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Analysis of Case-Law on Femicide and Attempted Femicide in Bosnia and Herzegovina

2017 - 2021



Vrhovni sud
Federacije Bosne i Hercegovine



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Analysis of Case-Law on Femicide and Attempted Femicide in Bosnia and Herzegovina

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INTRODUCTION

Numerous research studies have shown that violence committed by men against women is very widespread, but often remains hidden. Case-law on violence against women has been gradually developing, and given that murders of women are the most extreme manifestation of violence against women, special attention must be devoted to this issue, also in Bosnia and Herzegovina.

The comprehensive research presented in this publication clearly points to this.

It is worth recalling that femicide is not a universally defined legal category and that its definitions in international documents vary, but to start, I would like to draw your attention to a brief but complex definition offered by Dr Diana Russel, one of the most prominent pioneering experts on sexual violence and abuse of women and girls in the world. According to Dr Russel, femicide is 'the murder of a woman by a man because she is a woman', clarifying that the term 'woman' refers to all female persons, including girls.

That this definition is meaningful and suitable is supported by the findings of this research study conducted in BiH, which are presented in this publication and provide an overview of case-law on all forms of murder of women committed by men, since femicide is not incriminated as a discrete criminal offence within the current legal framework.

This publication was produced as part of broader activities of the AIRE Centre in Bosnia and Herzegovina, aimed solely on strengthening the implementation of the European Convention on Human Rights and its standards. In addition to organising an annual forum of the highest courts in Bosnia and Herzegovina, establishing a case-law database of these courts under the auspices of the High Judicial and Prosecutorial Council, and participation in populating that database, these activities of the AIRE Centre also include cooperation with the highest courts and centres for the education of judges and prosecutors and participation in developing regular and periodic publications and reports.

This publication is the result of intensive cooperation with judges of the Supreme Court of the Federation of Bosnia and Herzegovina, the Supreme Court of Republika Srpska, and the Appellate Court of the Brčko District, within the project on Judicial Capacity Building in Bosnia for Harmonization with a View to Harmonise Domestic Case-law and to Comply with European Legal Standards.

This research included an analysis of the legal framework regulating the crime of murder in Bosnia and Herzegovina and a case-law analysis covering the legal qualification of criminal offences, the phenomenological characteristics of the committed crimes, the perpetrator profiles, victim profiles, criminal sanctions, duration of court proceedings, as well as how civil claims for damages are handled. The publication also presents a number of case studies in detail.

I trust that the conclusions drawn from the case-law analysis will provide readers with a clear picture of the effectiveness of prosecuting perpetrators and the proportionality of criminal sanctions. I also hope that this publication can encourage active dialogue by the highest courts in Bosnia and Herzegovina, focusing on harmonization of case-law in this area, to the extent possible. This would significantly contribute to strengthening judicial capacity in applying standards from the European Convention on Human Rights, as well as to the harmonization of domestic case-law and to ensuring legal certainty and high quality of court rulings in Bosnia and Herzegovina on these issues.

We also believe that these research results can be used in support of proposals to incriminate femicide as a discrete criminal offence against the life and limb of women, and to strengthening capacities of justice authorities through additional training of judges and prosecutors, but that they can also support the work of many other institutions, legal and other experts working to raise awareness on the negative impact of gender stereotypes, to improve the culture of gender equality and to prevent all forms of discrimination against women.

We are particularly grateful to the working group that participated in the development of this publication for their efforts to make it meaningful and comprehensive.

We would also like to thank the UK Government for being dedicated to the cause of ending violence against women and for supporting this publication.

Biljana Braithwaite

Western Balkans Programme Director
AIRE Centre

INTRODUCTION ON FEMICIDE

Femicide is the most extreme manifestation of violence against women and includes gender-related killing of women by men, killing a woman because she is a woman, killing motivated by hatred of women, as well as by a feeling of ownership and domination (Vilić Konstantinović, Petrušić and Beker, 2019:67). Given that the roots of femicide are found in society itself and a culture of patriarchal hierarchy dominated by discrimination of women, inequality and unequal distribution of power between women and men, there is an evident need to monitor this phenomenon as distinct from other forms of murder. However, there is no unique definition of femicide,^[1] which makes gathering data on femicide difficult and hampers efforts to provide adequate prevention of femicide.

Violence against women is a global problem and numerous activities are being undertaken internationally to adopt documents aimed at preventing and protecting women from violence, including femicide. The United Nations have also taken steps in this regard, most notably through reports of special rapporteurs on violence against women.

In 2012, the UN Human Rights Council was presented with a thematic report on gender-related killings of women,^[2] irrespective of who committed them or where. The report highlighted the rise in gender-based killings on a global level, as well as the fact that impunity for the killings of women and failure

[1] Building on what Diana Russell said already in 1976, that a lot of homicide was in fact femicide given the sexual politics of murder, femicide has been defined as a feminist term to denote the murder of a woman by a man because she is of the female sex, the murder of a woman by a man because she is a woman, the misogynist murder of women by men motivated by hatred towards women, derision, pleasure, a feeling of ownership and domination over women. A newer definition of femicide (*Geneva Declaration on Armed Violence and Development*) does not have a strictly feminist component because it defines femicide as any murder of a female person. For more, see: Konstantinović Vilić, S. Petrušić, N. Beker, K. (2019) Društveni i institucionalni odgovor na femicid u Srbiji I, FemPlatz, Pančevo, p. 67-77, available at: http://femplatz.org/library/publications/2019-11_Femicid_monografija_Prva_publikacija_E_primerak.pdf

[2] UN, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences Rashida Manjoo: Gender-related killings of women, 2012, available at: http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf

to hold perpetrators accountable has become a global concern (Manjoo, 2012: paragraph 14 and 19). Gender-related killings of women are divided into direct killings, including: killings as a result of intimate-partner violence; honour-related killings; armed conflict-related killings; dowry-related killings; gender identity- and sexual orientation-related killings; etc. and indirect gender-related killings of women that include: deaths due to poorly conducted or clandestine abortions; deaths from harmful practices; deaths linked to human trafficking, drug dealing, organized crime and gang- related activities; etc. (Manjoo, 2012, paragraph 16).

The United Nations General Assembly has adopted two resolutions on taking action against gender-related killings of women and girls (in 2013 and 2015).^[3] Both resolutions point to the alarming scale of gender-related killings of women around the world, including the fact that every second victim was murdered by her intimate partner or family member. States have been called upon to improve national legal frameworks and prevention of gender-related killings of girls and women, to adopt measures to address the problem of violence, including the killings of girls and women, to exercise due diligence to investigate, prosecute and punish these acts, to counter social attitudes that foster, justify or tolerate violence against women, to adopt integrated and comprehensive strategies in order to reduce risks of gender-related killing of women, and to improve data gathering and national records and statistics. The next thematic report on femicide was submitted in 2016.^[4] The Special Rapporteur on violence against women highlighted, among other things, the need to gather sufficient data on violence against women, including femicide. In addition, states were invited to establish observatories to monitor femicide (*femicide watch*), to cooperate in order to establish a common methodology for the collection of comparable data, and to provide police and prosecutors with specific expertise and skills on risk assessment and encourage courts to gain specific expertise on femicide and violence against women (Šimonović, 2016: paragraph 82 c), d) and e)).

[3] UN General Assembly, Resolution on Taking action against gender-related killing of women and girls (A/RES/68/191) from 2013 and Resolution on Taking action against gender-related killing of women and girls (A/RES/70/176) from 2015.

[4] Report of the Special Rapporteur on violence against women, its causes and consequences Dubravka Šimonović, 2016, available at: <https://undocs.org/A/71/398>

Finally, note should be taken of the most recent report on femicide submitted to the United Nations General Assembly in 2021.^[5] The Special Rapporteur on violence against women looked at the progress made in preventing and countering femicide, especially in the context of the previous femicide watch initiative, and she also gathered good practice examples and gave recommendations about how to use data to design and implement effective femicide prevention strategies. The report noted significant progress over the past five years towards the creation of different types of bodies with the purpose of monitoring violence against women and femicide in particular, but warned that the progress was uneven because while some countries and regions had put significant resources into setting up their femicide watches, in others there was very little progress, if any. Likewise, considerably more data on violence against women and femicide are available, but they are still not comparable. In addition, many states do not include information about the relationship between the perpetrator and the victim in their homicide data, while in some countries, data on femicide or gender-related killings of women and girls are limited only to intimate-partner violence. The Special Rapporteur stressed the need for a comprehensive approach to collecting statistics on all types of femicide relevant to a particular context, including intimate-partner and family-related killings and others in which, while there is no relationship between the victim and the perpetrator, there is a gender motive.

Although awareness has been raised internationally about the widespread nature of violence against women, including femicide as its most extreme form, in most countries, femicide is not incriminated as a specific criminal offence. According to the report of the Expert Group on gender-related killing of women and girls,^[6] globally there are three dominant systems in criminal legislation related to the prevention, investigation, prosecution and punishment of gender-related killings of women: countries where femicide is incriminated as a specific criminal offence, countries where gender-related circumstances are part (one of the forms) of the criminal offence of aggravated homicide, and countries with a gender-neutral system.

[5] Report of the Special Rapporteur on violence against women, its causes and consequences Dubravka Šimonović: Taking stock on the femicide watch initiative, 2021, available at: <https://undocs.org/A/76/132>

[6] Expert Group on gender-related killing of women and girls, Criminalization of gender-related killings of women and girls, 2014, available at: <https://www.femicideincanada.ca/sites/default/files/2017-12/UNODC%20%282014%29%20CRIMINALIZATION%20OF%20GENDER-RELATED%20KILLINGS%20OF%20WOMEN%2C%20GIRLS.pdf>

In BiH, as in the majority of countries, femicide is not incriminated as a specific criminal offence. That is why below you will find an overview of how homicide is regulated in the criminal legislation of the Federation of BiH, Republika Srpska, and the Brčko District, given that femicide is prosecuted under criminal legislation on homicide.

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CRIMINAL LAW REGULATION OF HOMICIDE IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

The right to life, as a basic human right protected under fundamental international documents, is also enshrined in the Constitution of Bosnia and Herzegovina (Article II/3.a) and the Constitution of the Federation of Bosnia and Herzegovina (Article II.A.2.1.a).

The obligation to protect the right to life of all persons in the territory of Bosnia and Herzegovina, or specifically the Federation of Bosnia and Herzegovina is also achieved by provisions regulating criminal offences in the Criminal Code of the Federation of Bosnia and Herzegovina^[7] (hereinafter: CC FBiH) whose aim is to protect and preserve human life.

The criminal offence of *homicide* under Article 166 of CC FBiH, found in Chapter XVI – Criminal Offences against Life and Limb, is a basic criminal offence in the criminal legislation of FBiH that protects human life. In contrast to the Criminal Code of Republika Srpska, as well as some other laws in the region, this legal provision stipulates not just the basic form of this criminal offence, but also its more serious, qualified forms.

The *basic form of the criminal offence of homicide* is defined under CC FBiH Article 166, paragraph 1 as the act of depriving another person of life. The act of commission is determined by the consequence it causes, meaning that this criminal offence may be committed by any act that causes the death of another person (resultant act of commission). The act of commission usually implies action, but homicide may also be committed through an act of omission in cases

[7] Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16, and 75/17).

where the offender was legally obligated to prevent death and failed to do so in a way where that omission is identical in action and meaning to the commission of the criminal offence.^[8] The act of commission may comprise physical action (direct or indirect) against the body of another person, as well as psychological action, such as causing a shock that directly leads to the death of another person (Tomić, 2007:61; Stojanović, 2019:439).

The object of the criminal offence of homicide is a person. The dominant view in legal theory and judicial practice is that the object of the act of commission of this criminal offence can only be a living person, where life begins at the start of birth and death occurs when brain function ceases (Tomić, 2007:61, Babić, Filipović, Marković, Rajić, 2005:1433, Stojanović, 2019: 439). For the establishment of the criminal offence, it is irrelevant what state the object of the act was in at the time of the act of commission, meaning that the criminal offence of homicide also applies to killing one's own child when that child's life was not viable and to killing a person who is terminally ill.^[9]

The criminal offence of homicide is established at the time when the offender was acting or was obliged to act, irrespective of when the consequence (death of a person) occurred. The existence of a time interval between the act of commission and the death of the victim may open up the question of causality between the act of commission and the consequence that occurred, which is necessary to establish the criminal offence of homicide. This question will be raised in particular when the actions of other persons or some special circumstances are interpolated between the perpetrator's act and the consequence that occurred. The dominant view in legal theory and judicial practice is that a consequence can be considered caused only by an action that is a *conditio sine qua non* of the consequence that occurred, i.e. without which the concrete consequence would not have occurred.^[10]

[8] Article 22, CC FBiH.

[9] The Supreme Court of Bosnia and Herzegovina (hereinafter: Supreme Court of BiH) concluded in its Decision no. Kž 720/61: "The criminal proceedings established that the child, whom the accused tried to kill, was not fit for life due to injuries sustained during childbirth. That fact, however, does not characterise the acts of the accused as an inappropriate attempt because they committed the acts for which they were found guilty while the child was alive."

[10] Supreme Court of BiH Decision no. Kž 880/79 states that the causal link between the act of the accused and the consequence that occurred (death of the victim) had not been severed by the fact that the victim was not given immediate medical assistance after sustaining the fatal injury.

The criminal offence of homicide under CC FBiH Article 166, paragraph 1 can only be committed with intent, whether direct or oblique. For there to be direct intent, the perpetrator must be aware of his act (action, consequence and causal link) and desire the consequence (death of another),^[11] while for oblique intent, the perpetrator must be aware that the prohibited consequence may result from his act of commission or omission and must accept its occurrence.^[12] As a rule, whether intent exists and in what form is determined based on objective circumstances – those generally considered to be the circumstances of the act of commission itself (primarily, the nature of the act of commission, the manner of commission and the means used, the part of the body of the victim on which the perpetrator acted, the intensity of the action)^[13], but also on those preceding the act of commission and, in certain cases, on the conduct of the perpetrator immediately following the act.

The motive for killing another person does not constitute an element of the legal essence of this basic form of the criminal offence of homicide, but may be of significance for sentencing. If there is a special motive associated in the law with a special, more serious form of the criminal offence of homicide as set out in paragraph 2 of Article 166 of CC FBiH (e.g. killing out of hatred), such a motive shall constitute a legal element of this qualified form of the criminal offence of homicide.

The basic form of this criminal offence, as set out under CC FBiH Article 166, paragraph 1, incurs a punishment of prison for a minimum term of five years. Given the general provision on imprisonment, whereby a sentence of imprisonment may

[11] CC FBiH Article 37, paragraph 2.

[12] CC FBiH Article 37, paragraph 3.

[13] Thus, in its Judgement no. 07 0 K 003979 11 KžK of 5 April 2011, the Supreme Court of the Federation of Bosnia and Herzegovina (hereinafter: Supreme Court of FBiH) found that the accused murdered the victim with direct intent based on the established fact that the accused fired several shots from an automatic rifle into the victim, including into the chest area, which contains vital organs, and that this followed a verbal altercation with the victim during which they exchanged threats. In its Judgement no. Kžk 4/05 of 21 October 2005 concerning the murder of a spouse, the same Court based its finding of homicide with direct intent on the established fact that the accused, following a verbal altercation with his spouse, threw her to the floor and then proceeded to exert strong pressure with his hands on her neck and mouth, which actions disrupted and halted the circulation of blood to the brain, causing subarachnoid haemorrhage which resulted in the death of the victim from suffocation by strangulation.

not be less than 30 days or more than twenty years,^[14] the perpetrator of this criminal offence may be sentenced to imprisonment lasting between five and twenty years.

If the perpetrator started the act of commission but did not finish it, or if he finished it, but the consequence (death of another person) did not occur, this will be treated as an attempted criminal offence of homicide, as set out in CC FBiH Article 166, paragraph 1, if the perpetrator had direct or oblique intent in relation to the death of the victim. It will constitute attempted homicide not only when the victim sustains serious or non-serious bodily injuries, but also when the victim does not sustain any injury. It is precisely the intent of the perpetrator that is used as the criterion to distinguish an attempted criminal offence of homicide, as set out under Article 166, paragraph 1, from the criminal offences of grievous bodily harm set out in CC FBiH Article 172 or Bodily Injury in Article 173. The two latter criminal offences are found when the perpetrator's intent was limited to causing bodily harm to another person.^[15]

In line with the general provision on punishment for attempted crimes,^[16] the perpetrator shall be punished for an attempted criminal offence within the limits of the punishment prescribed for the same criminal offence completed, but may also be punished less severely. Given that the punishment stipulated for the criminal offence of homicide under CC FBiH Article 166, paragraph 1 is not less than five years of imprisonment, by applying the provisions on the reduction of punishment for attempted criminal offences, the perpetrator's punishment may be reduced down to one year of imprisonment.^[17]

Qualified forms of the criminal offence of homicide are set out in CC FBiH Article 166, paragraph 2. The qualified form of the criminal offence of homicide

[14] CC FBiH Article 43, paragraph 1.

[15] In its Judgement no. 09 0 K 013156 12 Kžk of 17 May 2013, the Supreme Court of FBiH ruled on charges for attempted homicide and found the accused guilty of Aggravated Bodily Injury under CC FBiH Article 172, paragraph 1. In its reasoning, the Court explained its qualification of the act of the accused by stating that it does not follow from the facts of the case, as presented in the amended indictment, that the accused's intent encompassed killing the victim, because the facts in the indictment stated that the accused had fired after telling the victim, "I'm going to wound you now, and your friend," and that he was aware that that the victim could be injured (but not killed) and that he had foreseen that consequence (injury).

[16] CC FBiH Article 28, paragraph 2.

[17] CC FBiH Article 51, paragraph 1, point b).

applies to whoever deprives another person of their life in a cruel or insidious manner (point a), deprives another person of their life while acting with reckless violence (point b), deprives another person of their life out of hatred (point c), deprives another person of their life out of greed, for the perpetration of another criminal offence, out of callous revenge or other base motives (point d), or takes the life of a judge or prosecutor in connection with the exercise of their judicial or prosecutorial duties, an official or member of the military in the exercise of duties of safeguarding the security, public peace and order, or apprehending the perpetrator of a criminal offence, or guarding a person deprived of liberty (point e). The qualifying circumstances that give the basic form of homicide a more serious, qualified form for which a harsher punishment is prescribed may pertain to the manner, special circumstances, motive, or to the passive subject of the homicide.

A finding of *homicide in a cruel manner* requires establishing certain objective circumstances (the taking of the victim's life was accompanied by inflicting severe physical or mental pain or suffering on the victim whose intensity or duration surpass the pain or suffering commonly associated with the taking of a life) and subjective circumstances (awareness on the part of the perpetrator of inflicting such pain or suffering on the victim and the desire for or acceptance of it) (Tomić, 2007:63; Babić, Filipović, Marković, Rajić, 2005: 1439.)^[18] In order to establish

[18] As with other qualified forms of the criminal offence of homicide, for homicide in a cruel manner, the facts and circumstances presented in the indictment and judgement must support the finding of the qualifying circumstance. Thus, in its Judgement no. 04 O K 004500 13 Kž 7 of 16 October 2013, the Supreme Court of FBiH reversed the legal qualification of the offence from the first-instance judgement, which found the accused guilty of the criminal offence of Homicide under CC FBiH Article 166, paragraph 2, point a), and pronounced the accused guilty of the criminal offence of Homicide under CC FBiH Article 166, paragraph 1 with the following reasoning: "A finding of homicide in a cruel manner requires that the pain and suffering of the victim, in their intensity or duration, surpass the measure of pain and suffering that is to be expected when taking the life of another. From a subjective standpoint, this legal qualification requires awareness and willingness, or assent on the part of the perpetrator to causing such pain and suffering to the victim when taking his/her life. Therefore, the facts and circumstances that constitute the elements of the criminal offence, as per CPC FBiH Article 300, paragraph 1, point a), required for the offence to be qualified as homicide in a cruel manner in line with CC FBiH Article 166, paragraph 2, point a) must include facts and circumstances proving that the homicide was accompanied by inflicting on the victim pain and suffering in excess of the common measure of pain and suffering inherent in the taking of a life, as well as facts and circumstances proving the mental attitude of the perpetrator towards these actions, i.e. awareness and willingness or assent on the part of the perpetrator to inflict such pain and

whether the homicide was committed in a cruel manner, the court examines all the circumstances of the given case and gives special significance to the findings and opinions of expert witnesses about the type and scope of injuries sustained by the victim and the intensity and duration of the pain or suffering they caused. It is contested in relevant literature whether this qualified form of the criminal offence of homicide requires establishing that the victim was able to feel pain or suffering (Babić, Filipović, Marković, Rajić, 2005:1440). Since the very notion of pain or suffering implies physical or mental experience, it would seem to follow that the requirement of the victim being able to feel the inflicted pain or suffering should be necessary to establish homicide in a cruel manner.

The existence of certain objective and subjective elements is also necessary for establishing *homicide in an insidious manner*. The objective circumstances concern the manner in which the perpetrator acted and require that manner to have been secret or covert so that the victim was kept unaware of actions whose purpose was to take the victim's life. That is why taking the life of someone by ambush, poisoning or while the victim was asleep is often qualified as homicide in an insidious manner. The subjective elements concern the relationship of the perpetrator with the victim and are reflected in the perpetrator abusing the victim's trust or helplessness or defencelessness. Therefore, killing someone while they are sleeping, for example, would be considered homicide in an insidious manner if the perpetrator and victim were in a relationship characterised by the victim's trust of the perpetrator (marriage, kinship, friendship, hospitality).^[19]

suffering on the victim. However, the facts and circumstances that constitute the elements of the criminal offence given in the reversed judgement pertaining to the homicide of Č.E. do not include facts and circumstances establishing the objective and subjective elements of taking the life of another in a cruel manner. It should also be noted that the indication in the cited facts and circumstances that in the concerned case the accused cruelly kicked the victim in the head as the victim was lying helplessly on the floor, in and of itself, does not constitute even the objective component required to establish the criminal offence of homicide under CC FBiH Article 166, paragraph 2, point a)."

[19] In its Decision no. KŽ 10/79 of 27 November 1979, the Supreme Court of BiH found that taking the life of another while they are sleeping, in and of itself, does not constitute the criminal offence of homicide in an insidious manner, because this criminal offence requires not only that the perpetrator acted objectively covertly, but that subjective conditions are also met, i.e. that the perpetrator acted in a fraudulent, dishonest or malicious manner, abusing the helplessness, harmlessness or special trust of the victim.

For *depriving another person of their life while acting with reckless violence*, the qualifying circumstances are the circumstances of the killing. Violent behaviour should be understood as set out under CC FBiH Article 362 on Violent Behaviour.^[20] However, this qualified form of homicide requires that it was committed with reckless violence, i.e. with violent behaviour that is so reckless, insolent, arrogant or callous as to surpass the requirement for constituting violent behaviour. The determinant 'while' requires that the homicide was committed during such ruthless violent behaviour.^[21]

CC FBiH defines a hate crime as any criminal offence committed due to the race, skin colour, religion, national or ethnic origin, language, disability, sex, sexual orientation or gender identity of another person and requires the court to treat such behaviour as an aggravating circumstance for the purpose of punishment of the perpetrator, unless the law explicitly provides for more severe punishment for the qualified form of the criminal offence committed out of hatred.^[22] For the criminal offence of homicide, *depriving another person of their life out of hatred* is stipulated as a qualifying circumstance giving the basic criminal offence a more serious form for which the law foresees a harsher punishment (CC FBiH Article 166, paragraph 2, point c)). Therefore, when the accused is found guilty of this qualified form of the criminal offence of homicide, the commission of the criminal offence out of hatred cannot also be counted as an aggravating circumstance against the accused. In order to establish this qualifying circumstance, the perpetrator has to have killed another person due to their belonging to a group with one of the protected characteristics, but need not also have felt hatred towards the victim of

[20] This legal provision defines violent behaviour as disturbing the public peace by harsh insult or maltreatment of another, violence towards another, provoking a fight or by particularly insolent or arrogant behaviour.

[21] In its Judgement no. 09 0 K 001525 10 KŽK of 1 July 2010, the Supreme Court of FBiH found the accused guilty of depriving another person of his life while acting with ruthless violence because it had been established that in a tram full of passengers, one of the accused tried to provoke a fight with the victim, a pupil returning from school, that subsequently the accused undertook acts of violence against the victim, inflicting several blows with their fists and a metal knuckles, and that the victim was murdered by stabbing precisely while the accused were acting in this way. The Judgement underscored the absence of a motive for the violence on the part of the accused towards the victim who was not known to them, an arbitrary passenger on the tram, the severity of the assault of the accused on the victim, the fact that the violence towards the victim took place on public transport crowded with other passengers, mostly pupils, who were distressed and made to feel unsafe.

[22] CC FBiH Article 2, paragraph 11.

the criminal offence. It is sufficient that the victim was selected by the perpetrator due to belonging to a group with a protected characteristic (Filipović, 2019:20-21). This qualified form of the criminal offence of homicide also applies when the victim does not have any of the protected characteristics but was targeted by the perpetrator due to being associated with persons who do have the protected characteristics (Filipović, 2019:21-22).

Special motive is a qualifying circumstance also for qualified forms of the criminal offence of homicide, as set out under CC FBiH Article 166, paragraph 2, point d), committed out of greed, in order to commit or conceal another criminal offence, out of callous revenge or other base motives.

Homicide out of greed means that the perpetrator kills for material gain, which can take the form of either increasing the perpetrator's fortune (for example, in order to gain property by inheritance) or preventing its decrease (for example, to avoid paying debt). The motive must exist at the time of commission. It is irrelevant whether this constitutes unlawful gain. In the relevant literature, some hold that this form of homicide requires the perpetrator to be motivated by an unscrupulous egotistical desire for material gain (Babić, Filipović, Marković, Rajić, 2005:1449; Tomić, 2007:63-64). The intent of the perpetrator is crucial for distinguishing this qualified form of the criminal offence of homicide from the qualified forms of the criminal offence of robbery or aggravated robbery. If the killing was perpetrated in order to obtain material gain after the death of the victim, where the death of the victim is a precondition for obtaining the gain, then this will be homicide out of greed, but if the killing was perpetrated in order to overpower or prevent resistance while appropriating another's property or to retain the appropriated property, then it will be a qualified form of aggravated robbery or robbery (Babić, Filipović, Marković, Rajić, 2005:1450-1451; Tomić, 2007:64).

The qualified form of the criminal offence of homicide will also apply to *depriving another person of their life in order to commit another criminal offence*, i.e. to enable the perpetration of another criminal offence or to conceal another criminal offence (for example, killing a witness to another criminal offence). This qualified form does not, in the former case, require the perpetrator to have committed the other criminal offence, and in the latter case, does not require a final judgement to have found that the criminal offence being concealed was committed.

Homicide out of callous revenge is found when there is manifest disproportion between the event or action of the victim on account of which the perpetrator

undertook the killing of the victim and the harm the perpetrator causes to the victim out of revenge.^[23] If there is no such callousness, there will be no qualified form of the criminal offence of homicide, but only the aggravating circumstance of acting out of revenge for the purpose of sentencing for the basic form of the criminal offence of homicide.

Homicide out of other base motives as a qualifying circumstance can only exist when the motives are particularly unacceptable from a moral or social standpoint. Thus, for example, the prevailing view in our case-law is that killing another person out of jealousy does not, in and of itself, constitute homicide out of other base motives^[24]. On the other hand, homicide for base motives was found when the two accused had conspired to kill the husband of one of the accused because he presented an obstacle to them maintaining their intimate relationship.^[25]

Article 166, paragraph 2, point e) of CC FBiH sets out the qualified form of the criminal offence of homicide as committed when someone *kills a judge or prosecutor in connection to the exercise of their judicial or prosecutorial duties, an official or member of the military in the exercise of duties of safeguarding security, public peace and order, or apprehending the perpetrator of a criminal offence, or guarding a person deprived of liberty*. The qualifying circumstance is, therefore, the special characteristic of the passive subject. If the passive subject is a judge or prosecutor, the qualified form does not require that the person with these characteristics is killed while exercising their duties, but that the killing is connected to those duties. However, if the passive subject is an official or a member of the military, this qualified form of the criminal offence of homicide requires that the killing takes place while they are exercising their duties.

Any person may be the perpetrator of qualified forms of the criminal offence of homicide under CC FBiH Article 166, paragraph 2. The intent for the commission of these offences must include the qualifying circumstance. The qualified forms of the criminal offence of homicide under CC FBiH Article 166, paragraph 2 incur a punishment of imprisonment for a term of at least ten years or long-term

[23] In its Judgement no. 01 0 K 009692 19 Kžk of 5 March 2020, the Supreme Court of FBiH concluded that the accused had killed the victim out of callous revenge, finding that the accused had set up an improvised explosive device in front of the entrance to the victim's office, because he had lost disputes with his ex-wife who was represented by the victim as a lawyer, and that the device was activated when the victim moved it as she entered and was killed.

[24] Decision of the Supreme Court of Serbia, no. Kž I 982/70

[25] Judgement of the Supreme Court of BiH, no. Kž 35/91.

imprisonment. This means that the perpetrator may be sentenced to between ten and twenty years of imprisonment^[26] or long-term imprisonment between 21 and 45 years.^[27]

The criminal offence of *manslaughter* under CC FBiH Article 167 refers to the act of whoever deprives another person of their life in a fit of passion, having been provoked through no fault of his own into a state of intense rage or fright caused by attack, abuse or serious insult. Manslaughter is a privileged form of homicide which is why this criminal offence is punishable by a lesser sentence than the one stipulated for the criminal offence of homicide. The perpetrator of this criminal offence shall be punished by imprisonment for a term between one and ten years.

What gives this criminal offence the character of a privileged form of the criminal offence of homicide is, primarily, the special emotional state of the perpetrator at the time of commission – a state of intense rage or fright making the perpetrator unable to think or act reasonably.^[28] Objective criteria are used to determine whether the state of intense rage or fright within the meaning of this provision existed. Therefore, intense rage or fright on the part of the perpetrator that results primarily from certain subjective characteristics of the perpetrator cannot be the basis for applying this legal provision.^[29] In order for the court to establish the existence and intensity of rage or fright on the part of the accused at the time of commission, and that it resulted from the behaviour of the victim, it is necessary to conduct a psychiatric examination that will provide the court with relevant material for such a conclusion. The state of intense rage or fright may lead to diminished capacity on the part of the perpetrator, but this form of the criminal offence of homicide also exists when such states do not lead to diminished capacity. The prevailing view in the case-law and legal theory is that if

[26] CC FBiH Article 43, paragraph 1.

[27] CC FBiH Article 43.b, paragraph 1.

[28] In its decision no. Kž1410/64, the Supreme Court of BiH noted that for manslaughter to exist, the mental state of the perpetrator has to have such a negative effect that he makes the decision to kill uncritically.

[29] In its Judgement no. 070-0-Kž-000516 of 14 February 2008, the Supreme Court of FBiH expressed the view that intense rage within the meaning of the legal provision on manslaughter cannot be understood as referring to any such state of affect, especially when, as in this concrete case, it follows from the expert psychiatric testimony that the accused reached this state of intense affect due to his own personal traits of being hypersensitive and fearful, and noted that only a state of affect objectively deemed to have been caused by the attack, abuse or serious insult on the part of the victim falls within the meaning of the legal provision.

the state of intense rage or fright led to diminished or severely diminished capacity on the part of the perpetrator, this circumstance cannot also be counted for the purpose of determining the punishment, because this would mean counting it twice.

The perpetrator must be brought into a state of intense rage or fright through no fault of his own by the attack, abuse or serious insult on the part of the victim. If the perpetrator provoked these actions on the part of the victim, the qualification of manslaughter cannot apply.

An attack, in this context, is an act of commission or omission on the part of the victim directed against some protected good of the perpetrator. For the existence of the criminal offence, it is not necessary that the good was harmed. Abuse means causing the perpetrator to feel pain or suffering, either physical or mental. Serious insult refers to conduct that seriously disrespects, that is, violates the perpetrator's dignity and honour. The prevailing view in literature and case-law is that this form of the criminal offence of homicide can exist even when the perpetrator is brought into the state of intense rage or fright, through no fault of his own, by an attack, abuse or serious insult to a third person with close ties to the perpetrator (Babić, Filipović, Marković, Rajić, 2005:1476-1477; Tomić, 2007:65-66).

For this form of the criminal offence of homicide to exist, it is also necessary for the perpetrator to have acted in the moment, i.e. there has to be continuity between the provocation on the part of the victim that brought the perpetrator into a state of intense rage or fright and the act of killing. Whether this condition will be met depends on the circumstances of the concrete case, but in any case, the act must be committed during the state of intense rage or fright caused by attack.

The perpetrator of this criminal offence can be any person and the offence can only be committed with intent.

Another privileged form of the criminal offence of homicide is the criminal offence of *Infanticide*, defined in CC FBiH Article 169, which is committed by a mother killing her newborn child at birth or immediately following birth. This legal provision does not require that the killing take place while the mother is suffering from a childbirth-related disorder. Only the mother of the newborn can be the perpetrator of this criminal offence and only at birth or immediately following birth. This criminal offence requires intent. The punishment foreseen for this criminal offence is imprisonment for a term between six months and five years.

A special form of the criminal offence of homicide is the criminal offence of *negligent homicide* from CC FBiH Article 168. As with the basic form of the criminal offence of homicide, as set out under CC FBiH Article 166, paragraph 1, the act of commission is the resultant act because it is defined as causing the death of another out of negligence. This means that the criminal offence can be committed by any act of commission or omission that is able to cause the death of another person. The criminal offence can be committed by an act of omission only if the perpetrator was under the obligation to act, i.e. to undertake actions to prevent causing the death of another person.

What distinguishes this criminal offence from the basic form of the criminal offence of homicide is the form of culpability. This criminal offence requires negligence on the part of the perpetrator. For the existence of this criminal offence, it is necessary that the perpetrator was aware that the prohibited consequence (death of another person) could result from his act of commission or omission, but carelessly assumed that it would not occur or that he would be able to avert it (advertent negligence),^[30] or that he was unaware of that possibility, although, under the circumstances and according to his personal characteristics, he should and could have been aware of the possibility (inadvertent negligence).^[31] The death of another person, therefore, resulted from the recklessness, carelessness, or neglect of the perpetrator.^[32]

A question that often comes up in practice is one of distinguishing between advertent negligence and indirect intent, which is particularly important in the context of criminal offences against life and limb. What is known as Frank's second formula, according to which indirect intent exists if it can be concluded

[30] CC FBiH Article 38, paragraph 2.

[31] CC FBiH Article 38, paragraph 3.

[32] In its Judgement no. 070-0-Kžk-08-000002 of 20 May 2008, the Supreme Court of FBiH concluded that, in the concrete case, the death of another person was caused by negligence and not with intent, given that there had been no prior conflict between the accused and the victim, not just at the time of the event but also prior to the event, since, according to the testimony of the victim's mother, their long relationship did have its disagreements, but these can be considered commonplace and normal, that the shot that killed the victim was fired while the accused handled the pistol carelessly and irresponsibly so that at one point, although he had not checked to make sure there was no bullet left in the barrel, he inadvertently pulled the trigger, carelessly assuming that there was no bullet in the barrel and that no shot could be fired to kill the victim, although he had been aware that the described action and omission could result in such a consequence.

that while undertaking the action the perpetrator thought, 'Whatever happens, I'll undertake this action' (Horvatić, 2002:297) and that, therefore, advertent negligence exists if it is found that the perpetrator would have refrained from acting had he foreseen the consequence of his action as certain, is still often used in court practice, but distinguishing between these two forms of culpability must be based on analysing all the circumstances of the concrete event, and above all on analysing the circumstances the perpetrator relied on to believe that the consequence would not occur or that he could avert it.

Any person can be the perpetrator of this criminal offence, for which the foreseen punishment is imprisonment for a term between six months and five years.

Causing the death of another is also incriminated with the *qualified form of the criminal offence of grievous bodily harm* under CC FBiH Article 172, paragraph 5, for which the law foresees the punishment of imprisonment for a term between one and twelve years.

The basic form of the criminal offence of grievous bodily harm under CC FBiH Article 172, paragraph 1 is committed by whoever inflicts a grievous bodily injury or seriously impairs the health of another person (*basic grievous bodily harm*). If the criminal offence is perpetrated against a spouse, common-law spouse, or to the parent of the perpetrator's child with whom he does not share a household, it constitutes the qualified form of the criminal offence as set out under Article 172, paragraph 2 of CC FBiH. If the criminal offence referred to in paragraph 1 is committed out of hatred, it will constitute the qualified form of the criminal offence as set out under paragraph 4 of this Article. *Particularly grievous bodily harm* is incriminated under CC FBiH Article 172, paragraph 3 and exists when the perpetrator inflicts bodily injury upon another person or impairs his health so severely that the life of the injured person is endangered, or an important part or organ of his body destroyed or permanently weakened to a substantial degree, or if the injured person's earning ability has been impaired permanently, or if permanent and grave damage to his health, or disfigurement was caused.

Should the injured person die as a result of the injuries referred to in paragraphs 1 through 4 of this Article, this will constitute the qualified form of the criminal offence of grievous bodily harm as set out under CC FBiH Article 172, paragraph 5. Grievous bodily harm qualified by the death of the victim incurs a more serious punishment on account of its more serious consequence.

In order for this form of the criminal offence of grievous bodily harm to exist, there must be intent on the part of the perpetrator to cause serious bodily injury or severe impairment of the health of the victim, while the death of the victim must be caused by negligence on the part of the perpetrator.^[33] The criminal offence of Negligent Homicide, as set out under CC FBiH Article 168, will exist if the bodily injury or impairment of the health of the victim was caused by negligence and resulted in the victim's death. CC FBiH.

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

Under CC FBiH, a family member is a spouse or common-law spouse, ex-spouse or ex-common-law spouse, lineal relative, adoptive parent and adopted child, relative in a collateral line to the third degree and in-law to the second degree.^[34]

Although these are two qualified forms of the same criminal offence, they differ significantly.

The qualified form of the criminal offence of domestic violence under CC FBiH Article 222, paragraph 5 requires that the death of the family member was caused by a criminal offence referred to in paragraphs 1 through 4 of that Article, as well as

[33] In its Decision no. Kž 16/98 of 26 February 1998, the Supreme Court of FBiH pointed out that in order for a criminal offence to constitute aggravated bodily injury qualified by death, it is necessary that the more serious consequence of death was caused by negligence on the part of the perpetrator. Since in this concrete case, it follows from the actual action of the perpetrator that he delivered a forceful blow by hand to the neck of the victim in order to cause him grievous bodily harm, his action with respect to the death of the victim can only be attributed to his negligence and cannot, therefore, constitute the criminal offence of homicide.

[34] CC FBiH Article 2, paragraph 23.

the qualifying circumstance of negligence on the part of the perpetrator in relation to the death of the victim. In the basic form of this criminal offence, as set out under paragraph 1, the perpetrator violates the peace, physical integrity or mental health of a member of his family by violence, insolent or arrogant behaviour. The violence can consist of various forms of physical, mental, emotional or economic abuse (Babić, Filipović, Marković, Rajić, 2005:1618), and insolent or arrogant behaviour of behaviour deviating from what is expected or common behaviour within a family (Babić, Filipović, Marković, Rajić, 2005:1618). The qualified form referred to in paragraph 2 of this Article is when the perpetrator perpetrates the criminal offence referred to in paragraph 1 of this Article against a member of his household, and the qualified form referred to in paragraph 3 is when, in the course of the perpetration of the criminal offence referred to in paragraphs 1 and 2 of this Article, a weapon, dangerous implement or other means capable of inflicting a grievous bodily injury or impairing health have been used. If a serious bodily injury was inflicted on a family member by the criminal offence referred to in paragraph 1 through 3 of this Article, or his health was severely impaired; or if the criminal offence was perpetrated against a child or juvenile, this will constitute the qualified form under CC FBiH Article 222, paragraph 4.

The qualified form under CC FBiH Article 222, paragraph 6 does not require that the death of a family member was caused by a criminal offence referred to in paragraphs 1 through 4 of the Article. This criminal offence is committed when the perpetrator kills a family member whom he had previously been abusing. The killing need not be committed at the same time as the abuse, but the victim must be a family member whom the perpetrator had been previously abusing. In that case, this would actually constitute a qualified form of homicide where the qualifying circumstance is the passive subject – the family member whom the perpetrator had previously been abusing. This criminal offence requires intent.

The perpetrator of this criminal offence must be a member of the same family as the passive subject of the criminal offence.

Apart from provisions on criminal offences under Chapter XVI and Chapter XX of CC FBiH, life and limb are also protected under provisions on other criminal offences set out in other chapters of the Special Part of CC FBiH, where the primary objects of protection are other goods, such as, for example, criminal offences against health, criminal offences against property, criminal offences against the public safety of persons and property, and where, as a rule, killing or causing the death of another person is a qualifying circumstance.

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— Judge Obren Bužanin, Supreme Court of Republika Srpska

CRIMINAL LAW REGULATION OF HOMICIDE IN REPUBLIKA SRPSKA

Protection of the right to life and bodily integrity under criminal law is the most important segment of criminal law protection in contemporary criminal codes. The right to life as a fundamental, universal and primary human right is guaranteed under international legal instruments^[35] and in constitutions of all contemporary states. The protection of this right under criminal law is the basis and precondition for the protection of all other human rights and freedoms.

The right to life is protected under constitutional law in Republika Srpska on the basis of Article II.3.a) of the Constitution of Bosnia and Herzegovina,^[36] and Article 11, paragraph 1 of the Constitution of Republika Srpska,^[37] while protection under criminal law is provided by the Criminal Code of Republika Srpska (hereinafter: CC RS).^[38]

Incriminations contained in Chapter XII – Criminal Offences against Life and Limb refer to a group of criminal offences where the life and body of a person are the primary and exclusive object of protection. Another group is made up of incriminations found in various chapters of the Criminal Code where the primary

[35] Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966); European Convention on Human Rights (1950); Convention on the Prevention and Punishment of the Crime of Genocide (1948); Geneva Conventions for the Protection of War Victims from 1949 with additional protocols from 1965, etc.

[36] Article II.3.a) of the Constitution of Bosnia and Herzegovina: "All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include: (a) The right to life..." (*Paragraph 2. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.*)

[37] Article 11, paragraph 1 of the Constitution of Republika Srpska: "Human life shall be inviolable."

[38] Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, 64/18 and 15/21 - hereinafter: CC RS).

objects of protection are other individual or social goods (Babić and Marković, 2005:30). Therefore, the essential difference between these two groups of criminal offences is that, as opposed to criminal offences against life and limb, the other group consists of criminal offences that are not solely or primarily directed against a person's life or body. Under CC RS, the group of criminal offences against life and limb (Chapter XII) includes other criminal offences that result in death. These are incitement to suicide and assistance in suicide (Article 129), the aggravated form of the criminal offence of illegal abortion qualified by death (Article 130, paragraph 4), the aggravated form of the criminal offence of grievous bodily harm qualified by death (Article 132, paragraph 3), the aggravated form of the criminal offence of female genital mutilation qualified by death (Article 133, paragraph 4), the aggravated form of the criminal offence of exposure to danger qualified by the death of the exposed person (Article 136, paragraph 3), and the aggravated form of the criminal offence of failure to render aid qualified by the death of the person whose life was in imminent danger (Article 138, paragraph 3).

The general concept of the criminal offence of homicide is defined by law as depriving another person of life. It can be perpetrated in various ways, by various means and under various concurrent circumstances that distinguish the manifest forms of this criminal offence as the basic form of homicide, the aggravated (qualified) form of homicide (aggravated homicide), or the lesser (privileged) form of homicide (manslaughter). Within the group of criminal offences against life, a distinction should be made between homicide with intent and negligent homicide.

Homicide perpetrated with intent may be basic homicide, qualified (aggravated) homicide (aggravated homicide), or the privileged (lesser) form of homicide (manslaughter).

The *basic form* of the criminal offence of homicide is stipulated under CC RS Article 124, paragraph 1 and incurs a punishment of imprisonment for a term between five and twenty years. Homicide under this provision is any intended and unlawful deprivation of another person of their life that is not concurrent with additional, special circumstances that give it a lesser or aggravated form,^[39]

[39] "The detailed and clear testimony of D.M., in correlation with corroborating testimony of V.Ž., and evaluated within the context of other witness testimony and expert witness findings, gives sound grounds for the court to conclude that on the occasion in question, there was no insult or attack by the victim that could have put the accused in a state where his actions could be seen as caused by impulse. Therefore, the legal qualification of the offence could not have been

and where the life of a person appears as the basic and exclusive protected object. However, all the special forms of homicide are based on the basic form because the characteristics of the basic form of homicide are common for all other forms of this incrimination (Babić, Filipović, Marković and Rajić, 2005:1432). For this reason, the basic form of homicide appears as subsidiary to its qualified or privileged forms and is found only when, in the concrete case, it does not have any characteristics of another (qualified or privileged) form of this criminal offence. The elements that constitute homicide are: the act of perpetration, the consequence, the causal relationship between the act of perpetration and the consequence, the object of protection under criminal law or of the act of the criminal offence, unlawfulness, and intent as a form of culpability (Lazarević, 2006:340). The act of perpetration is determined by its consequence (deprivation of life), which means that it is any action that deprives another person of their life. The consequence of the offence is manifested in the death of another person, where the time of death (immediately following perpetration or some time later) is irrelevant for the existence of the offence, but where there must be a causal link between the act of perpetration and the consequence of death, and there must be intent on the part of the perpetrator to deprive another person of their life.

Therefore, this criminal offence requires a causal link between the consequence of death and the act of perpetration (the act of the perpetrator in the form of either commission or omission).

The object of this criminal offence is a living human being from birth to death. The moment of birth, within the meaning of this incrimination, is the moment when the first labour pains commence, and in the case of surgical childbirth (known as caesarean section), the decisive procedure is the one corresponding to cervical dilation in normal birth (KZSV:107; Babić, 2005:74). Within its meaning under criminal law, life ceases with brain death, i.e. when the brain as the centre of all physical and mental functions has ceased activity. The element of unlawfulness is not explicitly stated in the law but derives from the nature of this criminal offence. The subjective aspect of the offence consists of the intent (direct or oblique)^[40].

different from the one given by the court in the judgement under appeal... the first-instance court correctly appraised the evidence to find that the accused committed the criminal offence of homicide under CC RS Article 124, paragraph 1, and not voluntary manslaughter under CC RS Article 126 as suggested by the appeal, and found him guilty of that offence." (*Judgement of the Supreme Court of Republika Srpska no. 14 0 K 003900 20 Kž12 of 26 January 2021*)

[40] "In view of the findings of expert witness Dr M.S., in conjunction with other presented evidence giving support to the conclusion on the dynamics of the critical event, the argumentation in

Aggravated (qualified) homicide: Article 125, paragraphs 1 and 2 of CC RS define the various forms of aggravated homicide incurring the punishment of imprisonment for a term of at least ten years or long-term imprisonment. Qualified or aggravated homicide exists when intentional homicide is perpetrated under particularly aggravating (qualifying) circumstances as stipulated by law, whose impact on the degree of menace of the perpetrator and the offence is such that the legislator foresees for this offence the severest punishment or the severest measure of punishment (Babić and Marković, 2005:35). The specificity of aggravated homicide compared to other forms of killing is found in the legally defined qualifying circumstances reflected in such a manner of perpetration, such motives or such circumstances, or against such a person that they give the offence a higher degree of severity and harm for which the law foresees more serious punishment. Aggravated homicide, therefore, has a number of forms depending on the manner of perpetration, the motives of the perpetrator, the circumstances of perpetration and its consequences, and the character of the passive subject.

In terms of the manner of perpetration, *aggravated homicide* takes the following forms: *homicide committed in a cruel manner* (Article 125, paragraph 1, point 1), *homicide committed in an insidious manner* (Article 125, paragraph 1, point 1), and homicide committed by an organised group or when it is contracted (Article 125, paragraph 2).

the appeal contesting the correctness and validity of the reasoning of the judgement under appeal with respect to the mental attitude of the accused towards the act as a whole, and therefore also its consequence, is ungrounded. The manner of inflicting injury on the victim, in terms of the implement used, a metal telescopic rod, which the first-instance court correctly defined as a weapon within the meaning of Article 4 of the Law on Weapons and Ammunition (Official Gazette of Republika Srpska, 26/16) because it is an instrument intended for attack and defence, the strength of the blow and its point of action, as well as the injury to vital organs resulting in a brain contusion, in the opinion of this court clearly indicate the conscious and voluntary component of intent (oblique), because the accused was aware that such blows, given their strength of impact on the head as a vital part of the body, could cause the death of the victim and accepted that consequence. Given the above, this court finds that the facts were entirely and correctly established and that the Criminal Code was correctly applied, when the actions of the accused, factually described in the operative part of the judgement under appeal, were qualified as the criminal offence of attempted homicide in line with Article 124, paragraph 1 in conjunction with Articles 22 and 37 of CC RS." (*Judgement of the Supreme Court of Republika Srpska no. 11 0 K 023231 19 Kž6 of 18 February 2020*)

Homicide committed in a cruel manner: the concept of cruelty as a qualifying circumstance has not been determined by the legislator within the meaning of this incrimination, nor have criteria been provided to determine it, but judicial practice and doctrine have over time developed an understanding of this concept. A homicide will be deemed cruel when it is perpetrated in such a way so as to inflict on the victim severe and excessive suffering that surpasses the physical and mental pain felt by the victim of basic homicide, and is accompanied by certain mental characteristics on the part of the perpetrator. This would entail torturing the victim before the onset of the consequence of death. That is why, for the existence of this form of aggravated homicide, it is necessary to determine whether the passive subject was exposed to and felt such suffering prior to the onset of death (Lazarević, 2006:347).

This means that cruelty within the meaning of this incrimination does not include the cruelty inherent in every intentional homicide, but such cruelty as reflected in its special quality and intensity. The objective component of cruelty is reflected in the severity of the suffering inflicted on the victim and it is brought about by using a certain means of killing or through the way the homicide is perpetrated. The subjective aspect of cruelty is expressed in the callousness of the perpetrator, the absence of compassion for the victim and the suffering he inflicts on her; where it is irrelevant whether the perpetrator acted with the intent to cause such suffering, but it is necessary that he does so objectively and with awareness, and that this awareness does not provoke in him any feeling of pity or compassion (Lazarević, 2006:347).

Homicide in an insidious manner: an important characteristic of this incrimination that distinguishes it from ordinary homicide and from other forms of aggravated homicide is the insidiousness in the manner of perpetration. Homicide in an insidious manner means depriving another person of their life in a covert or secret way, where the perpetrator exhibits particular cunning or deviousness. Insidiousness is both objective and subjective. The objective element is manifested in the circumstances of the perpetration of the offence in the form of secret or concealed action, while the subjective element is related to the personality of the perpetrator and manifested in the perpetrator's cunning or deviousness. There must be awareness and willingness on the part of the perpetrator to create a situation conducive to perpetrating the offence or to exploiting the victim's trust. The victim's life is attacked when she does not expect it and is unable to notice the actions or sense the means used for the purpose of killing, and on account of such circumstances of the perpetration of the offence, the victim is not prepared to defend herself.

Homicide perpetrated in an organised way or contracted homicide: organised homicide^[41] is a form of aggravated homicide that is distinguished from other forms of homicide by the organised manner of its perpetration (by an organised crime group). An organised crime group is defined as a term in CC RS Article 113, point 10 as an association of three or more persons that is formed for the purpose of commission of criminal offences for which a punishment of imprisonment of three years or a more severe punishment is prescribed. The qualifying circumstance of this form of aggravated homicide is the organised manner of perpetration. This form of homicide is one whose perpetration requires the participation of multiple persons, i.e. whose definition foresees the participation and contribution of multiple persons for it to be perpetrated. Since the participation of multiple persons in the perpetration of this offence derives from its legal formulation, we can say that this is statutory co-perpetration (Babić and Marković, 2005:35).

Contracted homicide is a specific form of qualified homicide with the participation of at least two persons in its perpetration, of which one contracts the homicide and the other is the direct perpetrator. The contract for the homicide is some form of agreement between the contracting person and the direct perpetrator and constitutes a special form of incitement of another person to commit the criminal offence of homicide on behalf and in the interest of the contracting person (instigator). However, in contrast to the previously described form of aggravated homicide (organised homicide), this form does not include statutory co-perpetration, because each party is culpable for its share in the perpetration of the offence, i.e. the contracting person as an instigator and the direct perpetrator as the perpetrator of the criminal offence of aggravated

[41] "By evaluating the cited evidence, in the judgement under appeal the first-instance court correctly found and reasoned that the murder of M. Đ. was organised, that it was perpetrated in line with a prior agreement between the accused M. R. and D. P. and a plan of perpetration that they devised together and which also involved R. B. who had the role of sending a message of pre-agreed content to M. R. when the victim left "M" on the night in question. In the achievement of this joint aim, in line with the prior agreement, plan and preparations, the direct perpetrator is the accused M. R. who killed the victim M. Đ. by firing shots from an automatic rifle. In line with the above and contrary to the arguments set out in the appeal of the defence, and the father and spouse of the accused D. P., this court finds that the judgement under appeal, with respect to actions from point 1 of its operative part, was based on completely and correctly established facts and correct application of the Criminal Code when the actions of the accused M. R. and D. P. were qualified as the criminal offence of aggravated homicide under Article 149, paragraph 2 of the Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, 49/03, 108/04, 37/06, 70/06, 73/10, 01/12, and 67/13)." (*Judgement of the Supreme Court of Republika Srpska no. 11 OK 017025 17 Kž 13 of 8 June 2017*)

homicide (Babić and Marković, 2005:55). For this incrimination to exist, it is not necessary for the perpetration of the homicide to be motivated by greed on the part of the perpetrator because it can be perpetrated out of other motives, such as, for example, political, business and similar motives.

Aggravated homicides in respect of the motives of the perpetrator are: homicide out of greed (Article 125, point 2); homicide to commit or conceal another criminal offence (Article 125, point 2); homicide out of callous revenge (Article 125, point 2); homicide out of hatred (Article 125, point 2); and homicide out of other base motives (Article 125, point 2).

Homicide out of greed is when someone intentionally takes the life of another where the perpetrator is motivated by greed. Furthermore, the qualifying circumstance of this form of aggravated homicide is greed as a special motive out of which the homicide is perpetrated. The essence of this form of homicide is that it is perpetrated with the aim of achieving a material benefit for the perpetrator or another person. Achieving material benefit is both achieving material gain, i.e. an increase in fortune, and preventing a decrease in fortune that was supposed to occur (Lazarević, 2006:352). With this form of aggravated homicide, it is important that the act of perpetration is taken with the aim of achieving the greed motive, but it is irrelevant for the existence of the offence whether that aim was actually achieved in the concrete case.

Homicide in order to commit or conceal another criminal offence: this form of aggravated homicide is qualified by the motive of perpetration manifested in two forms, either as the desire to commit another criminal offence or to conceal another criminal offence. The first form is taking the life of another person in order to enable or facilitate the perpetration of another criminal offence. For this qualified form of homicide to exist, it is irrelevant which other criminal offence was supposed to be perpetrated, whether the homicide was meant to enable or facilitate the perpetration of the other offence for the perpetrator or for someone else, or whether that planned offence was perpetrated. In any case, the perpetration of the other offence must be the motive for the perpetration of the homicide. The other form of this homicide offence is when a person (witness, victim or accomplice) is killed in order to conceal a previously committed criminal offence. For the existence of this homicide offence, it is irrelevant which criminal offence is being concealed, whether that offence was committed by the perpetrator of the homicide or someone else, what role the perpetrator of the homicide had in the previous offence (perpetrator or accomplice), or whether the previous criminal offence had been discovered or not.

Homicide out of callous revenge is a qualified form of homicide where the qualifying circumstance is the amoral motive in the form of callous revenge. With this form of homicide, the perpetrator takes the life of another person motivated by the desire to take revenge for harm previously inflicted on him or a person close to him, and where that revenge is callous. Therefore, in order for this form of the criminal offence of homicide to exist, it must be perpetrated out of revenge, the revenge must be callous in nature, and the callousness of the revenge is determined based on the facts. The callousness of the revenge must be evaluated in each specific case and can take into account various circumstances, most typically the large disproportion between the harm on account of which the revenge is taken and the harm of the homicide.

Homicide out of hatred is when the perpetrator is motivated by hatred as a special type of amoral motive to take the life of another person. CC RS Article 123, point 21 defines hate crime as a criminal offence entirely or partly perpetrated against a person for reasons of racial, national or ethnic origin, language, religious beliefs, colour, sex, or sexual orientation, health status or gender identity. In terms of incriminating the criminal offence of aggravated homicide out of hatred, the above definition suggests that the motive for the homicide is based on the perpetrator's bias in relation to persons with the cited protected characteristics. This means that the perpetrator selects the victim on the basis of the victim's belonging to a group with a protected characteristic and not based on any personal feeling of animosity or actual hatred towards the victim.

Homicide out of other base motives: the qualifying circumstance in this form of aggravated homicide is manifested in other base motives (other than the ones cited previously), and these include motives considered base in terms of morals and ethics. This is to be determined based on the facts of each specific case. Therefore, this qualifying circumstance is defined in law by a general clause encompassing all cases of homicide committed out of other amoral motives. Base motives are those that are at odds with the prevailing universally accepted moral norms and attitudes, and that are met with condemnation on the part of the majority of society. These are extremely negative motives making the perpetrator's conduct inhuman, dishonourable and unworthy, and designating the perpetrator as a person of no character (Babić, Marković, 2005:47). They exist when the perpetrator takes the life of another person in order to satisfy immoral proclivities, low passions and deviance, such as jealousy, envy, malice or deviant sexual desires.

Aggravated homicide in terms of the circumstances of perpetration and the consequence includes: homicide with reckless violence, homicide with intentional endangerment of the life of another person, killing multiple persons, and homicide while committing aggravated robbery or robbery.

Homicide with reckless violence: the qualifying circumstance of this aggravated form of the criminal offence is that the perpetrator acts with reckless violence. The main characteristic of this form of aggravated homicide is that it results from the violent conduct of the perpetrator towards the victim during perpetration, that it is perpetrated recklessly and is not motivated by anything. This criminal offence consists of two acts that must be linked, namely, violent conduct (as a criminal offence against public peace and order) of such a degree, seriousness and duration, or with such consequences that it acquires the character of being reckless, arrogant, insolent, contemptuous violent conduct, and homicide (as a criminal offence against life). This is when the life of another person is taken as a result of the recklessness, arrogance, callousness and insolence of the perpetrator as an asocial and destructive personality (Jovašević, Mitrović and Ikanović, 2021:315).

Homicide with intentional endangerment of another person: this form of aggravated homicide is manifested in that the act both takes the life of one person and endangers the life of another person. This means that a single intentional act achieves two consequences, where the consequence of endangering the life of another person is a qualifying circumstance giving the perpetrated homicide its aggravated form.

Killing multiple persons is a specific construction of aggravated homicide where two or more concurrent intentional homicides are qualified as a single criminal offence of aggravated homicide, provided they are not privileged forms of homicide^[42] and that no judgement has been delivered on any of the

[42] "...It was correctly found that the victims did not insult, nor did they attack the accused, prior to his taking their lives, and that there was no elements to suggest that there was any strong agitation, all of which excludes the possibility of perpetration in a fit of passion. The first-instance court correctly applied the Criminal Code to the correctly and completely established facts when it legally qualified the actions of the accused as the criminal offence of aggravated homicide under CC RS Article 125, paragraph 1, point 6 and found him guilty. The objections raised in the appeal referring to a breach of the Criminal Code and suggesting that his actions should have been qualified as manslaughter under CC RS Article 126 are, therefore, unfounded." (*Judgement of the Supreme Court of Republika Srpska no. 14 0 K 003398 18 Kž 3 of 25 February 2019*)

homicides. This form of aggravated homicide exists when two or more persons are intentionally killed, and it is irrelevant whether this consequence was achieved in ideal or actual concurrence, and whether the same person participated in the perpetration of all the homicides as a perpetrator or as an accomplice. The scope of the consequence manifested in intentionally causing the death of two or more persons is the qualifying circumstance of this form of aggravated homicide.

Homicide during aggravated robbery or robbery is a criminal offence involving multiple actions where the perpetrator first undertakes coercive action (use of force absolute or compulsive) towards another person with the intent of appropriating another's property (aggravated robbery) or retaining previously appropriated property (robbery) and then proceeds to take the life of the same person (victim) or another person (passer-by, onlooker, a person trying to prevent the robbery or perceived by the perpetrator as such). (Jovašević, Mitrović and Ikanović, 2021:316). This means that the aggravated robbery or robbery are qualifying circumstances under which the homicide is perpetrated and due to which it has its more serious (qualified) form.

Aggravated homicide with regard to passive subject characteristics includes: killing a family member who has been previously abused by the perpetrator, killing a child, or a pregnant woman knowing that she is pregnant, killing a judge or public prosecutor in connection with the exercise of their judicial or prosecutorial duties, killing an official or member of the military in the exercise of their duties related to maintaining security or preserving public peace and order, apprehending a criminal perpetrator or guarding any person deprived of liberty.

Killing a family member who has been previously abused by the perpetrator: this form of aggravated (qualified) homicide is determined by two qualifying circumstances. The first circumstance is that the perpetrator and the victim belong to the same family or household, and the second is that the perpetrator had previously abused the victim over a shorter or longer period. The notion of family or household within the meaning of this incrimination should be interpreted broadly, as defined under CC RS Article 190, paragraph 6 in reference to the incrimination of the criminal offence of domestic violence.

Killing a child^[43] is a qualified form of aggravated homicide manifested in unlawfully causing the death of a person who was under 18 at the time of perpetration. With this form of aggravated homicide, the qualifying circumstance is the age of the victim. It involves intentional homicide where the perpetrator is aware that the victim is under 18 and desires or accepts the intended consequence.

Killing a pregnant woman, knowing that she is pregnant. The qualifying circumstance for this offence is that the woman is pregnant and the intent of the perpetrator at the time of perpetration must include this qualifying circumstance.

Killing a judge or prosecutor in connection with the exercise of their judicial or prosecutorial duties: this form of aggravated homicide entails intentionally causing the death of a judge or prosecutor in connection with the exercise of their judicial or prosecutorial duties. The qualifying circumstances include the characteristic of the victim and the fact that the homicide is perpetrated in connection with the victim's judicial or prosecutorial duties, which means that the perpetrator must be aware of this characteristic at the time of perpetration and the act must be undertaken in connection with the victim's exercise of official duties.

[43] "Having analysed and evaluated the evidence presented by the prosecution and the defence, including testimony of witnesses with direct or indirect knowledge of the offence or its significant circumstances, the material evidence (inquest, exhumation and autopsy reports), expert findings, written findings of medical expert witnesses (forensic expert and psychiatrist), individually and in mutual correlation, as foreseen by CPC RS Article 295, paragraph 2, the first-instance court completely and correctly determined the facts and correctly drew the conclusion that on 16 August 2016, in the home of P. M., in D. K., Municipality Z., where she was a tenant, the accused, together with her common-law partner M. S., caused the death of L. R., a child born on 19 November 2014 who was in the care of the accused and M., by inflicting a strong blow with her hand or some blunt object to L.'s head that caused a massive diastatic fracture of the cranial roof with partial separation of the cranial and sagittal suture, which injuries, together with a depressed fracture of the right parietal bone, most likely sustained from the fall caused by the blow to the head when L.'s head hit the floor or another hard object, caused intracranial bleeding, haematoma, brain tissue damage and the death of R.L., meaning that the accused committed the criminal offence of aggravated homicide under Article 149, paragraph 1, point 5 of the Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, 49/03, 108/04, 37/06, 70/06, 73/10, 01/12, and 67/13)." (*Judgement of the Supreme Court of Republika Srpska no. 12 0 K 005846 17 Kž6 of 31 August 2017*)

Killing an official or member of the military in the exercise of their duties related to maintaining security or preserving public peace and order, apprehending a criminal perpetrator or guarding any person deprived of liberty: the qualifying circumstances of this form of aggravated homicide include the characteristic of the victim (official or member of the military) and the circumstance of the homicide being perpetrated while they are carrying out specific legally defined official duties (security or preserving public peace and order, apprehending a criminal perpetrator or guarding a person deprived of liberty). The subjective aspect of the offence is the intent (direct or oblique) of the perpetrator that includes awareness of this characteristic of the passive subject (victim) and the desire to cause the victim's death in connection with official duties that the victim is carrying out or plans to carry out. The term 'an official' is defined under CC RS Article 123, point 3.

Privileged homicides are when the unlawful killing of another person takes place under special privileged circumstances that make it less serious than the basic offence of homicide. In line with the incriminations in CC RS, privileged homicides are *manslaughter, infanticide, and homicide under particularly mitigating circumstances*.

Manslaughter, as defined under CC RS Article 126, is a special form of privileged (lesser) homicide where the perpetrator kills in a fit of passion, having been provoked through no fault of his own into a state of intense rage by an attack, severe abuse or insult on the part of the victim. The privileging circumstances of this form of homicide are manifested in the facts that at the time of perpetration, the perpetrator was in a state of intense rage, that this state was caused by an attack, severe abuse or insult on the part of the victim and that the homicide was perpetrated in a fit of passion.^[44]

[44] "Manslaughter requires continuity between the provocation on the part of the victim and the homicide, which is lacking from the actions of the accused in this specific case. When insulted by the victim, the accused did not respond impulsively or aggressively, by attacking, which could have reasonably been expected from a person in an intense state of rage and a lowered tolerance threshold. On the contrary, the accused leaves the premises and returns only twenty to thirty minutes later, with a knife concealed on his person. In the meantime, according to witness testimony given by D. G., the accused had stopped by petrol station 'B', where he bought and drank a bottle of mineral water, and then drove his vehicle towards the city. These actions on the part of the accused are not the result of a sudden and impulsive reaction in response to the insult launched by the victim, and were not undertaken without critical reasoning. Namely, the accused's return to the cafe-bar, the way he entered the

The state of intense rage is a special emotional state of intense affect (it can be expressed as intense irritation, anger, rage, furiousness) that influences behaviour in such a way as to diminish to a greater or lesser extent the ability to understand and control one's own actions. This state of intense rage on the part of the perpetrator of a homicide may be the result of unprovoked attack, severe abuse or insult on the part of the victim. An offence is said to be committed in a fit of passion when the action of killing is undertaken immediately following an attack or severe insult, within a brief period following provocation by the victim and while the state of intense rage is ongoing. The perpetrator makes the decision impulsively, suddenly, without critical reflection. This means that the perpetrator is aware of his actions but being under the influence of affect, cannot control them. The state of intense rage on the part of the perpetrator must have arisen as a consequence of an attack, severe abuse or insult on the part of the victim, where it is irrelevant for the existence of the criminal offence whether such provocations were directed towards the perpetrator himself or a person close to the perpetrator, but they must have been undertaken by the victim who was killed following such actions of provocation.

An attack is an action that threatens or harms bodily integrity. Severe insult is manifested in the severe forms (higher degree, larger scope or longer duration) of harm to honour and reputation, while severe abuse entails actions that inflict physical or mental distress, pain and suffering to a higher degree or for a longer duration. For the existence of this offence, there needs to be a causal relationship between the provocation on the part of the victim and the intense state of rage on the part of the perpetrator. The punishment foreseen for this criminal offence is imprisonment for a term between two and twelve years.

premises and approached the victim, and the way he inflicted a knife wound to a vital part of the victim's body, render untenable the thesis of expert witness Dr 'K' that the words spoken by the victim 'triggered' an impassioned state of affect manifested in high intensity rage on the part of the accused. Affect is characterised by sudden onset and a relatively brief interval between the action giving rise to it and its onset. That is why states of affect tend to result in uncontrolled and most often misguided reactions. However, the actions of the accused were manifestly controlled and rational, as evidenced in the findings of expert witness Dr 'S' and Dr 'St' pointing out that the time interval between the words spoken by the victim and the act of killing are crucial. Therefore, the overall behaviour of the accused, determined by analysing all the presented evidence, compromises the position of Dr. 'K' that his actions were involuntary and arose out of an emotional reaction conditioned by the situation, i.e. the strong insult on the part of the victim. (*Judgement of the Supreme Court of Republika Srpska no. 15 0 K 003779 21 Kž10 of 7 September 2021*)

Infanticide is a privileged form of the criminal offence of homicide defined under CC RS Article 127. According to its legal definition, this criminal offence is when the mother intentionally causes the death of her newborn child at birth or immediately thereafter, while under the influence of a childbirth-induced condition. Childbirth is understood to begin with the first labour pains and to last until the physical separation of mother and child. Only the mother can be the perpetrator of this offence, and the object of attack is the newborn (a live born child irrespective of whether the child's life is viable, but provided that childbirth is completed), and for this incrimination to exist, the killing can only be perpetrated at childbirth or immediately following childbirth. Therefore, this offence is committed by a mother who causes the death of her newborn child at childbirth or immediately following childbirth, while under the influence of a disorder (a special psychosomatic situation) caused by childbirth. The privileging circumstance with this form of homicide is the mother's condition caused by childbirth. The killing of a child at childbirth is intentional homicide. Notwithstanding the special mental state of the mother caused by childbirth, she must be aware of causing the death of her newborn child and must desire or accept that consequence. Otherwise, the case would concern an accident, and not this offence (Lazarević, 2006:364).

Homicide under particularly mitigating circumstances is defined under CC RS Article 124, paragraph 2 as a privileged form of homicide. This form of the criminal offence reflects a new form of criminal legislation introduced in Republika Srpska through reforms carried out in 2000. This is a lesser form of homicide, privileged on account of the fact that intentionally causing the death of another person was perpetrated under particularly mitigating circumstances.

It is impossible to precisely define the mitigating circumstances in the context of this incrimination. However, in view of the intention of the legislator, they can be applied to cases of intentional homicide perpetrated at the request or with the consent of the passive subject, to mercy killings, to assisted ending of life with intentional shortening of life, as well as to some cases of intentionally causing death where the behaviour of the victim over a protracted period was such that it significantly influenced the decision of the perpetrator to take the victim's life, such as the perpetrator suffering many years of mental and physical abuse (Babić and Marković, 2005:35). The punishment foreseen for this criminal offence is imprisonment for a term between one and eight years.

Negligent homicide: this form of the criminal offence of homicide is stipulated under CC RS Article 128 and incurs a punishment of imprisonment for a term between two and eight years. This criminal offence exists when the perpetrator was aware that his acts (of commission or omission) could cause the death of a person, but carelessly assumed that the consequence would not occur or that he could avert it (advertent negligence), and when the perpetrator was not aware that death could occur, but given the circumstances of his actions and his personal characteristics, he was obliged and could have foreseen it (inadvertent negligence). With this criminal offence, there is no voluntary relationship of the perpetrator towards the consequence of death, which is why the degree of his criminal culpability is manifested in negligent behaviour. This means that in negligent homicide, the death of another person is not the aim of the perpetrator's actions but an unintended consequence of his negligent behaviour. This mental attitude of the perpetrator towards the consequence makes this a privileged form of the criminal offence of homicide (Lazarević, 2006:369).

Grievous bodily harm qualified by death, stipulated under CC RS Article 132, paragraph 3, represents the most serious form of grievous bodily harm and exists when an intentionally inflicted bodily injury or grievous bodily injury, through negligence, results in the death of the injured person. The qualifying circumstance is the more serious consequence (that is beyond the intent of the perpetrator), manifested in the death of the person on whom grievous bodily injury (either ordinary or severe) was inflicted.

Three conditions must be met for this criminal offence to exist, and they are: a) that the perpetrator's act achieved one of the forms of grievous bodily harm and that it was inflicted intentionally; b) that there is a causal link between the grievous bodily harm and the consequence of death; and c) that the perpetrator acted with negligence towards the consequence of death of the injured victim. The death of the injured victim is the result of the same action that caused the grievous bodily injury, except that the death was caused not directly, but indirectly by the grievous bodily injury. This means that the grievous bodily injury was not fatal in and of itself, but that its onset set off a process that was compounded by various factors and resulted in death (Jovašević, Mitrović and Ikanović, 2021:333). The punishment foreseen for this criminal offence is imprisonment for a term between three and twelve years.

Criminal Law Regulation of Domestic Violence in Republika Srpska

Article 190 of CC RS regulates the criminal offence of domestic violence. This criminal offence has one basic and three qualified forms.

The *basic form* is defined under paragraph 1 (incurring a fine or imprisonment for a maximum term of three years) and exists when the perpetrator harms the peace, physical integrity or mental health of a member of his family or household by violence or threat of violence against life and limb, or by insolent or reckless behaviour. The *qualified form* of this offence, defined under paragraph 2 (incurring a punishment of imprisonment for a term between six months and five years), exists when in the perpetration of the basic offence, the perpetrator uses a weapon, dangerous implement or other dangerous means capable of inflicting grievous bodily injury or harm to health, while the *qualified form* stipulated under paragraph 3 (incurring a punishment of imprisonment for a term between two and ten years) exists when the criminal offence referred to in paragraph 1 or 2 results in grievous bodily injury or harm to health, or when it is perpetrated against a child or in the presence of a child.^[45] The *most serious qualified form of this criminal offence*, stipulated under paragraph 4, is when the criminal offence referred to in paragraph 1, 2, or 3 results in the death of the member of the family or household. This form of the criminal offence incurs a punishment of imprisonment for a term between three and fifteen years.

[45] "The motion filed on behalf of the defendant seeks to overturn the final judgement by arguing that the first- and second-instance court incorrectly qualified the actions of the defendant during the event in question as the criminal offence of domestic violence under CC RS Article 208, paragraph 3, whereas they could only be qualified as the basic form of this criminal offence as set out under paragraph 1 of the above Article. This was all to suggest a violation of the Criminal Code had been made as per CPC RS Article 312, point g)... According to the facts stated in the operative part of the judgement under appeal, in the event in question, the defendant perpetrated the acts that amount to the basic form of domestic violence, as per CC RS Article 208, paragraph 1, towards his juvenile daughter and his wife, and in the presence of his other juvenile daughter. These circumstances, each viewed individually, give his actions the more serious form of this criminal offence as set out under paragraph 3, of which he was found guilty through correct application of the Criminal Code in the judgement under appeal, which renders unfounded the motion seeking to rebut that judgement by arguing that the legal qualification was incorrect." (*Judgement of the Supreme Court of Republika Srpska no. 78 0 K 024012 17 Kvlz of 14 July 2017*)

The perpetrator of this offence can only be a family or household member, and the offence can only be committed against another member of the family or household. Within the meaning of this incrimination, paragraph 6 sets out the family or household members that can be the passive subjects as follows: spouses or ex-spouses, their children and children of each of them, common-law spouses or former common-law spouses, their children and children of each of them, in-laws up to the second degree of kinship regardless of the fact that the marriage union has ended, parents of current and former married or common-law spouses, relatives from full adoption in direct line without limitation, and in indirect line up to the fourth degree of kinship, as well as relatives from partial adoption, persons linked by guardianship, persons who live or have lived in the same family household regardless of kinship, persons who together have a child or have conceived a child, even if they have never lived in the same household, and persons who were or are still in an emotional or intimate relationship regardless of whether the perpetrator shares or has shared a household with the victim.

The act of perpetration is determined by its consequence so that it can include any action undertaken that falls within any of the stipulated forms of the act of perpetration (using violence, or threat of violence against life and limb, or insolent or reckless behaviour) that is able to cause the consequence of harming the peace, bodily integrity or mental health of the victim. The consequence of the offence is manifested in harming the peace, bodily integrity or mental health of a family or household member. The object of protection is the physical and mental integrity of family or household members.

Criminal culpability of the perpetrator requires intent; the nature of the offence implies direct intent. The perpetrator must be aware of inflicting violence on a family or household member. With the qualified forms of the offence that concern a more serious consequence, negligence on the part of the perpetrator towards that consequence is required, and if the qualifying circumstance is the means of perpetration or a characteristic of the passive subject (a person who is a minor), it must be part of the intent (Lazarević, 2006:551).

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— Judge Srđan Nedić, Appellate Court of the Brčko District of BiH

CRIMINAL LAW REGULATION OF HOMICIDE IN THE BRČKO DISTRICT OF BiH

'The right to life, as the right to the inviolability of physical integrity, is one of the most significant natural, fundamental and universal human rights. These rights are the basis and precondition for the existence of all other human rights and freedoms, and are of paramount importance not just as personal, but also as social goods. The right to the inviolability of bodily integrity, together with the right to life, is guaranteed by a host of international legal instruments.' (Jovašević, 2020:11-12)

The right to life is protected under Article II/3a of the Constitution of Bosnia and Herzegovina. The Criminal Code of the Brčko District of BiH (hereinafter: CC BD BiH)^[46] defines many criminal offences for the purpose of protecting life and limb. These can be divided into two groups: 1) Criminal offences contained in Chapter XVI of CC BD BiH titled 'Criminal Offences against Life and Limb' whose object of protection is solely and exclusively life and bodily integrity; and 2) Criminal offences contained in other chapters of CC BD BiH whose primary object of protection is not life and bodily integrity, but where the consequence of death constitutes a qualifying circumstance.

Criminal Offences against Life and Limb (Chapter XVI, CC BD BiH) This part will only deal with those criminal offences against life and limb that result in death (homicide, manslaughter, negligent homicide, infanticide, incitement to suicide and assistance in suicide, illegal abortion, grievous bodily harm, failure to render aid, and abandonment of a helpless person).

Article 163, paragraph 1 of CC BD BiH defines the *basic form of the criminal offence of homicide* as depriving another person of life and stipulates the punishment of imprisonment for at least five years. 'The basic criminal offence of homicide means intentionally taking the life of another person without additional, special

[46] Criminal Code of the Brčko District of BiH (Official Gazette of the Brčko District of BiH, 19/20 – consolidated version, hereinafter: CC BD BiH).

circumstances that would change the seriousness and form of the offence into one of the qualified or privileged forms of homicide. However, all the special forms of homicide are based on the basic form because the characteristics of the basic form of homicide are common for all other forms of this incrimination. Therefore, the basic criminal offence of homicide is subsidiary to its more serious and less serious forms, meaning that, in practice, the basic offence of homicide exists only when elements of another form of this criminal offence are absent. Although the element of unlawfulness is not explicitly stated in the description of the offence, homicide exists only when deprivation of life is unlawful. The criminal offence of homicide does not exist if there are any of the general conditions (self-defence, utmost necessity) or special conditions (the right to use firearms concurrent with deprivation of life) that exclude unlawfulness.' (Babić et al., 2005:1432-1433)

The above provision of CC BD BiH implies that the act of perpetration of the basic offence of homicide consists of depriving another person of life. 'This means that the act of perpetration may be any act capable of causing the death of another person. This can be an act of commission, or an act of omission (commission by omission). These are very diverse and numerous acts of which not even the most typical acts of depriving another of life, and not even for the purpose of example, could be encompassed by a description of the essence of the criminal offence.' (Stojanović and Perić, 2002:93)

The consequence of the criminal offence of homicide is the death of another person. There must be a causal link between the act and the consequence. 'The object of protection in the case of these criminal offences is the human being, i.e. human life. Protection of life begins at birth and lasts until onset of death.' (Jovašević, 2020:13) 'In subjective terms, the existence of the criminal offence referred to in paragraph 1 requires intent. Oblique intent on the part of the perpetrator is sufficient, i.e. that the perpetrator accepted the death of the passive subject.' (Stojanović and Perić, 2002:94)

The basic form of homicide incurs a punishment of imprisonment for at least five years. Given the provision of CC BD BiH Article 43, paragraph 1, stipulating that imprisonment may not be shorter than 30 days or longer than twenty years, this means that the basic form of the criminal offence of homicide may be punished by imprisonment for a term between five and twenty years. Given the provision of CC BD BiH Article 28,^[47] attempted homicide is also punishable.

[47] Whoever intentionally commences the perpetration of a criminal offence, but does not complete it, shall be punished for the attempted criminal offence when the criminal offence

CC BD BiH Article 163, paragraph 2 defines the *qualified forms of the criminal offence of homicide* as when the perpetrator: 1) deprives another of life in a cruel or insidious manner; 2) deprives another of life while acting with reckless violence; 3) deprives another of life out of hatred; 4) deprives another of life out of greed, to commit or conceal another criminal offence, out of callous revenge or other base motives; and 5) takes the life of an official or a member of the military in the exercise of their duties related to security or preserving public order, apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty.

Given the above provision, qualified forms of homicide are differentiated: *by the manner of perpetration* (homicide in a cruel or insidious manner); *by the circumstances of perpetration* (homicide while acting with reckless violence); *by the motives of the perpetrator*^[48] (homicide out of hatred, homicide out of greed, homicide to commit or conceal another criminal offence, homicide out of callous revenge, homicide out of other base motives); and *by the characteristics of the passive subject* (homicide of an official or a member of the military in the exercise of their duties related to security or preserving public order, apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty).

With *homicide in a cruel manner*^[49] (CC BD BiH Article 163, paragraph 2, point 1), 'cruelty is determined objectively and subjectively. For this form of homicide to exist, it is necessary that the victim was subjected to unnecessary suffering (exceeding suffering commonly associated with deprivation of life), which will depend on the specific case. Suffering may be mental, not just physical. In addition, the perpetrator must be aware of this, i.e. he must desire to torture the victim, or even take pleasure in doing so. The fact that the perpetrator, as a rule, acts in cold

in question incurs a punishment of imprisonment for a term of three years or a more severe punishment, and for the attempt of another criminal offence when the law expressly prescribes punishment of the attempt alone.

[48] "Motive is the psychological motivation for the perpetration of the criminal offence, i.e. what drives the perpetrator to perpetrate the criminal offence. Determining the motive is necessary to qualify an offence as aggravated homicide." (Jovašević, 2020:30)

[49] "In order for the criminal offence of homicide in a cruel manner to exist, it is necessary that in addition to its objective elements, pertaining to the manner of perpetration (inflicting multiple injuries), subjective elements of this qualified form of the criminal offence also exist, and these are reflected in the awareness of the perpetrator that by delivering so many blows of high intensity he is inflicting pain and suffering of such intensity and duration that surpasses the pain and suffering inherent in any homicide." (*Judgement of the Appellate Court of the Brčko District of BiH no. 96 0 K 128777 21 Kž 6 of 1 October 2021*)

blood and takes pleasure in torturing the victim, often acting systematically and the like, excludes oblique intent' (Stojanović and Perić, 2002:95).

For *homicide in an insidious manner*^[50] (CC BD BiH Article 163, paragraph 2, point 1) to exist, 'both the objective and the subjective component must be present. Objectively, the manner of perpetration must be particularly concealed or secret, while subjectively, the perpetrator must exhibit pronounced cunning, treachery, and must abuse the victim's trust or defencelessness' (Stojanović and Perić, 2002:96).

For *homicide while acting with reckless violence* (CC BD BiH, Article 163, paragraph 2, point 2), deprivation of life must be preceded by recklessly violent behaviour. 'Jurisprudence requires that the forms of violence objectively exceed the common degree of violence inherent to the perpetration of the criminal offence of homicide, so as to distinguish violent from recklessly violent behaviour.' (Stojanović and Perić, 2002:96)

Homicide out of hatred (CC BD BiH Article 163, paragraph 2, point 3): 'The offence is committed out of hatred if the act of depriving another of life is undertaken due to that person's race or religion, national or ethnic belonging, sex, sexual orientation or gender identity.' (Jovašević, 2020:31) According to CC BD BiH Article 2, paragraph 42, hatred is a motive for the commission of a criminal offence stipulated in this Code, when it is based in whole or in part on differences in real or presumed ethnic or national origin, language or script, religious beliefs, race, colour, sex, sexual orientation, political or other beliefs, social origin, social status, age, health condition or other characteristics, or on an association with persons that have any of the above characteristics.

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

[50] "With respect to changing the legal qualification of the criminal offence with which the accused is charged, on page 36 the first-instance court gave sound reasons indicating that the offence in question was not homicide in an insidious manner given the scene and sequence of the event, that the perpetrator did not exhibit particular cunning or treachery that would have to be exhibited on the part of the perpetrator for the offence to be homicide in an insidious manner." (*Judgement of the Appellate Court of the Brčko District of BiH no. 96 0 K 089079 18 Kž 12 of 29 March 2018*)

Homicide out of greed 'is when the perpetrator commits the offence in order to achieve an increase in fortune, i.e. material gain' (Stojanović and Perić, 2002:98). *Homicide to commit or conceal another criminal offence* 'is when the homicide is committed either to conceal another criminal offence that has already been perpetrated (for example, killing an eyewitness), or to enable the perpetration of another criminal offence (in which case the other criminal offence need not have been perpetrated)' (Stojanović and Perić, 2002:98).

In the case of *homicide out of callous revenge*, it is necessary to distinguish between ordinary and callous revenge. 'The basic distinguishing criterion is the disproportion between the harm caused and the harm being avenged. The disproportion must be pronounced, i.e. it must be manifest in order to constitute callous revenge.' (Stojanović and Perić, 2002:99). For the criminal offence of *homicide of an official or a member of the military in the exercise of their duties related to security or preserving public order, apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty* (CC BD BiH, Article 163, paragraph 2, point 5) to exist, 'it is necessary that the official or the member of the military is killed while carrying out activities or duties related to their official or military capacity' (Stojanović and Perić, 2002:99).

The above qualified forms of the criminal offence of homicide may be perpetrated by any person, but they can only be perpetrated with intent which must include the qualified circumstance. For the qualified forms of the criminal offence of homicide under CC BD BiH Article 163, paragraph 2, the perpetrator shall be punished by imprisonment for a term of at least ten years or long-term imprisonment. In view of the provisions under CC BD BiH Article 43, paragraph 1 (imprisonment) and Article 43.b, paragraph 1 (long-term imprisonment), the perpetrator of a qualified form of the criminal offence of homicide may be sentenced to imprisonment for a term between ten and twenty years, or to long-term imprisonment for 21 to 45 years.

Manslaughter (CC BD BiH Article 164) is perpetrated by whoever deprives another of life, having been brought through no fault of his own into a state of intense rage or fear by an attack, abuse or serious insult on the part of the victim. Manslaughter is a privileged form of homicide.^[51] 'The circumstances that in this

[51] "Based on these established decisive facts related to the commission of the criminal offence for which the accused is charged, and given that the Prosecutor of the Brčko District of Bosnia and Herzegovina in his submission of 15 May 2015 amended the both facts and the

case mitigate the criminal offence of homicide and that must be cumulatively met are: 1) that the homicide was perpetrated while in a state of intense rage; 2) that the perpetrator was brought into such a state through no fault of his own; and 3) that the offence was committed out of irresistible impulse. (Stojanović and Perić, 2002:100) This criminal offence incurs a punishment of imprisonment for a term between one and ten years.

Negligent homicide (CC BD BiH Article 165) is committed by a person who deprives another of life out of negligence. As a privileged form of homicide, negligent homicide is formally distinguished from the basic offence 'only in terms of the form of culpability, i.e. with negligence appearing as a privileging circumstance. However, the behaviour of the perpetrator essentially differs from intentional homicide. Although both criminal offences have the same consequence, the intensity of the attack on the protected good is much less pronounced in the case of negligent homicide. Negligent homicide exists when the perpetrator was aware that his act of commission or omission could result in the death of another person, but he carelessly assumed that it would not occur

legal qualification in the indictment and instead of the criminal offence of homicide under Article 163, paragraph 1 of the Criminal Code of the Brčko District of Bosnia and Herzegovina, charged the accused P.I. with the criminal offence of manslaughter under Article 164 of the Criminal Code of the Brčko District of Bosnia and Herzegovina, the court finds that it has been established beyond reasonable doubt that the accused committed the criminal offences as described in the operative part of the indictment. This finding is based on all the circumstances that preceded the use of a firearm by the accused and the death of the victim M.D., about which this court has heard and has in sufficient part accepted testimonies from eyewitnesses to the entire event, and can therefore conclude with the requisite degree of certainty that the verbal insults, the physical attack on the accused, as well as the demolishing of the window of the catering establishment were of such intensity that they produced in the accused, due to the structure of his personality and general health condition (dissecting abdominal aortic aneurysm), an emotional state of high intensity that, in the opinion of this court, corresponds to the state of intense rage within the meaning of Article 164 of the Criminal Code of the Brčko District of Bosnia and Herzegovina. It was also found with the requisite degree of certainty, based on the same evidence, that the accused was brought into such a state through no fault of his own and that he made the decision to use a firearm and kill the victim M.D. after the victim, together with J. and D.Đ., smashed the window of the accused's catering establishment, leading this court to conclude that his actions exhibited all the legal characteristics of the criminal offence of manslaughter as set out under Article 164 of the Criminal Code of the Brčko District of Bosnia and Herzegovina." (*Judgement of the Appellate Court of the Brčko District of BiH no. 96 O K 040355 15 Kžk of 21 May 2015*)

or that he could avert it (advertent negligence), and when the perpetrator was not aware that death could occur, but given the circumstances of his actions and his personal characteristics, he had a duty and an ability to be aware of this possibility. For the existence of this criminal offence, it is irrelevant whether the negligence was advertent or inadvertent. However, the type of negligence must be determined, not only because this circumstance is of significance for evaluating the degree of criminal responsibility for the purpose of punishment, but also in order to distinguish between advertent negligence, oblique intent, and inadvertent negligence, as the case may be.' (Stojanović and Perić, 2002:102-103)

The punishment foreseen for this criminal offence is imprisonment for a term between six months and five years.

Infanticide (CC BD BiH Article 166) is committed by a mother who deprives her child of life during or immediately following childbirth, while under the influence of a condition brought on by childbirth. 'The perpetrator of this criminal offence can only be the mother of the child. Any co-perpetrator or accomplice is held responsible for the basic form of homicide. The criminal offence must be perpetrated during childbirth or immediately thereafter while the disorder caused by childbirth lasts.' (Stojanović and Perić, 2002:104) This criminal offence incurs a punishment of imprisonment for a term between one and five years.

Incitement to suicide and assistance in suicide (CC BD BiH Article 167, paragraph 1) is perpetrated by whoever induces another to commit suicide or assists him in committing suicide. The basic form of this criminal offence incurs a punishment of imprisonment for a term between three months and five years. 'The act of perpetration consists of the act of incitement or assistance in the suicide of another person. These can be different actions and should be understood as in the forms of complicity. There must be a causal link between such actions and the suicide, i.e. the act of incitement must cause or reinforce the decision of the person to commit suicide. This form of the offence requires that the suicide has been committed.' (Stojanović and Perić, 2002:106)

Qualified forms of this criminal offence (due to the characteristics of the passive subject or relations of subordination or dependence) are set out under CC BD BiH Article 167, paragraphs 2 through 4 : (2) Whoever commits the offence referred to in paragraph 1 of this Article against a juvenile or a person whose capacity to understand the significance or to control his actions was significantly diminished shall be punished by imprisonment for a term between one and ten years; (3) Whoever commits the offence referred to in paragraph 1 of this Article

against a child or a person whose capacity to understand the significance or to control his actions was significantly diminished shall be punished in line with Article 163 (homicide), paragraph 1 of this Code; and (4) Whoever cruelly or inhumanely treats a person in some way subordinated to or dependent on him and out of such negligence causes that person to commit suicide shall be punished by imprisonment for a term between six months and five years.

Illegal abortion (CC BD BiH Article 168) This offence is committed by whoever, in contravention of abortion regulations, commences or performs an abortion on a pregnant woman with her consent, or assists her in inducing a miscarriage. The basic form of this criminal offence incurs a punishment of imprisonment for a term between three months and three years. CC BD BiH Article 168, paragraphs 2 through 4 define the qualified forms of this criminal offence as: (2) Whoever commences or performs an abortion on a pregnant woman without her consent shall be punished by imprisonment for a term between one and eight years; (3) If grievous bodily harm or serious impairment of health or the death of the pregnant woman occurs as a consequence of the criminal act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between six months and five years; and (4) If grievous bodily harm or serious impairment of health or the death of the pregnant woman occur as a consequence of the criminal act referred to in paragraph 2 of this Article, the perpetrator shall be punished by imprisonment for a minimum term of one year.

The perpetrator shall be 'criminally responsible for the most serious form of this incrimination if it is found that the abortion, within the meaning of this incrimination, causes grievous bodily harm, serious impairment of health or the death of the pregnant woman and that there was negligence on the part of the perpetrator in respect of these consequences' (Babić et al., 2005:1504).

Grievous bodily harm (CC BD BiH Article 169, paragraph 1) This offence is committed by whoever causes grievous bodily harm to another or seriously impairs his health. The basic form of this criminal offence incurs a punishment of imprisonment for a term between six months and five years. CC BD BiH Article 169, paragraphs 2 through 5 define the qualified forms of this criminal offence as follows: (2) Whoever commits the criminal offence referred to in paragraph 1 of this Article against his spouse, common-law spouse, or to the parent of his child with whom he does not cohabit shall be punished by imprisonment for a term between one and five years; (3) Whoever inflicts bodily harm on or impairs the health of another person so gravely as to endanger the life of the injured person, or so that an important body part or organ of the injured person is destroyed or

permanently and substantially impaired, or so that the injured person is rendered permanently unfit for work, or so as to cause severe impairment of health or disfigurement shall be punished by imprisonment for a term between one and ten years; and (4) Whoever commits the criminal offence referred to in paragraph 1 of this Article out of hatred shall be punished as set out under paragraph 3 of this Article.

Paragraph 5 of this Article defines the most serious qualified form of this criminal offence, which exists when the injured person dies as a result of injuries referred to in paragraphs 1 through 4 of this Article. 'Intent must exist in respect of grievous bodily harm, and negligence in respect of death.' (Stojanović, Škulić and Delibašić, 2018:200) This qualified form of grievous bodily harm incurs a punishment of imprisonment for a term between one and twelve years. Paragraphs 6 through 8 of this Article set out the privileged forms of the criminal offence of grievous bodily harm.

Failure to render aid (CC BD BiH Article 172) is committed by whoever fails to render aid to a person whose life is in imminent danger, although he could have done so with no danger to either himself or others. The basic form of this criminal offence incurs a fine or imprisonment for a maximum term of six months. CC BD BiH Article 172, paragraphs 2 and 3 define the qualified forms of this criminal offence: (2) Whoever abandons a person whose life he placed in imminent danger shall be punished by a fine or imprisonment for a maximum term of one year, and (3) If the criminal offence referred to in paragraph 2 of this Article causes the death of the person whose life was endangered or grievous bodily harm or seriously impaired health, the perpetrator shall be punished by imprisonment for a term between three months and three years. 'Criminal responsibility for the more serious form of this offence requires a causal link between the act of perpetration of the basic form of the criminal offence and the more serious consequence that occurs, and negligence on the part of the perpetrator in respect of that more serious consequence.' (Babić et al., 2005:1531-1532)

Abandonment of a helpless person (CC BD BiH Article 173) is perpetrated by whoever abandons a helpless person entrusted to his care, leaving him without assistance in life or health endangering circumstances. The basic form of this criminal offence incurs a fine or imprisonment for a maximum term of one year.

CC BD BiH Article 173, paragraph 2 defines the qualified form of this criminal offence where if the criminal offence referred to in paragraph 1 of this Article causes the death of the abandoned person or grievous bodily harm or seriously impairs

his health, the perpetrator shall be punished by imprisonment for a term between three months and three years. 'The more serious qualification of the offence requires a causal link between the basic form of failure to aid a helpless person and the more serious consequence, i.e. grievous bodily harm or impairment of health, or the death of the passive subject. In addition, it is necessary to establish that the more serious consequence falls within the perpetrator's negligence. Therefore, criminal responsibility for the more serious form of the offence requires intent in respect of the act of abandoning a helpless person in a condition or in circumstances that endanger his life or health, and negligence in respect of the more serious consequence.' (Babić et al., 2005:1529)

Criminal offences where life and limb are not the primary object of protection, but where the consequence of death appears as a qualifying circumstance: below is an overview of criminal offences where life and limb are not the primary object of protection, but where a qualified form of the criminal offence exists if death occurs. These are criminal offences that fall within criminal offences against freedom and rights of individuals and citizens, criminal offences against sexual freedom and morals, criminal offences against marriage, family and youth, and criminal offences against property.^[52]

Unlawful deprivation of liberty (CC BD BiH Article 176) is set out in CC BD BiH Chapter XVII (Criminal Offences against Freedom and the Rights of Individuals and Citizens). The basic form of this criminal offence, as set out under CC BD BiH Article 176, paragraph 1, is committed by whoever unlawfully detains a person, keeps him detained, or otherwise unlawfully deprives him of his freedom of movement. The basic form of this criminal offence incurs a fine or imprisonment for a maximum term of three years.

CC BD BiH Article 176, paragraphs 2 and 3 define the qualified forms of this criminal offence: (2) If the unlawful detention lasted for more than thirty days, or if it was cruel, or if it led to serious health impairment or other serious consequences for the unlawfully detained person, the perpetrator shall be punished by imprisonment for a term between two and eight years, and (3) If the criminal offence referred to in paragraph 1 of this Article resulted in the

[52] Although there are criminal offences that fall within criminal offences against health, criminal offences against the environment, agriculture and natural resources, criminal offences against the security of persons and property, criminal offences against traffic safety, and criminal offences against the judiciary where the legislator has foreseen a qualified form of the criminal offence if it causes death, these will not be examined as part of this publication.

death of the unlawfully detained person, the perpetrator shall be punished by imprisonment for a minimum term of five years. The most serious form of this criminal offence exists if it causes the death of the unlawfully detained person. This form of the criminal offence of unlawful detention incurs the same punishment at that foreseen for the criminal offence of homicide under CC BD BiH Article 163, paragraph 1.

Rape (CC BD BiH Article 200) is defined in Chapter XIX of CC BD BiH (Criminal Offences against Sexual Freedom and Morals). The criminal offence of rape under CC BD BiH Article 200, paragraph 1 is perpetrated by whoever compels another person to sexual intercourse or an equivalent sexual act by use of force or threat of force against the life and limb of that person or someone close to that person. The basic form of this criminal offence incurs a punishment of imprisonment for a term between three and ten years.

Paragraphs 2 through 7 of this Article define the qualified forms of this criminal offence: (2) If the criminal offence referred to in paragraph 1 of this article is perpetrated in a particularly cruel or degrading manner, or if the same victim was coerced into multiple acts of sexual intercourse or equivalent sexual acts with multiple perpetrators, they shall be punished by imprisonment for a term between three and fifteen years; (3) If the criminal offence referred to under paragraph 1 of this Article causes the death of the rape victim, or grievous bodily harm, or serious impairment of health, or pregnancy, the perpetrator shall be punished by imprisonment for a minimum term of three years; (4) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article out of hatred shall be punished as for the criminal offence referred to in paragraph 2 of this Article; (5) Whoever commits the criminal offence referred to in paragraph 1 of this Article against a minor shall be punished by imprisonment for a minimum term of three years; (6) Whoever commits the criminal offence referred to in paragraphs 2 through 4 of this Article against a minor shall be punished by imprisonment for a minimum term of five years; and (7) If the criminal offence referred to in paragraph 2 of this Article results in any of the consequences referred to in paragraph 3 of this article, the perpetrator shall be punished by imprisonment for a minimum term of five years.

'The most serious form of the criminal offence of rape is when the basic offence, or any of the above qualified forms, results in the death of the victim. The criminal offence is then qualified by its more serious consequence, and the perpetrator will be held criminally responsible for this form of rape if there is negligence on his part as to the consequence of death. If there was intent in respect of the more serious

consequence, the criminal offence of rape and the criminal offence of homicide will be merged.' (Babić et al., 2005:1570) The most serious form of rape (rape resulting in death) incurs a punishment of imprisonment for a minimum term of three years, or a minimum term of five years if the criminal offence was perpetrated in a particularly cruel or degrading manner, or if the victim was coerced into multiple acts of sexual intercourse or equivalent sexual acts by multiple perpetrators.

Sexual intercourse with a helpless person (CC BD BiH Article 201) is defined in Chapter XIX of CC BD BiH (Criminal Offences against Sexual Freedom and Morals). The criminal offence of sexual intercourse with a helpless person under CC BD BiH Article 201, paragraph 1 is committed by whoever subjects another person to sexual intercourse or an equivalent sexual act by exploiting the other person's mental illness, mental disorder, impaired mental development, or some other serious mental disability or condition rendering the person unable to offer resistance. The basic form of this criminal offence incurs a punishment of imprisonment for a term between two and ten years.

Paragraphs 2 through 6 of this Article define the qualified forms of this criminal offence: (2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a person whose state of incapacity he himself caused or participated in causing shall be punished by imprisonment for a term between three and fifteen years; (3) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article in a particularly cruel or degrading manner, or if the victim is subjected to multiple acts of sexual intercourse or equivalent sexual acts by multiple perpetrators, they shall be punished by imprisonment for a term between three and fifteen years; (4) Whoever perpetrates the criminal offence referred to in paragraph 2 of this Article in a particularly cruel or degrading manner, or if the victim is subjected to multiple acts of sexual intercourse or equivalent sexual acts by multiple perpetrators, they shall be punished by imprisonment for a term between three and fifteen years; (5) If the criminal offence referred to in paragraph 1 of this article results in the death of the person subjected to sexual intercourse or an equivalent sexual act, or in grievous bodily harm, or serious impairment of health, or pregnancy, the perpetrator shall be punished by imprisonment for a minimum term of five years; and (6) If the criminal offence referred to in paragraph 3 and 4 of this Article results in the consequences referred to in paragraph 5 of this Article, the perpetrator shall be punished by imprisonment for a minimum term of ten years.

The most serious form of this criminal offence exists if it results in the death of the person subjected to sexual intercourse or an equivalent sexual act and incurs

a punishment of imprisonment for a minimum term of five years, or a minimum term of ten years if the criminal offence referred to in paragraphs 3 and 4 of this Article results in the consequences referred to in paragraph 5 of this Article.

Sexual intercourse with a child (CC BD BiH Article 204) is defined in Chapter XIX of CC BD BiH (Criminal Offences against Sexual Freedom and Morals). The basic form of this criminal offence, as defined under CC BD BiH Article 204, paragraph 1, is perpetrated by whoever performs sexual intercourse or an equivalent sexual act on a child. The basic form of this criminal offence incurs a punishment of imprisonment for a term between two and ten years.

Paragraphs 2 through 5 of this Article define the qualified forms of this criminal offence: (2) Whoever coerces into sexual intercourse or an equivalent sexual act a child (Article 200, Rape, paragraph 1) or a helpless child (Article 201, Sexual Intercourse with a Helpless Person, paragraph 1) shall be punished by imprisonment for a minimum term of eight years; (3) Whoever performs sexual intercourse or an equivalent sexual act on a child through abuse of official capacity (Article 202, Sexual Intercourse through Abuse of Official Capacity, paragraph 2) shall be punished by imprisonment for a term between five and fifteen years; (4) Whoever commits the criminal act referred to in paragraph 1 through 3 in a particularly cruel or degrading manner, or if the same victim is subjected to multiple acts of sexual intercourse or equivalent sexual acts by multiple perpetrators, they shall be punished by imprisonment for a minimum term of eight years; and (5) If the criminal offence referred to in paragraph 1 through 3 of this Article results in the death of the child, or grievous bodily harm, or serious impairment of health, or pregnancy, the perpetrator shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment.

The most serious form of this criminal offence exists when it results in the death of the child, or grievous bodily harm, or serious impairment of health, or pregnancy, and incurs the punishment of imprisonment for a minimum term of ten years (10 to 20 years) or long-term imprisonment (21 to 45 years). 'Since this is a criminal offence qualified by a more serious consequence, criminal responsibility of the perpetrator exists when that more serious consequence falls under the negligence of the perpetrator.' (Babić et al., 2005:1581)

Human trafficking (CC BD BiH Article 207.a) is defined in Chapter XIX of CC BD BiH (Criminal Offences against Sexual Freedom and Morals). The criminal offence of human trafficking under CC BD BiH Article 207.a is perpetrated by whoever, by use of force or threat of force, or other forms of coercion, abduction, fraud

or deception, abuse of authority or influence, or helplessness, or by giving or receiving payment or other benefit to obtain the consent a person having control over another person, recruits, transports, transfers, conceals or receives a person for the purpose of exploitation. Exploitation within the meaning of this Article entails: prostitution of another person or other forms of sexual exploitation, forced labour or service, enslavement or similar relationship, servitude, removal of body parts, or other forms of exploitation. The basic form of this criminal offence incurs a punishment of imprisonment for a minimum term of five years.

Paragraphs 2 through 9 of this Article define the qualified and other forms of this criminal offence, and include special provisions: (2) Whoever recruits, induces, transports, transfers, conceals and receives a person under the age of 18 for the purpose of exploitation for prostitution or another form of sexual exploitation, forced labour or service, enslavement or similar relationship, servitude, removal of body parts, or other forms of exploitation shall be punished by imprisonment for a minimum term of ten years; (3) If the criminal offence referred to in paragraph 1 and 2 of this Article is perpetrated by an official in the exercise of his official duties, the perpetrator shall be punished by imprisonment for a minimum term of ten years; (4) Whoever forges, obtains or issues a travel or personal identification document, or uses, retains, seizes, changes, damages or destroys the travel or personal identification document of another person in order to enable human trafficking shall be punished by imprisonment for a term between one and five years; (5) Whoever uses the services of a victim of human trafficking shall be punished by imprisonment for a term between six months and five years; (6) If the criminal offence referred to in paragraphs 1 and 2 of this Article results in serious impairment of health, grievous bodily harm or the death of the person referred to in paragraphs 1 and 2 of this Article, the perpetrator shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment; (7) Items, vehicles and facilities used to perpetrate the offence shall be seized; (8) The consent of the victim of human trafficking to exploitation shall have no bearing on the existence of the criminal offence of human trafficking; and (9) Criminal proceedings shall not be conducted against a victim of human trafficking who was coerced by the perpetrator to participate in the commission of another criminal offence, provided that such actions were the direct result of being a victim of human trafficking.

The most serious form of this criminal offence is defined in paragraph 6 of this Article (if the result is serious impairment of health, grievous bodily harm or death) and incurs a punishment of imprisonment for a minimum term of ten years (10 to 20 years) or long-term imprisonment (21 to 45 years).

Violation of family obligations (CC BD BiH Article 217) is defined in Chapter XX of CC BD BiH (Criminal Offences against Marriage, Family and Youth). The criminal offence of violation of family obligations from paragraph 1 of this Article is committed by whoever, by grave violation of family obligations stipulated by law, leaves in a difficult position a member of his family who is incapable of taking care of himself. The basic form of this criminal offence incurs a punishment of imprisonment for a term between three months and three years. Paragraph 2 of this Article defines the qualified form of this criminal offence: If the offence referred to in paragraph 1 of this Article results in the death of the family member who was left in a difficult position, grievous bodily harm or serious impairment of health, the perpetrator shall be punished by imprisonment for a term between one and eight years.

Domestic violence (CC BD BiH Article 218) is defined in Chapter XX of CC BD BiH (Criminal Offences against Marriage, Family and Youth). The criminal offence of domestic violence under Article 218, paragraph 1 is committed by whoever endangers the peace, bodily integrity or mental health of a member of his family by violence, insolent or reckless behaviour. The basic form of this criminal offence incurs a fine or imprisonment for a maximum term of three years.

Paragraphs 2 through 6 of this Article define the qualified forms of this criminal offence: (2) Whoever commits the criminal offence referred to in paragraph 1 of this Article against a family member with whom he shares a household shall be punished by a fine or imprisonment for a maximum term of three years; (3) If the criminal offence referred to in paragraph 1 and 2 is committed using a firearm, dangerous implement or other means capable of inflicting grievous bodily harm or serious impairment of health, or if the criminal offence referred to in paragraph 1 and 2 is committed in the presence of a juvenile or child, the perpetrator shall be punished with imprisonment for a term between three months and three years; (4) If the criminal offence referred to in paragraph 1 through 3 of this Article results in grievous bodily harm or serious impairment of health of the family member, or if the offence referred to in paragraph 1 through 3 of this Article is perpetrated against a child or juvenile, the perpetrator shall be punished by imprisonment for a term between one and five years; (5) If the criminal offence referred to in paragraph 1 through 4 of this Article results in the death of the family member, the perpetrator shall be punished by imprisonment for a term between two and fifteen years; and (6) Whoever causes the death of a family member whom he had previously been abusing shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment.

The most serious form of domestic violence is when this criminal offence is qualified by death. We can distinguish between two cases in this regard. Paragraph

5 of this Article prescribes that if the criminal offence referred to in paragraph 1 through 4 of this Article results in the death of the family member, the perpetrator shall be punished by imprisonment for a term between two and fifteen years. 'This qualification shall apply irrespective of whether the consequence of death occurred as a result of the perpetrator's actions or as a result of actions on the part of the passive subject. Such a case would exist if the consequence of death occurred in the attempt of the passive subject to save himself from violence or if the passive subject, unable to protect himself from domestic violence, committed suicide.' (Babić et al., 2005:1619) Paragraph 6 of this article defines the specific form of this criminal offence where whoever causes the death of a family member whom he had previously been abusing shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment. 'This is a case of intentionally causing the death of a family or household member by a person who had previously been abusing them, which is a form of aggravated homicide that falls within this incrimination due to the specific characteristics of the perpetrator and victim and their relationship, as well as the current issues to which it relates. The passive subject in this offence is the family or household member whom the perpetrator had previously been abusing. Previous abuse within the meaning of this form of the offence should include all the acts that fall within the basic form of the offence.' (Babić et al., 2005:1619)

Robbery (CC BD BiH Article 282) is defined in Chapter XXV of CC BD BiH (Criminal Offences against Property). The criminal offence in CC BD BiH Article 282, paragraph 1 is committed by whoever is caught in a robbery and uses force against another or threatens an attack against life and limb with the intention of keeping the appropriated property. The basic form of this criminal offence incurs a punishment of imprisonment for a term between one and ten years.

Paragraphs 2 and 3 of this Article define the qualified forms of this criminal offence: (2) If the criminal offence referred to in paragraph 1 of this Article causes intentional grievous bodily harm to another person, or if it is committed out of hatred, or if it is committed by a group of people, or if a weapon or dangerous implement is used, the perpetrator shall be punished by imprisonment for a minimum term of five years, and (3) If in the criminal offence referred to in paragraph 1 of this Article the perpetrator intentionally causes the death of another person, he shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment. 'The most serious form of this offence exists if in the course of a robbery, the perpetrator intentionally causes the death of another person. This is actually just a special case of qualified homicide out of greed, but because causing the death of another appears here as a means to ensure the completion of robbery, and because of the correlation between these two offences, the law

foresees this as an aggravated form of robbery.' (Babić et al., 2005:1670) This form of the criminal offence incurs a punishment of imprisonment for a minimum term of ten years (10 to 20 years) or long-term imprisonment (21 to 45 years).

Armed Robbery (CC BD BiH Article 283) is defined in Chapter XX of CC BD BiH (Criminal Offences against Property). The criminal offence in CC BD BiH Article 283, paragraph 1 is committed by whoever, by use of force or threat of direct attack on the life and body of another, seizes another's movable property with the aim of achieving unlawful material gain for himself or another person by appropriating such property or in order to unlawfully appropriate such property. The basic form of this criminal offence incurs a punishment of imprisonment for a term between one and ten years.

Paragraphs 2 and 3 of this Article define the qualified forms of this criminal offence: (2) If the criminal offence referred to in paragraph 1 of this Article causes intentional grievous bodily harm to another person, or if it is committed out of hatred, or if it is committed by a group of people, or if a weapon or dangerous implement is used, the perpetrator shall be punished by imprisonment for a minimum term of five years, and (3) If in the criminal offence referred to in paragraph 1 of this Article, the perpetrator intentionally causes the death of another person, he shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment.

As with the criminal offence of robbery, the most serious form of armed robbery is when in the course of perpetration, the perpetrator intentionally causes the death of another person. This form of the criminal offence incurs a punishment of imprisonment for a minimum term of ten years (10 to 20 years) or long-term imprisonment (21 to 45 years).

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CASE-LAW ANALYSIS

General Information about the Research Subject

The subject of research was the case-law of courts in Bosnia and Herzegovina on prosecuting cases of femicide. In international documents and literature, there are various definitions of femicide as a gender-based murder of a woman. For the purpose of this research study, femicide is understood as any case of murder of a woman committed by a man, and attempted femicide as any attempted murder of a woman by a man. Given that femicide is not incriminated as a discrete criminal offence in Bosnia and Herzegovina, this research study uses a very broad definition – murder or attempted murder of a woman perpetrated by a man – in order to facilitate the collection of judgements, and the gender-based nature of the murders is subsequently analysed in the overall research sample. With that in mind, the research sample consists of criminal cases finally adjudicated in the period from 1 January 2017 to 30 June 2021 that relate to prosecuted crimes where the perpetrators were male and the victims female, and where the offences were qualified as:

- » homicide, attempted homicide, and domestic violence resulting in death under Article 166, paragraph 1 and paragraph 2, point a) and d), Article 166, paragraph 1 in conjunction with paragraph 28, and Article 222, paragraph 5 in conjunction with paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina;^[53]
- » homicide, attempted homicide, aggravated homicide under Article 124, paragraph 1, Article 124, paragraph 1 in conjunction with Article 22, Article 125, paragraph 1, point 6, Article 149, paragraph 1, point 5 of the 2017 Criminal Code of Republika Srpska,^[54] and attempted homicide, aggravated homicide and attempted aggravated homicide under Article 148, paragraph 1 in conjunction with Article 20, Article 149, paragraph 1, point 5, and Article 149, paragraph 1, point 1 of the 2003 Criminal Code of Republika Srpska;^[55]

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

[54] *Official Gazette of Republika Srpska*, 64/2017, 104/2018 - odluka US, 15/2021, and 89/2021 (hereinafter: 2017 CC RS).

[55] *Official Gazette of Republika Srpska*, 49/2003, 108/2004, 37/2006, 70/2006, 73/2010, 1/12,

- » attempted homicide under Article 163, paragraph 1 in conjunction with Article 28 of the Criminal Code of the Brčko District of BiH.^[56]

The analysis included a total of 34 court cases (26 cases from courts of the Federation of BiH, seven cases from courts of Republika Srpska, and one case from courts of the Brčko District) with a total of 94 first-instance and second-instance decisions: 78 first- and second-instance decisions of FBiH courts, 14 first- and second-instance decisions of RS courts, and one first- and one second-instance decision of Brčko District of BiH courts. An overview of the cases included in the analysis is given in Table 1.

Table 1: Overview of cases included in the analysis

Court	Number of cases	Decisions of the first-instance court	Decisions of instance courts
District Court in Istočno Sarajevo/ Supreme Court of RS	1	14 0 K 03900 19 K	14 0 K 003900 20 Kž 12
District Court in Doboj/ Supreme Court of RS	1	13 0 K 005596 19 K	13 0 K 005596 21 Kž 3
District Court in Istočno Sarajevo/ Supreme Court of RS	1	14 0 K 002480 16 K 2	14 0 K 002480 17 Kž 2
District Court in Istočno Sarajevo/ Supreme Court of RS	1	14 0 K 003398 18 K	14 0 K 003398 18 Kž 3
District Court in Prijedor/ Supreme Court of RS	1	16 0 K 000043 17 K	16 0 K 000043 18 Kž 9
District Court in Banja Luka/ Supreme Court of RS	1	11 0 K 019131 16 K	11 0 K 019131 17 Kž 2
District Court in Banja Luka/ Supreme Court of RS	1	11 0 K 019456 17 K	11 0 K 019456 18 Kž
Cantonal Court in Bihać/ Supreme Court of FBiH	1	01 0 K 011183 16 K 01 0 K 011183 16 Kv2	01 0 K 011183 16 Kž 2

and 37/2013 (hereinafter: 2003 CC RS).

[56] *Official Gazette of the Brčko District of BiH, 19/20* – consolidated version, (hereinafter: CC BD BiH).

Court	Number of cases	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 033856 19 K	09 0 K 033856 20 Kž 2
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 019762 20 K	03 0 K 019762 20 Kž 5
Cantonal Court in Zenica/ Supreme Court of FBiH	1	04 0 K 004783 12 K 04 0 K 004783 15 K2	04 0 K 004783 14 Kž 3 04 0 K 004783 16 Kž 4
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 018715 19 K 03 0 K 018715 20 K 2	03 0 K 018715 20 Kž 6 03 0 K 018715 20 Kž 7 03 0 K 018715 20 Kžk
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 014025 15 K 03 0 K 014025 17 K 2	03 0 K 014025 16 Kž 11 03 0 K 014025 17 Kž 14
Cantonal Court in Mostar/ Supreme Court of FBiH	1	07 0 K 013045 16 K 07 0 K 013045 17 K2	07 0 K 013045 17 Kž 3 07 0 K 013045 18 Kž 4 07 0 K 013045 18 Kžk
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 016509 17 K	03 0 K 016509 18 Kž 8
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 019615 19 K	03 0 K 019615 20 Kž 4
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 023662 15 K	09 0 K 023662 17 Kž 13
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 017819 18 K	03 0 K 017819 19 Kž 2
Cantonal Court in Bihać/ Supreme Court of FBiH	1	01 0 K 012594 18 K 2	01 0 K 012594 18 Kž 6
Cantonal Court in Novi Travnik/ Supreme Court of FBiH	1	06 0 K 008884 16 K	06 0 K 008884 17 Kž 2
Cantonal Court in Zenica/ Supreme Court of FBiH	1	04 0 K 008216 16 K	04 0 K 008216 16 Kž 3
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 018563 19 K	03 0 K 018563 19 Kž
Cantonal Court in Bihać/ Supreme Court of FBiH	1	01 0 K 011854 17 K	01 0 K 011854 17 Kž 3
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 015282 16 K	03 0 K 015282 17 Kž 5

Court	Number of cases	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 025482 16 K	09 0 K 025482 16 Kž 7
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 026265 16 K	09 0 K 026265 17 Kž 8
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 034816 20 K	09 0 K 034816 21 Kž 5
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 024331 16 K 09 0 K 024331 18 K 3	09 0 K 024331 18 Kž 14 09 0 K 024331 19 Kž 21 09 0 K 024331 19 Kžk 09 0 K 024331 19 Kž 21
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 027196 17 K 09 0 K 027196 18 K 2 09 0 K 027196 18 K 2	09 0 K 027196 17 Kž 4
Cantonal Court in Sarajevo/ Supreme Court of FBiH	1	09 0 K 024662 15 K 09 0 K 024662 15 K 2 09 0 K 024662 17 K 3	09 0 K 024662 16 Kž 6 09 0 K 024662 16 Kž 6
Cantonal Court in Bihać/ Supreme Court of FBiH	1	01 0 K 009692 15 K 01 0 K 009692 18 K 2	01 0 K 009692 17 Kž 7 01 0 K 009692 Kž 13 01 0 K 009692 19 Kžk
Cantonal Court in Zenica/ Supreme Court of FBiH	1	04 0 K 011060 19 K 04 0 K 011060 21 K 2	04 0 K 011060 20 Kž
Cantonal Court in Tuzla/ Supreme Court of FBiH	1	03 0 K 017352 18 K 03 0 K 017352 19 K 2	03 0 K 017352 19 Kž 7 03 0 K 017352 19 Kž 10
Basic Court of the Brčko District/Appellate Court of the Brčko District	1	96 0 K 098324 16 K	96 0 K 098324 17 Kž 5
TOTAL:	34	47	47

Research Methodology

The case-law analysis on prosecuting cases of femicide was limited for objective reasons caused by the Covid-19 pandemic in that it was impossible to have insight into complete case files, so the research material consists of court decisions in cases from the research sample, which is restrictive in terms of gaining information about court practice.

The analysis employed quantitative and qualitative research methods.

A special questionnaire was designed to gather data from court judgements about the crimes, perpetrators, victims, criminal sanctions and criminal proceedings. These data were systematised, shown numerically and as percentages, and analysed.

Having reviewed the judgements, five criminal cases were selected from the research sample as representative of femicide based on the researchers' appraisal of such aspects as the type of homicide, method of perpetration, means of perpetration, relationship between victim and perpetrator, etc. These cases were analysed using the case study method in order to reveal the phenomenological and aetiological characteristics of the crime of murder when the victim is female, and in order to gain more detailed insight, to the extent possible, and a deeper understanding of the circumstances before and during the perpetration of the crime, as well as the process of indictment, trial and sentencing.

Legal Qualification of the Criminal Offences in the Judgements

In all cases from courts of the Federation of Bosnia and Herzegovina, the criminal offences were legally qualified in line with the Criminal Code of the Federation of Bosnia and Herzegovina,^[57] abbreviated as CC FBiH. Cases prosecuted before courts of Republika Srpska that were included in the analysis applied two laws when qualifying the criminal offences: the previous Criminal Code of Republika Srpska from 2003, which had been changed and amended several times,^[58] and the Criminal Code of Republika Srpska from 2017,^[59] which is currently in force. In the one case from courts of the Brčko District of BiH, the Criminal Code of the Brčko District, last amended in 2013, was applied.

In the examined judgements from courts of the Federation of BiH, the legal qualification was changed from that in the indictment in only one case, by retrial before the first-instance court following an overturned first-instance judgement. In one case, the legal qualification of the criminal offence was changed during

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

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

[59] *Official Gazette of Republika Srpska*, 64/2017, 104/2018 – US ruling, 15/2021, and 89/2021 (hereinafter: 2017 CC RS).

second-instance proceedings before a higher court, when the prosecutor decided to change the qualification of the criminal offence and this was accepted by the court, and in one case where the second-instance court itself changed the legal qualification of the offence. In judgements from courts of Republika Srpska, the legal qualification of the criminal offences was not changed from that in the indictment, nor did any of the second-instance courts change the legal qualification as they upheld the first-instance judgements in all seven cases. The judgement from courts of the Brčko District did not change the legal qualification of the offence. (Table 2).

Table 2: Legal qualification of the offence

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
District Court in Istočno Sarajevo/ Supreme Court of RS	Homicide, Article 124, paragraph 1, 2017 CC RS	14 0 K 03900 19 K	14 0 K 003900 20 Kž 12
District Court in Doboј/ Supreme Court of RS	Attempted homicide, Article 124, paragraph 1 in conjunction with Article 22, 2017 CC RS and unauthorised manufacture and trade in weapons and explosive materials, Article 361, paragraph 1, 2017 CC RS	13 0 K 005596 19 K	13 0 K 005596 21 Kž 3
District Court in Istočno Sarajevo/ Supreme Court of RS	Attempted homicide, Article 148, paragraph 1 in conjunction with Article 20, 2003 CC RS	14 0 K 002480 16 K 2	14 0 K 002480 17 Kž 2
District Court in East Sarajevo/ Supreme Court of RS	Aggravated homicide, Article 125, paragraph 1, point 6, 2017 CC RS ^[60]	14 0 K 003398 18 K	14 0 K 003398 18 Kž 3

[60] Aggravated homicide, 2017 CC RS Article 125, paragraph 1, point 6: "...whoever intentionally causes the death of two or more persons, which is not manslaughter, infanticide, or homicide under particularly mitigating circumstances (Article 124, paragraph 2)"

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
District Court in Prijedor/ Supreme Court of RS	Aggravated homicide, Article 149, paragraph 1, point 5, 2003 CC RS ^[61]	16 O K 000043 17 K	16 O K 000043 18 Kž 9
District Court in Banja Luka/ Supreme Court of RS	Attempted aggravated homicide, Article 149, paragraph 1, point 1 in conjunction with Article 20, 2003 CC RS ^[62]	11 O K 019131 16 K	11 O K 019131 17 Kž 2
District Court in Banja Luka/ Supreme Court of RS	Homicide, Article 148, paragraph 1 and unauthorised manufacture and trade in weapons or explosive materials from Article 399, paragraph 1, 2003 CC RS	11 O K 019456 17 K	11 O K 019456 18 Kž
Cantonal Court in Bihać/ Supreme Court of FBiH	Complicity in homicide, Article 166, paragraph 2, point d in conjunction with Article 31, CC FBiH ^[63]	01 O K 011183 16 K 01 O K 011183 16 K	01 O K 011183 16 Kž 2
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH	09 O K 033856 19 K	09 O K 033856 20 Kž 2
Cantonal Court in Tuzla/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH	03 O K 019762 20 K	03 O K 019762 20 Kž 5

[61] Aggravated homicide, 2003 CC RS Article 149, paragraph 1, point 5: "...whoever intentionally causes the death of two or more persons, which is not manslaughter, infanticide, or homicide under particularly mitigating circumstances (Article 148, paragraph 2)"

[62] Attempted aggravated homicide in extremely insidious manner, 2003 CC RS Article 149, paragraph 1, point 1: "... whoever deprives another of life in a particularly cruel or extremely insidious manner."

[63] Homicide, CC FBiH Article 166, paragraph 2, point d: "whoever deprives another of life out of greed, to commit or conceal another criminal offence, out of callous revenge or other base motives." Homicide out of greed committed in complicity with a separately prosecuted female person.

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Zenica/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH; general endangerment, Article 323, paragraph 3 in conjunction with paragraph 1, CC FBiH; obstructing an official in the exercise of official activities, Article 358, paragraph 3 in conjunction with paragraph 1 and 2, CC FBiH, unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH in conjunction with Article 54, CC FBiH	04 0 K 004783 12 K 04 0 K 004783 15 K2	04 0 K 004783 14 Kž 3 04 0 K 004783 16 Kž 4
Cantonal Court in Tuzla/ Supreme Court of FBiH	Two attempted homicides, Article 166, paragraph 1 in conjunction with Article 28 and Article 54, CC FBiH – concurrence	03 0 K 018715 19 K 03 0 K 018715 20 K 2	03 0 K 018715 20 Kž 6 03 0 K 018715 20 Kž 7 03 0 K 018715 20 Kžk
Cantonal Court in Tuzla/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1 in conjunction with Article 31, CC FBiH (co-perpetration)	03 0 K 014025 15 K 03 0 K 014025 17 K 2	03 0 K 014025 16 Kž 11 03 0 K 014025 17 Kž 14
Cantonal Court in Mostar/ Supreme Court of FBiH	Homicide, Article 166, paragraph 2, point d), CC FBiH ^[64]	07 0 K 013045 16 K 07 0 K 013045 17 K2	07 0 K 013045 17 Kž 3 07 0 K 013045 18 Kž 4 07 0 K 013045 18 Kžk

[64] In the second-instance proceedings, at the trial held before the Supreme Court of the Federation of BiH, the Federal Prosecutor changed the legal qualification of the criminal offence from the indictment by charging the accused of homicide under CC FBiH Article 166, paragraph 2, point d): "...whoever deprives another of life out of greed, to commit or conceal another criminal offence, out of callous revenge or other base motives."

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Tuzla/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH, aggravated theft, Article 287, paragraph 1, point d in conjunction with Article 286, paragraph 1 CC FBiH, all in conjunction with Article 54, CC FBiH – concurrence	03 0 K 016509 17 K	03 0 K 016509 18 Kž 8
Cantonal Court in Tuzla/ Supreme Court of FBiH	Two attempted homicides, Article 166, paragraph 1 in conjunction with Article 28 CC FBiH, endangering security, Article 183, paragraph 1 CC FBiH in conjunction with Article 54, CC FBiH – concurrence	03 0 K 019615 19 K	03 0 K 019615 20 Kž 4
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH	09 0 K 023662 15 K	09 0 K 023662 17 Kž 13
Cantonal Court in Tuzla/ Supreme Court of FBiH	Homicide, Article 166, paragraph 2, point a), CC FBiH (homicide in cruel of insidious manner); unauthorised procurement, possession and sale of weapons and weapon components, Article 72, paragraph 1 Law on Weapons and Ammunition of the Tuzla Kanton in conjunction with Article 54, CC FBiH – concurrence	03 0 K 017819 18 K	03 0 K 017819 19 Kž 2
Cantonal Court in Bihać/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH	01 0 K 012594 18 K 2	01 0 K 012594 18 Kž 6
Cantonal Court in Novi Travnik/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH	06 0 K 008884 16 K	06 0 K 008884 17 Kž 2

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Zenica/ Supreme Court of FBiH	Homicide, Article 166, paragraph 2, point a), CC FBiH ^[65] – one perpetrator Accessory after the fact, Article 346, paragraph 3 in conjunction with paragraph 1, CC FBiH - other perpetrator	04 0 K 008216 16 K	04 0 K 008216 16 Kž 3
Cantonal Court in Tuzla/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH, committed in concurrence ^[66]	03 0 K 018563 19 K	03 0 K 018563 19 Kž
Cantonal Court in Bihać/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH Unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH	01 0 K 011854 17 K	01 0 K 011854 17 Kž 3
Cantonal Court in Tuzla/ Supreme Court of FBiH	Attempted homicide, Article 1 in conjunction with Article 28 CC FBiH, committed in concurrence ^[67]	K 015282 16 K	03 K 015282 17 Kž 5

[65] Homicide, CC FBiH Article 166, paragraph 2, point a): "... whoever deprives another of life in a cruel or insidious manner."

[66] In this case, one perpetrator committed two concurrent criminal offences of homicide under CC FBiH Article 166, paragraph 1, in concurrence. The victim of one of the criminal offences of homicide was male, but given the purpose of our analysis, this criminal offence was not included in the statistics.

[67] One perpetrator committed two concurrent criminal offences: attempted homicide under CC FBiH Article 166, paragraph 1 in conjunction with Article 28 against a female victim and attempted homicide under CC FBiH Article 166, paragraph 1 in conjunction with Articles 28 and 31, as co-perpetrator, against a male victim. Only the first criminal offence was included in the statistics because it was committed against a female victim.

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH Criminal offence under Article 52 of the Law on Procuring, Possessing and Carrying of Weapons and Ammunition – unlicensed possession of weapons	K 025482 16 K	09 K 025482 16 Kž 7
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1, CC FBiH in conjunction with Article 28, CC FBiH	09 0 K 026265 16 K	09 0 K 026265 17 Kž 8
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH	09 0 K 034816 20 K	09 0 K 034816 21 Kž 5
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Homicide, Article 166, paragraph 1, CC FBiH, unauthorised possession of weapons or explosive materials, Article 371, paragraph 1 CC, FBiH ^[68]	09 0 K 024331 16 K 09 0 K 024331 18 K 3	09 0 K 024331 18 Kž 14 09 0 K 024331 19 Kž 21 09 0 K 024331 19 Kžk 09 0 K 024331 19 Kž 21
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH ^[69]	09 0 K 027196 17 K 09 0 K 027196 18 K 2 09 0 K 027196 18 K 2 (decision to suspend proceedings)	09 0 K 027196 17 Kž 4

[68] The perpetrator also committed the criminal offence of attempted homicide as per CC FBiH Article 166, paragraph 1 in conjunction with Article 28 against a male victim, which was not included in the statistics.

[69] In its decision of 9 April 2019, the Cantonal Court in Sarajevo terminated the sentence of imprisonment for one year pronounced by the Cantonal Court in Sarajevo in its Judgement no 09 0 027196 18 K 2. The imprisonment sentence was terminated pursuant to Article 219 of CPC

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Cantonal Court in Sarajevo/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1, CC FBiH	09 0 K 024662 15 K 09 0 K 024662 15 K 2 K 024662 17 K 3	09 K 024662 16 Kž 6 09 K 024662 16 Kž 6
Cantonal Court in Bihać/ Supreme Court of FBiH	Homicide, Article 166, paragraph 2, point d), CC FBiH ^[70]	01 0 K 009692 15 K 01 0 K 009692 18 K 2	01 0 K 009692 17 Kž 7 01 0 K 009692 Kž 13 01 0 K 009692 19 Kžk
Cantonal Court in Zenica/ Supreme Court of FBiH	Domestic violence, Article 222, paragraph 5 in conjunction with paragraph 1, CC FBiH ^[71]	04 0 K 011060 19 K 04 0 K 011060 21 K 2	04 0 K 011060 20 Kž
Cantonal Court in Tuzla/ Supreme Court of FBiH	Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH; unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH ^[72]	03 K 017352 18 K 03 K 017352 19 K 2	03 K 017352 19 Kž 7 03 K 017352 19 Kž 10

FBiH because the perpetrator had died.

[70] The second-instance court changed the qualification of the criminal offence, having found that the criminal offence was committed out of callous revenge, as per Article 166, paragraph 2, point d), and not, as the first-instance court had found, in a cruel and insidious manner, as per Article 166, paragraph 2, point a), and out of callous revenge, as per Article 166, paragraph 2, point d).

[71] Criminal offence of domestic violence as per CC FBiH Article 222, paragraph 5: "... if the criminal offence referred to in paragraphs 1 through 4 of this Article results in the death of the family member, the perpetrator shall be punished by imprisonment for a term between two and fifteen years." In this case, in the retrial at the first-instance, the court did not accept the qualification proposed by the prosecution of the criminal offence under CC FBiH Article 222, paragraph 1, point 6: "...whoever causes the death of a family member whom he had previously been abusing shall be punished by imprisonment for a minimum term of ten years or long-term imprisonment."

[72] In this case, the perpetrator was convicted of two more criminal offences of attempted homicide, as per CC FBiH Article 166, paragraph 1.

Court	Qualification	Decisions of the first-instance court	Decisions of instance courts
Basic Court of the Brčko District/ Appellate Court of the Brčko District	Attempted homicide, Article 163, paragraph 1 in conjunction with paragraph 28, CC BD BiH; Endangering safety as per Article 180, paragraph 2 in conjunction with paragraph 1, CC BD BiH ^[73]	96 0 K 098324 16 K	96 0 K 098324 17 KŽ 5

In terms of the number of criminal offences committed, we have found that 35 perpetrators committed a total of 51 criminal offences. The criminal offences are distinguished by their legal qualification in the judgements. (Table 3)

Table 3: Number of perpetrators and criminal offences

Offence	Number of perpetrators	Number of offences
Homicide, Article 124, paragraph 1, 2017 CC RS	1	1
Attempted homicide, Article 124, paragraph 1 in conjunction with Article 22, CC RS and unauthorised manufacture and trade in weapons and explosive materials, Article 361, paragraph 1, 2017 CC RS	1	2
Attempted homicide, Article 148, paragraph 1 in conjunction with Article 20, 2003 CC RS	1	1
Homicide, Article 148, paragraph 1 and unauthorised manufacture and trade in weapons or explosive materials from Article 399, paragraph 1, 2003 CC RS	1	2
Aggravated homicide, Article 125, paragraph 1, point 6, 2017 CC RS	1	1
Aggravated homicide, Article 149, paragraph 1, point 5, 2003 CC RS	1	1
Attempted aggravated homicide, Article 149, paragraph 1, point 1 in conjunction with Article 20, 2017 CC RS	1	1
Homicide, Article 166, paragraph 1 in conjunction with Article 31, CC FBiH (complicity)	1	1

[73] The perpetrator was convicted of endangering the safety of three men (neighbours) who were helping the victim of the attempted homicide.

Offence	Number of perpetrators	Number of offences
Complicity in homicide, Article 166, paragraph 2, point d in conjunction with Article 31, CC FBiH	1	1
Homicide, Article 166, para1, CC FBiH	5	5
Homicide, Article 166, paragraph 1, CC FBiH, unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH	2	4
Homicide, Article 166, paragraph 2, point d), CC FBiH	2	2
Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH	4	4
Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH; general endangerment, Article 323, paragraph 3 in conjunction with paragraph 1, CC FBiH; obstructing an official in the exercise of official activities, Article 358, paragraph 3 in conjunction with paragraph 1 and 2, CC FBiH, unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH in conjunction with Article 54, CC FBiH	1	4
Two attempted homicides, Article 166, paragraph 1 in conjunction with Article 28 and Article 54, CC FBiH – concurrence	1	2
Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH, committed in concurrence	1	1
Two attempted homicides, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH, endangering security, Article 183, paragraph 1, CC FBiH in conjunction with Article 54, CC FBiH – concurrence	1	.
Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH; Criminal offence under Article 52, of the Law on Procuring, Possessing and Carrying of Weapons and Ammunition – unlicensed possession of weapons	1	2
Attempted homicide, Article 166, paragraph 1 in conjunction with Article 28, CC FBiH, unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH	1	2

Offence	Number of perpetrators	Number of offences
Homicide, Article 166, paragraph 1, CC FBiH, aggravated theft, Article 287, paragraph 1, point d) in conjunction with Article 286, paragraph 1, CC FBiH, all in conjunction with Article 54, CC FBiH – concurrence	1	2
Homicide, Article 166, paragraph 1, CC FBiH Unauthorised possession of weapons or explosive materials, Article 371, paragraph 1, CC FBiH	1	2
Homicide, Article 166, paragraph 2, point a), CC FBiH (homicide in cruel or insidious manner); unauthorised procurement, possession and sale of weapons and weapon components, Article 72, paragraph 1, Law on Weapons and Ammunition of the Tuzla Kanton in conjunction with Article 54, CC FBiH – concurrence	1	2
Homicide, Article 166, paragraph 2, point a), CC FBiH ^[74] – one perpetrator; Accessory after the fact, Article 346, paragraph 3 in conjunction with paragraph 1, CC FBiH - other perpetrator	2	2
Domestic violence, Article 222, paragraph 5 in conjunction with paragraph 1, CC FBiH	1	1
Attempted homicide, Article 163, paragraph 1 in conjunction with paragraph 28, CC BD BiH; Endangering safety as per Article 180, paragraph 2 in conjunction with paragraph 1, CC BD BiH	1	2

The majority of the criminal offences were homicides, under CC FBiH Article 166, paragraphs 1 and 2; 2017 CC RS Article 124, paragraph 1; or 2003 CC RS Article 148, paragraph 1 – 17 in total (34%). It should be noted that CC FBiH Article 166, 2, pts a) through e) define the more serious or qualified forms of homicide, of which there were four cases. Aggravated homicide under 2017 CC RS Article 125, and 2003 CC RS Article 149, and attempted aggravated homicide under CC RS Article 149, paragraph 1, point 1 in conjunction with Article 20, were committed in three cases. Attempted homicide was found in 15 cases (29%), while 14 homicides and attempted homicides were committed concurrently with other criminal offences (robbery, general endangerment, preventing an official from exercising official duties, unauthorised possession of weapons or explosive materials, unauthorised procurement, possession and sale of weapons and weapon components, unlicensed possession of weapons).

[74] Homicide, CC FBiH Article 166, paragraph 2, point a): "... whoever deprives another of life in a cruel or insidious manner."

The data from court judgements show that in the majority of cases the perpetrators acted alone. Only three cases involved co-perpetration of criminal offences, but in two of those the perpetrators were not put on trial together. Given that in addition to homicide, attempted homicide and aggravated homicide, the perpetrators had also committed other criminal offences, many judgements pertain to merged criminal offences, which certainly had an effect on the severity of sentencing.

Phenomenological Characteristics of the Perpetrated Criminal Offences

Place (rural/urban) and Scene (space) of the Crime

According to the available data, more criminal offences in the research sample were committed in urban areas (29.4%) compared to rural areas, where four of the criminal offences were committed (11.8%). However, it should be noted that in the majority of cases (58.8%), the place of perpetration of the criminal offence was anonymised, so it is impossible to determine whether the majority of criminal offences were committed in urban or rural areas. (Table 4).

Table 4: Place of perpetration

Place	Number of criminal offences	%
Rural	4	11.8
Urban	10	29.4
Anonymised	20	58.8
Total	34	100%

In terms of the scene of perpetration, we can conclude that the largest number of all criminal offences, over one third, was committed at the flat/house/yard of the victim (35.3%), which is consistent with previous research findings on violence against women indicating that the least safe place for a woman is her own home. It is interesting that as many as 20.6% of the criminal offences were committed at the victim's place of work, which indicates a high degree of insolence and recklessness on the part of perpetrators, as well as a higher degree of social threat of the committed offences. A large number of offences were committed in the flat/house/yard the perpetrator and victim shared (17.6%), which is to be expected given the nature of the relationship between the victim and perpetrator

(marriage, common-law marriage, emotional relationship, kinship) and their living in a shared household. It should be noted that none of the criminal offences in the sample were committed in a space used only by the perpetrator (flat, house, yard) (Table 5).

Table 5: Scene of perpetration

Place	Number of criminal offences	%
Flat/house/yard of the victim	12	35.3
Shared flat/house/yard of the victim and perpetrator	6	17.6
Auxiliary building used by the victim	1	2.9
Local road	3	8.8
Intercity road	2	5.9
Parking lot	1	2.9
Road in front of the victim's house	1	2.9
House of victim's parents	1	2.9
Victim's place of work (sports bookmakers, catering establishment, kiosk, institution, school, law office)	7	20.6
Total	34	100%

Time of Perpetration

The time of perpetration is significant for mapping the distribution of criminality in various periods (seasons, times of day). Data from the sample do not indicate any special time pattern of the criminal offences in terms of season (Table 6). In terms of the seasons, the highest percentage of criminal offences from the sample were committed in the summer (29.4%), equal shares were committed in spring and autumn (26.5%), while 17.6% of the offences were committed in winter. This finding is consistent with previous criminological research on the distribution of criminality across seasons, where it was found that the highest number of criminal offences against persons (criminal offences against life and limb) is committed in the months of summer and spring.

Table 6: Time of perpetration – seasons

Season	Number of criminal offences	%
Spring (March – April – May)	9	26.5
Summer (June – July – August)	10	29.4
Autumn (September – October – November)	9	26.5
Winter (December – January – February)	6	17.6
Total	34	100%

In terms of the time of day, the highest percentage of criminal offences were committed in the morning hours before noon – 26.4% and in the afternoon – 20.6%, while the same percentage were committed in the early afternoon and in the evening (17.6% each). A significantly lower number of criminal offences were committed in the early morning (8.8%) and at night (2.9%). These findings indicate that the criminal offences in the sample did not belong to what is known as 'night-time crime' (Table 7).

Table 7: Time of perpetration – time of day

Time of day	Number of criminal offences	%
Early morning (4 to 8 am)	3	8.8
Morning (8 am to 12 noon)	9	26.4
Early afternoon (12 noon to 4 pm)	6	17.6
Afternoon (4 to 8 pm)	7	20.6
Evening (8 pm to 12 midnight)	6	17.6
Night (12 midnight to 4 am)	1	2.9
Unknown	2	5.9
Total	34	100%

Means of Perpetration

Various means were used in the perpetration of criminal offences with elements of violence. The means (physical force, objects, implements, weapons) of perpetration are significant in forensic terms, but also as evidence in criminal proceedings. One of the main questions in criminalistics concerns the means by which criminal offences are committed. Along with the method of perpetration,

the means provide important information for discovering the perpetrated criminal offence and the perpetrator. Research to date has shown that violent crime is mostly characterised by the use of multiple means of perpetration, as was also confirmed by the findings of this analysis.

To commit the criminal offences in the sample, the perpetrators more often used firearms (hand grenade, pistol, automatic rifle – 35.3%) than other weapons (knife/spring knife, knife, scalpel, hammer, metal rod, blunt object – 29.3%) or physical force (8.8%), which could be explained by widespread unauthorised possession of firearms mostly left over from the war. The highest percentage of criminal offences – 23.5% were committed using multiple means of perpetration to overcome the victim's resistance, which speaks to a particular brutality and cruelty of the perpetrators towards their victims. (Table 8).

Table 8: Means of perpetration

Means of perpetration	Number of criminal offences	%
Physical force (legs, arms)	3	8.8
Hand grenade	5	14.7
Knife	5	14.7
Scalpel	1	2.9
Hammer	2	5.9
Metal rod	1	2.9
Pistol	5	14.7
Automatic rifle	2	5.9
Passenger vehicle	1	2.9
Blunt object	1	2.9
Multiple means of perpetration		
» axe and knife		
» leg, arm, kitchen knife, tongs with embers, log for the fire		
» rope, arms and legs		
» silicon zip ties, kitchen knife	8	23.5
» fists, knife, pistol		
» metal blade, fists, neck tie		
» spring knife, axe, home-made firearm		
» fists and scissors		
Total	34	100%

Method of Perpetration

The use of various means for the perpetration of violent crimes is also connected to the method of perpetration, which most often depends on the intentions and plan of the perpetrator about how to commit the criminal offence, the specific situation preceding the perpetration, the physical characteristics of the victim and the perpetrator, but also their mutual relationship. Perpetrators often combine several methods of perpetration, which indicates a particular hatred, coldness, brutality, cruelty, ruthlessness and revenge towards the victim. When qualifying a criminal offence, the method of perpetration is taken into account so as to distinguish lesser forms of perpetration from aggravated or qualified forms of the criminal offence, but the method of perpetration may alternatively be counted as an aggravating circumstance for the purpose of sentencing.

Within the research sample, an analysis of the descriptions of perpetration of individual criminal offences shows that the most serious criminal offences were perpetrated in a variety of methods. An analysis of the descriptions of the criminal offences of homicide shows that in most cases, the method of perpetration reveals a high degree of brutality and cruelty towards the victim. Given below are descriptions of some characteristic methods of perpetration based on information from the operative parts of judgements and their reasonings.

- » *The perpetrator killed his mother, who had warned him that she would call the police on account of his behaviour. The perpetrator was under the influence of alcohol when he first grabbed her by the chest and pushed her onto the balcony railing so that she was leaning on it with just her right hip, and then he grabbed her by the legs with both hands and with physical force threw her over the railing so that she fell to the ground next to the front steps and hit her head on the ground, which resulted in a number of bodily injuries, and due to termination of vital brain function, which occurred as a result of massive destruction of brain tissue, she died instantly;*
- » *The perpetrator committed the criminal offence of aggravated homicide of two persons, taking the life of his wife, who had left him, and her intimate partner. He committed the homicides by arriving in the morning hours at the house where his wife lived, and when he saw that her partner's car was parked in the yard, he took an axe and a 25 cm-long knife, jumped over the fence and entered the room where his wife and her partner were lying naked in bed. He delivered several blows alternately with the axe and the knife to their heads and bodies. The female victim suffered a number of stab wounds in the neck, chest, forearm, upper arm, hand, lower abdomen, and groin area, where she*

- had two stab wounds on her right labia majora, one of which continued through her skin and subcutaneous tissue, her vaginal canal and ended in her pelvic cavity, as well as other injuries, so that the death of the female victim occurred immediately due to massive haemorrhaging from severed large blood vessels in the neck area and was aided by the contusion and destruction of brain tissue;*
- » *Prior to committing the criminal offence of attempted aggravated homicide in an extremely insidious manner, the perpetrator had visited the victim at her home several times, pretending to hold nothing against her, but at the same time not accepting the fact that she had broken off their emotional relationship and had no intention of renewing it. When he found out that the victim would be going on vacation with her daughter, with whom she lived, he decided to kill her, so he brought and left by the door of the victim's flat a pvc bag in which he had placed a packet of crisps, intended for her daughter, lighter cubes, some small pieces of firewood and a concealed M52 hand grenade that he had wrapped in some bark, so that the victim could not see it and know that it was a hand grenade, and a note saying '... ', certainly counting on the note reinforcing the victim's trust that the gift was harmless, knowing that the victim would use the 'gift' to light a fire sooner or later and knowing that the grenade would then explode, which is what happened when the victim, due to very cold weather, placed the contents of the bag in the fireplace furnace in the living room and lit a fire, and when she kneeled in front of the furnace to add more firewood, the M52 hand grenade that she had previously unknowingly placed inside exploded, and due to that explosion, parts of the furnace and the grenade caused the victim grievous bodily injuries in the area of her face, eye and lower lip, with a fracture of the alveolar ridge of the lower left half of her jaw and loss of her lower left external incisor, with foreign metal bodies, shrapnel, lodging in both her eye sockets and in her neck area, of which one foreign metal body, a piece of shrapnel measuring 20x7mm, was lodged in the back of her neck on the left side, 11mm from the common carotid artery, which is the main blood vessel supplying blood to the brain, and only 2 mm from her jugular vein;*
 - » *Upset at the actions of the headmistress and members of the disciplinary committee due to disciplinary proceedings that were initiated against him at the secondary school where he worked as a teacher, the perpetrator came to the secondary school carrying a hammer with a wooden handle, a 20 cm screwdriver and a 30 cm metal chisel, walked into the headmistress's office and as she sat at the desk with her back turned to him, he delivered blows with the hammer he had brought with him, at least five times to the back of her head and her right hand that the victim had raised in order to protect her head from the hammer blows, due to which she lost consciousness and suffered*

several grievous bodily injuries. The perpetrator struck the second victim, who had come in when she heard the headmistress screaming, with the hammer twice on the head and right hand, and then as she was lying on the floor, he repeatedly struck her with the hammer on her head and right hand, thereby inflicting grievous bodily injuries;

- » The perpetrator, together with his wife, the victim, who was in the passenger seat, exploiting her trust, set off in his passenger vehicle on the main road with the intention of taking her to an isolated location, at a sufficient distance from the main road and closest populated area from where it was unlikely that anyone would hear the shots he planned to fire from his pistol, and to kill her, with the help of his brother, who was driving in his own vehicle behind them. When he was a sufficient distance away from the main road, he stopped his vehicle, checked there were no third persons around and exited the vehicle together with his wife. His brother's vehicle came to a stop behind them, and his brother also exited his vehicle, and one of them discharged a firearm, a pistol of unknown make and calibre, while he was to the left of the victim at a distance of more than one meter, firing three shots in her direction, thereby inflicting gunshot wounds to her head, thorax and abdomen which resulted in the victim's death due to damage to vital brain centres and brain tissue. The perpetrator then left the scene of the crime with his brother, abandoning the lifeless body of the victim at the scene of her murder. The perpetrator then went to the police station and falsely reported that two unknown persons had killed his wife, while his brother left Bosnia and Herzegovina that same day;
- » In the morning hours, the perpetrator made his way to a location that was frequented, to his knowledge, by 'women selling love', approached the victim, who was alone by the intercity road, went with her to some nearby shrubbery and started a verbal altercation. During the verbal altercation, he swung a scalpel at the vital parts of the victim's body, inflicting injuries in the form of multiple slash wounds in the right side of her neck, left breast, left thumb and right pointer finger, due to which she fell to the ground, injuring her head in several places as well as other parts of her body and resulting in loss of consciousness, in which state she was hospitalised at the Anaesthesiology and Reanimation Clinic, where she succumbed to her injuries and died. While the victim was lying on the ground unconscious, the perpetrator exploited her helplessness and with the aim of securing for himself material benefit, he stole her mobile phone and an undetermined amount of money that the victim had on her person;
- » As a member of the Federal Police Administration, employed at the time as a field crime intelligence officer with the rank of junior inspector, the perpetrator was in possession of a 9x19 mm Glock pistol which had been assigned to him

and which he carried on his person. On the evening in question, he arrived by previous agreement to the flat of the victim with whom he had been in an emotional relationship for some time. Following a brief verbal altercation in the hallway of the victim's flat, as they were facing each other, the perpetrator fired six shots into the victim which hit her in the chest and abdomen, inflicting grievous and life-threatening wounds of which she died;

- » On a local road leading to a residential area, in close proximity to a shop, the perpetrator approached the victim, with whom he had had close relations in the past and to whom he had sent serious death threats, striking her first with his fists, and then with the blade of a kitchen knife, which was 33.5 cm long in total, the blade being 20.5 cm long and at most 2.7 cm wide, he delivered several blows to her head and body, as a result of which the victim fell to the ground, where he approached her again and as she was lying on the ground, he delivered multiple blows with his fists and the knife blade to her head and body, while the victim attempted to defend herself by raising her arms and attempting to grab the knife with her hands. In this manner, the perpetrator inflicted on the victim numerous contusions, stab wounds on her neck, head, face, entire body and internal organs, making her suffer pains of high intensity. While the victim was lying unconscious on the floor on her stomach, the perpetrator fired first one shot from a M-57 Crvena Zastava pistol, calibre 7.62 x 25 mm, in her direction, thereby inflicting a grievous bodily injury, and then fired another shot from relative proximity into the back of the victim's neck, thereby inflicting a grievous bodily injury, and another shot to the back of her head, thereby inflicting a grievous and life-threatening bodily injury due to which the victim died at the scene as a result of damage to brain tissue and vital centres in the brain. The perpetrator deprived the victim of life in a cruel manner due to the method of perpetration, because expert witness findings concluded that all the injuries (26 lacerations, seven incised wounds and three incised lacerations) occurred while the victim was alive, that the victim suffered high intensity pain throughout, and that at the moment of infliction of the final gunshot wound to her head, she was probably unconscious due to previously inflicted injuries to her abdominal organs;
- » In the early morning hours, the victim and the perpetrator were in a passenger vehicle driven by the perpetrator, on their way to a weekend house owned by the perpetrator, following a night spent working at a catering establishment. Following a verbal altercation with the perpetrator, the victim exited the vehicle and proceeded to go by foot. The perpetrator continued driving towards the victim, hitting her with the front of the vehicle in the lower part of her right thigh as she was mid-step, her right foot in front and facing the vehicle, and as a result the victim was not thrown far by the impact, but fell beneath the

vehicle, which was still moving, its undercarriage pushed and pressed the body of the victim backwards, while at the same time spinning it along the vertical axis, the pressure and dragging along the ground causing injuries manifested in a number of fatal injuries to the victim, from which traumas she died at the scene;

- » *The perpetrator continuously physically and mentally abused his unwed partner for two days by repeatedly delivering blows to her head and face with his fists, and on the evening in question, he continued the physical abuse, and while the victim was lying on the floor, screaming and begging him to stop beating her, he kicked her forcefully in the head, abdomen, legs and arms, even though he was aware that inflicting such blows on a woman who was mentally and physically weaker and unable to offer resistance, and especially because he was keeping fit through boxing training, could cause her death, he carelessly assumed death would not occur, and inflicted on her a number of grievous and life-threatening bodily injuries that the victim succumbed to, having been given no aid, and died during that night;*
- » *When the victim rejected entering into an emotional relationship with the perpetrator, he came to the house where she lived and threatened her, saying, 'If that's so, I'll slit your throat.' He then produced a spring knife from his pocket and pointed it at the victim, then put it back in his pocket, after which, with the intention of killing the victim, he took an axe that was in the room and struck the victim in the back of her head six times with the back of the axe, due to which blows she fell to the floor, and when she tried to get up, he took out a home-made firearm, what is known as a 'lead barrel', of 5.8 mm in diameter, pointed it at the victim's head and from a distance of approximately half a meter fired a shot that hit the victim in the forehead and caused multiple other lesser bodily injuries;*
- » *Exploiting the fact that the victim was alone in the flat and her trust, as she was a neighbour and friend of the perpetrator's parents, the perpetrator, aiming to obtain money for heroin, first physically attacked the victim, pushing her from the living room to the bedroom, then took her knitting needles with their silicon zip tie and a large kitchen knife with a black handle, used the needles to pierce her three times in the chest area, of which one incision perforated her right thoracic region between the second and third rib, but seeing that she was alive and offering resistance, he used the silicon zip tie to make a noose that he placed around her neck and tightened forcefully so that it left a deep mark in her neck tissue, but she continued to offer resistance and fight for her life and managed to scratch him with her fingernails across the face. He then inflicted two stab wounds to the front of the victim's neck with a large kitchen knife, of which one was shallow, around 1 cm deep, and the other was grievous and*

- life-threatening with a deep incision of around 16.5 cm, thereby inflicting on the victim a number of life-threatening injuries as a result of which she soon died. He then took 600 Canadian dollars from the victim's flat and absconded;*
- » *At the flat that he shared with the victim as they were emotionally involved, the perpetrator first grabbed the victim by her hair, then struck the back of her head against a hard blunt surface and by forcefully yanking her head back and forth inflicted on the victim grievous and life-threatening injuries. He then grabbed the victim's neck with his hands, pressing and squeezing her throat, inflicting on the victim a number of life-threatening bodily injuries, and then proceeded to inflict injuries by blows with a hard blunt object. All the injuries were of such intensity and nature that they resulted in the death of the victim, upon which the perpetrator covered her body with an orange towel and absconded from the flat in the morning hours;*
 - » *At the family home he shared with the victim, his wife, and nine children, due to a family disagreement, the perpetrator approached the couch in the living room where the victim was sleeping and with the intention of killing her, wielded a knife of 23.6 cm in total length, blade length 12.1 cm, and inflicted on the victim's chest and head several grievous and life-threatening injuries. The victim awoke from the pain and called to her juvenile son who came and took the knife from the hands of the perpetrator;*
 - » *In the early morning hours, exploiting the darkness and foggy weather, with the intention of killing, out of callous revenge, the victim, who was a lawyer and had represented his ex-wife, because he had lost a number of alimony and division of marital property disputes with his ex-wife, as well as a dispute for damages, he placed an improvised explosive device that he had assembled with the assistance of an unknown person in front of the entrance to the victim's law office, which is located in the immediate vicinity of a pavement and street frequented by people on foot and passenger vehicles. The explosive device consisted of an M-75 hand grenade, from which the perpetrator had pulled the safety pin, placed it in a glass and covered with paper, and placed on top of it a plastic Tisal dish detergent bottle with the bottom cut off and taped the plastic bottle with black duct tape, so that when the victim went to enter her office, she noticed the plastic bottle and moved it to open the door to her office, at which point the hand grenade exploded and the metal charge of the grenade struck the victim, inflicting fatal bodily injuries.*

Perpetrator Profile

The research sample included a total of 35 perpetrators, because there were two perpetrators in one case, one of whom committed the criminal offence of homicide, under CC FBiH Article 166, paragraph 2, point a), while the other perpetrator committed the criminal offence of accessory after the fact, under CC FBiH Article 346, paragraph 3 in conjunction with paragraph 1.

Age

The majority of perpetrators belonged to the 33-40 and 49-59 age group (20%), which indicates equal representation of perpetrators in what is known as 'middle age'. The youngest perpetrator was a young adult of 18, while the oldest was 72 at the time of perpetration (Table 9).

Table 9: Age

	18-25	25-32	33-40	41-48	49-56	57-65	65+	No data	Total
Number	2	3	7	6	7	6	2	2	35
%	5.7	8.6	20	17.1	20	17.1	5.7	2.7	100 %

Marital status

In terms of the marital status of perpetrators at the time of perpetration of the criminal offence, the highest percentage were married (40%), followed by unmarried (31.4%) and divorced (17.1%). Within the group of unmarried perpetrators, a certain number had been in an emotional relationship or a partner relationship without cohabitation (Table 10). The marital status of perpetrators correlates with the relationship between the perpetrator and victim, because the highest percentage of perpetrators were married, cohabited, or had a partner or emotional relationship with the victim. The percentage of divorced perpetrators (17.1%), when analysed alongside the relationship between the perpetrator and victim, shows that an escalation to violence and perpetration of the most serious criminal offences can occur even after divorce.

Table 10: Marital status

	Married	Common-law spouse	Divorced	Widower	Unmarried	Total
Number	14	2	6	2	11	35
%	40	5.7	17.1	5.7	31.4	100 %

Family Status

Data on the number of children of the perpetrators in the research sample show that an equal number of perpetrators were without children and had two children at the time of perpetration (10 – 28.6%). It should be noted that of the total number of perpetrators' children (67), 15 were minors (22.4%), which confirms, among other things, that children are exposed to domestic violence and loss of parents, and that the danger of trans-generational transmission of violence is extremely high, which is why one of the main policy priorities of the state should be to prevent gender-based violence (Table 11).

Table 11: Number of children

	None	1	2	3	4	More than 4	Unknown	Total
No.	10	2	10	6	2	2	3	35
%	28.6	5.7	28.6	17.1	5.7	5.7	8.8	100 %

Education, Occupation and Employment Status of Perpetrators

In terms of the perpetrators' level of education, there were no perpetrators in the research sample with no education or with the highest level of education (Table 12). The highest percentage of perpetrators (45.7%) had a secondary school level of education, which confirms that in the sample, the level of education was not decisive for the decision to perpetrate the criminal offence. Based on this finding, we can also conclude that the perpetrators from the research sample were not uneducated, but also that their secondary school level of education did not act as a deterrent to prevent them from perpetrating the criminal offence.

Table 12: Education

	Number	%
No education	0	0
Incomplete primary school	4	11.4
Primary School	3	8.6
Secondary school	16	45.7
Higher education	2	5.7
MA/PhD	0	0
Unknown	10	28.5
TOTAL	35	100

The perpetrators from the sample were of different occupations at the time of perpetration. Most were manual labourers (unskilled worker, labourer, mason, house painter, carpenter, metal worker, etc.), while two perpetrators (5.7%) were without occupation, which is consistent with the level of education of the perpetrators. There were also police officers among the perpetrators (in two cases) who committed the criminal offences using their service weapons or weapons they owned and constantly carried on their persons.

The highest percentage of perpetrators, almost a half, were unemployed (48.6%), while 14.3% were employed, but in eight cases, the judgements noted that the perpetrators were 'indigent' (Table 13).

Table 13: Employment

Employed	Unemployed	Retired	Unknown	Total
5	17	6	7	35
14.3	48.6	17.1	20	100 %

Findings on education, occupation and employment status of the perpetrators in the research sample coincide with the established view that perpetrators of violent crimes and murder, as the most serious criminal offence, come from all social strata and have diverse educational and occupational profiles.

Prior Criminal Record

Information about any prior criminal record of the perpetrators was not included in the information provided about the perpetrator in the operative part of all judgements. Therefore, information about prior criminal records of perpetrators was gathered from the reasoning of first- and second-instance judgements. In terms of prior criminal record, we can conclude that the majority of perpetrators did not have prior criminal convictions – 21 (60%).

Among the perpetrators, 14 (40%) had previously committed criminal offences. For one perpetrator, it was stated in the operative part of the judgement that he had a 'prior conviction', but in the reasoning, the fact that the perpetrator had not been convicted for the same or similar criminal offences was counted as a mitigating circumstance. In another case, it was stated in the operative part of the judgement that the perpetrator had a 'prior conviction', while the reasoning provided information that between 2006 and 2008, he had been convicted of various criminal offences: timber theft, theft, forging documents, domestic violence. In one case, the operative part of the judgement did not provide information about prior convictions of the perpetrator, but the prosecutor stated at the main hearing that Interpol had issued a warrant for the perpetrator's arrest 'where he was identified as a dangerous person' due to his prior convictions. However, the court did not accept the allegations of the prosecutor, explaining that the prosecution did not provide any evidence of such claims, while criminal records showed the perpetrator did not have any prior convictions. In the next case, the prior convictions of the perpetrator were not mentioned in the operative part of the judgement, but were referred to in the reasoning, 'the accused did not previously come into conflict with the law when it comes to criminal offences against life and limb,' but criminal records show that the perpetrator had a previous conviction for the criminal offence of appropriation of another's movable property, under CC FBiH Article 291, paragraph 1. Nevertheless, the court did not count this as an aggravating circumstance because fifteen years had passed since the perpetrator's last conviction.

It is characteristic for perpetrators with a prior criminal record that they had been convicted of a range of criminal offences: one perpetrator had a prior record of convictions for 39 criminal offences, one for 11 criminal offences, one for seven, one for eight, which shows that a number of perpetrators belonged to the category of what is known as 'continuously convicted persons', but prior criminal sanctions had not resulted in prevention and re-socialisation.

Perpetrators had previously been convicted of various crimes, mostly for criminal offences against property (theft, robbery, aggravated robbery), but also for criminal offences of causing lesser or grievous bodily harm, violent behaviour, endangerment of safety, preventing an official in the exercise of official duties, unauthorised manufacture and trade in drugs. One perpetrator had a prior record of six convictions for criminal offences of robbery, lesser bodily injury, violent behaviour and attempted homicide. We can, therefore, conclude that, even though the sample contains a minority of perpetrators with previous convictions, given the large number of prior criminal offences of the individual perpetrators, this is a category of perpetrators whose criminal behaviour prior to the commission of the most serious criminal offence constituted a heightened social threat.

In all cases, the court counted the prior convictions of perpetrators as an aggravating circumstance for the purpose sentencing.

Family and Personal History of the Perpetrators

The court judgements do not contain data on the perpetrators' primary family, whether it was complete, or the family relationships within which the perpetrators grew up. From the findings and opinions of psychiatrists and psychologists testifying in the capacity of expert witnesses included in the judgements, it is impossible to determine whether their examinations covered the family circumstances and relationships in the perpetrators' primary families, such as the perpetrators' relationships with their parents, whether they had been exposed to domestic violence, or whether their families were functional. This shows that court proceedings very rarely examine facts about previous family life and behaviour of perpetrators, before they committed the criminal offence, which would be important for gaining insight into the overall personality of the perpetrator, and these circumstances should be examined in court proceedings, especially those concerned with criminal offences of violent crime, including murder. In only one case, concerning a perpetrator who was 18 years old at the time of perpetration, the defender noted in his closing statement at the trial that the court should count as a particularly mitigating circumstance the fact that *'the accused lost his mother who died when he was two, and lived for a brief period with his father and stepmother, but due to insufficient material means to sustain this new family, his care was entrusted to his father's parents. Therefore, he did not know parental love and gentleness and care. Losing one parent and being abandoned by the other created in M. exclusively negative responses, such as feeling he was not needed by anyone, that he was worthless, rejected, and a burden to his family and to society.'* Expert witness findings in one case revealed that the perpetrator had grown up in disadvantaged conditions, with severely impaired family relationships, which resulted in his developing deviant behaviours.

Given that all cases included examinations by a court psychiatrist, and some cases also included examination by a psychologist, it was possible to glean from the court judgements the personal histories of the perpetrators and their personal psychological characteristics from the evaluations of their mental capacity/incapacity. Thus, a number of perpetrators were found to have:

- » psychopathic personality structure,
- » permanent mental disorder of a psychotic nature,
- » impulsive, emotionally unstable, easily offended person, of unpredictable behaviour, with a tendency to lack adequate communication style and poorly judge social situations, with the potential development of hatred, alienation, impulsiveness and vengefulness, a tendency to interpret what others say and do as expressions of rejection, leading to intensive introspection and misjudgement of real situations, all of which resulted in chronic difficulties in interpersonal relations,
- » psychopathic personality disorder with paranoid and antisocial elements,
- » presence of some features of personality disorder, predominantly impulsive behaviour, low tolerance of frustration, tendency towards aggressive expression and egocentric behaviour,
- » chronic mental conditions of psychotic disorder, sleep disorder due to failure to take medication,
- » psychological consequences of war, this person suffered a number of traumatic events in his lifetime, including those related to war, which is why at the Psychiatric Clinic, he was diagnosed with post-traumatic stress disorder, chronic PTSD with recurrent depressive disorder,
- » mental illness, inability to control affect,
- » a type of psychopathic personality, 'moral insanity' – lack of superego (conscience),
- » emotional immaturity, insecurity,
- » psychoactive personality structure, tendency towards asocial behaviour and alcohol consumption, as well as possibly other psychoactive substances,
- » the accused is sound of mind in terms of thinking, memory, recall, but in terms of personal character and emotional traits, 'he is very cold',
- » pronounced jealousy affect, but not pathological jealousy,
- » dissocial personality disorder with structured changes in personality structure in the form of maladapted behaviour in society, dominated by the principle of instant gratification of his own desires and needs and a complete absence of empathy for the needs and suffering of others.

For one perpetrator, the expert witness concluded that *'he tried to pretend he was mentally ill in order to deceive the expert witness and prolong the court proceedings.'*

Alcohol and Drug Use at the Time of Perpetration

In a number of cases, court appointed psychiatrists examined whether the perpetrators had been using alcohol or drugs at the time of perpetration of the criminal offence. Most of the perpetrators were not under the influence of alcohol at the time of perpetration – 27 (77.1%). For the remaining eight perpetrators (22.9%) in the sample, the expert findings concluded:

- » *At the time of perpetration, the accused was under the influence of alcohol with a blood alcohol concentration of 1.2 permille, which is classified as mild intoxication, but consumption of alcohol on the part of the accused falls within hazardous drinking resulting in family problems.*
- » *At the time of perpetration, the accused was intoxicated, with 1.65 permille, which is the medium intoxication stage, outpatient alcohol abuse treatment is recommended.*
- » *The blood alcohol concentration at the time of the event was at the stage of pre-intoxication and mild drunkenness.*
- » *There is no patient history of alcoholism treatment for the accused. There are also no precise indicators that the accused was in a state of moderate drunkenness on the morning in question (alcohol breath test). However, given the information provided by the mother of the accused, that the father of the accused had undergone treatment for alcoholism multiple times, and given that in families with alcoholics, children often become alcoholics themselves, it is possible that on the day of perpetration, the perpetrator had been continuously consuming alcohol and was at the stage of moderate drunkenness with a 1.5 to 2 permille blood alcohol concentration.*
- » *The accused was in a state of mild drunkenness at the time of the criminal event (blood alcohol concentration of 1 to 1.5 permille).*
- » *At the time of perpetration, the accused had a 0.6 permille blood alcohol level (determined by alcohol breath test), which is consistent with mild drunkenness.*
- » *At the time of perpetration, the accused was in a state of moderate drunkenness with blood alcohol level of 1.89 permille.*
- » *The perpetrator claims that immediately in advance of the event in question, he had consumed several shots of an alcoholic drink over a relatively short period. Witnesses have also confirmed that he was in a state of drunkenness, so the expert witness concluded that the perpetrator was in a state of drunkenness and affective rage.*

In no cases did the court find that the perpetrator was under the influence of drugs at the time of perpetration. In one case, the father of the perpetrator was heard as a witness and testified that his son had been a 'drug addict' for some ten years, and the court psychiatrist noted in his findings and opinion that the perpetrator was a 'long-term addict to opiates that he had been taking since the age of 16 with intermittent periods of abstinence.' However, it was not determined whether he had been under the influence of drugs at the time of perpetration.

Relationship between the Perpetrator and the Victim

Like previous research studies, this analysis confirmed that the most frequent relationship between perpetrator and victim is an emotional, common-law marriage, or family relationship (Table 14). In only two cases, the perpetrator did not know the victim (5.7%), while in all others, the victim and perpetrator knew each other from before (the perpetrator was the victim's acquaintance, co-worker, neighbour), they were married or cohabited, had an emotional relationship or a relationship of kinship (94.3%). This finding is consistent with that of previous research on femicide and attempted femicide^[75] where the greatest risk of femicide exists when the perpetrator and victim are in a marital/common-law marriage/partner relationship, which significantly increases the social threat of the perpetrated crimes since they most often occur within relationships that are meant to be ruled by trust, affection, honesty and love.

Table 14: Relationship between the perpetrator and the victim

Relationship	Number	%
Spouse (marriage)	6	17.1
Common-law spouse	1	2.9
Ex-spouse or common-law spouse	2	5.7
Emotional partner	4	11.4
Former emotional partner	2	5.7
Son	1	2.9
Brother	1	2.9
Common-law spouse to one victim and the common-law spouse of her daughter to the second victim	1	2.9
Did not know the victim	1	2.9

[75] Konstantinović Vilić, S., Petrušić, N. (2021) *Pokušaj femicida i femicid u Srbiji, sprečavanje i procesuiranje*, Udruženje građanki FemPlatz, Pančevo

Relationship	Number	%
Acquaintance	4	11.4
Friend of the perpetrator, did not know the victim	1	2.9
Emotional partner and co-worker	1	2.9
Colleague	1	2.9
Neighbour	4	11.4
Was in love with the victim who did not want to have a relationship with him	2	5.7
Former common-law spouse of one victim and acquaintance of the second victim	1	2.9
Acquaintance, whose father was in an emotional relationship with the victim	1	2.9
Relative (nephew)	1	2.9
Total	35	100%

Mental Capacity and Degree of Guilt

The mental capacity of the perpetrator is one of the basic elements of guilt, in addition to intent and negligence. Culpability exists if at the time of committing the crime, the perpetrator was sound of mind and acted with intent, or out of negligence when explicitly provided for by the law (CC FBiH Article 35, paragraphs 1 and 2). When evaluating mental capacity, what is taken into account is the awareness of the perpetrator, whether he was able to understand the significance of his act and whether he was able to control his actions (ability to reason and make decisions). The law (CC FBiH Article 37) provides for two forms of intent: direct (when the perpetrator was aware of his act and desired its commission) and oblique (when the perpetrator was aware that his act of commission or omission could result in a prohibited consequence, but consented to its occurrence); and two forms of negligence (CC FBiH Article 38): advertent (when the perpetrator was aware that his act of commission or omission could result in a prohibited consequence, but carelessly assumed it would not occur or that he could avert it) and inadvertent (when the perpetrator was not aware that a prohibited consequence could occur, but under the circumstances and given his personal characteristics, he could and should have been aware of this possibility). Similar provisions on culpability are also found in Article 13 of CC RS 2013. The provisions in CC BD BiH are similar to those found in CC FBiH and have been presented in more detail in the first part of this study related to the criminal law regulation of homicide in BiH. In Republika Srpska, according to 2017 CC RS Article 28, paragraphs 1 and 2, criminal responsibility exists if at the time of perpetration of the criminal offence, the perpetrator was of sound

mind and acted with intent, or out of negligence when explicitly provided for by the law, but was aware or should or could have been aware that his act was prohibited.

Looking at the mental capacity of the perpetrators from the research sample, for the majority of perpetrators, the court found that they were of sound mind, 18 (51.4%). Mental capacity was diminished for nine perpetrators (25.7%), but not to a significant degree, while for six perpetrators (17.1%), mental capacity was significantly diminished, which led to more lenient sentencing. In only one case (2.9%), the court found that the perpetrator committed the criminal offence of homicide while not of sound mind, i.e. that at the time of commission, he was unable to understand the significance of his act and control his actions (Table 15).

Table 15: Mental capacity of perpetrators

	Number	%
Of sound mind	18	51.4
Diminished, but not significantly	9	25.7
Significantly diminished mental capacity	6	17.1
Not of sound mind	1	2.9
Total	35	100%

Except for two cases, all the other perpetrators from the research sample committed the criminal offence with intent (Table 16). For seven perpetrators (20%), the court found the existence of intent without determining the form of intent. In the majority of cases, 23 (68.6%), the perpetrators acted with direct intent, i.e. they were aware of the commission of the act and desired it, while two perpetrators (5.7%) acted with oblique intent and one perpetrator (2.9%) acted with advertent negligence.

Table 16: Guilt

	Number	%
Intent	7	20
Direct intent	24	68.6
Oblique intent	2	5.7
Mental incapacity	1	2.9
Advertent negligence	1	2.9
Total	35	100%

Perpetrator's Attitude towards the Criminal Offence

Determining the perpetrator's attitude towards the criminal offence is important in terms of criminological psychology because it reveals, among other things, the personality traits of the perpetrator. The significance of this information in terms of criminal law and criminal procedure is that when determining mitigating and aggravating circumstances and sentencing the perpetrator, the court can take into account the perpetrator's attitude towards the criminal offence for which he is charged. There are three possibilities in this sense:

- » the perpetrator admits to committing the criminal offence completely as set out in the indictment and expresses regret, in which case a plea bargain would most often be concluded, the perpetrator's guilt would be proven based on his own admission of having committed all the acts of the criminal offence with which he is charged, as well as other evidence;
- » the perpetrator does not admit to committing the criminal offence he is charged with in the indictment, he admits the acts of perpetration, but not the legal qualification from the indictment, believing instead that his actions amount to a lesser criminal offence and expresses remorse over having committed it;
- » the perpetrator does not admit to having committed the criminal offence as stated in the indictment at all.

Ten perpetrators pleaded guilty to all the charges as set out in the indictment (28.5%) (Table 17). Following their guilty plea, they concluded a plea bargain, which was accepted by the court and the perpetrator's admission of guilt was counted as a mitigating circumstance. In all cases, the perpetrators pleaded guilty of their own free will, with awareness and understanding, and the guilty plea constituted evidence, i.e. a source of information establishing the facts in the criminal proceedings. When pleading guilty, the perpetrators also expressed remorse, which the court accepted and counted as a mitigating circumstance.

One perpetrator expressed remorse in the closing statement and his readiness to compensate the injured parties for damages. In another case, the court counted as a mitigating circumstance the fact that the perpetrator had already offered financial assistance to the injured parties, which they refused, that he pleaded guilty and expressed remorse. The court also counted as a mitigating circumstance the fact that the perpetrator pleaded guilty, said he did not know why he had harmed the victim (attempted homicide), but that he was prepared to resume their intimate relationship.

Another group of perpetrators (7-20%) did not plead guilty to the criminal offence stated in the indictment, but to a lesser criminal offence. These perpetrators stated:

- » Does not admit that he intended to kill the victim, in his defence he said he did not know why he had brought the grenade, he just wanted to talk to the victim, the defence claims this amounts to the criminal offence of general endangerment;
- » Does not plead guilty, claims this amounts to manslaughter, the court counted as a mitigating circumstance his expression of remorse for the death of his wife, which was not detected in the text of the judgement;
- » Does not plead guilty, claims it was self-defence or utmost necessity. The court did not accept the remorse expressed by the accused in his closing statement as sincere and was of the opinion that he exclusively intended it to reduce his criminal responsibility, and that the consequences of the offence and the number of injured parties in the proceedings require real remorse that goes beyond the words that were spoken;
- » Did not plead guilty, the defence stated that the perpetrator was criminally responsible for the criminal offence of grievous bodily harm resulting in death under CC FBiH Article 172, paragraph 5, because the perpetrator had acted in a fit of passion in relation to the resulting death;
- » Does not plead guilty to the criminal offence, says that he does not know what happened, he blacked out, he is sorry for having done it because he harmed his children and family. The defence said in the closing statement that the criminal offence in this concrete case was manslaughter under CC FBiH Article 167. The court did not accept these arguments of the defence, because there had been no serious insult of the perpetrator on the part of the victim. The court counted as a mitigating circumstance the fact that the perpetrator admitted to the acts of perpetration of the criminal offence.
- » Does not plead guilty. Believes he can only be found guilty of the criminal offence of grievous bodily harm qualified by death. He did not intend to kill the victim, only to beat her up, if he had wanted to, he could have 'killed her with his fists in a minute '.

The third group of perpetrators (17 – 48.6%) did not admit to having committed the criminal offence with which they were charged in the indictment. It is interesting that among these perpetrators that did not admit to having committed the criminal offence, there were some who expressed remorse, not out of their own guilty conscience, but over the tragic event itself. Some of the perpetrators stated:

- » Does not admit to having committed the criminal offence, claims to have brought the grenade to take his own life, he had decided to kill himself in front of the victim because she had insulted him and said he was not brave enough to do anything, that he was a coward. He expressed remorse and said he had visited her grave twice;
- » The perpetrator did not admit that he had intended to kill the victim. Due to long-lasting physical, mental, emotional and sexual abuse by the victim, serious insult and attack by knife, he was brought into a state where he does not remember firing any shots at the victim, i.e. the perpetrator had no awareness or will at the time of shooting. According to the arguments of the defence, the perpetrator was under attack and reacted in self-defence, while the victim was the attacker, so the offence should be qualified as manslaughter or homicide in excess of self-defence. The court did not accept these arguments of the defence;
- » Does not admit to the criminal offence. In his closing statement, he said that he has no idea how it all happened, and that his biggest punishment is that the victim is no longer among the living. The court counted as a mitigating circumstance the fact that the perpetrator expressed deep regret and remorse in front of the victim's mother and asked for forgiveness (notwithstanding the fact that he was in a relationship with the victim, he is a married man, a family man, the father of two children and the court counted this as a mitigating circumstance);
- » Does not admit to having committed the criminal offence, states that he did not intend to kill the male victim and his own wife and that he feels remorse for what he did. The court counted as a mitigating circumstance the fact that the perpetrator admitted to the objective act of the criminal offence;
- » Does not admit to having committed the criminal offence, says that he did not intend to kill the victim and that during the event in question, the victim was wielding the axe wanting to strike him. The court took into account as a mitigating circumstance the fact that he expressed genuine remorse and regret for the perpetrated act;
- » Does not admit to having committed the criminal offence, complete absence of any genuine remorse towards the victim; attempted to feign mental illness;
- » Does not plead guilty. Having committed the criminal offence, he left the victim's apartment after he had placed in her hand a cutting board to make it seem like the injuries had resulted from a fall in the kitchen and the cutting board, he removed traces of blood and covered the body with a towel;
- » Does not admit to having committed the criminal offence, states that he

does not remember what happened because he was drunk. The only thing he remembers is that they pushed him into the kitchen and tried to take away his pistol because he wanted to kill himself. He ran away to the woods and spent ten days sleeping in the woods, but after ten days, 'the suspense was killing him' and he returned to town. He was arrested two months later. He is sorry that all this happened because he never had anything against the victim (she was his father's partner). He has been thinking about it every night and he cannot remember how he shot her. The court counted as a mitigating circumstance the fact that the perpetrator expressed genuine remorse and regret over the committed criminal offences;

- » Does not admit to the criminal offence. Denied any part in setting up the explosive device and killing the victim;
- » Does not admit to having committed the criminal offence. For many years, he was not in good relations with the victim's relatives;
- » Does not admit to having committed the offence. Claims that his ex-wife attacked him and he was defending himself. He has asked his children to forgive him and expressed remorse over everything that happened.

For the perpetrator found by the court to have been not of sound mind at the time of perpetration of the criminal offence, the expert witness found that he was entirely uncritical of his experience ('I did not do it'), without any feelings of guilt or remorse, and at the time of perpetration, he was suffering from his warped experience, deranged ideas of a religious nature and feelings of persecution.

Table 17: Perpetrator's attitude towards the offence

	Number	%
Admits and feels remorse	10	28.5
Does not admit	17	48.6
Admits to a lesser criminal offence	7	20
Not of sound mind	1	2.9
Total	35	100

Motives of Perpetration of the Criminal Offence

In psychological terms, the motives for the perpetration of crimes constitute internal drivers to undertake certain criminal activities and achieve criminal aims. The motive is closely related to personal characteristics, predispositions and interests, and in criminological terms, it depends on the form of criminality and

the aims the perpetrator seeks to achieve by committing the crime. Theory divides motives into stable and situational. Stable motives are related to personality traits, they are long-lasting and fall under personality structure, such as the motive of greed, for example. Situational motives arise under the influence of external circumstances, they are dependent on the external living situation and refracted through the personality.^[76] The most common motives guiding behaviour towards crime are greed, hatred, revenge, intolerance, anger, and jealousy.

The motives for the perpetration of the criminal offences in the research sample were inferred from the description of the events in the judgements, the testimony of the perpetrator, the testimony of the victim (in attempted homicides), testimony of other witnesses, and from examinations by court psychiatrists and psychologists. In the judgements, the courts did not address the motives of the perpetrators. Given that in all the cases included in the analysis, the victims were female, it would have been necessary for the court to assess the presence of gender-based motives on the part of the perpetrator, given that extensive research on violence against women shows that women are for the most part victims of gender-based murders, especially those resulting from intimate partner violence and domestic violence.^[77] As noted in the introduction, the United Nations General Assembly has adopted two resolutions on undertaking measures to counter gender-based killings of women and girls (in 2013 and 2015), which point to the alarming scale of gender-based killings of women across the world, including the fact that every second woman was killed by an intimate partner or family member. Further steps were subsequently taken at the level of the United Nations, placing the globally widespread problem of femicide high on the agenda, with significant contributions made by the activities of UN Special Rapporteurs on violence against women. In view of the above, it is necessary for courts, since they have a final and paramount role after a woman has been killed, to devote additional attention during proceedings and make sure to examine whether there were any gender-based motives for her murder.

[76] Konstantinović Vilić, S. Nikolić Ristanović, V.: *Kriminologija*, Centar za publikacije Pravnog fakulteta u Nišu, Niš, 2003, p. 350.

[77] While taking into account that criminal legislation in BiH currently does not include motive as an element of criminal offences, but treats it as an aggravating or qualifying circumstance in some criminal offences. Until femicide is incriminated as gender-based homicide of a woman, the court could count the motive manifested in the form of a gender-based homicide of a woman as an aggravating circumstance for the purpose of sentencing, if such motive is found to follow from the facts established at trial.

Only four court judgements explained the motive of the perpetrator for committing the crime.

- » the perpetrator wanted to kill the victim out of jealousy, because he suspected she had a lover behind the door in the next room (attempted homicide);
- » the direct motive for the perpetration of the criminal offence was the perpetrator's suspicion that the victim had reported him to the police, which follows from his testimony, where he stated that the actions of the victim angered him (homicide);
- » the court found that on the previous evening, the perpetrator had followed his ex-wife and seen her with another man, which was the manifest motive to try to take her life (attempted homicide);
- » the court found the motive of callous revenge towards the victim who, as a lawyer representing his ex-wife in court, performed her duties expertly and conscientiously, very capably represented her client and won all the disputes against the perpetrator, which he, being the other party to the proceedings, perceived as an 'attack against him' because he lost property, something he had not expected and instead thought he would be able to retain all the property belonging to his ex-wife for himself and did not care that this would have left his ex-wife not only without the property she gained during their marriage, but also without means of sustenance, old and infirm (homicide).

Based on the analysed judgements, the other motives for the perpetration of crimes included: greed, revenge for severing an emotional/marital/cohabiting relationship, unrequited love, disciplinary proceedings against the perpetrator, dissatisfaction of the perpetrator regarding retirement benefits, long-lasting intolerance within family relations, and jealousy.

Victim Profile

General Information about Victims

The research sample contained 37 victims, because in three cases there were two victims of the criminal offence in question. All the victims were female. The analysed court judgements offer almost no information about the victims. Such information, absent from the judgements, primarily concerns the victim's age, marital status, number of children, education, occupation, employment status, relationship with the perpetrator prior to the commission of the crime, reports

of violence to institutions, etc. Where the criminal offence was an attempt, some information about the victim can be gleaned from her testimony, but this is mostly information describing the event in question, the circumstances of the criminal offence and the conduct of the perpetrator. In a few cases, when assessing the credibility of defence arguments, the court also took into account the behaviour of the victim and her contribution to the perpetration of the criminal offence.

It is impossible to determine the predominant age of the victims from the judgements, because for 35 victims, no information about their age is given. In a few cases, the victims were characterised as elderly, but without specifying their age.

Table 18: Age

	Number	%
Over 65	2	5.4
No data	35	94.6
Total	37	100%

It is similar with the victims' marital status at the time of perpetration of the criminal offence – no such data was available in 17 cases (Table 19). Where such data was available, it was found that most of the victims were married (8 – 21.6%).

Table 19: Marital status

	Number	%
Married	8	21.6
Living with a common-law spouse	3	8.1
Divorced	2	2.7
Widow	3	8.1
Unmarried	3	8.1
Emotional relationship with the accused	1	2.7
Unknown	17	45.9
Total	37	100

In a large number of cases (23 or 62.1%), there was no information about how many children the victim had. According to the available data, most of the victims had three and two children (Table 20). One victim had six children, of which only one was not a minor. The number of children of victims is very important for establishing the number of indirect victims of the perpetrated crime. These certainly include children who are left without both parents, which shows that the commission of these most serious crimes leaves far-reaching consequences.

Table 20: Number of children

	1	2	3	Mora than 3	Unknown	Total
Number	2	4	6	2	23	37
%	5.4	10.8	16.2	5.4	62.1	100

The court judgements also failed to provide information about the victim's occupation (29 – 78.4%). Based on the available data, we can conclude that the victims, like the perpetrators, had various occupations and professional qualifications (administrative worker, school headmistress, teacher, housewife, pensioner, singer, lawyer), and that all of the women were exposed to the most serious forms of violence, irrespective of their level of education, occupation, or employment status.

Information about the victim's education is provided in only three court judgements (3 – 8.1%), while in the majority of judgements (91.9%) this data is absent (Table 21).

Table 21: Victim's education level

	Number	%
Higher education	3	8.1
Unknown	34	91.9
Total	37	100%

Most court judgements also failed to provide data on the victim's employment status (26 -70.3%). In the absence of such data, it is impossible to determine whether most of the victims were employed at the time of perpetration of the criminal offence (Table 22).

Table 22: Victim's employment status

	Number	%
Employed	8	21.6
Unemployed	2	5.4
Retired	1	2.7
Unknown	26	70.3
Total	37	100%

As already noted, when examining the relations between the perpetrators and victims (Table 14), their most frequent mutual relationship was marriage, common-law marriage, partners, relatives, neighbours. Only two victims did not know the perpetrators, whereas in all other cases, the victim and perpetrator knew each other, were previously involved in an emotional relationship or had a relationship of trust (Table 23).

Table 23: Relationship between victim and perpetrator

	Number	%
Mother	1	2.7
Wife	6	16.2
Common-law spouse	2	5.4
Mother of common-law spouse	1	2.7
Former emotional partner of the perpetrator	2	5.4
Former common-law spouse	3	5.4
Acquaintance	5	13.5
Did not know each other	2	5.4
Sister	1	2.7
Colleague	2	5.4
Neighbour	4	10.8
Emotional partner	4	10.8
Emotional partner and co-worker	1	2.7
Relative (aunt)	1	2.7
Acquaintance of the perpetrator and emotional partner of his father	1	2.7
Lawyer representing the perpetrator's ex-wife	1	2.7
Total	37	100%

Relationship between the Perpetrator and Victim prior to the Criminal Offence

Determining the relationship between the perpetrator and victim prior to the criminal offence is necessary in order to establish any history of violence and its frequency. Information about the situation preceding the offence can also shed light on the causes of criminal behaviour, which is of great significance for preventive action to avert these crimes. A history of violence signals the need to examine the responses of institutions in cases where various forms of physical and mental violence had been known before the murder or attempted murder, and any actions that were taken to prevent the fatal outcome. Insight into the relationship between the victim and perpetrator reveals the presence of power and domination of the perpetrator over the victim, as well as the presence of gender stereotypes, gender inequality and discrimination.

Research on femicide in Serbia^[78] has found that in their reasoning, court judgements rarely include descriptions of the relationship between the perpetrator and victim prior to the commission of the criminal offence. Such information may be inferred from the testimony of the perpetrator, family members or neighbours in cases where they gave testimony about these circumstances. Similar findings were obtained from the court judgements included in the research sample (Table 24). As many as 24 judgements (64.9%) contain no information about what the relationship between the perpetrator and the victim was like for a shorter or longer period leading up to the perpetration of the criminal offence. In only three judgements (8.1%), the court found that the victim had been previously subjected to various forms of violence by the perpetrator, and in one case the perpetrator had been convicted of the criminal offence of domestic violence resulting in death. The fact that for the most part, the courts did not try to shed light on the relations between the victim and perpetrator prior to the criminal offence speaks to the lack of a gender approach to considering violence against women and the killing of women as the most serious form of gender-based violence.

[78] Konstantinović Vilić, S., Petrušić, N, Beker, K. (2019) Društveni i institucionalni odgovor na femicid u Srbiji, Udruženje građanki FemPlatz, Pančevo, p. 163; Konstantinović Vilić, S. Petrušić, N. (2021) Pokušaj femicida i femicid u Srbiji – sprečavanje i procesuiranje, Udruženje građanki FemPlaz, Pančevo, p. 77.

Table 24: Previous violence

Previous violence	Number	%
Mental violence over a longer period	1	2.7
Mental and physical violence over a longer period	1	2.7
Sporadic	1	2.7
None	10	27.1
Unknown	24	64.9%
Total	37	100%

From the arguments presented by the defence on behalf of a number of perpetrators, it can be inferred that impaired relations with the mother or sister, quarrels and conflicts, the behaviour of the victim prior to the perpetration of the criminal offence are often cited as the reason for the perpetrated murder or attempted murder, i.e. the criminal behaviour of the perpetrator, and the defence would seek a lesser qualification of the criminal offence, either manslaughter or (attempted) homicide in self-defence. The court did not find in any of the cases included in the sample that the victim's behaviour had contributed to the perpetration of the criminal offence.

Below are some examples of impaired relations between the perpetrator and victim leading up to the perpetration of the criminal offence:

- » *The perpetrator, who did not admit to the commission of the criminal offence in the indictment, stated that as he was driving her in his vehicle from the catering establishment where they worked together, he was arguing with the victim, who was his co-worker and emotional partner, because he was jealous;*
- » *The perpetrator did not admit to having committed the criminal offence; the judgement states that the homicide occurred following a verbal altercation with the victim, who was a prostitute and whom the perpetrator killed by the intercity road, an area frequented by prostitutes (the gender dimension was not considered);*
- » *At the main hearing, the victim confirmed in her testimony that she was living with the accused, that the event (attempted homicide) was preceded by a quarrel and he had hit her, that the quarrelling continued and culminated when she went to leave the flat and the accused hit her and pierced her back with a pair of scissors;*
- » *The victim explained that she knew the accused from when she worked at G.C. because he was friends with her co-worker, that he had asked her out repeatedly*

and that she had always made it clear she did not want a relationship with him. She recalled how on one occasion... he had stopped her and said he wanted to talk to her, how she made it clear that she did not want to talk to him, and that she was left feeling afraid and her health was impaired by headaches. The witness said that the only reason she can think of for the perpetration of the criminal offence (attempted homicide) was that she did not want to go out with the accused or start a relationship with him;

- » *The perpetrator was friends with the victim for a time, then they were in an intimate relationship and daily contact, which is why the victim had agreed to meet him at the designated place. As part of the evidence, the court examined the records of incoming and outgoing calls and text messages and found that the perpetrator and victim were in an intimate relationship, that in the concrete case there was a disagreement and misunderstanding, and that the victim agreed to meet the perpetrator so that they could work out their misunderstanding in person. However, 'the accused exploited the pressure to meet in person, brought a rifle, fired at the victim as she moved towards his vehicle with the intention of talking to the accused, but he did not get out of his car, instead he pointed the barrel of his automatic rifle at the victim through the car window and fired a shot at her at close range.' Deciding on the appeal of the prosecution in this case, the second-instance court increased the duration of the prison sentence for the perpetrator because it found that the victim's behaviour did not in any way contribute to the perpetration of the criminal offence. 'Any threats the victim may have directed at the accused and any blackmail of the accused (she threatened to disclose details about his family) referred to in the appeal submitted by the defence could have been resolved by the accused in the legally prescribed manner – by reporting the victim to law enforcement authorities ';*
- » *Six years prior to the perpetration of the criminal offence, the perpetrator applied for pension benefits with the competent Pension Insurance Institute where the victim worked on his application. The perpetrator complained to the victim about the length of the procedure and unfair treatment, to which, according to the perpetrator, she replied 'that he was a Chetnik and should apply for a pension in Serbia.' This is when the incident occurred, the perpetrator was accused of a criminal offence and sentenced to two years in prison. When the perpetrator appealed, the higher-instance court suspended the sentence. The perpetrator's dissatisfaction culminated when he was ordered by court to pay a substantial sum in compensation to the victim for non-material damages due to the incident. These circumstances, as well as his consumption of alcohol at the time, significantly contributed to the perpetration of the criminal offence (attempted homicide);*

- » *According to the testimony of the victim's daughter, her mother had completely changed her behaviour when she was in a relationship with the perpetrator, which lasted several months, she had stopped putting on make-up, wearing certain clothes and high heels, all because the perpetrator did not like that. She changed her phone number, grew distant. Her three-year-old son, whom the victim was minding, once told her that the perpetrator had 'hit grandma'. She could no longer communicate with her mother without the perpetrator being present, he had complete control over her.*

Two court judgements include information about good relations between the perpetrator and victim prior to the commission of the criminal offence.

- » *At the main hearing, the victim testified that she was not interested in the prosecution of her husband (for attempted homicide), that she wanted a divorce, and that because of their children, she did not want these proceedings conducted. As to any property claims, she made none, she wants for them both to go on with their separate lives and not spoil the relationship with their children any further... during their 30 years of marriage, he had been a good husband, taking care of the children, and was never violent;*
- » *The court heard testimony regarding the marital and family life of the perpetrator and the victim from the victim's mother and the perpetrator's sister. The victim's mother testified that the perpetrator [note: who had committed the criminal offence of homicide by firing eight shots from his pistol into the victim] was married to her daughter for 18 years, that they have three children, that they did not argue, did not have marital issues, and that there were no issues between the perpetrator and them as his in-laws. The victim was unemployed, she took care of the house, farm and the perpetrator's parents. Lately, she had had some health issues and mental health issues, she went to her parent's house and told them she did not want to live with her husband anymore, 'that she was afraid, that she felt like she was suffocating and could they rescue her.' They took her to see a psychiatrist and she was prescribed medication. The perpetrator's sister testified that relations between the perpetrator and the victim were good, that her brother respected the victim's parents and that the victim respected her and their parents. The perpetrator testified that he got on well with the victims, that they had no problems and that he was 'the happiest man in the world... they shared a household with his parents... they had an ideal marriage up until M.'s gallbladder surgery. She later had mental health issues so that he took her to see doctors and imams and offered every assistance. '*

Although it can be inferred from the court cases that the relations between the victim and the perpetrator had been impaired prior to the commission of the criminal offence, in only one case there is information about a previous report to relevant institutions. The judgement notes that the victim had repeatedly reported to the police, the centre for social work, and a non-governmental organisation that the perpetrator was physically and mentally abusing her, and that she had stayed at a women's shelter which she left of her own volition to go back to the perpetrator. None of the other judgements contain information about the victim seeking help from institutions or reporting violence, or of any prior institutional measures.

Criminal Sanctions

Mitigating and Aggravating Circumstances

Pursuant to CC FBiH Article 49, 2017 CC RS Article 52 and CC BD BiH Article 49, (general sentencing rules), the court sentences the perpetrator within the boundaries set by the law for the relevant criminal offence, in view of the purpose of the sanction and taking into account all the circumstances impacting the length or the shortness of the sentence (mitigating and aggravating circumstances). For example, the law cites certain circumstances that impact the sentencing, such as the degree of guilt, motivation for the offence, intensity of injury or violation of a protected good, circumstances of the commission of the crime, the perpetrator's prior life, their personal circumstances, behaviour after the commission of the offence, and other circumstances related to the perpetrator. All three laws provide that in case of recidivism, the court particularly takes into account whether any previous offence is of the same nature as the new one, whether both have been committed with the same motivation, and how much time had elapsed since the previous conviction, served or pardoned sentence.

The 2017 CC RS (Article 52, paragraph) and CC BD BiH (Article 49, paragraph 2) specify that any circumstance that is an element of the crime itself cannot be taken into account as either mitigating or aggravating, unless it exceeds the measure required for the existence of a crime or a particular form of crime, or if there are two or more such circumstances, but only one is sufficient for the existence of a more serious form of the crime or a milder one.

Provisions of CC FBiH Article 2, paragraph 11 prescribe that a hate crime is any offence committed on the basis of racial background, colour, religious belief, national or ethnic background, language, disability, sex, sexual orientation or

gender identity of another person. Such conduct is to be considered an aggravating element provided that this law does not provide for a stricter sanction for a qualified form of hate crime. The 2017 CC RS Article 52, paragraph 3 provides that if a crime was motivated by hate (Article 123, paragraph 1, point 21), the court will take it as an aggravating circumstance, unless the hate was the qualifying element of the crime itself, whereas a hate crime is defined as a crime committed partly or entirely on the basis of racial, national or ethnic background, language, religious belief, colour, sex or sexual orientation, health status or gender identity of a person. Also, pursuant to CC BD BiH Article 49, paragraph 2, in case of a hate crime, the court takes into account the existence of hate as an aggravating circumstance, unless hate is the qualifying element of that same crime.

The analysed sample judgements lead to a conclusion that in their reasoning, courts were mainly citing the mitigating and aggravating circumstances which were, for example, referred to in the law, with no detailed analyses of their significance. Thus, for the purpose of sentencing, the courts took into account the following mitigating circumstances:

- » confession: by confessing the crime, the perpetrator contributed to a faster, more efficient and more economical conclusion of criminal proceedings;
- » expressed remorse;
- » family situation: married (a family man), the number of children - father of two or more (eight) children;
- » family situation related to the nuclear family: growing up without a mother and without parental love, care and tenderness;
- » property situation: indigency, unemployment;
- » age of the perpetrator: young person of legal age, an elderly person (aged 60, 70 or older);
- » the perpetrator's occupation: pensioner;
- » health status: poor health, mental problems and several stays for treatment at a psychiatric clinic with a confirmed diagnosis, disability, surgery;
- » diminished capacity, though not significantly;
- » significantly diminished capacity;
- » degree of guilt: crime committed with possible premeditation;
- » proper conduct before a judge during the proceedings;
- » contribution to a swift completion of criminal proceedings;
- » uncovering accomplices;
- » previous clean record, no previous instances of breaking the law in relation to crimes against life or limb;

- » the perpetrator offered financial assistance to the injured parties and compensation of damages;
- » the actions were a consequence of an affective impulsive moment caused by alcohol rather than planning;
- » mental immaturity, insufficiently developed understanding of the act and its consequences;
- » mental consequences of war trauma;
- » the injured party is not joining criminal prosecution.

When sentencing, the courts took into account the following aggravating circumstances:

- » previous convictions;
- » previous criminal offences with elements of violence;
- » previous convictions for crimes of domestic violence;
- » reckless infliction of bodily harm, persistence, determination;
- » the injured party is a wife and a mother;
- » degree of guilt;
- » the crime was committed in relation to an elderly female who was his neighbour and his parents' friend;
- » circumstances of commission of the crime,
- » the injured party had six children, of whom only one was of legal age, the children remain with no provision of care;
- » an unusual method of commission of the crime, which led to the injured party's great suffering prior to death;
- » insensitivity after the commission of the crime;
- » two crimes were committed in the perpetrator's place of residence, in relation to the closest neighbours, in a particularly harsh way, with numerous injuries sustained by the victims (28 stab wounds, 29 stab and laceration wounds);
- » throughout the proceedings, the perpetrator showed no remorse or sympathy towards the victim, until the end of the main hearing the court was not satisfied that the perpetrator was remorseful in relation to the crime committed, according to the team of expert witnesses' finding (evidence for the defence), the perpetrator faked a mental illness, solely to avoid criminal liability and to stall the proceedings;
- » cruel behaviour after the crime: the perpetrator covered the injured party's body, left the flat and locked it;
- » the injured party in no way contributed to the commission of the crime, she simply performed the actions arising from her profession;

- » the crime was committed in a restaurant filled with numerous guests during a religious holiday;
- » persistence of the accused in the attempt to commit the crime.

Type of Sanction and Length of the Prison Sentence

An analysis of enforceable judgements (34) established that all of them, except for one, which found the perpetrator not to be legally competent, were convictions and delivered the following criminal sanctions in relation to the perpetrators (35): prison sentence, prison sentence and a security measure of confiscation of items used in the commission of the offence, long-term prison sentence, long-term prison sentence and a security measure of confiscation of items, prison sentence and a security measure of mandatory treatment in a psychiatric institution. Most of them were prison sentences and security measures of confiscation of items – 51.4% and prison sentences – 37.1%. (Table 25). As for long-term prison sentences, delivered in two cases, it is clear that the dominant form of criminal sanction in the sample was prison sentence including long-term sentences – 34 (97.2%), which is understandable in view of the fact that these were the most serious criminal offences.

Table 25: Type of sanction

	No.	%
Prison sentence	13	37.1
Long-term prison sentence	1	2.8
Long-term prison sentence and a security measure of confiscation of items	1	2.8
Long-term prison sentence and a security measure of mandatory treatment in a psychiatric institution	1	2.8
Prison sentence and a security measure of confiscation of items	18	51.4
No sanction, the perpetrator was not legally competent	1	2.8
Total	35	100%

Table 26 presents an overview of length of the prison sentences, including long-term ones.

Table 26: Length of prison sentences

	No.	%
30 years	2	5.9
25 years	1	2.9
19 years	1	2.9
17 years	1	2.9
15 years and 3 months	1	2.9
15 years	2	5.9
14 years	2	5.9
12 years and 6 months	1	2.9
12 years	3	8.8
11 years	1	2.9
10 years and 10 months	1	2.9
8 years	3	8.8
7 years and 6 months	1	2.9
5 years and 6 months	1	2.9
5 years and 3 months	2	5.9
5 years and 2 months	1	2.9
4 years and 6 months	1	2.9
4 years	2	5.9
3 years and 1 month	1	2.9
3 years and 2 months	1	2.9
2 years and 9 months	2	5.9
2 years and 6 months	1	2.9
1 years and 7 months	1	2.9
1 years and 6 months	1	2.9
1 year	1	2.9
Total	34	100

In 15 cases, the second-instance court modified the sentence delivered at the first-instance. In 18 cases, the sentence remained the same as in the first-instance judgement, whereas one judgement includes no sentence, since the perpetrator

was not legally competent. The second-instance court delivered a shorter sentence in seven cases, and in three cases the long-term sentence was reduced. In five cases, the second-instance court delivered a prison sentence longer than the one delivered in the first-instance judgement.

Prison sentences shorter than the first-instance ones:

- » from 11 to 8 years in prison,
- » from a long-term prison sentence of 35 years to a long-term sentence of 30 years,
- » from 16 to 15 years in prison,
- » from 13 to 12 in prison,
- » from 17 to 11 years in prison, for the second perpetrator from 2 years to 1 year and 6 months,
- » from a long-term prison sentence of 27 years (with a security measure of mandatory psychiatric treatment) to a long-term sentence of 25 years (with a security measure of mandatory psychiatric treatment),
- » from a long-term prison sentence of 32 years to a long-term sentence of 30 years,
- » from 18 to 14 years in prison,
- » from 18 to 17 years in prison,
- » from 3 years and 10 months to 3 years and two months in prison.

Prison sentences longer than the first-instance ones:

- » the sentence was increased from 2 years to 2 years and 6 months,
- » the sentence was increased from 3 years and 3 months to 4 years and 6 months,
- » the sentence was increased from 10 years and 5 months to 15 years in prison,
- » the sentence was increased from 8 years and 10 months to 10 years and 10 months,
- » the sentence was increased from 3 years and 6 months to 5 years and 6 months.

In its reasoning for prison sentences shorter than the first-instance ones, it was stated that the first-instance court did not properly take into account the mitigating circumstances:

- » *Reasons for the sentence are not acceptable, all the mitigating and aggravating circumstances were not adequately valued. Denial of a crime cannot be*

considered an aggravating circumstance... the first-instance judgement treated as an aggravating circumstance the fact that the accused confessed the crime only when interrogated by the investigating authorities. The court found justified the appeal by the defence that the first-instance court did not adequately take into account the mitigating circumstances: no previous convictions, just turned 18, grew up in an extremely difficult family situation, his behaviour after the crime was proper, he cooperated with the prosecution and uncovered the person(s) who aided and abetted him.

- » *The first-instance court failed to accept as a mitigating circumstance the fact that the accused committed the crimes in a state of significantly diminished capacity, which is a qualifying element for a milder sentence, as per CC FBiH Article 36, paragraph 2.*
- » *The sentence of 11 years is too harsh and the purpose of a criminal sanction may be reached by a shorter sentence. At that, this court took into account that at sentencing, the court accepted as an aggravating circumstance the fact that the injured party suffered a severe physical injury, which is part of the description of the commission of the crime and thus cannot be accepted as aggravating. The fact that the accused failed to visit the injured party in hospital does not bear the significance that the prosecutor's appeal attaches to it, in view of the fact that the accused was in detention immediately following the commission of the crime and was thus unable to visit her.*
- » *This court finds that a prison sentence of 18 years is too harsh. Namely, the assessment of circumstances relevant for the sentence in the given case, in the opinion of this court, do not justify a sentence nearing the maximum prescribed for this offence. Unlike the second-instance court, when delivering the sentence of 18 years in prison, the first-instance court accepted as aggravating the fact that the perpetrator killed his partner by abusing her trust, because she allowed him to enter her flat, where the crime took place, that he inflicted numerous physical injuries, left the scene, and left the injured party in the flat, locked.*
- » *The appeal of the cantonal prosecutor indicates that the first-instance court assigned excessive significance to the mitigating circumstances, while underestimating the aggravating ones. However, this appeal does not refute the established facts of relevance for the sentence, as established in the judgement which is subject to appeal, stating at the same time that the first-instance court neglected the aggravating elements that the accused was a police officer and that his primary task and duty was to protect the lives of citizens, and that the consequence of the crime was that three minor children were placed under guardianship and have no contact with the deceased wife's family. These circumstances do not have the significance assigned to them*

by the prosecutor, primarily because the circumstances of the case indicate that the accused committed the crime as a civilian, as part of resolving issues between himself and his wife, he was not on duty or on an assignment, which would have warranted special obligations... the fact that the children were placed under guardianship of the family of the accused and have no contact with the family of their deceased mother is not an aggravating element, since the case file shows that the children were placed under guardianship of the family of the accused and that the family provides for their life and education.

- » Namely, in relation to the accused, the first-instance court properly assessed as mitigating the fact that he was a father of three, that he had no previous convictions that he was indigent, that he committed the crimes he was found guilty of in a state of diminished mental capacity, and that he expressed remorse for the crimes, and, on the other side, as aggravating the fact that while committing the crime as described in Point 1 of the judgement subject to appeal, the accused showed persistence in the actual commission of the crime. However, it is the opinion of this court that the court failed to assign adequate significance to those mitigating circumstances, particularly in view of the fact that CC BD BiH Article 28, paragraph 2 provides for the possibility of a milder sanction for the accused (a milder sanction provided by the law). In view of the fact that the mitigating circumstances the first-instance court cites in the judgement subject to this appeal, including the severity of the consequences of this crime (light physical injuries), which the first-instance court unjustifiably failed to assess as an element that may impact significantly the sanction it would deliver for said crime, do exceed significantly the number and the significance of the aggravating circumstances on the part of the accused, this court finds that the sentence of 3 (three) years and 10 (ten) months in prison, delivered by the first-instance court to the accused in relation to the crime described in point 1 of the judgement subject to this appeal, is too harsh and does not represent a sanction adequate to the severity of the crime in relation to which the accused was found guilty, the degree of his guilt, or his personal or family situation.

When modifying the first-instance judgement regarding the sentence by delivering a longer prison sentence, the judgements stated:

- » The first-instance court failed to take into account as aggravating in relation to the accused the method of commission of the crime: the fact that the perpetrator invited the injured party to meet at a particular place and that he killed her by taking advantage of the fact that she responded to his invitation, and that several bullets were fired at her, of which six hit her, all indicating increased determination and perseverance in the commission of the crime.

- » *The mitigating circumstances established by the first-instance court are not particularly mitigating in nature. Moreover, the first-instance court did not assess the circumstances of the commission of the crimes, the pronounced perseverance and determination of the accused, as well as the severity of the consequences suffered by the injured party (two physical injuries). The individual sentences and thus the single prison sentences delivered in relation to the accused were too mild.*
- » *Appreciating the foundation of other elements of appeal by the cantonal prosecutor, this court finds that the fact that the accused demonstrated pronounced perseverance and callousness, inflicting to the injured party no less than 36 knife injuries on different parts of the body and then firing three bullets into her body, should be treated as an aggravating element, whereas the fact that the injured party endured immense suffering cannot be treated as an aggravating element, since they are elements exceeding the usual measure of suffering accompanying any killing, are included in the facts of the case and are the elements of a crime committed in a cruel manner as a qualified form of the crime of homicide as defined by CC FBiH Article 166, paragraph 2, point a).*

Duration of Criminal Proceedings

Table 27 provides an overview of duration of criminal proceedings in the sample cases, citing also the date of commission of the crime, although the duration of proceedings is calculated from the date when criminal charges are filed until a final court decision, i.e. the time a judgement becomes enforceable. On the basis of available data, it was not possible to establish the date when criminal charges were filed and the date the judgement became enforceable.

In order to examine the efficiency of criminal proceedings in the sample, the duration of proceedings was observed through three phases: from the indictment until the first-instance judgement, from the first-instance judgement until the second instance judgement, and from the indictment until the second-instance judgement.

Table 27: Duration of proceedings

No.	Date	Indictment – 1 st instance judgement	1 st instance judgement – 2 nd instance judgement	Indictment – 2 nd instance judgement
1.	Commission: 21.12.2018 Indictment: 18.03.2019 1st instance judgement: 01.07.2020 2nd instance judgement: 26.01.2021	1 year, 3 months and 13 days	6 months and 25 days	1 year, 10 months and 8 days
2.	Commission: 09.09.2019 and 10.09.2019 Indictment: 02.12.2019. 1st instance judgement: 1.4.2021 2nd instance judgement: 20.05.2021	1 year, 3 months and 29	1 month and 19 days	1 year, 5 months and 18 days
3.	Commission: 06.07.2014 Indictment: 29.12.2014 Indictment amended: 15.06.2016 1st instance judgement: 28.02.2017 2nd instance judgement: 13.06.2017	2 years, 1 months and 29 days	5 months and 15 days	2 years, 5 months and 14 days
4.	Commission: 04.09.2017 Indictment: 12.01.2018 1st instance judgement: 21.09.2018 2nd instance judgement: 25.02.2019	8 months and 9 days	5 months and 4 days	1 year, 1 month and 13 days
5.	Commission: 27.05.2017 Indictment: 22.09.2017 1st instance judgement: 12.10.2018 2nd instance judgement: 11.02.2019	1 year and 20 days	3 months and 29 days	1 year, 4 months and 19 days
6.	Commission: 16.07.2016 Indictment: 03.10.2016 Indictment amended: 25.05.2017 1st instance judgement: 08.06.2017 2nd instance judgement: 06.11.2017	8 months and 5 days	4 months and 28 days	1 year, 1 month and 3 days
7.	Commission: 14.09.2016 Indictment: 01.06.2017 1st instance judgement: 27.11.2017 2nd instance judgement: 18.04.2018	5 months and 26 days	4 months and 21 days	10 months and 17 days
8.	Commission: 20.04.2005 Indictment: 17.02.2016 1st instance judgement: 22.04.2016 Second 1st instance judgement: 22.11.2016 2nd instance judgement: 22.02.2017	2 months and 5 days	10 months	1 year and 5 days

No.	Date	Indictment – 1 st instance judgement	1 st instance judgement – 2 nd instance judgement	Indictment – 2 nd instance judgement
9.	Commission: 05.04.2019 Indictment: 03.07.2019 1st instance judgement: 23.01.2020 2nd instance judgement: 14.05.2020	6 months and 20 days	3 months and 21 days	10 months and 11 days
10.	Commission: 22.11.2019 Indictment: 13.02.2020 1st instance judgement: 08.06.2020 2nd instance judgement: 10.03.2021	3 months and 25 days	9 months and 2 days	1 year and 27 days
11.	Commission: 09.08.2012 Indictment: 30.10.2012 1st instance judgement: 05.06.2014 Second 1st instance judgement: 06.05.2016 2nd instance judgement: 01.02.2018	1 year, 7 months and 5 days	1 year, 8 months and 25 days	5 years, 3 months and 1 day
12.	Commission: 16.01.2019 Indictment: 04.04.2019 1st instance judgement: 22.10.2019 2nd instance ruling: 06.02.2020 Second 1st instance judgement: 16.03.2020 2nd instance ruling: 21.5.2020 2nd instance judgement: 15.06.2020	6 months and 18 days	7 months and 23 days	1 year, 2 months and 11 days
13.	Commission: 16.06.2015 Indictment: 12.11.2015 1st instance judgement: 02.06.2016 2nd instance ruling 12.01.2017 2nd instance judgement: 07.09.2017	6 months and 20 days	1 year, 3 months and 5 days	1 year, 9 months and 25 days
14.	Commission: 07.03.2016 Indictment: 06.06.2016 Indictment amended: 03.03.2017 1st instance judgement: 29.03.2017 2nd instance ruling: 25.10.2017 Second 1st instance judgement: 18.01.2018 2nd instance ruling: 09.05.2018. 2nd instance judgement: 13.11.2018	9 months and 23 days	1 year, 7 months and 1 day	2 year, 5 months and 7 days

No.	Date	Indictment – 1 st instance judgement	1 st instance judgement – 2 nd instance judgement	Indictment – 2 nd instance judgement
15.	Commission: 03.06.2017 Indictment: 29.09.2017 Indictment confirmed: 03.10.2017 1st instance judgement: 23.02.2018 2nd instance judgement: 08.11.2018	4 months and 29 days	8 months and 15 days	1 year, 1 month and 9 days
16.	Commission: 12.10.2019 Indictment: 06.11.2019 Indictment confirmed: 08.11.2019 1st instance judgement: 10.01.2020 2nd instance judgement: 25.08.2020	2 months and 4 days	7 months and 15 days	9 months and 19 days
17.	Commission: 13.04.2015 Indictment: 30.06.2015 Indictment amended: 20.01.2017 1st instance judgement: 06.03.2017 2nd instance judgement: 14.09.2017	1 year, 8 months and 6 days	6 months and 8 days	2 years, 2 months and 14 days
18.	Commission: 18.05.2018 Indictment: 16.07.2018 Indictment confirmed: 19.07.2018 1st instance judgement: 04.03.2019 2nd instance judgement: 21.10.2019	7 months and 18 days	7 months and 17 days	1 year, 3 months and 5 days
19.	Commission: 27.06.2017 Indictment: 15.09.2017 1st instance judgement: 09.10.2018 2nd instance judgement: 14.02.2019	1 year and 24 days	4 months and 5 days	1 year, 4 m months and 29 days
20.	Commission: 28.11.2015 Indictment: 04.05.2016 1st instance judgement: 29.12.2016 2nd instance judgement: 27.11.2019	7 months and 25 days	3 years and 28 days	3 year, 6 months and 23 days
21.	Commission: 02.04.2016 Indictment: 21.06.2016 1st instance judgement: 22.08.2016 2nd instance judgement: 25.10.2016	2 months and 1 day	2 months and 3 days	4 months and 4 days
22.	Commission: 03.12.2018 Indictment: 18.02.2019 Indictment confirmed: 21.02.2019 1st instance judgement: 06.06.2019 2nd instance judgement: 23.10.2019	3 months and 18 days	4 months and 17 days	8 months and 5 days

No.	Date	Indictment – 1 st instance judgement	1 st instance judgement – 2 nd instance judgement	Indictment – 2 nd instance judgement
23.	Commission: 10.10.2016 Indictment: 05.01.2017 1st instance judgement: 13.03.2017 2nd instance ruling: 06.09.2017	2 months and 8 days	5 months and 23 days	8 months and 1 day
24.	Commission: 29.05.2016 Indictment: 23.06.2016 1st instance judgement: 09.12.2016 2nd instance judgement: 29.03.2017	5 months and 16 days	3 months and 20 days	9 months and 26 days
25.	Commission: 30.12.2015 Indictment: 16.2.2016 1st instance judgement: 06.10.2016 2nd instance judgement: 09.02.2017	7 months and 20 days	4 months and 3 days	11 months and 23 days
26.	Commission: 28.03.2016 Indictment: 08.07.2016 1st instance judgement: 10.04.2017 2nd instance judgement: 12.12.2017	9 months and 2 days	8 months and 2 days	1 year, 5 months and 4 dana days
27.	Commission: 15-17.09.2019 Indictment: 06.03.2020 Indictment confirmed: 11.03.2020 1st instance judgement: 30.11.2020 2nd instance judgement: 17.03.2021	8 months and 24 days	3 months and 17 days	1 year and 11 days
28.	Commission: 18.07.2015 Indictment: 27.11.2015 1st instance judgement: 27.10.2017 2nd instance ruling: 22.03.2018 Second 1st instance judgement: 24.01.2019 2nd instance ruling: 01.04.2019 2nd instance judgement: 06.09.2019	1 year and 11 months	1 year, 8 months and 9 days	3 years, 9 months and 9 days
29.	Commission: 23.09.2016 Indictment: 13.12.2016 1st instance judgement: 27.03.2017 2nd instance judgement: 23.04.2018	3 months and 14 days	1 year and 26 days	1 years, 4 months and 10 days

No.	Date	Indictment – 1 st instance judgement	1 st instance judgement – 2 nd instance judgement	Indictment – 2 nd instance judgement
30.	Commission: 29.08.2015 Indictment: 24.11.2015 Indictment confirmed: 26.11.2015 1st instance judgement: 18.02.2016 2nd instance ruling: 09.06.2016 1st instance judgement: 04.07.2016 2nd instance ruling: 30.05.2017 2nd instance judgement: 17.04.2018	2 months and 24 days	2 years, 1 month and 29 days	2 years, 4 months and 23 days
31.	Commission: 13.02.2015 Indictment: 25.08.2015 Indictment amended: 15.06.2017 First 1st instance judgement: 02.10.2017 First 2nd instance ruling: 28.03.2018 Second 1st instance judgement: 14.12.2018 Second 2nd instance ruling: 22.05.2019 2nd instance judgement: 05.03.2020	2 years, 1 month and 7 days	2 years, 5 months and 3 days	4 years, 6 months and 10 days
32.	Commission: 08-09.07.2019 Indictment: 03.10.2019 Indictment confirmed: 04.10.2019 1st instance judgement: 20.08.2020 2nd instance ruling: 10.12.2020 Second 1st instance judgement: 10.02.2021	10 months and 17 days	5 months and 20 days	1 year, 4 months and 7 days
33.	Commission: 22.01.2018 Indictment: 10.04.2018. Indictment confirmed: 11.10.2018 First 1st instance judgement: 16.11.2018. 2nd instance ruling: 19.06.2019 Second 1st instance judgement: 24.07.2019 2nd instance judgement: 15.01.2020	7 months and 6 days	1 year, 1 month and 29 days	1 year, 9 months and 5 days
34.	Commission: 03.07.2016 Indictment: 21.09.2016 Indictment confirmed: 26.09.2016 1st instance judgement: 02.02.2017 2nd instance judgement: 13.04.2017	4 months and 12 days	2 months and 11 days	6 months and 23 days

According to data presented in Table 28, in most cases, the time between the indictment and the first-instance judgement was short (just 13 days in one case), which shows considerable efficiency in this part of criminal proceedings. It should be taken into account that in 10 cases perpetrators confessed in their statement, which certainly led to a shorter evidentiary procedure, and thus shorter criminal proceedings. In most cases, between one and two years elapsed between indictment and second-instance judgement (17), whereas in nine cases less than a year elapsed between indictment and a second-instance judgement, also showing that criminal proceedings were quite efficient.

Table 28: Duration of Proceedings

Number	Number	%
Less than 1 year	9	26.5
Between 1 and 2 years	17	50
More than 2 years	4	11.8
More than 3 years	3	8.8
More than 5 years	1	2.9
Total	34	100

Rulings on the Injured Parties' Damages Claims

The Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Article 207, paragraph 1 and Article 212, paragraph 3), the Criminal Procedure Code of Republika Srpska (Article 108, paragraph 3) and the Criminal Procedure Code of the Brčko District (Article 116) regulate the exercise of damages claims within criminal proceedings. The injured parties are entitled to file their claims for damages caused by the commission of the crime during the actual criminal proceedings, but the court is left with a possibility to refer the injured parties to file a civil claim to exercise their right to damages. These provisions of procedural legislation prescribe that the damages claim will be considered during criminal proceedings if that does not cause a significant delay in the proceedings. However, if the information available in the criminal proceedings does not provide a reliable basis for either a full or a partial determination, the court will refer the injured party to initiate civil proceedings to exercise the right to a claim for damages.

Invoking these provisions, criminal courts, as a rule, do not decide on the damages claims of the injured parties, i.e. they do not decide on the damages claim even in part, but rather refer them to civil proceedings. This is how the

courts acted in cases covered by our research. According to information available from the judgements, all the injured parties were referred to civil proceedings to file their claims for damages. It is advisable for courts to change this practice, since the possibility provided for by law "if that does not cause a significant delay in the proceedings" may be interpreted as an exception, but has evidently become a rule, in view of the fact that in the studied sample, not a single claim for damages was adjudicated, and these were the most serious crimes. On the other hand, this practice of referring them to civil proceedings exposes the injured parties, who often include children, to enormous costs, re-traumatisation and a waste of time. This is why this practice should be changed so that courts decide on the injured parties' damages claims during criminal proceedings as a rule, rather than an exception, similar to what has been done in BiH recently regarding rulings on claims for damages filed by victims of wartime rape.^[79]

[79] See more at: <https://trial.ba/wp-content/uploads/2021/02/IMOVINSKOPRAVNI-ZAHTJEVI-U-KRIVICNOM-POSTUPKU.pdf>

PART TWO – CASE STUDIES

Object and Methodology

For the purpose of better insight into the phenomenon of femicide and the actions of institutions of the system in order to prevent and prosecute femicide, qualitative research was also conducted in relation to cases of femicide that ended in enforceable judgements, by using the case study method. The aim of the qualitative research was to uncover the phenomenological and aetiological features of femicide, as well as a comprehensive view of actions by institutions prior to the commission of the crime of femicide, as well as actions by relevant authorities in the prosecution of said crime.

This in-depth analysis includes five selected cases of homicide, attempted homicide, aggravated homicide and domestic violence involving homicide, which, in the researchers' opinion, were specific to the phenomenon of femicide in terms of the type of criminal offence, method of commission, means of commission, relationship between the victim and the perpetrator, presence of gender biases and stereotypes, and gender discrimination.

Relevant data for the case studies were collected by direct insight into first and second-instance court rulings, using a tailor-made questionnaire. This method of data collection is certainly neither complete nor sufficient, but it was the only possible option during the special epidemiological measures in response to the Covid-19 pandemic. The enforceable judgements provided data related to: elements of the indictment, qualification of the crime in the indictment and the judgement, medical and psychiatric expert testimony, the defence case, statements by the victim (attempted murder), statements by other relevant witnesses, the court's ruling on the crime, guilt and the criminal sanction. It should be taken into account that some relevant data remained unknown, since they were not contained in the judgements. This is primarily related to data on victims of the crimes, in relation to whom the information is very limited, information on personal relations between the perpetrators and the victims prior to the crime, family relations of the perpetrator within the nuclear family, life and behaviour of the perpetrator prior to the commission of the crime (judgements only provide information on prior convictions). On the basis of the analysis, each study ends with a short commentary regarding the qualification, circumstances of the commission of the crime, any shortcomings in criminal proceedings, the

sanction delivered etc. When providing commentaries, the authors took into account provisions of the FBiH Criminal Procedure Code, Article 295, which regulates the reliance of judgement on the charges, or rather, it is prescribed that the judgement may only relate to the accused individual and only the offence which is contained in the confirmed indictment or the indictment amended in the main hearing, as well as provisions of paragraph 2 of this Article, which prescribes that the court is not bound by proposals made by the prosecutor regarding the legal assessment of the offence. Similar provisions are contained in Article 294 of the Criminal Procedure Code of Republika Srpska.

The following judgements were selected for the case studies:

1.	District Court in Prijedor, 16 0 K 000043 17 K (Supreme Court of Republika Srpska, 16 0 K 000043 18 Kž 9)
2.	District Court in Banja Luka, 11 0 K 019456 17 K (Supreme Court of Republika Srpska 11 0 K 019456 18 Kž)
3.	Cantonal Court in Zenica, 04 0 K 011060 19 K (Supreme Court of the Federation of Bosnia and Herzegovina, 04 0 K 011060 20 Kž, 04 0 K 011060 21 K 2)
4.	Cantonal Court in Bihać, 01 0 K 009692 15 K and 01 0 K 009692 18 K 2 (Supreme Court of the Federation of Bosnia and Herzegovina, 01 0 K 009692 17 Kž 7, 01 0 K 009692 19 Kž 13, 01 0 K 009692 19 Kžk)
5.	Cantonal Court in Tuzla 03 0 K 014025 15 K (Supreme Court of the Federation of Bosnia and Herzegovina 03 0 K 014025 16 Kž 11, 03 0 K 014025 17 K 2, 03 0 K 0a4025 17 Kž 14)

Case Studies

Case No. 1: perpetrator A.H, victim H.A.

Method of commission, features and legal qualification of the criminal offence

The district public prosecutor in Prijedor filed an indictment against A.H. for the crime of aggravated homicide pursuant to CC RS Article 149, paragraph 1, point 5. At the first hearing, the perpetrator entered a plea of not guilty in relation to the indictment.

In the first-instance proceedings, the court found the perpetrator guilty for the crime of aggravated murder as provided in the 2003 CC RS Article 149, paragraph 1, point 5. The crime was committed in the following manner: the perpetrator first drove in his car to the house owned by 'J.H, where his wife, H.A., who had left

him in late March 2017, lived at the time, with the intention of inviting his minor son, H.A., who lived in that house with his mother, to come with him to work, and at the moment when he arrived in front of the house and parked his car by the fence, he observed a car parked in the front yard, a red '...' with Austrian registration plates, and knowing from before that his wife was having an intimate relationship with H.E., who had a job in A., and that it was his car, he realised that this individual was in the house with her and at that moment, with the intention of killing them, he took from his car an axe and a knife 25 cm long, of which 12 cm was the blade, he jumped over the fence and entered the house, and then climbed to the upper floor where he heard noises coming from the room, he then entered the room and seeing his wife A. and H.E. naked in bed, he immediately approached them and inflicted on both of them several blows to the head and the body with the axe and the knife, thus H.A. sustained injuries (...) which led to her instantaneous death caused by massive haemorrhaging from the severed major blood vessels in the region of her neck, and death was aided by crushing and destruction of brain tissue, whereas H.E. suffered injuries (...) which led to rapid death due to massive haemorrhaging from the severed major blood vessels in the region of his neck, and death was aided by haemorrhaged inside the skull and an injury to the lungs, which interrupted breathing; after this, the suspect left the scene.'

A medical expert testimony was obtained during the criminal proceedings, as well as autopsy of the victims' bodies. The autopsy found that *all the injuries were mechanical in nature; the stabbing lacerations could have been caused by a knife, some lacerations could have been caused by an axe, whereas injuries that led to fractures could have been caused by the mass of the axe; in both cases the cause of death was exsanguination, and all the blows, in the opinion of the medical expert, could have been inflicted within a time period of 15 minutes.* The medical expert was unable to determine who of the two victims was injured first, but in view of the number of injuries, he assumed that, taking into account the different locations of the injuries, the position of the two bodies in relation to one another, all the injuries were inflicted in an alternating fashion, i.e. chaotically. The injured party H.A. received 22 injuries, and H.E. more than 30, so *'both deaths were violent, occurring immediately, due to massive haemorrhaging from severed major blood vessels in the region of the neck (...) and were homicidal in origin.'*

On the basis of material evidence gathered at the site, the expert analyses and expert witness testimonies at the main hearing, statements by witnesses and interrogation of the perpetrator, the court found beyond any doubt that the perpetrator's actions contained all the elements of the crime he was charged with in the indictment. The court did not accept statements made by the defence that

that the legal qualification in the given case was homicide in necessary defence or manslaughter. Assessing the case made by the defence that the perpetrator acted in affect, the court noted that the crime of manslaughter (CC RS Article 150) is committed by whoever deprives another person of life in a fit of passion, having been provoked through no fault of his own into a state of intense rage or fright by an attack, abuse or serious insult on the part of the victim. The presence of this criminal offence, requires, as the court noted, *'an extraordinary mental state, the intensity of which impacts negatively the psyche of the perpetrator, so that in such a state the perpetrator makes uncritical decisions focused on depriving of life the attacker or the person insulting them'*. In the opinion of the court, the perpetrator did not possess this mental state.

Accepting the findings of the expert witness for the prosecution, and thus the conclusion that the accused demonstrated *'personality traits of sensitivity to insult, vulnerability, self-insecurity and a sense of vindictiveness, that the accused tolerated verbal arguments and conflict in marriage, even divorce to some extent, but not the leaving, that the decisive moment was the fact that his wife left him for another man, that this replacement was a narcissistic violation of his person, manifested also through the injury the accused inflicted on the victim in the region of genitalia, it is thus established that the accused was led to a state of affect due to his personality traits.'* Even if the court was to accept the existence of extreme irritation of the accused, it cannot disregard the fact that the accused led himself to such a state with his own actions, because on that morning the accused was not invited into the house, he was not invited into the room where the injured parties were; on the contrary, the accused entered uninvited, knowing that the injured parties were in the house, aware of their privacy, he nonetheless climbed to the upper floor, opened the door standing ajar, and observed the scene. Therefore, the injured parties did not undertake any unfair action to provoke the accused to react affectively, since they were not even aware of his presence in the house, which leads to the conclusion that there is no insult as the basis of a milder qualification of murder.'

Personality and behaviour of the perpetrator

At the time of the crime, the perpetrator was 48 years old, an unskilled labourer by occupation, with completed primary education and no employment record. Due to anonymisation, there is no information on his place of birth or residence. No previous convictions. He grew up in a complete family, but father was treated for alcohol addiction several times. The judgement contains no information on relations within the nuclear family, earlier abuse within the nuclear family, or the parents' occupation, since the court did not interrogate the perpetrator in relation

to these facts. Only the perpetrator mentioned in his defence the intention to commit suicide, stating that he had *'decided to hang himself'* but that he *'decided not to do it upon a plea by his son E, and then informed the son that he had killed his mother and her lover'*.

The perpetrator was married to the victim H.A. for 18 years, but they were separated, since his wife had left him in late March 2017. At the time of commission of the crime, they had two minor children. During the marriage, the perpetrator demonstrated jealousy, he suspected his wife of having a lover, which is why she left him, taking the children and *'starting an independent life'*. According to the perpetrator's statement, she did it *'deliberately, provoking him that he was weak, that she no longer wanted to live with him, she even tried to hit him'*, but he *'did not dispute that the children became involved in the conflict'*. He admitted that the day before the crime he placed an axe in his car, but that he did it *'to chop some wood for his mother, and the knife was in the car from before, ready to help his neighbour to slaughter chicken'*. On the basis of the perpetrator's statement, findings of the expert witnesses and witness statements, the court found that *'the relationship between the victim A. and the accused was not characterised by harmony and trust, but rather that the relationship was wrought with arguments, suspicion and physical attacks by the accused on the victim and their minor children. After the factual termination of the marriage, the accused had information about his ex-wife being in a relationship with H.E. who had a job in A., so when the accused was "circling around the house", as insisted by his minor son in his statement, then such actions by the accused were directed towards verifying his own suspicions.'*

Giving his statement in relation to the indictment, the perpetrator recounted that *'on 27 May 2017, at around 07:00, he came in front of the house owned by J.H. with the intention of inviting his son A. to go and work together. He observed a car with Austrian registration plates in the front yard and assumed immediately that A.'s lover was staying with her. He insists that he entered the yard by unlatching the wing of the gate and found the owner J.H. in front of the house; she was unable to tell him whether his son was still asleep, so he decided to enter the house and wake him up. Upon entry, at the stairs leading to the upper floor, he took off his sneakers and then heard the voices of A. and an unknown man making love. This angered him, he went into a fit and decided to kill them both. He returned to his car, took an axe from the boot and a knife from the driver's door, and returned towards the upper floor, holding the knife in his left hand, and the axe in his right. He entered the room and walked towards them with the weapons in his hands, and when A. spotted him, she pushed the man off of her. He first approached the man and stabbed him, which made him fall down, and during that time A. tried to escape, but he stopped her by hitting her*

twice on the head with the axe. After that, the accused approached the man and hit him on the head with the axe several times, so that the handle of the axe broke at some point, but he continued to stab him with the knife all over his body. He then returned to A. and stabbed her several times, on the body and in the genitalia.'

In his closing statement, the perpetrator said that he regretted the events and felt remorse, with an explanation that *'this should not have happened'* but *'when he entered his son's room he went into a fit, he did not know what he was doing'*. He insisted that *'the injured party E. had a pistol under his pillow and wanted to take it, but A. prevented him, but he did manage to pull the pistol half way out, he then propped up on his knees and lunged towards the accused to hit him with his fist, and the accused then responded with his knife and axe.'* He then stated that *'in terms of time, it was all very short, 5 or 6 minutes, and that he continued to inflict injuries until the axe fell off or broke, and as for the gun, he thinks that the prosecutor or the police removed it.'* The court did not accept confession thus stated or the verbally expressed remorse as sincere, but rather as *'solely directed towards diminishing his own criminal liability, appreciating that the consequences of the crime and the number of injured parties in the proceedings require true remorse that has greater significance than the words spoken here.'*

In his closing statement, the defence stated that the record of the crime site investigation indicated that *'items used in the commission were found on the site, with an explanation that this fact was important for assessing the mental state of the accused at the time of commission of the crime. He expressed suspicion that the police hid the gun that E. had had under his pillow and pulled it out when the accused entered the room, which is why the accused acted in self-defence or utmost necessity'*. On the basis of autopsy records and findings of the expert witness, the defence held *'that at the time of commission of the offence, the accused had a temporary mental disorder'* and that *'bodies of the injured parties [were] naked and that each injured party received more than 15 serious, deadly injuries, which indicated the mental state of the accused at the time of commission of the offence, a state of rage, momentary affect, and irritation of utmost intensity in a very short period of time'*.

The defence also pointed out regarding the personality of the accused, *'that he was a family man and his actions were directed solely towards preserving the marriage which produced two minor children, which is a particularly mitigating element on the part of the accused, but alcohol abuse, intoxication by alcohol, psychopathic personality of epileptoid nature, provocations by the injured party, the sight of sexual intercourse by the injured parties, caused in the accused a very high*

level and intensity of rage, affect and irritation'. In the first-instance proceedings, the defence proposed that the *'accused be acquitted, since he acted in self-defence'*. The court did not accept the positions presented by the defence.

During the proceedings, expert analyses were provided by a court appointed psychiatrist and psychologist. The findings of the expert witnesses found, inter alia, that *'in the process of assessing the mental status and state, the expert witnesses found that the accused has no organic deficit, psychotic content or features, no signs of psycho-pathology, paranoid interpretations, sensory delusions or manic ideas, and that he was a mentally healthy person'*.

According to the expert witnesses' findings, *'commission of the crime is the consequence of an affective-impulsive reaction of the accused, because the neuro-psychological status of the accused was not compromised, there were no signs of a split personality or an affective disorder. The accused does display elements of psychopathic personality traits such as sensitivity to insult, vulnerability, self-insecurity and a sense of vindictiveness, because the accused tolerated verbal arguments and conflicts in the marriage, the divorce to some extent, but did not tolerate leaving and replacement with another man. (...) The accused had no state of pathological affect (...) there is no organic basis for it (...) and the act had elements of an emotional reckoning by an insult-sensitive and vulnerable person.'* Although the perpetrator did say that he was an alcoholic, the court did not accept the finding of the expert witness for the defence that the perpetrator was an alcoholic and that at the time of commission of the crime he was under mild alcohol intoxication.

As for the perpetrator's mental capacity, the court found that at the time of the crime, the perpetrator was fully mentally competent, i.e. his ability to comprehend the significance of his actions was preserved. The court did not accept the defence expert witness's statement that *'the perpetrator is at times impulsive (easy to excite, slow to calm down) because this feature cannot be displayed by expert craftsmen and hard-working people, as the accused was found to be'*. According to the court, *'the sight found in the room was not an "out of the blue" situation, in light of the fact that the accused knew that his ex-wife had a relationship, he knew who the partner was, he knew that he was in the house that morning, and he knew by the sounds coming from the room that the two of them were in an intimate situation'* "

Appreciating his subjective attitude towards the offence, i.e. his legal liability, the court found that the perpetrator acted with direct intent and that *at the time of commission of the crime, the accused was capable of comprehending the significance of his act and was able to control his actions*. Deciding on this form of

legal liability, the court found that *the mental attitude of the accused at the time of commission of the act did depend only on the objective circumstances present at the time, but that it was also necessary to assess such attitude as a whole and as part of all the circumstances that preceded the event, as well as those that came to be after it. The relationship between the accused and the victim A. was not characterised by harmony and trust, but was, instead, burdened by verbal conflicts, suspicion and physical attacks by the accused on the injured party as his wife, as well as their minor children. After the factual dissolution of the marriage, the accused knew that his wife was in a relationship with H.E., who had a job in A., so when the accused was 'circling around the house' where his ex-wife lived, as stated by his minor son in his testimony, such actions by the accused were, in fact, intended to verify his personal suspicions.*

Since he was mentally competent at the time of commission of the crime and acted with direct intent, the court found the accused to be criminally liable, because he was aware of the fact that his act was a prohibited one and he wanted to commit it.

When evaluating evidence, the court did not accept the perpetrator's claim that he took the weapons only to give them to his minor child, because *'such a statement is illogical and contrary to the behaviour of mentally healthy individuals, because mentally healthy parents, and the accused is in that category, do not enter houses early in the morning to wake up their minor children with a knife in one hand and an axe in the other'*. Also, *'the claim that the injured party provoked the event of 27 March 2017 in order to leave him, which led him to the state he was in at the time of commission of the offence, does not diminish his criminal liability and is contrary to statements by witnesses for the prosecution, whom the court found to be credible and whose statements established that the accused had been violent to his wife in the past'*.

The court assessed in particular the way the injuries were inflicted to the victims in terms of items used, the perpetrator's superiority in relation to the injured parties, the number of injuries inflicted, the strength of the axe and knife blows, the location of their impact and injuries to vital organs, and concluded that all this *'defines clearly the perpetrator's mental attitude towards the act, since the accused was aware that the described actions would lead to the injured parties' death, which is what he wanted'*. The court also indicated the nature of the victims' lethal injuries, which were caused by *'slaughter'*, as well as the consequences resulting from such actions, because *these very injuries exclude any possibility of a limited mental capacity of the accused at the time of commission, because such injuries require full awareness of the location, i.e. the actual part of the body where*

the injury is being inflicted and the awareness of the fact that death may become the consequence only if it is the result of exactly this kind of action, cutting across blood vessels and the oesophagus. When in the mass of injuries that the accused opted for slaughtering the victims, in the opinion of this court, the accused had an exact idea where and how the injury is to be inflicted, which is why he was capable of understanding the significance of his actions at the time and thus capable of deciding on his actions.

The court established that the perpetrator was fully aware of what he was doing (*Thus, when the accused enters, early that morning, the house used by his ex-wife, aware of the fact that she was in a room on the upper floor of the house, making love with her partner, and instead of leaving the house, he takes off his sneakers so that he can move with no sounds, which is what he himself stated to the expert witness during an interview, the accused is, then, aware of his actions and wants to commit the crime, aware of the fact that the knife and the axe he had already taken with him are the instruments suitable for the act and for deprivation of life*), just as he was aware after the commission (*Circumstances after the commission, manifested in the way the accused left the house, in a manner identical to his entry, exclude any possibility that the act was a consequence of his irritation that led to diminished awareness, in view of the established fact that his actions when entering and exiting the house were accompanied by completely identical calmness (...) This kind of rational behaviour is quantified by the fact that he sat in his car and had no difficulties in reaching his own house in an entirely different village. The same calmness, which the minor E. described as his father's normal behaviour, was also present when, after the crime had been committed, the accused kissed the minor E. and told him that he loved him, washed his hands, removed his blood-stained clothes, fully aware also of the place where dirty clothes are kept*).

Personality and behaviour of the victim

The victim is the wife of the perpetrator, with whom she had lived for 18 years, and then left him and lived separately, along with their two minor children. According to witness statements and the autopsy report, at the time of the crime the victim was 35 years old. There is no information on her education, occupation or employment. As for her relationship with the perpetrator, it can be inferred from the testimonies by the perpetrator and their children. According to the children's statements, their relationship was unhealthy and violence happened from time to time, with one incident being reported to the police. The victim's mother was also heard as a witness and she stated that she did not know about her daughter's marital problems, but she did know that she had left the perpetrator two or three

times and stayed with her. The last time she left she did not return to the family home, but went instead to live with her children at the house owned by an older woman, for whom she provided care. She also knew that the older son stayed with her mother, but the younger one returned to his father. On her own behalf and as the guardian of the minor injured parties, she also filed an undetermined claim for damages, and as for the criminal prosecution, *'she wanted a life for a life'*.

Minor sons of the perpetrator and the injured party, H.A. and H.E., were heard as witnesses and they confirmed that, while they lived at the family home with their parents, their father used to be violent towards them and their mother, but there were also days when he did not drink and was kind on such days. On the day the mother left the family home, their father started an argument over something trivial and physically attacked their mother, so they defended her. The situation ended when the perpetrator hit his minor son A. with a clenched fist and broke his tooth, he hit his other son E. on the head, and the injured party tried to escape down the street and he caught up with her and kicked her in the back. After the injured party reported the event to the police, they all left the family home and lived with their grandmother for a while. They later moved to the house owned by J.H. and their mother provided care for the elderly woman, and in return they were able to use one floor of the house as residence. The minor son E. soon returned to his father and continued to live with him, with an explanation that he *'liked being at his own home and loved his dad'*. There was still communication between the children and their parents, the minor E. visited his mother and brother, and the minor A. used to go with his younger brother and father to seek work in construction for daily wages.

It was established from the testimony of the minor son A. that the spouses' relationship was somewhat better after the separation, when he lived with his mother. The perpetrator used to visit from time to time and talk to his mother (the injured party), but such relations did not last, because the perpetrator soon started to call the injured party on the telephone and harass her by cursing and insulting her. He was angry at his father because of this and decided to have no contact with him in the future, and he informed his brother about this and said that they should both stay with the selected parent, but to relay to his father that he no longer wanted to work with him. Two days before the event, the father called the mother on the telephone during the night and harassed her by again *'cursing and telling her all kinds of things'*. He personally saw his father circling in his car around the house where he lived with his mother. This also happened a few days before the tragic event. He underlined that their father bribed his younger brother and attempted to do the same with him, asking him to move back and

receive a motorcycle in return, which he refused. The minor A. stated that he *'does not recognise [the perpetrator] as his father*, and when asked by the defence to state the reason for not using the possibility not to testify, he said that he *'wanted the truth to be known'*.

The criminal proceedings

The perpetrator committed the offence on 17 May 2017. The District Public Prosecutor of Prijedor issued the indictment on 22 September 2017. The first-instance judgement was delivered on 12 October 2018, and following an appeal filed by the defence counsel, the second-instance ruling was delivered on 11 February 2019. Remand was ordered for the perpetrator and he was in detention from 27 May 2017 until the start of his long-term prison sentence.

The following evidence was presented during the main hearing: statement by the accused, witness statements, expert testimonies, examination of the crime scene investigation report, crime lab documentation, report on the forensic examination of the site, autopsy report, certificates regarding temporarily seized items, reports on blood and urine tests for the presence of alcohol, criminal record of the perpetrator, rulings of the social work centre, request for reconciliation procedure for the spouses, minutes from the reconciliation hearing, records from the interrogation of the accused and minutes by the District Public Prosecutor on the interrogation. The evidentiary procedure at the main hearing also included reading of statements by witnesses heard previously. At the main hearing, held on 30 January 2018, the minor H.E., son of the injured party and the perpetrator, who was a child at the time of the hearing, was heard by the court in compliance with Article 186, paragraphs 2 and 4a, in conjunction with Article 3, paragraph 1 of the Law on Protection and Treatment of Children and Minors in Criminal Proceedings,^[80] so that the witness was not present in the same room with the parties during the hearing, and all the questions were asked through the court. The trial chamber granted the request by the minor witness H.A., the other son of the perpetrator and the injured party, taking into account the opinion of the social work centre psychologist, as well as reasons prescribed by Article 186, paragraph 1 of the afore cited law, so that his hearing was conducted outside the courtroom, but the parties and the defence counsel were able to ask their questions directly, using technical devices. Both hearings were conducted with expert assistance and support by the social work centre psychologist.

[80] Official Gazette of Republika Srpska, No. 13/10.

The witness K.A, who was the duty officer on the day in question, stated that the perpetrator himself reported the crime, stating that he had killed his wife and her lover. As a police officer, the witness was familiar with the spouses' relations, because the injured party had previously reported the perpetrator for driving a minor child while under the influence of alcohol, and there was an earlier report against the accused for the crime of domestic violence, committed against his own child. As an officer, he knew that the process of 'dissolution of marriage' was in progress and that the injured party was not living with the perpetrator. The witness stated that *'at the time of reporting, the accused appeared confused, lost, disoriented, but cooperative and followed all the instructions given by him'*. Another police officer, M.B., who was the first to be dispatched to the crime scene, testified that he found the front gate locked and he jumped over it. The front door of the house was left ajar and inside the house, in the living room on the ground floor, he found J.H., the owner of the house, who had been asleep and knew nothing about the events in her house, except that the perpetrator had been there in the morning. He observed traces of blood along the stairs leading to the upper floor, and he followed them, thus reaching the room with the door slightly open, and when he opened the door, he saw two naked corpses.

The wife of the victim H.E was heard as a witness, and she stated that she was married to H.E. and they had one child aged 14, but she did not know that her husband had an intimate relationship with the injured party.

The perpetrator's mother was heard as a witness and she stated that she knew that her son's and the victim's relationship was bad, which led to termination of their marriage. She also observed that her son was drinking heavily and constantly, and that *'he carried some kind of hardship inside him'*. He was otherwise a good man, ready to help anyone.

The witness J.R. stated that he and the perpetrator used to do construction and farming work together and that they could drink a crate of beer and a litre of brandy during a single working day. They would start the morning with 3-4 shots of brandy, then worked, then had a drink with breakfast, drank beer while they worked, and finish the day with what was left of the brandy. Alcohol consumption was the only way for them to handle the shared construction work, but when they drank, they neither stumbled nor fell. He said that the perpetrator was *'a hard-working man, popular, an excellent craftsman, a good neighbour who had never slaughtered an animal, but he did not know if the accused could slaughter a human being'*. The accused kept his tools, an axe, a knife, a power drill and other items, in the boot of his car, just like all others who worked with him. He also stated

that the perpetrator's marital relations were harmonious, and that the spouses maintained contact after the dissolution of their marriage.

The criminal sanction

The first-instance court found the accused guilty and delivered a sentence of 35 years in prison. Pursuant to CC RS Article 62, paragraph 1, the accused also received a security measure of confiscation of items – an axe with a broken wooden handle and a knife with a black handle of 25 cm length in total, with a 12 cm long blade. Pursuant to CC RS Article 108, paragraph 3, all the injured parties were referred to civil proceedings for their claims for damages. The accused was also ordered to pay the cost of criminal proceedings.

Establishing facts relevant for individualisation of the sanction and in order to achieve the purpose of sanctioning, the court took into account the circumstances that impact the length of the sanction, mitigating as well as aggravating. Deciding on the type and length of the sanction, the court took into account the following mitigating circumstances in relation to the perpetrator: no previous criminal sanctions, father of two minor children, the fact that he himself reported to the police following the crime, thus contributing to efficient identification of the perpetrator. As for the aggravating circumstances, the court, first and foremost, assessed the gravity of the act (an aggravated form of the crime of murder), for which the most severe sanction is prescribed. In addition to the gravity of the crime, the court also took into account the circumstances related to the perpetrator, manifested in the high degree of his criminal liability, expressed through direct intent, the number and type of items used in the commission, perseverance in the commission of the crime along with manifest ruthlessness and cruelty, the number and type of physical injuries, the type and nature of deadly injuries, motivation for the crime, and in particular the circumstances of commission of the crime, as well as the intensity of violation of a protected good, manifested through the severity of the consequences, indicating in their totality to such a high level of danger for society of the actions of the accused that reasons for special prevention, as one of the segments of the actual purpose of criminal sanctions, justify the sanction delivered. *With the commission of this crime, the accused caused a major tragedy for two families, because the minor A. and E. lost their mother, the minor son of the victim E. is left without a father, and all of them are at an age when full parental care is required; the injured mother T.J. lost her daughter, and H.G. lost a son. The court took into account the fact that at the time of commission of the crime, the injured party A. was 35 years old, and the injured party E. was 41, their lives were still on a rising trajectory, they were in their prime.*

The court held that the *'the sentence of long-term imprisonment delivered in relation to the accused is sufficient and necessary in order to achieve the purpose of general prevention as well, i.e. deterring others from such crimes, thus building their positive attitude towards the values protected by criminal legislation, and to develop and solidify a sense of responsibility, and therefore the functional unity of special and general prevention, prescribed by CC RS Article 28 as the purpose of sanctioning, and in view of all the circumstances of the case, can only be achieved through the sentence as delivered.'*

The first-instance judgement was appealed by the defence counsel, on the basis of his grounds pursuant to CC RS Article 310, with a proposal to abolish the first-instance judgement. The Supreme Court of Republika Srpska dismissed the defence counsel's appeal as unfounded, and on the basis of appeal *ex-officio* it commuted the first-instance judgement in relation to the sanction, so that *'in relation to the crime of aggravated homicide, as defined by CC RS Article 149, paragraph 1, point 5, for which the accused was found guilty by that judgement, pursuant to the same law, and applying Articles 31a, paragraph 4, 37, the accused is sentenced to 30 (thirty) years in prison, which includes the time spent in detention as of 27 May 2017 onwards.'* The rest of the first-instance judgement remained unchanged.

The second-instance judgement stated, inter alia, that the sanction was too harsh. The court did assess all the mitigating and aggravating circumstances adequately, *'but it erroneously assessed the gravity of the consequences as aggravating, because the usual consequences of the crime which are an essential part of the crime itself, as the case is here, cannot be assessed as aggravating, unless they exceed significantly the gravity prescribed by law for this crime as a special or specific object of protection'*. According to the court, *'the sanction was too harsh and with an adequate assessment of all the above circumstances, a sanction of long-term imprisonment of 30 years for the accused is the right measure that will achieve the purpose of criminal sanctions and punishment as prescribed by law. That is why this court delivered in relation to the accused a long-term prison sentence of this duration, as an adequate measure of the sanction that achieves the legally prescribed purpose of sanctioning'*.

Duration of criminal proceedings

The crime was committed on 27 May 2017 and the indictment was issued on 22 September 2017. The first-instance judgement was delivered on 12 October 2018, and the second-instance one on 11 February 2019. A total of three months

and 25 days elapsed from the date of commission until the indictment; the first-instance judgement was delivered one year and 20 days after the indictment, and the second-instance one three months and 29 days after the first-instance one. The entire proceedings, from indictment until the second-instance judgement took one year, four months and 19 days, which is a relatively short period, taking into account the volume of factual and evidentiary materials, so in terms of duration, the proceedings meet the efficiency standard.

COMMENTARY

In view of the motive of the murder and the circumstances of its commission, this case illustrates a typical case of femicide. The court qualified the crime of murder as aggravated homicide as defined by the 2003 CC RS Article 149, paragraph 1, point 5 (intentional deprivation of life of two or more persons) and in the opinion of the authors, the conclusion that the crime cannot be defined as manslaughter, i.e. that the perpetrator committed the crime in a state of extreme agitation, as claimed by the defence, was an accurate one.

However, the reasoning the first-instance court gave for its legal qualification of the crime is an interesting one. Namely, referring to the expert witness findings, the court states that the perpetrator was brought to the state of affect *due to his own personal traits*, psychopathic personality features, such as sensitivity to insult, lack of self-confidence and a sense of vindictiveness, as well as his inability to accept that his wife had left him for another man. In the opinion of the court, the fact that the perpetrator inflicted injuries to his wife in the genital area testifies to the fact that her abandonment of the perpetrator for another man was a *narcissistic personal injury* to the perpetrator. However, we hold that these are not 'personal traits' of the perpetrator, but rather low motives, because the perpetrator treated the victim as his own property, denying her the right to freedom of choice. On the other hand, the court rejected the view of the defence that this was voluntary manslaughter, finding that even if the perpetrator was considered to have been in a state of intense rage, he brought himself to this state, because the victims *never invited him to the house*, he came uninvited and was confronted with *the sight*, so that there is no insult.

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

In this case, the murder was preceded by years of violence by the perpetrator against his family members, that was known to their extended family. The relevant authorities obviously failed to respond adequately and recognise the risks of murder. On the other hand, although the marriage and the joint life did end, the perpetrator controlled his wife's movements, he harassed her and insulted her on the telephone, these instances of violence were not reported, which is a form of expression of mistrust regarding institutions of the system, and doubts that their actions may provide protection.

When deciding on the sanction, the court took into account the fact that the perpetrator had no previous convictions and that he was the father of two minor children. We believe that it was not appropriate to take these facts into account, in view of the fact that prior to the murder the perpetrator had been violent towards his children, that he had hit one child so hard that he broke his tooth, that he had hit the other one on the head, that he had been violent to their mother in front of the children, thus exposing the children themselves to psychological violence. On the other hand, this ignored the fact that after the crime, the perpetrator entered the house and washed his hands and removed his blood-stained clothes in front of the child he had lived with, and informed him that he had killed his mother.

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

Case No. 2: perpetrator G.D, victim M.M.

Method of commission, features and legal qualification of the criminal offence

According to the indictment issued by the District Public Prosecutor in Banja Luka dated 1 June 2017, the perpetrator was suspected of the crime of homicide as defined by the 2002 RS CC Article 148, paragraph 1, merged with the crime of unauthorised manufacturing and trade in weapons and explosives, as defined by the 2003 CC RS Article 399, paragraph 1. The preliminary hearing judge confirmed the indictment, and at the initial hearing the perpetrator entered a plea of not guilty. In the first-instance proceedings, the court found the perpetrator guilty.

The perpetrator committed the first crime, deprivation of life, as *on 14 September 2016, around 20:00, in the town of M.B., municipality P, under the influence of alcohol, with blood alcohol level of 1.32 permille, and in a state of considerably diminished capacity, he entered a catering establishment '...', owned by the injured party M.M., with whom he had previously lived in a common-law marriage, and after a short verbal confrontation and pushing, he and the injured party left the establishment and moved to the middle of the road, and at that time, intending to deprive the injured party M.M. of life, G.D. activated a hand-held grenade which led to an explosion, which killed the injured party M.M., due to injuries of multiple organ systems – brain, heart, lung, caused by the explosion blast, and the accused G.D. suffered serious physical injuries.*

The perpetrator committed the second crime as *in September 2016, in P., in the town of ..., in the vicinity of his family home, he had in his possession firearms and ammunition which citizens are not allowed to possess, specifically an automatic rifle with a folding butt, serial number..., a magazine with 30 pieces of 7.62 mm calibre ammunition, three magazines for an automatic rifle with 62 pieces of 7.62 mm calibre ammunition, a brown box containing 19 pieces of 7.62 mm calibre armour-piercing ammunition, 125 pieces of 7.62 mm calibre ammunition, and 5 pieces of 7.9 mm calibre ammunition, two unidentified extensions of grey colour, contrary to provisions of Articles 6 and 7, although he had known that private citizens were not allowed to own and store this type of weapons and ammunition.*

On the basis of material evidence presented (on-site report, photo-documentation with a sketch of the scene, an autopsy report, alcohol level report, psychiatric expert analysis), witnesses heard and statements made by the perpetrator, the court established that the perpetrator did commit the crimes cited by the indictment, and that actions of the perpetrator in relation to the injured party contain all the elements of the crime of homicide as defined by CC RS Article 148, paragraph 1.

It was established on the basis of the autopsy report and medical expert witness findings that the injured party sustained numerous injuries on her body and that *death was violent, caused directly by severe traumatic injuries, i.e. severe injuries of the brain, chest organs, primarily the heart and the lungs, as well as the diaphragm, and all the injuries found on the body were caused by the physical action of the blast, mechanical action of the metal projectiles, i.e. the shrapnel created by the exploding device, i.e. the grenade, and other than these no other injuries or diseases were found that could point to a different cause of death, so that the death of the injured party M.M. was directly caused by injuries sustained in the event.* At the main hearing, the expert witness stated that *in view of traces of scorching and soot on the clothes and the skin surface, that the distance was minimal, i.e. the blast was very close, but since he had no information on the type of the hand grenade, i.e. the explosive device, nor was it within his professional realm, the source was at the distance of approximately 1 metre or less.*

Personality and behaviour of the perpetrator

At the time of commission of the crime, the perpetrator was 42 years old, divorced and father of three. He had two children with his former wife, with whom he had been married for 18 years, and one son born in 2012 in the common-law marriage with the victim M.M. He was a shoemaker by profession, he completed

secondary vocational education in shoemaking, and he was unemployed. As documents were anonymised, there is no information regarding the place of birth or residence of the accused. Since 2010, he had owned a café where the injured party worked as a waitress. He had a previous conviction for the crime of injury to rights of other parties.

Heard as a witness at the main hearing, the perpetrator stated that he had gone to A. to work 'illegally', but he had all the preconditions for the injured party and their son to go there and live with him. They had been together for three years when the injured party decided to return home with their son. *'After that, he started receiving all kinds of information that she had changed for the worse, that she had been out to bars a lot, that she had been drinking and the child had to sleep in bars, that she had another man... He did not know what happened, since they had had disagreements, but always resolved them through dialogue, he had always sought compromise and never showed any violence towards her, because he loved her then and loved her still'*. He explained that he returned home from A. in late September, to see what was happening. While he was away, his aunt kept him informed by *'sending photos of the bar, because M. was taking pictures with this guy with whom she had started a relationship'*. When he arrived from A. he spoke to her boyfriend and he said he would no longer 'meddle' in his life. However, he did notice *'that the two of them kept correspondence'*.

The perpetrator stated that on the day in question he came to the bar, but the injured party verbally assaulted him, asking why he had come and telling him to leave. He returned home and collected the hand grenade and first went to a bar in town, and then to the café where the injured party was. He took the hand grenade *'because he intended to kill himself and wanted her to see it'*. The injured party and her sister kicked him out although he was not violent. The café was full of guests, he moved away because he did not want to hurt anyone. The injured party came up to him and ripped his shirt *'while he stood calmly and offered no resistance'*. He stated that the injured party returned to the café and he followed, trying to persuade her to live a normal life, *'but talking to her was impossible because she was drunk. He knew this for sure, because she had been drinking lately, he moved away from her, basically ran away, but she ran towards him, he kept telling her to move away and placed the grenade next to his foot and it exploded. He woke up in intensive care. It is true that he removed the safety pin from the hand grenade in front of the catering establishment, but since it was an old Yugoslav hand grenade, he had had experience with during the war. He threw away the safety pin in front of the café... He decided to kill himself and make her watch because she had been insulting him, telling him that he was not brave enough to do anything, that he was*

a coward'. In his closing statement, the perpetrator said that he *'did not intend to kill the injured party, that the event was a set of circumstances, and that he was sorry it had happened... and he had gone to her grave twice and lit more candles than her entire family'*. He felt remorse, his health was poor, he sustained injuries, he had no contact with his daughters from his first marriage, because they did not want to have anything to do with him, nor with his minor son, whom he never recognised as his own.

Assessing the statements made by the defence, the court noted that the perpetrator did not challenge the place, the time or the method of commission of the crime, nor the means, and that he did admit that he brought a hand grenade to the injured party's place of work, that he activated it by removing the safety pin. However, the court did not accept that the perpetrator intended to commit suicide in front of the injured party, rather than kill her. All the circumstances of the event as it unfolded, earlier threats directed at the injured party, the very method of commission of the crime while they argued in front of the establishment, in the opinion of the court, excludes any doubt as to whether the perpetrator intended to kill the injured party.

The court held that it was established unequivocally that the relationship between the perpetrator and the injured party *'became fraught'* when the injured party returned home with her minor son, where she managed a bar, which led the perpetrator to feel serious suspicion and jealousy regarding her relationship with another man. Problems between the accused and the injured party started when she informed him that she was ending their emotional relationship, and he continued to send her serious threats, and the threats ended fatally on the day in question, *'when the perpetrator, intending to murder the injured party, brought a hand grenade with him to the bar where the injured party worked, and then activated it. It is obvious that the accused had prepared the crime much earlier, and that that is when he decided to murder the injured party, because she explicitly rejected any communication with him. Perseverance, followed by callousness in 'forcing' the injured party not to terminate their relationship, ended exactly as the accused had intended, with the death of the injured party'*.

Psychiatric and psychological expert evaluation of the perpetrator was conducted during the proceedings. The expert witness found, inter alia, that the perpetrator was *'an emotionally immature personality, unsure of himself, that it is a psychoactive personality structure, prone to anti-social behaviour and consumption of alcohol, perhaps even of other substances which may be psychoactive, but that the accused was quite well regarding thinking, memory, memorisation, and as for*

character traits and emotional aspects of his personality, he is quite cold', and that 'at the time of commission of the crime he was of considerably diminished capacity, as he was unable to control his impulsive urges'. At the main hearing, the expert witness stated that the perpetrator was 'born to term, but with resuscitation, and he developed slowly as a child, that he was weak, small and restless, that he was considered to have a heart condition, but this was never confirmed, (...) that some time in 1992, during the war in the region, he volunteered to join a military unit led by a certain commander M, that his mother opposed to it, which was normal, since he was a minor at the time, and her request was granted and he was sent to complete his military service in Z, where he stayed for one month, and then he was soon dispatched to the front, and G.D. said that he had encountered the mujahideen there, and the minute they all scattered and he was left, somehow, face to face with them, at a distance, and just as he thought he should activate a hand grenade and blow himself up so that they would not catch him, they withdrew and he got away'. As for the perpetrator's family life, the expert witness explained that 'he had been married and had two children, two daughters, but he divorced his wife and left the children whom he never loved much, because he simply does not have that kind of emotional love in him, he does not have the capacity to receive love and be grateful, these are his personality problems, he then established an emotional relationship with the injured party M.M. and had a son with her, whom he never recognised, the son's name is A. but the accused found it odd that she should name the boy A.'

According to the expert witness, it is a personality trait of the perpetrator that *'he is the type of person who doubts everything, so he probably doubted the injured party as well'*. The expert witness also found that the perpetrator *'liked to drink, and the injured party used to drink too, but not that night, and the accused was moderately drunk that night, his blood alcohol level was 1.35 permille and that is the medium dose that intensifies excitement in a person, i.e. makes the person feel strong, powerful, as if he can do anything, but not control his emotions, not control his impulses, or control them to a limited extent, and that is the real problem of intoxication by alcohol to that extent, and that is the state he was in when he came to the bar where the injured party worked, and he was banned from entering on the basis of a judgement that sentenced him and he was, as the accused himself had told him, forbidden from approaching the injured party to less than 500 m.'*^[81] Speaking about the perpetrator's psychological profile, the expert witness underscored that the perpetrator was *'an emotionally under-developed person, his emotional*

[81] There is no other data in the judgement about this particular judgement and a restraining order, except for the findings of the expert witness and a statement by witness K.N. (authors' note).

development did not follow his physical one, and he remained at the level of a small child, still dependent on his mother, confirmed by the fact that when he worked either here or in A., he continued to take money from his mother, he is very sensitive and indifferent, prone to anti-social behaviour, and particularly so when drunk, his memory, reproduction of memories and intellect are quite odd, it is all altered, and that is why he has no strength to withdraw at a certain moment, and to understand what his action would mean, or to be able to control himself'. At the time of commission of the crime, the perpetrator's blood alcohol level was 1.3 permille which, according to the expert witness, was a state of mild drunkenness.

As for his mental capacity, the court found that it was diminished. At the time of commission, the perpetrator was at a state of significantly diminished capacity to understand the significance of his actions or to control them, and he was entirely unable to control his impulsive urges. There was no temporary or permanent mental illness observed, simply actions led by impulses, and *'he could be a danger to himself or his surroundings, but on the basis of the arrogant emotional reasoning presented by the accused, one can speak of retardation in mental development when it comes to emotional development'*. The perpetrator committed the crime with direct intent, i.e. a high level of legal liability, because he was aware of his actions and he wanted to complete them. Opting for this kind of liability, the court found that the mental attitude of the accused during the commission depended not only on the objective circumstances that existed at the time, but also that this attitude had to be assessed within all the circumstances that preceded the event, as well as the circumstances in the time that followed. According to the court, if the perpetrator had wanted to commit suicide, rather than murder the injured party, he would have certainly done it earlier, without taking the injured party out of the bar. *Even the tolerance he demonstrated during the verbal confrontation, according to the court, does not diminish his mental attitude towards the act, expressed in the form of intent, meaning that by bringing a hand grenade to the bar where the injured party worked and having removed the safety pin prior to that, only goes to show that the accused committed the act with direct intent.*

Personality and behaviour of the victim

The victim is the perpetrator's former common-law wife, who had been separated from him, living with her minor son. The judgement does not include even the basic information on the victim – age, education, occupation, family status. We learn about the victim's age from a statement made by a friend, who said that the victim was born in 1992 and that the perpetrator was *quite jealous because of the age difference*. The injured party first worked at the bar owned by

the perpetrator, until she opened her own. She had a common-law marriage with the perpetrator for several years and in 2016 she decided to terminate it, but even after the termination they continued to have verbal confrontations. It arises from the statement by witness K.N. and the findings by the expert witness that the perpetrator had a restraining order prohibiting him from approaching the injured party at less than 500 metres.

The criminal proceedings

The crime was committed at around 20:00 on 14 September 2016, and the District Public Prosecutor in Banja Luka issued an indictment on 1 June 2017. The first-instance judgement was delivered on 27 November 2017, and following appeals by the prosecutor and the defence counsel, the second-instance judgement was delivered on 18 April 2018.

Evidence presented at the main hearing included crime-lab and medical documentation and testimonies by medical and neuro-psychiatry expert witnesses, testimonies by the perpetrators and a number of witnesses.

Witness K.N, who knew the perpetrator and the injured party, stated, *inter alia*, that his wife had babysat the injured party's child and that in one instance, when she visited to pay for the babysitting services, she told him that there was a restraining order related to the perpetrator. He was in the garden of the bar when he observed, on the day in question, that the perpetrator and the injured party were arguing in front of the bar, *'they argued on the road for a while, he walked past them... he saw the two of them pushing one another, the accused was silent, and the injured party was hitting him on the face, he did not hit her back, this took about five minutes and then the accused returned to the bar without his T-shirt, with a belt-pouch bag over his shoulder and then, as the accused was entering the bar, S. shouted bomb and all who were sitting in the garden rushed towards the shop, (...)'*.

Witness M.Z. stated at the main hearing that on the night in question he, together with K.O., K.N. and some other individuals, *'separated the accused and the injured party several times, that he did see a hand grenade in the hand of the accused, that this was in front of the building but outside the garden'*. Witness K.O. stated that on the night in question *'he saw the accused and the late M. fighting in the street just in front of the garden of the establishment, at some 5 metres'*. He stated that *'she was slapping the accused and he just stood, or rather, that they were both aggressive, they fought and argued'*. He also underscored that approximately 40 minutes elapsed from the moment he separated them until the explosion.

Sister of the injured party, witness M.S. testified about the relationship between the perpetrator and the injured party and stated that *'their relationship was not particularly good', that the injured party 'left the accused before he returned from A. and while he was there, she knew that he was sending M. threatening messages, that she would end up like the singer K.P.'* The injured party was advised to report this to the police, but she did not want to. On the day in question, the perpetrator and the injured party moved towards the street, she followed them, they pushed one another and argued and that is when the grenade exploded. The witness said that *'the accused never recognised their child A., that she knew that the accused wanted to get back together with the injured party, but also that after the termination of their relationship she sent him messages that made him jealous'*. Witness M.Z, maternal uncle of the injured party, testified that *'the accused pulled the injured party from the bar, that he told her to be careful because he had a grenade in his hand, that the accused dragged the injured party, that they went to the asphalt road and then the accused threw the grenade behind the injured party's back that the accused ran away and he called the police, that the police arrived some 15-20 minutes later, that the injured party was killed instantly (...)'*. The witness also said that he *'knew that the accused sent messages to the injured party from A., threatening that he was going to kill her'*. At the main hearing, witness B.R. stated that he was friendly with the perpetrator and the injured party. He was not an eyewitness to the event, but he knew that *'the accused and the injured party had problems in their relationship, that she complained of his jealousy, that she had her own life, that she did what she wanted, that a few days before the event he heard the injured party say that she was going to challenge the accused even if it killed her, that she said she would like him to just kill her'*.

Mother of the injured party, heard as a witness, stated, inter alia, *'that the injured party and the accused G.D. were in a relationship, that they had no problems, they never argued in front of her, that she did not know whether there were any conflicts between them prior to the murder'*, but that one day before the event the injured party did tell her *'that the accused was threatening to kill her, and that she advised her to report him, that the injured party said that she could no longer live with the accused'*. She did not know that there was a restraining order banning the accused from approaching her. In the main hearing, witness J.S. said that she *'and the injured party were good friends, that they had been very close since birth, that the relationship between the injured party and the accused G.D. lasted about 6 years, that they had a child, that they went abroad after the birth of the child, and that when the injured party returned to B. she told her that she was done with the accused, that she had brought all her things, that there was just a toy bulldozer left, that she asked her if that was definite, and that she responded affirmatively, this*

was in June 2016'. She then stated 'that during the 6 years that they were together there was always jealousy that the accused was quite jealous because of the age difference, her youth and beauty, that the accused was born in 1974 and the injured party was born in 1992, that no one in their family could accept that'. The injured party showed her a message in her messenger inbox that she had received from the accused, where he 'threatened to kill her, that she would end up like the singer K.P., that she advised her to report it, that the injured party said that the accused loved her, that he would not do it'. She stated that she sent a Viber message to the accused not to threaten the injured party like that, that he should come so they could have a conversation, and that the accused responded: 'you are all so tough now that I am 500-800 km away and that they would meet face to face when he returns, to see who is really brave'. The injured party told her that she was done with him and had started a new relationship

According to the court, all the witness statements, along with material evidence presented, confirm unequivocally that the event in question happened at the time and in the way as detailed in the indictment and that following a verbal disagreement with the injured party, with whom he had lived in a common-law marriage, and after pushing and pulling outside the bar, the accused activated a hand grenade which he had brought with him and from which he had already removed the safety pin, an explosion followed and the injured party was killed by the injuries sustained by the blast, and the accused sustained serious physical injuries. The court did not accept the defence claim that the accused activated the hand grenade in order to commit suicide, because if he had wanted to, he would have done that much earlier, without bringing the injured party outside the bar. According to the court, 'even the tolerance he demonstrated during the verbal confrontation, as claimed by the witnesses, does not diminish his mental attitude towards the act, expressed in the form of intent, meaning that by bringing a hand grenade to the bar where the injured party worked and having removed the safety pin prior to that, only goes to show that the accused committed the act with direct intent'.

The criminal sanction

The first-instance court found the accused guilty of two crimes that merged: homicide as defined by Article 148, paragraph 1, and unlawful manufacturing and trade in weapons and explosive materials, as defined by Article 399, paragraph 1 of the 2002 CC RS. For the first crime the court delivered a sanction of 7 years, and for the second one a sanction of one year, and delivered a single prison sentence of 7 years and 6 months. Pursuant to CC RS Article 62, paragraph 1, the accused

also received a security measure of confiscation of items – an automatic rifle, three magazines for an automatic rifle with 62 pieces of ammunition and various other ammunition.

Pursuant to the 2003 CC RS Article 108, paragraph 3, all the injured parties were referred to civil proceedings for their claims for damages, and the perpetrator was obliged to pay the cost of criminal proceedings. Deciding on the type and length of sanction, the court took into account the following mitigating circumstances in relation to the perpetrator: his family situation, that he was a father of three, that he was unemployed, that he was of diminished mental capacity at the time of commission of the crime. As relevant aggravating circumstances the court took into account the high degree of liability, that the perpetrator had planned and prepared the act in advance, that he committed it in front of the bar where the injured party had worked, in front of numerous citizens, i.e. in a public place, that he committed the act in a brutal and callous fashion, by activating a hand grenade, and with it destroyed a young life, the mother of a minor child, all because of unverified and false information related to the private life of the injured party. In the opinion of the court, the aggravating circumstances *'far exceed the established mitigating circumstances, including the element of significantly diminished capacity, which can be the basis for a milder sentence, but this is not the case in this instance'*.

Both the prosecutor and the defence counsel appealed the first-instance judgement. The Supreme Court dismissed both appeals as unfounded and confirmed the first-instance judgement.

Duration of criminal proceedings

The crime was committed on 14 September 2016, and the indictment was issued on 1 June 2017. The first-instance judgement was delivered on 27 November 2017, and the second-instance judgement on appeal was delivered on 18 April 2018. A total of nine months and 17 days elapsed from the date of commission of the crime until the indictment, the first-instance judgement was delivered 5 months and 26 days after the indictment, and the second-instance judgement was delivered 4 months and 21 days after the first-instance one. From the date of indictment until the second-instance judgement, the proceedings took 10 months and 17 days, which is a short period of time, in light of the volume of factual and evidentiary material, so in terms of duration, the proceedings meet the requirement of efficiency.

COMMENTARY

The principal commentary regarding this case is that the sanction in relation to the crime was very mild and it illustrates the generally very mild penal policy of the courts.^[82] The court failed to take into account a host of aggravating circumstances, some of which it did not establish, such as the fact that there was a restraining order prohibiting the perpetrator to approach the victim.

In this case, the prosecutor qualified the crime as an 'ordinary' murder, but the question is whether there are in this crime elements of murder accompanied by intentional endangering of the life of another person, as defined by the 2003 CC RS Article 149, paragraph 1, point 4, in view of the fact that the perpetrator activated a hand grenade in a public place, and that the individuals who were present at the commission of the crime saved themselves by fleeing, as confirmed by witnesses.

As for the crime of unlawful manufacturing and trade in weapons and explosive materials, as defined by the 2003 CC RS Article 339, paragraph 1, for this crime the perpetrator received a prison sentence of one year, although the law provides for a sentence of two to five years. The fact that a large quantity of illegal firearms was found in the perpetrator's possession and was confiscated illustrates the considerable availability and presence of illegal firearms after the armed conflict. This is an immense threat and it is one of the indicators of high risk of femicide. This complex problem must

[82] Although it is the legislator that sets the penal policy, one can speak about the penal policy of the courts, since courts have a wide margin of appreciation, both regarding the selection of a criminal sanction, and the actual determination of severity of the penalty, as made available by general principles of criminal law and the wide range of criminal sanctions prescribed for the offences. In general, the courts may be assessed as maintain a mild penal policy, and that there is often a discrepancy between prescribed and delivered sentences. Although in view of the flexible sanctioning rules and preconditions for delivering different sanctions, it cannot be said that the case law is *contra legem*, still, its actions are to a certain extent *praeter legem* (Stojanović, Z (2012) Penal Policy in Serbia: a conflict between legislation and case law. Penal Response in Serbia, Part II, a thematic monograph (Đorđe Ignjatović, ed.), Law School of the University of Belgrade, pp. 2-3; Ignjatović, Đ. (2012) Is Penal Policy of Serbian Courts Adequate? Penal Policy (gap between law and application), East Sarajevo, p. 103.

be in the focus of attention of the relevant authorities, and the mild penal policy of the courts, as manifested in this case, will certainly not contribute to overcoming it.

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

It is interesting that in its reasoning the court notes that the perpetrator committed the crime because of *unverified and false information regarding the private life of the injured party*. It is unclear why the court felt the need to include this statement in its ruling, nor is it clear on what basis the court decided that the information about the private life of the victim after she had left the perpetrator was *unverified and false*. Instead of linking suspicions regarding his common-law spouse with his jealousy and interpreting it as his possessiveness and the desire to control his former common-law partner's sexuality, the court qualified information about her private life as unverified and false, and it seems that in the case of verified and accurate information about her relationship with another man, the ruling would have been different.

It is indicative that the court did not find it necessary to collect information about the restraining order prohibiting the perpetrator from accessing the victim, although it did learn from witnesses and court experts that such a measure had been delivered. It remains unknown as to when and in relation to what act of violence this measure was delivered, whether it had expired, etc. If the court had gathered these facts from the relevant authority, it could have discovered a pattern of the perpetrator's violent behaviour towards the victim and analysed in greater depth their

relationship prior to the murder. This omission by the court is one of the reasons for delivering such a mild sentence to the perpetrator. Although the victim in this case had not reported earlier violence, it is obvious that actions by relevant institutions were not adequate, and that the victim and persons in her immediate surroundings did not take the death threats by the perpetrator seriously.

In this case, just like in others, the court did not decide on the injured parties' claims for damages, but rather referred them to civil proceedings. This practice by courts should be changed, because injured parties must initiate civil proceedings and thus subject themselves to considerable expense, waste of time and re-traumatisation.

Case No. 3: perpetrator G.I, victim F.R.

Method of commission, features and legal qualification of the criminal offence

On 3 October 2019, the Cantonal Prosecutor in Zenica issued an indictment against the perpetrator G.I. for the crime of domestic violence as defined by CC FBiH Article 222, paragraph 6 (homicide of a family member preceded by abuse). The indictment was confirmed on 4 October 2019, and at the plea hearing on 31 October 2019, accompanied by his defence counsel, the perpetrator pleaded not guilty.

The first-instance court changed the legal qualification of the offence and found the perpetrator guilty of the crime of domestic violence defined by CC FBiH Article 222, paragraph 5, in conjunction with paragraph 1 (domestic violence with a deadly outcome).

The judgement states that *'on 8 and 9 July 2019 in Z, the town of B, in the house which he had shared with his common-law wife since 2017, for two days B.P. physically and mentally abused his wife, by hitting R. numerous times with clenched fists and slaps across the face and the head, and on the evening of 9 July 2019 he continued with this physical abuse, and as R. was on the floor, screaming and begging him not to hit her, while wearing sports shoes, kicked her hard in the area of the head, the abdomen, arms and legs, although he knew that by hitting in this manner a woman who was physically and mentally weaker and unable to give any resistance, particularly because he had maintained his physical fitness by training box, knowing*

that he could kill her, but assuming carelessly that she would stay alive, thus inflicting serious, life-threatening physical injuries (...) and he then left R. thus injured and with no assistance, and she passed away during the night from the injuries; this mental and physical abuse continued throughout their life together and on two occasions, because of his violent behaviour towards R, the Municipal Court in Zenica issued restraining orders preventing access to the victim of domestic violence for a period of one year, as well as protective measures prohibiting harassment or stalking of the victim of domestic violence for a period of one year each (...); during this time, R. was accommodated at the Safe House ... despite these measures and activities by the Social Work Centre in Z., they continued to live together and he continued to abuse R. physically and mentally, and thus, some twenty days prior to the event in question, he continuously physically abused R. by hitting her across the body and inflicting light physical injuries (...) which the court expert witness confirmed during the autopsy of R. on 11 July 2019; he thus caused the death of his family member'.

In its reasoning regarding the qualification of the crime, the first-instance judgement indicates that actions of the perpetrator did contain elements of the crime of domestic violence as defined by CC FBiH Article 222, paragraph 5, in conjunction with paragraph 1, because the perpetrator did not intend to kill the injured party, but rather *hit her and beat her as he had done for years*. The perpetrator was aware of the fact that he could kill her, but he carelessly believed that she would not die, because *he had beat and hit her before, but the injured party always repaired her injuries and their relationship had not changed, i.e. the injured party always returned to him*. In the opinion of the trial chamber, the death of the injured party was *not included in the perpetrator's intent, but rather his advertent negligence, and when death is the result of negligence, it is a crime defined by CC FBiH Article 222, paragraph 5*.

The Cantonal Prosecutor appealed the judgement on the basis of a serious violation of provisions of criminal proceedings, because the first-instance court *modified the factual description of the indictment, related to the guilt of the accused, i.e. his mental attitude towards the crime he was charged with, specifically regarding his will to do it, by changing the content of the mental will element as part of direct intent, as presented in the indictment, and included it in the judgement as advertent negligence, thus instead of finding the accused guilty of the crime of domestic violence defined by CC FBiH Article 222, paragraph six, the court found him guilty of the crime of domestic violence defined in Article 222, paragraph, 5, in conjunction with paragraph 1 of the same law, which is a crime that the accused was not charged with, thus going outside the charges and thus committing the above mentioned serious violation of provisions of criminal proceedings*. According to the Cantonal

Prosecutor, *in the given case, without changing the facts of the indictment, with the above mentioned modification of the indictment, specifically only in the legal description of the subjective element (instead of the described direct intent 'with the intention of killing her... which is what he wanted', the court introduced elements of advertent negligence, stating 'but he assumed carelessly that she would stay alive'), without offering facts that would provide a closer description of the crime in this respect, the court made the judgement difficult to understand and contradictory to itself and its own reasoning.* The difference is in the fact that the perpetrator was charged with the crime of domestic violence defined by CC FBiH Article 222, paragraph 6, i.e. intentional deprivation of life of a family member whom the accused had previously abused, and this description was changed (advertent negligence instead of direct intent). The accused caused the death of the injured party, his family member, with his own physical violence, and he had physically abused her continuously from 2014 until her death; these are all elements of the crime of domestic violence as defined by CC FBiH Article 222, paragraph 6.

The second-instance judgement maintained the same legal qualification of the crime as provided by the indictment. Unlike the description contained in the first-instance judgement, the second-instance judgement states that the perpetrator was aware of the fact that by inflicting *'such blows to a woman who was physically and mentally weaker and could not offer any resistance, particularly because he had maintained his fitness by training boxing, he knew that he could kill her, which is what he wanted, so by hitting her in this manner he inflicted qualified serious, life-threatening physical injuries ...'* The reasoning of the judgment regarding the legal qualification states that the given case contains all the elements of the crime of domestic violence as defined by CC FBiH Article 6: the injured party as the victim and the perpetrator were members of the same family, the perpetrator had previously abused the victim, and in the event in question, he intended to kill her by hitting her in the region of vital organs, so there was intent. *Intent is derived from the fact that while wearing sports shoes, the accused kicked the injured party multiple times in the area of the head, the abdomen and the chest, i.e. regions of vital organs, he thus hit her in vital regions of her body, aware that these actions may kill the injured party, which is what he wanted, and which means that he was acting with direct intent.*

Findings of the court medical examiner found injuries and changes on the body of the injured party. The findings state, inter alia, that numerous injuries were found, some of which were inflicted prior to her death, and some post-mortem. An internal examination found injuries to brain tissue, subcutaneous fatty tissues along the chest and the abdomen, the abdominal cavity contained *'some 600 ml*

of liquid and partly softly coagulated blood', several large and mutually connected 'tears in the fatty lining between the stomach and the transverse colon, as well as tears of the peritoneum the size of a man's hand', injuries to the transverse colon and curvature of the small intestine, injuries to the peritoneum around the umbilicus, in the chest 'some 200 ml of fresh blood in the left section of the chest, and some 100 ml in the right section', 'a small tear of the wall of the vena cava, measuring approx. 1 cm, located at the passage of vena cava through the pericardium', injuries of lung tissue in the lower segment of both lungs. The autopsy established that 'death was violent, caused by a haemorrhage into the abdominal cavity, due to a rupture of the mesentery between the stomach and the transversal colon, a rupture of the peritoneum and the mesentery of the small intestine, and a tear in the wall of the jejunal section of the small intestine, and as a consequence of pressure injury to lung tissue and haemorrhage through the thus inflicted tear in the lower vena cava in the region of the chest cavity'. All the injuries that were the direct cause of death were qualified as serious, life-threatening injuries. The court medical examiner concluded that the injured party's death was violent, caused immediately due to haemorrhage into the abdominal cavity. 'Location of the injuries, haematoma in the region of both arms and tears on the lower arm above the right hand show that these are defensive wounds, inflicted while the injured party tried to defend herself by placing her arms in front of the attack, in order to protect her head and her abdomen'. 'While receiving blows - injuries, F.R. suffered medium to high intensity pain, as well as after that, i.e. after she stopped receiving blows, until she lost consciousness caused by haemorrhage into the abdomen and the chest cavity'. The appearance and the characteristics, but primarily the colour of the haematoma show that they originate from several periods of time (three to four) over the period of 15 to 20 days prior to the final event. The medical examiner underlined that timely and adequate assistance to the injured party after the injuries that caused her death could have saved her life.

Personality and behaviour of the perpetrator

At the time of the crime, the perpetrator was 51 years old, he had completed four grades of primary school, unemployed, no occupation, indigent. He is a father of three, Roma by ethnicity. He had a common-law marriage with the injured party since 2014 and they had no children. He had several earlier convictions (11 convictions from 1987 until 2010) for different crimes, including grievous bodily harm, violent behaviour, illegal manufacturing and trade in opiates.

The perpetrator did not confess to the crime. Heard as a witness, he stated that in the morning of 8 July 2019 he did *slap the injured party two or three times*

and went out to town and got drunk. He returned in the evening, went to bed and fell asleep. In the morning of 9 July, they were having coffee and at one point they started talking, she said she had had contact with her man, he beat her, crushed her with his foot... he told the police that he beat her, but did not want to kill her. Two days later, as he stated, he begged her to see a doctor. She told him she just had a stomach ache, she was afraid that if she went to the hospital, he would bring another woman. He gave her soup, mineral water, a cake, and some ibuprofen to make her feel better. She talked to him. She sat on the stairs until six thirty, if she had seemed to be dying, he would have taken her. He wanted to beat her. If he had wanted to, he could have killed her with his fist in a minute. He has been fighting all around town his entire life. He hit her once in the stomach, she urinated and he splashed her with water. He did slap her a few times, he hit her on the ribs, he did not want to hurt her badly, it all happened in a second.

In his closing statement, the defence counsel said that the mental attitude of the perpetrator was *of such nature that he did have the intent regarding grievous bodily harm, but regarding the deadly outcome, the accused acted carelessly, as that arises also from the findings of the medical expert... as well as from the findings of the court expert neuropsychiatrist, and thus taking into account that the injured party was alert for two days and death occurred subsequently, the accused may only be found guilty for the crime of grievous bodily harm qualified by death.*

A court expert provided a psychiatric examination during the proceedings. The findings state, inter alia, that *'this is a person of modest intellectual abilities, in the lower part of the average scale (...), a person with a deep and lasting personality disorder, primarily of the emotionally unstable type, with significant defects in the area of moral ethical functioning. Nothing indicates that he is psychotic, there is no indication of a real mental illness, nor is he mentally retarded. As for alcohol and psychoactive substances, he is prone to alcohol abuse and he said he did take psychoactive substances, but he has not developed an addiction'. He is 'emotionally unstable, aggressive, explosive', and in view of the fact that there had been disagreements in their relationship for quite some time, there had been emotional tension, 'his ability to understand and control his actions was reduced, but not significantly'. The expert analysis did show that 'the accused was impulsive, this is part of the structure of his personality and that is how he reacts, without thinking, but one cannot speak of any reduction of consciousness, since he remembers everything in detail'. It stated that 'he did not think about a deadly outcome, he was just angry and this was a vent. He did not intend to kill her, he did not think about that'.*

Personality and behaviour of the victim

The judgements provide very little information about the victim of the crime, the common-law wife of the accused. There is no information on her age, education, occupation or employment. She was a mother of two, but had no children with the accused. She had been a victim of domestic violence for a long time, and relevant institutions were familiar with the history of domestic violence.

A.J., employed at the Social Work Centre as a domestic violence and THB officer and a psychologist for the Safe House testified about the persistent domestic violence that the injured party was subjected to over a long period of time. The witness from the Social Work Centre stated that the injured party approached her for help for the first time on 3 December 2014, complaining about the violence she had endured from the perpetrator. She was accommodated at the Safe House, where she stayed for 15 days and left of her own will. The Municipal Court issued a restraining order, prohibiting the perpetrator from approaching and harassing the victim of domestic violence for a period of one year. The injured party approached them again in early 2015, complaining that the perpetrator was harassing her even during the restraining order. The Centre advised that she should report this to the police, which she did not do, so the Social Work Centre received a police report that *'there were no violations of the protection measure'*. The injured party contacted the Social Work Centre again on 16 March 2016. On that occasion, according to the witness, *'she came exhausted, in a very bad state, complaining that she had been to the police, that she had to walk, that she was running away from the perpetrator, that she was asking for help. She talked about what he did to her. He would sit above her and bang her head on the floor'*. The witness then stated that F.R. told her *'I can't take that much violence, I can take a little, but not this much'*. Everybody knew that he had abused her all her life, *'but they could not help her, because she chose to refuse help. She decided herself to leave the Safe House. (...) The last time she was there, it was for five months. They prepared all the documents to place her in a social protection institution (...) However, she gave up. Even after being advised not to go back to him, F.R. insisted that she wanted to live with him, despite all the protection measures. If they had managed to place her in the Nursing Home, she would probably be alive'*. The Safe House psychologist testified that the injured party *'was a client of the Safe House twice, in 2014 and in 2016, because of the violence she suffered from her common-law husband. Both times, the placement into the Safe House was proposed by the police and the Social Work Centre. During her first stay, she left the Safe House upon her own request. The second time, when she was again referred by the police and the Social Work Centre, on the basis of a report of violence by her common-law husband, she stayed for five months'*.

The criminal proceedings

The first-instance judgement was delivered on 20 August 2020. The second-instance court vacated this judgement and sent the case back to the same court for a new trial. The second first-instance judgement was delivered on 10 February 2021 and became enforceable on 4 March 2021. The perpetrator was placed in detention and he remained there from 10 July 2019 until he was sent to serve the sentence.

During the main hearing, evidence was presented in the form of photo-documentation and documentation, including the crime scene report, records of collection of bodily samples, findings from toxicology tests and opinions of the Forensic Testing and Court Analyses Agency, a report on temporary seizure of items, records of court expert's analyses, findings of the psychiatric court expert analyses, reports and documents of the Social Work Centre related to the party (the injured party), final reports related to protection measures, placement consent, placement proposal and notification on admission to the Safe House.

A decision of the Municipal Court in Z. dated 10 December 2014 shows that the perpetrator received a protection measure prohibiting him from approaching the victim of domestic violence to a distance no less than 100 metres at all places, for the duration of one year, and a prohibition of harassment or stalking F.R. for the duration of one year. Also, a decision of the Municipal Court in Z. dated 25 March 2016 shows that G.I. received a protection measure prohibiting him from approaching the victim of domestic violence for the duration of one year, and a prohibition of harassment or stalking the victim of violence for the duration of one year. Police reports by the Centre Precinct in Z. dated 27 November 2014 and 18 March 2016 show that the injured party F.R. reported physical and psychological violence against her, by her common-law husband G.I. A document from the Social Work Centre dated 27 November 2014 shows that the 'M...' association informed the Social Work Centre that the injured party F.R. was accommodated at the Safe House because of the violence in her common-law marriage upon proposal of the Ministry of the Interior in Z, because the injured party had been subjected to physical and psychological violence by her common-law husband G.I. In a statement the injured party F.R. gave to the Social Work Centre on 3 December 2014, the injured party stated that G.I., with whom she had lived in a common-law marriage, hit her on the head, the chest and other parts of the body. She asked to stay at the M. Safe House until she recovered and decided where to live. The injured party was discharged from the Safe House on 11 December 2014, upon her own request. Official records of the

Social Work Centre dated 25 August 2015 show that the injured party came to the Centre again to report violence by her common-law husband G.I., who had already received a restraining order. It arises from a report by the 1st Precinct in Z. dated 10 December 2015 that there were no violations of the protection measures, and the official note by the Social Work Centre dated 15 December 2015 indicates that in a telephone interview related to the completion of the protection measure in relation to her common-law husband G.I., the injured party F.R. said that she was living with G.I. that there were no problems *'when he behaves properly towards her'*. The final report on the completion of protection measures dated 21 December 2015 establishes *'that the restraining measures were enforced with no problems and that their purpose has been achieved and that they created better quality of life of common-law spouses'*. According to the Social Work Centre notification on safe house placement consent dated 18 March 2016, the injured party was referred to the Safe House because *'she asked for police protection... because G.I had beaten her'*. It was then noted that the injured party left the Safe House on 22 August 2016 upon her own request, that she withdrew her request to be placed in a safe house and expressed her desire to continue living with her common-law husband G.I. A report by the Social Work Centre dated 4 April 2017 states that G.I. observed the protection measures and showed that he *'underwent a positive change in behaviour and that F.R. had reconciled with him and suspended the procedure to be placed in a social protection institution. The protection measures were enforced successfully and delivered positive results throughout their duration'*.

Witnesses and expert witnesses were heard at the main hearing. We will quote several witness statements that the court accepted as credible evidence for proving the crime. Witness B.K., daughter of the injured party, said that she knew the perpetrator *'who had lived in a common-law marriage with her mother for about ten years. She met him when he came to visit her mother. Mother told her that she had been living with him in a common-law marriage, that he had been violent that he had hit and abused her'*. Witness F.S., son of the injured party, emphasized that he had known the perpetrator *'for some 15-20 years for his violent behaviour, drug dealing, racketeering, debt collection. His mother and the accused started living together in the shacks in B. sometime in 2013-2014. It is a settlement used for accommodating social welfare cases and the Roma population. She used to come visit him in L. beaten, crying, covered in bruises, complaining of the kind of torture she had to go through every day'*. The witness said that he went with his mother to report the perpetrator to the police because his mother did not have the courage to do it. He saw bruises on his mother's face and body, she was disoriented, she did not know which day it was or where she was. They reported the perpetrator

once again, and after that she was placed in a safe house in 2016. *'She told me she had to hide from the accused in the safe house. From the safe house she was supposed to transfer to the nursing home, but she returned home to B. instead. After a while, she was moved to a farm managed by the 'P' association.*

Witness D.E., a senior patrol officer, testified that he was dispatched to the address of the perpetrator and the injured party. When he arrived, the perpetrator approached the patrol and stated that he had killed F.R., gave them the key to enter the house, where the injured party was dead on the bed. He remembers that an ambulance arrived and confirmed that she was deceased, and the perpetrator gave no resistance. A.J. employed at the Social Work Centre in Z., and L.H., a psychologist at the Safe House, were also heard as witnesses, and they stated that the injured party had reported the violence of the perpetrator against her, that security measures were issued, that she was placed at the Safe House, but that she left it on her own and returned to the perpetrator.

On the basis of evidence presented during the criminal proceedings, the court found that *'the accused G.I., who had lived in a common-law marriage with the injured party F.R., following a disagreement and confrontation, beat the injured party, or rather abused her physically and mentally, by hitting and kicking her all over the body, and subsequently F.R. died.'* The court noted that *'violence as an instrument of crime in this case includes application of physical force against the physical integrity of another person, such as, for example, hitting, using force that causes physical and mental pain'*. In the given case, the court found that in the morning of 8 July 2019, the accused slapped and hit the injured party, following a suspicion that *'she had a relationship or an intercourse with a certain taxi driver E'*. The next day, he beat the injured party again, for the same reason, first with his fists, and when she collapsed on the floor, he kicked her, according to the statement of the accused in the main hearing, he *'crushed her'*. The consequence of this is that *'during the night of 9-10 October 2019, the injured party passed away'* due to the injuries she had sustained. It is thus the conclusion of the court that *'the death of the injured party F.R. was a consequence of the injuries inflicted by the accused by subjecting her to domestic violence'*.

The criminal sanction

The first-instance court found the accused guilty and sentenced him to 12 years and 6 months in prison. Establishing the presence of facts relevant for an individualised sanction, and in order to achieve the purpose of sanctioning, the court took into account circumstances impacting the length of sentence, both

mitigating and aggravating ones. As mitigating circumstances on the part of the accused, the court assessed his health status, which is poor, as he had had an operation. As aggravating circumstance, the court first referred to the fact that *'the accused was a recidivist, that he had previously committed crimes that included elements of violence, that he demonstrated brutality because he abused his wife, with whom he had shared a household, persistence, because he physically abused the injured party continuously since 2014 and he did the same two days prior to the event in question, inflicting in that instance serious, life-threatening physical injuries which led to her death, which is directly caused by those injuries'*. It arises from this that *'when ruling on the sentence, the court considered the method, the gravity and the consequences of the offence (...) and holds that the prison sentence of 12 years and six months is proportionate to the gravity of the offence and the degree of guilt of the accused, and that it is sufficient and necessary for achieving the general and special aims of prevention, and that in relation to the accused G.I., the prison sentence will achieve the purpose of sanctions as defined by CC FBiH Article 42'*. Injured parties F.S. and K.B. were referred to civil proceedings to file their claim for damages.

Duration of criminal proceedings

The crime was committed on 8-9 July 2019, there is no information on the date when the criminal charge was filed, and the indictment was issued on 3 October 2019 and confirmed on 4 October 2019. The first first-instance judgement was delivered on 20 August 2020, and the second-instance ruling on appeal, vacating the first-instance judgement and returning the case for a new trial was delivered on 10 December 2020. The second first-instance judgement was delivered on 10 February 2021 and it became enforceable on 4 March 2021.

Two months and 24 days elapsed from the date of commission of the crime until the date of indictment, the first-instance judgement was delivered 10 months and 17 days after the indictment, and the second-instance ruling vacating the first-instance judgement was delivered 5 months and 20 days after the first-instance judgement. The second first-instance judgement was delivered five months and 21 days after the first first-instance judgement. One year, three months and seven days elapsed from the date of indictment until the second first-instance judgement.

COMMENTARY

This case is a blatant example of inadequate response of institutions of the system in preventing femicide; representatives of the institutions put the blame entirely on the victim, accusing her that by leaving the safe house on her own initiative and by returning to the perpetrator, despite different advice, she practically took the risk of her own murder. It seems that, other than placing her in the safe house in two instances, nothing was done to prevent repetitions of violence, including work with the perpetrator. Equally concerning are reports on the completion of protection measures and a statement that *'purpose has been achieved and that they created better quality of life of common-law spouses'*, i.e. *'that the measures were enforced successfully and delivered positive results throughout their duration'*, indicating shortcomings in following up the situation after the measures had been delivered and an utter lack of understanding of the dynamics of violence.

We find the qualification of the crime in the first-instance judgement to be erroneous, but this was corrected in the second first-instance judgement. Namely, all the elements for the offence to be qualified as murder of a family member previously abused by the perpetrator were present. We find unacceptable the conclusion made by the court in the first first-instance judgement that *'the perpetrator did not intend to kill the injured party'*, particularly because the court based this on the fact that the perpetrator *'did beat and hit (the victim) before, but the injured party always repaired her injuries and their relationship had not changed, i.e. the injured party always returned to him'*. This reasoning of the court would require a comparison of earlier acts of violence and an examination as to whether the commission of those acts was identical to the last one, that had a deadly outcome, because it is also possible that earlier acts of violence did not lead to death by a mere accident, because of adequate medical treatment, or for other reasons. Instead of treating earlier violence against the victim, which the perpetrator did continuously, as a qualifying circumstance that would make his crime more serious, the court treats earlier acts of violence as a circumstance that indicates the absence of intent of the perpetrator to kill the victim. On the other hand, this attitude of the court is an expression of a lack of understanding of the dynamics of violence within the context of family, which does, as research confirms, escalate over time and becomes more brutal. The court obviously failed to take this element into account.

The sanction itself is very mild, particularly in view of the fact that there were no mitigating circumstances on the part of the perpetrator, except for the fact that 'his health was poor because he had had an operation', although it is utterly unclear why this would be qualified as a mitigating circumstance, and the court provided no additional explanation.

There were no objective obstacles for the court to rule on the injured parties' claim for damages within the criminal proceedings. Referring them to civil proceedings cannot be justified by reasonable reasons, particularly in view of the fact that the injured parties are Roma, who, as an extensive body of research shows,^[83] encounter additional obstacles in accessing justice, such as poverty, insufficient knowledge of the language etc., which the court should take into account, inter alia, by deciding on their claim for damages within the criminal proceedings.

Case No. 4: perpetrator B.M, victim K.J.

Method of commission, features and legal qualification of the criminal offence

On 25 August 2015, the Cantonal Prosecutor in Bihać filed an indictment against the perpetrator B.M. for three crimes that merged, as follows: the crime of homicide in a particularly insidious manner and out of callous revenge, as defined by CC FBiH Article 166, paragraph 2, points a) and d) in conjunction with paragraph 1, the crime of unlawful possession of weapons or explosive materials, as defined by CC FBiH Article 371, paragraph 1, and the crime of causing general danger, as defined by CC FBiH Article 323, paragraph 1. The indictment was confirmed on 27 August 2015 and partly amended on 15 June 2016, on the part of time of commission of the crime, which the court accepted.

[83] More at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2013121011144464bos.pdf, <https://www.unicef.org/bih/media/436/file/Polo%C5%BEaj%20romske%20djece%20i%20porodica%20u%20Bosni%20i%20Hercegovini.pdf>, <https://www.osce.org/files/f/documents/8/2/406001.pdf>, <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93-Roma-in-Bosnia-and-Herzegovina-BiH.pdf>, <https://vstv.pravosudje.ba/vstvfo/B/141/article/90379>

In the first first-instance proceedings, the first-instance court accepted the qualification of the crime the indictment provided for all three crimes. A ruling of the Supreme Court of the Federation of Bosnia and Herzegovina vacated the first first-instance judgement and the case was returned to the first-instance court for a new trial. In the second first-instance judgement, the first-instance court qualified the crime in the same way as did the indictment and the first judgement. Deciding on the appeal by the defence counsel, the second-instance court issued a ruling vacating the first-instance judgement and ordered a new hearing. Following the hearing, the second-instance court delivered a judgement finding the perpetrator guilty of intentional killing, thus committing the crime of homicide as defined by CC FBiH Article 166, paragraph 2, point d), in the following manner: *'during the early morning of 13 February 2015 in B., with the intention of killing K.J. out of callous revenge, because he had lost in several civil cases before the Municipal Court in Cazin, related to alimony for his former wife B.F., and determination and partition of marital property and compensation of damages, where K.J. was the lawyer who represented his former wife, using the night and the fog that enveloped the town on that particular night, placed in front of the entrance to K.J.'s legal practice, immediately next to the pavement and a street filled with pedestrians and vehicles, an explosive device he had manufactured, assisted by an unidentified person, which comprised an M-75 hand grenade from which he removed the safety pin, then placed it inside a glass and covered with paper, and then placed on top of it a plastic dishwashing detergent bottle, having cut off the bottom, and then covered the bottle with black duct tape, so on that same day at around 08:15, as she was entering her office, K.J. observed the plastic bottle and moved it in order to open her office door, the bomb exploded and the metal charge of the grenade hit K.J., inflicting injuries that were instantaneously lethal (...) and which caused her death on the spot.*

When qualifying the crime, the second-instance court held that the perpetrator committed the crime out of callous revenge (Article 166, paragraph 2, point d), and not out of callous revenge and in an insidious manner, as found by the first-instance court and as stated in the indictment (Article 166, paragraph 2, points a) and d), irrespective of the fact that *'it was a foggy night'*. Unlike the second-instance court, the first-instance court found that the perpetrator committed the crime in an insidious manner, taking advantage of the weather, because it was night and there was fog at the time when he placed the explosive device, which caused poor visibility and *'there was almost no possibility for anyone to see him do it'*. As for the two other crimes, the court acquitted him pursuant to Article 299, point a) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, finding that it does not arise from the description of the crimes contained in the

indictment, i.e. the facts and circumstances of the case, that the offences the accused was charged with were prescribed by law as criminal offences.

Findings of the court medical examiner and the autopsy report establish that the examiner *'found a total of 56 penetrating injuries and found the metal beads that created those injuries inside the victim's body, and the autopsy found that K.J. received two absolutely lethal injuries, due to penetration into the brain tissue and haemorrhage into the skull, and penetration into the heart and haemorrhage into the pericardium, as consequence of the effect of the metal beads from the explosive device, and no medical assistance would have saved the life of the deceased'*. The court examiner also stated that at the moment of the blast, the injured party was bent forward.

Personality and behaviour of the perpetrator

At the time of commission of the crime, the perpetrator was 65 years old, divorced, father of four, a mason, retired. He had previous convictions for domestic violence (Cazin Municipal Court, 2011) and for breaking laws on addiction (the court in Salzburg, Austria, 2010). The perpetrator had previous convictions for domestic violence against his former wife, with whom he had had a series of court cases in relation to alimony, compensation of damages, establishment of marital property and division of real property. He threatened his wife that he would kill her and *'serve the time'*, *'because he will not give what is his'*, *'he let her go when she said it was all for nothing'*. The perpetrator did confess that he had beaten his ex-wife, that he could have killed her at the time, but the piece of wood he had hit her with was too short, and if it had been longer, he would have killed her. He tried to avoid his obligations to his ex-wife in all sorts of ways, thus prior to filing for a divorce, he gifted all his possessions to his sister, so that his wife would have nothing to collect alimony from. Intending to avoid paying alimony, *'he suspended his retirement and started to work again, so that less would be deducted as alimony for his ex-wife'*.

The perpetrator did not confess the crime. He insisted that on 13 February 2015, when the explosive device was placed in front of the injured party's legal practice, according to the indictment, he went to several cafés in C. early in the morning to have coffee, and he spoke on the phone with D.S. (partner who he assists financially – authors' note) who had called him. The court did not accept these claims by the defence as credible, because no evidence confirmed that the perpetrator *'did go to several cafés early in the morning to have coffee'*, and forensic analysis of his mobile phone showed that on that day he only had several

missed calls and that D.S.'s number was not among those that had called him. Moreover, the perpetrator stated that he returned to Bosnia and Herzegovina on 3 March 2015 *'to see what it was, because his name had been mentioned by the media in relation to the killing of the lawyer'*. The court held that the perpetrator did not have any intention to report himself and to be cooperative with the law enforcement staff, and that he would not have come *'if he had known that they were going to take his car and detain him, i.e. he would not have come if he had known that there was a warrant for his arrest'*. The court established the existence of an arrest warrant on the basis of statements by border police officers, who stated that *'they had the accused on a list and waited and followed his return to Bosnia and Herzegovina, and as soon as they verified his identity, they arrested him'*. Assessing the credibility of the perpetrator's statements, the court found that this testimony *'could not be accepted as credible, because throughout the proceedings he insisted that he did not commit the crime, that he did not know where the deceased lawyer's office was and that he had never held a grenade in his hand, that he never served in the army and that he did not know how to manufacture an explosive device, which is ultimately all contrary to the evidence presented'*. The court could not accept these statements as credible, because *'in addition to traces of the accused at the crime scene, traces left by an unidentified individual were also found, so the fact that the accused never served in the army, which the defence insisted on during the proceedings, was irrelevant'*.

A psychological expert evaluation of the perpetrator was conducted during the proceedings. The expert witness stated that he was *'an emotionally unstable person, with a very low threshold for frustration, that he does not handle tension well, that he is irritable and impulsive, and that individuals with this personality structure are prone to revenge, because they feel to be of lesser value, rejected, with no emotional warmth, that he is full of rage because of material possessions and that he was bitter about the lawyer, because in hearings she spoke in favour of his wife, with whom he had a conflict'*. During interviews, when speaking about the event in question, *'the accused presents all the defence mechanisms – minimisation, denial and suppression'*.

When establishing facts related to the commission of the crime of murder, the court took indirect evidence into account, particularly the testimony of witness P.E., whom the perpetrator told while in detention that he was *'involved in the killing of the lawyer K. and that he would do the same to the female prosecutor in this case'*. The law enforcement officer V.O., heard as a witness, stated that P.E. told him that the perpetrator had told him that he had killed the female lawyer and that he asked him to beat with a metal rod the (female) cantonal prosecutor

who was appearing in this case. Assessing the perpetrator's level of guilt and his subjective attitude towards the crime, the court found that in the murder of the injured party the perpetrator acted with direct intent, which is also proved by the murder weapon. The perpetrator prepared the murder in cold blood, he knowingly and willingly engaged an unidentified individual to produce an explosive device, he then placed this device in front of the office of the lawyer he was bitter about, because of everything she had done for him to lose all the cases he had with his ex-wife. In order to hide the explosive device, the perpetrator and the unidentified individual placed it inside a plastic bottle, and placed it all inside a plastic bag, knowing that the device would cause a strong blast and that any person touching it would be killed, which is what he wanted.

In the opinion of the court, the motive for this crime was callous revenge. The perpetrator placed an explosive device in front of the lawyer's office in order to kill her and thus have his revenge, because she successfully represented his former wife in cases against him, as part of her professional activities. The conclusion of the court was that *'in order to establish callous revenge, the decisive factor is not only the fact that the harm inflicted on the victim by the perpetrator is much greater and more serious than the harm inflicted by the victim on the perpetrator, but it is also necessary to establish that the murder was committed out of vindictive inclinations and under such circumstances that the actions of the perpetrator appear as manifestly callous'*.

Personality and behaviour of the victim

The victim is K.J., a lawyer who represented the perpetrator's ex-wife in civil proceedings against him. The judgement does not contain even the basic information about the victim. Civil and enforcement cases of the Municipal Court in C. related to alimony, compensation of damages, determination of marital property and division of real property, with the perpetrator and his ex-wife as parties, show that the lawyer, the injured party, was committed to her client and was very successful. Thus, the perpetrator was obliged to pay alimony to his ex-wife and he lost part of his property, which went to his ex-wife, thanks to the work of her lawyer. It transpires from witness statements that the perpetrator had threatened the lawyer prior to the actual crime, but the judgement does not indicate if she ever reported those threats.

The injured party's husband testified about the threats, stating *'that his wife was a very brave woman and that he was concerned when she told him that the accused had threatened her in front of the court, because she had never told him*

that anyone had threatened her (and she had long work experience), and that this happened two or three days before she was killed’.

The criminal proceedings

During the evidentiary procedure before first- and second-instance courts, evidence was presented by the prosecutor and the defence. This included documents by the Police Authority, crime scene investigation report, autopsy report, findings of chemical forensic analysis, items from the Municipal Court in C., DNA profile with analysed fingerprints and photographs of the accused, weather reports provide by the Meteorology Institute, findings of the centre for forensic IT support, etc. Also, the evidentiary procedure included expert analyses and statements by the medical examiner and a psychologist, forensic analyses of mobile telephones and SIM cards, biological and DNA analysis, chemical and biological analyses, etc. Numerous witnesses and the perpetrator were heard. The perpetrator was held in detention and he stayed there from 3 March 2015 until he was sent to serve his long-term prison sentence.

A court expert of the Federation Police Authority in Sarajevo, Department of Forensics, explained how the explosive device used in the commission of the crime was manufactured. According to his findings, it was a bomb with *‘a lethal blast radius of 12 metres, and injury-creating blast radius of up to 30 metres, and it was, in fact, a booby-trap, because it was masked in such a way that it presented no danger at first sight’.* An expert chemical analyst found that *‘the centre of the explosion was on the rubber mat in front of the door to the office, and traces found at the site were exposed to high-brisance explosives (TNT, nitro-glycerine, pentaerythritol tetranitrate, hexogen or tetryl), that she found metal beads in the material of the explosion crater which corresponded to the metal beads found in the body of the deceased lawyer’.*

The perpetrator’s son was also heard as a witness and he stated, inter alia, *‘that it is 99.9% certain that his father killed the lawyer, that he called him from A. several times and that he informed the police commander about it’.* He had no motive to help his father manufacture the explosive device used in the commission of the crime, because the injured party represented his mother *‘on whose side he was and who succeeded in all the cases’.* Moreover, the presence of his DNA was not established at the crime scene.

The defence also called as witness a friend of the injured party, D.Ž.D., with whom she frequently communicated professionally, and as they lived close

to one another, every morning they took coffee together before they started work, *'but the lawyer K.J. never confided in her that someone was threatening her'*. On the morning in question, *'passing by K.J.'s office, she did notice a dark bottle in front of the entrance, but she assumed that someone had left it for the lawyer and paid no attention to it'*. On the basis of the evidence presented, the court found unequivocally that the perpetrator did commit the crime of murder as defined by CC FBiH Article 166, paragraph 2, point d).

The criminal sanction

In the first and the second first-instance judgement, the court found the accused guilty of the crime of homicide as defined by CC FBiH Article 166, paragraph 2, points a) and d), in conjunction with paragraph 1, merged with the crime of unlawful possession of weapons or explosive materials defined by CC FBiH Article 371, paragraph 1, and the crime of causing general danger defined by CC FBiH Article 323, paragraph 1, and delivered a single sentence of long-term imprisonment of 32 years. However, after a hearing before the Supreme Court of the Federation of Bosnia and Herzegovina, the perpetrator was found guilty of the crime of homicide defined by CC FBiH Article 166, paragraph 1, point d) and was sentenced to long-term imprisonment of 30 years. The same judgement acquitted the perpetrator in relation to the charge of unlawful possession of weapons or explosive materials defined by CC FBiH Article 371, paragraph 1, and the crime of causing general danger defined by CC FBiH Article 323, paragraph 1. The perpetrator was obliged to pay the cost of criminal proceedings, and pursuant to CPC FBiH Article 212, paragraph 3, the injured parties were referred to civil proceedings for their claim for damages.

Deciding on the type and severity of the sanction, the court did not find any mitigating circumstances on the part of the perpetrator. As for the aggravating circumstances, the court took into account his earlier conviction for the crime of domestic violence, the degree of guilt reflected in the perpetrator's persistence in committing this crime, starting from the rage he felt towards the injured party, to organising and manufacturing the explosive device. The court also took into account the fact that the injured party in no way contributed to the commission of the crime, but rather performed her professional duties. In view of all the circumstances, the court delivered a sanction of long-term imprisonment of 30 years, which differs from the two first-instance judgements (long-term imprisonment of 32 years), because the perpetrator was acquitted of the charge for the other two crimes.

Duration of criminal proceedings

In relation to the crime committed on 13 February 2015, the indictment was issued on 28 August 2015 and amended on 15 June 2017. The first first-instance judgement was delivered on 2 October 2017, and the second-instance judgement on appeal was delivered on 28 March 2018, returning the case to the same court for a new trial. The second first-instance judgement was delivered on 14 December 2018, and the second-instance ruling vacating the first-instance judgement again and scheduling a hearing before the Supreme Court of the Federation of Bosnia and Herzegovina was delivered on 15 March 2020. The Supreme Court of the Federation of Bosnia and Herzegovina delivered its judgement on 5 March 2020. A total of two years, 1 month and 7 days elapsed from the indictment until the first first-instance judgement, two years, 5 months and 3 days elapsed from the first-instance judgement until the FBiH Supreme Court judgement, and a total of 4 years, 5 months and 10 days elapsed from the indictment until the FBiH Supreme Court judgement.

COMMENTARY

This case prosecuted the case of murder of a lawyer whom the perpetrator threatened verbally prior to the commission of the crime. Although a threat of murder is a crime, the lawyer did not report this, nor did her husband, whom she had informed about the threat. Reasons why neither of them did so remain unknown. In any case, failure to report this crime missed an opportunity for a rapid intervention by the relevant authorities to stop the commission of the crime of murder. It is obvious that the threat should have been taken seriously.

The perpetrator was convicted to a long-term prison sentence of 30 years. As for the charge that he committed the crime of unlawful possession of weapons or explosive materials and the crime of causing general danger, the perpetrator was acquitted of that charge. According to the court, it does not arise from the facts and circumstances in the description of the crimes contained in the indictment that the crimes the accused was charged with were prescribed as crimes. Without considering which of the judicial bodies (the public prosecutor or the court) these omissions may be assigned to, the fact that the perpetrator was not convicted for these acts is a defeat for the judiciary. Also, it is concerning that, according to the information

available to the authors, the perpetrator was not accused in relation to the crime related to the cantonal prosecutor who appeared in this case, because according to a statement made by a police officer, the perpetrator asked him *'to beat the prosecutor with a metal rod'*. The case file contains no information as to whether the police officer reported this.

This case raises numerous issues related to the criminal-legal protection of members of the legal profession. Namely, CC FBiH does define as a particular type of murder the murder of a judge or a prosecutor in relation to their professional duties (Article 166, paragraph 1, point e). However, the legal-policy reasons for including judges and public prosecutors in this definition, and not lawyers, remains unknown. In reality, parties often see lawyers representing the opposite side as their direct opponents, which is particularly relevant for female lawyers representing women in family-related cases, who are often subjected to verbal abuse, abuse and threats by violent men. This treatment is also experienced by women in women's non-governmental organisations providing assistance and support to women victims of violence. We believe that the murder of a male or a female lawyer should have the same treatment in law as the murder of male or female judges and public prosecutors, and that threats and intimidation they receive should be criminalised adequately.

In this case, the victim of femicide was a lawyer. Although it may not seem at first that this is gender-based violence, the fact that it was a woman acting as legal counsel for a woman in numerous cases against the perpetrator indicates that this case of femicide also contains a gender element and that future research should focus more on the risks faced by female lawyers and women working in women's organisations providing assistance and support to women in judicial and other procedures, particularly those ensuring protection from violence and the exercise of women's rights in relation to family matters.

Again in this case, although there were preconditions to do so, the court did not decide on the injured parties' claim for damages.

Case No. 5: perpetrator Z.S, victim S.S.*Method of commission, features and legal qualification of the criminal offence*

An indictment by the Cantonal Prosecutor of the Tuzla Canton dated 12 November 2015, confirmed on 13 November 2015 and amended at the main hearing on 15 May 2016 regarding the factual description of the crime, with no change in its legal qualification. The perpetrator Z.S. was accused of premeditated murder because *'on 16 June 2015, in the time period between 12:00 and 13:30 in Ž., settlement B. on an uncategorised gravel road at the site of Nj.B, between a forest owned by H.H, after having decided, early that morning, in front of his family home in M., municipality of D.J., together with his brother K.M., to murder his wife S.S., he consciously and willingly conducted additional actions which were his decisive contribution to his wife's death which was his intention, and K.M. accepted such actions as his own, and then, for that purpose, in his own vehicle, Opel Zafira with German number plates, which he drove, with his wife S.S. in the passenger seat, he drove towards the municipality of Ž, and K.M. followed him in his own vehicle, Opel Zafira with German number plates, and they both, upon arrival, took the main road across populated area C., towards populated area B., intending to bring his wife S.S. to an isolated area where, according to an earlier agreement, she would be killed, and where no third persons were expected to arrive and at a place that was far enough from the main road or another populated area, so that the effect of pistol shots would be almost entirely diminished, he used the trust that S. had had in him as her spouse; he then turned off the asphalt road to a local, almost impassable gravel road, and K.M. followed shortly in his own vehicle, and they thus continued to move along the almost impassable gravel road, to a site at approximately 1,450 metres from the main asphalt road, and once he was certain that there were no third parties at the site, S.Z. stopped his vehicle and when he and his wife left the vehicle, the vehicle driven by K.M. stopped behind them and he left his vehicle; after that, one of them killed S.S., which is what both of them ultimately intended, so that one of them used a firearm – a revolver of unknown make and calibre, while standing left of S, at a distance greater than 1 metre, fired three shots in her direction, thus inflicting a penetrating gunshot wound to the head(...) in the area of chest and abdomen (...) and a lacerating gunshot wound on the left side of the chest (...), following which S. died, due to injury to vital sections of the brain as a consequence of brain tissue injury, with an increased pressure inside the skull due to an oedema and haemorrhage in the skull, all caused by a gunshot wound with an entry point on the rear left part of the head; after this both drove away from the site in their respective vehicles, leaving S.'s lifeless body at the site; they then proceeded to Ž. And when they arrived, S.Z. went to the Ž. Police Station and made a false report that two unidentified individuals*

murdered his wife S.S., and K.M. left Ž. and left Bosnia and Herzegovina on the same day, exiting towards R.H. at border crossing B. at 18:30.' In the indictment, the crime was qualified as homicide defined by CC FBiH Article 166, paragraph 1, in conjunction with Article 31 (complicity), because Z.S. acted with premeditation while taking actions that gave a decisive contribution to the death of another person.

Following the evidentiary procedure, the first-instance court accepted in its entirety the factual description and the legal qualification of the crime and found the perpetrator guilty of the crime of homicide defined in CC FBiH Article 166, paragraph 1, in conjunction with Article 31. During the criminal proceedings, a court medical examination and an autopsy of S.S.'s body were performed. It was found that the injured party sustained three penetrating wounds, i.e. that she *'sustained a penetrating gunshot wound of the head (...) and gunshot wounds to the chest and the abdomen'*. According to the autopsy report and findings of the court medical examiner, S.S. died a violent death, caused directly by damage to vital brain centres, as a consequence of damage to the brain tissue and an increased pressure inside the skull, due to brain oedema and bleeding inside the skull, all caused by the penetrating gunshot wound, *'... and that a timely medical intervention would not have prevented death from this injury'*.

Personality and behaviour of the perpetrator

At the time of commission of the crime, the perpetrator Z.S. was 53 years old and according to his statement, he had been married for 10 years (reasoning of the second first-instance judgement states that they had been married for over 30 years, which was also confirmed by the testimony of the injured party's sister – author's note) and had two children with her. The perpetrator is a train engine driver, he completed secondary vocational education for railway workers, he was employed at an airport, and his wife worked in a shop, they were settled financially, they had purchased three flats, he gifted one to his older daughter, the second one was intended for his younger daughter, and he was planning to buy another one for himself and his wife. His wife was of Serb ethnicity, he is Roma, they had frequent contacts with her family in Serbia and visited often, and the family used to come for the New Year. His wife marked her religious festivities, but also the Muslim ones, she knew how to read the Qur'an, he respected her faith, went to church and lit candles. His family accepted his wife quite well. Due to anonymisation, there is no information on the perpetrator's place of birth or residence. He had no previous convictions.

In his statement for the defence during the main hearing, the perpetrator S.Z. did not dispute that he was at the site where his wife had been killed, but he did not confess to the crime; instead, he stated that his wife was killed by two unidentified individuals using a firearm. He then stated *'that he has been married to his wife for 10 years, that they have two children, two daughters, one of whom has been ill since birth, the other one is fine but would not listen to him, she has changed since she had found herself a boyfriend, she stays out all night, she comes home in the morning, they meet at the front door. In June last year, he came to Bosnia to see an imam, to see if something had been placed upon them and their home and their daughters, because they were aggressive towards him and his late wife, and that was his reason for coming to Bosnia, they heard that there was an imam and they went to see him to make them a talisman, the police found the talisman in the car. They arrived to Bosnia late, at about 23:30 and they wanted to sleep at the 'Č.' Hotel, but they could not, because there was no receptionist (...) His wife suggested that they should sleep in the car and go to the hotel in the morning and then to the imam. In the morning, they went to the hotel and slept until 10, and then at 11 they went to see the imam and finished with him late that day. After that, they returned to the hotel and stayed overnight, and the next day he told his wife he wanted to go to M. to visit his mother, and when they arrived, they were all sitting there, his sisters J. and Z., his sister-in-law M. and his brother M., and that the conversation was about dowry, he told them he had no time to sit with them, he was only there for the dowry, because they wanted to divide it, he said that they should divide his part among his brothers and sisters, and then his mother cried and told him that some of it belonged to him too (...). He went to the hotel with his wife, he told his wife that he had taken none of the dowry (...) After that, they went to the petrol station to pour some petrol, and there was a shop there and S. Bought some things for Z.'s grandchildren, some things for SZ., and they went towards T.1, in Ž. he had a feeling that someone was following him (...) He states that there was a car overtaking all other cars and it reached him, he was on his way towards the village of T.1, and he then said to his wife "this guy wants something from us", he slowed down, and the other car slowed down too, he accelerated, and the other car accelerated too. He saw that he was being followed by a dark Audi, black or dark blue, and there was a Mercedes behind that car, he and his wife were frightened, they just wanted to move away and he turned onto a gravel road, to later return to the road in the direction of Ž. As he moved away, he told this driver that he was making way for him, to overtake him, to let him pass, he just moved away to go back and that he was blocking him from behind, and then he accelerated and he was frightened. He drove along this gravel road, when he saw that there was a hedgerow and a house, he thought there was a village there and he continued along this road, he saw that it was a dead end, and he was at the end, he saw a big tree, it was blocking his way, he had no place to go During the drive, he told his wife "Do not yell, do not insult them, if they ask for money, give them money, if they ask for the car, give them the car and everything". He describes*

that there were two men in the car, with masks so that only their eyes, mouth and nose were showing (...) They got out to ask them what they wanted, S. left on one side, and he on the other. They approached them slowly and said "Money! Give us the money," his wife pulled the money from her chest and said "Here is the money" and his colleague ran towards him and took the money from his hand and put it in his pocket... the one who had a hat and glasses, he just saw him holding the bag, carrying the bag, he did not see a pistol. It was quiet for two minutes, he thought they were going to go, that they would let them go, that they would leave, but S. started cursing them, telling them all kinds of things, the one with the bag went to her side and told him (Z) "don't look at us, look at the car". He looked towards the car, he went numb and he just saw, as he looked to the other side, that he wanted to shoot his wife, he started shooting at his wife, she held herself like this and looked at him and then fell down. She fell down and the one on the other side fired another shot in the head, and that is how it happened and he almost died of fear, and it would have been easier if they had killed him too'. Since the perpetrator was giving this account in the courtroom, the court gave a description of the accused demonstrating that the person held his hand in his pocket, and that because there was a bulge, it seemed to him that he was armed, he did not know, he just watched and waited.

In the rest of the statement, the perpetrator described *'that he was on the driver's side (to the left) and that his wife was on the right-hand side, and that the guy with the bag approached and started to shoot at her, and the other one was at 30 cm from the car, at the corner, and he stood there by the back door, where the indicator light is. He left his wife to call for help and for an ambulance.'* As he failed to find the police, he said that he saw a police car and he told the police officers what had happened. *'They asked him to show them the place, to sit in the car with them, their car, and he did show them the place and they saw it and looked at it, and then others came there and stayed They told him to take out all the keys, his wallet, to put all his things on the hood of the car, they patted him and then they put all his things into a back and they drove him, after they had finished all that, to the police station, they took his fingerprints, his clothes, and they inspected the car in detail'.* Describing the persons who allegedly intercepted them, Z.S. said that they were *'approximately 1.90 and 1.85 cm tall, but one of them was wide, like a bodybuilder, and the other one with him was a bit shorter but also like a bodybuilder'.* He also described the physique of his brother M., that he was taller than him, he was 1.75. and his brother is 1.80 cm tall. As for his brother M., he stated that *'he did not know he would be there when he came to see his mother, they had had no contact for a year, because he was in prison, and they had no contact in Nj. either, nor did he ever call him on the phone, he just said hello to him and all the others in front of his mother's house'.* He did not know what kind of car his brother owned.

After examining surveillance camera footage, which the perpetrator saw at the main hearing, it turned out that the car driving behind his own was owned by his brother M., who had followed them all along. When he saw this footage, the perpetrator was surprised, how come he did not notice a car that was exactly the same as his own and that was owned by his brother. Following the evidentiary procedure and examination of surveillance camera footage, the court rejected the defence claim that the perpetrator did not commit the crime of murder of his wife, aided by his brother as accomplice, as stated in the indictment, but rather that the murder was committed by two masked, unidentified individuals who had followed their car and intercepted them on the road.

An expert psychiatric examination was conducted at the Psychiatric Clinic during the proceedings. The expert findings state, inter alia, that *'the act the accused is charged with, murder, was committed as a primarily wilful act, there was no altered state of mind, nor any major affect and in terms of time, there was opportunity for reasoning and weighing motives for and against, and other assessment, and the killing intention, even vaguely, on the basis of a particular motive or several motives, to be determined by the investigation, was created in the perpetrator's mind prior to the murder, and was manifested through actions that were planned... The accused presented no elements of psychopathology that could affect his ability to reason. The accused was free to manage his actions at the time in question as well as in the present time. The accused has no temporary or permanent mental illness, there is no delayed mental development, and the act was not committed under the influence of alcohol or drugs, and it was committed as a predominantly wilful act tempore criminalis, he was with full mental capacity'*. As for his mental capacity and the type of liability, the court found that the perpetrator understood that his actions may kill his wife and that he wanted to do it, with his brother as accomplice, which means that the crime was committed with direct intent.

Personality and behaviour of the victim

The victim of the crime of murder is S.S., wife of the perpetrator, with whom the perpetrator had two daughters. The judgement contains no information on the injured party: her age, education, occupation, etc. We learned about her relationship with the perpetrator from witness statements: her sister and daughters of the perpetrator and the injured party.

In her statement at the main hearing, the injured party's sister, B.M. said that her sister and the perpetrator *'were together for 30 years, that she knew a lot about their relationship and their life together, but that S. did not want to talk*

about many of the problems, to protect them, so that they do not worry... When S. married Z., the family did not approve, because he did not suit her on any grounds, they were mentally different, but she left, she built a life for herself and her family (...) Z. is a fairly unstable person, so that his mother manipulated him easily. S. managed her own family and she behaved normally and she built a career for her children normally, she built education and everything else that a normal woman should do, and all this bothered his parents, which is why they did not like her'. Testifying about the relationship between the perpetrator and the injured party, she noted that 'S. used to tell her that her husband's behaviour changed when his father fell ill (...) that he was jealous and accused S. of infidelity. She complained that they had frequent arguments because of that, that the accused went to visit his family, that he came home and refused anything she cooked, that he did not want to sleep in the same room with her, that he did not want to talk to her (...) that they changed their telephone number and that S. rarely called them after that, only from her mobile, whether he forbade her or she could not or did not want to, in any case, since the New Year she had only called them from her mobile telephone and never said anything, she just asked them how they were and told them they were fine and not to worry (...), she rarely called, which was strange, because they used to call frequently and talk for hours, the last time he visited in 2013, Z. told her that S. had cheated on him, that he was ready to swear o the Bible or the Qur'an or to face this witness with whom she had cheated on him, he was receiving certain telephone calls, that is why they changed their telephone number, they thought that the calls were from those who were instigating all that and that he knew that he was unstable and that he was easily persuaded and that they caused problems. After 2013 he never came to visit, only S. and the children visited for the family saint's day'.

The daughter of the perpetrator and the injured party was heard as a witness, waiving the possibility to be exempted from testifying. In her statement she said *'that mother and father argued a lot about money, that he was always asking for money for his father, he was very, very jealous, in the past he would stop by her workplace on his way back from work, just to check what she was doing, he told her that her mother was a whore and that she was acting like a whore and that she had someone (...)* She states that she had no contact with her father's other family members, they hated her mother, they used to say that she was a chetnik, his mother, his father H., they all kept saying that she was bad, that he should divorce her and leave them, to have a better life, they always asked for money, they always said that she was preventing them from getting the money, that she would not let them have the money'. The other daughter also agreed to testify and, in her statement, she described her parents' relationship. She said that as a person with limited mobility she had had health problems since birth and she had always lived in a flat

with her parents. A few days, or rather five days before travelling to Bosnia, her mother told her that she was afraid that Z.S. was going to kill her, together with his brother M., she was frightened and she cried because *'she heard this threat that her husband would kill her, or that his brother M. would kill her'*, which is what Z. himself had told her; when asked by the court if the injured party ever reported to anyone, other than telling her about it, the witness said that she only told her and she was not sure if she even told her sister. She was concerned about her mother's safety, she wanted to report it to the police, but her mother wanted to protect everyone, she did not want to tell anyone, *'she tried not to make such things public, to hide them and tell no one'*, so that they did not report anything to the police. She claims that her father Z.S. slept with a knife under his pillow. She said that her mother had had health problems, she had broken her spine, she had problems with her legs and arthrosis in her fingers, she had never seen a psychiatrist, neither had she, they had never been treated, they were mentally healthy.

The criminal proceedings

The crime was committed on 16 June 2015 and the Cantonal Prosecutor of the Tuzla Canton issued an indictment on 12 November 2015. The indictment was confirmed on 13 November 2015 and changed at the main hearing on 15 May 2016 regarding the factual description of the crime. The first-instance judgement was delivered on 2 June 2016 and upon appeal by the defence, the FBiH Supreme Court delivered a second-instance ruling on 12 January 2017, vacating the judgement and returning the case to be re-considered. The second first-instance judgement was delivered on 27 March 2017. The Cantonal Prosecutor and the defence counsel filed appeals against this judgement. The second-instance court delivered its judgement on 7 September 2017, dismissing both appeals and confirming the first-instance judgement. The perpetrator was detained and he remained in detention from 16 June 2015 until he was sent to serve his prison sentence.

Various pieces of evidence were presented during the first-instance hearing, as presented by the prosecutor and the defence. In addition to statements by witnesses, the injured parties, court experts, psychiatrists, experts in ballistic and mechanoscopic analysis, biological analysis, DNA analysis, police documents related to the event were examined, as well as crime scene reports, reconstruction footage, surveillance camera footage, photo-documentation etc.

The injured party's sister stated in her testimony, inter alia, that the last time she saw her sister was on 20 January 2015, when she came for a surprise visit.

She stated she knew nothing about the event that led to her sister's death. In her statement, the daughter of the perpetrator and the injured party, stated, inter alia, that *'the last time she spoke to her mother was when they arrived to Bosnia, the next day she called her sister and she said they had arrived to a hotel, that everything was OK and they should not worry'*. She knew that their parents were travelling to Bosnia to visit an imam, their father told her that they were visiting the imam because her sister was ill and they wanted to try and help her, *'but first that he wanted to go there because of her, because she would not listen to him, because she was carrying a child, because he did not know what was happening with her, that is why he wanted to go, and also to see what was happening with them, everything was going badly, they had no money, that is why they wanted to go'*. She denied that her father did not have enough money, he lived like a gentleman, he had a job. She also stated *'that she had no doubt that it was her father's fault that her mother died'*. She was not angry with him, she just did not know why he did it. The other daughter, also heard as a witness, stated, inter alia, that the reason why her father wanted to see the imam was *'because before they left for Bosnia he had, as they call it, panic, and he had high blood pressure (...) he opened the window, he opened the balcony, he paced through the flat, he was totally apathic, he knew nothing, and then L. came and took him to the emergency room, right next to their home, and they gave him blood pressure tablets and he took tablets for his depression, he had depression and he told her before he left for Bosnia, he claimed that some people around them were demons, he got up at night, opened doors to check if everyone was asleep, he did all that'*.

Witness A.F. stated that he did not know the perpetrator, he had only seen him twice in his life, but he did know his brother S.M., who changed his name into K.M. *'At that time, in the month of June, he saw Z. in front of the house, perhaps around eight thirty in the morning, maybe on the fourth or the fifth day after they had arrived, he knew that the very next day M. went to the police station to collect his passport, he is a retired police officer and he asked him what to do and where to collect his passport'*. He described *'how he saw the accused at around eight or eight thirty in the morning, while he was having coffee with his wife on the balcony, and he saw him parking in his front yard a new model of Opel Zafira, greenish, black or grey, he was not paying attention, he knew the plates were G., because the distance from his house is about 20 m or so to the house of M. and S. M.1, M. in front of the house and a short gentleman with a moustache (the accused) and he was with his brother M. for about ten minutes, he was not paying attention, that it was his brother entering the house, and at the moment when he exited again, the car that had been parked at the entrance, Opel Zafira, had already left in the direction of M4 motorway, which is where it had come from.*

A statement was also made by witness P.F, who is employed at the police station and who received the perpetrator's oral report, where he stated that he had been followed by a black car, he was unsure of the make, and that when the car caught up with him, one, two, three persons got out of the car and asked his wife for money, and she gave them the money, and one person allegedly had a pistol in the bag and shot from the bag. When asked what he did, the perpetrator said that he managed to escape. The witness registered the report in the daily log, informed his superior shift chief, who then notified the duty investigator and they proceeded with their work. H.Z. was heard as witness for the defence and she said she had known the perpetrator since the war, when they were refugees in N. and that is where they met, that she had known his wife and that they used to socialise there and visit one another. She knew that the perpetrator's wife was of different ethnicity, but she never noticed that things were not working between them, they got along, to her they seemed to be a happy couple.

The court also heard an expert witness for ballistic and mechanoscopic analyses from the Federation Police Authority Centre for Forensic Analysis and Research who stated that the autopsy found two bullets in the body of S.S., which he found to match entirely in terms of morphology, but he could not identify the weapon that inflicted the wounds that killed S.S. Another expert was heard during the main hearing, representative of the company responsible for the Media SKY video footage, who described video recordings that showed the movement of vehicles.

Following the evidentiary procedure, the court accepted all the relevant factual claims of the indictment, that the perpetrator decided jointly with his brother to kill his wife and that to that end he consciously and wilfully took actions that contributed to his wife's death, which is what he wanted, and at that, he accepted the actions of his brother M.K. as his own. The judgement provides a detailed explanation of complicity of the perpetrator and his brother. Participating in the process of deprivation of life of the perpetrator's wife, they had roles that are of great importance in the process of commission of the crime of murder, i.e. the execution of their joint plan. The judgement then states: *'such roles give the accused and his brother functional control over the crime as a whole, because if either of them, acting as a co-perpetrator, had failed to complete part of their respective tasks, as previously agreed, the crime would not have been completed, or it would not have been completed in the way the two of them had planned it. Therefore, an important and decisive feature of co-perpetration of the two of them is their shared participation in the commission of the crime referred to in this judgement. This means that subjective and objective conditions were met, it was their joint decision, or collective intent, but also the commission of actions that participate in the*

*execution of the act.*¹ The court held that video surveillance footage was of crucial importance, as it presented clearly visible images of the perpetrator's brother in his vehicle moving immediately behind the perpetrator's vehicle, which carried him and his wife, and that on the way back from the scene, first his brother's car appeared on the main road, and the perpetrator's car shortly after that, and there were no other vehicles on the road. Surveillance footage also showed that the perpetrator's brother crossed the border between BiH and Croatia immediately after the event and returned to Germany, and the perpetrator rushed to the police station and made a false report about how his wife had been killed. The crime scene report as material evidence shows which items were found on the injured party, as they are all listed, and items found included money, credit cards, gold and other valuables, and the court thus found the witness statement made by the perpetrator, that the injured party had given money to the people who had intercepted them, as unconvincing.

The criminal sanction

The first-instance court found the accused guilty of the crime of murder as defined by CC FBiH Article 166, paragraph 1 in conjunction with Article 31 and sentenced him to a prison sentence of 12 years, which includes the time spent in detention. The same judgement obliged the perpetrator to pay the cost of criminal proceedings, and pursuant to Article 212, paragraph 3 of the FBiH Criminal Procedure Code, the court referred the injured parties to civil proceedings to file their claim for damages. Upon appeal against the first-instance judgement, the FBiH Supreme Court returned the case to the first-instance court for a new trial. The second first-instance judgement was the same as the first one. The perpetrator was found guilty of the same crime and sentenced to the same prison sentence of 12 years. Deciding on appeal by the defence and the prosecutor the second-instance court dismissed both appeals and confirmed the first-instance judgement.

The court took the perpetrator's previously clean criminal record as a mitigating circumstance. In terms of aggravating circumstances, the court took into account the fact that the perpetrator, together with his brother K.M., killed his wife, the mother of his children and his spouse, the gravity of the crime, the degree of guilt of the perpetrator and the level of violation of a protected good, and found that a prison sentence of 12 years was proportional to the gravity of the crime and the degree of liability of the perpetrator, and that this sentence achieves the purpose of sanctioning as defined by CC FBiH Article 42.

Duration of criminal proceedings

In terms of criminal proceedings for the crime committed on 16 June 2015, the indictment was issued on 12 November 2015, confirmed on 13 November 2015 and amended on 15 May 2016. The first-instance judgement was delivered on 2 June 2016 and the second-instance ruling on appeal was delivered on 12 January 2017, returning the case to the same court for a new trial. The second first-instance judgement was delivered on 27 March 2017, and the second-instance one on 7 September 2017. A total of six months and 20 days elapsed from the indictment until the first first-instance judgement, one year, three months and five days from the first first-instance judgement until the second instance one, and a total of one year, nine months and 25 days from the indictment until the second-instance judgement, which means that the criminal proceedings were completed in a relatively short time.

COMMENTARY

This case of femicide is a blatant example of the consequences of a partnership based on patriarchal values and stereotypical gender roles, shared by the victim and the perpetrator. In the authors' opinion and as confirmed by results of research focused on domestic violence against women,^[84] it was such patriarchal views that prevented the victim from reporting violence, wishing to hide from the public the husband's accusations that she had 'cheated on him', believing that it is her shame and that in a patriarchal environment, the mere suspicion of infidelity expressed by her husband would lead to her being condemned by the family and the community. On the other hand, the perpetrator perceived the alleged infidelity as humiliation, which triggered in him the desire to punish her with the harshest punishment – taking her life, which he eventually did do.

[84] More on: https://journals.sagepub.com/doi/abs/10.1177/1362480615585399?journalCode=tcr;https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1186&context=csh_etd; <https://crcvc.ca/docs/victim-blaming.pdf>; <https://www.redalyc.org/pdf/172/17217456017.pdf>; <https://www.abc.net.au/everyday/reasons-why-victim-survivors-dont-report-domestic-violence/100035002>; <https://www.aljazeera.com/features/2021/10/29/how-not-to-blame-a-woman-for-being-murdered>

The perpetrator's violent behaviour towards the victim was known to members of the nuclear as well as the extended family, but it was a 'family secret' kept very carefully so that no one would know about any suspicion of the wife's infidelity, which traditional communities receive with general condemnation. The gender aspect of the crime was not examined during the proceedings, nor was the relationship between the perpetrator and the victim. Had this been done, the legal qualification of the crime could have been changed, because, in the opinion of the authors, this crime bears the elements of callous revenge, which carries a much harsher sanction than the one of 'ordinary' murder. This approach would have also included an examination of the fact that the perpetrator was member of the Roma community, where a woman's faithfulness is glorified as the most important female duty and virtue.

In this case, the court did not decide on the injured parties' claim for damages, although there was no hindrance for it to do so within the criminal proceedings. This means that the injured parties are forced to start lengthy and expensive civil proceedings, which is a practice that should be changed, as noted previously.

KEY FINDINGS AND RECOMMENDATIONS

Key Findings

- » The object of this research was the case-law of courts in Bosnia and Herzegovina in prosecuting cases of violent deprivation of life of women committed by men (femicide). The sample included criminal cases that ended in final and enforceable judgements in the time period from 1 January 2017 until 30 June 2021, related to cases of prosecuted offences committed by men, with women as victims, and qualified as follows: homicide, attempted homicide and domestic violence with a deadly outcome defined by Article 166, paragraph 1 and paragraph 2, points a) and d), Article 166, paragraph 1, in conjunction with Article 28 and Article 222, paragraph 5, in conjunction with paragraph 1 of the FBiH Criminal Code; homicide, attempted homicide, aggravated homicide defined by Article 124, paragraph 1, by Article 124, paragraph 1, in conjunction with Article 22, by Article 125, paragraph 1, point 6, Article 149, paragraph 1, point 5 of the 2017 RS Criminal Code, and attempted homicide, aggravated homicide and attempted aggravated homicide defined by Article 148, paragraph 1, in conjunction with Article 20, Article 149, paragraph 1, point 5 and Article 149, paragraph 1, point 1 of the 2003 RS CC, as well as attempted homicide defined by Article 28 of the BD BiH Criminal Code. All the cases in the sample were observed in relation to the legal qualification as femicide – deprivation of life or attempted deprivation of life of a woman by a man, since the existing legislation in the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District of Bosnia and Herzegovina does not criminalise femicide as a separate crime.
- » The research included a total of 34 court cases (26 from courts in the Federation of BiH, seven from courts in Republika Srpska, and one from courts in the Brčko District), which delivered a total of 94 first-instance and second-instance rulings: 78 first- and second-instance rulings by courts in the Federation BiH and 14 first- and second-instance rulings by courts in Republika Srpska, and one first and one second-instance ruling by courts in the Brčko District.
- » Data collected from the case files of judgements included in the research showed that in the time period from 1 January 2017 until 30 June 2021,

most crimes against women were the crimes of homicide defined by Article 166, paragraphs 1 and 2 CC FBiH and Article 124, paragraph 1 CC RS 2017, and Article 148, paragraph 1 CC RS RS 2003 – a total of 17 (34%). It should be noted that Article 166, paragraph 2 CC FBiH from point a) to point e) provides for a more serious or a qualified form of homicide, of which there four. Aggravated homicide defined by Article 125 CC RS 2017 and Article 149 CC RS 2003 and attempted aggravated homicide defined by Article 149, paragraph 1, point 1 in conjunction with Article 20 CC RS was committed in three cases. Attempted homicides were committed in 15 cases (29%), and 14 homicides and attempted homicides that merged with other crimes (robbery, causing general danger, preventing an official in the performance of official duties, unlawful possession of weapons or explosive materials, unlawful procurement, possession and trade in weapons and key components, possession of weapons unlicensed by a relevant authority).

- » Data obtained from the case files show that the perpetrators mainly committed the crimes themselves. Only in three cases, the crimes were committed with accomplices. In view of the fact that in addition to the crime of homicide, attempted homicide or aggravated homicide, perpetrators also committed other crimes, many of them merged, which certainly impacted the severity of the sentence.
- » Specific features of the crimes were observed by analysing the place of commission, the scene where the crime was committed, the time, method and instruments of commission. In the sample, according to the data available, many of the crimes were committed in urban areas – 29.4%, and only four in rural areas. However, it should be borne in mind that in most case files (58.8%), the crime scene was anonymised, and it is thus impossible to conclude reliably whether most of the crimes were committed in urban or in rural areas.
- » As for the specific scene of perpetration, it can be concluded that most of the crimes, more than one third, were committed in the victim's flat/house/yard (35.3%), confirming the result of earlier research related to domestic violence against women, showing that the most unsafe place for a woman is, in fact, her own home. It is interesting to note that as many as 20.6% of the crimes were committed at the victim's place of work, which shows considerable brazenness and callousness of the perpetrators, as well as an increased societal danger of such crimes. Quite a number of the crimes were committed in the flat/house/yard shared by the victim and the perpetrator (17.6%), which was to be expected in view of the nature of the relationship between the victims and the perpetrators (marriage, common-law marriage, an emotional relationship, kinship) and their life in a shared household. It

should be noted that no crime covered by the sample was committed in a space used only by the perpetrator (flat, house, yard).

- » As for the time of commission (season, time of day), data from the sample show no particular temporal regularity in commission in relation to the season. In terms of season, many of the crimes in the sample were committed in the summer (29.4%), the same number during spring and autumn (26.5%), whereas 17.6% of the crimes were committed in the winter. As for the time of day, the higher percentage were crimes committed during the morning – 26.4% and in the afternoon – 20.6%, and the percentage of crimes committed during the early afternoon or in the evening was the same (17.6% each). Fewer crimes were committed early in the morning (8.8%) or at night (2.9%). This shows that within this sample, the crimes were not part of the so-called 'night-time crime'.
- » The highest percentage (23.5%) was of crimes committed using several instruments in order to overcome the victim's resistance, which is a manifestation of particular brutality and cruelty of the perpetrator towards the victim. During the commission, perpetrators used firearms (hand grenade, pistol, automatic rifle – 35.3%) more than various sidearms (knife/spring knife, scalpel, hammer, metal rod, blunt object – 29,3%) or physical strength (8.8%), which may be explained by illegal possession of firearms mainly originating from the war. Most of the crimes – 23.5% were committed by the use of multiple means of commission, in order to overpower the victim's resistance, which is an expression of the perpetrator's particular brutality and cruelty towards the victim.
- » In the sample, the analyses of descriptions of the method of commission of individual crimes show that perpetrators committed the most serious crimes in various ways. In most cases, the method of commission shows immense brutality and cruelty towards the victim.
- » Most of the perpetrators were in the age groups 33-40 and 49-59 (20%), which shows equal distribution of perpetrators in the so-called 'middle age'. The youngest perpetrator was a person who had just come of legal age of 18, and the oldest was 72 at the time of commission.
- » Marital status of the perpetrators observed at the time of commission shows that most of them were married (40%), unmarried (31.4%) and divorced (17,1%). Within the category of unmarried perpetrators, a number of them had been in a short emotional relationship or partnership which did not amount to a common-law marriage. The perpetrator's marital status is linked to the relationship between the perpetrator and the victim, because most of the perpetrators were in marriage, common-law marriage, an emotional relationship or a partnership with the victim. The percentage

of divorced perpetrators (17.1%), compared with the relationship between the perpetrator and the victim, show that an escalation of violence and the worst crime may happen even after a marriage has ended.

- » Data on the number of perpetrators' children in the sample show that there was an equal number of perpetrators who were with no children or with two children at the time of commission (10 – 28.6%). It should be noted that of the total number of children (67), 15 were minors (22.4%), which confirms, inter alia, that children are exposed to domestic violence and loss of a parent in their formative age, but also that there is pronounced danger of trans-generational transmission of violence, which is why it is necessary for preventive action and prevention of gender-based violence to be one of the key policy priorities of the state.
- » The sample did not include perpetrators with no education or with higher education or above. Most of the perpetrators, 45.7%, were with secondary education, which shows that in the cases examined, the level of education was not a decisive element in the decision to commit the crime. On the basis of these finding, it can also be concluded that perpetrators covered by the sample were not uneducated individuals and that the average level of education was not a factor of prevention of the crime.
- » At the time of commission, perpetrators were from different walks of life. Most of them were labourers (unskilled worker, manual labourer, builder, house painter, carpenter, metal worker, etc.), and two of them were with no occupation, which certainly corresponds to the level of education of the perpetrators. Police officers were also present among the perpetrators (two cases) and they committed the crime using their service weapon or the weapon they owned and carried at all times.
- » Almost one half of the perpetrators were unemployed (48.6%), followed by pensioners (17.1%), and 14.3% were employed. The judgements noted that eight perpetrators were 'indigent'.
- » Most of the perpetrators had no previous convictions – 21 (60%). There were 14 (40%) with earlier criminal convictions. Specifically, those with previous convictions were sanctioned for numerous crimes: one was convicted previously for 39 different crimes, one for 11, one for 7, one for 8, showing that a number of them fall into the category of the so-called 'frequently convicted persons', but earlier convictions had no effect on them in terms of prevention and resocialisation.
- » Perpetrators had previous convictions for different crimes, predominantly related to property (theft, robbery), but also for light or serious physical injuries, violent behaviour, threat to security unlawful manufacturing and trading in opiates. One perpetrator was convicted six times for robbery,

light or serious physical injuries, violent behaviour and attempted homicide. It can thus be concluded that although the sample included a small number of persons with previous convictions, in view of the large number of crimes committed previously by each perpetrator individually, this is a category of perpetrators whose delinquent behaviour prior to the most serious crime was an increased threat to society.

- » Judgements do not include information regarding the perpetrator's primary family, whether it was complete or not, and relationships within the family the perpetrator came from. This shows that court proceedings rarely examine facts related to earlier family life and behaviour of the perpetrator prior to the commission of the crime.
- » A large number of perpetrators were not under the influence of alcohol at the time of commission –27 (77.1%). No case established that the perpetrators were under the influence of drugs at the time of commission.
- » The most frequent relationship between the perpetrator and the victim is emotional, partnership or family. Only in two cases the perpetrator did not know the victim, and in all other cases the victim and the perpetrator knew one another (the perpetrator was an acquaintance, a colleague, a neighbour) or there was a marriage or a common-law marriage, an emotional relationship or kinship.
- » Looking into the mental capacity of the perpetrators included in the sample, the court found that most of them were with full mental capacity - 18 (51.4%). Nine perpetrators (25.7%) had diminished capacity, but not to a significant level. Whereas six perpetrators (17.1%) were found to be with significantly diminished capacity, which impacted their sentencing. Only in one case (2.9%) the court found that the perpetrator committed the homicide in a state of no mental competence, i.e. that at the time of commission he was unable to understand the significance of his actions or to control them.
- » Most of the perpetrators committed the crime with intent. For seven perpetrators (20%), the court established the existence of intent with no determination of the form of intent. In most cases - 23 (68.6%), perpetrators acted with direct intent, i.e. they were aware of their actions and they wanted to execute them, only two perpetrators (5.7) acted with oblique intent and one perpetrator (2.9%) with advertent neglect (2,9%).
- » Ten perpetrators (28.5%) confessed fully to the crime cited in the indictment, seven (20%) did not confess to the crime they were charged with in the indictment, but only to the commission of a milder crime, and 17 perpetrators (48%) never confessed to the crime they were charged with in the indictment. Those who never confessed include those who showed

remorse, but not because of their own guilty conscience, but because the tragic event happened.

- » Judgements usually do not include the court's findings regarding motives for the crime. It can be noted in the reasoning of the judgements that the most frequent motives were jealousy, revenge for termination of an emotional relationship, unrequited love, termination of an emotional relationship/marriage/common-law marriage, disciplinary proceedings against the perpetrator, the perpetrator's dissatisfaction in the exercise of rights related to pension, long-term tensions in the family, personal gain.
- » There were 37 victims in the sample. It was impossible to determine the exact profile of the victims, as there is almost no information about these women in the judgements. The data absent from the judgements is primarily related to the age of the victim, marital status, number of children, education, occupation, employment status, relationship with the perpetrator prior to commission of the crime, communication with institutions regarding earlier violence, etc. Crimes that remained attempted provide some information about the victim from her testimony, but this is mainly related to the description of the event itself, circumstances of commission of the crime and behaviour of the perpetrators. In very few cases, when evaluating the credibility of the claims presented by the defence, the court assessed the behaviour of the victim and her contribution to the commission of the crime.
- » Data contained in the judgements do not allow for conclusions to be made regarding the dominant age of the victims, because there was no data on the age of 35 victims. In several cases the court noted that they were elderly, but without providing the exact age. It is similar with the marital status of the victims at the time of commission – 17 cases provided no information. According to information available in other cases, most of the victims were married (8 – 21.6%). In quite a number of cases (23 or 62.1%) there was no information on the number of children. According to the available information, most of the victims had three or two children. Out of six children of one victim, only one was of legal age.
- » Most judgements provide no information on the occupation of the victims (29 – 78.4%). From the information available, it can be concluded that victims, just like the perpetrators, were of different professions and occupations (an administrative worker, a headmistress, a teacher, a housewife, a pensioner, a singer, a lawyer) and that all women are exposed to the worst forms of violence, irrespective of their education, occupation or employment status. Information on education was provided by judgements for only three victims (3 – 8.1%), but in most other judgements (91.9%) this information was not provided at all. Information on the employment status

of the victims is not included in most of the judgements (26 -70.3%). Due to this lack of data, there can be no reliable conclusion if most of the victims were employed at the time of commission of the crime.

- » The most frequent relationship between the victim and the perpetrator was that of marriage, common-law marriage, partnership, kinship or being neighbours. Only two victims did not know the perpetrator, and in all other cases the victim and the perpetrator did know one another or there was an earlier emotional relationship or a relationship of trust.
- » Very few judgements refer to the type of relationship between the victim and the perpetrator prior to the crime. The fact that courts mainly do not examine those relationships prior to the crime shows a clear lack of a gender-based approach to examining violence and murder of women, as the most serious form of gender-based violence against women.
- » When deciding on the severity of the criminal sanction, the court considered both the mitigating and the aggravating circumstances of relevance for the type and duration of the sanction. For example, mitigating circumstances considered by the court were a confession, the fact that by confessing the perpetrator contributed to faster, more efficient and more economical completion of the criminal proceedings, expressed remorse, family situation: married (a family man); number of children father of two or more (eight); family situation related to the primary family: growing up without a mother and parental love, tenderness and care, financial status: poverty; unemployment, the perpetrator's age: a young person of legal age, an elderly person (older than 60 or 70) etc. The most frequent aggravating circumstances considered by the court were: previous convictions, previous commission of crimes with elements of violence, previous convictions for crimes of domestic violence, ruthlessness in the infliction of physical injuries, persistence, determination, the injured party was a wife and a mother, the degree of guilt, the act was committed in relation to an elderly person who was his neighbour and his parents' friend, circumstances of commission of the crime, etc.
- » Except for one, where the perpetrator was found to be mentally incompetent, all the judgements were convictions. The following sanctions were delivered: prison sentence, prison sentence with a security measure of confiscation of items used in the commission of the crime, long-term prison sentence, long-term prison sentence and a security measure of confiscation of items, prison sentence and a security measure of mandatory treatment in a psychiatric institution. Most numerous were prison sentences and security measure of confiscation of items – 51.4% and prison sentences – 37.1%. With long-term prison sentences delivered in two cases, it is obvious that

prison sentences and long-term prison sentences were the dominant form of criminal sanction in the sample – 34 (97.2%), which is understandable, as these are the most serious crimes.

- » As for the duration of proceedings, in most cases there was a very short period of time between the indictment and the first-instance judgement (just 13 days in one case), which shows considerable efficiency in this part of the criminal proceedings. It should be borne in mind that in 10 cases the perpetrators confessed the crime, which certainly led to a shorter evidentiary procedure, and thus shorter criminal proceedings. In most cases, between one and two years elapsed between the indictment and the second-instance judgement (17), and in two cases less than a year elapsed between the indictment and the second-instance judgement, which also shows that criminal proceedings were efficient.
- » Although there is a legal possibility to decide on claims for damages filed by the injured parties (the victim's children, parents, and other family members) within the criminal proceedings, as a rule, courts opt for resolving claims for damages by referring the injured parties to civil proceedings, thus exposing them to expenses, a waste of time and additional trauma.

Recommendations for Prevention of Femicide

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. The text below presents recommendations for the prevention of femicide, related to society as a whole, as the problem of femicide is not a problem of a single system, but a problem faced by numerous societies, including Bosnia and Herzegovina.

- » It is necessary first to define femicide, and then to follow the incidence of femicide, on the basis of official statistics. Also, it is necessary to formally mark and publicize cases of femicide and suicide, and avoid the use of the general term 'homicide' to denote 'femicide', pursuant to recommendations by the UN Special Rapporteur for violence against women, its causes and consequences.
- » For cases of femicide to be adequately investigated, prosecuted and sanctioned, incrimination of femicide needs to be considered as a separate criminal offence against life and limb, or a special form of aggravated murder.

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. This crime should include all gender-motivated murders of women, including transsexual and transgender women. Another possible approach is for gender-motivated murder of women to be criminalised as a form of aggravated murder of women by men within the context of gender-based violence and murder of women because they are women. Criminalisation of the crime of gender-based violence should be fully harmonised with definitions contained in the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence.

- » For investigations and indictments to be effective, and for sanctions to be proportional 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 competent authorities and institutions in processing femicide.
- » It is necessary to strengthen the capacities of institutions of criminal justice to investigate, prosecute and sanction perpetrators of gender-based violence, through training programmes for professionals in social, healthcare and education institutions, and through awareness raising campaigns, in order to overcome gender stereotypes and institutional sexism, using experience from comparable legal systems. Judicial training centres should include topics related to effective prosecution of gender-based violence in the mandatory training for judges and prosecutors.
- » When prosecuting femicide, it should not be seen as an isolated event, but rather take into account the specificity of the context where it happened and the history of violence. This means a detailed examination of the history of violence, earlier life and relationships between victims and perpetrators, with expert assessments of the perpetrators' personality, their misogynous views etc. 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, with analysis of the significance of the violent perpetrator's physical superiority over the victim and the existence of inequality of power. The defence tactics based on allegedly decisive contribution of the victim to the actual commission of the crime of femicide, by failing to report earlier violence or to leave the violent man, by starting a relationship with a new partner, etc., needs to be critically examined.
- » In collaboration with the highest courts in the country, prepare a manual/guideline on prosecuting femicide, i.e., gender-based murders of women, indicating the shortcomings observed in the current case-law (information

on the victim, previous violence, mitigating and aggravating circumstances, scope of the sanction, decision on claims for damages within criminal proceedings etc).

- » It is necessary to adopt a strategic document or an action plan that sets an integral policy and an adequate system of measures for preventing violence against women and securing effective and efficient protection and support for women who experienced any form of gender-based violence. It is particularly important to establish effective measures for early identification of violence against women that may lead to femicide.
- » Security and protection from violence with a deadly outcome should be improved, and deadly risks for women should be reduced, by introducing simple, efficient and rapid response methods through SOS phonedlines, safe houses, reception centres and shelters for women, as well as by taking other measures of support and assistance, which should not depend on whether criminal proceedings have been initiated or not.
- » It would be good to analyse legislation related to weapons possession from a gender perspective, and integrate a gender perspective into legislation on possession and use of firearms, including introduction of restrictions of ownership and possession of firearms, particularly in situations where violence against women has been recorded, and implement awareness raising campaigns on risks related to the use of firearms in family disputes. It would also be good to analyse case-law related to cases of violence against women with the use of firearms, including femicide and attempted femicide.
- » It is necessary to secure the implementation of adequate programmes for working with perpetrators of domestic violence and violence against women, as well as treatment, reintegration and rehabilitation programmes for perpetrators of femicide in penitentiary institutions.
- » Use education and campaigns to build awareness of the necessity to report knowledge and/or suspicion of domestic violence, by professionals within institutions of the system (healthcare professionals, social welfare and education professionals) who have a legal obligation to do so, but also by family members, neighbours and private citizens.
- » Undertake measures to improve the awareness of women themselves of their rights, ensure that women enjoy equal protection pursuant to the law and equal access to justice, including legal aid and language services.
- » In order to prevent femicide successfully, support is needed for research and data collection on gender-based violence against women, including violence in the context of family and partnership, trafficking in women and femicide, and on the links between gender-based murders of women

and different forms of violence against women. Research should ensure collection and analysis of qualitative and quantitative data on gender-based violence against women, particularly femicide, focusing on the data on age, racial or ethnic background, criminal history of the perpetrator, relationship between the victim and the perpetrator, motives, as well as indirect forms of gender-based murders (death caused by poorly performed illegal abortion; deaths of women related to trafficking in human beings, drug trafficking and organised crime, deaths of girls due to neglect, starvation or abuse).

- » Particular attention should be focused on victims and family members who want to cooperate in the investigation. Special protection should be provided for child witnesses, by developing specialised services of psychological support, adapted to the age and needs of the children. It is particularly important to advance the position of the injured parties in criminal proceedings and decide on their claims for damages within the criminal proceedings, in order to avoid their additional traumatisation.
- » Multi-sectoral cooperation should be advanced in the field of prevention and combatting all forms of gender-based violence against women and the provision of services to the victims, including specialised services provided by civil society organisations.
- » It is necessary to build further the capacities of professionals who work in social protection institutions, police and prosecutors' offices, to identify and assess the specific risks of femicide. Analyses of the risk factors and possible preventive action should focus particularly on the prosecuted cases of attempted murder.
- » Establish an adequate methodology for continuous monitoring and evaluation of efficiency and effectiveness of work of all the relevant actors, with active participation by women's civil society organisations.

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