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# SAIME DOMAZETI IS ALSO MURDERED IN THE HANDS OF THE STATE



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## 1. Executive summary

On November 8, 2022, in the village of Kuk, Municipality of Dragash, Nazire Abdyli and Jeton Abdyli in cooperation with each other and in their shared house, are accused of having committed psychological violence against the victim/sister-in-law and their aunt Saime Domazeti. Until December 21, 2022, when the Basic Prosecution in Prizren filed an indictment for this case, the Basic Prosecution in Prizren, the Office for Protection and Assistance to Victims and the Center for Social Work in Dragash did not undertake additional actions for the protection of the victim. This case was handled in a regular procedure, since the Basic Prosecutor's Office in Prizren had not initiated any request for the appointment of any of the measures to ensure the presence of the person in the criminal procedure.

Also, during this period of time, there was no request for the appointment of any protective order for the victim. This is because for this case, even though the Office for the protection and Assistance to Victims (OPAV) had been notified, it had not made a request for the appointment of a protective order according to the Law on Protection from Domestic Violence. The Center for Social Work in Dragash had vitiated the victim in this case. This Center, with the excuse that it knew from other cases that the shelters do not have adequate conditions for such cases, did not refer this case to the shelter at all. OPAV did not do this either. A few days after the case was reported regarding the criminal offense “domestic violence”, namely December 26, 2022, the victim Saime Domazeti was found dead. According to the Police the sister-in-law of the deceased admitted that she had committed the crime.

The Istanbul Convention, the jurisprudence of the European Court of Human Rights and the legislation and internal acts require proactive institutional actions in each case of domestic violence. Despite this, in the case of Saime Domazeti, the state did not have this approach. The case was dealt with in a regular procedure, the victim was not referred to a shelter, no protective measures were requested and no solution was found to provide safety for the victim. This lack of action by the institutions in the face of their knowledge of the existence of danger for the deceased, represents a violation of the right to life, as the most sublime right, from which all other rights derive.

This lack of action has been abstracted by the Basic Prosecutor's Office in Prizren, providing only circumstantial information about this situation, but not addressing the accountability for this case.

Unfortunately, this is not the first case of this nature in Kosovo. This case comes during a time when the Constitutional Court is examining the case concerning the murder of Sebahate Morina, in which case KLI and KWN found that the state, by inaction, had deprived her of her life, findings that were also confirmed by the Ombudsperson.

Domestic violence is repeatedly said to be a state emergency. Unfortunately, in this case, and not only, the chain failure of the institutions makes it clear once again that domestic violence is being treated with a deep lack of professionalism, with no adequate response to this phenomenon and

with a lack of accountability from the responsible actors. The adoption of policies, which are not implemented in practice, once again prove to us that they achieve nothing.

## **2. Chronology of handling the case**

On November 8, 2022, in the village of Kuk, Municipality of Dragash, Nazire Abdyli and Jeton Abdyli in cooperation with each other and in their shared house, are accused of having committed psychological violence against the victim/sister-in-law and their aunt Saime Domazeti. On the critical day, the aforementioned defendants take the now deceased Domazeti, who was elderly and mentally challenged, out of the house, sending her to stay in a part of the garden (cellar), thus causing the same emotional distress.<sup>1</sup>

The Kosovo Police had dealt with this case on the same day and had notified the guardian Prosecutor and the Office for Protection and Assistance of Victims. On the same day, the guardian Prosecutor of this Prosecutor's Office had decided that the case will be processed in a regular procedure.<sup>2</sup>

Seven days later, on November 15, 2022, the Kosovo Police filed a criminal charge with the Basic Prosecutor's Office of Prizren. While nine days later, this Prosecutor's Office started investigations.<sup>3</sup>

Until December 21, 2022, when the Basic Prosecutor's Office in Prizren filed an indictment for this case, this Prosecutor did not undertake additional actions for the protection of the victim. This case was handled in a regular procedure, since the Basic Prosecutor's Office in Prizren had not initiated any request for the appointment of any of the measures for the appointment of the person's security in criminal proceedings.<sup>4</sup>

Also, during this period of time, no protective order had been issued against the victim. This is because for this case, even though the Office for Protection and Assistance to Victims had been notified,<sup>5</sup> it had not made a request at all for the appointment of a protective order according to the Law on Protection from Domestic Violence.

The Center for Social Work in Dragash visited the victim of this case. This Center, with the excuse that they knew from other cases that the shelters do not have adequate conditions for a case such as this, did not refer the case to the Shelter.<sup>6</sup>

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<sup>1</sup> The indictment of the Basic Prosecution in Prizren, PP/II.nr.2201-4/22.

<sup>2</sup> The response to KLI from the Kosovo Police, 28 dhjetor 2022.

<sup>3</sup> The indictment of the Basic Prosecution in Prizren, PP/II.nr.2201-4/22.

<sup>4</sup> The response to KLI from the Basic Court in Prizren, 28.12.2022

<sup>5</sup> The response to KLI from the Kosovo Police and conversation KLI had with the Director of CSW in Dragash, Mr. Ibrahim Gashi, 28.12.2022.

<sup>6</sup> Ibid.

Thus, in the absence of actions by the competent institutions, to offer her protection according to the legal provisions in force, Saime Domazeti was left at the mercy of the suspects for committing violence against her.

A few days after the reported case related to the criminal offense "domestic violence", namely on December 26, 2022, the victim Saime Domazeti passed away. According to the Police, it is said that day, *at 05:00 the police received information that a 67-year-old woman (Saime Domazeti) died in the village of Kuk, KK Dragash. The lifeless body was found in her house in the village of Kuk. At 12:30, the doctor in charge of the Brodosan Medical Center, after the initial check and examination at the scene, noticed that there were suspected signs of violence on the body of the deceased. In order to clarify the cause of death, the police opened a "suspicious death" case. The Regional Department of Investigations, after conducting a forensic examination by the Institute of Forensic Medicine, by order of the prosecutor, re-interviewed the victim's sister-in-law, suspect N. A, born in 1958. After being confronted with new suspect evidence in the presence of the defense lawyer admitted that she committed the murder. She did this action using various strong tools, which she then hid.*<sup>7</sup>

### **3. Failures of the institutional chain in the implementation of its obligations**

In the case reported on November 8, 2022, when the Police went to the scene, for which after a few days submitted criminal charges to the Prosecutor's Office due to the criminal offense of "domestic violence". According to the Police report, the Basic Prosecutor's Office in Prizren was notified, namely the guardian prosecutor, the Office for Protection and Assistance to Victims was contacted, as well as the Center for Social Work in Dragash, and the case was handled in a regular procedure by order of the prosecutor.

In this case, the institutions despite their obligations defined by legal provisions, Standard Operating Procedures and also defined in the Convention of the Council of Europe on preventing and combating violence against women and domestic violence, directly implemented in the legal order of Kosovo, have failed to act in line with these obligations.

Article 51 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) expressly defines the state's obligations regarding risk assessment and management. In the first paragraph of this article it is determined that "parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by

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<sup>7</sup> "Suspicious death in Dragash is re-qualified as "serious murder", Press release, Kosovo Police, 27 December 2022. (available at: <https://www.facebook.com/KosovoPolice/posts/pfbid06cr7rxmfu8fyZSvPsj6zGyGn68eojqiSLJkpM3zVk1pwQiMZnUgS23GjR8k9oCL9l>). (Last accessed 28 December 2022).

all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.”

However, the circumstances of the case prove that the institutions involved in handling the case of Saime Domazeti did not make a proper assessment of the risk, thus not providing the necessary measures that would provide safety and support for the victim. In such cases, in particular, the prosecution has the duty to take the necessary measures in accordance with the risk assessment.

Despite the fact that from all the institutions involved, it is established that the victim had mental problems and that she was in a serious state of health, none of them took concrete actions in terms of providing the protection and safety of the victim. Despite the fact that they were aware that the victim was forcibly removed from the house, that she was placed in a cellar in an almost outdoor environment, without care, they nevertheless failed to properly address the case. Therefore, in this case, even though it was clearly seen that the victim is experiencing scandalous treatment, significantly violating her dignity, they did not act to offer her adequate protection or shelter and there was no institutional coordination in order to draw up a plan for managing the risk faced by the victim.

In this regard, despite the initiation of the case due to the criminal offense of "domestic violence", there was no request for the assignment of a protective order for the victim, or a request for the assignment of a safety measure for the defendants.<sup>8</sup> Above all, there was no referral of the victim to the shelter. To this, the CSW in Dragash responded that due to the mental state of the victim, the shelter would not accept her, because there were previous cases when the CSW referred cases to the shelter and then the shelters asked the CSW to remove the victims from there, because they cannot hold them due to their mental state.<sup>9</sup>

From November 8, 2022, when the case of domestic violence was reported, until December 26, 2022, when the victim passed away, despite being aware of the case, state institutions failed and did not act in accordance with their obligations to provide protection and provide safety to the victim. On the contrary, in such circumstances, with a very non-serious treatment of the case, the OPAV and the Prosecutor's Office in Prizren as well as the CSW in Dragash, have made it impossible to provide adequate security for the victim, leaving her to continue living in the same environment as the perpetrators of violence, without the necessary care and without providing them with adequate protection.

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<sup>8</sup> Response to the KLI from the Basic Court of Prizren, 28.12.2022.

<sup>9</sup> KLI conversation with the Director of CSW in Dragash, Mr. Ibrahim Gashi, 28.12.2022.

#### 4. Jurisprudence of Strasbourg regarding the violation of the right to life

Based on the circumstances of the case, the Basic Prosecutor's Office in Prizren knew or should have known that there is a real mortal danger to the now deceased. A murder under these circumstances is defined by the jurisprudence of the ECtHR as a violation of the right to life, this jurisprudence is applicable in the constitutional and legal order of Kosovo.

The jurisprudence of this court emphasizes that it is the obligation of state bodies not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to protect the lives of individuals within their jurisdiction (*L.C.B. v. United Kingdom*, 1998).

*“In appropriate circumstances, it also extends to a positive obligation for authorities to take operational preventive measures to protect an individual whose life is in danger from the criminal offenses of another individual”* (*Osman v. United Kingdom*, 1998; *Kontrova v. Slovakia*, 2007; *Opuz v. Turkey*, 2009).

In the case of *Osman v. United Kingdom* (par.116), the ECtHR has precisely clarified the situations when the state is considered to have violated positive obligations in relation to the right to life: “In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”

According to these standards, the murder of Saime Domazetin is a typical case of violation of the right to life. Based on the fact that the Basic Prosecutor's Office in Prizren has been aware since October 15, 2022 that Saime Domazetin was a victim of domestic violence, the sensitivity of the victim and the level of domestic violence in society, this prosecutor must have known that there is a real and immediate danger to her life. Based on the legal provisions, the role of the State Prosecutor in this case has been to take procedural actions within the legal powers to prevent this risk. If the State Prosecutor in the present case, in accordance with his powers, had taken adequate measures to ensure the victim's stay away from the perpetrator of domestic violence, it is reasonably believed that the murder of Saima Domazeti would have been avoided.

At the same time, the Office for the Protection and Assistance of Victims, despite having been notified of this case by the Kosovo Police, has not submitted a request for the assignment of a protective order. Thus, in the present case, institutional inaction in the sense of fulfilling positive obligations also appears from the Office for Protection and Assistance to Victims.

Also, assuming, from experience, the lack of shelter resources, the Center for Social Work had not referred the victim to the Shelter at all. Thus, the victim was left at the mercy of the suspects for exercising violence against her.

For these reasons, according to the jurisprudence of the ECtHR, in this particular case we are dealing with a violation of the right to life.

Moreover, precisely evaluating based on these standards, the Constitutional Court of the Republic of Kosovo concluded in February 2013 that the inaction of the Municipal Court in Pristina in the case of the now deceased Diana Kastrati represents a violation of the constitutional obligations arising from Article 25 of the Constitution and Article 2 of the European Convention on Human Rights. "There was a violation of the right to life...", it was said in the provision part of this judgment.

Likewise, the KLI and KWN<sup>10</sup> in March 2021 found that in violation of these standards, the state had also deprived Sebahate Morina of her life through inaction. These findings were also confirmed by the Ombudsperson.<sup>11</sup>

For these reasons, the Republic of Kosovo, namely the Basic Prosecutor's Office in Prizren, the Office for Protection and Assistance to Victims and the Center for Social Work in Dragash, have violated Saime Domazeti's right to life, as the most basic human right, from which all other rights follow.

With this approach, state institutions continue to close the doors to any potential victims of domestic violence to address their cases according to the obligations and responsibilities that the state has to provide protection, safety and criminal prosecution to the perpetrators of these crimes.

By acting in this way, the damage to the victim, the victim's family members, the justice system and the Republic of Kosovo itself has already been caused, and all that remains is to take urgent measures to address accountability in this case. In this regard, it should be emphasized that the violation of the right to life against a citizen damages the very image of the state of the Republic of Kosovo in terms of respect and protection of human rights and fundamental freedoms, as well as the obligations that Kosovo has also in relation to the implementation of the Istanbul Convention. Even more so, when these actions are repeated.

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<sup>10</sup> Arrita Rezniki and Gzim Shala, "*The state with inaction deprives Sebahate Sopi from the right to life*", Kosovo Law Institute, 17 March 2021. (available at: <https://kli-ks.org/shteti-me-mos-veprim-privon-nga-jeta-sebahate-sopin/>).

<sup>11</sup> Ombudsperson report 150/2021, 29 April 2021.

## 5. Lack of seriousness in handling the case

### 5.1. The “templated” indictment

From what is seen according to an analysis of the indictment of the case provided by KLI, it results that in addition to the improper handling of the case and institutional inaction, even the insufficient actions that have been taken in this case, is evidence of the extreme lack of seriousness.

In this regard, the indictment of the Basic Prosecutor's Office in Prizren with no. PP/II no. 2201-4/22, compiled by prosecutor Elfete Purova, in its content, at the end of the indictment, there is this conclusion: *“The state prosecutor evaluating all the evidence provided in this criminal case, such as the statement of the injured party and the statement of the defendant given to the prosecution, in the video recording as well as the documents in the case, so that evaluating them in logical and factual connection with each other and all together, the factual situation described in the provision of the indictment is confirmed, where also in the actions of the defendant M.L. all elements of the criminal offense charged with this indictment are fulfilled. Therefore, I consider that the indictment is proven and based on the law”*.

So, in this particular case, the Prosecutor's Office, despite having received the criminal complaint on 15.11.2022 and submitted the indictment on 21.12.2022, still failed to compile the same in accordance with the legal provisions, so that the content of its to be clear and precise. In fact, from the content it is easy to understand that this indictment was filed based on a form (template) of the indictment and the part at the end remained completely unchanged from a completely different case.

So, in the last part of the indictment, the prosecutor of the case refers to one defendant and not two as in the case. The name of the defendant written in the indictment has nothing to do with the defendants who are suspected of committing the criminal offense of domestic violence, who are charged with this indictment. So, in the part at the end, the name of the defendant is with the initials M.L., while the two defendants of the specific case are Nazire Abdyli and Jeton Abdyli.

Further, it is said that the prosecution has evaluated the evidence provided and the statement of the victim. However, in the case of the deceased Domazeti, the indictment states that her statement was *impossible to obtain, because she has mental problems, is in a serious state of health and has speech problems.*<sup>12</sup>

Also, in the last part of the indictment, it is stated that the prosecution has also evaluated the evidence in the video recording as well as the other documents in the case [...], while in this particular case there was no video recording in the case documents. As evidence in this case, only

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<sup>12</sup> The indictment of the Basic Prosecution in Prizren, PP/II.no.2201-4/22, p. 3.

photographs from the scene, which were taken by the police officers of the Police Station in Dragash, were presented.

All this shows the completely unprofessional treatment of this case in another dimension. Such a form of drafting the accusatory act by the Prosecution, best proves the way of handling this case by the Basic Prosecution in Prizren.

## 5.2. Almost 50 days without a solution for the victim

The case reported to the Police on November 8, 2022 should have been an alarm for raising and undertaking appropriate institutional actions to address a case of domestic violence. But despite this, the victim of the case, for almost 50 days, in a serious state of health and with mental problems, unable to take care of herself, was left at the mercy of the perpetrators of violence against her.

Although the police officials have seen and testified that the now deceased was living in extremely disturbing circumstances, living in a cellar in the backyard, in an almost open environment, in low temperatures at the end of the year and without the ability of personal care, did not manage to find a solution for the same and arrange a safe place for her.

The Standard Operating Procedures have clearly defined that the OPAV *has the duty to assist the victims throughout the process.*<sup>13</sup> [...] and that the victim advocate (VA) *represents the victim before government institutions. VA also acts as a bridge between the victim and all other actors for the provision of services including shelters.*<sup>14</sup>

In this particular case, OPAV has completely failed to fulfill its duties and obligations, failing to find an adequate solution for the victim for almost two months.

In this aspect, the CSW in Dragash has also failed. Despite what is foreseen that the *Center for Social Work for all referred or identified victims provides social and family services based on the assessment of the needs of the victim and has the obligation to coordinate social services for the victim until his/her reintegration into society.*<sup>15</sup> [...] *This enables the CSW to identify the needs of the victim and coordinate the appropriate services*<sup>16</sup>, even after almost 50 days, they have not offered a solution. On the contrary, the CSW stated that even after this time, they were still evaluating the plan of what to do, in order to find a long-term solution..<sup>17</sup>

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<sup>13</sup> Standard Operating Procedures for Protection from Domestic Violence in Kosovo, p. 38.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, p. 41.

<sup>16</sup> Ibid.

<sup>17</sup> KLI conversation with the Director of CSW in Dragash, Mr. Ibrahim Gashi, 28.12.2022.

In this way, even after the treatment of the victim in an undignified manner and consequently the exercise of violence through violation of her dignity that was proven through the photo documentation of the Kosovo Police, the victim was still allowed to live in the same environment as the defendants who committed violence against her. Therefore, not addressing this case in time and not treating this case with seriousness and professionalism by the competent state institutions has led to the event of December 26, when the victim also passed away.

## **6. Failure to address internal responsibility by the Basic Prosecutor's Office in Prizren**

In the face of all this lack of action that has led to the violation of Saime Domazeti's right to life, the State Prosecutor has not yet notified the public if he has initiated any internal procedure in order to investigate and address the responsibility of the competent officials in this case. The lack of accountability and transparency in the Prosecutor's Office is not new, but in such cases, it should be the least that is done as a first step.

In this regard, the Basic Prosecutor's Office in Prizren, on the contrary, has only provided information regarding how the murder took place and has not informed whether any action has been taken in terms of holding accountable the responsible persons who have not performed their duties. This Prosecutor's Office has stated that on December 21, 2022, they filed an indictment for domestic violence against the sister-in-law and nephew of Saime Domazeti,<sup>18</sup> But, in their responses to the media, both the Basic Prosecutor's Office in Prizren and the Chief Prosecutor of this Prosecutor's Office, Admir Shala, abstracted all the State Prosecutor's inaction, not giving any details and even less responsibility for this situation. While, for this case, the Kosovo Prosecutorial Council has not given a statement at all.

Initially, the declaration to the public of only the Basic Prosecutor's Office in Prizren, which does not cover the Office for Protection and Assistance to Victims, is an escape from responsibility regarding the non-fulfillment of the obligations of the State Prosecutor.

On the other hand, the partial information of the Chief Prosecutor of the Basic Prosecution in Prizren, showing only that on December 21, 2022 he filed an indictment for domestic violence, while in no other way of communication, not revealing the inaction in this case or at least to show

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<sup>18</sup> “The death of the woman in Dragash, the Chief Prosecutor of Prizren tells about the indictments that were filed a week ago”, Gazeta Express, 27 dhjetor 2022. (Shh linkun <https://www.gazetaexpress.com/vdekja-e-gruas-ne-dragash-kryeprokurori-i-prizrenit-tregon-per-aktakuzat-qe-ishin-ngritur-para-nje-jave/amp/>). (Last accessed 27 December 2022).

that investigations have begun to evaluate the inactions of various officials, is to hide the failures for this Prosecutor's Office in this case.

Thus, in his public statements, the Chief Prosecutor of the Basic Prosecution in Prizren did not show how this case was handled from the moment when the State Prosecutor was informed, he did not show why the suspects were released in a regular procedure, why no detention was requested, why was protection, safety and shelter not requested for the victim, etc. Legally, filing an indictment is not part of the victim's legal means of protection, at least until a final decision is made against the defendants.

This lack of investigation of internal responsibility due to the inaction of the Basic Prosecutor's Office in Prizren and the Office for Protection and Assistance to Victims reflects the pronounced lack of accountability of the State Prosecutor in relation to the victim, her family, other victims of domestic violence and the public in general. Faced with the need for the Chief Prosecutor of the Basic Prosecution in Prizren to start accountability procedures, according to his authorizations based on Law No. 06/L-057 on the Disciplinary Responsibility of Judges and Prosecutors, he has so far abstracted the way of handling this the case, before the indictment was filed.

## **7. Recommendations**

1. The Acting Chief State Prosecutor, in accordance with the Law on Disciplinary Responsibility of Judges and Prosecutors, should initiate disciplinary proceedings against all actors involved in this case, including the Chief Prosecutor of the Basic Prosecution in Prizren.
2. For not referring the case to the shelter, address the responsibility of the Center for Social Work.
3. The Ombudsperson Institution should initiate an investigation regarding this case and come up with an opinion on how to handle this case by the competent institutions.
4. The Assembly of the Republic of Kosovo should treat vetting in the justice system as the highest priority in its work.
5. Non-implementation of obligations in cases of domestic violence should be urgently addressed by all competent institutions.
6. The Assembly of the Republic of Kosovo allocates sufficient funds for housing victims of domestic violence, especially those with disabilities.
7. In addition to the current suspect for the murder of Saima Domazeti, the Basic Prosecutor's Office in Pristina should investigate the criminal responsibility of the other suspect, who had been involved in violence against the victim.