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# THE ISTANBUL CONVENTION IN THE VERDICTS OF COURTS IN KOSOVO



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**About Kosovo Law Institute:**

Kosovo Law Institute (KLI) is a non-governmental and non-profit organization of public policy, factory of thoughts specialized in the justice sector.

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# EXECUTIVE SUMMARY

The increase of domestic violence cases in Kosovo, especially recently, has turned into a quite concerning occurrence. To address this occurrence, it is especially necessary to have institutional commitment and coordination, so the current legal framework is properly implemented. In this direction, in the sense of the constitutional and legal infrastructure for protection against domestic violence, Kosovo has undertaken multiple actions. Initially, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) through the constitutional amendment has become part of the Kosovar constitutional order. Whereas, throughout the years, Kosovo has adopted different laws and strategies for the prevention and combat against domestic violence, while with the Code No. 06/L-074 Criminal Code of the Republic of Kosovo, domestic violence has been incriminated as a unique criminal act.

To evaluate the enforcement of the certain standards of the Convention by these courts, but also other characteristics of domestic violence cases, KLI in this report has analyzed 50 randomly chosen verdicts of the basic courts and 11 verdicts of the Court of Appeals. Nevertheless, it should be stated that this method disables having a complete evaluation about all the specified measures in the Convention since some of them can be analyzed only based on direct monitoring during the early phases of the procedures and not only based on court verdicts. But, knowing that domestic violence cases are closed to the public, KLI has assessed as a better opportunity analyzing the verdicts and evaluating those measures that can be determined in this way. Thus, the report identifies the findings on the way these cases are handled, from the moment the indictment is filed, the representation offered to the victims in the judicial process, judgement and punishment of perpetrators, but also other elements that reflect the way of handling cases of domestic violence by the judiciary.

Regarding the duration of the procedure in cases of domestic violence, something like this has been analyzed based on the time the criminal offense was committed, the time the indictment was filed, and the time the verdict was received. In this case, the KLI has found that the average duration of handling cases from the moment of execution until the announcement of the verdict in the first degree is 266 days or 8.5 months. Thus, if we take into account the procedural steps that according to the Criminal Procedure Code are required to take place from the moment of committing or reporting a criminal offense of domestic violence and the deadlines set by law, then the conclusion emerges that, on average, cases of domestic violence are being handled within an optimal period. It is worth noting that in the analyzed cases, KLI found that the shortest duration was in the cases that were handled according to the legal definition based on the criminal offense "domestic violence", while the other cases that were handled according to the basic criminal offense (eg. harassment, assault, threats, slight bodily harm, etc.) took much longer to resolve.

In this aspect, KLI has also handled the legal definition of the criminal offense for which the verdicts analyzed in the report were obtained. These cases include violence committed in a family context. Clearly, this is confirmed by the description of the factual situation of these cases. As such, as long as we do not have a more serious criminal offense that can be related to domestic violence, the cases cannot be characterized differently. This is because in these cases the basic offense is considered to be domestic violence. In this way, this situation creates a kind of amnesty towards perpetrators of domestic violence. Let's take for example the cases where these acts are defined as "assault". While the criminal offense of domestic violence is punishable by a fine and imprisonment of up to three years, the criminal offense of assault is punishable by up to 1 year. Thus, the perpetrator of domestic violence is punished for a lesser crime. For this reason, KLI recommends that in these cases, in accordance with the Criminal Code and the Guidelines of the Supreme Court, the prosecution should classify these cases as "domestic violence".

Regarding the obligations arising from the Istanbul Convention, but also the positive legislation in place regarding the representation of the parties during court proceedings, KLI has analyzed all the cases in the selected verdicts to identify whether in these criminal cases the victims - the plaintiff, have had proper representation. In this regard, the Law on Protection from Domestic Violence defines the defense of the victims as the authorized official person who, from the first contact directly helps the injured party with the competent protection bodies, advises, initiates the procedures for assigning protection measures, is obliged to participate in all court sessions to monitor the progress of the court process. Despite this definition, according to the findings of the KLI, from these 50 verdicts, it results that 72% of victims of domestic violence did not have professional representation.

Whereas, out of the 50 analyzed verdicts of the basic courts, 47 were sentencing verdicts. Among them, KLI has also analyzed the sentencing policy, where it was found that the trend of the sentencing policy in cases of domestic violence in our country constitutes a mild sentencing policy, considering the small number of identified cases where an effective prison sentence was imposed. Thus, out of the 50 convicted persons, the courts have imposed conditional imprisonment on 37 of them, while the basic courts have imposed effective prison sentences on only 5 perpetrators of criminal acts of domestic violence. In this case, KLI takes into account that each case has its own specifics and depending on the specifics, the practice may bring different types of cases that justify different punishments. But, when we see such a high number of cases that have ended with conditional sentences, then the argument is built that in these cases it is not a matter of specific cases, but of a phenomenon in decision-making which is manifested in the combat against domestic violence through conditional sentences. In its essence, conditional sentences, in principle, cannot be assumed to be efficient and proportionate in preventing and combating domestic violence. Therefore, we have recommended that, in accordance with the Criminal Code of Kosovo and the Guidelines of the Supreme Court for Sentencing Policy, the punishments imposed in cases of

domestic violence should be aggravated, in order to achieve the purpose of the punishment, and consequently influence the reduction of the trend of appearance of domestic violence cases.

On the other hand, KLI has also found a scandalous case of domestic violence, where the State Prosecutor illegally withdrew the charges, on the grounds that the parties are ex-spouses, illegally amnestying the defendant for domestic violence.

# INTRODUCTION

Gender-based violence, including domestic violence, is among the most common human rights violations worldwide, as well as in Kosovo. In the combat against this phenomenon, the reaction of all institutions is of special importance [1]. Domestic violence is a disturbing phenomenon in Kosovo, especially in recent years, when it has marked a noticeable increase [2]. An increase in this phenomenon in Kosovo has also been noted during the pandemic period [3].

In terms of the constitutional and legal infrastructure for protection from domestic violence, Kosovo has undertaken numerous actions. Initially, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) through the constitutional amendment has become part of the Kosovar constitutional order. In addition, throughout the years, Kosovo has adopted various laws and strategies for preventing and combating domestic violence, until with Code No. 06/L-074 Criminal Code of the Republic of Kosovo, domestic violence is criminalized as a separate criminal offense.

Despite this, according to statistics, domestic violence has increased almost year after year [4]. Moreover, for not acting according to the provisions of the aforementioned law, in the case of Diana Kastrati, the Constitutional Court of the Republic of Kosovo found a violation of the right to life [5]. Similarly, in 2021, the Kosovo Law Institute in collaboration with the Kosovo Women's Network through a published report, [6] as well as the Ombudsperson Institution through a report with recommendations, [7] had also found the same in the case of the now deceased Sebahate Morina.

[1] Kosovar Gender Studies Center (KGSC), "Gender Based Violence in Kosovo - A critical Review of Police Response" ([https://kgscenter.net/site/assets/files/1742/gender\\_base\\_violence\\_eng-1.pdf](https://kgscenter.net/site/assets/files/1742/gender_base_violence_eng-1.pdf) - p.7).

[2] Annual Work Report of Kosovo Police for the period January-December 2021, p. 6.

[3] <https://kli-ks.org/wp-content/uploads/2021/01/IKD-Kriminaliteti-n%C3%AB-pandemi-23.01.2021.pdf> - p.10.

[4] KWN Report "From Laws to Actions", p. 80.

[5] Constitutional Court of Republic of Kosovo, Judgement in the case K141/12, 26 February 2013.

[6] Arrita Reznqi and Gzim Shala "The State by not acting deprives Sebahate Sopi of life", KLI and KWN, March 2021, (<https://kli-ks.org/wp-content/uploads/2021/03/IKD-Shteti-me-mos-veprim-privon-nga-jeta-Sebahate-Sopi-17.03.2021-1.pdf>).

[7] Ombudsperson Institution, Report with recommendations, ex officio, Case nr. 150/2021 related to the positive obligations of the state for the right to life and protection against domestic violence, 27.04.2021 (<https://oik-rks.org/2021/04/27/raport-me-rekomandime-ex-officio-nr-1502021-ne-lidhje-me-detyrimet-pozitive-te-shtetit-per-te-drejtjen-ne-ujete-dhe-mbrojtjen-nga-dhuna-ne-familje/>).

# LEGAL BASIS

On August 15, 2010, Law No. 03/L-182 on Protection from Domestic Violence entered into force, which is still applicable. According to the law in question, domestic violence is handled in civil proceedings, and only if the perpetrator of domestic violence does not respect the protective order, then he is criminally liable [8].

In the course of the advancement of the legal basis for preventing and combating domestic violence, on April 14, 2019, Code No. 06/L-074 Criminal Code of the Republic of Kosovo (hereinafter: CCRK), for the first time criminalizes domestic violence as a separate criminal offense. Physical, sexual, psychological, and economic abuse have been defined as forms of committing this criminal offense. The punishment prescribed by law in this case is up to three years of imprisonment. This criminal offense is among the offenses which are prosecuted according to official duty and not according to the proposal [9].

The criminalization of domestic violence has marked an important step towards meeting the standards derived from the Istanbul Convention. In particular, the fact that, in line with the standards defined by this Convention, [10] criminal prosecution for domestic violence is not conditional on the proposal of the victim of domestic violence is positively evaluated. This assessment was also supported by the Ombudsperson Institution. With the claim of violation of the right to life, this case is being handled by the Constitutional Court of the Republic of Kosovo.

However, even the criminalization of domestic violence does not seem to have had the required effects in practice to prevent this disturbing phenomenon. Moreover, in the case of Sebahate Morina (Sopi), KLI and KWN assessed that the Basic Prosecutor's Office in Prishtina had deprived her of life by not acting [11]. This assessment was also supported by the Ombudsperson Institution [12]. With the claim of violation of the right to life, this case is being handled by the Constitutional Court of the Republic of Kosovo [13].

[8] Law No.03/L-182 for Protection against Domestic Violence, article 18.3.3.2.

[9] Code no.06/L-074 Penal Code of Republic of Kosovo, article 248.

[10] The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, article 55, par.1.

[11] Arrita Rezniki and Gzim Shala "The State by not acting deprives Sebahate Sopi of life", (KLI and KWN), March 2021:<https://kli-ks.org/wp-content/uploads/2021/03/IKD-Shteti-me-mos-veprim-privon-nga-jeta-Sebahate-Sopi-17.03.2021-1.pdf>.

[12] Ombudsperson Institution, Report with recommendations, ex officio, Case nr. 150/2021 related to the positive obligations of the state for the right to life and protection against domestic violence, 27.04.2021 (<https://oik-rks.org/2021/04/27/raport-me-rekomandime-ex-officio-nr-1502021-ne-lidhje-me-detyrimet-pozitive-te-shtetit-per-te-drejte-ne-ujete-dhe-mbrojtjen-nga-dhuna-ne-familje/>).

[13] "The request through which it is proposed to ascertain the violation of the right to life, in the case of Sebahate Morina is submitted to the Constitutional Court of Kosovo," Kosovo Law Institute (13 July 2021): <https://kli-ks.org/dorezohet-ne-gjykaten-kushtetuese-te-kosoves-kerkesa-permes-se-ciles-propozohet-te-konstatohet-shkelja-e-te-drejte-per-jeten-ne-rastin-e-sebahate-morines/>.



# THE ISTANBUL CONVENTION AND ITS INCORPORATION IN THE CONSTITUTION OF KOSOVO

One of the main international instruments in terms of preventing domestic violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the Istanbul Convention. This Convention was approved by the Committee of Ministers of the Council of Europe on April 7, 2011. It was opened for signature by states on May 11, 2011, at the session of the Committee of Ministers in Istanbul and entered into force on August 1, 2014. Until today, 34 member states of the Council of Europe have ratified the Istanbul Convention, while 12 states have signed it [14]. To implement the Convention, these member states must adopt concrete measures to fulfill their commitment to prevent and combat violence against women and domestic violence.

The Constitution of the Republic of Kosovo (Article 22) has incorporated into the Kosovar legal order eight international instruments related to human rights, which apply directly to the Republic of Kosovo and have priority, in case of conflict, over the provisions of laws and acts of other public institutions.

In addition to these eight international instruments, the Assembly of the Republic of Kosovo, through constitutional amendments, on September 25, 2020, added the Istanbul Convention (amendment no. 26) to this list of international instruments. In this way, since September 25, 2020, although Kosovo is not a ratifying state of the Istanbul Convention and a member of the Council of Europe, the Convention is directly applied in the Kosovar legal order and has priority over other laws and acts. In terms of the implementation of this Convention, states are obliged to take certain measures.

This is because the provisions of the Convention are not necessarily self-enforcing, but the undertaking of legislative and other measures is required in relation to acts of violence covered under this Convention. Accordingly, Article 5 of the Convention defines the obligations of the state and in paragraph 1, it is taxatively provided that *'parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation'*. Further, in paragraph 2 it assigns that *"Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors."*

[14] Note: In 2021, Turkey withdrew from this Convention: "Key facts about the Istanbul Convention", Council of Europe (see link: <https://www.coe.int/en/web/istanbul-convention/key-facts>).

# STANDARDS OF THE ISTANBUL CONVENTION IMPLEMENTATION IN COURT DECISIONS

The Istanbul Convention defines a series of standards and when a state ratifies it, it must undertake various measures related to the proper course of judicial proceedings, particularly through some key measures, among which are listed:

- 1.** Legislation sanctioning violence against women – creating laws criminalizing physical, psychological, and sexual violence, sexual harassment, stalking, female genital mutilation, forced marriage, forced abortion, and forced sterilization.
- 2.** Effective police investigation – law enforcement agencies will need to respond promptly to calls for help, manage dangerous situations appropriately, and investigate all allegations of violence against women.
- 3.** Effective public prosecution – investigation or prosecution of acts of violence against women will take into account that women are disproportionately affected by violence and will also not depend on a report or complaint from the victim and may even continue if the victim withdraws the statement or own complaint.
- 4.** Coordinated risk assessment – will be carried out in collaboration with relevant agencies and institutions, taking into account repeated offenses and access to firearms, as well as any new information that the investigation may bring to light.
- 5.** Protection of victims during the investigation and court proceedings – victims of violence and their families will be protected at all stages of the investigation and court proceedings from pressure, intimidation, retaliation, and repeated victimization.
- 6.** Persuasive sanctions for perpetrators of violence – ensure that criminal offenses and violations of protection orders are subject to proportionate or statutory criminal sanctions, including imprisonment, extradition, monitoring and supervision, and withdrawal of parental rights.
- 7.** Considering aggravating circumstances – ensure that aggravating circumstances are taken into account, including the victim being in an intimate or close relationship, crimes against a vulnerable person or in the presence of a child, in conflict with other people, extreme levels of violence or psychological harm, threat of a weapon, etc., or previous convictions for crimes of a similar nature.

- Victims' rights to information and support – victims should be informed of the progress and outcome of their case, of victim's rights and of appropriate support services to help them represent those rights and interests. They should also have support and assistance from governmental and non-governmental organizations and domestic violence counselors during investigation and court proceedings, as well as legal support to seek compensation from perpetrators of violence and support to sue state authorities if they have failed in their preventive and protective duties.
- 8.**
- Protection of child victims and witnesses – children will be provided with appropriate and special protective measures, and also for child victims of sexual violence, forced marriage, female genital mutilation and forced abortion or sterilization, they will be able to initiate legal action for a sufficient time after reaching the age of majority.
- 9.**
- Victims' rights to privacy – the victim's privacy and image must be protected, and contact between the victim and the alleged perpetrators avoided where possible. Also, victims will be able to testify in the courtroom through communication technologies, or at least not in the presence of the alleged perpetrator of the crime.
- 10.**
- No victim-blaming - Investigations and judicial processes will respect victims at all stages and will not display attitudes, behaviors, and practices that blame victims and cause them additional distress [16].
- 11.**

In this report, which consists of monitoring the judicial processes of cases of domestic violence through the analysis of the published verdicts, KLI will deal with the implementation of some of the aforementioned measures. Accordingly, in a direct manner, the following part includes and analyzes in particular measures such as:

1. legislation that sanctions violence against women;
2. protection of victims during the investigation and court proceedings;
3. persuasive sanctions for the perpetrators of the act of violence, and;
4. taking into account aggravating circumstances.

In the following part, KLI has analyzed the verdicts of the basic courts and the Court of Appeal, in order to assess the implementation of the standards set in the Convention by these courts, but also other characteristics of cases of domestic violence. The following part presents the findings on the way these cases are handled, from the moment the indictment is filed, the representation offered to the victims in the judicial process, judgement and punishment of perpetrators, but also other elements that reflect the way the cases of domestic violence are handled by the judiciary.

[16] For all measurements, see Council of Europe, "The Four Pillars of the Istanbul Convention": <https://rm.coe.int/coe-istanbulconvention-brochure-en-r03-v01/1680a06d4f>.

# THE ISTANBUL CONVENTION IN THE VERDICTS OF THE BASIC COURTS

## The duration of handling domestic violence cases

KLI has identified and analyzed 50 basic court verdicts in Kosovo, chosen in a random manner from the official pages of the courts, in order to assess the implementation of the standards of the Istanbul Convention in the Kosovo courts decisions.

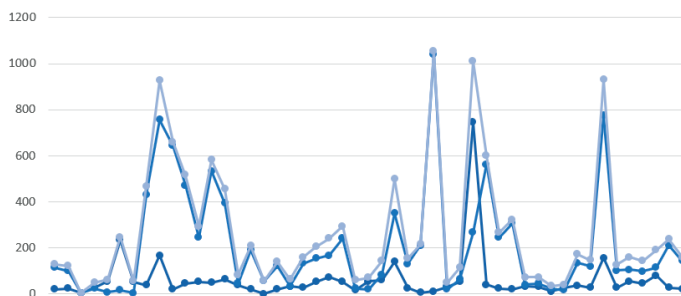
In this direction, KLI has analyzed different aspects of each verdict, in order to come to objective conclusions. Thus, in these verdicts have been analyzed: the duration of handling cases of this nature, the legal setting of the criminal offense, the family relations among the parties, violence victims' representation in the court procedure in the first degree, the type of the verdict, the type of the imposed sentence, the form of the proven violence in the verdict, and the gender of the judges.

The duration of the procedure has been analyzed based on the time the criminal offense has been committed, the time of the indictment, and the time of verdict. As it can be seen in the graph below, the average duration from the commitment of the criminal offense to the indictment in cases of this nature is 60 days. As for the average duration from the indictment to the verdict, KLI found that it reaches up to 206 days. Hence, in total, it means that the average duration of handling cases from committing to verdict in the first degree is 266 days or 8.5 months.

If we take into account the procedural steps that according to the Code of Criminal Procedure are requested to develop from the commitment or report of a criminal offense of domestic violence and the deadlines assigned by law, then it is found that on the overall average, domestic violence cases are being handled in an optimal deadline. Thus, taking into account the duration of handling other cases, [17] KLI finds that prioritizing these cases is being reflected in practice. Therefore, the duration of handling domestic violence cases is in accordance with the requests of the Istanbul Convention, which requests a handling of cases "without undue delay" [18].

[17] See <https://kli-ks.org/wp-content/uploads/2021/12/Drejtesia-e-vonuar-ne-Kosove-2021.pdf>

[18] Istanbul Convention, Article 49.1.



Graph 1. Duration (expressed in days) from committing the criminal offense to indictment and verdict of first degree

- Duration from committing the criminal offense to indictment
- Duration from indictment to verdict
- Duration from committing the criminal offense to verdict

However, compared to the overall average, KLI has found different cases where the duration has been longer than the overall average. KLI finds that from the 49 analyzed verdicts [19], in a case the indictment was immediate, on the day the criminal offense was committed, which is considered a positive aspect [20]. Whereas in a case, the indictment was after 746 days from the commitment of the criminal offense [21]. This duration presents over 12 times of the average duration of handling a domestic violence case and overall an undue delay in handling this case, an aspect that presents a violation of obligation according to the Istanbul Convention.

Major differences are evident in the handling of cases by courts as well. In a case the verdict was made only three days after the indictment [22]. While in a different instance, the same procedure took 1,041 days [23]. Thus, in the second instance, the court did not respect the legal deadlines, whereas the duration of handling the cases has been around 5 times longer than the overall average. In this case as well, it seems like the court has been involved in unduly delays, the opposite of what is requested by the Istanbul Convention.

It is worth emphasizing that in all these cases KLI has found that the shortest duration was in cases that were treated by the legal setting based on the criminal offense "domestic violence", while other cases that were treated by the basic criminal offense (eg. harassment, assault, threats, slight bodily harm, etc.) took much longer to resolve.

[19] Note: Nga 50 aktgjykimet e përgjedhura, njëri përmban datat e gabuara në pjesën e arsyetimit, në bazë të të cilave rezultojnë se ngritja e aktakuzës është bërë para kryerjes së veprës penale. Për shkak të këtij gabimi, ai aktgjykim nuk është marrë për bazë në analizën e këtij seksioni.

[20] Aktakuza PP.nr.1999-1/21 e Prokurorisë Themelore në Prizren, dt. 09.11.2021.

[21] Aktakuza PP.II.nr.366/21 e Prokurorisë Themelore në Ferizaj, dt.18.03.2021.

[22] Aktgjykimi P.nr.3195/21 i Gjykatës Themelore në Prishtinë, dt. 05.11.2021.

[23] Aktgjykimi P.nr.381/2018 i Gjykatës Themelore në Gjiilan, i dt. 02.03.2021.

# Legal setting of the criminal offense

There have been multiple dilemmas and discussions regarding the legal setting of the criminal offense in domestic violence cases, particularly criminal offense committed in a family context, from the enforcement of the new Criminal Code, which criminalizes domestic violence as a special offense. What consisted the main dilemma was regarding the legal setting of the cases committed in the context of family relations when elements of another basic criminal offense, especially the manner these cases should be treated, whether to be followed as a basic criminal offense or by Article 248 of the Criminal Code which assigns the criminal offense of domestic violence. With the goal of explaining this situation, the Supreme Court of Kosovo in June 2020 released a Guideline [24].

In the Guideline of the Supreme Court, among other, it is stated that *“the determination of the criminal offense committed within the family relationship, against the family member or against the vulnerable victim, as a principle should be done on the basis of the basic offense or offenses (if there is more than one offense committed), and not according to the article 248, if all the elements of that basic offense are met. This is in accordance with the spirit of the Criminal Code, which, as was seen above, in any case where a certain criminal offense is committed within a family relationship, it is sanctioned more severely than other forms, within the same article or in relation with Article 248 (domestic violence)”* [25]. Thus, according to these Guidelines, in every case that the elements of the basic offense are fulfilled, it is required that the determination is done based on that offense and not according to Article 248 - domestic violence.

Further, the Supreme Court in this Guideline concludes that the “the purpose of the legislative was for Article 248 to serve more as a reference and determinant of these forms of domestic violence, rather than have all offenses committed in family relationships be sanctioned based on Article 248. This is since in the contrary we would be acting in violation with principles known internationally as well that such offenses should be punished more roughly” [26]. According to the Guideline of the Supreme Court “the purpose of Article 248 is to include the easiest forms of domestic violence. In each case that the elements of any of the basic offenses are not fulfilled, as a consequence of the degree of the violence practiced or the absence of evidence for that element, the qualification of the offense is done according to Article 248” [27].

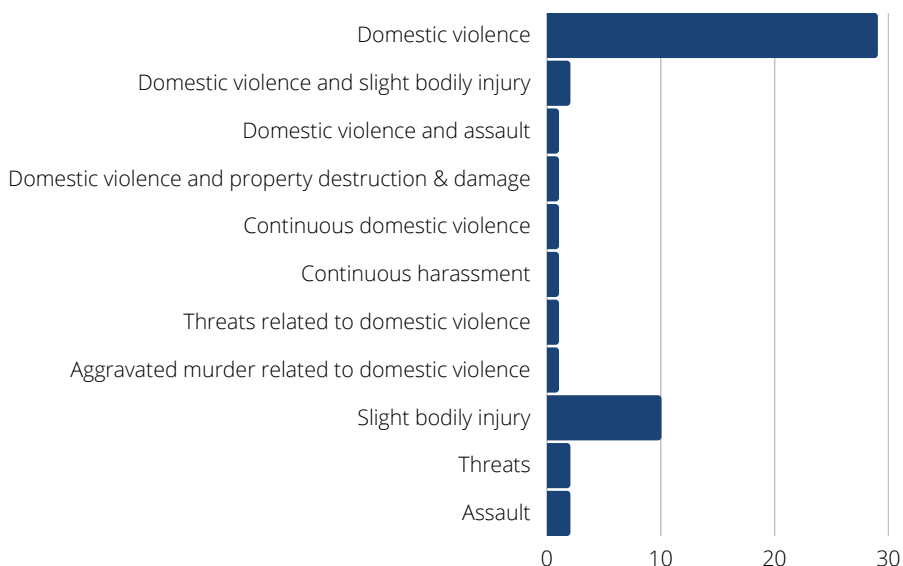
From the analyzed verdicts, as seen in the following table, KLI has found that the largest number of cases are classified as "domestic violence". Of the 50 verdicts analyzed, the following graph shows the legal setting according to which they were treated:

[24] Guideline of the Supreme Court of Kosovo regarding the legal setting and handling of domestic violence cases according to the Criminal Code of Kosovo: [https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/27806\\_Udhezim%20-%20cilesimi%20juridik%20dhe%20trajtimi%20i%20rasteve%20te%20dhunes%20ne%20Familje%20sipas%20KPRK.pdf](https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/27806_Udhezim%20-%20cilesimi%20juridik%20dhe%20trajtimi%20i%20rasteve%20te%20dhunes%20ne%20Familje%20sipas%20KPRK.pdf).

[25] Ibid, p. 7.

[26] Ibid.

[27] Ibid, p. 7 and 8.



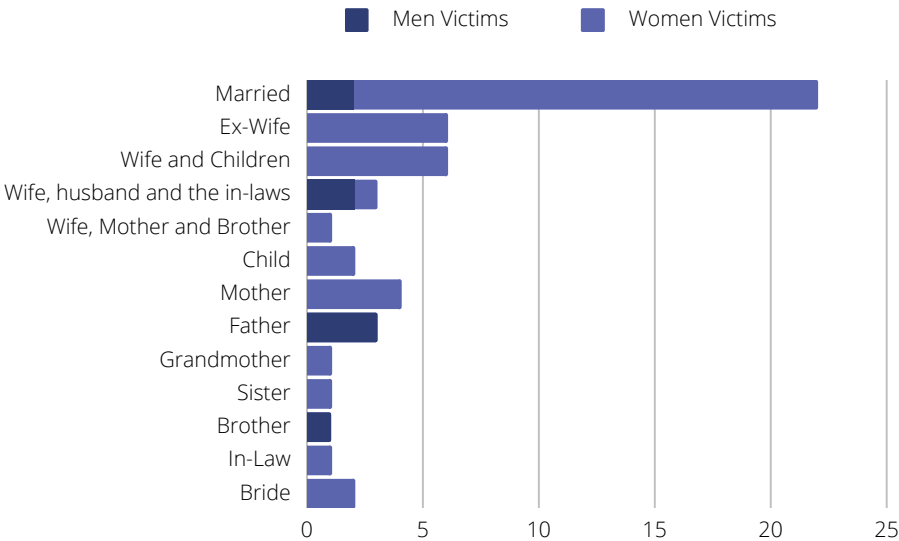
Graph 2. The type of criminal offense for which the perpetrator was accused in the verdicts of the basic courts

Thus, out of the 50 analyzed cases, 29 of them were handled in terms of the criminal offense of domestic violence from article 248 of the CCRK, while in six cases the offense was classified as domestic violence, but, another offense was added.

Whereas, what stands out is that ten cases are classified as minor bodily injury by Article 185 of the CCRK, which means that a significant part of such cases are often processed as minor bodily injury cases. Likewise, two cases were processed with the legal setting "assault" and two other cases with the setting "intimidation". This type of setting in these cases is not in accordance with the Code No. 06/L-074 Criminal Code and the Guidelines of the Supreme Court, elaborated above. The cases analyzed in this report are about violence committed in a family context. Clearly, this is confirmed by the description of the factual situation of these cases. As such, as long as we do not have a more serious criminal offense that can be related to domestic violence, the cases cannot be characterized differently. This is because in these cases, the basic offense is considered to be domestic violence. In this way, this situation creates a kind of amnesty towards perpetrators of domestic violence. Let's take for example the cases where these acts are defined as "assault". While the criminal offense of domestic violence is punishable by a fine and imprisonment of up to three years, the criminal offense of assault is punishable by up to 1 year. Thus, the perpetrator of domestic violence is punished for a lesser crime. For this reason, KLI recommends that in these cases, in accordance with the Criminal Code and the Guidelines of the Supreme Court, the prosecution should classify these cases as "domestic violence".

# Family relationships in cases of domestic violence

In 22 out of 50 cases analyzed through the verdicts of the basic courts, it turns out that the perpetrator and the victim were married. Of these, in 20 cases the victim was a woman, while in 2 cases the victim was a man. In 6 of the 50 analyzed cases, the victim was the ex-wife, while also in 6 other cases, in addition to the wife, the children were victims of domestic violence. In some exceptional cases, other family members are also identified, which are illustrated in the graphic below.



Graph 3. Family relations among parties in cases handled by basic courts

## Victim representation in procedures

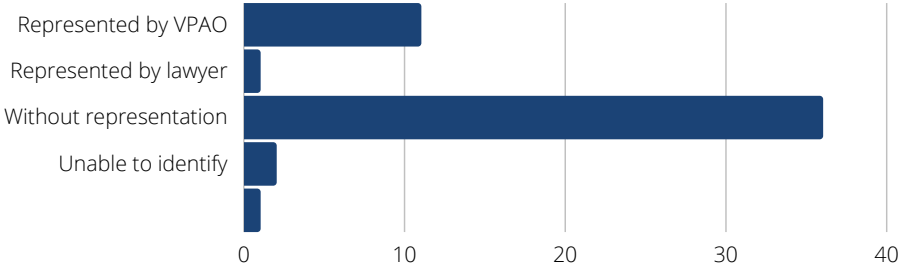
The Victim Protection and Assistance Office (VPAO) that functions within the Office of the Chief State Prosecutor *has a mandate to institutionalize the rights of crime victims and offer them representation, counseling and support to have access to the justice system* [28].

Despite this, based on the analysis of these 50 verdicts of the basic courts, it results that out of these 50 cases, only in 11 of them, the victims of domestic violence were represented in court proceedings through the victims' defenders. On the other hand, in one case the victim hired a lawyer for representation, while in 36 other cases it turns out that the victims appeared without a representative. Simultaneously, there were two cases in which KLI was unable to understand whether the victim was represented during

[28] For more, see the link: <https://prokuroria-rks.org/psh/zmnv/68/misoni>.



the judicial process or not.

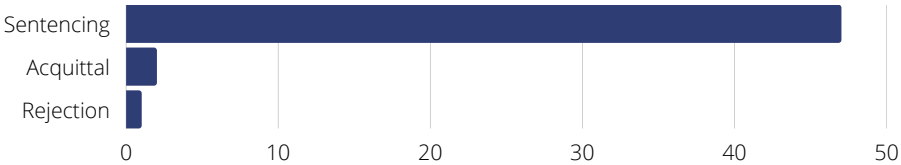


Graph 4. Representation of victims of violence in court proceedings of first degree

Law No. 03/L-182 on Protection from Domestic Violence defines the defender of victims as the official authorized person who directly helps the injured party from the first contacts with the competent protection bodies, advises, initiates the procedures for assigning measures of defense, is obliged to participate in all court sessions to monitor the progress of the court process. Despite this determination, according to the findings of the KLI, from these 50 verdicts, it results that 72% of victims of domestic violence did not have professional representation. Thus, KLI finds that in these cases it was not acted in accordance with the legislation in force, and at the same time it was acted contrary to the Istanbul Convention, which in Article 55.2. stipulates that *"parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and nongovernmental organisations and domestic violence counselors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention"*.

## Types of verdicts

Of the 50 analyzed verdicts, KLI finds that in 47 cases the courts have made sentencing verdicts, in two cases acquittal, and in one case rejection. Expressed in percentage 94% of the cases have ended in sentencing verdicts against the plaintiff.

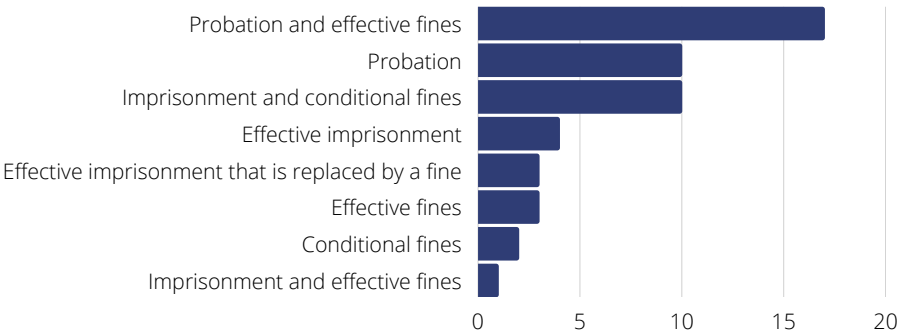


Graph 5. Type of verdict made

What is scandalous is the rejection verdict, in which the prosecutor withdrew the indictment since it considered that the ex-wife is not in the category of family relationships. In the reasoning of this verdict it is said that: *“The State Prosecutor in the seance of the judicial review asked for the word and declared: After analyzing the disposition of the indictment, it results that in this case the plaintiff was divorced from his ex wife. Therefore, for the criminal offense domestic violence from Article 248 to exist a fundamental condition is that the family relationship exists. From the disposition of the indictment, it appears that the defendant and the victim were not in a family relationship at all.”* [29] KLI finds that in this case, the reasoning of the State Prosecutor is illegal and amnesty to the defendant for committing domestic violence. Article 113.25 of the Criminal Code No. 06/L-074 of the Republic of Kosovo clearly defines that the family relationship, among other things, also means the relationship between persons who have been married. Under this situation and with this reasoning, the withdrawal of the State Prosecutor from the indictment represents an illegal amnesty of the defendant for committing domestic violence.

# Sentencing policy in domestic violence cases

As also seen in the graph below, of the sentences imposed in the 47 convictions (which include 50 people), the vast majority are conditional sentences:



Graph 6. Type of imposed sentences by the basic courts

Thus, out of the 50 convicted persons, the courts imposed conditional imprisonment on 37 of them. According to Code no. 06/L-074 Criminal Code of Kosovo, *the purpose of the conditional sentence is not to apply the sentence for minor criminal offenses, when it is estimated that the withdrawal of the warning with the threat of punishment is necessary to prevent the perpetrator from committing a criminal offense* [30]. According to this Code, with this type of punishment, *the court assigns the punishment to the perpetrator of the*

[29] Judgement of the Basic Court of Prishtina - Branch of Podujeva, P.no.480/2020, date 30.12.2021.

[30] Code no. 06/L-074 Criminal Code of Kosovo, Article 47.

*and at the same time orders that this punishment is not executed if the convicted person does not commit another criminal offense during the verification period set by the court* [31]. Based on the seriousness of the cases of domestic violence and the goals that are intended to be achieved through the punishments imposed by the courts, KLI estimates that these data represent a concern in relation to the sentencing policy that is followed in cases of domestic violence. In this case, KLI takes into account that each case has its own specifics and depending on the specifics, the practice may bring different types of cases that justify different punishments. But, when we see such a high number of cases that have ended with conditional sentences, then the argument is built that in these cases it is not a matter of specific cases, but of a phenomenon in decision-making. This phenomenon is manifested in the fight against domestic violence through conditional sentences. In its essence, conditional sentences, in principle, cannot be assumed to be efficient and proportionate in preventing and combating domestic violence.

This form of punishment clearly shows the trend of sentencing policy in cases of domestic violence in our country. Such a form can easily be evaluated as a mild punishment policy, considering the small number of identified cases where an effective prison sentence was imposed. This then translates into the lack of achieving the purpose of the punishment and, consequently, the increase in the number of cases of domestic violence in our country.

On the other hand, out of the 50 persons included in the 47 convictions, KLI has found that only 5 persons have been sentenced by the basic courts to effective imprisonment for the perpetrators of criminal acts of domestic violence. Whereas, in three other cases, the courts have imposed an effective imprisonment sentence, but the same have been replaced by a fine. However, as far as punishments with fines are concerned, KLI has identified 5 cases, of which, three cases where the courts imposed fines, as well as two cases where the fines were conditional.

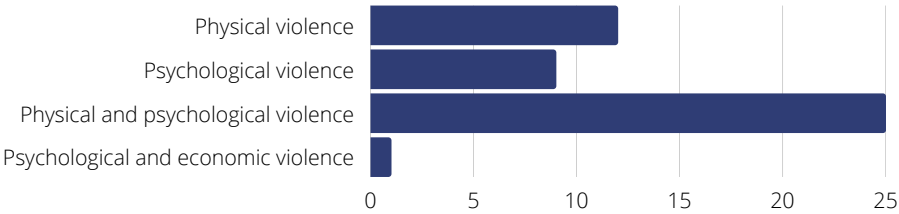
KLI has also identified three cases in which, in addition to the main punishment, the courts have imposed mandatory treatment measures, which, based on the CCRK, can be imposed on the perpetrator who is not criminally responsible, has essentially reduced mental capacity or is addicted to drugs or alcohol. In two of these cases, the measure imposed was that of compulsory psychiatric treatment with detention in a health care institution. Whereas, in one case, the measure of mandatory outpatient treatment.

## Types of domestic violence

Code no. 06/L-074 Criminal Code recognizes several forms of domestic violence: physical violence, psychological violence, sexual violence, and economic violence. In cases where the perpetrator of the criminal offense has been found guilty, the KLI has also analyzed the form of violence certified by the verdict.

[31] Ibid, Article 48.2.

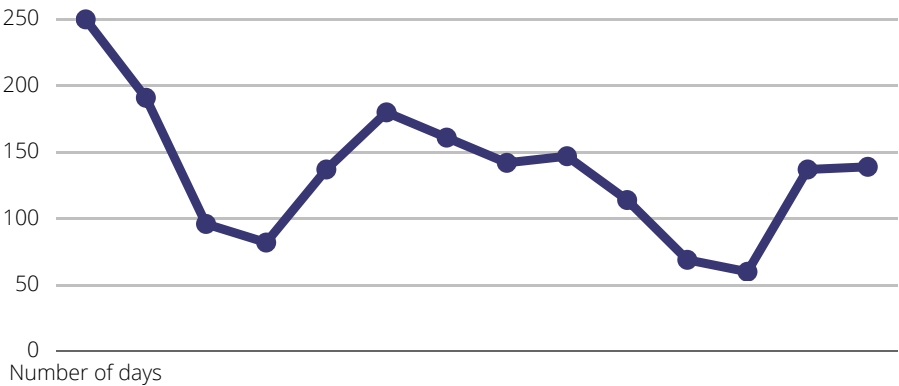
Of the 47 convictions, the form of violence proved in 12 cases was physical violence, while in 9 other cases it was psychological violence. In 25 cases out of 47 convictions, KLI has identified that the violence certified by the verdict of the court of first degree consisted of physical violence and psychological violence. Whereas, KLI has identified one case of economic violence and that together with psychological violence, while no case involving sexual violence has been identified.



Graph 7: Type of imposed sentences by the basic courts

# Analysis of the verdicts of the Courts of Appeals

For purposes of this report, KLI has analyzed another 14 verdicts of second degree, of domestic violence in family context, which have also been chosen randomly. From these verdicts, findings that express the level of implementation of the Istanbul Convention and the enforced laws in the verdicts of the Court of Appeals have been generated. In the graph below, the number of duration days for each case of the 14 analyzed verdicts have been shown.



Graph 8. Time from the verdict in first degree to the verdict of the Court of Appeals

Based on these data, it results that the average duration of procedure in cases of domestic violence, from the verdict in first degree to the verdict of the Court of Appeals is 136 days. Thus, calculated with the average duration of the criminal procedure in other phases, KLI finds that the average handling of domestic violence from the commitment of the criminal offense to the omnipotence of the verdict (when there is complaint from the parties) is 402 days.

KLI, based on the analyzed verdicts, has managed to also identify the fact that in all these 14 verdicts, all the filed complaints in the Court of Appeals have been complaints regarding the sentence. In some cases, only the prosecutor has filed a complaint, in some only the defense, but it was identified that there were also cases where both parties filed complaints.

In 7 cases, the Court of Appeal rejected the appeal of the prosecution and confirmed the decision of the first degree. In one case they issued an acquittal verdict, while in 6 other cases they issued a sentencing verdict, with conditional imprisonment, of which 4 were also sentenced to an effective fine and a conditional fine. In one case, the appeal of both the prosecution and the defense was rejected, where the punishment was conditional imprisonment and a conditional fine. While in 5 cases, the complaint was filed only by the defender of the accused, of which in two cases the complaint was rejected, while in three other cases it was approved. In the two cases where the appeal was rejected, then the conviction of the first degree was confirmed. In these cases, both judgements were criminal, where both were effective imprisonment and fines. While, in three other cases, the Appeal has accepted the appeal of the defense of the accused regarding the sentence, and from the sentences of effective imprisonment of 1 year, in two cases it has confirmed the sentence, but requested not to apply it for two years. While in the third case, from a prison sentence of 6 months and an effective fine of 200 euros, they changed it by requesting that the prison sentence is not applied for two years. However, in a case where the complaint was filed directly by the accused, the same was rejected by the Appeal and the decision of the first degree was confirmed. In this case, there was a prison sentence (converted to a fine) and an effective fine.

# MAIN CONCLUSIONS

This report consists of analyzing 50 verdicts of cases with domestic violence elements taken from the basic courts in Kosovo and 14 verdicts of the Court of Appeals, all randomly chosen, with the purpose of evaluating the implementation of the standards of the Istanbul Convention in the verdict of Kosovo's courts.

One of the analyzed aspects is the duration of the procedure, which was analyzed by taking into account the time of committing the criminal offense, the time of the indictment, and time of the verdict. In this case, KLI has found that the average duration of handling cases from the moment of the offense to the verdict of first degree is 266 days or 8.5 months which means that in the overall average, domestic violence cases are been handled within an optimal deadline, which is in accordance with the standards of the Istanbul Convention.

Further, the legal setting has also been analyzed, in which from 50 cases, 58% of them are classified as criminal offense domestic violence from Article 248 of the CCRK, whereas in 12% of the cases, the offense has been classified as domestic violence while also adding another offense. Then, 20% of the cases are classified as slight bodily harm under Article 185 of CCRK, while 4% were classified as "attack" and "threat", while 2% consists of continuous harassment offenses. In this case, KLI has recommended that the committed offenses in a family context, in accordance with the Criminal Code and the Guidelines of the Supreme Court and the Istanbul Convention, are classified as "domestic violence" in each case when that is possible.

KLI has found that out of the 50 analyzed appeals, 72% of the victims of domestic violence cases did not have professional representation, which is a violation of the standards of the Istanbul Convention, but also the positive legislation in place.

Whereas, in the aspect of the type of the verdict, KLI has found that out of the 50 analyzed verdicts of the basic courts for the purposes of this report, 94% of them have been sentencing verdicts. Regarding the sentencing policy, we consider that in these cases there is a soft sentencing policy. This is since out of the 50 sentenced persons in these verdicts, courts have imposed sentences of conditional imprisonment in 74% cases, whereas in only 10% of the cases they imposed sentences with effective imprisonment for the perpetrators of the criminal offenses of domestic violence.

In relation to these findings, KLI considers that in its essence, conditional sentences, in principle, cannot be assumed as efficient and proportional in preventing and combating domestic violence. Therefore, we have recommended that, in accordance with the Criminal Code of Kosovo and the Guidelines of the Supreme Court for Sentencing Policy, the sentences imposed in cases of domestic violence should be aggravated, in order to achieve the purpose of the punishment and consequently influence the reduction of the trend of the appearance of cases of domestic violence.

# RECOMMENDATIONS

Considering the whole analysis above, but also the alarming situation with the continuous increase in cases of domestic violence in our country, KLI recommends that:

- 1.** There should be an increase in the efficiency of the bodies of the justice system in dealing with cases with elements of domestic violence, especially when the same are legally qualified according to basic criminal offenses.
- 2.** The legal setting of these criminal offenses, in any case, should be done in accordance with the Criminal Code and the Guidelines of the Supreme Court.
- 3.** Prosecutors and judges should be continuously trained regarding the standards of the Istanbul Convention, but also the basic concepts of family relations.
- 4.** Prosecutors and judges should be held accountable in cases where they commit violations and/or neglect the proper handling of domestic violence cases.
- 5.** VPAO should exercise its role fully and offer representation of victims in every case and every stage of the procedure.
- 6.** All relevant actors should engage in raising awareness of all forms of domestic violence. So in addition to physical violence, citizens should also be informed about the concepts of psychological, economic, and sexual violence.
- 7.** In accordance with the Code No. 06/L-074 Criminal Code of Kosovo and the Guidelines of the Supreme Court for Sentencing Policy, the sentences imposed in cases of domestic violence should be aggravated, in order to achieve the purpose of the sentence and consequently influence the reduction of the trend of occurrence of cases of domestic violence.
- 8.** In the justifications of the verdicts of the courts in Kosovo, which are issued in relation to cases of domestic violence, the judges should also refer to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).

