

Reporting and treatment of domestic violence cases

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JUST REACT – Boosting Civic Reaction
towards an Improved Access to Justice
in Kosovo

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Abbreviations:

BC – Basic Court

CPCRK – Criminal Procedure Code of the Republic of Kosovo

CCRK – Criminal Code of the Republic of Kosovo

Constitution – The Constitution of the Republic of Kosovo

Law – Law on Protection against Domestic Violence

KP – Kosovo Police

BP – Basic Prosecution

CSW – Centre for Social Work

KCS – Kosovo Correctional Service

Supreme Court Guidance – Guidance On the legal qualification and treatment of domestic violence cases according to the Criminal Code of the Republic of Kosovo

VCAO – Victim Protection and Assistance Office

Introduction

The domestic violence is a pervasive social problem that crosses borders and occurs in all cultures and societies around the world. Undoubtedly, even our country is not excluded from the presence of this phenomenon, from which the physical, psychological, economic, sexual and social integrity of the most sensitive groups of society: women, children and the elderly are being violated more frequently every day.

The punishment of the latter and its perpetrators has been addressed in the legislative aspect in several legal acts, including the Constitution of the Republic of Kosovo (Constitution), Law No. 03/L-182 on Protection against Domestic Violence (Law), and also in the Criminal Code of the Republic of Kosovo (CCRK), which entered into force in January 2019, where the domestic violence phenomenon is defined as a separate/specific criminal offense under Article 248 of this Code.

Due to the prevailing social mentality in the country, the domestic violence has been treated, and unfortunately still is treated in most cases as a private matter and as a normal part of marital and family life. However, in recent times it is worth noting that social awareness against domestic violence as a criminal offense and unacceptable phenomenon is increasing and the same is treated as an incriminating issue not only by state institutions but also by lay persons. Kosovo as a state is at a critical stage where persons who commit domestic violence must be sanctioned according to the law, while protection and security must be provided to the victims.

Through this analysis, the "Just React" Project aims to highlight important data related to the institutional treatment of domestic violence cases during January 1 - August 31, 2022, including the number of cases reported to the Kosovo Police, and the way they are treated by the Basic Prosecutor's Office and the Basic Court in Pristina.

The official data from the Police, the Prosecutor's Office and the Basic Court in Pristina is part of the analysis. These data include the number of reported cases, the number of indictments filed, the number of judgments, including the characteristics of perpetrators and victims of domestic violence, with special emphasis on their age and gender.

In addition, the punitive policy of the Basic Court in Pristina has been analysed based on the verdicts for domestic violence cases during the first eight months of 2022, published on the KJC web portal.

In the final part, the analysis generally includes the competences and duties of other institutions in relation to the perpetrators and victims of domestic violence, as well as the concrete recommendations from the "Just React" project that emerge from the analysis of the provided data for these cases for the period January-August 2022.

Criminal offense “Domestic violence” according to the Criminal Code of the Republic of Kosovo

The Criminal Code of the Republic of Kosovo (CCRK), which entered into force in April 2019, within the chapter of criminal offenses against marriage and the family, has defined domestic violence as a separate/specific criminal offense under Article 248, providing for punishment with a fine and imprisonment for up to three years.¹

According to paragraph 1 of this Article “Whoever commits physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years.”² According to this definition, it results that in order to be considered to have caused domestic violence, the condition is that this criminal offense is committed within a domestic relationship, which the CCRK defines as the relationship between who are engaged or were engaged or are married or were married or are in extra marital union or were in extra marital union or are co-habiting in a common household or were co-habiting in a common household; 25.2. who use a common house and who are related by blood, marriage, adoption, in-law or are in a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, cousins; or who are the parents of a common child.³

Unlike paragraph 1 of Article 248 of the CCRK, in paragraph 3, domestic violence is defined as a criminal offense committed by any member of the family who exerts physical, psychological, sexual or economic violence or mistreatment against another member of his/her family, shall be punished by a fine and imprisonment of up to three (3) years. From this, one can see that the criminal offense of domestic violence according to this paragraph means when it is committed by persons who are defined as a family member, including a parent, adoptive parent, child, adopted child, brother or sister, spouse, relative of blood living in the same house or the person with whom the perpetrator lives in extramarital union.

Therefore, in the case where we are dealing with the definition of the criminal offense, the state prosecutor must take into account the definitions “domestic relationship” and “family member” so that, based on the relationship of the perpetrator of the criminal offense of domestic violence, to determine whether the incriminating actions fit with paragraph 1 or 3 of Article 248.

As for the types of domestic violence, Article 248 of the KPRK recognizes four types, physical, psychological, sexual and economic violence. However, as stated in the Guidance on the legal qualification and treatment of domestic violence cases according to the Criminal Code of the Republic of Kosovo⁴, regardless of the fact that under paragraph 3.2 of this Article it is stated that for purposes of this Code, the definition shall be the same as defined in provision of Article

1 Official Gazette of the Republic of Kosovo, Criminal Code of the Republic of Kosovo, Article 248, April 2019, link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

2 Ibid., Article 248, paragraph 1

3 Ibid., Article 113, paragraph 25

4 Supreme Court of the Republic of Kosovo, Guidance in the legal qualification and treatment of domestic violence cases according to Criminal Code of the Republic of Kosovo. June 2020, link: Udhëzimi 113/2020

2 sub-paragraph 1.2. of the Law no. 03/L-182 Law on Protection against Domestic Violence⁵, we do not find such a definition in this law. Therefore, even at this point it is suggested that this law be amended/supplemented so as to include a detailed definition for each of the types of domestic violence recognized by the CCRK.

Moreover, in the aforementioned provision of this law, domestic violence is defined as a single, not divided into types. Therefore, according to the Law, domestic violence represents one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relationship, but not limited to: use of physical force or psychological pressure exercised towards another member of the family; any other action of a family member, which may inflict or threaten to inflict physical pain or psychological suffering; causing the feeling of fear, personal dangerousness or threat of dignity, and physical assault regardless of consequences;

Moreover, domestic violence means insult, offence, calling by offensive names and other forms of violent intimidation; repetitive behavior with the aim of derogating the other person; non-consensual sexual acts and sexual ill-treatment; unlawfully limiting the freedom of movement of the other person; property damage or destruction or threatening to do this; causing the other person to fear for his or her physical, emotional or economic wellbeing; forcibly entering removing from a common residence or other person's residence, and kidnapping.⁶

A very important issue contained in Article 248 of the CCRK is paragraph 2, where it is stated that "When any act in the Criminal Code is committed within a domestic relationship, it will be considered an aggravating circumstance". So, when judging domestic violence cases or other crimes that are defined in this Code, the judge was reminded once again that, just as in Article 70, par.2, subpar. 2.14, when determining the punishment, the court takes into account as an aggravating circumstance if the criminal offense is committed within the domestic relationship.

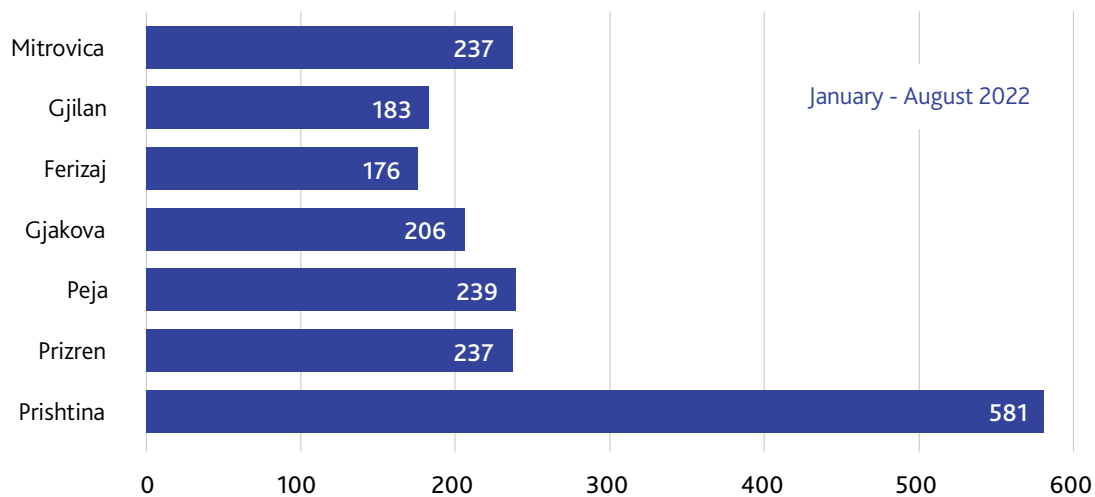
5 Official Gazette of the Republic of Kosovo, Law No. 03/L-182 on Protection against Domestic Violence, August 2010, Article 2, sub-paragraph 1.2, link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691>

6 Ibid.

Reporting of domestic violence cases in the Kosovo Police during the period January-August 2022

As it was stated in the introduction of this analysis, "Just React" will also include the official data received by the Information and Public Relations Office within the Kosovo Police⁷, related to the domestic violence cases reported during the first eight months of this year, which are presented graphically in the following graphs.

Graph 1. The number of domestic violence cases reported to the Kosovo Police

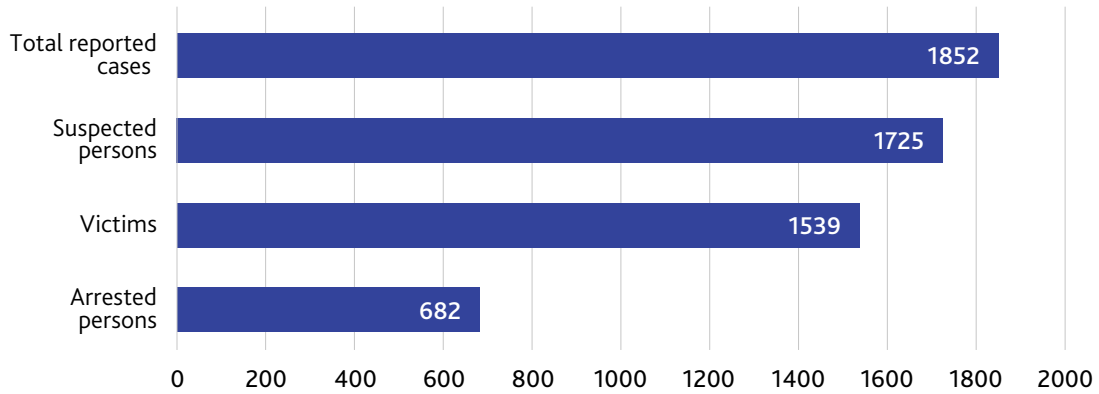


Graph 1 shows that, in the Republic of Kosovo, during the period January-August 2022, in total 1 thousand 852 cases of violence were reported to the Kosovo Police, and referring to the official data received by this institution, it appears that 581 cases or about one third of the total cases were reported in Pristina region. The second region with the most domestic violence cases reported during this period is Peja region with 239 cases, followed by Prizren and Mitrovica (South and North) regions, each with only two cases less. Whereas, the received data shows that from the regions that have fewer domestic violence reported cases during the first eight months of 2022 are Gjakova with 206 cases, Gjilan with 183 cases and the last is Ferizaj region with 176 cases.

Furthermore, from the data received by the Kosovo Police, the GLPS has also given particular importance to the issue of how many persons are suspected of committing the criminal offense "Domestic violence", how many persons have been arrested and what is the number of victims from this criminal offence.

⁷ Official data received by the Information and Public Relations Office within the Kosovo Police, September 21, 2022

Graph 2. Statistics about the number of suspected, arrested persons and victims of domestic violence during January - August 2022



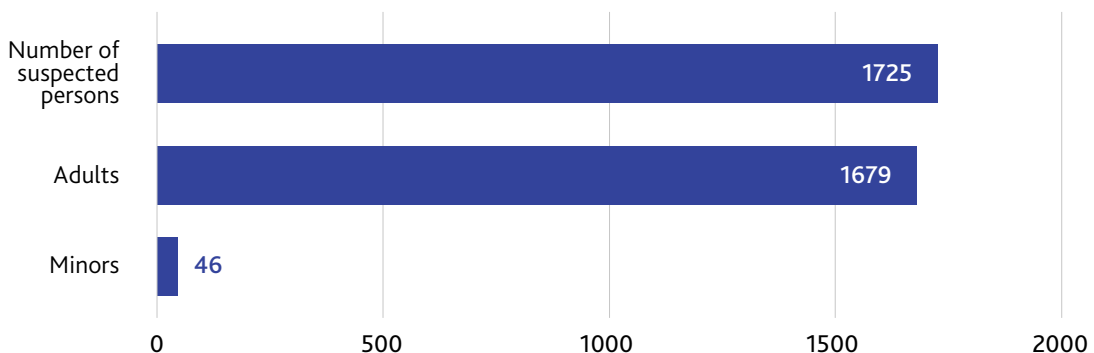
Graph No. 2 shows that from the total number of cases reported to the Kosovo Police, there is a discrepancy between the number of suspected persons and those arrested, where we have 1,725 persons suspected of having committed the criminal offense of domestic violence during this period, whereas only 682 people were arrested. This means that the Police has not demonstrated efficiency in arresting suspects of having committed domestic violence in all the reported cases.

Therefore, the GLPS calls upon Police for increasing the efficiency in treatment of such cases with high level of professionalism and effectiveness and that in every reported case they conduct professional investigations that will result in the arrest of suspects, so that these persons are not free and do not have the opportunity to repeat the same offense or commit another criminal offense.

Moreover, from these official data it can be seen that the number of victims compared to the total number of reported cases is smaller, implying that not in all reported cases it has been possible to specify who was the victim of domestic violence, which most frequently happens to be a member of the family, and also there can be few of them.

In regards to the number of persons suspected of having committed the criminal offense "Domestic Violence" during January-August 2022, the GLPS has also provided information concerning the age of these suspects. According to the Police, it is reported that most of the suspects are adults, so they are over 18 years old.

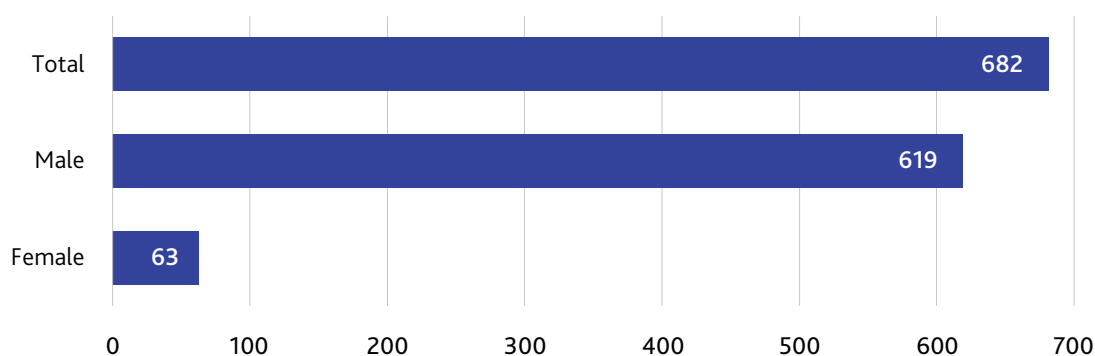
Graph 3. Suspects by age



As can be seen in the graph above, out of the total number of persons suspected of having committed domestic violence during the first eight months of this year, only 46 or 3% of them are under the age of 18, i.e. minors, whereas another 1,679 are adults, i.e. over the age of 18. From this we conclude that during this period, the highest number of persons suspected of having committed domestic violence are adults, which is much higher percentage than of the minors.

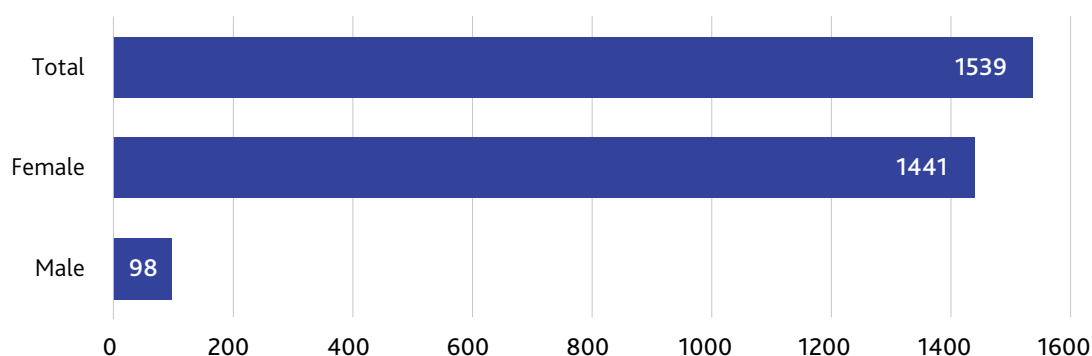
However, as it was mentioned above, at the country level, during this eight-months period, a total of 1,859 cases were reported, out of which 682 people who were suspected of committing domestic violence were arrested. Nevertheless, from these statistical data, it can be seen that the highest number of the arrested persons are males, i.e. 619 men or about 91%, while the number of women who have been arrested as suspects for this criminal offense is much lower, i.e. only 63 or about 9%. For more, see the following graph:

Graph 4. Arrested persons by gender

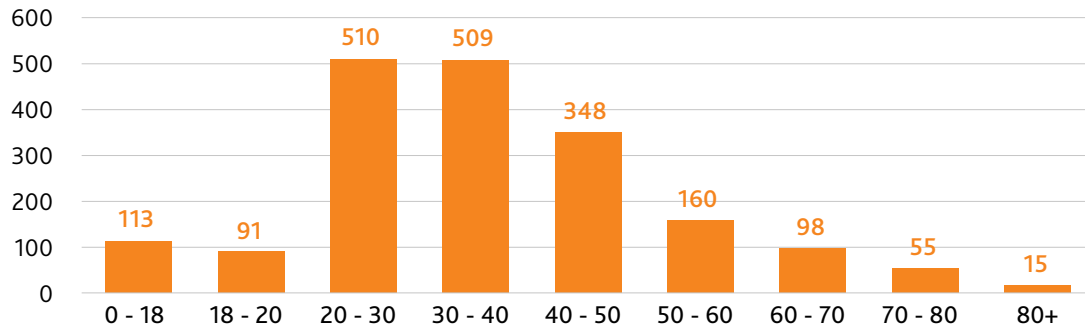


Additionally, this analysis includes two important indicators concerning the domestic violence victims during the first eight months of this year. It is about the gender and age of the victims of this criminal offense, where as it will be presented graphically, one can see that the women are the ones that are most often the victims of domestic violence, while based on the age indicator it can be seen that the victims of this criminal offense are adults.

Graph 5. Victims of domestic violence by gender

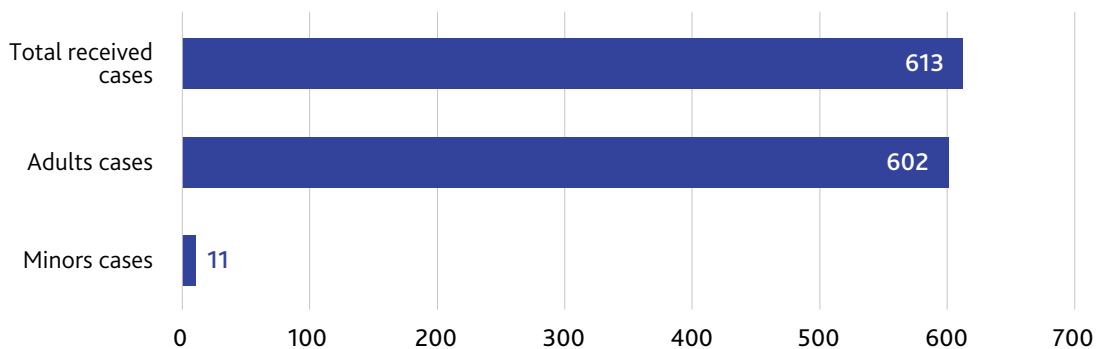


From the Kosovo Police, we have also received official information regarding the age of persons who have been victims of domestic violence. Thus, from these data it appears that persons between the age of 20 to 50 represent the highest number of domestic violence victims during January-August 2022. Whereas, the persons who are the least domestic violence victims are those between the age of 70 to 80 and those over 80 years old.

Graph 6. Number of victims by age group

Treatment of domestic violence cases by the Basic Prosecutor's Office in Pristina

Considering that all domestic violence cases fall under the competence of the General Department of Basic Prosecutions, in this analysis we focused on the Basic Prosecution in Pristina - General Department, to see how many cases were received during January-August 2022, and how these cases were treated by the prosecutors engaged in such cases. Therefore, on the request addressed to the Information and Media Monitoring Office of the Basic Prosecutor's Office in Pristina, on September 27, 2022, we received the information presented in the graph below:

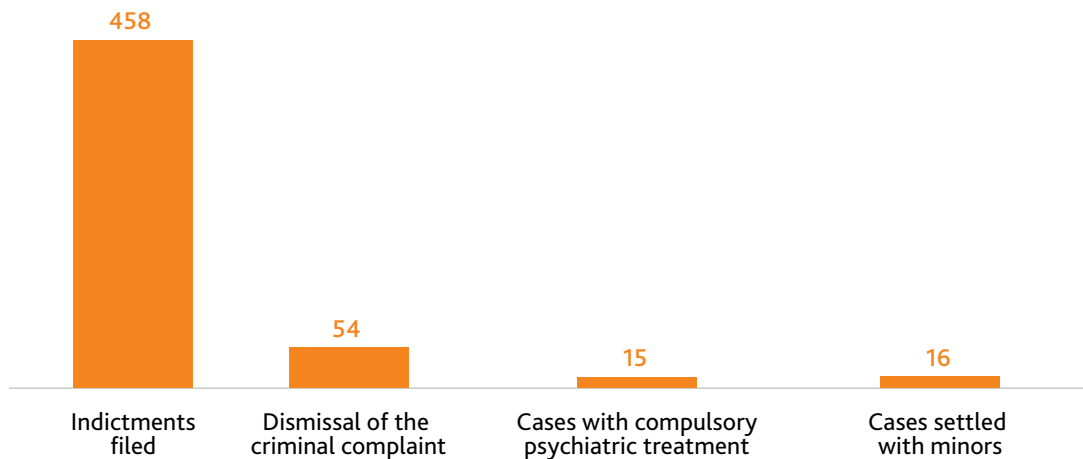
Graph 7. Cases of domestic violence received by the Basic Prosecutor's Office in Pristina

From the data presented in the graph 7, it appears that during the first eight months, the Basic Prosecutor's Office in Pristina has received 613 cases related to the criminal offense "Domestic Violence". Out of these cases, in 602 cases the perpetrators are adults, while only 11 perpetrators are minors.

Hence, as it was emphasized above, we can come to the conclusion that in domestic violence cases, most often we are dealing with the adult suspects and in fewer cases we come across when this criminal offense is committed by minors.

Further, referring to the data received by the Basic Prosecutor's Office in Pristina, during the period January-August 2022, in relation to the criminal offense "Domestic Violence", it appears that this Prosecutors Office has filed 458 indictments against adults, 15 cases with mandatory psychiatric treatment, and in 54 cases criminal charges were dismissed. As for the cases where the perpetrators of this criminal offense are minors, it appears that this Prosecutor's Office has solved 16 cases in total.

Graph 8. Treatment of active domestic violence cases by the Basic Prosecutor's Office in Pristina, January-August 2022



As can be seen from the data presented in graph above, during January-August 2022, the Basic Prosecutor's Office in Pristina handled a total of 543 cases, where indictments were filed in 458 of them, criminal charges were dismissed in 54 cases, and 15 cases were handled with the mandatory psychiatric treatment for suspects, while 16 cases concerning perpetrators of domestic violence who are minors have been resolved.

If we compare the number of received cases and those handled by the Basic Prosecutor's Office in Pristina, we can see that for the reporting period this prosecutor's office managed to handle fewer domestic violence cases than the cases it accepted, so we have a difference of 70 cases. However, if we take as a basis the number of domestic violence cases with minor perpetrators, we can see that this Prosecutor's Office showed efficiency by solving a greater number of cases than those it received during the first eight months of this year.

Considering what was said above, we recommend that the Basic Prosecutor's Office in Pristina increase the efficiency of handling domestic violence cases so that we do not have such difference in number of treated and received cases, and thus creating backlogs and delays in handling these cases. On the other hand, the GLPS sees as very positive the approach of the Juvenile Department of the Basic Prosecutor's Office in Pristina, which during the reporting period has managed to show high efficiency in handling domestic violence cases with minor perpetrators, where, from 11 received cases, it has managed to solve 16 cases, i.e. somewhere around 150% efficiency.

Analysis of 43 published judgments of domestic violence cases by the Basic Court in Pristina (January-August 2022)

In this analysis, the GLPS paid special attention to the handling of cases domestic violence by the Basic Court in Pristina including its branches, as one of the courts that has the most such cases in the country. For the purposes of this analysis, the official website of the KJC, respectively of the Basic Court in Pristina, was used as a source of information, where judgments are published on a daily basis, including cases of domestic violence treated by this court.

Through this research, "Just React" Project has analysed 43 judgment⁸s of domestic violence criminal acts, published on the website of the Basic Court in Pristina during period January 1 - August 31, 2022.⁹ During the process of analysis these judgments, particular attention was paid to respecting of the legal deadline for holding the initial hearing, the types of judgments issued by this court, the sentences imposed, the characteristics of the victims of the crime, the economic situation and the educational background of the perpetrators of these criminal offenses, the type of punishments imposed by the court, the aggravating and mitigating circumstances, as well as the duration of the court's decision.

Non-compliance with the deadline for scheduling and holding the initial examination session

The Criminal Procedure Code of the Republic of Kosovo, in Article 242, provides that the single trial judge or presiding trial judge may ex officio determine whether it has jurisdiction over the matter within the indictment. And in cases when the defendant is being held in detention on remand, the initial hearing shall be held at the first opportunity, not to exceed fifteen (15) days from the indictment being filed.¹⁰ Hence, this provision clearly presents the deadlines within which the case judge is obliged to schedule and hold the initial examination session within 30 days from the moment when the indictment was filed. In addition, the CPCRK also foresees a 15-day deadline after the indictment is filed for scheduling and holding the initial hearing, provided that the defendant is under detention.

8 Judgments: P.nr.2018/21; P.nr.1372/2020; P.nr.171/2020; P.nr.336/20; P.nr.572/2020; P.nr.1888/20; P.nr.3042/2021; P.nr.3485/21; P.nr.3424/21; P.nr.7/22; P.nr.429/2022; P.nr. 416/22; P.nr.920/22; P.nr.895/22; P.nr. 913/22; P.nr.2372/21; P.nr.545/2021; P.nr.2018/21; P.nr.1372/2020; P.nr.336/20; P.nr.572/2020; P.nr.171/2020; P.nr.1888/20; P.nr.3042/2021; P.nr.3485/21; P.nr.3424/21; P.nr.7/22; P.nr.3675/21; P.nr.429/2022; P.nr.228/22; P.nr. 416/22; P.nr. 920/22; P.nr.895/22; P.nr. 913/22; P.nr.2372/21; P.nr.545/2021; P.nr.520/19; P.nr.2800/21; P.nr.2495/21; P.nr.3285/21; P.nr.228/22; P.nr.3675/21 and P.nr.459/20

9 Domestic violence judgments by the Basic Court in Pristina, January 1 - August 31, 2022, link: <https://www.gjyqesori-rks.org/aktgjkimet/?r=M>

10 Criminal Procedure Code of the Republic of Kosovo, Article 242, paragraph 4 and 5, January 2013, link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

However, while analysing the issue of compliance with the procedural deadlines by the court in handling with these criminal offenses, "Just React" has found that out of the 43 cases - the analysed judgments related to the "Domestic Violence criminal offense ", in 30 of them, the deadline for scheduling the initial examination was not respected, while only in 13 cases this deadline was respected.

Graph 9. Deadline for scheduling and holding the initial examination session of the analysed judgments



Graph 9 shows that the Basic Court in Pristina, from 43 analysed court cases, it results that in most of these domestic violence cases it did not respect the legal deadline of 30 days for scheduling and holding the initial examination of the case. Thus, this deadline was not respected in 30 cases, while in only 13 of them the initial examination session was scheduled and held within the deadline set with the provisions of the CPCRK.

While, according to the analysed judgments, "Just React" has found that in one of the domestic violence cases, the court needed 952 days or 2 years, 7 months and 9 days to schedule the initial examination session from the day it was the indictment was filed¹¹. However, it was found that the same court in four other domestic violence court cases needed only one day from the filing of the indictment to the scheduling of the initial hearing¹². From this we can understand that the Basic Court in Pristina can and should increase the efficiency in handling with such cases, with particular emphasis on scheduling and holding the initial examination within the deadline defined under Article 242 of the CPCRK.

Types of the analysed judgments

From the 43 judgments that were analysed by "Just React", it can be seen that the Basic Court in Pristina during the period January-August 2022, received three types of judgments as foreseen with the provisions of the CPCRK. Consequently, during this time, this court has announced convictions, acquittals and rejection judgments. Moreover, as table below shows, we can notice that the majority of judgments, more precisely, in 35 cases or 81% of them, perpetrators were found guilty, in 6 cases or 14% are acquittal judgments were issued, while only in 2 cases or 5% of the cases analysed, we see that this court has decided with a rejection judgment.

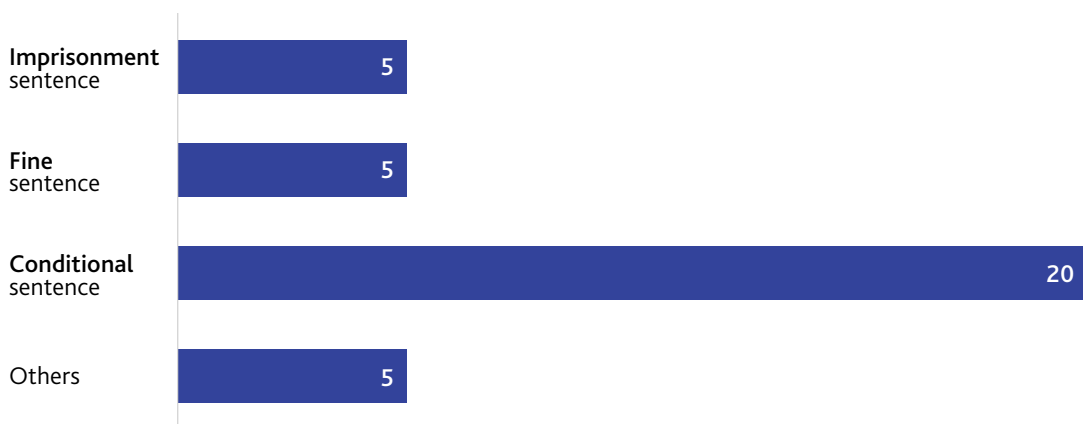
¹¹ Judgment in the case P.nr. 520/19,
link: https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_LI_P_520_19_SQ.pdf

¹² Judgments in cases P.nr. 416/22; P.nr. 913/22; P.nr. 416/22 and P.nr. 913/22

Graph 10. Types of judgments for domestic violence cases (January-August 2022)

Types of sentences imposed by the Basic Court in Pristina

As stated above, out of 43 analysed cases, in 35 of them the Basic Court in Pristina has imposed punishments against the perpetrators of the "Domestic Violence" criminal offense. However, if we view it as a statistic, in 81% of the cases, the court has sentenced the perpetrators of domestic violence, but the fact that most of them are suspended/conditional sentences it is of a concern. In the table below are presented the types of sentences that the Basic Court in Pristina has imposed in the 35 sentencing judgments published during January 1 - August 31, 2022:

Graph 11. Types of punishments imposed by the Basic Court in Pristina against domestic violence perpetrators

As it can be seen from the graph above, "Just React" has found that this court has imposed 20 conditional sentences, five effective imprisonment sentences, five sentences with a fine and in five cases it has imposed other sentences. Whereas, from the analysis of the five judgments with imprisonment, we found that the most serious punishment was the effective imprisonment sentence of 6 months against the offender who previously had 12 other judgments for various criminal offenses.¹³

¹³ Prishtina Basic Court, judgment with number P.nr. 2800/21, dated 28.12.2021

Whereas, considering that the CCRK provisions provide for that whoever commits the criminal offense of domestic violence shall be punished by fine and imprisonment of up to 3 (three) years¹⁴, we consider that the situation presented to us by the analyzed judgments shows an scarce punitive policy of perpetrators of domestic violence by the Basic Court in Pristina. Therefore, such a large number of cases where the perpetrators are only punished with a conditional sentence and not with effective sentences may increase the possibility that they may commit this or another criminal offense again and thus question the obligation of the state institutions in preserving and protecting the institution of the family, as the basic unit of society.

Another issue analyzed in the punishing judgments for the domestic violence criminal offense published by the Basic Court in Pristina, for the period January-August 2022, are the mitigating and aggravating circumstances which this court took into account when imposing such sentences.

Therefore, "Just React" has found that the most frequent mitigating circumstances that were mentioned in almost every judgment of domestic violence were the remorse of the accused, admission of guilt, regret, economic situation, unemployment, not convicted before and the continuation of cohabitation.

In addition, according to these judgments concerning the aggravating circumstances, it was found that this court in 18 cases did not find aggravating circumstances against the perpetrator despite the fact that he/she received a punishing judgments. While in two other judgments, this court in similar circumstances mentioned the fact that the defendant was previously convicted, while it did not mention the decisions with which the perpetrator was previously convicted.

Whereas paragraph 4 of Article 69 of the Criminal Code of the Republic of Kosovo determines that "when determining the punishment for a recidivist, the court shall especially consider whether the perpetrator has previously committed a criminal offense of the same type as the new criminal offense, whether the two (2) acts were committed for the same motives, and the period of time that has elapsed since the previous conviction was pronounced or since the punishment was served or waived".¹⁵ And this means that the recidivist can be considered as an aggravating circumstance only when he has committed criminal offenses of the same nature or for the same motive, and from these judgments it can be seen that the court has taken it as an aggravating circumstance even though the perpetrator has committed crimes of various criminal nature.

Moreover, according to these judgments, the GLPS has found that in the case with the number P.nr. 416/22, as an aggravating circumstance, this court shall consider the fact "that such nature of criminal offenses is quite frequent in the Republic of Kosovo and affects the breakdown of family and social relations in general".¹⁶

From this, an unprofessional approach of the court in protecting the constitutional rights of the defendant is obvious, and this is due to the fact that on the other hand, Article 69 of the Criminal Code No. 06/L-074 has envisaged that when the court determines the punishment for a criminal offense, must take into account the minimum and maximum punishment provided for that criminal offense. The court then must consider the purpose of the sentence, the principles set forth in this chapter, and the mitigating and aggravating circumstances

14 Article 248, Criminal Code No. 06/L-074 of the Republic of Kosovo

15 Article 69, Criminal Code No. 06/L-074. of the Republic of Kosovo

16 Prishtina Basic Court, judgment with number P.nr. 416/22, dated 25.02.2022.

related to the particular offense or sentence. It also provides that the punishment must be proportionate to the gravity of the offense, the behavior and circumstances of the perpetrator.

It has also foreseen that when determining the punishment, the court shall consider but not limited by following facts related to: the degree of criminal liability; the motives for committing the act; the intensity of danger or injury to the protected value; the circumstances in which the act was committed; the past conduct of the perpetrator; the entering of a guilty plea; and the personal circumstances of the perpetrator and his or her behavior after committing a criminal offense.¹⁷

GLPS considers that the justice system should do more in achieving the purposes of punishment, resocialization and rehabilitation of perpetrators of criminal offenses, since Article 38 of the Criminal Code envisages that "to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator; to prevent other persons from committing criminal offenses; to provide compensation to victims or the community for losses or damages caused by the criminal conduct; and to express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law."¹⁸

Duration of trials in domestic violence cases at the Basic Court in Pristina

The Constitution of the Republic of Kosovo, the European Convention on Human Rights as well as other applicable acts in our country require the court cases to be treated within a reasonable time, by an independent and impartial court, established by law.

However, since the focus of the analysis is the domestic violence cases based on 43 judgments published during the period January - August 2022 by the Basic Court in Pristina, one can see that this court in some cases took about 3 years to judge cases of this nature, while on the other hand one can see that the court for some domestic violence cases managed to issue verdicts just one day after the indictment was filed.

Hence, we see that there were cases when this court, from the filing of the indictment to the decision on domestic violence cases, took a full 2 years, 7 months and 15 days, or 958 days, while in one case it only took one day to issue a judgment. The average trial of these cases is about eight months.

This delay in judging some cases is contrary to Article 31 of the Constitution of the Republic of Kosovo, which states that "Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers, and it is further provides that Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law."¹⁹

Po ashtu kjo zvarritje bie në kundërshtim edhe me nenin 6 të Konventës Evropiane për të Drejtat e Njeriut ku përcaktohet se, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide both disputes concerning his rights and civil nature, as well as for the validity of any criminal charge against him".²⁰

17 Article 69, Criminal Code No. 06/L-074. of the Republic of Kosovo.

18 Article 38, Criminal Code No. 06/L-074. of the Republic of Kosovo

19 Article 31, Constitution of the Republic of Kosovo.

20 European Convention on Human Rights, Article 6, link: https://www.echr.coe.int/documents/convention_sqi.pdf

"Just React" estimates that the domestic violence cases are not being treated by the Basic Court in Pristina within a reasonable time, therefore, taking into account the nature of these cases, it suggests that cases of such nature should be of high priority for each of the assigned judges.

Characteristics of victims and accused of domestic violence according to the analyzed judgments

"Just React" during the analysing of 43 judgments published on the official website of the Basic Court in Pristina for the period January 1 - August 31, 2022, also focused on the issue of the characteristics of victims of domestic violence in terms of their gender, in order to have a more detailed overview of which gender is most affected by the domestic violence phenomenon.

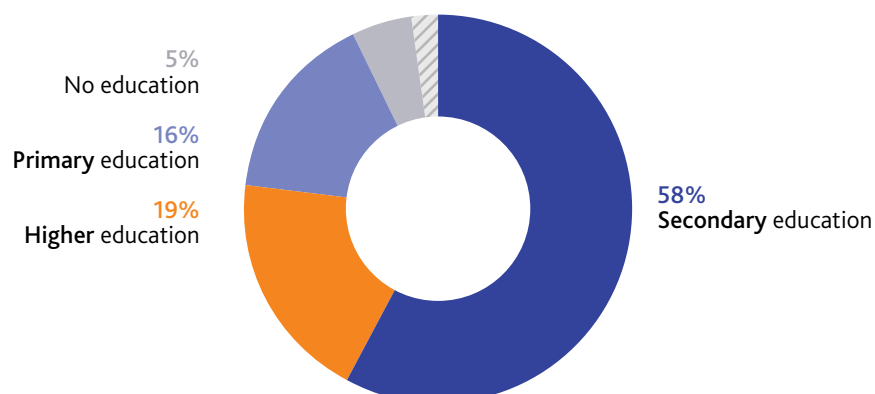
Graph 12. Victims of domestic violence by gender



As can be seen from the graph, "Just React" has found that from the 43 domestic violence cases for which the judgments were published during the first eight months of this year, in 35 cases or 81% of the victims of the crime of domestic violence are females, while in 8 cases, respectively in 19% of them, male persons are victims. If we look at the percentage as a basis, it turns out that in four out of five cases of domestic violence, the victims are women, while in one out of five cases, the victim is male.

Furthermore, part of the analysis are also the characteristics of the perpetrators of criminal offense of domestic violence in terms of their educational background and economic situation. Regarding the mentioned components, Just React found the data presented in the graph below:

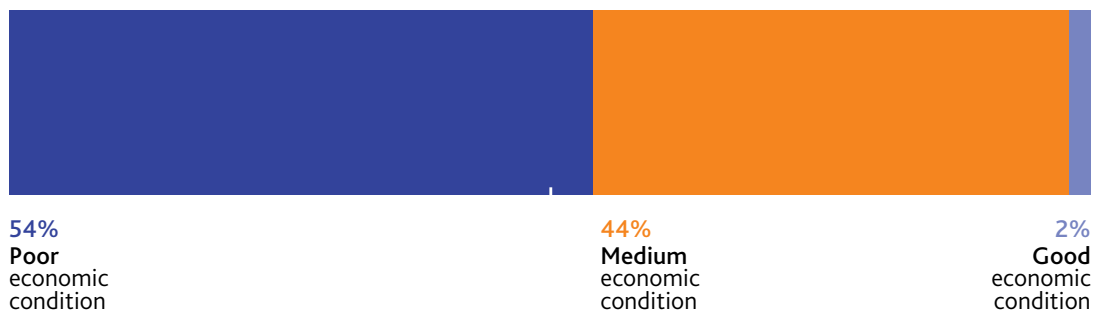
Graph 13. Educational background of the accused of domestic violence



From the analyzed data and presented graphically, it is clearly seen that as far as the educational background of the accused of domestic violence is concerned, most of them have completed secondary education, or in 25 cases the accused have completed secondary school, in seven cases they had just primary education, in eight cases higher education, in two cases the accused had no education at all, while for one case there was no data.

Moreover, regarding the economic situation component of the accused of domestic violence, from the 43 analyzed judgments, it can be seen that the majority of them, or 23 of them are of poor economic situation, while the other 19 are of medium economic situation and one of good economic situation.

Graph 14. Economic situation of the accused of domestic violence



Based on the analyzed cases, the graph above shows that more than a half of the accused of domestic violence appear to belong to a poor economic condition group or 25 of them, while 19 of them or 44% of them had a medium economic condition, while in one case, the accused of this criminal offense had a good economic situation.

Treatment of court cases when the accused of domestic violence were recidivists

From the decisions for the period January-August 2022 published by the Basic Court of Pristina together with its branches, such as Podujeva, Glogoc, Gračanica and Lipjan, "Just React" has found that in three cases the accused of domestic violence were recidivists of domestic violence, where in only one case the perpetrator of the domestic violence was sentenced to imprisonment²¹, in one case a fine and a conditional sentence was imposed, and in the final case only a conditional sentence was imposed.

Out of this, we can conclude that in such cases, the punishments imposed by the court were inadequate for the perpetrators of domestic violence, considering that the main goal of punishment has not been achieved, which has to do with preventing the convicted person from committing another or the same criminal offense in the future.

21 Judgment P.nr.429/22

In the Criminal Code of the Republic of Kosovo, it is determined that when determining the punishment for a recidivist, the court shall especially consider whether the perpetrator has previously committed a criminal offense of the same type as the new criminal offense, whether the two (2) acts were committed for the same motives, and the period of time that has elapsed since the previous conviction was pronounced or since the punishment was served or waived.²²

The main purpose of punishment in the criminal procedure is to prevent the commission of criminal offenses and the general awareness of citizens regarding their harmful consequences. More precisely, according to this Code, the purpose of punishment is: to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator; to prevent other persons from committing criminal offenses; to provide compensation to victims or the community for losses or damages caused by the criminal conduct; and to express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.²³

Therefore, for the future it is suggested that the judges who judge such cases, should pay attention to the calculation of punishment for persons who are proven to have committed domestic violence, so that the type and height of the punishment for the perpetrator of the criminal offense corresponds to the weight of the crime committed and its social gravity.

The role and competences of the Social Work Centers in relation to victims of domestic violence

Currently, in the Republic of Kosovo, there are 40 Social Work Centers (SWCs), one in each of the 38 municipalities, plus two additional branches in Pristina. The local government is the only source of funding for SWCs. According to the Municipal Regulations for allocation of subsidies, Mayors have the right to allocate subsidies to individuals and families, as well as to support the NGO activities that provide social services.²⁴

The SWC is a public institution at the municipal level, competent for the protection of citizens in need of social and family services, in this context also the protection and provision of services for victims of domestic violence up to the re-integration of the victim. It also coordinates activities with other stakeholders in the process of supporting the victim and empowering him/her.

The SWC helps victims of domestic violence when social services, protection, rehabilitation and integration of victims into society are needed. Every referred victim is assigned a case manager, who is an official appointed by SWC to help in identifying and coordinating existing services.

The Social Work Center assigns to each case of domestic violence a case management officer and support him/her regarding needed services. This case manager takes over the case supervision. The case manager assesses the social and economic situation of victims of domestic violence. This enables the SWC to identify the needs of the victim and coordinate the

22 Article 69, par. 4 of Code No. 06/L-074 of the Republic of Kosovo.

23 Article 38 par.1, subpar.1.1 to 1.4 of Code No.06/L-074 of the Republic of Kosovo.

24 Regulation No. 11/2013 on Subsidizing Municipalities, available at:

<https://kk.rks-gov.net/mitrovica/getattachment/Municipality/Assembly/Regulations/Regulloret-Komunale-2013/Regullorja-Nr--11-2013-per-ndarjen-e-subvencioneve.pdf.aspx>

appropriate services. Home visits can be done in order to assess the general family condition, shelter, etc. In general, the case manager supports the victim and empowers him/her to make independent and responsible decisions about his/her life.

The provision of social and family services should be done after assessing the needs. The victim must be informed about the conditions and obligations required in order to benefit from services. The case manager completes the basic data form for the victim and coordinates activities with other stakeholders in order to help and integrate the victim. The case manager ensures that other stakeholders inform the SWC about referral of the case to social services. During the provision of services, the case manager is obliged to respect the procedures and deadlines according to the legislation in force.²⁵

Social Services Officer shall mean a qualified Social and Family Services professional, in the area of social work, psychology sociology, law, pedagogy or other discipline closely related to social and family services licensed and registered in the register of General Social and Family Services Council.²⁶

According to the Administrative Instruction²⁷, natural person who provides psychosocial treatment on a perpetrator of violence must fulfill the following conditions and criteria: Be able to work; To be a psychiatrist, psychologist, sociologist, pedagog, social worker and to have a professional license.

As for the points mentioned in the Administrative Instruction, according to the conducted research, it was observed that out of 164 officials who work in Social Work Centers throughout Kosovo, only 6 of them have a university education in the social work area. According to the research, the others are graduates of law, history, ecology, political science and other faculties. Moreover, except the lack of education, the majority of SWC officials do not have any training, which would enable them to handle the re-socialization and re-integration process.²⁸

The role and competences of the Kosovo Correctional Service in relation to the convicted individuals of domestic violence

The Kosovo Correctional Service (KCS) was created for the purpose of executing penal sanctions, such as: imprisonment and life imprisonment, juvenile imprisonment, correctional education measure for juveniles and detention measure, consists of the following Correctional Institutions: Correctional Centers; Detention Centers; High Security Institutions. Within a Correctional Institution there may be closed, semi-open and open units, depending on the needs of the institution.²⁹

The Correctional Service upon admission of the prisoners to the correctional center, it first conducts individual risk assessment taking into account the length of the sentence imposed,

25 <https://abgj.rks-gov.net/assets/cms/uploads/files/Publikimet%20ABGJ/Procedurat%20Standarte%20t%C3%AB%20Veprimit%20p%C3%ABr%20Mbrojtje%20nga%20Dhuna%20n%C3%AB%20Familje.pdf>

26 Article 1 (1.3(i)), Law on Social and Family Services.

27 Administrative Instruction No. 12/2012 on determining the place and way of psychosocial treatment of perpetrators of domestic violence, October 2010, article 5, par. 5.

28 <https://kallxo.com/gjate/hulumtim/hulumtim-ne-kosove-historianet-i-trajtojne-ne-qendrat-sociale-familjet-qe-kane-probleme/>

29 Article 21, par. 1, subparagraphs 1.1, 1.2 and 1.3 of Law No. 08/L-131 for the Correctional Service of Kosovo.

age, gender, health status, features and other characteristic of all prisoners through the Assessment and Classification Unit and after the evaluation process, an individual plan for the execution of the sentence is drafted according to the specifics of each convicted person.³⁰

When admitting a convicted person, the possibility of implementing joint resocialization programs, as well as the need to avoid negative influences, must also be taken into account.³¹ Among the main responsibilities of the KCS is the development and implementation of programs for vocational education and training as well as other programs for re-socialization and re-education of prisoners.³²

The purpose of rehabilitation is to promote the process of social reintegration of the convicted individual, which requires a break from their previous attitudes and behaviors. Rehabilitation serves as a valuable tool to change the cycle of violence for those who do not see any other option to do this without the outside help.

The basic idea behind rehabilitation through imprisonment is that a person once imprisoned will never want to go back to prison after being released. On the other hand, many studies argue that some prisoners will learn new and better ways to commit crimes while imprisoned.³³ Therefore, prisons are not a guaranteed instrument of rehabilitation. Better rehabilitation services should be provided to prisoners, such as activities inside and outside prisons.

However, there are some challenges that can make the rehabilitation process difficult due to the lack of sufficient budget and since everything is related to prisons, there is a lack of professional staff (experts within prisons).³⁴

The Law on Execution of Penal Sanctions foresees the individual program for correction and resocialization for convicted persons that includes placement in an institution or a section within an institution; participation in educational activities; participation in vocational training activities; participation in cultural, formative and sport activities; work and improvement in professional skills; family links and contacts with the outside world; conditions for eligibility for home leave, conditional release or early release; and measures aiming at preparation for the final release.³⁵

Based on the above mentioned, it can be observed that in the Correctional Centers there are no special programs for the re-education and re-socialization of perpetrators of violence, which, from the monitoring of domestic violence cases in the judicial system, there are cases when persons who have committed domestic violence, during their stay in detention - they stay in the same room with people who have also committed other criminal offenses, and this phenomenon is of a concern, because the perpetrators of violence while serving their sentence are not subject to any special program for their re-education and re-socialization. Even in the Correctional Service internal regulations for the treatment of convicted persons, no special programs for perpetrators of domestic violence are foreseen.³⁶

30 Article 17, paragraph 1 and 4 of Law No. 08/L-131 for the Correctional Service of Kosovo.

31 Article 13, paragraph 3 of Law No. 04/L-149 on Execution of Penal Sanctions.

32 Article 24, paragraph 1, 2, 3, 4 and 5 of Law No. 08/L-131 on the Correctional Service of Kosovo.

33 <http://www.crimemuseum.org/crime-library/rehabilitative-effects-of-imprisonment/>

34 https://qkss.org/images/uploads/files/Riintegrimi_84989.pdf

35 Article 54, par. 2, subpar. 2.1 to 2.8 of Law No. 04/L-149 on the Execution of Penal Sanctions.

36 <https://shkk.rks-gov.net/assets/cms/uploads/files/Rregullorja%20e%20brendhsme%20per%20tretman.pdf>

Mandate of the Victim Protection and Assistance Office (VPAO)

The VPAO is embedded within the Office of the Chief State Prosecutor, which has primary responsibility for ensuring justice in criminal matters. The VPAO has the obligation to ensure the protection of the rights of victims in the justice system. This obligation exists during the procedure of investigations, prosecution and punishment of the perpetrator, but also in cases when the state through the Court can limit the rights and privileges of the perpetrator as a result of an order.

The Victim Advocate is an authorized representative who has the power to notify the injured party of his/her rights and represents the victim in proceedings at the prosecutor's office and at the court and when necessary refers the victim to other service providers. The Victim Advocate acts on behalf of the victim when it is necessary and appropriate to stop the violation of the victim's rights and to request action to guarantee their protection.

The VPAO provides legal information on the rights of crime victims, assistance and representation in the justice system. With 7 regional offices, it covers the entire territory of the Republic of Kosovo.³⁷

Conclusions and recommendations

From the analyzed data, we can conclude that within the period January-August 2022, at the country level, 1,852 cases of domestic violence were reported to the Kosovo Police, and referring to the official data received by this institution, it appears that 581 cases or about a third of the total cases were reported in Pristina region. In regards to the suspects and arrested persons who are suspected of having committed domestic violence, we can see that most of them are males and adults. In regards to the victims of domestic violence, we found out that most of them are females.

Regarding the treatment of cases of this nature by the Basic Prosecutor's Office in Prishtina, we can conclude that this institution has shown efficiency in handling domestic violence cases with minor perpetrators, while it is required to increase efficiency in handling domestic violence cases when the perpetrators of this criminal offenses are adults.

While, from analysing of 43 judgments published by the Basic Court in Pristina (together with the branches), for the period January - August 2022, it can be seen that only in 5 cases this court has imposed an effective imprisonment sentence, while the majority of the judgments consist of conditional sentences. On the other hand, one can see that in relation to such cases, in 70% of them, the legal deadline for scheduling and holding the initial examination from the moment when the indictment was filed, it was not respected. Moreover, one can see that there have been cases when it took this court 2 years, 7 months and 15 days, or 958 days from the date of filing of the indictment to rendering the decision on domestic violence cases, while

37 Mandati i Zyrës për Mbrojtje dhe Ndihmë Viktimave (ZMNV), link:
<https://prokuroria-rks.org/assets/cms/uploads/files/Mbrojtja%20e%20viktimave/Zyra%20p%C3%ABr%20Mbrojtje%20dhe%20Ndihm%C3%AB%20Viktimave.pdf>

in some other cases, it took this court only one day to complete the process. The average trial of these type of cases is about eight months.

In relation to the economic situation and educational background of those accused of domestic violence, from the analyzed data it was found that in most cases the accused are of a poor economic situation, while based on the educational background component it was found that over 50% of those accused of domestic violence have completed secondary education.

On the other hand, one can see that there is a legal void of the Law on Protection from Domestic Violence, meaning that it does not contain specific provisions that specify and define the incriminating actions that constitute physical, psychological, economic and sexual violence.

In conclusion, there is a need that the domestic violence cases are treated with high priority by all institutions, starting from the Kosovo Police, the Prosecutor's Office, the Courts, VPAO, SWCs and KCS, and also other bodies that in any form can influence the reducing the domestic violence phenomenon in our country. These institutions must prove that domestic violence is not only a personal problem within a family, but that the family is an institution that enjoys the state protection, which sanctions those who perpetrate violence within the domestic relationship, and that the victims are treated with care, ensuring their well-being and protection.

From the findings of this analysis, "Just React" gives the following recommendations:

1. The Kosovo Police should treat every domestic violence case with high seriousness, to identify and arrest the suspects within the shortest possible time, and for every action to be in coordination with the state prosecutors;
2. The Kosovo Police should continue the good practice of informing the public about domestic violence cases that are reported every 24 hours at the country level;
3. The Basic Prosecutor's Office in Pristina is called upon to increase the efficiency in the treating the domestic violence cases with adult suspects and to continue the efficient treatment of such cases with minor perpetrators.
4. The Basic Court in Pristina is called upon to treat with greater seriousness the domestic violence cases in cases where the accused persons are recidivists, as well as in terms of respecting the deadline for scheduling and holding the initial examination session;
5. The Basic Court in Pristina is called upon to justify all mitigating and aggravating circumstances related to the accused persons in the punitive judgments for the "Domestic Violence" criminal offense, when determining the type and height of the punishment;
6. The Basic Court in Pristina is called upon to treat cases of this nature with priority so that the cases are completed within a reasonable time.
7. Institutions such as VPAO, SWOs and KCS are called upon to increase their capacities and treat seriously every domestic violence victim or perpetrator of;
8. It is recommended to supplement/amend the Law on Protection from Domestic Violence, with special emphasis on definitions of types of domestic violence;
9. It is recommended that the courts continue to publish judgments on their official website related to the domestic violence cases.

Reporting and treatment of domestic violence cases

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