

Domestic violence in Albania

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Abstract

This paper will be presented a comparative picture of the norms of criminal substantive law intertwined in the Code of Criminal Procedure and the harmonization they carry with the Constitution of the Republic of Albania. Domestic violence is a disturbing element that we face daily as a society. The peculiarity of this criminal offense figure is the fact that both the perpetrators and the victims have an active role in terms of the realization of this criminal offense.

Based on the most developed European countries' legislation tradition regarding this criminal figure, in 2006 the law on domestic violence was adopted. Based on the judicial jurisprudence, the problems that have been identified in this area have gaps

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and leave room for many discussions. It is noted that the norms of the Criminal Code do not find an adequate approach to combat this phenomenon in all dimensions. Often there is an internal conflict between norms, where being or not being part of a family affects the coercive measure, losing the re-educational function which is expressed in the Constitution.

An ongoing key role remains for the legislator, social operators, individuals, and not only, to take initiative and address the competent bodies to update this criminal figure provided by the Criminal Code. Also, an important role in preventing and reducing this phenomenon plays not only the legislator but also the social media as a whole with the force of development.

Keywords: *Domestic violence, law, constitution, legal norms, criminal offense, legal violation.*

I. Introduction

Domestic violence is a phenomenon of social, economic, and legal character with serious consequences not only for its victims but also for the perpetrator. Of particular importance is the way it is classified or a definition for domestic violence. This violence should not be justified as bad behavior, because in reality it is a criminal act and the tendencies tend to show that the violence is escalating to a progressive dimension, which makes it very disturbing.

When we talk about domestic violence, we mainly refer to its most widespread form: 'Violence against women. Violence against women, although the most widespread human rights violation in the world, continues to be less valued. Violence is also a profound health problem that results in death and injury, compromises women's well-being, and destroys their dignity and self-esteem. It is already known that domestic violence transcends all boundaries and is present in all cultures.

As a result of strong patriarchal traditions, Albanian society has historically been dominated by men. Women have long been dictated to accept the role of subordinates. During the communist regime, a deep gap was created between the theory of emancipation of women and her daily reality. In 1991, after the overthrow of the communist regime, Albania went through a period of great changes, often dramatic social, political, and economic that have created a profound impact on the lives of Albanians. Gender equality is a new principle in Albanian society, which has not yet been embraced by a significant percentage of the population.

II. Albanian legislator and legal instruments

In 2006, the Albanian Parliament approved Law No. 9669, dated 18.12.2006 “On measures against domestic violence” which aims to prevent and reduce domestic violence in all its forms through appropriate legal measures and to guarantee protection through legal means to family members who are subject to domestic violence (Law no 9669 dated 18.12.2006 “On measures against domestic violence”)

The law has four main objectives:

1. the establishment of a coordinated network of authorities responsible for the protection, support, and rehabilitation of victims, mitigation of consequences, and prevention of domestic violence;
2. orienting efforts to establish structures and responsible authorities at the central and local levels to support victims and prevent domestic violence;
3. strengthening the judiciary to take protective measures against domestic violence;
4. providing/guaranteeing fast, inexpensive and simple services to victims of domestic violence provided by courts and other law enforcement agencies, by the law.

The law defines violence as “any action or inaction of one person against another, which results in a violation of physical, moral, psychological, sexual, social and economic integrity. (Article 1 of Law No. 9669/2006 “On measures against domestic violence”, as amended). The following, domestic violence is defined as “any act of violence exercised between persons who are or have been in a family relationship” (Ibid). By law, family members include:

- a. spouse or cohabitant or ex-spouse or ex-cohabiting partner;
- b. brothers, sisters, gender in a straight line. (Ibid)

The law provides for safeguards against domestic violence, including protection orders issued by the court - a court-issued decision providing for protection for the victim (article 12 of Law No. 9669/2006 “On measures against domestic violence”, as amended) and immediate protection orders - an interim injunction issued by the court, which is valid until it issues a protection order (Ibid). The peculiarity of these types of trials has to do with the fact that even if the victim (under pressure) wants to withdraw the lawsuit/lawsuits or dismiss the case, this does not affect the continuation of the trial, in this case, the principle of availability has no value

and is not taken considered by the court, due to the specificity of this type of trial prescribed by law ((Ibid, article 16, par. 3). In these trials by law, the raped woman is not only the main witness but also the forced witness (Albanian Criminal Code – ACC 2016). Failure to execute the protection order or the immediate protection order constitutes a criminal offense under Article 320 of the Criminal Code. Consequently, its perpetrator can be arrested without an arrest warrant.

In Albania, although the powers of the police to enter private premises are generally limited, this law provides that the police may enter a private residence in conditions of domestic violence if required by a person residing on that premises or if the police the officer has reason to believe that a person in the home is the subject of a criminal attack or is in danger of being attacked. It is important to note that the law establishes six government institutions in a coordinated network of authorities responsible for the protection, support, and rehabilitation of victims, for mitigating the consequences, and preventing domestic violence. The main governing authority under this law is the Ministry of Labor, Social Affairs, and Equal Opportunities. Other line authorities under the Law on Measures against Domestic Violence are the issuance of a protection order or immediate protection by the Local Police Department, which does not prevent interested parties from also initiating criminal proceedings in connection with actions or omissions that are classified as criminal offenses. Determining the criminal figure of domestic violence in the Criminal Code of the Republic of Albania. Other provisions for the treatment of crimes related to domestic violence may be applied in the Criminal Code of the Republic of Albania.

These criminal offenses are not limited only to elements of domestic violence, but also to other elements of the objective and subjective side that they belong and below are reflected some articles of the Criminal Code of the Republic of Albania that is listed as follows: Intentional homicide is punishable by 10 to 20 years in prison (article 76 ACC). Intentional homicide related to another crime (intentional homicide that precedes, accompanies, conceals, or follows another crime, is punishable by imprisonment of not less than 20 years (article 77 ACC). Premeditated murder (premeditated murder is punishable by imprisonment of 15 to 20 years; murder committed for interest, revenge, or blood feud is punishable by imprisonment of not less than 25 years or life imprisonment (article 78 ACC). Intentional homicide due to the special qualities of the victim (committed against a minor, against a person with a physical or mental disability, seriously ill or pregnant, when the qualities of the victim are obvious or known; against a the denouncing witness [of the criminal offense], the victim, other litigants, more than once, against two or more persons, in such a way as to cause special suffering to the victim, shall be punished by not less than 25 years of imprisonment or with life imprisonment (article 79 ACC). Threat, serious threat of murder or grievous



bodily harm to a person, constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 84 ACC). Intentionally inflicting grievous bodily harm (intentionally inflicting an injury that has resulted in mutilation, disfigurement, or any other permanent damage to health, causing termination of pregnancy or that was life-threatening at the time of its infliction, is punishable with imprisonment from three to ten years; when this offense has resulted in death, is punishable by imprisonment from 5 to 15 years (article 88 ACC). Intentional minor injury (intentional minor injury, which has caused temporary incapacity for work for more than nine days, constitutes a criminal offense and is punishable by a fine or imprisonment of up to two years (article 89 ACC).

The other intentional injuries (beatings), as well as any other act of violence, constitute criminal offenses and are punishable by a fine; when this offense has caused temporary incapacity for work for up to nine days, constitutes a criminal offense and is punishable by a fine or imprisonment of up to six months (article 90 ACC). Serious injury by negligence, serious injury committed by negligence constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 91 ACC). Minor injury by negligence, minor injury committed by negligence constitutes a criminal offense and is punishable by a fine (article 92 ACC). Termination of pregnancy without the consent of the wife (termination of pregnancy without the consent of the wife, unless the termination is dictated by a justified health cause, punishable by a fine or imprisonment of up to five years (article 93 ACC). Sexual intercourse with adult violence (committing sexual intercourse with adult violence is punishable by imprisonment from three to ten years; when sexual intercourse is performed in cooperation or more than once, or when the injured party causes serious health consequences, punishable by imprisonment of five to 15 years; when the offense has resulted in the death or suicide of the injured party, is punishable by imprisonment of 10 to 20 years (article 102 ACC). Sexual or homosexual intercourse with persons of the same sex or under guardianship (committing sexual or homosexual intercourse between a parent and child, brother and sister, between other persons of the same sex, or with persons in custody or adoption relations, is punishable by imprisonment up to seven years - article 106 ACC. (Domestic Violence in Albania: A National Population-Based Survey). Abandonment of minor children (abandonment of a child under the age of 16 by a parent or person who is obliged to take care of him/her is punishable by a fine or imprisonment of up to three years. When the offense has caused serious damage to the health or death of a child, is punishable by imprisonment of three to ten years (article 106 ACC). Failure to provide means of subsistence (failure to provide the means necessary for the livelihood of children, parents, or spouse, by the person who is obliged to provide it under a court decision, constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year (article 125 ACC).

From the above, it is clear the approach that the figure of domestic violence has with these offenses provided by the criminal legislator. The above reflects the forms of domestic violence in Albania, the objective and subjective elements, as well as the definitions from the minimum to the maximum for the legal coercive measures for this criminal activity. According to Article 284 of the Criminal Procedure Code of the Republic of Albania (2013), for the criminal offenses provided by Article 89, Articles 102, and 106 of the Criminal Code, criminal prosecution can begin only with the appeal of the injured party, who can withdraw it any stage of the procedure. In other words, criminal proceedings can be initiated by the Prosecution only if the victim lodges a complaint and usually the preparation of the whole case is the responsibility of the victim. The victim has an important role related to the right to appeal, but also the obligation to present evidence before the prosecuting authority related to these figures of criminal offenses provided in Article 284 of the Code of Procedure Criminal Court of the Republic of Albania. He/she has the right to drop the appeal until the preliminary investigations have not been completed or even during the trial until the court has given a final decision. The state generally does not assist in the exercise of criminal prosecution, especially for all criminal offenses prosecuted at the request of the accusing injured party under Article 59 of the Criminal Code, such as the beating provided for in Article 90 of the Criminal Code.

The Family Code of the Republic of Albania also contains several articles related to domestic violence against the spouse and the child/children. The Family Code addresses the parental obligations and rights of children in family life, as well as child abuse and neglect. For example, Article 62 of the Family Code provides that “the abusive spouse may be forced to leave the marital home.” However, this article has no other procedural provisions to determine how such a measure should be taken which is regulated by Law no. 9669 “On measures against domestic violence”, dated 18.12.2006 (article 62 of the Albanian Family Code - AFC).

III. Is there a conflict between legal norms?

Article 130 / a of the Criminal Code on Domestic Violence (Added by Law No. 23/2012, dated 1.3.2012; amended the last paragraph by Law No. 144, dated 2.5.2013, amended by Law No. 35/2020. 16.4.2020) provides: Beating, as well as any other act of physical, or psychological violence, against the person who is a spouse, ex-spouse, cohabitant or ex-cohabitant, close gender (before birth, after birth, brothers, sisters, uncle, etc.) or close relatives (mother-in-law, mother-in-law, etc.) or in connection with or previous connection with the perpetrator, leading to the violation of his physical, psycho-social, and economic integrity is punishable



by imprisonment up to three years. The serious threat of murder or grievous bodily harm to a person who is a spouse, ex-spouse, cohabitant or ex-cohabitant, relative (etc. as in the first paragraph of Article 130 / a of the Criminal Code), as in the above paragraph, or in connection with or the previous relationship with the author, is punishable by imprisonment of up to four years. Intentionally injuring a person who is a spouse, ex-spouse, cohabitant or cohabitant, relative (etc. as in the previous paragraph of Article 130 / a of the Criminal Code), or an ex-spouse or in an intimate relationship with the perpetrator, who has caused temporary incapacity for work for nine days, is punishable by up to five years in prison. The same offenses committed repeatedly or in the presence of children are punishable by imprisonment of one to five years.

Article 130 / a of the Criminal Code is in contradicts the constitutional principle provided in Article 18 and specifically: “Everyone is equal before the law and secondly, no one can be unjustly discriminated against, even because of gender.” For the criminal offenses of beating, threatening, minor or serious injury, other intentional damages are provided by Articles 84, 89, and 90, where these offenses are prosecuted based on the complaint of the accusing injured party and the appeal can be withdrawn in any case during the stage of criminal proceedings, as long as the decision has not become final. While according to Article 130 / a of the Criminal Code, this criminal case is prosecuted mainly by the prosecuting authority, although the accusing injured party may wish to terminate the criminal prosecution against the accused subject, the criminal case against this subject continues mainly by Prosecutor Office. So, a provision within the Albanian Criminal Code cannot be both a criminal offense and a crime. According to article 130 /a of the Criminal Code., any simple beating is punishable by imprisonment of up to 2 years if it is happened at the same gender as the injured party, while for the same offense committed by persons outside the family or gender, article 90 i. K.P. which provides only a fine or deprivation of liberty for up to 6 months and this offense is prosecuted, directly in court under Article 59 of the Criminal Procedure Code.

Serious intimidation, as well, for all subjects is provided as a criminal offense by Article 84 of the Criminal Code, which is punishable by a fine or imprisonment of up to one year. While for subjects who have committed this criminal offense due to their gender, is replicated Article 130 / a of the Code of Criminal Procedure applies which provides for a sentence of up to 3 years imprisonment. Even the intentional minor injury of general subjects is followed by the denunciation of the injured party and is provided as a criminal contravention by article 89 of the Criminal Code which provides for a fine or punishment of up to 2 years, while the same offense if committed by persons of the same sex, is treated under Article 130 / a of Criminal Code, where in addition to the complaint of the injured party is not required, but is provided as a criminal offense with punishment in 5 years.

For these reasons, we think that based on article 134 point “d”, article 145 point 2 of the Constitution of the Republic of Albania, and article 68 of law no. 8577, dated 10.02.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania” it is reasonable to request the suspension of ongoing trials and their submission to the Constitutional Court of the Republic of Albania, for the abrogation as unconstitutional of Article 130 / a of KP amended by law 144/2013 and 23/2012.

IV. Cases of domestic violence associated with the commission of other criminal offenses.

Domestic violence is of critical importance in all cases where the perpetrator’s actions and omissions are accompanied by the commission of other criminal offenses such as intimidation or attempted murder, which clearly show that the perpetrator’s subjective purpose is not merely rape of the victim for motives of jealousy, anger, rage, economic problems, etc. In these types of situations, the risk of losing the life of a victim of domestic violence can occur and is not excluded, when acts of violence are accompanied by other illegal actions such as threatening with a weapon, or attempted murder committed and such circumstances, where the prevention of causing the murder occurred due to the interference of other persons. These types of situations should be taken into consideration with too much care during the investigation of two or more criminal offenses simultaneously, such as domestic violence and intimidation, as case law has shown that the subject of domestic violence, after serving his sentence, later has committed a grave criminal offense such as the murder of the victim.

In such a situation the question arises whether the maximum punishment for domestic violence committed to aggravating circumstances, such as acts of violence in public and the eyes of children, as provided in Article 130 / fourth paragraph of the Criminal Code from one year to five years of imprisonment serves to prevent future murder when, moreover, the domestic violence is committed at the same time with another criminal offense that is illegal possession of a weapon?

Referring to a case from the jurisprudence, the Kavaja District Court, among others, in the reasoning of its decision, analyzes “.With his actions, the defendant F. K has completely consumed elements of the figure of the criminal offense of “Illegal possession of weapons “provided” by Article 278/5 and “Domestic Violence”, provided by Article 130 / a1 of the Criminal Code, these offenses that violate and jeopardize legal relationships established to ensure public order, and public safety from the production or possession, sale, or purchase of illegal weapons that endanger legal relations established by law to guarantee freedom,



rights, health and the life of each cohabitant or family member by the actions of criminal omissions of family members or their cohabitants, specifically protected by our criminal legislation from criminal acts or omissions (decision no. 12-2016-664-76, dated 28.04.2016 of the Kavaja District Court).

Based on this position of the court in the reasoning part, the defendant F.K was sentenced to 4.5 years of imprisonment for the criminal offense of illegal possession of weapons provided by Article 278 of the Criminal Code and the criminal offense of domestic violence provided by Article 130 / a paragraph fourth of the Criminal Code, and where under summary judgment was finally sentenced to three years' imprisonment. After two years in prison, he was released, benefiting also due to the time of detention which is worth 1.5 days of imprisonment. The citizen F.K, after serving the sentence for domestic violence and illegal possession of weapons committed another more serious crime which was the murder of his ex-wife F.Sh. This painful case in the social aspect raises the question in the legal aspect of whether such similar cases should be treated with more severe punishments when the criminal offense of domestic violence is accompanied by another criminal offense such as the illegal possession of weapons, or any kind of maximum punishment against the perpetrators of these offenses would not be the most effective measures of preventing in the future the commission of more serious criminal offenses, such as murder. Of course, there can be no definitive answer, despite the very serious consequences of the degradation of family relations, if the finger were pointed only at the judiciary bodies for protecting the lives of citizens, mainly women.

Exercising the pressure on the judiciary in connection with such similar offenses involving domestic violence to give maximum sentences, to prevent a more serious criminal offense such as murder, would discourage magistrates from being independent, in the interpretation of the provisions of substantive law, procedural law, and the evaluation of evidence administered in a concrete case. It should be noted that beyond the pain and failure that has resulted from the loss of an innocent mother's life, preventing the avoidance of murder, when the commission of the crime of domestic violence has previously occurred in the company of unlawful possession of a weapon, should serve as an alarm bell for the awareness of all actors in society, human rights organizations, relatives, social authorities and the media, regarding the phenomenon of these two types of criminal offenses prevalent in our country. To hope that only the maximum punishment of the perpetrator of domestic violence by the judiciary will prevent the commission of another more serious crime, in the future would be a departure from the responsibility and role that everyone should play in a democratic state and emancipated.

In another case, the role played by the head of the family in some patriarchal families in our country has caused violence against the boy's wife to go to extreme limits, such as taking a life. The connection with this generational conflict regarding

the dissatisfaction that parents have with their children's choices regarding the future spouse has resulted in the loss of life of the victim M.H, by the father-in-law of the victim, 61-year-old Xh. H, where the motive for the murder of the boy's wife was the disagreement of his son's relationship with 30-year-old M.H, who according to the author had been previously married and had three children, and this was the reason why his son was separated from ex-wife with whom he had an 8-year-old son (<https://sot.com.al/aktualitet/vjehrrri-na-kishte-thene-me-pare-vasje-e-30-vjecares-ne-fier-e-parala-i506072>).

Another problem that has arisen in the judicial activity has to do with the circle of subjects that can be considered perpetrators of domestic violence and victims of this violence.

Even though the intention of the legislator in 2012 when he first provided this provision in the Criminal Code was intended to protect mainly the health and dignity of spouses against violence perpetrated by men, the categorization of other persons who will be part of the circle of gender or marriage.

Another contradiction regarding this situation has been encountered because point 3 of article 3 of Law no. 9669, dated 18.12.2006 "On measures against domestic violence", has a categorization of the circle of these persons narrower than Article 16 of the Criminal Code.

In point 3 of article 3 of Law no. 9669/2006, the definition of "family members" is given, is defined as such:

- a) spouse or cohabitant or ex-spouse or former cohabiting partner;
- b) siblings, straight-line gender, including adoptive parents and adopted children;
- c) the spouse or cohabitant of the persons provided in letter "b";
- ç) gender in a straight line, including the parents, and the adopted children of the spouse or cohabitant;
- d) brothers and sisters of the spouse if they have lived together for the last 3 months;

Meanwhile, in the meaning and interpretation of the term "close gender" provided in Article 130 / a of the Criminal Code, we find the answer referring to the provisions of the Code of Criminal Procedure, Family Code, criminal doctrine, and judicial jurisprudence. According to Article 16 of the Code of Criminal Procedure and Article 10 of the Family Code, the term "close gender" includes firstborns, descendants, brothers, sisters, uncles, mothers-in-law, grandchildren, great-grandchildren, great-grandchildren, children of brothers, and sisters.

Based on this duality of legal concepts that takes place in various normative acts, the Court of the Durres District in reviewing the accusation about a crime



that was committed between two cousins (uncles' sons), where the Prosecution had raised the accusation provided by Article 130 / a / 1 of the Criminal Code, decided to suspend the trial and requested before the Constitutional Court the abrogation of the terms "Near gender" and "Near marriage" provided in Article 130 / a of the Criminal Code, because it is contrary to Article 3 of Law no. 9669, dated 18.12.2006 "On measures against domestic violence" (Decision no. 148 dated 31.05.2022, Criminal College of the High Court, point 4). For this request (which is a random trial), the Constitutional Court decided to reject the request for the abrogation of Article 130 / a of the Criminal Code of the term "close gender" with the argument that: "The referring court, based on the principle of constitutionality, before to address the Court must do everything to interpret the law in force. by the Constitution (Decision no. 55, dated 21.07.2015 of the Constitutional Court). The referring court must resolve the interpretative doubts, giving the right explanation of articles that are in force based on constitutional principles (decision no. 38 dated 25.3.2016 of the Constitutional Court).

Following the trial, the Durres District Court ruled: The dismissal of the criminal case against the defendant N. O, accused of the criminal offense "Other Intentional Injuries". According to the Durres District Court, in the main part of its decision, it is held that: "... the term" narrow gender "used in the first paragraph of Article 130 / a of the Criminal Code should be interpreted systematically with Article 3, point 3 of Law No. 9669, dated 18.12.2006 "On measures against domestic violence", which means gender in a straight line, including adoptive parents and adopted children, as well as adoptive parents and children of the spouse or cohabitant, but not other relatives beyond this circle. According to the court, a different interpretation would expand the circle of subjects provided by Article 130 / n of the Criminal Code beyond the scope of the legislator, for a criminal offense that can be prosecuted directly by the injured party in court and the prosecution office under Articles 59 and 284 of the Code of Criminal Procedure. Meanwhile, the expansion of the circle of subjects called "narrow genius" based on Article 130 / n of the Criminal Code, makes that the criminal prosecution cannot end with the withdrawal of the report by the injured party, as the criminal prosecution continues mainly by the prosecution body that is to the detriment of the procedural interests of the accused person (Decision no. 514, dated 24.04.2016 of the Durres District Court).

The same position as above was held by the Court of Appeal of Durres, which after reviewing the appeal of the Prosecution decided: "Leaving in force the decision no. 514 dated 28.04.2016 of the Durres District Court." (Decision no. 712 dated 24.10.20 of the Court of Appeal of Durres). The Court of Appeals of Durres, among other things, in its decision reasoned that: finds grounded the reasoning of the decision of the Court of First Instance that in the interpretation and application of Article 130 / a of the Criminal Code, have to take into account the provisions of

law no. 9669, dated 18.12.2006 “On measures against domestic violence”, which is also the law whereby the legislator is based for approving of article 130 / a of the Criminal Code, this provision added by law no. 23/2012 “On some additions and changes to Law no. 7895, dated 27.01.1995 Criminal Code” (Decision no. 148 dated 31.05.2022, Criminal College of the High Court, point 1).

Against the decision of the Court of Appeal of Durres, the Prosecution filed a recourse in the High Court, where at the end of the review of this procedural act, the Criminal College of the High Court decided to annul the decision no. 712, dated 24.10.2016, of the Court of Appeal of Durres, and returning the case for reconsideration to the same court, with another panel. Among other things, in the reasoning part of the College’s decision, regarding the term “close gender”, it is analyzed: Article 130 / a before the amendments approved by law no. 35/2020, dated 16.4.2020 did not exhaustively define the subjects that benefited from the legal protection offered by this provision, because after listing the spouse/cohabitant, the ex-spouse/cohabitant defined the subjects that are in a close relationship, without specifying which category of subjects was included in this group. In these circumstances, the only criminal provision that gives the meaning to the notion of “gender and close relationship” is Article 16 of the Criminal Code which defines the circle of relatives who are close gender: According to this article in the same proceeding cannot participate as judges persons who are among themselves or with the participants in the trial, spouse, cohabitant, close gender (prenatal, postnatal, brothers, sisters, uncles, nieces, nephews, grandchildren, children of brothers and sisters) or close relatives (father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, stepmother, stepmother, stepfather, and stepmother (Decision no. 148, dated 31.05.2022, Criminal College of the High Court, point 15).

The College Panel considers it is true that this provision is not directly related to Article 130 / a of the Criminal Code, but it is the only criminal procedural provision that gives a clear understanding of who will be considered the closest gender in terms of the criminal norm. On the other hand, the reference made by the courts of fact to law no. 9669, dated 18.12.2006 “On measures against domestic violence” is not grounded, as this is not a law applicable in criminal proceedings (Ibid, point 26). In this line of reasoning, the Panel considers that the reference to Article 16 of the Criminal Code made by the courts of fact to determine the subjects that would be considered close gender and relative, in the sense of Article 130 / a / 1 of the Criminal Code has been fair (Ibid, point 28). The above considerations should be emphasized as very positive the position of the Criminal College of the High Court in terms of doctrine and theological interpretation where it is suggested that the judiciary takes into account the individualization of the circle of subjects who have committed the crime of domestic violence by referring directly article 130 / a of the Criminal Code which has clarified the circle of subjects that are close gender based



on the changes made in Criminal Code 2020, as well as article 16 of the Code of Criminal Procedure and not point 3 of article 3 of law no. 9669, dated 18.12.2006 “On measures against domestic violence”.

V. Legal ways and instruments to prevent domestic violence

The use of moral norms that precede legal norms has long served as a positive instrument in the prevention of domestic violence. There is a fundamental difference between moral and legal norms regarding the prevention of domestic violence. Moral norms (or moral beliefs) tend to be ‘more motivated by conscience than social expectations’ and relate to deeply held values rather than a matter of judgment or taste associated with personal attitudes. For instance, ‘I do not hit my wife because I believe it is morally wrong to do so’ or ‘Thou shalt not kill’. While social norms are informal rules of behavior and enforced through group approval and disapproval. On the other hand, legal norms are formal rules of the game, commanded by the state, and enforced through coercion. For example, national laws against domestic violence (Alexander-Scott, M., E. Bell, J. Holden, 2016).

The most important international instrument aimed at preventing domestic violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Article 12 of this Convention stipulates the obligation of the member states that have ratified the convention to take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men, to eradicate prejudices, customs, traditions, and all other practices based on the idea of women’s inferiority or stereotyped roles for men and women (Council of Europe Treaty Series - № 210, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence Istanbul, 11.05.2011, page 7). Article 29 of the Convention provides for the possibility of opening civil proceedings and other legal remedies for domestic violence (Ibid, article 29, page 11). Regarding the legal remedies that can be used by persons who are victims of domestic violence (victims are mainly women and children), our domestic legislation provides for the possibility of pursuing two legal remedies, which are to file a civil lawsuit to secure a protection order and report for the criminal offense provided by Article 130 / a of the Criminal Code.

In several cases of court practice, it turns out that men are also victims of domestic violence. In the decision no. 313, dated 24.1.2019 of the Tirana District Court, after analyzing the circumstances of the case, it results in that: on 29.10.2017, the citizen S.B was presented at the Police Commissariat no. 3 in Tirana, who has filed a criminal report for the fact of physical violence by the suspects, where according to his allegations are his ex-wife and ex-sister-in-law (Commentary on the Law against Domestic Violence, Tirana, December 2021, School of Magistrates, page

62). In the civil case no. 13010/7261, as well, with plaintiff AB against the respondent BB, the Court of the District with a decision no. 13010 reg. dated 31.10.2020 has decided: "Acceptance of the lawsuit. Issuance of an immediate protection order for plaintiff AB, consisting of the following measures: The respondent is immediately ordered not to commit or threaten to commit domestic violence against her minor children and ex-spouse as well as not to go to the school where the children are learning, except meetings allowed by the Court." (Ibid, page 207).

Statistical data show that there has been a continuous increase in the number of women convicted of domestic violence under Article 130 / a of the Criminal Code, from 1 case in 2013 to 76 cases in 2017. In 2013, women accounted for only 0.4% of convicted persons in domestic violence cases under Article 130 / a of the Criminal Code. However, in 2017, women accounted for 10.3% of persons convicted of domestic violence under Article 130 / a of the Criminal Code. These data are important because they reflect a large increase in the number of women convicted of domestic violence under Article 130 / a of the Criminal Code, compared to a significant decrease in the number of men convicted of domestic violence.³

However, the largest number of victims of domestic violence not only in our country but also in developed democracies like the United States of America, are women and girls. The majority of violent victimization researchers for example have found out that being a female is the main factor of violent victimization. Similar studies have revealed that women are more significantly likely to experience violent victimization than men. This study was conducted in the United States within the periods of November 1995 and May 1996. Almost 8000 men and women were selected for this study. The outcome of the study showed that more women than men reported experiencing violence victimization before and after the relationship ended with their partner (Violent Victimization against Women in Canada: Evidence from the General Social Survey 2009 Data, a Gendered Study. Published at Open Journal of Social Sciences, Vol.5 No.4, April 17, 2017).

VI. Consequences of domestic violence on women and children

Domestic violence against women can cause multiple negative consequences that affect the well-being and physical and mental health of abused women. Research has shown that domestic violence can cause chronic pain,¹⁻⁴ either through repeated

³ National population-based survey 2018. Violence against Women and Girls in Albania, prepared by INSTAT with the technical expertise of Ph.D. Robin Haarr, International Consultant, with support from UNDP and UN Women and financial assistance from the Government of Australia, as part of the Regional Gender Statistics and Sustainable Development Goals project, "To make every woman and girl important and the Swedish Government in the framework of the United Nations Joint Program to End Violence Against Women in Albania. March 2019, page 37



physical injuries over a period of time, or caused indirectly by the long-term stress that domestic violence causes victims. Migraines and/or headaches are not common among domestic violence victims. The cause of migraines is relatively unknown; however, migraines are closely associated with anxiety, depression, and distress, all of which are often present among in domestic violence victims. Headaches can also be caused by traumatic brain injuries from hits and impacts. Central Nervous System problems: The immune system, via the central nervous system, may be negatively influenced by stress and emotional distress. Stress increases cortisol, which is immunosuppressive. There is a considerable link between stress and the onset of cancer, cardiovascular disease, and autoimmune diseases (National Prevention Toolkit on Domestic Violence for Medical Professionals Conditions & Injuries Related to Domestic Violence National Prevention Toolkit on Domestic Violence for Medical Professionals. Florida State University 2014).

Usually, Mental Health Conditions that can Result from Domestic Violence are Depression and Suicide: Victims of domestic violence may suffer from depression due to feelings of loss of control, lack of worth, and fear for one's life. Other contributing factors to depression are being isolated, controlled, and injured by a partner. Suicide is caused by depression and feelings of hopelessness. If a victim feels like there is no escape or other way out, he or she may become desperate. Another post effects of domestic violence are post-traumatic stress disorder (PTSD), Alcohol abuse, Drug abuse, and Anxiety (Ibid).

Women and girls are also often the hardest hit by the socio-economic impacts of both sudden- and slow onset disasters and climate change. Destruction of infrastructures such as water and electricity supply, transport, communications, health, education, and care service, often imposes an increased domestic burden on women, as household work is made more difficult, and the responsibility of caring for children and the elderly falls disproportionately on women (Beyond vulnerability to gender equality and women's empowerment and leadership in disaster risk reduction: Critical Actions for the United Nations System. Published by UN WOMEN, UNFPA, UNDRR 2021. page 57).

Regarding children as victims of domestic violence, the effects of this violence are associated with permanent effects of their physical and mental health damage. It is not excluded that cases of violence against children can cause their death. According to WHO data, is estimated that there is one death of a minor child as a result of violence for every 150-2400 cases of abuse. In terms of the consequences of domestic violence caused to children, childhood injuries can be very dangerous, especially severe brain damage as a result of violence, which causes serious consequences throughout the life of the injured person in terms of social. It should be noted that in terms of violence against children the most at risk are children born into an abusive family (where their parents have previously experienced the

effects of domestic violence against them or have witnessed domestic violence against them. origin), where the opportunities for domestic violence are higher (Consequences of Child Abuse and Exposure to Domestic Violence. Journal of Domestic Violence, Vol. 25. page 53-63).

Increased awareness and understanding of the phenomenon of domestic violence against women and its impact on children are a prerequisite for changes in attitudes and behaviors. Therefore, it can play an important role as part of a comprehensive prevention strategy. To be effective, it is important to ensure that awareness campaigns or programs are designed as an integral part of a comprehensive and sustainable approach to ending violence against women, such as a national action plan or program. A clear framework, which defines clear objectives, targets, and ways to measure and evaluate success, is just as important as the choice of partners, such as civil society and other partners with relevant experience - in particular NGOs. Based on existing knowledge and expertise and taking into account the mutually reinforcing and intertwined nature of the Convention on Preventing and Combating Violence against Women and Domestic Violence, it is possible to design effective awareness-raising initiatives appropriate to different local or national contexts (Summary of documents on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Council of Europe publication, September 2014).

VII. Conclusions

Referring to international standards, the use of imprisonment as a form of punishment should be strictly limited, as well as be an extreme ratio in special cases, when other appropriate measures cannot be applied.

Also, according to the Council of Europe: “imprisonment should be applied as a measure only when any other measure or sanction would be inappropriate for the gravity of the offense, efforts should be made to minimize the use of measures depriving a person of their liberty and to apply more many that do not”. (Recommendation R (2017) 3 of the Council of Europe).

After this brief comparative presentation of criminal offenses which express within themselves elements of violence, whether in the family or not, it becomes clear the desire of the legislator to curb this increasingly worrying phenomenon for the Albanian society, while the legal changes of 2013 focus mainly in toughening the imprisonment sentence.



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