

## FEMICIDE-CERTAIN CONTROVERSIAL ISSUES AND COMPARATIVE LAW REVIEW\*

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During the last decades, the phenomenon of femicide has attracted the attention of both the scientific community and the wider public. However, despite the willingness to address the problem of gender-based violence, the number of murdered women is not decreasing. As a result, there is growing discussion on whether or not femicide ought to be treated like a distinct crime. Hence, the paper is devoted to general considerations about femicide and issues related to its narrower and broader definition, with the aim of answering the question of whether it is necessary to criminalize femicide as a specific type of murder. The authors have applied normative, logical and comparative legal methods, in order to point out the existing solutions in some European countries and certain controversial issues. By analysing literature and selected legal documents, they conclude that the criminalization of femicide by criminal or other laws is welcome and useful, despite the fact that the suppression of this phenomenon cannot be achieved by the isolated application of normative measures. On the contrary, the fight against femicide necessitates learning about gender-based violence, dispelling myths and prejudices that enable violence against women, and creating a robust network of support for victims and those close to them.

KEYWORDS: femicide, gender-based violence, criminal law.

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## Introduction and general considerations

Global sources suggest that approximately 89.000 women were murdered worldwide in 2022 (UNODC, 2023), although the statistics should be interpreted cautiously due to varying definitions and inconsistent methods. In contrast to women, in recent years, the rate of men who lost their lives due to homicide has been declining (UNODC, 2023). It is also important to note that research shows that men are the victims of homicide in 80% of all homicide cases. Simultaneously, in 56% of all homicides, women are killed by intimate partners or family members, compared to just 11% for men (UNODC, 2022).

The highest rate of women killed in 2022 was recorded in Africa, followed by North, Latin and Central America, and at the same time the fewest women were killed in Europe (UNODC, 2023). In Serbia, 20 cases of femicide were detected in 2021 (AŽC, 2022), while 26 women lost their lives in 2020 in the context of gender-based violence (AŽC, 2021). To date, there are no universally comparable or complete data on the prevalence of femicide in different parts of the world, and it can be said that most countries are characterized by the unresearched phenomenon of femicide (Cecchi et al., 2022). However, some states have allocated funds for femicide research, so some European nations already have their own femicide observatories, for example, Italy (Piacenti and De Pasquali, 2014), the United Kingdom, Spain and Portugal (Weil, 2018, p. 10).

Diana Russell coined the term “femicide“ in 1976, at the first congress dedicated to crimes against women, held in Brussels (Coradi et al., 2016: 976). Russell states that the term “femicide“ denotes the killing of women by men — because they are women (Russell, 2021). Mexican anthropologist Mariana Lagarde also drew attention to femicide, pointing to the crimes that victimized numerous women in Ciudad Juarez in Mexico (Cecchi et al., 2022). Further progress was made in 2013 when the UN Vienna Declaration defined femicide as “the killing of women and girls because of their gender”, while at the same time also providing a very broad definition of femicide that included female infanticide or gender-based selection, known as foeticide, femicide as a result of genital mutilation and femicide related to accusations of witchcraft (Weil, 2018, p. 9).

The distinction between the concepts of gender and sex should be kept in mind when comprehending the idea of femicide. Namely, “sex” refers to the biological and psychological characteristics on the basis of which men differ from women, while “gender” implies a socially conditioned experience of masculinity and femininity, and specific and generally accepted social roles of men and women (Stojkovska-Stefanovska, 2018, p. 65).

The fundamental query is whether any killing of a woman should be classified as femicide, regardless of the perpetrator's gender or the nature of his relationship with the victim, or whether femicide should be limited primarily to cases in which the loss of life is a consequence of the escalation of gender-based violence (Kovačević, 2022, p. 149). Some authors define femicide as the killing of a woman by a partner after the escalation of intimate partner violence (EIGE, 2021, p. 4), which significantly narrows the use of this term. Others focus on the fact that femicide is caused by gender inequality and hatred, and that it is repeated due to inadequate sanctioning by the state (Pasinato and de Avila, 2023, p. 62). Examples include homicides as a result of intimate partner violence, as well as murder following rape, so-called "honor killings", dowry-related killings, killings of women accused of witchcraft and gender-motivated homicides connected with armed conflict or with gangs, human trafficking and other forms of organized crime (UNODC, 2023). Thus, the murder of a prostitute should also be included, given that female prostitutes are often victims of pimps and clients to whom they are subordinate, and that the state has an indisputable duty to protect the lives of all citizens (Kovacs, 2019, p. 123).

In Israel, Elisha and a group of authors defined femicide as three types of the homicide of a woman: by a "betrayed husband" due to jealousy, by an abandoned obsessive lover and by a tyrant who can no longer control the victim (EIGE, 2021, p. 14). Dobash and Dobash believe that femicide implies the killing of a woman in the context of sexual violence, which does not have to be preceded by a permanent partner relationship, but is characterized by anger and the desire for supremacy and control (EIGE, 2021, p. 15). Also, the literature points out that femicide is conditioned by rigid patriarchal patterns, gender discrimination and unequal power relations, which determines specific ways of its suppression and sanctioning (Beker and Vilić, 2022, p. 133). Femicide is also defined as the murder of a woman because she has violated the rules of the patriarchal order in a scale and manner that cannot be tolerated, whereby certain attitudes on this matter are not only fostered by the offender, but also by the wider community (Caicedo-Roa et al., 2020). Therefore, femicide can be a reflection of the inadequate actions of state institutions, and of the denial of women's human rights (Pasinato and de Avila, 2023).

Finally, broader definitions of femicide include female infanticide, which refers to the killing of female fetuses and newborn babies, because of their gender (Kouroutsidou and Kakarouna, 2021, p. 23), while the status of matricide, or the murder of a mother by her son, is still unclear (Miles et al., 2023). The phenomenon of femicide followed by the suicide of the perpetrator has also been recorded. In this instance, the male partner has usually been violent in the past, and an additional risk is embodied in the possession of firearms (EIGE, 2021, p. 15).

Femicide is also defined as a murder perpetrated because of a failure to recognize the victim's right to self-determination, so that the victim is killed because she has answered "no" to a request from the murderer, or because the desires or beliefs she wants to affirm do not coincide with those of the aggressor (Cacchi, 2022).

The motivation for committing femicide is very complex, but basically concerns the imposition of certain narrowly understood gender roles, and the maintenance of control over women (UNODC, 2023). Comparative research points out that femicide is often motivated by jealousy and the inability to accept the end of an emotional relationship (Sorrentino et al., 2020). Apart from personal motivation, the social context in which femicide occurs is also important. Thus, on the one hand, we have a perpetrator who believes in the supremacy of man, in respecting male authority and the obligation of a woman to obey a man, and on the other hand, a community that also mostly accepts patriarchal patterns of behavior, or at least tacitly agrees with them.

The dominant risk factors for femicide identified through meta-analytic studies are: age difference in favor of the perpetrator, unemployment of the perpetrator, mental illness, drug or alcohol abuse, living in a household with a child who is not a biological descendant of the perpetrator, a woman leaving her partner, immigration status, possession of weapons, pregnancy, previous violence acts and persecution and threats (EIGE, 2021, p. 20).

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), also known as the Istanbul Convention, is an essential international document when discussing violence against women and femicide. This document does not actually deal directly with femicide, nor does it mention the term explicitly. However, it is clear from the Istanbul Convention that states are obliged to take all measures to prevent and sanction gender-based violence. Thus, there is an obligation to criminalize all forms of physical violence against women (Art. 35). Additionally, even though the convention does not require femicide to be criminalized, it does insist that the fact that the crime was committed by a family member, someone who cohabitates with the victim, or someone who abused their authority against the former or current spouse or partner, is to be considered as an aggravating circumstance, in accordance with national legislation (Art. 46). The convention obliges states to make it impossible for customs, religion, tradition, or so-called "honor" to be considered a justification for criminal acts to the detriment of women. The above especially includes claims that the victim has violated cultural, religious, social or traditional norms and customs. In addition to the state's obligation to incriminate and sanction acts by which women are victimized, it is

particularly significant that the convention stipulates the responsibility of states to take a series of measures that will encourage women's equity and eradicate prejudices and stereotypes about women's social roles. The Istanbul Convention, in this sense, is essentially a continuation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), which stipulates in Art. 5 that parties shall take all appropriate measures to modify men's and women's social and cultural patterns of conduct in order to achieve the elimination of prejudices, stereotypes, and other practices that are based on the idea that one sex is superior to the other.

### **Criminalization of femicide and certain controversial issues**

Although it cannot be denied that the feminist movement has rightfully focused on the topic of violence against women, and therefore on femicide as its most extreme form, it is also undeniable that the criminalization of femicide is an extremely complex legal issue. Specifically, it is difficult to convey the intricate cultural, social, political, and historical elements that define femicide in the technical vocabulary of criminal law. In addition to this, states are required by international law to govern in accordance with the principle of due diligence and to protect women from all types of violence. As a result, femicide is currently also seen through the lens of violations of human rights (Kovačević, 2019). Thus, the question arises whether it is necessary to reduce all the features of this intricate social phenomenon to a single criminal offense. It is also a question of general feasibility. At the same time, the criminal offense of femicide should be formulated in a concise and precise manner, which leaves no room for extensive interpretations and ambiguities.

Bearing in mind all the above-mentioned problems related to specifying the criminal offense of femicide, we should not forget that, without any doubt, the problem of femicide is present everywhere in the world, so there is no country that does not need to deal with this phenomenon systematically. Therefore, it is undeniable that governments must take proactive measures to protect women's lives and acknowledge the existence of social and cultural norms that support the violation of women's human rights and the need to eradicate them. However, it is not entirely clear whether or not it makes sense to separate femicide as a distinct criminal offense in this regard.

One reason femicide has not yet been criminalized worldwide is due to concern about the issue of legal equality of women and men, regardless of their gender or any other natural attributes. It cannot be denied that this objection carries a certain weight. Namely, every human life is equally precious, so the question could be raised

whether it is acceptable to define *a priori* the murder of a woman as a more serious crime than the murder of a man. In addition, it can be discussed whether by singling out femicide, the legislator actually underlines that women are a more vulnerable gender and that they should continue to be perceived as such, which logically does not contribute to affirming the equality of women and men (Messias et al., 2020). That is how Maltese Roderick Cassar, who is suspected of murdering his wife, has requested the Constitutional Court to review the constitutionality of criminalizing femicide in the context of equal rights for all citizens, regardless of their gender. However, we believe that this perspective on the issue of femicide is superficial because femicide should not be defined as any homicide of a woman, rather, it should be defined as a gender-based murder of a woman driven by misogynistic beliefs and the notion that women must always accept their inevitable subordination. It is undeniable that, to a lesser or larger extent, gender inequality exists practically everywhere in the world (Fortier, 2020). If the law recognizes the indisputable fact that women are exposed to violence in a specific way compared to men, and that their social position is special and complex, then criminalizing femicide shows that authorities are not willing to tolerate it. It may also be argued that the implementation of measures based on a vulnerable category that needs extra protection is what makes the application of additional protection different from discriminatory practices (Neumann, 2022). Instead, it is considered an application of affirmative action. Namely, in order to achieve not only equality in the form of guaranteeing identical rights, but also equity, the factual circumstances in which women perform their gender roles must be recognized. The gender roles of women and the stereotypes related to them are in close connection to women losing their lives, and the state should not turn a blind eye to this issue.

According to the literature, the homicide of a woman in the context of partner violence could even have been considered a crime of passion, or a privileged form of murder, prior to the separation and specific definition of femicide. This suggests that there was an institutional understanding of this kind of behavior, if not outright approval of it (Luffy et al., 2015, p. 107). Moreover, the literature points out that the British “doctrine of provocation”, under which the subsequent American “doctrine of the heat of passion” originated and flourished, is known for interpreting the motivation of the perpetrator for murdering a woman in a specific way. Namely, a cheated or abandoned husband can not withstand an attack on his pride and masculinity, which can result in the homicide of a woman being treated as manslaughter, not murder, due to the specific emotional and psychological pressure under which a man reacts (Dayan, 2023). Of course, this kind of attitude about murdering women is completely unacceptable, and it may even encourage violence against women. In connection with the above, in Serbia, the murder of

a woman has often been qualified as ordinary murder, and it is also noted that among the mitigating circumstances there has been cited the termination of the marriage union, as well as the fact that the perpetrator was very angry due to broken relationships with his wife (Konstantinović-Vilić and Petrušić, 2021, p. 98). Thus, the criminalization of femicide would contribute to the impossibility of reducing the murder of a woman to a privileged murder.

It was also noted that it could be contentious to define femicide in correlation with the peculiar concept of “gender”, as a category conditioned by societal norms and specific social roles of men and women. In this regard, the question arises as to whether trans-women and other persons of a specific sexual orientation could be victims of femicide, or whether only women who have undergone surgical interventions to change their gender from male to female come into consideration (Messias et al., 2020). This issue has significant practical implications, given that transgender people are known to be at enormous risk of being victimized (Messias et al., 2020; Lee and Kwan, 2014, p. 94). Therefore, opinions differ on whether femicide should be understood in a context where people of a particular sexual orientation have the right to the full range of human rights and appropriate protection from femicide, or whether it should be primarily associated with the domain of traditionally understood partnership and family relations.

Additionally, there is the issue of the right to privacy, family life and citizens’ freedom to define their personal relations in a way that best suits them. When it comes to violence in intimate relationships and behind closed doors in one’s household, the question of boundaries arises (Marcuello-Servos et al., 2016). It can be debated whether it is appropriate to assess and categorize partner and family relationships in a specific way, as investigating the reasons behind acts of femicide requires delving into their dynamics. However, there is no justification for the escalation of domestic violence —which includes killing a woman— to remain a private affair or taboo because it is undeniable that the issue goes beyond private boundaries. Moreover, it is necessary for the issue of domestic violence to become visible and to be proactively prevented. As eminent authors state: “Private violence is no longer a private business: it is a public and global issue” (Marcuello-Servos et al., 2016: 3).

Another interesting question concerns the gender of the perpetrator of femicide. Although in the vast majority of femicide cases perpetrators are male, it should not be disputed that the perpetrator can also be a woman (Messias et al., 2020). The killing of a woman by a woman in the context of femicide can be related to the protection of “family honor”, dowry-related killings, female infanticide and the like, while it is undeniable that almost no attention has been paid to this type of femicide

(Muftić and Baumann, 2012). The problem of women as perpetrators of femicide points to unexplored issues, and to the fact that this phenomenon cannot actually be reduced to the escalation of violence in intimate partner relationships, because its social conditioning is far more complex.

We conclude that the standpoint that femicide needs to be criminalized is becoming more prevalent in scientific literature, notwithstanding the arguments against it. This is because it serves two purposes: protecting women and enabling the gathering of data for a thorough study of the phenomena (Beker, 2023, p. 93).

### **Femicide in comparative law**

When it comes to the criminalization of femicide in comparative law, the situation is very uneven. Thus, the solutions range from criminalizing femicide as a separate criminal offense to not recognizing the peculiarity of homicide of a woman as a result of gender-based violence. Some countries define femicide within existing criminal legislation, while others dedicate separate laws to femicide.

At the current moment, a large number of Latin and Central American countries foresee the crime of femicide, while the same is not the case when it comes to North America and Europe. The national criminal codes provide specific provisions for femicide in Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay, and in Chile there is an increase of applicable penalties for this crime (Cacchi, 2021; Neumann, 2022; Padilla, 2022, p. 115). Nevertheless, the means through which these countries have recognized femicide/feminicide do differ. So, some countries chose to criminalize femicide/feminicide by amending their penal codes, other implemented special legislation dealing with all aspects of femicide/feminicide, but in all states, the problem was defined as woman-killing and named “femicide” or “feminicide” (Carrigan and Dawson, 2020). The first country to specifically criminalize femicide was Costa Rica in 2007 (Bradley, 2021). Over the years, some states have changed the original legal solutions related to femicide. Thus, in 2012, a special law was adopted in Nicaragua that defined femicide as “the crime committed by man, in the framework of unequal power relations between men and women, that causes the death of a woman in the public or private sphere”, but afterward in 2014, the concept of femicide was narrowed by the new law, so that femicide is defined exclusively as the murder of a woman by a current or former emotional partner, husband, ex-husband, boyfriend and ex-boyfriend (Neumann, 2022). It turned out that in the years that followed, fewer femicides were detected in Nicaragua, which was most likely caused by the narrowing of the legal definition (Neumann, 2022).



In Germany, the criminal legislation does not recognize femicide, but in the case of killing a woman, it is a criminal offense of murder, which is punished according to the generally known aggravating and mitigating circumstances (Schröttle et al., 2021). However, numerous and complex measures for the prevention and suppression of violence against women have been applied in Germany for more than 20 years.

The USA also does not recognize femicide, but the killing of a woman falls under standard homicide (Lewis et al., 2024). Also, in the United States the term “femicide” is not commonly used. (Cacchi, 2022).

A certain number of countries foresee the possibility of harsher punishment if the crime is motivated by the personal traits of the victim, including gender. Thus, the European Court of Human Rights insists on determining whether the discriminatory attitude towards certain groups of citizens can contribute to their victimization (Kolaković-Bojović and Đukanović, 2023, p. 51).

### *Belgium*

Law on the prevention and fight against feminicides, gender-based homicides and violence (Loi sur la prévention et la lutte contre les féminicides, les homicides fondés sur le genre et les violences)<sup>1</sup> was passed in Belgium in 2023. A protracted campaign to increase public awareness of the significance and frequency of violence against women took place prior to the law’s passage. This law defines gender as roles, attitudes, activities and qualities that are socially formed and considered proper for men and women.

The new law defines four different categories of femicide: intimate femicide, non-intimate femicide, indirect femicide and gender-based homicide. The law generally defines femicide as the intentional killing of women because of their gender.

Intimate homicide is the intentional killing of a woman because of her gender, committed by a partner or family member in the name of culture, custom, religion, tradition or the protection of so-called honor.

Non-intimate femicide is the intentional killing of a woman committed mainly in the context of sexual exploitation, human trafficking and sexual violence and when there is a relationship of subordination and unequal power. This form of femicide mainly involves prostitutes as victims and victims of human trafficking.

Indirect femicide is the unintentional killing of a woman when the woman’s death is the result of harmful actions against women, or the suicide of a vulnerable or

<sup>1</sup> Available at: [https://etaamb.openjustice.be/fr/loi-du-13-juillet-2023\\_n2023044133.html](https://etaamb.openjustice.be/fr/loi-du-13-juillet-2023_n2023044133.html) (Accessed: 30 August 2024)

previously abused woman. This form of femicide may also be the result of an unprofessionally performed abortion or genital mutilation, or it may be the case of a woman who, due to her extreme vulnerability or subordination, committed suicide. It should be emphasized that Belgian law states that the following persons, among others, are particularly vulnerable: persons at risk because of social, economic and psychological reasons, drug addicts, prostitutes, illegal immigrants, homeless people, members of minority groups, pregnant women, nursing mothers, mothers and other persons. At the same time, femicide also exists when the perpetrator mistakenly believes that women belong to one of the aforementioned groups.

The fourth type of female homicide suggests that the victim was targeted because of their gender, while at the same time this is not an instance of indirect, non-intimate, or intimate femicide. Rather, it is the outcome of damaging activities directed towards victims because of their gender. This type of murder pertains to victims who identify as LGBTQ+ or who belong to a certain sexual orientation.

The law also establishes enhanced protection for victims of gender-based violence. It provides for the collection of data on the phenomenon of femicide, and constitutes training for police officers and judges to deal with cases of violence against women.

It is particularly noteworthy that the Belgian law on femicide does not deal with prescribing penalties for this type of murder, but that the punishment for murder is defined by criminal law. Actually, the law on femicide has three main components when it comes to femicide: defining, measuring and protecting (Schlitz, 2023). Currently, in Belgium various forms of murder are punishable by imprisonment of 20 to 30 years, or life imprisonment, according to Art. 393-397 of the Penal Code.<sup>2</sup> During 2026, the new Penal Code should enter into force (Belga News Agency, 2024).<sup>3</sup>

### *Cyprus*

Cyprus's legal framework regarding protection against domestic abuse and violence against women underwent revisions and additions in 2022.<sup>4</sup> As a result, when a woman is murdered, the entirety of the circumstances surrounding the crime is

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<sup>2</sup> Available at: [https://legislationline.org/sites/default/files/documents/6e/BELG\\_CC\\_fr.pdf](https://legislationline.org/sites/default/files/documents/6e/BELG_CC_fr.pdf) (Accessed: 30 August 2024)

<sup>3</sup> Available at: <https://www.belganewsagency.eu/belgium-approves-comprehensive-reform-of-criminal-code> (Accessed: 30 August 2024)

<sup>4</sup> Available at: [https://www.olc.gov.cy/OLC/OLC.NSF/E05815D6C4BB3F3CC225887E003E0ADD/\\$file/The%20Prevention%20and%20Combating%20of%20violence%20against%20women.pdf](https://www.olc.gov.cy/OLC/OLC.NSF/E05815D6C4BB3F3CC225887E003E0ADD/$file/The%20Prevention%20and%20Combating%20of%20violence%20against%20women.pdf) (Accessed: 30 August 2024)

now taken into consideration. Femicide is therefore considered a unique crime whereby a woman dies as a result of increasing incidences of gender-based violence.

The Prevention and Combating of Violence Against Women and Domestic Violence and for Related Matters Law (*Official Gazette of the Republic of Cyprus*, Law no. 115(I) of 2021, as amended by Law no. 117(I) of 2022) provides that any person who, with an unlawful act or omission, causes the death of a woman, is guilty of the offense of femicide and is liable to life imprisonment, according to Art. 10a. When penalizing for femicide, the court may consider the following aggravating circumstances in addition to those specified by the criminal legislation: intimate partner violence; torture or the use of violence for misogynistic reasons; domestic violence; violence for honor reasons; violence for reasons of religious beliefs; violence for reasons of sexual orientation or gender identity; commission of the offense of female genital mutilation; violence with intent to or in the context of sexual exploitation and/or human trafficking and/or drug trafficking and/or organized crime; violence for the purpose of illicit sexual relations and targeted use of violence. Article 11 also states that the femicide committed by a partner, former or current spouse, member of the victim's family, person cohabiting or having cohabited with the victim, or person who has abused their position of authority, trust, or influence will be considered aggravating circumstances.

It should be emphasized that the legislator explains, in Art. 2, that the term "gender" denotes, in addition to the biological gender, socially formed roles, behaviors, activities and attributes that a given society considers appropriate and applicable to a man and a woman respectively, while "gender-based violence" covers violence that is directed against a woman, because of her gender, or violence that affects a woman disproportionately.

Furthermore, as stipulated in Art. 16, the perpetrator cannot use the victim's alleged transgression of cultural, religious, social, or traditional norms or customs of appropriate behavior, her sexual orientation or gender identity, or the fact that the offense was committed out of "honor" as a defense, mitigating factor, or justification for an offense involving violence against a woman.

The goals of this law are to enable the extensive collection of data on violence against women, including femicide, as well as to provide special protection for women, both in terms of social protection and meeting their needs, as well as in the context of criminal proceedings and prevention of secondary victimization.

### *Malta*

Amendments to the Criminal Code of Malta<sup>5</sup> in 2022 have *de facto* criminalized femicide, although the term denoting the murder of a woman did not appear in the law. However, the murder of a woman based on gender-based violence is provided as a qualifying circumstance when sentencing for murder. Specifically, premeditated murder is covered by Art. 211, and those who commit it face a life sentence. Amendments to the law brought in Art. 211a, state that the court must consider the following as mandatory aggravating elements while suspending a sentence in cases of murder or attempted murder of a woman:

- the death occurred as a result of intimate partner violence between persons who are in an emotional relationship or were in such a relationship, i.e. persons who are or were married
- the death is the result of violence manifested towards the woman by one or more family members
- the murder was committed due to misogynistic motives
- the murder was committed to protect the family's honor or reputation, that is, in connection with cultural and religious values and customs
- the murder was committed because of gender or sexual orientation
- the murder was committed in the context of sexual violence or acts of a sexual nature
- the murder was committed because the victim engaged in prostitution, was sexually exploited or was a victim of human trafficking for the purpose of sexual exploitation.

### *Croatia*

A new type of murder, known as aggravated murder of a female, was added to the Criminal Code of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23 and 36/24, through law amendments in 2024.

Art. 111a of the Criminal Code has introduced a new crime called “aggravated murder of a female”. It is stipulated that whoever commits gender-based murder of a female person will be punished with imprisonment of at least ten years or long-term imprisonment. The sentence of long-term imprisonment is usually measured in the range of twenty-one to forty years, with the exceptional possibility of a sentence of 50 years in the cases of concurrence of crimes (Art. 46 of the Criminal Code).

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<sup>5</sup> Available at: <https://legislation.mt/eli/cap/9/eng/pdf> (Accessed: 30 August 2024)

It is further stipulated that when determining the existence of a crime, it will be taken into account that the crime was committed against a close person, a person who was previously abused by the perpetrator, a vulnerable person, a person who is in a position of subordination or dependence, and that the crime was committed in circumstances of gender-based violence, a relationship that puts women in an unequal position or if other circumstances indicate that it is gender-based violence (Art. 111a). A “close person” is defined as a family member, former marital or cohabiting partner, former informal life partner, current or former partner in an intimate relationship, persons who share a child and persons living in a joint household, in accordance with Art. 87. Also, the Criminal Code, defines “gender-based” violence as violence directed at a woman because she is a woman or as violence that disproportionately affects women. Representation of gender-based violence will be taken into account as an aggravating circumstance, except in cases where it is already covered by the essence of the criminal act.

In the Croatian scientific literature, it is emphasized that the introduction of femicide was justified and that it was necessary. Thus, it was accentuated that it was not unusual for criminal offenses that are distinguished by the characteristics of femicide to be legally qualified as ordinary murder (Maršavelski and Moslavac, 2023, p. 316). Moreover, it is pointed out that long-term broken relationships between a man and a woman and similar circumstances are often taken into account as mitigating circumstances, and that the significantly reduced sanity of the perpetrator often resulted in a reduced sentence for femicide (Maršavelski and Moslavac, 2023).

#### *North Macedonia*

In North Macedonia, amendments to the criminal legislation in 2023 have *de facto* criminalized femicide. In the general provisions of the Criminal Law, *Official Gazette of the Republic of Macedonia*, no. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/ 11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/ 15, 226/15, 97/17, 248/18 and 36/23, in Art. 122, which defines the meaning of certain terms, “domestic violence” is defined in a broader way, which includes: bullying, wounding, insulting, endangering safety, physical injury, sexual, psychological, physical or economic violence that causes feelings of insecurity and making threats or causing fear to the spouse... or other persons living in marriage or cohabiting union or joint household, as well as the current or former spouse. It is then specified that “gender-based violence” denotes violence directed at women due to belonging to the female gender that results in physical, sexual, psychological or economic endangerment or injury to women, including direct and indirect threats

and intimidation, as well as coercion or deprivation of liberty. Any woman or girl under the age of 18 who has suffered the described violence is considered a victim of gender-based violence.

Although the term “femicide” is not used, a new form of qualified murder has been foreseen in Art. 123, para. 2 of the Criminal Code, which criminalizes aggravated murder. Therefore, anyone who kills a woman or girl under the age of 18 while engaging in gender-based violence will be held accountable for severe murder, a crime for which the maximum penalty is life in prison or a minimum of 10 years in jail.

It should be noted that in circumstances where the passive subject is a woman or a female person under the age of 18, due to gender-based violence, qualified forms of other crimes, such as severe bodily harm, have also been established. In line with Art. 125, the lawmaker has also created a new form of privileged homicide, which is the homicide of a person who has previously committed acts of gender-based violence against the offender.

## **Conclusion**

It is indisputable that states must protect women’s lives as best they can and that femicide is a phenomenon that warrants greater attention. This requirement is established by national and international regulations, and it can be said that it represents a civilizational standard that modern society must not ignore. What can be disputed are the forms and procedures that will be applied to prevent and sanction femicide.

We believe that, in the end, it is of little practical significance if femicide is officially recognized as a distinct crime, rather, it is crucial that women are recognized as a group that is overwhelmingly exposed to gender-based violence. Law and practice must acknowledge the unique vulnerability of women as well as the pattern-consequential relationship between gender-based violence and societal inequality of men and women. Out of all the remedies outlined in legislation, the most crucial is that judicial practice identifies and accurately assesses the particular motivations that underlie femicide. Additionally, certain stereotypical concepts of male-female relationships and women’s inherent subordination cannot be disregarded in sentencing, nor should they be treated as extenuating circumstances.

The issues surrounding the factual inequality of women, which persists throughout the world, cannot be resolved by merely declaring that femicide is a special type of crime. Sometimes it is forgotten that criminal law defines prohibited behaviors starting from generally accepted values in a given social and historical context, and not the other way around. Therefore, certain behavior is not condemned by society

because it is criminalized, but on the contrary, it is criminalized because citizens agree that it is unacceptable and should be forbidden. The declaration of new crimes that are intended to safeguard women is a reflection of hypocrisy, if the inferiority of women is accepted as a frequent and normal occurrence in the community, and if there are no resources available to assist victims of domestic abuse and intimate partner violence in all the appropriate ways.

Therefore, we are of the opinion that the criminalization of femicide is useful, but by no means sufficient, in order to put an end to violence against women. On the other hand, it is necessary to studiously detect and study the phenomenon of femicide, in favor of devising effective strategies for its prevention and support for victims and their families. The criminalization of femicide as a separate criminal offense undoubtedly enables the collection of data on this phenomenon, but data can also be collected without constituting a new crime, which is already the case in many countries. Furthermore, to raise awareness of the terrible situation of femicide, political impetus must be created so that it is regularly brought up in public discourse. It is not necessary to enact new laws or offenses for the sake of doing that.

Finally, the question arises whether it is appropriate to reduce femicide only to cases of death of women in the context of intimate and domestic violence. We believe that femicide should be defined more broadly to include homicide of women who are victims of human trafficking and sexual exploitation, as well as transgender people, keeping in mind that femicide can be conditioned by all situations in which women are in a particularly vulnerable position due to their gender and gender-based roles. Of course, it is crucial in this case to educate people about the rights and status of citizens who belong to marginalized groups.

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## FEMICID-KOMPARATIVNOPRAVNI PREGLED I ODREĐENA SPORNA PITANJA

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Tokom poslednjih decenija fenomen femicida privlači pažnju kako naučne javnosti, tako i javnog mnjenja. Međutim, i pored toga što postoji volja da se deluje povodom problema u vezi sa nejednakošću žena, rodno zasnovano nasilje i femicid, kao njegov najekstremniji oblik, ne jenjavaju. Tako se sve češće polemise o tome da li femicid treba inkriminisati kao posebno krivično delo. Otuda su izlaganja u radu posvećena opštim razmatranjima o femicidu i pitanjima u vezi sa njegovim užim i širim definisanjem, a sa ciljem da se ponudi odgovor na pitanje da li je nužno uvođenje posebne inkriminacije u nacionalnim zakonodavstvima. Potom su putem upotrebe normativnog i logičkog metoda predstavljena rešenja koja se odnose na femicid u uporednom pravu. Autorke zaključuju da je inkriminisanje femicida krivičnim ili drugim zakonskim tekstovima doborodošlo i korisno, s tim što se suzbijanje ovog fenomena ne može postići izolovanom primenom normativnih mera. Naprotiv, naučna literatura ukazuje da borba protiv femicida iziskuje proučavanje rodno zasnovanog nasilja i iskorenjivanje predrasuda i stereotipa koji pogoduju različitim oblicma rodno zasnovanog nasilja, te ustanovljavanje kompleksnog sistema podrške za žrtve i njima bliska lica.

KLJUČNE REČI: femicid, rodno zasnovano nasilje, krivični zakon.

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