

Institutional treatment of cases of domestic violence

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

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Introduction

Domestic violence is a social problem that knows no boundaries, affecting all cultures and societies worldwide, Kosovo included. This global challenge represents a severe violation of human rights, threatening societal development and peace. Statistics reveal that, worldwide, one in three women faces sexual or physical violence in their lifetime.¹

Moreover, according to a survey conducted in 2019 by the Organization for Security and Co-operation in Europe (OSCE) in Kosovo, 54% of women surveyed suffered psychological, physical, or sexual violence, by an intimate partner, after the age of 15.² Another survey conducted by the Kosovo Women's Network (KWN) in 2015, found that 68% of women, and 57% of men had been a victim of domestic violence at least once in their lifetimes.³ As such, domestic violence is a widespread violation of fundamental human rights and freedoms, conflicting an alerting number of the population.

The Group for Legal and Political Studies (GLPS), with the support of the European Union, conducts the "JUST REACT" project, through which it regularly monitors the operations of the judicial and prosecutorial system, focusing primarily on the analysis of how law enforcement institutions handle cases of domestic violence. On the framework of this project, GLPS has published this periodic analysis, which tackles the institutional response to domestic violence, within a one-year period (from July 1, 2022, to June 30, 2023).

This report's objective is to present and analyze data from some of the key institutions dealing with domestic violence: the police, prosecution, and the courts, in three respective chapters.

In the first chapter, the report examines the data from the Kosovo Police, focusing on the age groups and genders of those affected by domestic violence. It also analyzes the regional distribution of reported cases and the family relationships between the perpetrators and victims.

The second chapter shifts the focus to the Kosovo State Prosecution, where it assesses its performance metrics and conducts an analysis of indictments related to domestic violence.

Finally, the third chapter centers on the treatment of domestic violence cases by the courts, offering key findings presented in numerical form and regional distribution. The report also provides an analysis of selected domestic violence judgments, assessing their compliance with the law. Additionally, it investigates the issuance of protection orders by the courts and presents data from the court hearings that have been monitored.

1 "Gender-based Violence", UNHCR, accessed at:
<https://www.unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence>

2 "Survey on well-being and safety of women in Kosovo", OSCE 2019, accessed at:
<https://www.osce.org/files/f/documents/e/4/439790.pdf>

3 "No More Excuses: An Analysis of Attitudes, Incidence, and Institutional Responses to Domestic Violence in Kosovo", KWN 2015, accessed at:
<https://womensnetwork.org/wp-content/uploads/2018/10/20151124105025622.pdf>

Methodology

The data for this report was obtained from two primary sources: official data from key institutions involved in treating domestic violence cases, namely the Kosovo Police, Kosovo State Prosecution, and Kosovo Judicial Council, and data collected through monitoring conducted by the JUST REACT team. The information was gathered and analyzed for the period between July 2022- June 2023.

The initial portion of the data utilized in this report was gathered from official sources within the Kosovo justice system. This data includes statistics related to reports, indictments, and cases adjudicated concerning domestic violence cases. The analysis of this data focused on demographic factors and, when applicable, compliance with legal standards. The official data from the Kosovo Police, Kosovo State Prosecution, and Kosovo Judicial Council included statistics related to the number of domestic violence reports, indictments issued, and cases that underwent judicial review. This information was examined to assess trends and patterns over the specified time frame.

In conjunction with official data, the JUST REACT team conducted monitoring activities to gather additional insights into the handling of domestic violence cases in Kosovo. The monitoring process involved the analysis of 30 indictments obtained from the prosecution and 129 judgments published by the Kosovo Judicial Council. To evaluate the quality of indictments, the sample of 30 cases from the prosecution was scrutinized to ascertain the degree of compliance with the provisions of the Criminal Procedure Code of the Republic of Kosovo (CPCRK). The 129 judgments published on the Judicial Council's website were analyzed to determine the distribution of verdicts, including judgments of guilt, acquittal, and rejections. Additionally, particular attention was given to the punitive policies followed by the relevant courts in sentencing perpetrators of domestic violence, with a focus on the sanctions imposed. In the end, 72 cases of protection orders for domestic violence victims were analyzed.

Another aspect of the monitoring process involved observing court hearings related to domestic violence cases. The team diligently maintained the confidentiality of these proceedings while collecting essential data. This method enabled the team to gain firsthand insights into the courtroom dynamics and the manner in which cases were handled.

Current legal framework on protection from domestic violence in Kosovo

In terms of legal documents, Kosovo is committed to addressing domestic violence and ensuring the fundamental rights of all individuals in its territory. This commitment is first anchored in the Constitution of the Republic of Kosovo, which dedicates its second chapter to the protection of human rights.

Secondly, in 2020, Kosovo adopted a Constitutional Amendment, to give direct application to the Convention on Preventing and Combating Violence Against Women and Domestic Violence, known as the Istanbul Convention.⁴ This Convention is a landmark human rights treaty of the Council of Europe, which provides guidelines for creating a legal framework to protect women against all forms of violence, and prevent and prosecute the violence against women and domestic violence. In this Convention, violence against women is defined as “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.⁵

Thirdly, Kosovo's Criminal Code (CCRK), identifies domestic violence as a separate criminal offense within the scope of its article 248. This article provides that “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”.

Fourthly, besides the CCRK, another important legal document is the Law on Protection Against Domestic Violence (LPADV).⁶ The LPADV, defines domestic violence as 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, such as 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. Furthermore, domestic violence implies 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 or removing from a common residence or other person's residence; and kidnapping”.⁷

4 Amendment of Constitution of the Republic of Kosovo No.07-V-058. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

5 “Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)”, Council of Europe, 2022, Article 3 (a)

6 Law No.03/L-182 on Protection Against Domestic Violence, Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691>

7 Ibid

Moreover, the LPADV addresses the well-being of survivors within families, emphasizes treatment for perpetrators, and seeks to tackle the broader consequences of domestic violence. The law also grants basic courts the authority to review and issue protection orders, which try to effectively protect survivors from exposure to violence, by removing circumstances that may lead to further harm.

Lastly, Kosovo has also drafted the National Strategy on Protection Against Domestic Violence, for the period 2022-2026.⁸This strategy contains actions and measures that aim to further the protection from domestic violence and violence against women in accordance with the standards of ratified international instruments.



8 National Strategy on Protection Against Domestic Violence and Violence against Women 2022-2026, accessed at: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/ALB-Strategjia-Kombetare-per-Mbrojtje-nga-Dhuna-ne-Familje-dhe-Dhuna-ndaj-Grave-2022---2026.pdf>

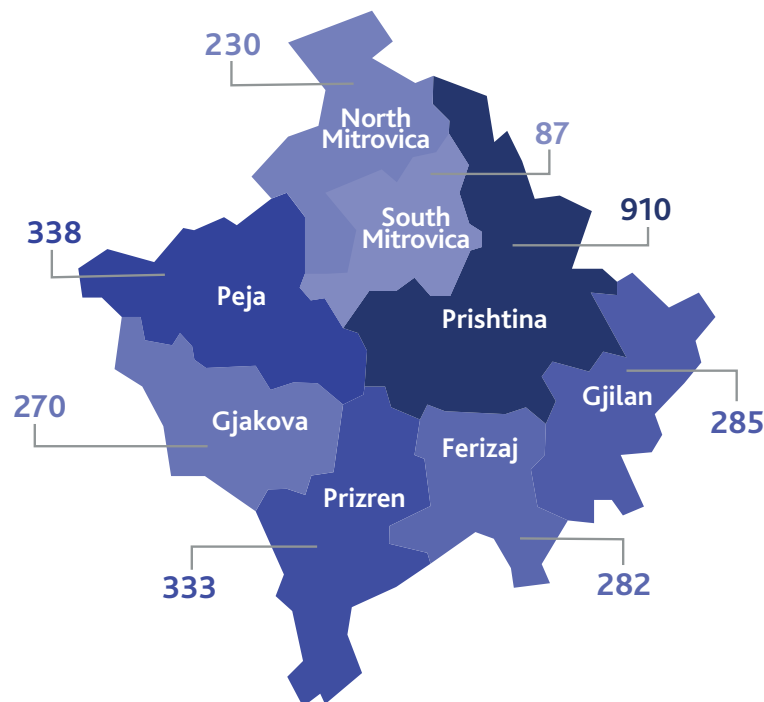
Reporting of cases of domestic violence to the Kosovo Police

The Kosovo Police (KP) remains the most trusted institution for citizens in terms of reporting criminality,⁹ and it is the first institution that addresses the domestic violence cases. This chapter presents an analysis of key data related to domestic violence in Kosovo regarding cases that were reported to KP in the set monitoring period. The chapter is divided into distinct sections, each focusing on specific aspects of domestic violence, including the geographic distribution of reported cases, the gender dynamics, family relationships between suspects and victims, and the age groups of those involved.

Number of reported cases by region

According to official data received from KP, during the evaluation period (July, 2022- June, 2023), a total of 2,735 cases of domestic violence were reported at country level. Concerning this matter, Prishtina leads in terms of the number of cases reported, with a total of 910 cases, or over 1/3 of the total cases reported throughout the country.

Graph 1. Reporting of domestic violence cases to the Kosovo Police in the period July 1, 2022 - June 30, 2023



9 Performance Index of Justice Institutions - RoLPIK – 8-th Edition, March 2023, link: <https://shorturl.at/abES4>

Prishtina is followed by Peja, Prizren, Gjilan, Ferizaj and Gjakova. On the other hand, domestic violence is less reported in Mitrovica region, in general, with 230 cases, while South Mitrovica, is the place with the lowest number of reported cases of domestic violence, with 87 cases.

In order to provide a regional perspective regarding the reported cases, the data were analyzed also taking into account the population of each region. This is due to the fact that Prishtina naturally comes out as the region with the highest number of reported cases because it has a larger population. However, the evaluation taking the population in the regions as a benchmark gives a clearer picture of which regions have the highest level of cases of domestic violence in relation to their population.

For the purpose of this analysis the benchmark of 10,000 inhabitants is used and it is based on the official number of the population reported by the latest official Census conducted in 2012.¹⁰ When taking into account the population benchmark Peja turns out to be the region with the largest number of reported cases of domestic violence per 10,000 inhabitants, with 27 cases reported for each 10,000 inhabitants, followed by Prishtina with 23 cases.¹¹

As far as other regions are concerned, the data suggest that the number of cases of domestic violence reported during the period July 2022 - June 2023, per 10,000 inhabitants is as follows: Gjakova and Ferizaj with 15 cases each, Gjilan with 13 cases, Prizren with 11 cases and the region of Mitrovica with 8 cases.

The gender aspect of reported cases of domestic violence

Out of **2,735** reported cases, **2,165** women and **559** men were victims of domestic violence.

In this chapter, the focus shifts to the gender dynamics of domestic violence, examining how it disproportionately affects women in comparison to men. This gender-based disparity is an established fact, supported by international agreements such as the Istanbul Convention, which recognizes that women and girls are exposed to a significantly higher risk of gender-based violence than men.¹² The data presented in this chapter further

underscores this point, showing that in Kosovo, in the majority of cases, women are the primary victims of domestic violence according to police reportings.

According to data from KP, 79% (or 2165 individuals) of the victims were women, while men make up for 21% (or 559 individuals) of the victims.

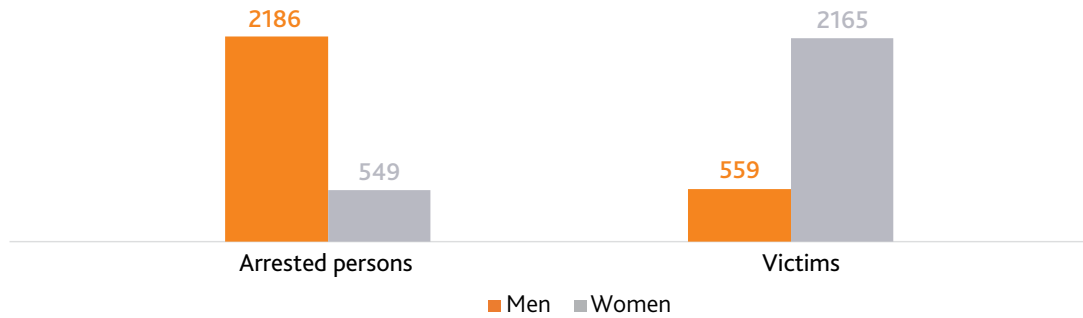
10 Kosovo Population Census 2012, Accessible at:

https://askdata.rks-gov.net/pxweb/sq/ASKdata/ASKdata_Census%20population_Census%202011_3%20By%20Municipalities/census32.px/table/tableViewLayout1/

11 The number is derived by dividing the number of reported cases (338) by the number of the population (123,614) and then multiplying by 10000, it results that approximately 27 cases of this nature were reported in 10,000 inhabitants.

12 "Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)", Council of Europe, 2022, Preamble.

Graph 2. Gender ratio between suspects, arrested persons and victims of domestic violence during the period July 2022-June 2023



Furthermore, data suggests that out of 2,735 reported cases, 2,735 individuals were arrested for domestic violence, of which over 80% (or 2,186) are men, while about 20% (or 549) are women. This said, in every five persons arrested for committing domestic violence, four of them are men and one is a woman. Similarly, men also lead in numbers in terms being suspected for domestic violence.

On another note, the number of arrested individuals, in relation to reported cases, has increased compared to an earlier report of JUST REACT for the period January-August 2022.¹³ In reference to this, there is a highly positive trend noted in the number of people arrested for domestic violence. In the current year, for 2735 cases reported to KP, an equal number of 2735 persons were arrested. This stands in contrast with the latest monitored period (January-August 2022), as reported by an earlier report of JUSTREACT, where 1852 cases were reported to KP, and only 682 individuals were arrested.

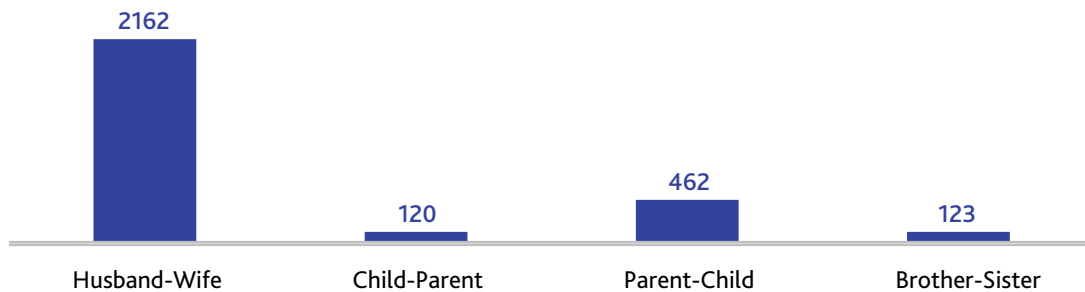
Family relationship between victims and suspects of domestic violence

Another important aspect addressed in this report is the family relationship between suspects and victims of domestic violence. When analyzing the KP data, it is noticed that in most cases, the violence occurred within a spousal relationship. Subsequently, cases involving the parents inflicting violence upon their children, and conversely, are common. In contrast, cases of violence within sibling relationships are rarer.

Over **80%** of perpetrators arrested for domestic violence are men, while about **20%** of them are women. From this statistic, it follows that for every five people arrested for committing domestic violence, four of them are men and one is a woman.

¹³ Group for Legal and Political Studies, Analysis "Reporting and treatment of cases of domestic violence, in the period January-August 2022", October 2022, link: <https://shorturl.at/ipAM9>

Graph 3. Number of cases according to the relationship between the suspect and the victim of domestic violence

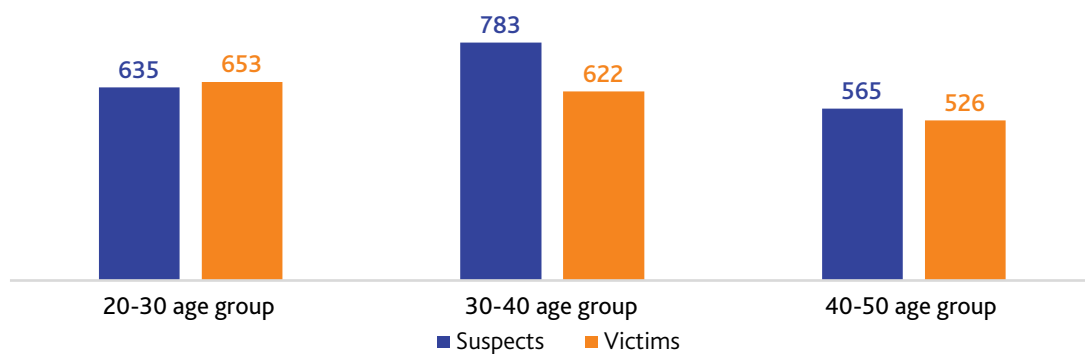


Age groups of suspects and victims of domestic violence

In terms of age groups, data shows that out of the 2,573 persons suspected of committing domestic violence, 783 (or 30%), belong to the 30-40 age group, 635 (or 25%), of the suspects belong to the 20-30 age group, and 565 (or 22%), of the suspects belong to the 40 to 50 age group.

The data on victims age groups suggests that the 20-30 age group dominates with 653 cases, or 36%, followed by the 30-40 age group with 622 cases, or 35%, and the 40-50 age group with 526 cases, or 29%.

Graph 4. Age groups most affected by domestic violence in the period July 2022–June 2023



Therefore, taking into account the bio-psychic development, social and cultural circumstances, the economic situation and other factors the ages groups 20-30, 30-40 and 40-50 turns out to be among the most affected ages, without excluding other age groups in which there are also no exceptions

The treatment of domestic violence cases by the State Prosecutor

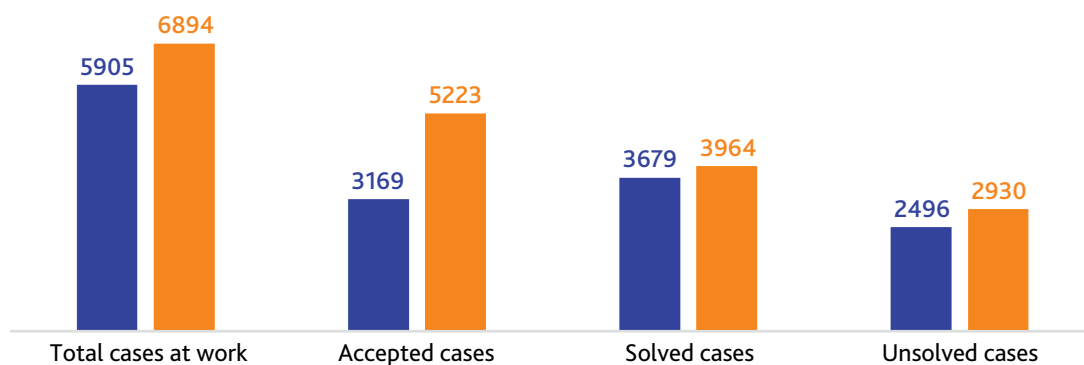
Effective prosecution is crucial in addressing domestic violence. This chapter closely examines the role played by the State Prosecutor in the treatment of domestic violence cases. With the responsibility of investigating, indicting, and prosecuting perpetrators of domestic violence, State Prosecutors are central to the legal response. This chapter explores the metrics of domestic violence cases from the State Prosecutor, domestic violence indictments, considers the difficulties of incriminating actions and their reasoning, evaluates the legal qualifications of domestic violence offenses, and analyzes the proposal of mitigating and aggravating circumstances – elements that influence sentencing outcomes. Additionally, it addresses the matter of recidivism and its relevance as an aggravating circumstance. At the core of this chapter's analysis are the findings drawn from the analysis of 30 domestic violence indictments, which offer insights into the State Prosecutor's approach in addressing this critical issue.

State Prosecutor performance metrics in domestic violence cases

As per the performance of this institution in terms of handling domestic violence cases, the official data from the Statistics Office of the KPC,¹⁴ suggests that in the reporting period, the Basic Prosecutor's Offices at the country level have received 3,169 cases with 5,223 suspects (adults and minors). In this period, they have solved 3,679 cases with 3,964 suspects, making the State Prosecutor 116% efficient in handling domestic violence.

As for the adult suspects, the State Prosecutor has dismissed the criminal charges or closed the investigations against **267** persons or about **16%** of the suspects of domestic violence

Graph 5. Cases and Suspects of domestic violence processed by the State Prosecutor



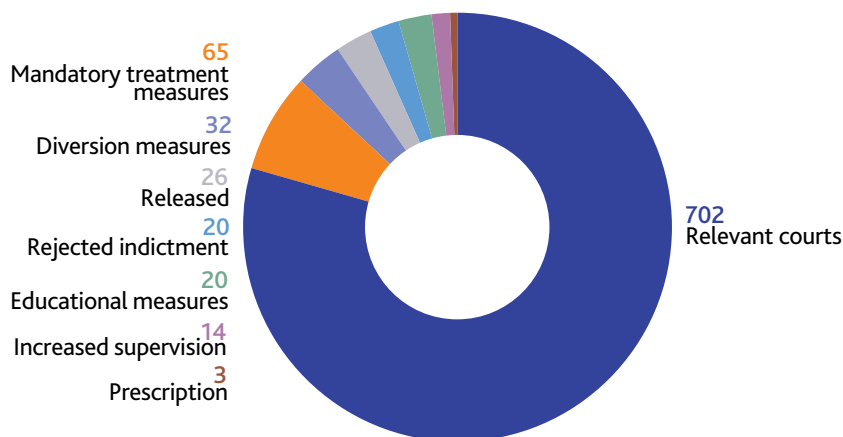
¹⁴ Data received from the KPC Communications Office, July 27, 2023

However, as of July 1, 2023, the Basic Prosecutor's Office still had a considerable number of 2,496 cases in process inherited from previous years with 2,930 suspects involved. Thus, this efficiency should continue the raising trend.

Moreover, the data shows the Basic Prosecutor's Offices in cases where suspects were adults, dismissed criminal charges or closed investigations for 267 individuals, filed indictments against 1,498 individuals, imposed mandatory treatment measures for 46 persons, and made other determinations, including measures for mandatory treatment and ceding of competence, for 125 adults suspected of committing domestic violence. Among these cases, 702 individuals were convicted by the respective courts, while 26 were released based on court decisions. Additionally, 20 cases saw the rejection of the indictment, and in 63 instances, mandatory treatment measures were imposed. In a small number of cases, the court made decisions based on the statute of limitations for criminal prosecution, totaling three cases.

Regarding cases involving juvenile suspects, the State Prosecutor reports that 32 individuals have been subjected to diversion measures (measures designed to prevent, the initiation of judicial proceedings against minor perpetrators, to facilitate positive rehabilitation and reintegration into their communities in order to deter recidivist behavior).¹⁵ 14 individuals received increased supervision measures, while two others were mandated to undergo treatment. Two cases were resolved through alternative means, and in 19 instances, a decision was made to initiate investigations. In relation to court rulings within these cases, decisions were reached involving to 20 minors, wherein they applied an educational measure as outlined in the Juvenile Justice Code.

Graph 6. Decisions regarding persons suspected of domestic violence (adults and minors)



¹⁵ According to the Juvenile Justice Code, the diversion measures that may be imposed on a juvenile offender are: reconciliation between the juvenile and the injured party, including an apology by the juvenile to the injured party; reconciliation between the juvenile and his family; compensation for damage to the injured party, through mutual agreement between the injured party, the juvenile and his legal representative, in accordance with the juvenile's financial situation; regular school attendance; acceptance of employment or training for a profession appropriate to his abilities and skills; performance of unpaid community service work, in accordance with the ability of the juvenile offender to perform such work. This measure may be imposed with the approval of the juvenile offender for a term ten (10) up to sixty (60) hours; education in traffic regulations; psychological counselling; engagement in charity activities; payment of a certain amount of money destined for charity purposes or the program for victim compensation in compliance with the financial situation of the juvenile; engagement in sport and recreation activities; counselling between families of juveniles; to refrain from any contact with certain individuals that might have negative influence to the juvenile; to refrain from frequenting certain places or locations likely to have a negative influence on the juvenile; and to abstain from the use of drugs and alcohol; police warning

Indictments in cases of domestic violence

According to the data obtained by JUST REACT, during the evaluation period, the State Prosecutor and Basic Prosecutor's Offices have filed indictments against 1,498 persons. These charges include direct indictments, indictments filed subsequent investigations, or indictments for the issuance of punitive orders.

Given that domestic violence entails a direct violation of the dignity of the person, the legal framework that regulates this criminal offense, including the filing of the indictment, demands a more sensitive treatment. Hence, in addition to applying the Criminal Procedure Code's provisions on indictments, prosecutors should also consider the Supreme Court's guidance pertaining to the legal classification and handling of domestic violence cases under the CCRK. This guidance outlines the CCRK articles that can be applied in conjunction with Article 248 of the CCRK, when the other offenses occurred within a domestic relationship or involved a vulnerable victim susceptible to offenses such as threats, sexual assault, injuries, coercion, unlawful deprivation of liberty, slavery, harassment, rape, sexual assault, and the violation of sexual integrity. This approach ensures that the legal response to domestic violence aligns with the sensitive nature of these cases and provides adequate protection for victims.¹⁶

Findings from the analysis of 30 domestic violence indictments

The CPCRK in article 235 has determined the elements that must be contained in the indictment filed by the prosecutor for all criminal offenses, including domestic violence.¹⁷

In order to assess whether the prosecutors include all elements foreseen in the article 235 of the CPCRK in domestic violence indictments, JUST REACT has analyzed 30 indictments from different prosecutors filed during the evaluation period.¹⁸ A recurring theme evident in

¹⁶ Supreme Court of Kosovo, Guidance regarding the legal qualification and treatment of cases of Domestic Violence according to the Criminal Code of the Republic of Kosovo, link: <https://shorturl.at/BLUX7>

¹⁷ Article 235 of the CPCRK provides that the indictment must contain: an indication of the court before which the main trial is to be held; the name and surname of the defendant and his personal data; an indication as to whether and for how long detention on remand or other measures to ensure the presence of defendant were ordered against the defendant, whether he is at liberty and, if he was released prior to the filing of the indictment, how long he was held in detention on remand; the legal name of the criminal offense with a citation of the provisions of the Criminal Code; the time and place of commission of the criminal offense, the object upon which and the instrument by which the criminal offense was committed; Also, as mandatory elements of the indictment are a recommendation as to evidence that should be presented at the main trial along with the names of witnesses and expert witnesses, documents to be read and objects to be produced as evidence. an explanation of the grounds for filing the indictment on the basis of the results of the investigation and the evidence which establishes the key facts; the identity of the injured party or victim known to the state prosecutor, if any; detail any property subject to confiscation known to the state prosecutor at the time of the filing of the indictment, including information on the holder, respectively the owner and third parties who have an interest on the property, as well as the reasoning of the confiscation request. the proposal of mitigating and aggravating circumstances that are known at the time of filing of the indictment, which may be relevant in rendering an appropriate decision. In addition to these elements, if the defendant is at liberty, the state prosecutor in the indictment may propose that a detention order be issued, and when the defendant is in detention, the state prosecutor may propose that he be released.

¹⁸ The indictments analyzed: PP/II.n.969-8/22; PP/II.n.981-11/22; PP/II.n.852-2/22; PP/II.n.1036-11/22; PP/II.n.1036-11/22; PP/II.n.442-4/22; PP/II.n.500--1/22; PP/II.n.1005-1/22; PP/II.n.1310-2/22; PP/II.n.852-2/22; P/II.n.1765-11/22; PP/II.n.1520-11/22; PP/II.n.221-4/22; PP/II.n.237-15/22; PP/II.n.54-12/23; PP/II.n.538-5/23; PP/II.n.1249/22; PP/II.n.1280/22; PP/II.n.1282/22; PP/II.n.1122/22; PP/II.n.429/22; PP/II.n.1506/22; PP/II.n.302/23; PP/II.n.1479/20; PP/II.n.92/23F; PP/II.n.60/23F; PP/II.n.5621/19; PP/II.n.4460/20;

the analyzed indictments, is the State Prosecutor's prioritization of domestic violence cases. Notably, the State Prosecutor has taken swift action by filing indictments shortly after receiving the criminal reports. Furthermore, another trend observed among the analyzed indictments is that most of the victims are women and in most cases domestic violence has occurred in the relationship between spouses. This mirrors the data analysis of the police reportings, examined in the previous chapter.

› Incriminating actions and their reasoning

In the context of domestic violence cases, a challenge emerges during the investigation phase, where the foundation of the indictment can be called into question. Often, these cases rely heavily on the victim's testimony as a primary source of evidence, due to the private and sensitive nature of such incidents. However, legal provisions, such as Article 257 of the Criminal Procedure Code of the Republic of Kosovo (CPCRK),¹⁹ underscore the need for multiple sources of evidence to establish the accused's guilt. This can create a dilemma, as the absence of additional material evidence often results from the very nature of domestic violence cases, where witnesses and external proof may be scarce.

On another note, it's noteworthy that in the cases monitored by JUST REACT, prosecutors sometimes also fall short in providing a more comprehensive reasoning for the accused's actions or even material evidence in cases that is present, potentially due to the delicate nature of these offenses. As a result, some indictments lack detailed legal reasoning of the incriminating actions. This can then lead to discussions for a potential breach of the *In Dubio Pro Reo* principle, according to which when there is any doubt or uncertainty about a person's guilt, the decision should favor the accused.

› Legal qualification of the criminal offense

The CPCRK obliges the State Prosecutor to make an adequate description of the criminal offense that corresponds to the incriminating actions when filing the indictment. However, in the analyzed indictments, JUST REACT has identified cases of inadequate qualifications of the criminal offenses by the State Prosecutor in cases of domestic violence. Regarding this issue, seeing the ambiguities within the articles, the Supreme Court came out with a related Guidance in order to clarify the dilemmas related to legal qualification with the legal definition and treatment of cases of domestic violence according to the Criminal Code of Kosovo.²⁰

According to the guidance,, when dealing with domestic violence cases, the primary principle is that the qualification of the criminal offense should align with the relevant article or articles of the CCRK. In simpler terms, when the elements of an offense or its basic components are met in a domestic violence case, the court should apply the appropriate article of the CCRK that corresponds to that offense, rather than referring exclusively to Article 248 of the CCRK, which specifically addresses domestic violence.²¹

However during the analysis of the cases, it was observed that for a similar circumstance, the prosecutors tend to make different qualifications, not conforming to the guidance of the

PP/II.nr.268/22F;

19 Criminal Procedure Code of the Republic of Kosovo, accessible at: <https://shorturl.at/imJMQ>

20 Supreme Court of the Republic of Kosovo, Guidance regarding the legal qualification and handling of cases of domestic violence according to the Criminal Code of the Republic of Kosovo. June 2020, available at: [Guidance 113/2020](#)

21 Ibid

Supreme Court.²²In many cases the State Prosecutor combines a primary criminal offense with a domestic violence charge in a single indictment. This results in two different legal actions for a single criminal act, potentially leading to the imposition of two sentences- one based on the fundamental offense, and the other on the domestic violence offence. Furthermore, there are instances where a criminal offense is qualified as a domestic violence, even when the elements and criteria of other offenses are met. This raises concerns about the potential for overlapping or redundant charges and sentencing.

› Proposal of mitigating and aggravating circumstances

Another element of the indictment as set in Article 235 of the CPCRK is the obligation of the prosecutor to propose the mitigating and aggravating circumstances known at the time of the submission of the indictment. Nonetheless, most of the sampled indictments are missing this element.

In this regard, until the entry into force of the New Code (in 2022), the previous Code did not decisively require the inclusion of mitigating and aggravating circumstances in the indictment. This novelty of the new Criminal Code was followed by the issuance of a special Guidance, which specifies the role and contribution of the State Prosecutor in the calculation of punishment against the accused, by the Office of the Chief State Prosecutor (OCSP).²³

According to this guidance, the prosecutors, must present the mitigating and aggravating circumstances within the indictment.

In the analyzed indictments (since the entry into force of the new CCPRK), JUST REACT found that in many cases, the prosecutors did not include mitigating and aggravating circumstances against the persons involved in the indictments.

In this sense, many challenges come up as to defining the mitigating and aggravating circumstances. For instance, the economic situation of the defendant, which is a mitigating circumstance, in most of the indictments analyzed was solely based on the defendant's statement, lacking a proper database related to all personal data of suspected individuals. In some rarer cases, it was found that the prosecution requested a certificate of the economic status of the defendant, as set by the CCPRK, and the OCSP Guidance.²⁴ Another example of the complexity of the mitigating and aggravating circumstances, is the issue of recidivism. This issue is regulated in article 74 of the CCRK, which gives the court the possibility to increase the punishment in case the defendant is a repeat offender. In this sense, JUST REACT team found that in most cases prosecutors only use a brief report from the Kosovo Police Information System (ZIMP) summarizing the accused's potentially criminal past. Surprisingly, this report is often added to case files without more details, nor elaboration, and in other cases it is not mentioned in the indictment at all.

Handling of the issue of recidivism lies in the role of the prosecutor in calculating the punishment to be imposed on the perpetrator. Therefore, it is indisputable that proof and elaboration of recidivism by the prosecutor helps the court in its efficient work as to clarify the criminal case and to make a fair decision.

22 Ibid

23 Office of the Chief State Prosecutor, Guidance, 2020, link: <https://shorturl.at/APU01>

24 Guidance on the role and contribution of the state prosecutor in calculation of the punishment: <https://shorturl.at/jwBFW>

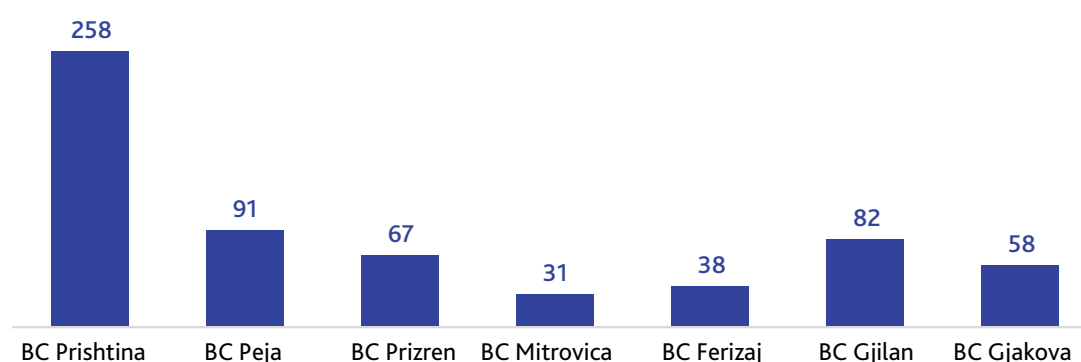
The treatment of domestic violence by courts of first instance

In this chapter, the focus is on the judicial process within the courts of first instance regarding domestic violence cases. It firstly presents the numbers of domestic violence judged by the courts of first instance, examining the differences between regions in Kosovo and the verdicts taken in those cases. Secondly, it includes an analysis of a sample of judgments regarding their compliance with the technical provisions set in the CPCRK, the punitive policies applied, and measures for ensuring the defendant's presence during proceedings. Thirdly, the analysis provides details on applications for protection orders against domestic violence, through a sample of judgments in this regard. In its end, this chapter provides insights from the monitored court hearings.

Domestic violence cases treated by the courts of first instance in numbers

Based on the official data received from the Kosovo Judicial Council (KJC) for the period July 1, 2022 - April 30, 2023,²⁵ it is evident that the courts of first instance together with their branches have received a total of 625 cases of domestic violence. Among these cases, the Basic Court in Prishtina stands out with the highest number of cases (258), while the Basic Court in Mitrovica recorded the lowest number of domestic violence cases during reporting period.

Graph 7. Number of cases of domestic violence accepted in the courts (July 2022 - April 2023)



The highest number of cases recorded in the Basic Court in Prishtina, further mirrors this region's distinction as having the highest number of police reports for domestic violence, as well as the highest caseload handled by the prosecution. Conversely, Mitrovica registers the lowest number of court cases associated with domestic violence, reflecting its status as the region with the fewest reports of domestic violence to the police, and the lowest caseload at prosecutorial level.

²⁵ GLPS has submitted a request to the KJC for the data of the period May-June 2023, but until the moment of compiling this report we have not accepted them on the grounds that it takes time to compile the required data.

Furthermore, JUST REACT has obtained data pertaining to the total number of judgements rendered by the courts, including their types, and the resultant sentences in active cases during the evaluation period. During this timeframe, the courts issued a total of 254 judgments and 52 decisions. The data analysis shows that out of these judgements, the courts found the accused guilty of domestic violence in 243 cases, signifying that in over 90% of the cases under the court's purview, guilty verdicts were delivered. The remaining 11 judgements resulted in acquittals and rejections.

In cases where guilty verdicts were rendered, special importance has been given to the nature of penalties imposed against those convicted of domestic violence. Predominantly, the judges have followed a lenient approach by opting for conditional sentences, judicial warnings, or fines. In fewer cases, courts decided to impose a sentence of effective imprisonment. In fewer instances, effective imprisonment sentences were handed down. However, it's worth noting that the use of conditional sentences or relatively lenient penalties may have a limited deterrent effect on domestic violence.

Main findings from the analyzed judgments

Besides the caseload of Basic Courts, to get a better understanding on court's efficiency in treating domestic violence cases, JUST REACT has analyzed a total of 129 judgments on domestic violence, published on the websites of the seven basic courts of the Republic of Kosovo.²⁶ In this context, in the following subchapters, this report will analyze the efficiency on publishing the judgements within the set timeframe, the punitive policy applied, as well as the application of measures to ensure the defendant's presence in the proceedings in these judgments.

› Efficiency and compliance with legal provisions on publishing judgments

Regarding the publication of judgments, CPCRK,²⁷ as well as the Law on Courts determine that the courts are obliged to publish all judgments online within sixty (60) days from their issuance.²⁸

From JUST REACT findings, it is evident that out of 129 judgments analyzed, 79 judgments were published within the legal timeframe, while 49 others were published after the designated deadline with one notable case, where the Basic Court in Gjilan took 922 days to publish a judgment.²⁹

26 The analyzed judgments are accessible at the link: <https://www.gjyqesori-rks.org/aktgjykimet/> with case number: P.nr.264/21; P.nr.275/2021; P.nr.751/2021; P.nr.773/2021; P.nr.1061/21; P.nr.57/2022; P.nr.223/22; P.nr.107/2022; P.nr.275/22; P.nr.170/22; P.nr.277/2022; P.nr.679/22; P.nr.540/22; P.nr.682/22; P.nr.700/2022; P.nr.914/22; P.nr.944/22; P.nr.236/2023; P.nr.62/2022; P.nr.94/2022; P.nr.278/2022; P.nr.289/2022; P.nr.312/2022; 2022:134321; P.nr.15/21; P.nr.59/22; P.nr.73/22; P.nr.170/22; P.nr.200/22; P.nr.303/22; P.nr.368/22; P.nr.459/20; P.nr.641/21; P.nr.1629/19; P.nr.1311/22; P.nr.336/20; P.nr.1888/20; P.nr.1054/2021; P.nr.1811/21; P.nr.3342/21; P.nr.3528/21; P.nr.32/22; P.nr.228/22; P.nr.289/22; P.nr.483/22; P.nr.353/22; P.nr.393/22; P.nr.3159/22; P.nr.403/22; P.nr.559/20; P.nr.163/22; P.nr.326/21; P.nr.416/22; P.nr.27/22; P.nr.78/22; P.nr.414/22; P.nr.286/2021; P.nr.41/22; P.nr.364/22; P.nr.379/22; P.nr.861/21; P.nr.412/22; P.nr.246/22; P.nr.356/22; P.nr.36/22; P.nr.410/22; P.nr.572/21; P.nr.429/22; P.nr.194/22; P.nr.318/22; P.nr.254/22; P.Nr.255/22; P.nr.376/22; P.nr.543/22; P.nr.55/22; P.nr.420/22; P.nr.83/22; P.nr.433/22; P.nr.958/20; dhe P.nr.491/22.

27 Code of Criminal Procedure of the Republic of Kosovo, article 370 par.1, link: <https://shorturl.at/pHKMQ>

28 Law No. 06/L - 054 On Courts, article 6 (3) December 18, 2018, link: <https://shorturl.at/ljMN1>

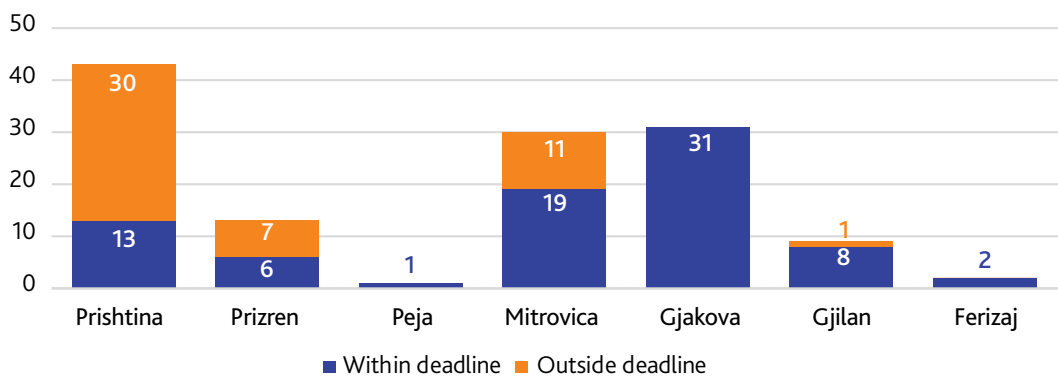
29 Judgment P. nr.393/22

Graph 8. Percentage of judgments published within and outside the legal deadline for domestic violence cases, July 2022 - July 2023



When analyzing the published judgements of domestic violence cases, again we can see many differences among regions. In Prishtina, for instance, the Basic Court has published a total of 37 judgments, though only meeting the legal deadline in 10 of these cases. Similarly, in Mitrovica, the court has published a substantial 30 judgments, with 19 adhering to the legal timeframe, while Gjakova has published all its 31 judgments within the legal deadline. In contrast, the Basic Courts in Peja and Ferizaj appear to have fewer cases, with just one judgment from Peja and a mere two from Ferizaj within the legal deadline. These statistics offer a regional perspective on the prevalence and handling of domestic violence cases in Kosovo, highlighting the varying caseloads and efficiency across different areas.

Graph 9. Compliance and non-compliance with the deadline for the publication of judgments July 2022 - June 2023



On another technical note, the structure and essential elements of judgements are outlined in the Article 369 of the CPCRK. This article highlights the significance of including specific details in the introduction of the judgment, such as the date of entry into force, and whether the hearing was conducted in an open or closed session. In the judgments analyzed by JUST REACT, it was found that 17 cases did not comply with the CPCRK, as to not containing the date of compilation, while one case did not contain the information whether the trial was open or closed for public.³⁰

30 Criminal Procedure Code of the Republic of Kosovo, article 369 par.2, link: <https://shorturl.at/pHKMQ>.

› Punitive policy in cases of domestic violence

From the analysis of **129** judgments published during the reporting period, it results that **126** of them, or about **98%** represent guilty verdicts.

Based on the monitored judgements, JUST REACT found that the minimum sentence imposed on domestic violence offenders was 90 days suspended sentence with 200 euro fine, while the maximum sentence was effective imprisonment for 1 year and 4 months. It's important to note that these sentences are considerably below the maximum sentence allowed under the Penal Code, which permits punishments including fines and imprisonment of up to 3 years for the relevant offenses. In most cases courts have rendered guilty verdicts for the accused. In two cases, the courts have issued a rejection judgment based on Article 362 of the CPRCK.³¹ Additionally, only one of the 129 judgments was an acquittal, based on Article 363 of the CPRCK.³²

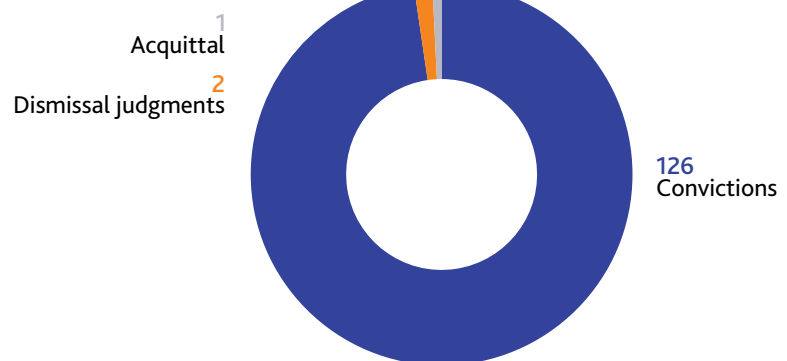
Minimum punishment imposed:
90-day suspended sentence and 200 euro fine

Maximum punishment imposed:
Effective imprisonment for a duration of 1 year and 4 months

Punishment provided under the Penal Code:
Punishment with a fine and imprisonment up to 3 years

Graph 10.

Types of judgments that were published by the courts during the period July 2022 - June 2023



31 According to this provision, the court renders a judgment rejecting the charge, if: the state prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial; 1.2. the accused was previously convicted or acquitted of the same offense under a final judgment; 1.3. the period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution; or 1.4. the injured party withdraws the motion for criminal offense not prosecuted ex officio, unless the court has evidence that the decision to withdraw has been unduly influenced by a third party

32 This provision stipulates that the offense with which the accused is accused does not constitute a criminal offense; there are circumstances that exclude criminal liability; or it has not been proven that the accused committed the criminal offense for which he is accused.

As most judgements represent guilty verdicts, JUST REACT delved deeper to analyze the type of sentences imposed in those judgements. In this regard, similar to previous monitoring periods, in 65% of cases the courts mostly imposed conditional sentences on the offenders, while in only 11% cases of effective imprisonment were imposed. Another 24% of judgements represent other measures imposed to offenders of domestic violence.

Graph 11. Punishments for those accused of domestic violence



› Measures to ensure presence of defendant in proceedings

Article 171 of the CPCRK stipulates that the measures to ensure the presence of the defendant in criminal proceedings are: summons; order for arrest; promise of the defendant not to leave his place of current residence; prohibition on approaching a specific place or person; attendance at a police station; bail; house detention; and detention on remand.³³

From the analyzed judgements, on 108 cases there was a lack of data on whether the perpetrator was under any measure to ensure their presence in the proceedings. From the other 21 cases, the most frequently imposed measure was detention on remand, which is also the harshest measure for ensuring the presence of the defendant in criminal proceedings. Courts have imposed this measure in 20 cases. In the other remaining case, the measure of house arrest was imposed.

From the analysis of the judgments, it was evident that the maximum duration of detention on remand for cases of domestic violence is **4 months and 13 days**, while the average duration of the measure of detention on remand in these cases is **2 months**. Additionally, out of the **129** analyzed judgments, the court has only one imposed the measure of house arrest.

Regarding the duration of detention on remand, the CPCRK provides that it should be between 30 days and 12 months, except in highly specific cases where this measure can be prolonged up to 18 months.³⁴ From the analysis of the judgments, it was evident that the average duration of this measure was 2 months, while the maximum was 4 months and 13 days. However, in three cases³⁵ the duration of detention on remand was imposed until the final judgment.

Additionally, out of the 129 analyzed judgments, the court has only one imposed the measure of house arrest.

³³ Criminal Procedure Code of the Republic of Kosovo, Article 171, link: <https://shorturl.at/imJMQ>

³⁴ Criminal Procedure Code of the Republic of Kosovo, Article 187, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759>

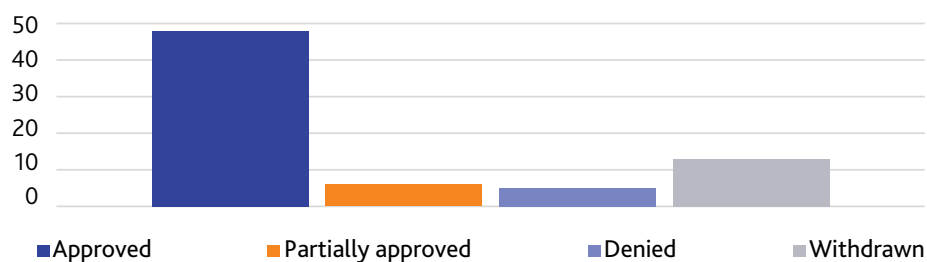
³⁵ P.nr. 32/22, P.nr.416/22, P.nr.700/22,

Protection orders against domestic violence applications

The Law on Protection Against Domestic Violence, among others, regulates the process of issuing civil protection orders for victims of domestic violence.³⁶ Under the LPADV, victims have the right to submit a request for a protection order, which is intended to safeguard them from the continuance of violence. These protection orders are categorized into three distinct types, each associated with the institution and procedures to issue them. Firstly, the “Protection Order” is issued through a court decision and encompasses a range of protective measures designed to shield the victim. Secondly, the “Emergency Protection Order” is a temporary order issued by the court to provide immediate protection. Thirdly, the “Temporary Emergency Protection Order” is issued typically by the police, when the request comes outside of court working hours. The primary purpose of these orders is to create a legal barrier between the perpetrator and the victim, and the violation of the order constitutes a separate criminal offense.

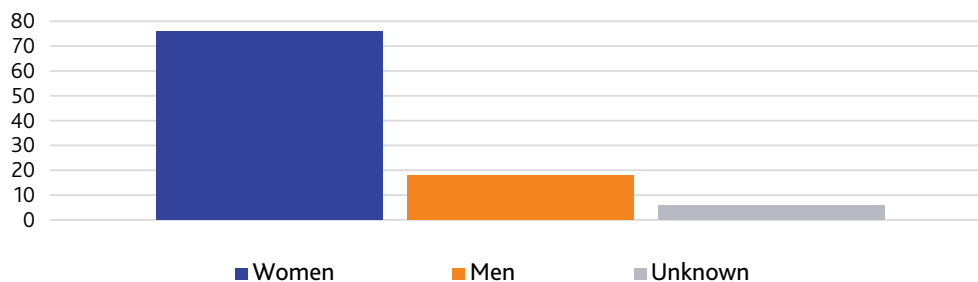
JUST REACT has analyzed 72 petitions for Protection Orders, during the monitoring period. From the 72 requests, 48 were approved, six were denied, five were partially approved, while in 13 cases the petition was withdrawn by the victims.

Graph 12. Protection Orders approval by courts



Among 72 requests, 55 (or 76%) of the applicants were women seeking protection, while 13 (or 18%) were men. In four cases, there was insufficient data regarding the gender identity of the individuals involved. This data again underscores the prevalence of women seeking protection orders as victims of domestic violence.

Graph 13. Gender Identities of the Applicants for Protection Orders analyzed



36 LAW No. 03/L-182 ON PROTECTION AGAINST DOMESTIC VIOLENCE, link: <https://shorturl.at/cpUZ1>

Data from monitoring the court hearings

In addition to monitoring judgments, since July 2022, JUST REACT is systematically monitoring court hearings on cases of domestic violence.³⁷

Graph 14. Monitoring statistics



From this monitoring for the reporting period, JUST REACT has identified a number of findings, listed below:

1. Cases of domestic violence are treated as high priority cases by courts and prosecutors;
2. Judges respect the obligation to hold the hearings without the presence of the public;
3. In all hearings on protection order, one of the orders provided by the LPADV is imposed;
4. There is no mechanism of supervision of the persons against whom the protective order is issued;
5. From the total number of monitored hearings, 385 or 32% of them failed to be held;
6. The most frequent reasons for the failure of hearings included absence of the accused (in more than 60% of cases), the absence of the prosecutor or judge, the absence of the injured party, the absence of legal representatives, among others;
7. Courts continue to impose conditional sentences in relation to perpetrators of domestic violence, and in cases where these sentences are effective, they are far from the maximum sentence provided for this criminal offense;

In addition to monitoring court hearings, through JUST REACT project, GLPS monitored the meetings of the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Commission for Legislation, and the Commission for Human Rights in the Assembly of Kosovo. Moreover, GLPS compiled journalistic reports related to the monitored hearings, on a daily basis. These journalistic reports together with the data from the 24-hour reports of the Kosovo Police and the State Prosecutor have been published on "Drejtësia Sot" [Justice Today]" platform.³⁸

³⁷ Memorandum of cooperation between KJC and GLPS, 2022, link: <https://shorturl.at/nPR45>

³⁸ Platform "Drejtësia Sot", link: <https://drejtusiasot.com/>

Findings and recommendations

The main findings deriving from this analysis are:

1. During the evaluation period (July 2022 - June 2023), a total of 2,735 cases of domestic violence were reported at the country level.
2. Prishtina led in the number of cases reported, with 910 cases, followed by Peja, Prizren, Gjilan, Ferizaj, and Gjakova.
3. The population-adjusted analysis revealed that Peja had the highest number of reported cases of domestic violence per 10,000 inhabitants, followed by Prishtina.
4. Women are disproportionately affected by domestic violence, with 79% of victims being women, according to police reports.
5. In most cases, the violence occurred within spousal relationships.
6. A positive trend is noticed, regarding the increased number of people arrested for domestic violence compared to a previous monitoring period.
7. Prosecutors sometimes vary in how they qualify and reason domestic violence as a criminal offense, which can lead to issues when specifying sentences by courts. Additionally, there is room for improvement in terms of reasoning the mitigating and aggravating circumstances in indictments.
8. The Basic Court in Prishtina had the highest number of domestic violence cases, while the Basic Court in Mitrovica had the lowest.
9. Courts found the accused guilty in over 90% of cases. However, in the published judgments, the most common type of sentence imposed was conditional sentences, with effective imprisonment used less frequently.
10. From the protection order judgments analyzed, a considerable amount was approved. Again, women make up for more than 76% of the requests for protection orders against domestic violence.
11. The effective application of protection orders consists of many challenges, which emphasize the need for electronic surveillance in enhancing their enforcement.
12. In monitored court hearings, it was noted that domestic violence cases are treated as high priority by courts and prosecutors.

From these findings, JUST REACT provides these recommendations for institutions that deal with cases of domestic violence:

1. Enhance the efficiency of the Kosovo Police in the preventing, and investigating domestic violence cases, and apprehending suspects of this offense;
2. The State Prosecutor needs to accurately qualify domestic violence offenses in line with the Guidance of the Supreme Court;
3. The State Prosecutor needs to ensure that the indictments filed are comprehensive and include reasoned evidence that proves the guilt of the accused;

4. The courts need to continue treating these cases with priority and provide detailed reasoning to their judgments;
5. The Government of Kosovo/Ministry of Internal Affairs should urgently start the acquisition procedures for surveillance technology for enforcing protection orders;
6. It is recommended that the courts strictly apply the Supreme Court's Guidance on Punitive Policy;
7. It is recommended that the courts impose adequate sentences based on the evidence in order to achieve the purpose of the sentence.

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Institutional treatment of cases of domestic violence

JULY 2022 – JUNE 2023



Grupi për Studime
Juridike dhe
Politike

