimes.

Aside from the features elaborated above, the important common denominator that results from the analysis of the four (4) case studies, primarily relates to the determination and weighing of the sentences, namely the evaluation of the mitigating and aggravating circumstances of the cases. While the average sentence of imprisonment of the above-referred cases is twenty-six (26) years of imprisonment, the evaluation of the corresponding mitigating and aggravating circumstances, among others, reflects an inadequate implementation of the Guidelines for Sentencing, adopted by the Supreme Court of the Republic of Kosovo. In terms of the mitigating factors, this primarily relates to the use of (i) *"the economic and family state of the accused"*; (ii) *"age"*; and (iii) *"the remorse for the criminal offence committed"*; while in terms of the aggravating factors, this

primarily relates to the failure of the respective courts to specifically analyse the presence of children when the respective murders occurred and give the necessary aggravating weight to this fact when determining and weighing the respective sentence.

More specifically, and pertaining to the use of the "*the economic and family state of the accused*", namely, the perpetrator, as a mitigating factor, the analysis of all cases reveals that the Guidelines for Sentencing were not properly complied with. This is so because, taking into account the nature and the circumstances of the respective crimes, and particularly the seriousness of the criminal offence and the consequences and involvement of family members in the respective criminal offences, the above-mentioned Guidelines exclude the possibility of using the "*family state*" as a mitigating circumstance. It has already been noted that in all four (4) cases, the victims were killed by their husbands, and in three of them children and other family members were present during the murder. Furthermore, the "*age of the accused*", namely, the perpetrator, based on the Guidelines for Sentencing, also appears to have been inadequately applied as a mitigating factor in respective cases. As noted in the report, the Guidelines for Sentencing are specific in terms of the circumstances under which "*age*" can be used as a mitigating factor, and none of these circumstances in this respect were fulfilled in the respective case studies that were analysed. Finally, "*the remorse for the criminal offence that has been committed*", while being an important mitigating factor in determining and weighing the sentences, according to the Guidelines for Sentencing, should be carefully considered in cases related to domestic violence, in the light of the respective person's efforts to minimise the impact of his crime. In cases of aggravated murder based on the motivation of gender, remorse is not to be consistently used as a mitigating circumstance in determining and weighing the final sentence without proper and necessary justification and/or reasoning.

On the other hand, the lack of evaluation of the presence of the children at the crime scene as a specific aggravating factor also deserves attention in three (3) case studies. The Guidelines for Sentencing specifically maintain that the court should strongly consider this aggravating factor in cases when, among other things, a child was physically present when the violence was taking place, even if the crime does not include an offence for actions directly against the child. According to the Guidelines for Sentencing, the Court will need to determine the extent of the injury and consider the degree of appropriate aggravation, similar to considerations against the primary victim. As noted in the report, similar requirements derive from the Istanbul Convention pertaining to the rights and needs of child witnesses of all forms of violence.

Finally, there are two other trends that must be noted, namely (i) the duration of the proceedings; and (ii) the legal advice provided in terms of claims for damages filed by the injured parties, including the implementation of the laws on Crime Victim Compensation. Pertaining to the first issue, it is to be noted that the duration of the proceedings was relatively reasonable. The longest proceedings involved a period of two and half (2.5) years in a case which was tried twice, and involved five decisions of the courts, of which two at the first instance level, two at the second instance level, and one at the Supreme Court level. The shortest proceedings involved a period of seven (7) months until the final judgment was rendered. While the 2023 Amendments to the Criminal Procedure Code, which shortened the deadlines for investigation and completion of the main trial, were not applicable during the proceedings of the cases elaborated in these case studies, the length of proceedings in the case studies involved in this report generally complies with the deadlines established by the new Criminal Procedure Code in this respect, which aimed at improving the efficiency of proceedings in domestic violence related cases. On the other hand, and pertaining to the second issue, it is to be noted that the courts consistently (i) ordered the defendants to pay the respective tax according to applicable Law on Crime Victim Compensation; and (ii) referred the injured parties, namely the victim's children, parents, and other family members within the criminal proceedings, to further pursue their claims for damages in civil proceedings; while (iii) no information was provided in the respective judgments pertaining to the Law on Crime Victim Compensation. It is also to be noted that the challenges in implementing the applicable laws on Crime Victim Compensation have been addressed, among others, through various reports of the civil society, including but not limited to the ones published by the Kosovo Law Institute. However, attention to civil lawsuits, remedies and compensation-related questions is critical, as they reflect positive obligations of the State under articles 29 (Civil lawsuits and remedies) and 30 (Compensation) of the Istanbul Convention. This was clearly recently emphasised by the Constitutional Court by virtue of its Judgment in the case K1129/21^[103], thereby finding that the State authorities had a positive obligation to act in order to protect the victims of violence and that their failure to do so constituted a violation of the victim's right to life, protected by article 25 (Right to Life) of the Constitution and article 2 (Right to life) of the ECHR.

[103] Case K1129/21, Constitutional Court Judgment of 7 March 2023, available at: [Constitutional review of "actions and inactions" of the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina - Constitutional Court \(gjk-ks.org\)](#).

2. Recommendations

As noted in the “*Analysis of Case-Law on Femicide and Attempted Femicide in Bosnia and Herzegovina*”,^[104] an effective prevention of femicide requires an advancement of the position of women in all areas of society, systemic work on deconstruction of gender stereotypes and prejudice and changes in the patriarchal gender patterns, integration of the gender perspective in all state policies, promotion and advancement of a culture of gender equality, and prevention of all forms of discrimination against women.

In this respect, this report recalls the findings and the corresponding recommendations provided for by numerous reports that were prepared by local and international organisations for Kosovo, including but not limited to (i) the GREVIO Assessment Report for Kosovo; (ii) Kosovo Women’s Network reports on gender-based violence in Kosovo; (iii) Amnesty International; and (iv) Kosovo Law Institute reports, particularly pertaining to the laws related to victim compensation. It is not the intention of this report to repeat the findings and recommendations that are clearly reflected in the above-mentioned reports and/or assessments. The recommendations provided below rather reflect and are related to the findings pertaining to the analysis of the available case-law in administering the cases that qualify as femicides in Kosovo. In this respect, it is important to note the following:

While progress in qualifying the criminal offence of murder because of a motivation based on gender as an aggravated murder was made by virtue of the 2019 Criminal Code, for cases of femicide to be adequately investigated, prosecuted and sanctioned, femicide should be provided as a separate criminal offence in the Criminal Code of the Republic of Kosovo. As a separate crime against life and limb of a woman, femicide would include any form of gender-motivated deprivation of life of a woman, be it intentional or negligent and should be fully harmonised with definitions contained in the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence, namely, the Istanbul Convention.

As noted in the report, including in the respective key findings, despite the fact that the 2019 Criminal Code allows the qualification of a murder as an aggravated

[104] Slobodanka Konstantinović Vilić, Nevena Petrušić, Ljiljana Filipović, Obren Bužanin, Srđan Nedić, *Analysis of Case-Law on Femicide and Attempted Femicide in Bosnia and Herzegovina 2017–2021*, p. 195, available at: [Femicide_English.pdf \(gcjnetwork.org\)](#).

one, particularly because it was motivated based on gender, none of the cases administered under the provisions of this Code qualified the murders as murders motivated based on gender. In failing to do so, the motives for the murders were not properly analysed and/or reasoned in the respective Court judgments. It is also important to note that when prosecuting a femicide, the latter should not be seen as an isolated event, but the authorities should rather take into account the specificity of the context and the history of violence. As noted in the report for Bosnia and Herzegovina, (i) this would also require a detailed examination of the history of violence, relationships between the victims and perpetrators, with expert assessments of the perpetrators' personality, including their misogynous views; and (ii) the investigations into gender-based motives of femicide should also be methodical and exhaustive, going beyond the mere examination of facts related to the place, method and means of commission of the offence, with analysis of the significance of the violent perpetrator's physical superiority over the victim and the existence of inequality of power.

Furthermore, for investigations and indictments to be effective, and for sanctions to be proportionate to the severity of the crime and to achieve their impact in terms of general prevention, special protocols should be adopted for the work of the competent authorities and institutions in processing cases of femicide. This is particularly important in the light of the findings of this report that the court judgments consistently reflect inadequate implementation of the Guidelines for Sentencing of the Supreme Court of the Republic of Kosovo, in evaluating and/or balancing the mitigating and aggravating circumstances of the respective cases.

Finally, the issue of statistics and/or reliable available data on cases of domestic violence and particularly femicide and/or attempted femicide, must be urgently addressed. The lack of proper data on an issue of tremendous importance for the society has also been noted by the GREVIO Assessment Report. While recognising the fact that the existing National Database on Domestic Violence, which is shared only between several public institutions, may contain information which is confidential, the scope of such National Database should be extended to include data on cases falling under the generally accepted definition of femicide, as well as to include data on, among others, the genders of the perpetrator and the victim, the motivation for the crime committed, the legal classification of the crime, the type of decision issued by the court, the sentence imposed on the perpetrator, as well as links to the judgments/decisions of the courts. This would not only make the work of the institutions easier, but it would ensure that when requests for public information are submitted, the data are available and can be

easily extracted, and more importantly, be reliably used to inform the respective institutions in making the necessary policy decisions, as well as legislative changes needed to address these phenomena.

Finally, specific attention must be shifted to the implementation of the following three key pieces of legislation, namely (i) the Law No. 05/L-003 on the Electronic Supervision of Persons whose Movement is Limited by the Decision of the Court, in order to, among others, ensure that protection orders are obeyed and the police is immediately notified if this is not case, thereby preventing cases of femicide; (ii) the Law No. 08/L-109 on Crime Victim Compensation in line with the requirements of the Istanbul Convention, also considering the possibility to make the necessary legislative amendments in order to advance the position of the injured parties in criminal proceedings and decide on their claims for damages within the criminal proceedings, thus avoiding their additional traumatising caused by subsequent trials and/or proceedings; including civil proceedings; and, finally, (iii) the Law No. 08/L-187 on Amending and Supplementing the Criminal Procedure Code No. 08/L-032, which provided specific deadlines for the administration of investigations and completion of main trials in cases of domestic violence. All cases concerning domestic violence, gender-based violence and cases falling under the generally accepted definition of femicides, must be treated in a timely manner by all responsible institutions.

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