

SUMMER SCHOOL „Law and Gender“

Assist. Prof. Dr Ivana Marković

July 3, 2024

<http://www.free-law-university-of-belgrade.com>
University of Belgrade, Faculty of Law



Topics

01 Femicide as a Separate Criminal Offence – *pro et contra*

- Introduction
- Classifications (Types)
- Definitions
- Arguments *pro et contra*
- Legal Regulations

02 Reflections of Gender in Criminal Law – Analysis of (Femicide) Cases & Statistics/estimates


- Mexico
- Georgia
- Albania
- Bosnia and Hercegovina
- Serbia



1. What is femicide?




2. How many European countries have specific legal regulations on femicide?



3. When was the first specific crime of femicide introduced (Europe)?

The background of the slide features abstract, flowing, and overlapping lines in shades of purple and blue, creating a sense of movement and depth. These lines are set against a plain white background.

4. What are the reasons *pro*? Why should femicide be a specific crime?

The background of the slide features abstract, flowing, and overlapping lines in shades of purple and blue, creating a sense of movement and depth. These lines are set against a plain white background.

5. What are the reasons *contra*? Why should femicide not be a specific crime?



**1. FEMICIDE AS A SEPARATE CRIMINAL
OFFENCE – *PRO ET CONTRA***

INTRODUCTION - TYPES OF FEMICIDE

Introduction

Types:

1) Intimate

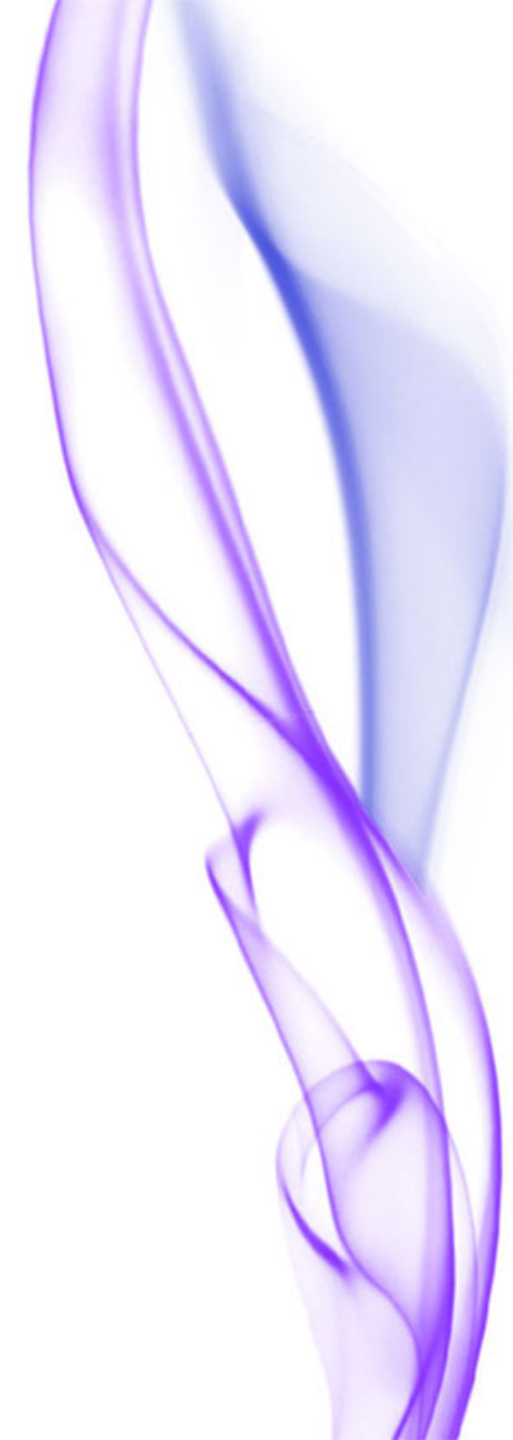
- Perpetrator (i.e. a current or ex-husband/boyfriend, same-sex partner or a **rejected would-be lover**)
- Ratio men/women
- Preferences
- Broader impact

2) Cultural

- Honour killings
- Dowry killings

3) Non-Intimate

- Perpetrator (i.e. stranger, **family member**, acquaintance etc.)



DEFINITION

Evolution of the term

Diana Russell (1976):

"We must realize that a lot of homicide is femicide. We must recognize the sexual politics of murder. From the burning of witches in the past, to the more recent widespread custom of female infanticide in many societies, to the killing of women for 'honor,' we realize that femicide has been going on a long time. But since it involves mere females, there was no name for it."

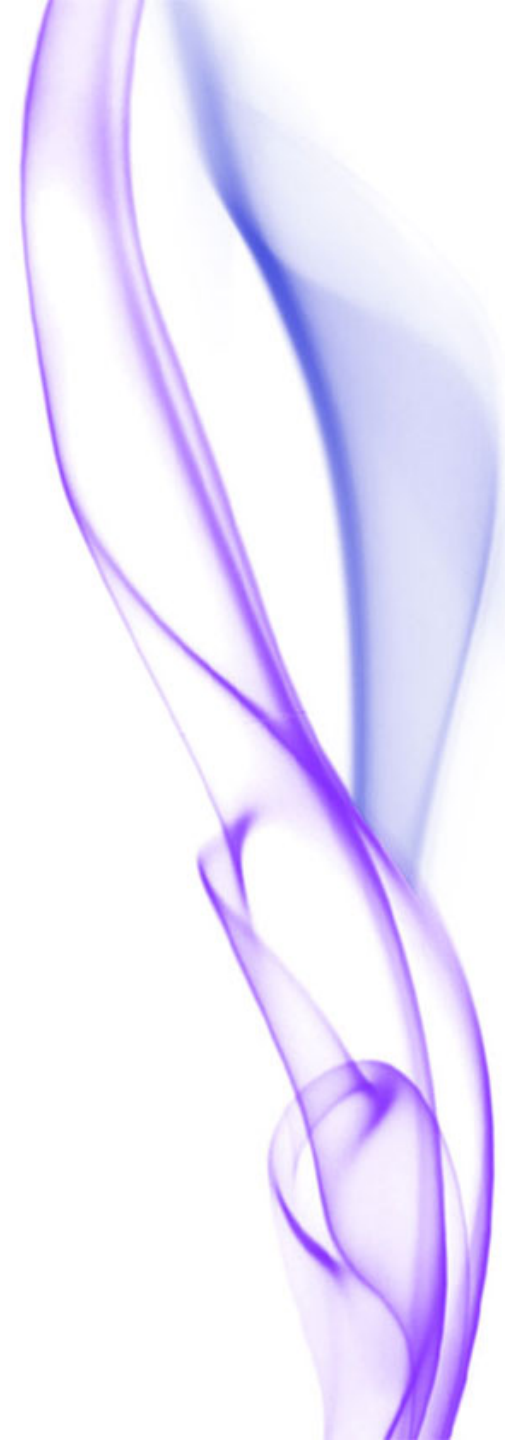


DEFINITIONS OF FEMICIDE

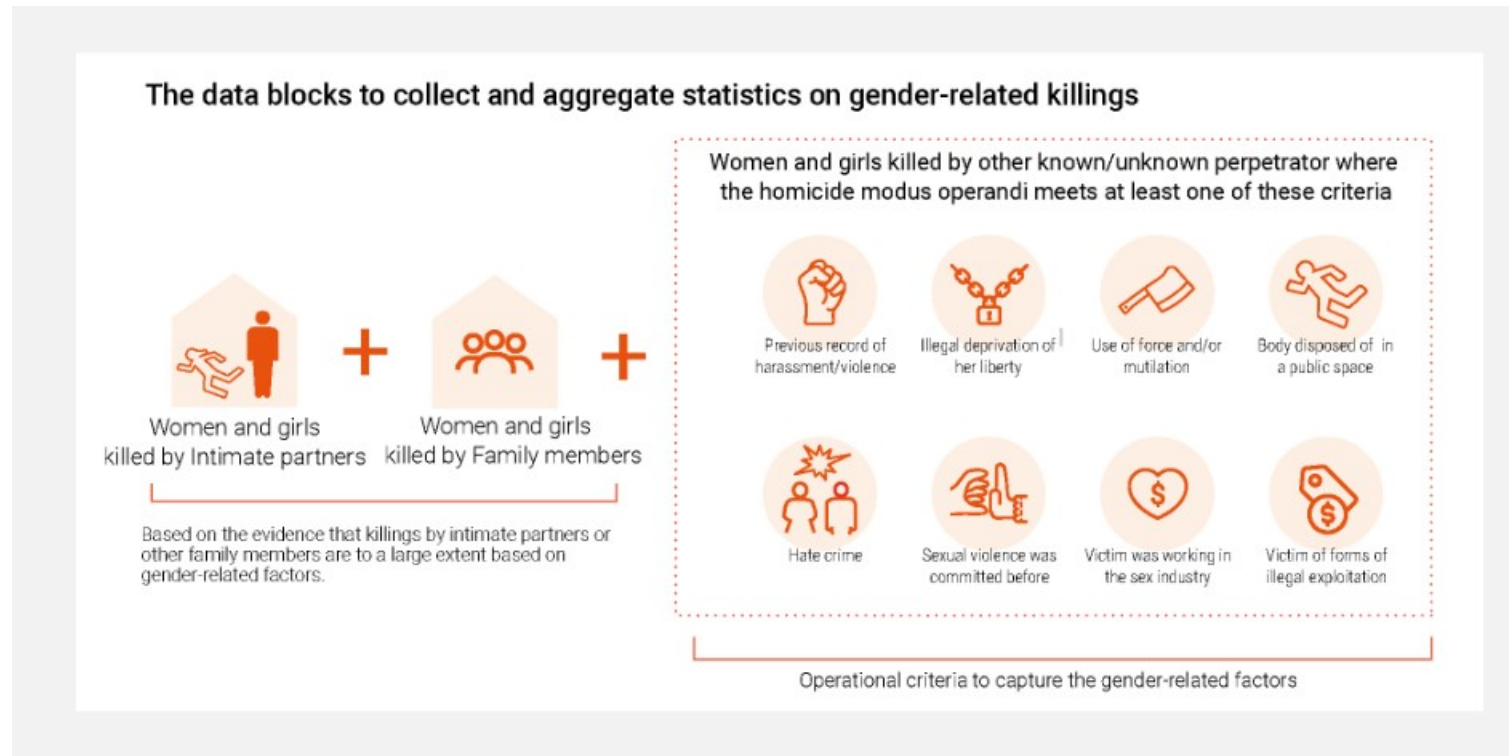
UN Vienna Declaration on Femicide (2013):

Femicide = **the killing of women and girls because of their gender**, which can take the form of, inter alia:

- (1) the murder of women as a result of intimate partner violence;
- (2) the torture and misogynist slaying of women
- (3) killing of women and girls in the name of “honour”;
- (4) targeted killing of women and girls in the context of armed conflict;
- (5) dowry-related killings of women;
- (6) killing of women and girls because of their sexual orientation and gender identity;
- (7) the killing of aboriginal and indigenous women and girls because of their gender;
- (8) female infanticide and gender-based sex selection foeticide;
- (9) genital mutilation related deaths;
- (10) accusations of witchcraft; and
- (11) other femicides connected with gangs, organized crime, drug dealers, human trafficking and the proliferation of small arms.



STATISTICAL FRAMEWORK (UN Women)



ARGUMENTS *PRO*

- Recognizing and making **visible** the particularity of the crime, as a gender-based violence (also: **symbolic effect**)
- **Simplifies** the application of legal provisions, legislatively speaking easier and **normatively clearer** way for stricter sentencing **than to rely on the judge to use it as an aggravating circumstance**
- Avoiding **misqualification** of the crime
- Introduction into **statistics** (reported/accused/convicted)
- Acknowledgement of the **numerous risk factors** (pregnancy, expected gender roles, etc.)
- Acknowledgement that women are **disproportionately affected** by gender-based violence
- Contributes to **creating specific measures** and **plans to prevent** femicide
- Need of the **judicial practice** to deal with this issue (to develop case law, to “learn” to interpret the elements of crime, etc.)
- Increases **trust in the justice sector** and **increases reports** to the police by victims
- Otherwise **no deterring effect** (maintaining further perpetuation of subordination of women)



ARGUMENTS CONTRA

- **Situational crime / result of a constant abuse**
- Already covered **by other incriminations or other provisions** (e.g. aggravating circumstance – motive), Serbia: Art. 54a CC
- Criticism of **symbolic criminal law** (= argument is both pro et contra)
- (Righteous) **expectations of other groups for special treatment** (e.g. journalists, teachers, old people, etc.)
- **Fragmentation of Criminal Law**, problems to differ **from other crimes/crime categories (e.g. hate crimes)**
- **Classification/hierarchy of victims** (some victims have become specifically visible, but not only that – higher sentence = they value more)
- **Can women be perpetrators as well?** If rooted in unequal structures of power between men and women, then no. If interpreted without this, purely normative, then yes.
- Potential conflict with the **legality principle** of criminal law (segment of certainty!)
- If we reduce it to subordination of women, then girls and female babies would be excluded.
- Next step: **differentiation between babies/children based on sex**
- **“Criminal Law does not know neither sex, nor gender” – everything is gender neutral.** 4 elements of crime





Legal Regulations



Belgium

2023 (Stop Femicide Law), 4 types of femicide



Malta

June 2022



Cyprus

July 2022



North Macedonia

March 2023

Legal Regulations - CROATIA

Art. 87 (32): Gender-based violence

„Gender-based violence against women means violence **directed at a woman because she is a woman** or **that disproportionately affects women**. Such behavior will be considered **an aggravating circumstance** if this Law does not expressly prescribe a more severe punishment.“

Art. 111a Aggravated Murder of a Female Person

„(1) Whoever commits **gender-based murder of a female person** shall be punished by a prison sentence of **at least ten years or a long-term prison sentence**.

(2) When establishing the criminal offense referred to in paragraph 1 of this article, it will be taken into account that the offense was committed **against a close person**, a person whom the perpetrator has **previously abused, a vulnerable person**, a person who is **in a relationship of subordination or dependence**, or the offense is committed in circumstances of **sexual violence** or because of a **relationship that puts women in an unequal position** or that there are **other circumstances** that indicate that it is **gender-based violence**."



Legal Regulations - SERBIA

Art. 114 CC Aggravated Murder

(1) The following shall be punished by imprisonment of ten years or a life sentence:

- 1) Causes death of another in a cruel or insidious manner;
- 2) Causes death of another by **callous violent behaviour**;
- 3) Causes death of another and with premeditation endangers the life of other person;
- 5) Causes death of another for gain, to commit or conceal another offence, from **callous revenge or other base motives**;
- 9) Causes death of a child or **pregnant woman**;
- 10) Causes death of **a member of his family whom he previously abused**;
- 11) With premeditation causes death of several persons, and this not being a case of manslaughter in a heat of passion, infanticide or causes death from mercy.

Art. 194 (4) CC Domestic Violence

(1) Whoever by use of violence, threat of attacks against life or body, insolent or ruthless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his family, shall be punished with imprisonment of three months to three years.

(4) If the offence specified in paragraphs 1 and 2 of this Article results in **death of a family member**, the offender shall be punished with imprisonment of **five to fifteen years**, and if a family member is a minor, the offender shall be punished by imprisonment of at least ten years.



Legal Regulations - SERBIA

Sentencing



Aggravating Circumstance, Art. 54 (1) CC

The court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, **the motives for committing the offence**, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, **the past life of the offender, his personal situation, his behaviour after the commission** of the criminal offence and particularly **his attitude towards the victim of the criminal offence**, and other circumstances related to the personality of the offender.



Special Circumstance for Determining a Punishment for a Criminal Offence Committed in Hatred, Art. 54a CC

If a criminal offence was committed in hatred, due to race, religion, national or ethnic origin, **sex**, sexual orientation or gender identity of another person, the court shall consider such circumstance as an **aggravating circumstance**, unless it is prescribed as an element of the criminal offence.

Legal Regulations - SERBIA

Sentencing

... in practice:

a) „**family man**“ as an extenuating circumstance

a) judicial ground for **mitigating the penalty**

Art. 56 (3) CC: „The court finds that particularly mitigating circumstances exist indicating that the purpose of punishment may be achieved by a mitigated penalty.“

c) qualification **as murder** or **as manslaughter in the heat of passion**





2. REFLECTIONS OF GENDER IN CRIMINAL LAW – ANALYSIS OF (FEMICIDE) CASES & STATISTICS/ESTIMATES



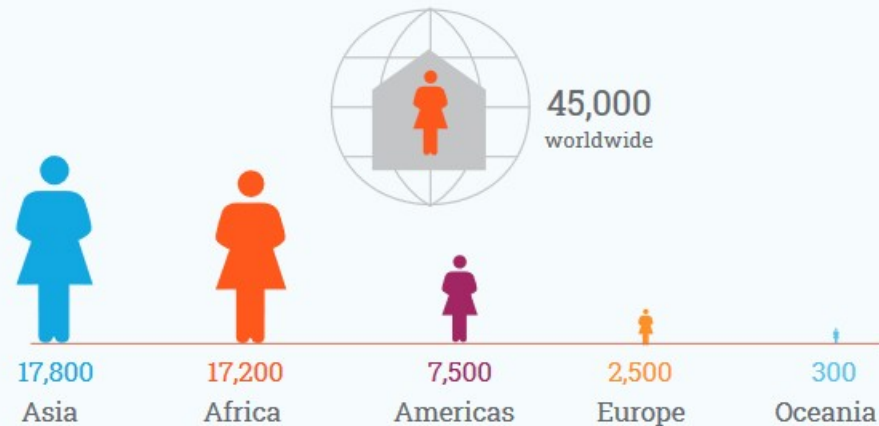
STATISTICS/GLOBAL ESTIMATES

GLOBAL ESTIMATES (UNODC, 2022)

Global estimates

Women and girls in all regions are affected by gender-based killings. While Asia is the region with the largest absolute number of killings, Africa is the region with the highest level of violence relative to the size of its female population.

Total female intimate partner/family-related homicides
2021



GLOBAL ESTIMATES

Total number of women killed by intimate partners or other family members

In 2021, around 45,000 women and girls worldwide were killed by their intimate partners or other family members. This means that, on average, more than five women or girls are killed every hour by someone in their own family.



45,000
worldwide

More than
5



women or girls are killed
every hour by someone in
their own family



GLOBAL ESTIMATES

Gender dimension of homicide

While the overwhelming majority of male homicides occur outside the private sphere, for women and girls the most dangerous place is the home.

Male and female share of homicide victims
2021



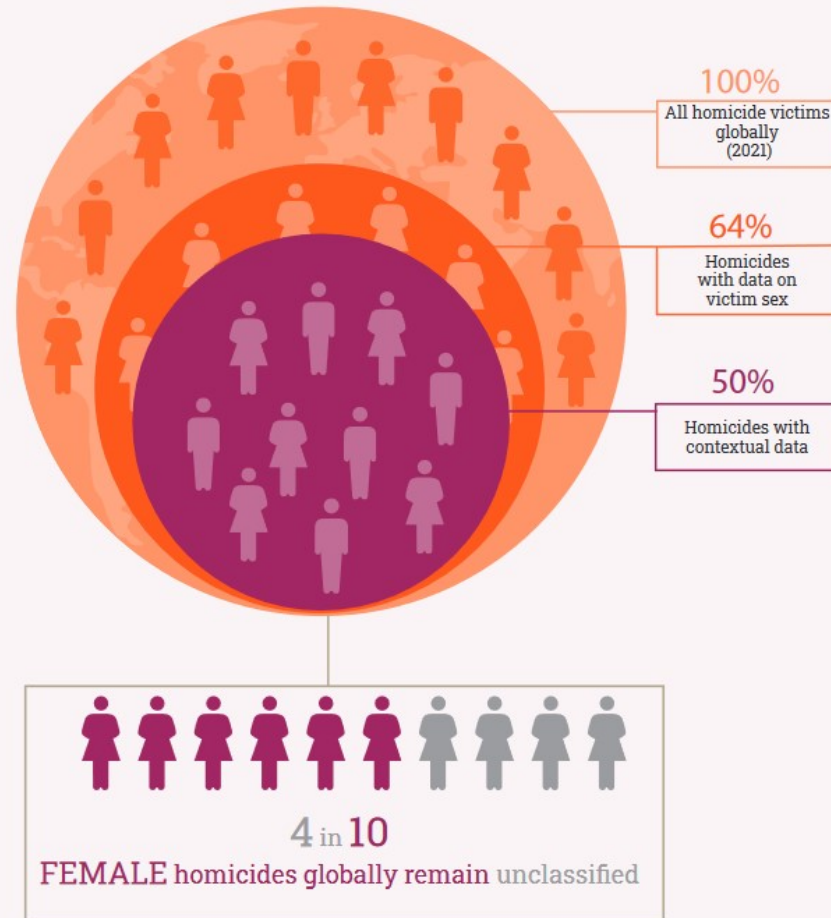
Share of male and female homicide victims killed by intimate partners/family members
2021



GLOBAL ESTIMATES

Many gender-related killings are not identified and counted

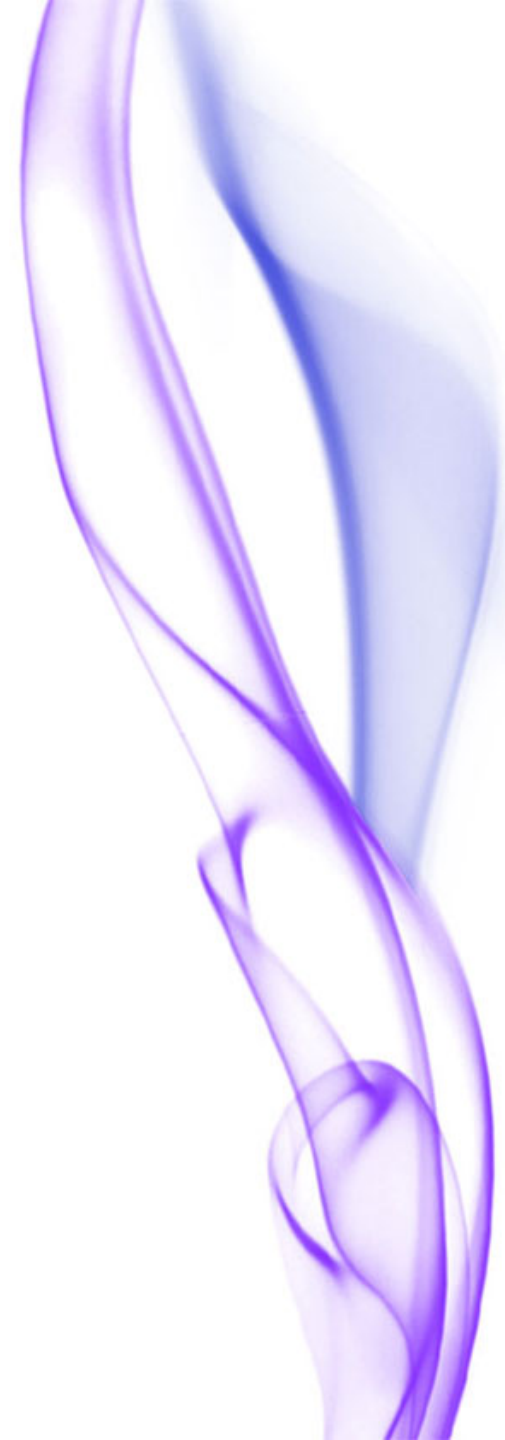
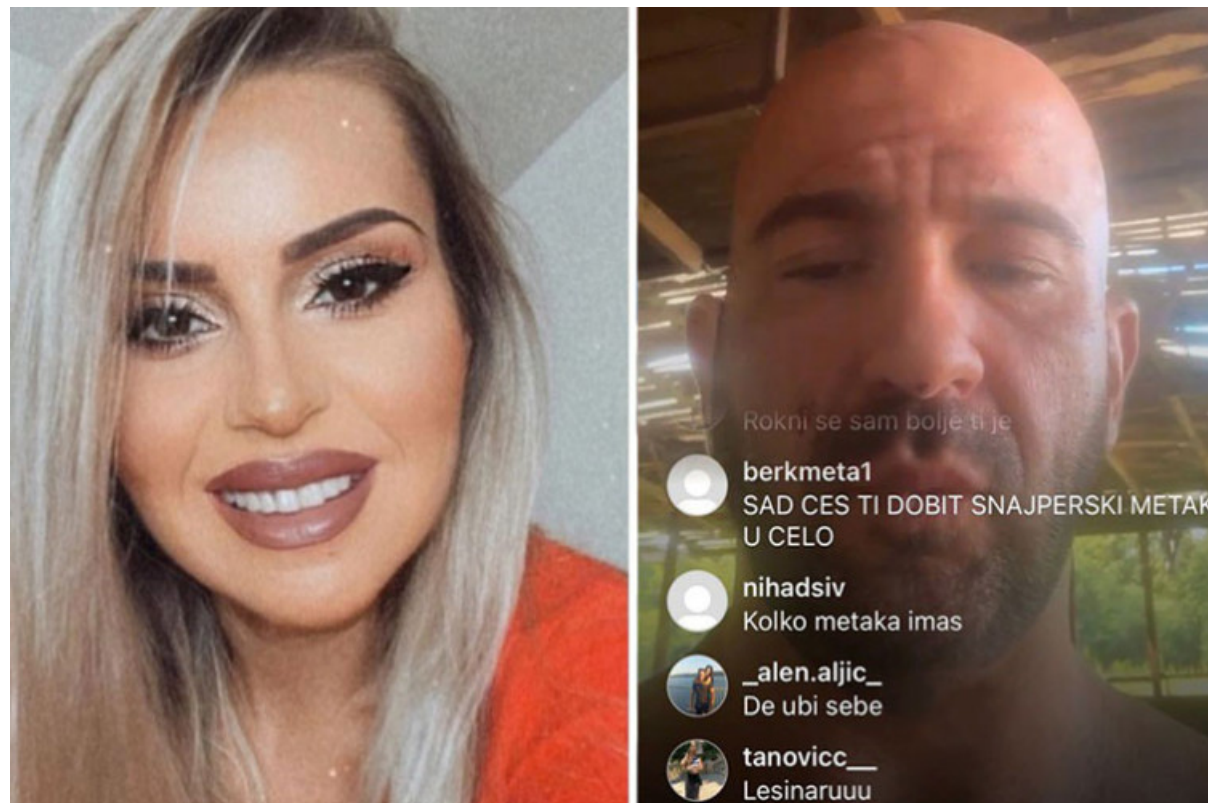
Four out of ten female homicides in 2021 had no contextual data that would allow for them to be classified as gender-related killings.



CUIDAD DE JUÁREZ – the capital of femicide



Example from Bosnia:



Cases:

Tkhelidze v. Georgia (2021):

- Failure of law-enforcement authorities to take preventive action to protect murdered domestic violence victim, against backdrop of systemic failures and gender-based discrimination (Art. 2)
- Failure to effectively investigate inaction (Art. 14)

“The **inactivity** of the domestic law-enforcement authorities, in particular the police, had been even more unforgivable when assessed against the fact that, in general, violence against women, including domestic violence, had been reported to be **a major systemic problem affecting society** in the country at the material time. The domestic authorities responsible **thus had known or should have known of the gravity** of the situation affecting many women in the country and **should have shown particular diligence and provided heightened State protection** to vulnerable members of that group. In the light of the foregoing, the Court could only conclude that **the general and discriminatory passivity** of the law-enforcement authorities in the face of allegations of domestic violence such as the present case had created **a climate conducive to a further proliferation of violence committed against women**. That being so, the respondent State’s failure to take preventive operational measures had undermined the rights of the applicant and her daughter to **equal protection before the law**.”

Cases:

Tërshana v. Albania (2020):

Art 2 (substantive) • Existence of an effective criminal-law framework • Risk to applicant's life, by suspected former husband, not being brought to attention of authorities before attack

Art 2 (procedural) • Effective investigation • Court having regard to general situation of violence against women in Albania • Ineffectual approach to violence against women by law-enforcement officials • Obligation on the part of the investigative authorities to react with special diligence in conducting a thorough investigation • Failure to carry out with due expedition and determination investigative measure of crucial importance

„150. The Court observes at the outset that the facts of the case concern **a serious acid attack on the applicant perpetrated by an unidentified individual**. At the relevant time, the Criminal Code provided for a number of offences committed against a person's life or health. These offences, including that provided for in Article 88 of the Code, under which the prosecutor opened the criminal investigation into the acid attack, are subject to investigation **by the prosecutor of his own motion**. The Court notes, although not relevant to the present case, that, following legislative amendments in 2012 and 2013, the Criminal Code contains **specific provisions proscribing domestic violence and battery**, and criminalising **as an aggravating circumstance** the commission of another offence during or after a court protection order given in relation to the occurrence of domestic violence.”

Cases:

Tërshana v. Albania (2020):

„156. The Court notes that, since at least 2003, international reports in respect of Albania have repeatedly pointed out the high prevalence of violence against women. Moreover, the national reports lend support to the view that between 2007 and 2013 violence against women was **a widespread problem**. Between 2006 and 2012 the international reports further noted that violence against women was **under-reported, under-investigated, under-prosecuted and under-sentenced**. They suggested that the police and prosecuting authorities manifested an **ineffectual approach to violence against women on the grounds of “social attitude and cultural values”** and that **a climate of leniency or impunity** prevailed towards perpetrators of violence against women. In its 2010 Concluding Observations, the CEDAW Committee recommended, among other things, that “public officials, especially law enforcement officials [and] members of the judiciary” become fully **“sensitized to all forms of violence against women”**. In the light of the foregoing, the Court considers that, at the time of the attack, there existed prima facie **a general climate in Albania that was conducive to violence against women**. Moreover, the **2017 GREVIO evaluation report** noted that domestic violence **exceeded “all other crimes as the criminal offence with the largest number of victims”**.

157. Where an attack happens in a general climate as described above, **the investigation assumes even greater importance** and the investigative authorities **should be more diligent** in conducting a thorough investigation, in order to secure the effective implementation of the domestic laws which protect the right to life. Such diligence to investigate, among other things, an acid attack – which, according to the CEDAW Committee and other reports, **may be a practice of “gender-based violence” against women** – has been reiterated in General Recommendation no. 19, according to which “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

Cases:

Tërshana v. Albania (2020):

„159. In this regard, it is difficult for the Court to accept that an investigative measure of crucial importance for the case, namely an expert report to enable the identification of the substance used to attack the applicant, was not carried out with due expedition and determination. It is up to the domestic authorities to sort out the issues of competence or to establish specialised institutions to carry out such procedural steps which are decisive for the progress of the investigation and to meet the procedural obligations under Article 2 of the Convention.

160. The Court considers that the circumstances of the attack on the applicant – which has the hallmarks of a form of gender-based violence – should have incited the authorities **to react with special diligence** in carrying out the investigative measures. **Whenever there is a suspicion that an attack might be gender-motivated, it is particularly important that the investigation is pursued with vigour.**”



SERBIA

Deaths by violent death, by the origin of violent death, sex and age

Get link

Download in Excel

PeriodAge groupsGender																							
Indicator				Period	2023																		
				Age groups	Total		0-4		5-9		10-14		15-19		20-24		25-29		30-34		35-39		40-44
				Gender	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Territory - RPJ																							
Violent death																							
Indicator	Territory - RPJ	Violent death																					
Deaths, by violent death, by the origin of violent death, sex and age [number]	Republic of Serbia	Total		1673	662	13	2	4	...	14	9	33	14	52	5	59	10	66	17	85	21	95	
		Accidents		910	343	11	2	2	...	8	1	15	9	29	1	34	3	37	8	44	9	48	
		Suicides		496	172	...	...	...	...	1	...	10	2	12	1	16	4	22	7	32	10	37	
		Murder		57	36	2	...	1	...	3	8	5	2	7	1	3	1	3	...	4	1	3	
		Other		210	111	...	...	1	...	2	...	3	1	4	2	6	2	4	2	5	1	7	

Deaths by violent death, by the origin of violent death, sex and age

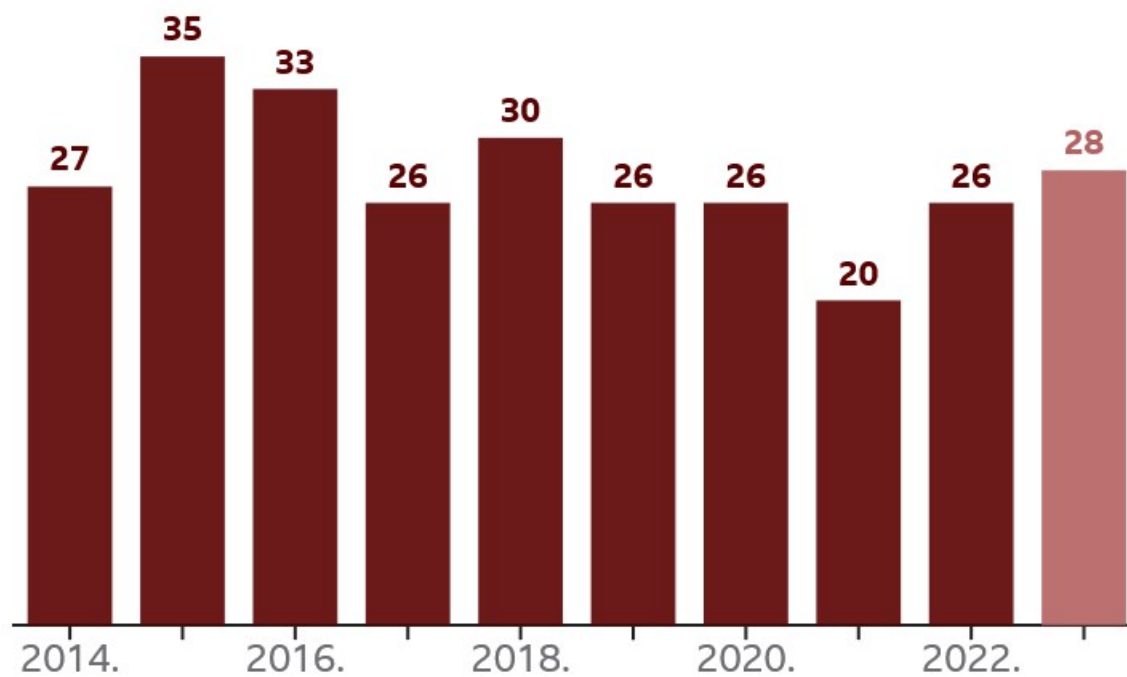
Get link

Download in Excel

	25-29		30-34		35-39		40-44		45-49		50-54		55-59		60-64		65-69		70-74		75-79		80 and more		Unknown			
Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
5	59	10	66	17	85	21	95	24	127	30	119	33	141	39	162	48	172	68	163	73	127	70	229	199	12	...		
1	34	3	37	8	44	9	48	7	67	13	62	9	69	19	90	20	92	31	95	42	69	40	126	129	12	...		
1	16	4	22	7	32	10	37	14	46	12	40	16	49	10	50	17	50	26	43	15	29	16	59	22	...	...
1	3	1	3	...	4	1	3	2	4	2	5	3	5	2	3	3	3	1	2	2	4	3	...	5	...	...
2	6	2	4	2	5	1	7	1	10	3	12	5	18	8	19	8	27	10	23	14	25	11	44	43	...	...

Broj femicida u Srbiji

u poslednjih 10 godina



Izvori: Monitoring Autonomnog ženskog centra (AŽC)

2014-2022, Femplatz

*zaključno sa 5. 12. 2023. u 12č

B B C

Women, mothers, girls: **Victims of femicide** in Serbia

Data from verdicts between the beginning of 2014 and the end of 2022; click on a field for more details

👤 wife / common-law wife / girlfriend / partner 👤 mother 👤 ex-wife/girlfriend 👤 neighbor 👤 grandmother 👤 other (relatives, acquaintances...)



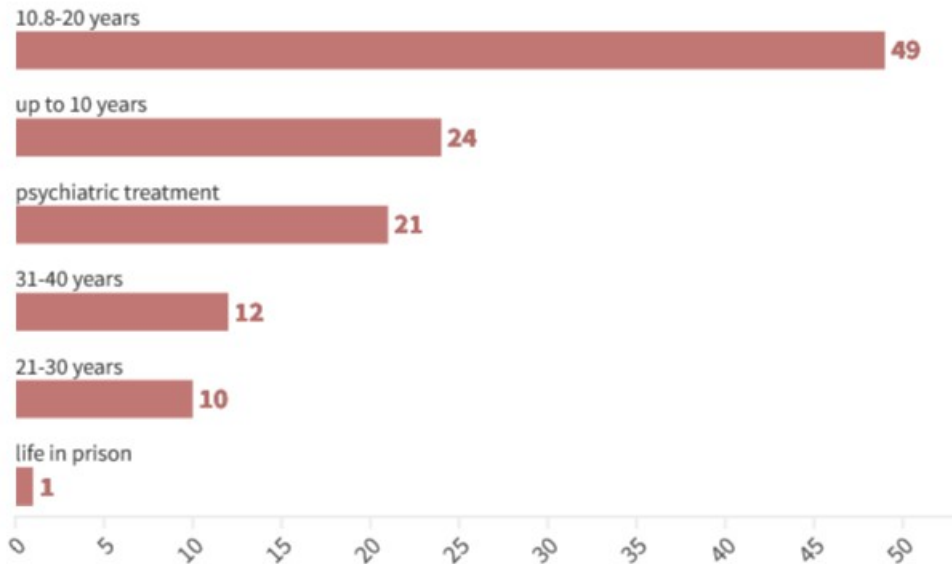
Source: Higher courts in Serbia • Graph: Center for Investigative Journalism of Serbia

How courts handle cases of femicide

verdicts between 2014 to the end of 2022, [click on a field for more details](#)

CINS analyzed **117**
cases of femicide that went to court.

Punishments in court



source: Higher courts in Serbia

Aggravated murder
Murder
Domestic violence resulting in death

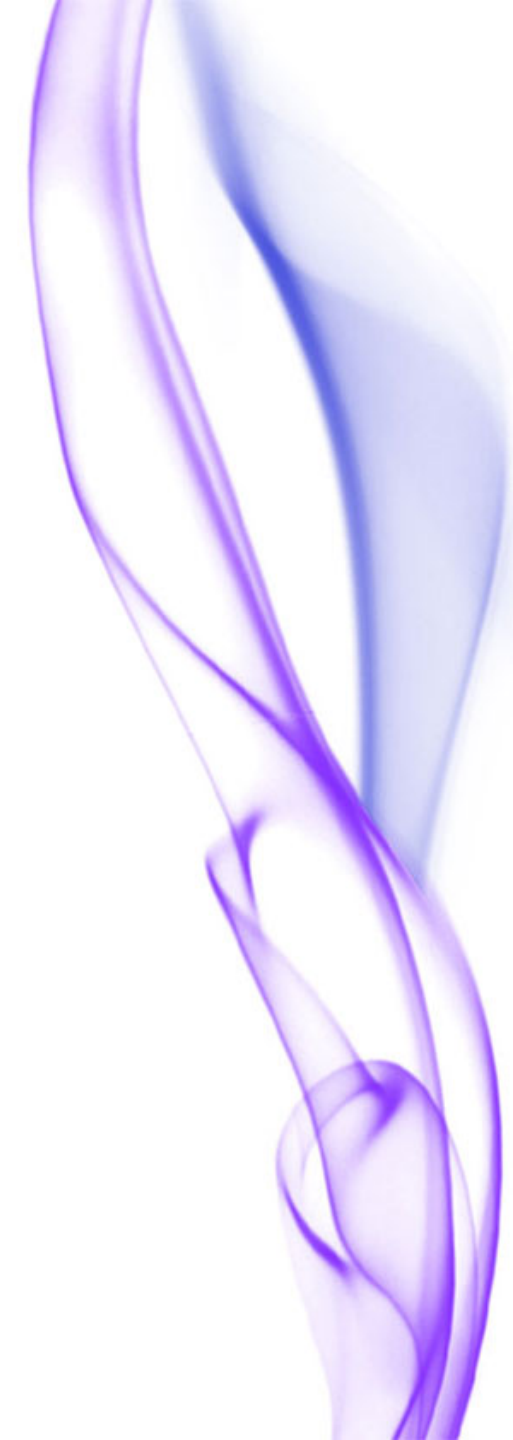


Less than half was characterized as aggravated murder.

Cases:

Serbia

- Example 1: Veliko Gradište, February 27, 2024 (mother and daughter killed by former husband of the daughter, **restraining order**, **suspended sentence for domestic violence**)
- Example 2: Bosilegrad, mother, „**his eyes went dark**“, regular murder, 10 yrs in prison
- Example 3: Šabac, „stand up, don't die here, I'll go to jail because of you“, beaten to death, **left on a country road**, 8 yrs in prison
- Example 4: Golubac, life care contract, strangled her, left her by the road, was „**annoyed**“ by her asking him to stay, 6 yrs in prison, mitigating circumstance: “**the deceased contributed with her behavior to the occurrence of the critical event**” (!)
- Example 5: Opovo, killed his wife, 8 yrs in prison, **high blood pressure**, he was held **in high regard in the neighborhood**, president of the local community and the local football club



Cases:

Serbia

- But also: example 6: Čačak/Ivanjica

High Court was deciding on the sentence for a man from the Ivanjica area who had **previously abused his wife and eventually killed her with a knife**.

The judge's stance was different. The ruling states that **being the father of three daughters** will not be considered a mitigating circumstance **since he killed their mother**, which **“precludes a sense of attachment to family”**.

20 yrs in prison



Cases:

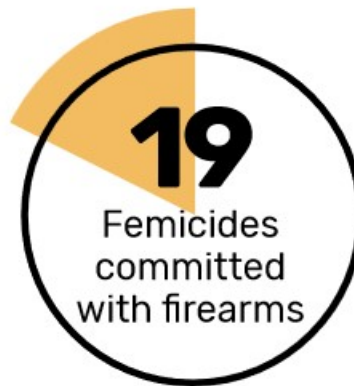
Serbia

- The case of Jelena Marjanović vs. the case of Ivana Bodrožić (intersectional manipulation)
- „In order for revenge, and especially **wanton revenge**, to be taken as a motive for committing murder, it is necessary that the perpetrator has **the intention to repay the evil** that was done to him or that he thinks was done to him, regardless of whether it is objective and that did the evil do the person to whom he returns the evil, or some other person. When it was established that the accused made the decision **to take the life of his wife at the moment when she refused to serve him**, that is, at the moment of the conflict situation that **the accused had previously solved by using violence of various forms (physical attacks or insults), as well as (considering the conclusion of the medical expert) that the accused was in a state of heightened affect at the time of the crime**, his behavior can only be treated **as bullying behavior**. It follows that **the motive of the act** in question was **the resolution of a conflict situation through violence, and not revenge**. Therefore, this behavior of the accused cannot be treated as wanton revenge, so the committed crime cannot be qualified as aggravated murder under Article 135, paragraph 2, point 3 of the CC. The **recklessness** of the accused has to be taken into account **when deciding on the sentence**.”

(Supreme Court of Serbia, Kž. 285/73.)

UNDP Study Serbia (Femicides with firearms)

FEMICIDE CASES FROM JUNE 2017 TO JUNE 2020



UNDP Study Serbia (Femicides with firearms)

VICTIMS AND PERPETRATORS OF FEMICIDES WITH FIREARMS

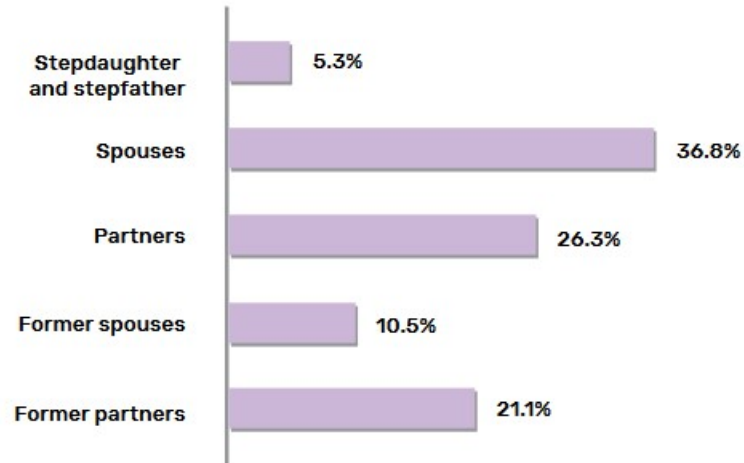
A great majority of femicides were committed in an intimate partner relationship.

Most of the women killed were aged between 46 and 55.

In most cases, the perpetrators were men aged 46 to 55 and those over 65.

In four cases, the perpetrators had access to weapons based on their work (farmland warden, game warden, police officer).

Relationship between the victims and perpetrators of femicides with firearms



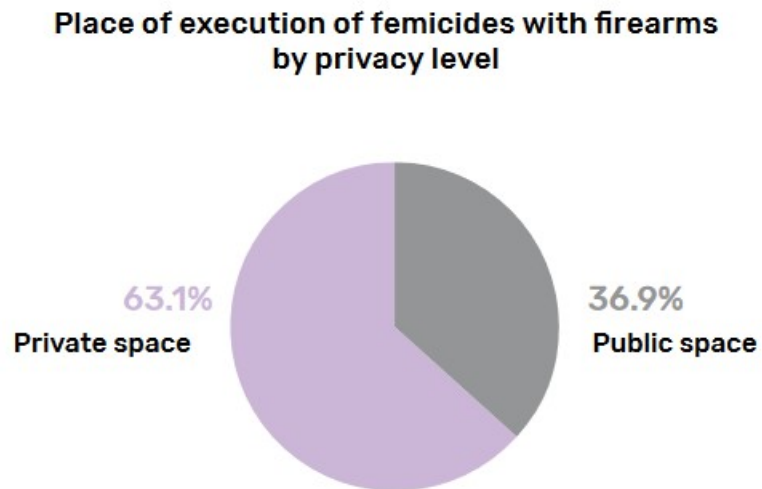
UNDP Study Serbia (Femicides with firearms)

FEMICIDES WITH FIREARMS

Almost two thirds of recorded femicides were committed in private spaces, where victims have fewer opportunities to avoid assaults with a firearm.

One out of three femicides took place in public, with several witnesses in the immediate vicinity.

Twice as many femicides were committed in cities as in rural areas.

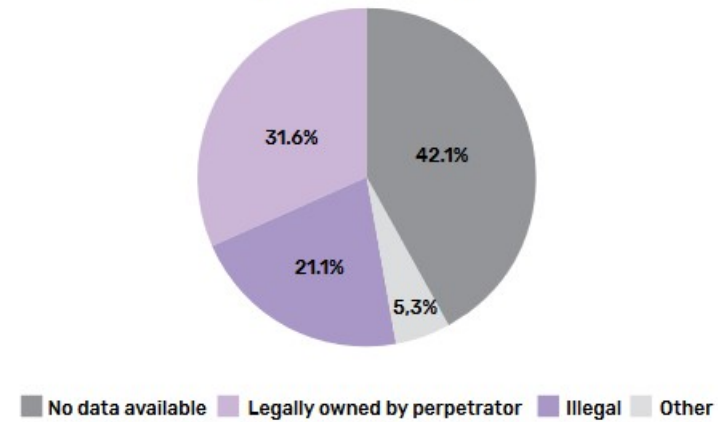


UNDP Study Serbia (Femicides with firearms)

The firearm was legally owned in one out of three cases, and one out of five firearms were illegal.



Femicides with firearms by weapon ownership status



UNDP Study Serbia (Femicides with firearms)

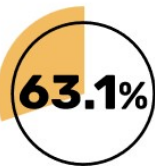
Most prevalent risk factors leading up to the killing



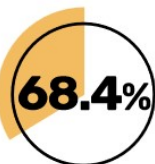
In a quarter of the cases, **the perpetrator stalked and followed the victim.**



Almost half of the women were **afraid of the abuser** and/or feared that the abuser would kill them.



In two thirds of the cases, **the perpetrator was jealous.**



In two thirds of the cases, the killing took place when **the victim announced leaving, tried to leave or had already left the abuser.**

Conclusions (I)

- Only **a recent development**; particular criminalizations still very rare (exception)
- Problem: **no (common, universally accepted) definition** (e.g. FGM) – here, it is the crucial point
- Important: clear and operational definition of femicide
- In Criminal Law: to be **as precise as possible** (to avoid: **subjective elements** as much as possible due to difficulties with proving)
- Problem with the abovementioned definitions: **criminological** ones. Not suitable for **normative text** of the Criminal Code (too long, too casuistic, at the same time not abstract enough to cover cases that were not mentioned explicitly)
- **Cultural context** (femicide - femicidio in Europe/Latin America/Asia/Africa)
- **Data collection** (underreported – underinvestigated - underresearched), not formally or systematically collected in the European Union
- **Familiarization** with the issue, prevention and education campaigns
- More nuanced approach needed, **preventive** rather than repressive (3x “e”: education, economic development, employment)
- Could remain **merely a legislative sign of „goodwill“**

Conclusions (II)

- „Deviation“ via focus on / protection of **children**
- **Domestic violence** (mentioned in 1/3 of the cases; legal classification)
 - re-evaluation of judicial practice
- Problem in Serbia: judicial practice
- In **dogmatic terms**:
 - as **a specific crime** (femicide) or
 - as **form or gender-based violence**
 - or as **gender-neutral homicide** (current situation), but with **specialization** (legal qualification & judicial practice)
- In addition to that (non-punitive measures):
 - **Specialization** of police/prosecutors/judges & enhanced **protection programmes**
 - Ensuring coordinated action **in the early phases**
 - Improving **access to reparation and compensation**
 - **Media coverage**
 - **Education of broader population** (picture of masculinity/social adequance)

THANK YOU FOR YOUR ATTENTION!

