



University of Zagreb  
Faculty of Law

**MAX PLANCK INSTITUTE**  
FOR THE STUDY OF  
CRIME, SECURITY AND LAW



# FEMICIDE

## Critical Perspectives

**Prof. Dr. Dr. h.c. mult. Hans-Jörg Albrecht**  
**Prof. Dr. Anna-Maria Getoš Kalac**



# OUTLINE

- Introduction – Creating a Social Problem Femicide
- Femicide and Homicide in Numbers
- Creating New Criminal Law: Femicide Statutes
- Were the Promises Kept?
- Conclusions



# CREATING A SOCIAL PROBLEM FEMICIDE

- It is claimed by various interest groups that femicide is
  - A particularly serious wrong
  - Which can be equated with an „undeclared war“ against women
  - Amounts to a serious and exponentially growing pandemic
- Which requires
  - The creation of a separate criminal offence statute „femicide“
  - Complete and effective implementation of the Istanbul Convention



# HOW TO CREATE A SOCIAL PROBLEM DESERVING PENALIZATION

- A parallel to moral entrepreneurs stirring up a moral panic
- **Crime clock**
  - Germany 2024: „Every 48 hours a woman is killed by partner or former partner“
  - If femicide does not increase (and femicide – like homicides at large – does not increase, but rather decreases) then switch to domestic violence (which due to public sensitivity is more exposed to downs and ups)
- **Strong language fueling outrage and hostility**
  - Scourge (of humanity)
  - Epidemic
  - Targeted for elimination



# BROADENING THE VIEW: THE WHOLE PICTURE

- Debates on femicide as an extraordinary social problem are part of a wider picture which includes
  - domestic violence
  - stalking
  - sexual abuse
  - violence against women in general
  - hatred of women
- It is alleged that violence against women is „among the least punished crimes in the world“ and reflects a „high level of impunity“ (UN Resolution 2015)
- UK Home Secretary Yvette Cooper 2024 has voiced the intent to upgrade misogyny to a motive which qualifies as a condition of hate crimes and terrorism



# CASE IN POINT: „MANDATORY” INVESTIGATIVE DETENTION FOR DOMESTIC VIOLENCE SUSPECTS

- Investigative detention is a measure of last resort in Croatia and there is no basis in law for „mandatory” investigative detention
- However, the public prosecution has in recent years successfully enforced as a rule that any person (commonly a male) reported/suspected of having committed domestic violence is kept in investigative detention pending trial
- Said unofficial rule has consequently been transposed by prison managements, which (as a rule) need to ensure that always at least 1 placement capacity is available for domestic violence suspects
- Even if a public prosecutor is not convinced that detention is necessary, the unofficial rule is being enforced



# CAUSES OF FEMICIDE

- The causes of these developments are seen in
  - Social structures which result in unequal power between women and men
  - Harmful gender roles
  - Harmful traditional practices (genital mutilation)
  - Family and collective honor
  - Misogyny/hatred of women



# WHAT IS FEMICIDE?

- Diana Russell „Femicide in Global Perspective. New York: Teachers College Press. 2001“
- Femicide is
  - the killing of females by males because they are female
- Intentional killing with a gender-related motivation
- Killing of a woman by an intimate partner
- Death of a woman as a result of a (traditional) practice that is harmful to women

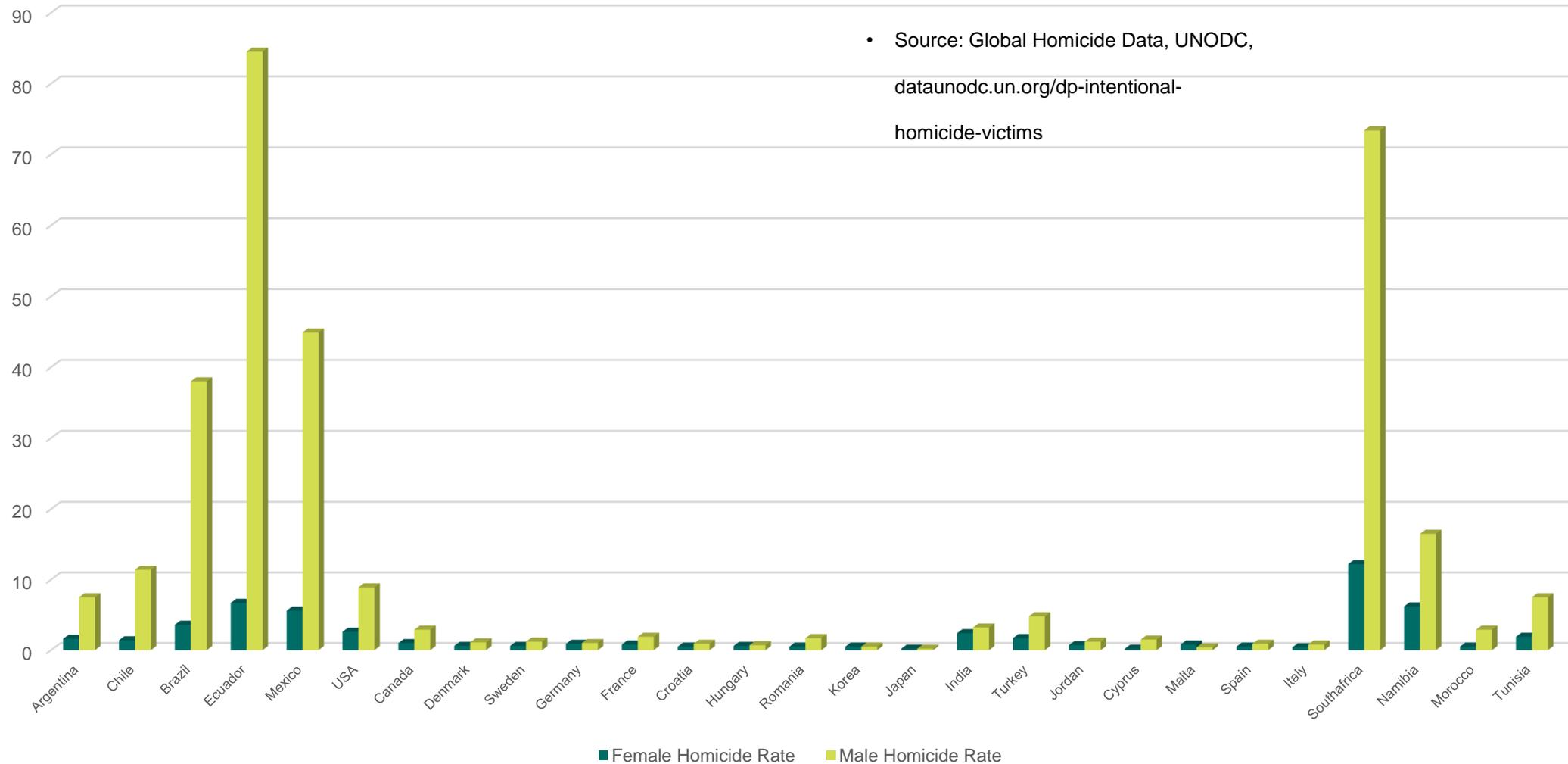


# MEASURES OF FEMICIDE

- There are attempts to elaborate definitions of femicide which can be a basis for identifying and counting femicide cases
  - National police statistics
  - UNODC global data base on homicides
- Similar problems arise when police record hate crimes (not reliable, it is difficult to establish motives)
- No uniform statistical systems (also in Latin American Countries)
- Approaches
  - Female victims of lethal violence by partner (or former partner)
  - Female victims of domestic violence
  - Female victims of male violence



# MALE AND FEMALE HOMICIDE VICTIMIZATION RATES IN SELECTED COUNTRIES 2022/2023





# WHAT FOLLOWS FROM THE FIGURE?

- Dramatic differences in homicide rates between various countries
- High homicide rates in Latin American countries and in Southern Africa
- Moderate homicide rates in the East of Europe, United States and in the Near and Middle East
- Low homicide rates in Western, Southern and Northern Europe and in the Far East
  
- Female homicide victimization rates follow these distributions
- Strong correlation .88 (Pearson), this means almost collinearity



# DISCUSSION

FOLLOWED BY COFFE BREAK

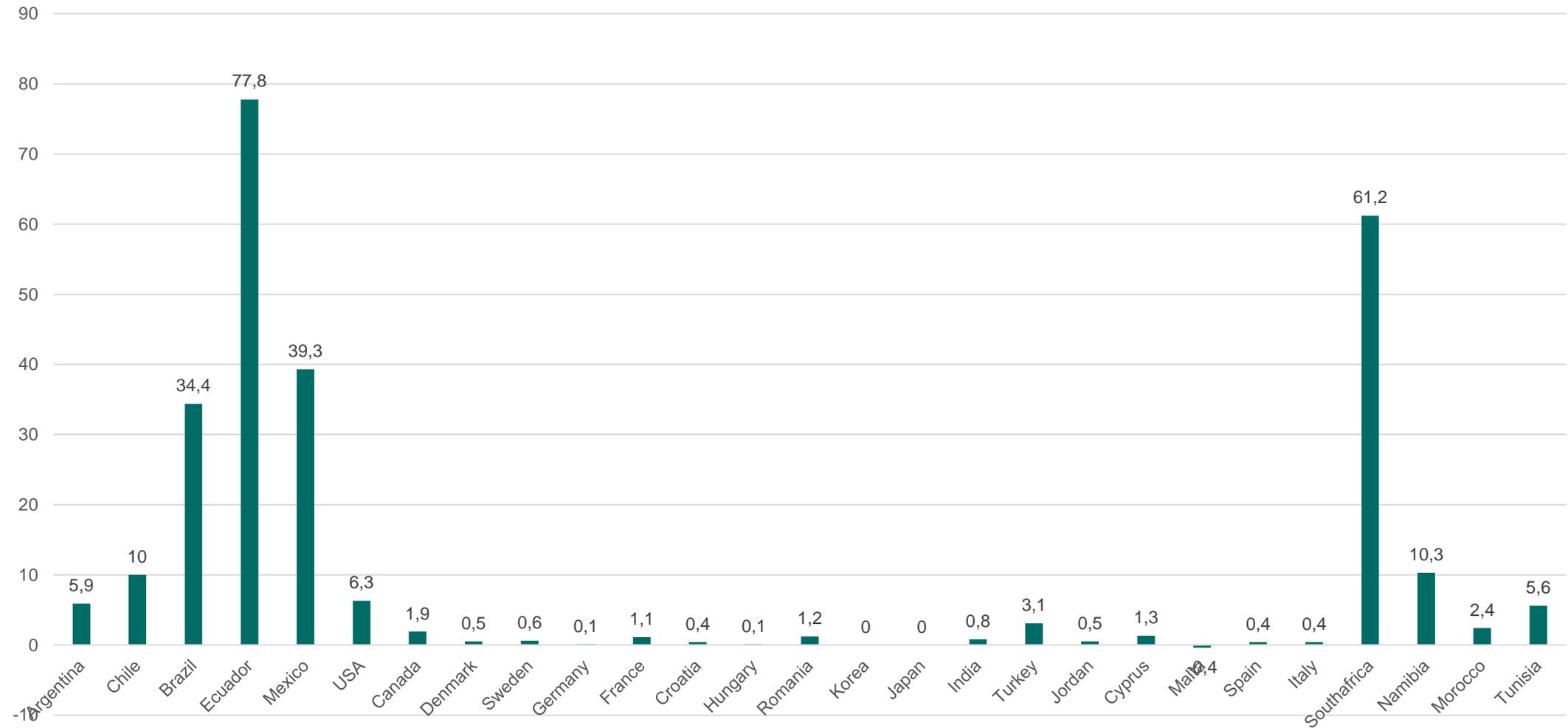


# LOOKING AT DIFFERENCES BETWEEN MALE AND FEMALE RATES

- In countries with high homicide rates the difference between female and male rates are extreme

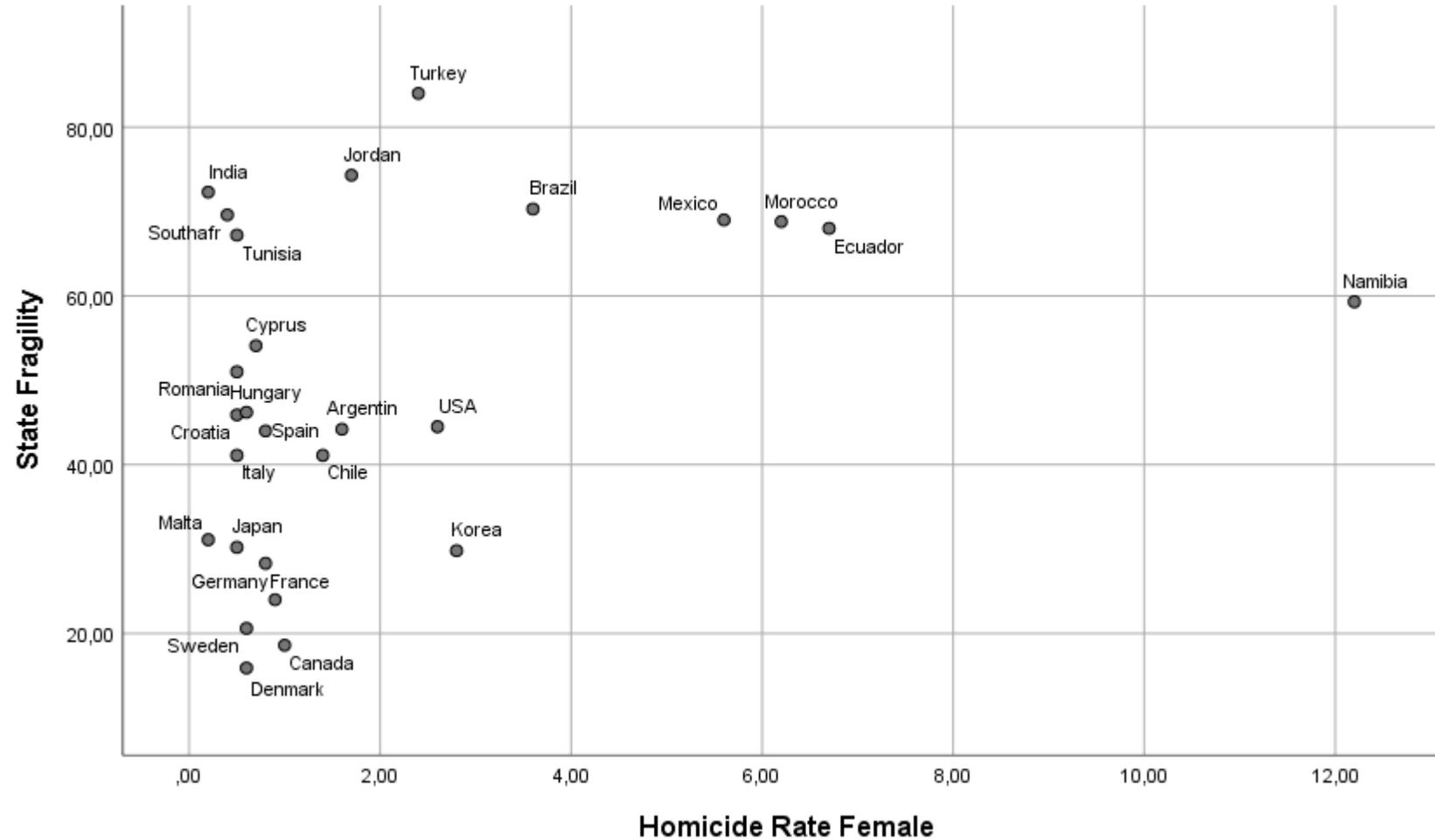


# DIFFERENCES BETWEEN MALE AND FEMALE HOMICIDE RATES





# STATE FRAGILITY AND FEMALE HOMICIDE RATES





# WHAT DO WE KNOW ABOUT LETHAL VIOLENCE

- Differences in homicide rates are explained by
  - Differences in stranger to stranger homicides
  - This explains also the dramatic differences in clearing and conviction rates
  - Explanations of differences in stranger to stranger homicides: violent drug markets (Ecuador), gang violence, cultures of violence
- In Europe and other parts of the world stranger to stranger homicides (or lethal violence in public places) have almost completely disappeared, lethal violence is at a historical low
- What remained is killing in intimate relationships and a trend towards alignment of female and male homicide victimization rates
- This is commonly misinterpreted as a rise in intimate partner violence
- In intimate lethal violence most victims are women and most offenders are men



## ... CIDES

- Parricide (killing of relatives, threatening the social structure and power relationships)
- Regicide
- Infanticide (mitigation of punishment)
- Representatives of the state (defiance of the monopoly of power)
- However, during the 20th century: a move toward equality and premeditation as a guiding principle of an **act based criminal law** (Tatstrafrecht)
- It is legitimate to punish acts, but there is no justification for **punishing motives, attitudes, beliefs** (Gesinnungsstrafrecht)
- Partially expression of identity politics



# FEMICIDE STATUTES

- First wave of creating femicide offence statutes
- Latin America (OAS Belem Convention 1994)
- Europe
  - Femicide statutes introduced in Malta, Cyprus, Croatia, N. Macedonia (2020s)
  - In Serbia, Bosnia and Herzegovina, Montenegro and Kosovo discussions are ongoing – are post communist countries more prone to „Gesinnungsstrafrecht“?
  - Constitutional case pending in Malta (first case tried and convicted for femicide)
  - Debates on introducing femicide offence statutes in most EU countries, but the vast majority has not initiated legislation



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- In March 2024 the Croatian legislator amended the Criminal Code
- Among other novelties, the criminal offence of ‘aggravated murder of a female person’ has been introduced as a special homicide-offence
- Thus, the term of ‘gender-based violence against women’ has been introduced as an aggravating circumstance
- What was the relevant social context leading up to said amendments?



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- Aggravated murder of a female person (Art. 111.a) is **the gender-based murder of a female person** punishable by a prison sentence of at least ten years or a long-term prison sentence (para. 1)
- In the determination of the offence, the following circumstances shall be considered: the offence was committed against a close person, a person whom the perpetrator had previously been abusing, a vulnerable person, a person who is in a relationship of subordination or dependence, or that the offence was committed in circumstances of sexual violence or because of a relationship that puts women in an unequal position or that there exist other circumstances that indicate that it is “gender-based violence” (para. 2.)



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- The Supreme Court's judges of the Criminal Department categorically, openly and explicitly stated that the enhanced criminal protection of women compared to men is discriminatory, contrary to the Croatian Constitution and the ECHR, as it introduces more extensive criminal protection of women compared to men
- Therefore, the proposed provision is based in inequality between the sexes and as such contrary to the equality between sexes as one of the highest values of the constitutional order



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- Another important argument against the introduction of the new offence concerns the gradation of the value of human life according to the value of a human being due to sex which is completely foreign to the basic principles of criminal law in Croatia
- The Croatian Constitution guarantees the equal right to life to every human being, whereas the new offence builds on the faulty assumption that the life of a female is more valuable than the life of a male or even that of a child
- Same reasoning – that the life of any human being has the same value regardless of the human being's characteristics (such as for example young age) – was used back in 2011 for eliminating the qualified form of aggravated murder in case the victim is a child or a minor



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- The Croatian legislator prescribed the femicide-offence as “gender-based murder of a female person”
- Furthermore, it defined the term “gender-based violence against women” in Art. 87 Para. 32 of the Criminal Code as “**violence directed at a woman because she is a woman or that disproportionately affects women**”
- Such behaviour shall be considered as an aggravating circumstance if the Criminal Code does not expressly prescribe a more severe punishment



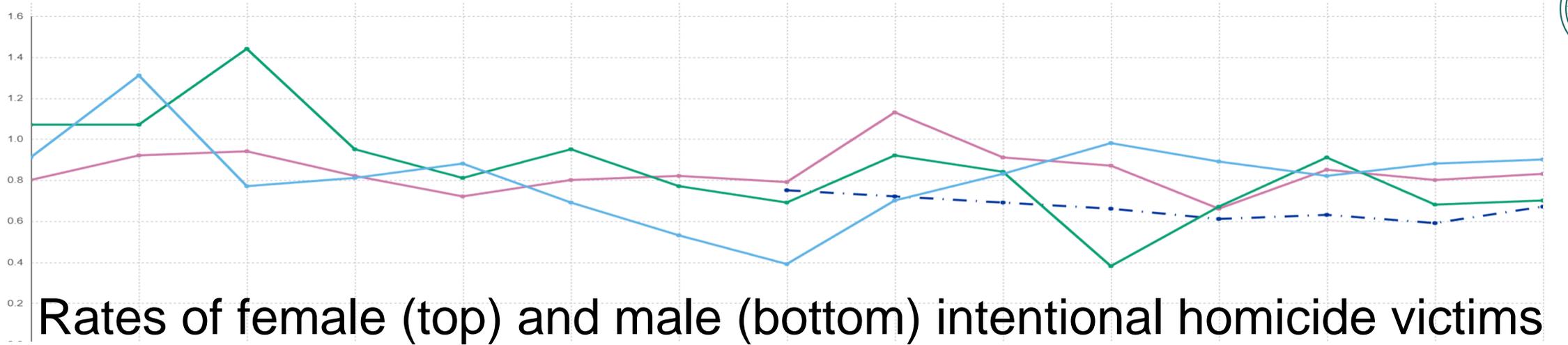
# FEMICIDE STATUTE – CROATIAN CASE STUDY

- The said term “gender-based violence against woman” and its definition in the Croatian Criminal Code have been adopted from the Istanbul Convention (Art. 3 Item d.), whereas in Art. 111.a Para. 1 the aggravated murder of a female person is proscribed as the “gender-based murder of a female person” (general clause)
- However, neither the Istanbul Convention, nor the Criminal Code define the term “woman” (beyond the notion in the Istanbul Convention that the term “women” includes girls under the age of 18)
- Instead the Istanbul Convention defines “gender” as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”

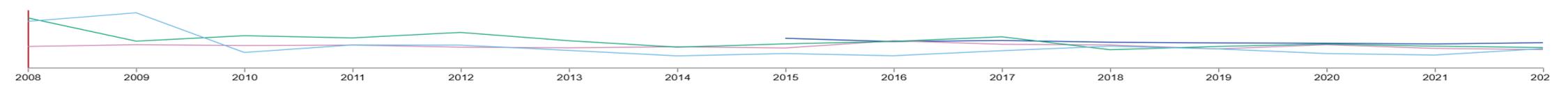
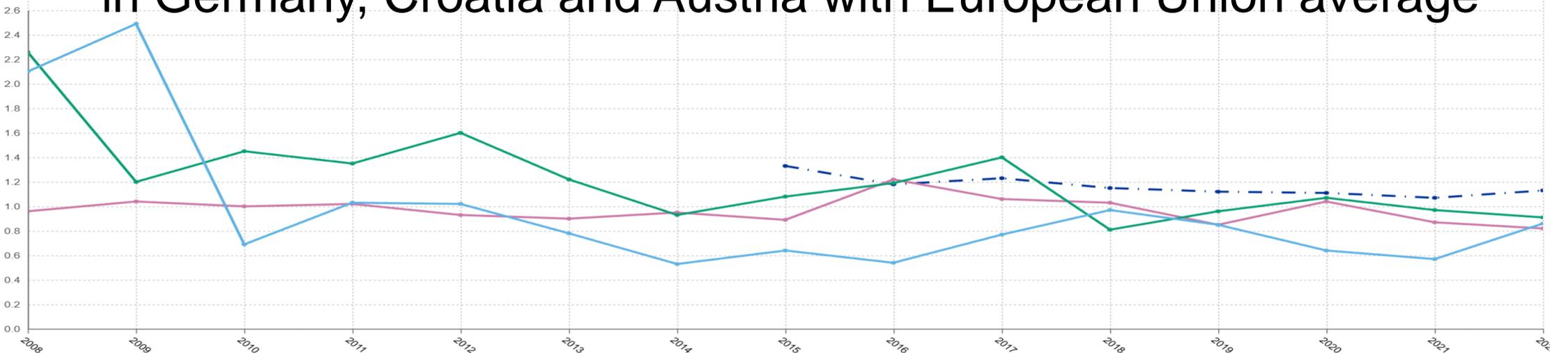


# FEMICIDE STATUTE – CROATIAN CASE STUDY

- From a nomotechnical point of view, Art. 111.a Para 1 is an example of a so called “referring disposition” because it refers to the application of some other provisions of the Criminal Code, in this particular case, it refers to the application of Art. 87 Para 32. Now, when applying the definition of the term “gender-base violence against women” from Art. 87 Para 32 to the criminal offence of aggravated murder of a female person (femicide), it is defined as **the murder of a woman because she is a woman or that disproportionately affects women**
- However, nomotechnically (and logically) the prescribing of “murder of a woman because she is woman” is an evident example of sophism, whereas with regards to murders/homicides disproportionately affecting women in Croatia or Europe or even globally, this is without any empirical basis in reality



# Rates of female (top) and male (bottom) intentional homicide victims in Germany, Croatia and Austria with European Union average



European Union (aggregate changing according to the context) Germany Croatia Austria





# FEMICIDE STATUTE – CROATIAN CASE STUDY

- It remains unclear whether the Croatian Criminal Code refers to the sex of the victim or the gender or both or to “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”
- Since all the justifications for the introduction of the new criminal offence of the aggravated murder of a women focused exclusively on the **biological sex of victims, regardless of gender, clearly the offence was intended by the legislator to apply in certain (but not all) cases in which the victim is of female sex**



# FEMICIDE STATUTE – CROATIAN CASE STUDY

- Namely, its substance is in the sex of a victim as a motive or reason for the murder
- The problem becomes most obvious when looking at an example
- In case a husband murders his wife, the question arises whether the murder shall be qualified as either an aggravated murder of a female person (Art. 111.a) or as an ‘ordinary’ aggravated murder of a close person (Art. 111. Item 3)



# CROATIAN FEMICIDE CASES

- Commonly cases of (lethal) intimate partner violence
  - Female (attempted) homicides by male intimate partners while in an ongoing relationship
  - Males (attempt) killing females who are ending or have ended the intimate relationship
- No final adjudicated cases – remains to be seen how the ‘specificum’ of the femicide-statute is handled in practice



# EUROPEAN UNION AND FEMICIDE

- The EU has issued May 14, 2024 a Directive on Combatting Violence against Women and Domestic Violence
- Based on the conviction that violence against women is an increasing problem it is stated (p. 3):
  - It is confirmed by data and studies that women and girls are disproportionately affected by the forms of violence covered by this Directive, namely violence against women and domestic violence
- The Directive 2024 requests penalization of offences already covered by the Istanbul Convention 2011



# CONCLUSIONS

- Despite ample activism and moral entrepreneurship, only exceptionally European states have introduced femicide statutes in their criminal law
- The entire ‘concept’ of femicide-statutes is based on faulty assumptions
  - No pandemic scope of female homicide victimization
  - No particular wrong – why should the killing of a female be ‘more wrong’ than that of a child?
  - Motives as grounds for criminalization and penalization (Gesinnungstrafrecht)? Immanent danger of penalizing particular worldviews
  - Impossible to formulate a sensible femicide-statute



# CONCLUSIONS

- No need for specific/special femicide criminal law statutes
  - Normative
  - Criminological
  - Penological
  - Victimological
- Potentially sensible justifications for femicide-statutes in criminal law
  - Symbolic criminal law
  - Identity politics
- Case in point: Croatian activists' reaction after new 'femicides' occurred, despite a femicide-statute having been introduced



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**THANK YOU**  
for your attention!

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