

Zorica Mršević*

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FEMICIDE AS A CRIMINAL LAW DEED - PRO ET CONTRA

The subject of the paper is the analysis of arguments and counter-arguments for the legalization of femicide as a criminal offense. The activist understanding of femicide relies on the position of the global feminist movement, according to which femicide is the killing of a woman due to hatred, contempt by a man over a woman. Formulating femicide in this way is justified, necessary and well-founded in the activist, academic and artistic sense but not as the Criminal Code deed. The text's author argues that there is no need to introduce the element of feminist anger into the nature of the crime, because there are femicides without that emotional element, which is always processwise difficult to prove. The main problem is the lack of official data on the number of femicides in Serbia. The need for data on the gender of killers and their victims should be solved by introducing gender/sex-disaggregated data on murders and their victims not by introducing femicide as Criminal Code deed.

Keywords: femicide, global feminist movement, man's hatred of women, Croatia, gender disaggregated data, argument against femicide as criminal law offence.

* Dr Zorica Mršević is retired principal research fellow at the Institute of Social Sciences, in Belgrade, e-mail: zorica.mrsevic@gmail.com, [ORCID 0000-0003-1968-9699](https://orcid.org/0000-0003-1968-9699)

1. Introduction

Femicide is the term used to denote the killing of women by men. It is a gender-based murder, committed against women, girls, girls, and even female babies by men. In order for a murder to be characterized as a femicide, the gender of the victim must be relevant, i.e. that the murder occurred because the victim was a woman. The term femicide, by the way, is not new and has existed in the English language since 1801 and means the killing of women, and in 1848 the term was first published in Wharton's Law Lexicon. This term has entered the scientific terminology of the study of violence against women since the article "Femicide: speaking about the unspoken", which was published in Ms magazine in 1990. It is a critical analysis of the massacre of female students in Montreal in 1989, when today's formulation, femicide, first appeared - intentional killing of women by men (Mršević, 2011: 55-58).

The actuality of femicide has existed since then until today. In Italy, a film about femicide recently attracted a lot of attention from the audience, precisely because of the topic it deals with. The film *There's Still Tomorrow* (*C'è Ancora Domani*) about femicide was directed by a woman, Paola Cortelezi (Ide, W. 2024: April 28th) and is now showing across Europe. Both in Italy and Serbia, femicide is sometimes the fatal outcome of a relationship that began as love and romance¹.

2. The concept of femicide

Femicide is a crime against women motivated by hatred of women, the killer's contempt for women, his sense of superiority over women, and the femicide believes that he has the right to take a woman's life (Mršević, 2013: 52). Femicide by an intimate partner is the most widespread subtype of femicide, but

¹ Last year he made more money than both *Barbie* and *Oppenheimer*. As of last month, it had grossed around £31.5 million in cinemas, making it the highest-grossing film of 2023 and the highest-grossing film directed by an Italian woman to date. In the film, *Delia* is a housewife and mother living in poverty in post-war Rome in 1946, the year Italian women first got the vote. The film's story resonates with contemporary Italian audiences because according to recent police statistics, 120 women were murdered in Italy in 2023, roughly one every three days (Nova.S: 2024 April 04th).

it is not the only one. Femicide includes several types of gender-based violence, from “ordinary” femicide, through rape and murder, to burning widows on the husband’s pyre and murder for “insulting family honor”, which used to occur (until the middle of the twentieth century) mainly in the Mediterranean area, the Middle East and still in the area of the Indian subcontinent and South Asia (Mršević, 2011: 47-48).

In modern times, it is observed that femicide represents a type of continuous gender-based terror, which begins with physical and psychological abuse of rape. It moves through torture and abuse with hatred of women, due to the perpetrator’s feelings of superiority, sadistic pleasures and/or the exercise of power by a man over a subjugated woman, which in some cases escalates to intentional killing (Mršević, 2011: 55-56). The authors Caputi and Russell define the death of women in those circumstances as femicide (Drew, 2009: 24). While the most common forms of violence experienced by men are physical attacks and robberies in public spaces outside the home, the most common violence against women is everyday violence in the home, in the family, which in some cases leads to femicide in the family-partner context, which as such constitutes a significant part of all murders of women (Drew, 2009: 206).

Domestic murder is preceded by domestic violence, which, although comprehensively present, is largely hidden from public view. Many families that are outwardly harmonious and “solid” conceal violence against women and are reluctant to seek external help from social services or enforcement agencies (Drew, 2009: 2006). Violence by an intimate partner can occur in any relationship, regardless of class or ethnic affiliation, and the observed regularity is that abusers most often grew up in violent families themselves. They grew up there in an atmosphere of permissibility of control and violence against women, so they themselves exercise control and power in the relationship with their intimate partner and are intensely jealous and vengeful. The use of drugs or alcohol intensifies these problems (Drew, 2009: 213), and the availability of firearms facilitates and guarantees the realization of the killer’s decision to take a woman’s life.

3. Hegemonic masculinity

Although the police around the world most often emphasize the causal connection between the individual pathology of the killer and the committed femicide, as well as the unpredictability and randomness of the act of murder itself, experts in the field of phenomenology of violence do not agree with the police's position that the violent act could not have been foreseen (Drew, 2009: 216). Especially those experts who professionally deal with domestic violence, consider femicides in the family-partner context to be very predictable and as such could have been prevented by sanctioning domestic violence (Drew, 2009: 221). In fact, femicide could be said to represent the most predictable murder (Mršević, 2014: 87).

Authors from the field of phenomenology of violence point out that gender-based violence is one way of manifesting gender in conflictual family situations. By studying the characteristics of typical perpetrators of gender-based violence, along with the characteristics of those criminal acts, criminologist Barbara Perry determined that committing such criminal acts is a way of achieving a kind of masculinity, the so-called hegemonic masculinity (Renzetti, Edleson, 2008: 270). Hegemonic masculinity is a model of practicing male dominance over women. The term "hegemonic" refers to the contextually tolerated ways in which men practice masculinity, which includes violence to subjugate women (Drew, 2009: 3), denying the victim's right to leave or end an abusive relationship, lead her own life, seek and receive help institution etc

The social contextuality of hegemonic masculinity is reflected in the permissibility of male jealousy and its violent manifestation. Thus, it was recorded that the Russian writer Maxim Gorky was once beaten unconscious by a group of Russian peasants because he tried to defend a woman, who was stripped naked in front of a crowd that roared with approval, and her husband whipped him with a horse whip for alleged fraud (Margaret, Usborne, 1999). The message is clear, not even a man can with impunity oppose hegemonic masculinity manifested as a man's right to express his jealousy through extremely violent acts. Men are violent when they are jealous for no reason, and when they themselves are not faithful, and even when they are the ones who left their ex-partners for other women.

4. Initiatives to introduce femicide as a separate crime

Activists for women's rights demand that this crime be viewed as femicide - a gender-based murder, that is, what the Criminal Code treats as a separate offense and qualifies it as aggravated murder. The Association of Judges and Prosecutors of Serbia responds that the law does not recognize gender, and lawyers also reject such a proposal - they say that the legislator has foreseen a space in which every act would be adequately punished (RTS, 2024: 15.04). Activism regularly comes up with the argument of a large number of femicides, which indicates the increased social danger of that act.

In Serbia, there are no official data on the number of femicides, and at the same time, there is a strong need for that data expressed by many parties for a long, two-decade period. The activist understanding of femicide relies on the position of the global and domestic feminist movement, according to which femicide is the killing of a woman due to hatred, contempt, a sense of superiority or ownership of a man over a woman. Formulating the category of femicide in this way is completely justified, necessary and well-founded in the activist, academic and artistic sense. When I teach Phenomenology of Violence and Gender Studies, at the Faculty of European Legal and Political Studies, I use such an approach to femicide, but with full awareness that theory is one thing and legislative and judicial practice is another. The problem is that in practice there are a significant number of murders of women in which the emotional moment cannot be identified (accidental, mistaken murder, the killer of an unknown woman, or women as collateral unintentional victims whom their killers neither despised nor hated because they did not even know them) (Mršević, 2024a: 13.05). Examples of "wrong" women in our country are Biljana Paić murdered in 2014 (swapped the room and bed with the intended victim) (Glas Srpske, 2014: 24.01), and Teodora Kaćanski murdered in 2013 (got out of her boyfriend's jeep for whom the murder was intended) (Bogosav, 2003: 19.11).

There is no publicly available database on the number of femicides in Serbia. Some of us who are engaged in the analysis of violence against women get a daily Ebart pressclipping and by counting the number of women killed annually, monthly, semi-annually, we get some insight into the number of femicides, with full awareness that media reports do not include all cases of femicides.

Various initiatives and efforts that the MoI², which alone has all the data on women killed by men, has a problem with electronic data processing, explained by different understandings of the term femicide. Women's groups strongly insist that hatred, contempt, possessiveness, etc. motivational moment is key to understanding femicide, while others believe that the fact that a man killed a woman is sufficient for the concept of femicide, and there are those who would like the concept of femicide to be completely avoided as potentially irritating due to its roots in feminist context. The MoI then replies that they cannot classify the data if there is no legal, criminal definition of femicide, and so in Serbia for years we have a stalemate that we do not actually know the number of femicides, although different data appear in the public, but they all come from counting cases (putting "x" signs) from media reports (Mršević, 2024a: 13.05).

A decade ago, South American activists initiated the UN Commission on the Status of Women to consider the killing of a woman in the face of criminal gangs and drug cartels, i.e. accidental victims, as femicide. According to the decision of that UN body, that extended concept of femicide also included such murders, so even though there is no hatred towards the specific murdered woman, there is still femicide. Due to all such possible confusions, I believe that there is no need to introduce the element of feminist anger into the being of the criminal offense at all by incorporating male hatred as a constitutive element, because there are murders of women without that, or any, emotional element, which is otherwise difficult to prove in every case of murder, but who is the killer and who is the victim (Manjoo, 2012: 4).

"International documents ratified in Serbia, e.g. UN Resolution 1325 (S/RES/1325, 2000), as well as the Istanbul Convention (CoE, 2011), do not recognize the term femicide. A number of international organizations relevant to gender equality prefer to use the term "killing of women by men" European Institute for Gender Equality, (EIGE, 2006), or occasional, irregular use of the term femicide, e.g. UN Commission on status on women - CSW (Commission, 1946)." (Mršević, 2024a: 13.05).

The police should have clearly visible data on the number of women killed by men, but they have the excuse that femicide does not exist as a crime.

² Ministry of the Interior

Records do not even need to exist, we only need gender disaggregated data on murders, that is, how many men killed women and how many men, and how many women killed men and women. Nothing more, and that can be easily extracted from the data of the MUP. The problem is represented by activists of women's groups who misunderstand femicide by relying on feminist theory, according to which femicide is the killing of a woman due to hatred, contempt, a sense of superiority or ownership of a man over a woman. Theory is one thing and practice is another, so we can agree with such a feminist approach, but then the murders of women in which that emotional moment cannot be identified remain beyond our reach, such as, for example, killing a random woman.

Not to get into theory, femicide is simply the killing of a woman by a man. There is no need to bring feminist anger into the whole thing and in that future work we see male hatred and the like³.

5. Seeing where the real problem is

In Serbia, there are no official data on the number of femicides, and at the same time, there is a strong need for that data expressed by many parties for a long, many decades-long period. There is no publicly available database on the number of femicides in Serbia. Some of us who are engaged in the analysis of violence against women get a daily Ebart pressclipping and by counting the number of women killed annually, monthly, semi-annually, we get some insight into the number of femicides, with full awareness that media reports do not include all cases of femicides.

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³ This discussion in the women's movement has been going on for a long time, always the same women from FemPlatz and AŽC strive for it, but in fact, they only want nice foreign grants to receive permanently, and in an easy way, counting femicides.

the relationship between men and women, male social supremacy in relation to women and the widespread belief of many that they have the “right” to demonstrate this supremacy by force.

6. Myths and facts about femicide as a separate crime⁴

Should femicide be included in the Criminal Code as a separate crime because the gender of the victim is not legally recognized as relevant, is a controversy that has been going on for some time in Serbia (RTS, 2024: 15.04). Experts point out that it is much more important to implement existing laws than to write new ones. (2024: 11. 09). The main argument in those public discussions is the social danger of femicide, the alleged increase in the number of murders of women, the relatively (until recently) mild punishment policy in relation to murderers of women, often citing examples of insufficient understanding by the competent institutions of the complexity of this criminal act, which is often preceded by the multi-decade duration of violence that the killer perpetrated on the murdered (RTS, 2024: 15.04). That is why it is first of all necessary to demystify inaccurate representations, myths, which are presented as true facts in those discussions (Mršević, 2024b: 29.05).

Myth: Countries in the region already have femicide in their criminal laws. **Fact:** They don't. But in March, Croatia adopted amendments to the Penal Code with a new criminal offense in Article 111a “Aggravated murder of a female.” Femicide is being prepared as a criminal offense in Slovenia, which will probably be adopted, but not yet. There are initiatives and proposals to recognize femicide as a separate crime, in order to better emphasize the specific gender-based motive in these crimes, but so far this has not yet been formally included in the legislation in North Macedonia which currently does not have a special crime called “femicide” in its criminal code. However, murders of women can be prosecuted under the general provisions for murder.

⁴Both texts published in the daily newspaper Danas on May 13 and 29, 2024, in which arguments deny the need for the legalization of a special criminal offense of femicide in Serbia, did not receive a single denial in the comments or any expression of rejection of the author's personal position. On the contrary, the professional, academic and activist scene expressed agreement and support.

Myth: EU countries have femicide in their criminal laws. **Fact:** They don't. Femicide as a crime only exists in Malta and Cyprus.

Myth: The Criminal Code of the Republic of Serbia does not adequately sanction femicide with the existing crime of murder and its forms. **Fact:** There is. In Serbia, there is the possibility of imposing the most severe criminal sanction, life imprisonment for crimes of aggravated murder, in which form some cases of femicide may also be included. That sentence was already pronounced for the act of femicide committed in 2019. in Novi Sad and confirmed by the Appellate Court.

Myth: Femicide, as a separate act, allows for more adequate (stricter) punishment of murderers of women than is currently the case in Serbia. **Fact:** Even now there is a possibility of life imprisonment for the crime of murdering a woman. Any further insistence on stricter punishment can only open the issue of returning the death penalty to the Serbian legal system.

Myth: Introducing femicide as a separate crime in the Criminal Code is actually a small intervention. A small step for a legislator, but a big and significant one for women. **Fact:** No CC change, no matter how seemingly small, is insignificant. As a systemic code, the CC is changed only with a systemic approach and not with ad hoc initiatives, case by case, "piecemeal" supported by not always well-informed international organizations

Myth: Activists of the women's movement are the ones who are advocating that femicide be included in the Criminal Code as a separate crime. **Fact:** There are only a few, actually a small number (one organization), who are financially rewarded by foreign foundations for that commitment through projects.

Myth: The Ministry of Interior (hides) does not allow the public to see the number of femicides. **Fact:** False. There are different understandings of that term. According to some, the constitutive part of the being of the criminal offense of femicide should be hatred, contempt, the feeling of superiority and/or ownership of the male murderer of the woman, according to others, the emotional moment is only of a theoretical character, but it is not a necessary part of the being of the criminal offense of femicide, which, according to those understandings, is every murder committed by a man against a woman. In this situation of different understandings, the Ministry of Interior considers that the registration of femicide on their part would be possible only if there was a criminal offense of femicide

when they, without entering into different understandings of that term, could register it as such.

Myth: Femicide as a special crime means that a woman's life is more valuable and important than a man's life in the eyes of the legislator. **Fact:** False. The term femicide does not have that meaning, but was created based on the fact that women's lives are far more and more often threatened by men in private and public spaces and relationships than is the case with the reverse division of "roles". For severe forms of the crime of murder, it is still possible to impose the most severe sanctions, depending on the circumstances of the crime.

Myth: Women will be better protected from murder if femicide is a separate offense in the Criminal Code. **Fact:** There is no evidence that this would actually be the case, but there is plenty of domestic and foreign research evidence that strict legal provisions in most cases do not have the expected general preventive effect, which has the certainty of detection and prosecution. Women's lives are better protected by good functional prevention.

Myth: Some people do not like femicide being a separate crime in the Criminal Code of the Republic of Serbia. **Fact:** Paradoxical (at first glance), but above all to those same activists who are project "advocating" for its legalization. Namely, if there are no records, they can receive grants from foreign foundations for counting femicides from media reports many years in advance, as is the case many years ago. If femicide were a separate crime, then the MoI could also have public records of committed femicides and no one would receive such projects to count femicides.

Myth: A body to monitor femicide is necessary for a better understanding and a better response of institutions to that act. **Fact:** The establishment of a body to monitor femicide would exclude all but the initiators, who are again the same activists. This would exclude all other, far more numerous activists of human and women's rights, against violence, etc., research actors and actresses, the media, science, students and the entire academic community, social work institutions and educational institutions, etc., who would all of them had the body for monitoring femicide as the only source of data, and not the official MUP data. It would be a discriminatory exclusion of everyone else except those who would thereby unjustifiably gain the status of the only "truth holders" about femicide.

Myth: The problem of the lack of official records of the number of femicides in Serbia cannot be solved without the existence of the criminal offense of femicide. **Fact:** Very false. It is possible by changing the MUP's practice of recording murders. Without the need for a separate criminal offense of femicide, the MUP should and can simply sort data on killers and their victims by gender, so that one can see how many men killed women (and how many men), as well as how many women killed men and how many women. From that ideologically neutral data, everyone can benefit, both those who advocate for a feminist understanding of femicide and those who mean by it any killing of a woman by a man.

Myth: The views of independent institutions support femicide as a separate crime. **Fact:** There is no explicit declaration so far, but there are indications that independent institutions do not support that concept, or that they at least differ among themselves.

Myth: One of the benefits of femicide as a separate criminal offense would be the final existence of official data on the number of femicides in Serbia. **Fact:** In fact, it would not even exist as a benefit because the crime of femicide would include a feminist understanding of the special emotional relationship of the male killer in relation to the victim, which would make all other murders of women by men unrecorded as such, and the number of femicides would actually be reduced (women as collateral damage of the crackdown on criminal gangs, accidentally killed women, killers of unknown women, etc.).

7. Croatia, an example that should not be followed

On March 14, 2024, the Croatian Parliament adopted the Decision on the Promulgation of the Law on Amendments to the Criminal Code (Law on Amendments to the Criminal Code. Official Gazette of the Republic of Croatia, No. 36/2024). In Chapter Ten, Art. 111a. there is a new act: Aggravated murder of a female person, which literally stipulates: “(1) Whoever commits the gender-based murder of a female person shall be punished by a prison sentence of at least ten years or a long-term prison sentence. (2) When determining the criminal offense referred to in paragraph 1 of this article, it will be taken into account that the offense was committed against a close person, a person whom the perpetrator has

previously abused, a vulnerable person, a person who is in a relationship of subordination or dependence, or the offense is committed in circumstances of sexual violence or because of a relationship that puts women in an unequal position or that there are other circumstances that indicate that it is gender-based violence.”

That decision was preceded, as in Serbia, by numerous controversies in which, as in Serbia, the gravity and prevalence of this act was cited as the main reason for the legalization of femicide, but also, as in Serbia, in the background of the argumentation, there is also the problem of the lack of records of how many women were actually killed by men (Beta, 2023: 13.09). It is pointed out that the scale of the problem can be seen by just looking at the Save Me platform, which is a Facebook page where tens of thousands of women have been writing for the sixth year asking for help and advice in the fight against domestic violence, the most radical outcome of which is femicide. In contrast to Serbia, where it seems clear that this is not the case, in Croatia they wrongly refer to the Istanbul Convention as an argument for the legalization of femicide (DNEVNIK.hr, 2024: 24.05) and therefore the challenges are moving in the domains of defense against challenging “gender ideology”.

“Gender-based violence really exists and the world and Europe are very aware of it, there are numerous statistics and works on it, that’s why the Istanbul Convention was adopted to bring gender-based violence under control and to ensure women’s protection.” “The Istanbul Convention is being implemented, the laws have been tightened. We introduced the criminal offense of femicide. We also increased the penalties for rape. This act has the characteristics of the aggravated murder of a woman precisely because she is a woman,” Prime Minister Andrej Plenković said in April.

The ombudsman for gender equality, Višnja Ljubičić, advocates as a necessary element the closeness of the murdered woman and her killer: “So the murder must be committed against a close person, that person must be in some kind of subordinate relationship, or it was about circumstances of severe sexual violence, or it was about the question of a vulnerable person or some other circumstances connected with gender-based violence,” says Ljubičić. In the end, this was included in the legal text, which, in addition to partner femicide, actually excluded a considerable number of other types of femicide (old women living alone, journalists, nurses, students, hitchhikers, girls, errant women, members of

other marginalized groups (Obradović, 2023: 316), etc.) who were also killed by men, also because they could do it as physically and socially superior. Elderly women remain outside the protection of this criminal offense if they are not in a union with the murderer, which leaves them in a vulnerable situation because otherwise elderly people have weaker legal protection (/Kostić, 2013: 330).

A special weakness of this criminal offense is that it does not include any form of non-partner femicide, to which older women are especially exposed (Janković, 2023: 665). Also, in a procedural sense, it is necessary to prove that the murderer had previously abused the murdered person, that she is a vulnerable person, a person in a relationship of subordination or dependence, or that the act was committed in circumstances of sexual violence or because of a relationship that puts women in an unequal position. The unanswered question remains whether every partnership, marriage and extramarital union is a relationship that puts a woman in a subordinate position, or whether it is a characteristic of only some unions, which must then be proven in court proceedings in each specific case. Victims of obstetric violence also remain unaffected by that criminal act, as well as potential victims of violence and gross neglect in homes for the elderly. All of this greatly limits the practical application of this criminal offense, which leaves the effectiveness of this offense questionable because many murders of women by men will simply remain “under the radar”, that is, not covered by the bombastically announced introduction of the criminal offense of femicide in Croatia, as, in this respect, the first country in the region.

8. Conclusion

We conclude that the creation of the criminal offense of femicide in Serbia is legally, politically and nomothetically unfounded. The need for data on the gender of killers and their victims should be solved by introducing gender/sex-disaggregated data on killers/murders: how many men killed women and how many men, and how many women killed men and how many women. It is necessary to change the MoI’s practice of classifying murders, without elements of feminism or any ideology, while avoiding different understandings of the term femicide.

Otherwise, the criminal policy for murderers of women will neither become stricter nor more effective if we have the criminal offense of femicide, because even now the existing criminal offenses allow for the most severe sentence of life imprisonment (the Court of Appeal in Novi Sad confirmed the sentence of life imprisonment to Dejan Dabović (30) from Herceg Novi due to the murder of ex-girlfriend Dušanka Jocović (25) at the end of December 2019) (Beta, 2021: 27.08).

Being against femicide as a separate crime does not at all mean diminishing male violence against women, nor diminishing the criminal responsibility of a male murderer of a woman, and even less enabling a reduced punishment policy for murderers of women. It just means enabling a good categorization of murders and, therefore, a correct perception of the problem of femicide while avoiding different understandings of the term.

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