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Femicide as a violation of the human rights to life, liberty & personal security – findings and recommendations 2017-2020

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Main points of discussion

- The legal situation on femicide and it's level of compliance with the obligations stemming from the Istanbul Convention;
- Findings and recommendations from monitoring court decisions on femicide in Albania;
- Using of recommendations;

Methodology:

- Interactive discussion by participants based on the findings of the FEMPLATZ study in Albania;
- Sharing good practices and inviting participants to share their countries' good practices;
- Lessons learnt;
- Brainstorming to identify the next steps.

Main findings

- "Femicide" is not a term used in the Criminal Code (CC), nor in the Albanian legislation.
- The criminal legislation of the Republic of Albania does not contain any expressed provision that regulates gender-related murders. So, it is not considered as a separate criminal offense.
- However, the Criminal Code (CC) provides for certain criminal offenses which, under certain circumstances, might qualify as femicide. This includes murder (Article 76 of the Criminal Code), intentional murder in connection with another crime (Article 77), premeditated murder (Article 78), murder in other qualifying circumstances (Article 79), murder committed in a state of severe mental shock (Article 82) and intentional serious injury resulting in death (Article 88, paragraph 2).

Analysis of court decisions on the criminal offenses of killing of women and girls related to gender, femicide (2017-2020)

- From the judicial decisions forwarded by the courts, 23 final decisions are classified as femicide and attempted femicide and are analyzed in this study.
- In the studied cases, it turns out that 33 criminal offenses were investigated, of which 25 main criminal offenses, including one case of the criminal offense of "Domestic Violence", provided by Article 130/a of the Criminal Code.
- The criminal offenses that are considered femicides have been defined by the court mainly as: murder due to family relations provided by Article 79/c of the Criminal Code (75%), murder in other qualifying circumstances provided for by Article 79 of the Criminal Code (8.3%), premeditated murder, provided for by Article 78 of the Criminal Code (8.3%), intentional serious injury, provided for by Article 88 of the Criminal Code (8.3%).

Empirical data

- Despite the progress made regarding the collection, processing and publication of crime data disaggregated by age and gender, perpetrators and victims, the statistics are still not standardized, harmonized and do not provide public data on victims and perpetrators according to specifics and all types of crime.
- The statistical yearbooks of the Prosecutor's Office and the Ministry of Justice do not provide data on crimes and victims by gender.
- It is recommended to collect and process data on the implementation of aggravating motives for criminal offenses with gender motives, as well as gender-disaggregated data for criminal offenses against persons, health, family, etc.
- **The full implementation of the integrated case data system will enable better understanding of crime from a gender perspective and data on its victims according to demographic characteristics.**

Places where femicide is committed

- Criminal acts of femicide were committed in urban areas to the extent of 57%, mainly in small towns, while 43% of them were committed in rural areas.
- **Most of them were committed in the common apartment of the victim and the perpetrator or in the yard of the apartment (74%),** in the workplace - private business of the victim (13%) or on the street, while the victim was going to work (road in rural area) or when the victim was leaving a service center (9%). In one case, the criminal offense was committed in the apartment of the parents of the perpetrator's ex-wife, where she was settled after the divorce and the violence exerted by her ex-husband (4%).

The way and means of committing the criminal offense

- **The way and means of committing the criminal offense** were different, such as: sharp tools found in the apartment (hawk, sledgehammer, crowbar, iron bar), automatic firearm (in one case with a silencer), house knife, and in one case, phototoxin poisoning.
- There have been cases when the perpetrator has used more than one tool, making the crime even more cruel.
- In some cases, the perpetrators have committed the criminal offense in the presence of their minor child(ren).

Profile of the perpetrators

- **Age of Femicide perpetrators.** Most of the perpetrators of femicide crimes were in the age group over 57 years old, but there were also younger ages. **Specifically, at the time of committing the criminal offense, the perpetrators were over 57 years old (50%),** followed by the 49-56 age group (17%), the 41-48 age group (13%), the 25-32 age group (13 %) and 8-25 and 33-40 age groups (4%).
- **Place of Residence.** In terms of residence, **the defendants live in the city (54%)** and in the countryside (46%).
- **Marital status.** Regarding marital status, **most of the perpetrators were married at the time of committing the crime (58%).**
- **Education.** The authors had an **elementary level of education or secondary education.**
- **Criminal records.** The perpetrators of criminal offenses **were mostly not convicted earlier (75%), while 21% of them were convicted for various criminal offences.** 17% of cases, the perpetrators were convicted of domestic violence, including one, who had been convicted twice.

Victims of Femicide

- Criminal offenses have caused 27 victims, most of them women **(89%)**. The criminal acts of femicide are committed more often **against the wife, ex-wife, or cohabitant**. Women are more often victims of femicide by their husbands, but also by other family members or other persons.
- **Victims of femicide are most at risk in their home, especially when they live with the abuser.** The risk increases when women continue to live together with the abuser in the shared apartment even though they have a protection order; when the victim who is violated does not report it and continues to stay in the same apartment with the abuser.

Victims of Femicide

- **Most of the victims experienced physical and psychological violence before femicide.** Most of the victims were physically and psychologically abused for a long period (44%); had been psychologically abused (11 %) and only a few victims (15 %) had not suffered violence earlier. However, only a part of the victims **(19%) had a protection order when the crime was committed or earlier.** So only a small fraction of them had reported the violence and sought help.
- Weak motives, jealousy, gender stereotypes, patriarchal culture, suspicions of adultery, alcohol addiction, untreated mental health problems, economic problems in the family, have been some of the motives for committing crimes of femicide.

Victims of Femicide

- Although the victim and her heirs enjoy a number of rights in the criminal process, they are invited as witnesses, while for information and assistance to address the needs of the victim during the process, there are no data from the information contained in the decisions.
- The civil action in the criminal process and the compensation of victims are provided for in the law, but they are very little applied in practice. Of the studied cases, **only in one case was a civil lawsuit filed in the criminal process** and it was not reviewed by the court. There is no data on whether the victim was informed about the right to material and moral compensation and other services necessary for her rehabilitation, free legal aid, or security needs in their contact with justice and in confronting the perpetrator.
- In addition to the different understanding and application of the law, it is established that the defendants have benefited from significant reductions in punishment due to their shortened trial. **The acceptance of the request for an abbreviated trial by the Court has led to a less harsh sentence and non-judgment of the civil suit in the criminal process.**

Recommendations

General measures for the prevention of femicide

- Promoting gender equality and combating gender stereotypes should be part of legal education programs at all levels of pre-university education, educating positive role models of men and women, boys and girls.
- Schools, local institutions, civil society organizations and community activists should be at the forefront of educational and awareness campaigns to create an environment that prevents discrimination against women and girls.
- Continued approximation of the non-criminal legislation dealing with all forms of violence against women in society, is needed. This recommendation comes from the Committee of the Parties to the Istanbul Convention.

Special preventive measures

- It is imperative that a *femicide watch* be established under an independent institution of public administration.
- Local mechanisms for the prevention of gender-based violence and social services need to be strengthened with sufficient human and financial resources, but above all trained and specialized human resources for serving and supporting women and girls.
- Informing potential victims or victims of gender-based violence about their rights and institutional mechanisms for guaranteeing their rights, about social services, as well as increasing the victim's trust in institutions and removing any barriers to reporting and receiving necessary services needs to be guaranteed everywhere, especially outside Tirana.
- The map of psychological services and mental health care services should be extended to the entire territory of the country.

Justice for victims

- To strengthen the implementation of the legal provisions introduced to the law on preventive measures against domestic violence, **which requires the police officer contacted by a victim asking for protection, to refer the case to the prosecutor's office for initiating criminal proceedings against the perpetrator** according to the rules defined in the Code of Criminal Procedure;
- It is suggested that the implementation of protection orders be accompanied by the application of other protective measures provided by law and, in particular, of the **offender's treatment programs**. On the other hand, rehabilitation programs for offenders addicted to alcohol, with personality and mental health disorders, need to be extended and consolidated throughout the country.
- The separation of the perpetrator from the victim should be accompanied by other protective measures, careful monitoring of the case by the responsible institutions in order to guarantee the life of the victim, as well as by taking measures, when the reports of the local coordinators against domestic violence show that the perpetrator has committed actions in violation of the court's protection orders.

Regarding the criminal proceedings and the position of the victims and their heirs in the criminal process

- Informing the victims about their rights, the right to participate and be heard in the process must be guaranteed along with ensuring the victims' physical and emotional safety.
- The rule that victims should be questioned as little as possible, preferably once, avoiding confrontation with the perpetrator in order to prevent re-victimization, must be respected every time this is requested by the victim. In order to guarantee the respect of this right, it is necessary that the victims are informed in an understandable language about their rights.
- The right of heirs participating in the process should be evaluated as an opportunity to hear and address the rights of the victim and especially the right to compensation from the perpetrator or the state.
- Special care should be taken of victims' minor children when called to testify. When it is considered necessary to ask the minor child, this should be done in the presence of psychologists specialized in the rights of the child.

Criminal procedure and criminal policy

- Regarding the reasoning for the type and extent of punishment, it is recommended to have the same understanding and application of the dangerousness of the offense and the perpetrator, the reasoning must be based on the analysis of the concrete circumstances of the case and use of a gender nondiscriminatory language.
- It is recommended that the courts, in evaluating requests for shorter adjudication, should consider preventing obstacles to proportional punishments and reviewing civil claims in the criminal process.

The need for scientific studies on femicide and other forms of violence against women and girls

- The collection and processing of statistics on femicide does not require legal changes, but a revision of the developed guidelines and their unification/standardization by the responsible structures of the police, the General Prosecutor's Office and the High Judicial Council (HJC), together with the Ministry of Justice, in order to determine the statistics and elements that must be recorded, collected, processed and published, based on the provisions of the legislation in force for the right to information and the protection of personal data.

Regarding the professional training of employees of justice bodies

- Training organized with police officers, other institutions or members of the National Referral Mechanism in cases of domestic violence should address issues related to the understanding of domestic violence, its causes, consequences, human rights, women's rights and their guarantee.
- The responsible institutions must develop an in-depth analysis on the reasons for the lack of effectiveness of protection orders and the measures needed to increase their effectiveness.
- The responsible institutions, in cooperation with other relevant stakeholders, should assess the need for training for prosecutors in relation to the effective criminal prosecution of acts of domestic violence.
- Also, the changes in civil and criminal legislation on domestic violence make it necessary to continue organizing activities to strengthen the capacities of judges.

Regarding the professional training of employees of justice bodies

- The responsible institutions, in cooperation with other relevant actors, should organize trainings in relation to risk assessment, analysis of risk factors both in relation to the victim and in relation to the perpetrators, as well as the importance of risk assessment by victims themselves. **It is also important to include topics aimed at eradicating gender stereotypes in the training for the institutions responsible against domestic violence.**
- There is a need for strengthening **institutional legal responsibility**, in order for the representatives of the institutions to be aware of the state's obligation to compensate the damage caused to the victims as a result of violence against women and domestic violence, when the system has failed to protect victims' lives. Special attention should be paid to the execution of final court decisions for the compensation of the surviving victims or their heirs. Also, the articles of the Istanbul Convention as well as the explanatory report of this convention regarding the compensation of the victims are recommended to become part of the training of the members of the NRM in cases of domestic violence.

Femicide Watch

- In Albania, there is no special state body for reporting and monitoring cases of femicide. Until now, such cases have been reported in the general framework of statistics of the relevant bodies: the police, the prosecutor's office, the judicial bodies, as well as the Ministry of Justice. It is necessary that, in addition to statistical reporting, **a public institution engages in reporting and monitoring cases of femicide to ensure a better approach to prevention and compliance by the competent state bodies. It is imperative that a *femicide watch* be established under an independent institution of public administration.**
- It can be established at the **People's Advocate**, which is an independent Constitutional body. The Commissioner could be engaged at the People's Advocate through some internal regulations of this institution, without requiring any legislative changes.
- An alternative could be the creation of a special Femicide Watch Office under the **Commissioner for Protection from Discrimination**.
- We also see it as possible for the **Commissioner for protection from gender-based violence**, who is informed by the draft law currently presented in the Assembly to amend the law "On measures against violence in family relationships", to engage specifically with this task. This solution is a better solution, as this Commissioner will be a very specialized body. However, its creation takes time, as the law on the Commissioner for protection from gender-based violence has not yet been submitted to the Assembly.

Issues for Discussion

- The legal framework on Femicide in other countries;
- The effectiveness of the legislation implementation in other countries;
- Femicide Watch;
- **How the findings and recommendations are used? Two examples;**
 - 1) Trainings for judges, prosecutors and judicial police officers on the effective criminal prosecution of cases of domestic and gender based violence; The Monitoring Network Against Gender Based Violence and CLCI's advocacy experience using the standards of the Istanbul Convention, and the recommendations of GREVIO, Committee of Parties;
 - 2) Femicide Watch;
- Good practices in other countries;
- Advocacy as member of AWEN Network and MNAGBV network;
- Other;

- Thank You!