

Sladana Jovanović*

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FEMICIDE/FEMINICIDE IN CRIMINAL LAW: DO WE NEED A NEW CRIMINAL OFFENCE?

The author examines relevant definitions, surveys and actual legal responses to femicide, focusing on the state of affairs in the Republic of Serbia, especially dilemma about introducing femicide as a new, separate criminal offence. The actual data on femicide are presented, as well as the overview of the historic perspective, and the difficulties in defining the phenomenon in order to collect accurate and comparable data as the solid base for creating adequate responses. The author focuses on arguments pro and contra introducing femicide as separate criminal offence having in mind actual trends in Serbian criminal law characterized by penal populism, as well as often hastily made interventions without much thinking about their outcomes in practice and lack of adequate implementation of already existing good provisions and preventive mechanisms.

Keywords: *gender-related killing, femicide/feminicide, new/separate criminal offence, gender violence, domestic violence.*

* Phd, full professor at the Union University School of Law, Belgrad,
e-mail: sladjana.jovanovic@pravnofakultet.rs, [ORCID 0000-0001-8300-2594](https://orcid.org/0000-0001-8300-2594)

1. Introduction

The term femicide¹ was used in England in 1801 for the first time to refer to the “killing of a woman”². In 1848, it was incorporated in Wharton’s Law Lexicon, suggesting it had become a prosecutable offence³, thus indicating that the practice of taking the life of women had long been tolerated.

Pretty simple and often used, but not enough clear and accurate is the definition of femicide as the intentional killing of women because they are women (WHO, 2012:1). More complex one (and used in relevant documents and studies on femicide) is “gender-related killing of women and girls” or “killing of women and girls because of their gender” or “intentional killing committed on the grounds of gender-related factors”⁴ (such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable behaviour of women).

According to the latest report on gender-based killings of women approximately 48,800 women and girls lost their lives at the hands of intimate partners or other family members in 2022 (that is 3800 victims more than in previous year (UNODC, UN Women, 2023: 5). On average, more than 133 women or girls are killed every day by someone in their own family. Africa was the region with the largest absolute number of killings, and also with the highest level of violence relative to the size of its female population. Europe was on the fourth place, after Asia, and Americas (Ibid: 3-4).

Despite the overwhelming majority of homicides worldwide are committed against men and boys (80%), women and girls are disproportionately affected

¹ In the literature, the term gynocide appears as a synonym. The term gynocide was for the first time used by radical feminist Mary Daly to describe the systematic mutilation, rape and murder of women by men (Daly, 1978:3).

² History of the Term Femicide. Available at: [History of the Term Femicide - Femicide in Canada](#), accessed on 1.6.2024.

³ The Oxford English Dictionary, 1989, p. 285.

⁴ UN General Assembly resolutions A/RES/68/191 adopted in 2013 and A/RES/70/176 adopted in 2016; UN General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para. 19 (CEDAW/C/GC/35); UNODC, UN Women, 2023; EIGE, 2023.

by homicidal violence in the private sphere. Approximately 53% of all female homicides are committed by intimate partners or other family members, while only 11% of all male homicides are perpetrated in the private sphere (Ibid: 17).

The perpetrator - often male intimate partner usually punishes “his” woman or takes revenge on her - for adultery, separation, but also for supposedly socially valuable, but fatal reasons for the woman such as love, honour or tradition. When it comes to honour and tradition, another family member, even another woman, may be on the side of the perpetrator. Nevertheless, femicide could occur in public sphere too, committed by known or unknown perpetrator, (especially in context related to sex work, human trafficking, war and conflict settings, witch-hunting, etc⁵. This fact (the multidimensionality of the phenomenon) has often been overlooked, so the proper understanding of femicide and its (covert) forms is of great importance.

Despite the efforts of the modern, “civilized” community to eradicate this practice and provide equal opportunities for both sexes, it is still present in all parts of the world, but in poorer, more patriarchal societies, and those with a high tolerance of violence in general, it has its more open expression, while in others it is covert⁶. This is linked to another characteristic of femicide, as its peculiarity is also the contribution of society to its universality and survival, if not through encouragement and support, then through inadequate response and failure to prevent femicidal victimization. One of the possible responses/recommendations is the introduction of a specific criminal offence of femicide (EIGE, 2023: 73) which is strongly supported by women’s rights proponents.

⁵ More details about different types of femicides: Simeunović-Patić, Jovanović, 2011: 281-283; Corradi, 2021: 6-7; EIGE, 2023: 7.

⁶ More about Ciudad Juárez – “city of dead women” or “ Mexico’s femicide capital” and femicidal practice in Latin America that increased interest of Europe in the problem of femicide: Simeunović-Patić, Jovanović, 2011.

2. Gender-related factors as *differentia specifica* of homicidal victimization of women

Femicide is characterized by the specific context or motivation of homicidal victimization of women related to gender. Within the feminist approach, femicide is understood as murder with misogynistic motives (Russell, Van de Ven, 1976). When the gender⁷ of the victim is not within the motive of the perpetrator, the murder of a woman does not constitute femicide, or, to put it simply, femicide is the murder of women by men, because they are women (Radford, Russell, 1992). Soon, the concept of femicide evolved from misogynistic to all forms of sexist killings (motivated by men's contempt for women, their feelings of power, superiority, dominance over women, or the belief that they own and control them).

It is noteworthy to point out that feminists in Latin America insist on the term femicide (*feminicidio*) as more appropriate (so it is used alongside term femicide in many documents, even European ones) arguing that the term femicide emphasizes only the sex of the victim as *differentia specifica*, while femicide emphasizes the misogynistic connotation of murder, and the phenomenon itself is associated with a crime backed up/abolished by a state that does not protect women's rights to a life free from violence (Lagarde, 2006: 223). In 2006, the Special Commission for Monitoring Investigations and Access to Justice in Femicide Cases even stated: "Femicide is a crime of the state". (Brugger, 2009: 6)

In addition to murders related to violence such as rape or beating, femicide, as a form of discrimination/violence against women, also includes murders, i.e. deaths related to genital mutilation, sacrificing widows by burning (*sati*), dowry killings and other femicide practices in India, as well as "honor crimes/killings"⁸. Femicide can also be classified as a covert form of violence against women resulting in their death, which consist of not providing help, i.e. leaving women to death due to misogynistic or sexist motives or social constructs. For

⁷ Homicides motivated by gender of the victim are defined also as *gendercide* (eng.) that could be femicide and androicide (Warren, 1985).

⁸ Noteworthy is practice of "honor-killing" (*karo-kari*) from Pakistan that is gender neutral in terms that victims are men and women accused for adultery. Nevertheless, much more women are sacrificed in the name of honour of the family than men (Simeunović-Patić, Jovanović, 2011: 282).

example, traditionally male children are valued more than female children, and many girls starve to provide food for their brothers. In connection with the above, we must not forget still widespread practice of infanticide, i.e. foeticide, whose victims are also more often female fetuses, while in the background there is a desire to provide male offspring as more valuable. A covert form of femicide could also include suicides committed by women due to the violence. One specific form of femicide is so-called “femicide-suicide”: intentional killing of a woman followed by the perpetrator’s suicide is an incident reported in almost all European countries (Corradi, 2021: 7; Simeunović-Patić, Jovanović, 2013: 19-20, 34-35).

In order to provide a universal definition of femicide, and thus create a solid base for collection of accurate, comparable data, for better understanding of the phenomenon and creation of appropriate social and state responses, the UN Statistical Commission endorsed the Statistical framework for measuring the gender-related killings of women and girls (femicide/feminicide)”, based on the results of the global consultation, in 2022 (UNODC, UN Women, 2022).

In the foundation of the definition of gender-related killing of women and girls (femicide/feminicide) is “gender-related motivation” or context in which killing of woman occurs. It refers to the root causes - such as stereotyped gender roles, discrimination towards women and girls, inequality and unequal power relations between women and men in society - that characterize the specific context in which such killings take place. These factors can trigger violence by perpetrators when a woman’s behavior is perceived not to be in line with social norms or stereotyped gender roles. In this context, the term “gender-related motivation” does not refer to the subjective intent of the perpetrator to commit the homicide, but to its underlying root causes. (Ibid: 3).

As femicide could also occur in the public sphere, homicide *modus operandi* meets at least one of the following criteria: the homicide victim had a previous record of physical, sexual, or psychological violence/harassment perpetrated by the author of the killing; the homicide victim was a victim of forms of illegal exploitation, e. g. in relation to trafficking in persons, forced labour or slavery; the homicide victim was in a situation where she was abducted or illegally deprived of her liberty; the victim was working in the sex industry; sexual violence against the victim was committed before and/or after the killing; the

killing was accompanied by mutilation of the body of the victim; the body of the victim was disposed of in a public space; the killing of the woman or girl constituted a gender-based hate crime, i.e. she was targeted because of a specific bias against women on the part of the perpetrator(s) (Ibid: 9).

Risk factors that should be addressed in all policies and actions in order to prevent femicide (especially its well-known type - perpetrated by intimate partner/family member) include previous violence (violent model of conflict resolution, in general, and especially intense physical abuse of the partner (and other family members), verbal aggressiveness; death and/or suicide threats), pathological possessiveness (related to issues of power imbalance and control tactics within the partnership), jealousy and pronounced ambivalence towards the partner (“I can’t live with you, I can’t live without you”). Separation could be at the same time a solution, by ending an abusive relationship, but also a point at which the violence can escalate, when a man refuses to let “his woman” go. Important risk-factors are also: the presence of mental disorders, such as alcoholism, alcoholophilia, paranoid or schizophrenic psychosis, depression or certain personality traits (psychopathic structure, passive-dependent personalities, etc.), as well as the possession, or more precisely - the availability of firearms (Simeunović-Patić, Jovanović, 2013: 145-146 and 2017: 36-37; Corradi, 2021: 9). Previous victimization by violence or the presence of violent patterns of communication in the primary family are important, but social factors on the side of wider social community/context must not be neglected (such as nurturing macho-culture, tolerating violence, neglecting the principle of gender equality/not eradicating harmful customs and practices, war or other social conflicts...).

3. International and Serbian legal framework

Alarming rates of femicide (and violence against women in general) in Latin American countries contributed to the adoption of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women in 1994 (Belém do Pará Convention) by the General Assembly of the

Organization of American States⁹. Since then, the development of mechanisms to counter this problem in Latin American countries has begun, as well as increasing Europe's interest in the problem, its recognition and responses, regardless of where it occurs.

In 2005, the Parliamentary Assembly of the Council of Europe adopted Resolution 1454(2005) on the disappearance and murder of a large number of women and girls in Mexico¹⁰ emphasizing the concept of femicide that could also find its place in European criminal law. Resolution adopted in 2009 even got the title *Feminicides*¹¹. It highlights the existence of femicide in Europe as well, and requires special attention to be paid to immigrant communities that should restrain from harmful practices and customs that imply violence against women. It is also recommended to punish more severely gender-related violence against women, including femicide. There is also a need to establish a special observatory that will collect data on violence against women, and especially femicide, in European countries, in order to identify gaps in achieving the protection of women and take measures to overcome them¹².

In 2007, the European Parliament took into consideration the Report on the murders of women (femicides) in Central America and Mexico and the role of the EU in combating this phenomenon, as well as the Motion for a European Parliament Resolution¹³. This document, as well as those of the Council of Europe, in addition to the promise of support to countries where femicide is widespread, draws the attention of EU member states to this phenomenon, while countries-candidates for membership in the EU must prove that they respect women's

⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Covention of Belém do Pará", <http://sem.oas.org/pdfs.agres/ag03808E01.pdf>

¹⁰ Council of Europe Parliamentary Assembly, Resolution 1454(2005) Disappearance and murder of a great number of women and girls in Mexico, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17351&lang=en>

¹¹ Council of Europe Parliamentary Assembly, Resolution 1654(2009)Femicides, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1654.htm>

¹² Council of Europe Parliamentary Assembly, Recommendation 1861(2009)Femicides, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1861.htm>

¹³ [REPORT on the murders of women \(femicides\) in Central America and Mexico and the role of the European Union in fighting this phenomenon | A6-0338/2007 | European Parliament \(europa.eu\)](http://www.europa.eu) (2007/2025(INI))

human rights and protect women from violence and femicide. Within the UN, Vienna Declaration on Femicide was adopted more than a decade ago¹⁴.

International interest in femicide has led to changes in legislation in Latin American countries. In 2007, Mexico adopted the General Law on Women's Access to a Life Free from Violence, which defines the concept of femicide, while on July 27, 2011, femicide has been criminalized. This criminal offence consists in "inflicting obvious and humiliating injuries on a woman before or after deprivation of life", and the perpetrator can be punished by imprisonment up to 60 years. The aggravated form of the offence exists in the case of an emotional bond (romantic or a relationship of trust) between the perpetrator and the victim, kinship or a relationship of supremacy. The criminal procedural provisions have also been changed, and those conducting the investigation are required to strictly adhere to the established protocols regarding the crime of femicide in order to ensure efficiency in identifying the victim and perpetrator. Since 2004, there has been a Special Prosecutor for Violence against Women in Mexico.¹⁶ Nevertheless, the country still has a very high rate of femicide. In 2020, official national data registered 948 femicides (aprox. 2.5 daily), whereas, the grass roots associations reported 11 femicides per day (Corradi, 2021: 21). It clearly indicates that the roots of the problem are not in the normative sphere, but in the comprehensive understanding and acceptance of the problem, willingness and capacities of the society and state to counter it.

The Council of Europe's legally binding document, the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, adopted in 2011¹⁸ and ratified by Serbia in 2013¹⁹) doesn't mention the term femicide/femicide. Nevertheless, it sets firmer obligations for

¹⁴ UN, Economic and Social Council, Vienna Declaration on Femicide, E/CN.15/2013/NGO/1

¹⁵ About UN efforts to counter femicide: Jovanović, Simeunović-Patić, 2017: 205-207

¹⁶ LACWHN, Mexico City defines Femicide in the Penal Code. Available at: http://www.reddesalud.org/news/act1_int.php?id=288, accessed on 2. 8. 2024.

¹⁷ About Latino American countries' incriminations of femicide: UNODC, 2019: 57-62.

¹⁸ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, <http://conventions.coe.int/Treaty/EN/Treaties/HTML/DomesticViolence.htm>

¹⁹ Law on Ratification of the COE Convention on Preventing and Combating Violence against Women and Domestic Violence, Official Gazette of the RS - International Treaties, No. 12/2013

States Parties to prevent and combat violence against women, defining and broadening the definition of violence against women in comparison to the definition in the Inter-American Convention. In such a broad framework of violence against women (Article 3a), there is certainly place for femicide, and the Article 51 envisages requirements regarding assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence in order to manage the risk and if necessary to provide co-ordinated safety and support. The relevant assessment is important at all stages of the investigation and application of protective measures, especially if perpetrators possess or have access to firearms.

In Europe, specific, but rather indirect responses to femicide exist (in terms that there is no mention of the femicide, and the relevant incriminations are mostly gender-neutral, and primarily related to domestic/family violence). The most often, murder becomes aggravated if it is committed by a family member/partner or this circumstance is taken as aggravating one in the determination of the sentence (Spinelli, 2011: 42). It is in compliance with the requirements of the Istanbul Convention, but such solution does not cover all forms of femicide that have been discussed, so efforts are still being made to better understand this phenomenon and find more adequate (criminal law) responses.

The European country that has gone the furthest in the sphere of protection of women from violence, including femicide, because it fosters a holistic approach to the problem is Spain, known for its Organic Law 1/2004 on comprehensive protection measures against gender-based violence. In 2004, a public prosecutor for cases of violence against women was appointed, and Spain is the only Member State that has established specialised courts for handling gender-based violence cases and has guidelines on judicial action against gender-based violence issued by a group of experts of the General Council of the Judiciary. As noted in Organic Act 1/2004, these new courts are mandated to examine and rule on criminal cases involving violence against women and any related civil causes. The perpetrator of a femicide can be held liable for murder or homicide under the Spanish Criminal Law which could be aggravated, if committed against a spouse, ex-spouse, partner or ex-partner or a person of particular vulnerability (without mentioning gender-related motivation). However, Organic Law 1/2015 of 30 March 2015 further strengthened the protection of victims of gender-based violence by specifying that committing a crime motivated by the victim's gender

must be considered an aggravating circumstance. Therefore, this law offers legal protection in all cases of violence motivated by gender, which goes beyond violent acts committed in intimate partner relationships. Moreover, in 2015, the Spanish Supreme Tribunal clarified that this provision needed to be applied in all instances in which the victim was a woman and the harmful action was motivated by a man's desire to subject the woman to his will, demonstrating superiority or an attempt to dominate her²⁰. Several European countries adopted specific amendments regarding femicide - Malta, Cyprus²², Croatia²³.

In Serbia, data on femicide are not officially collected (which is undoubtedly a big flaw from the aspect of (more declarative) efforts of the state to counter violence against women, as well as from the aspect of international legal recommendations regarding the mandatory collection of data. Some outlines about phenomenon and the state response to it could be found in the reports of the Network "Women against Violence", as well as in some empirical analysis of judicial decisions (Simeunović-Patić, 2003; Simeunović-Patić, Jovanović, 2013; Beker, 2023). Since 2010, an average of 30 women per year have been victimized by men (by murder or attempted murder) in a family/partner context,²⁴ and according to UNODC data from 2019, Serbia is one of the countries with a medium rate of femicides - 0,65 (rate - per 100,000 female population). Latvia has the highest rate and Ireland has the lowest (UNODC, 2019).

In most cases, the violence that preceded murder was noted, as well as the victims' call for help and contacts with relevant institutions (but adequate help was not obtained). Firearms (very often in legal possession) were common means

²⁰ Critic tones about this kind of state response which undermines human (men's) dignity in some judicial cases in practice has to be taken into consideration. See: Muñoz Pérez, 2021: 477-488.

²¹ More details on Spanish and other European legal responses to femicide: EIGE, 2023.

²² The concept of femicide was introduced into Maltese criminal law in 2022, thus a homicide can be considered a femicide if a woman is killed as a result of domestic violence, honour killings, misogynistic intentions, religious practices such as genital mutilation, and sexual abuse (Calleja, 2022). Similar method was used in Cypriot criminal law (Hazou, E., 2022).

²³ See: Article 111a of the CC of the Republic of Croatia (Aggravated Murder of a Female Person) NN [125/11](#), [144/12](#), [56/15](#), [61/15](#), [101/17](#), [118/18](#), [126/19](#), [84/21](#), [114/22](#), [114/23](#), [36/24](#).

²⁴ Reports of the Network "Women against Violence", *Femicid in Serbia*, Available at: <http://www.zeneprotivnasilja.net/femicid-u-srbiji>, accessed on: 5. 8. 2024.

of committing crime. The same picture (in terms of the motivation of the perpetrator, the use of weapons and prior violence to which the institutions did not react in a timely/adequate manner) is shown by the surveys on judicial practice in Serbia (Simeunović-Patić, Jovanović, 2013; Beker, 2023) as well as by survey on institutional support and assistance prior to femicide in period 2017-2018 (Lacmanović, 2022).

When it comes to criminal law responses, Serbia is one of the European countries that do not recognize the specific crime with gender dimension, nor does femicide as the notion appear in current (strategic and other) documents. However, it could be said that Serbian criminal law (indirectly) complies with international recommendations when it comes to intimate partnership/family gender-related killing, with the gender-neutral incrimination providing protection to all family members that have previously been subjected to abuse (regardless of gender/and motivation). It is a form of aggravated murder - murder of a family member who has been previously abused by the perpetrator (Article 114, para. 1, item 10 of the Criminal Code (hereinafter: CC)²⁵. This specific form of aggravated murder was meant to improve protection of women, i.e. family members who are most often victims of domestic violence (which can end in homicidal victimization). Also, the criminal offence of domestic violence acquires the most aggravated form if it results in death of the victim (in relation to death as a consequence, there is negligence on the part of the perpetrator (Article 194, para. 4 CC)). The prescribed punishment for this offence was increased in 2019, so it is now at the level of the punishment prescribed for murder (Article 113 CC), and if the victim is a minor the minimum of the punishment is the same as the minimum prescribed for aggravated murder²⁶. This legal intervention should also indicate the increased interest of the state in the problem of violence against women and its aggravated forms (at least declaratively and indirectly, because the incrimination itself is also gender-neutral, the only relevant circumstance is the context in which the fatal consequence occurred - domestic violence). However, there is

²⁵ Criminal Code, Official Gazette of the RS, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.

²⁶ Law on Amendments to the CC, Official Gazette of the RS, No. 35/2019

still a direct non-compliance with European requirements regarding the interpretation of a constitutive element of the offence - a family member. Namely, according to the interpretation given by the legislator (Article 112, para. 28 CC) an important determinant in the case of ex-spouses (without child) is living in a common household, while former common-law partners (without child) do not enjoy any protection (under the provisions on family violence offence), although it is a well-known fact that the termination of a relationship does not mean the end of violence and that, as it has been emphasized, separation is often a trigger for murder. On the other hand, the Istanbul Convention envisages wider circle of possible perpetrators and victims (Article 3b). The same is envisaged in the latest EU Directive on Combating Violence against Women and Domestic Violence²⁷.

Also, a murder of a pregnant woman is a form of aggravated murder (Article 114, para. 1, item 9 CC), but gender-related motives are not relevant, and the murder out of callous revenge or other base motives (Article 114, para. 1, item 5) could also be applied in the cases of femicide. Serbian Criminal Code envisages other suitable incriminations that could be applied in cases of violence against women resulting in victim's death, but they are also gender-neutral (except for the offence of female genital mutilation) and death is envisaged as the consequence which is not caused intentionally (but negligently) by the perpetrator (e.g. Human Trafficking - Article 388. para. 5 CC; Stalking - 138a, para. 3 CC, and Female Genital Mutilation - Article 121a, para. 4 CC). The prescribed sentences for aggravated murder are at least ten years (up to 20 years) of imprisonment, but life imprisonment could be pronounced too, alternatively. In case of other previously mentioned offences (with death as the graver consequence) it is at least 10 years (up to 20 years) of imprisonment, and in case of Female Genital Mutilation is two to twelve years of imprisonment (which could be criticized as some other features of that particular incrimination, that could be linked to misunderstanding of the phenomenon and its absence in Serbian tradition and culture). However, when speaking of protection of women against violence, the main problem is not normative framework as it is its (adequate) implementation. For example - incrimination of aggravated murder - murder of a family member who

²⁷ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L, 2024/1385, 24.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1385/oj>

was previously abused by the perpetrator is very rare in practice, although it seemed that have been grounds for that qualification in judicial practice (Simeunović-Patić, Jovanović, 2013: 166-169). Just two cases of murder of a previously abused family member in Serbia were mentioned by Turanjanin et al. (2020) in the period 2006-2016. The problem is related to the incrimination itself (the interpretation of the notion of a family member, and the interpretation of the notion of previous abuse (Simeunović-Patić, Jovanović, 2013: 167; Đorđević, 2005). Let's conclude: the incrimination "does not work" properly; it has no application in practice, and judging by the data on domestic violence and stability of the rate of femicide - something else is crucial.

In cases of femicide, aggravated murder from callous revenge or other base motives (Article 114, para. 1, item 5 CC) can also be applied, but such cases are also rare in judicial practice. It looks like judicial practice is in line with media coverage of femicide cases - a man who kills his wife because she left him, "couldn't really live without her" or "he suffered from the inability to preserve his marriage", and most often "still loves her"²⁸. Given the moment we live in and the research results showing that jealousy is often the reason for murder, this attitude should be radically changed. Recent survey on femicide emphasizes that the most frequent motive for committing femicide is jealousy, arising from the desire for exclusive possession of the partner, inability to control her behaviour and manage her life (Beker, 2023:54).

The same outcome is related to circumstance that should be considered as an aggravated one in determining a punishment for a criminal offence committed in hatred²⁹. There are no cases in court practice regarding issue of violence against women or other vulnerable groups (Mršević, 2017: 202; Kolaković-Bojović, Đukanović, 2023: 104). The aggravating circumstances that must be considered in determination of the sentence (Article 46 of the Istanbul Convention) are also not applied properly in Serbian judicial practice. There is an automatic-

²⁸ About media coverage: Mršević, 2013:104-105.

²⁹ Article 54a of the CC: "If a criminal offence is committed by hatred due to race or religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, this circumstance will be judged by the court as an aggravating circumstance, unless it is prescribed as a feature of a criminal offence."

ity/scheme in listing circumstances in the process of determination of the sentence; mitigating circumstances dominate (disputable ones, which are stated automatically, as those related to age, marital/familial status, parenthood), and the institute of mitigation of punishment is applied in almost every case of attempted murder of female intimate partner (Simeunović-Patić, Jovanović, 2013: 164). The latest survey on judicial practice mentions the same problems in relation to the sentencing (circumstances related to marital or family status are present as mitigating circumstances (married/unmarried, “marital union was terminated”, age of a perpetrator, number of children), but the some positive steps are noticed, regarding aggravated circumstances: presence of children when the criminal offence was committed, children losing their mother, the perpetrator’s strong desire for the consequence to occur, intense persistence and premeditation” (Beker, 2023: 55-56). Serbia’s approach towards protection against violence and femicide within criminal law sphere could be additionally well illustrated by the review of the new incriminations (both in normative and practical aspects), introduced in (non)compliance with the requirements of the Istanbul Convention. Some of the new amendments have serious flaws, thus indicating more declarative approach in the process of making compliance with ratified Istanbul Convention (and protection of women against violence). The Article 121a, para. 2 CC (Female Genital Mutilation)³⁰ is even in the contradiction to Istanbul Convention spirit and requirements, thus displaying deep misunderstanding of gender-based violence (Jovanović, 2017: 230-236; Jovanović, Vujičić, 2022: 2015-2016). The other ones are not flawless, too (Jovanović, 2019 and 2024), so GREVIO also made different comments and suggestions regarding new incriminations and their implementation (GREVIO, 2020).

It seems that in the background of previously mention problems with implementation of the existing (good) provisions is a long time ago observed problem of underestimating of seriousness of the reported cases of violence against

³⁰ It defines a lighter form of the crime: if there are some particularly extenuating circumstances under which the act specified in paragraph 1 of this Article has been committed, the perpetrator shall be punished with imprisonment of three months to three years (instead of with imprisonment of one to eight years which is the punishment for the basic form of the criminal offence stipulated by paragraph 1). The Convention does not envisage such cases, and in Article 42 even envisages that culture, custom, religion, tradition, or so-called “honor” shall not be regarded as justification for such acts.

women and/or untimely/inadequate reaction to them (Jovanović, 2010: 157-275). Even the latest survey on femicide shows that “old practice” is still present, that the new preventive measures (envisaged by the Law on Prevention of Domestic Violence³¹) have not been implemented in order to prevent femicidal victimization (Beker, 2023: 58). The work of the groups for coordination and cooperation was criticized (as they should provide a timely, coordinated and individualized response in cases of domestic violence, and should take care of the safety of the victims, as well as the adequate risk assessment) also by the Protector of Citizens (2020 and 2022) and GREVIO (2020).

Let us recall that in such cases, the state violates the principle of due diligence which implies its obligation to prevent, investigate and punish acts of violence. Such omissions could take Serbia before European Court for Human Rights for the violation of the principle of due diligence and obligation to protect right to life in cases of domestic violence³².

4. Femicide: new criminal offence in Serbian Criminal Code?

There are proposals to introduce femicide as a separate criminal offence in the group of crimes against life and body, and to define it as an offence which will include any gender-motivated killing of a woman, regardless of whether it was committed intentionally or the woman’s death occurred due to the perpetrator’s negligence, provided that the death occurred as a result of gender-motivated violence (Beker, 2023: 58). Defining femicide as a separate criminal offence, with many forms and precise determinants, would be an extremely difficult job, given the complexity of the phenomenon (even the proponents of femicide have not made a concrete proposal), and need of precise and understandable incrimination. The other possibility is to define it as new form of aggravated murder (similar to proposition made in Croatian initiatives launched by women’s organizations (Kujundžić, 2024).

³¹ Law on Prevention of Domestic Violence, Official Gazette of the RS, No. 94/2016, 10/2023.

³² About judicial decisions of the ECHR in cases of domestic violence: Ilić, 2014: 383-393; Josifović, Kambovski, 2021: 447-461.

Would really new incrimination, new form of aggravated murder bring better protection for women against violence and lower femicide rate in Serbia? Are we going to change the CC again in order to boast in the reports that we have a new incrimination (even though we have not properly regulated the other ones that are supposed to protect women from violence) (Jovanović, Vujičić, 2022; GREVIO, 2020), and even though we are not using existing prevention mechanisms in the right way? Or, would it primarily bring some political gain to decision makers in the context of penal populism and carceral orientation of the lay public, that are obvious in current trends in Serbian criminal law (Stojanović, 2010; Ignjatović, 2017: 27-28). These trends (as well as hastily done interventions) could be clearly seen in the existing concept of aggravated murders in Serbian Criminal Code (Jovanović, 2021).

The expectations from a new incrimination are greater visibility and awareness-raising. So, the Criminal Code would be used as educational material for the general public, but also for the professionals, as new incrimination should force them to apply the law in the right way. Undoubtedly, such innovative amendments to the Criminal Code would absorb attention of all media, as the intervention into criminal law is too often used as an excellent tool for starting and/or deepening conversations on certain socially sensitive topics, drawing attention and raising public awareness. However, it is not the main social role of the criminal law.

Of course, the deterrent effect of the new incrimination is also counted on, i.e. its preventive effects, even in relation to domestic violence cases, bearing in mind that this form of murder (as aggravated one) would be punishable by life imprisonment. However, a long time ago, in XVIII century, Beccaria concluded that harsh punishment (as well as hyper-criminalization) does not have the desired deterrent effects, and that prevention and certain, timely and just punishment are right solutions.

Having in mind the state of affairs in Serbia (which was previously discussed and the need to use criminal law as *ultima ratio*) it does not seem that femicide as separate offence/new form of aggravated murder would be a miraculous solution, because there are existing incriminations which can be used in cases

of femicide. Why they are not created and/or used properly in such cases is the right question (GREVIO posed it also in its latest report on Serbia)³³.

5. Concluding remarks

Relevant international instruments and studies are important impetus for making more efforts to counter problem of femicide, not just within the context of domestic violence, but in wider context. One of the possible responses and most visible one is introducing new criminal offence - femicide in national legislations (and policies addressing discrimination/violence against women). Expectations from it are related to benefits such as: awareness raising, prevention and applying the law adequately (EIGE, 2023: 68).

In Serbia, generally speaking, the current state of the normative criminal law response to violence against women, including femicide, cannot be assessed as bad, as much as the problem that neither the existing relevant incriminations nor the existing prevention and protection mechanisms are properly applied in practice. Thus, the fate of the new incrimination would probably be more at the level of declaration than operationalization. However, insufficient knowledge of this phenomenon in general, burdened with prejudices and/or insufficient interest in the problem are greater obstacles on the way to protecting women from violence and femicide, than the absence of specific incrimination. Coping with risk factors, such as availability of firearms is of paramount importance, as it is necessary to intervene in the existing regulations related to the link between gun ownership/availability and possible femicide, having in mind that some constructive suggestions have already been made (UNDP, 2021: 79-85)).

To be brief, Latin American countries introduced separate offence and specific procedural mechanisms, but do not have lower rate of femicides. Obviously, the solutions should be sought elsewhere, as incriminations-declarations promising severe punishment have no effect.

³³ The aggravated murder that refers to murder out of callous revenge or other base motives is suitable also for some femicide cases, and perhaps it could be amended by specifying the gender-related motivation of the perpetrator. Or, the base motives could be specified under Article 112 of the CC in order to clarify femicide cases in law implementation.

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