**Unapređivanje pravne i društvene matrice radi prevencije femicida i rodno zasnovanog nasilja u BiH**

1. **Uvod**

U oktobru 2022. žene Bosne i Hercegovine su ujedinjeno i solidarno izašle na ulice u više od dvadeset mjesta u Bosni i Hercegovini da zahtijevaju:

„uvođenje pravne definicije femicida, uvođenje femicida kao krivičnog djela u sve zakonske i podzakonske akte, hitno usklađivanje krivičnih zakona s Konvencijom Vijeća Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulskom konvencijom) i revidiranje kaznenih praksi, osiguravanje prevencije i zaštite od nasilja nad ženama kroz nadležne institucije i multisektorske protokole, te dosljednu primjenu zakona u slučajevima kada do smrtnog slučaja kao posljedice nasilja u porodici da se počiniocu sudi prema odredbama zakona koje će utvrditi težu kaznu.”[[1]](#footnote-1)

U proglasu koji je objavljen povodom poziva na protestna okupljanja jasno je vidljivo da se femicid razumije u okvirima kontinuiteta muškog rodno zasnovanog nasilja nad ženama i djevojčicama, te da je, kao globalni fenomen, prisutan u svim sferama javnog i privatnog života zbog patrijarhalnih društvenih normi. Proglas ne nudi direktnu definiciju femicida kao takvog, već je usmjeren na zakonodavce da kao svoju obavezu pravno reguliraju pojam femicida uz navedene elemente. Neposredni povod protesta je bilo još jedno muško ubistvo ženske osobe uzrokovano nasiljem u intimnim partnerskim odnosima. Međutim, naglašeno je da zvanične statistike ukazuju na to da je u periodu od 2017. godine ubijeno minimalno 60 žena, ali da je broj sigurno veći upravo zbog nevidljivosti femicida i nepostojanja njegove pravne kvalifikacije. Da je porast muškog nasilja nad ženama i femicida prisutan u regiji, žene Bosne i Hercegovine su naglasile i činom pružanja solidarne podrške sa ženama Srbije i Kosova koje su zbog istog razloga u tom periodu također bile na ulicama.

Međutim, potrebno je istaknuti da se tek u zadnjih nekoliko godina počelo malo detaljnije pristupati pitanju femicida, kako u regiji tako i u BiH. Tako se u regiji mogu naći detaljne analize poput studija pod nazivom „Društveni i institucionalni odgovor na femicid u Srbiji“[[2]](#footnote-2) koja je objavljena u dva toma 2019. godine, te studija pod istim nazivom ali koja se tiče Crne Gore koja je objavljena 2023. godine.[[3]](#footnote-3) Objavljena su i dva izvještaja u koja je uključen pregled slučajeva femicida u regiji Zapadnog Balkana za 2020. i 2021. godinu koji sadrže i pregled slučajeva femicida iz BiH.[[4]](#footnote-4) Što se tiče same BiH, 2020. godine udruženje Helsinški parlament građana je objavilo kratku studiju „Femicid i mehanizmi za prevenciju u slučaju Bosne i Hercegovine“ autorice Sunčice Đukanović,[[5]](#footnote-5) te su u kontekstu svog izvještaja sa praćenja suđenja Centar za ženska prava i Fondacija Udružene žene posebno uradile i analizu slučajeva femicida.[[6]](#footnote-6) Tokom 2022. objavljeni su tematski bilten o femicidu Atlantske inicijative[[7]](#footnote-7) i „Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021“ koju su u saradnji objavili The Aire Center i FemPlatz[[8]](#footnote-8). Jako bitno je naglasiti i da neke od bosanskohercegovačkih feministica, koje nisu direktno vezane za nevladine ili vladine organizacije, uspijevaju, doduše u ograničenim prostorima, objaviti poneki tekst na online portalima. Takav slučaj je i sa tekstom Tamare Zablocki pod naslovom „Femicid je društveni problem, a ne sporadični incident iz privatne sfere“[[9]](#footnote-9) koji je objavljen na portalu prometej.ba u januaru 2021. godine, a koji je naknadno prenijela i Ženska mreža BiH[[10]](#footnote-10). Nakon gore pomenutih protesta, Kristina Ljevak na Media centar online objavljuje kratku kritičku analizu medijskih pisanja o femicidu pod naslovom „Relativizacija uzroka femicida u mizoginoj kulturi“,[[11]](#footnote-11) koju prenosi i portal diskriminacija.ba.[[12]](#footnote-12)

Ovaj izvještaj predstavlja pokušaj malog doprinosa u tek otvorenim feminističkim raspravama o femicidu u Bosni i Hercegovini. S obzirom na to da je ovo istraživanje trajalo samo dva mjeseca, uspjeli smo tek zagrebati po površini prilično velikog broja diskusija koje su se otvorile u zadnjih deset godina u vezi sa prevencijom femicida. Iako je feministicama dugo trebalo da uopće ukažu na ovaj fenomen, jednom kada je termin prihvaćen, jako brzo se rasprostranio. U vezi s tim, nismo sigurni da li je ovo dobro jer je očigledno da je termin već izašao iz striktno feminističkih rasprava i ima život za sebe i kao takav riskira da ga patrijarhalni sistem kooptira.

Za izvještaj je urađena desktop analiza do sada razvijenih rasprava o femicidu i njegovoj prevenciji globalno ali i specifično u Bosni i Hercegovini. Koristeći feministički analitički okvir urađena je analiza pojma femicid u etimološkom i fenomenološkom smislu. Također, urađena je detaljna analiza krivičnopravnog okvira u vezi s krivičnim djelom ubistva, koje je u Bosni i Hercegovini rodno neutralno, te kako se sudska praksa odnosi prema femicidu u tako uređenom rodno neutralnom zakonodavstvu. Za potrebe studije smo uradili i analize krivičnopravnih sistema zemalja EU i zemalja regiona, kako bismo utvrdili na koji se način femicid tretira. S obzirom na to da je jedan od razloga zagovaranja uvođenja femicida kao posebnog krivičnog djela i mogućnost njegovog praćenja radi kreiranja politika i mjera za njegovu prevenciju, napravljena je i analiza različitih mehanizama za prikupljanje podataka o nasilju nad ženama i djevojčicama i femicidu. U vezi s tim, uradili smo i analizu nedavno objavljenog *Izvještaja o polaznom postupku procjene o zakonodavnim i drugim mjerama za provedbu odredbi Konvencije Vijeća Evrope sprječavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulska konvencija),* grupe eksperata Vijeća Evrope (GREVIO), gdje je detaljno urađena osnovna studija usklađenosti politika i zakonodavstva Bosne i Hercegovine sa Istanbulskom konvencijom. Na kraju, u kontekstu potencijalne prevencije uradili smo i kratku analizu regulatornog okvira za kontrolu malog oružja i lakog naoružanja kao jednog od faktora rizika femicida. Ova studija ne nudi nikakve odgovore, već samo želi otvoriti pitanja i potaknuti dalje feminističke i profesionalne rasprave o najboljim načinima sprečavanja femicida u Bosni i Hercegovini.

1. **Šta je u imenu – etimološka i fenomenološka razmatranja**

Femicid kao najteži oblik muškog rodno zasnovanog nasilja nad ženama i djevojčicama je prvi put prepoznat tokom prvog Međunarodnog suda za zločine protiv žena, koji je održan u Briselu u martu 1976. godine. Kao takvog u svom svjedočenju ga je koristila feministica Diana Russell, koja je zajedno sa Nicole van de Ven organizirala ženski sud kako bi učinile vidljivim zločine protiv žena i započele, kako je to Simone de Beauvoir u svom pozdravnom pismu sudu nazvala, radikalni proces „dekoloniziranja žena“.[[13]](#footnote-13) Na sudu je Russell svjedočila o mnogim primjerima smrtonosnih oblika muškog nasilja nad ženama i djevojčicama u nadi da će „uvođenje ovog novog koncepta olakšati prepoznavanje mizogine motivacije takvih zločina.“[[14]](#footnote-14)

Russell nije sama skovala riječ femicid. Pojam je korišten u engleskom jeziku i prije što ga je Russell uzela i dodijelila mu političko značenje. Ona sama navodi da je prvi put čula za termin *femicid* od poznanice koja joj je rekla da američka spisateljica Carol Orlock piše antologiju o femicidu.[[15]](#footnote-15) Antologija nikada nije obljavljena, pa tako ni definicija femicida koju je Orlock imala na umu, ali je termin pomogao Russell da definira patrijarhalni fenomen muškog ubijanja ženskih osoba (žena i djevojčica) zbog toga što su žene (ženska bića). Ovdje se, zbog potencijalnih različitosti u značenju koje se mogu pojaviti zbog prevođenja s engleskog jezika, treba naglasiti da Russell insistira na korištenju riječi „female“ i „male“ (što bi u se kontekstu naših jezika moglo prevesti kao ženska i muška osoba, ali i kao žensko i muško). U suprotnom se, Russell insistira, isključuju maloljetne osobe koje ovaj patrijarhalni fenomen ne zaobilazi (naročito kada se radi o ubistvima djevojčica upravo zato što su djevojčice).[[16]](#footnote-16)

Kasnija literatura koja se bavi pitanjem femicida i njegovim uvođenjem u krivična zakonodavstva različitih država[[17]](#footnote-17) skreće pažnju na činjenicu da se u engleskom govornom području (gdje ga feministice prvo uvode) termin femicid može pronaći u tekstovima napisanim na početku 19. stoljeća, u kojima se riječ femicid odnosila na ubistvo žene općenito. U ovom kontekstu se kao primjer takvog korištenja pominju tekst John Correyja „Satirični pogled na London sa početka devetnaestog stoljeća“, te naslov memoara William MacNisha „Priznavanje neučinjenog femicida.“ Pominjanja oba ova teksta upravo ukazuju na značaj političkog čina Diane Russell jer i samim odabirom termina ona proziva mizoginiju koja je vidljiva i u prethodnom korištenju riječi femicid u svrhu ismijavanja ili eventualne romanizacije ubistva žene, s obziom da se MacNish u literaturi o femicidu definira kao ubica mlade žene.[[18]](#footnote-18)

Sama Russell navodi da „[d]efiniranje riječi koja označava ubijanje ženskih osoba važan je korak ka obznanjivanju ovog najvećeg oblika nasilja nad ženama. Imenovanje nepravde, a time i omogućavanje načina razmišljanja o njoj, obično prethodi formiranju pokreta koji bi se borio protiv te nepravde.”[[19]](#footnote-19) Russell zajedno sa Jill Radford u zborniku tekstova *Femicid, politika ubijanja žene* u kojem su predstavile brojna razmatranja o problemu femicida u Velikoj Britaniji, Sjedinjenim Američkim Državama (SAD) i Indiji, a koji su objavile 1992. godine, ističe da se uvođenjem pojma „femicid“ oslovljava problem rodne neutralnosti pojma „homicid“ (ubistvo, ubojstvo, umorstvo) koji se svestrano koristi za označavanje nasilne smrti osobe koju je prouzrokovala druga osoba.

Etimološki gledano riječ ‘femicid' u značenju kojem ga sada razumijemo dolazi iz engleskog jezika (femicide). Osmišljena je kao kovanica koja se sastoji od dvije latinske riječi: *femina,* ženai *caedere*, isjeći (u nekim prevodima čak i ubiti). Feministice su počele koristiti pojam femicid kao direktnu refleksiju na riječ 'homicid' koja se u nekoj od varijanti koristi u modernim jezicima koji počivaju na latinskom jeziku, ili čiji pravni jezik počiva na latinskom jeziku, kako bi se njome u najširem smislu opisalo svako ljudsko djelo lišavanja života drugog čovjeka. Dok u latinskom jeziku homo označava muški rod, u jezicima koji koriste riječ ‘homicid' (npr. engleski, španski, francuski, talijanski) ona je osmišljena kao rodno neutralna[[20]](#footnote-20). Kako primjećuju Corradi i dr. “[r]evolucionarni doprinos Radford i Russell bio je naglasiti da homicid/ubistvo briše iz sociološkog oka one posebne, rodno utemeljene dokaze o ubistvu žena, koji se razlikuju od ubistava muškaraca.”[[21]](#footnote-21) Jedino je putem prepoznavanja femicida moguće ukazati na njegovu duboku ukorijenjenost u disbalansu moći u patrijarhalnom društvu koji promovira nejednak status muškaraca i žena. Dok je istina da su muškarci u velikom broju počinitelji i ubistava muških osoba, motivi i okolnosti su drugačije kada se radi o ubistvima žena. U jezicima u upotrebi u Bosni i Hercegovini izvedenica ‘homicid’ se rijetko koristi. Međutim, i sama riječ ubistvo (ubojstvo, umorstvo) je rodno neutralna, te je tako analiza i kritika koju je Russell pokrenula primjenjiva i na bosanskohercegovački patrijarhalni društveni, politički i pravni okvir.

Od Ženskog suda do danas pojam *femicid* je imao kompliciran put. Sama Russell je u nekoliko navrata primijetila da su čak i feministice imale različit stav o upotrebi pojma femicid.[[22]](#footnote-22) Tako se, naprimjer, u Sjedinjenim Američkim Državama, uprkos opsežnom medijskom izvještavanju o ubistvima žena koje su počinili muškarci, ignorira činjenica (čak i među feministicama koje su uključene u borbu protiv nasilja nad ženama) da su mnoga od tih ubistava u cijelosti ili djelimično motivirana muškim mizoginim stavovima prema ženskim osobama. S druge strane feministice u Latinskoj Americi su još od 1980-ih naširoko usvojile termin femicid ili feminicid, a do danas je čak 18 zemalja te regije kriminaliziralo femicid/feminicid na različite načine uključujući u kontekstu intimnih i neintimnih odnose.[[23]](#footnote-23)

Međutim, ni unutar teorijskih i političkih diskusija u Latinskoj Americi feministice nisu zauzele potpuno identične stavove oko koncepta. Čak su formirana i dva tabora oko samog naziva fenomena (femicid, odnosno feminicid), a u vezi s tim i donekle različitim definiranjem koncepta. Neke od feministica, predvođene Marcelom Lagarde y de los Rios, feministicom iz Meksika, insistiraju da riječ feminicid bolje reflektira kontekst Latinske Amerike te da nije dovoljno samo napraviti razliku između ubistava muških od ženskih osoba, već da treba naglasiti i institucionalno nasilje kao dio tog fenomena, jer ubistvo žene je praćeno institucionalnim nasiljem koje vodi ka nekažnjivosti.[[24]](#footnote-24) Primjer koji se u ovim diskusijama često koristi su serijska ubistva žena i djevojčica u Meksičkom Ciudad Juarezu, gdje je, kako je Interamerički sud za ljudska prava[[25]](#footnote-25) utvrdio, meksička država propustila sprovesti svoju obavezu zaštite prava žena i djevojčica. S druge strane, feministice iz Costa Rice Monsterat Sagot i Ana Carcedo, zadržavaju riječ femicid i upozoravaju da ako se nekažnjivosti i zahtjev da država poštuje svoje obaveze uključe u definiciju femicida, to ne smije biti odlučujući faktor jer može biti ograničavajuće utoliko što zanemaruje da je rodno zasnovano nasilje protiv žena i djevojčica univerzalni problem koji prevazilazi granice.[[26]](#footnote-26) U vezi s tim, sama Russell primjećuje da, dok je Lagarde u pravu što se tiče nekažnjivosti, uvrštavanje nekažnjivosti u definiciju implicira da bi u onim slučajevima u kojima je počinitelj uhapšen i zatvoren, ti slučajevi automatski prestali biti femicidi/feminicidi[[27]](#footnote-27). Također, država može poštovati svoje obaveze i procesuirati i kazniti sve počinitelje unutar rodno neutralnog sistema i bez priznavanja specifičnosti takvih ubistava, što onda isključuje mogućnost postojanja femicida/feminicida u tim državama, a to nije slučaj niti u jednoj državi. U tim slučajevima bi se propustila prilika identifikacije uzroka i korijena femicida, a diskriminacija i opresija žena i djevojčica bi ostale nevidljive.

Bez obzira na sve, feministice iz Latinske Amerike su u svojim diskusijama unijele razmišljanja o primjeni teorijsko-političkog termina u lokalne i pravne kontekste. Kako Corradi i dr. primjećuju:

„Jedna od osnovnih tvrdnji sociologije jeste da su društvene radnje smislene; stoga su procesi društvenih promjena uvijek bili popraćeni društveno prihvatljivim načinima preimenovanja transformiranog svijeta. Ako odgovarajuće riječi nisu bile dostupne, trebalo ih je izmisliti, a sam čin izgovaranja provokativnog pojma postajao je revolucionarni događaj, koji je bio transgresija društvenog poretka. Ako je pojam jak, tačnije ako obuhvaća aspekte stvarnosti koji su prethodno bili neprimjetni u teoriji ili stereotipnim percepcijama, on tada počinje kružiti i širiti se u različitim kontekstima. Nakon toga više nije isključivo vlasništvo autora/ice. Nešto se dogodilo: novi pojam napreduje, a to pokazuje da ima jaku pretpostavku ugrađenu u sebe.“ [[28]](#footnote-28)

Međutim, nekontrolirano kruženje i širenje pojma predstavlja i opasnost razvodnjavanja definicije što može dovesti do gubljenja političkog utjecaja tog pojma.[[29]](#footnote-29) Tako se, naprimjer, svako ubistvo žene nikako ne može smatrati femicidom jer se onda gube rodno utemeljeni dokazi o ubistvu žena, te se onemogućava moć koncepta femicid da ukaže na disbalans moći u patrijarhalnom društvu. U ovom kontekstu i Russell je 2013. godine upozorila na korištenje definicije femicida kakva je, kako ona navodi, u to doba još uvijek bila u upotrebi u Ujedinjenim nacijama (UN), a to je „ubistvo žene zato što je žena“. Takva definicija, kako je već gore pomenuto, isključuje kao žrtve ženske bebe, djevojčice i djevojke (tinejdžerke). Također, insinuira da se radi o ubistvu koje je počinila jedna muška osoba nad jednom ženskom osobom, što onda zanemaruje činjenicu da mnoge femicide vrše grupe muškaraca, poput bandi i vojske. Konačno, takva definicija uključuje ženske osobe kao moguće počiniteljice ubistva, pri tome ignorirajući da mnoge muške osobe koriste prisilu, čak i prijetnju femicidom, da natjeraju mnoge ženske osobe da izvrše femicid, kao što je to npr. slučaj u Indiji kada majke odbijaju da ubiju ženske bebe.[[30]](#footnote-30)

U vezi s tim, Karen Ingala Smith,[[31]](#footnote-31) upozorava na problem depolitizacije termina femicid kad uđe u političke i pravne okvire. Korsiteći primjer UN-ovog Simpozija o femicidu koji je održan u Beču u novembru 2012. godine i Deklaracije o femicidu koja je je proizašla iz simpozijuma, a koje u neku ruku označavaju značajan pomak u popularizaciji korištenja femicida u zvaničnim globalnim i nacionalnim politikama, Ingala Smith primjećuje da dok se na prvo čitanje definicija koja se koristi na Simpoziju[[32]](#footnote-32) i u Deklaraciji,[[33]](#footnote-33) a koji glasi „ubijanje žena i djevojčica zbog njihovog roda“, može činiti sveobuhvatnom, ona u principu ne identificira muškarce kao veliku većinu počinitelja ubistava žena i djevojčica što u konačnici ozbiljno potkopava svaku preventivnu namjeru političkih inicijativa. Prihvatajući argument da femicid također može uključivati da žene mogu ubiti žene zbog utjecaja patrijarhalnih vrijednosti, Ingala Smith zaključuje da svaka definicija ili koncepcija femicida mora uključivati muškarce kao primarne izvršitelje i/ili korisnike, uz sofisticiranije verzije koje priznaju i eventualne žene počiniteljice koje djeluju pod utjecajem patrijarhalnih vrijednosti, te predlaže svoju definiciju kao „ubijanje žena, djevojčica i ženskih beba i fetusa,[[34]](#footnote-34) koje pretežno, ali ne uvijek, počine muškarci, kako bi se održao individualni i/ili kolektivni muški dominantni status, ili kao odraz nižeg statusa žena“.[[35]](#footnote-35)

* 1. **Manifestacije femicida**

Da se femicidu unutar javnih politika može pristupiti i na način da se objedine do tada razvijeni elementi definicije bez da se depolitizira ili razvodni sam pojam demonstrirala je Specijalna izvjestiteljica UN-a za borbu protiv nasilja nad ženama i za njegove uzroke i posljedice, Rashida Manjoo. U svom tematskom izvještaju koji je objavila u maju 2012. godine, a koji je posvetila rodno zasnovanim ubistvima žena[[36]](#footnote-36) Manjoo uvodi termin femicida u UN dokumente prezentirajući pregled feminističkih diskusija o definiciji koje su se do tada razvoče- Manjoo naglašava da je femicid ekstremna manifestacija postojećih oblika nasilja nad ženama, gdje nasilje nad ženama shvata kao najveći oblik opresije žena u društvu globalno. Femicid je krajnji čin nasilja kojem su žene izložene u kontinuitetu.

Manjoo ističe da ovakva ubistva nisu izolirani incidenti koji se pojavljuju iznenada i neočekivano. Sve žene diljem svijeta su izložene kontinuiranom nasilju jer žive u uslovima rodno zasnovane diskriminacije i prijetnji koje su uzrokovane strukturnim (kao što su društveni, ekonomski i politički sistemi), institucionalnim (kao što su formalne i neformalne društvene mreže i institucije), interpersonalnim (kao što su lični odnosi između partnera, među članovima porodice i unutar zajednice) i individualnim (kao što individualne sposobnosti da se odgovori na nasilje) faktorima, koji najčešće djeluju intersekcionalno. Koristeći svoju ulogu specijalne izvjestiteljice pri UN-u Manjoo također naglašava problem nekažnjivosti nasilja nad ženama, ali i obavezu svake države da pruži dužnu pažnju[[37]](#footnote-37) u promociji i zaštiti ženskih prava, što podrazumijeva sveobuhvatne i rodno osviještene intervencije, uključujući mjere koje su osmišljene za oslovljavanje institucionalnih i društvenih faktora.

Naglašavajući da je globalno rasprostranjenost različitih oblika ovakvih ubistava u porastu, Manjoo obrađuje različite manifestacije problema širom svijeta i iznošenjem činjenica o ovim ubistvima u kazuje na rasprostranjenost muškog nasilja nad ženama i djevojčicama. U svom izvještaju Manjoo imenuje sljedeće oblike femicida[[38]](#footnote-38):

1. Ubistva žena koja su rezultat nasilja u intimnim partnerskim odnosima
2. Ubistva žena optuženih za čarobnjaštvo/vještičarstvo
3. Ubistva žena u ime „časti“
4. Ubistva u kontekstu oružanog sukoba
5. Ubistva žena vezana uz miraz
6. Ubistva aboridžanskih i domorodačkih žena
7. Ekstremni oblici nasilnog ubijanja žena, koji ona povezuje sa rastućim sociopolitičkim fenomenom bandi, organiziranog kriminala, dilerima droge, lanacima trgovine ljudima i drogom, masovnim migracijama i proliferacijom malog i lakog oružja
8. Ubistva kao rezultat seksualne orijentacije i rodnog identiteta
9. Drugi oblici rodno zasnovanog ubistva žena i djevojčica u koje uključuje čedomorstva ženskih beba, selektivne abortuse kao opresivna patrijarhalna praksa, ali i druge štetne prakse nasilja nad ženama.

Neke od manifestacija koje je Manjoo analizirala u svom izvještaju, prethodno su već bile obrađene u tekstovima koje su 1992. godine u svojoj knjizi objavile Russell i Radford. U uvodu u knjigu Radford[[39]](#footnote-39) napominje da se femicid, kao mizogino muško ubistvo ženskih osoba, pojavljuje u mnogim različitim formama, između ostalog nabrajajući:

1. Rasistički motivirani femicid
2. Homofobni femicid ili lezbicid
3. Bračni femicid
4. Femicid kojeg je izvršio stranac izvan doma ženske osobe
5. Serijski femicid
6. Masovni femicid
7. Situacije u kojima dolazi do smrti žena usljed mizoginih stavova ili društvenih praksi (kao npr. namjerna transmisija HIV-a, zabrana abortusa, smrti prouzrokovane nepotrebnim operacijama kao što su histerektomija, klitoridektomija, čedomorstva ženskih beba, ili čak namjerna preferiranja dječaka nad djevojčicama što uzrokuje smrti djevojčica usljed zapuštanja ili izgladnjivanja).

Naravno, druge feministice identificiraju drugačije obrasce/manifestacije femicida jer muško mizogino nasilje nad ženama se pojavljuje u različitim oblicima u različitim kontekstima. U nekim od konteksta, vjerovatno zbog sveprisutnosti nasilja u intimnim partnerskim i porodičnim odnosima se čak insistira da se femicid razumije samo kroz prizmu intimnih partnerskih i porodičnih odnosa.

U kontekstu EU, Pododbor za ljudska prava Evropskog parlamenta (DROI) je 2021. godine zatražio izradu studije o femicidu koju je uradila Consuelo Corradi, profesorica sociologije sa LUMSA Univerziteta u Italiji.[[40]](#footnote-40) Iako to nije posebno naznačeno, bitno je istaknuti da je studija naručena tokom globalnog porasta nasilja u porodici registriranog tokom zdravstvene krize izazvane COVID–19 pandemijom,[[41]](#footnote-41) a koje je rezultiralo „povećanom razinom složenosti u upravljanju slučajevima nasilja nad ženama i djevojčicama, kao i fluktuacijama u razini hitnih poziva telefonima za pomoć i skloništima.“[[42]](#footnote-42) Do tada se femicid pominjao na marginama EU, na godišnjim konferencijama koje je u EU parlamentu organizirala EU-LAT mreža u saradnji sa Zelenima/EFA i Heinrich Böll Stiftungom.[[43]](#footnote-43)

U izvještaju Corradi ističe da slučajeve femicida možemo klasificirati u različite vrste, i to prema ponašanju počinitelja, odnosu počinitelja sa žrtvama, i širem kontekstu nastanka ovog zločina. U tom kontekstu ona pobraja sljedeće vrste[[44]](#footnote-44):

1. Femicid u intimnim pratnerskim odnosima
2. Femicid unutar porodice (neintimni odnosi) koji se može dalje podijeliti na:
3. Femicid u ime časti
4. Smrti zbog miraza
5. Femicid-suicid[[45]](#footnote-45)
6. Femicid u uslovima rata i konflikta
7. Selekcija ženskog spola
8. Lov na vještice
9. Druge vrste u kontekstu pristupa zasnovanog na ljudskim pravima (npr. u kontekstu trgovine ljudima, žene koje pripadaju etničkim manjinama i domorodačkim grupacijama, i sl. grupacije žena iz marginaliziranih populacija).

U principu, Corradi samo malo drugačije predstavlja oblike femicida koje su navele Russell i Radford, kao i Manjoo. Ono što je bitno istaknuti jeste da u svom izvještaju Corradi primjećuje da dok se u Evropi femicid općenito shvata u kontekstu intimnih partnerskih odnosa, „takav ograničeni pojam ne pokriva potpunu stvarnost ovog zločina na našem kontinentu i diljem svijeta.“[[46]](#footnote-46)

* 1. **Definicija femicida u BiH**

U kontekstu Bosne i Hercegovine ne možemo se pohvaliti nekim feminističkim raspravama o femicidu niti njegovoj definiciji. Gore pomenuti protest i proglas iz oktobra 2022. su bili izuzetak, ali su barem malom mjerom utjecali na osvještavanje javnog diskursa o fenomenu femicida. Pojam *femicid* je u javni prostor Bosne i Hercegovine ušao, kao doduše i jako puno drugih koncepata, stihijski. Ovaj put to se desilo nakon što je kroz medijska izvještavanja postalo jasno da su ubistva žena, najčešće u konteksu intimnih partnerskih odnosa u porastu, kako u Bosni i Hercegovini tako i u regiji, te se često i razumije kao takav.

U svom tekstu u kojem pruža društvenu analizu femicida u kontekstu intimnih partnerskih odnosa, Tamara Zablocka ističe da:

„definicija femicida koja najbolje odgovara bh. kontekstu je ona koju su Diana Russell i Jane Caputi 1990. godine dale u članku „Femicid: Govoreći neizrecivo“, navodeći da je femicid „ubijanje žena od strane muškaraca iz mržnje, prezira, zadovoljstva ili osjećaja vlasništva nad ženama, odnosno seksizma“.“[[47]](#footnote-47)

Dok bi se dalo razgovarati da li je ova definicija najadekvatnija za bosanskohercegovački kontekst, Zablocka je ustvari jedina feministica koja je ponudila neka razmišljanja o definiranju femicida u našem kontekstu[[48]](#footnote-48).

Općenito gledajući, definicije femicida koje su u opticaju u medijima su raznolike, ali najčešće se pojavljuju u rečenicama poput: „Femicid, kao najekstremnija forma rodno zasnovanog nasilja, definiše se kao ‘namjerno ubistvo žena samo zato što su žene'.“[[49]](#footnote-49) Ovdje se implicira da se radi o ubistvima koja vrše muškarci nad ženama, ali se to ne izgovara. Mediji u principu najčešće prihvataju definicije koje im se ponude iz ženskih nevladinih organizacija, a koje su često preuzete iz nekih međunarodnih institucionalnih okvira koji se često boje feminističkih rasprava.[[50]](#footnote-50) U principu ova definicija je generička pa samim tim nije neadekvatna, ali nažalost puko preuzimanje i ponavljanje definicija ne dozvoljava nam stvarni društveni razgovor u kojem bi se mogli zaista uhvatiti u koštac sa kontinuitetom nasilja nad ženama i djevojčicama. Da je to tako potvrđuju nam mnogi medijski natpisi koji sve više ukazuju na to da se razgovori često vode oko djece kao žrtava femicida, dok ubijene žene ostaju nevidljive, a samim tim i nasilje koje su pretrpjele. Tako su nas nedavno mediji obavijestili o održanim radionicama i panelima na kojima su iznesene sljedeće tvrdnje:

„U slučajevima femicida, najveći gubitnici su djeca, jer ostaju bez oba roditelja i potrebno je osnažiti odgovor države u takvim slučajevima - rečeno je na konferenciji „Multidisciplinarni pristup prevenciji i borbi protiv femicida i nasilja u porodici“ koju je danas u Sarajevu organizirao Gender centar Federacije BiH.“[[51]](#footnote-51)

„U slučajevima femicida, najveći gubitnici su djeca, jer ostaju bez oba roditelja, rečeno je u petak navečer u Mostaru na panel diskusiji "Zašto su žrtve femicida nevidljive".“[[52]](#footnote-52)

Čak i neke aktivistice, vjerovatno razmišljajući da je lakše animirati sistem da djeluje na prevenciji nasilja nad ženama prave iste greške pa izjavljuju da „nakon što se femicid desi jedina žrtva nije ubijena žena, često iza nje ostaju djeca.“[[53]](#footnote-53)

Svakako, važno je razmišljati kako pomoći djeci koja su pogođena femicidom, ali to niti u jednom momentu ne smije učiniti direktne žrtve ili uzroke femicida femicida. U protivnom se normalizira nasilje nad ženama kao i sam femicid, te se briše obaveza države da radi na prevenciji nasilja nad ženama i femicida.

Kako nema rasprava o definicijama, tako u kontekstu Bosne i Hercegovine nema ni razgovora o tome postoje li drugi oblici femicida osim zaista izraženog femicida u kontekstu intimnih partnerskih odnosa. Recimo, moglo bi se diskutirati da li u definiciju femicida uključiti, kako neke feministice sugeriraju, i situacije u kojima dolazi do smrti žena usljed mizoginih stavova društva zbog kojeg je upotpunosti zanemaren zdravstveni sistem koji se bavi pitanjima reproduktivnog zdravlja žena, pa se sve češće bilježe čak i smrti žena tokom porođaja.[[54]](#footnote-54) Naravno, pored otvaranja diskusija za sve ovo bi nam trebali i neki konkretni podaci o smrtima žena u BiH, čime se baš i ne možemo pohvaliti.

1. **Prikupljanje relevantnih rodno razvrstanih podataka kao uslov za adekvatan rad na prevenciji femicida**

Razmatrajući odsustvo diskusija o femicidu u mnogim feminističkim krugovima Radford smatra da je jedan od razloga zašto feministice nerado pristupaju toj temi upravo konačnost femicida koja ga stavlja izvan tradicionalnih feminističkih načina rada: ubistvo žene je konačno, ona nije preživjela da ispriča svoju priču i opiše iskustvo nasilne smrti:

“sve što se može podijeliti su bol i bijes onih koji su doživjeli/e takav gubitak. A ta bol, daleko od toga da bude osnov za jedinstvo i snagu - kao što je to u grupama podrške za žene koje su preživjele seksualno nasilje - može potkopavati i ušutkavati. U mnogim se kulturama suočavanje sa smrću smatra privatnom stvari. Žene koje podignu glas moraju voditi računa o uticaju koji njihove riječi mogu imati na one koji su bliski mrtvoj ženi. Postoji i opasnost od optužbe da se na tuzi stvara “politički kapital”. Iz tih je razloga femicid možda jedna od najmučnijih i najosjetljivijih dimenzija muškog nasilja kojima se feministkinje trebaju pozabaviti.”[[55]](#footnote-55)

I tako smo umjesto iskustava ostavljeni da se bavimo hladnom statistikom. Doduše, statistika jeste bitna jer se njome mogu učvrstiti ili osporiti postojeći društveni odnosi.

Patrijarhalna društva su razvila statističke sisteme u koje su ugradili koncepte i definicije koje odgovaraju održavanju patrijarhalnog sistema. Feministice su odavno upozoravale da su statistički sistemi orodnjeni i da nisu neutralni. Međutim, tek u zadnje dvije decenije su se, uglavnom inspirisane teorijom promjene[[56]](#footnote-56) koju su usvojila mnoga tijela UN koja se bave razvojem, i feministice više uključile u razgovore o statistici i prikupljanju podataka zahtijevajući od statističkih sistema da razviju adekvatne kategorije koje bi nam mogle efikasno ukazivati na rodnu (ne)jednakost ili rodno zasnovano nasilje.[[57]](#footnote-57) U tom kontekstu se shvata da su dobro definirane kategorije podataka neophodne da bi se oslovilo nasilje nad ženama i djevojčicama, ali i da bi se radilo na jednakosti svih, te da dobro razvijeni indikatori mogu omogućiti praćenje svih intervencija i omogućiti da se pravovremeno reaguje.

* 1. **Obaveze prikupljanja podataka iz Istanbulske konvencije**

U vezi s tim, treba istaknuti obavezu država članica da redovno prikupljaju podatke o nasilju nad ženama i djevojčicama, a koja proističe iz člana 11 Konvencije Vijeća Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulska konvencija):

„Član 11. Prikupljanje podataka i istraživanje[[58]](#footnote-58)

1. U svrhu primjene ove konvencije, članice će preduzimati sljedeće:

a. prikupljati razdvojene relevantne statističke podatke u redovnim vremenskim razmacima o slučajevima svih oblika nasilja obuhvaćenih ovom konvencijom;

b. podržavati istraživanja na terenu svih vidova nasilja obuhvaćenih konvencijom radi proučavanja osnovnih uzroka i posljedica, učestalosti i stope osuđujućih presuda, kao i efikasnosti mjera koje se preduzimaju u primjeni ove konvencije.

2. Članice će nastojati provoditi ankete među stanovništvom u redovnim vremenskim razmacima radi procjene prevalence i trendova svih oblika nasilja obuhvaćenih Konvencijom.

3. Članice će grupi eksperata, koja se pominje u članu 66. ove konvencije, dati prikupljene podatke u skladu s ovim članom kako bi se stimulirala međunarodna saradnja i omogućilo međunarodno upoređivanje (benchmarking).

4. Članice će osigurati da informacije prikupljene u skladu s ovim članom budu dostupni javnosti.“

Član 11.1.a Istanbulske konvencije izričito navodi da u svrhu provedbe Konvencije zemlje članice moraju ispuniti, između ostalog, zahtjev prikupljanja „razdvojenih relevantnih statističkih podataka u redovnim intervalima o slučajevima svih oblika nasilja obuhvaćenih ovom Konvencijom”. Ova obaveza se u principu odnosi na prikupljanje administrativnih podataka koji se obično prikupljaju tokom rutinskog rada javnih službi kada žrtve nasilja traže pomoć (npr. policija, sudstvo, zdravstvene institucije, službe za socijalni rad, i sl.).

Uz pristup usmjeren na žrtve koji je izričito naglašen u Istanbulskoj konvenciji, za razvoj mjera za sprečavanja i efikasnu borbu protiv nasilja nad ženama potrebno je prikupljati tačne statističke podatke koji su posebno osmišljeni da sadrže informacije i o žrtvi i o počinitelju. Ekspertska grupa Vijeća Evrope za akciju protiv nasilja nad ženama i nasilja u porodici (GREVIO) je u svojim evaluacijskim izvještajima koji se tiču provođenja Istanbulske konvencije u različitim zemljama članicama naglasio da nije dovoljno da različite institucije prikupljaju podatke samo za svoje potrebe, jer fragmentirani podaci ne daju potpunu sliku rodno zasnovanog nasilja. U vezi s tim, GREVIO je preporučio usklađivanje definicija i mjernih jedinica u svim evaluiranim zemljama.

Također, pored prikupljanja administrativnih podataka, Istanbulska konvencija u članu 11.2 zahtijeva i sprovođenje redovnih anketa. Ovo se između ostalog odnosi na potrebu sprovođenja istraživanja opće populacije omogućuju prikupljanje informacija o brojnim žrtvama koje se ne javljaju ili koriste javne službe, kao i onima koje to čine. Međutim, prikupljanje podataka ne smije postati svrha samom sebi. Kao što je navedeno u članu 11.1.b, potrebno je sprovesti istraživanja kako bi se shvatili prikupljeni podaci, otkrili uzroci i posljedice nasilja nad ženama i nasilja u porodici te analizirala efikasnost poduzetih mjera, uključujući istraživanje stope osuđujućih presuda koje su izričito navedene u konvenciji kao jedna od tema koju bi trebalo istražiti. Na kraju, u članu 11.4 Istanbulske konvencije zahtijeva se od članica da osiguraju „da informacije prikupljene u skladu s ovim članom budu dostupne javnosti,“ s tim da se naravno mora voditi računa o potrebi zaštite privatnosti.

Kako Wallby primjećuje, prikupljeni podaci moraju biti relevantni i koordinirani, tj. administrativni i anketni podaci trebaju koristiti iste definicije i iste mjerne jedinice: „To nije uvijek trenutna praksa, budući da se prikupljanje podataka razvilo za posebne svrhe, a ne kao dio integriranog sistema osmišljenog za sprječavanje nasilja nad ženama i nasilja u obitelji. [...] Saradnja u okviru Istanbulske konvencije nudi mogućnost prikupljanja podataka koji su relevantni za širu svrhu okončanja nasilja nad ženama u svim njegovim oblicima, a ne samo za specifičnije svrhe pojedinih agencija.“[[59]](#footnote-59)

Zahtjev za prikupljanje podataka odnosi se na sve oblike nasilja obuhvaćene područjem primjene Istanbulske konvencije. Konkretno, u Istanbulskoj konvenciji navodi se osam oblika rodno zasnovanog nasilja: psihičko nasilje; uhođenje; fizičko nasilje; seksualno nasilje, uključujući silovanje; prisilni brak; sakaćenje ženskih genitalija; prisilni abortus i prisilna sterilizacija; te seksualno uznemiravanje. Kao što je naglašeno u Eksplanatornom izvještaju, kreiranje politika utemeljeno na dokazima, utemeljeno na sistemskom i primjerenom prikupljanju podataka, ključna je komponenta za efikasnu prevenciju i borbu protiv nasilja nad ženama i nasilja u porodici. U tom smislu, strane moraju prikupiti čvrste, reprezentativne i usporedive podatke za širenje, koordinaciju i kreiranje politika prevencije.[[60]](#footnote-60)

U kontekstu ovog istraživanja, treba primijetiti da se femicid ne spominje direktno u Istanbulskoj konvenciji. Međutim, Konvencija je zamišljena kao dokument za prevenciju i borbu protiv nasilja nad ženama, pa samim tim je relevantan i za prevenciju femicida. Ovo se može vidjeti i iz člana 51.1 (Procjena rizika i upravljanje rizikom) gdje se izričito članice obavezuju da osiguraju da sva relevantna tijela efikasno procijene i osmisle plan za upravljanje sigurnosnim rizicima s kojima se određena žrtva suočava od slučaja do slučaja u skladu sa standardiziranim postupkom i uz međusobno djelovanje i koordinaciju, a sa ciljem prevencije ponovljenog nasilja, posebno smrtonosnog nasilja. Za ovakve procjene rizika također je neophodno efikasno vođenje administrativnih podataka.

* 1. **„Femicide watch“[[61]](#footnote-61) ili opservatorij za praćenje femicida - Inicijativa praćenja femicida zbog efikasnijeg rada na prevenciji femicida**

Nastavljajući rad koji je započela svojim izvještajem o rodno zasnovanom ubijanju žena 2012. godine Rashida Manjoo, njena nasljednica na poziciju Specijalne izvjestiteljice UN-a za borbu protiv nasilja nad ženama i za njegove uzroke i posljedice Dubravka Šimonović je 25. novembra 2015. godine, na Međunarodni dan borbe protiv nasilja nad ženama, pozvala sve države svijeta da se usredotoče na prevenciju femicida i uspostave „Femicide Watch“ ili opservatorij femicida.[[62]](#footnote-62) Pozvala je zemlje da svakog 25. novembra objave godišnji broj femicida, razvrstanih prema dobi i spolu/rodu počinitelja, kao i odnosu između počinitelja i žrtve ili žrtava, te prikupe i objave informacije o procesuiranju i kažnjavanju počinitelja.[[63]](#footnote-63)

Poziv je uputila nakon što je identificirala da su slabost nacionalnih sistema za prevenciju, nedostatak odgovarajućih procjena rizika i nedostatak ili loša kvaliteta podataka glavne prepreke za sprečavanje femicida i razvoj svrsishodnih strategija za njegovu prevenciju:

„Te slabosti rezultiraju pogrešnom identifikacijom, prikrivanjem i nedovoljno prijavljivanjem rodno motiviranih ubistava, čime se održava nekažnjivost za takva ubistva. [...] Što je najvažnije, svaki slučaj rodno zasnovanog ubistva treba pažljivo analizirati kako bi se utvrdio svaki nedostatak zaštite s ciljem poboljšanja i razvoja daljnjih preventivnih mjera.”[[64]](#footnote-64)

Šimonović je također naglasila da u prikupljanju, analizi i objavljivanju takvih podataka država mora sarađivati s nevladinim organizacijama, nezavisnim institucijama za ljudska prava, akademskom zajednicom, predstavnicima žrtava i relevantnim međunarodnim institucijama. Prikupljeni podaci trebaju biti javno dostupni za svaku državu pojedinačno, a UN i druge organizacije trebaju osigurati globalnu i regionalnu objavu.

Naredne godine, u septembru 2016., Šimonović je Generalnoj skupštini UN-a predstavila svoj izvještaj o „Modalitetima za uspostavu femicide watch-a”[[65]](#footnote-65) gdje je preporučila da svaka država uspostavi fleksibilni model femicide watcha ili opservatorija za praćenje femicida (ili ih ugraditi u već postojeće mehanizme za praćenje nasilja nad ženama) vodeći računa o kontekstu i potrebama tog konteksta. Modeli bi trebali osigurati sistemsko prikupljanje relevantnih razvrstanih podataka o svim oblicima nasilja nad ženama, uključujući posebno o femicidu, s tim da bi se femicid trebao razdvojiti u dvije šire potkategorije gdje bi se posebno vodili podaci o femicidu u kontekstu intimnih partnerskih ili porodičnih odnosa, na bazi odnosa između žrtve i počinitelja, a posebno podaci o drugim vrstama femicida. Što je više moguće trebaju se prikupljati i podaci o slučajevima femicid-suicida. Prikupljene podatke trebaju analizirati interdisciplinarna tijela uspostavljena ne samo na državnom, već i regionalnom i globalnom nivou, te na osnovu analiza predložiti konkretne mjere za sprečavanje femicida i nasilja nad ženama. Analize svih slučajeva femicida, uključujući sudske slučajeve, trebale bi biti sistemski provedene s ciljem utvrđivanja nedostataka u sistemu prevencije i odgovora na rodno zasnovano nasilje, uključujući i pravosuđe, te utvrđivanja faktora rizika za sprečavanje rodno zasnovanog nasilja i zaštitu žena i djevojčica od femicida. Pored ovih tijela moguće je da i nevladine organizacije ili institucije za ljudska prava uspostave svoja tijela za praćenje i analizu femicida. Sve lične podatke o žrtvama i članovima porodice zaštititi u skladu s međunarodnim standardima o zaštiti privatnosti.

Bitno je istaknuti da je i prije globalnog poziva koji je upuila Šimunović, postojalo više nezavisnih inicijativa femicide watch-a ili opservatorija za praćenje femicida. Tako je npr. Women’s aid od 1996 pratio femicide čiji je uzrok bilo nasilje u intimnim partnerskim odnosima u Irskoj.[[66]](#footnote-66) I sama Šimunović je u svom izvještaju navela nekoliko takvih slučajeva, ali se čini da su svi uglavnom vezani za femicid koji je uzrokovan nasiljem u intimnim partnerskim odnosima. Ovo potvrđuje i Corradi u svom izvještaju za EU parlament, kada primjećuje da je do sada najbolje dokumentovan femicid u intimnim partnerskim odnosima.[[67]](#footnote-67)

Međutim, primjetno je da je nakon što je Šimonović pozvala na njihovo globalno uspostavljanje, uspostavljen niz različitih femicide watcha ili opservatorija za praćenje femicida. Tako je naprimjer 2018. osnovan i prvi Evropski opservatorij za praćenje femicida (EOF),[[68]](#footnote-68) a i Evropski institut za rodnu jednakost (EIGE) se aktivno uključio u stvaranje resursnog materijala kao i u prikupljanje podataka o femicidu u zemljama EU. [[69]](#footnote-69) Nažalost, čini se da su neke od inicijativa i projektno vođene, a i sam UN Women se hvali da radi top-down pristup umjesto da to ipak budi kontekstualizirane inicijative.[[70]](#footnote-70)

* 1. **Prikupljanje podataka u BiH – još mnogo toga treba da se uradi**

Istanbulsku konvenciju usvojio je 7. aprila 2011. Odbor ministara Vijeća Evrope. Konvencija je stupila na snagu 1. augusta 2014. nakon desete ratifikacije. BiH je postala članica Istanbulske konvencije u novembru 2013. godine. Postavši članicom Istanbulske konvencije, BiH se obavezala, između ostalog, ispuniti i obaveze proistekle iz člana 11.

Općenito gledajući, kao što je slučaj i sa mnogo drugih međunarodnih dokumenata o ljudskim pravima, naše vlasti su rade potpisati i ratificirati ih. Međutim, kada dođe do implementacije, često se obaveze iz tih dokumenata ili ignoriraju ili se nalaze razni izgovori, među kojima i nenadležnost zbog administrativne složenosti države.

Izvještaji sa praćenja suđenja u predmetima koji se tiču nasilja nad ženama ukazuju na činjenicu da se kaznena politika nije promijenila u zadnjih deset godina, te da se počinioci uglavnom kažnjavaju blago, ispod zakonskog minimuma i uz uvažavanje olakšavajućih okolnosti, a gotovo bez razmatranja otežavajućih okolnosti.[[71]](#footnote-71) Ovo se dešava bez obzira na to što član 46 Istanbulske konvencije direktno poziva države članice da poduzmu zakonodavne ili druge mjere kako bi se osiguralo korištenje određenih otežavajućih okolnosti. Ovo ignoriranje odgovornih kreatora politika i zakonskih mjera ukazuje ne samo na nezainteresovanost za implementaciju Istanbulske konvencije, već na potpunu nezainteresiranost za ozbiljan pristup prevenciji femicida.

U septembru 2019. godine GREVIO je pokrenuo polazni postupak procjene o zakonodavnim i drugim mjerama kojima se provode odredbe Istanbulske konvencije u Bosni i Hercegovini, koju je završio objavljivanjem Evaluacijskog izvještaja u novembru 2022.[[72]](#footnote-72) U izvještaju je ukazano na niz aspekata u kojima je potrebno poboljšanje kako bi se postiglo bolje sprovođenje Istanbulske konvencije. Između ostalog, primijećeno je da dok su vidljivi pomaci u zakondavstvu i nekim politikama u vezi s prevencijom i borbom protiv nasilja u porodici, Bosna i Hercegovina nije osigurala posebne integrirane mjere za borbu protiv drugih štetnih oblika nasilja nad ženama. Nadalje, GREVIO je primijetio da dok se pristupi na razini politika doista bave i odražavaju rodnu prirodu nasilja nad ženama, to se ne reflektira u provedbi jer naprimjer reakcije mnogih stručnjaka/stručnjakinja, uključujući one iz centara za socijalni rad, policijskih službenika/službenica i sudaca/sutkinja, često ustvari odražavaju duboko ukorijenjene rodne stereotipe. U vezi s tim, GREVIO je izrazio zabrinutost da se unutar krivičnog postupka i procesnog prava porodično nasilje i drugi oblici nasilja nad ženama smatraju krivičnim djelima niske društvene opasnosti što proističe iz „zabrinjavajuće prakse u presuđivanju i kažnjavanju, poput prevlađujuće primjene olakšavajućih okolnosti, velike upotrebe sporazuma o priznanju krivice, te odmjeravanja veoma niskih kazni, što na kraju izaziva osjećaj nekažnjivosti kako među počiniocima tako i među žrtvama.“[[73]](#footnote-73)

GREVIO je pohvalio neke pomake koji su učinjeni, naročito u Republici Srpskoj, kada je riječ o kriminalizaciji nekih oblika nasilja nad ženama, kao što su genitalno sakaćenje žena, proganjanje, prisilna sterilizacija, seksualno uznemiravanje i prisilni brak, te je pohvalio napore u Federaciji BiH usmjerene ka istom cilju.[[74]](#footnote-74) Međutim, također je primijetio i da neke od izmjena nisu dovoljne da bi ispunile standarde Istanbulske konvencije, tj. da su neke definicije u krivičnim zakonima nedovoljne ili neadekvatne. Iz tog razloga GREVIO je pozvao vlast BiH da, između ostalog,

„inkriminira psihičko nasilje počinjeno nad trenutnim ili bivšim partnerom bez obzira da li živi u istom domaćinstvu ili ne i bez obzira da li imaju zajedničko dijete ili ne;“[[75]](#footnote-75)

da adekvatno inkriminira „proganjanje, kako ono počinjeno u kontekstu porodice, tako i van njega, konkretno navodeći elemente djela u skladu sa članom 34. Istanbulske konvencije;“[[76]](#footnote-76)

da u definicije u seksualnom nasilju u potpunosti integriše „pojam nedostatka slobodnog pristanka iz člana 36. Istanbulske konvencije i da konkretno navedu vidove seksualnih radnji bez pristanka koje su inkriminisane u skladu sa članom 36. stav 1. tačke a, b i c Konvencije“[[77]](#footnote-77)

da inkriminiše „svako namjerno prisiljavanje osobe da stupi u brak, namjerno namamljivanje osobe na teritoriju članice odnosno države koja nije njena/njegova država prebivališta s ciljem prinude te osobe da stupi u brak, kao što je propisano članom 37. stav 2. Istanbulske konvencije.“[[78]](#footnote-78)

Primjećujući složenosti zakonodavnog sistema uzrokovane ustavnim podjelama, GREVIO primjećuje da u slučajevima kao što je seksualno uznemiravanje[[79]](#footnote-79) i psihičko nasilje[[80]](#footnote-80) (205 76) koje je inkriminisano i Zakonom o ravnopravnosti spolova može doći do preklapanja a samim tim i do neuspješnog procesuiranja. U vezi s tim, uputili smo zahtjev za pristup informacijama Sudu Bosne i Hercegovine, kao nadležnom pravosudnom organu za postupanje po Zakonu o ravnopravnosti spolova. Od Suda smo dobili informaciju da je u periodu od 2003. do 2023. godine, a zaključno sa 30.4.2023. godine, pred Sudom BiH ukupno evidentirano i pravosnažno okončano osam (8) predmeta koji se odnose na Zakon o ravnopravnosti polova u Bosni i Hercegovini (ZORP). Nažalost, presude u ovim predmetima nisu u bazi podataka Suda BiH dostupnoj javnosti, pa tako nismo mogli izvršiti analize presuda. Zbog ograničenja trajanja ovog istraživanja nismo podnosili novi zahtjev za pristup predmetima, ali recimo da bi to mogao biti jedan od narednih koraka za analizu. Jedino što je vidljivo iz imena predmeta jeste da se radi o osam osoba s muškim imenima protiv kojih je podnesena neka prijava u vezi sa kršenjem Zakona o ravnopravnosti spolova BiH.

U pogledu obaveze prikupljanja podataka GREVIO je primijetio da:

„Bosna i Hercegovina trenutno još uvijek nema sveobuhvatan i koordiniran sistem prikupljanja podataka koji bi dao ukupnu sliku slučajeva nasilja u porodici i drugih oblika nasilja nad ženama, kao i podrška i zaštita za cijelu državu, žrtve. U oba entiteta postoji određeni broj službenih tijela koja primjenjuju različite metodologije u prikupljanju podataka, koji se uglavnom tiču nasilja u porodici. Prikupljanje podataka o drugim oblicima nasilja nad ženama je vrlo ograničeno...“[[81]](#footnote-81)

GREVIO je prilično detaljno oslovio prikupljanje podataka različitih vrsta nasilja nad ženama, primjećujući da se jedino u nekoj mjeri sistematski prikupljaju podaci o nasilju u porodici, naročito u kontekstu podataka koje prikuplja Ministarstvo porodice, omladine i sporta Republike Srpske. Nešto detaljniji opis dvotračnog prikupljanja podataka u BiH može se naći u analizi Vijeća Evrope pod nazivom *Prikupljanje administrativnih podataka o nasilju nad ženama i nasilju u porodici u Bosni i Hercegovini, prema standardima Istanbulske konvencije,* a koja je sprovedena tokom 2019. godine.[[82]](#footnote-82)

Pored činjenice da se prikupljanje administrativnih podataka u Bosni i Hercegovini provodi na dva kolosijeka (izvještavanje o kriminalitetu i prikupljanje podataka o nasilju u porodici) koji još uvijek nisu objedinjeni u jedan koordinirani sistem, postoji i problem jer različiti zakonski okviri nisu sinhronizovani. Ovo se prvenstveno odnosi na činjenicu da krivični zakoni entiteta nisu sinhronizovani, jer su s izmjenama i dopunama Krivičnog zakonika RS 2017. godine uvedena nova krivična djela koja su usko definisana prateći Istanbulsku konvenciju, a u Federaciji BiH to još nije urađeno. Međutim, ne samo da se kriminaliziraju različita djela, već ni opisi krivičnih djela ni propisane kazne nisu potpuno iste.[[83]](#footnote-83)

Što se tiče praćenja femicida, ono kao takvo nije kriminalizirano niti u jednom entitetu. Međutim, preko podataka o kriminalitetu moguće je doći do nekih informacija o krivičnim djelima koji tretiraju ubistva. Tako naprimjer, Visoko sudsko i tužilačko vijeće (VSTV) prikuplja neke podatke o svim pojedinačnim krivičnim predmetima koji se vode pred sudovima i tužilaštvima u BiH. Sudovi i tužilaštva su uvezani u CMS sistem (sistem za automatsko upravljanje predmetima), s tim da se vode odvojene baze podataka za sudove (CMS) i tužilaštva (TCMS) koje nisu međusobno uvezane, niti su uvezane s policijskim prijavama, pa se tako ne mogu pratiti prekvalifikacije djela u istrazi.[[84]](#footnote-84) S druge strane, prema informacijama do kojih je GREVIO došao CMS navodno omogućava „praćenje raznih faza sudskog postupka i time 34 daje informacije o ishodu slučajeva prema djelu, uključujući broj osuđujućih presuda i vrstu izrečene kazne, međutim ova informacija se ne objavljuje javno.“[[85]](#footnote-85) Da se potencijalno radi o femicidu moguće je utvrdit na osnovu činjenice da se u obje baze podataka vodi evidencija o spolu počinitelja i žrtve. Međutim, ne vode se evidencije o odnosu između žrtve i počinitelja, a kvalitet podataka zavisi od toga koliko sudije/sutkinje i tužitelji/tužiteljice revnosno unose tražene podatke. Podaci nisu razvrstani niti prema dobi, niti se recimo može provjeriti da li je žrtva ranije bila izložena nasilju, odnosno da li je počinitelj bio ranije nasilan prema žrtvi, o kojem djelu se radilo, te koliko je bilo otvorenih istraga. Također, bitno je napomenuti da ove informacije nisu javno dostupne.

Drugi način praćenja femicida prema kriminalitetu moguć je preko izvještaja entitetskih zavoda za statistiku, odnosno Agencije za statistiku BiH. Agencija ne prikuplja direktno podatke, već to vrši preko entitetskih zavoda za statistiku koji prikupljaju podatke od sudova i tužilaštava putem upitnika koji se popunjavaju po okončanju predmeta i onda se agregirani skupovi podataka šalju Agenciji za statistiku BiH koja izdaje Godišnji statistički izvještaj: „Godišnji statistički izvještaj sadrži dio o kriminalitetu. Iako se u izvještaju navodi broj počinitelja i žrtava po spolu, podaci nisu razvrstani po krivičnim djelima već prema grupama krivičnih dijela, kao što su ‘krivična djela protiv života i tijela’ ili ‘krivična djela protiv imovine’. Detaljni podaci, kao što su odnos između žrtve i počinioca, nisu obuhvaćeni.”[[86]](#footnote-86) Tako npr. iz izvještaja Agencije za statistiku BiH možemo dobiti sljedeće informacije:

* U 2022. godini od ukupno prijavljenih 1388 poznatih punoljetnih počinilaca 95 za grupu krivičnih djela definiranih kao krivična djela protiv života i tijela. Pod tom grupom krivičnih djela ukupno je optuženo 985 lica od toga 54 žene, a osuđeno je 914 lica od toga 48 žene.[[87]](#footnote-87)
* Što se tiče maloljetnih osoba za istu grupu krivičnih djela u 2022. prijavljeno je 142 maloljetna lica od čega 7 maloljetnih ženskih osoba, optuženo je 30 maloljetnih lica od toga 3 maloljetne ženske osobe, osuđeno je 78 maloljetnih lica od toga 5 ženskih maloljetnih osoba.[[88]](#footnote-88)
* Iz izvještaja *Žene i muškarci u Bosni i Hercegovini*, trenutno možemo dobiti pregled nasilnih smrti raščlanjenih prema spolu za svaku godinu u period od 2016. do 2020, a prema kategorijama: nesretan slučaj, samoubistvo, ubistvo i nepoznato.[[89]](#footnote-89) Također, možemo za isti vremenski period pratiti broj prijavljenih, optuženih i osuđenih maloljetnih[[90]](#footnote-90) i punoljetnih[[91]](#footnote-91) muških i ženskih osoba, po godini, ali bez ikakvih daljih raščlanjivanja. Ovaj izvještaj sadrži još i informacije za 2019. i 2020. godinu o prijavljenim, optuženim i osuđenim slučajevima nasilja u porodici prema spolu i starosnim grupama počinioca i žrtava[[92]](#footnote-92), te o prijavljenim, optuženim i osuđenim slučajevima prema krivičnim djelima protiv spolne slobode i morala/spolnog integriteta prema spolu i starosnim grupama počinioca i žrtve.[[93]](#footnote-93) U izvještaj je uključen i broj poziva razvrstan prem spolu na SOS telefone za žrtve nasilja u porodici, tokom 2019. i 2020.[[94]](#footnote-94) Konačno, prikazan nam je grafikon ubistava prema spolu žrtve u BiH koji po godinama obrađuje period od 2016. do 2020.[[95]](#footnote-95) Ovdje je bitno napomenuti da se ovaj izvještaj objavljuje svake druge godine, a zadnji podaci koji su objavljeni u februaru 2022. godine odnosili su se na 2020. godinu, čime se može postaviti pitanje relevantnosti postojećih podataka.

Ovo nisu dovoljni podaci na osnovu kojih se može napraviti bilo kakva svrsishodna analiza niti izvući neki svrsishodan zaključak. Čini se da se podaci prvenstveno skupljaju jer je to zakonska obaveza, a da nisu baš usmjereni za informisanje politika i mjera za prevenciju nasilja nad ženama i femicid.

U principu u Bosni i Hercegovini nema zvaničnih podataka o femicidu, čak je jako teško doći i do nekih provjerljivih brojeva. Jedino se ponekad neprecizne informacije pojave u medijima, mada se ne zna na osnovu čega su se tačno prikupili. Tako recimo mediji prenose da je tokom “2022. godine, odnosno do 13. novembra, prema podacima Fondacije CURE, zabilježeno je 11 slučajeva ubistva žena, a koja se mogu definisati kao femicid.”[[96]](#footnote-96) Nije baš navedeno po kojoj definiciji femicida je to određeno ni kako su te informacije prikupljene. Čak su i podaci koji se u medijima prezentiraju kao podaci koje su mediji dobili od zvanične institucije tretirani kao nešto što institucija daje kao da nije nadležna za prikupljanje podataka. Ovaj put barem znamo odakle podaci dolaze:

“Jedinstvena statistika o broju femicida i nasilju nad ženama u BiH ne postoji. Prema podacima do kojih je došla Agencije za ravnopravnost polova Bosne i Hercegovine, koja je prikupljala podatke od pravosudnih institucija i nevladinih organizacija, u prošloj godini [2019.] u BiH je ubijeno 12 žena, a od 2015. do danas ubijeno je ukupno 56 žena, ali se ona ne tretiraju kao femicid.”

Ovaj podatak nam ustvari ništa ne govori, baš kao ni oni podaci koji su dostupni na web-stranici Agencije za statistiku BiH sa do dvije godine zakašnjenja.

Što se tiče „Femicide watch-a“ ili opservatorija za praćenje femicida u Bosni i Hercegovini, prema navodima koje je GREVIO primio od vlasti BiH tokom evaluacijskog procesa, inicirana su istraživanja slučajeva femicida i relevantnog institucionalnog okvira s ciljem uspostavljanja Femicide Watch-a.[[97]](#footnote-97) U vezi s tim, treba istaknuti da je 2019. godine osnovan Odbor za praćenje provedbe i izvještavanje po Istanbulskoj konvenciji i femicidu.[[98]](#footnote-98) U članu 4 Odluke o osnivanju, Odbor je dobio zadatke da između ostalog, analizira provođenje politika i mjera za sprečavanje i borbu protiv nasilja nad ženama i nasilja u porodici na svim nivoima u Bosni i Hercegovini; procjenjuje stanje implementacije Istanbulske konvencije i daje preporuke za efikasnije provođenje iste; analizira podatke o slučajevima ubistava žena iz rodnog aspekta (femicid) i daje preporuke za dalje postupanje u cilju sprečavanja femicida, a u skladu sa Preporukama UN Specijalne izvjestiteljice za nasilje nad ženama, njegove uzroke i posljedice; izvještava o politikama i mjerama za sprečavanje i borbu protiv nasilja nad ženama i nasilja u porodici kako bi se osiguralo da ove mjere budu dobro koordinirane i da dovode do postizanja zajedničkih ciljeva. Međutim, kako je sam GREVIO naglasio, unutar 3 godine postojanja ovaj odbor se sastao svega četiri puta i to uz odsustvo predstavnika vlasti Republike Srpske koji ne priznaju legitimnost ovog tijela što u principu dovodi do nemogućnosti ovog tijela da ispunjava svoj mandat i unapređuje i harmonizira mjere zaštite od nasilja nad ženama koje bi se trebale omogućiti svim žrtvama na cijeloj teritoriji Bosne i Hercegovine.[[99]](#footnote-99) Rad ovog tijela nije javan, pa je teško procijeniti njegovu učinkovitost.

Ono što je bitno naglasiti jeste da je GREVIO pozvao vlasti „poduzmu zakonodavne i druge mjere kako bi osigurale da se procjena rizika i upravljanje rizikom vrše sistematično u odnosu na sve vidove nasilja nad ženama obuhvaćene Istanbulskom konvencijom uz upotrebu standardiziranih alata za procjenu rizika zasnovanih na dokazima.”[[100]](#footnote-100) Također je pozvao vlasti da uvedu sistem za analizu svih slučajeva rodno zasnovanih ubistava žena, s ciljem njihova sprečavanja, te pružanja sigurnosti ženama i osiguravanja adekvatnog kažnjavanja počinitelja uz odgovoran rad svih agencija koje dolaze u kontakt kako sa žrtvom tako i sa počiniteljem.[[101]](#footnote-101)

1. **Šta možemo naučiti iz iskustva kriminalizacije femicida u Latinskoj Americi**

Dok su i prije protesta u oktobru mjesecu sporadično iznošeni zahtjevi za pravnom kvalifikacijom femicida u BiH[[102]](#footnote-102), nakon oktobra 2022. sve se češće mogu primijetiti tekstovi u medijima koji raspravljaju o tome da li treba[[103]](#footnote-103) ili ne treba[[104]](#footnote-104) prepoznati femicid kao posebno krivično djelo u krivičnom zakonodavstvu BiH. S jedne strane je jasno da je neophodno naći način da se osigura efikasno praćenje i analiza femicida, njegovih uzroka i efikasnost institucionalnih odgovora, a s druge strane je pitanje da li će novo krivično djelo imati ikakvog stvarnog efekta na prevenciju i da li će se adekvatno primjenjivati.

Već odavno smo svjesni da je patrijarhalni sistem otporan i da jako lako apsorbira i kooptira feminističke ideje. Kako Karen Ingala Smith primjećuje u svom tekstu o Femicidu:

„Jedno od najznačajnijih dostignuća feminizma je uvođenje muškog nasilja nad ženama u mainstream i na političke agende, ali jedna od prijetnji ovom postignuću je da oni koji imaju moć preuzimaju koncepte i, pod okriljem suočavanja s problemom, istjeraju neke od najosnovnijih elemenata feminističke analize i prakse iz njih. Femicid nije sinonim za 'žensko ubistvo'. To je feministički politički termin koji nas obavještava da u patrijarhalnom društvu muškarac koji ubija ženu nikada nije apolitičan čin; rijetko je, ako ikada, oslobođen uticaja objektivizacije, iskorištavanja, degradacije i ugnjetavanja žena i rijetko, ako ikada, je oslobođen zamki društveno konstruiranog roda. Kada muškarci ubijaju žene, bile one intimne partnerice, članice porodice ili ne, čine to u kontekstu društva u kojem su objektivizacija žena i mizoginija ukorijenjeni i sistemski i u kojemu je nasilje muškaraca nad ženama uzrok i posljedica strukturalne nejednakosti.“[[105]](#footnote-105)

U vezi s tim, kada razmatramo pravno kodificirianje femicida i njegovo eventualno definiranje kao krivičnog djela moramo voditi računa o sveprisutnoj mizoginiji u našem društvu i činjenici da naše patrijarhalne institucije nisu sposobne a i nevoljke su da je oslove. Feministice djeluju i institucionalno, a kako nam je to između ostalih i Manjoo pokazala u svojoj ulozi specijalne izvjestiteljice, mogu i prodrmati patrijarhalne okove. Naravno, problem je kao što je, recimo, slučaj s nekim oblicima nasilja nad ženama, kada se feministice potpuno odstrane iz diskusija. Stoga, za bilo kakve aktivnosti potrebna nam je sveobuhvatna feministička diskusija i djelovanje.

Već smo identificirali da su nam potrebni relevantni podaci da bi smo mogli djelovati. U našem pravnom i društvenom sistemu, čak i kada postoje obaveze prikupljanja podataka i adekvatne definicije, teško se dolazi do bilo kakvih podataka korisnih za praćenje efikasnosti i kreiranje mjera prevencije nasilja nad ženama i djevočicama, a u vezi s tim i prevenciju femicida. Trenutno nemamo usaglašenu ni definiciju femicida, a postojeći indikatori su svi rodno neutralni. S jedne strane se čini da baš iz tog razloga imamo neka insistiranja na definiranju krivičnog djela femicida. S druge strane, iz medijskih natpisa, a i sprovedenih analiza, stiče se dojam postojanja određenog stepena nekažnjivosti kao i nedosljednosti u kaznenoj politici kada se radi o procesuiranju nasilja nad ženama i djevojčicama. I u ovom segmentu, potencijalno bi prepoznavanje krivičnog djela femicida omogućilo barem konzistentniju kaznenu politiku, odnosno smanjilo mogućnost arbitrarnog primjenjivanja olakšavajućih i otežavajućih okolnosti u izricanju kazni.

Kao što je već primijećeno u uvodnim razmatranjima, femicid kao krivično djelo je jedino prepoznato u zemljama Latinske Amerike.[[106]](#footnote-106) Sam koncept femicida su prvo uvele feministice u teoretskim razmatranjima, a onda je koncept preuzet u političkom feminističkom aktivizmu.[[107]](#footnote-107) Feministička teorija i aktivizam su skovali i upotrijebili pojam femicida „unutar političkog konteksta kako bi proizvele promjene u društvenom patrijarhalnom poretku i delegitimizirale nasilne smrti žena“.[[108]](#footnote-108) Nakon toga, kao i sa samim konceptom nasilja nad ženama, slijedila je borba za priznavanje fenomena u javnom diskursu, te njegovo priznavanje i normiranje unutar javnih politika, međunarodnih dokumenata i nacionalnih zakonodavstava. U principu, kriminalizacija femicida/feminicida u Latinskoj Americi je bazirana na međunarodnim konvencijama o ljudskim pravima i ženskim pravima.[[109]](#footnote-109)

U svojoj studiji koju su proveli za MESECVI i UN Women, Deus i Gonzales[[110]](#footnote-110) daju nam detaljan pregled regionalnog zakonodavstva Latinske Amerike koje se bavi femicidom/feminicidom. Kao i kod definicije, zemlje Latinske Amerike nisu na isti način pristupile kriminalizaciji femicida – neke su usvojile sveobuhvatni zakon o nasilju nad ženama i ovim zakonom feminicid kriminalizirale, neke su ga dodatno kriminalizirale u krivičnom zakonu. Neke zemlje nemaju opsežan zakon o nasilju nad ženama, ali kriminaliziraju femicid kroz krivične zakone. Onim zemljama koje nemaju sveobuhvatne zakone o nasilju nad ženama nedostaju posebne odredbe za prevenciju, zaštitu, istraživanje zločina i obeštećenje za žrtve. To je nešto na što treba posebno obratiti pažnju u daljnjim raspravama o kriminalizaciji femicida u kontekstu Bosne i Hercegovine. Ako smo zaista zainteresirani koristiti kriminalizaciju kao sredstvo prevencije femicida, treba li nam također sveobuhvatan zakon koji se bavi nasiljem nad ženama i djevojčicama?

Deus i Gonzales dalje ističu da od osamnaest zemalja koje su analizirane sve zemlje nemaju femicid/feminicid kao zasebno krivično djelo: “Argentina ga navodi kao otežavajuću okolnost za ubistvo, bez vlastitog nomen iuris, iako se zakon koji ga uspostavlja zove Femicid.”[[111]](#footnote-111) Pored Argentine, Urugvaj također definira femicid kao otežavajuću okolnost za ubistvo, dok ga Čile također ubraja u zločin roditeljskog ubistva. Neke zemlje ograničavaju femicid samo na intimne partnerske odnose, ponekad samo na formalne i izvanbračne veze. Neke zemlje ograničavaju počinitelje na muškarce, druge ne. Neke zemlje razlikuju ubistvo od femicida uvođenjem motiva (subjektivnog elementa) i/ili vrste odnosa između žrtve i počinitelja: „Opisani motiv povezan je s mizoginijom, statusom žrtve kao žene, činjenicom da je žena ili rodno utemeljenom mržnjom. Odnosi se opisuju kao odnosi nejednake moći, ili odnosi kontrole ili potčinjenosti. Zakoni navode, naprimjer, 'onaj ko ubije ženu zato što je žena...' ili 'onaj ko ubije u kontekstu odnosa koji se temelji na nejednakoj strukturi moći...'”[[112]](#footnote-112)

Naravno, kao što je slučaj s kriminalizacijom porodičnog nasilja, ni kriminalizacija femicida nije dovela do neposrednih značajnih promjena u smanjenju nasilja nad ženama i femicida. Nadalje, korištenje krivičnog prava kako bi se osudili svih oblici rodno zasnovanih ubistava ima svoja ograničenja koja su povezana isključivo sa individualnom odgovornošću, bez oslovljavanja strutkuralnog nasilja i kriminaliteta (patrijarhalnog, mizoginog i seksističkog) sistema. Ipak, bez obzira na ograničenja pravnih koncepata, najrelevantnija praktična posljedica kriminalizacije bila je podsticanje senzibiliteta aktera u pravosuđu i stvaranja bolje statistike. Feministice iz Latinske Amerike insistiraju da se kriminalizacijom femicida cilja na osudu i dekonstrukciju seksističkog sistema u kojem su ženska tijela dostupna za ubijanje, te da je to samo jedan korak u naporima na promociji rodne jednakosti i ljudskih prava žena:

„Sama kriminalizacija femicida, ako je ona odvojena od potpune politike prevencije, neće doprinijeti smanjenju ubistava žena. Ovo bi otkriće trebalo dovesti do razmatranja stvarnih uzroka rodnog nasilja, diskriminirajućih kulturnih obrazaca, a ne do liječenja samo simptoma društvene bolesti. Posebnu pažnju treba obratiti na to da se snagama vezanim uz populistički kazneni diskurs ne dopusti da slobodno upravljaju feminističkom agendom.“[[113]](#footnote-113)

S obzirom na to da „konceptualizacija rodno zasnovanog nasilja nije prožeta kroz krivično-pravni sistem“,[[114]](#footnote-114) potrebno je nadovezati se na dogmatske stavove o krivičnom pravu da je rodno zasnovano nasilje samo još jedna manifestacija nasilja koje postoji u društvu. Stoga je važno insistirati na tome da se rodno zasnovano nasilje smatra „oblikom diskriminacije koju proizvode nejednaki odnosi moći između muškaraca i žena unutar dominantnog patrijarhalnog sistema, zatim femicid/feminicid treba smatrati problemom od koji pogađa žene, samo zato što su žene, a to zahtijeva diferenciran i specijaliziran odgovor.”[[115]](#footnote-115) Iako bi moglo izgledati da je teško prevesti koncepte femicida/feminicida na krivične procese i pravila dokazivanja, naročito kada se odnose na društveno i kulturno okruženje koje određuje kriminalno ponašanje počinitelja izvan njihovog neposrednog motiva, krivično pravo ne može ostati neupitno kao rodno neutralno sredstvo i moramo tražiti načine da ga promijenimo.[[116]](#footnote-116)

1. **Kratki pregled krivičnih zakonodavstava u EU, našoj regiji i Bosni i Hercegovini relevantnih za procesuiranje femicida**

U ovom poglavlju samo se ukratko osvrćemo na krivična zakonodavstva EU, naše regije i Bosne i Hercegovine kako bismo utvrdili postoji li prostor za uvođenje femicida u krivično zakonodavstvo Bosne i Hercegovine i istražili najadekvatnije modele takvog uvođenja.

* 1. **Pregled krivičnog zakonodavstva u EU relevantnog za procesuiranje femicida**

Trenutno u svijetu preovlađuju tri različita sistema u nacionalnim krivičnim zakonodavstvima u vezi sa prevencijom, istragama, gonjenjem i kažnjavanjem rodno zasnovanih ubistava žena: države u kojima je femicid inkriminisan kao posebno krivično djelo, države u kojima rodno zasnovane okolnosti predstavljaju jedan od oblika krivičnog djela teškog ubistva i države u kojima je na snazi rodno neutralan sistem.[[117]](#footnote-117) Da bi utvrdili kako se femicid tretira u krivičnim zakonodavstvima zemalja članica EU, EIGE je uradio istraživanje pod nazivom *Osiguranje pravde za žrtve femicida: pregled stanja u državama EU*.[[118]](#footnote-118) Istraživanjem su analizirana krivična zakonodavstva svih država EU i Ujedinjenog Kraljevsta. Zaključeno je da niti jedna od ovih država u okviru krivičnog zakonodavsta ne daje definiciju femicida niti ono postoji kao samostalno krivično djelo.

Zakonske odredbe na osnovu kojih bi se mogli procesuirati predmeti femicida mogu se svrstati u nekoliko kategorija. U prvu kategoriju spadaju pojedini oblici teških ubistava (koji su uglavnom rodno neutralni) koji zbog određenih okolnosti osnovnom djelu daju teži oblik i predviđaju se teže kazne ili kao otežavajuća okolnost koja se uzima u obzir prilikom izricanja kazne za određeno krivično djelo u granicama kazne koja je predviđena. Pored toga, u većini država EU potoje pojedina krivična djela čiji primarni objekt zaštite nije život i tijelo čovjeka, ali kod kojih se smrtna posljedica javlja kao kvalifikatorna okolnost u odnosu na koju može postojati nehat ili umišljaj. U ovim slučajevima primarni predmet krivičnopravne zaštite nije život žene nego neka druga vrijednost zaštićena krivičnim pravom.

Elementi vezani uz spol uključeni su u definiciju teškog ubistva u nekoliko država EU. Tradicionalniji oblik je ubistvo trudne žene (ne nužno od strane muškarca), koje se nalazi u krivičnom zakonodavstvu nekoliko zemalja. Ovdje je kvalifikatorna okolnost vezana uz konkretnu činjeničnu okolnost u vezi sa žrtvom. Ubistvo trudne žene kao oblik teškog ubistva inkriminirano je u Francuskoj[[119]](#footnote-119), Hrvatskoj[[120]](#footnote-120), Latviji[[121]](#footnote-121), Rumuniji[[122]](#footnote-122), Litvaniji[[123]](#footnote-123), Češkoj[[124]](#footnote-124) i Bugarskoj.[[125]](#footnote-125)

Pojedina krivična zakonodavstva država EU kao kvalifikatornu okolnost uzimaju posebnu motivaciju počinitelja u vezi sa spolom ili rodnim identitetom i seksualnom orijentacijom žrtve[[126]](#footnote-126), kada je ubistvo učinjeno iz mržnje prema grupi osoba ili osobi koja im pripada na temelju doba, spola, seksualne orijentacije, invaliditeta, rase, nacionalnosti, jezika, porijekla, društvenog statusa, vjere ili uvjerenja[[127]](#footnote-127), motiva koji zaslužuju posebnu osudu[[128]](#footnote-128), zbog posebne motivacije[[129]](#footnote-129), zlonamjernih[[130]](#footnote-130) ili drugih niskih[[131]](#footnote-131) motiva.

Relevantni oblici teških ubistava uključuju i ubistvo zbog odbijanja žrtve da stupi u brak ili vanbračnu zajednicu[[132]](#footnote-132), ubistvo člana porodice kojeg je počinitelj već ranije zlostavljao[[133]](#footnote-133), ili ako je žrtva prethodno uhođena. Tako, italijanski krivični zakon u članovima 576. i 577. predviđa kaznu doživotnog zatvora ako je ubistvu prethodilo seksualno nasilje ili ga je počinio uhoditelj, ili je žrtva supružnik, čak i ako su zakonski rastavljeni, odnosno ako je žrtva osoba sa kojom je počinitelj bio u partnerstvu, bez obzira na to da li su živjeli zajedno ili ne.[[134]](#footnote-134)

Nekoliko država kao kvalifikatornu okolnost uzima i odnos između počinioca i žrtve. Tako portugalski krivični zakon kao kvalifikatornu okolnost kod teškog ubistva uzima ubistvo supružnika, bivšeg supružnika, osobe istog ili drugog spola sa kojom je počinitelj održavao ljubavnu vezu ili vezu sličnu onoj sa supružnikom, čak i bez izvanbračne zajednice, ili ubistvo roditelja zajedničkog potomka.[[135]](#footnote-135) U Francuskoj je kvalifikatorna okolnost ubistvo supružnika ili vanbračnog druga ili partnera u građanskoj zajednici.[[136]](#footnote-136) U Litvaniji je to ubistvo bliskog rođaka ili člana porodice.[[137]](#footnote-137)

Pojedina zakonodavstva kao kvalifikatornu okolnost kod teškog ubistva predviđaju okolnost da je ubistvu prethodilo krivično djelo protiv slobode pojedinca ili spolne slobode. Tako, latvijski krivični zakon propisuje kao oblik teškog ubistva ono ubistvo koje je povezano sa silovanjem[[138]](#footnote-138), španski krivični zakon ako je ubistvo počinjeno nakon krivičnog djela protiv spolne slobode koje je počinjeno nad žrtvom[[139]](#footnote-139), poljski krivični zakon kao kvalifikatornu okolnost uzima okolnost da je ubistvo učinjeno u vezi sa uzimanjem taoca ili silovanjem[[140]](#footnote-140), dok njemački krivični zakon kao kvalifikatornu okolnost uzima ubistvo radi seksualnog zadovoljenja.[[141]](#footnote-141)

Ovi različiti oblici teških ubistava pokrivaju niz okolnosti koji se odnose na svojstvo pasivnog subjekta (trudna žena), odnos između počinioca i žrtve (bliska osoba ili član porodice), posebnu motivaciju počinioca (mržnja zbog spolog ili rodnog identiteta), da je ubistvu prethodilo uhođenje ili seksualno ili drugo zlostavljenje ili neke druge okolnosti (odbijanje žrtve da stupi u brak). Međutim, svi ovi oblici teških ubistava, iako su uglavnom u praksi tiču rodnog ubijanja žena i djevojaka, nisu vezani uz spol, tako da teoretski i počinilac i žrtva mogu biti muškarac ili žena. Rodno neutralne odredbe su inače karakteristične u krivičnom pravu i koriste se prilikom propisivanja krivičnih djela.

Krivični zakoni mnogih zemalja EU sadrže odredbe o otežavajućim okolnostima koje se mogu primijeniti na brojna krivična djela, uključujući ubistvo. Suprotno odredbama ispitanim u prethodnom dijelu, takve okolnosti ne tvore obilježje bića krivičnog djela teškog ubistva. Umjesto toga, one utječu na određivanje visine kazne za relevantna krivična djela u u skladu s općim pravilima o odmjeravanju kazne. Dakle, što se tiče kazne, postojanje otežavajućih okolnosti imat će za posljedicu da kazna bude teža, ali u granicama kazne predviđene za to krivično djelo. Konačno, relevantne otežavajuće okolnosti formulisane su na rodno neutralan način.

U Španiji je otežavajuća okolnost da je počinjeno krivično djela motivirano rasizmom, diskriminacijom, spolom, orijentacijom ili seksualnom orijentacijom žrtve, zbog identiteta i rodnih razloga.[[142]](#footnote-142) Također, otežavajuća okolnost je ako je krivično djelo počinjeno prema supružniku ili osobi sa kojom počinitelj održava stabilnu vezu.[[143]](#footnote-143)

U Francuskoj se od 2017. godine seksizam smatra otežavajućom okolnošću za krivična djela, odnosno prekršaje, jednako kao i homofobija ili rasizam.[[144]](#footnote-144) Također, otežavajuća okolnost je ako je krivično djelo počinio sadašnji ili bivši intimni partner žrtve.[[145]](#footnote-145)

Član 405quater (Otežavajuće okolnosti) belgijskog krivičnog zakona predviđa povećanje kazne sa 5 na 10 godina zatvora ako je krivično djelo motivirano mržnjom, prijezirom ili neprijatelljstvom prema nekoj osobi na temelju spola, promjene spola ili seksualne orijentacije.[[146]](#footnote-146)

Član 312. stav 2. grčkog krivičnog zakona propisuje strožije kažnjavanje za krivična djela tjelesne povrede, teške tjelesne povrede i teške tjelesne povrede sa smrtnim ishodom (čl. 308. st. 2., čl. 309. i čl. 311. grčkog krivičnog zakona) ako su ta djela počinjena prema bračnom drugu za vrijeme trajanja braka ili prema partner u toku partnerstva. Ovi članovi primjenjuju se zajedno sa odrdbama Zakona o nasilju u porodici (Zakon 3500/2006).[[147]](#footnote-147)

Krivični zakon Danske predviđa mogućnost povećanja zatvorske kazne za 10 godina ako je učinjenjem krivičnog djela iz člana 245a (sakaćenje ženskih genitalija) došlo do nanošenja teških tjelesnih povreda ili je prouzrokovana smrt žene.[[148]](#footnote-148)

* 1. **Pregled krivičnog zakonodavstva u regiji relevantnog za procesuiranje femicida**

Za potrebe ove analize odabrali smo pregled krivično pravne regulative Srbije i Hrvatske kao ogledne primjere.

* + 1. *Krivičnopravna regulativa relevantna za procesuiranje femicida u Srbiji*

Krivični zakonik Republike Srbije[[149]](#footnote-149) (u daljem tekstu: KZ Srbije) ne poznaje krivično djelo femicida, odnosno ne poznaje rodno motivisano ubistvo žene kao samostalno krivično djelo. S obzirom da femicid nije inkriminisan kao posebno krivično djelo, on može biti kvalificiran kao obično ubistvo (čl. 113. KZ Srbije), kao neki od oblika teškog ubistva (čl. 114. KZ Srbije) ili kao poseban kvalificiran oblik krivičnog djela nasilja u porodici usljed koga je došlo do smrti člana porodice (čl. 194. st. 4. KZ Srbije). Kao oblik teškog ubistva femicid može biti tretiran kao ubistvo žene učinjene iz mržnje prema ženskom spolu, odnosno kao teško ubistvo učinjeno iz drugih niskih pobuda iz člana 114. stav 1. tačka 5. KZ Srbije, kao lišenje života bremenite (trudne) žene (čl. 114. st. 1. tač. 9. KZ Srbije), odnosno kao ubistvo člana porodice koji je bio prethodno zlostavljan (čl. 114. st. 1. tač. 10. KZ Srbije).

Članom porodice smatraju se: supružnici, njihova djeca, preci supružnika u pravoj liniji krvnog srodstva, vanbračni partneri i njihova djeca, usvojilac i usvojenik, hranilac i hranjenik. Članovima porodice smatraju se i braća i sestre, njihovi supružnici i djeca, bivši supružnici i njihova djeca i roditelji bivših supružnika, ako žive u zajedničkom domaćinstvu, kao i lica koja imaju zajedničko dijete ili je dijete na putu da bude rođeno, iako nikada nisu živjela u istom porodičnom domaćinstvu (čl. 112. st. 28. KZ Srbije).

KZ Srbije u članu 54. propisuje opća pravila o odmjeravanju kazne, koja su ustvari generičke prirode, tj. pretvarajući se da su rodno neutralna ustvari i dalje ostaju isključivo u okvirima patrijarhalnog pravnog sistema. Doduše, zakon propisuje da će za krivično djelo učinjeno iz mržnje zbog pripadnosti rasi i vjeroispovijesti, nacionalne ili etničke pripadnosti, pola, seksualne orijentacije ili rodnog identiteta drugog lica, sud tu okolnost cijeniti kao otežavajuću okolnost, osim ako ona nije propisana kao obilježje krivičnog djela (čl. 54a KZ Srbije).

U Srbiji, ponajviše zahvaljujući zalaganju pojedinih feminističkih autorki i nevladinih organizacija, seksističko ubijanje žena – ubijanje žena kao zločin mržnje, konačno je privuklo pažnju i djelovalo na podizanje svijesti o femicidu kako kod opće tako i kod profesionalne javnosti. Kao rezultat njihovih prethodnih aktivnosti, nevladina organizacija FemPlatz uputila je Radnoj grupi za izmjenu Krivičnog zakonika pri Ministarstvu pravde Srbije prijedlog za dopunu KZ, koja se odnosi na inkriminaciju femicida kao posebnog krivičnog djela:

„Smatramo da je propisivanje femicida kao posebnog krivičnog dela u srpskom krivičnom zakonodavstvu opravdano, ali i neophodno kako bi se svi slučajevi femicida adekvatno procesuirali i sankcionisali, te da bi se na taj način smanjila pravna nesigurnost i moguće greške prilikom kvalifikacije krivičnog djela i kažnjavanja učinilaca, kao i da bi se statistički pratio broj prijavljenih, optuženih i osuđenih lica za femicid. Ovo je moguće uraditi na nekoliko načina. Jedan mogući pristup je da femicid, kao posebno krivično djelo protiv života i tela žene, obuhvati svako rodno motivisano lišenje života žene. Drugi mogući pristup je da se rodno motivisano ubistvo žene inkriminiše kao poseban oblik teškog ubistva žena koje su počinili muškarci u kontekstu rodno zasnovanog nasilja prema ženama.

Bez obzira na pristup, objektivni i subjektivni elementi bića krivičnog djela femicida treba da budu određeni na način koji obezbeđuje da njegova inkriminacija obuhvati:

- nasilna lišenja života žena koja je izvršio sadašnji ili bivši bračni ili vanbračni supružnik, odnosno, intimni partner sa kojim je žrtva bila ili je još uvek u vezi;

- ubistva žena koja su izvršena iz mizoginih motiva, tzv. ubistva iz časti ili iz razloga koji se odnose na kulturna uvjerenja ili običaje, kao i ubistva iz motiva zasnovanih na rodnim ulogama žena i muškaraca i nejednakim odnosima moći unutar društvenog konteksta

- nasilna lišenja života žena koja su rezultat seksualnog nasilja ili su izvršena zbog toga što je žrtva bila u prostituciji ili je bila podvrgnuta seksualnoj eksploataciji ili je bila žrtva trgovine ljudima u svrhu seksualne eksploatacije.“[[150]](#footnote-150)

* + 1. *Krivičnopravna regulativa relevantna za procesuiranje femicida u Hrvatskoj*

U hrvatskom Kaznenom zakonu[[151]](#footnote-151) (u daljem tekstu: KZ RH) ne postoji definicija femicida. S obzirom na to da femicid nije inkriminisan kao posebno krivično djelo, on može biti kvalifikovan kao obično ubistvo iz člana 110. KZ RH ili teško ubistvo iz člana 111. KZ RH. Kao oblik teškog ubistva femicid može biti tretiran kao ubistvo žene učinjeno iz mržnje, odnosno kao teško ubistvo učinjeno iz drugih niskih pobuda iz člana 111. stav 4. KZ RH, kao ubistvo žene koja je posebno ranjiva zbog trudnoće – ubistvo trudne žene (čl. 111. st. 2. KZ RH), odnosno kao ubistvo bliske osobe koju je počinitelj prethodno zlostavljao (čl. 111. st. 3. KZ RH).

Definicija bliskih osoba[[152]](#footnote-152) proširena je, pored članova porodice, na bivšeg bračnog ili vanbračnog druga, bivšeg životnog partnera ili neformalnog životnog partnera, sadašnjeg ili bivšeg partnera u intimnoj vezi, odnosno na osobe koje imaju zajedničko dijete te osobe koje žive u zajedničkom domaćinstvu (čl. 87. st. 9. KZ RH).

Isto kao i u Srbiji, prema članu 47. KZ RH propisana su opća, generička i rodno neutrlana, pravila o odmjeravanju kazne. Također, kao i u Srbiji postupanje definirano unutar zločina iz mržnje uzet će se kao otežavajuća okolnost ako ovim Zakonom nije izričito propisano teže kažnjavanje (čl. 87. st. 21. KZ RH). Zločin iz mržnje je krivično djelo počinjeno zbog rasne pripadnosti, boje kože, vjeroispovijesti, nacionalnog ili etničkog porijekla, jezika, invaliditeta, spola, spolnog opredjeljenja ili rodnog identiteta druge osobe.

Pojam femicid počeo se u Hrvatskoj koristiti u kasnim 1990-im i to uglavnom u akademskoj zajednici. Iako je i ranije objavljeno nekoliko ozbiljnih studija o nasilju u porodici u Hrvatska, prvi put se u naučnoj literaturu pojam femicid pojavio 2014. godine.[[153]](#footnote-153) Do tada pojam femicid nije bio u širokoj upotrebi u Hrvatskoj, radije su se koristili izrazi kao što je „ubijanje žena“' ili „intimno ubistvo” koje se koristilo da označi ubistva žena od strane intimnih partnera kao specifičan oblik ubistva.[[154]](#footnote-154)

Pravobraniteljica za ravnopravnost spolova Republike Hrvatske je analizirajući sistem prevencije rodno zasnovanog nasilja, zaštite žrtava i progona počinitelja, utvrdila kako policija, sudovi i državna odvjetništva nisu u dovoljnoj mjeri educirani za rodno osjetljiv pristup u procesuiranju porodičnog nasilja, posebno pojedini/e suci/sutkinje i državni/e odvjetnici/e. Individualne procjene potreba žrtava i procjene rizika za žrtve se ili uopšte ne vrše ili su samo formalne, pa često ne odgovaraju stvarnim potrebama zaštite žrtava. Mjere zaštite žrtava se rijetko izriču, a one izrečene se ne provode učinkovito.[[155]](#footnote-155)

Klub zastupnika Socijaldemokrata podnio je krajem 2021. godine Hrvatskom saboru Prijedlog zakona o izmjeni Kaznenog zakona, s Konačnim prijedlogom zakona, predlažući dopunu odredbe člana 87. stav 1. KZ RH na način:

„Zločin iz mržnje je kazneno djelo počinjeno zbog rasne pripadnosti, boje kože, vjeroispovijesti, nacionalnog ili etničkog podrijetla, jezika, invaliditeta, spola, spolnog opredjeljenja, rodnog identiteta druge osobe ili ***kazneno djelo počinjeno od strane muškarca nad ženom motivirano njezinim spolom i mizoginijom (femicid).*** Takvo postupanje uzet će se kao otegotna okolnost ako ovim Zakonom nije izričito propisano teže kažnjavanje."

Ova zakonska inicijativa je u kasnijoj proceduri odbijena uz obrazloženje da je ubistvo zbog spola i rodnog identiteta, kao oblik ubistva počinjenog iz mržnje već obuhvaćena čl. 111. st. 4. KZ RH, odnosno kao oblik teškog ubistva.[[156]](#footnote-156)

* 1. **Pregled krivičnog zakonodavstva u Bosni i Hercegovini relevantnog za procesuiranje femicida**

Što se tiče krivičnopravnog okvira, Bosna i Hercegovina niti u jednom od svojih krivičnih zakona nema priznat femicid kao posebno krivično djelo. Pravo na život kao osnovno, najznačajnije i univerzalno ljudsko pravo, zaštićeno temeljnim međunarodnim dokumentima, garantirano je i Ustavom Bosne i Hercegovine (član II/3.a), Ustavom Federacije Bosne i Hercegovine (član II.A.2.1.a) i članom 11. stav 1. Ustava Republike Srpske. Pored toga, s obzirom na to da život i tjelesni integritet čovjeka predstavljaju osnovne vrijednosti i pojedinca i društva, njegova zaštita ostvaruje se i propisivanjem krivičnih djela čiji je zaštitni objekt život i tijelo čovjeka. Međutim, sve ove formulacije su rodno neutralne i smještene su unutar patrijarhalnog okvira međunarodnih i domaćih pravnih instrumenata.

Krivičnim zakonom Federacije Bosne i Hercegovine[[157]](#footnote-157) (u daljem tekstu: KZ FBiH), Krivičnim zakonikom Republike Srpske[[158]](#footnote-158) (u daljem tekstu: KZ RS) i Krivičnim zakonom Brčko Distrikta Bosne i Hercegovine[[159]](#footnote-159) (u daljem tekstu: KZ BD BiH) propisan je veliki broj krivičnih djela kojima se štiti život i tijelo čovjeka. Ova krivična djela možemo podijeliti u dvije grupe: 1) krivična djela sadržana u glavi pod nazivom „Krivična djela protiv života i tijela“ (glava XVI KZ FBiH, glava XII KZ RS i glava XVI KZ BD BiH. Objekt zaštite ovih krivičnih djela je jedino i isključivo život i tjelesni integritet čovjeka i 2) Krivična djela sadržana u drugim glavama krivičnih zakona/zakonika u BiH, čiji primarni objekt zaštite nije život i tijelo čovjeka, ali kod kojih se smrtna posljedica javlja kao kvalifikatorna okolnost.

Studije *Analiza prakse sudova u procesuiranju femicida i pokušaja femicida* *u Bosni i Hercegovini 2017-2021*.,[[160]](#footnote-160) nudi detaljnu analiza krivičnog zakonodavstva BiH. Zbog kratkoće našeg istraživanja, ovdje ćemo se samo kratko osvrnuti na trenutne definicije ubistva u krivičnog zakonodavstva.

Krivično djelo ubistva osnovno je krivično djelo kojim se u krivičnom zakonodavstvu u BiH štiti život čovjeka.[[161]](#footnote-161) Dakle, prema općeprihvaćenoj semantici to je smrt jednog čoveka prouzrokovana od strane drugog čovjeka.[[162]](#footnote-162) Smrt kod krivičnog djela ubistva treba da je posljedica ljudske radnje, jer ne bi postojalo ovo krivično djelo ako bi smrt nastupila nezavisno od ljudske radnje.[[163]](#footnote-163) Ovakav pojam ubistva je uži od njegovog uobičajenog pojma, prema kome je ubistvo svako uništavanje ljudskog života. Ovo krivično djelo se sastoji u protivpravnom lišavanju života druge osobe sa umišljajem pri čemu ne postoje posebne okolnosti koje ga čine teškim ili lakim.[[164]](#footnote-164)

Objekt krivičnog djela ubistva je čovjek kao ljudsko biće od rođenja do smrti. Potpuna sposobnost za život nije uslov za postojanje ubistva, tako da će ovo djelo postoji i kada se lišava života dijete za koje je sasvim izvjesno da se kod njega ne mogu normalno odvijati sve životne funkcije, ili novorođenče koje ne može dugo živjeti.[[165]](#footnote-165)

Učinitelj ovog krivičnog djela može biti svako lice, a u pogledu krivice potreban je umišljaj. To znači da učinitelj mora biti svjestan da lišava života drugo lice, i da to hoće, odnosno da na to pristaje. Moguć je kako direktni tako i eventualni umišljaj, što podrazumijeva da svijest učinitelja treba da obuhvati sva navedena obilježja ovog djela. Učinitelj i žrtva mogu biti bilo kojeg roda i dobi.

Za ovo krivično djelo zakonodavac u Federaciji BiH i Brčko Distriktu BiH opredijelio se za kaznu zatvora najmanje pet godina, dok u Republici Srpskoj propisuje kaznu zatvora od pet do dvadeset godina. Suštinski riječ je o jednakom kažnjavanju jer prema KZ FBiH i KZ BD BiH opći zakonski maksimum za kaznu zatvora iznosi 20 godina, za razliku od KZ RS gdje je ova zakonska granica postavljena na 30 godina.

KZ FBiH u članu 166. stav 2. propisuje krivično djelo teškog ubistva, te predviđa kvalifikatorne okolnosti koje osnovnom obliku ubistva daju teži karakter za koje je predviđena kazna zatvora najmanje deset godina ili kazna dugotrajnog zatvora. Od kvalifikatornih okolnosti zakon predviđa: (a) okrutnost ili podmuklost, (b) bezobzirno nasilničko ponašanje, (c) mržnja, (d) koristoljublje, učinjenje ili prikrivanje kod drugog krivičnog djela, bezobzirna osveta, druge niske pobude, (e) svojstvo pasivnog subjekta (ubistvo sudije ili tužioca, službene ili vojne osobe). Identične kvalifikatorne okolnosti, sa izuzetkom ubistva sudije ili tužioca, predviđene su u članu 163. stav 2. KZ BD BiH.

Krivično djelo teškog ubistva zakonodavac u RS je predvidio u posebnom članu 125. te je, u poređenju sa KZ FBiH, propisao više kvalifikatornih okolnosti koje osnovnom obliku ubistva daju teži vid. Navedenim članom predviđeno je da će se kaznom zatvora od najmanje deset godina ili kaznom doživotnog zatvora kazniti: (1) ko drugog liši života na svirep ili podmukao način, (2) ko drugog liši života iz koristoljublja, radi izvršenja ili prikrivanja drugog krivičnog djela, iz bezobzirne osvete, mržnje ili iz drugih naročito niskih pobuda, (3) ko liši života člana svoje porodice kojeg je prethodno zlostavljao, (4) ko drugog liši života pri bezobzirnom nasilničkom ponašanju, (5) ko drugog liši života i pri tome umišljajno dovede u opasnost život još nekog lica, (6) ko umišljajno liši života dva ili više lica, a ne radi se o ubistvu na mah, ubistvu djeteta pri porođaju ili ubistvu učinjenom pod osobito olakšavajućim okolnostima, (7) ko liši života dijete ili žensko lice za koje zna da je bremenito, (8) ko liši života sudiju ili javnog tužioca u vezi sa vršenjem njihove sudijske ili tužilačke dužnosti, ili ko liši života službeno ili vojno lice pri vršenju poslova bezbjednosti ili dužnosti čuvanja javnog reda, hvatanja učinitelja krivičnog djela ili čuvanja lica lišenog slobode i (9) ko drugog liši života pri izvršenju krivičnog djela razbojništva ili razbojničke krađe. U stavu 2. ovog člana predviđeno je da će ista kazna primijeniti kada je lišenje života izvršeno organizovano ili po narudžbi.

Prema zakonskim odredbama koje regulišu krivično djelo teškog ubistva na području Bosne i Hercegovine može se zaključiti da se teška ubistva klasificiraju prema različitim kriterijumima, i to:

* prema načinu izvršenja: (a) ubistvo na okrutan/svirep način, (b) ubistvo na podmukao način i (c) ubistvo izvršeno organizovano ili po narudžbi;
* s obzirom na pobude učinitelja: (a) ubistvo iz mržnje, (b) ubistvo iz koristoljublja, (c) ubistvo radi učinjenja ili prikrivanja drugog krivičnog djela i (d) ubistvo iz bezobzirne osvete ili drugih niskih pobuda;
* s obzirom na okolnosti učinjenja i posljedicu: (a) ubistvo pri bezobzirnom nasilničkom ponašanju, (b) ubistvo kojim se umišljajem dovodi u opasnost život još nekog lica, (c) ubistvo više osoba i (d) ubistvo pri izvršenju krivičnog djela razbojništva ili razbojničke krađe;
* s obzirom na svojstvo pasivnog subjekta: (a) ubistvo službenog ili vojnog lica pri vršenju službene dužnosti, (b) ubistvo sudije ili javnog tužitelja, (c) ubistvo djeteta, (d) ubistvo člana porodice kojeg je učinitelj ranije zlostavljao i (e) ubistvo ženskog lica za koje učinitelj zna da je trudna/bremenita.

Međutim, ovo su sve rodno neutralne kvalifikacije koje ignorišu realnost nejednakosti, opresije i sistemskog nasilja nad ženama i djevojčicama. Ova rodna neutralnost, pošto se odnosi i na muškarce i na žene kao žrtve i počinioce, bez detaljnog vođenja raščlanjenih podataka (a kao što smo već gore vidjeli u BiH se i ne radi baš najbolje iako je to zahtjev koji proizlazi iz Istanbulske konvencije) u principu maskira rodne odnose moći u društvu i u konačnici prikazuje netačnu sliku o femicidu i nasilju nad ženama i djevojčicama. Samim tim nasilje nad ženama se i dalje ne vidi kao nešto uzrokovano u nejednakosti i opresiji.

Čak i posebna kvalifikatorna okolnost teškog ubistva koja proističe iz člana 125. stav 1. tačka c) KZ RS a koja propisuje lišavanje života člana svoje porodice kojeg je prethodno zlostavljao ustvari je rodno neutralna. Isti slučaj je i sa načinom na koji je ova inkriminacija obuhvaćena u KZ FBiH i KZ BD BiH u okviru krivičnog djela nasilja u porodici, kao najtežeg oblika ovog krivičnog djela.[[166]](#footnote-166) Tu se zapravo radi o posebnom obliku nasilja u porodici koji zapravo predstavlja oblik teškog ubistva koje je zbog specifičnosti učinitelja i žrtve u smislu specifičnosti njihovog međusobnog odnosa svrstano u oblike ovog krivičnog djela.[[167]](#footnote-167) Kazna za ovaj oblik krivičnog djela odgovara kazni za teško ubistvo. Članom porodice smatraju se bračni i/ili vanbračni partneri i njihova djeca, srodnici po tazbini zaključno do drugog stepena, roditelji sadašnjih i bivših bračnih i vanbračnih partnera, usvojitelji i usvojenici, lica koja žive ili su živjela u istom porodičnom domaćinstvu bez obzira na srodstvo i sl.[[168]](#footnote-168)

Pored toga što je i zaštita od nasilja u porodici rodno neutralno formulirana, ona operira unutar uske definicije porodice, te nužno ne štiti sve oblike intimnih partnerskih odnosa kao jedne od najčešćih okolnosti u kojima se dešava femicid kod nay, a da ne govorimo o tome da su potencijalni drugi oblici femicida i nasilja nad ženama potpuno nevidljivi ako se oslanjamo isključivo na Zakon o zaštiti od nasilja u porodici i njegovu logiku. U ovom kontekstu se možemo osvrnuti i na posebne kvalifikacijske okolnosti predviđene u članu 125, paragraf 1, tačka 7) KZ RS, koji propisuje da je teško ubistvo i ono ko liši života dijete ili žensko lice za koje zna da je trudna. Ovdje se treba postaviti pitanje, da li je ovo namijenjeno zaštiti žene ili je ustvari zaštita nerođenog djeteta, koje se vidi kao budućnost i opstanak države.

Nije dovoljno da se rodno zasnovani zločini smjeste unutar okvira tradicionalnog krivičnog zakona, jer on kao što smo već rekli ne samo da je rodno neutralan već je izrazito patrijarhalan. Rodno zasnovani zločini su posljedica kompleksnih društvenih i kulturoloških problema, a tradicionalni krivični zakon je dio tih problema, stoga definiranje femicida mora izbjeći simplifikaciju, odnosno truditi se da ne dođe do razvodnjavanja i ublažavanja političkih argumenata i konteksta koji opravdavaju uvođenje, razmatranje i poseban tretman ovog fenomena.[[169]](#footnote-169)

Naravno, pored toga, kao što je slučaj i sa mnogim drugim zakonima u Bosni i Hercegovini, sprovođenje zakona je u najmanju ruku arbitrarno. Bitno je primijetiti da bez obzira na to što po svom obliku femicid unutar trenutnog krivičnog zakonodavstva u BiH još nije priznat, slučajevi femicida mogu biti svrstan u djela teškog ubistva. Međutim, to nije uvijek slučaj. To se vidi iz odabranih slučajeva prezentiranih u *Analiza prakse sudova u procesuiranju femicida i pokušaja femicida* *u Bosni i Hercegovini 2017-2021.* gdje možemo vidjeti da je femicid kvalificiran kao djelo ubistva, teškog ubistva i nasilja u porodici sa smrtnim ishodom.

Međutim, čak i kada se femicid klasificira kao djelo teškog ubistva, Sud, kao što je slučaj u predmetu koji je bio pred Okružnim sudom u Prijedoru,[[170]](#footnote-170) može ignorisati rodnu komponentu ubistva. Kako su Konstantinović i dr. primijetili, sud obrazlaže svoj stav u pogledu pravne kvalifikacije djela, ističući da je učinilac u stanje afekta doveden *uslijed svojih ličnih svojstava,* umjesto da naglasi da je u pitanju niska pobuda jer je učinilac žrtvu tretirao kao svoje vlasništvo, negirajući njeno pravo na slobodu izbora.[[171]](#footnote-171)

1. **Zakonodavni okviri za posjedovanje malog oružja i lakog naoružanja u BiH iz feminističke perspektive**

Pored analize i eventualnih izmjena krivične regulative neophodno je razmotriti i eventualne druge zakonodavne okvire koji olakšavaju femicid. Jedan od takvih sigurno jeste i pitanje reguliranja posjedovanja lakog oružja upravo zbog toga što nam globalni podaci o femicidu ukazuju na činjenicu da je prisutnost oružja u značajan faktor rizika za femicid, naročito u intimnim partnerskim odnosima.

Prema podacima Koordinacijskog odbora za malo oružje i lako naoružanje u BiH, 2021. godine su registrovana 324.316 komada legalnog oružja. Godinu dana kasnije taj broj je znatno porastao te je registrovano 348.692 komada oružja.[[172]](#footnote-172) Istraživanje međunarodne organizacije Small Arms Surveya za 2018. godinu, pokazuje na mogućnost da je već tada mnogo više osoba posjedovalo oružje nego što to pokazuju zvanične brojke. Prema podacima ove organizacije, civili u BiH su u 2017. godini posjedovali oko 1.185.000 komada vatrenog oružja, uz napomenu da je registrirana tek trećina, te procjenu da svako peto domaćinstvo u našoj zemlji posjeduje neku vrstu nelegalnog oružja.[[173]](#footnote-173) Ista organizacija je već 2014.[[174]](#footnote-174) upozorila na činjenicu da na Balkanu, uključujući i BiH, rasprostranjeno vlasništvo oružja kod civila dovodi do povećanja nasilnih krivičnih dijela, uključujući ubistva.

Na isto ukazuje istraživanje Regionalni centar za kontrolu malog i lakog oružja (SEESAC) za 2018. godinu,[[175]](#footnote-175) koje pokazuje da je većina legalnog oružja u posjedu muškaraca, te da su žene češće žrtve upotrebe oružja u slučajevima porodičnog nasilja. Na osnovu prikupljenih podataka o zlupotrebi vatrenog oružja u izvještaju se navodi da:

* nedozvoljeno posjedovanje vatrenog oružja predstavlja značajan rizik za sigurnost građana i građanki Bosne i Hercegovine;
* Oružje se često zloupotrebljava u kontekstu razbojništva i izazivanja opšte opasnosti;
* Vatreno oružje je najčešće korišteno sredstvo za izvršenje ubistava;
* Raširena je zloupotreba vatrenog oružja u kontekstu nasilja u porodici i intimnog partnerskog nasilja, a postojeće mjere i prakse za kontrolu vatrenog oružja nedovoljno uvažavaju rizike zloupotrebe oružja u ovom kontekstu;
* Samoubistva počinjena vatrenim oružjem čine najveći dio smrtnih slučajeva do kojih je došlo zloupotrebom vatrenog oružja;
* Zloupotreba oružja ima izraženu rodnu dimenziju i muškarci čine ogromnu većinu počinioca incidenata vatrenim oružjem.

Da počinoci porodičnog nasilja često koriste oružje, te u slučajevima koji imaju karakteristike femicida, ukazuje i gore pomenuto istraživanje AIRE centra iz 2022. godine (*Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021).* Istraživanje je obuhvatilo ukupno 34 sudska predmeta (26 predmeta sudova Federacije BiH i sedam predmeta sudova Republike Srpske i jedan predmet suda Brčko distrikta). Na osnovu analiza sudskih odluka konstatovano je da su „Učinioci su prilikom izvršenja krivičnih djela više koristili vatreno oružje (ručna bomba, pištolj, automatska puška – 35,3%) od hladnog oružja (nož/čakija, nož, skalpel, čekić, metalna šipka, tup predmet – 29,3%) i fizičke snage (8,8%), što se može objasniti nedozvoljenim posjedovanjem vatrenog oružja koje uglavnom potiče iz ratnog perioda.”.[[176]](#footnote-176) Podaci koje je SEESAC prikupio ukazuju da je čak 45.5% žena koje su ubili njihovi intimni partneri ubijeno vatrenim oružjem.[[177]](#footnote-177)

Posjedovanje oružja i municije u BiH reguliše se u 12 zakona. Tako zakon ima entitet Republika Srpska, distrikt Brčko, te svih deset kantona u Federaciji. Ovi zakoni nisu u potpunosti ujednačeni, ni međusobno niti sa legislativom u EU, što je jedan od zahtjeva na putu pridruživanja. Pored zakona, na državnom nivou, postoji Strategija za kontrolu malog i lakog naoružanja usvojena 2020.[[178]](#footnote-178), a koja se tiče perioda 2021-2024, te Akcioni plan sprovođenja Strategije. Ovaj dokument ukazuje na probleme koji se tiču bezbjednosti, naročito žena, te upotrebu vatrenog naoružanja pri počinjenju krivičnih dijela.

Iako je BiH potpisnica Istanbulske konvencije, koja u Članu 51, nalaže zemljama potpisnicama da njihova zakonodavna tijela osiguraju nadzor nad počiniocima nasilja i sprečavanje ponavljanja, što uključuje i veći nadzor na posjedovanjem oružja osoba koje su počinioci nasilja, nema jasno propisanih mjera koje ovo omogućavaju. Štaviše, nadležni organi ne rijetko nalaze način da olakšaju proces izdavanja dozvola za posjedovanja oružja i nabavku municije. Tako je Ministarstvo unutrašnjih poslova Kantona Sarajevo[[179]](#footnote-179), nakon izmjena zakona 2019. godine, javnost uputilo da im je olakšano ostvarivanje prava na nabavljanje, nošenje i držanje oružja i municije. Na sličan način je nekoliko godina ranije, 2013. promjene u zakonu Bosansko-podrinjog kantona[[180]](#footnote-180) objavilo tamošnje ministarstvo napominjući kako nove odrednice omogućavaju da će svi stanovnici kantona koji budu željeli ostvariti “pravo” da posjeduju oružje, imati više mogućnosti i načina. Godine 2013. usvojenu su prijedlozi i promijenjen zakona u ovom kantonu te je proširena mogućnost nabavljanja oružja i municije. Municija se se može nabaviti i bez posebnog odobrenja “uz već izdati postojeći oružni list za određeno oružje koje je građanin nabavio te uz ličnu kartu”.[[181]](#footnote-181) Amandmani su usvojeni i 2017. godine[[182]](#footnote-182) te je odobreno da osobe sa navršenih 18 godina (umjesto 21) mogu dobiti dozvolu.

Kada je riječ o ravnopravnosti na osnovu spolova, većina postojećih zakona ima odrednicu u kojoj stoji kako “gramatička terminologija” zakona “podrazumijeva uključivanje oba spola”. Iako Strategija i niz drugih dostupnih izvora ukazuje na činjenicu da su žene češće žrtve zlupotrebe oružja nego muškarci, naročito u slučajevima porodičnog nasilja, nijedan zakon ne predviđa mjere koje bi omogućile veću kontrolu posjedovanja oružja, niti predviđa ulogu centara za socijalni rad.

* 1. **Državna strategija**

Strategija na državnom nivou izrađena je uz podršku i savjete SEESAC, Misije u BiH Organizacije za sigurnost i saradnju u Europi (OSCE), te Razvojnog programa Ujedinjenih nacija (UNDP) i Delegacije EU u BiH. Osnovna smjernica na osnovu ovog dokumenta je da bi BiH trebala biti „sigurno društvo sa uspostavljenim sveobuhvatnim i održivim mehanizmima za identifikovanje, sprečavanje, krivično gonjenje i kontrolu nedozvoljenog posjedovanja, zloupotrebe i trgovine vatrenim oružjem i municijom”.[[183]](#footnote-183) Strategija konstatuje povećanu upotrebu oružja u nasilnim djelovanju pojedinaca, te u slučajevima nasilja u porodici, te ukazuje na činjenicu da muškarci čine većini počinilaca krivičnih djela povezanih sa upotrebom vatrenog oružja. Konstatuje se da “rodna perspektiva ima veoma značajnu ulogu u razumijevanju distrbucije i potražnje za vatrenim oružjem, kao i specifičnih rizika sa kojima se žene i muškarci suočavaju u pogledu zloupotrebe vatrenog oružja”.[[184]](#footnote-184)

Strategija nalaže integrisanje rodne perspektive “u strateški i operativni okvir”[[185]](#footnote-185), a kao preduslov za efikasnu kontrolu oružja:

“U skladu sa tim, BiH će u u narednom periodu raditi na integraciji rodne perspektive u mjere za kontrolu SALW, a poseban značaj dat će se sprečavanju zloupotrebe oružja u slučajevima nasilja u porodici, prevenciji zloupotrebe vatrenog oružja, jačanju kapaciteta institucija da kreiraju i sprovode rodno odgovorne mjere i povećanju učešća žena u kontroli SALW-a.” [[186]](#footnote-186)

U vezi s ovim, skraćenica SALW se odnosi na *Mapu puta za održivo rješenje za suzbijanje nedozvoljenog posjedovanja, zloupotrebe i prometa malog oružja i lakog naoružanja*.[[187]](#footnote-187)

Uvidom u postojeći zakonodavni okvir, nije vidno da je ova preporuka ispoštovana.

* 1. **Zakonski okvir za posjedovanje pružja i municije**

Svi postojeći zakoni definišu različite kategorije oružja i municije, te opće uslove i načine na koji se mogu dobiti dozvole za posjedovanje i nošenje, odnosno za koje vrste oružja i municije i pod kojim uslovima nisu potrebne dozvole. Zakon na nivou Kantona Sarajevo (slično kao i ostali zakoni) kao opći uslovi za izdavanje odobrenja za nabavljanje oružja fizičkom licu definiše:

„a) da ima opravdani razlog za nabavljanje oružja,

b) da je lice navršilo 21 godinu života,

c) da nije pravosnažno osuđeno za krivično djelo, osim za krivično djelo protiv bezbjednosti javnog saobraćaja iz nehata koje za posljedicu ima tjelesnu povredu ili materijalnu štetu, odnosno za krivična djela u državi čiji je državljanin ili u kojoj ima prebivalište ili boravište,

d) da protiv njega nije u Bosni i Hercegovini potvrđena optužnica, niti da se vodi krivična istraga ili krivični postupak, osim za krivična djela protiv bezbjednosti javnog saobraćaja iz nehata koje za posljedicu ima tjelesnu povredu ili materijalnu štetu, odnosno za krivična djela u državi čiji je državljanin ili u kojoj ima prebivalište ili boravište,

e) da lice u posljednje dvije godine do dana podnošenja zahtjeva za izdavanje odobrenja za nabavljanje oružja ili od momenta vršenja provjera na osnovu stava 7. ovog člana nije kažnjavano za prekršaj protiv javnog reda i mira s obilježjem nasilja, prekršaj propisan ovim zakonom ili prekršaj s obilježjem nasilja propisan drugim zakonom,

f) da ne postoje druge okolnosti koje ukazuju da bi oružje moglo biti zloupotrijebljeno, a naročito: češće i prekomjerno uživanje alkohola, uživanje narkotičkih sredstava ili drugih omamljujućih sredstava, disciplinske povrede propisa o lovstvu i sportskom streljaštvu, kao i druge okolnosti koje lice čine nepodobnim za posjedovanje oružja.” [[188]](#footnote-188)

Zakon o oružju i municiji Republike Srpske, nalaže da kod osobe koja traži dozvolu

„ne postoje okolnosti koje negativno utiču na interese bezbjednosti, kao što su: češće i prekomjerno uživanje alkohola, konzumiranje opojnih droga ili drugih omamljujućih sredstava, izraženo poremećeni porodični odnosi, sukobi sa okolinom, agresivno i ekscesno ponašanje i druge okolnosti koje lice čine nepodobnim za posjedovanje oružja.“[[189]](#footnote-189)

Na teritoriji cijele države, nadležne policijske uprave imaju mogućnost, ali ne obavezu, da provjeravaju ispunjenje uvjeta i nakon izdavanja dozvole, a ako saznaju “za okolnosti koje dovode u sumnju daljnje ispunjavanje tih uvjeta”.[[190]](#footnote-190)

Kao “opravdan razlog” za posjedovanje oružja, Zakon definiše: ličnu sigurnost (“ukoliko učini vjerovatnim da bi mu mogla biti ugrožena lična sigurnost ili zbog drugih okolnosti”[[191]](#footnote-191)), za potrebe lova, sporta ili kolekcionarstva. Zakon također definiše članstvo u sportskim streljačkim društvima, naslijeđe, kolekcionarstvo kao moguće razloge zbog kojih mogu biti izdate dozvole. Policijski službenici su u svakom od definisanih razloga dužni utvrditi postojanje “opravdanog razloga”.

U Unsko-sanskom kantonu, dozvolu može dobiti svaka osoba ako

„nije u posljednje dvije godine od dana pravosnažnosti rješenja o prekršaju, odnosno prekršajnog naloga kažnjavan za prekršaj protiv javnog reda i mira koji se odnosi na fizički napad, učestvovanje u tuči, fizičko zlostavljanje, izazivanje tuče ili za prekršaj propisan Zakonom o oružju i municiji za koji je izrečena zaštitna mjera oduzimanja oružja, bitnih dijelova i municije ili za prekršaj zbog nasilja u porodici ili ako mu je u skladu sa Zakonom o zaštiti nasilja u porodici izrečena zaštitna mjera ili za prekršaj sa elementima fizičkog nasilja u skladu sa drugim propisima, kao i da se protiv tog lica ne vodi postupak za takve prekršaje;“ [[192]](#footnote-192)

Ovdje je potrebno istaknuti da se ovim Zakonom govori o uslovu da osobi nije izrečena zaštitna mjera ili prekršajni postupak zbog porodičnog nasilja, ali se pod porodičnim nasiljem ovdje prvenstveno podrazumijeva fizičko nasilje.

Nadalje, uslov za dozvolu u Unsko-sanskom kantonu je također, kao i u drugim zakonima,

„da ne postoje okolnosti koje negativno utiču na javni red i mir, odnosno interese sigurnosti, kao i da ne postoje druge okolnosti koje ukazuju da bi oružje moglo biti zloupotrijebljeno, kao što je: prekomjerno uživanje alkohola, konzumacija opojnih droga ili drugih omamljujućih sredstava, izraženo poremećeni porodični odnosi, sukobi s okolinom, agresivno i ekscesno ponašanje i drugi poremećaji u ponašanju, kriminalističko - obavještajni razlozi i razlozi koji ukazuju na povezanost sa licima iz kriminalističko - obavještajne evidencije i slično.“ [[193]](#footnote-193)

Ovdje treba naglasiti da je postavljeni uslov da nema bitno narušenih porodičnih odnosa, ali to je potpuno rodno neutralan pristup, koji najvjerovatnije narušavanje porodičnih odnosa shvata u kontekstu porodičnih razmirica, a ne prisutnosti rodno zasnovanog nasilja.

Kazna za nelegalno posjedovanje oružja u BiH iznosi do tri godine zatvora, a previđene su i novčane kazne od 250 eura do 500 eura za fizičke osobe, odnosno od 5.000 eura do 7.500 eura za pravne.

Zakonima se definišu i posebni uslovi za izdavanje odobrenja za nabavljanje oružja fizičkom licu, što podrazumijeva i zdravstveno uvjerenje. No, tek dio postojećih zakona definiše i koje vrste liječnika bi trebale dati svoje mišljenje. Tako zakon u Zeničko-dobojskom kantonu definiše da uvjerenje o zdravstvenoj sposobnosti izdaju

„ovlaštene zdravstvene ustanove sa liste koju utvrđuje Ministarstvo zdravstva Zeničko-dobojskog kantona po mjestu prebivališta fizičkog lica, u kojem se o podobnosti podnosioca zahtjeva za nabavljanje, držanje i nošenje oružja navode pojedinačna i zaključno mišljenje članova zdravstvene komisije u sastavu ljekara oftamološke, neurološke, psihijatrijske i psihologijske specijalnosti, i ljekara specijaliste medicine rada.“ [[194]](#footnote-194)

Zakon u KS nalaže:

“Bliže uvjete koje moraju ispunjavati zdravstvene ustanove koje će obavljati zdravstvene preglede kojima se utvrđuje zdravstvena sposobnost za držanje i nošenje oružja, način i postupak obavljanja redovnih i vanrednih zdravstvenih pregleda, popis bolesti i zdravstvenih stanja koja lice čine nepodobnim za držanje i nošenje oružja, način vođenja evidencije i medicinske dokumentacije, razmjena podataka o izdatim ljekarskim uvjerenjima i promjenama u pogledu zdravstvene sposobnosti imaoca oružja, sadržaj uvjerenja o izvršenom zdravstvenom pregledu, naknade u vezi s utvrđivanjem zdravstvene sposobnosti, te druga pitanja od značaja za utvrđivanje zdravstvene sposobnosti, propisuje ministar zdravstva u saradnji sa Ministarstvom unutrašnjih poslova Kantona Sarajevo.” [[195]](#footnote-195)

Zapravo, na jednom je pojedincu, odnosno ministru zdravstva, koji može ili ne mora biti specijaliziran za tu materiju, da propisuje podzakonske propise koji određuju zdravstvene uvjete za posjedovanje oružja.

Postojeći zakoni nalažu da ljekarsko uvjerenje prilikom predaje zahtjeva ne bude starije od šest mjeseci, ali se obnova uvjerenja traži tek za pet do deset godina, što predstavlja izuzetno dug period. U svim slučajevima, data je mogućnost policijskim upravama da odluče da li pojedinac treba ići na provjeru zdravstvenog stanja ili ne, zahtijevajući od onog ko posjeduje oružje da sam prijavi eventualnu promjenu ili da to urade liječnici koji su upoznati sa stanjem te osobe, a koji nužno ne moraju znati da ta osoba posjeduje oružje. Zakon koji je na snazi u Srednje-bosanskom kantotu tako propisuje da o eventualnim promjena zdravstvenog stanja osobe koja posjeduje dozvolu za oružje, “izabrani ljekar primarne zdravstvene zaštite, svaka zdravstvena ustanova, svaki drugi ljekar koji sazna za promjenu zdravstvenog stanja imaoca oružja, a koje može uticati na sposobnost držanja i nošenja oružja, dužan je odmah dok sazna o takvoj promjeni da obavijesti najbliži policijski organ”.[[196]](#footnote-196)

Niti jedan zakon nema dio koji eksplicitno upućuje na porodično nasilje kao takvo, iako većina navodi da osobe protiv kojih postoje sudski slučajevi povezani za porodično nasilje ne mogu dobiti dozvolu. Ipak, opće je poznato da je broj slučajeva porodičnog nasilja koji su registrovani, ili imaju sudski ishod, prilično ograničen. Uz to, čak i kada su registrovani slučajevi porodičnog nasilja, rijetko su to slučajevi kojima se bave sudovi, a često su ne izreču ni presude za minorne prekršaje. Slična je situacija i s ostalim oblicima rodno zasnovanog nasilja: uslov je da se takvo nasilje kriminalizira i procesuira kao fizičko nasilje.

Zakon ne nalaže centrima za socijalni rad, ili članovima porodice, da prijave promjene u ponašanju osoba koje posjeduju oružje, niti ukazuje na potrebu da oni prijave te slučajeve nadležnim policijama i institucijama.

Općenito, postojeće zakonodavstvo koje se tiče posjedovanja oružja i municije u BiH je decentralizovano i prilično liberalno kada je riječ o izdavanju dozvola. Rodna perspektiva je potpuno zanemarena u ovim zakonima, kao i činjenica o postojanju znatnog broja slučajeva zlupotrebe oružja u slučajevima porodičnog nasilja. Uz to, institucije ne rade dovoljno (ako uopće) na promociji razoružanja, što je suprotno feminističkim principima, ostavljajući oružje u rukama prevelikog broja ljudi, te dajući mogućnost za zlupotrebu.

1. **Umjesto zaključka: kako zagovarati prevenciju femicida**

Konačno, umjesto zaključka u ovom poglavlju ćemo razmotriti kako nadležnim organima i pravosuđu prezentirati preporuke na osnovu kojih bi se, u koordinaciji s njima, dobila podrška za kreiranje ozbiljnog pristupa u prevenciji femicida i eventualnu izmjenu krivičnog zakonodavstva BiH . Na osnovu uvida u primjere iz drugih zemalja, onih u kojima je zakon već promijenjen, te onih gdje su promjene u toku ili se diskutuje o mogućnostima, ova analiza predlaže načine za razvoj zagovaračkog rada. Jedan od ključnih dokumenata koji su uzeti u obzir, a s obzirom na opredijeljenost BiH za članstvo u EU, jeste istraživanje EIGE-a *Hidden in plain sight: improving legal response for ‘invisible’ victims of femicide (Skriveno pred očima: poboljšanje pravnih odgovora na ‘nevidljive’ žrtve femicida)[[197]](#footnote-197)* koje zagovara promjene zakonodavstva u EU članicama.

* 1. **Analiza stanja i sažetak izvještaja**

Femicid se može smatrati krajnjim oblikom muškog nasilja nad ženama i djevojčicama koji je ukorijenjen u rodnoj nejednakosti u društvu i prisutan je u svim dijelovima svijeta. Postojanje različitih definicija femicida jedan je od ključnih razloga zbog kojih je teško utvrditi rasprostranjenost ove pojave, što otežava njeno sveobuhvatno analiziranje i kreiranje efikasnih strategija za njeno sprečavanje. Nepostojanje jedinstvene definicije otežava praćenje femicida, koji postaje nevidljiv među općim podacima o ubistvima. Iz iskustva Latinske Amerike, potrebno je otvoriti razgovor među feministicama o tome kako bi najadekvatnije bilo definirati femicid u kontekstu Bosne i Hercegoivne, te da li je najbolji pristup prevenciji femicida definiranje femicida kao posebnog krivičnog djela.

Prema podacima UN Women u 2021.[[198]](#footnote-198) registrovano je oko 81.000 slučajeva ubistava žena, djevojaka i djevojčica u svijetu, odnosno u prosjeku, više od devet žena ubijeno je svaki sat. Od tog broja, više od polovine ubistava počinili su partneri žrtava. Istovremeno, tek nekoliko država Latinske Amerike za sada je prepoznalo femicid kao posebno krivično djelo u svom zakonodavstvu, i to zahvaljujući zagovaranjima i lobiranjima feminističkih organizacija. Nijedna država članica EU nije prepoznala femicid kao posebno krivično djelo, iako neke prepoznaju rodne motive ili diskriminaciju kao osnovu za ubistva žena u svojim zakonima. Istovremeno, feminističke organizacije i grupe, ali i znatan broj pravnika, te psihologa i ostalih profesionalaca koji rade na problemima povezanim sa porodičnim i rodnim nasiljem, ukazuju na potrebu da se femicid prepozna kao posebno krivično djelo, te da se radi na podizanju svijesti o ovim pitanjima. Stručnjaci koji se bave ovim pitanjem tvrde da na iskustava zemalja u kojima je femicid prepoznat kao krivično djelo ukazuju na unapređenje sistema praćenja i prevencije.

Istovremeno, čitav niz međunarodnih dokumenata sadržava mehanizme za zaštitu žena, uključujući Istanbulsku konvenciju, no njena provodivost nije dovoljna u zemljama koje su je ratificirale, uključujući i BiH. U međuvremenu, broj slučajeva ubistava žena, naročito kao žrtava porodičnog nasilja, neprestano raste. Javnost o ovim djelima informacije uglavnom dobiva putem medija koji često izvještavaju na senzacionalistički način, relativizirajući zločin i žrtvu, ali i samo nasilje, čega smo svjedoci i u BiH.

Kako mediji imaju snažan utjecaj na formiranje javnog mnijenja, jedan od zadataka za bilo koga ko se upušta u zalaganje za promjene zakona, ali i prevenciju i sprečavanje nasilja, jeste rad sa novinarima i medijskim kućama, ali i angažman u javnim kampanjama koje će podići svijesti kod građanstva.

Da bi se radilo na ovome, potrebno je da feministice i civilno društvo jasno definišu osnovne termine, od nasilja u porodici do femicida, i približe ih cjelokupnom društvu, svim generacijama. Također je neophodno imati bazu podataka sa slučajevima koji imaju odlike femicida i tu bazu učiniti javnom. Postojanje baze podataka omogućit će da javnost, stručna i građanstvo, zaista zna koliko je ovo raširen problem. Ovakva baza već postoji u regiji Balkana (FemPlaz).[[199]](#footnote-199) U njenom uspostavljanju su uključene organizacije civilnog društva iz Srbije i Crne Gore. Nijedna organizacija iz BiH se za sada nije uključila, a to bi potencijalno mogao biti značajan korak u kampanji.

Postojeća baza, a s obzirom na nedostatak zakonskih definicija, ali i pristup sudskim dokumentima, oslanja se na informacije iz medija, što znači da određeni broj slučajeva ostaje nezabilježen. U idelanim uslovima, ova baza (Femicide Watch ili Opservatorij za praćenje femicida) bi trebala biti odgovornost institucija, i oslanjati se na podatke koje pružaju policijske baze i pravosudni sektor. No, i baza podataka koja se oslanja na medije i istraživanja koje vrše nevladine organizacije, može imati značajnu ulogu ukoliko institucije ne rade na registrovanju slučajeva. Ujedno postojanje baze može biti i vrsta zagovaranja za promjene zakona, jer će omogućiti skupljanje činjenica o raširenosti zločina femicida.

Pored javnosti, od izuzetnog je značaja obrazovanje policije i drugih službenika koji rade u krivičnom sistemu. Trenutno stanje u Europi, uključujući BiH, pokazuje da su slučajevi ubistava žena istraživani kao zločini koji nemaju rodnu dimenziju. No, EIGE ukazuje na potrebu da se zločini u kojima su žrtve žene istražuju od početka kao potencijalni femicid ili rodno zasnovano nasilje. Na taj način će se drugačije prikupljati dokazi i voditi postupak. Štaviše, u ovom izvještaju se ukazuje da bi trebali postojati specijalni timovi za istraživanje femicida pri policijama i tužilaštvima.

Javnost mora znati i zašto je važno da femicid bude prepoznat zakonom. Šta to znači za žrtve i njihove porodice, te na koji način to može doprinijeti sprečavanju ovog zločina. Takva pojašnjenja također moraju biti dio kampanja, a sve kako bi se pridobila javnost koja je najveći saveznik civilnom društvu u lobiranju za izmjenu zakonodavstva. U javnim kampanjama moraju učestvovati pravni stručnjaci, socijalni radnici i psiholozi, koji bi dodatno objasnili nedostatke sistema koji ne prepoznaje femicid kao krivično djelo.

* 1. **Preporuke za zagovaranje**

Zagovaranje bi trebalo ići u nekoliko osnovnih smjernica:

1. Argumentovanje prepoznavanje femicida kao posebnog krivičnog djela
2. Učiniti femicid vidljivim (baza podataka)
3. Djelovati preventivno (edukacija)
4. Definisanje femicida kao posebnog krivičnog djela kako bi se smanjilo i preveniralo rodno nasilje (u saradnji sa pravnim stručnjacima i feminističkim organizacijama)
5. Povećano prijavljivanje porodičnog nasilja i nasilja nad ženama i djevojčicama policiji (javne kampanje)

*Podrška javnosti*

Javnost je najbolji saveznik u ovoj vrsti kampanja, te bi privi koraci u kampanji trebali biti javno zagovaranje i podizanje svijesti o samom problemu nasilja u porodici, nasilja nad ženama i djevojčicama i femicida, te posljedicama po društvo. Također je u kampanjama potrebno objasniti javnosti zašto femicid treba biti kategorija u krivičnom zakonu i kako će to promijeniti postojeće stanje. Neophodan korak je osnivaje SOS telefona te baze podataka, na osnovu kojih će se moći prikupiti i javnosti približiti informacije o stepeni raširenosti nasilja nad ženama. Kampanja ka javnosti se vrši putem medija, ali i organizovanjem javnih razgovora i uličnih akcija kojima se ukazuje na postojanje problema nasilja nad ženama i djevojčicama i femicida.

*Institucije*

Jaka podrška u javnosti izvršit će pritisak na institucije. Paralelno sa javnim kampanjama, potrebno je lobirati ka parlamentarcima. Ovaj korak bi bilo najbolje da rade koordinirano oganizacije civilnog društva, kako bi izvršili što veći pritisak, a sve to dok traje javna kampanja.

*Mediji*

Medijska kampanja koja će uključivati učešće u radijskim i TV emisijama, ali i posebno kreiranu kampanju koja će se voditi na društvenim mrežama uključujući Instagram i TikTok kao mreže koje najviše koriste mladi ljudi za informisanje danas.

Napominjemo da je Facebook stranica *Nisam tražila[[200]](#footnote-200)* imala značajan utjecaj na javno prepoznavanje seksualnog uznemiravanja, te su posljedično i neki drugi oblici nasilja (naročito seksualnog) nad ženama postali vidljivi. U ovom dijelu kampanje pored nevladinih organizacije mogu se angažovati umjetnici, ali i akademska zajednica, te aktivisti. Kampanja treba imati prepoznatljiv vizualni identitet i poruku koju je lako pamtiti. I u ovoj fazi je neophodno učešće što više organizacija i pojedinaca.

*Nevladine organizacije*

Za uspješnu kampanju potrebno je izgraditi frontu u koju će biti uključen što veći broj organizacija, ali ne samo onih koje se bave pitanjima nasilja u porodici i nasilja nad ženama i djevojčicama, nego svih organizacija koje djeluju u širokom okviru zaštite ljudskih prava, kao i organizacija koje rade sa mladim ljudima, onima koji su preživjeli ratno nasilje ili organizacija koje rade sa osobama koje imaju PTSP.

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**Improving the legal and social matrix for the prevention of femicide and gender-based violence in Bosnia and Herzegovina[[201]](#footnote-201)**

1. **Introduction**

In October 2022, the women of Bosnia and Herzegovina took to the streets unitedly and in solidarity in more than twenty places in Bosnia and Herzegovina to demand:

“introduction of the legal definition of femicide; introduction of femicide as a criminal offense in all laws and by-laws; urgent harmonization of criminal laws with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and revising criminal practices; ensuring prevention and protection from violence against women through the competent institutions and multi-sector protocols; as well as the consistent application of the law, even in cases of death as a consequence of domestic violence, that the perpetrator be tried according to the provisions of the law, which will establish a more severe punishment.”[[202]](#footnote-202)

In the statement that was published as the call for protest gatherings, it is clearly visible that femicide is understood within the framework of the continuum of male gender-based violence against women and girls, as a global phenomenon, that is present in all spheres of public and private life and caused by patriarchal social norms. The statement does not offer a direct definition of femicide as such but is aimed at legislators demanding from them to legally regulate the term femicide with the above elements since that is their obligation. The immediate reason for the protest was yet another male murder of a woman caused by violence in intimate partner relationships. It was emphasized that official statistics indicate that at least 60 women were killed in the period from 2017, but that the number is certainly higher because of the invisibility of femicide and the lack of its legal qualification. That the increase in male violence against women and femicides is present in the region, the women of Bosnia and Herzegovina emphasized by the act of expressing solidarity with the women of Serbia and Kosovo who were also on the streets for the same reason during that period.

However, it should be pointed out that only in the last few years has the issue of femicide been approached seriously, both in the region and in Bosnia and Herzegovina. Thus, in-depth analyses can be found in the region, such as in-depth studies entitled *Social and Institutional Response to Femicide in Serbia*,[[203]](#footnote-203) which was published in two volumes in 2019, and a study with the same title, but concerning Montenegro, which was published in 2023. [[204]](#footnote-204)Two reports were also published, which included an overview of femicide cases in the Western Balkans region for 2020 and 2021. Those also included an overview of femicide cases from Bosnia and Herzegovina.[[205]](#footnote-205)

As for BiH itself, in 2020 the association Helsinki Citizens' Assembly published a short study *Femicide and Prevention Mechanisms in the Case of Bosnia and Herzegovina*, authored by Sunčica Đukanović.[[206]](#footnote-206) Same year, in the context of their trial monitoring report, the Centre for Women's Rights and the Foundation United Women specifically analysed cases of femicide.[[207]](#footnote-207) During 2022, the *Thematic Bulletin on Femicide* of the Atlantic Initiative[[208]](#footnote-208) and *Analysis of court practice in the prosecution of femicide and attempted femicide in Bosnia and Herzegovina 2017-2021* issued in cooperation by The Aire Centre and FemPlatz,[[209]](#footnote-209) were published.

Furthermore, it is very important to emphasize that some of the Bosnian feminists, who are not directly connected to non-governmental or governmental organizations, have managed to publish some texts on online portals, albeit in limited spaces. Such is the case of Tamara Zablocka's text *Femicide is a social problem, not a sporadic incident in the private sphere*,[[210]](#footnote-210) which was published on the prometaj.ba portal in January 2021, and subsequently taken over by the Women's Network of BiH.[[211]](#footnote-211) After the above-mentioned protests, Kristina Ljevak published a short critical analysis of media writings about femicide on the Media Center Online under the title *Relativization of the causes of femicide in misogynistic culture*.[[212]](#footnote-212) The same text was republished by the portal discriminija.ba.[[213]](#footnote-213)

This report is an attempt to make a small contribution to the newly opened feminist discussions about femicide in Bosnia and Herzegovina. Given that this research lasted only two months, we only managed to scratch the surface of a fairly large number of discussions that have opened up in the last 10 years regarding the prevention of femicide. While it took a very long time for feminists to even point out to this phenomenon, once the term was accepted it spread very quickly. In this regard, we are not sure if this is a good thing because it is obvious that the term has already emigrated from strictly feminist discussions and has got a life of its own, and as such risks co-option by the patriarchal system.

For the report, a detailed analysis of discussions on femicide and its prevention, both globally and specifically in Bosnia and Herzegovina, was made. First, an analysis of the term femicide with its etymology and phenomenology was provided using a feminist analytical framework. This is followed by a detailed analysis of the criminal legal framework regarding the criminal offense of murder, which is gender neutral in Bosnia and Herzegovina, and a look into how judicial practice relates to femicide in such gender-neutral legislation. For the purposes of the study, we also analysed the criminal legal systems of the EU countries and the countries of the region, to determine how femicide is treated in these jurisdictions. One of the reasons for advocating the introduction of femicide as a distinct criminal offense is the possibility of monitoring it in order to create policies and measures for its prevention. For this reason, we also conducted an analysis of various mechanisms for collecting data on violence against women and girls and femicide. In this regard, we also analysed the recently *published Baseline Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, of the Council of Europe’s Group of Experts (GREVIO), where a basic study of the compliance of the policies and legislation of Bosnia and Herzegovina with the Istanbul Convention was done in detail. Finally, in the context of potential prevention, we also did a short analysis of the regulatory framework for the control of small arms and light weapons as one of the risk factors of femicide. This study does not offer any answers, but only wants to open space for questions and encourage further feminist and professional discussions about the best ways to prevent femicide in Bosnia and Herzegovina.

1. **What's in a name - etymological and phenomenological considerations**

Femicide as the most serious form of male gender-based violence against women and girls was recognized for the first time during the first International Tribunal on Crimes against Women, which was held in Brussels in March 1976. As such, the term was used in her testimony by the feminist Diana Russell, who, together with Nicole van de Ven, organized the Women's Tribunal to make visible crimes against women and begin, as Simone de Beauvoir called it in her welcoming letter to the tribunal, a radical process of “decolonization of women”.[[214]](#footnote-214) In the tribunal, Russell testified about many examples of deadly forms of male violence against women and girls in the hope that “introducing this new concept would facilitate people's recognition of the misogynistic motivation of such crimes.”[[215]](#footnote-215)

Russell did not coin the word femicide herself. The term was used in the English language even before Russell took it and assigned it a political meaning. She herself states that she first heard about the term *femicide* from an acquaintance who told her that the American writer Carol Orlock was writing an anthology about femicide.[[216]](#footnote-216) The anthology was never published, nor was the definition of femicide that Orlock had in mind made known. However, the term helped Russell define the patriarchal phenomenon of “the killing of females by males because they are female”.[[217]](#footnote-217) Here, due to potential differences in meaning that may appear due to translation from the English language (to Bosnian/Croatian/Serbian), it should be emphasized that Russell insists on using the words “female” and “male” (which in the context of our languages could be translated as female and male person). Otherwise, Russell insists, minors who are not spared by this patriarchal phenomenon are excluded (especially when it comes to murders of girls precisely because they are girls).[[218]](#footnote-218)

Later literature that deals with the issue of femicide and its introduction into the criminal legislation of different countries[[219]](#footnote-219) draws attention to the fact that in the English-speaking world (where feminists first introduced it) the term femicide can be found in texts written at the beginning of the 19th century, in which the word femicide referred to the killing of women in general. In this context, John Correy's text *A satirical view of London at the Commencement of the Nineteenth Century* and the title of William MacNish's memoir *The Confessions of an Unexecuted Femicide* are mentioned as examples of such use. The mentions of both texts indicate the significance of Russell's political act, because even by the very choice of term she calls out the misogyny that is also visible in the previous use of the word femicide for the purpose of mocking or possibly romanticizing the murder of a woman, especially since MacNish is referred to in the literature on femicide as the killer of a young woman.[[220]](#footnote-220)

Russell herself states that “[e]stablishing a word that signifies the killing of females is an important step toward making known this ultimate form of violence against women. Naming an injustice, and thereby providing a means of thinking about it, usually precedes the creation of a movement against it.”[[221]](#footnote-221) Russell together with Jill Radford in the collection of texts *Femicide, the politics of woman killing* in which they presented numerous considerations on the problem of femicide in Great Britain, the United States of America (USA) and India, published in 1992, points out that the introduction of the term *femicide* addresses the problem of the gender-neutrality of the term *homicide* (murder), which is universally used to denote the violent death of a person caused by another person.

Etymologically speaking, the word 'femicide' in the sense we understand it now comes from the English language. It was designed as a coined term consisting of two Latin words: *femina*, woman, and *caedere*, to cut (in some translations even to kill). Feminists began to use the term femicide as a direct reflection on the word 'homicide', which is used in some of its variants in modern languages (which are based on the Latin language, or whose legal language is based on the Latin language), in order to describe every human act of depriving the life of another human being in the broadest sense. While in the Latin language *homo* denotes the male gender, in languages that use the word 'homicide' (e.g. English, Spanish, French, Italian) it is designed as gender neutral.[[222]](#footnote-222)

As noted by Corradi et al., “[t]he groundbreaking contribution by Radford and Russell was to emphasize that homicide deletes from the sociological eye that special, gender-based evidence of woman-killing, which is different from the murder of men.” [[223]](#footnote-223) Only by recognizing femicide as such it is possible to point out its deep roots in the disbalance of power in a patriarchal society that promotes the unequal status of men and women. While it is true that men are the perpetrators of a large number of murders of men, the motives and circumstances are different when it comes to the murders of women. In the languages used in Bosnia and Herzegovina, the derivative 'homicide' is rarely used. However, the very word *murder* is gender neutral, and therefore the analysis and criticism that Russell initiated is also applicable to Bosnia and Herzegovina's patriarchal social, political and legal framework.

From the Women's Tribunal to today, the term *femicide* has not been unquestionably accepted as such. Russell herself noticed on several occasions that even feminists had different views on the use of the term femicide.[[224]](#footnote-224) Thus, for example, in the USA, despite extensive media coverage of murders of women committed by men, the fact is ignored (even among feminists involved in the fight against violence against women) that many of these murders are wholly or partially motivated by men’s misogynistic attitudes towards women. On the other hand, feminists in Latin America have widely adopted the term femicide or feminicide since the 1980s. To date, as many as 18 countries in the region have criminalized femicide/feminicide in various ways, including in the context of intimate and non-intimate partner relationships.[[225]](#footnote-225)

However, even within the theoretical and political discussions in Latin America, feminists did not take completely identical positions on the concept. Two camps were formed around the very name of the phenomenon (femicide or feminicide), and in this regard, somewhat different definitions of the concept. Some of the feminists, led by Marcela Lagarde y de los Rios, a feminist from Mexico, insist that the word feminicide better reflects the context of Latin America and that it is not enough to distinguish between the murders of men and women, but that institutional violence should also be emphasized as part of this phenomenon, because the killing of a woman is accompanied by institutional violence that leads to impunity.[[226]](#footnote-226) An example that is often used in these discussions is the serial murders of women and girls in Ciudad Juarez, Mexico, where, as the Inter-American Court of Human Rights[[227]](#footnote-227) found, the Mexican state failed to implement its obligation to protect the rights of women and girls. On the other hand, feminists from Costa Rica, Monsterat Sagot and Ana Carcedo, have kept the word femicide cautioning that if impunity and the requirement that the state respects its obligations are included in the definition of femicide, this should not be a decisive factor because it can be limiting insofar as it ignores that gender-based violence against women and girls is a universal problem that transcends borders.[[228]](#footnote-228)

In this regard, Russell herself notes that, while Lagarde is right about impunity, the inclusion of impunity in the definition implies that in those cases where the perpetrator is arrested and imprisoned, those cases would automatically cease to be femicides/feminicides.[[229]](#footnote-229) Also, the state can honour its obligations and prosecute and punish all perpetrators within a gender-neutral system and without recognizing the specificity of such murders. This then implies that there is no femicide/feminicide in such states, which in reality is not the case anywhere. In these cases, the opportunity to identify the causes and roots of femicide would be missed, while the discrimination and oppression of women and girls would remain invisible.

Nevertheless, feminists from Latin America brought reflections on the application of the theoretical-political term in local and legal contexts into their discussions. As Corradi et al. note,

“One of the basic claims of sociology is that social actions are meaningful; therefore, processes of social change have always been accompanied by socially plausible ways of renaming the transformed world. If appropriate words were not available, they needed to be invented and the mere act of pronouncing a provocative term became a revolutionary event, which was transgressive of the social order. If the term is strong, namely if it captures aspects of reality that were previously indiscernible by mainstream scholarship or stereotyped perceptions, it then begins circulating and disseminating in different contexts. Subsequently, it is no longer the exclusive property of the author. Something has happened: the new term is thriving, and this demonstrates that it has a strong notion embedded within it.”[[230]](#footnote-230)

However, the uncontrolled circulation and spread of the term also poses the danger of diluting the definition, which can lead to the loss of the political influence of the term.[[231]](#footnote-231) Thus, for example, every killing of a woman cannot be considered femicide because then the gender-based evidence of the killing of women is lost, and the power of the concept of femicide to indicate the disbalance of power in a patriarchal society disappears.

In this context, in 2013, Russell also warned against the use of the definition of femicide which, as she states, was still in use in the United Nations (UN) at that time, namely “the killing of a woman because she is a woman.” Such a definition, as already mentioned above, excludes female babies, girls and teenage girls as victims. It also insinuates that this is a murder committed by one male person against one female person, which then ignores the fact that many femicides are committed by groups of men, such as gangs and the military. Finally, such a definition includes women as possible perpetrators of murder, while ignoring that many men use coercion, even the threat of femicide, to force many women to commit femicide, such as in India when mothers refuse to kill female infants.[[232]](#footnote-232)

In this regard, Karen Ingala Smith[[233]](#footnote-233) warns of the problem of depoliticization of the term femicide when it enters policy and legal frameworks. In her discussion Ingala Smith uses the example of the UN Symposium on Femicide[[234]](#footnote-234) that was held in Vienna in November 2012 and the Declaration on Femicide[[235]](#footnote-235) that emerged from the symposium. The two, in some ways, mark a significant shift in the popularization of the use of femicide in official global and national policies. Ingala Smith notes that while at first reading the definition used in the Symposium and in the Declaration, which reads “the killing of women and girls because of their gender”, may appear to be comprehensive, it does not in principle identify men as the vast majority of perpetrators of the killing of women and girls. According to Ingala Smith, this ultimately seriously undermines any preventive intention of political initiatives

Accepting the argument that femicide can also include women able to kill women due to the influence of patriarchal values, Ingala Smith concludes that any definition or conception of femicide must include men as the primary perpetrators and/or beneficiaries, with more sophisticated versions that acknowledge eventual female perpetrators acting under the influence of patriarchal values. Thus she proposes her definition as “the killing of women, girls and female infants and foetuses, predominantly but not always committed by men, in order to maintain individual and/or collective male dominant status, or as a reflection of the lower status of females.” [[236]](#footnote-236)

* 1. **Manifestations of femicide**

Rashida Manjoo in her role as the UN Special Rapporteur on violence against women, its causes and consequences demonstrated that femicide can be approached within public policies in a way that combines the previously developed elements of the definition without depoliticizing or diluting the term itself. In her thematic report published in May 2012, which she dedicated to gender-related killings of women,[[237]](#footnote-237) Manjoo introduces the term femicide in UN documents, presenting an updated overview of feminist discussions on the definition. Manjoo emphasizes that femicide is an extreme manifestation of existing forms of violence against women, where she understands violence against women as the gravest form of oppression of women in society globally. Femicide is the ultimate act of violence to which women are continuously exposed.

Manjoo points out that such killings are not isolated incidents that appear suddenly and unexpectedly. All women around the world are exposed to continuous violence because they live in conditions of gender-based discrimination and threats caused by structural (such as social, economic and political systems), institutional (such as formal and informal social networks and institutions), interpersonal (such as personal relationships between partners, between family members and within the community) and individual (such as individual abilities to respond to violence) factors, which most often act intersectionally. In her role of the UN Special Rapporteur, Manjoo also emphasizes the problem of impunity for violence against women, but also the obligation of each state to respect its due diligence obligation to the promotion and protection of women's rights, which requires comprehensive and gender-sensitive interventions, including measures designed to address institutional and social factors.

Emphasizing that the global prevalence of various forms of such killings is on the rise, Manjoo addresses various manifestations of the problem around the world and presents facts about these killings. In such a way she points to the prevalence of male violence against women and girls. In her report, Manjoo names the following forms of femicide:[[238]](#footnote-238)

1. Killings of women as a result of intimate-partner violence
2. Killings of women due to accusations of sorcery/witchcraft
3. Killings of women and girls in the name of “honour”
4. Killings in the context of armed conflict
5. Dowry-related killings of women
6. Killings of aboriginal and indigenous women
7. Extreme forms of violent killings of women, which she connects to the growing socio-political phenomenon of gangs, organised crime, drug dealers, human and drug trafficking chains, mass migrations and the proliferation of small arms
8. Killings as a result of sexual orientation and gender identity
9. Other forms of gender related killings of women and girls that include widow killings, female infanticide, selective abortions as the oppressive patriarchal practice and other harmful practices of violence against women.

Some of the manifestations that Manjoo analysed in her report were previously covered in texts published by Russell and Radford in their book in 1992. In the introduction to the book, Radford[[239]](#footnote-239) notes that femicide, as the misogynistic male killing of females, appears in many different forms, including:

1. Racist femicide
2. Homophobic femicide or lesbicide
3. Marital femicide
4. Femicide committed outside the home by a stranger
5. Serial femicide
6. Mass femicide
7. Situations in which women are permitted to die as a result of misogynous attitudes or social practices (as for example intentional transmission on HIV, prohibition of abortion, deaths caused by unnecessary surgeries such as hysterectomies, clitorectomies, infanticide of female babies, or even intentional preferencing of boys over girls that causes deaths of girls due to neglect or starvation).

Of course, other feminists identify different forms/manifestations of femicide because male misogynistic violence against women appears in different forms in different contexts. In some contexts, probably due to the ubiquity of violence in intimate partner and domestic relationships there is even an insistence that femicide be understood only through the prism of intimate partner and family relationships.

In the context of the EU, in 2021 the European Parliament’s Subcommittee on Human Rights (DROI) requested the preparation of a study on femicide from Consuelo Corradi, professor of sociology at LUMSA University in Italy.[[240]](#footnote-240) Although it is not specifically indicated, it is important to point out that the study was commissioned during the global increase in domestic violence registered during the health crisis caused by the COVID-19 pandemic,[[241]](#footnote-241) which resulted in “in an increased level of complexity in managing VAWG cases, as well as fluctuations in the level of emergency calls to helplines and shelters.“ [[242]](#footnote-242) Until then, femicide was mentioned only on the margins of the EU, at the annual conferences organized in the EU Parliament by the EU-LAT network in cooperation with the Greens/EFA and the Heinrich Böll Stiftung.[[243]](#footnote-243)

In her report, Corradi emphasises that cases of femicide can be classified into different types, according to the behaviour of the perpetrator, the relationship between the perpetrator and the victim, and the wider context of the occurrence of this crime. In this context, she lists the following types:[[244]](#footnote-244)

1. Intimate partner femicide
2. Family (non-intimate) femicide which further divides on:
3. Femicide in the name of honour
4. Dowry death
5. Femicide-suicide[[245]](#footnote-245)
6. Femicide in war and conflict settings
7. Female sex selection
8. Witch-hunting
9. Other types in human rights-based approach (e.g. in the context of human trafficking, women belonging ethnic minorities and indigenous groups, and similar groups of women from marginalized populations).

In principle, Corradi presents the forms of femicide mentioned by Russell and Radford, as well as Manjoo, only slightly differently. What is important to point out is that in her report, Corradi notes that while in Europe femicide is generally understood in the context of intimate partner relationships, “such a restricted notion does not cover the complete reality of this crime in our continent and across the world.”[[246]](#footnote-246)

* 1. **Definition of femicide in BiH**

In the context of Bosnia and Herzegovina, we cannot boast of some feminist discussions about femicide or its definition. The above-mentioned protest and proclamation from October 2022 were an exception, but at least to a small extent they influenced public discourse on the phenomenon of femicide. The term femicide entered the public space of Bosnia and Herzegovina, like many other concepts, without any previous discussion. This time it happened after it became clear through media reports that murders of women, usually in the context of intimate partner relationships, are on the rise, both in Bosnia and Herzegovina and in the region. This is why femicide is often understood exclusively within the framework of intimate partner relationships.

In her text in which she provides a social analysis of femicide in the context of intimate partner relationships, Tamara Zablocka points out that

"the definition of femicide that best fits the BiH context is the one given by Diana Russell and Jane Caputi in 1990 in the article 'Femicide: Speaking the Unspeakable', stating that femicide is 'the killing of women by men motivated by hatred, contempt, pleasure or a sense of ownership of women, i.e. sexism'“.[[247]](#footnote-247)

While one could discuss whether this definition is the most adequate for the BiH context, Zablocka is the only feminist who offered some thoughts on defining femicide in our context.[[248]](#footnote-248)

The definitions of femicide circulating in the media are diverse, but most often appear in sentences like: “Femicide, as the most extreme form of gender-based violence, is defined as 'the intentional killing of women just because they are women'.”[[249]](#footnote-249) Here it is implied that these are killings committed by men against women, but this is not visibly stated. In principle, the media most often accept the definitions offered to them by women's non-governmental organizations, which are usually taken from some international institutional frameworks that are often devoid of feminist discussions.[[250]](#footnote-250) Basically, this definition is generic and therefore not inadequate. However, simply copy-pasting definitions does not allow us to have a real conversation in the society that could enable us to properly tackle the continuity of violence against women and girls. This is indicated by many media captions, which indicate that the conversations are increasingly focused on children as victims of femicide, while the killed women remain invisible, as well as the violence they suffered. For example, the media recently informed us about the held workshops and panels where the following claims were made:

“In cases of femicide, the biggest losers are children, because they are left without both parents, and it is necessary to strengthen the state's response in such cases - it was stated at the conference ‘Multidisciplinary approach to the prevention and addressing femicide and domestic violence’ organized today in Sarajevo by the Gender Centre of the Federation of Bosnia and Herzegovina.” [[251]](#footnote-251)

“In cases of femicide, the biggest losers are children, because they are left without both parents, it was said on Friday evening in Mostar at the panel discussion ‘Why are the victims of femicide invisible’.” [[252]](#footnote-252)

Even some activists, probably thinking that it is easier to animate the system to act in the prevention of violence against women, make the same mistakes and declare that “after femicide happens, the killed woman is not the only victim, often children are left behind.”[[253]](#footnote-253)

While, of course, it is important to think about how to help children who are affected by femicide, at no point should this make the direct victims of femicide invisible, nor the causes of femicide. Otherwise, violence against women is normalized, as is femicide itself, and the state's obligation to work on the prevention of violence against women and femicide is erased.

Since there is no discussion about definitions, in the context of Bosnia and Herzegovina there is no discussion as to whether there are other forms of femicide apart from visibly pronounced femicide in the context of intimate partner relationships. For example, it could be discussed whether the definition of femicide should also include, as some feminists suggest, situations in which women die as a result of the misogynist attitudes of society, due to which the health system that deals with women's reproductive health has been completely neglected including the deaths of women during childbirth.[[254]](#footnote-254) Of course, in addition to opening discussions, we would also need some concrete data on the deaths of women in BiH, which we cannot boast about.

1. **Relevant gender-disaggregated data collection as a condition for adequate work on the prevention of femicide**

Considering the absence of discussions about femicide in many feminist circles, Radford believes that one of the reasons why feminists are reluctant to approach this topic is the finality of femicide, which puts it outside of traditional feminist ways of working. The killing of a woman is final, she did not survive to tell her story and describe the experience of violent death:

“all that can be shared are the pain and anger of those who have known such a loss. And this pain, far from being a basis for unity and strength – as it is in support groups for women who have survived sexual violence – can be undermining and silencing. In many cultures coming to terms with death is considered a private matter. Women who do speak out have had to be mindful of the impact their words may have on those close to the dead woman. There is also the danger of being faced with the accusation of making ‘political capital’ out of grief. For these reasons is perhaps one of the most harrowing and sensitive dimensions of male violence for feminists to address.”[[255]](#footnote-255)

And so, instead of experiences, we are left to deal with cold statistics. Admittedly, statistics are important because they can strengthen or challenge existing social relationships.

Patriarchal societies have developed statistical systems in which they have incorporated concepts and definitions that correspond to the maintenance of the patriarchal system. Feminists have long warned that statistics systems are gendered and not neutral. However, only in the last two decades, mainly inspired by the theory of change[[256]](#footnote-256) adopted by many UN bodies focused on development, have feminists become more involved in conversations about statistics and data collection, demanding that statistics systems develop adequate categories to effectively indicate gender (in)equality or gender-based violence.[[257]](#footnote-257) In this context, it is understood that well-defined categories of data are necessary to address violence against women and girls, but also to work towards equality for all. Well-developed indicators can enable the monitoring of all interventions and enable timely reactions.

* 1. **Istanbul Convention obligations for data collection**

The obligation of member states to regularly collect data on violence against women and girls stems from Article 11 of the Istanbul Convention:

“Article 11 –Data collection and research

1 For the purpose of the implementation of this Convention, Parties shall undertake to:

a collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;

b support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.

2 Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.

3 Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.

4 Parties shall ensure that the information collected pursuant to this article is available to the public.” [[258]](#footnote-258)

Article 11.1.a of the Istanbul Convention expressly states that in order to implement the Convention, member states must fulfil, among other things, the requirement to collect “disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by this Convention.” This obligation in principle refers to the collection of administrative data that is usually collected during the routine work of public services when victims of violence seek help (e.g., police, judiciary, health institutions, social work services, etc.).

In addition to the victim-centered approach that is explicitly emphasized in the Istanbul Convention, for the development of preventive measures and an effective addressing of violence against women, it is necessary to collect accurate statistical data that are specially designed to contain information about both the victim and the perpetrator. The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) emphasized in its evaluation reports on the implementation of the Istanbul Convention in different member countries that it is not enough for different institutions to collect data only for their own needs, because fragmented data does not provide a complete picture on gender-based violence. In this regard, GREVIO recommended the harmonization of definitions and measurement units in all evaluated countries.

In addition to the administrative data collection, the Istanbul Convention in Article 11.2 requires the conducting of regular surveys. This refers, among other things, to the need to conduct surveys of the general population, enabling the collection of information on the many victims who do not come forward or use public services, as well as those who do. However, data collection must not become an end in itself. As stated in Article 11.1.b, it is necessary to conduct research to understand the collected data, uncover the root causes and consequences of violence against women and domestic violence, and analyse the effectiveness of the measures. This includes research on the rate of convictions, which are expressly stated in the Convention as one of the topics that should be explored. Finally, Article 11.4 of the Istanbul Convention requires members to ensure “that the information collected pursuant to this Article is available to the public.” Of course, attention needs to be paid to the obligation to protect privacy and personal data.

As Wallby notes, the collected data must be relevant and coordinated, i.e. administrative and survey data should use the same definitions and the same units of measurement:

“This is not always current practice, since data collection has developed for specific purposes, rather than as part of an integrated system designed to prevent violence against women and domestic violence. [...] Co-operation within the framework of the Istanbul Convention offers the opportunity to collect data that is relevant to the wider purpose of ending violence against women in all its forms, not only the more specific purposes of individual agencies.”[[259]](#footnote-259)

The requirement for data collection refers to all forms of violence covered by the scope of the Istanbul Convention. Specifically, the Istanbul Convention lists eight forms of gender-based violence: psychological violence; stalking; physical violence; sexual violence, including rape; forced marriage; female genital mutilation; forced abortion and forced sterilization; and sexual harassment. As emphasized in the Explanatory Report to the Istanbul Convention, evidence-based policymaking, based on systematic and appropriate data collection, is a key component for effective prevention and combating violence against women and domestic violence. In this sense, the parties must collect solid, representative and comparable data for the dissemination, coordination and creation of prevention policies.[[260]](#footnote-260)

In the context of this research, it should be noted that femicide is not mentioned directly in the Istanbul Convention. However, the convention was conceived as a document for the prevention and combating violence against women, so it is also relevant for the prevention of femicide. This can also be seen from Article 51.1 (Risk assessment and risk management), where the members expressly undertake to ensure that all relevant authorities effectively assess and design a plan for managing the security risks faced by a certain victim on a case-by-case basis in accordance with a standardized procedure and with mutual action and coordination, with the aim of preventing repeated violence, especially deadly violence. Effective management of administrative data is also necessary for such risk assessments.

* 1. **"Femicide watch" or observatory for monitoring femicides - Initiative to monitor femicides for more efficient work on the prevention of femicides**

Continuing the work Rashida Manjoo started with her report on gender-based killings of women in 2012, her successor in the position of the UN Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, on 25 November 2015, the International Day for the Elimination of Violence against Women, called on all countries of the world to focus on the prevention of femicide and establish a “Femicide Watch” or femicide observatory.[[261]](#footnote-261) She called on countries to publish the annual numbers of femicides every 25 November, classified by the age and sex/gender of the perpetrator, as well as the relationship between the perpetrator and the victim or victims, and to collect and publish information on the prosecution and punishment of the perpetrators.[[262]](#footnote-262)

Šimonović made the call after identifying that the weakness of national prevention systems, the lack of adequate risk assessments and the lack or poor quality of data are the main obstacles to preventing femicide and developing effective strategies for its prevention:

“These weaknesses result in misidentification, concealment and under reporting of gender-motivated killings, thus perpetuating impunity for such killings. [...] Most importantly, each case of gender-related killing should be carefully analysed to identify any failure of protection with a view to improving and developing further preventive measures.” [[263]](#footnote-263)

Šimonović also emphasized that in collecting, analysing and publishing such data, the state must cooperate with non-governmental organizations, independent institutions for human rights, the academic community, victims' representatives and relevant international institutions. The collected data should be publicly available for each country individually, and the UN and other organizations should ensure global and regional publication.

The following year, in September 2016, Šimonović presented to the UN General Assembly her report on *Modalities for establishing a femicide watch*,[[264]](#footnote-264) where she recommended that each country establishes a flexible model of femicide watch or observatory for monitoring femicide (or incorporate them into already existing mechanisms for monitoring violence against women) taking into account the context and the needs of that context. The models should ensure the systematic collection of relevant disaggregated data on all forms of violence against women, including specifically on femicide. The femicide should be separated into two broader subcategories where data on femicide in the context of intimate partner or family relationships would be kept separately from data on other types of femicide. Within the context of intimate partner or family relationships femicide the data should be also separated based on the relationship between the victim and the perpetrator. Data on femicide-suicide cases should be collected as much as possible.

The collected data should be analysed by interdisciplinary bodies established not only at the national, but also regional and global level. Based on the analysis, they should propose concrete measures to prevent femicide and violence against women. Analyses of all cases of femicide, including court cases, should be systematically carried out with the aim of determining deficiencies in the system of prevention and response to gender-based violence, including in the judiciary, and determining risk factors for the prevention of gender-based violence and the protection of women and girls from femicide. In addition to these bodies, it is possible for non-governmental organizations or human rights institutions to establish their own bodies for monitoring and analyzing femicide. Finally, all personal data about victims and family members should be protected in accordance with international privacy standards.

It is important to point out that even before the global call made by Šimunović, there were several independent femicide watch initiatives or observatories for monitoring femicide. For example, since 1996, Women's Aid has monitored femicides caused by violence in intimate partner relationships in Ireland.[[265]](#footnote-265) Šimunović herself mentioned several such cases in her report, but it seems that all of them are mainly related to femicide caused by violence in intimate partner relationships. This is also confirmed by Corradi in her report for the EU Parliament, when she notes that so far the best documented femicide is in intimate partner relationships.[[266]](#footnote-266)

However, it is noticeable that after Šimonović called for their global establishment, a number of different femicide watches or observatories for monitoring femicides were established. For example, in 2018, the first European Observatory on Femicide (EOF)[[267]](#footnote-267) was established, and the European Institute for Gender Equality (EIGE) has started actively participating in the creation of resource materials as well as in the collection of data on femicide in EU countries.[[268]](#footnote-268) Unfortunately, it seems that some of the initiatives are also project-led, and UN Women itself boasts that it does a top-down approach instead of contextualized initiatives.[[269]](#footnote-269)

* 1. **Data collection in Bosnia and Herzegovina – there is still a lot to be done**

The Istanbul Convention was adopted on 7 April 2011 by the Committee of Ministers of the Council of Europe. The Convention entered into force on 1 August 2014 after the tenth ratification. BiH became a member of the Istanbul Convention in November 2013. By becoming a member of the Istanbul Convention, BiH undertook, among other things, to fulfill the obligations arising from Article 11.

As is the case with many other international human rights documents, our authorities have been happy to sign and ratify them. However, when it comes to implementation, obligations from these documents are often either ignored or various excuses are found, including lack of jurisdiction due to the administrative complexity of the state.

Reports from the monitoring of trials in cases concerning violence against women point to the fact that the conviction policy has not changed in the last ten years, and that the perpetrators are mostly punished lightly, below the legal minimum and with consideration of mitigating circumstances, and almost no consideration of aggravating circumstances.[[270]](#footnote-270) This happens despite the fact that Article 46 of the Istanbul Convention directly calls on member states to take legislative or other measures to ensure the use of certain aggravating circumstances. This ignorance by the responsible policies makers and legal measures indicates not only a lack of interest in the implementation of the Istanbul Convention, but a complete lack of interest in a serious approach to the prevention of femicide.

In September 2019, GREVIO initiated the baseline evaluation process on legislative and other measures giving effect to the provisions of the Istanbul Convention in Bosnia and Herzegovina. The process was concluded with the publication of the GREVIO’s Evaluation Report in November 2022.[[271]](#footnote-271) The report pointed to a number of aspects in which improvement is needed in order to achieve better implementation of the Istanbul Convention. Among other things, it was noted that while there are visible developments in legislation and some policies regarding the prevention and combating domestic violence, Bosnia and Herzegovina has not provided special integrated measures to address other forms of violence against women. Furthermore, GREVIO noted that while approaches at the policy level do indeed deal with and reflect the gendered nature of violence against women, this is not reflected in implementation because, for example, the reactions of many experts, including those from social work centres, police officers and judges, often reflect deeply rooted gender stereotypes. In this regard, GREVIO expressed concern that within the criminal procedure and procedural law, domestic violence and other forms of violence against women are considered criminal acts of low social danger: “worrying judicial and sentencing practices are identified, such as the predominant use of mitigating circumstances, the large use of plea-bargaining agreements and the imposition of very lenient sentences, which ultimately entail a sentiment of impunity among perpetrators and victims alike.”[[272]](#footnote-272)

GREVIO praised some progress made, especially in Republika Srpska, when it comes to the criminalization of some forms of violence against women, such as female genital mutilation, stalking, forced sterilization, sexual harassment and forced marriage. They also praised the efforts in the Federation of BiH directed towards the same goal.[[273]](#footnote-273) However, they also noted that some of the changes are not sufficient to meet the standards of the Istanbul Convention, i.e. that some definitions in criminal laws are insufficient or inadequate. For this reason, GREVIO called on the BiH government to, among other things,

“criminalise psychological violence perpetrated against a current or former partner, irrespective of whether the perpetrator shares or has shared the same residence with the victim or whether they have a child together.”[[274]](#footnote-274)

“to adequately criminalise stalking when it is perpetrated outside the family as well as in the family/domestic context, specifying its constituent elements, in line with Article 34 of the Istanbul Convention.”[[275]](#footnote-275)

“amend the sexual offences provided under the national, entity-level and Brčko District criminal codes to fully incorporate the notion of lack of freely given consent as required by Article 36 of the Istanbul Convention and to specify the type of non-consensual sexual acts that are criminalised, in line with Article 36, paragraph 1a, b and c, of the convention;”[[276]](#footnote-276)

“to ensure that the intentional conduct of forcing an adult to enter into a marriage and the intentional conduct of luring an adult or a child to the territory of another state with the purpose of forcing this person into a marriage are criminalised in all of the jurisdictions in Bosnia and Herzegovina, as required by Article 37, paragraph 2, of the Istanbul Convention.”[[277]](#footnote-277)

Noting the complexities of the legislative system caused by constitutional divisions, GREVIO notes that in cases such as sexual harassment[[278]](#footnote-278) and psychological violence,[[279]](#footnote-279) which are criminalized by the Law on Gender Equality, there may be overlapping and therefore unsuccessful prosecution. In this regard, we sent a request for access to information to the Court of Bosnia and Herzegovina, as the competent judicial authority for proceedings under the Law on Gender Equality. We received information from the Court that in the period from 2003 to 2023, ending with 30 April 2023, a total of eight (8) cases related to the Law on Gender Equality in Bosnia and Herzegovina were recorded and concluded before the Court of Bosnia and Herzegovina. Unfortunately, the judgments in these cases are not in the database of the Court of Bosnia and Herzegovina available to the public, so we could not analyse the judgments. Due to the time limitation of this research, we did not submit a new request for access to the cases. Thus, this could be one of the next steps for the further analysis. The only thing that is visible from the names of the cases is that the cases concern eight persons with male names against whom some report was filed in connection with the violation of the Law on Gender Equality of BiH.

Regarding the obligation to collect data, GREVIO noted that

“Bosnia and Herzegovina does not yet have a comprehensive and co-ordinated system of data collection capable of presenting an overall picture, for the whole state, of the incidence of domestic violence and other forms of violence against women, and of the support and protection provided to victims. In both entities, a number of official bodies applying different methodologies are responsible for data collection, which mostly concerns domestic violence. Data collection on other forms of violence against women is extremely limited...”[[280]](#footnote-280)

GREVIO addressed the collection of data on various types of violence against women in considerable detail, noting that data on domestic violence is only systematically collected to some extent, especially in the context of data collected by the Ministry of Family, Youth and Sports of the Republic of Srpska. A somewhat more detailed description of the two-track data collection in Bosnia and Herzegovina can be found in the analysis of the Council of Europe entitled *Administrative Data Collection on Violence against Women and Domestic Violence in Bosnia and Herzegovina, in line with the Istanbul Convention Standards*, which was carried out in 2019.[[281]](#footnote-281)

In addition to the fact that the administrative data collection in Bosnia and Herzegovina is carried out on two tracks (reporting on criminality and collection of data on domestic violence) which have not yet been combined into one coordinated system, there is also the problem that different legal frameworks are not harmonized. This primarily refers to the fact that the criminal laws of the entities are not synchronized, because with the amendments to the Criminal Code of the RS in 2017, new criminal offenses were introduced that are narrowly defined following the Istanbul Convention. This has not yet been done in the Federation of Bosnia and Herzegovina. However, not only are different acts criminalized, but neither the descriptions of the crimes nor the prescribed punishments are the same.[[282]](#footnote-282)

As for monitoring femicide, it is not criminalized as such in any entity. However, through data on crimes, it is possible to obtain some information about crimes that treat murder. For example, the High Judicial and Prosecutorial Council (HJPC) collects some data on all individual criminal cases that are conducted before the courts and prosecutor's offices in BiH. Courts and prosecutor's offices are connected to the CMS system (system for automatic case management). In fact, separate databases for courts (CMS) and prosecutor's offices (TCMS) are maintained. They are not connected to each other, nor are they connected to police reports. Consequently, requalification of offenses in the investigation cannot be monitored.[[283]](#footnote-283) On the other hand, according to the information obtained by GREVIO, CMS allegedly enables “a case to be tracked at various stages of the judicial procedure and thus provides information on the outcome of cases per offence, including the number of convictions for the offences and the type of sanction imposed. However, this information is not made publicly available.”[[284]](#footnote-284)

A potential case of femicide can be determined because both databases record the sex of the perpetrator and the victim. However, no records are kept on the relationship between the victim and the perpetrator, and the quality of the data depends on how diligently the judges and prosecutors enter the requested data. The data is not classified by age, nor can it be checked, for example, whether the victim was previously exposed to violence, that is, whether the perpetrator was previously violent towards the victim, what the crime was, and how many open investigations there were. Also, it is important to note that this information is not publicly available.

Another way of monitoring femicide according to criminality is possible through the reports of the entity's statistics institutes, and the Agency for Statistics of Bosnia and Herzegovina. The Agency does not collect data directly but does so through entity statistics institutes that collect data from courts and prosecutor's offices through questionnaires that are filled out after the completion of each case. Then the aggregated data sets are sent to the BiH Agency for Statistics, which issues the Annual Statistical Report: “In their annual statistical report, there is a section on crime. Although these reports do show numbers of perpetrators and of victims by gender, they are not broken down according to criminal offences, but only to groups of offences, such as ‘offences against life and body’ or ‘against property’. More detailed data, such as the relationship between victim and perpetrator, is not presented.”[[285]](#footnote-285) So, for example, from the report of the BiH Agency for Statistics, we can get the following information:

* In 2022, out of a total of 1,388 known adult offenders, 95 are for the group of crimes defined as crimes against life and body. A total of 985 persons were charged under this group of crimes, of which 54 were women, and 914 persons were convicted, of which 48 were women.[[286]](#footnote-286)
* Regarding minors, 142 minors were reported for the same group of crimes in 2022, of which 7 were female minors, 30 minors were charged, of which 3 were female minors, and 78 minors were convicted, of which 5 were female minors.[[287]](#footnote-287)
* From the *Women and Men in Bosnia and Herzegovina* report, we can currently get an overview of violent deaths broken down by gender for each year in the period from 2016 to 2020, by categories: accident, suicide, murder and unknown.[[288]](#footnote-288) We can also for the same reported period, learn about the number of accused and convicted minors[[289]](#footnote-289) and adult[[290]](#footnote-290) male and female persons, per year, but without any further breakdowns. This report also contains information for 2019 and 2020 on reported, accused and convicted cases of domestic violence by gender and age groups of perpetrators and victims,[[291]](#footnote-291), and on reported, accused and convicted cases of crimes against sexual freedom and morals/sexual integrity according to gender and age groups of perpetrators and victims.[[292]](#footnote-292) The report also includes the number of calls to SOS hotlines for victims of domestic violence, broken down by gender, during 2019 and 2020.[[293]](#footnote-293) Finally, we are shown a graph of murders by gender of the victims in BiH, covering the period from 2016 to 2020 by year.[[294]](#footnote-294) It should be noted that this report is published every second year, and the last data published in February 2022 referred to the year 2020, which raises the question of the relevance of the existing data.

This is not enough data based on which any purposeful analysis can be made, or any purposeful conclusion can be drawn. It seems that the data is primarily collected because it is a legal obligation and is not really aimed at informing policies and measures for the prevention of violence against women and femicide.

In principle, there are no official data on femicide in Bosnia and Herzegovina. It is even very difficult to get some verifiable numbers. Only sometimes imprecise information appears in the media, although it is not known on what basis exactly it was collected. For example, the media reports that during “2022, that is, until 13 November, according to the data of the CURE Foundation, 11 cases of murder of women were recorded, which can be defined as femicide.”[[295]](#footnote-295) It is not exactly stated by which definition of femicide this was determined or how this information was collected. Even data that is presented in the media as data that the media received from an official institution was treated as something that the institution provides as if it is not competent to collect data. Although this time at least we know where the data comes from:

“There are no unified statistics on the number of femicides and violence against women in Bosnia and Herzegovina. According to data obtained by the Agency for Gender Equality of Bosnia and Herzegovina, which collected data from judicial institutions and non-governmental organizations, 12 women were killed in BiH last year [2019], and a total of 56 women were killed from 2015 to today, but those are not treated as femicide.”[[296]](#footnote-296)

This data tells us nothing, just like the data available at the website of the BiH Statistics Agency that is delayed up to two years.

Concerning “Femicide watch” or the observatory for monitoring femicide in Bosnia and Herzegovina, according to the statements received by GREVIO from the BiH authorities during the evaluation process, research into femicide cases and the relevant institutional framework was initiated with the aim of establishing Femicide Watch.[[297]](#footnote-297) In this regard, it should be noted that in 2019 the Committee for Monitoring the Implementation and Reporting of the Istanbul Convention and Femicide was established.[[298]](#footnote-298) In Article 4 of the Decision on Establishment, the Committee was tasked with, among other things, analysing the implementation of policies and measures to prevent and combat violence against women and domestic violence at all levels in Bosnia and Herzegovina; assesses the state of implementation of the Istanbul Convention and makes recommendations for more efficient implementation thereof; analyses data on cases of murder of women from a gender perspective (femicide) and makes recommendations for further action in order to prevent femicide, in accordance with the Recommendations of the UN Special Rapporteur on violence against women, its causes and consequences; reports on policies and measures to prevent and combat violence against women and domestic violence in order to ensure that these measures are well coordinated and lead to the achievement of common goals. However, as GREVIO emphasized, within 3 years of its existence, this committee met only four times, with the absence of representatives of the authorities of Republika Srpska, who do not recognize the legitimacy of this body. This in principle leads to the inability of this body to fulfill its mandate and improve and harmonizes protection measures against violence against women that should be available to all victims throughout the territory of Bosnia and Herzegovina.[[299]](#footnote-299) The work of this body is not public, so it is difficult to assess its effectiveness.

What is important to emphasize is that GREVIO called on the authorities “to take legislative and other measures to ensure that risk assessment and management are systematically carried out in relation to all forms of violence against women covered by the Istanbul Convention using standardised, evidence-based risk-assessment tools“[[300]](#footnote-300) They also called on the authorities to introduce a system for the analysis of all cases of gender-based killings of women, with the aim of preventing them, as well as providing women with safety and ensuring adequate punishment of the perpetrators and the responsible work of all agencies that come into contact with both the victim and the perpetrator.[[301]](#footnote-301)

1. **What can we learn from the experience of criminalizing femicide in Latin America**

While before the protests in October there were sporadic requests for the legal qualification of femicide in BiH,[[302]](#footnote-302) after October 2022 one can increasingly notice articles in the media discussing whether[[303]](#footnote-303) or not[[304]](#footnote-304) femicide should be recognized as a distinct crime in the criminal legislation of BiH. On the one hand, it is necessary to find a way to ensure effective monitoring and analysis of femicide, its causes and the effectiveness of institutional responses, and on the other hand, the question is whether the new criminal offense will have any real effect on prevention and whether it will be adequately applied.

We have long been aware that the patriarchal system is resistant and that it very easily absorbs and co-opts feminist ideas. As Karen Ingala Smith notes in her essay on Femicide:

“One of the most significant achievements of feminism is getting male violence against women into the mainstream and onto policy agendas, but one of the threats against this achievement is that those with power take the concepts and, under the auspices of dealing with the problem, shake some of the most basic elements of feminist analysis and praxis right out of them. Femicide is not synonymous with ‘female homicide’. It is a feminist political term informing us that in patriarchal society, a man killing a woman is never an apolitical act; it is rarely, if ever, free from the influence of the objectification, exploitation, degradation and oppression of women and rarely, if ever, free from the trappings of socially constructed gender. When men kill women, whether they are intimate partners, family members or not, they do so in the context of a society in which objectification of women and misogyny are entrenched and systematic and in which men’s violence against women is a cause and consequence of structural inequality.” [[305]](#footnote-305)

In this regard, when we consider the legal codification of femicide and its possible definition as a criminal act, we must consider the ubiquitous misogyny in our society and the fact that our patriarchal institutions are not capable and are reluctant to address it. Feminists also work institutionally, and as Manjoo, among others, showed us in her role as special rapporteur, they can also shake patriarchal shackles. Of course, the problem is what happens with some forms of violence against women when feminists are completely removed from the discussion. Therefore, for any activities we need a comprehensive feminist discussion and action.

We have already identified that we need relevant data to be able to act. In our legal and social system, even when there are obligations to collect data and adequate definitions, it is difficult to obtain any data useful for monitoring the effectiveness of and needs for creating measures to prevent violence against women and girls, and connected to this, the prevention of femicide. Currently, we do not even have an agreed definition of femicide, and the existing indicators are all gender neutral. On the one hand, it seems that precisely for this reason we have some insistence on defining the criminal act of femicide. On the other hand, from the media captions and the conducted analyses, one gets the impression of the existence of a certain degree of impunity as well as inconsistency in criminal policy when it comes to the prosecution of violence against women and girls. In this segment as well, the potential recognition of the criminal offense of femicide would, if nothing else, enable a more consistent criminal policy, that is, reduce the possibility of arbitrarily applying mitigating and aggravating circumstances in sentencing.

As already noted in the introductory remarks, femicide as a criminal offense is only recognized in Latin American countries.[[306]](#footnote-306) The very concept of femicide was first introduced by feminists in theoretical considerations, and then the concept was taken up in political feminist activism.[[307]](#footnote-307) Feminist theory and activism have coined and used the term femicide “in a political context to produce changes in the social patriarchal order and delegitimize the violent death of women.“[[308]](#footnote-308)After that, as with the very concept of violence against women, followed the struggle for recognition of the phenomenon in public discourse, and its recognition and standardization within public policies, international documents and national legislation. In principle, the criminalization of femicide/feminicide in Latin America is based on international conventions on human rights and women's rights.[[309]](#footnote-309)

In their study conducted for MESECVI and UN Women, Deus and Gonzales[[310]](#footnote-310) present us with the detailed overview of regional Latin American legislation addressing femicide/feminicide. As with the definition, the countries of Latin America did not approach the criminalization of femicide in the same way – some adopted the comprehensive law on violence against women and criminalized feminicide through this law, some additionally criminalized it in the criminal law. Some countries do not have the comprehensive law on violence against women but criminalize femicide through the criminal codes. Those countries without the comprehensive laws on violence against women luck specific provisions for prevention, protection, investigation of the crime, and reparation for the victims. This is something that should be specifically paid attention in further discussions regarding criminalization of femicide in the context of Bosnia and Herzegovina if we are really interested in using criminalisation as a means of prevention of femicide or whether we also need comprehensive law addressing violence against women and girls.

Deus and Gonzales, further point that out of the eighteen countries that were analysed not all countries in fact have femicide/feminicide as distinct crime: “Argentina lists it as an aggravating circumstance to homicide, without its own *nomen i*uris, even though the law that establishes it is called Femicide.”[[311]](#footnote-311) In addition to Argentine, Uruguay also defines femicide as aggravating circumstance to homicide, while Chile also includes it in crime of parricide. Some countries limit femicide only to intimate partner relationships, sometimes only to formal and cohabiting relationships. Some countries limit perpetrators to males, other not. Some countries differentiate homicide from femicide through introduction of a motive (subjective element) and/or type of relationship between victim and perpetrator:

“The described motive is related to misogyny, to the victim’s status as a woman, to the fact that she is a woman or to gender-based hatred. Relationships are described as being unequal in power, or relationships of control or submission. A law might state for example, ‘he who kills a woman because she is a woman...’ or ‘he who kills within the context of a relationship based on an unequal power structure...’”[[312]](#footnote-312)

As with the criminalization of domestic violence against women, the criminalization of femicide did not lead to immediate significant changes in the reduction of violence against women and femicide. Furthermore, the use of criminal law to condemn all forms of gender-based killings has its limitations, which are exclusively related to individual responsibility, without addressing the structural violence and criminality of the (patriarchal, misogynistic and sexist) system. But regardless of the limitations of legal concepts, the most relevant practical consequence of criminalization was to encourage the sensibility of actors in the judiciary and to create better statistics. Feminists from Latin America insist that the criminalization of femicide aims to condemn and deconstruct the sexist system in which women's bodies are available for killing, and that this is only one step in efforts to promote gender equality and women's human rights:

“Only the criminalization of femicide, dissociated from fully enforced prevention policies, is ineffective to reduce women’s killings. This finding should lead to regard to the real causes of gender violence, the discriminatory cultural patterns, rather than to treat only the symptoms of the social disease. Special attention should be paid to not allowing the forces related to the populist punitive discourse to take a free ride on the feminist agenda.”[[313]](#footnote-313)

Given that “the conceptualization of gender-based violence has not permeated the criminal justice system”,[[314]](#footnote-314) it is necessary to address dogmatic positions on criminal law that gender-based violence is just one more manifestation of the violence that exists in society. Thus, it is important to insist to consider gender-based violence as “a form of discrimination produced by the unequal power relationships between men and women within the dominant patriarchal system, then femicide/ feminicide should be considered a problem that women suffer from, solely because they are women, and that requires a differentiated and specialized response.”[[315]](#footnote-315) While it might look difficult to translate the concepts of femicide/feminicide to criminal processes and rules of evidence, especially when they refer to the social and cultural environment determining perpetrator’s criminal behaviour beyond their immediate motive, criminal law cannot remain unquestioned as a gender-neutral tool and we need to look for the ways to change it.[[316]](#footnote-316)

1. **Short overview of criminal legislatives in the EU, our region and Bosnia and Herzegovina relevant to prosecuting femicide**

This chapter only briefly looks at the criminal legislations of the EU, our region and Bosnia and Herzegovina in order to determine whether there is a space to introduce femicide in the criminal legislative of Bosnia and Herzegovina and look for the most adequate models of such introduction.

* 1. **Overview of criminal legislative in the EU relevant to prosecuting femicide**

Currently, three different systems prevail in the world in national criminal legislation regarding the prevention, investigation, prosecution and punishment of gender-based killings of women: countries in which femicide is criminalized as a distinct crime, countries in which gender-based circumstances represent one of the forms of a criminal offense of aggravated murder and countries where a gender-neutral system is in force.[[317]](#footnote-317) In order to determine how femicide is treated in the criminal legislation of EU member states, EIGE carried out a study entitled *Providing justice to victims of femicide: country factsheets*.[[318]](#footnote-318) The research analysed the criminal legislation of all EU countries and the United Kingdom. It was concluded that none of the countries defines femicide in their criminal legislation, nor does it exist as a distinct crime.

The legal provisions based on which femicide cases could be prosecuted can be classified into several categories. The first category includes certain forms of aggravated murder, which are mostly gender neutral. These forms, due to special circumstances, give the basic offense a more serious form and provide for heavier punishments or for an aggravating circumstance that is considered when sentencing for a specific criminal offense within the limits of the punishment that is foreseen. In addition, in most EU countries there are certain criminal acts whose primary object of protection is not the life and body of a person, but in which the death consequence appears as a qualifying circumstance in relation to which there may be negligence or intent. In these cases, the primary object of criminal protection is not the woman's life, but some other value protected by criminal law.

Gender-related elements are included in the definition of aggravated murder in several EU countries. A more traditional form is the murder of a pregnant woman (not necessarily by a man), which is found in the criminal legislation of several countries. Here, the qualifying circumstance is related to a specific factual circumstance regarding the victim. The murder of a pregnant woman as a form of aggravated murder is criminalized in France,[[319]](#footnote-319) Croatia,[[320]](#footnote-320) Latvia,[[321]](#footnote-321) Romania,[[322]](#footnote-322) Lithuania,[[323]](#footnote-323) the Czech Republic[[324]](#footnote-324) and Bulgaria.[[325]](#footnote-325)

Certain criminal legislations of the EU countries take as a qualifying circumstance the special motivation of the perpetrator in connection with the sex/gender, gender identity or sexual orientation of the victim;[[326]](#footnote-326) when the murder is committed out of hatred towards a group of people or a person who belongs to the group on the basis of age, gender, sexual orientation, disability, race, nationality, language, origin, social status, religion or belief;[[327]](#footnote-327) motives that deserve special condemnation;[[328]](#footnote-328) due to special motivation;[[329]](#footnote-329) malicious[[330]](#footnote-330) or other low motives.[[331]](#footnote-331)

Relevant forms of aggravated murder include murder due to the victim's refusal to enter into marriage or cohabitation;[[332]](#footnote-332) the murder of a family member who was previously abused by the perpetrator;[[333]](#footnote-333) or if the victim was previously stalked. Thus, in Articles 576 and 577 of the Italian Penal Code, a sentence of life imprisonment is provided if the murder was preceded by sexual violence or was committed by a stalker, or the victim is a spouse, even if they are legally separated, or if the victim is a person with whom the perpetrator was in a partnership, regardless of whether they lived together or not.[[334]](#footnote-334)

Several states consider the relationship between the perpetrator and the victim as a qualifying circumstance. Thus, the Portuguese criminal law considers the murder of a spouse, ex-spouse, a person of the same or a different sex with whom the perpetrator had a love relationship or a relationship similar to that of a spouse, even without an extramarital union, or the murder of a parent of a common child as a qualifying circumstance for aggravated murder.[[335]](#footnote-335) In France, the qualifying circumstance is the murder of a spouse or common-law partner or partner in a civil union.[[336]](#footnote-336) In Lithuania, it is the murder of a close relative or family member.[[337]](#footnote-337)

Certain legislation provides that the murder was preceded by a criminal offense against individual freedom or sexual freedom as a qualifying circumstance for aggravated murder. For example, the Latvian criminal law prescribes as a form of aggravated murder the murder that is connected with rape.[[338]](#footnote-338) In the Spanish criminal law this is the case if the murder was committed after a criminal offense against sexual freedom was committed against the victim.[[339]](#footnote-339) The Polish criminal law takes as a qualifying circumstance the fact that the murder was committed in connection with hostage-taking or rape,[[340]](#footnote-340) while the German criminal law considers murder for sexual pleasure as a qualifying circumstance.[[341]](#footnote-341)

These different forms of aggravated murder cover a number of circumstances related to the passive subject (pregnant woman), the relationship between the perpetrator and the victim (a close person or family member), the perpetrator's special motivation (hate due to sex/gender or gender identity), that the murder was preceded by stalking or sexual or other abuse or some other circumstances (victim's refusal to marry). However, all these forms of aggravated murder, although in practice they mainly concern the gender related killings of women and girls, are not linked to gender, so both the perpetrator and the victim can be male or female. Gender-neutral provisions are otherwise characteristic in criminal law and are used when prescribing criminal offences.

The criminal laws of many EU countries contain provisions on aggravating circumstances that can be applied to criminal offences, including murder. Contrary to the provisions examined in the previous part, such circumstances do not constitute a feature of the criminal offense of aggravated murder. Instead, they affect the determination of the amount of punishment for the relevant criminal offenses in accordance with the general rules on sentencing. So, as far as the punishment is concerned, the existence of aggravating circumstances will result in the punishment being more severe, but within the limits of the punishment provided for that criminal act. Finally, relevant aggravating circumstances are formulated in a gender-neutral manner.

In Spain, it is an aggravating circumstance if motive for the commission of the crime was racism, discrimination, sex/gender or sexual orientation of the victim, due to identity and gender reasons.[[342]](#footnote-342) Also, an aggravating circumstance is if the criminal offense was committed against a spouse or a person with whom the perpetrator maintains a stable relationship.[[343]](#footnote-343)

In France, since 2017, sexism has been considered an aggravating circumstance for criminal acts and misdemeanours, just like homophobia or racism.[[344]](#footnote-344) Also, an aggravating circumstance is if the crime was committed by the victim's current or former intimate partner.[[345]](#footnote-345)

Article 405quater (Aggravating Circumstances) of the Belgian Criminal Code provides for an increase in the sentence from 5 to 10 years in prison if the crime is motivated by hatred, contempt or hostility towards a person based on sex/gender, gender reassignment or sexual orientation.[[346]](#footnote-346)

Article 312, paragraph 2, of the Greek Criminal Code prescribes stricter punishment for criminal acts of bodily injury, serious bodily injury, and serious bodily injury resulting in death (Article 308, paragraph 2, Article 309, and Article 311 of the Greek Criminal Code ) if these acts were committed against the spouse during the marriage or against the partner during the partnership. These articles apply together with the provisions of the Law on Domestic Violence (Law 3500/2006).[[347]](#footnote-347)

The penal code of Denmark foresees the possibility of increasing the prison sentence by 10 years if the commission of the criminal offense referred to in Article 245a (mutilation of female genitalia) resulted in the infliction of serious physical injuries or caused the death of a woman.[[348]](#footnote-348)

* 1. **Overview of criminal legislative in the region relevant to prosecuting femicide**

For the purposes of this analysis, we have chosen an overview of the criminal law regulations of Serbia and Croatia as examples.

* + 1. *Criminal legislative relevant to prosecuting femicide in Serbia*

The Criminal Code of the Republic of Serbia[[349]](#footnote-349) (CC of Serbia) does not recognize the criminal offense of femicide. Given that femicide is not criminalized as a special crime, it can be qualified as ordinary murder (Art. 113 of the CC of Serbia), as one of the forms of aggravated murder (Art. 114 of the CC of Serbia) or as a special qualified form of the criminal act of domestic violence as a result of which a family member died (Art. 194, paragraph 4, CC of Serbia). As a form of aggravated murder, femicide can be treated as murder of a woman committed out of hatred for the female sex, or as aggravated murder committed for other base motives from Article 114, paragraph 1, item 5 of the CC of Serbia, as taking the life of a pregnant (pregnant) woman (Art. 114, paragraph 1, item 9 of the CC of Serbia), or as the killing of a family member who was previously abused (Article 114, paragraph 1, item 10 of the CC of Serbia).

The following are considered family members: spouses, their children, spouses' ancestors in the straight line of blood relationship, extramarital partners and their children, adoptive parents and adopted children, foster parent and foster child. Family members are also considered to be brothers and sisters, their spouses and children, ex-spouses and their children and parents of ex-spouses, if they live in a joint household, as well as persons who have a child together or a child is about to be born, even though they have never lived together in the same family household (Art. 112, paragraph 28, CC of Serbia).

Article 54 of the CC of Serbia prescribes general rules on sentencing, which are generic in nature, i.e. pretending to be gender neutral, they remain exclusively within the framework of the patriarchal legal system. However, the law stipulates that for a criminal offense committed out of hatred due to race and religion, national or ethnic affiliation, sex/gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as a feature of the criminal offense (Art. 54a CC of Serbia).

In Serbia, mostly thanks to the efforts of some feminist authors and non-governmental organizations, the sexist killing of women - killing women as a hate crime - finally attracted attention and influenced the raising of awareness of femicide both among the general and the professional public. As a result of their activities, the non-governmental organization FemPlatz submitted to the Working Group for Amendments to the Criminal Code at the Ministry of Justice of Serbia a proposal to amend the Criminal Code, which refers to the incrimination of femicide as a special crime:

“We believe that the recognition of femicide as a distinct criminal offense in the Serbian criminal legislation is justified, but also necessary in order to adequately process and sanction all cases of femicide, and in this way to reduce legal uncertainty and possible mistakes when qualifying the criminal offense and punishing the perpetrators, as well as to statistically monitor the number of reported, accused and convicted persons for femicide. This can be done in several ways. One possible approach is that femicide, as a distinct crime against the life and body of a woman, includes any gender-motivated deprivation of a woman's life. Another possible approach is to criminalize gender-motivated killing of women as a special form of aggravated killing of women committed by men in the context of gender-based violence against women.

Irrespective of the approach, the objective and subjective elements of the criminal offense of femicide should be determined in a way that ensures that its incrimination includes:

- violent deprivation of the life of a woman committed by a current or former married or common-law spouse, that is, an intimate partner with whom the victim was or is still in a relationship;

- murders of women that were committed for misogynistic motives, the so-called honour killings or for reasons related to cultural beliefs or customs, as well as murders for motives based on the gender roles of women and men and unequal power relations within the social context

- violent deprivations of women's lives resulting from sexual violence or were carried out because the victim was in prostitution or was subjected to sexual exploitation or was a victim of human trafficking for the purpose of sexual exploitation.”[[350]](#footnote-350)

* + 1. *Criminal legislative relevant to prosecuting femicide in Croatia*

There is no definition of femicide in the Croatian Criminal Code[[351]](#footnote-351) (CC RC). Given that femicide is not criminalized as a distinct crime, it can be qualified as ordinary murder under Article 110 of the CC RC or aggravated murder under Article 111 of the CC RC. As a form of aggravated murder, femicide can be treated as murder of a woman committed out of hatred, or as aggravated murder committed for other base motives from Article 111, paragraph 4 of the CC RC, as the murder of a woman who is particularly vulnerable due to pregnancy - the murder of a pregnant woman (Art. 111, paragraph 2 of the CC RC), or as the murder of a close person whom the perpetrator previously abused (Article 111, paragraph 3 of the CC RC).

In addition to family members,[[352]](#footnote-352) the definition of close persons has been extended, to a former spouse or common-law partner, former life partner or informal life partner, current or former partner in an intimate relationship, or to persons who have a child together and persons who live in a joint household (Art. 87, paragraph 9 of the CC RC).

As in Serbia, according to Article 47 of the CC RC, general, generic and gender-neutral rules on sentencing are prescribed. Also, as in Serbia, conduct defined as a hate crime is to be taken as an aggravating circumstance if CC RC does not expressly prescribe a more severe punishment (Article 87, paragraph 21, CC RC). A hate crime is a criminal offense committed because of the race, skin colour, religion, national or ethnic origin, language, disability, sex, sexual orientation or gender identity of another person.

The term femicide began to be used in Croatia in the late 1990s, mainly informally. Although several serious studies on domestic violence in Croatia were published before, the term femicide first appeared in scientific literature in 2014.[[353]](#footnote-353) Until then, the term femicide was not widely used in Croatia, rather expressions such as “killing of women” or “intimate murder” were used to denote the killing of women by intimate partners as a specific form of murder.[[354]](#footnote-354)

Analysing the system of prevention of gender-based violence, protection of victims and prosecution of perpetrators, the Ombudsman for Gender Equality determined that the police, courts and state attorneys' offices are not sufficiently educated for a gender-sensitive approach in the processing of domestic violence, especially individual judges and state attorneys. Individual assessments of victims' needs and risk assessments for victims are either not carried out at all or are only formal, so they often do not correspond to the real needs of victims' protection. Victim protection measures are rarely imposed, and those imposed are not effectively implemented.[[355]](#footnote-355)

At the end of 2021, the Social Democrats Caucus submitted to the Croatian Parliament a Draft Law on Amendments to the Criminal Code, with the Final Draft Law, proposing to amend the provisions of Article 87, Paragraph 1 of the CC RC in the following way:

“A hate crime is a crime committed because of another person's race, colour, religion, national or ethnic origin, language, disability, sex, sexual orientation, gender identity, or a ***crime committed by a man against a woman motivated by her sex/gender and misogyny (femicide)***. Such behaviour will be considered an aggravating circumstance if this Law does not expressly prescribe a more severe punishment.” [[356]](#footnote-356)

This legal initiative was rejected in the later procedure with the explanation that murder due to sex/gender and gender identity, as a form of murder committed out of hatred, is already included in Article 111. paragraph 4 of the CC RC, i.e. as a form of aggravated murder.

* 1. **Overview of criminal legislative in Bosnia and Herzegovina relevant to prosecuting femicide**

Bosnia and Herzegovina does not recognize femicide as a separate criminal offense in any of its criminal laws. The right to life as a basic, most important and universal human right, protected by fundamental international documents, is guaranteed by the Constitution of Bosnia and Herzegovina (Article II/3.a), the Constitution of the Federation of Bosnia and Herzegovina (Article II.A.2.1.a) and Article 11. paragraph 1 of the Constitution of the Republic of Srpska. In addition, considering that the life and physical integrity of a person represent the basic values of both the individual and society, its protection is achieved by prescribing criminal offenses whose protective object is the life and body of a person. However, all the formulations are gender neutral, and are placed within the patriarchal framework of both international and domestic legal instruments.

The Criminal Code of the Federation of Bosnia and Herzegovina[[357]](#footnote-357) (CC FBiH), the Criminal Code of the Republic of Srpska[[358]](#footnote-358) (CC RS) and the Criminal Code of the Brčko District of Bosnia and Herzegovina[[359]](#footnote-359) (CC BD BiH) prescribe a large number of criminal offenses which protect the life and body of a person.[[360]](#footnote-360) These criminal offenses can be divided into two groups: 1) criminal offenses contained in the chapter entitled “Criminal offenses against life and body” (chapter XVI CC FBiH, chapter XII CC RS and chapter XVI CC BD BiH). The object of protection of these criminal offenses is only and exclusively the life and physical integrity of a person and 2) Criminal acts contained in other chapters of criminal laws/codes in BiH, whose primary object of protection is not the life and body of a person, but in which the death as aconsequence appears as a qualifying circumstance.

The study *Analysis of court practice in the prosecution of femicide and attempted femicide in Bosnia and Herzegovina 2017-2021*,[[361]](#footnote-361) offers a detailed analysis of the criminal legislation of Bosnia and Herzegovina. Due to the conciseness of our research, we will only briefly review the current definitions of murder in the criminal legislation.

The criminal offense of murder is the basic criminal offense by which human life is protected in the criminal legislation in Bosnia and Herzegovina.[[362]](#footnote-362) So, according to generally accepted semantics, it is the death of one person caused by another person.[[363]](#footnote-363) Death in the criminal offense of murder must be a consequence of human action, because this criminal offense would not exist if death occurred independently of human action.[[364]](#footnote-364) This definition of murder is narrower than its usual definition, according to which murder is any destruction of human life. This criminal offense consists of the unlawful taking of another person's life with intent, where there are no special circumstances that make it grave or light.[[365]](#footnote-365)

The object of the criminal offense of murder is a person as a human being from birth to death. Full capacity for life is not a condition for the existence of murder, so this offense will also exist when a child is deprived of life for whom it is quite certain that all vital functions cannot take place normally, or a new-born who cannot live long.[[366]](#footnote-366)

The perpetrator of this criminal act can be any person. In terms of guilt, intent is required. This means that the perpetrator must be aware that he is depriving another person of his life, and that he wants it and agrees to it. Both direct and oblique intent are possible, which implies that the consciousness of the perpetrator should include all the listed characteristics of this act. The perpetrator and the victim can be of any gender and age.

For this criminal offense, the legislator in the Federation of BiH and the Brčko District of BiH decided on a prison sentence of at least five years, while in the Republika Srpska it prescribes a prison sentence of five to twenty years. Essentially, it is equal punishment, because according to the CC FBiH and CC BD BiH, the general legal maximum for a prison sentence is 20 years, in contrast to the CC RS, this legal limit is set at 30 years.

Article 166, paragraph 2 of the CC FBiH prescribes the criminal offense of aggravated murder and provides qualifying circumstances that give the basic form of murder a more serious character, for which a prison sentence of at least ten years or a long-term prison sentence is provided. Among the qualifying circumstances, the law foresees: (a) cruelty or insidiousness, (b) reckless violent behaviour, (c) hatred, (d) self-interest, commission or concealment of another criminal act, reckless revenge, other base motives, (e) being a passive subject (murder of a judge or prosecutor, official or military person). Identical qualifying circumstances, except for the murder of a judge or prosecutor, are provided for in Article 163, paragraph 2 of the CC BD BiH.

The criminal offense of aggravated murder was foreseen by the legislator in the RS in a distinct article 125. In comparison with the CC FBiH, it prescribes more qualifying circumstances that give the basic form of murder a more serious aspect. The aforementioned article stipulates that the following shall be punished with a prison sentence of at least ten years or life imprisonment: (1) who takes the life of another in a cruel or insidious manner, (2) who takes the life of another out of self-interest, for the purpose of committing or concealing another criminal act, out of reckless revenge, hatred or other particularly low motives, (3) who takes the life of a member of his family whom he previously abused, (4) who takes the life of another due to reckless violent behaviour, (5) who takes the life of another and intentionally causes the life of another person in danger, (6) who deliberately takes the life of two or more people, and it is not a matter of manslaughter, child murder during childbirth or murder committed under particularly mitigating circumstances, (7) who takes the life of a child or a female person for whom he knows that she is pregnant, (8) who takes the life of a judge or public prosecutor in connection with the performance of their judicial or prosecutorial duties, or who takes the life of an official or military person while performing security duties or the duty of maintaining public order, apprehending the perpetrator of a criminal offense, or custody of a person deprived of liberty and (9) who deprives another of his life while committing the criminal act of burglary or robbery. Paragraph 2 of this article stipulates that the same penalty will be applied when the deprivation of life is carried out in an organized manner or by order.

According to the legal provisions that regulate the criminal offense of aggravated murder in the territory of Bosnia and Herzegovina, it can be concluded that aggravated murder is classified according to different criteria, namely:

* according to the method of execution: (a) murder in a cruel/ferocious manner, (b) murder in an insidious manner and (c) murder carried out organized or by order;
* with regard to the motives of the perpetrator: (a) murder out of hatred, (b) murder out of self-interest, (c) murder for the purpose of committing or concealing another criminal act and (d) murder out of wanton revenge or other base motives;
* with regard to the circumstances of the act and the consequences: (a) murder during reckless violent behaviour, (b) murder in which the life of another person is at risk, (c) murder of several persons and (d) murder during the commission of the criminal act of burglary or robbery;
* regarding the attribute of a passive subject: (a) killing of an official or military person in the performance of official duty, (b) killing of a judge or public prosecutor, (c) killing of a child, (d) killing of a family member who was previously abused by the perpetrator and (e) murder of a woman whom the perpetrator knows is pregnant

However, these are all gender-neutral qualifications that ignore the reality of inequality, oppression and systemic violence against women and girls. This gender neutrality, since it refers to both men and women as victims and perpetrators, without detailed maintenance of disaggregated data (and as we have already seen above, in BiH it is not done very well even though it is a requirement arising from the Istanbul Convention), masks gendered power relations in society and ultimately presents an inaccurate picture of femicide and violence against women and girls. Therefore, violence against women is still not seen as something caused by inequality and oppression.

Even the special qualifying circumstance of aggravated murder, which derives from Article 125, paragraph 1, item 3) of the RS CC, which prescribes the deprivation of life of a member of his family whom he previously abused, is gender neutral. The same is the case with the way in which this incrimination is included in the Criminal Code of FBiH and the Criminal Code of BD BiH[[367]](#footnote-367) within the criminal offense of domestic violence, as the most serious form of this criminal offense. This is a special form of domestic violence, which represents a form of aggravated murder. It is classified as a form of this criminal offense due to the specificity of the perpetrator and the victim in terms of the specificity of their mutual relationship.[[368]](#footnote-368) The punishment for this form of criminal offense corresponds to the punishment for aggravated murder. Family members are considered to be married and/or common-law partners and their children, relatives by in-laws up to the second degree, parents of current and former married and common-law partners, adoptive parents and adoptees, persons who live or have lived in the same family household regardless of kinship and similar. [[369]](#footnote-369)

In addition to the fact that protection against domestic violence is gender-neutrally formulated, it operates within a narrow definition of family, and does not necessarily protect all forms of intimate partner relationships, as one of the most common circumstances in which femicide occurs in our country. Not to mention that potential other forms of femicide and violence against women are completely invisible if we rely solely on the Law on Protection from Domestic Violence and its logic. In this context, we can also refer to the special qualifying circumstances provided for in Article 125, paragraph 1, item 7) of the RS CC, which stipulates that the person who takes the life of a child or a woman whom he knows is pregnant also qualifies as aggravated murder. Here, the question should be raised, whether this is intended to protect the woman or is intended as the protection of the unborn child, which is seen as the future of the state and its survival.

It is not enough to place gender-based crimes within the framework of the traditional criminal law, because, as we have already said, it is not only gender-neutral but extremely patriarchal. Gender-based crimes are the result of complex social and cultural problems, and traditional criminal law is part of these problems. Therefore, the definition of femicide must avoid simplification and try not to dilute and soften the political arguments and context that justify the introduction, consideration, and special treatment of this phenomenon.[[370]](#footnote-370)

Of course, in addition, as is the case with many other laws in Bosnia and Herzegovina, the implementation of the law is, to say the least, arbitrary. It is important to note that notwithstanding that femicide is not yet recognized in the current criminal legislation in BiH, cases of femicide can be classified as crimes of aggravated murder. However, this is not always the case. This can be seen from the selected cases presented in *the Analysis of court practice in prosecuting femicide and attempted femicide in Bosnia and Herzegovina 2017-2021*. where we can see that femicide is qualified as a crime of murder, aggravated murder, and domestic violence with a fatal outcome. However, even when femicide is classified as a crime of aggravated murder, as is, for example, the case before the District Court in Prijedor. [[371]](#footnote-371) In this case the court ignored the gendered nature of the killing. As the Konstantinović et al note, the court explains its position regarding the legal qualification of the act by pointing out that the perpetrator was brought into a state of affect because of *his personal characteristics*, instead of emphasizing that it was a based motive because the perpetrator treated the victim as his property, denying her right to freedom of choice.[[372]](#footnote-372)

1. **Legislative frameworks for the possession of small arms and light weapons in Bosnia and Herzegovina from a feminist perspective**

In addition to the analysis and possible changes to criminal regulations, it is necessary to consider other possible legislative frameworks that facilitate femicide. One of these is certainly the issue of regulating the possession of light weapons, precisely because global data on femicide indicates the fact that the presence of weapons is a significant risk factor for femicide, especially in intimate partner relationships.

According to the data of the Coordination Committee for Small Arms and Light Weapons in BiH, 324,316 pieces of legal weapons were registered in 2021. A year later, that number grew significantly and 348,692 weapons were registered.[[373]](#footnote-373) Research by the international organization Small Arms Survey for 2018 indicates the possibility that even then many more people owned weapons than the official figures show. According to the data of this organization, in 2017, civilians in Bosnia and Herzegovina owned about 1,185,000 firearms. It was noted that only a third were registered. Furthermore, it was estimated that every fifth household in our country owns some kind of illegal weapon.[[374]](#footnote-374) In 2014, the same organization warned of the fact that in the Balkans, including Bosnia and Herzegovina, the widespread ownership of weapons by civilians leads to an increase in violent crimes, including murders.[[375]](#footnote-375)

The same is indicated by the research of the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) for 2018,[[376]](#footnote-376) which shows that the majority of legal weapons are owned by men, and that women are more often victims of the use of weapons in cases of domestic violence. Based on the collected data on the misuse of firearms, the report states following:

* Illegal possession of firearms represents a significant risk for the safety of the citizens of Bosnia and Herzegovina;
* Weapons are often misused in the context of robbery and causing general danger;
* Firearms are the most frequently used means of murder;
* The misuse of firearms in the context of domestic violence and intimate partner violence is widespread, and the existing measures and practices for the control of firearms do not sufficiently appreciate the risks of misuse of weapons in this context;
* Suicides committed with firearms make up the majority of deaths caused by misuse of firearms;
* Abuse of weapons has a pronounced gender dimension and men make up the vast majority perpetrators of incidents with firearms.

The aforementioned AIRE Centre’s research from 2022 (*the Analysis of court practice in prosecuting femicide and attempted femicide in Bosnia and Herzegovina 2017-2021)* also indicates that weapons are often used by perpetrators of domestic violence, and in cases that have characteristics of femicide. The research covered a total of 34 court cases (26 cases of the courts of the Federation of BiH and seven cases of the courts of the Republika Srpska and one case of the Brčko District court). Based on the analysis of court decisions, it was concluded that “when committing crimes, the perpetrators used firearms (hand grenade, gun, automatic rifle - 35.3%) more than cold weapons (army knife, knife, scalpel, hammer, metal rod, a blunt object – 29.3%) and physical strength (8.8%), which can be explained by the illegal possession of firearms, which mainly originates from the war period.”[[377]](#footnote-377) Data collected by SEESAC indicate that as many as 45.5% of women killed by their intimate partners were killed with a firearm.[[378]](#footnote-378)

Possession of weapons and ammunition in BiH is regulated by 12 laws. The separate laws exist in the entity Republika Srpska, the Brčko District, and all ten cantons in the Federation of BiH. These laws are not completely harmonized, neither with each other nor with the legislation in the EU, which is one of the requirements on the path to accession. In addition to the laws, at the state level, there is a Strategy for the control of small arms and light weapons adopted in 2020.[[379]](#footnote-379) The Strategy concerns the period 2021-2024. The Action Plan for the implementation of the Strategy is also adopted. This document points to problems concerning security, especially security of women, and the use of firearms in the commission of crimes.

Although BiH is a signatory to the Istanbul Convention, which, in Article 51, mandates the signatory countries that their legislative bodies ensure supervision over perpetrators of violence and prevention of repetition, which includes greater supervision over the possession of weapons by persons who are perpetrators of violence, there are no clearly prescribed measures that enable this. Moreover, the competent authorities often find a way to ease the process of issuing permits for the possession of weapons and the acquisition of ammunition. Thus, the Ministry of Internal Affairs of the Canton of Sarajevo,[[380]](#footnote-380) after changes to the law in 2019, informed the public that it became easier for residents of Canton Sarajevo to exercise their right to procure, carry and hold weapons and ammunition. In a similar way, several years earlier, in 2013, changes in the law of the Bosnian-Podrinje Canton[[381]](#footnote-381) were announced by the local ministry, noting that the new guidelines make it possible for all residents of the canton who wish to exercise their “right” to own weapons, to have more options and ways. In 2013, proposals were adopted and the law was changed in this canton, and the possibility of acquiring weapons and ammunition was expanded. The ammunition can be acquired without special approval “with an already issued weapon license for a certain weapon that a citizen has acquired and with an identity card.”[[382]](#footnote-382) The amendments were also adopted in 2017, and it was approved that persons over the age of 18 (instead 21) can obtain a permit.[[383]](#footnote-383)

When it comes to gender equality, it needs to be pointed out that, although the Strategy and a number of other available sources point to the fact that women are more often victims of the misuse of weapons than men, especially in cases of domestic violence, no law foresees measures that would enable greater control over the possession of weapons, nor does it envisage the role of centres for social work.

* 1. **State strategy**

The state-level strategy was developed with the support and advice of SEESAC, the Organization for Security and Cooperation in Europe (OSCE), the United Nations Development Program (UNDP) and the EU Delegation to Bosnia and Herzegovina. The basic guideline based on this document is that BiH should be “a safe society with established comprehensive and sustainable mechanisms for identifying, preventing, prosecuting and controlling illegal possession, abuse and trade in firearms and ammunition.”[[384]](#footnote-384) The strategy notes the increased use of weapons in the violent actions of individuals and in cases of domestic violence. It points to the fact that men are the majority of perpetrators of criminal acts related to the use of firearms. Further, it states that “the gender perspective plays a very significant role in understanding the distribution and demand for firearms, as well as the specific risks that women and men face in terms of the misuse of firearms.”[[385]](#footnote-385)

The strategy mandates the integration of the gender perspective “into the strategic and operational framework,”[[386]](#footnote-386) as a prerequisite for effective arms control:

“Accordingly, in the coming period, BiH will work on the integration of the gender perspective in the measures for SALW control, and special importance will be given to the prevention of the misuse of weapons in cases of domestic violence, the prevention of the misuse of firearms, strengthening the capacity of institutions to create and implement gender responsible measures and increasing the participation of women in the control of SALW.”[[387]](#footnote-387)

In this context acronym SALW refers to *A road map for a sustainable solution to combating the illegal possession, abuse and trafficking of small arms and light weapons.[[388]](#footnote-388)*

Looking at the existing legislative framework, it is not apparent that this recommendation has been complied with.

* 1. **Legal framework for possession of firearms and ammunition**

All existing laws define different categories of weapons and ammunition, as well as the general conditions and ways in which permits for possession and carrying can be obtained, that is, for which types of weapons and ammunition and under which conditions permits are not required. The law at the level of the Canton Sarajevo (similar to other laws) defines the following as general conditions for issuing authorization for the acquisition of weapons to a natural person:

“a) that the person has a justified reason for acquiring weapons,

b) that the person has reached 21 years of age,

c) that the person has not been convicted of a criminal offense, except for a criminal offense against the safety of public traffic due to negligence resulting in bodily injury or material damage, or for criminal offenses in the country of which the person is a citizen or in which the person has a residence or stay,

d) that no indictment has been confirmed against the person in Bosnia and Herzegovina, nor that a criminal investigation or criminal proceeding is being conducted, except for criminal offenses against the safety of public traffic caused by negligence resulting in physical injury or material damage, or for criminal offenses in the country of which he is a citizen or in which the person has a residence or stay,

e) that in the last two years until the date of submission of the application for the issuance of authorization for the acquisition of weapons or from the moment of the checks based on paragraph 7 of this article the person has not been punished for an offense against public order and peace with violence, an offense prescribed by this law or an offense with the characteristic of violence prescribed by another law,

f) that there are no other circumstances that indicate that weapons could be misused, in particular: frequent and excessive consumption of alcohol, consumption of narcotics or other intoxicants, disciplinary violations of regulations on hunting and sport shooting, as well as other circumstances that make the person ineligible for possessing weapons.” [[389]](#footnote-389)

The Law on Weapons and Ammunition of the Republika Srpska mandates that the person applying for a permit

“does not have circumstances that negatively affect the interests of security, such as: frequent and excessive consumption of alcohol, consumption of drugs or other narcotics, significantly disturbed family relationships, conflicts with the environment, aggressive and excessive behaviour and other circumstances that make a person unfit to own a weapon.” [[390]](#footnote-390)

On the territory of the whole country, the competent police administrations have the possibility, but not the obligation, to check the fulfilment of the conditions even after the license has been issued, and if they learn of “circumstances that cast doubt on the further fulfilment of those conditions.”[[391]](#footnote-391)

As a “justifiable reason” for owning a weapon, the Law defines: personal safety (“if he makes it likely that his personal safety could be threatened or due to other circumstances”[[392]](#footnote-392)), for the purposes of hunting, sports or collecting. The law also defines membership in sports shooting societies, inheritance, and collecting as possible reasons for which permits may be issued. Police officers are obliged to establish the existence of a “justified reason” in each of the defined reasons.

In the Una-Sana Canton, any person can get a permit if

“in the last two years from the date of entry into force of the decision on the misdemeanour, that is, the misdemeanour order he has not been punished for an offense against public order and peace related to physical assault, participation in a fight, physical abuse, inciting a fight or for a misdemeanour prescribed by the Law on Weapons and Ammunition for which a protective measure of confiscation of weapons, essential parts and ammunition has been issued or for a misdemeanour due to domestic violence or if in accordance with the Law on Protection of Domestic Violence a protective measure has been imposed on him or for a misdemeanour with elements of physical violence in accordance with other regulations, as well as that the person is not prosecuted for such offenses;”[[393]](#footnote-393)

Here it needs to be highlighted that this Law refers to the condition that the person is not issued either protective measure or misdemeanour for domestic violence, but domestic violence is here primarily understood as physical violence.

Furthermore, the condition for the permit in Una-Sana Canton is also, as in other laws,

“that there are no circumstances that negatively affect public order and peace, i.e. security interests, as well as that there are no other circumstances that indicate that weapons could be misused, such as: excessive consumption of alcohol, consumption of drugs or other intoxicants, significantly disturbed family relationships, conflicts with the environment, aggressive and excessive behaviour and other behavioural disorders, criminal-intelligence reasons and reasons that indicate a connection with persons from criminal-intelligence records and alike.”[[394]](#footnote-394)

Here, it needs to be underlined that the set condition is that there are no significantly disturbed family relationships (same phrasing as in the Republika Srpska Law cited above), but this is entirely gender-neutral approach, which most probably understands disturbance of family relations in the context of family feuds, rather than presence of gender-based violence.

The penalty for illegal possession of weapons in Bosnia and Herzegovina is up to three years in prison, and fines from EUR 250 to EUR 500 for natural persons, or from EUR 5,000 to EUR 7,500 for legal entities, are also foreseen.

Laws also define special conditions for issuing authorization for the acquisition of weapons to a natural person, which includes a health certificate. However, only part of the existing laws define which types of doctors should give their opinion. Thus, the law in the Zenica-Doboj Canton defines that the certificate of medical fitness is issued by

“authorized health institutions from the list determined by the Ministry of Health of the Zenica-Doboj Canton by the place of residence of the natural person, in which the suitability of the applicant for acquiring, keeping and carrying weapons is specified and the final opinion of the members of the health commission composed of doctors specializing in ophthalmology, neurology, psychiatry and psychology, and doctors specializing in occupational medicine.”[[395]](#footnote-395)

The law in the Canton Sarajevo mandates the following:

“Details of the conditions that must be met by health institutions that will perform health examinations that determine the health capacity to hold and carry weapons, the method and procedure of performing regular and extraordinary health examinations, the list of diseases and health conditions that make a person unfit to hold and carry weapons, the method keeping records and medical documentation, exchange of data on issued medical certificates and changes regarding the health capacity of the gun owner, content of the certificate on the performed health examination, fees related to the determination of health capacity, and other matters of importance for the determination of health capacity, is prescribed by the Minister of Health in cooperation with the Ministry of Internal Affairs of Sarajevo Canton.”[[396]](#footnote-396)

It is in fact up to one individual, i.e. the Minister of Health, who might or might not be specialized on the matter, to prescribe the bylaws determining health conditions for the possession of a weapon.

The existing laws require that the medical certificate be no older than six months when the application is submitted, but renewal of the certificate is requested only after five to ten years, which represents an extremely long period. In all cases, police authorities are given the option to decide whether an individual should go for a medical check-up, requiring the person who owns a weapon to report any changes himself or to have doctors familiar with the person's condition do it. The doctors necessarily do not need to know that person owns a weapon. The law in force in the Central Bosnia Canton stipulates that in the event of a change in the health status of a person who owns a gun license, “the selected primary health care physician, any health care institution, any other doctor who learns of a change in the health status of a gun owner that can affect the ability to hold and carry a weapon, is obliged to inform the nearest police authority as soon as he finds out about such a change.”[[397]](#footnote-397)

No law has a section that explicitly refers to domestic violence as such, although most state that persons against whom there are court cases related to domestic violence cannot obtain a license. However, it is generally known that the number of cases of domestic violence that are registered, or have a judicial outcome, is quite limited. In addition, even when cases of domestic violence are registered, they are rarely dealt with by the courts, and verdicts for minor misdemeanours are not often handed down. Similar situation is regarding other forms of gender-based violence: the condition is that such violence is criminalized and prosecuted as physical violence.

The law does not require social work centres or family members to report changes in the behaviour of persons who own weapons, nor does it indicate the need for them to report these cases to the competent police and institutions.

In general, the existing legislation concerning the possession of weapons and ammunition in Bosnia and Herzegovina is decentralized and quite liberal when it comes to issuing permits. The gender perspective is entirely ignored in these laws, as well as the fact that there is a significant number of cases of misuse of weapons in cases of domestic violence. In addition, institutions do not do enough (if at all) to promote disarmament, which is contrary to feminist principles, leaving weapons in the hands of too many people, and allowing them to be misused.

1. **Instead of a conclusion: how to advocate the prevention of femicide**

Finally, instead of a conclusion, in this chapter we will consider how to introduce recommendations to the competent authorities and the judiciary. Based on these recommendations, and in coordination with the competent authorities and judiciary, public and political support should be obtained for the creation of a serious approach to the prevention of femicide and the eventual amendments of the criminal legislation of BiH. This analysis suggests ways to develop advocacy work, based on examples from other countries, those where the law has already been changed, and those where changes are underway, or possibilities are being discussed. One of the key documents that was taken into account, considering BiH's commitment to EU membership, is the EIGE survey *Hidden in plain sight: improving legal response for 'invisible' victims of femicide*,[[398]](#footnote-398) which advocates changes in legislation in EU member states.

* 1. **Analysis of the situation and summary of the report**

Femicide can be considered the ultimate form of male violence against women and girls that is rooted in gender inequality in society and is present in all parts of the world. The existence of different definitions of femicide is one of the key reasons why it is difficult to determine the prevalence of this phenomenon, which makes it difficult to comprehensively analyse it and create effective strategies for its prevention. The absence of a single definition makes it difficult to track femicide, which becomes invisible among general homicide data. From the experience of Latin America, it is necessary to open a conversation among feminists about how it would be most adequate to define femicide in the context of Bosnia and Herzegovina, and whether the best approach to preventing femicide is to define femicide as a distinct criminal act.

According to UN Women data, in 2021,[[399]](#footnote-399) around 81,000 cases of killings of women and girls were registered in the world, that is, on average, more than nine women were killed every hour. Of that number, more than half of the murders were committed by the partners of the victims. At the same time, only a few Latin American countries have so far recognized femicide as a special crime in their legislation, thanks to the advocacy and lobbying of feminist organizations. No EU member state has recognized femicide as a distinct criminal offence, although some recognize gender motives or discrimination as a basis for killing women in their laws. At the same time, feminist organizations and groups, as well as a significant number of lawyers, psychologists and other professionals who work on problems related to domestic and gender-based violence, point to the need to recognize femicide as a distinct crime, and to work on raising awareness about the phenomenon. Experts dealing with this issue claim that the experiences of countries where femicide is recognized as a criminal offense point to the improvement of monitoring and prevention systems.

At the same time, a whole series of international documents contain mechanisms for the protection of women and girls, including the Istanbul Convention. However, its implementation is not sufficient in the countries that have ratified it, including Bosnia and Herzegovina. Meanwhile, the number of cases of killing of women is constantly increasing. The public mainly receives information about these acts through the media, which often report in a sensationalist manner, relativizing the crime and the victim, but also the violence itself. We are witnessing this in BiH as well.

As the media has a strong influence on the formation of public opinion, one of the tasks for anyone who engages in advocating for changes in the law, as well as the prevention of violence, is to work with journalists and media houses, but also to engage in public campaigns that will raise awareness in the public.

To work on this, it is necessary for feminists and civil society to clearly define the basic terms, from domestic violence to femicide, and bring them closer to the entire society, to all generations. It is also necessary to have a database with cases that have characteristics of femicide and make that database public. The existence of a database will allow the public, professionals, and citizens, to know how widespread this problem is. Such a base already exists in the Balkan region (FemPlaz).[[400]](#footnote-400) Civil society organizations from Serbia and Montenegro were involved in its establishment. No organization from BiH has joined so far, and this could potentially be a significant step in the campaign.

The existing database, given the lack of legal definitions and difficulties in accessing court documents, relies on information from the media. This means that a certain number of cases remain unrecorded. In ideal conditions, this database (Femicide Watch or Observatory for monitoring femicides) should be the responsibility of institutions and rely on data provided by police databases and the judicial sector. However, a database that relies on the media and research conducted by non-governmental organizations can play a significant role if the institutions do not work to register cases. The existence of the database can be of help for advocacy for changes in the law, as it will enable the collection of facts about the prevalence of the crime of femicide.

In addition to the public, it is extremely important to educate the police and other officials who work in the criminal system on these issues. The current situation in Europe, including Bosnia and Herzegovina, is that cases of killings of women are investigated as crimes that do not have a gender dimension. However, EIGE points to the need to investigate crimes involving female victims from the outset as potential femicide or gender-based violence. In this way, the evidence will be collected, and the procedure will be conducted differently. Moreover, EIGE’s report indicates that there should be special teams to investigate femicide at the police and prosecutor's offices.

The public must also know why it is important that femicide is recognized by law. What does this mean for the victims, their families and the society at large, and how can it contribute to preventing this crime. Such clarifications must also be part of campaigns, all in order to win over the public, which is the greatest ally of civil society in lobbying for legislative changes. Legal experts, social workers and psychologists must participate in public campaigns. They would additionally explain the shortcomings of a system that does not recognize femicide as a criminal offense.

* 1. **Recommendations for advocacy**

Advocacy should focus on several basic guidelines:

1. Arguing the recognition of femicide as a distinct crime
2. Make femicide visible (database)
3. Act preventively (education)
4. Defining femicide as a distinct crime to reduce and prevent gender-based violence (in cooperation with legal experts and feminist organizations)
5. Increased reporting of domestic violence and violence against women and girls to the police (public campaigns)

*Public support*

The public is the best ally in this type of campaign. Thus, the next steps in the campaign should be public advocacy and raising awareness about the very problem of domestic violence, violence against women and girls and femicide, and the consequences for the society. Campaigns also need to explain to the public why femicide should be a distinct crime in the criminal code and how it will change the current situation. A necessary step is the establishment of an SOS telephone and a database, based on which it will be possible to collect and bring to the public information about the degree of prevalence of violence against women and girls (not just domestic violence). The campaign to the public is carried out through the media, but also by organizing public talks and street actions pointing out the existence of the problem of violence against women and girls and femicide.

*Institutions*

Strong public support will put pressure on institutions. In parallel with public campaigns, it is necessary to lobby parliamentarians. This step would be best done by coordinated action of civil society organizations, to exert as much pressure as possible. This needs to be done while the public campaign is ongoing.

*Media*

A media campaign that will include participation in radio and TV shows, but also a specially created campaign that will be run on social networks including Instagram and TikTok as the networks most used by young people for information today. Also, please note the significant impact the Facebook page *Nisam tražila (I did not ask for it)[[401]](#footnote-401)* had on recognition of sexual harassment in public, and consequently even some other forms of violence (sexual violence in particular) against women were made visible. In this part of the campaign, in addition to non-governmental organizations, artists, but also the academic community and activists can be engaged. The campaign should have a recognizable visual identity and a message that is easy to remember. In this phase as well, the participation of as many organizations and individuals as possible is necessary.

*Non-governmental organisations*

For a successful campaign, it is necessary to build a front in which as many organizations as possible will be involved. Not only those dealing with issues of domestic violence and violence against women and girls, but all organizations that operate in the broad framework of human rights protection. It is also important to include organizations that work with young people, as well as survivors of war violence or organizations that work with people who have PTSD.

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38. Manjoo, ibid, para 29-81 str. 8-20 [↑](#footnote-ref-38)
39. Radford, J. u Rusell, D. i Radford, J. ibid, str. 7. [↑](#footnote-ref-39)
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44. Corradi, 2022, ibid, str. 6-8 [↑](#footnote-ref-44)
45. Ovdje treba primijetiti da se ovaj oblik femicida pojavljuje u intimnim i neintimnim porodičnim odnosima. Pozivajući se na istraživanje sprovedeno u Rumuniji, Corradi primjećuje sljedeće (str. 7): „do 67 % svih slučajeva femicida-samoubistva počinili su muški intimni partneri, a do 97 % slučajeva rođaci; gotovo 50 % počinjeno je u kući žrtve, nakon što se ona razvela od potencijalnog počinitelja. Kada žrtva ima djecu, u 30% slučajeva i ona su na meti nasilnika.“ Dok u vezi s femicidom u intimnim partnerskim odnosima Corradi opaža da je to trenutno najbolje dokumentiran oblik femicida, za femicid-suicide ona ističe da je ovaj oblik femicida nedovoljno dokumentiran. [↑](#footnote-ref-45)
46. Corradi, 2022, ibid. str 3 [↑](#footnote-ref-46)
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51. Federalna.ba/Fena, *Femicid: djeca su najveći gubitnici, potrebno osnažiti odgovor države*, Sarajevo, 6. decembar 2022, dostupno na <https://federalna.ba/konferencija-o-femicidu-djeca-su-najveci-gubitnici-potrebno-osnaziti-odgovor-drzave-yrig6>, pristupljeno u maju 2023. [↑](#footnote-ref-51)
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55. Radford, ibid. str 4-5 [↑](#footnote-ref-55)
56. Prema UNDAF, „[t]eorija promjene je metoda koja objašnjava kako se očekuje da određena intervencija, ili skup intervencija, dovede do specifične razvojne promjene, oslanjajući se na uzročnu analizu temeljenu na dostupnim dokazima.“ Vidi UNDAF, *Theory of Change: UNDAF Companion Guidance (Teorija promjene: UNDAF smjernice),* dostupno na <https://unsdg.un.org/sites/default/files/UNDG-UNDAF-Companion-Pieces-7-Theory-of-Change.pdf>, pristupljeno u maju 2023. [↑](#footnote-ref-56)
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60. Vijeće Evrope, Explanatory Report to the Council of Europe Convention on prevening and combating violence agaisnt women and domestic violence (Eksplanatorni izvještaj za Konvenciju Vijeća Evrope o sprječavanju i borbi protiv nasilja nad ženama i nasilja u porodici), 11. maj 2011., dostupno na <https://rm.coe.int/1680a48903>, pristupljeno u maju 2023., para. 74 str. 14 [↑](#footnote-ref-60)
61. Autori ove studije nisu uspjeli naći adekvatan prijevod na naše jezike. U našim jezicima Femicide watch je trenutno kao takav u upotrebi, ali bi bilo zaista dobro kada bi se kao i sa definicijom o femicidu kroz feminističke razgovore moglo doći do adekvatnog prijevoda. [↑](#footnote-ref-61)
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64. Ibid. [↑](#footnote-ref-64)
65. Šimonović, D., *Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović*, UN General Assembly, Seventy-first session, Agenda item 27, br. Dokumenta A/71/398, 23. septembar 2016., dostupno na <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/297/08/PDF/N1629708.pdf?OpenElement>, pristupljeno u maju 2023. [↑](#footnote-ref-65)
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68. Vidi, EOF, dostupno na <https://eof.cut.ac.cy/>, pristupljeno u maju 2023. [↑](#footnote-ref-68)
69. Vidi, EIGE, Femicide, dostupno na <https://eige.europa.eu/gender-based-violence/femicide?language_content_entity=en>, pristupljeno u maju 2023. [↑](#footnote-ref-69)
70. Vidi, UN Women Europe and Central Asisa, *Countries accross Europe take first steps to address femicide (Zemlje širom Evrope poduzimaju prve korake da oslove femicid)*, 4. maj 2023., dostupno na <https://eca.unwomen.org/en/stories/news/2023/05/countries-across-europe-take-first-steps-to-address-femicide>, pristupljeno u maju 2023. [↑](#footnote-ref-70)
71. Petrić, A. i Radončić, Dž., ibid, str 23 i 114 [↑](#footnote-ref-71)
72. Vijeće Evrope, GREVIO, *Polazni postupak procjene, izvještaj o zakonodavnim i drugim mjerama za provedbu odredbi Konvencije Vijeća Evrope sprječavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulska konvencija), Bosna i Hercegovina*, 8. novembar 2022, dostupno na <https://arsbih.gov.ba/wp-content/uploads/2023/02/GREVIO-IZVJESTAJ-bosanski-jezik.pdf>, pristupljeno u maju 2023. [↑](#footnote-ref-72)
73. Ibid, str. 9. [↑](#footnote-ref-73)
74. Ibid, para 199, str. 74 [↑](#footnote-ref-74)
75. Ibid, para 206.a, str. 76 [↑](#footnote-ref-75)
76. Ibid, para 213, str. 78 [↑](#footnote-ref-76)
77. Ibid, para 222.a, str.81 [↑](#footnote-ref-77)
78. Ibid, para 226, str 83 [↑](#footnote-ref-78)
79. Ibid, para 200, str 74 [↑](#footnote-ref-79)
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