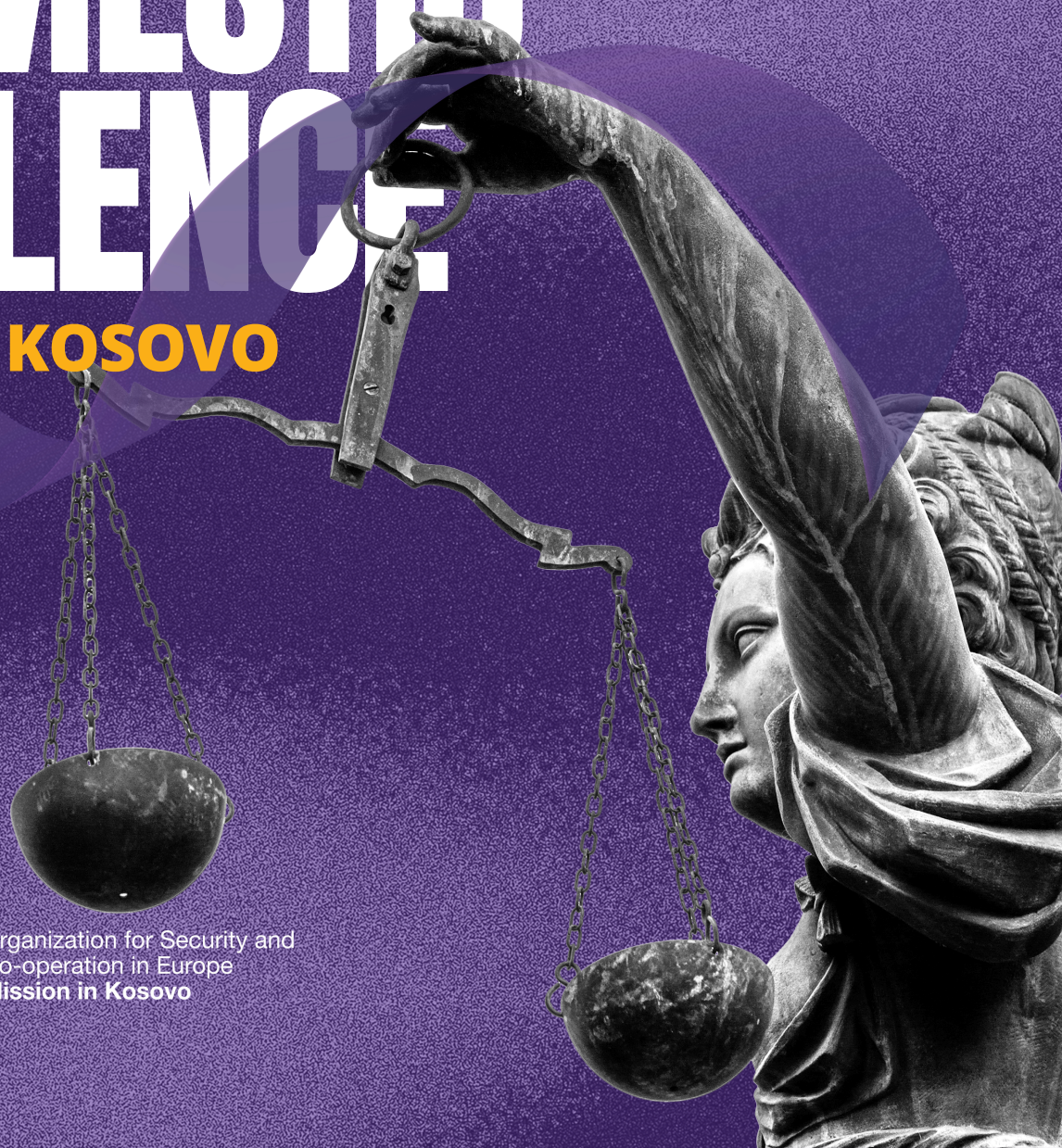


TRIAL MONITORING REPORT ON THE ADJUDICATION OF DOMESTIC VIOLENCE

CASES IN KOSOVO

July 2024

osce Organization for Security and
Co-operation in Europe
Mission in Kosovo



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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPC	Criminal Procedure Code
CSW	Centre for Social Work
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPO	Emergency Protection Order
ICCPR	International Covenant on Civil and Political Rights
KAJ	Kosovo Academy of Justice
KBA	Kosovo Bar Association
LPDV	Law on the Protection Against Domestic Violence
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PO	Protection Order

EXECUTIVE SUMMARY

Domestic violence and violence against women are among the most prevalent forms of violence and breaches of fundamental human rights and freedoms.¹ According to media reports, at least 55 Kosovo women have been killed by their male partners or relatives since 2010, amounting to around one such murder every three months.²

This report analyses data collected in 2023 by the Organization for Security and Co-operation in Europe Mission in Kosovo's (OSCE) trial monitoring program on the adjudication of domestic violence crimes and civil disputes in Kosovo.³ The report aims to assess how the seven Basic Courts in Kosovo⁴ comply with local and international legal standards in the adjudication of domestic violence cases. It is intended to serve as a learning tool for judges, prosecutors and attorneys and to support training and other recommendations for the Kosovo Academy of Justice (KAJ), Kosovo Bar Association (KBA), and other relevant Kosovo institutions.

In line with the OSCE mandate and well-established OSCE Office for Democratic Institutions and Human Rights (ODIHR) trial monitoring methodology, this report is based on findings from 141 civil and criminal domestic violence cases that were directly monitored by the OSCE between 1 January 2023 and 1 December 2023. The analysis benefits from the OSCE's five Regional Centres, all of which have trial monitoring staff who regularly monitor cases at the seven Basic Courts. As such, the OSCE is uniquely placed to analyse the adjudication of domestic violence cases across Kosovo courts.

One of the main findings is that very few of the cases monitored adhered to procedural deadlines, thus raising concerns about victims' safety, as well as criminal defendants' right to a trial within a reasonable time, as is afforded by Article 31 of the Kosovo Constitution. Indeed, fairly and promptly adjudicating

1 Kosovo Ministry of Justice 2022 National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026. Available at <https://kryeministri.rks-gov.net/wp-content/uploads/2022/08/ENG-Strategjia-Kombetare-per-Mbrojtje-nga-Dhuna-ne-Familje-dhe-Dhuna-ndaj-Grave-2022-2026.pdf> (accessed 24 October 2023).

2 Radio Free Europe "55 women killed in 13 years." Available at <https://www.evropaelire.org/a/gra-te-vrara-kosove/32157504.html> (Accessed 1 December 2023).

3 For the purpose of this report (unless otherwise noted) the definitions of conduct amounting to or "qualifying" as domestic violence or abuse include the following offences found in the Criminal Code of Kosovo committed within the context of a domestic relationship: murder (Article 172), aggravated murder (Article 173), threat (Article 181), harassment (Article 182), sexual harassment (Article 183), assault (Article 184), light bodily injury (Article 185), grievous bodily injury (Article 186), unlawful deprivation of liberty (Article 193), rape (Article 227), sexual assault (Article 229), degradation of sexual integrity (Article 230), mistreating or abandoning a child (Article 243), violating family obligations (Article 244), and domestic violence (Article 248).

4 Prishtinë/Priština Basic Court, Prizren Basic Court, Gjakovë/Đakovica Basic Court, Pejë/Peć Basic Court, Mitrovicë/Mitrovica Basic Court, Gjilan/Gnjilane Basic Court, and Ferizaj/Uroševac Basic Court.

domestic violence cases is crucial in ensuring respect for the fair trial rights enshrined in Article 6 of the European Convention on Human Rights (ECHR). In evaluating whether criminal proceedings adhere to Article 6, courts look at the proceedings as a whole, including the rights of the defence, the interests of the public and the victims in proper prosecution, and, where necessary, the rights of witnesses.⁵

The data also show that, while sentencing practices vary, it is a common practice for courts⁶ to impose the alternative punishment of a suspended sentence or a fine. The plain language of Kosovo's Sentencing Guidelines (Guidelines) clarifies that suspended sentences are appropriate in some situations, but can be perceived as a "complete release of the perpetrator from all liability without consequence" and that courts must provide thorough justification for any alternative punishment, demonstrating that it will equally meet the purposes of punishment.⁷ The Guidelines further specify that suspended sentences should only be applied to offences "*that are not severe* and when the threat of punishment is sufficient to prevent the perpetrator from committing another offense" (emphasis added). The OSCE is concerned that the prevalent and often unjustified practice of imposing suspended sentences in Kosovo may both discourage domestic violence victims from reporting abuse and result in perpetrators' impunity, leading to a risk of recidivism.

Protection measures are issued by a civil court or the police and encompass a wide range of remedies, including prohibiting perpetrators from approaching or harassing the victim, requiring that perpetrators undergo psycho-social, drug, or alcohol treatment, and property protection measures.⁸ The data show that, although Kosovo courts granted a majority of all requests for protection orders, in the majority of protection order (PO) hearings involving juveniles, no staff member from the Centres for Social Work (CSW) attended despite a clear legal mandate to do so.

5 *Schatschaschwili v. Germany* (no. 9154/10), §§ 100-101/2015, 15 December 2015 (accessed 24 October 2023).

6 For brevity and consistency this document will refer to actions taken by "the court" even though Kosovo's Code of Criminal Procedure foresees criminal matters occurring either before a single trial judge or a panel of judges with a presiding trial judge.

7 Kosovo, Supreme Court of Kosovo, *Sentencing Guidelines First Edition*, 2018. https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Sentencing%20Guidelines_February%202018.pdf, pgs. 164-165. (Accessed 24 October 2023).

8 OSCE (no date) Catalogue of Advice and Assistance for Domestic Violence Victims, <https://www.osce.org/files/f/documents/0/a/88708.pdf> (Accessed 1 December 2023).

1. INTRODUCTION

Since 1999, the mandate of the trial monitoring section within the OSCE Mission in Kosovo has been to monitor the justice system for compliance with fair trial and international human rights standards. Based on this trial monitoring, the Mission seeks to improve the rule of law in Kosovo by providing specific and practical recommendations, such as for training or legislative change.

The Mission has previously reported on concerns regarding domestic violence and the handling of domestic violence cases, based on OSCE court monitoring findings.⁹ Those reports identified challenges such as significant delays in scheduling hearings and failing to adjudicate petitions for POs and emergency protection orders (EPOs) within the relevant legal timeframes. In addition, OSCE monitors reported poor judicial reasoning in sentencing decisions and courts' failure to distinguish between POs and EPOs. Also, reports noted shortcomings in the implementation of legislation on protection against domestic violence and misapplication of the law by courts, such as courts improperly encouraging parties in domestic violence cases to reconcile, or issues with the right to public proceedings. Several outreach workshops were held by the OSCE Kosovo-wide to raise awareness of the legal remedies available to victims of crime, in particular victims of gender-based violence. The OSCE held workshops for justice system actors on thematic areas covering the protection of victims, observation of their rights and proper handling of domestic violence cases.

Domestic violence and violence against women are among the most prevalent forms of violence and breaches of fundamental human rights and freedoms.¹⁰ According to media reports, at least 55 Kosovo women were killed by their male partners or relatives from 2010 to 2023, amounting to around one murder every three months.¹¹ In April 2024, Kosovo witnessed two femicides within days, both committed by a husband or ex-husband in broad daylight. Most of these fatal outcomes had been preceded by a history of assault or abuse previously brought

⁹ See, e.g.: *OSCE Report on Domestic Violence Cases in Kosovo* (July 2007). <https://www.osce.org/files/f/documents/8/0/26282.pdf> (accessed 1 December 2023); *OSCE Report Judicial Proceedings Involving Domestic Violence* (November 2009). <http://www.osce.org/kosovo/40398> (accessed 31 May 2023); *OSCE React Report: Emergency Protection Orders in Domestic Violence Cases* (June 2011); *OSCE Catalogue of Advice and Assistance for Domestic Violence Victims* (March 2012). <http://www.osce.org/kosovo/88708> (accessed 1 December 2023); see also *OSCE Report, Adjudication of petitions for protection orders in domestic violence cases in Kosovo* (March 2012). <https://www.osce.org/files/f/documents/9/5/88713.pdf> (accessed 1 December 2023); see also *OSCE React Report: Responses to Cases of Domestic Violence in Light of the Death of Ms. Zejnepe Bytyçi-Berisha* (November 2015). <https://www.osce.org/files/f/documents/3/8/203051.pdf> (accessed 1 December 2023).

¹⁰ Kosovo Ministry of Justice 2022 National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026. Available at <https://kryeministri.rks-gov.net/wp-content/uploads/2022/08/ENG-Strategjia-Kombetare-per-Mbrojtje-nga-Dhuna-ne-Familje-dhe-Dhuna-ndaj-Grave-2022-2026.pdf> (accessed 24 October 2023).

¹¹ Radio Free Europe "55 women killed in 13 years." Available at <https://www.evropaelire.org/a/grate-vrara-kosove/32157504.html> (accessed 1 December 2023).

to the attention of the justice system or other protective services. This underlines the crucial role played by the courts in addressing and preventing cases of domestic violence. Data collected by the Ministry of Justice shows that the number of domestic violence cases reported to the Kosovo police increased from 1,915 in 2019 to 2,638 in 2023.¹²

The OSCE's 2019 Survey on Well-being and Safety of Women in Kosovo details¹³ the prevalence of domestic violence in Kosovo and signals that these statistics may not accurately reflect the actual, most likely much higher, number of domestic violence cases. Nearly two-thirds (64%) of women who participated in the survey¹⁴ thought that violence by partners, acquaintances, or strangers was either very or fairly common, over half (54%) said they had personally experienced psychological, physical or sexual violence from an intimate partner, and nearly half believed that domestic violence is a private matter to be handled within the family. Seventy-five percent of the women surveyed who came from households facing significant financial difficulties were subjected to current partner violence.

Despite the overwhelming percentage of survey participants who revealed that they had experienced domestic violence, the majority of women had not contacted any services as a result of the most serious cases of violence experienced at the hands of a current partner (92%), previous partner (81%) or a person other than a partner (72%). Only 2% of women had reported their most serious incident of current partner violence to the police, 3% had reported cases to social services and hardly any had contacted a women's shelter or another specialized service. The report concluded that underreporting of domestic violence is related to victims' shame, not wanting to be separated from their children, lack of financial independence, fear of repercussions from their partner, and lack of trust in institutions such as the police, the social support and health sector and the judiciary.

This report aims to provide an objective, evidence-based and current assessment of the handling of domestic violence cases by Kosovo courts, based on an analysis of cases directly monitored by OSCE trial monitors, as well as legal submissions and court rulings, between 1 January and 1 December 2023.

12 Database for the Evidence of Domestic Violence Cases. Available at <https://md.rks-gov.net/page.aspx?id=1,184> (ccesed 1 December 2023). In 2024, there were only 698 domestic violence cases reported to the Kosovo police. *Id.* This report does not analyse 2024 data and cannot conclude whether this decrease results from victims' lack of trust in the legal system, an actual decrease in domestic violence cases, or some other reason(s).

13 OSCE Report (21 November 2019) *Survey on well-being and safety of women in Kosovo* <https://www.osce.org/mission-in-kosovo/439781> (accessed 1 December 2023).

14 The survey involved 1,990 women ages 18–74 living in Kosovo, including 1,690 women living in areas predominantly inhabited by Kosovo Albanians, and 300 women living in areas predominantly inhabited by Kosovo Serbs.

The report presents the following key concerns:

- Excessive delays in court hearings. OSCE trial monitors reported that courts consistently do not adhere to the procedural deadlines outlined in Kosovo's Criminal Procedure Code. The report will analyse recurring areas of procedural delays and will offer suggestions for improvement.
- Sentencing. The report will evaluate sentencing practices in domestic violence cases and the issues of leniency and proportionality. The report will also analyse if and how courts are utilizing sentencing guidelines, including the application of aggravating and mitigation factors.
- Protection order case management issues. OSCE trial monitors have observed case management shortcomings, including timeliness deficiencies and the absence of mandatory participants and parties to cases.

2. METHODOLOGY

This report is based on:

- i. Desk research of relevant international human rights standards and the Kosovo legal framework related to domestic violence;
- ii. Quantitative and qualitative analysis of data collected from civil and criminal domestic violence hearings between 1 January and 1 December 2023;
- iii. Qualitative data analysis of additional case details received from OSCE trial monitors of courts Kosovo-wide by region;
- iv. Direct monitoring of hearings and assessment by OSCE trial monitors of the conduct of those hearings.

Trial monitoring is widely regarded as a powerful diagnostic tool to evaluate institutional, structural and capacity shortcomings in the judiciary. By systematically gathering reliable information about how trials and court proceedings are conducted, these programs assist in implementing and maintaining justice systems that adhere to international rule of law and fair trial standards.

For this report, OSCE trial monitors directly observed more than 300 hearings before the seven Kosovo Basic Courts in 141 cases monitored between 1 January 2023 and 1 December 2023. After observing a domestic violence hearing, trial monitors completed database entries with short analyses of the main procedural or substantive issues and uploaded key court documents such as petitions for protection orders, indictments and written judgments. The OSCE follows ODIHR trial monitoring methodology¹⁵ in observing courtroom proceedings and key trial monitoring principles such as non-interference in individual cases and the duties of impartiality, confidentiality and accuracy.

¹⁵ The OSCE Mission in Kosovo's trial monitoring methodology is based on ODIHR's 2012 publication, "Trial Monitoring: A Reference Manual for Practitioners," available at <https://www.osce.org/odihr/94216> (accessed on 31 May 2023).

3. LEGAL FRAMEWORK

Kosovo Legal Framework

The Constitution of Kosovo guarantees a number of internationally recognized fundamental human rights and freedoms,¹⁶ including the right to life (Article 25), equality before the law (Article 24), personal integrity (Article 29), marriage and divorce based on equality of spouses (Article 37), and judicial protection if any constitutionally or legally afforded right is violated or denied (Article 54). The Constitution obliges public authorities to ensure equal treatment of all individuals before the law, and fully respect internationally recognized fundamental human rights and freedoms.¹⁷ To that end, Article 7 of the Constitution establishes that Kosovo's constitutional order is founded upon equality, respect for human rights, freedoms, and non-discrimination, and enshrines gender equality as a fundamental value.

Kosovo's Criminal Procedure Code (CPC)¹⁸ aims to protect fair trial rights, including the right to a fair and impartial trial within a reasonable time;¹⁹ judicial independence;²⁰ and participation in criminal proceedings speaking one's native language and to have free interpreting services rendered²¹ in one's own language or a language one understands.²² Injured parties have the right to be treated with respect by the police, prosecutors, judges, or any other body conducting criminal proceedings, and to reasonable court-ordered restitution from a defendant(s) who has admitted or been found to be guilty of a criminal offence causing harm to the injured party.²³ If court-ordered restitution from the defendant is not possible, the injured party has the right to claim compensation from the Crime Victim Compensation Program.²⁴ Injured parties may be represented by an attorney who is a KBA member, a victims' advocate or by themselves.²⁵

16 Constitution of Kosovo, Chapter II – Fundamental Rights and Freedoms, June 2008.

17 *Id.* at Art. 3.

18 Assembly of Kosovo, *Criminal Procedure Code No. 08/L-032 (17 August 2022)*, available at <https://md.rks-gov.net/desk/inc/media/8750FE73-BA51-463C-BA88-31D0B8865840.pdf> (Accessed 1 December 2023). The law entered into force 6 months later on 17 February 2023.

19 *Ibid.*, Article 5.

20 *Ibid.*, Article 8.

21 *Ibid.*, Article 13.

22 *Ibid.*, Article 14.

23 *Ibid.*, Article 62.

24 *Ibid.*, Article 63.

25 *Ibid.*, Article 64.

Kosovo's domestic violence legal framework is specifically defined in the Law on Gender Equality,²⁶ Article 248 of the Criminal Code,²⁷ guidance issued by the Supreme Court of Kosovo regarding sentencing matters²⁸ and the legal qualification of domestic violence offences,²⁹ and the Law on Protection against Domestic Violence (LPDV).³⁰ Article 13 of the LPDV provides for two types of protection: petitions for protection orders (POs) and petitions for emergency protection orders (EPOs). Direct victims may request a PO; in certain situations, POs may be requested by a victim's authorized representative, a victim advocate, or a CSW representative. The same parties may request an EPO, along with anyone having a domestic relationship with the victim, anyone with direct knowledge of domestic violence committed against the victim, or a well-informed NGO. Courts must decide EPOs within 24 hours, and POs within 15 days, of receipt of a request.

In September 2023, Kosovo amended a significant part of the legal framework related to domestic violence by adopting a new Law on Prevention and Protection from Domestic Violence, Violence Against Women and Gender-based Violence (2023 DV Law),³¹ aimed at harmonization with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).³² Around the same time, the Assembly of Kosovo adopted amendments to the Criminal Code and CPC providing harsher sentences for domestic violence perpetrators and tightening the deadlines for

26 Law No. 05/L-020 on Gender Equality <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10923>. 26 June 2015 (accessed 27 March 2024).

27 Code No. 06/L-074, Criminal Code of of Kosovo, Article 248). <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>. 14 January 2019 (accessed 1 December 2023).

28 Supreme Court of Kosovo Sentencing Guidelines (2018). https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Sentencing%20Guidelines_February%202018.pdf. (accessed 1 December 2023).

29 Guidance on the Legal Qualification and Treatment of Domestic Violence Cases According to the Criminal Code of Republic of Kosovo (2020). https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/75340_Supreme%20Court%20DV%20Guidance_June%202020.pdf. (accessed 1 December 2023).

30 Law No.03/L-182, (2010). <http://old.kuvendikosoves.org/common/docs/ligjet/2010-182-eng.pdf>. (accessed 1 December 2023).

31 The LPDV law was in force during the majority of the report's monitoring period. However, the 2023 DV Law was published on 12 October 2023; it entered into force 15 days later on 27 October 2023. <https://gzk.rksgov.net/ActDocumentDetail.aspx?ActID=83131> (accessed 1 December 2023).

32 On 25 September 2020, the National Assembly of Kosovo adopted an amendment to its Constitution that ratified the Istanbul Convention. Article 50 of the Istanbul Convention discusses ratifying states' obligation to ensure that the responsible law enforcement agencies provide immediate response, prevention, and protection via legislative or other measures. Article 53 of the Istanbul Convention outlines ratifying states' obligation to "take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention." Part 2 of said Article sets minimum standards for protection orders, including that they: are immediately available; do not impose an undue financial or administrative burden on the victim; are issued for a specified period or until they are modified or discharged; and are available on an *ex parte* basis, if necessary. Article 53 also requires that effective, proportionate and dissuasive criminal or other legal sanctions be applied in the event of a violation of the protection order.

investigation and trial duration.³³ Several other strategic documents relating to domestic violence have been adopted.³⁴

International Legal Framework

Kosovo's Constitution also establishes that certain enumerated international agreements and instruments are directly applicable, including the ECHR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the Istanbul Convention.³⁵ Article 53 of the Constitution further mandates that any interpretation of human rights and fundamental freedoms guaranteed by Kosovo's Constitution be compatible with ECtHR jurisprudence.³⁶ This report will therefore interpret human rights and fundamental freedoms in light of ECHR case law. The report will take the jurisprudence of the European Court of Human Rights (ECtHR) as the main international standard defining the right to liberty, the right to trial within a reasonable time, and other rights as set forth in the report.

The ECtHR has played an important role in recognizing domestic violence as an international human rights violation. ECtHR jurisprudence holds that authorities' positive obligations under Article 2 of the ECHR (right to life), Article 3 (prohibition against torture and inhuman or degrading treatment), and Article 14 (prohibition of discrimination) may include a duty to maintain and practically apply an adequate legal framework affording protection against acts of violence by private individuals. The ECtHR has noted "the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection."³⁷ A violation of Article 3, which is an absolute right, leads to stricter scrutiny by the Court and is therefore more significant than a violation of Article 2 or 14, which are limited and qualified rights respectively.³⁸

33 On 26 October 2023, the National Assembly of Kosovo adopted amendments to its CPC and Criminal Code. In relevant part, offenders are now restricted from running for public positions and employment in the public sector; purchasing at auctions of sale of public properties, public assets or licenses, applying as a strategic investor and driving (for professional drivers).

34 National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026 <https://md.rks-gov.net/desk/inc/media/9307CD0A-E63D-4DCE-A93C-39698DE65A2F.pdf> (Accessed 1 December 2023); Curriculum for the Training of Professionals Working on Programmes for Perpetrators of Domestic Violence of Kosovo <https://md.rks-gov.net/desk/inc/media/DFB18A0D-1B6A-47FB-BF26-65C2F0D77977.pdf> (Accessed 1 December 2023); Annual Report on the Implementation of the National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026 <https://md.rks-gov.net/desk/inc/media/DE72E004-123A-4E11-AF68-F577319CDC89.pdf> (Accessed 1 December 2023); State Protocol for Treatment of Sexual Violence Cases <https://md.rks-gov.net/desk/inc/media/67347A0F-D211-492F-B8CC-3619F43E5484.pdf> (Accessed 1 December 2023).

35 *Ibid.*, Article 22.

36 Constitution of Kosovo, Articles 22 and 53, June 2008.

37 *Volodina v. Russia*, no. 40419/19, § 47, 14 December 2021.

38 Qualified rights are rights which may be interfered with in order to protect the rights of another or the wider public interest, e.g. the right to private and family life, Article 8. Unqualified rights are rights which cannot be balanced against the needs of other individuals or against any general public interest. They may be subject to specific exceptions, e.g. the

As it relates to the specific findings of this report, the OSCE highlights ECtHR jurisprudence, clarifying the positive obligations of state authorities to protect people's rights even against the actions of private individuals. In *Tkheldidze*,³⁹ the ECtHR summarised Georgia's failure to address domestic violence and violence against women in general. Indeed, a failure to protect women against domestic violence breaches their right to equal protection before the law – and this failure need not be intentional. The ECtHR has previously held that “general and discriminatory judicial passivity [creating] a climate ... conducive to domestic violence” amounts to a violation of Article 14 of the Convention.⁴⁰ In *Opuz*, the Court found that, despite reforms carried out by the Turkish government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence. The ECtHR cited the judiciary's frequent delays when issuing orders for protection against domestic violence and the fact that “perpetrators of domestic violence did not receive dissuasive punishments.”

Such discriminatory treatment occurs where the authorities' actions are not a simple failure or delay in dealing with the violence in question, but amount to repeatedly condoning such violence and reflect a discriminatory attitude towards the complainant as a woman.⁴¹ An immediate response to allegations of domestic violence is required from the authorities, who must establish whether there exists a real and immediate risk to the life of one or more identified victims of domestic violence by carrying out an autonomous, proactive and comprehensive risk assessment.⁴²

right not to be deprived of liberty, Article 5; or to none at all, when they are called absolute rights. See Toolkit to inform public officials about the State's obligations under the European Convention on Human Rights. <https://www.coe.int/en/web/echr-toolkit/definitions> (accessed 27 March 2024).

39 *Tkheldidze v. Georgia*, no. 33056/17, §§ 48-51, 8 July 2021.

40 *Opuz v. Turkey*, no. 33401/02, §§ 191 *et seq.*, 9 June 2009.

41 *Talpis v. Italy*, no. 41237/14, § 141, 2 March 2017.

42 *Kurt v. Austria*, no. 62903/15, § 190, 15 June 2021.

4. TRIAL MONITORING FINDINGS

4.1 Basic Courts' Overreliance on Alternative Penalties and Failure to Sufficiently Analyse Aggravating and Mitigating Factors in Domestic Violence Cases

The OSCE is concerned about courts' excessive reliance on alternative penalties such as suspended sentences or fines when sentencing criminal defendants convicted of domestic violence offences. It has also been observed that courts often do not adequately evaluate relevant aggravating and mitigating circumstances in their written judgments. These practices may violate international human rights law, the legal framework in Kosovo and the very purpose of sentencing – that is the prevention of violence, compensation for victims, and rehabilitation of the perpetrator.⁴³

Domestic violence crimes can be charged as multiple and different offences (light⁴⁴ or grievous⁴⁵ bodily assault, threats,⁴⁶ harassment,⁴⁷ violating family obligations,⁴⁸ etc.). In order to compare sentencing practices fairly and accurately, this section of the report analyses *only* offences charged as domestic violence under Art. 248 of the Criminal Code.⁴⁹ Of these, the OSCE analysed sentences rendered in nine cases. The findings indicate that imprisonment was imposed in only 22 percent of cases, while the clear majority of judges (in 78 percent of cases) elected to either fine the offender, apply an alternative sentence (such as a suspended sentence, suspended fines, or no fines), or institute other measures (such as judgments requiring mandatory psychiatric evaluation). Where effective imprisonment was imposed, the average sentence was just over five months, whereas the average suspended sentence of imprisonment was nearly six-and-a-half months. The average amount for both actual and suspended fines was €350.

43 Article 38(1) (Purpose of punishments) of the Criminal Code of 2019.

44 *Id.* at Article 185.

45 *Id.* at Article 186.

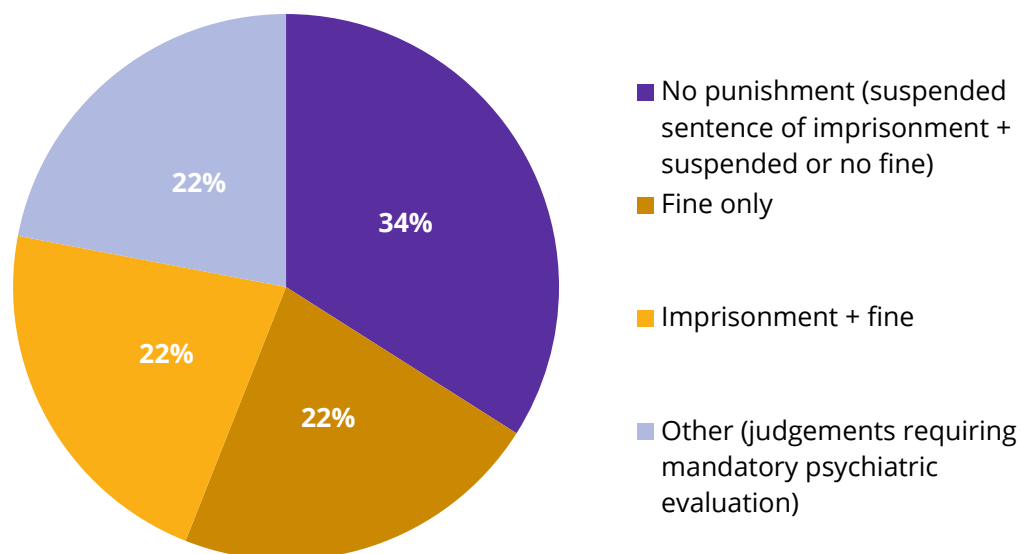
46 *Id.* at Article 181.

47 *Id.* at Article 182.

48 *Id.* at Article 244.

49 *Id.* at Article 248.

Types of Punishment Imposed



Despite the absence of an international standard of sentencing principles, the Council of Europe has called for consistency in sentencing between its member states, recommending that “like cases should be treated alike and different cases differently, so long as the differences are carefully justified.”⁵⁰ To achieve sentencing consistency, both mitigating and aggravating features of the offence should be considered.⁵¹

Along those lines, the Supreme Court of Kosovo adopted Sentencing Guidelines (Guidelines) in 2018 to provide a useful, non-binding tool for judges to achieve uniformity in sentencing.⁵² Section 5.8 of the Guidelines stresses that, although courts can consider any prior criminal offences in adjusting the penalty range upward, “if the court encounters offences commonly associated with domestic violence situations, it is *strongly suggested* to apply this provision in order to enhance the overall offense level” (emphasis added). Section 5.9.3 states that a court must automatically consider increasing the sentence if the perpetrator and victim live in the same household. Within the context of domestic violence offences, courts should carefully scrutinize any claims of provocation asserted as a mitigating factor and be aware that “abusers often consider any threat to their ability to control the victim as provocation.” The section further specifies that “statements or apologies from the defendant should be viewed with scepticism as false remorse can be an integral part of the cycle of violence present in

⁵⁰ Council of Europe, Recommendation No.R(92)17 of the Committee of Ministers to the Member States Concerning Consistency in Sentencing, October 1992 (CoE Recommendation R(92)17).

⁵¹ Legal Digest of International Fair Trial Rights, OSCE ODIHR, page 192, Consistency and sentencing based on mitigating and aggravating circumstances. <https://www.osce.org/files/f/documents/1/f/94214.pdf>.

⁵² Sentencing Guidelines, Supreme Court of Kosovo, 2018.

domestic violence relationships.”⁵³ In particular, courts should be “suspicious of any claim of mitigation for good character” and “should only consider the character of the defendant as it pertains to the relationship [with the injured party]” as often “abusive partners present well [and] are skilled at maintaining control.”⁵⁴ When considering a victim’s request for leniency, the court must be “extremely wary if there are indications of domestic violence in the offense.” Courts should understand that “[r]econciliation is a fundamental part of the cycle of violence in domestic violence cases” and that “the prior history of the relationship must be thoroughly evaluated.”⁵⁵

Bearing these considerations in mind, below are three case examples in which courts imposed arguably overly lenient measures when sentencing criminal defendants found guilty of committing the criminal offence of domestic violence – an offence that allows for a fine and imprisonment of up to three years.

EXAMPLE ONE: In a case before the Gjilan/Gnjilane Basic Court, a defendant was convicted of committing domestic violence against his ex-partner, from whom he had separated three days before the incident. On the day of the incident, the defendant and the injured party were sitting in a car when the injured party received a phone call. The defendant demanded that he be allowed to listen to the conversation, became jealous when the injured party’s friend invited her for coffee, and began yelling at and insulting her. He then struck her face and head and grabbed her hair. The injured party attempted to escape, but the defendant chased her and dragged her by her hair for 10 meters back to his car. Fortunately, a police officer was passing by and intervened; the defendant fled but was later captured and arrested. The court considered the following to be mitigating circumstances: the defendant’s guilty plea, his remorse, his promise not to reoffend, and the fact that he was responsible for paying child support. The court considered as aggravating factors the defendant’s high level of intention to commit the criminal offence, the fact that he committed the offence due to jealousy, and the fact that he continued with the commission of the criminal offence even after the injured party attempted to flee. Despite the severity of the aggravating factors and the facts underlying the offence (including that the defendant initially fled arrest and the high degree of control he attempted to exert over the injured party) the court only imposed a fine of €500 and issued an eight-month suspended sentence.

53 *Id.* at Section 6.7.5.

54 *Id.* at Section 6.4.

55 *Id.* at Section 6.8.6.

Punishing such criminal conduct with a suspended sentence and a fine could be seen as inappropriate in light of the Supreme Court's Sentencing Guidelines, which state that a court must assess the defendant's sincerity in order to properly consider remorse as a mitigating factor.⁵⁶ Examples for the court to consider include whether the defendant immediately sought or provided medical assistance to an injured victim or the defendant's subsequent behaviour – including “surrender to police.” The Guidelines specifically ask, “Did the perpetrator exhibit remorse in an attempt to persuade the victim to lobby for a reduced or no sentence? Is this a domestic violence situation?” In the present case example, the defendant left the injured party without offering any aid and attempted to evade police to avoid arrest. Both actions weigh heavily against remorse being properly considered as a mitigating factor. Rather, the severe aggravating circumstances should arguably have resulted in a significant sentence of effective imprisonment. Further, while the court considered the defendant's child support obligations as a mitigating factor, it did not articulate whether he and the injured party shared custody of the child. In that case, “there should be NO mitigation for family circumstances that... put other family members in jeopardy”⁵⁷ and the defendant's obligation should not have been considered a mitigating factor.

EXAMPLE TWO: In a case before the Prizren Basic Court, a defendant was convicted of committing domestic violence against his wife after he entered her room, yelled at and insulted her, and dragged her through the house by her arms, legs, and hair. The injured party was able to escape and lock herself and their youngest daughter in a bathroom. The defendant continued to pursue the injured party and, when their three other daughters tried to move him away from the door, he pushed them to the ground and pulled them by their hair. In its judgment, the court cited the following as mitigating circumstances: defendant's correct behaviour after committing the criminal offence, “the fact that he is a family man and father of four children,” his expression of regret, public apology to the injured parties before the court, and his promise that “in the future he will be more careful and refrain from such actions.” The only aggravating factor the court specifically considered was that “in the present case, we are dealing with the criminal offence of domestic violence – a crime that has been on the rise in recent times in our society.” The court went on to state that the defendant's criminal conduct resulted from “constant disagreements” between him and the injured party and “jealousy between them.” The court sentenced the defendant to 13 months' imprisonment and a fine of €400. However, since the court was obliged to count the defendant's time spent in custody toward the total sentence

⁵⁶ *Id.* at pp. 127-129.

⁵⁷ *Id.* at pp. 111-112.

imposed, the defendant was ultimately obligated to serve zero days of effective imprisonment and pay a €60 fine.

Perhaps unsurprisingly, the defendant threatened the same injured party soon after he was released from the detention facility. In that separate criminal proceeding, the court found the defendant guilty of threats and contempt of court and sentenced him to two years' suspended imprisonment and a fine amounting to €300.

The OSCE wishes to highlight the court's consideration that the defendant "is a family man and the father of four children." As stated above, the defendant physically attacked three of those children and committed domestic violence against the injured party in front of the youngest child. The Guidelines state that "if there is a child present in the home during the offence, the Court *must...* look at the history involved and the impact on the child. Even if the crime charged does not include an offence for actions directly against the child, the presence of the child can be considered an aggravating factor"⁵⁸ (emphasis added). Moreover, the Guidelines specify that "witnesses to the crime and family members... may be considered victims of the direct actions of the perpetrator" and that the court should consider "the vulnerability and/or defenselessness of the victim(s)... the mental trauma and psychological suffering caused to the victim(s)... [and] whether the crime was committed by [...] exploitation of trust or authority."⁵⁹ The defendant's physical and verbal assault of the injured party, his continued attempts to harm her in the presence of their children, and his decision to physically assault his children when they tried to intervene strongly undermine the application of his "family man" status as a mitigating factor.

EXAMPLE THREE: In a case before the Prishtinë/Priština Basic Court, a defendant was convicted of domestic violence for threatening to kill his son while in front of the injured parties⁶⁰ (his wife and son). Importantly, the defendant had previously been convicted of a similar domestic violence offence. Despite the defendant's recidivism and the fact that he committed domestic violence in the presence of a minor, the court merely sentenced him to four months' imprisonment (including time served), a fine of €1000, and (another) mandatory alcohol abuse rehabilitation treatment to last no longer than two years. The court cited the defendant's guilty plea and his expression of remorse as mitigating circumstances, but found no aggravating circumstances. The Supreme Court's Sentencing Guidelines cite the fact that "[r]epetition frequently occurs in

58 *Id.* at p. 76.

59 *Id.* at p. 47.

60 Defendant made the threat in the presence of the injured parties and in the presence of his minor daughter.

situations of domestic violence” and emphasize “the particularly devastating effect on a victim” who is subjected to repeated criminal offences.⁶¹ The guidelines counsel that the presence of any relevant prior criminal convictions should be considered as an aggravating factor, recognizing that “previous sentences or punishment... have failed to rehabilitate or reform the perpetrator.”⁶² Indeed, in this case it appears evident that the punishment previously imposed⁶³ did not deter the defendant from reoffending against the same victims. The court should have thoroughly considered this aggravating circumstance and imposed a punishment in accordance with the severity of the offence and defendant’s history of recidivism.

In the case examples above, the courts failed to properly assess basic aggravating circumstances, such as: whether there were repeated offences against the same victim(s); the age of the victim(s); relevant prior criminal convictions of the convicted person; and any abuse of trust (specifying that “the abuse of power in a relationship by restricting another individual’s autonomy... is frequently a component of domestic violence situations”)⁶⁴ before imposing a sentence. Moreover, despite the Supreme Court’s Sentencing Guidelines, courts have continued to render sentences in domestic violence cases which are disproportionately lenient. This hinders not only the very purpose of the justice system, but also raises concerns from a human rights perspective and may result in a serious loss of public confidence. Such disproportionate leniency may discourage victims from reporting abuse: should they do so, they can expect to endure a prolonged and traumatic adversarial legal proceeding with little hope of their abuser being deterred from repeating the abuse and a low likelihood of financial compensation for damages and expenses (such as medical expenses, physical injuries, disturbances to mental health, the loss of capacity to work, and the loss of maintenance, etc.).

4.2 Basic Courts’ Failure to Timely Adjudicate Domestic Violence Cases

The OSCE is concerned that the Kosovo justice system is not meeting procedural deadlines in domestic violence cases, thereby leaving victims in protracted, stressful, and potentially dangerous situations. After leaving their abuser, an injured party faces a long process to rebuild their life that often features post-

⁶¹ *Id.* at p. 73.

⁶² *Id.* at p. 95.

⁶³ At that time, defendant was sentenced to a fine, six months’ suspended imprisonment and mandatory drug and alcohol rehabilitation treatment.

⁶⁴ *Id.* at p. 88.

separation abuse, financial insecurity and lengthy civil and criminal court proceedings. Courts' failure to swiftly adjudicate domestic violence proceedings can leave vulnerable people in dangerous and volatile situations for extended periods of time. In this section, the OSCE analysed over 50 domestic or gender-based violence cases that were monitored between 1 January 2023 and 1 December 2023, including crimes qualified as light or grievous bodily assault, threats, harassment, violating family obligations or domestic violence.

Kosovo's CPC requires that judges adhere to specific timeframes, including the length of time between the filing of a criminal indictment and the initial hearing⁶⁵ (30 days) and the time to complete a trial⁶⁶ (90 days for trials occurring before a single judge, 120 days for trials occurring before a panel).

Only 28.6 percent of the domestic violence or gender-based violence cases monitored adhered to Art. 236's requirement to hold an initial hearing within 30 days of filing the indictment. An average of 286.2 days elapsed between the filing of the indictment and holding the initial hearing, with a median of 58 days.

Out of the five cases that proceeded to trial during the monitoring period, three adhered to Art. 310's deadline to complete trials within a specific timeframe. An average of 80.8 days elapsed between the indictment being filed and the trial beginning, and a median of 64 days elapsed.

Bearing these requirements in mind, below are three examples of courts failing to adhere to statutorily prescribed procedural deadlines.

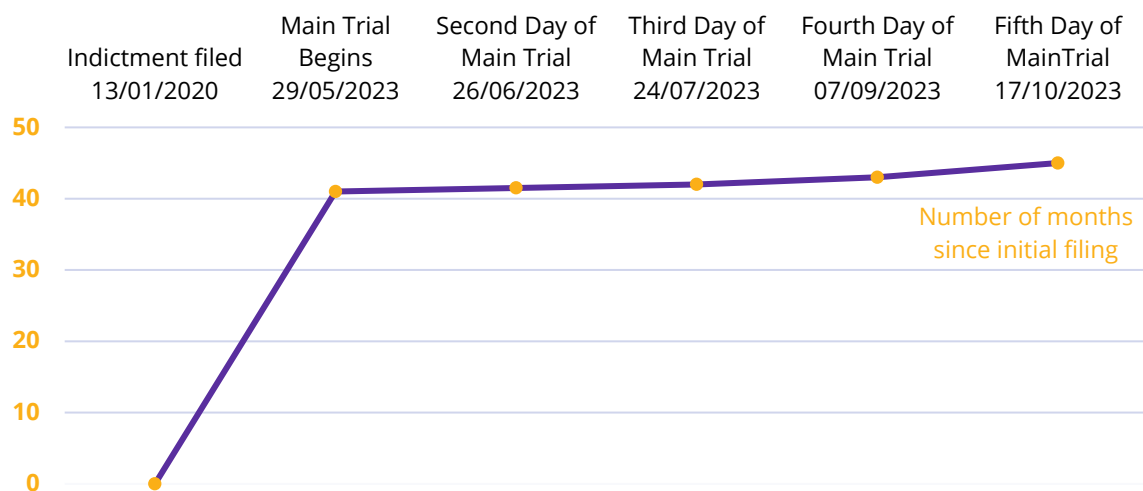
EXAMPLE ONE: In a case before the Prishtinë/Priština Basic Court, a defendant was charged with threatening the injured party, his ex-wife. The injured party claimed that, during her decades-long marriage to the defendant, he would regularly physically abuse her in front of their children and her mother-in-law. According to the indictment, the defendant made repeated threats to kill the injured party and blackmail her with sensitive photos. The indictment was filed on 13 January 2020, with the main trial commencing over three years later, on 29 May 2023.⁶⁷ Despite this significant gap, the first day of trial was adjourned at the prosecutor's request because he was unprepared. Defence counsel agreed to the adjournment, but noted that a witness had travelled from abroad to testify that day in court, thereby incurring financial expenses. The court approved the motion to adjourn the trial, scheduling follow-up trial sessions approximately

65 CPC Art. 236.

66 CPC Art. 310.

67 This case was previously presided over by a different judge before being reassigned.

once a month thereafter.⁶⁸ Despite allegations that the defendant was continuing to threaten the injured party and harass her work colleagues, the trial sessions that followed would be adjourned early for various reasons. These included: lunch; because the prosecutor was “on duty” and had other obligations; or because the prosecutor was absent since she was being interviewed for a promotion. In total, the trial lasted 193 days – well outside the CPC’s 90-day limit for cases proceeding before a single judge. On 13 December 2023, the court found the defendant guilty of harassment and issued a suspended sentence of two years.



EXAMPLE TWO: In a case before the Mitrovicë/Mitrovica Basic Court, a defendant was charged with the attempted murder of her husband, the injured party. The 2010 indictment alleges that the injured party physically assaulted the defendant, first by dragging her by the hair around the house and then punching and kicking her in the body. The defendant fell on top of the kitchen drawer, took a knife, stabbed her husband four times and, believing she had killed him, fled their house. In his statement, the injured party stated that he did not call the police or seek medical assistance since it was not necessary and did not want to press charges.

The initial hearing was held *over 13 years later* on 25 April 2023. The astonishing amount of time that elapsed between the filing of the indictment and the initial hearing clearly violates Article 236 of the CPC, which requires that an initial hearing be held within 30 days after the indictment has been filed.

⁶⁸ The OSCE has previously reported on this scheduling practice and recommended that trials be held on consecutive, or as close to consecutive as possible, days. See *Criminal Case Management and the Scheduling of Trials* (31 October 2023) <https://www.osce.org/mission-in-kosovo/557019> (accessed 1 December 2023). See also Appendix I to the Kosovo Judicial Council's 2022-2025 Strategic Plan for the Improvement of Access. https://www.gjyqesori-rks.org/wp-content/uploads/2023/03/KJC_Strategic_Plan_on_Access_to_Justice_2022.pdf (accessed 1 December 2023).

EXAMPLE THREE: In a case before the Ferizaj/Uroševac Basic Court, the defendant was charged with the criminal offence of committing light bodily injury. The indictment, filed on 30 December 2022, alleges that, after a verbal dispute with his sister-in-law (the injured party), the defendant forced her into her bedroom, grabbed her by the hair, and hit her several times in the head. The defendant pleaded guilty during the 16 June 2023 initial hearing; this hearing was held 168 days after the indictment was filed, breaching Article 236. Notably, the presiding judge held the hearing in his office, claiming there were no available courtrooms, forcing the injured party to sit one meter away from the defendant, reportedly making her feel very uncomfortable.

4.3 Shortcomings in the Implementation of the Law on Protection Against Domestic Violence

The most dangerous time in the life of a domestic violence victim is when she decides to leave: 77 percent of domestic violence-related murders occur upon separation and there is a 75 percent increase of violence upon separation for at least two years.⁶⁹ The way institutions respond during this crucial period can mean the difference between success and failure, safety or more violence, and life or death.

One important response comes in the form of protection orders. The OSCE has previously highlighted systemic delays in the adjudication of protection order petitions.⁷⁰ As indicated above, these petitions are urgent matters that must be resolved within 15 days. However, 24 percent of the 29 civil protection order cases monitored between 1 January 2023 and 1 December 2023 breached that deadline. On average, courts took 11 days to resolve a protection order petition; where the deadline was breached, courts took an average of 27.4 days to resolve PO petitions. In other words, Kosovo courts left nearly a quarter of victims without a timely resolution, thereby potentially exposing them to further violence.

Article 15 of the LPDV requires that a CSW representative attend any protection order hearing where the petitioner is younger than 18 or the alleged acts of violence impact a person younger than 18. However, CSW representatives failed to attend a staggering 60 percent of the 20 protection order hearings involving

⁶⁹ Battered Women's Support Services. *Eighteen months after leaving domestic violence is still the most dangerous time.* <https://www.bwss.org/eighteen-months-after-leaving-domestic-violence-is-still-the-most-dangerous-time>. 11 June 2022 (accessed 1 December 2023).

⁷⁰ OSCE Report *Adjudication of petitions for protection orders in domestic violence cases in Kosovo* March 2012 (accessed 1 December 2023).

people younger than 18. When a CSW representative did attend, courts granted 75 percent of the protection order petitions before them compared to petitioners' overall success rate of 68 percent. This statistic illustrates the value and expertise offered by CSW representatives – when they are present. The OSCE has previously analysed the extent to which CSWs comply with Kosovo legislation and principles of human rights and the rule of law, noting concerns that CSWs were either absent from or did not provide substantial input during judicial proceedings.⁷¹

On a positive note, OSCE trial monitors did not observe some of the deficiencies present in its 2012 report.⁷² For instance, protection orders now generally specify which protection measures are granted and advise perpetrators that any violation of the order will constitute a criminal offence. Finally, when approving restrictions against approaching the victim, courts now generally specify the restricted distance in meters.

71 OSCE Report [Children first: the role of Centres for Social Work in judicial proceedings](#) June 2020 (accessed 1 December 2023).

72 See discussion *supra* note 5.

5. CONCLUSIONS

The OSCE has observed several shortcomings related to domestic violence proceedings in its analysis of cases before Kosovo Basic Courts. The OSCE notes the constructive developments cited above in the area of protection measures and acknowledges the judiciary's appropriate addressing of the OSCE's 2012 concerns. Despite these advances, the OSCE finds that the shortcomings noted in this report require additional policy-making amendments and capacity building for the judiciary.

In the clear majority of judgments finding defendants guilty of committing the criminal offence of domestic violence, Basic Courts imposed overly lenient measures such as suspended sentences, fines, or other alternative measures. The average sentence for effective imprisonment was just over five months, and the average amount for both actual and suspended fines was 350 EUR. In the analysed cases, it was evident that at times the courts did not properly assess mitigating factors such as defendants' sincerity or remorse. Moreover, it was observed that the courts failed to assess basic aggravating circumstances properly, such as whether the convicted person had committed repeated offences against the same victim(s), the age of the victim(s), relevant prior criminal convictions of the convicted person, and whether any abuse of trust occurred. These practices depart from the framework provided by the Supreme Court's Sentencing Guidelines and likely violate international standards.

Moreover, there are specific timeframes that must be respected in both criminal and civil domestic violence cases, including the time between the filing of a criminal indictment and the initial hearing (which should be no more than 30 days) and the time to complete a trial (which should not exceed 90 days). However, the OSCE has found that Basic Courts are failing to adhere to statutorily prescribed procedural deadlines – again, in violation of the domestic legal framework and potentially in violation of international ECtHR standards. For example, in cases of domestic violence or gender-based violence, the courts have followed the 30-day deadline – from the filing of an indictment to holding an initial hearing – in only 28.6 percent of cases.

Finally, there are delays in the process of adjudicating protection order petitions. Indeed, the assessment showed that Kosovo courts left nearly a quarter of victims without a timely resolution, thereby potentially exposing them to further violence.

Moreover, required parties do not always attend civil PO hearings. According to the law, if the petitioner is under 18 years old or the alleged acts of violence involve a person under 18, a CSW representative is required to attend any protection order hearing. However, in 60% of the observed cases in Kosovo involving children under 18, the CSW failed to participate in the court hearings as required. These concerns not only constitute a breach of the relevant provisions of the CPC and LPDV, but in more severe situations, they may raise issues with regard to Articles 2, 3, 6 and 14 of the ECHR.

6. RECOMMENDATIONS

To the Kosovo Supreme Court:

- To demonstrate a sufficient commitment on the part of the judiciary to address domestic violence, the OSCE urges the judiciary to develop supplementary domestic violence sentencing guidelines that promote effective and proportionate punishment, reduce recidivism, and rehabilitate offenders.

To the Kosovo Academy of Justice:

- Provide gender-responsive domestic violence training to judges on ECtHR case law, Kosovo law, and international human rights standards. The training for judges should include modules on consistent sentencing methods that properly consider mitigating and aggravating factors in all domestic violence cases.
- Provide training to judges on efficient court administration procedures in line with the CPC and as referenced in the Kosovo Judicial Council's 2022-2025 Strategic Plan.

To the Presidents of the Basic Courts and the Kosovo Judicial Council:

- Take immediate steps to ensure that courts schedule uninterrupted and continuous hearings in criminal domestic violence cases.
- Take immediate steps to ensure that courts comply with the 24-hour time limit for adjudicating petitions for emergency protection orders, and the 15-day time limit for adjudicating petitions for protection orders.
- Minimise contact between victims and the accused, defence witnesses, or supporters during hearings in order to avoid any re-victimisation of the injured parties.

To the Centres for Social Work:

- Ensure that a CSW representative accompany victims and their dependants to all protection order hearings and support them throughout the proceeding as is mandated by the LPDV.

