

ANALYSIS OF COURT PRACTICES IN CASES OF VIOLENCE AGAINST WOMEN



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CONTENTS

1. INTRODUCTION	7
2. STRATEGIC, LEGAL AND INSTITUTIONAL FRAMEWORK	9
2.1. INTERNATIONAL STANDARDS	9
2.1.1. ISTANBUL CONVENTION	9
2.2. NATIONAL STRATEGIC FRAMEWORK.....	10
2.3. NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK	12
2.3.1. LEGAL FRAMEWORK	12
2.3.2. INSTITUTIONAL FRAMEWORK	17
2.4. SJUDICIAL PROTECTION IN CASES OF VIOLENCE AGAINST WOMEN AND GENDER-BASED VIOLENCE	19
3.RESEARCH METHODOLOGY	22
4. REVIEW OF COURT PRACTICES IN CASES OF CRIMINAL OFFENSES INVOLVING GENDER-BASED VIOLENCE AND ANALYSIS OF RESEARCH FINDINGS.....	23
4.1. SAMPLE	23
4.2. RPRIOR REPORTING/NON-REPORTING OF VIOLENCE BY THE VICTIM	24
4.3. JOINING THE CRIMINAL PROSECUTION BY THE INJURED PARTY	26
4.3.1. PCASES WHERE THE VICTIM'S FAILURE TO JOIN THE PROSECUTION WAS CONSIDERED A MITIGATING CIRCUMSTAN	30
4.4. PREVIOUS CONVICTIONS OF THE ACCUSED	31
4.4.1. CASES WHERE THE VICTIM PREVIOUSLY REPORTED VIOLENCE AND THE ACCUSED HAD PRIOR CONVICTIONS/HAD PRIOR CONVICTION FOR IDENTICAL OR SIMILAR CRIMES	32
4.5. RELATIONSHIP BETWEEN VICTIM AND ACCUSED	34
4.6. SENTENCING POLICY	35
4.6.1. PRISON SENTENCES AND HOUSE ARREST	36
4.6.2. PRISON SENTENCE OF UP TO SIX MONTHS	37
4.6.3. IMPRISONMENT SENTENCES RANGING FROM SIX MONTHS TO ONE YEAR	39
4.6.4. PRISON SENTENCE OF MORE THAN ONE YEAR	41
4.6.5. SUSPENDED SENTENCE	43
4.6.6.IMPOSITION OF SECURITY MEASURES WITH A FOCUS ON RESTRAINING ORDERS AND EVIC- TION FROM RESIDENCE	44
4.6.7.STRUCTURE OF THE REVIEWED SAMPLE IN TERMS OF CRIMINAL OFFENSES	44
4.7. OTHER OBSERVATIONS	45
5. CONCLUSIONS AND RECOMMENDATIONS	49
LITERATURE	56

INTRODUCTION

Gender-Based Violence refers to violence committed based on gender and, in a broader sense, includes violence against women. According to the definition of the Istanbul Convention, gender refers to socially determined roles, behaviors, activities, and attributes that society considers appropriate for women and men, and it involves a power imbalance between the genders. **Gender-based violence** typically refers to violence committed on the basis of gender, whereby gender, according to the definition of the Council of Europe, represents socially determined roles, behaviors, activities and attributes that a given society considers appropriate for women and men.¹ However, violence against women can also occur in contexts that are not necessarily related to gender norms and expectations. It is also important to note that victims of gender-based violence are not only women (including girls under 18), but also men, boys, and members of the LGBTIQ+ population; therefore, the terms “gender-based violence” and “violence against or towards women” are not synonyms, but due to the dominant percentage representation of women as victims of acts of gender-based violence, they are often identified.

In this analysis, we focus specifically on violence against women, but with the note that our research does not only cover gender-based violence against women, but also includes violence against women that does not necessarily fall under the category of gender-based violence. Even when violence is not directly connected to gender roles, women often find themselves in situations where they are in a more vulnerable position compared to the abusers. Due to social, economic, and cultural factors, women are often in a position of less power and empowerment. This inequality, which can result from economic, educational, or social circumstances, can make them more vulnerable to violence, even in cases where gender is not the main factor behind the violence. For example, women may be economically dependent on the abuser, have limited resources to escape toxic relationships, or face social stigmas that further hinder them from seeking help.

Therefore, violence against women in this broader context is not necessarily caused by gender roles, but it is important to consider all the circumstances that can put them in a more vulnerable position and make it difficult for them to access protection and justice. Consequentially, our research goal is comprehensive, in order to create conditions for effective prevention and elimination of violence, taking into account all the complexities and causes of violence against women.

The analysis presented here focuses solely on the criminal law and, to some extent, the misdemeanor law aspects of gender-based violence and violence against women, specifically criminal proceedings in which women (victims) are the injured parties, regardless of their age or the relationship they have with the perpetrator of the act. The misdemeanor law aspects were considered during the analysis because the Law on Domestic Violence Protection prescribes a range of actions for which family members are held administratively accountable, as well as protective measures that can be imposed in misdemeanor proceedings. In a significant number of the criminal cases analyzed, part of the evidence regarding the previous convictions of the defendant consists of decisions made in the misdemeanor proceedings.

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Art. 3, Paragraph 1, Point c.

This analysis has several goals: to provide a deeper understanding of the current approach of courts in Montenegro in cases of violence against women and gender-based violence; to explore the extent to which courts in Montenegro apply international standards, such as the Istanbul Convention and guidelines from the European Court of Human Rights, in proceedings related to violence against women and gender-based violence; to examine specific challenges and obstacles faced by victims of gender-based violence and violence against women when initiating and conducting legal proceedings; and to investigate the extent to which criminal policy has a deterrent effect on perpetrators and contributes to reducing violence against women and gender-based violence.

This analysis was created within the framework of the project *Enhancing Judicial Mechanisms for the Fight against Gender-Based Violence*, implemented by the Center for Monitoring and Research in partnership with the Institute for Legal Studies (IPLS), and funded by the Ministry for Human and Minority Rights.

STRATEGIC, LEGAL AND INSTITUTIONAL FRAMEWORK

2.1. INTERNATIONAL STANDARDS

The international framework in the field of combating gender-based violence is based on a number of legal instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action (BPfa), the Declaration on the Elimination of Violence against Women (DEVAW), as well as UN General Assembly Resolution 48/104. The International Covenant on Civil and Political Rights (1996) is also an important instrument of protection against violence, guaranteeing basic human rights and freedoms, including freedom from violence.

UN Resolution no. 54/134 (1999), November 25 was declared the International Day for the Elimination of Violence against Women, which globally emphasized the importance of raising awareness about this problem. The European Charter on Gender Equality at Local Level (2006) promotes the implementation of gender equality in local communities, while the Charter on Fundamental Freedoms in the European Union (2007) provides additional guarantees of human rights, including protection against gender-based violence. Long-term goals for achieving gender equality have been set through the Gender Equality Pact 2011-2020 and the European Strategy for Gender Equality 2021-2025.

Considering the global dimension of the fight against gender-based violence, it is important to mention documents that address the protection of children, as domestic violence often affects children, either as direct victims or as witnesses to the violence. The Convention on the Rights of the Child and the Lanzarote Convention of the Council of Europe, which pertains to the protection of children from sexual exploitation and abuse, further expand legal protection, while the Council of Europe Convention on Action against Trafficking in Human Beings obligates states to protect children from all forms of violence, including human trafficking. For the purposes of this analysis, the most significant is the **Convention on preventing and combating violence against women and domestic violence – the Istanbul Convention**.

2.1.1. ISTANBUL CONVENTION

Drafted by the Committee for the Prevention and Suppression of Violence and implemented in April 2011 in Istanbul, this convention applies to all forms of violence against women, including domestic violence, and pays special attention to specific forms of violence such as psychological, physical, sexual violence, forced marriage, female genital mutilation, and sexual harassment.

The Istanbul Convention establishes a comprehensive framework for combating gender-based violence and domestic violence. The aim of this Convention is to protect women from all forms of violence, eliminate discrimination, promote equality, and ensure assistance to victims. The Convention provides definitions of key concepts such as 'violence against women,' 'domestic violence,' and 'gender-based violence against women.' These definitions include various forms of violence and discrimination and are applied in context of peacetime conditions and armed conflicts.

The Convention imposes an obligation on the signatory states to ensure legislative measures for the prevention, protection of victims, and the sanctioning of perpetrators. It also requires international cooperation, particularly in the engagement of incorporating a gender perspective into evaluation and implementation.

An important aspect is the obligation of states to ensure the necessary resources for the implementation of measures, cooperation with the non-governmental sector, and transparent collection of statistical data. The Convention also requires education, awareness-raising, and training of professionals, as well as the involvement of the media and the private sector in violence prevention.

Within the framework of prevention, The Convention regulates awareness-raising, education, professional training, preventive intervention programs, and treatment, as well as the participation of the private sector and the media.

The chapter dedicated to protection and support stipulates that the signatories of the Convention, in accordance with their legislation, will take necessary legislative and other measures to establish effective cooperation mechanisms among all relevant state institutions. This includes judicial authorities, public prosecutors, law enforcement agencies, local and regional authorities, as well as non-governmental organizations and other relevant legal and physical entities. The aim of these mechanisms is to protect and support victims and witnesses of all forms of violence covered by the Convention, including general and specialized support services.

Montenegro is among the first countries in Europe to ratify the Istanbul Convention, but with a reservation regarding the application of Article 30 on compensation for victims of violence. The state has committed to align its legislation with this provision, which is still underway. GREVIO reports for Montenegro from 2018 and 2021 identified key weaknesses, including inconsistent law enforcement and geographical disparities in procedures, particularly poor prosecution rates for psychological and sexual violence. Recommended measures were categorized by urgency, but it remains an open question to what extent the proposed amendments have actually been implemented.

The OSCE report from 2019 highlights practical challenges – from interpretations of the law that limit its application to discrimination in the protection of women outside formal partnership unions. Additionally, although MONSTAT and other state institutions collect data on violence, the methodologies are inconsistent and difficult to access, complicating the monitoring of the effects of the Convention.

2.2. NATIONAL STRATEGIC FRAMEWORK

The National Gender Equality Strategy 2021-2025, along with the action plans for 2021-2022 and 2023-2024, forms the basis for the improvement of the normative framework of gender equality in Montenegro. The Government adopted the Strategy in July 2021, along with the final report on the implementation of activities for the period 2017-2021. The report for 2022, together with the new Action Plan for 2023-2024, indicates that the implementation of planned activities was limited due to external factors such as political changes, cyber-attacks, and the crisis caused by the COVID-19 pandemic.

Despite the efforts, gender inequality in Montenegro remains deeply entrenched. Key issues include insufficient institutional support, dominant gender stereotypes, and low representation of women in resource sectors. In 2023, analyses show a concerning prevalence of domestic violence, with Roma women, Egyptian women, and women with disabilities facing multiple forms of discrimination. According to a survey by the DeFacto Agency, 85% of citizens recognize a high frequency of psychological violence against women and girls, with partners being the most common perpetrators.

The Gender Equality Strategy sets forth objectives to improve the regulatory framework and increase the participation of women in key social sectors, as well as to reduce gender stereotypes, but it ignores crucial aspects of protecting victims of gender-based violence within the judicial system. The police, public prosecutors, and courts, although essential for prosecuting perpetrators, are not adequately involved in the operational measures of the Strategy.

Additionally, the National Plan for the Implementation of the Istanbul Convention for 2023 emphasizes the fight against domestic violence, while gender-based violence in other areas, such as rape, forced marriages, and sexual harassment, is only beginning to be addressed at the necessary level. Amendments to the Criminal Code, including the introduction of misdemeanor liability for domestic violence and new protective measures, represent progress, but there are still serious problems in preventive measures protection, as well as in the availability of victim support services.

Despite these efforts, the justice system still demonstrates insufficient gender sensitivity, making it difficult for victims to access justice, while social attitudes that minimize violence further undermine trust in institutions.

The main purpose and goals of the National Plan for the Implementation of the Istanbul Convention (2023-2027) focus on several key areas. The first goal is to protect women from all forms of violence, while preventing and eliminating violence against women and domestic violence. The second goal contributes to combating discrimination against women and promoting gender equality, including the empowerment of women. The third goal involves creating a comprehensive framework for the protection and assistance of victims of violence. The fourth goal emphasizes the enhancement of international cooperation in the fight against violence, while the fifth goal supports collaboration with organizations and law enforcement agencies to effectively eliminate violence.²

The plan also envisages harmonizing the legislative framework with international standards, strengthening institutional coordination, and providing specialized protection to victims of violence, including migrants and women in rural areas. It also focuses on preventing secondary victimization through training of experts and the development of programs for perpetrators of violence.

Among the key activities to achieve the goals is ensuring access for victims of violence to all relevant services, strengthening legal measures for effective combating of violence and forced marriages, and training relevant institutions on issues related to sexual violence, revenge pornography, and sexist hate speech. An important aspect is also ensuring specialized crisis centers for victims of violence and educating victims about their rights.

The 2023 Report on the Implementation of the Gender Equality Action Plan indicates progress, particularly in the area of integrating gender equality into public policies, education, and the media. It also reports on training for relevant institutions and legislative changes that enable better protection and legal safeguards for victims.

² *National Plan for the Implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) for the Period 2023-2027*, p. 15-16

2.3. NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

2.3.1. LEGAL FRAMEWORK

When it comes to the legal framework that regulates the subject area, following the restoration of independence in 2006, Montenegro has taken significant steps in creating and strengthening the legal framework for promoting and protecting gender equality, as well as for the special protection of the human rights of women and people with different sexual and gender identities, through the adoption of new laws and amendments to existing regulations. These laws, along with the relevant subsidiary legislation and strategic documents, are aimed at fulfilling the obligations of the Istanbul Convention, specifically focusing on punishing violence with effective, proportional, and deterrent sanctions, taking into account the severity of the criminal acts committed.³

According to the Constitution of Montenegro dated 2007,⁴ the state guarantees the equality of women and men and develops a policy of equal opportunities,⁵ prohibits all forms of direct and indirect discrimination on any grounds but also allows the enactment of regulations and the application of special measures aimed at creating conditions for achieving national, gender, and overall equality, as well as the protection of individuals in an unequal position for any reason (so-called positive discrimination), whereby special measures may only be applied until their objectives are achieved.⁶

Chapter on Human Rights and Freedoms⁷ of the Constitution of Montenegro details a wide range of rights and freedoms for citizens. Among other things, it establishes state obligations and guarantees fundamental human rights and freedoms, prohibits discrimination on any grounds, guarantees gender equality, dignity and security of the individual, inviolability of physical and mental integrity, privacy, and personal rights. It prohibits torture or inhumane and degrading treatment, and it guarantees freedom of movement and residence. The right to protection of equal rights and freedoms and to legal assistance is also guaranteed.⁸

Furthermore, the Constitution prescribes the primacy of international law over domestic legislation and provides for the direct application of international law when it regulates relations differently from domestic legislation.⁹ Article 81 of the Constitution establishes the institution of the Protector of Human Rights and Freedoms of Montenegro, which is an independent and autonomous body that takes measures to protect human rights and freedoms, functioning based on the Constitution, laws, and ratified international agreements, adhering to the principles of justice and fairness.

In the same year, the Law on Gender Equality was adopted,¹⁰ followed by the Law on Prohibition of Discrimination in 2010¹¹ and the Law on the Protector of Human Rights in 2011.¹² These laws further regulate the promotion and protection of these rights and create conditions for empowering women and individuals with different gender identities, and define priority areas

3 Article 9 of the Istanbul Convention

4 "Official Gazette of Montenegro", no. 1/2007 and 38/2013

5 Article 18

6 Article 8

7 Article 17-80

8 Article 19 and 21

9 Article 9

10 "Official Gazette of the Republic of Montenegro" no. 046/07 dated 31.07.2007, "Official Gazette of Montenegro" 073/10 dated 10.12.2010, 040/11 dated 08.08.2011 and 035/15 dated 07.07.2015

11 "Official Gazette of Montenegro", no. 046/10, 040/11, 018/14 and 042/1

12 "Official Gazette of Montenegro", no. 42/2011 and 32/2014

and objectives to help reduce gender inequality in all areas of social, economic, political, and cultural life.

The Law on Gender Equality defines discrimination based on gender, establishing that discrimination includes any legal or factual, direct or indirect making of distinctions or unequal treatment, or the omission of treatment toward one individual or group of individuals of one gender compared to individuals of another gender. It also addresses the exclusion, limitation, or preferential treatment of one individual or group of individuals of one gender over those of another gender, which impedes or denies recognition, enjoyment, or realization of human rights and freedoms in civil and political, economic, social, and cultural life, and in other areas of public and private life.

The law regulates the means of ensuring and realizing rights based on gender equality as well as measures for eliminating discrimination based on gender and creating equal opportunities for participation of women and men, as well as individuals with different gender identities, in all areas of social life. It defines the terms and obligations of state authorities, public administration authorities, local self-government, public institutions, public enterprises, and other legal entities exercising public authority, as well as other entities in the private sector. The use of masculine terms as a generic neutral form for both male and female genders is also considered discrimination based on gender under this law. Additionally, there is an obligation to gender-sensitize all instruments (normative and implementational) and strategies across all areas, as well as to enhance the capacity of all institutions for implementing gender equality policies.

Legal norms, which are directly related to the prohibition of discrimination and the realization of gender equality, also contain the following regulations:

- Family law
- Law on Social and Child Protection
- Law on Free Legal Aid
- Law on compensation for damages to victims of criminal acts of violence¹³
- Labor Law
- Law on employment and exercise of unemployment insurance rights
- Law on the Election of Councilors and Members of Parliament
- Law on the Constitutional Court of Montenegro
- Law on the Judicial Council and judges
- Law on the State Prosecutor's Office
- Law on Foreigners

As the most relevant for the narrowest topic of this Analysis, here we will refer to two in particular national regulations, namely: the Criminal Code of Montenegro,¹⁴ which incriminates acts which represent or may, depending on the case, represent acts with gender-based elements violence, and the Law on Protection from Domestic Violence¹⁵ in aspects related to misdemeanor liability and protective measures, especially for the reason that very often those accused of crimes with gender elements based violence should be persons who have been previously convicted or at least reported for committing it offenses provided for in this Law. From the procedural

¹³ This law entered into force on the eighth day from the day of its publication in the "Official Gazette of Montenegro", but his application begins on the day of Montenegro's accession to the European Union

¹⁴ "Official Gazette of the Republic of Montenegro", no. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", no. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018, 3/2020, 26/2021 - correction, 144/2021 and 145/ 2021 and 110/2023

¹⁵ "Official Gazette of Montenegro", no. 046/10 dated 06.08.2010, 040/11 dated 08.08.2011

legal aspect, the Code should be taken into account on criminal proceedings,¹⁶ although it does not contain provisions that specifically refer to criminal offenses the element of violence against women and gender-based violence and the Law on Misdemeanors¹⁷ which regulates the procedure in which perpetrators of misdemeanors are prosecuted in general, including misdemeanors related to gender-based violence, as well as the Protocol on treatment, prevention and protection from domestic violence.¹⁸

The Criminal Code, in accordance with the established international and national legal framework in subject area, incriminates the following criminal acts:

- Unauthorized termination of pregnancy (Art. 150)
- Female genital mutilation (Art. 151a)
- Forced sterilization (Art. 151b)
- Violation of equality (Art. 159)
- Unlawful deprivation of liberty (Art. 162)
- Abuse (Art. 166a)
- Persecution (Art. 168a)
- Misuse of someone else's video, photo, portrait, audio recording or writing with sexual content explicit content (Art. 175a)
- Rape (Art. 204)
- Promise to an incapacitated person (Art. 205)
- Promise with a child under the age of fourteen (Art. 206)
- Promise by abuse of position (Art. 207)
- Illicit sexual acts (Art. 208)
- Pimping and facilitating sexual intercourse (Art. 209)
- Mediation in prostitution (Art. 210)
- Exploitation of children for pornography (Art. 211)
- Inducing a child to witness the commission of criminal acts against sexual freedom (Article 211a)
- Enticing a child under the age of fourteen in order to commit crimes against sex freedom (Art. 211b)
- Sexual harassment (Art. 211c)
- Violation of measures of special supervision (Art. 211d)
- Extramarital union with a minor (Art. 216)
- Violence in the family or in the family community (Art. 220)
- Incest (Art. 223)
- Racial and other discrimination (Art. 443)
- Human trafficking (Art. 444)

According to the Criminal Code, members of the family or family union are considered married or the common-law spouse, their common children and the children of each of them, the partner in the community of life persons of the same sex and children of each partner, blood relatives and relatives from adoption in the direct line without restrictions, and in the collateral line up to and including the fourth degree, in-laws up to and including second degree, partner in an intimate relationship, persons living in the same family household and persons who have a child together or a child is about to be born even though they have never lived in the same house

¹⁶ "Official Gazette of Montenegro", no. 57/2009, 49/2010, 47/2014 - Decision of the US of Montenegro, 2/2015 - Decision of the US of Montenegro, 35/2015 (Art. 88-91 are not in the revised text), 58/2015 - other law, 28/2018 - Decision of the US of Montenegro, 116/2020 - Decision of the US of Montenegro, 145/2021, 54/2024 and 58/2024 - correction, v. Decision US CG - 87/2023

¹⁷ "Official Gazette of Montenegro", no. 001/11, 006/11, 039/11, 032/14, 043/17 and 051/17

¹⁸ Signed in Podgorica, September 28, 2018, <https://wapi.gov.me/download-preview/79717111-a1b3-45e8-993b-ae34ade4f861?version=1.0>

family household. Former spouses are also considered members of the family or family union or common-law spouses, former same-sex partners, former in-laws ending with the second degree and former partners in an intimate relationship.

Defining the concept of family member or family union in this way includes marital and common-law spouses, same-sex partners, intimate partners, etc and ex-spouses and partners, thus harmonizing the national legislation with Istanbul's convention and its definition of violence based on gender, unlike the Law on Gender of equality that recognizes gender-based violence. Exactly the GREVIO, in its Report for Montenegro from 2018 stated that "the current definition of gender-based violence that provides The Law on Gender Equality does not comply with the definitions of 'violence against women' and 'gender based on violence,' as stated in Article 3 of the Convention", so this issue is relatively quick resolved by subsequent amendments to the Criminal Code.

The Law on Protection from Domestic Violence defines domestic violence as the act or omission of a member family that endangers physical, psychological, sexual or economic integrity, mental health and the tranquility of another family member, regardless of the place where it was done,¹⁹ is regulated by who considers a member of the family and foresees that the victim of violence has the right to psychosocial and legal assistance and social and medical protection, in accordance with the law, as well as that the protection of the victim is ensured and imposing protective measures. Special assistance and protection, according to this Law, is enjoyed by the victim who is a child, an elderly person, a person with a disability and a person who is not capable of taking care of himself.²⁰ Procedures which are related to protection from this type of violence are regulated as urgent,²¹ and as the institutions that implement them is recognized by the administrative body responsible for police affairs, i.e. the police, the authority for misdemeanors, i.e. courts for misdemeanors, state prosecutor's offices, centers for social work and other social and child protection institutions, health institutions, other authorities and institutions dealing with this field, as well as non-governmental organizations, other legal and natural persons who can provide protection in accordance with the law.²²

The Law on Protection from Domestic Violence regulates in detail the forms of violence, establishes the right to free legal aid²³ and that this protection is realized in accordance with the strategy of protection against domestic violence which contains: 1) assessment of the situation and identification of key problems in social and other protection; 2) goals and measures to improve social and other protection, especially in connection with: raising the level of awareness citizens about the problem of violence and forming attitudes about the unacceptability of violence; program development for the prevention of violence; supporting the family in the prevention of violence; further development of the normative framework in the field of protection; by strengthening the cooperation of authorities, institutions, organizations and other legal and natural persons which deal with protection; by acquiring new knowledge and skills of all those involved in protection; improvement system for collecting and analyzing data and reporting on cases of violence.²⁴ Activities for implementation of goals and measures from Para. 1 Point. 2 of this Article are determined by the action plan for implementation Strategies. The strategy and action plan for the implementation of the Strategy are adopted by the Government of Montenegro.²⁵

19 Article 1

20 Article 4

21 Article 6

22 Article 5

23 Article 8 and 13

24 Article 18

25 Article 18; This is the basis for the adoption of the National Strategy and Plan, which are detailed in the National Strategic Framework subchapter of this Analysis

As protective measures, the Law on Protection from Domestic Violence foresees and regulates in more detail:

1. removal from the apartment or other living space
2. restraining order
3. prohibition of harassment and stalking
4. mandatory addiction treatment
5. mandatory psychosocial treatment.²⁶

Furthermore, the Law regulates in detail the procedure for the determination of protective measures,²⁷ the corresponding application provisions of the law regulating the work and powers of the police, misdemeanor procedure, criminal procedure, criminal sanctions and their application and execution,²⁸ as well as the misdemeanor liability of the member family, misdemeanor liability for neglect, liability for failure to follow orders and misdemeanor liability of another person (responsible person in a state authority, another authority, health, educational and other institutions, health and social worker, teacher, educator and another person if he does not report the violence committed to the police that he learns about in the course of his duties, a person who within the scope of his work, learns that the perpetrator of violence is not acting in accordance with the protective order measure and does not notify the authority for misdemeanors, the center for social work or another institution social and child protection, the police or the state prosecutor).²⁹ As the purpose of imposing measures, the law provides preventing and suppressing violence, eliminating the consequences of violence and taking effective measures measure of re-education of perpetrators of violence i removal of circumstances that favor or encourage the performance new violence.³⁰

An important aspect of the protection of women and especially children from domestic violence is also their social protection. Earlier this year, a Study on the Compliance of the Law on Social Security was published on this topic and child protection and the Istanbul Convention.³¹ The Study states that the issue of victim protection will be addressed by the Strategy for the Development of the Social and Children's System protection, which is expected to be adopted in 2024, as well as that Montenegro has several regulations with a gender-neutral concept of human rights protection in the context of violence, but that it is not fully harmonized the legislation with the standards of the Istanbul Convention.³² The author of the Study believes that the Law on Social and Child Protection of Montenegro, in order to harmonize it with the Istanbul Convention, should be further improved, especially in terms of "explicit recognition and addressing of gender based violence, resource and infrastructure improvements, specialized services, improvements intersectoral cooperation, as well as control of the work of service providers in order to ensure quality and responsible support for users. Further reforms and adjustments to the law, taking into account international standards and recommendations, can contribute to the strengthening of the social protection system and a better protect all vulnerable groups in Montenegro."³³

26 Article 20-25

27 Article 26-34

28 Article 35

29 Article 36-39

30 Article 19

31 Women's Safe House: A Study of the Compliance of the Law on Social and Child Protection and the Istanbul Convention <http://szk.co.me/wp-content/uploads/2024/10/kompletna-STUDIJA.pdf>

32 Ibidem, page 6

33 Ibidem, page 15

The Law on Social and Child Protection prescribes “prohibition of discrimination of beneficiaries on the basis of race, gender, age, nationality, social origin, sexual orientation, religion, political, trade union or other affiliation, property status, culture, language, disability, of the nature of social exclusion, belonging to a certain social group or other personal characteristic”; defines that “a family consists of married or common-law partners and children (marital, non-marital, adopted and stepchildren) and relatives in the direct line regardless of the degree of kinship, as well as relatives in collateral line including other relatives who live together; a child who does not live in the family if is in regular education in high school, until the end of the term prescribed for that education and married a friend regardless of where he lives”. Therefore, although the Law prohibits discrimination based on gender, it does not recognize it does not explicitly define gender-based discrimination or gender-based violence.³⁴

Consequently, as one of the key shortcomings of the Law on Social and Child Protection, the author sees the lack of explicit definition and recognition of gender-based violence. This means that the Law it does not provide a clear basis for the development of specific measures and policies that would directly address this problem. As a result, there is a risk that protection and support measures for victims are not fully implemented adapted to their specific needs.³⁵

2.3.2. INSTITUTIONAL FRAMEWORK

When discussing the institutional framework in the field of domestic violence and gender-based violence, it is most appropriate to start with the Law on Protection from Domestic Violence, bearing in mind that a significant percentage of criminal offenses in which women are victims arise from the criminal offense under Article 220 of the Criminal Code of Montenegro-violence in a family or family community (domestic violence). Article 5 of this Law identifies the following as key institutions involved in protection: the administrative authority responsible for police affairs (the Police), the authority for misdemeanors (the Misdemeanor Court), the State Prosecutor's Office, the Center for Social Work or other institutions for social and child protection, healthcare institutions, as well as other authorities and institutions engaged in providing protection.

Additionally, relevant institutions include the Ministry of Human and Minority Rights, the Protector of Human Rights and Freedoms of Montenegro, and the Center for Social Work.

Due to their importance, the roles of the police, prosecution, and judiciary-key institutions in proceedings concerning violence against women and gender-based violence-will be analyzed in the following subsection. This section briefly examines other significant institutions.

The Ministry of Human and Minority Rights, among other responsibilities, is involved in protection and improvement of the implementation of equal opportunities policies, preparing proposals and coordinating the monitoring of the application of the Law on Gender Equality and the National Gender Equality Strategy, coordinating activities aimed at establishing gender equality, providing expert support in the preparation of local action plans for the establishment of gender equality, monitoring the implementation of international documents and conventions, adopted international standards in the field of gender equality, and promoting activities focused on gender equality education.

Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is an independent and autonomous institution, whose task is to take measures to protect human rights and freedoms, as well as measures to protect against discrimination. Of the four areas of work this

³⁴ Ibidem, page 16

³⁵ Ibidem.

institution is involved in, one relates to the protection from discrimination, vulnerable groups, and gender equality.

The Protector of Human Rights and Freedoms plays a significant role in coordinating, analyzing, and improving the institutional response to gender-based violence, including violence against women. Through its activities, the Ombudsman provides unified data, conducts research and analyses, and makes recommendations for improving the work of relevant authorities. The Ombudsman's annual reports include a section dedicated to domestic violence and gender-based violence.

Periodic training of professionals in the field of law, particularly regarding the Law on the Prohibition of Discrimination and issues related to criminal and misdemeanor procedures, is another key activity of the Ombudsman. This training pays special attention to handling cases of domestic violence.

Finally, the Ombudsman relies on good judicial practices based on final decisions in its work. In cases of abuse of procedural authority or delays in proceedings, the Ombudsman is authorized to take appropriate measures to ensure an efficient and fair process for the victims.

The powers of the **Center for Social Work** are based on the Law on Social and Child Protection,³⁶ with special measures for the protection from domestic violence and violence against women. The Center for Social Work is required to record all reports of violence, including anonymous ones. Upon receiving information, it immediately contacts the victim and notifies the police in an appropriate manner.

During each contact, the protection of the identity of the reporter and the victim is ensured. The case manager, selected based on their competencies, forms an internal team of experts as needed, especially when the victims are children. Victims are provided with privacy during the conversation, where they receive support, their rights and options are explained, including free legal assistance. If other family members are also victims, the police are notified individually for each of them.

Special attention is given to the protection of children and other vulnerable groups within the family, with an assessment of the possibility of appointing a special guardian and considering placement in a shelter or foster family, if necessary. The Center ensures multidisciplinary cooperation with other institutions and coordinates all measures. The victim's safety is monitored through protection plans, which include integrated services and crisis plans.

At all stages, the Center records the actions taken, reports to the court, and provides relevant institutions with access to information in accordance with the law.

In addition to these, we can also mention the **Committee for Gender Equality of the Parliament of Montenegro**, which, among other things, considers proposals for laws, other regulations, and general acts related to the implementation of the principle of gender equality, participates in the preparation, drafting, and harmonization of laws and other acts with international standards, promotes the signing of international documents addressing this issue, monitors their implementation, and assesses the alignment of Montenegro's laws with the legal acquis of the European Union. Based on the Government's reports, it also monitors and evaluates

³⁶ "Official Gazette of Montenegro", no. 027/13 dated 11.06.2013, 001/15 dated 05.01.2015, 042/15 dated 29.07.2015, 047/15 dated 18.08.2015, 056/16 dated 23.08.2016, 066/16 dated 20.10.2016, 001/17 dated 09.01.2017, 031/17 dated 12.05.2017, 042/17 dated 30.06.2017, 050/17 dated 31.07.2017, 059/21 dated 04.06.2021, 145/21 dated 31.12.2021, 145/21 dated 31.12.2021, 003/23 dated 10.01.2023

the application of laws. Additionally, there is the **National Council for Gender Equality**, a professional advisory body established in 2016, which deals with the consideration of issues related to the implementation of gender equality policies at the national and local levels, as well as the review and application of regulations related to gender equality.

Gender equality issues at the national level are also addressed by the **Operational Team (of the Government of Montenegro)** for the fight against domestic violence and violence against women. Furthermore, the **State Audit Institution** should not be overlooked, as it examines gender equality from a budgeting perspective, which is an important aspect of the fight against gender-based violence.³⁷ Also, there are councils or similar bodies that are internally formed by institutions and legal entities.

2.4. JUDICIAL PROTECTION IN CASES OF VIOLENCE AGAINST WOMEN AND GENDER-BASED VIOLENCE

Judicial protection in cases of violence against women and gender-based violence in Montenegro involves the actions of the police, prosecutor's office, and courts through specific mechanisms for supporting and protecting victims. The starting point is the work of the police, which is the first to come into contact with the victim and takes urgent protective measures. The police play a key role in receiving reports of violence, ensuring the victim's physical safety, and preventing contact with the perpetrator.

Under the Law on Internal Affairs,³⁸ police officers are obligated to record every report (Article 64). Any report containing at least basic information, such as the location of the event or the identity of the victim or perpetrator, triggers mandatory action by the police.

After receiving a report, officers are required to promptly go to the scene, ensure the presence of at least two police officers (preferably of different genders), and immediately assess the situation. At the scene, the police ensure the victim's physical safety and strive to prevent any contact between the victim and the perpetrator, avoiding both verbal and nonverbal communication that could compromise the victim's statement. During these interventions, police officers interview the victim and the perpetrator separately, using risk and safety assessment questionnaires to obtain accurate information about the incident.

Furthermore, the police document and identify all individuals present, collecting personal information and photographic evidence as required by law. Officers verbally inform the perpetrator of their rights and provide the victim with written information and instructions, including contact details for assistance organizations. The police may suggest that the victim undergo a medical examination and submit the findings to the relevant institutions.

If there are indications of weapon possession, police officers take measures to confiscate the weapon to enhance the safety of the victim and the community. Additionally, they always contact the state prosecutor to direct further proceedings and, if necessary, detain the perpetrator. The police review the history of violence in domestic violence cases to identify the primary aggressor and make informed decisions for future actions.

37 v. DRI: *Success Audit – Effectiveness of Gender- Responsive Budgeting Implementation in Montenegro – final report*, Podgorica, December 29, 2023. Link: <https://www.dri.co.me/doc/lzvje%C5%A1taj%20o%20reviziji%20uspjeha%20%E2%80%9EUspje%C5%A1nost%20sprovo%C4%91enja%20rodno%20odgovornog%20bud%C5%BEetiranja%20u%20Crnoj%20Gori%E2%80%9D.pdf>

38 "Official Gazette of Montenegro", no. 70/2021, 123/2021, 3/2023 and 84/2024.

In cases where a moderate or high risk to the victim's safety is assessed, police officers can immediately issue an order to remove the perpetrator from the residence. At the victim's request, the police can arrange transportation to a shelter or crisis center while maintaining confidentiality. Additionally, in situations where children are direct or indirect victims of violence, the police take extra measures to ensure their safety and contact the relevant institutions if necessary.

Police officers report every case of violence to the Center for Social Work using information systems and are required to collaborate with social workers in creating and implementing a victim protection plan. All actions taken by the police are documented in a special registry, and relevant information is shared with professional teams monitoring the case.

Regarding **the role of the prosecutor's office**, the state prosecutor directly guides the actions of the police by issuing binding orders for their conduct and overseeing the execution of these actions. In practice, the prosecutor files and represents indictments and charges before the basic courts.

Within their authority, the prosecutor may submit an oral or written request to the court for the search of the accused's residence, other premises, and movable property. Additionally, in accordance with the Istanbul Convention, the prosecutor proposes special protective measures for the victim, including specific methods of testimony to reduce risks to their health and safety.

In cases where deemed necessary, the prosecutor submits a request to the court for the imposition of supervision measures on the perpetrator, which may include prohibiting access to certain locations, requiring periodic reporting to a designated state authority, or forbidding contact with specific individuals. If the legal prerequisites are met, the prosecutor may also propose pretrial detention for the perpetrator of the violence.

The prosecutor is authorized to file appeals against court decisions when there are grounds to do so, as well as to regularly inform the police about all complaints that have been dismissed, initiated, or processed, using standardized forms for documenting and tracking the status of each case. Additionally, when proceedings are initiated by the prosecutor's office or another authority, rather than the police, the prosecutor is obligated to inform the police about the status of the case, ensuring timely coordination between institutions.

Regarding **judicial protection**, the basic court (of appropriate territorial jurisdiction) has **first-instance** jurisdiction over criminal offenses for which the law prescribes a fine or a prison sentence of **up to ten years as the primary punishment**. Meanwhile, the **higher court** has **first-instance** jurisdiction over criminal proceedings for offenses for which a **prison sentence of more than ten years** is prescribed as the primary punishment, as well as for the following explicitly listed criminal offenses: manslaughter, rape, abuse of position in economic affairs under Article 272, Paragraph 3 of the Criminal Code of Montenegro, endangering the safety of air traffic, unauthorized production, possession, and distribution of narcotic drugs, incitement to violent change of constitutional order, disclosure of classified information, incitement of national, racial, and religious hatred, discord, and intolerance, violation of territorial sovereignty, conspiracy for anti-constitutional activities, preparation of acts against the constitutional order and security of Montenegro, and crimes against humanity and other rights protected by international law.

The obligations of courts and prosecutors towards victims of violence include comprehensive measures of information, protection, and support. Victims must be informed of their rights, including the right to free legal aid, the right to support from victim and witness services, and the option to engage a trusted person. All proceedings must be conducted without unnecessary delays and with urgency that reflects the seriousness of the offense. Courts are required

to provide written notice of the victim's rights when summoning them, along with contact information for support services.

To prevent secondary victimization and intimidation, victims must be allowed to avoid contact with the perpetrator, except in specific situations required by the court. In cases where there is a risk to the victim's testimony, the court may impose special supervision measures on the perpetrator, such as prohibiting visits to certain locations or access to specific individuals. Special attention is given to children as victims, requiring additional protective measures, such as excluding the public from hearings and ensuring careful reporting by the media.

Technical means, such as devices for transmitting audio and video, may be used to allow the victim to testify without being physically present in the courtroom. In exceptional cases, when evidence is contradictory, a confrontation between the victim and the perpetrator may be necessary, but the court must assess the victim's readiness for such a step.

Courts are also obliged to verify whether the perpetrator is involved in any other proceedings for crimes involving elements of violence and to obtain opinions and available information from the relevant Center for Social Work, especially in cases involving violence against a child. The basic court deciding on marital disputes or making custody decisions must have information on any misdemeanor or criminal proceedings against the parents.

When deciding on sanctions, courts should take into account the aggravating circumstances provided in Article 46 of the Istanbul Convention. This includes considering factors such as recidivism, possession of weapons, the presence of children during the act of violence, the manner and duration of the violence, inflicted injuries, the age of the victim, and other relevant circumstances that further aggravate the situation.

Additionally, in every procedure related to domestic violence, the court is obliged to obtain all available information and opinions about the family from the competent Center for Social Work. If the victim of violence is a child, it is necessary to ensure the family's anamnesis, which can assist in a more comprehensive understanding of the context and history of family violence. Following the initiation of proceedings, the court is required to notify the Centers for Social Work, especially in cases where the victim is a child.

RESEARCH METHODOLOGY

The Center for Monitoring and Research (CeMI) previously developed and verified a methodology for collecting and analyzing data through the review of documentation from legally concluded court proceedings. This methodology was created in collaboration with the OSCE Mission in 2007 as part of a trial monitoring project.

For the purposes of this project, CeMI revised and adapted the existing approach to focus specifically on collecting data related to court cases involving violence against women and gender-based violence. In line with the project's clearly defined scope, the focus was on court cases initiated and concluded between 2020 and 2024, concerning cases where women were victims and men were perpetrators. These included instances of domestic violence or violence within a family unit, rape, unlawful sexual acts, abuse, stalking, and similar offenses.

The project and research focus, therefore, extends beyond gender-based violence to encompass violence against women in a broader sense. Consequently, the sample of monitored cases also includes criminal acts against life and physical integrity, such as murder, aggravated murder, and both minor and serious bodily injuries.

Special attention was given to ensuring the alignment of judicial practice in cases of violence against women and gender-based violence with international standards. These include the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and the case law of the European Court of Human Rights.

To ensure precise and consistent data collection, CeMI developed standardized forms, which the project team used during court visits. These forms were designed in accordance with the adapted methodology and facilitated a systematic approach to data collection through direct access to files of legally concluded cases from all basic courts as well as both higher courts in Montenegro. The questionnaires were completed directly during these reviews, and the data was subsequently processed using a software tool developed by CeMI for trial monitoring and court documentation analysis in previous projects. This application was enhanced with a new module specialized for inputting and analyzing data on criminal offenses involving violence against women and gender-based violence.

The collected statistical data was then thoroughly analyzed and qualitatively processed through desk research, which included a review of relevant literature, legislation, policies, case studies, and reports on violence against women. Through this process, the project team analyzed existing data and materials to gain insight into the current situation, previously implemented strategies and their outcomes, as well as to identify key trends and gaps in the research.

REVIEW OF COURT PRACTICES IN CASES OF CRIMINAL OFFENSES INVOLVING GENDER-BASED VIOLENCE AND ANALYSIS OF RESEARCH FINDINGS

4.1. SAMPLE

In accordance with the methodology defined by the project itself, the monitors reviewed the case files of final judgments from all basic courts in Montenegro, i.e., all 15 of them, as well as both higher courts, the Higher Court in Podgorica and the Higher Court in Bijelo Polje. Below is an overview of the number of cases processed by the courts.

Table 1

Court	No. of domestic violence cases reviewed by monitors
Basic Court Bar	9
Basic Court Berane	10
Basic Court Bijelo Polje	14
Basic Court Cetinje	4
Basic Court Danilovgrad	9
Basic Court Herceg Novi	10
Basic Court Kolašin	9
Basic Court Kotor	10
Basic Court Nikšić	4
Basic Court Plav	9
Basic Court Pljevlja	10
Basic Court Podgorica	31
Basic Court Rožaje	9
Basic Court Ulcinj	4
Basic Court Žabljak	5
Higher Court Bijelo Polje	4
Higher Court Podgorica	3
BASIC COURTS	147
HIGHER COURTS	7
ALL COURTS	154

It is important to note that the reviewed cases were formed between 2020 and 2024, and became final during the period of review, i.e., from June to November 2024. The uneven distribution of reviewed cases does not solely indicate the frequency of criminal acts with elements of gender-based violence (violence against women) in the territory covered by the jurisdiction of a particular court but is also influenced by the volume and complexity of the cases themselves, as well as the technical conditions related to the time and space in which the reviews were conducted in individual courts. This especially applies to the reviews carried out by the monitors in the Higher

Courts in Podgorica and Bijelo Polje. The low frequency of this type of criminal offense was the sole reason for the small sample size in the Capital Cetinje, as well as in the Municipalities of Ulcinj and Žabljak, while the relatively large territory of the Bar Municipality explains the noticeably low frequency of this type of crime. Furthermore, the willingness or unwillingness of victims to report violence should not be overlooked, as it certainly impacts the sample size and may or may not be related to territorial factors.

Below are the numerical and percentage representations of cases where the victim had previously reported or not reported the violence.

4.2. RPRIOR REPORTING/NON-REPORTING OF VIOLENCE BY THE VICTIM

Table 2

Court	No. of domestic violence cases reviewed by monitors	Number and percentage of cases in which the victim had previously REPORTED the violence.		Number and percentage of cases in which the victim had NOT previously REPORTED the violence.	
Basic Court Bar	9	1	11,11%	8	88,89%
Basic Court Berane*	N/A	N/A	N/A	N/A	N/A
Basic Court Bijelo Polje	14	13	21,43%	11	78,57%
Basic Court Cetinje	4	2	50,00%	2	50,00%
Basic Court Danilovgrad	9	3	33,33%	6	66,67%
Basic Court Herceg Novi	10	3	30,00%	7	70,00%
Basic Court Kolašin	9	5	55,56%	4	44,44%
Basic Court Kotor*	N/A	N/A	N/A	N/A	N/A
Basic Court Nikšić	4	2	50,00%	2	50,00%
Basic Court Plav	9	4	44,44%	5	55,56%
Basic Court Pljevlja	10	5	50,00%	5	50,00%
Basic Court Podgorica	31	12	38,71%	19	61,29%
Basic Court Rožaje	9	0	0,00%	9	100,00%
Basic Court Ulcinj	4	0	0,00%	4	100,00%
Basic Court Žabljak	5	0	0,00%	5	100,00%
Higher Court Bijelo Polje	4	0	0,00%	4	100,00%
Higher Court Podgorica	3	0	0,00%	3	100,00%
BASIC COURTS	127	40	31,50%	87	68,50%
HIGHER COURTS	7	0	0,00%	7	100,00%
ALL COURTS	134	40	29,85%	94	70,15%

The highest, 100% share of cases in which the victim had not previously reported violence was observed in the Municipalities of Rožaje, Ulcinj, and Žabljak, as well as in cases from the Higher Courts in Podgorica and Bijelo Polje.

It is important to emphasize that these figures do not necessarily mean that violence did not

occur (on the contrary, data on the prior convictions of perpetrators often suggest otherwise)³⁹, but solely indicate that the victim did not report the violence to the competent authorities. It is also often a case during the hearings that information about previous instances of violence between the same perpetrator and victim comes to light. Additionally, it should be noted that the cases from the Higher Courts involved the most serious criminal offenses (such as aggravated murder, rape, etc.), which are more frequently committed under diminished or complete lack of responsibility, impulsively, or can, by nature, be done only once (e.g., murder). This contrasts with, for instance, domestic violence cases where victims may endure years of abuse, such as verbal insults or physical violence resulting in minor injuries that the victim does not report, nor seeks medical assistance for, in which case the attending physician would have documented evidence of violence.

With a slightly lower share, the Basic Courts in Bar and Bijelo Polje follow, while the highest percentage of cases in which the victim had previously reported violence was recorded in the Basic Courts in Kolašin, Cetinje, Nikšić, and Pljevlja. However, the fact that even in these jurisdictions the percentage is only around 50%, combined with data on the prior convictions of perpetrators,⁴⁰ suggests that fear of the perpetrator, concerns for one's own and one's children's livelihood if the relationship is abandoned, fear of societal condemnation, prejudices, and stereotypes, as well as deeply rooted traditional views of gender relations, often outweigh efforts to eliminate discrimination against women and violence against them. This is particularly true when it comes to encouraging women to report violence and providing adequate support and institutional, primarily judicial, responses. It cannot be overlooked that victims often continue to harbor feelings for the accused, convincing themselves that the perpetrator will change, and may even actively defend them during the proceedings. Additionally, cases where institutions fail to respond adequately to reports or even discourage the victim by emphasizing her contribution to the offense that harmed her cannot be ignored.

No.	Description
1	The victim had previously reported violence but withdrew the complaints "because she was ashamed," even though the accused had beaten her, threatened to beat and kill her, and consumed alcohol throughout the marriage.
2	The victim was unable to report the violence earlier because she was always monitored by the accused during phone communications.
3	The accused threatened the victim two years earlier during an argument; although, in her assessment, the threat was not serious, she reported him to the police. However, the police did not come and instead told her that she needed to come to the station herself to file a report, which she did not do. They reconciled that same evening.
4	As a mitigating circumstance during sentencing, it was considered that the accused had no prior issues with the victim, that she contributed to the commission of the crime as she was consuming alcohol during that period, and that the accused is the father of two children with autism.

³⁹ For detailed data on this, see Tables 7 and 8

⁴⁰ Ibidem

5	In the case of abuse by an intimate partner, the fact that the victim was found to have contributed to the incident by damaging the accused's vehicle was taken as a mitigating circumstance for the accused. However, the judgment itself indicates that the physical violence had already begun before the victim's "contribution," i.e., before she damaged the vehicle. This raises the question of whether all the elements of the offense of abuse were already established before the damage to the vehicle occurred, given that the violence continued afterward. It was not established that the violence would not have occurred or continued without the victim's "contribution." Additionally, considering that the violence had already started, the victim's actions were provoked by the accused's behavior, and her emotional state at the time was a result of the abuse she was subjected to. This raises further questions about how she can be held responsible for instigating the disputed incident.
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The same conclusion is supported by the fact that over 70% of cases, across all courts, involved victims who had not previously reported the violence.

4.3. JOINING THE CRIMINAL PROSECUTION BY THE INJURED PARTY

There is also a high percentage, nearly 66%, of victims who did not join the criminal prosecution, calculated across all courts. The highest rate, 100%, of cases where the victim did not join the prosecution was recorded in the jurisdiction of the Basic Court in Ulcinj. A percentage of 70% or more was observed in the jurisdictions of the basic courts in Berane, Bijelo Polje, Herceg Novi, Kolašin, Kotor, and Pljevlja. A low percentage, 25% or less, of victims who did not join the prosecution was recorded in the basic courts in Cetinje and Žabljak.

It should be noted that these statistics pertain to cases where the victim joined the prosecution during the main hearing or maintained that decision throughout the process, from the hearing before the Basic/High Prosecutor's Office to the end of the proceedings. The percentage of victims who declare before the Basic or High Prosecutor's Office that they will not join the prosecution is negligible. Most victims withdraw from prosecution during the later stages of the proceedings. According to statements made by victim witnesses documented in these cases, the reasons for withdrawal should be sought in the passage of time, reconciliation, or the definitive divorce/separation of partners that occurred in the interim. These reasons are likely frequent but are not always noted in the hearing records, as well as in the continued fear of the perpetrator. Here are a few examples observed in the reviewed cases:

No.	Description
1	The injured party did not join the criminal prosecution because she wants reconciliation, is expecting another child with the accused (a repeat offender), even though the court did not take her stance into account when deciding on the extension of custody.
2	The injured party herself requested the removal of the electronic monitoring device, explaining that it was "burdensome to wear, and the accused has calmed down."
3	The injured party defended the accused, who had previous convictions for domestic violence and attempted murder, claiming that the reason for the violence was that the accused had consumed a larger dose of an anticholinergic drug than prescribed.
4	The injured party did not join the criminal prosecution because she is now in a harmonious marital relationship with the accused and pleaded with the court not to convict him.
5	The injured party and the accused have since divorced but communicate regarding their child. The injured party herself sent a letter following the accused's appeal against the verdict, also requesting a reduced sentence for the sake of their son.

6	The injured party did not join the criminal prosecution; moreover, she stated that she would withdraw the complaint if it were possible.
7	Although she had previously reported violence, the injured party did not want to testify against her husband because they have been married for 52 years and have children together. She believes that he needs some form of help, as his mental condition is deteriorating.

Table 3

Court	Number of Cases of Violence Against Women Reviewed	Number and Percentage of Cases Where the Injured Party JOINED Criminal Prosecution		Number and Percentage of Cases Where the Injured Party DID NOT JOIN Criminal Prosecution	
Basic Court Bar	9	5	55,56%	4	44,44%
Basic Court Berane	10	1	10,00%	9	90,00%
Basic Court Bijelo Polje	14	4	28,57%	10	71,43%
Basic Court Cetinje	4	3	75,00%	1	25,00%
Basic Court Danilovgrad	9	3	33,33%	6	66,67%
Basic Court Herceg Novi	10	3	30,00%	7	70,00%
Basic Court Kolašin	9	2	22,22%	7	77,78%
Basic Court Kotor	10	2	20,00%	8	80,00%
Basic Court Nikšić	4	2	50,00%	2	50,00%
Basic Court Plav	9	4	44,44%	5	55,56%
Basic Court Pljevlja	10	1	10,00%	9	90,00%
Basic Court Podgorica	31	12	38,71%	19	61,29%
Basic Court Rožaje	9	3	33,33%	6	66,67%
Basic Court Ulcinj	4	0	0,00%	4	100,00%
Basic Court Žabljak	5	4	80,00%	1	20,00%
Higher Court Bijelo Polje	4	2	50,00%	2	50,00%
Higher Court Podgorica	3	2	66,67%	1	33,33%
HIGHER COURTS	147	49	33,33%	98	66,67%
HIGHER COURTS	7	4	57,14%	3	42,86%
ALL COURTS	154	53	34,42%	101	65,58%

The ratio of victims who joined versus did not join the prosecution closely matches the ratio of victims who had previously reported violence versus those who had not in areas under the jurisdiction of basic courts in Danilovgrad, Herceg Novi, Nikšić, Plav, Podgorica, and Ulcinj.

In areas such as Bar, Rožaje, Žabljak, and the higher courts in Podgorica and Bijelo Polje, fewer victims who previously reported violence joined the prosecution. Conversely, these same courts saw a higher number of victims who joined the prosecution despite not having previously reported violence.

Below, Table 4 presents the number and percentage of cases where the victim, who HAD previously reported violence, either DID or DID NOT join the criminal prosecution. Additionally,

Table 5 provides a breakdown of the number and percentage of cases where the victim, who HAD NOT previously reported violence, either DID or DID NOT join the criminal prosecution.

Table 4

Court	Number of Cases of Violence Against Women Reviewed	Broj i procenat Number and Percentage of Cases Where the Victim WHO HAD PREVIOUSLY REPORTED VIOLENCE Joined the Prosecution		Number and Percentage of Cases Where the Victim WHO HAD PREVIOUSLY REPORTED VIOLENCE Did NOT Join the Prosecution	
Basic Court Bar	9	1	11,11%	0	0,00%
Basic Court Berane*	N/A	N/A	N/A	N/A	N/A
Basic Court Bijelo Polje	14	0	0,00%	3	21,43%
Basic Court Cetinje	4	1	25,00%	1	25,00%
Basic Court Danilovgrad	9	1	11,11%	2	22,22%
Basic Court Herceg Novi	10	1	10,00%	2	20,00%
Basic Court Kolašin	9	1	11,11%	4	44,44%
Basic Court Kotor*	N/A	N/A	N/A	N/A	N/A
Basic Court Nikšić	4	1	25,00%	1	25,00%
Basic Court Plav	9	1	11,11%	3	33,33%
Basic Court Pljevlja	10	0	0,00%	5	50,00%
Basic Court Podgorica	31	5	16,13%	7	22,58%
Basic Court Rožaje	9	0	0,00%	0	0,00%
Basic Court Ulcinj	4	0	0,00%	0	0,00%
Basic Court Žabljak	5	0	0,00%	0	0,00%
Higher Court Bijelo Polje	4	0	0,00%	0	0,00%
Higher Court Podgorica	3	0	0,00%	0	0,00%
HIGHER COURTS	127	12	9,44%	28	22,04%
HIGHER COURTS	7	0	0,00%	0	0,00%
ALL COURTS	134	12	8,95%	28	20,89%

There is a noticeably low percentage of victims who had previously reported violence and joined the criminal prosecution in the current case – less than 10%. This percentage is 0% in higher courts, which may partly be due to the small sample size but also related to the nature of the offenses prosecuted in higher courts. Alarming, the percentage of those who had previously reported violence but did not join the prosecution is more than double. In this context, it would be prudent to question trust in institutions. A future study could use surveys and interviews with representatives from social work centers, free legal aid services, NGOs providing support to victims of domestic violence, and the victims themselves to gather more precise data. This could help identify the factors influencing a victim's decision to report violence or not, to join the criminal prosecution or not, as well as the reasons for the high percentage of victims who withdraw from prosecution during the proceedings.

Table 5

Court	Number of Cases of Violence Against Women Reviewed	Number and Percentage of Cases Where the Victim WHO HAD NOT PREVIOUSLY REPORTED VIOLENCE Joined the Prosecution		Number and Percentage of Cases Where the Victim WHO HAD NOT PREVIOUSLY REPORTED VIOLENCE Did NOT Join the Prosecution	
Basic Court Bar	9	4	44,44%	4	44,44%
Basic Court Berane*	N/A	N/A	N/A	N/A	N/A
Basic Court Bijelo Polje	14	4	28,57%	7	50,00%
Basic Court Cetinje	4	2	50,00%	0	0,00%
Basic Court Danilovgrad	9	2	22,22%	4	44,44%
Basic Court Herceg Novi	10	2	20,00%	5	50,00%
Basic Court Kolašin	9	1	11,11%	3	33,33%
Basic Court Kotor*	N/A	N/A	N/A	N/A	N/A
Basic Court Nikšić	4	1	25,00%	1	25,00%
Basic Court Plav	9	3	33,33%	2	22,22%
Basic Court Pljevlja	10	1	10,00%	4	40,00%
Basic Court Podgorica	31	7	22,58%	12	38,71%
Basic Court Rožaje	9	3	33,33%	6	66,67%
Basic Court Ulcinj	4	0	0,00%	4	100,00%
Basic Court Žabljak	5	4	80,00%	1	20,00%
Higher Court Bijelo Polje	4	2	50,00%	2	50,00%
Higher Court Podgorica	3	2	66,67%	1	33,33%
BASIC COURTS	127	34	26,67%	53	41,73%
HIGHER COURTS	7	4	57,14%	3	42,86%
ALL COURTS	134	38	28,35%	56	41,79%

It is somewhat encouraging that over 50% of victims who had not previously reported violence have now joined the prosecution in cases before higher courts. However, the percentage remains very low – just over 20% – for victims who joined the prosecution before basic courts. Not reporting violence previously does not mean that it did not occur. On the contrary, almost all victims, during police proceedings, indicated that physical violence had occurred before but was not reported in the hope that the situation would improve, to preserve the family for the sake of the children, or out of fear of the perpetrator. We did not record any instance where a victim stated that there had been no prior instances of at least verbal abuse, threats, blackmail, or similar behavior.

4.3.1. PCASES WHERE THE VICTIM'S FAILURE TO JOIN THE PROSECUTION WAS CONSIDERED A MITIGATING CIRCUMSTANCE

The issue of treating a victim's failure to join criminal prosecution as a mitigating circumstance during sentencing for gender-based violence has been addressed by the European Court of Human Rights. The Court held that the state is obligated to prosecute perpetrators of gender-based violence in the public interest, even if the victim withdraws from the prosecution, as such withdrawal often occurs due to fear or coercion.⁴¹ Therefore, this circumstance should not be considered a mitigating factor for the accused. Additionally, Article 55 of the Istanbul Convention mandates *ex parte* and *ex officio* proceedings, stating that: "Member States shall ensure that investigations and judicial proceedings concerning the criminal offences established in Articles 35, 36, 37, 38, and 39 of this Convention shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part on their territory and that proceedings may continue even if the victim withdraws their statement or complaint."

Despite this, the number and percentage of cases before basic courts where a victim's failure to join prosecution was treated as a mitigating circumstance for the accused remain high (33.33%). The highest percentage of such cases (70%) was recorded in the Basic Court in Pljevlja, followed by courts in Kotor and Bijelo Polje, while the lowest percentages were noted in courts in Podgorica, Danilovgrad, Rožaje, and Herceg Novi. It is notable that the fact that the victim did not join the prosecution was not considered a mitigating circumstance in any of the reviewed cases before higher courts. This is particularly significant given that these cases involve incidents of violence that were not previously reported, and the number of instances where victims joined the prosecution is fairly equal to those where they did not. A topic for future research could be whether this is a result of the consistency of judicial practices in higher courts, which may lack sufficient influence on the practices of basic courts, or whether it reflects that judges in cases involving the most serious crimes base their judicial reasoning more on the social danger of the crime and the perpetrator's attitude toward the act, rather than on the victim's actions.

Table 6

Court	Number of Cases of Violence Against Women Reviewed	Number and Percentage of Cases Where Victim's Failure to Join Prosecution Was a Mitigating Circumstance	
		Number	Percentage
Basic Court Bar	9	4	44,44%
Basic Court Berane	10	5	50,00%
Basic Court Bijelo Polje	14	8	57,14%
Basic Court Cetinje	4	1	25,00%
Basic Court Danilovgrad	9	1	11,11%
Basic Court Herceg Novi	10	2	20,00%
Basic Court Kolašin	9	3	33,33%
Basic Court Kotor	10	6	60,00%
Basic Court Nikšić	4	2	50,00%
Basic Court Plav	9	4	44,44%
Basic Court Pljevlja	10	7	70,00%

⁴¹ Opuz v. Turkey, Application No. 33401/02, June 9, 2009

Basic Court Podgorica	31	3	9,68%
Basic Court Rožaje	9	1	11,11%
Basic Court Ulcinj	4	2	50,00%
Basic Court Žabljak	5	0	0,00%
Higher Court Bijelo Polje	4	0	0,00%
Higher Court Podgorica	3	0	0,00%
BASIC COURTS	147	49	33,33%
HIGHER COURTS	7	0	0,00%
ALL COURTS	154	49	31,82%

In cases where the failure to join the prosecution was considered a mitigating circumstance, there were generally no aggravating circumstances against the accused. However, in 14 cases, exceptions were observed.

Specifically, in two cases, the accused had previously been penalized under the Law on Protection from Domestic Violence, in three cases, the victim's failure to join the prosecution was considered a mitigating circumstance despite the practice of the European Court of Human Rights and even though:

- *The accused frequently harassed and beat the victim, less so when sober but always when intoxicated. A previous proceeding had resulted in a conviction for the same criminal offense against the same victim. After this, the victim moved in with her parents but returned to her husband after he promised never to beat her again. In the first judgment, the accused was sentenced to three months of imprisonment; in this case, he was sentenced to five months;*
- *The victim had previously reported violence and feared it would recur, as the accused had issues with alcohol use, endangering family members, including children. The victim expressed fear, had visible physical injuries, and required immediate medical care. In the meantime, the victim "reconciled" with the accused and requested the removal of the restraining order, which the court then annulled;*
- *The victim did not join the prosecution on her behalf or on behalf of her minor son. However, aggravating circumstances existed against the accused, including prior convictions for similar offenses against the victim, persistence in committing the crime, and the emotional harm caused to their minor son, who also has Down syndrome.*

4.4. PREVIOUS CONVICTIONS OF THE ACCUSED

Recidivism is a significant issue in cases of gender-based violence, particularly domestic violence. Nearly 50% of perpetrators reviewed in this study were repeat offenders. In 15.65% of cases before basic courts (34.36% of cases involving recidivists), the perpetrator had prior convictions for identical or similar crimes. In higher courts, approximately 60% of perpetrators were recidivists, but none had prior convictions for identical or similar crimes, likely reflecting the distinct nature of cases tried in higher courts.

The highest recidivism rates (over 50%) were recorded in the Basic Court in Nikšić (75%), followed by the Higher Court in Podgorica (66.67%), and the Basic Courts in Danilovgrad and Podgorica. The lowest rate was in Rožaje (11.11%). Among all the reviewed cases, the highest percentage of repeat offenders (special recidivists) was observed in the Basic Courts of Danilovgrad, Kolašin, and Podgorica (44.44%, 33.33%, and 29.03%, respectively). In contrast, no *special recidivists* were identified in cases handled by the Basic Courts in Cetinje, Kotor, Plav,

Rožaje, Ulcinj, and Žabljak, as well as in cases before the Higher Courts in Podgorica and Bijelo Polje.

Within the reviewed sample, in 12 cases, the accused had been convicted more than five times previously (with a maximum of 12 prior convictions). Additionally, five cases involved accused individuals who had previously been penalized under the Law on Protection from Domestic Violence.

Table 7

Court	Number of Cases of Violence Against Women Reviewed	Number and Percentage of Accused with Prior Convictions		Number and Percentage of Accused with Prior Convictions for Identical/Similar Crimes	
Basic Court Bar	9	5	55,56%	1	11,11%
Basic Court Berane	10	4	40,00%	1	10,00%
Basic Court Bijelo Polje	14	6	42,86%	2	14,29%
Basic Court Cetinje	4	2	50,00%	0	0,00%
Basic Court Danilovgrad	9	6	66,67%	4	44,44%
Basic Court Herceg Novi	10	4	40,00%	1	10,00%
Basic Court Kolašin	9	4	44,44%	3	33,33%
Basic Court Kotor	10	4	40,00%	0	0,00%
Basic Court Nikšić	4	3	75,00%	1	25,00%
Basic Court Plav	9	3	33,33%	0	0,00%
Basic Court Pljevlja	10	5	50,00%	1	10,00%
Basic Court Podgorica	31	17	54,84%	9	29,03%
Basic Court Rožaje	9	1	11,11%	0	0,00%
Basic Court Ulcinj	4	2	50,00%	0	0,00%
Basic Court Žabljak	5	1	20,00%	0	0,00%
Higher Court Bijelo Polje	4	2	50,00%	0	0,00%
Higher Court Podgorica	3	2	66,67%	0	0,00%
BASIC COURTS	147	67	45,58%	23	15,65%
HIGHER COURTS	7	4	57,14%	0	0,00%
ALL COURTS	154	71	46,10%	23	14,94%

4.4.1. CASES WHERE THE VICTIM PREVIOUSLY REPORTED VIOLENCE AND THE ACCUSED HAD PRIOR CONVICTIONS/HAD PRIOR CONVICTION FOR IDENTICAL OR SIMILAR CRIMES

Data on the relationship between the victim's prior reporting of violence and the accused's prior convictions (general or special recidivism) indicate alarmingly low reporting rates. Specifically, victims living with or in relationships with individuals known to commit criminal acts report violence in only 14.94% of cases across all courts. This rate is even lower (11.04%) in cases where the accused had prior convictions for identical or similar crimes. Moreover, in cases

tried before higher courts, prior reporting of violence by victims remains at 0%. The causes of this situation should not be reduced solely to personal choices of victims when selecting partners (a stereotype prevalent in less developed societies) but are more likely rooted in fear of the perpetrator, economic dependence, lack of financial independence to support oneself and children, and distrust in institutions.

Table 8

Court	Number of Cases of Violence Against Women Reviewed	Number and Percentage of Cases Where Victim Previously Reported Violence and Accused Had Prior Convictions		Number and Percentage of Cases Where Victim Previously Reported Violence and Accused Had Convictions for Identical/Similar Crimes	
Basic Court Bar	9	1	11,11%	0	0,00%
Basic Court Berane	10	N/A	N/A	N/A	N/A
Basic Court Bijelo Polje	14	2	14,29%	2	14,29%
Basic Court Cetinje	4	1	25,00%	0	0,00%
Basic Court Danilovgrad	9	3	33,33%	2	22,22%
Basic Court Herceg Novi	10	1	10,00%	1	10,00%
Basic Court Kolašin	9	3	33,33%	3	33,33%
Basic Court Kotor	10	N/A	N/A	N/A	N/A
Basic Court Nikšić	4	1	25,00%	1	25,00%
Basic Court Plav	9	1	11,11%	0	0,00%
Basic Court Pljevlja	10	2	20,00%	1	10,00%
Basic Court Podgorica	31	8	25,81%	7	22,58%
Basic Court Rožaje	9	0	0,00%	0	0,00%
Basic Court Ulcinj	4	0	0,00%	0	0,00%
Basic Court Žabljak	5	0	0,00%	0	0,00%
Higher Court Bijelo Polje	4	0	0,00%	0	0,00%
Higher Court Podgorica	3	0	0,00%	0	0,00%
BASIC COURTS	147	23	15,65%	17	11,56%
HIGHER COURTS	7	0	0,00%	0	0,00%
ALL COURTS	154	23	14,94%	17	11,04%

The highest reporting rates for victims previously reporting violence in cases involving general recidivism,⁴² were observed in Danilovgrad and Kolašin, followed by Podgorica, and were nearly half as frequent in Cetinje, Nikšić, and Pljevlja. Similar trends were observed for special recidivism in Kolašin and Nikšić, with comparable rates in Podgorica, slightly lower rates in Danilovgrad, and zero cases in Cetinje.

⁴² See Table 2

4.5. RELATIONSHIP BETWEEN VICTIM AND ACCUSED

To process the large volume of data in this study, it was necessary to classify the relationships between the victim and the accused in cases not involving relatives. The following categories were used:

- **Close Acquaintance:** Includes friends, neighbors, and others with whom the victim has regular, long-term contact but no familial relationship.
- **Superficial Acquaintance:** Individuals with whom the victim has occasional contact, such as acquaintances from shared environments, without deeper emotional or personal ties.
- **Professional Relationship:** Cases where the victim and accused know each other exclusively through work, without personal connections.
- **Casual Contact:** Instances where the victim and accused met only once or a few times under circumstances that did not establish a lasting relationship (e.g., customers in a store, passersby).
- **Unknown:** Situations where the victim and accused had no prior contact or familiarity before the incident.

The majority of victims were wives and common-law wives, while former wives and former common-law wives were the least represented. This suggests that permanently ending cohabitation and physically distancing oneself from the accused, though challenging, may be the most effective way to stop violence. However, this does not apply to former emotional partners (who are often victims of stalking in addition to physical violence) or to emotional partners, mothers, and daughters, who were the next most represented relationships between victims and accused.

Table 9

Relationship Between Victim and Perpetrator	Number of Victims in Cases ⁴³	Number and Percentage of Victims Who Previously Reported Violence		Number and Percentage of Victims Who Joined the Criminal Prosecution	
Former Emotional Partner	10	2	20,00%	3	30,00%
Former Wife	4	4	100,00%	1	25,00%
Former Common-Law Wife	4	3	75,00%	2	50,00%
Close Acquaintance	5	0	0,00%	4	80,00%
Daughter	10	1	10,00%	1	10,00%
Emotional Partner	10	0	0,00%	4	40,00%
Mother	10	1	10,00%	1	10,00%
Superficial Acquaintance	9	2	22,22%	6	66,67%
Relatives	6	0	0,00%	0	0,00%
Sister	6	2	33,33%	3	50,00%
Casual Contact	9	0	0,00%	8	88,89%
Wife	48	18	37,50%	15	31,25%
Common-Law Wife	30	9	30,00%	6	20,00%
TOTAL	161	42	26,09%	54	33,54%

⁴³ The number of victims is higher than the number of cases reviewed because some cases involved more than one victim.

The highest number of victims who had previously reported violence were former wives and former common-law wives (which correlates with their lowest representation among all victims and suggests these are women who had the courage to end their cohabitation with the abuser). This was followed by current wives and common-law wives. A zero-reporting rate was observed in cases of casual contact, which is logical due to the lack of prior contact between the victim and the accused. Similarly, a zero-reporting rate was found among close acquaintances, relatives, and current emotional partners (all 0%). This, along with the fact that all victims (except in cases of casual contact) report having been victims of at least verbal abuse previously, again highlights the reality that emotional partners are often subjected to frequent, perhaps even daily, abuse for various reasons, as mentioned earlier.

Regarding the percentage of victims who joined the criminal prosecution, casual contact and close acquaintances led, followed by superficial acquaintances, then sisters and former common-law wives. Zero representation was observed among relatives, and 10% of cases involved mothers and daughters.

Without intending to create or encourage any prejudice or stereotypes, it is important to point out a noticeable fact: in 39 out of 154 reviewed cases, the age difference between the victim and the accused ranged from 7 to 19 years, with 9 cases where the victim was older than the accused. In 30 cases, the accused was older than the victim, with an age difference ranging from 7 to 25 years. These cases exclude those where the age difference is due to parent-child relationships (such as mother-son, father-daughter), casual contact, superficial acquaintances, or cases involving minor victims of sexual offenses. These data could be useful for future research on the causes of women enduring violence, which is often linked to economic dependence.

In 15 cases, the victim was a minor, with six cases involving domestic violence, two involving abuse, and one case each of light bodily injury (casual contact), incest, child pornography, stalking, sexual intercourse with a child, abuse, and cohabitation with a minor (the victim quickly became an adult after the case was initiated and continued living in a common-law relationship with the accused).

4.6. SENTENCING POLICY

Regarding sentencing policies for gender-based violence in Montenegro, prison sentences were most frequently imposed in the reviewed cases – 78 sentences (50.32%). Of these, 70 sentences were for up to six months, 10 for six months to one year, and 11 for over one year. Additionally, 13 sentences of house arrest were imposed, which were included in the six-month sentence category for statistical purposes. Following prison sentences, suspended sentences were most common, with 49 cases (one with protective supervision). There were relatively low and consistent numbers of security measures, community service sentences, and fines as primary penalties. There were two acquittals.

Table 10

Sentence Type	Number and Percentage of Sentences Imposed by Type	
Prison Sentece	78	50,32%
House Arrest stanovanje	13	8,39%
Suspended Sentence	48	30,97%
Suspended Sentence with Supervision	1	0,65%
Security Measure as Sole Penalty	4	2,58%
Community Service	5	3,23%
Fine as Primary Penalty	4	2,58%
Acquittal	2	1,29%
TOTAL	155⁴⁴	100,00%

4.6.1. PRISON SENTENCES AND HOUSE ARREST

The highest percentage of prison sentences (relative to the number of cases reviewed at a given court) was imposed by higher courts, which is expected given the nature and severity of the offenses tried there. Among basic courts, the highest percentages were observed in Danilovgrad, Podgorica, and Pljevlja. The lowest percentages were in Plav and Rožaje.

The highest percentages of house arrest sentences were in Cetinje, Nikšić, and Ulcinj, while no such sentences were recorded in Berane, Danilovgrad, Pljevlja, Rožaje, or Žabljak.

Table 11

Court	Number and Percentage of Prison Sentences		Number and Percentage of House Arrest Sentences		Total	
Basic Court Bar	4	44,44%	2	22,22%	6	66,67%
Basic Court Berane	6	60,00%	0	0,00%	6	60,00%
Basic Court Bijelo Polje	6	42,86%	3	21,43%	9	64,29%
Basic Court Cetinje	1	25,00%	1	25,00%	2	50,00%
Basic Court Danilovgrad	8	88,89%	0	0,00%	8	88,89%
Basic Court Herceg Novi	3	30,00%	1	10,00%	4	40,00%
Basic Court Kolašin	3	33,33%	1	11,11%	4	44,44%
Basic Court Kotor	3	30,00%	1	10,00%	4	40,00%
Basic Court Nikšić	1	25,00%	1	25,00%	2	50,00%
Basic Court Plav	1	11,11%	1	11,11%	2	22,22%
Basic Court Pljevlja	7	70,00%	0	0,00%	7	70,00%
Basic Court Podgorica	25	78,13%	1	3,13%	26	81,25%

⁴⁴ The number of sentences deviates by one from the number of cases reviewed because, in one case, it involved co-perpetration, so two sentences were included in the statistical representation. Specifically, regarding Table 1, the number of cases for the Basic Court in Podgorica was considered as 32 for statistical purposes, rather than 31.

Basic Court Rožaje	1	11,11%	0	0,00%	1	11,11%
Basic Court Ulcinj	2	50,00%	1	25,00%	3	75,00%
Basic Court Žabljak	1	20,00%	0	0,00%	1	20,00%
Higher Court Bijelo Polje	3	75,00%	0	0,00%	3	75,00%
Higher Court Podgorica	3	100,00%	0	0,00%	3	100,00%
BASIC COURTS	72	48,65%	13	8,78%	85	57,43%
HIGHER COURTS	6	85,71%	0	0,00%	6	85,71%
ALL COURTS	78	50,32%	13	8,39%	91	58,71%

4.6.2. PRISON SENTENCE OF UP TO SIX MONTHS

The highest percentage of prison sentences of up to six months (relative to the number of cases reviewed at a given court) was imposed in the Basic Courts of Berane, Pljevlja, Bijelo Polje, and Podgorica, while the lowest percentage of such sentences was imposed in Rožaje. No prison sentences of up to six months were imposed by the Higher Court in Podgorica, while two were imposed by the Higher Court in Bijelo Polje.

For general recidivists, this sentence was most frequently imposed in Nikšić, Berane, Pljevlja, and the Higher Court in Bijelo Polje (which can impose sentences of up to six months), and least frequently in the Basic Courts of Plav and Žabljak. Zero instances of these sentences were recorded in Kotor, Rožaje, and the Higher Court in Podgorica.

As for special recidivists, this sentence was most frequently imposed in Nikšić, Danilovgrad, and Kolašin, and least frequently in the Basic Courts of Berane, Herceg Novi, and Pljevlja. No such sentences were recorded in Bar, Cetinje, Kotor, Plav, Rožaje, Ulcinj, Žabljak, or in either of the Higher Courts.

The shortest prison sentences imposed were those at the legal minimum duration of 30 days, followed by sentences of 45 days.

Upon review of the case files, one instance was recorded where a prison sentence of three months was imposed, below the legal minimum for the offense, due to the "quality of mitigating circumstances." In this case, since the victim was a minor, she was represented by a social services center representative who decided not to join the criminal prosecution. The case involved a father who beat his children and forced them to beg, as well as a wife who did not report him. The wife and daughter, in attempt to avoid punishment for the accused, changed their statements made during the investigation, but the court recognized that they had coordinated their testimonies to help the accused avoid responsibility. Furthermore, the expert evaluation confirmed their original testimony before the Basic State Prosecutor's Office (ODT).

Table 12

Court	Number and Percentage of Prison Sentences of Up to Six Months		Number and Percentage of Prison Sentences of Up to Six Months for Previously Convicted Individuals		Number and Percentage of Prison Sentences of Up to Six Months for Individuals Previously Convicted for Identical/Similar Crimes	
	Number	Percentage	Number	Percentage	Number	Percentage
Basic Court Bar	5	55,56%	3	33,33%	0	0,00%
Basic Court	6	60,00%	4	40,00%	1	10,00%
Basic Court Bijelo Polje	8	57,14%	5	35,71%	2	14,29%
Basic Court Cetinje	2	50,00%	1	25,00%	0	0,00%
Basic Court Danilovgrad	4	44,44%	2	22,22%	2	22,22%
Basic Court Herceg Novi	4	40,00%	3	30,00%	1	10,00%
Basic Court Kolašin	4	44,44%	3	33,33%	2	22,22%
Basic Court Kotor	3	30,00%	0	0,00%	0	0,00%
Basic Court Nikšić	2	50,00%	2	50,00%	1	25,00%
Basic Court Plav	2	22,22%	1	11,11%	0	0,00%
Basic Court Pljevlja	6	60,00%	4	40,00%	1	10,00%
Basic Court Podgorica	18	56,25%	10	31,25%	6	18,75%
Basic Court Rožaje	1	11,11%	0	0,00%	0	0,00%
Basic Court Ulcinj	2	50,00%	1	25,00%	0	0,00%
Basic Court Žabljak	1	20,00%	1	20,00%	0	0,00%
Higher Court Bijelo Polje	2	50,00%	2	50,00%	0	0,00%
Higher Court Podgorica	0	0,00%	0	0,00%	0	0,00%
BASIC COURTS	68	45,95%	40	27,03%	16	10,81%
HIGHER COURTS	2	28,57%	2	28,57%	0	0,00%
ALL COURTS	70⁴⁵	45,16%	42	27,10%	16	10,32%

Regarding the cases in which this sentence was imposed, the highest percentage where the fact that the victim did not join the prosecution was considered a mitigating circumstance was observed in the courts in Berane and Pljevlja (40%). In cases before the Basic Court in Podgorica, this percentage was below 10%, and there was zero representation of such cases before the Higher Courts and the Basic Courts in Nikšić, Rožaje, and Žabljak.

⁴⁵ This includes Prison sentences served in residential facilities.

Table13

Court	Number and Percentage of Prison Sentences of Up to Six Months in Cases Where the Fact That the Victim Did Not Join the Prosecution Was Considered a Mitigating Circumstance	
Basic Court Bar	2	22,22%
Basic Court Berane	4	40,00%
Basic Court Bijelo Polje	3	21,43%
Basic Court Cetinje	1	25,00%
Basic Court Danilovgrad	1	11,11%
Basic Court Herceg Novi	1	10,00%
Basic Court Kolašin	2	22,22%
Basic Court Kotor	3	30,00%
Basic Court Nikšić	0	0,00%
Basic Court Plav	1	11,11%
Basic Court Pljevlja	4	40,00%
Basic Court Podgorica	3	9,38%
Basic Court Rožaje	0	0,00%
Basic Court Ulcinj	1	25,00%
Basic Court Žabljak	0	0,00%
Higher Court Bijelo Polje	0	0,00%
Higher Court Podgorica	0	0,00%
BASIC COURTS	26	17,57%
HIGHER COURTS	0	0,00%
ALL COURTS	26	16,77%

4.6.3. IMPRISONMENT SENTENCES RANGING FROM SIX MONTHS TO ONE YEAR

The highest percentage (albeit low, approximately 20%) of imprisonment sentences ranging from six months to one year (relative to the number of cases reviewed at the given court) was issued by the Basic Courts in Danilovgrad and Ulcinj. In contrast, zero prevalence of such sentences was observed at both Higher Courts and all other Basic Courts, except for those in Bijelo Polje, Kotor, Pljevlja, and Podgorica (around 10%).

For general recidivists, this type of sentence was most frequently imposed in Ulcinj and Danilovgrad and least frequently by the Basic Courts in Kotor, Pljevlja, Bijelo Polje, and Podgorica. Zero prevalence of these judgments was recorded in all other courts. Regarding special recidivists, this sentence was applied in 11.11% of the total number of cases at the Basic Court in Danilovgrad and in 6.25% of cases at the Basic Court in Podgorica, while zero prevalence was recorded in all other courts.

Table14

Court	Number and Percentage of Prison Sentences of Six Months to One Year		Number and Percentage of Prison Sentences of Six Months to One Year for Previously Convicted Individuals		Number and Percentage of Prison Sentences of Six Months to One Year for Individuals Previously Convicted for Identical/Similar Crimes	
Basic Court Bar	0	0,00%	0	0,00%	0	0,00%
Basic Court Berane	0	0,00%	0	0,00%	0	0,00%
Basic Court Bijelo Polje	1	7,14%	1	7,14%	0	0,00%
Basic Court Cetinje	0	0,00%	0	0,00%	0	0,00%
Basic Court Danilovgrad	2	22,22%	2	22,22%	1	11,11%
Basic Court Herceg Novi	0	0,00%	0	0,00%	0	0,00%
Basic Court Kolašin	0	0,00%	0	0,00%	0	0,00%
Basic Court Kotor	1	10,00%	1	10,00%	0	0,00%
Basic Court Nikšić	0	0,00%	0	0,00%	0	0,00%
Basic Court Plav	0	0,00%	0	0,00%	0	0,00%
Basic Court Pljevlja	1	10,00%	1	10,00%	0	0,00%
Basic Court Podgorica	4	12,50%	2	6,25%	2	6,25%
Basic Court Rožaje	0	0,00%	0	0,00%	0	0,00%
Basic Court Ulcinj	1	25,00%	1	25,00%	0	0,00%
Basic Court Žabljak	0	0,00%	0	0,00%	0	0,00%
Higher Court Bijelo Polje	0	0,00%	0	0,00%	0	0,00%
Higher Court Podgorica	0	0,00%	0	0,00%	0	0,00%
BASIC COURTS	10	6,76%	8	5,41%	3	2,03%
HIGHER COURTS	0	0,00%	0	0,00%	0	0,00%
ALL COURTS	10	6,45%	8	5,16%	3	1,94%

Regarding cases where this sentence was imposed, the highest percentage where the fact that the victim did not join the prosecution was considered a mitigating circumstance was recorded in cases before the Basic Court in Ulcinj (25%) and approximately 7% in Bijelo Polje. In cases before all other courts where prison sentences between six months and one year were imposed, the victim's failure to join the prosecution was not considered a mitigating circumstance in any case.

Table 15

Court	Number and Percentage of Prison Sentences of Six Months to One Year in Cases Where the Fact That the Victim Did Not Join the Prosecution Was Considered a Mitigating Circumstance	
Basic Court Bar	0	0,00%
Basic Court Berane	0	0,00%
Basic Court Bijelo Polje	1	7,14%
Basic Court Cetinje	0	0,00%
Basic Court Danilovgrad	0	0,00%
Basic Court Herceg Novi	0	0,00%
Basic Court Kolašin	0	0,00%
Basic Court Kotor	0	0,00%
Basic Court Nikšić	0	0,00%
Basic Court Plav	0	0,00%
Basic Court Pljevlja	0	0,00%
Basic Court Podgorica	0	0,00%
Basic Court Rožaje	0	0,00%
Basic Court Ulcinj	1	25,00%
Basic Court Žabljak	0	0,00%
Higher Court Bijelo Polje	0	0,00%
Higher Court Podgorica	0	0,00%
BASIC COURTS	2	1,35%
HIGHER COURTS	0	0,00%
ALL COURTS	2	1,29%

4.6.4. PRISON SENTENCE OF MORE THAN ONE YEAR

The highest percentage (100%) of prison sentences longer than one year (relative to the number of cases reviewed at the respective court) was imposed by the Higher Court in Podgorica, which is expected given the type and severity of offenses tried in higher courts. At the Higher Court in Bijelo Polje and the Basic Court in Danilovgrad, this percentage was around 20%, approximately 10% at the Basic Courts in Bar and Podgorica, while no such sentences were recorded at any of the other courts.

For general recidivists, this sentence was most frequently imposed by the Higher Court in Podgorica (66.67%), significantly less at the Basic Courts in Danilovgrad and Podgorica, while no such sentences were recorded at any other courts.

For special recidivists, this sentence accounted for 11.11% of all cases at the Basic Court in Danilovgrad and 3.13% at the Basic Court in Podgorica. In all other courts, there was zero representation of such sentences.

Table 16

Court	The number and percentage of prison sentences exceeding one year in duration.		The number and percentage of prison sentences exceeding one year imposed on previously convicted individuals.		The number and percentage of prison sentences exceeding one year imposed on individuals previously convicted of the same or similar criminal offense(s).	
Basic Court Bar	1	11,11%	0	0,00%	0	0,00%
Basic Court Berane	0	0,00%	0	0,00%	0	0,00%
Basic Court Bijelo Polje	0	0,00%	0	0,00%	0	0,00%
Basic Court Cetinje	0	0,00%	0	0,00%	0	0,00%
Basic Court Danilovgrad	2	22,22%	2	22,22%	1	11,11%
Basic Court Herceg Novi	0	0,00%	0	0,00%	0	0,00%
Basic Court Kolašin	0	0,00%	0	0,00%	0	0,00%
Basic Court Kotor	0	0,00%	0	0,00%	0	0,00%
Basic Court Nikšić	0	0,00%	0	0,00%	0	0,00%
Basic Court Plav	0	0,00%	0	0,00%	0	0,00%
Basic Court Pljevlja	0	0,00%	0	0,00%	0	0,00%
Basic Court Podgorica	4	12,50%	3	9,38%	1	3,13%
Basic Court Rožaje	0	0,00%	0	0,00%	0	0,00%
Basic Court Ulcinj	0	0,00%	0	0,00%	0	0,00%
Basic Court Žabljak	0	0,00%	0	0,00%	0	0,00%
Higher court Bijelo Polje	1	25,00%	0	0,00%	0	0,00%
Higher court Podgorica	3	100,00%	2	66,67%	0	0,00%
BASIC COURTS	7	4,73%	5	3,38%	2	1,35%
HIGHER COURTS	4	57,14%	2	28,57%	0	0,00%
ALL COURTS	11	7,10%	7	4,52%	2	1,29%

Regarding the length of sentences in these cases, the longest sentences were naturally imposed by the Higher Courts. These included: a 20-year prison sentence for aggravated murder and a five-year sentence for rape, both by the Higher Court in Podgorica. The longest sentences recorded in cases before the Basic Courts were two years, imposed for domestic violence or violence within the family and for prohibited sexual acts related to prolonged sexual intercourse with a child,⁴⁶ both by the Basic Court in Podgorica.

⁴⁶ In this case, the court considered the following as aggravating circumstances: the accused had been previously convicted eight times (six times for property crimes, once for grievous bodily harm, and once for abuse in conjunction with the illegal possession of weapons and explosive materials, whereby the most severe prior sentence was ten months of imprisonment for the latter offense, while the others were mostly sentences of one to two months), the court took into account the circumstances under which the crime was committed, specifically the accused's audacity in committing prohibited sexual acts against the minor victim in a family home and a rented apartment where he lived with the minor victim and her mother (his emotional partner). These acts were often carried out when the victim's mother was absent.

4.6.5. SUSPENDED SENTENCE

The highest prevalence of suspended sentences among all imposed sanctions was recorded in the Basic Courts in Rožaje, Herceg Novi, and Žabljak, while the lowest prevalence was in the Basic Courts in Danilovgrad and Podgorica.

For repeat offenders, suspended sentences were most frequently imposed in the Basic Courts in Kotor and Nikšić (25% and 30%, respectively), significantly less often in the Basic Courts in Bar, Herceg Novi, Rožaje, and Podgorica, while no such sentences were recorded in any other courts. These involved general recidivism in seven cases, while two cases involved similar offenses. However, the time elapsed (over 10 and 20 years, respectively) since the previous offense influenced the decision, and prior convictions were not seen as an obstacle to imposing a suspended sentence.

Regarding the imposition of suspended sentences in cases where the fact that the victim did not join the prosecution was considered a mitigating circumstance, this sanction was most frequently imposed in Nikšić (in 50% of reviewed cases), slightly less often (around 30%) in Kotor, Pljevlja, and Bijelo Polje. No such sentences were recorded in the Basic Courts in Cetinje, Danilovgrad, Ulcinj, Žabljak, or in either of the Higher Courts.

Table 17

Court	The number and percentage of suspended sentences.		The number and percentage of suspended sentences imposed on previously convicted individuals.		The number and percentage of suspended sentences imposed in cases where it was considered a mitigating circumstance that the victim did not join the criminal prosecution.	
Basic court Bar	2	22,22%	1	11,11%	1	11,11%
Basic court Berane	3	30,00%	0	0,00%	1	10,00%
Basic court Bijelo Polje	5	35,71%	0	0,00%	4	28,57%
Basic court Cetinje	1	25,00%	0	0,00%	0	0,00%
Basic court Danilovgrad	1	11,11%	0	0,00%	0	0,00%
Basic court Herceg Novi	6	60,00%	1	10,00%	1	10,00%
Basic court Kolašin	2	22,22%	0	0,00%	1	11,11%
Basic court Kotor	5	50,00%	3	30,00%	3	30,00%
Basic court Nikšić	2	50,00%	1	25,00%	2	50,00%
Basic court Plav	4	44,44%	0	0,00%	1	11,11%
Basic court Pljevlja	3	30,00%	0	0,00%	3	30,00%
Basic court Podgorica	6	18,75%	2	6,25%	1	3,13%
Basic court Rožaje	6	66,67%	1	11,11%	1	11,11%
Basic court Ulcinj	0	0,00%	0	0,00%	0	0,00%
Basic court Žabljak	3	60,00%	0	0,00%	0	0,00%
Higher court Bijelo Polje	0	0,00%	0	0,00%	0	0,00%
Higher court Podgorica	0	0,00%	0	0,00%	0	0,00%
BASIC COURTS	49	33,11%	9	6,08%	19	12,84%
HIGHER COURTS	0	0,00%	0	0,00%	0	0,00%
ALL COURTS	49	31,61%	9	5,81%	19	12,26%

4.6.6.IMPOSITION OF SECURITY MEASURES WITH A FOCUS ON RESTRAINING ORDERS AND EVICTION FROM RESIDENCE

Article 67 of the Criminal Code provides for 11 security measures. For the purposes of this analysis, we will specifically focus on two measures relevant to gender-based violence: restraining orders and eviction from a residence or other living space. Restraining orders were imposed in 22 reviewed cases. In six of these cases, the judgments did not specify the distance at which the convicted person must stay away from the victim.

Restraining orders were imposed alongside suspended sentences in three cases, alongside prison sentences in 16 cases, alongside prison sentences and mandatory treatment for alcoholism in two cases, and alongside community service and confiscation of property in one case.

The measure of eviction from a residence or other living space was imposed in only one case.

As for other security measures, two standalone measures of mandatory psychiatric treatment in the community were imposed, one measure of mandatory psychiatric treatment and confinement in a medical institution was imposed, later modified to mandatory psychiatric treatment in the community.

In addition to the second sanction, the measure of mandatory treatment for drug addicts was imposed in four reviewed cases, mandatory treatment for alcoholics in 12, confiscation of property in five, and expulsion of a foreigner from the country in one case.

4.6.7.STRUCTURE OF THE REVIEWED SAMPLE IN TERMS OF CRIMINAL OFFENSES

Regarding the criminal offenses themselves, relative to the total number of cases reviewed, the most prevalent offense was domestic violence or violence within the family, recorded in 96 cases, plus six cases where the offense was committed as a continuous act. This was followed by: endangerment of safety (9 cases), stalking (8 cases), and minor bodily harm (7 cases).

Table 18

Criminal offense	The number and percentage of criminal offenses in the analyzed cases	
Child pornography	1	0,65%
Minor bodily injury	7	4,55%
Minor bodily injury in conjunction with unlawful deprivation of liberty	1	0,65%
Violent behavior	2	1,30%
Violent behavior over an extended period in conjunction with grievous bodily injury	1	0,65%
Domestic violence	96	62,34%
Domestic violence over an extended period	6	3,90%
Illegal sexual acts	5	3,25%

Illegal sexual acts related to the rape of a child	1	0,65%
Illegal sexual acts related to the rape of a child over an extended period	1	0,65%
Unauthorized photography	1	0,65%
Stalking	8	5,19%
Rape	3	1,95%
Attempted rape	1	0,65%
Aggravated murder	2	1,30%
Attempted murder and domestic violence	1	0,65%
Extortion over an extended period in conjunction with stalking	1	0,65%
Endangerment of security	9	5,84%
Cohabitation with a minor	1	0,65%
Abuse	3	1,95%
Abuse in co-perpetration	1	0,65%
Abuse in conjunction with the illegal possession of weapons and explosives	1	0,65%
Abuse in conjunction with unlawful deprivation of liberty	1	0,65%
TOTAL	154	100,00%

Regarding the offense of Domestic Violence or Violence within the Family, five cases involved its form under Article 220, Paragraph 7 of the Criminal Code ("Whoever violates protection measures against domestic violence imposed by the court or another state authority based on the law"), i.e., violations of protective measures under the Law on the Prevention of Domestic Violence. Additionally, three cases involved defendants who violated supervision measures under the Criminal Procedure Code.

4.7. OTHER OBSERVATIONS

In the reviewed sample, plea agreements were concluded in six cases. It is worth noting that resolving a criminal case through a judgment based on an agreement between the prosecutor and the defendant can be problematic from the perspective of the victim, as they do not participate in that part of the process in any way, except that the court is obligated to ensure, when issuing a decision approving the agreement, that the victim's rights are not violated by the agreement. The victim also has the right to appeal such a decision, but no such cases were encountered in the reviewed sample.⁴⁷

⁴⁷ There are striking examples in which defendants were sentenced to 120 days in prison on the basis of a plea agreement, to be served in residential premises; to 10 months in prison for the extended act of blackmail and stalking; and to a suspended sentence of six months with a probation period of two years for qualified forms of violence in the family or in the family community under Article 220, paragraph 2 (a person who abuses a member of his family or family community or treats him in a manner that offends human dignity), in which the injured parties did not join the criminal prosecution, but also, in a case in which the injured party joined the prosecution, the defendant, previously convicted seven times, among other things for acts with elements of violence, was sentenced to four months in prison on the basis of a plea agreement for domestic violence, with a ban on approaching the injured party.

Additionally, no cases of deferred prosecution under Article 272 of the Criminal Procedure Code were recorded.

The obligation to pay a specific monetary amount for humanitarian purposes was imposed in two cases.

In five cases, civil claims for damages were filed. In three of these cases, the victims were referred to civil litigation, while in two, the claims were withdrawn. This data pertains to civil claims made during the main trial hearing. A significantly higher number of such claims were filed during the hearings before the prosecutor, but the victims generally withdrew them by the time of the main trial.

Justifications, as required by Article 458, Paragraph 7 of the Criminal Procedure Code, were missing in five judgments.

Prison sentences were modified by the appellate court to longer durations in only two cases:

Case 1:

The sentence was increased from five months to one year of imprisonment. In this case, the court did not consider as mitigating circumstances the defendant's family ties, the fact that he had two children with the victim, or the fact that the victim did not join the prosecution or file a civil claim, even though these points were emphasized by the defendant's lawyer. This was because the offense for which he was convicted involved severe violence against the victim, a clear family member. This offense fell under the category of crimes against marriage and family. Furthermore, according to the judgment's reasoning, **"the victim's stance in this particular case cannot be considered a mitigating factor, both because the court finds that it does not represent the victim's free will but is instead conditioned by her dependent position relative to the defendant, and because it is explicitly prohibited by the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. This convention specifically requires that the decisions of competent state authorities must not depend on whether victims withdraw their statements and complaints."**

Case 2:

The sentence was increased from nine months to one year of imprisonment. In this case, the appellate court held that the first-instance court had overvalued mitigating circumstances, such as the defendant's lack of prior convictions, which was merely assumed since the defendant was a foreign national, and the court did not request records from his home country to avoid delaying the proceedings. Furthermore, the appellate court found that the first-instance court underestimated the aggravating factor of the victim's "developmental difficulties" and its significance in the case.

An example of a shorter sentence being imposed in a retrial is a case of rape of a minor:

The appellate court upheld an appeal against a first-instance judgment that imposed a four-year prison sentence, which was below the statutory minimum for the offense. The court had treated mitigating factors as exceptionally significant. In the retrial, the defendant's sentence was further reduced to two years of imprisonment.

As striking examples of retraining, we can cite two cases:

Case1:

In the case where a three-month prison sentence was imposed for incest, during a first-instance trial initially conducted for rape of a minor (the first-instance court ignored the element of coercion, and the Higher State Prosecutor's Office (VDT) appealed on this basis, citing the Convention on the Rights of the Child and emphasizing that the victim had been questioned multiple times despite the opinion of expert services), the court in the retrial issued an acquittal, citing the principle of *in dubio pro reo* (when in doubt, rule in favor of the accused), and referring to **judgments from the European Court of Human Rights in the cases of Barberà, Messegue and Jabardo v. Spain and Talat Tepe v. Turkey**. In the retrial, neither the victim's parents, who were witnesses, nor the victim herself, wished to testify. During the proceedings, there was a noticeable effort to shift the blame onto the victim's older brother, who had committed suicide several years earlier. The defense attorney, in the first-instance trial, even insisted on requalifying the charge from rape to incest, arguing that it was "common in pastoral settlements (katuns)" and pointing out that at one point, the victim had stopped resisting. The Higher State Prosecutor's Office (VDT) showed persistence and determination in prosecuting the case, striving to protect the victim from further victimization, and from justifying the criminal act by blaming her for her alleged "previous free behavior," with witnesses swearing that the accused "did not commit the act."

Case 2:

In the case of proceedings for the offense of **Aggravated Murder** (where a person takes the life of a family member or a member of their household whom they had previously abused), which was later reclassified as **Murder** after the element of previous abuse was removed, the defendant was given a security measure of mandatory psychiatric treatment and confinement in a medical institution due to insanity, despite the fact that the children testified that their father had previously pulled out a **service pistol** on their mother and had psychologically abused her. They also testified that the parents had planned to divorce, but their older son begged them not to, even though the victim had complained about the humiliation from the defendant and had asked the children not to speak about the violence in front of her parents to avoid worrying them.

Upon reviewing the case files, it seems that from the very first action in the pre-trial phase, the defendant's insanity was never questioned. There were no follow-up psychiatric evaluations or even an attempt to file an indictment, unlike the usual police and prosecution procedures, where they start with the most serious charge and leave the defense attorney to initiate defense actions and improve the defendant's position before the court. Unfortunately, all of this calls into question the impartiality of the judicial authorities, considering that the defendant was a police officer.

As the most striking examples of the disproportion of punishments to the committed act and circumstances and the unevenness in sentencing among different courts, we can cite the following:

Case 1:

The judgment of the Basic Court in Kolašin for domestic violence or violence within the family against a defendant who had previously been convicted 12 times (for the same offense, violent behavior, physical assault, etc.) showed that the earlier restraining order was not respected by the defendant, according to the victim's testimony. The restraining order was lifted at the suggestion of the Higher State Prosecutor's Office (ODT) during the sentencing. The defendant was sentenced to four months in prison, to be served in residential accommodation, without the imposition of any security measures.

Case 2:

The judgment of the Basic Court in Bar for domestic violence or violence within the family against a defendant who had previously been convicted since early adulthood for grand theft, bodily injury, and attempted murder, was that he was sentenced to one month in prison, to be served in residential accommodation, without the imposition of any security measures.

Case 3:

The judgment of the Basic Court in Kolašin for domestic violence or violence within the family, in its aggravated form (if the offense was committed with the use of a weapon, dangerous object, or any other means capable of causing serious bodily harm or significant health impairment), in conjunction with illegal possession of weapons and explosives, resulted in the defendant being sentenced to community service for 360 hours, along with the imposition of security measures: confiscation of items and a restraining order for one year.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Montenegro has initiated alignment with the requirements of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention through the adoption of new legislation and amendments to existing laws. These include the Criminal Code, the Code of Criminal Procedure, the Law on Protection from Domestic Violence, the Law on Free Legal Aid, and relevant by-laws, as well as through the adoption of strategic documents and accompanying action plans.

However, as noted in the 2019 OSCE Report, while the laws “look good on paper,” issues arise in their application. Although existing laws allow for the prosecution of all forms of violence defined by the Istanbul Convention, practical challenges, such as varying interpretations of the laws, limit their implementation and reduce the efficiency of prosecuting perpetrators. Additionally, significant geographic disparities in law enforcement practices were identified, an issue that persists five years later, as demonstrated by this analysis.

Improvements have been made to the legal framework since the OSCE Report, which previously highlighted that attention was primarily focused on domestic violence and not all forms of violence against women. It also noted that partners outside of marital relationships were inadequately protected by law and that the application of laws was inconsistent across different forms of violence. Psychological and sexual violence were not recognized or prosecuted on par with physical violence.

Regarding data tracking on gender-based violence, the situation has slightly improved but remains insufficient. A comprehensive, coordinated, and unified system of statistics on gender-based violence and violence against women is still lacking. Such a system would allow the phenomenon to be monitored throughout its various stages—from its causes and manifestations to reporting, prosecution, and addressing the consequences for victims to the greatest possible extent.

Given these challenges in law enforcement and practice related to gender-based and violence against women, a deeper analysis of the current situation is needed. This study focused on examining how Montenegrin courts handle cases of violence against women and the extent to which international standards are applied. It also explored specific obstacles victims face during legal proceedings and the effectiveness of penal policies in preventing violence.

The analysis revealed that only 29.85% of victims of violence against women had previously reported violence. Notably, there were no cases where victims stated that there had not been at least verbal violence, threats, blackmail, or similar behaviors beforehand.

Correlating this data with information about offenders’ prior convictions supports the conclusion that fear of the perpetrator, concerns for personal and children’s welfare if the victim leaves the relationship, fear of societal judgment, prejudices, and stereotypes—along with entrenched traditional views on gender roles—often outweigh efforts to eradicate discrimination and violence against women. Encouraging victims to report violence and providing adequate support and judicial responses remain critical challenges.

Victims frequently hold on to feelings for the accused, convincing themselves that the perpetrator will change, and may even actively defend them in proceedings. There are also cases where institutions fail to respond adequately to reports or discourage victims by emphasizing their contribution to the offense.

The issue of victims joining criminal prosecution is critical in the context of the Istanbul Convention and the practice of the European Court of Human Rights (ECHR). These international norms obligate states to prosecute gender-based violence *ex officio*, regardless of the victim's involvement. However, in Montenegro, the situation is concerning: fewer than 35% of victims join prosecutions, and the number of victims who explicitly decline to participate is negligible. This means most victims withdraw during the proceedings, likely for the same reasons that deter them from reporting violence in the first place. Furthermore, the fact that over twice as many victims who had previously reported violence chosen not to join prosecutions compared to those who did raises questions about victims' trust in institutions.

A significant proportion of cases (33.33%) before basic courts considered the victim's non-participation in prosecution as a mitigating factor for the perpetrator. This is troubling in light of the Istanbul Convention and ECHR practices, which stipulate that the victim's attitude toward the offense and the offender should not affect the prosecution of these crimes, as they must be handled *ex officio* under state obligation.

Recidivism in gender-based violence, particularly domestic violence, is prevalent. Nearly 50% of perpetrators in the reviewed cases were repeat offenders, and 34.36% of these were specifically recidivists for identical or similar offenses. For higher courts, recidivism rates were around 60%, though none were for identical offenses, potentially due to the nature of cases tried at these courts.

Regarding penal policy, the findings indicate it is too lenient given the severity of the crimes and the type of harm involved. In the analyzed cases, imprisonment was the most common sentence (50.32%), but 70 sentences across all courts were for less than six months. Conditional sentences (49) were also prevalent, while safety measures such as restraining orders and eviction orders were rarely used (14.94%).

The plea-bargaining process was used in six cases (3.90%). Although this is a small percentage, the absence of victim involvement in the negotiation and conclusion of plea agreements raises concerns about its appropriateness in cases of gender-based violence.

This analysis underscores the need for stricter penal policies, enhanced institutional support, and a more victim-centered approach to addressing gender-based violence.

RECOMMENDATIONS:

- **Application of International Standards**

All judicial and other state authorities involved in criminal and misdemeanor proceedings should consistently apply international standards, especially those from the Istanbul Convention, concerning:

- Prosecuting gender-based violence crimes *ex officio* throughout the entire process, regardless of any withdrawal by the victim from pursuing criminal prosecution.
- Ensuring that the absence or withdrawal of victim participation in the prosecution is not considered a mitigating factor for the perpetrator during sentencing.

- Guaranteeing that the fact that the perpetrator has children is not treated as a mitigating circumstance during sentencing, especially if the children are victims of domestic violence or witnesses to it.
- Ensuring courts consistently consider aggravating factors outlined in Article 46 of the Istanbul Convention when determining sanctions, such as recidivism, possession of weapons, the presence of children during the violence, the method and duration of the violence, injuries inflicted, the victim's age, and other relevant circumstances that exacerbate the victim's position.
- Consistent application of protective measures specified in the Law on Protection from Domestic Violence, particularly eviction measures, which the European Court of Human Rights prioritizes over property rights in shared living spaces of the perpetrator and the victim.
- Ensuring that confidentiality rules under national law do not prevent professionals from reporting acts of violence.
- Providing protection to victims from harassment, retaliation, or re-victimization, including notifying victims and their families if the perpetrator escapes from prison, or is temporarily or permanently released, as well as providing feedback on complaints, investigation progress, and procedural outcomes.
- Ensuring consistent application of measures to protect victims' privacy, avoiding contact between the victim and perpetrator in courts, other institutions, and facilities.
- Providing sufficiently long and proportionate statute of limitations for initiating legal proceedings concerning sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, and sterilization, enabling effective legal action after the victim reaches adulthood.
- Paying special attention to international standards for child protection, not only for children as victims of domestic violence but also for those who witness such violence, particularly during testimony throughout the process.

• **Enhancing the Legal Framework**

Public policy makers in the fight against gender-based violence and domestic violence, particularly the Government and the Ministry of Human and Minority Rights, must identify all deficiencies and inconsistencies in regulations that hinder or slow the prosecution of gender-based violence and violence against women. More harmonized and detailed legal norms, both in laws and by-laws, would enable more comprehensive victim protection and more effective justice implementation. This is also mandated by the Istanbul Convention, which obligates signatories to adopt and implement effective, comprehensive, and coordinated policies at the national level to prevent violence, protect victims, and sanction perpetrators.

Ensuring an adequate legal framework through amendments to the Criminal Procedure Code, Misdemeanor Law, and Law on Protection from Domestic Violence, to enable more efficient conduct of criminal and misdemeanor proceedings without undue delay. This includes establishing strict accountability mechanisms for failure to act within prescribed timeframes and disregarding the principle of urgency, as well as providing adequate legal remedies to victims of violence against state bodies and public institutions that failed to fulfill their duties and take necessary preventive and protective measures within their jurisdiction.

Legislative actions should ensure that appropriate restraining or protective measures are available at all stages of misdemeanor and criminal proceedings.

Implementing activities outlined in the National Action Plan for the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic

Violence by providing a legal framework to eliminate procedural barriers and restrictions in prosecuting forced marriage cases and ensuring that intentional behavior seriously impairing an individual's psychological integrity through coercion or threats is criminalized. This includes aligning the Criminal Code with the Convention's standards regarding the criminalization of psychological violence.

Amending the Criminal Code to include the above-mentioned international standard on statute of limitations for prosecuting sexual violence.

The Law on Gender Equality considers the use of masculine nouns as a generic neutral form for both genders as discrimination based on sex and establishes the obligation to apply gender-sensitive language in all instruments (normative and implementational) and strategies across all sectors. This obligation must be fulfilled throughout the entire body of legislation. Additionally, the Law on Gender Equality itself must be aligned with the Istanbul Convention and its definition of gender-based violence, as it currently recognizes violence based on sex.

The Law on Social and Child Protection in Montenegro should be aligned with the Istanbul Convention to enhance resources and infrastructure for providing specialized services, improve intersectoral cooperation, and control the work of service providers, aiming to ensure higher-quality support for all vulnerable groups. While the Law on Social and Child Protection prohibits discrimination based on sex, it does not recognize discrimination based on gender or explicitly define gender-based violence.

Following the obligations under the Istanbul Convention, it is necessary to ensure a legal framework enabling migrant women who are victims of gender-based violence to obtain an autonomous residence permit on humanitarian grounds.

Finally, in all areas of social and public life, imperative norms (primarily the Family Law, General Law on Education and Upbringing, Law on Culture, Labor Law, Law on the Election of Councilors and Members of Parliament, Media Law, Electronic Media Law, and subsequently detailed in by-laws) must establish the obligation for all social actors to promote the transformation of social and cultural behavior patterns of women and men to eradicate prejudices, customs, traditions, and practices based on the notion of women's inferiority and stereotypical division of gender roles. This should include effective accountability mechanisms for non-compliance.

The financial resources required for implementing these measures should be planned and provided for when drafting state budgets and local budget decisions.

- **Tightening Penal Policy**

Tightening penal policies through legislative actions and the work of courts, particularly for repeat offenders and perpetrators of severe criminal acts, can have a deterrent effect and reduce the number of such crimes. Both inconsistent judicial practices and a lack of coherent and harmonized penal policies can contribute to public distrust in the institutional system.

Penalties should be proportionate to the severity of the crime and the circumstances of the case. Sentences at or near the statutory minimum often fail to act as a deterrent to offenders, as evidenced by high rates of recidivism.

In this context, prior accountability for offenses under the Law on Protection from Domestic Violence should be comprehensively assessed and considered an aggravating circumstance. Additionally, it is unacceptable to treat the fact that the offender has children as a mitigating

factor, particularly if the children are also victims of domestic violence or have witnessed it.

Finally, excluding the possibility of plea agreements under the Criminal Procedure Code for crimes involving gender-based violence or domestic violence could significantly improve the status of victims in these proceedings. It would contribute to a more equitable position for victims and prevent further victimization.

- **Establishing Detailed and Comprehensive Records on Gender-Based Violence**

The lack of systematic monitoring of the implementation of the Istanbul Convention and data collection identified in the OSCE's 2019 report remains an issue. Establishing comprehensive records, collecting, and tracking data at all levels by judicial bodies, state administration authorities, institutions with responsibilities in combating gender-based and domestic violence, and NGOs providing victim support services would enable trend analysis in this area. This would facilitate the creation of more effective policies – not only penal but also preventive measures and strategies to combat gender-based and domestic violence – as well as policies in the domains of social, child, and healthcare services.

This is especially important as signatories to the Istanbul Convention are obligated to collect disaggregated statistical data at regular intervals on all forms of violence covered by the Convention. They must also support research to study the causes, consequences, frequency, conviction rates, and effectiveness of measures taken.

- **Monitoring and Analyzing Judicial Practices**

Regular analysis of court proceedings in cases of gender-based violence and domestic violence is essential for monitoring the application of international standards, consistency in decisions, and the effects of penal policies. Such monitoring should occur within courts, at the Ministry of Justice level, and within civil society organizations. It would allow for an assessment of achieved outcomes and further improvements in procedural efficiency and penal policies.

Special attention should be given to monitoring the issuance and enforcement of protective measures and safety measures prescribed by the Law on Protection from Domestic Violence and the Criminal Code, as well as maintaining adequate records in this domain.

- **Harmonizing Judicial Practices in Addressing Gender-Based Violence and Violence Against Women**

Courts must take steps to harmonize judicial practices to ensure consistent, fair, and effective approaches in cases of gender-based violence and violence against women. Variations in judicial practices regarding the application of laws currently result in differing outcomes for similar cases. This inconsistency fosters legal uncertainty and can undermine trust in institutions, deterring victims from reporting violence or pursuing legal action, particularly if the legal system is perceived as unpredictable and inconsistent in upholding their rights.

Under the Law on Courts, the responsibility for monitoring and harmonizing judicial practices lies with the Supreme Court, which establishes general legal principles on contentious legal issues arising from judicial practices. These principles are adopted during General Sessions, while individual courts also maintain judicial practice departments to monitor and study practices. If no such department exists in a court, the court president can designate one or

more judges to fulfill this role.

Moreover, coordination and collaboration between courts of various levels are crucial for harmonizing practices. Courts are obligated to provide higher courts with data and allow direct access to their operations upon request to facilitate monitoring, studying judicial practices, and ensuring control.

An excellent example of best practices in the judiciary is the Guidelines for Handling Cases of Domestic Violence or Violence within Family Communities, issued by the Supreme State Prosecutor in October of this year to basic and higher state prosecutor's offices. A similar document at the judiciary level would significantly contribute to the harmonization of judicial practices.

- **Conducting Research on Factors Leading Victims to Withdraw Prosecution and Trust in Institutions**

Additional research should be conducted by both relevant state authorities and institutions, as well as non-governmental organizations, to identify the key reasons why victims of violence withdraw from criminal prosecution. Such research should include a detailed analysis of the factors that hinder the reporting of violence and cause hesitation in victims to persist in legal proceedings, including fear of retaliation, feelings of stigma, lack of community support, and lengthy and emotionally draining court processes. Understanding these reasons can significantly contribute to the development of targeted support measures tailored to the actual needs and challenges faced by victims.

Additionally, the research should also focus on victims' trust in institutional systems—judiciary, prosecution, police, and other relevant services. Analyzing levels of trust and perceptions of these institutions' effectiveness is crucial for understanding how they can better meet the needs of victims and improve prevention and protection measures. The data gathered from this research should help design measures to provide more effective institutional support, thereby increasing trust in the system.

- **Strengthening Mechanisms for Institutional and Non-Institutional Support for Victims of Violence**

Additional training sessions should be organized for judges, prosecutors, and other judicial officials, as well as for police officers, social workers, healthcare workers, and others, focusing on understanding the dynamics of violence against women and gender-based violence, including its physical, psychological, and social consequences for victims.

Particular attention should also be given to educators, given their role in identifying children who are witnesses or victims of domestic violence. Training should emphasize recognizing specific patterns and forms of violence, understanding the factors influencing whether violence is reported, and enhancing the application of international standards, especially those related to the Istanbul Convention.

These sessions should include practical aspects – experience sharing, case studies, and examples of positive practices – aimed at enabling the judiciary to protect victims more effectively and deter offenders.

Establishing new and strengthening existing institutional and non-institutional mechanisms for

protecting and supporting victims of gender-based violence and domestic violence, including amendments to laws in social and healthcare protection, should ensure more effective psychological, social, and legal assistance and support for victims. This assistance should be specialized and sensitive, considering the vulnerability of those affected by this type of violence. It should also include adherence to the legal obligation for urgent action in cases of domestic violence.

- **Organizing Training and Awareness Campaigns for Citizens**

Non-governmental organizations, human rights organizations, and other relevant stakeholders should organize training, campaigns, and workshops for citizens to raise awareness of violence against women and gender-based violence. These activities should focus on understanding the nature and consequences of violence, including its physical, psychological, and social impacts on victims, and recognizing patterns of abusive behavior and prejudices that often prevent victims from reporting violence. Key elements of the training should include educating the public about victims' rights, available forms of institutional and non-institutional support, and relevant international standards, particularly those derived from the Istanbul Convention. These activities should incorporate practical components such as case studies, examples of positive practices, and open discussions to encourage experience sharing and reduce the stigmatization of victims. It is also essential to ensure that educational content is accessible to diverse social groups, including minorities and vulnerable populations, so that a larger portion of society becomes informed about the importance of zero tolerance for violence. These efforts should aim to collectively create a foundation for supporting victims and combating gender-based violence within the community.

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